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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

9:48 a.m. to 2:18 p.m.
Tuesday, March 15, 2016

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 Board Members:

3 MARNIQUE Y. HEATH, Chairperson

4 FREDERICK L. HILL, Vice-Chairperson

5 JEFFREY L. HINKLE, Board Member

6 MICHAEL TURNBULL, Zoning Commission

7 MARCIE COHEN, Zoning Commission

8 ROBERT MILLER, Zoning Commission

9 CLIFFORD MOY, Board Secretary

10

11 Office of the Attorney General

12 SHERRY GLAZER, ESQ.

13 ARIEL EBI, ESQ.

14

15 Office of Planning:

16 MATT JESICK

17 STEVE COCHRAN

18 STEPHEN MORDFIN

19 STEPHEN GYOR

20 MEGAN RAPPOLT

21 ANNE FOTHERGILL

22 KAREN THOMAS

23

24

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P R O C E E D I N G S

1
2 CHAIRPERSON HEATH: The hearing will please
3 come to order. Good morning, ladies and gentlemen.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street Northwest. Today's
6 date is March 15th, 2016 and we're here for the
7 public meeting and hearings of the Board of Zoning
8 Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.
10 Joining me today is Fred Hill, Vice Chairperson,
11 Jeffrey Hinkle, board member, and we're going to play
12 musical chairs today with Zoning Commissioners, we'll
13 first have Rob Miller, then Michael Turnbull, and
14 then Marcie Cohen will be sitting in for the rest of
15 the day as a Zoning Commissioner as a member of the
16 board.

17 Please be advised that this proceeding is
18 being recorded by a court reporter and is also being
19 webcast live. Accordingly we must ask you to refrain
20 from any disruptive noises or actions while in the
21 hearing room. The Board's hearing procedures and how
22 we will process applications can be found on the
23 table by the back door.

24 All individuals wishing to testify today will
25 need to do two things. The first is prior to

1 testifying you'll need to fill out two witness cards
2 and give them to the court reporter seated to my
3 right. The second is that you'll need to now stand
4 and take the oath as administered by the Board
5 Secretary, Mr. Moy.

6 Please stand.

7 MR. MOY: Those wishing to testify, if I
8 could administer the oath for a second? Good
9 morning.

10 [Oath administered to the participants.]

11 MR. MOY: Ladies and gentlemen, you may
12 consider yourselves under oath.

13 CHAIRPERSON HEATH: Thank you. Good morning,
14 Mr. Moy. Do we have any preliminary matters
15 [simultaneous speech].

16 MR. MOY: Yes, we do. Very, very briefly,
17 Madam Chair. Good morning. Good morning, Members of
18 the Board. This is for the record for the
19 transcript, on today's docket we have three cases,
20 three cases that have been postponed and rescheduled.
21 The first is Case No. 19218 of Jahagirdar and Bergen
22 has been rescheduled to April 5th, 2016. Application
23 No. 19173 of Equity Trust Company has been
24 rescheduled to the Board's docket on April 5th. And
25 finally Application No. 19177 of 615 Upshire Street

1 Northwest, LLC., which was formally named for your
2 record, Bailey's Real Estate I believe. Anyways,
3 that's been rescheduled to March 22nd. And that's,
4 other than other preliminaries, we'll address on a
5 case by case basis, Madam Chair.

6 CHAIRPERSON HEATH: Okay. All right. So we
7 have three decision cases on the docket this morning,
8 and we'll get started with those and then move into
9 our hearing cases. If you would call our first
10 decision case, Mr. Moy?

11 MR. MOY: Yes. Yes, then that would be
12 Application No. -- actually, it's Appeal No. 19174 of
13 Unit Owners Association of the Erie Condominiums, and
14 I'll read again the caption as advertised. This is
15 the appeal from a June 17th, 2015 decision by the
16 Zoning Administrator to issue Building Permit No.
17 B1410680, to construct a four -- or rather a new 40-
18 unit residential building with underground garage
19 parking, RC/R-5-B District at 2337 Champlain Street
20 Northwest, Square 2563, Lot 887, and participating on
21 the vote, Madam Chair, is Vice Chair Hill, Mr.
22 Jeffrey Hinkle, and Mr. Robert Miller.

23 MR. HILL: Thank you, Madam Chair. Since you
24 weren't here that day I'll go ahead and start the
25 discussion or we're ready to deliberate.

1 Again, I kind of found this case a little
2 confusing. I was conflicted in the beginning about
3 kind of my opinion on what I thought. I went back
4 and looked at the record again and watched the
5 testimony and then again came to, first again,
6 deciding the motion to dismiss the appeal as
7 untimely. I went through and again the appellant was
8 in opposition to this project at the very beginning
9 when it first came before the BZA and they lost that
10 opposition, the BZA granted the relief.

11 Then they appealed the BZA decision and
12 eventually came to an agreement with the owner of
13 some sort of compensation. At that time the
14 appellant thought the issues were resolved and moved
15 on. The building permit was then issued on 6/17/2015
16 and you know, the 60 days or thereabouts, you know,
17 when they should have known, the time clock of that
18 would have run out about 8/16/2015 and the appeal was
19 not filed until 10/27/15, which was 125 days after
20 the permit was issued.

21 The appellant argues that they did not know
22 about the penthouse issues until they saw it, and I
23 understand why they, you know, would have thought the
24 height issue was not apparent until it was built,
25 however I was really -- I had a very difficult time

1 getting past the significant amount of time which
2 passed since the permit was issued. There was some
3 issues that the attorneys brought up like estoppel
4 and laches, and that the elevator shaft was already
5 completed by the time the appeal was put out and the
6 stairwells were already done by the time the appeal
7 was filed. So significant work was done by that time
8 and so even before getting to the merits of the
9 appeal and whether or not the ZA erred, and I don't
10 again know even how that discussion would have
11 necessarily gone, I wasn't able to get past the
12 significant delay in when the appeal was filed.

13 So, you know, they -- let's see. So even
14 though again, I empathize with the appellant, I
15 didn't see their argument about the timeline and so I
16 couldn't get past that. So my vote would be to, or
17 at least at this point before hearing from both of my
18 colleagues, would be to dismiss due to the time of
19 the appeal being filed.

20 MR. MILLER: Okay. Thank you, Mr. Vice
21 Chair. We did have the argument on the -- the
22 arguments from the parties on the motion to dismiss
23 because of untimeliness. But we held that in
24 abeyance and then did hear the arguments on the
25 merits of the case. I agree with you that it's hard

1 to get past that the appellant should have known,
2 should have availed themselves somehow. They were so
3 on top of this issue from the get-go with the
4 previous BZA case they should have found the
5 officially filed building permit plans which would
6 have shown the change in the rooftop, the height of
7 the rooftop structure, and could have appealed it in
8 a timely fashion, and I'm not sure why that due
9 diligence wasn't done since they were so concerned
10 about that issue from the very beginning of the
11 original case. Maybe they didn't have counsel during
12 that period. I don't know.

13 But so and they're right next door and they
14 were in constant dialog and building permit plans
15 were being shared. They said it didn't show it on
16 there. They said there was misrepresentations. You
17 know, we really can't get into all that. I mean,
18 it's hard for us to deal with those back and forth
19 allegations of what was shared and what wasn't shared
20 and so I think we have to accept that the officially,
21 even though there's no definitive proof, but that the
22 officially filed permit plans did show at least in
23 our records show, that the officially filed permit
24 plans in June did show that the rooftop structure
25 with having a change from the BZA approved plans.

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1 So I agree with you that the appeal was not
2 filed in a timely manner. Late October is way beyond
3 and it would be prejudicial to the owner, property
4 owner, to allow that to go forward.

5 Nonetheless, we did hear the merits of the
6 case and I think there -- I do take away a lot of
7 lessons personally from this and I hope DCRA does, I
8 hope the BZA does, OAG, OZ staff, because it's clear
9 that the Zoning Administrator has had a longstanding
10 practice of doing modification, of permitting
11 modifications to approve plans that don't affect the
12 relief that was granted if it doesn't go against a
13 specifically enumerated condition in the order, and
14 if it's within matter of right.

15 And although there was other findings of
16 facts within that BZA order that talked about a nine-
17 foot high rooftop structure, it wasn't a specifically
18 enumerated condition. And I think going forward this
19 Board and the Zoning Commission as well, needs to be
20 cognizant that if it's important to this body, a
21 particular condition, it needs to be in that final
22 part of the order where the approval, as a
23 specifically enumerated condition. And the parties
24 should be recommending that and the OZ and OAG should
25 be recommending that.

1 And the other takeaway I have about this is
2 that I think it's somewhat questionable whether or
3 not the modification that was made didn't affect the
4 relief that was granted. The relief that was granted
5 was special exception for the height of the building.
6 Instead of being 40 feet I think it was it was
7 allowed -- in the Reed-Cook Overlay, it was allowed
8 to go to 48. It's a big deal in that neighborhood
9 and the mitigating -- one of the mitigations was that
10 the property owner at that time, a different prior
11 property owner, offered to only do a nine-foot
12 penthouse roof structure, nine-foot high, when 18 and
13 a half is permitted as a matter of right.

14 So that was a big deal for that case and for
15 the -- but it wasn't specifically enumerated as a
16 condition in the BZA order. But I think it's
17 somewhat questionable for the ZA to assert that it
18 has no impact on the relief that was granted, which
19 was the height of the building. And this is the
20 height of the structure that's on top of the
21 building. So, I mean, I think the ZA should have
22 sent it back to the BZA for a modification. That's
23 my own personal view. But that's the merits of the
24 case.

25 If we had gotten to the merits of the case I

1 might have had a different outcome, but the appeal
2 just was not filed in a timely manner and so I think
3 it would be prejudicial to the property owner at this
4 point when, as you said, the elevator shaft was
5 already built in the stairwell or whatever. So it's
6 just, it's very unfortunate. It's an unfortunate,
7 somewhat troubling case. But I think there was a
8 failure of due diligence by a lot of players in the
9 process, including this Board, including BZA,
10 including the appellant who didn't file, do their due
11 diligence to look at those set of building permit
12 plans that showed the rooftop structure that they
13 were very concerned about at five or seven feet. I
14 think it was five feet tall, or two feet with the
15 parapet or whatever, taller. Still within matter of
16 right but not at the -- but higher than what was
17 originally proffered.

18 So with all that said I shouldn't have
19 probably gone into all that and I hope -- I
20 appreciate your indulgence but I think there's just a
21 lot of lessons that I've learned and going forward
22 hopefully we can manage these cases better. But I
23 agree that it just was not filed timely and it was
24 within the appellant's control to find those building
25 permit -- officially filed building permit plans that

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1 would have told them that they needed to appeal, so I
2 agree with you on the timeliness question.

3 MR. HINKLE: Yeah. Thank you, Mr. Vice
4 Chair.

5 I tend to agree with everything that's been
6 said so far. It's unfortunate, actually, that they
7 didn't file in a timely manner and I'm not quite sure
8 why. But I think this is an interesting case. I sat
9 in the initial case. I think after the discussions
10 we had I thought the intent of the Board was fairly
11 clear in that the parameters set in terms of massing
12 and what the Board was approving in terms of relief
13 were set in that Exhibit 30 or what have you, that
14 that is noted that the approval was subject to this
15 plan.

16 Obviously it was not. But I just want to --
17 I was looking at the transcript and I was just really
18 struck with something that the attorney for the DCRA
19 stated, and you know, this is in discussion about
20 when a modification should come back to the Board and
21 one of the things he said is, I quote, "Because the
22 ZA cannot review every word of the board order,
23 including background, the description, the party's
24 position, and the findings of facts and conclusions
25 of law," essentially he's stating that the Zoning

1 Administrator doesn't read our orders. And that
2 strikes me, you know, a little strange because it's
3 the orders that guide kind of the permitting process.
4 And if the orders don't do that then what are the
5 orders for? I mean, that's a big question I have.

6 So, you know, I do wish we could move forward
7 and talk more about the merits of this case. As I
8 said, it's very interesting, but I tend to agree in
9 terms of the dismissal on being untimely.

10 MR. HILL: Okay. Just as far as the
11 appellant, I do understand how they were kind of
12 getting to the point where they thought everything
13 was going to be fine. But during the due diligence
14 time, you know, the part that also confused me is
15 they went to DCRA and they claim that DCRA did not
16 provide them with the plans. And what I found kind
17 of -- they weren't able to give the name of the
18 person that said that. However, I found it a little
19 odd that -- and again, I understand why they might
20 not have continued to pursue it. However, just going
21 down there one time and then being turned away and
22 then you know, it was such a big deal for such a long
23 time, I found -- so therefore I also have found it
24 hard to be able to go past the untimeliness issue.

25 So I'm going to make a motion to approve the

1 motion to dismiss as untimely for Case 19174.

2 All those in favor -- oh, sorry.

3 MR. HINKLE: Could I just make a quick point?
4 I think part of the discussion that we had in terms
5 of untimeliness and the appellant going down to try
6 to research the permit and plans, you know, DCRA
7 didn't say that those plans were there and available
8 at that moment, and if we're going to establish some
9 sort of statement that the moment those plans are
10 publically available and permitted, that's when the
11 clock, the 60 days starts to appeal those plans.

12 I think it's up to DCRA to make sure that
13 those plans are there and publically available. So
14 that somebody that does come down can get them right
15 there. And, you know, there's probably some
16 processes. I know they talked about looking at
17 getting it online and so forth. But, you know, if
18 you're going to set the clock at 60 days, you need to
19 make sure that those plans are available to the
20 public, and I think that's an important point here.

21 MR. MILLER: I would agree with that. I
22 think their testimony was that it's like two weeks or
23 a week or two after the permit is filed they digitize
24 it or whatever, and then that's when it becomes
25 public available. In this case, I mean, they didn't

1 go down until at the time they were filing the appeal
2 in late October. They didn't go down. They didn't
3 go down when the permit was filed. And they knew
4 when the permit was filed. The building was going up
5 right next door to them.

6 But yeah, I agree with you on that. I don't
7 think that -- I don't agree with the appellant that
8 the placard was deficient. But I think there clearly
9 can be improvements in that placard. It probably
10 should indicate a 60 day time clock of some sort with
11 some date on it so that the public knows that there's
12 a deadline there, and that -- I think it does say
13 that they're available for public inspection, I think
14 is the word, the words that are on the placards.

15 But clearly, as I said, there are
16 improvements -- this case shows there are
17 improvements that can be made throughout the entire
18 zoning process, including ourselves in terms of
19 enumerating conditions that are important at the end
20 of the order. So I support your motion.

21 MR. HILL: Okay. So how do we share that
22 with DCRA, though? Send something that --

23 MR. MILLER: I think we've publically --

24 MR. HILL: So that's it. Okay. All right.
25 Okay. All right. So the motion has been made and

1 seconded.

2 [Vote taken.]

3 MR. HILL: The motion carries, Mr. Moy.

4 MR. MOY: Yes. Thank you, sir. Staff would
5 record the vote as three to zero to two. This is on
6 your motion, Vice Chair Hill, to grant the motion to
7 dismiss for timeliness, or untimeliness in this case.
8 Seconded the motion, Mr. Robert Miller, also support,
9 Mr. Jeffrey Hinkle. We have a board member not
10 participating, a board seat vacant. Motion carries
11 three to zero to two. And of course this would be a
12 full order.

13 MR. HILL: And with that I will turn this
14 back over to you, Madam Chair.

15 CHAIRPERSON HEATH: Thank you. We're going
16 to give Mr. Turnbull a bit of time. Thank you, Mr.
17 Miller. We'll give Mr. Turnbull a bit of time to get
18 situated.

19 Let's actually take a five-minute break while
20 he comes out. And then we'll resume.

21 [Off the record from 10:10 a.m. until 10:17
22 a.m.]

23 CHAIRPERSON HEATH: All right. We'll come
24 back to order. Mr. Moy, if you could call our next
25 decision case?

1 MR. MOY: Yes. Thank you, Madam Chair. That
2 would be Application No. 19203 of Sheela, Sheela, S-
3 H-E-E-L-A., Tschand. This was last heard on March
4 1st, 2016. This is a request for a variance relief
5 from the side yard requirements under 405, special
6 exception from the conversion to an apartment house,
7 requirements under 336, to allow the conversion of a
8 one-family dwelling to a three-story, three-unit
9 apartment house in a R-4 district, 1844 Kendall
10 Street Northeast, Square 4048, Lot 808.

11 The Board, as I said, heard this case on
12 March 1st, scheduled it for decision today, March
13 15th, requested filings and those are in the record,
14 Madam Chair, under Exhibits 33 through 35.
15 Participating on the vote is yourself, Madam Chair,
16 Vice Chair Hill, and Mr. Michael Turnbull.

17 CHAIRPERSON HEATH: Thank you, Mr. Moy. As
18 you noted the applicant has submitted their requested
19 filings. So since March 1st we did receive revised
20 drawings showing the agreed upon penthouse setbacks
21 as requested by the Board. We also received a self-
22 certification and a letter in support from an
23 adjacent neighbor.

24 And if the Board will recall during the
25 hearing we also discussed the fact that OP was in

1 support of this application, ANC 5D was also in
2 support, and DDOT had no objection. So I think based
3 upon the fact that this applicant has sent the Board
4 what we requested and everything looks good, I would
5 make a motion that we approve the request for
6 variance from side yard requirements and the special
7 exception from the conversion to apartment house to
8 allow the conversion of a one-family dwelling into a
9 three-story, three-unit apartment house for
10 Application No. 19203.

11 MR. HILL: I second.

12 CHAIRPERSON HEATH: The motion has been made
13 and seconded. Any further discussion?

14 [Vote taken.]

15 CHAIRPERSON HEATH: The motion carries.
16 Summary, Mr. Moy.

17 MR. MOY: Yes, thank you, Madam Chair. Staff
18 would record the vote as three to zero to two. This
19 is on your motion, Madam Chair, to approve the
20 application for the relief requested. Seconding your
21 motion, Vice Chair Hill. Also in support, Mr.
22 Turnbull, board member not participating, board seat
23 vacant. Motion carries. Summary order. Thank you.
24 This is to Case 19203.

25 Okay. So, next I believe is Application No.

1 17703A of Sidwell Friends School. Participating is
2 yourself, Ms. Heath, Vice Chair Hill, and Mr.
3 Turnbull.

4 CHAIRPERSON HEATH: All right. So during
5 this hearing we heard quite a bit of testimony from
6 the applicant and the other parties to this case.
7 And at that time we requested that the applicant
8 provide us with some documentation that noted their
9 dedication to moving forward with at least some of
10 DDOT's recommendations around the site. There had
11 been a lot of safety concerns expressed by the
12 neighbors and specifically the VanNess Coalition.

13 And so since that hearing we did receive from
14 the applicant, a filing which included a new
15 condition number 6, which proposed that the applicant
16 would include \$100,000 dedicated to funding some of
17 DDOT's recommendations. There wasn't anything
18 specific about which recommendations and we were made
19 aware during the hearing that the \$100,000 wasn't
20 going to be enough to cover all of DDOT's
21 recommendations.

22 And so then we also received an additional
23 filing from the VanNess Coalition recommending
24 modifications to that new condition 6, which
25 requested that priority be given to two intersections

1 that were most concerning to them, which were the
2 intersection of Wisconsin and Upton, and 37th and
3 Upton, where there had been particular issues of
4 safety and collisions in the past.

5 Unfortunately, we haven't received anything
6 from Department of Transportation and we were hopeful
7 that they would be able to be here today to speak
8 about the two additional filings, in addition to the
9 petitions that we received from VanNess Coalition.
10 So I would recommend that rather than the Board
11 moving forward on a decision on this today, that we
12 postpone our decision until we can hear from DDOT on
13 this to hear what they might recommend, and so that
14 the Board can provide more clarity and definition
15 around the conditions, specifically how this \$100,000
16 should be allocated.

17 Does anybody else have any thoughts on that?

18 MR. TURNBULL: I would agree, Madam Chair. I
19 think one of the issues that -- I think that before
20 we can issue an order we have to have a little bit
21 more finality on how this money -- I mean, one of the
22 items that came up was that the applicant might
23 actually opt to do this construction itself, rather
24 than having Department of Transportation do it
25 because they thought they could be quicker, more

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1 efficient, they have construction people there. So I
2 think we just need to tighten this up a little bit
3 more before we can write an order.

4 I mean, one of the things here, it says here,
5 if after five years the money hasn't been spent it
6 would go back to the applicant. I don't have a
7 problem with that as a basic point of looking at it.
8 But I think as you had said, I think we need to have
9 a listing of some of these priorities. What are we
10 trying to achieve for that money? And we need some
11 more input on that, how to best achieve the use for
12 that 100K. And I mean, I'd like to see it all used
13 for -- and so I think the Department of
14 Transportation has to weigh in a bit, and maybe the
15 neighbors have to come back and say well, of the five
16 things or whatever, we'd like to definitely see this,
17 this, or this done. And that those -- and prioritize
18 it.

19 But I think we're close. I think when we
20 left at the end of that hearing I think we had
21 reached a meeting of the minds that the 100K, that
22 the cap as Mr. Miller had, you know, proposed putting
23 in a cap, I think that's the way to go. And I think
24 the applicant was amenable to that and they proffered
25 that. And so but I would just -- we just need to

1 finalize that just a little bit further before we can
2 finish this.

3 CHAIRPERSON HEATH: Sure. I completely
4 agree. So, did you have anything you wanted to say?

5 MR. HILL: Yeah, I did want to say like, I
6 mean, I appreciate that the applicant had offered the
7 funds to help offset some of the costs of some of the
8 issues that were coming up for the opposition. And I
9 also just -- I guess it would have been nice
10 obviously had DDOT been able to be here, that we kind
11 of tighten some of this up. I mean, I don't know how
12 tight it's going to get. I don't want them to
13 necessarily be penalized because they've now made an
14 offer to do this. I mean, I just think that if there
15 was something, however DDOT and the applicant can get
16 together with -- again, if DDOT were here and just
17 explain how this was going to kind of move forward,
18 you know, for me, you know, this is something that
19 helped me get there, get to the point in them
20 offering the funds.

21 And so, you know, I just want to kind of say
22 that you know, I appreciate them doing this and if
23 DDOT were here we could have been able to move
24 forward. But since they're not here we're not able
25 to get some clarity as to how this would actually

1 work. So I would -- you know, I would also agree to
2 push it back until DDOT is here.

3 CHAIRPERSON HEATH: Okay. And one other
4 point, I just want to thank the Vice Chair for
5 pushing on that because I think it was your
6 insistence that got us to the point of the applicant
7 agreeing on the \$100,000. So I think we are moving
8 in the right direction.

9 And, Mr. Moy, if we could postpone this
10 decision until -- is March 27th a good date?

11 MR. MOY: Well, it would be --

12 CHAIRPERSON HEATH: 29th.

13 MR. MOY: -- March 29th, Madam Chair. And I
14 think, I believe, Mr. Turnbull will be able to attend
15 for that day as well.

16 CHAIRPERSON HEATH: Okay.

17 MS. GLAZER: Madam Chair.

18 CHAIRPERSON HEATH: Yes.

19 MS. GLAZER: Just so we're clear, is this
20 going to be then for a limited hearing, if you're
21 going to hear from DDOT and possibly the other
22 parties?

23 CHAIRPERSON HEATH: Good point. I do think
24 it makes sense for us to put this on as a limited
25 hearing, just in case. I think there may be

1 additional filings addressing these points
2 specifically, but it would be helpful, I think, for
3 us to have conversation with the applicant, and DDOT
4 specifically. And if the other parties wish to be
5 here that would be fine as well. But specifically
6 the applicant and DDOT would be good to hear from.

7 MS. GLAZER: Well, are you going to allow --
8 I think it should be clear, though, whether you're
9 going to allow additional filings in the record at
10 this point, or whether you just want to hear from the
11 parties.

