

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING
March 15, 2011
Start: 9:49am - End: 6:55pm

Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson
Nicole Sorg - Vice Chairperson
Jeffery L. Hinkle - NCPC
Michael G. Turnbull - Architect
Greg Selfridge - Zoning Commission
Clifford Moy - Secretary
Beverley Bailey - Office of Zoning
Mary Nagelhout - Office of the Attorney General
John Nyarku - Office of Zoning

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order good morning ladies and
4 gentleman. This is the March 15, 2011, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 right is Jeffrey Hinkle, and Representative of
9 the National Capital Planning Commission and to
10 my left is the Representative of the Zoning
11 Commission Gregory Selfridge. Copies of today's
12 meeting agenda are available to you and are
13 located to my left in the wall bin near the door.
14 We do not take any public testimony at our
15 meeting unless the Board asks someone to come
16 forward. Please be advised this proceeding is
17 being recorded by a court reporter and is also
18 being webcast live, accordingly we must ask you
19 to refrain from any disturbing noises or actions
20 in the hearing room. Please turn off all cell
21 phones and beepers at this time. Mr. Secretary,
22 do we have any preliminary matters?

1 SECRETARY MOY: Madam Chair we do, oh not
2 for the Special Meeting, sorry there.

3 CHAIRPERSON MOLDENHAUER: Not a problem,
4 okay so the first case on our agenda for decision
5 this morning.

6 **Application No. 18173**

7 MR. MOY: Yes, good morning Madam Chair
8 Person, Members of the Board, the first case for
9 Board Action in the Special Public Meeting
10 Session is Application No. 18173 of Allison C.
11 Warren, pursuant to 11 DCMR 3103.2 for a variance
12 of the lot occupancy requirements under Section
13 403 and the alley centerline setback requirements
14 under (Subsection 2300.2 Sub B) to allow the
15 construction of an accessory garage serving a one
16 family Row Dwelling in the R-4 District at
17 premises 906 Maryland Avenue, N.E. the property
18 is located in (Square 936, Lot 24). As the Board
19 will recall on the 1st of March of this year 2011,
20 the Board completed public testimony, closed the
21 record and scheduled this decision on March 15.
22 The Board requested the Application submit

1 additional information to supplement the record
2 by March 10, 2011, this was in the form of a
3 submission of full set of drawings of plans. The
4 Applicant did file and that post hearing document
5 is identified in your case folders as "Exhibit
6 29" including the certificate of service which is
7 your "Exhibit 30". The Board is to act on the
8 merits of the Applicants request for variance
9 relief, and that completed the Staff's briefing
10 Madam Chair.

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much so we'll go into deliberation, as indicated
13 this is a case where we have two area variances
14 that are being requested and so we'll walk
15 through the standards. The first is for the lot
16 occupancy and the second is for the setback from
17 the alley centerline requirement. This property
18 was unique in the fact that there was a 2%
19 encroachment on the lot by the neighboring
20 property and that there was no way of remedying
21 that and based on that 2% it actually put the
22 property over the 70% threshold by 1.8%. So this

1 is obviously a direct kind of correlation between
2 their ability to potentially create a 223
3 addition and their ability to require satisfying
4 the area variance standard. That being said there
5 is also the fact of a confluence of factors in
6 regards to the fact that a large shaded tree was
7 in the rear and that they did not want to have to
8 take that down in order to build the garage or to
9 enhance the garage. That being said I think that
10 based on those two factors alone that they do
11 satisfy the uniqueness standards and that based
12 on those factors they created a practical
13 difficulty for them to be able to provide an
14 addition to the garage without having to
15 potentially push into the alley centerline
16 requirement and also their requirement would go
17 over the 70% to 71.8% lot occupancy. Based on OP
18 Statements and documentation of record there is
19 no impact on the integrity of the zone plan. We
20 have documentation our record from the ANC which
21 is our "Exhibit No. 25" which indicates that at a
22 duly called meeting on February 10th, with a