12 CHAIRPERSON HEATH: Yes. Yes. As I said,
13 additional filings.

14 MS. GLAZER: Okay.

15 CHAIRPERSON HEATH: Specifically on this
16 condition number 6 and how we are addressing how the
17 \$100,000 gets allocated.

18 MS. GLAZER: And should there be a time limit
19 to submit those --

20 CHAIRPERSON HEATH: Mr. Moy, can you --

21 MS. GLAZER: -- so that the Board isn't
22 surprised, you know, the day before.

23 CHAIRPERSON HEATH: Sure. If you could give
24 us dates, Mr. Moy?

25 MR. MOY: Then I would suggest, Madam Chair,

1 so that the Board has time to digest the information,
2 that we receive it into the record by Wednesday,
3 March the 23rd.

4 CHAIRPERSON HEATH: Okay.

5 MR. MOY: Yeah.

6 CHAIRPERSON HEATH: All right. So we'll
7 circle back on this on the 29th. All right.

8 So we have, as usual, quite a long docket
9 today and what I'd like to do to manage this docket,
10 particularly since we have two Zoning Commissioners
11 still with us today, is to first call Application No.
12 18895A, James Walker. And then our second will be
13 19193, C&S Development. And then we will go back to
14 the top of the order as listed in the agenda for
15 today.

16 MR. MOY: Okay. Thank you, Madam Chair. So
17 with that announcement Application No. -- actually, I
18 have new information for the Board too --

19 CHAIRPERSON HEATH: Okay.

20 MR. MOY: -- that just came to my attention
21 15 minutes ago, give or take.

22 This is to Application No. 18895A, this is
23 the application of James Walker, as amended relief,
24 with amended relief. And apparently the applicant
25 filed this morning and asked the Board for a

1 postponement, and so if the Board agrees then I would
2 suggest that we rehear this application on April the
3 12th.

4 CHAIRPERSON HEATH: Okay. I think that's
5 acceptable, Mr. Moy. This application has been
6 postponed a number of times due to a number of
7 different reasons, so hopefully we can hear from this
8 applicant on April 12th.

9 MR. MOY: Yes. Thank you. So with that then
10 we are at Application No. 19193, parties to the
11 table. This is the application of C&S Development,
12 LLC. as amended and captioned for variance relief on
13 the lot area and lot width requirements under Section
14 401.2, lot width requirements under 401.3, to permit
15 construction of a three three-story one-family
16 dwelling on three new nonconforming lots in the R-4
17 district at premises 1620 through 1622 E Street
18 Southeast, Square 1090, Lots 813 and 814.

19 This was continued from the hearings of March
20 1st, Madam Chair.

21 CHAIRPERSON HEATH: Thank you. Good morning.
22 Would you all please introduce yourselves?

23 MR. KADLECEK: Good morning, Cary Kadlecek
24 from Goulston and Storrs on behalf of the applicant.

25 MR. SCHMIDT: Good morning, JD Schmidt from

1 C&S Development.

2 MR. CONNELL: Good morning, Jesse Connell
3 from C&S Development.

4 MR. NELSON: Good morning, Joel Nelson from
5 KW Capital Properties Real Estate Brokerage.

6 CHAIRPERSON HEATH: Okay. Thank you. And
7 thank you all for submitting additional documentation
8 into the record. You'll recall at our March 1st
9 hearing we asked that you all strengthen your
10 variance request by submitting some additional
11 documentation to strengthen your case. And we
12 received that. I think it might be helpful, both in
13 terms of just so the Board is all clear, but also so
14 that we can then hear from Office of Planning if
15 there is a change in position.

16 If you could just quickly highlight what
17 you've stated in your most recent submission, and if
18 you want to -- I don't think we necessarily need to
19 walk through the drawings, although we do appreciate
20 you submitting those as well. But just your argument
21 towards the variance.

22 MR. KADLECEK: Yeah, I think it might be
23 helpful just since two weeks have lapsed. I just
24 wanted to kind of restate and reframe a little bit --

25 CHAIRPERSON HEATH: Sure.

1 MR. KADLECEK: -- the argument. And then JD
2 might have a little bit of information to add, but I
3 promise we'll keep it brief.

4 It seems like the crux of what the remaining
5 issue was is really relating to the practical
6 difficulty standard with respect to the variance. A
7 matter of right project, as the applicant had
8 explained at the last hearing would, you know, as a
9 practical matter, would really create a hardship in
10 terms of increased expense and inconvenience as far
11 as what a matter of right two-flat project would
12 result in. And as the real estate broker testified,
13 and I know he's happy to give more information about
14 that, you know, that really would create a situation
15 of two larger units that are just really not
16 marketable at a price commensurate with what this
17 market really can stand.

18 Related to that and equally important, I
19 think, is the stylistic consistency. You know, two
20 24 foot wide flats is just really inconsistent with
21 what the neighborhood really is characterized as.
22 It's almost, as they testified, 16 foot wide lots.

23 What they're proposing is, you know, very
24 much in line with that. And indeed the Court of
25 Appeals has said, stylistic consistency is something

1 that can be considered as a practical difficulty. So
2 when you consider the marketability of the extremely
3 large condominium units combined with the stylistic
4 inconsistency of what would be allowed as a matter of
5 right, you know, it really does rise to the level of
6 creating a practical difficulty.

7 And just one last point. I know that the
8 Board at the end of the last hearing had asked for
9 some precedent, and those are cited in the letter, as
10 you saw. But there was one case as we discussed in
11 that letter that, you know, really was nearly
12 identical in terms of the relief. And in that case
13 the Board did accept the unmarketability, if you
14 will, of the matter of right, two large houses that
15 allowed then the Board to get comfortable to grant
16 the relief allowing for lot width that was
17 nonconforming, slightly below what was required in
18 the regulations.

19 MR. SCHMIDT: I also wanted to add, the -- a
20 couple weeks ago, Mr. Hill, you asked a question.
21 And it caught me off guard a little bit and I think
22 my answer wasn't clear. You asked, did you purchase
23 this property assuming you were going to get a
24 variance.

25 The answer to that is, I didn't do a good job

1 of answering that a couple weeks ago. I think the
2 right answer is that we did a risk assessment. And
3 the price of the land was determined by the market.
4 This property was marketed fairly on the open market
5 and it got -- there was multiple competing offers.
6 Our offer was the highest by a very small margin. So
7 I think the price of the land is determined by the
8 market and that's what drove -- now, our risk
9 assessment was more driven by, not an assumption that
10 we would get a variance, but a hope that the
11 likelihood would be there because we found precedence
12 for it, and also the stylistic compatibility and how
13 what we would be proposing would be supported by the
14 neighbors, they would fit in, and there was, you
15 know, nothing but 16 foot wide lots on the block, so
16 that's the risk assessment that was done. We didn't
17 assume we were going to get a variance. So.

18 CHAIRPERSON HEATH: Okay. Does the board
19 have any questions?

20 Then unless the applicant has anything else
21 you'd like to present at this time, I'd like to hear
22 from Office of Planning to see where they stand on
23 this case. Good morning.

24 MR. JESICK: Good morning, Madam Chair and
25 Members of the Board. Thank you. We just got this

1 full packet of information yesterday so I've not been
2 able to prepare a complete analysis of it. So at
3 this time we're going to have to rest on the record
4 that we previously submitted to the Board. Thank
5 you.

6 CHAIRPERSON HEATH: Okay. But you have been
7 able to review the document?

8 MR. JESICK: Briefly, yes.

9 CHAIRPERSON HEATH: Okay. Would you need
10 additional time or do you have any indication that
11 additional time might help based on the direction
12 that this application is headed?

13 MR. JESICK: I'm not sure that additional
14 time would change the position on this case.

15 CHAIRPERSON HEATH: Okay.

16 MR. JESICK: Thanks.

17 CHAIRPERSON HEATH: All right. And so the
18 fact that the Court of Appeals has ruled previously
19 on stylistic inconsistency being a factor that weighs
20 in towards practical difficulty wouldn't be a factor
21 that would cause you to think otherwise about your
22 recommendation?

23 MR. JESICK: We would have to see that case
24 and --

25 CHAIRPERSON HEATH: Okay.

1 MR. JESICK: -- the circumstances of that
2 case and how applicable it is to this one. But we'd
3 certainly be willing to take a look at it.

4 CHAIRPERSON HEATH: Okay. Understood. All
5 right. Okay. And would you agree that the
6 marketability of what the applicant has proposed
7 makes more sense, or that the project as the
8 applicant has proposed is more marketable than the 24
9 foot wide matter of right?

10 MR. JESICK: I'm not familiar with the market
11 so I can't speak to what is marketable in terms of
12 unit sizes.

13 CHAIRPERSON HEATH: Okay. All right. Does
14 the Board have any other questions of Office of
15 Planning?

16 Does the applicant have any questions of
17 Office of Planning?

18 MR. KADLECEK: No, we don't have any
19 questions. Thank you.

20 MR. HILL: I've got a question. Would Office
21 of Planning agree that their proposal is more
22 stylistically compatible with the neighborhood?

23 MR. JESICK: Yes, as noted in our written
24 report, we feel that the proposal would likely not
25 have any negative impacts to the neighborhood

1 character or adjacent properties.

2 MR. HILL: Okay. Thank you.

3 CHAIRPERSON HEATH: Okay.

4 MR. NELSON: Madam Chairman and Members of
5 the Board, just again, just the real estate broker.
6 And I had the benefit of consulting with the
7 applicants at the time of purchase and just to
8 elaborate for 10 seconds on JD's recollection. The
9 analysis and some of the advice that I was conveying
10 at the time was that we knew the by right development
11 opportunity, but we talked about the fact that the
12 neighborhood would fundamentally be opposed to the by
13 right design and development and that while the
14 applicant would encounter no objections on a zoning
15 basis, they would encounter objections.

16 Now maybe the neighbors couldn't do anything
17 to stop them at that stage because, right? But being
18 a good neighborhood partner and proceeding with a
19 construction that takes, you know, an extended period
20 of time, constructing a project that the neighbors
21 are directly in opposition to because it sticks out
22 like a sore thumb relative to everything that's
23 constructed on the block, was a significant
24 consideration as they did the risk analysis.

25 And then just separately related to

1 marketability, we did provide, or we tried to provide
2 a summation of the statistics around the size of the
3 units, all of the units, both fee simple and
4 condominium that are sold in the immediate
5 jurisdiction, and the average price per square foot.
6 And effectively what we found is there's just nothing
7 that even begins to approximate the size of these
8 condos.

9 And it really, it boils down to that a buyer
10 in this particular micro market, would be faced with
11 a choice between buying a condominium with the
12 accompanying fees and sharing and et cetera, at a
13 price far greater than a house, a fee simple home, of
14 the same size in the exact same location. So
15 effectively that was the crux of what the data leads
16 us to conclude.

17 CHAIRPERSON HEATH: Okay. Questions on that?
18 Okay.

19 I think we went through all of the other --
20 we heard testimony from others on this, or at least
21 requested it at the last hearing. And so just, I'll
22 state again for the record, we do have a letter of no
23 objection from DDOT and a letter recommending
24 approval from ANC 6B, and we received the additional
25 letters of support into the file from neighbors,

1 quite a few, including adjacent property owners. So
2 we appreciate you taking the time to work with the
3 neighbors and to collect that information from them.

4 Does the Board have any other questions or
5 want to hear anything else from the applicant?

6 MR. TURNBULL: Well, no. I was hoping to
7 hear more from the Office of Planning because I
8 thought the records were filed on last Thursday and I
9 thought they were in ISIS on March 10th.

10 MR. JESICK: We were not aware that they were
11 in ISIS until yesterday.

12 [Pause.]

13 CHAIRPERSON HEATH: Okay. So then we'll turn
14 back to the applicant for any closing you'd like to
15 make and then we'll conclude. I think the Board is
16 likely ready to deliberate on this today but we'll
17 allow you to close before we do.

18 MR. KADLECEK: I don't really have anything
19 much to add other than what I said at the beginning.
20 But, you know, I think it was clear that the first
21 prong of the variance test was met about uniqueness.
22 It's clear that the third prong about no adverse
23 impact on the zone plan or the neighboring
24 properties.

25 And based on the information that we've

1 provided I think that this clearly rises to the level
2 of a practical difficulty based both on other cases
3 that this Board has approved, and basic standards
4 that the Court of Appeals has agreed are basis for a
5 practical difficulty. I think when all those are
6 considered this case clearly meets the standards for
7 the variance test and we hope the Board will approve.
8 Thank you.

9 CHAIRPERSON HEATH: Okay. Thank you. So
10 with that is the Board ready to deliberate on this?

11 This was a tough case I think initially for
12 me because I didn't feel that the applicant had met
13 the practical difficulty requirement for proving that
14 you deserve a variance in this case. And I
15 appreciate the applicant's decision today to revisit
16 the question posed by the Vice Chair because I think
17 that response sort of, while it -- well, what I'll
18 say is the response sort of caught us off guard as
19 well. And so it certainly didn't strengthen the
20 argument towards the variance test. And so the
21 additional filings have gotten me there.

22 I think I completely agree. And as we've
23 heard from Office of Planning, the matter of right
24 development here would be completely inconsistent
25 with the character of the neighborhood. And we've

1 heard that from the neighbors and from the ANC as
2 well. And so I think everybody is on the same page
3 with that. I think I also feel that the
4 marketability issues are relevant here, and if the 24
5 -- we've heard several testimony from several people
6 in this case, or from the applicant and from others
7 submitting letters that the 24-foot matter of right
8 development would not be marketable.

9 And so I think that there is a practical
10 difficulty here and so I'm inclined to support this
11 request.

12 MR. HILL: Yeah, thank you, Madam Chair. I
13 also struggled with this actually quite a bit because
14 I don't like going against the recommendations of
15 Office of Planning given you know, really the great
16 weight that we take with their recommendations. And
17 so I did struggle quite a bit with the practical
18 difficulty in terms of how they're reaching that
19 first prong.

20 I again thought that -- and I am at that
21 point now. And how I got to that point was again,
22 was kind of the size of the lot, the stylistic
23 inconsistency that was mentioned earlier, and then
24 again the expenses in terms of like the profitability
25 of the project. It's kind of like a confluence of

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1 factors that is getting me to that point. And I do
2 appreciate the clarity that the applicant made in
3 terms of the market rate. You know, I mean, whether
4 someone pays too much for the land that doesn't
5 necessarily -- isn't the factor that we would take
6 into consideration. But again, if there were
7 multiple bids and it was a small amount that they --
8 that means, you know, that's what the market rate was
9 for the property.

10 But so all those things together is how I'm
11 getting to kind of again, the practical difficulty
12 issue. The thing that really, again, pushed me over
13 the edge was just the neighborhood and the strong
14 emotional letters of support in order to keep the
15 character of the neighborhood. And, you know, I
16 think that this project is the best one for the
17 intent, purpose and integrity of the zone plan, you
18 know, for that area.

19 And so often, you know, we don't have the --
20 so often we go against what the neighbors want, you
21 know, and the neighborhood, and what they're trying
22 to do. And for me, you know, I was able to first of
23 all get past the first prong. But then the fact that
24 there was so much support from the neighbors, from
25 the, you know, the Capitol Hill Restoration Society,

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1 that this is what they wanted as opposed to the by
2 right, that's what just pushed me over this. So I
3 would be in approval even though we would be going
4 against OP in this area. Those are the reasons why I
5 would be going against OP. But I would be in
6 approval of granting the variance.

7 MR. TURNBULL: Thank you, Madam Chair. I
8 would agree with both of your comments. I struggled
9 with this also. Again, we always look to OP for the
10 zone plan and the insight as to what's best. But I
11 think in this particular instance, and as the Vice
12 Chair has stated that, you know, we have the Capitol
13 Hill Restoration Society weighing in, and the ANC 6B
14 in favor of this, and a lot of neighbors, in
15 considering that the overwhelming width of most of
16 these row houses are 16 feet gives credence to that
17 the odd-sized lots might be -- are not quite in the
18 same character as what the rest of the block is.

19 And I won't go into any more but I think I
20 would be in support of this also.

21 CHAIRPERSON HEATH: Okay. All right. So,
22 with that then I will make a motion that we approve
23 the request for variances from lot area and lot width
24 requirements to permit the construction of three
25 three-story one-family dwellings on three

1 nonconforming lots for Application No. 19193.

2 MR. HILL: I second.

3 CHAIRPERSON HEATH: The motion has been made
4 and seconded. Any further discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: The motion carries. Do
7 you want to do a full order on this, Mr. Moy, or do
8 you want to do it as summary with --

9 MR. MOY: Well, as the --

10 CHAIRPERSON HEATH: An expanded summary.

11 MR. MOY: Well, the Board can do -- the staff
12 will do whatever the Board desires, but so long as if
13 you --

14 CHAIRPERSON HEATH: Let's do a full.

15 MR. MOY: Okay. Perfect. Given the
16 circumstance revolving around this application.
17 Staff would record the vote as three to zero to two.
18 This is on your motion, Madam Chair, Chair Heath, and
19 these are to the relief being requested as shown on
20 revised plans under Exhibit 37. Seconded the motion,
21 Vice Chair Hill. Also in support, Mr. Michael
22 Turnbull. A member not participating and a board
23 seat vacant. So there you go. Motion carries.

24 CHAIRPERSON HEATH: Thank you.

25 MR. KADLECEK: Thank you.

1 MR. NELSON: Thank you.

2 [Off the record discussion.]

3 CHAIRPERSON HEATH: All right. So we'll go
4 back to the top of the order, Mr. Moy, and resume
5 with 19201.

6 MR. MOY: Yes. Thank you, Madam Chair, and
7 welcome Ms. Marcie Cohen from the Zoning Commission.

8 All right. So to the table, parties to
9 application No. 19201 of Bourbon Two Real Estate,
10 LLC. as captioned and advertised for variance relief
11 from the rear yard setback requirements under 774.1.
12 This is for a restaurant in the C-2-A district, 1771
13 U Street Northwest, Square 2557, Lots 10 and 11. And
14 there is a revised self-certification in your case
15 folders, Madam Chair, as of March the 11th. The
16 application is all paid up and that's all I have from
17 the staff.

18 CHAIRPERSON HEATH: Okay. Thank you, Mr.
19 Moy.

20 Good morning. Can you all introduce
21 yourselves?

22 MR. BELLO: Good morning, Madam Chair. Toye
23 Bello representing the applicant.

24 CHAIRPERSON HEATH: Make sure your mic is on.

25 MR. THOMAS: Sorry. William Thomas, the

1 applicant.

2 MR. GRONNING: Eric Gronning, Gronning
3 Architects.

4 CHAIRPERSON HEATH: It's still not on.

5 MR. GRONNING: Eric Gronning, Gronning
6 Architects.

7 MS. SCHIERHOLD: Karin Schierhold, Gronning
8 Architects.

9 CHAIRPERSON HEATH: Okay. All right. Okay.
10 And so your new self-certification, I see, includes
11 both rear yard and nonconforming structure 2001.3.

12 MR. BELLO: As recommended by OP, that's
13 correct.

14 CHAIRPERSON HEATH: Sure. Okay. All right.
15 Does the Board have any questions on this
16 application? Okay. All right.

17 Then I think with that your file appears to
18 be complete and we're not going to need to hear a
19 full presentation from you. If you're okay with us
20 continuing on with the hearing we'll ask for any
21 additional comments from Office of Planning.

22 MR. BELLO: We welcome that. Thank you.

23 MR. COCHRAN: Madam Chair, I wonder if you're
24 accepting into the record the filing that they tried
25 to post yesterday?

1 CHAIRPERSON HEATH: Was that the supplemental
2 hearing statement?

3 MR. BELLO: That's correct.

4 CHAIRPERSON HEATH: Okay.

5 MR. BELLO: That's the supplemental hearing
6 statement.

7 CHAIRPERSON HEATH: Okay. Yeah, I'm okay to
8 -- I think it sounds like the Board, the Board is
9 okay to accept this and to waive the time requirement
10 for the supplemental hearing statement.

11 MR. BELLO: Thank you.

12 CHAIRPERSON HEATH: So yes, thank you for
13 pointing that out.

14 MR. COCHRAN: Sure. Then with the acceptance
15 of that statement OP believes the applicant has met
16 the tests and stands on its recommendation of
17 approval.

18 CHAIRPERSON HEATH: Okay. Thank you. Board,
19 any questions of Office of Planning? Applicant?

20 MS. COHEN: Yes.

21 CHAIRPERSON HEATH: Go ahead, Marcie.

22 MS. COHEN: Thank you, Madam Chairman. I
23 just have one question and that has to do with, does
24 it need any historic preservation approvals?

25 MR. COCHRAN: It has received at least

1 concept approval. It's actually historic
2 preservation considerations that led the applicant to
3 request the variance.

4 MS. COHEN: Thank you.

5 CHAIRPERSON HEATH: Okay. All right. So in
6 addition to support from Office of Planning we also
7 have a letter of no objection from Department of
8 Transportation, and a letter from ANC 1C indicating
9 their support by a vote of eight to zero. Is there
10 anyone here from ANC 1C?

11 All right. Is there anyone here wishing to
12 speak in support of this application? Anyone in
13 support?

14 Anyone in opposition to this applicant? No
15 opposition. Okay. Then we'll turn back to the
16 applicant for -- oh, did you want to speak in support
17 or to speak on this application?

18 MS. REYES: On the applicant I am opposing,
19 or --

20 CHAIRPERSON HEATH: Okay. You can come
21 forward. Did you fill out a witness card?

22 MS. REYES: Yes.

23 CHAIRPERSON HEATH: Okay. Perfect. Just
24 introduce yourself and then we'll give you three
25 minutes to make a statement.

1 MS. REYES: Hi. I'm Anna Reyes, I'm with El
2 Tamarindo, which is the neighboring lots next to
3 where they're requesting the variance.

4 CHAIRPERSON HEATH: Thank you.

5 MS. REYES: That did it. So I'm not opposed
6 to the project or the variance. I just want to make
7 sure that there is an egress in the rear yard
8 setback, which does come on to our private property.
9 I just want to make sure that that doesn't infringe
10 on any future development plans that we may have.

11 CHAIRPERSON HEATH: Okay. Have you talked to
12 the applicant about these egress issues and --

13 MS. REYES: It was mentioned before and I
14 believe it's okay. It's where the door has been put
15 is right on that three foot --

16 MR. THOMAS: Correct.

17 MS. REYES: -- right of way.

18 MR. THOMAS: She brought up at an ANC meeting
19 that there is a right of way for all the neighbors
20 because they're kind of landlocked. That's been
21 established. And making sure that the door was
22 placed in the proper position to make sure that it
23 conforms with the right of way.

24 CHAIRPERSON HEATH: Okay.

25 MR. THOMAS: Which is exactly what we've done

1 to make sure that if they decided to build out on
2 their additional property line that there would be no
3 problem with our egress nor impingement upon their
4 right to increase the size of their footprint.

5 MS. REYES: Uh-huh. Or use the space for
6 whatever it may be.

7 CHAIRPERSON HEATH: Okay. All right.

8 MS. REYES: Uh-huh.

9 CHAIRPERSON HEATH: Okay. Well, thank you
10 for addressing that and thank you for taking the time
11 to come down here and to make sure that your egress
12 or development rights are not infringed upon in the
13 future.

14 MS. REYES: Okay.

15 CHAIRPERSON HEATH: We appreciate it.

16 MR. THOMAS: Okay. Thanks.

17 CHAIRPERSON HEATH: All right. Anyone else
18 wishing to speak on this application?

19 All right. Then if the Board doesn't have
20 any other questions we'll turn back to the applicant
21 for any closing you might want to make.

22 MR. BELLO: We'll just rest on the record.

23 CHAIRPERSON HEATH: Okay. Thank you. All
24 right. Then that concludes this hearing. Is the
25 Board ready to deliberate? All right. Then I think

1 this application is pretty straightforward and so I
2 will make a motion that we approve the request for
3 variance relief from rear yard setback requirements
4 under 774.1 and nonconforming structure, 2001.3 for
5 Application No. 19201.

6 MS. COHEN: And I'll second that.

7 CHAIRPERSON HEATH: The motion has been made
8 and seconded. Any further discussion?

9 [Vote taken.]

10 CHAIRPERSON HEATH: The motion carries.
11 Summary order, Mr. Moy. Thank you.

12 MR. MOY: Thank you, Madam Chair.

13 MR. BELLO: Thank you.

14 MR. MOY: Staff would, for the record, record
15 the vote as three to zero to two. This is on the
16 motion of Chair Heath. Seconded the motion, Ms.
17 Marcie Cohen. Also in support Vice Chair Hill, board
18 member not participating, board seat vacant, and this
19 is for the amended relief requested as shown on plans
20 under Exhibit 5. And that's it. Summary order.

21 CHAIRPERSON HEATH: Okay. Thank you. Call
22 our next case when you're ready.

23 MR. MOY: That would be parties to the table
24 for Application No. 19206 of 1302 Pennsylvania Avenue
25 Southeast, LLC., as captioned and advertised for

1 variance relief from the FAR requirements under
2 771.2, Lot occupancy requirements under 772.1, rear
3 yard, under 774.1 and nonconforming structure
4 provisions under 2001.3 and off-street parking
5 requirements under 2101.1. This is to permit a third
6 floor addition to an existing two-story mixed use
7 building, C-2-A district. And this, the subject
8 site, is at 1300 Pennsylvania Avenue Southeast,
9 Square 1043, Lot 122.

10 And let's see. What can I tell the Board?
11 There was affidavit of posting that was, I believe,
12 Madam Chair, in the record filed over the weekend
13 along with the prehearing statement and a request for
14 waiver of time to submit from the applicant. And
15 that's it.

16 CHAIRPERSON HEATH: All right. Thank you,
17 Mr. Moy. So once again to address the request for
18 the late filing, unless the Board has any issues with
19 this, I'm fine to grant the request. It seems you
20 were very busy this weekend.

21 Can you just talk briefly, once you introduce
22 yourselves, about your newest filing and the gross
23 floor area plan that you submitted and the variation
24 between that and the original plans? But first
25 introduce yourselves.

1 MR. BELLO: Certain. Toye Bello, Madam
2 Chair, representing the applicant.

3 MR. RAGANOFF: And Todd Raganoff. I am the
4 owner of that building.

5 CHAIRPERSON HEATH: The owner?

6 MR. RAGANOFF: Yes.

7 CHAIRPERSON HEATH: Okay. Okay. All right.

8 MR. BELLO: So --

9 CHAIRPERSON HEATH: So, before you start I'll
10 just add one more point that, you know, we're going
11 to need you to speak to the issues raised by Office
12 of Planning. And I think the reason I want you to
13 address the gross floor area plan is because I think
14 you did with that plan, but I'd like to specifically
15 hear your points that you're addressing with --

16 MR. BELLO: Certainly.

17 CHAIRPERSON HEATH: -- [Simultaneous speech]
18 statement in the plan.

19 MR. BELLO: Thank you. What we filed on
20 Saturday is what would otherwise be quote/unquote, a
21 matter of right FAR. Even though we will still be
22 before you for the same number of relief, if we
23 wanted to build this.

24 But what we tried to show by this plan is the
25 practical difficulty imposed upon the owner because

1 at the .5 FAR that is buildable, you end up with a
2 slightly over 500 square foot floor plate, 24 percent
3 of which is taken over by a court area. And by the
4 time you add the mechanical room you're looking at
5 close to 40 percent of the floor area. So you really
6 end up with a net floor area of less than 300 square
7 feet of living space.

8 And by the elevation we're actually showing
9 the incompatibility of the design to the visual
10 fabric of the neighborhood, something that the ANC
11 specifically pointed out as the basis of their
12 support of their application.

13 CHAIRPERSON HEATH: Yeah, which elevation are
14 you talking about?

15 MR. BELLO: That of the -- that will be
16 Exhibit 35, which is titled, the Gross Floor Plan.

17 CHAIRPERSON HEATH: Yeah, that only has a
18 single page with the second and third floor plans.

19 MR. BELLO: Second page. We have hard copies
20 here.

21 CHAIRPERSON HEATH: So this is the elevation
22 along Pennsylvania Avenue where it shows --

23 MR. BELLO: That's correct. I apologize --

24 CHAIRPERSON HEATH: -- just that --

25 MR. BELLO: -- it didn't post when I posted

1 it.

2 CHAIRPERSON HEATH: Okay.

3 MR. BELLO: So I'll repost that.

4 CHAIRPERSON HEATH: Okay. Okay. All right.
5 Okay. Has Office of Planning seen this? There's
6 just one copy.

7 MR. MORDFIN: No.

8 CHAIRPERSON HEATH: Okay. So just to
9 clarify. With this plan that you've just submitted,
10 this meets the maximum FAR or does not exceed the
11 maximum FAR, or --

12 MR. BELLO: Does not exceed the maximum FAR
13 but we still need all these reliefs.

14 CHAIRPERSON HEATH: Lot occupancy and rear
15 yard?

16 MR. BELLO: Lot occupancy, yes.

17 CHAIRPERSON HEATH: Okay.

18 MR. BELLO: Parking.

19 CHAIRPERSON HEATH: Okay. Okay. Does the
20 Board have any other questions at this point?

21 MS. COHEN: No.

22 CHAIRPERSON HEATH: Okay. All right. Then
23 if you're okay with us turning to Office of Planning
24 I'd like to get their input on this.

25 MR. BELLO: Definitely. Thanks.

1 MR. MORDFIN: Good morning, Chair and Members
2 of the Board. I'm Stephen Mordfin. And the Office
3 of Planning continues to recommend denial of this
4 application, even in light of the additional
5 documentation or drawings that have been submitted.
6 This does show one way that you could design it to be
7 incompatible. I don't know that that's the only way
8 that it could be designed.

9 But primarily 50 percent of that second floor
10 could be devoted to an apartment, which is not what
11 shows on this plan. And the applicant just needs to
12 document why he needs to go above the FAR and the lot
13 occupancy, and at the same time not provide any rear
14 yard. Depending on how you design it, maybe you
15 could have a rear yard where it's set back off of the
16 rear yard of the row house to the north on 13th
17 Street. So it does impact those adjoining
18 properties.

19 The adjoining property on Pennsylvania Avenue
20 is a five-story building. It doesn't have the same
21 impact on that.

22 Also, in conversations with the Department of
23 Transportation, although there was a trash room that
24 was added, and this came up after the Office of
25 Planning report was submitted, the doors open into

1 public space. So that would have to be something
2 that would have to be addressed so that they don't
3 open out into the sidewalk. They would have to open
4 into the building.

5 CHAIRPERSON HEATH: Okay.

6 MR. MORDFIN: The Office of Planning does
7 support the parking relief, whether or not the
8 applicant is granted relief for the rear yard and the
9 lot occupancy and the floor area ratio, because there
10 is no way to provide parking for this property. And
11 if they do make smaller apartments out of the one
12 large apartment that's there now, it would create a
13 parking requirement. And if they also build, what
14 they could do on the third floor. So therefore we do
15 support that because that would support the
16 modernization of this building and also 2001.3
17 because this is a nonconforming structure.

18 CHAIRPERSON HEATH: Okay. And when you say
19 build what they could do you referenced previously,
20 building 50 percent.

21 MR. MORDFIN: Oh, yeah. Because right now
22 they're at an FAR of 2.

23 CHAIRPERSON HEATH: Okay.

24 MR. MORDFIN: They can go up to 2.5. So --

25 CHAIRPERSON HEATH: Got it.

1 MR. MORDFIN: -- approximately then half of
2 the third floor would get them to 2.5.

3 CHAIRPERSON HEATH: Okay. And Mr. Bello,
4 what you have here on this plan doesn't reflect 50
5 percent, correct?

6 MR. BELLO: It does reflect 50 percent.

7 CHAIRPERSON HEATH: Okay.

8 MR. BELLO: Which is the .5 of the FAR that
9 could be constructed.

10 CHAIRPERSON HEATH: Okay. Have you looked at
11 other configurations for this? Because what I see
12 from the elevation that makes it -- I am assuming
13 makes it inconsistent with the neighborhood is that
14 you've just built on that one side of the third
15 floor.

16 MR. BELLO: Yeah.

17 CHAIRPERSON HEATH: Rather than going
18 consistently across along Pennsylvania Avenue?

19 MR. BELLO: That's correct. And perhaps, you
20 know, a rendering of the end result compared to this
21 may comparatively help to visually see what's going
22 on here.

23 CHAIRPERSON HEATH: Okay.

24 MR. RAGANOFF: Yeah. If you allow, I'll just
25 show you some pictures.

1 CHAIRPERSON HEATH: Sure.

2 MR. RAGANOFF: So that's how our building
3 looks right now. Okay. So what we're proposing, and
4 I'll show you a rendering of what we're proposing
5 right here, is this. So as you can see we're not
6 really going up. We're just matching the height of
7 the building on the left. And by the way, the
8 neighbor on the left, he fully supports this project
9 and he also have -- I also have the support letter
10 from the neighbor.

11 Also, ANC support this project. And I don't
12 know like if we added this to our packet, we did the
13 survey of the neighborhood and the way it surveyed 80
14 plus properties in the neighborhood. And we received
15 11 surveys back and all neighbors who gave us back
16 the survey, they support this project.

17 They just, they only have issue with the
18 trash, which we are putting inside. But as far as
19 the exterior of the building, I also had presentation
20 on September 29 in the Capitol Hill Center with the
21 help of ANC representative. So they all like the
22 project and they all really like how it looks right
23 now. And as you can see, it's not going to be like a
24 popup looking. We're just adding another, I want to
25 say what's that, four, five feet? Yeah, just to

1 match the building on the left.

2 CHAIRPERSON HEATH: Can you go back to the
3 previous?

4 MR. RAGANOFF: Yes, absolutely. So that's
5 the new proposed plan and that's existing. So we
6 just pretty just going --

7 CHAIRPERSON HEATH: Extending that roof
8 structure.

9 MR. RAGANOFF: Yeah.

10 MS. COHEN: Wait, how much are you extending
11 the roof? By how many feet?

12 MR. BELLO: Well, the request is to mimic the
13 lower floor, the lower second floor. So it would be
14 a one-story addition on top of the second floor.

15 MR. RAGANOFF: Right.

16 MS. COHEN: And how many feet is that?

17 MR. RAGANOFF: I think it's about four feet
18 because we're going to use some of this roof that's
19 existing right now, and we're just going to add
20 another four feet just to match the building on the
21 left.

22 MS. COHEN: Yeah, I found that the
23 information provided was not complete. This is now
24 very helpful to visualize. So I appreciate that.

25 How many times did you meet with the Office

1 of Planning on this project?

2 MR. RAGANOFF: We actually didn't meet. We
3 did communicate about the project and I think Office
4 of Planning made it clear from the onset that they
5 could not support the FAR relief. But I think it's
6 important to note that the ANC made specific mention.

7 MS. COHEN: Yeah, and I appreciated their
8 report because they also indicated that, you know,
9 the need for more housing is part of their reasoning.
10 But I think it's always important to sit down with
11 OP, especially, you know, in light of the fact that
12 there is this additional visual that's helpful right
13 now for me at least. But I just wanted to
14 understand, the FAR is no longer an issue. Is that
15 correct, Madam Chairman?

16 CHAIRPERSON HEATH: Well, you're not
17 proposing to use this first floor area plan.

18 MR. RAGANOFF: No.

19 CHAIRPERSON HEATH: You just provided that to
20 make a point --

21 MR. RAGANOFF: Exactly.

22 CHAIRPERSON HEATH: -- about what it would
23 look -- what the property would look like if they
24 didn't need the FAR relief.

25 MR. MORDFIN: They do need the FAR relief.

1 CHAIRPERSON HEATH: So they do. They do.
2 But that was what it would look like if they didn't
3 need it. So.

4 MR. HILL: Could you just remind me again how
5 much increased FAR you're asking for?

6 MR. BELLO: It's .5.

7 MR. HILL: Point five. So you get 2.5 now?

8 MR. BELLO: No, we get 2.0 ultimately of
9 residential, and one of existing commercial FAR.

10 MR. HILL: Okay.

11 MR. RAGANOFF: That's actually the slide I
12 used during presentation with the neighbors and it
13 shows two buildings existing and proposed at the same
14 page.

15 CHAIRPERSON HEATH: Yeah.

16 MR. MOY: While there's a pause, Madam
17 Chair --

18 CHAIRPERSON HEATH: Sure.

19 MR. MOY: -- I think it would be appropriate
20 to have a copy of that rendering in the record after
21 today.

22 CHAIRPERSON HEATH: That would be -- as well
23 as the elevation. If you could just get that --

24 MR. BELLO: Yes.

25 CHAIRPERSON HEATH: -- uploaded.

1 MR. BELLO: Yes. We do have that but we'll
2 supplement the records.

3 CHAIRPERSON HEATH: Okay.

4 MR. BELLO: Thank you.

5 MS. COHEN: Can I ask a question?

6 CHAIRPERSON HEATH: Sure, go ahead.

7 MS. COHEN: Mr. Mordfin, one of your major
8 concerns was the walling in the adjacent neighbor who
9 apparently does support this change. Do you still
10 have an issue with that if the neighbor themselves
11 are inclined to accept the design?

12 MR. MORDFIN: I think that reduces the impact
13 on the neighbor because what we were looking for is
14 that we don't want to adversely affect somebody's
15 adjacent property. If they have no issues with it, I
16 think it lessens it. I still, you know, I have
17 issues with it myself just creating, you know, a
18 three-story wall against the rear yard of a row
19 house. But if they don't have any problems with it
20 then I think then, you know, the impact on the public
21 good is lessened from that perspective.

22 MS. COHEN: So then you're still concerned,
23 though, about the added FAR. Is that correct?

24 MR. MORDFIN: Still concerned about the added
25 FAR, yes, because of the max that you get within the

1 C-2-A, and when you start going up higher are you,
2 you know, entering into other zone districts and what
3 is permitted there, and not just the C-2-A.

4 MS. COHEN: Because one of the things that we
5 need to do is now balance. And again, when an ANC
6 supports modifications and in light of the fact that
7 it seems like everybody, or many people in the
8 neighborhood do support this project, and our balance
9 is also one of the issues of the Comprehensive Plan,
10 which I know we don't really get into, but the need
11 for housing. So does that have any weight with you?

12 MR. MORDFIN: Well, the issue over that is
13 also is that zoning is not by popular vote. There
14 are the criteria in the zoning regs that you have to
15 follow. Whether everybody likes it or not, if you
16 can't meet those criteria then from a technical
17 standpoint you, you know, we can't support it.

18 MS. COHEN: I appreciate that response.
19 However, I also appreciate the needs expressed by a
20 community about their own community. And you're
21 right, it's not a popular vote but it's one that if
22 they don't have any objections and it does add, it
23 chips away at a need, it's only chipping away, I
24 understand that, you know again it's a balance that
25 we do up here. And that's kind of where I'm coming

1 from as you are well familiar with my view of deals.

2 MR. MORDFIN: Yeah. Well, I think that one
3 goes towards the public good and not having an
4 adverse impact on the public good. If the public
5 doesn't see it that way I think then that impacts
6 that one part of the test.

7 MS. COHEN: Thank you.

8 CHAIRPERSON HEATH: Okay. So, okay. Where
9 are we? All right. So we've already indicated that
10 you have approval from ANC 6B, and we also have a
11 letter recommending no objection from Department of
12 Transportation. Is there anybody here wishing to
13 speak in support of this application? Anyone in
14 support? Anyone in opposition?

15 Is anybody here from ANC 6B? No 6B on this.
16 Okay.

17 Then does the Board have any other questions
18 before we allow the applicant to close?

19 All right. So, do you have any closing you'd
20 like to make?

21 MR. BELLO: I think Office of Planning does
22 not disagree that the property exhibits extraordinary
23 exceptional situation of condition of property. I
24 think perhaps if I can summarize OP's concerns, one
25 of proportionality. In the C-2-A zone there are

1 provisions, circumstances under the Zoning
2 Regulations where you can actually build 3.0 FAR or
3 residential. We're not anywhere close to that.
4 We're only asking for 2.0.

5 So I think that the Board should give
6 credence to the ANC's specific position that they in
7 fact support this design compared to what would
8 otherwise be the .5 far design. So I think for those
9 reasons that the Board should approve the
10 application. Thank you.

11 CHAIRPERSON HEATH: Okay. Thank you.

12 MR. RAGANOFF: Okay. Can I say something
13 really quick if you don't mind?

14 CHAIRPERSON HEATH: Sure.

15 MR. RAGANOFF: So just little background. I
16 bought this in 2014 and intent was not going up and
17 adding another level. But almost from the day 1 we
18 start getting approached from the neighbors that they
19 don't particularly like that business. It's a
20 Chinese delivery business that's been there for 20
21 years. And I bought that building with that tenant.
22 They have trash and, you know, not the best tenant as
23 far as neighbors.

24 So we thought okay, what's the best way of
25 financially, so because if I move this tenant out I

1 will need to rent, lease the space to another clean
2 tenant. Potentially maybe coffee shop, some
3 neighboring place. That's what neighbors want. So
4 I'll be like maybe 12 or maybe more months not
5 collecting rent. So we did the math and we thought
6 maybe we can just add residential unit and collect
7 some money from rent from residential unit and this
8 time we can advertise and it can go for years before
9 we will get a good tenant that neighbors will
10 approve. We want to be part of the neighborhood of
11 the community.

12 And that was pretty much logic behind adding
13 another two rental apartments upstairs.

14 CHAIRPERSON HEATH: Okay. All right. Thank
15 you for that.

16 I don't know where the Board stands on this
17 but I'm still not -- I'm not quite ready to
18 deliberate on this today. I think that I still have
19 concerns that align with Office of Planning's about
20 the size and configuration of this third floor. And
21 so -- and I am also concerned that the applicant
22 hasn't either had the time or taken the time at this
23 point to really spend time meeting with Office of
24 Planning to try to get them -- to try to come to some
25 conclusion that Office of Planning can support.

1 And so I would recommend that we delay the
2 decision in order to allow that additional work to
3 happen.

4 MS. COHEN: I concur with you Chairwoman.
5 Madam Chair. It sounds better.

6 I think it is very important for all
7 applicants to meet with the Office of Planning.
8 Again, we balance the great weight that we provide
9 with the Office of Planning and the ANC. And I
10 appreciate the fact that the ANC and the neighbors
11 are in agreement with this. So that actually has a
12 lot of credence for me.

13 But again, I think the Office of Planning
14 made a good point that there are rules and
15 regulations that govern a neighborhood and we need to
16 respect that as well. So it would be helpful to sit
17 down and see if you can come up with a resolution
18 that satisfies all parties. So I concur with you,
19 Madam Chairman, on having them meet once more with
20 the Office of Planning and see if they could resolve
21 that one difference on the FAR.

22 CHAIRPERSON HEATH: Okay. All right. So we
23 will put this on for a limited hearing and with the
24 expectation as well that you will submit additional
25 documentation into the record based on your further

1 studies and meetings with Office of Planning, and if
2 after that time Office of Planning has a new position
3 or can make any additional recommendations or provide
4 thoughts, we would appreciate another report from
5 Office of Planning as well.

6 So, Mr. Moy, can you provide us with a date
7 for a limited hearing?

8 MR. MOY: All right. Yes, I can. But I need
9 to confer with Ms. Cohen because --

10 MS. COHEN: I'll be back April 1st.

11 MR. MOY: April 1st?

12 [Discussion off the record.]

13 MR. MOY: Madam Chair, depending on how
14 quickly the applicant can coordinate with Office of
15 Planning, staff would suggest either coming back on
16 either April the 5th or April the 12th. So.

17 CHAIRPERSON HEATH: Does the applicant have a
18 preference?

19 MR. BELLO: We are flexible.

20 CHAIRPERSON HEATH: Okay. Let's try for the
21 5th.

22 MR. MOY: Let's go with April 5th, then.

23 CHAIRPERSON HEATH: Yeah. And if you need
24 additional time just let us know.

25 MR. BELLO: Thank you.

1 CHAIRPERSON HEATH: All right. Thank you.

2 MR. BELLO: Thank you.

3 CHAIRPERSON HEATH: All right. Mr. Moy, if
4 you could call our next case when you're ready?

5 MR. MOY: Thank you, Madam Chair. So that
6 would be, according to the agenda for today,
7 Application No. 19208 of James H. Shelton the III,
8 and as captioned and advertised for a variance for
9 the use requirements under 300.3. This is for a one-
10 family dwelling converted into a flat in the R-2
11 district, 1243 Alabama Avenue Southeast, Square 5946,
12 Lot 70. And that's it.

13 CHAIRPERSON HEATH: Okay. Thank you. Good
14 morning, still. Would you please introduce
15 yourselves. Make sure your mic is on.

16 MS. SHELTON: Good morning, I'm Julzette
17 Shelton (phonetic).

18 MR. SHELTON: Good morning, I'm James
19 Shelton.

20 CHAIRPERSON HEATH: Okay.

21 CHAIRPERSON HEATH: Let's see. All right.
22 Did you all meet with ANC 8E on this application?

23 MS. SHELTON: I sent a couple of e-mails to
24 her just letting her know that we had the case, we
25 had the hearing date, and I never got a response.

1 CHAIRPERSON HEATH: Did you ever make a
2 presentation to the ANC?

3 MS. SHELTON: No.

4 CHAIRPERSON HEATH: You didn't? Okay.

5 MR. SHELTON: I mean, as you can see, the
6 property was originally constructed as a duplex.

7 CHAIRPERSON HEATH: Uh-huh.

8 MR. SHELTON: In 2005 it was rezoned all
9 single-family. So most of the homes on that --

10 MS. COHEN: Could you speak into the mic?

11 MR. SHELTON: I'm sorry. So most of the
12 homes on that street actually are already operating
13 as duplexes.

14 CHAIRPERSON HEATH: Uh-huh.

15 MR. SHELTON: That's the home I grew up in.
16 So we tried significant outreach, talked to a lot of
17 the neighbors because most of the neighbors are
18 trying to understand what all this means to be
19 honest. So we were unfortunately unable to have
20 contact with the ANC rep.

21 CHAIRPERSON HEATH: Okay.

22 MR. SHELTON: After multiple attempts.

23 CHAIRPERSON HEATH: Okay. But we do have --
24 it looks like you've been able to get two letters of
25 support from neighborhoods.

1 MR. SHELTON: Yes, ma'am.

2 CHAIRPERSON HEATH: Okay. All right. Does
3 the Board have any other questions?

4 Okay. All right. Then it appears that your
5 application as documents have been filed to the
6 record is complete, and so if you're okay with us
7 proceeding on without a full presentation from you,
8 we'd like to do that. And we may come back to you
9 with questions at some point later. So we'll proceed
10 on.

11 So I'd like to hear from Office of Planning
12 on this application.

13 MR. GYOR: Good morning, Madam Chair.
14 Stephen Gyor with the Office of Planning. We support
15 the requested relief and rest on the record. Thank
16 you.

17 CHAIRPERSON HEATH: Okay. I believe, based
18 on my notes, that your report included references to
19 both an area of a use variance so I just wanted to
20 get clarity on this being in fact --

21 MR. GYOR: I believe it is advertised as a
22 use variance according to what I've copied from the
23 Office of Zoning. So it is a use variance as far as
24 -- but I could confirm -- I might confirm with Mr.
25 Moy, but I believe it is a use variance.