1 quorum present they voted 7 to 0 to support the
2 variance request so we give that great weight and
3 we have support from the ANC. We also have
4 support from the Applicant's neighbors both in
5 letter and we had a request for a party status
6 for support of the case, the gentleman didn't
7 show up and as we said we could not give him
8 party status, the woman Gail Robinson but we do
9 obviously recognize the support they have in
10 requesting this relief, based on the limited
11 amount of relief I think they definitely satisfy
12 the three prongs. The only thing we had asked
13 for was an improved set of architectural plans
14 because the initial plans were just not detailed
15 enough I think in all of our minds, so we did
16 receive those, that's our "Exhibit No. 30", and
17 having seen that and seen the additional
18 detailing that is now provided I feel much more
19 comfortable recommending approval for this case.

20 MR. HINKLE: Yes Madam Chair I agree with
21 you I thought the supplemental information was
22 helpful. I don't have anything else to add to

1 your analysis I'm certainly in agreement with
2 your findings.

3 CHAIRPERSON MOLDENHAUER: Wonderful then
4 what I will do is submit a motion, a motion to
5 approve Application No. 18173 under 11 DCMR
6 3103.2 for variance from a lot occupancy
7 requirements under (Subsection 403) and the alley
8 centerline setback requirement under (Subsection
9 2300.2B) to allow a construction of an accessory
10 garage serving a one family Row Dwelling in the
11 R4 District, the premises is 906 Maryland Avenue,
12 N.E A motion has been made is there a seconded?

13 MR. HINKLE: Second.

14 CHAIRPERSON MOLDENHAUER: A motion has
15 been made and seconded, all those in favor say
16 aye.

17 CHORUS: Aye.

18 CHAIRPERSON MOLDENHAUER: Mr. Moy I
19 believe we have an absentee ballot to provide us
20 a quorum.

21 MR. MOY: Yes we do Madam Chair, the
22 other participant on this Application was Mr.

1 Michael Turnbull and his absentee ballot vote is
2 to approve with such conditions as the Board may
3 impose. That would give a final vote of 3 to 0
4 to 2, this on the motion of the Chairperson to
5 approve the Application for a variance relief of
6 lot occupancy and alley centerline setback
7 requirements, seconded the motion Mr. Hinkle and
8 in support of motion Mr. Turnbull, we have a
9 Board Member not present, not voting and a vacant
10 seat on the Board so again the final vote is 3 to
11 0 to 2.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much Mr. Moy and seeing that there's no
14 opposition in that case the Board would like to
15 waive the requirements and as for a summary
16 order.

17 MR. MOY: Very good thank you Madam
18 Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you, I
20 believe that concludes our morning meeting?

21 MR. MOY: Yes it does.

22

1 **AM SESSION**

2 CHAIRPERSON MOLDENHAUER: This hearing
3 will please come to order, good morning ladies
4 and gentleman, this is the March 15, 2011, Public
5 Hearing of the Board of Zoning Adjustments for
6 the District of Columbia, my name is Meredith
7 Moldenhauer, Chairperson, is Jeffrey Hinkle,
8 Representative of the National Capital Planning
9 Commission and to my left Representative of the
10 Zoning Commission Greg Selfridge. Copies of
11 today's meeting agenda are available to you and
12 are located to my left in the wall bin near the
13 door. Please be advised this proceeding is being
14 recorded by a court reporter and is also being
15 webcast live. Accordingly we must ask you to
16 refrain from any disturbing noises or actions in
17 the hearing room. When presenting information to
18 the Board please turn-on and speak into your
19 microphone first stating your name and home
20 address. When you are finished speaking please
21 turn-off your microphone so that your microphone
22 is no longer picking up sounds or background

1 noise. All persons planning to testify either in
2 support or in opposition are to fill out two
3 witness cards these cards are located to my left
4 on the table near the door and are also on
5 witness tables. Upon coming forward to speak to
6 the Board please give both cards to the court
7 reporter sitting to my right. The order of
8 procedures for special exceptions and variances
9 are as follows: 1. Statement of the Applicant and
10 Applicant's Witnesses. 2. Parties and persons in
11 support. 3. Parties and persons in opposition. 4.
12 Government Reports including Office of Planning
13 and Department of Transportation. 5. Reports
14 from the ANC. 6. Rebuttal and closing statements
15 of the Applicant. Pursuant to Section 3117.4 and
16 3117.5 the following time constraints will be
17 maintained, the Applicant persons and parties
18 except an ANC in support including their
19 witnesses will be given 60 minutes collectively.
20 The Appellees persons and parties except an ANC
21 in opposition including witnesses will be given
22 60 minutes collectively. Individuals will be