1 CHAIRPERSON HEATH: Okay. Just wanted to be
2 sure. Okay. Thank you. Does the Board have any
3 questions of Office of Planning? No.

4 Does OAG?

5 MS. GLAZER: Madam Chair, I thought you were
6 getting at, if there is a different standard, as I'm
7 sure the Boards is aware for a use variance and an
8 area variance, so although OP has stated that it
9 regards it as a use variance, I think the report did
10 analyze at least part of it as an area variance.

11 So I think the record needs to be clear about
12 the standard for a use variance, which is -- includes
13 a finding of undue hardship as opposed to practical
14 difficulty for an area variance.

15 CHAIRPERSON HEATH: Can you address that,
16 please?

17 MR. GYOR: Sure. I think it would be an
18 undue hardship for the applicant, I think, to
19 reconfigure an existing flat that has been configured
20 as such since the 1940s, as I understand it would be
21 an undue hardship. So we would still -- we support
22 the relief.

23 CHAIRPERSON HEATH: Okay. All right. Thank
24 you for the clarity. All right.

25 As I indicated, we don't have a report from

1 ANC 8E. We give great weight to both Office of
2 Planning and the ANC and so it's our preference that
3 you have the opportunity to meet with the ANC to
4 present your proposal, and that they can weigh in and
5 send us a report back, letting us know if they do in
6 fact approve or oppose the proposed design of your
7 application.

8 And so we don't have that report but you have
9 indicated that you've been in conversation with
10 Neighbors and we also have letters from your
11 neighbors indicating their support. So is the Board
12 okay to proceed on that basis? Okay. All right.

13 Additionally we also have a letter of no
14 objection from Department of Transportation. So with
15 that is there anyone here wishing to speak in support
16 of this application? Anyone in support? Anyone
17 wishing to speak in opposition? No opposition.

18 Okay. Then normally we would turn back to
19 you for closing or rebuttal. There's nothing to
20 rebut, and I don't know if it's necessary for you to
21 close so if you don't have a closing then we'll
22 conclude the hearing. Okay.

23 Is the Board ready to deliberate? All right.
24 Do you want to make a motion? You pulled your
25 microphone close.

1 MS. COHEN: Thank you, Madam Chairman. I
2 move to approve Application No. 19208 of James H.
3 Shelton III and ask for a variance from the use
4 requirements under 300.3 to allow a one-family
5 dwelling to be converted into a flat in the R-2
6 district at premises 1243 Alabama Avenue Southeast,
7 Square 5946, Lot 70 and ask for a second.

8 MR. HILL: I second.

9 CHAIRPERSON HEATH: The motion has been made
10 and seconded. Any further discussion?

11 [Vote taken.]

12 CHAIRPERSON HEATH: Anyone opposed? The
13 motion carries. Thank you.

14 MR. SHELTON: Thank you.

15 MS. SHELTON: Thank you.

16 MR. SHELTON: May I say one thing before I
17 go?

18 CHAIRPERSON HEATH: Sure.

19 MR. SHELTON: Thank you for your decision.
20 The process was timely and costly and very complex,
21 and I'm not sure -- luckily I can do that and I had
22 the help of my sister. I have no idea how my
23 neighbors, being forced to navigate it, would do so
24 both in terms of time or money.

25 CHAIRPERSON HEATH: Uh-huh.

1 MR. SHELTON: I just don't think it's
2 possible.

3 CHAIRPERSON HEATH: Okay.

4 MR. SHELTON: So given that most people's
5 homes were kind of changed from the way they've been
6 living in them for years I just would ask you to
7 consider is there some way to think about providing
8 relief to a lot of people because I just don't know
9 how they'll get there from here. And we're at the
10 ages now where parents are transitioning to their
11 children and things like that.

12 CHAIRPERSON HEATH: Okay.

13 MR. SHELTON: Just for your consideration.

14 CHAIRPERSON HEATH: Sure. We appreciate that
15 and we will continue those discussions. I know that
16 that issue has been raised in the past, so we'll
17 continue those discussions to see what can be done.

18 MR. SHELTON: Thank you.

19 CHAIRPERSON HEATH: We appreciate your
20 comments. Thank you.

21 MR. SHELTON: Thank you, Office of Planning.

22 MR. HILL: And also just talking to your
23 council member would be helpful for that.

24 CHAIRPERSON HEATH: That would help too.

25 MR. SHELTON: Got it.

1 MR. MOY: All right. Before closing this
2 case, Madam Chair, staff would record the vote as
3 three to zero to two on Application 19208. This is
4 on the motion of Ms. Marcie Cohen to grant the
5 request for a use variance as shown on plans under
6 Exhibit 9. Seconded the motion, Vice Chair Hill.
7 Also in support Mr. Jeffrey Hinkle and Chairperson
8 Heath. No other member --

9 CHAIRPERSON HEATH: One --

10 MR. MOY: Yes.

11 CHAIRPERSON HEATH: -- point. Did you say
12 three to zero to two?

13 MR. MOY: Yeah, I meant four to zero to one.

14 CHAIRPERSON HEATH: Okay. All right.

15 MR. MOY: Thank you for the clarification.

16 CHAIRPERSON HEATH: Just making sure we're
17 all counted.

18 MR. MOY: Sometimes it doesn't come out of my
19 mouth the way it should. But anyways, four to zero
20 to one. We have a board seat vacant and the motion
21 carries and is there a waiver for a summary order?

22 CHAIRPERSON HEATH: Summary.

23 MR. MOY: Thank you. The next application, I
24 believe, Madam Chair, is Application No. 19212, of
25 410 GoodBuddy, G-O-O-D-B-U-D-D-Y, LLC. And as

1 advertised and captioned for variance relief on the
2 off-street parking requirements under 2101.1. This
3 is for a flat, for constructing a flat in an R-4
4 district, 1000 Lamont Street Northwest, Square 2854,
5 Lot 129.

6 CHAIRPERSON HEATH: All right. Good morning.
7 Would you please introduce yourselves?

8 MR. DORMAN: Kendall Dorman. I am a member
9 of the 410 GoodBuddy, LLC., and also an architect
10 with Weibenson & Dorman Architects.

11 MS. ROY: My name is J.T. Roy and I'm also a
12 member of 410 GoodBuddy.

13 CHAIRPERSON HEATH: Okay. Just, this is not
14 related to your zoning relief at all, but just
15 curious about the name, GoodBuddy with all of the
16 capitalization.

17 MR. DORMAN: Well, we have an address. It's
18 410 and it harkens back to the days of CB radio. And
19 we also -- well, we do some things within the
20 neighborhood in the space that we own, have events
21 for people, usually, without costs.

22 CHAIRPERSON HEATH: Okay.

23 MR. DORMAN: You're more confused than ever,
24 right?

25 CHAIRPERSON HEATH: Right.

1 MR. DORMAN: Yeah.

2 CHAIRPERSON HEATH: It's okay. Right.

3 Right. Okay. All right.

4 So, can you clarify the relief being
5 requested first?

6 MR. DORMAN: Right. If I can give you a
7 little bit of history on the project? We had a --

8 CHAIRPERSON HEATH: First, just clarify the
9 relief so we know.

10 MR. DORMAN: Relief is for parking.

11 CHAIRPERSON HEATH: Okay.

12 MR. DORMAN: In an R-4 district.

13 CHAIRPERSON HEATH: Okay. And so there is no
14 need for relief from height, penthouse, for penthouse
15 setback?

16 MR. DORMAN: I know that came up in the OP
17 report.

18 CHAIRPERSON HEATH: It did.

19 MR. DORMAN: I applied for -- a little bit of
20 history. I've applied for permit over a year ago and
21 at the time that I applied I had a desk review with
22 zoning. The desk review, they said, you don't need
23 parking. You don't need a parking variance for this.
24 Just put this note on your drawing and put this
25 drawing on there. So I did.

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1 We got through the first review, through
2 zoning during the permit application, with no comment
3 about it. We got to the second review with zoning on
4 the permit application, and it came up during that
5 time.

6 So I had a meeting with the reviewer and the
7 director and so we -- they did decide that I needed a
8 variance for a relief from parking. The other relief
9 wasn't mentioned. I had made modifications to the
10 penthouse as one of their comments. I tried, as soon
11 as I got the report from OP, I tried to contact
12 everybody I could with e-mails, phone calls, and I
13 went down there. I haven't got a response yet for --
14 if anything else is needed.

15 However, I was told at the time that parking
16 was the only thing that they would write an expedited
17 -- one of those expedited letters. I don't know
18 exactly what it's called, right?

19 CHAIRPERSON HEATH: Uh-huh. This is from --

20 MR. DORMAN: From the --

21 CHAIRPERSON HEATH: Zoning.

22 MR. DORMAN: -- zoning reviewer, right.

23 CHAIRPERSON HEATH: Okay. Just as a self-
24 certification.

25 MR. DORMAN: I self-certified it.

1 CHAIRPERSON HEATH: Okay.

2 MR. DORMAN: Because I thanked him for -- I
3 wanted him to do it and then it got into it was going
4 to cost more money and more time and I thought I
5 would just self-certify it, with the assurance that
6 no other relief would be needed.

7 CHAIRPERSON HEATH: Okay.

8 MR. DORMAN: Okay?

9 CHAIRPERSON HEATH: Because you did your due
10 diligence in meeting with him.

11 MR. DORMAN: Well, I was hoping that was the
12 case.

13 CHAIRPERSON HEATH: All right. Okay. What
14 is the proposed height?

15 MR. DORMAN: It's 40 feet to the ceiling of
16 the top floor.

17 CHAIRPERSON HEATH: Okay. Okay. Yeah, I
18 want to hear from Office of Planning on this some
19 more, and definitely on the setbacks.

20 Before we hear further testimony from you
21 with your presentation, I'd like to hear from Office
22 of Planning on their thoughts on the required relief.

23 MR. JESICK: Thank you, Madam Chair and
24 Members of the Board. My name is Matt Jesick. Yes,
25 we support the project, we just want to be sure the

1 applicant gets the relief that they would need when
2 they go to get their building permit. We believe
3 that height relief would be required if this moves
4 forward as designed. And I can get into, you know,
5 why that is.

6 We also believe that the new penthouse
7 regulations would require a special exception to
8 provide a stair tower in this zone, and that's
9 Section 411.5. And then also Sections 411.18B and C
10 would also be required, and those deal with the
11 setbacks from the edge of the building. Again, that
12 can be a special exception if approved by the Board
13 for the penthouse. But you cannot build up to the
14 edge of the building as matter of right.

15 CHAIRPERSON HEATH: Sure. Okay. So thank
16 you. Rather than going forward with this hearing
17 today, I think you're going to need more time to meet
18 with Office of Planning and to make sure that the
19 relief that you're seeking is correct. We'll also
20 need to hear from Office of Planning on the relief
21 that's being requested because so far they've only --
22 you've only weighed in on parking because the other
23 relief hadn't been requested as a part of your self-
24 certification. So I think further explanation from
25 Office of Planning for your benefit would be good.

1 And so I want to give you more time so that you can
2 do that.

3 MR. DORMAN: I have a -- I'm sorry.

4 MR. HILL: That's all right. I just want to
5 ask a question of Office of Planning.

6 So you're not able to say right now whether
7 or not you're in approval of the height, the stair
8 tower, special exception, and then the setback
9 special exception?

10 MR. JESICK: We would need to look at the
11 criteria for the penthouse special exceptions. I
12 think for the height it would be highly unusual for
13 us to support a variance for height for a new
14 building.

15 MR. HILL: Okay.

16 CHAIRPERSON HEATH: That's what I would
17 think.

18 MR. HILL: Okay. Thank you.

19 CHAIRPERSON HEATH: Okay. All right. So --

20 MR. DORMAN: I have a question of procedure
21 then because I'm an architect and I don't deal with
22 the Board of Zoning every single day, although I do
23 every few years. If it was only for parking I could
24 go back and continue on with my permit application.
25 If --

1 CHAIRPERSON HEATH: You can, and run the risk
2 of getting, yeah, rejected once you get back through
3 the permit process. So we're trying to help you
4 avoid that. But you are self-certifying this
5 application. So --

6 MR. DORMAN: Well, I understand that. And if
7 I have to add on a couple of the special exceptions
8 or whatever else I have to add on, how is that done
9 to this application? Or do I need to make a new
10 application and go through ANC and --

11 CHAIRPERSON HEATH: You'd need --

12 MR. DORMAN: -- everybody else?

13 CHAIRPERSON HEATH: You'd need to start over,
14 correct? Yeah.

15 MR. DORMAN: So I'm not really saving any
16 time, time or money, necessarily if the parking is
17 approved today and I make a new application?

18 CHAIRPERSON HEATH: You're not. Well, if we
19 put this on for a later decision, say in another two,
20 three weeks, whatever it takes for you to meet with
21 Office of Planning, that's going to save you time
22 over having to file a new application. At some point
23 later once you learn that you need additional relief.

24 MR. DORMAN: Okay.

25 MS. GLAZER: Madam Chair, if I could just

1 interject. If it is determined that additional
2 relief is needed, in particular a height variance,
3 the applicant would have to advertise.

4 CHAIRPERSON HEATH: Absolutely. Absolutely.
5 And there would be additional fees as well.

6 MR. DORMAN: Okay. Well, and I was very
7 frustrated and panicky about this when I heard about
8 this. I can't get a response and --

9 CHAIRPERSON HEATH: A response from who?

10 MR. DORMAN: From the people at zoning who
11 reviewed my permit application.

12 CHAIRPERSON HEATH: I think it makes sense
13 for you to meet with Office of Planning.

14 MR. DORMAN: Okay.

15 CHAIRPERSON HEATH: Because they can help
16 give you guidance.

17 MR. DORMAN: Okay.

18 CHAIRPERSON HEATH: With respect to this. So
19 I would recommend that you start there.

20 MR. DORMAN: And I did -- I'm sorry. Yeah.
21 I did meet with -- when I first applied for this I
22 also did meet with Office of Planning. The issues
23 didn't come up, however.

24 CHAIRPERSON HEATH: Okay. All right. So if
25 you can coordinate with the applicant to meet to

1 discuss this further so that they understand what
2 you're recommending, I think that would be helpful.
3 So, if we could get a new date for this, Mr. Moy.

4 MR. MOY: We're looking into the Month of
5 April, Madam Chair.

6 CHAIRPERSON HEATH: Okay.

7 MR. MOY: Because I want to allow, assuming
8 this is the approach that we're headed in, to allow
9 time for a reposting and to amend the existing
10 application for that additional relief. So we're
11 looking to, I would say, toward the back end of April
12 so just for assurances and to allow time to meet with
13 ANC on that height issue. So that would be the date
14 toward the end of April would be, I would say April
15 26th.

16 CHAIRPERSON HEATH: Okay. Is that date okay
17 for you?

18 MR. DORMAN: I'll look it up real quick.

19 CHAIRPERSON HEATH: Okay.

20 MR. DORMAN: It's my mother's birthday, I
21 know that.

22 MR. HILL: And just while you're looking up
23 the date, I mean again, to be clear, it is necessary
24 that you go ahead and work this out with Office of
25 Planning. You would have been rejected. I mean, you

1 would have moved forward and then you would have
2 been, you know, back starting all over again. So --

3 MR. DORMAN: I don't want to do that.

4 MR. HILL: Yeah. So --

5 MR. DORMAN: So --

6 MR. HILL: Believe it or not, we're helping
7 out the situation, so.

8 MR. DORMAN: I appreciate that. Anything you
9 can tell me that would help this would be great
10 because --

11 MR. HILL: Getting OP to say yes, that would
12 be great.

13 MR. DORMAN: -- my frustrations are -- I
14 mean, the goal post keeps moving on me, on this
15 project and I, you know, I thought I was doing okay
16 with it. So --

17 CHAIRPERSON HEATH: Sure.

18 MR. DORMAN: And then I keep kind of getting
19 different people to say different things when I think
20 I'm okay with things. So.

21 CHAIRPERSON HEATH: Okay.

22 MR. DORMAN: All right?

23 CHAIRPERSON HEATH: We appreciate it and we
24 know this process can be frustrating and long. But
25 again, if you meet with Office of Planning on this I

1 think it will go a long way.

2 MR. DORMAN: Okay.

3 CHAIRPERSON HEATH: All right?

4 MR. DORMAN: I appreciate your time.

5 CHAIRPERSON HEATH: Thank you.

6 MR. MOY: Yeah. Also I would suggest too,
7 Madam Chair, that while you're already here, if you,
8 before you leave, if you have another five, 10
9 minutes, go across the hall, meet with Mr. Varga
10 because he's the -- on my staff, that will help you
11 with amending your application. I think you should
12 do that while you're here if -- or at least he can
13 give you further information what your next steps
14 will be. Okay?

15 MR. DORMAN: I'll try to do that.

16 CHAIRPERSON HEATH: Thank you.

17 MR. DORMAN: Okay. Thank you very much.

18 CHAIRPERSON HEATH: Thank you. Before we go
19 to our next case can we take a quick break? Okay.
20 Maybe we'll do seven minutes instead of five. Thank
21 you.

22 [Off the record from 11:50 a.m. to 12:09
23 p.m.]

24 CHAIRPERSON HEATH: So we'll come back to
25 order.

1 MR. MOY: Thank you, Madam Chair. So,
2 parties to the table, and this is to Application No.
3 19214 of Pamela Hall, as captioned and advertised for
4 special exception relief under 223, not meeting the
5 rear yard requirements under 404.1, court width
6 requirements, 406, and this is to -- the proposal is
7 to construct a one-story deck to the rear of an
8 existing one-family dwelling R-3 district, 3836
9 Beecher Street Northwest, Square 1301, Lot 1057.

10 CHAIRPERSON HEATH: All right. Hi, if you
11 could introduce yourselves, please?

12 MR. STEVENSON: Good morning, Madam Chair,
13 Members of the Board, my name is Andrew Stevenson. I
14 am an architect representing the applicant.

15 MS. HALL: And I'm Pamela Hall, the
16 homeowner.

17 CHAIRPERSON HEATH: Okay. Thank you. All
18 right. So this application seems pretty straight
19 forward, and it looks like we have everything in the
20 file that we need. Does the Board have any
21 questions?

22 MS. COHEN: No.

23 CHAIRPERSON HEATH: Okay. So you probably
24 heard this morning when applications are complete we
25 don't typically need to have a full presentation so

1 if you're okay with us proceeding on we will do so.

2 MR. STEVENSON: Please do.

3 CHAIRPERSON HEATH: Okay. Thank you. So,
4 does Office of Planning have anything further to add?

5 MS. THOMAS: Good morning, Madam Chair.
6 Nothing further to add. We will stand on the record
7 of our report. Thank you.

8 CHAIRPERSON HEATH: Okay. Thank you. All
9 right. We also have a letter of approval from ANC
10 3B. Is anyone here from ANC 3B?

11 All right. And a letter recommending no
12 objection from Department of Transportation. Is
13 there anyone here wishing to speak in support of this
14 application? Anyone in support?

15 Anyone in opposition? No opposition. Okay.

16 Then if you're okay with us concluding the
17 hearing I think the Board is probably ready to
18 deliberate on this.

19 MR. STEVENSON: We are.

20 CHAIRPERSON HEATH: All right. Thanks. All
21 right. Then based on the fact that this is pretty
22 straight forward, probably one of our simplest
23 applications today I will make a motion that we
24 approve the request for special exception relief to
25 construct a one-story deck to the rear of an existing

1 one-family dwelling for Application No. 19214.

2 MR. HILL: Second.

3 CHAIRPERSON HEATH: The motion has been made
4 and seconded. Any further discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: The motion carries.
7 Thank you.

8 MR. STEVENSON: Thank you.

9 MR. MOY: Staff would record the vote as four
10 to zero to one. This is on the motion of Chairperson
11 Heath to approve the application for the relief
12 requested as shown on plans under Exhibit 7.
13 Seconded the motion, Vice Chair Hill, also in
14 support, Ms. Cohen, Mr. Hinkle, board seat vacant.
15 Motion carries, Madam.

16 CHAIRPERSON HEATH: Okay. Summary.

17 MR. MOY: Thank you. Next application, I
18 believe, is Application No. 19215 of K Street
19 Development Company, LLC. et al. And this
20 application, Madam Chair, has been amended with
21 special exception from the rooftop structure
22 requirements under 411.11, 411.10, 411.18, permitting
23 the renovation and expansion of an existing
24 commercial building, DD/C-2-C district, which is a
25 Housing Priority Area A at 470 through 476 K Street

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1 Northwest, Square 516, Lots 44, 64, and 65.

2 CHAIRPERSON HEATH: Okay.

3 MR. MOY: And I believe the revised plans are
4 under Exhibit 31 as well as a revised self-
5 certification under Exhibit 29.

6 CHAIRPERSON HEATH: Good afternoon. If you
7 all could introduce yourselves, please?

8 MR. UTZ: Sure. I'm Jeff Utz with the law
9 firm of Goulston and Storrs.

10 McDOWELL: Tom McDowell, representing the
11 applicant.

12 MR. DAVIDSON: Graham Davidson with Hartman
13 Cox Architects.

14 CHAIRPERSON HEATH: All right. Could you
15 just clarify one more time, your relief as its been
16 revised?

17 MR. UTZ: Sure. Yes. Originally our
18 application, which we filed about December 15th was
19 for Section 411.11, special exception relief from
20 411.5, which is the Non-uniform Height Provision.
21 Since the Zoning Commission amended the roof
22 structure regulations we -- it actually kind of
23 shifted the elements of relief we needed.

24 So it's the same roof structure, we just need
25 different relief for it. We now need special

1 exception relief from two different components of it.
2 Now we need still Section 411.11 special exception
3 relief, but then for the setback provisions of 411. -
4 - I think it's 411.18(c)(4), which is the setback of
5 one to one from a side wall when you are adjacent to
6 a historic property that's built to a lesser height
7 than you are.

8 And then the other element is the limitation
9 on the slope of a roof structure wall. There's a
10 limitation now, you can't be greater than 20 percent
11 from vertical and we reach 51 percent from vertical.

12 CHAIRPERSON HEATH: Okay.

13 MR. UTZ: So those new elements were included
14 in the March 1st prehearing statement.

15 CHAIRPERSON HEATH: Okay. All right. And we
16 also now have the ANC report. All right. Great.
17 All right. Does the Board have any questions?

18 MS. COHEN: No.

19 CHAIRPERSON HEATH: Okay. Then I think the
20 Board feels that we have what we need, so far at
21 least, on this application, based on what you've
22 submitted. And so if you're okay with us to proceed
23 on.

24 MR. UTZ: Sure, please.

25 CHAIRPERSON HEATH: Without a full hearing.

1 Okay.

2 MR. UTZ: Thank you.

3 CHAIRPERSON HEATH: All right. Does Office
4 of Planning have anything further to add on this
5 application?

6 MS. RAPPOLT: No. Megan Rappolt for the
7 record. We'll continue to stand on the record in
8 support of the application.

9 CHAIRPERSON HEATH: Okay. Thanks. All
10 right. Okay. We also have, as I indicated, the
11 letter from ANC 6E indicating that they voted to
12 support this application. Is there anybody here from
13 ANC 6E? No? Okay.

14 We also have a letter from DDOT recommending
15 no objection. So does the Board have -- anybody have
16 anything else? Okay. Then normally we'd turn back
17 to -- oh, I'm sorry. One more thing. Is there
18 anybody here wishing to speak in support? No
19 support. Any opposition? All right.

20 Then normally we would turn back to you for
21 rebuttal or closing but I don't know that there's any
22 need.

23 MR. UTZ: No. Thank you, though.

24 CHAIRPERSON HEATH: Okay. All right. So is
25 the Board ready to move on this?

1 MS. COHEN: Yes.

2 CHAIRPERSON HEATH: Okay. Anybody want to
3 make a motion?

4 MS. COHEN: Sure. I'll move to approve
5 Application No. 19215 of K Street Development
6 Company, LLC. pursuant to 11-DCMR-3104.1 for a
7 special exception from the rooftop structure
8 requirements pursuant to 411.11, 411.10, 411.18 to
9 permit the renovation and expansion of an existing
10 commercial building in the DD/C-2-C district at
11 premises 470, 476 K Street Northwest, Square 516,
12 Lots 44, 64, and 65, and ask for a second.

13 MR. HILL: I second.

14 CHAIRPERSON HEATH: The motion has been made
15 and seconded. Any further discussion?

16 [Vote taken.]

17 CHAIRPERSON HEATH: The motion carries.
18 Thank you.

19 MR. UTZ: Thank you very much.

20 MR. MOY: Staff would record for the record,
21 four to zero to one vote. This is on Ms. Cohen's
22 motion to approve the relief as she cited and shown
23 on revised plans 31. Seconded the motion, Vice Chair
24 Hill, also in support, Chairperson Heath, Mr. Hinkle,
25 board seat vacant.

1 CHAIRPERSON HEATH: Summary.

2 MR. MOY: Summary. Thank you. Okay. Next
3 up is Application No. 19217 of MR608T Contract, LLC.,
4 et al. as amended in its caption for relief for a
5 variance from the loading requirements under 2201, or
6 01, to permit the construction of a seven-story mixed
7 use building in the ARTS/C-2-B district. This is at
8 608, 610, 614, and 618 T Street Northwest, Square
9 441, Lots 32, 33, 35, and 852. And revised plans, I
10 believe, is under Exhibit 30C-1 through 30C-3.

11 CHAIRPERSON HEATH: Okay. Good afternoon.
12 If you all could please introduce yourselves?

13 MR. BROWN: Good afternoon, Patrick Brown
14 from Greenstein DeLorme & Luchs on behalf of the
15 applicant.

16 MS. OLSON: Josh Olson from Monument Realty
17 on behalf of the applicant.

18 MR. VANPELT: I'm Dan VanPelt, principal with
19 Gorove Slade Associates.

20 MR. GOINS: Jeff Goins with PGN Architects.

21 MR. McKENNA: John McKenna with PGN
22 Architects.

23 MS. BOYD: Evelyn Scott Boyd, property owner
24 618 T Street.

25 CHAIRPERSON HEATH: Okay. All right. So I

1 understand from your prehearing statement that you no
2 longer need height relief.

3 MR. BROWN: That's correct. The sole relief
4 at this point is the variance from the loading
5 requirements to reduce the loading from 55 feet to
6 30.

7 CHAIRPERSON HEATH: Okay. All right. Can
8 you just quickly walk us through your loading plan?
9 Do you have that presentation with you?

10 MR. BROWN: Yes.

11 CHAIRPERSON HEATH: Okay. All right.

12 MR. BROWN: And I could, while we're on that
13 subject, in response to DDOT's report there was some
14 back and forth and there was a revision or narrowing
15 of the TDM measures. I've submitted it there to Mr.
16 Moy, a memo dated yesterday to DDOT, which they've
17 accepted, laying out the final terms of the TDM
18 measures.

19 CHAIRPERSON HEATH: Okay.

20 MR. GOINS: Before Gorove Slade starts I'll
21 just say something from a community standpoint. We
22 had started with the loading in several different
23 locations, and through many meetings with the ANC and
24 the community we've revised the location per a lot of
25 their concerns.

1 MR. VANPELT: And I would also then, I think,
2 tag on to that. I think in addition to the community
3 concerns there's been a lot of dialog with DDOT on
4 access to this project, both from the loading
5 management -- the location of the loading dock and
6 also the parking access. And I think trying to
7 balance the concerns from the community and also
8 balance DDOT's concerns usually about access and curb
9 cuts. So we had been, you know, we had been before
10 the public space committee and had already conceptual
11 approval for the curb cut off of Wiltburger. And so
12 we've kind of vetted this plan pretty thoroughly with
13 DDOT.

14 The access for the loading berth will be off
15 the alley. It's really going to be, I guess,
16 parallel to the alley. You can point that out there.
17 So trucks will have to come in. Really they could do
18 one of two things. The smaller vehicles could come
19 in from Wiltburger and kind of make that move as it
20 is shown, coming in the east/west alley, and then
21 align themselves to back in the loading berth.

22 We think that most vehicles would probably
23 just come in directly from Florida Avenue and head
24 southbound in that alley back into the 30-foot
25 loading berth that's there, and then be able to

1 continue and exit out to the south.

2 MR. HILL: Where did you move it based on the
3 community discussion? Where was it before?

4 MR. GOINS: It actually faced the alley and
5 the neighbors adjacent here, along 6th Street, they
6 had concerns because that's their access. So it
7 actually, we pulled straight in this way and now it's
8 more of a north/south backing in. And we actually
9 also had the garage location over there, so we kind
10 of moved them both around. A lot of the neighbors
11 here use that alley as their access to their
12 properties.

13 CHAIRPERSON HEATH: Have you seen the letter
14 in opposition that's in the file, from Mr. Miser?
15 Did this -- was he a part of these discussions and
16 did this address his -- some of his concerns at
17 least?

18 MR. BROWN: [Speaking off microphone.]

19 CHAIRPERSON HEATH: Your mic is not on.

20 MR. BROWN: I don't believe he was involved
21 in the discussions.

22 CHAIRPERSON HEATH: Okay.

23 MR. BROWN: These issues arose and one of the
24 beauties of this project is how early and in depth
25 the community engagement was, such that there was an

1 agreement in place, at least in draft, that dealt
2 with a lot of these issues during the summer, early
3 fall of last year, long before Mr. Miser's letter.
4 So I think these issues were anticipated in the early
5 stages and form the part of the development
6 agreement.

7 CHAIRPERSON HEATH: Okay.

8 MR. BROWN: And planning that went on. We've
9 also put in the record, shadow studies, which we can
10 go through, but the bottom line is that the impact on
11 Mr. Miser and the people on that row of houses is
12 very minor, if at all, and certainly not related to
13 any variance that's being sought. I mean, this is,
14 with the exception of loading, this is a matter of
15 right building so that the shadow studies and Jeff
16 and his team can certainly walk you through them much
17 better than I can and I think paint a favorable
18 picture of the situation.

19 CHAIRPERSON HEATH: Okay. All right. You
20 want to see them?

21 MS. COHEN: What is the distance between your
22 property and Mr. Miser's property?

23 MR. BROWN: When you say the distance, his
24 property is -- and if we could --

25 MR. GOINS: I think I can quickly answer.

1 It's about 80 feet.

2 MS. COHEN: Okay. Thank you.

3 MR. GOINS: Yeah.

4 CHAIRPERSON HEATH: Okay. All right. I
5 don't think we need to see the presentation of the
6 shadow studies at this time. So does the Board have
7 any other questions? All right. Okay.

8 Then thank you for that presentation and if
9 you're okay for us to proceed?

10 MR. BROWN: Please.

11 CHAIRPERSON HEATH: Okay. All right. So
12 then we'll turn to Office of Planning for any
13 additional comments.

14 MS. FOTHERGILL: We don't have anything to
15 add. We rest on the record in support of the
16 variance relief.

17 CHAIRPERSON HEATH: Okay. Thank you. All
18 right. This is another ANC 6E. We have a letter
19 from ANC 6E indicating their approval and we
20 appreciate the work that you've done with them and
21 the community on this project.

22 We also have a report from DDOT of no
23 objection with conditions, and so this -- can you
24 just talk quickly about this report that you just
25 gave us?

1 MR. BROWN: I'll let Mr. VanPelt talk about
2 it, but it was a product of ongoing discussions and
3 just finalized yesterday.

4 CHAIRPERSON HEATH: Okay.

5 MR. VANPELT: Yes. So we've had full on
6 conversations with DDOT since their staff report was
7 issued. We're essentially agreeing to three of the
8 four conditions that are in the staff report. The
9 fourth one, which was the incentives, we kind of went
10 back to DDOT and said, we really didn't feel that
11 that was appropriate, transit incentives or
12 appropriate for this project because we're only
13 seeking loading relief. We're not -- and we believe
14 that the parking is right size. We're not under-
15 parking or we're not over-parking it. And I think on
16 further consideration from DDOT they agreed that we
17 could remove that condition from the project.

18 And so what we did was capture kind of our
19 response to the DDOT report, and our understanding of
20 an e-mail from Jamie Hanson as of this morning saying
21 that this is what we agreed to.

22 CHAIRPERSON HEATH: Okay. All right.

23 MS. COHEN: Could you make that e-mail part
24 of the record, please?

25 MR. VANPELT: Sure. Certainly.

1 CHAIRPERSON HEATH: That's helpful. Thank
2 you. All right. Is there anyone here wishing to
3 speak in support of this application?

4 MR. HART: Yes, ma'am.

5 CHAIRPERSON HEATH: Okay. Please come
6 forward. Make sure your mic is on.

7 MR. HART: Very briefly. My name is Thomas
8 Hart. I'm a native Washingtonian. I own the
9 building at 631 T Street, which is diagonally across
10 the street from the development site, and I support
11 their application here today. I'm familiar with
12 Monument Realty. They do good work, they have good
13 guys and gals working with them. Particularly
14 impressed with Tina Boyd's participation in this
15 project. Her family goes back many decades in
16 Washington, D.C. and I believe that the community
17 support is important on this particular project, and
18 I'm, on behalf of T Street Development, which is my
19 own company, support this application.

20 CHAIRPERSON HEATH: Okay. Thank you.

21 MR. HART: Thank you very much.

22 MS. BOYD: Hi. I'm Tina Scott Boyd, Evelyn
23 Scott Boyd.

24 My family has owned the property for over 50
25 years. I grew up here. I'm a D.C. resident. I have

1 my own company. I'm a certified business enterprise
2 providing community outreach support for DDOT and
3 D.C. Water. Excuse me.

4 We've been working -- well, I've been working
5 with the neighbors for over 10 years. We've
6 entertained multiple developers. They say three is
7 the charm, so this is the third developer. And we're
8 very pleased with Monument's concerted efforts to
9 reach out to the community to listen to their issues
10 and to incorporate it in the response. I know Jeff
11 has drawn this project about 100 times. But they've
12 been very, very receptive and we're very happy and
13 fortunate that Monument has stepped up, and we look
14 forward to the development. Thank you.

15 CHAIRPERSON HEATH: Thank you. Go ahead.

16 MR. HILL: Ms. Boyd, I'm sorry. I got a
17 little. Did you say you were with the ANC?

18 MS. BOYD: No.

19 MR. HILL: No.

20 MS. BOYD: I'm a property --

21 MR. HILL: Oh.

22 MS. BOYD: In 618 T Street Northwest.

23 MR. HILL: Okay. I'm sorry. Thank you. Go
24 ahead, Ms. Cohen.

25 MS. COHEN: Are you keeping that sculpture on

1 the site?

2 MR. GOINS: Yeah. Yes.

3 MS. COHEN: And --

4 MR. GOINS: That was part of the great
5 streets years ago, yeah. So that's staying. The
6 plaza is.

7 MS. COHEN: And what is it supposed to be,
8 just sculptural organic, that kind of --

9 MR. GOINS: It's Duke Ellington. It's Duke
10 Ellington playing the piano and the keys are going up
11 in the air.

12 MS. COHEN: Oh, that's great. Thank you.

13 MS. BOYD: Ellington Plaza.

14 CHAIRPERSON HEATH: That's great. Good.
15 Okay. Anyone else wishing to speak in support?
16 Anyone wishing to speak in opposition? Any
17 opposition? Okay.

18 We did have a letter of opposition from the
19 adjacent neighbor as we've noted from Mr. Miser, and
20 we've talked about some of the ways that you've tried
21 to address his concerns. Does the Board have any
22 other questions of the applicant?

23 All right. Then we'll turn back to you for
24 any closing.

25 MR. BROWN: I would only request that --

1 CHAIRPERSON HEATH: Your mic is not on.

2 MR. BROWN: I'm sorry. Request that in the
3 order which I think a bench decision summary order
4 would be much appreciated, that we have some standard
5 language allowing the applicant flexibility in the
6 interior layout and design of the project, as it goes
7 from where it is now to the permit phase and laying
8 out the various elements, including the units and the
9 IZ units that are part of that. Other than that
10 we'll stand on the record.

11 CHAIRPERSON HEATH: Okay.

12 MS. COHEN: Wait a second. The IZ units
13 you're not going to put them in the same place,
14 you're going to spread them out according to the IZ
15 requirements.

16 MR. BROWN: Yes. Yes, but the final design -
17 - and I'll leave this to Jeff. We're just asking the
18 flexibility to finalize the design of the interior of
19 the building, the configuration of the units, always
20 complying with the zoning, and particularly the IZ
21 requirements.

22 MS. COHEN: Thank you. Because you saw my
23 ears perk up. Yeah.

24 CHAIRPERSON HEATH: Anytime you mention IZ.

25 MS. COHEN: Okay. Thank you.

1 MR. BROWN: I didn't mean to do that.

2 CHAIRPERSON HEATH: All right. Thank you.
3 So, I don't think the Board has any problems with the
4 flexibility as long as you're still adhering to the
5 IZ requirements. All right.

6 So is the Board ready to deliberate? All
7 right. Without making a lot of comments I'll make a
8 motion that we approve the request for variance
9 relief from the loading dock requirements to permit
10 the construction of a seven-story mixed use building
11 at 608, 610, and 618 T Street for Application No.
12 19217.

13 MR. HILL: I second.

14 MS. GLAZER: Madam Chair, I'm sorry to
15 interrupt but were there conditions that were part of
16 that? The three conditions that DDOT and the
17 applicant agreed to?

18 CHAIRPERSON HEATH: Yes, so we will include
19 those. The motion is made to approve with the
20 conditions put forward by DDOT. And with the
21 flexibility for -- thank you. Interior plan changes
22 as long as you're still adhering to IZ requirements.

23 MR. BROWN: And going beyond that, all zoning
24 requirements, not just IZ.

25 CHAIRPERSON HEATH: Right. Absolutely.

1 Absolutely.

2 MR. HILL: I second your amended motion.

3 CHAIRPERSON HEATH: Okay. All right. So the
4 motion has been made and seconded. Any further
5 discussion?

6 [Vote taken.]

7 CHAIRPERSON HEATH: The motion carries.
8 Summary order, Mr. Moy.

9 MR. MOY: Yes. Thank you, Madam Chair. For
10 the record the vote count is four to zero to one.
11 This is on the motion of Chairperson Heath for the
12 relief requested with the DDOT conditions as part of
13 the order to revise plans under Exhibit 30C-1 through
14 C-3. Seconded the motion, Vice Chair Hill. Also in
15 support, Ms. Cohen, Mr. Hinkle. Board seat vacant.
16 Summary order.

17 CHAIRPERSON HEATH: Thank you.

18 MR. BROWN: Thank you.

19 MR. MOY: I believe the next case, applicants
20 to the table to Application No. 19228 of Michael Buff
21 as captioned and advertised for special exception
22 relief under Section 223, not meeting lot occupancy
23 requirements, under 403.2, open court requirements,
24 under 406.1, nonconforming structure provisions,
25 under 2001.3. This is for a second story addition

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1 and roof deck to an existing flat in the DC/R-5-B
2 district, 1513 Church Street Northwest, Square 194,
3 Lot 91.

4 CHAIRPERSON HEATH: All right. Good
5 afternoon. Could you introduce yourselves?

6 MR. BUFF: Good afternoon. So my name is
7 Michael Buff. My wife, Farah Fries and I are the
8 homeowners at 1513 Church.

9 CHAIRPERSON HEATH: Okay.

10 MR. HEISEY: Joel Heisey, architect for the
11 applicant.

12 CHAIRPERSON HEATH: Thank you. This was
13 previously on for expedited review and we took it off
14 of the expedited calendar to put it on the regular
15 calendar in order to move the date up at your
16 request. So, I think this did meet the requirements
17 for expedited review, so I think it's a pretty
18 straight forward application and I don't have any
19 issues with it. Does the Board have any questions?

20 All right. Then if you're okay with us
21 proceeding on without a full presentation from you,
22 we'll do that. Okay?

23 MR. BUFF: Yeah, that's fine.

24 CHAIRPERSON HEATH: Thanks. All right. Does
25 the Office of Planning have anything further to add?

1 MR. MORDFIN: Good afternoon. I'm Stephen
2 Mordfin and the Office of Planning continues to
3 support this application and stands on the record.

4 CHAIRPERSON HEATH: Okay. Thanks. All
5 right. We also have a letter from ANC 2B
6 recommending approval. Is there anybody here from
7 ANC 2B? All right. Also, a letter from DDOT
8 recommending no objection, and we have letters in
9 support from your adjacent neighborhoods as well,
10 which is great to have.

11 Is there anyone here wishing to speak in
12 support? Anyone in support? Anyone wishing to speak
13 in opposition to this. Any opposition? All right.

14 Then normally we would turn back to you for
15 closing but there's probably no need, so if you're
16 okay with us to conclude --

17 MR. BUFF: Sure.

18 CHAIRPERSON HEATH: -- we will. Thank you.

19 All right. Then I will make a motion that we
20 approve the request for special exception to
21 construct a second story addition and roof deck to an
22 existing flat at 1513 Church Street Northwest, for
23 Application No. 19228.

24 MS. COHEN: Second.

25 CHAIRPERSON HEATH: The motion has been made

1 and seconded. Any further discussion?

2 [Vote taken.]

3 CHAIRPERSON HEATH: The motion carries.

4 Thank you.

5 MR. BUFF: Thank you.

6 MR. MOY: For the record, Steve -- Steve.
7 Staff would record the vote as four to zero to one.
8 Yes, and this is on the motion of Chairperson Heath
9 for the relief requested as shown plans under Exhibit
10 8. Seconded the motion, Ms. Cohen. Also in support,
11 Vice Chair Hill, Mr. Hinkle, board seat vacant. And
12 again, this is to Application No. 19228.

13 CHAIRPERSON HEATH: All right. Summary.

14 MR. MOY: Thank you.

15 CHAIRPERSON HEATH: Thank you. And I believe
16 you can call our last application.

17 MR. MOY: Okay. I believe that would be
18 Application No. 19187 of 1212 through 1216 4th Street
19 LLC., as captioned and advertised for variance relief
20 on the lot are requirements under 401.11, lot
21 occupancy requirements, 403.2, and a special
22 exception from nonconforming use requirements 2003 to
23 allow expansion of a residential expansion of an
24 existing residential buildings and conversion of an
25 office use to a neighborhood retail or service

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1 establishment, R-4 district, 1212 through 1218 4th
2 Street Northwest, Square 513, Lots 155 and 156.

3 CHAIRPERSON HEATH: All right. All right.
4 Good afternoon. Did you have one more thing, Mr.
5 Moy?

6 MR. MOY: No, I think you'll catch it.

7 CHAIRPERSON HEATH: Oh, okay. All right.
8 Okay. All right. If you could please introduce
9 yourselves.

10 MS. MOLDENHAUER: Good afternoon, Chairman
11 Heath and Members of the Board. My name is Meredith
12 Moldenhauer from the law firm of Griffin, Murphy,
13 Moldenhauer, and Wiggins. And I am here with -- and
14 I'll have everybody else introduce themselves.

15 MR. SCHNECK: Ron Schneck, Square 134
16 Architects. Good afternoon.

17 MR. BOCKAI: Sahr Bockai, owner of the
18 property.

19 MS. MOLDENHAUER: I don't believe Mr. Bockai
20 was here for the swearing in so, Mr. Moy, I don't
21 know if you'd like to administer that?

22 [Oath administered to Mr. Bockai.]

23 MS. MOLDENHAUER: Chairwoman Heath, I have
24 two preliminary matters I just wanted to bring to the
25 Board's attention. One, we had been back and forth

1 in communication, obviously with the ANC, but also
2 with the individual in opposition, Mr. Sergei. And
3 we had come to an agreement with him. As you can see
4 in the record, he was able to file a withdrawal. But
5 we were filing a form 150 with a late filing with an
6 addendum just putting everything in our words,
7 confirming the conditions that he stated. For some
8 reason we filed it last night, we attempted to try to
9 refile it. We talked with Steve Varga in your
10 office, so I'm going to provide this to Mr. Moy but
11 it's simply just an addendum and a request for late
12 filing that includes the conditions that were also
13 part of Sergei's letter.

14 CHAIRPERSON HEATH: Okay. That would be
15 helpful. Thanks.

16 [Off the record discussion.]

17 CHAIRPERSON HEATH: So you've included three
18 conditions and I haven't read them all in comparison
19 to --

20 MS. MOLDENHAUER: I can summarize the
21 different --

22 CHAIRPERSON HEATH: Okay. Yeah, if you could
23 because just looking quickly he had eight or --

24 MS. MOLDENHAUER: I believe he repeated some
25 of the ones that we already had on our prior

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1 addendum. I was trying to --

2 CHAIRPERSON HEATH: Summarize, or just --

3 MS. MOLDENHAUER: No, just add the ones that
4 were new.

5 CHAIRPERSON HEATH: Okay.

6 MS. MOLDENHAUER: I don't know if that was
7 more confusing. But the difference was that we were
8 adding the proffer for a minimum number of parking
9 spaces.

10 CHAIRPERSON HEATH: Uh-huh.

11 MS. MOLDENHAUER: We were adding the proposed
12 procedure for how the 200 footers would then have the
13 opportunity to possibly rent or purchase excess
14 spaces. And then the confirmation that the excess
15 spaces would still be there and that the possible 22
16 unit owners would not rent or buy three units
17 themselves and kind of overcome -- over acquire the
18 additional excess. So it was a way to indicate that
19 the 22 unit owners would be limited to 22 spaces. We
20 think that would work out to the effect of where
21 maybe some of the studio units may desire -- I mean,
22 it will all be market based. But you know, maybe a
23 studio unit may or may not look to rent or buy a
24 parking space. It may be one of the three-unit
25 bedroom units may want two spaces.

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1 But that overall the applicant has agreed
2 with Mr. Sergei in an agreement that we would limit
3 the 22 unit owners to accessing 22 spaces only so
4 that there would be a surplus.

5 CHAIRPERSON HEATH: Okay.

6 MS. MOLDENHAUER: I hope that's -- and that
7 is then in addition to the other conditions that we
8 had already agreed to with the ANC.

9 CHAIRPERSON HEATH: Okay.

10 MR. HILL: Do you know if Mr. -- and I don't
11 think I'll be able to pronounce his name right,
12 Mikhailov, is in agreement to the way these have been
13 put down?

14 MS. MOLDENHAUER: We have been talking with
15 him. I e-mailed with him last night at about 11:00.
16 We then spoke with him this morning. I know that he
17 is watching right now, and so he has. He spoke with
18 an associate of mine who indicated that they
19 discussed it and that he was you know, satisfied.
20 This was part of a separate agreement that we've
21 entered into with him and he did withdraw his party
22 status and also provided in writing kind of his
23 summary which we copied in this addendum, which
24 outlined his conditions. So I believe the answer is
25 yes. Long winded, I know.

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: Madam Chair, while we're on Mr.
3 Mikhailov, my understanding from the staff today was
4 that apparently he called to his filing of Exhibit
5 33, and apparently in that exhibit of his filing
6 there's a blank page so --

7 CHAIRPERSON HEATH: There is.

8 MR. MOY: -- he's asking if the record could
9 be open for him to I guess replace that page or file
10 a new 33 that includes that missing page.