1 given 3 minutes and associations or organizations
2 will be given 5. These time restrictions do not
3 include cross examinations or questions from the
4 Board. Cross examination of witnesses is
5 permitted by a party or an Applicant. The ANC
6 within which the property is located is
7 automatically a party to a special exception or
8 variance case. Nothing prohibits the Board from
9 placing reasonable restrictions on cross
10 examination including time limitations or
11 limitation on the scope of cross examination.
12 The record will be closed at the conclusion of
13 each case except for any materials specifically
14 requested by the Board. The Board and the Staff
15 will specify at the end of each hearing exactly
16 what is expected and the date when the person is
17 required to submit the evidence to the Office of
18 Zoning. After the record is closed no other
19 information will be accepted by the Board. The
20 Sunshine Act requires that a public hearing on
21 each case be held in the open before the public.
22 The Board may consistent with its rules and

1 procedures and the Sunshine Act enter into
2 Executive Session during or after a public
3 hearing on a case for purposes of reviewing the
4 record or deliberating on a case. The decision
5 of the Board as in these contested cases must be
6 based exclusively on the public record, to avoid
7 any appearance to the contrary the Board requests
8 that persons present not engage the members of
9 the Board in conversation. Please turn off all
10 beepers and cell phones at this time as to not
11 disturb these proceedings. At this time the
12 Board will consider any preliminary matters,
13 preliminary matters relate to whether a case
14 should or will be heard today such as a request
15 for postponement, continuance or withdrawal or
16 whether proper or adequate notice of a hearing
17 was given. If you are not prepared to go forward
18 today or you believe that the Board should not
19 proceed, now is the time to raise such a matter.
20 Mr. Secretary, do we have any preliminary
21 matters?

22 MR. MOY: There are two items in the

1 morning session Madam Chair, the first is that
2 there's a request for a postponement for case
3 18161 and also Application No. 18180 of VIP Taxi
4 Cab the Application has been withdrawn from Board
5 Action.

6 CHAIRPERSON MOLDENHAUER: Okay well we'll
7 take Application 18161 first but we'll first
8 swear in all the witnesses, all individuals
9 wishing to testify today please stand and take
10 the oath.

11 MR. MOY: Do you solemnly swear or affirm
12 that the testimony you're about to present at
13 this proceeding is the truth, the whole truth and
14 nothing but truth. Ladies and gentleman you may
15 consider yourself under oath.

16 **Application No. 18161**

17 MR. MOY: Application No. 18161 Valeri A.
18 Byrd, pursuant to 11 DCMR 3103.2 for a variance
19 from the non-conforming structure provisions
20 under (Subsection 2001.3) to allow a second story
21 sunroom addition on top of an existing attached
22 garage serving an existing one family row

1 dwelling in the R-4 District at premises 1245 G
2 Street, N.E., (Square 1005, Lot 41).

3 CHAIRPERSON MOLDENHAUER: Good morning,
4 state your name for the record.

5 MR. WOODILL: Good morning Job Woodhill
6 on behalf of my client Valeri Byrd, it's good to
7 see you again Madam Chairperson although
8 unfortunately we're going to have to ask for a
9 postponement again, two factors; one being that
10 the Office of Zoning Administrator is requiring
11 some more information from us which unfortunately
12 is taking us a bit of time to secure. Also Ms.
13 Byrd really wanted to be involved in these
14 proceedings and her mother just passed away on
15 Saturday so those two factors necessitate us
16 asking for a postponement.

17 CHAIRPERSON MOLDENHAUER: How much time
18 do you think you'll need in order to satisfy, and
19 obviously we don't want to have to have you come
20 back in and ask for another extension?