11 CHAIRPERSON HEATH: That's this, correct?

12 MR. MOY: So I don't know if it's a technical
13 issue on our part or from him.

14 CHAIRPERSON HEATH: Okay. Okay. So he --

15 MS. MOLDENHAUER: I believe his --

16 CHAIRPERSON HEATH: -- tried to --

17 MS. MOLDENHAUER: And I spoke with staff. I
18 know there's been some challenges, but his 33, I
19 think, included both the letter of withdrawal, then
20 his statement included his support, and it also
21 included his summary of conditions. So we would be
22 fine with leaving the record open to make sure that
23 his summary, in his own words, are also part of the
24 record. But what we tried to do is we tried to copy
25 those in our addendum, or we were putting them into

1 the applicant saying, we are doing this.

2 CHAIRPERSON HEATH: Okay. All right. Okay.
3 All right. Okay. So are we satisfied with these for
4 now?

5 MS. COHEN: No.

6 CHAIRPERSON HEATH: Question?

7 MS. COHEN: Yeah. It has to do with the
8 entry to the garage that apparently it's implied by
9 OP, and I'll ask for further clarification from them,
10 that HPO would not approve that type of entry. So
11 can you elaborate on that, please?

12 MS. MOLDENHAUER: I'll elaborate, then I'll
13 ask the architect to kind of opine on where we are.
14 HPO indicated that they don't have images yet. We
15 have not gone through the HPRB process yet. So they
16 actually don't have renderings to see how that would
17 look or what the line of sights would be. And I
18 think that if you look more clearly at exactly what
19 HPO was saying, they are indicating that they are
20 concerned because they haven't actually seen the
21 renderings. And I'll Ron kind of testify to his
22 conversations with HPO.

23 MR. SCHNECK: That is correct. We had
24 numerous meetings with HPO originally. We had not
25 met with them after we are now proposing the below

1 grade parking, so I have not had a chance to go over
2 that with them. However, in their description that's
3 in the OP report, I think what they're thinking is
4 that it's something that you would see at sort of the
5 street level, and this is whether this is better or
6 worse, this is more something that's going to be
7 recessed into the ground. And again, we have not
8 gone through HP, that sort of after this we intend to
9 go through HP fully. Yeah. Yes.

10 And that's exactly right, we have not shown
11 any renderings to anybody about what that entrance
12 looks like.

13 MS. COHEN: I'm just curious why you're doing
14 this sequentially instead of concurrently with HP.

15 MR. SCHNECK: It was at the preference of HP.
16 There had been numerous, I think other sort of
17 proposed schemes. And when we met with them
18 initially we had talked about we were doing the
19 zoning variance as well, and they suggested that we
20 go through the variance process first and then come
21 back and go through the HPO process.

22 MS. COHEN: Thank you.

23 MR. SCHNECK: You're welcome.

24 MS. COHEN: I'd like to hear from OP, though.

25 CHAIRPERSON HEATH: All right. Okay. So did

1 you have a question for OP now or you want to come
2 back?

3 MS. COHEN: No, when they present.

4 CHAIRPERSON HEATH: Okay. All right. Okay.
5 So we appreciate the work you've done with the ANC
6 and with Mr. --

7 MS. MOLDENHAUER: Sergei.

8 CHAIRPERSON HEATH: Yes. Thank you. But we
9 still have some issues with OP's recommendation for
10 denial of lot occupancy and lot area. And so if you
11 can focus your presentation on the relief you're
12 requesting for those, I think that's what I'd like to
13 see.

14 The change of use issue is also still a big
15 issue and I'd like to -- I'd like for you to talk
16 about that too.

17 MS. MOLDENHAUER: So we'll then move forward
18 with a full presentation.

19 CHAIRPERSON HEATH: Probably makes sense.

20 MS. MOLDENHAUER: Okay. So as you can see
21 the property is obviously part of our relief is
22 requested, the property is in the R-4. It is a very
23 unique condition in regards to one, it's a corner
24 lot. It is the largest lot on the site that is
25 located on a corner and also has an existing

1 contributing building. There was another lot here
2 that was comparable size, or not as large, but it had
3 no property on it. There was no contributing
4 building, and this property does have a contributing
5 building that contributes to the Historic District,
6 which we believe are some of the factors that create
7 a unique factor here on this property and create the
8 confluence of factors.

9 Additionally, the R-4 zone that we are
10 discussing here is abutting a lot of high density
11 residential structure, so while this is R-4 there has
12 been the new change from 1411. We want to simply
13 point out kind of some of the uniquenesses in regards
14 to this site given the fact that it is abutting, you
15 know, the downtown with the C-2-A, which under the
16 new ZRR which is going to come into effect in
17 September, would have zero parking requirements.
18 It's abutting R-5-B and we can kind of take a look at
19 that as we go through our presentation in regards to
20 the character of some of the projects and properties
21 that are surrounding this site.

22 The property also is unique. It's 9,936
23 square feet. So this is obviously an extraordinarily
24 large site and in addition to that it has two
25 contiguous lots. Right now there are two 800 lots

1 that are abutting that have always been sold
2 collectively as one property, so it's not a situation
3 where they've sold one and then sold the other.
4 They've been always sold kind of as a bucket.

5 In addition to the two lots there are three
6 different uses. There is a two-story apartment. My
7 gosh, sorry. A two-story apartment building that has
8 six units, which is this portion of the structure
9 here. Then there is a -- and we have the original
10 building permits attached in our initial application.

11 Then there is a two-story structure here
12 which was built as a retail office use and then two
13 flats above. And then you have the third lot, which
14 is a commercial lot. Just to kind of show what that
15 means from a zoning perspective and a very unique
16 condition, you have obviously, you know, a purpose
17 built in the blue, a purpose built apartment
18 building, and then you have 1216, which is a mixed
19 use residential/office. And then you have the
20 commercial portion of the lot which is 1218.

21 We have on 1218, which is the commercial, the
22 red portion of the lot, it has had numerous degrees
23 of commercial uses over the course of its life. It
24 was originally a gas pump and storage facility for
25 trucks and cars. It was a liquor establishment for

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1 tobacco and beverage production, a taxi cab office,
2 and a dry-cleaning office. These are all part of the
3 record, but these just show that all of those were
4 validly issued certificates of occupancy that attach
5 to those prior nonresidential uses. And that goes to
6 some of the uniqueness here. You have a purpose
7 built building, a mixed use nonresidential building,
8 and then a nonresidential lot all that create this
9 challenge under the new R-4 1411 on how exactly is
10 that interpreted.

11 I will now turn to Ron -- sorry, turn to Dr.
12 Bockai to make some oral statements in the record
13 that kind of go, I believe, to Commissioner Cohen's -
14 - or Board Member Cohen's questions.

15 MR. BOCKAI: Good morning, Chairperson Heath
16 and the Members of the Board. My name is Dr. Bockai.
17 I am the owner of the property at issue in this
18 application. I bought the property about four years
19 ago and I've been trying to develop it since that
20 time. I'm a pharmacist really by trade. I own
21 pharmacies throughout the District.

22 My pharmacies locations mostly prime to areas
23 where the main -- like the CVS drug stores where they
24 never we go, outreach to people that really needs the
25 services. So I open up a store at Martin Luther King

1 Avenue years when CVS was not around that area. One
2 at Columbia Heights in about 1989 when the need was
3 really there, and when the CVS was there and they
4 move out of the area. And also in Capitol Hill.

5 I also development a lot of properties in the
6 District and I've been able to develop these
7 properties in at least -- I've developed these
8 properties over the years. I haven't been able to
9 develop this property in the last four years because
10 of the project difficulties associated with the
11 property.

12 As explained in the written application and
13 prehearing statement, developing the project as a
14 matter of right into 11 unit is not viable. And the
15 architect I previously employed temporarily pursued a
16 development with 11 residential flats, but this
17 concept was developed without me reviewing the
18 financials.

19 When the financials were reviewed it was
20 determined that it will not be feasible to move
21 forward with the project, and so the project was
22 cancelled.

23 The base costs associated with developing the
24 property are significant because of the substantial
25 repairs and site cleanup that are necessary. Also

1 given the history of this site of its use for a gas
2 and oil pump, it is likely that there will be a need
3 for environmental studies to be conducted and
4 possible environmental remediations. Additionally,
5 the historic preservation of the existing building
6 will add to development costs.

7 In developing the project I've conducted
8 extensive community outreach, including three
9 separate meetings with the ANC single-member district
10 representative for the property. The plans have been
11 substantially modified in response to the community
12 input and the project has the backing of the ANC and
13 the community in general.

14 As part of the project I'll be providing in a
15 bold seven retail or service establishment on the
16 ground floor. This was something that the
17 communities specifically requested to be included in
18 the project as the benefit to the neighborhood as a
19 whole.

20 The property has been used for various
21 commercial purposes since at least the 1960s, and to
22 my knowledge there has never been an intent to
23 abandon the commercial use on the property.

24 The site cannot be developed in any
25 alternative scheme as a matter of right. Zoning

1 relief is necessary and we ask the Board to find that
2 we have satisfied the variance standards. I'm hoping
3 to develop this site if the BZA grant the relief that
4 is necessary to overcome the project difficulties
5 associated with the property.

6 I really, right now, presented a hearing
7 before with the ANC, mostly pertaining to the parking
8 permits. When we have a first meeting, when I had
9 first meeting with the ANC, I think I did emphasize
10 to them that before doing that I did, the night we
11 had the meeting I went around the area because their
12 demand, their request was mostly if I can provide
13 them mostly like parking. Parking was their main
14 issue, around the area.

15 So in lieu of that I accepted to do
16 underground parking that would make it easier for the
17 tenants that will be living in the property to have
18 underground parking that will reduce some of the
19 parking problems that they have.

20 But after we went through all these and I
21 accepted to put more parking, I think the ANC
22 requested and I agreed to restrict the parking permit
23 for the residents of the proposed building. However,
24 I personally feel that I am appealing to them to
25 reconsider, to see if they can let the tenants of the

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1 property be allowed not to apply for zoning permit
2 that the issue be privilege to have the same right as
3 the 200 feet radius permitted to have -- 200 radius,
4 200-unit permit radius of the people around the area
5 can use the -- can buy or lease the property. But I
6 wanted them to, the tenants to have to a free access,
7 the freedom like the unit, the people surrounding
8 that unit have because of the simple fact that they
9 are people who would not be living in that area would
10 not be able to afford to rent the parking. And
11 therefore I'm requesting the ANC to reconsider that
12 and let it be uniform to everybody.

13 I think that's mostly what I really want to
14 express and I thank you very much for listening to
15 me. I know that I'm from Africa. Maybe you might
16 not be able understanding what I be saying, but I
17 try. So thank you all.

18 MS. MOLDENHAUER: Thank you, Dr. Bockai. And
19 we'll turn now to Ron Schneck to go through some of
20 the surrounding areas and then the development of the
21 project design, and to address some of the additional
22 issues.

23 MR. SCHNECK: Thank you. Quickly walk
24 through the first slide just to sort of from -- we'll
25 start with image 1. All of the images are basically

1 just to show the existing condition. One of the
2 things that I wanted to note is that the property,
3 both the existing building that is contributing in
4 the historic district as well as the sort of
5 surrounding site around it, on the immediate site, is
6 clearly underutilized. There is, you can see, in the
7 bottom right of the diagram there are two accessory
8 structures here, both of which we are proposing to
9 demolish and that has been sort of approved by HPO in
10 our discussions with them.

11 And the other sort of piece to this, in
12 addition to sort of being underutilized just in terms
13 of sort of condition, you know, we feel strongly
14 that, you know, from an architectural perspective
15 that the corner -- we're hoping, you know, by
16 developing the corner we'll do a lot to sort of help
17 the context of the neighborhood.

18 The next couple slides are just to illustrate
19 the condition of both the existing apartment building
20 as well as the existing mixed use building. You
21 know, if this was not a building in a historic
22 district we'd be hard-pressed to keep it. However,
23 it is a requirement and we are intending to keep as
24 much as we can. But as you can see, you know,
25 through the next series of slides, we're not going to

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1 be able to keep much.

2 And complicating it a little bit is the slide
3 -- yeah. Complicating it a little bit is this is the
4 mixed use building, and as you can see from the slide
5 on the left there's actually -- there's a bit of a
6 concrete construction, which is going to be a little
7 bit more difficult to sort of selectively demo.

8 So --

9 MS. COHEN: Was there a fire in this
10 building? It looks like it.

11 MR. SCHNECK: I don't think so, unless Dr.
12 Bockai knows differently, I don't think there's a
13 fire. I think it's just -- I think there's been some
14 areas of the roof that water has just, over time -- I
15 can't really explain the giant hole in the concrete,
16 but --

17 And then so now we sort of just talk about
18 the neighborhood a little bit. You know, we had
19 initially talked to HPO and just to sort of give you
20 some run down. So 4th Street, this was originally
21 sort of the street where sort of the shop owners
22 would live, and then Ridge Street is where the shop
23 sort of employees would live. So there's definitely
24 a different sort of hierarchy of scale between 4th
25 and Ridge, 4th being a sort of larger scale and then

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1 it scales down as you move further down Ridge.

2 And so you can see from the context of Bridge
3 Street, it definitely lessens scale, however there
4 are some larger buildings there that were probably
5 built sort of after most of the two-story ones. So
6 then over the next slide is 4th Street. And this,
7 you know, we think we understand that you know,
8 there's some concern about massing. And this is
9 basically the building across the street from what
10 we're proposing and it's actually, you know, of a
11 similar massing to what we're proposing. In fact,
12 it's actually a little bit taller.

13 MS. MOLDENHAUER: So this building was built
14 pre the change in the R-4 regulations. Was this
15 built to a 40 feet height, not a 35 feet height?

16 MR. SCHNECK: Forty feet. That's correct.

17 MS. MOLDENHAUER: All right.

18 MR. SCHNECK: As you can see, it's because of
19 they have a cellar plus four floor above that.
20 That's what gets them up to the 40 feet.

21 MS. MOLDENHAUER: And, sorry, there was a
22 comment in Sergei's letter about how our project does
23 not have a cellar. Is that because he looks onto
24 some of these larger projects that do have a cellar?

25 MR. SCHNECK: That's correct. And again,

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1 next slide just shows other buildings along 4th
2 Street. Again, sort of consistent with the larger
3 massing along 4th Street. Again, these are, you
4 know, 35 foot or greater along 4th Street. This one
5 here, next slide, same thing. This even shows sort
6 of one block away along M Street. Again, much larger
7 buildings than what you would see along Ridge.

8 So essentially from a design perspective it
9 was important to us to have a consistency of
10 transition, meaning keeping sort of a larger scale on
11 4th and then transitioning down on to Ridge, and this
12 next slide is just sort of a bird's eye view of our
13 massing. And you know, we think we're doing that.
14 You know, however obviously the existing apartment
15 building we are set back essentially one to one if
16 not greater so that you can't see the addition. And
17 that's a historic requirement.

18 However, on the corner then, we go up to the
19 allowable height to mark the corner. And then I'll
20 talk about a little bit later, we're sort of
21 providing an architecture that steps down a little
22 bit along Ridge.

23 MR. HILL: And that was the case, who owns
24 that apartment building then? Is that also part of
25 Dr. Bockai's property?

1 MS. MOLDENHAUER: Which one? This is an
2 apartment building that is next door that is not
3 owned by Dr. Bockai here.

4 MR. HILL: Okay.

5 MS. MOLDENHAUER: And then this is the --

6 MR. HILL: Yeah, that right there.

7 MS. MOLDENHAUER: -- apartment building that
8 we discussed. This is the purpose built six-unit
9 apartment building next to a flat with a commercial
10 use on the ground floor. And so this is the historic
11 building that's part of the site that has to be --

12 MR. HILL: Right. You have to keep that.

13 MS. MOLDENHAUER: We have to keep --

14 MR. HILL: You -- okay.

15 MS. MOLDENHAUER: And do we have to keep --
16 what is HPO saying? All four walls?

17 MR. SCHNECK: In theory we have to keep all
18 four walls, yes. And we have to set back visually.
19 You're not able to see the addition from any public
20 way. And so from across the street, and we have a
21 site diagram later on, that shows you that when
22 you're across the street you can't see the addition.

23 Just wanted to, again, I think this bird's
24 eye view shows pretty well that, you know, from a
25 massing perspective we're not -- we don't think we're

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1 that inconsistent with, especially the neighbor to
2 the north. I'll talk a little bit about this later,
3 but just sort of, you know, one of the you know, this
4 project would not have been developed by right in any
5 scenario and the closest thing would have been sort
6 of flats next to it, but we would have actually ended
7 up with, you know, a similar massing, like I said,
8 similar to the one to the north.

9 So as I'm sure you know, we've worked a lot
10 with the community on various things, and we just
11 wanted to include this slide. When we met with them
12 early on we did take a lot of their input to heart.
13 And what this original building was, was showing sort
14 of a more modern look with sort of rooftop decks and
15 more sort of activity higher up. And you know, they
16 were much more receptive of sort of a more historical
17 approach and that's sort of what we're proposing now.
18 Again, we haven't gone through HP yet. But it is
19 something we talked about with the community and we
20 feel that we responded to their concerns.

21 MS. COHEN: And remind me the height, again,
22 of this building.

23 MR. SCHNECK: Thirty-five feet.

24 MS. COHEN: It is 35.

25 MR. SCHNECK: It is 35 feet, yes.

1 The next -- this slide and the next couple
2 are floorplans, and one of the -- another issue that
3 when we first started meeting with the community was
4 basically the unit mix. And we had more sort of
5 smaller units or more one-bedrooms, and it was very
6 important for them that we had provided -- that we
7 could provide larger two and three-bedrooms. So you
8 can see on the first floor here that we have that.

9 And this plan also shows just to sort of
10 understand a little bit, the access to parking
11 visible from Ridge concern, in that as you can see in
12 the upper left of this drawing there is basically --
13 there is no structure at grade. It's just basically
14 a hole in the ground with a ramp down.

15 The only -- okay. So the one thing to sort
16 of note, we already talked about how we need to set
17 back from the historic structure. And so what you
18 can see in this plan -- and yes, in this plan, is
19 basically at the second floor we're able to, you
20 know, occupy all of the existing building and then
21 this has to do with our lot occupancy. We basically,
22 because we have to adhere and keep the back of the
23 building, we're sort of setting back the addition in
24 the back of the building in relative to what we're
25 required to do in terms of what you see from across

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1 the street. And it just makes for a much -- it also
2 makes for a much efficient layout in terms of
3 circulation from stair to stair, and elevator access.

4 And so you can see this clearly on the third
5 floor, which is the top floor, where the -- you know,
6 our setback from the front, from 4th Street, it's set
7 back. We don't have units along that side, we just
8 have units on the back. Again, so you can't see it
9 from the street. We are providing some outdoor
10 patio. But again, it's a very efficient layout. It
11 works well for us.

12 Next slide we've worked with DDOT. One of
13 their concerns was trash. And so we've -- we had a
14 traffic study done to show that a trash truck can get
15 into our property, get the trash, and remove the
16 trashes. It's a little hard to see sort of where the
17 truck is turning around, that's where the trash is.
18 And then just to sort of point out also, the bicycle
19 storage, which is that small blue room, it will be
20 off the lobby, just sort of easy access for the
21 residents.

22 Next slide shows the below grade parking
23 structure, essentially --

24 MS. COHEN: Before you go there could you
25 just tell me where the IZ units are going to be?

1 Have you --

2 MR. SCHNECK: We have one two-bedroom and one
3 large one-bedroom. I'm having a hard time reading
4 this too, to point out exactly where they are. But
5 they're evenly distributed on the floors. I have to
6 take a look.

7 MS. COHEN: I would like you to add to the
8 record where they're going to be.

9 MS. MOLDENHAUER: They actually are part of
10 the record in, sorry, Exhibit 29B, as in boy, 29B.
11 If you go to that version of the plans you can see
12 that there is a one-bedroom on the first floor and it
13 says under it in yellow, IZ unit. And then the two-
14 bedroom on the second floor. Sorry, 25. Twenty-six.
15 Sorry, 26. Exhibit 26B as in boy, is our prehearing
16 statement and the architectural plans. Okay.

17 MR. HILL: While you're waiting for it to
18 load, because I did have a question anyway. On the
19 second floor, can you show me the second floorplate
20 again?

21 MS. MOLDENHAUER: Oh, second floor. Sorry.

22 MR. HILL: That's all right. How is the --
23 I'm a little confused. Where is the historic
24 buildings?

25 MR. SCHNECK: Can you outline it in -- okay,

1 right. So that's the historic buildings. And then
2 what about the one-bedroom and the studios to the
3 left of that? Is that just -- where are their
4 windows?

5 MR. SCHNECK: So those row of units will have
6 windows out the back.

7 MR. HILL: Okay.

8 MR. SCHNECK: And then what we're intending
9 to do is try to -- you know, we have to keep the
10 perimeter of the existing building and so we're going
11 to make that a feature of the -- as you walk into the
12 unit you'll be able to sort of experience the brick
13 of the existing façade, and that's what you're seeing
14 here.

15 MR. HILL: I see.

16 MR. SCHNECK: But there is only -- there's
17 basically one window wall which is --

18 MR. HILL: At the end.

19 MR. SCHNECK: Yeah.

20 MR. HILL: Okay. Thank you.

21 MR. SCHNECK: You're welcome. Parking
22 diagram of, you know, the one level of below grade
23 parking. Next slide is sort of just the line of
24 sight diagram. And again, what you're seeing here is
25 as someone is standing across the street they're

1 looking and they don't see the addition on top of the
2 existing structure.

3 MS. COHEN: Ms. Moldenhauer, I must be going
4 blind because I do not see the IZ units. I'm sorry.
5 Just --

6 MS. MOLDENHAUER: In our prehearing statement
7 it was --

8 MS. COHEN: B?

9 MS. MOLDENHAUER: -- Exhibit B.

10 MS. COHEN: Right.

11 MS. MOLDENHAUER: And if you look we did
12 scrunch them, I think, two per page.

13 And on the second floor, the two-bedroom.
14 Okay. Sorry.

15 MS. COHEN: I am going blind.

16 MS. MOLDENHAUER: They're very, very -- it's
17 small font, which is why we took it off because it's
18 hard to see sometimes when you have too much going
19 on.

20 MR. SCHNECK: So the north elevation, again,
21 having gone through historic yet, we're not done with
22 the design, but conceptually you know, we're happy
23 with what we have. And what that is, is we'll start
24 first with the north elevation and just to sort of
25 talk about consistency of what we're trying to do

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1 which is make that corner, sort of reestablish that
2 corner in the neighborhood, but then obviously we do
3 want to sort of set down in scale a little bit as we
4 work our way down further to, further on Ridge.

5 Now, obviously we have the advantage of a,
6 you know, a very large setback. We're not
7 immediately adjacent in existing building. But
8 again, that's one of our design intentions is to step
9 down. And in terms of materials you know, this will
10 be a brick structure as consistent as we want to be
11 and as we work with OP -- I mean, with HPO.

12 The next slide is the north elevation. And
13 you know, what we like about the north elevation is
14 that there is a very clear distinction between sort
15 of the existing building. Again, you're seeing the
16 top here because of the elevation drawing, or the
17 third floor addition to the existing structure. But
18 obviously you don't see that from the street level.

19 And then, you know, we have a nice sort of
20 reveal in between the two buildings. The one on the
21 right, obviously is entirely new construction. And
22 one thing I did, if you don't mind going back to the
23 north elevation I just wanted to point out in terms
24 of sort of circulation, what we're proposing are sort
25 of access to the units from the street along Ridge,

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1 sort of more consistent with sort of the row home
2 type of circulation as opposed to just having the one
3 main entrance as you know, most apartment buildings
4 would, which we do have on the 4th Street side.

5 MS. COHEN: It doesn't appear that you're
6 going to be using the same type of materials as the
7 historic. What kind of materials are you using? I
8 know that's a little bit outside the --

9 MR. SCHNECK: Yeah. I mean, we just haven't
10 gone there yet. For example, the existing is red
11 brick. You know, I think we'll do something that may
12 not be a red brick, but sort of a red-tan brick.
13 Again, something that's consistent in terms of
14 material but yet acknowledging, you know, that it is
15 a new construction.

16 MS. MOLDENHAUER: And just for the record,
17 we've worked extensively with ANC but we have not
18 talked to them specifically about materials or the
19 HPRB process. We will be linked back to them for
20 that entire process, you know, if and when we get
21 through the zoning relief.

22 MR. SCHNECK: The next slide is just sort of
23 a highlight of where we are with sort of lot
24 occupancy and sort of explaining a little bit and,
25 you know, why we have what we have. The upper left

1 slide basically shows our existing lot occupancy
2 which included the two accessory structures. And the
3 sort of one underneath that is the proposed scheme
4 that is in front of you today, which is up to 75
5 percent lot occupancy and that was when we were sort
6 of assuming that we'd be able to do 60 percent lot
7 occupancy, and the relief that we were asking for was
8 basically setting back the addition to the existing
9 structure, the same distance that we are setting back
10 the third floor for the historic requirements.

11 And then the next -- the three diagrams to
12 the right are sort of we now understand that there's
13 sort of questions with the 40 percent lot occupancy
14 and so we did sort of an analysis to sort of try to
15 study, you know, what that means and sort of, you
16 know, how we could develop a project with the 40
17 percent lot occupancy. And as you can see from these
18 diagrams it's very infeasible sort of financially and
19 formally and otherwise to sort of add addition and
20 still maintain that 40 percent lot occupancy.

21 You know, given the pro forma that we have
22 you know, none of the 40 percent lot occupancy
23 schemes are, you know, financially practical. In
24 addition, although we haven't studied them
25 completely, we can -- we can discern that none of

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1 them could be sort of accomplished by right. There
2 would need to be some type of relief. We couldn't
3 divide it into smaller lots. We would need to have a
4 variance to add to a nonconforming structure and the
5 expansion of a purpose built apartment building.

6 MR. HILL: Can you explain just the cross-
7 hatched areas there, whatever it says, you know, for
8 I guess either your -- either A or C I guess it is.
9 Like, that's just what you would -- is that open
10 space supposedly?

11 MR. SCHNECK: No, I'm sorry. So the cross-
12 hatched area would be if we were to adhere with 40
13 percent lot occupancy, the by right lot occupancy --

14 MR. HILL: Uh-huh.

15 MR. SCHNECK: -- that's all we could add
16 given that we have to keep the existing structure
17 because it's in the historic district. And so
18 developing it, keeping the 40 percent lot occupancy
19 does not give us a lot of square footage to add to.
20 And that's what those three diagrams are showing.

21 MS. MOLDENHAUER: Can you explain the
22 challenge of adding the different scenarios with
23 maintaining the existing historic building?

24 MR. SCHNECK: That's a good question. So we
25 need to, as we sort of demonstrated in the slide

1 previously, we're required to keep the perimeter of
2 the building and take, for example, the middle top
3 one, which is sort of Image A, you know, that becomes
4 a very problematic footprint. It would not be able
5 to be a double-loaded corridor. We'd have to have --
6 you know, they would have to be incredibly large
7 units. We couldn't do the same layout that we have
8 now where we have the double-loaded corridor with a
9 unit on each side. It's just all of these three
10 schemes would be difficult to lay out.

11 MS. MOLDENHAUER: That then completes our
12 testimony. We have -- I was going to go through,
13 since there are some legal questions I want to make
14 sure I provide kind of a summary. And then we'll
15 open it up to any questions from the Board.

16 We are asking for different areas of relief,
17 special exception under a change for a nonconforming
18 use. And then three areas of variance relief, lot
19 area, lot occupancy, and then OP indicated that we
20 would need relief from a nonconforming structure, so
21 we have added that pursuant to OP's statement.

22 The four areas of zoning relief needed for
23 the alternative schemes, if we, as we indicated, if
24 we had needed -- if we had tried to divide other
25 schemes, we would still require lot area relief. We

1 would require rear yard relief, lot occupancy, and in
2 addition a nonconforming structure. So this kind of
3 outlines the other areas of relief that would still
4 need to be requested in other schemes that Ron
5 discussed, and other schemes that would possibly try
6 to provide a matter of right or a reduced density.
7 But one, obviously, as the financials show that there
8 would be a financial hardship. But from a zoning
9 perspective, under Palmer, it would still require
10 relief.

11 So we would want to just simply identify
12 those areas of relief that the alternative schemes
13 would still require zoning variance relief.

14 The special exception for a conversion of a
15 nonconforming office use to a conforming retail
16 servicing establishment, as stated on the record we
17 originally were not providing this but it was asked.
18 We had gone to the ANC multiple times and they asked
19 for the opportunity to have a local coffee shop or
20 some sort of neighborhood servicing retail
21 establishment closer by their homes, not kind of
22 across New York Avenue or closer to the Convention
23 Center where it gets, you know, more you know, less
24 residential and less community oriented but more kind
25 of a mass oriented.

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1 And so we looked at it and we believe that
2 based on the testimony that it is in harmony with the
3 general purpose, that there's no adverse effect to
4 the neighborhood for this use, and that under 2003 an
5 office use would be in a C-1 zone and thus you would
6 go to a neighborhood servicing retail establishment
7 would then be permitted in this zone.

8 Office of Planning's report does point out a
9 question of law in regards to abandonment. But it's
10 a question of burden shifting, not a question of it's
11 absolutely not permitted. If you can show that the
12 property was used in the last three years, then the
13 burden is not on us. It would be on an opposition
14 party to show that we had abandoned it, or did not
15 intend to keep it. So that means it would be a per
16 se evidence if we could show that it was used in the
17 last three years. We know it has not been used but
18 that just simply puts the burden back on us to show
19 that the intent was never abandoned.

20 And so the law does not create a bar, it just
21 simply puts the burden on us. We did have Dr. Bockai
22 testify here today on the record, under oath, that in
23 his opinion the intention was never to abandon it.
24 It was always appeared to be a commercial
25 establishment and that that was always the intention,

1 you know, when he acquired it and from prior owners.
2 So we believe that we would satisfy that standard
3 based on records, our testimony in the record today
4 under oath, that the intention was not abandoned.

5 Then we go to the variances, the three-prong
6 test, the -- we believe that we satisfy all three
7 prongs of the variance standard. First, we believe
8 that there's a confluence of factors. This is, in
9 our opinion, not a precedent setting case. It is
10 extraordinarily unique. It took us even a while to
11 kind of understand what was happening and the fact
12 that there was this purpose built apartment building,
13 and then there was a two-unit flat with commercial
14 use. And then there was also a commercial use where
15 they were you know, driving in oil and pump tanks and
16 then later on they were using it for taxi cabs and
17 things to that effect, in conjunction with the taxi
18 cab office at 1216.

19 So all of those factors in addition we
20 identified the large size. The site is over 9,000,
21 nearly 10,000 square feet in size. It's a, as I
22 said, nonresidential structure as was testified to by
23 Ron Schneck. You could see images of the commercial
24 office structure actually had concrete and steel
25 which is not, you know, a typical kind of

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1 construction for residential structures, but shows
2 the challenges associated with that unique
3 nonresidential development for developing the project
4 into the future.

5 The location of the historic building and
6 structure on the site, keeping that working with the
7 surrounding walls and trying to then obviously
8 preserve the existing structure and setback are all
9 exceptional conditions that lead to the practical
10 difficulty.

11 The practical difficulty as Dr. Bockai
12 testified to and as in part of our pro forma that,
13 you know, 11 units as a matter of right, or 15 units,
14 would not be feasible. There are multiple cases
15 where in 18511 which is a case before the BZA, where
16 the Board in their opinion stated that the
17 environmental contamination on the site was part of
18 the exceptional condition for that project. There
19 are other cases as well, where the Board has looked
20 to those additional costs associated with that.

21 Here we, as part of the record, the pro forma
22 shows that 22 units would be a five percent return
23 incorporating the market prices, including the
24 parking, and including the IZ units. One two-bedroom
25 at 80 percent AMI and one one-bedroom at 50 percent

1 AMI.

2 The detriment to the public good, we believe
3 that there would be no detriment to the public good
4 given the unique condition here in that the a-typical
5 R-4 structure, and also that there would be no
6 adverse impact based on the parking. The parking was
7 obviously one of the larger issues sometimes that
8 communities discuss and that we believe we've
9 resolved that by providing the additional parking,
10 but also assisting those people in the community that
11 are landlocked, that are surrounded by the Convention
12 Center and have a hard time obtaining parking, but by
13 providing the excess spaces to the community.

14 We believe that as we kind of just walk
15 through with the architectural images on the
16 surrounding properties, that the character is similar
17 to the large three-story plus cellar that is 40 feet
18 in height that is next door to this project, and that
19 we will obviously continue to work with HPO, ANC, as
20 you move forward through this process.

21 The degree of relief we are looking for, you
22 know, a degree of relief that is higher than other
23 cases that this Board has approved in the past, you
24 know, from 2010 to 2014. The Board has actually
25 approved cases dating all the way back to like the

1 1980s, in regards to there is cases in 1982, 1988.
2 All of these are very kind of unique exceptional
3 conditions and we believe that we also are requesting
4 a degree of relief that would satisfy that as well
5 and would not give the Board concerns regarding
6 adverse impacts or substantial adverse impacts on the
7 zone plan.

8 As we've already testified to, the community
9 outreach, we communicate with DDOT in regards to the
10 turning diagram. We have had preliminary discussions
11 with HPO, and obviously the ANC, and obtained
12 support. I do know that you'll hear from the ANC
13 Commissioner today. And so we also have, as part of
14 our conditions that were proffered, the additional --
15 the proffered transportation features of the RPP
16 restriction, the 27 parking spaces, that the excess
17 would go to the 200 foot individuals. Fifteen
18 bicycle spaces onsite as well as the onsite loading.
19 It was one of the factors that DDOT discussed with
20 us, was making sure that the garbage would not be
21 handled on the community. And by requesting the
22 additional lot occupancy we're also addressing the
23 corner configuration and kind of protecting the
24 community from seeing the trash, seeing the parking.
25 If that was pulled back in those 40 percent schemes,

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1 you're not going to have that same benefit. You're
2 going to be looking on to, you know, some of the I
3 think negative planning concepts.

4 That being said, we believe that we do
5 satisfy all three conditions for the variance relief
6 and we'll be happy to answer questions.

7 CHAIRPERSON HEATH: All right. Okay. All
8 right. So we'd like to hear from OP? All right.
9 Thank you. We'll turn to Office of Planning at this
10 point. And if you could address your issues and
11 anything that this presentation might have done to
12 your original position.

13 MS. THOMAS: Let me start off by saying that
14 we will remain in denial of this application. We
15 don't believe that the lot has any exceptional
16 condition with respect to for [garbled speech]. We
17 don't see historic preservation as an impediment to
18 developing a lot within the bounds of the
19 regulations. So a lot of properties have been
20 developed in historic districts with relief granted,
21 albeit some cases.

22 We complement the applicant in trying to
23 reach out to the community to address some of their
24 concerns, but I don't see how those concerns could be
25 addressed by bulking up the building and then saying,

1 we're putting more people in, and then asking for
2 relief. Not relief from parking but saying that we
3 need to provide parking. I mean, you have capacity
4 for 11. You're going to put 22, so then the
5 neighborhood will complain about parking.

6 So that seems contrary to the intent. If you
7 had less you wouldn't have that parking and parking
8 could be provided on the lot.

9 In addition, green space. There is no green
10 space on this lot. It bulks the building, what's
11 existing there into de facto an apartment building
12 again, which is not intended for the R-4. So we're
13 going from a smaller apartment building to a huge
14 apartment building, which skews against the R-4,
15 which is not intended for that purpose.

16 The lot area requirements are intended to
17 maintain a particular feel and character within the
18 R-4 where there are apartments. So we have that lot
19 area requirement. To extend that and to go beyond
20 that you're stepping outside of the bounds of the R-4
21 and it looks, as presented, it looks like an R-5
22 situation. We're not against redeveloping this
23 property, but as it stands I think this is well
24 beyond what's anticipated for the R-4 zone.

25 The minor relief -- relief is intended to

1 make the project essentially conform to the rules and
2 regulations that govern the neighborhood and the
3 character and not just to go beyond that. And I
4 think this well goes beyond it.

5 With respect to the public good we see that
6 maintained in just one part of the variance test,
7 addressing the one part of it. Again, we have three
8 parts to the test and the first part we don't believe
9 was met, and from that first part stems the other
10 three. But that first part hasn't been satisfied.

11 We see the regulations as being there to
12 stabilize the neighborhoods and the proliferation of
13 these smaller units, albeit they are providing a
14 couple larger units, they're not, should I say,
15 sympathetic to families who are there to stabilize
16 neighborhoods and they also stabilize the schools, if
17 you want to look at it from a policy standpoint in
18 that respect.

19 There are several other apartment buildings
20 within properly -- developed within the proper zone
21 districts that could accommodate this, but I don't
22 believe that the R-4 is where this is intended. And
23 this bulks the R-4 well beyond what is intended. And
24 I'll be happy to take any questions.

25 CHAIRPERSON HEATH: Okay. Go ahead.

1 MR. HILL: If they were to develop it with
2 the 11 to 15 that were by right or whatever they
3 could do, do you necessarily think that that would
4 help in terms of families?

5 MS. THOMAS: Perhaps there's a way to design
6 it, what how many units they can get a large size
7 units perhaps. I'm not you know, an architect, and
8 I'm sure that could be done architecturally.

9 MR. HILL: I was just curious.

10 MS. THOMAS: Yeah.

11 MS. COHEN: Where is the closest R-5 district
12 to this property?

13 MS. THOMAS: Across New York Avenue. Let's
14 see. I don't have the zoning map in front of me but
15 she can put it back on the screen. If you could put
16 your R-5 -- the map, the zoning map.

17 MS. COHEN: Yeah.

18 MS. THOMAS: You have one across --

19 MS. COHEN: You also have one, what is that,
20 to the east.

21 MS. THOMAS: To the north.

22 MS. COHEN: To the north?

23 MS. THOMAS: N Street, yeah. Uh-huh. That's
24 R-5-B and --

25 MS. COHEN: That's right, to the north. And

1 then to the east.

2 MS. THOMAS: To Convention Center and to the
3 south, what street is that? M?

4 CHAIRPERSON HEATH: M Street.

5 MS. THOMAS: M.

6 MS. COHEN: Do you think the design of this
7 project, though, is complimentary to the surrounding
8 area where they did show us a number of multi-family
9 sites? Is there complimentary there do you believe?

10 MS. THOMAS: Well, from what's shown you can
11 see that a lot of these pre '58 building types. And
12 probably most likely purpose built, and where there
13 were large, for instance in that, as shown in one of
14 the pictures there you see what looks to be probably
15 like an older row house or probably was an
16 institutional building. I can't say because I don't
17 have the information. But if it had been converted,
18 conversions were intended for that type of situation.
19 We're not talking about a conversion here, we're
20 talking about an older structure what an apartment is
21 considered in the R-4, and all of the structure and
22 building it well out into as more as a purpose built
23 apartment.

24 The multi-family buildings that are shown pre
25 '58 and had been developed, most likely, and part of

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1 the historic fabric of that neighborhood.

2 MS. COHEN: Well, and specifically are you
3 looking at the proposed site plan that was up there
4 before, if you could go back to it. Which again,
5 there are a number of buildings that are shorter in
6 height. But then adjacent to it there's a 40 foot
7 building. I guess this is 35.

8 I guess again what I'm trying to do is giving
9 great weight to the ANC that obviously is -- the
10 existence of the building now is unacceptable. And I
11 know what you're saying is that as of right it -- and
12 as a historic property, less density, fitting into an
13 R-4 interpretation, I understand all that.

14 But again, the economics don't always justify
15 what the zoning is requiring and that's what I'm
16 trying to see how we can come to a happy medium. Is
17 there anything else that you could see that would
18 make this a more acceptable project? Maybe not at
19 the, what's it 22 units now, as opposed to what the
20 as of right might be?

21 MS. THOMAS: I suppose there could be a happy
22 medium. With respect to character issues I'll defer
23 that more to HP because it's in a historic district.
24 I don't have any issues with the height per se
25 because within historic districts there are a variety

1 of heights, buildings are not all one formal height.
2 I don't have an issue with that because it is within
3 the height limits.

4 But, you know, you have what was basically a
5 separate lot being adjoined to all the -- she said it
6 sold as a packet. I don't know. But there are other
7 mechanisms there that that could have been developed
8 by itself and still maintain a neighborhood character
9 that's consistent with the R-4. Like I said, I'm not
10 an architect and --

11 MS. COHEN: Yeah, I don't think that it's so
12 totally out of character, and to work hard to get an
13 ANC to support greater density is very unusual in the
14 District of Columbia. And the need, you know, the
15 public good that this property would serve is great.
16 It's additional housing. And some of the units are
17 larger. And at least one of the unit is 50 percent
18 and one is at 80 percent. And I guess where I'm
19 coming from and I was looking at the economics, I
20 didn't really take out my calculator and do an
21 underwriting on the deal, but I think we need to take
22 into consideration that this is a shell of a
23 building. It does have potential remediation. It
24 was a gas station sitting there. And but it's not my
25 position to argue on behalf of the applicant. I

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1 think what I'm trying to do is say two things.

2 One, I don't see it architecturally as being
3 out of character, so totally out of character with
4 this neighborhood. And I also see it as a public
5 benefit. I'm waiting to hear my colleagues as well.

6 CHAIRPERSON HEATH: We're not deliberating.

7 MS. COHEN: Oh, we're not deliberating.

8 CHAIRPERSON HEATH: No, no, we're just asking
9 questions. But you made a statement.

10 MS. COHEN: Yeah, I do it a lot.

11 CHAIRPERSON HEATH: Does anybody else have
12 questions of Office of Planning? Does the applicant
13 have questions of Office of Planning?

14 MS. MOLDENHAUER: Just one or two. When the
15 Zoning Commission revised the R-4 regulations under
16 the new 1411, could they have made an apartment house
17 use not permitted at all in the R-4, and thus
18 requiring a use variance?

19 MS. THOMAS: Could you -- could they have --

20 MS. MOLDENHAUER: Could they have. It's a
21 total hypothetical. Like, let me just throw that out
22 there. Could they have made it not permitted and
23 made it a use variance?

24 MS. THOMAS: I don't -- you know, I'm not
25 going to answer the hypotheticals. The R-4 districts

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1 have apartments. Consist of a mix and a blend. And
2 where they have existed the intent is where they
3 could be added on they have been given a certain
4 prescription as to how much they could add on to
5 because the intent is to maintain that low density
6 character and not to bulk -- go into a bulk that goes
7 beyond the R-4.

8 MS. MOLDENHAUER: Do the new regulations make
9 it easier as under a special exception standard for
10 nonresidential buildings?

11 MS. THOMAS: I'm not sure right now because I
12 haven't done all -- everything through the R-4 right
13 now. You mean in the new regs?

14 MS. MOLDENHAUER: No, not the ZRR but under
15 the 1411, did they make a nonresidential building an
16 apartment building use special exception?

17 MS. THOMAS: Yes.

18 MS. MOLDENHAUER: And that would be, a
19 nonresidential use would be an office?

20 MS. THOMAS: Nonresidential is an office,
21 yes.

22 MS. MOLDENHAUER: And are you at all familiar
23 with the *Palmer* case, *v. D.C.*?

24 MS. THOMAS: No, I'm not.

25 MS. MOLDENHAUER: Okay. Then I --

1 MS. THOMAS: Yeah.

2 MS. MOLDENHAUER: No other questions.

3 MR. HILL: So for the Office of Planning,
4 just it was alluded to in terms of like a happy
5 compromise or something. Like what is that? What do
6 you foresee that to be? Or what are you saying that
7 might be?

8 MS. THOMAS: I can't foresee anything right
9 now because I don't have different schematics in
10 front of me or anything like that. A happy medium
11 would be if you had to push at it, would be the 11
12 units and I'm thinking that you would have some sort
13 of need for relief with respect to lot occupancy or
14 so. To go double the amount of units, the Office of
15 Planning could not support such a scenario.

16 MR. HILL: Okay.

17 CHAIRPERSON HEATH: So if they had fewer
18 units, let's just say 11, or something in that 11 to
19 15 range --

20 MS. THOMAS: Yeah.

21 CHAIRPERSON HEATH: -- and they needed lot
22 occupancy, would Office of Planning be in support of
23 that?

24 MS. THOMAS: I can't say we would be in
25 support of it. Again, we would have to see some

1 plans that show, you know, that some intent has been
2 made to respect the R-4 density, and that goes to the
3 number of units with respect to the low density,
4 since we don't have FAR.

5 CHAIRPERSON HEATH: Okay.

6 MS. THOMAS: Uh-huh.

7 CHAIRPERSON HEATH: Okay. All right. Any
8 other questions from the Board for Office of
9 Planning? Okay.

10 And you don't have any other questions of
11 Office of Planning?

12 MS. COHEN: No.

13 CHAIRPERSON HEATH: Okay. Or you? Okay.
14 All right. Thanks.

15 MS. MOLDENHAUER: Yeah, I just -- you're
16 saying that your main issue is that the property is
17 not exceptional, that you don't find the size of the
18 lot exceptional, the prior uses exceptional.

19 MS. THOMAS: No, the size of the lot is not
20 exceptional. It's an empty lot within the R-4 which
21 could be developed within a prescription of the R-4.

22 The prior use, again, based on our report I
23 don't think that has been established. And you're
24 referring to office use, am I correct? The office
25 use?

1 MS. MOLDENHAUER: All three existing uses.
2 The fact that there is an existing apartment building
3 connected with a contributing building that is
4 office. And then with --

5 MS. THOMAS: No. No.

6 MS. MOLDENHAUER: -- a gas station or other
7 type of commercial uses that were on the site that
8 need to be remediated.

9 MS. THOMAS: We have seen --

10 MS. MOLDENHAUER: You don't find any of those
11 as a confluence of factors?

12 MS. THOMAS: We have seen these types of mix
13 of uses within the R-4. We have Capitol Hill.
14 That's a fantastic example of a lot of mix of uses in
15 some of the R-4, and they developed in terms of new
16 regulations and it's in a historic district. So I
17 can't say just because it has a large lot and it has
18 some historic preservation resources on the lot, that
19 this is a --

20 CHAIRPERSON HEATH: Thank you. Okay. Thank
21 you. All right. Moving on we have a representative
22 from ANC 6E here. It's finally your time. If you
23 could introduce yourself and we'll give you -- is it
24 five or six minutes?

25 MR. MOY: There's no established time for --

1 CHAIRPERSON HEATH: Oh, okay.

2 MR. MOY: -- an ANC who is a full party.

3 CHAIRPERSON HEATH: All right.

4 MR. MOY: Or a party.

5 MS. NIGRO: Hi, everyone. Good afternoon.

6 My name is Rachelle Nigro. I am the advisory
7 neighbored commissioner for ANC 6E-04. Thank you
8 very much, the applicant and to the Board for hearing
9 about this case.

10 This was very difficult for the neighborhood,
11 but there has been certainly concessions, many
12 concessions by the applicant. But let me just put on
13 the table right away, the number one factor with this
14 project is about parking. It is always about parking
15 in our neighborhood. There is barely any throughout
16 my single-member district.