21 MR. WOODILL: Yes Madam Chairperson I
22 think at this point since it's taking us a bit of

1 time I think my client is willing to wait a bit
2 more so I would think that 30 days would be on
3 the side of caution.

4 CHAIRPERSON MOLDENHAUER: Why don't we
5 say 60 days just that way there's no concerns
6 that would put us into sometime in April and, how
7 about May 10?

8 MR. WOODILL: That's fine.

9 CHAIRPERSON MOLDENHAUER: So we'll add
10 you to May 10th in the afternoon at 1 o'clock.

11 MR. WOODILL: Great.

12 CHAIRPERSON MOLDENHAUER; Thank you very
13 much.

14 **Application No. 18182**

15 MR MOY: With that Madam Chair I believe
16 we're back at the top of the lineup, which would
17 be Application No. 18182 this is the Application
18 of Lincoln Westmoreland Housing, pursuant to 11
19 DCMR 3103.2 and 3104.1 for a variance from the
20 height requirements under (Subsection 770.1 and
21 2604.2) a variance from the floor area ratio
22 requirements under (Subsection 771.2) a variance

1 from the rear yard requirements under (Subsection
2 774.1) a variance from the parking requirements
3 under (Subsection 2101.1) a variance from the
4 loading requirements under (Subsection 2201.1)
5 and a special exception from the roof structure
6 requirements under (Subsection 411.5) to allow
7 the construction of a new apartment building in
8 the ARTS/C-2-B District at premises 1718-1734 7th
9 Street N.W., (Square 419, Lots 846 and 847).

10 CHAIRPERSON MOLDENHAUER: Thank you would
11 the parties please step forward. Good morning if
12 you'd introduce yourselves for the record.

13 MS. PRINCE: Good morning Madam Chair and
14 Members of the Board, I'm Allison Prince with the
15 Law Firm of Goldston and Storrs and I'm here on
16 behalf of the Applicant Lincoln Westmoreland
17 Housing. With me today I have Kerry
18 Kablacheck(ph sp) also of my firm, Robert Agus of
19 Lincoln Westmoreland, Patrick Burkhart of Shalom
20 Baronis Architects and Chris Kabatt of Wells and
21 Associates. We're here today to request variance
22 and special exception relief to allow for the

1 construction well designed all affordable housing
2 projects in the Shaw Neighborhood that is
3 supported by both the Office of Planning and the
4 ANC. This new apartment building will provide
5 approximately 56 affordable units next to an
6 existing all affordable project. As this Board
7 is aware affordable housing is badly needed both
8 in this neighborhood and in the city at large, so
9 your approval of the request at relief will help
10 supply some of this much needed housing while
11 improving and not adversely affecting the
12 surrounding committee. In order to make this
13 project feasible we are requesting multiple areas
14 of relief and it may seem like more than you're
15 used to seeing, but this property is a classic,
16 classic variance case because it is burdened by
17 many, many constraints that effectively prohibit
18 matter of right development. The property's
19 presence above the metro station is an asset in
20 terms of transportation and accessibility but it
21 is a considerable burden when it comes to
22 constructing the building. During his testimony

1 Patrick Burkhardt will elaborate on the sites
2 unique characteristics and the necessity for the
3 relief. First off however Robert Agus will
4 provide you with some background on Lincoln
5 Westmoreland and the proposed project and finally
6 Chris Kabatt's here to answer any questions
7 related to traffic or parking. So if the Board
8 has no questions we'll begin with Mr. Agus.

9 MR. AGUS: Good morning my name is Robert
10 Agus I'm owner's representative for Lincoln
11 Westmoreland Housing, Inc. A little background
12 Lincoln Westmoreland Housing came together after
13 the civil disturbances of 1968, two churches
14 Westmoreland Congregational Church which is right
15 on the edge of the District and the Maryland
16 Suburbs, and Lincoln Temple which is located
17 right in the Shaw neighborhood. Both being
18 congregational churches they came together to see
19 if they could do something to show the concern
20 for the neighborhood and to assist the rebuilding
21 of the neighborhood. Out of that concern came
22 the development of the Lincoln Westmoreland