17 So when Dr. Bockai came before us and they
18 did meet with the community three times at meetings
19 that I organized, that was always the concern.
20 However, many it was going to be, how was the parking
21 going to be handled. So when Dr. Bockai said earlier
22 about his personal feeling about RPP, it is the
23 feeling of the community and of the ANC and with the
24 agreement with the lawyers, Meredith that is here,
25 that the residents that do move in to this proposed

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1 building do not have RPP. That is, our support is
2 contingent on that. We agreed upon -- it was many
3 back and forths about the parking and then about the
4 RPP, that no residents be given residential parking
5 permits. It is that bad.

6 Unless, has anyone ever been to this street
7 on the Board? Okay. I mean, it is, when we are
8 called -- as I say jokingly, we are the parking lot
9 for the Convention Center. So when the Convention
10 Center has any function, whether it be international
11 meeting or a local event, there will literally be a
12 traffic jam in the neighborhood. It can be that bad.
13 And let's not even talk about Sunday with the
14 churches. I represent seven churches in a seven
15 block radius. So you can only imagine that my number
16 one concern is always about parking.

17 So that said I can certainly understand
18 Planning's position. We do have some constituents
19 that would have preferred a lower density. But the
20 majority, and certainly with the ANC, we are good
21 with the current plan. With the parking garage.
22 With the, you know, no RPP for the future residents
23 there, and with the proponent for, of course, when
24 there are going to be excess parking spots, how they
25 would be sold off to the neighbors.

1 CHAIRPERSON HEATH: Okay.

2 MS. NIGRO: It's all about the parking.

3 CHAIRPERSON HEATH: Okay. So if this
4 apartment complex were smaller, fewer units, but
5 still had no RPP and still had -- what are you going
6 to say?

7 MS. NIGRO: No, go ahead.

8 CHAIRPERSON HEATH: Okay. Still had no RPP
9 and still provided parking on site, would you be in
10 support? It's just that the only change that I'm
11 suggesting is if it were a smaller development, with
12 fewer units.

13 MS. NIGRO: If it was a smaller development
14 there would definitely have to be no RPP.

15 CHAIRPERSON HEATH: Right.

16 MS. NIGRO: The end. The end. The end. And
17 then of course, working again with Dr. Bockai to
18 provide parking for the people that -- you know, if
19 that is at all possible. I mean, it did take a while
20 to come to this current proposal. But I mean, I know
21 I sound a little bit ridiculous when I talk about
22 parking all the time, but it's the truth. So.

23 CHAIRPERSON HEATH: Yeah. We always hear
24 parking issues --

25 MS. NIGRO: Okay. Then you know.

1 CHAIRPERSON HEATH: -- when it -- and
2 especially around the Convention Center. We hear a
3 lot about parking issues.

4 MS. NIGRO: So I mean, I hope with, as I have
5 known Dr. Bockai now for five and a half years, or
6 actually longer than that before I became
7 Commissioner, that you know, whatever size this ends
8 up being, that there would be parking for the people
9 that are there. I mean, that's the good faith that
10 we would have between Dr. Bockai and the community
11 because we have come this far.

12 I know the regulations are going to change in
13 fall. So there is that fear within the community.
14 Whatever development does happen in the future, that
15 parking is off the table and it's, we'll just add --
16 so I have a couple larger lots that are still yet to
17 be developed and that's the future reface.

18 CHAIRPERSON HEATH: Okay. You have a
19 question, Ms. Cohen?

20 MS. COHEN: Thank you. The larger lots,
21 they're presently parking lots. Is that correct?

22 MS. NIGRO: No.

23 MS. COHEN: No?

24 MS. NIGRO: I have a large lot that is on New
25 York and 4th. The proposals that are on the table,

1 would that be a 12-story residential building, 12-
2 story hotel, or possible retirement community.
3 Either way it's going to be -- then that faces New
4 York. That's part of the original plan for the area.

5 MS. COHEN: If people were willing to pay for
6 parking instead of on the street, would that reduce
7 your problem because there are parking lots. Doesn't
8 the Marriott have some parking as well?

9 MS. NIGRO: Okay. Let me just -- no.

10 MS. COHEN: Yeah, educate me.

11 MS. NIGRO: You're talking about when people
12 come to visit the Convention Center or the churches,
13 right? Visit. To visit the area? So what happens
14 is, like if you're coming to the area, you don't want
15 to pay for parking if you don't have to. You look to
16 the immediate right of the Convention Center and you
17 see this neighborhood. You're going to scope out
18 that neighborhood first.

19 So, oh, there's a parking spot, you park, you
20 leave and go to the gymnastics, whatever, at the
21 Convention Center. It is also part of the problem
22 that we do not have enforcement all the time. So you
23 have people who park who are from out of state or
24 wherever, and then we cannot get enforcement certain
25 days of the week.

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1 So yes, ideally we have the city center
2 project that has, I think, 700 parking spaces. We
3 have the Marriott Marque, we have the Renaissance
4 Hotel, we have the Safeway across the street.
5 Absolutely people can park there. Do they? A lot of
6 times no. They look in ANC 6E-04 first.

7 MS. COHEN: So have you met with DDOT about
8 this enforcement issue?

9 MS. NIGRO: Oh.

10 MS. COHEN: Many times?

11 MS. NIGRO: That would be DPW. They are well
12 aware of my position. Yep.

13 MS. COHEN: Okay. So basically you're not
14 getting the signage or any cooperation?

15 MS. NIGRO: What's on the table right now,
16 well, on the DDOT side is of course we are seeking
17 residential only parking for one side of the Street.
18 That is, as you maybe are aware, that program was
19 paused for almost two years now. And I was actually
20 just told by DDOT that hopefully this summer it will
21 be put back out to the community.

22 But I have a couple blocks on the table right
23 now for that, so that is what we really desire, also.
24 But that's not happening.

25 MS. COHEN: Yeah, I hope you get it because I

1 mean, I don't take a car around town, so I'm not
2 really familiar with the density of parking. I just
3 know that there is available parking. I think
4 people, you know, don't want to pay for it and --

5 MS. NIGRO: You have hit it right on the --

6 MS. COHEN: Yeah.

7 MS. NIGRO: Yep.

8 MS. COHEN: And that's really, you know,
9 problematic in this city. We've got to do something
10 about that. But a lot of the people for the
11 Convention Center are out-of-towners --

12 MS. NIGRO: Yep.

13 MS. COHEN: -- they luckily don't have cars.
14 But --

15 MS. NIGRO: And another problem, I know that
16 the initiative with the city is that, you know,
17 livable, walkable city, et cetera. And I get that.
18 And I'm very much for that. The reality is when
19 people move in to, I live in a large condo building
20 or the project that we are talking about right now,
21 people bring their cars. That's it.

22 And then they, like me, I don't drive every
23 day. I'll leave my car parked, then drive it on the
24 weekend to Maryland to go see my mother. So.

25 MS. COHEN: Uber is good.

1 MR. HILL: I had two questions. The letter
2 that came from Ms. Moldenhauer, this is in line with
3 the agreements that you all came up with?

4 MS. NIGRO: Correct.

5 MR. HILL: Okay. So you approve the letter.

6 MS. NIGRO: That's right. We talked about
7 that openly at our ANC meeting. And then I read the
8 additional Sergei piece this morning. And in good
9 faith that will be put on. Okay. Good. That some
10 of the other residents -- and we're fine with that.

11 MR. HILL: Okay. And then the ANC vote was
12 four to two to zero?

13 MS. NIGRO: Yes.

14 MR. HILL: Who is the two -- why did the two
15 people vote against it?

16 MS. NIGRO: If I remember, Alex was concerned
17 -- Alex, Commissioner Potter, was concerned about how
18 people would be notified in terms of when the parking
19 spaces, supplemental parking spaces would be put out
20 into the community. That was his concern. And then
21 Commissioner Maceda, basically with anything with
22 dealing with no RPP and parking issues, she votes
23 against that a lot of times.

24 MR. HILL: Thank you.

25 CHAIRPERSON HEATH: Is that because she just

1 doesn't trust the enforcement?

2 MS. NIGRO: No, she is, as Mr. Bockai said,
3 personally is -- see, I don't deal with personal
4 issues. I deal with the facts. There's no parking.
5 So but Marge feels like Dr. Bockai said, that you
6 know, it's this right as your neighbors --

7 CHAIRPERSON HEATH: Oh, got it.

8 MS. NIGRO: -- type thing. I can tell you
9 assuredly the majority of my constituents do not feel
10 that way anymore. Maybe five years ago before all
11 this stuff happened, fine. It is not that world
12 anymore. The majority of my -- I don't care if it's
13 small, big, don't give them RPP.

14 CHAIRPERSON HEATH: Okay. All right. Any
15 other questions, Board? Do you have any questions?

16 MS. MOLDENHAUER: I was just going to thank
17 you for coordinating all the meetings. I just wanted
18 to make sure I heard you, you said that you would not
19 be supportive of a matter of right project because
20 that would not have the ability for us to restrict
21 RPP?

22 MS. NIGRO: No, no. Whatever density -- I
23 mean, clearly refined with the 22 units. But if it
24 does happen to go lower we would have to have that --
25 the residents would not be allowed to have RPP.

1 MS. MOLDENHAUER: So no matter what size?

2 MS. NIGRO: No matter what size. And then
3 work with us, if it does -- you know, as we said,
4 we're pro the 22, but if it does happen to go
5 smaller, to continue to work with us for parking
6 spaces for the people that live there.

7 CHAIRPERSON HEATH: Okay.

8 MS. MOLDENHAUER: And just one question
9 because I know we've had this conversation. But
10 you're aware that Dr. Bockai has not been able to
11 develop this because fewer units just don't work. Is
12 that your understanding?

13 MS. NIGRO: Like I said, with Dr. Bockai, as
14 we have talked about for years, and I talked to
15 Bockai, I would say not quite on a monthly basis for
16 five and a half years, but almost quite frequently.
17 So there was always the concern about permitting
18 issues. This was way back when the initial plans
19 were approved for the 11 units, and we had initially
20 talked about permitting problems, et cetera.

21 And now we certainly hear his concern when he
22 came to my single-member district the first time last
23 year about the financial concern. And, you know
24 what? We hear that from every developer. So that's
25 not exactly a new statement. And we get that. So,

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1 and that's why I said there -- I acknowledged my
2 constituents who did have a concern for the higher
3 density. You do have some of those people. But then
4 you do have some residents that are like, fine, we're
5 good, we're good with the 22.

6 And I get -- Dr. Bockai knows me well enough,
7 I get his financial concern.

8 MS. MOLDENHAUER: Thank you. No other
9 questions.

10 CHAIRPERSON HEATH: Thank you for spending
11 the day with us.

12 MS. NIGRO: No, no problem.

13 CHAIRPERSON HEATH: I know it was a --

14 MS. NIGRO: I enjoy it.

15 CHAIRPERSON HEATH: -- fairly long day.

16 Okay. So we also have a letter of no objection from
17 DDOT. And we don't have any other letters of support
18 or opposition at this point. Is there anybody here
19 wishing to speak in support? Are you wishing to
20 speak in support, or just speak? Okay. All right.
21 You can come forward. And just tell us your name and
22 then we'll give you three minutes.

23 MR. MONTGOMERY: Okay. It's probably not
24 going to take three minutes. My name is Shawn
25 Montgomery. I'm actually a member of the Church of

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1 the Living God, the Pillar and Ground of the Truth.
2 There is an apartment building adjacent to the
3 property that they're proposing to develop, and we're
4 on the other side with it. And just kind of echo
5 some of the sentiments of Ms. Nigro. Parking is one
6 of the biggest issues with us.

7 Now, I mean, their worship is on Saturday and
8 a lot of times -- and we also have a service on
9 Sunday. A lot of times it is -- it's a hassle
10 finding parking throughout the week. One of the
11 issues that we had, again was with the parking. Also
12 we were concerned about the availability of the
13 spaces once the project is complete. The attorney,
14 she did explain to us that a letter would be sent out
15 to the residents, because we are in that 200-foot
16 radius, to notify us when it would be available and
17 you know, one of our -- and I just want the record to
18 show that one of our concerns, we would want at least
19 to be able to have one of the spaces for our pastor.

20 And, you know, just kind of we want to make
21 sure that everything is going to be kept neat and
22 clean. The area, you know, with the dumpsters. You
23 know, once they're doing the demolition. So that was
24 our concern. The parking. And we also were
25 concerned about when they do the underground parking,

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1 how it would affect our church structurally. You
2 know, once they begin the digging we want to make
3 sure that there would not be any effects to our
4 building structurally. So those were some of the
5 things that we were concerned about.

6 CHAIRPERSON HEATH: Okay. All right. Thank
7 you. And thank you again to you for taking the time
8 to spend all morning and most of the afternoon with
9 us.

10 The issues related to construction are
11 definitely something that you should address with
12 DCRA because this Board doesn't address construction
13 issues. But they are of a major concern, I know.
14 Especially for those who are neighboring properties.
15 And so that is something that you can address with
16 the architect with the property owner and with DCRA.

17 MR. MONTGOMERY: And the attorney, she did
18 let us know that they could have somebody to come out
19 and take pictures of our structure and you know, in
20 the event that there was any damage that came about,
21 you know, during construction that they would, you
22 know, work to get those problems alleviated. So, we
23 did speak briefly about that.

24 CHAIRPERSON HEATH: Okay. All right.

25 MR. HILL: So, can somebody walk me through

1 just again really quick? It's come up a couple of
2 times so I just want to be clear I understand. If
3 there are parking spots available for the 200 -- you
4 know, for the people and the 200-foot area, how does
5 that work its way through? The 22 units, they would
6 have, first they would get a spot, correct? Is that
7 what that is? And then --

8 MS. MOLDENHAUER: What we handed out to you
9 this morning was an addendum and Mr. Sergei also had
10 an appendix to his, and it outlines the process that
11 we agreed to, and I'll just kind of read from it.
12 But it says that the applicant agrees that parking
13 spaces will be available in excess of the 22, which
14 would be four, so 27 minus 22 is four. And to the
15 200 footer. So the same 200 footers that get notice,
16 and we use the OTR diagram for that purpose.

17 MR. HILL: So you'd send out a letter?

18 MS. MOLDENHAUER: So six months after the
19 issuance of a certificate of occupancy, or six months
20 after 75 percent of the units are sold or leased,
21 whichever date is later, that then notice on the 200
22 footers would get notification that they have the
23 right to either purchase or lease the excess spaces.
24 They would then have to send a notice of intent to
25 purchase and it would be first come/first serve,

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1 based on who received the letters.

2 MR. HILL: Okay. So right, just letters. In
3 the mail.

4 MS. MOLDENHAUER: We outline that process.
5 Yes.

6 MR. HILL: In the mail.

7 MS. MOLDENHAUER: Yes.

8 MR. HILL: Okay. And would Dr. Bockai allow
9 the pastor to have right of first refusal if it went
10 over to --

11 MS. MOLDENHAUER: Not something -- I mean,
12 there has been a lot of individuals that have been
13 part of these conversations, and so at this point in
14 time --

15 MR. HILL: So the mail. So the mail. The
16 mail is going to -- I'm just saying, so the mail is
17 going to be what happens. You're saying you're going
18 to mail out a bunch of letters and whoever comes back
19 first is going to get the first shot?

20 MS. MOLDENHAUER: This has been the process
21 that we've articulated so that there is a process.

22 MR. HILL: Okay.

23 MS. MOLDENHAUER: Because I think that was
24 one of the questions that Mr. Sergei was
25 questioning --

1 MR. HILL: Sure.

2 MS. MOLDENHAUER: -- what is the process.
3 And so we said, okay, first we were like, no, we're
4 not going to tell you a process. And then we said,
5 okay, we will articulate and put in writing a
6 process. And we think that this is the best process.
7 It's very similar to TOPA or other notifications --

8 MR. HILL: That's all right. I was just
9 curious. I just wanted to be clear that I
10 understand. Now I understand. Okay. Thank you very
11 much.

12 CHAIRPERSON HEATH: Okay.

13 MR. MONTGOMERY: And just to that, I just
14 wanted to state, now our main day of worship is on
15 Saturday, so we're pretty much there. We check the
16 mail sometimes. It may be once a week, so there, you
17 know, you know, everyone else they may get their mail
18 every day. But I just want to make that clear.

19 MS. MOLDENHAUER: We will work to make sure
20 we have accurate communication mechanisms for
21 people --

22 CHAIRPERSON HEATH: Right.

23 MS. MOLDENHAUER: -- who contact us. Who
24 contact us.

25 CHAIRPERSON HEATH: Your home address. All

1 right.

2 MR. HINKLE: Madam Chair, I have a quick
3 question.

4 CHAIRPERSON HEATH: Sure.

5 MR. HINKLE: The profit and loss statement,
6 I'm looking for the parking because you're proposing
7 underground parking. And does that change with the
8 lesser units? I'm trying to find the line item,
9 really for like if you had 11 units you probably
10 don't need to go underground, I'm assuming.

11 MS. MOLDENHAUER: Sorry. We would not be.
12 So here you can see -- sorry. This is what you guys
13 have. This is the parking. It literally is the cost
14 for parking. And we have the line item taken out
15 that that would only be proffered or offered with a
16 22 units scheme. It would not be offered with a 15
17 unit or anything else which obviously would not be
18 developed because it's not viable. But we're not
19 including that. We wouldn't be putting that
20 additional cost -- we would not want to add that cost
21 in on top of you know -- it already is showing that
22 it would not be viable. And we also then, you don't
23 see it on the sales side as well. You can see here
24 on the sales, at the bottom, we have a sales price
25 for the parking is obviously higher on the 22-unit

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1 scheme than it is on the 15 or on the 11.

2 MR. HINKLE: Okay. Thank you.

3 CHAIRPERSON HEATH: So the 22-unit scheme
4 proposes 75 percent lot occupancy.

5 MS. MOLDENHAUER: Yes, correct.

6 CHAIRPERSON HEATH: And the 15 percent is
7 also 75 percent?

8 MS. MOLDENHAUER: Seventy-five percent lot
9 occupancy, yes.

10 CHAIRPERSON HEATH: Okay. So you've only
11 done a study for 11 units that is the 40 percent.

12 MS. MOLDENHAUER: Because it's not viable.
13 And I believe also when you go to *Palmer, Palmer*
14 talks about what is permitted and what would be
15 permitted as a matter of right. This, there's no
16 matter of right scheme. And so we would believe that
17 no matter what we would need to be able to satisfy
18 that first prong, and we disagree respectively with
19 Office of Planning that we more than satisfy that
20 first prong in regards to a confluence of exceptional
21 conditions. So, if we were able to satisfy that
22 first prong for 40 percent, we believe then it's just
23 a question of deviation for satisfying that first
24 prong in regards to creating a project that we think
25 will enhance the community, preserve the structure,

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1 and be viable to move forward.

2 CHAIRPERSON HEATH: Okay. All right. We
3 ready to deliberate on this?

4 [Off the record discussion.]

5 CHAIRPERSON HEATH: So the Board is going to
6 need some more time to give this more thought. We've
7 gotten a lot of information today and so I don't know
8 if it would help you to have further discussions with
9 Office of Planning in the meantime. It may not, but
10 it couldn't hurt, so.

11 MS. MOLDENHAUER: We believe the record is
12 full. I mean, we've had extensive phone
13 conversations with the Office of Planning since we
14 filed the application. You know, we believe that
15 there are exceptional conditions and that the
16 financials show the practical difficulty as well as
17 the challenges with the configuration of the site.

18 CHAIRPERSON HEATH: Okay. So we'll put this
19 on for decision. And we'll accept findings of facts
20 and conclusions if you want to submit anything else,
21 otherwise the record is closed because I don't
22 believe we've asked for anything else.

23 Okay. I know you've given us --

24 MS. MOLDENHAUER: Does the Board --

25 CHAIRPERSON HEATH: -- a lot of information.

1 MS. MOLDENHAUER: I mean, does the Board find
2 that they -- would they want findings of fact and
3 conclusions of law, because obviously if we don't
4 have to we won't incur the additional costs for our
5 client given, you know, the project.

6 CHAIRPERSON HEATH: This presentation isn't
7 in the --

8 MS. MOLDENHAUER: The PowerPoint we provided
9 a hard copy so I believe it could be then uploaded to
10 ISIS. Or we could also --

11 CHAIRPERSON HEATH: If you could upload
12 that --

13 MS. MOLDENHAUER: -- e-mail it and upload it.
14 We could do that as well.

15 CHAIRPERSON HEATH: If you could upload this,
16 that would be helpful.

17 MS. MOLDENHAUER: Absolutely. Yeah. And we
18 have some additional images. I think that those were
19 helpful to show the images and the character.

20 CHAIRPERSON HEATH: Okay.

21 MS. MOLDENHAUER: We can upload that.

22 CHAIRPERSON HEATH: That's great. Okay.

23 MS. COHEN: Actually, I think it would be
24 helpful because one of the things that you will
25 address is, again, the OP report and it's going to

1 be, you know, word for -- almost point by point.

2 MS. MOLDENHAUER: So we will then draft a
3 findings of facts and conclusion of law if that's
4 what the Board is asking for.

5 MS. COHEN: I just think that, again, we'll
6 be able to, you know, weigh their point by point.

7 MS. MOLDENHAUER: That's fine. We will
8 provide that then.

9 CHAIRPERSON HEATH: That is helpful.

10 MS. MOLDENHAUER: But if we do provide that
11 and the Board is so inclined to review this case
12 favorably, we would still indicate that there's no
13 opposition. So we'll put that on the record.

14 CHAIRPERSON HEATH: Okay.

15 MS. MOLDENHAUER: We will then ask maybe for
16 two weeks --

17 CHAIRPERSON HEATH: Other than from OP.

18 MS. MOLDENHAUER: -- to draft that. What?

19 CHAIRPERSON HEATH: Other than from OP.

20 MS. MOLDENHAUER: Other than from -- well,
21 parties in opposition that are not --

22 CHAIRPERSON HEATH: Okay.

23 MS. MOLDENHAUER: OP is an agency that's --
24 anyway. I'm going to stop talking. I would ask for
25 two weeks to draft the findings of facts and

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1 conclusions of law.

2 CHAIRPERSON HEATH: That's fine.

3 MR. HILL: I did want to mention, and, Dr.
4 Bockai -- it's Bockai? Is that how you pronounce it?

5 MR. BOCKAI: Yes. Yes. You're
6 pronouncing --

7 MR. HILL: You know, regardless of how this
8 goes you know, I do as a long-time D.C. resident
9 appreciate that you did go into neighborhoods with
10 your particular businesses that were of an
11 underserved area there. And so, you know, obviously
12 you are proud of that and you should be. So, just
13 wanted to mention that.

14 CHAIRPERSON HEATH: Okay. So at least two
15 weeks.

16 MR. MOY: Yeah. So, I'm looking at April;
17 April the 5th.

18 CHAIRPERSON HEATH: Okay.

19 MR. MOY: Which works with Marcie Cohen.

20 CHAIRPERSON HEATH: Okay.

21 MR. MOY: If I'm correct.

22 MS. COHEN: I'm going to Africa.

23 MS. MOLDENHAUER: So that would mean that we
24 would file by the 29th.

25 MR. MOY: This is a separate decision and

1 filing by, let's make it the 29th if that's possible.

2 MS. MOLDENHAUER: Yes, that would -- we would
3 be able to get that in by the 29th.

4 CHAIRPERSON HEATH: All right. Okay.

5 MS. MOLDENHAUER: Thank you very much.

6 CHAIRPERSON HEATH: Thank you. And thank
7 you.

8 Any more matters coming before the Board
9 today, Mr. Moy?

10 MR. MOY: No, I believe your agenda is
11 complete.

12 CHAIRPERSON HEATH: Thank you. Excellent.
13 We're adjourned.

14 [Whereupon, at 2:18 p.m., the Regular Board
15 Meeting was adjourned.]

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