1 Apartments located at 1730 7th Street, N.W. The
2 building has 108 residential units and on the
3 ground floor provides space to a number of
4 service providers, non-profit service providers.
5 This project is one of the earliest Section 236
6 unsupported projects in the country actually and
7 its 40 year initial term comes to an end in June.
8 Last year the Board supported a very substantial
9 renovation of the building and committed to
10 maintaining it as affordable housing for the next
11 40 years at least. As we finished that project
12 we turned our attention to developing part of the
13 same lot that Lincoln Westmoreland Housing
14 Apartments Number One is located, this is the
15 building we're talking about today. We are
16 asking for, we will be asking to separate the two
17 lots where the old building is located and the
18 new building, basically because of legal and
19 financial considerations regarding the source of
20 financing that we'll have for this property both
21 through the low income housing tax credit program
22 and various HUD Programs, in both cases they

1 necessitate single asset entities owning the
2 property so for reasons of convenience and
3 meeting legal and funding obligations we want to
4 separate the two lots. The Board is fully
5 committed to developing affordable housing in a
6 supportive community as we have been doing for
7 these past 40 years. This is a particularly
8 exciting project because it gives the opportunity
9 to expand our community, to develop a building
10 with excellent design characteristics and to meet
11 the needs of the larger community. In this case
12 the project will be all affordable, all 56 units
13 will be available to people whose income is at or
14 below 60% of area median income. We will of
15 course be open to people who bring housing
16 vouchers as well. Basically I want to
17 reemphasize that this is a project which reflects
18 the character and commitment of the Board and its
19 residence to building supportive communities that
20 reflect the respect for the divine presence in
21 each individual and to build communities where
22 families can take root and grow and develop.

1 Glad to take any questions.

2 CHAIRPERSON MOLDENHAUER: You indicated
3 that the initial HUD Financing was 40 years and
4 you've actually renewed that recently?

5 MR. AGUS: Yes we did, when we engaged in
6 the renovation we refinanced the program under a
7 separate HUD Program so we have a mortgage of 40
8 years.

9 CHAIRPERSON MOLDEHAUER: And what is the
10 type of restrictions that that low income
11 financing and HUD Programs provide on the
12 property?

13 MR. AGUS: On the existing property, on
14 the existing property of the 108 units 82 of them
15 are part of a what's called a HAP Contract which
16 is a Section 8 Contract with HUD which has been
17 renewed and continues to be renewed every year.
18 The other units, the other 26 are covered by
19 what's called the Section 236 Market Rents;
20 ironically the Section 236 Market Rents are
21 currently substantially below the Section 8
22 rents. So we have committed through a use

1 agreement to maintain the affordability for the
2 term of the mortgage which is as I said 40 years.

3 CHAIRPERSON MOLDENHAUER: I'm just trying
4 to understand how the finance in the prehearing
5 statement the finance was identified as one of
6 the contributing factors for the uniqueness of
7 the property; I'm trying to understand that in a
8 little more detail. You indicated that one of
9 the needs in order to obtain additional financing
10 for potentially the new lot when you subdivide is
11 that it has to be a single entity property
12 ownership, is that correct?

13 MR. AGUS: Single asset entity which
14 means that the entity that owns the property and
15 is the mortgager has to have no other properties
16 that they own.

17 CHAIRPERSON MOLDENHAUER: And the reason
18 why you would need obviously go through the loan
19 and this is obviously financial in order to
20 obtain better financing terms?

21 MR. AGUS: That's correct.

22 CHAIRPERSON MOLDENHAUER: And are there

1 any other restrictions that would be put on the
2 property or the new lot based on this financing
3 requirement?

4 MR. AGUS: Well there will be conditions
5 on the mortgage which will be recorded which
6 states its affordability, as part of securing the
7 loan housing tax credits we enter into an
8 agreement with the District of Columbia regarding
9 the use of the property and those are recorded
10 with the property.

11 CHAIRPERSON MOLDENHAUER: Thank you I
12 don't have any other questions, do any other
13 Board Members have any questions?

14 MR. SELFRIDGE: So just to be clear
15 you're required to split it to subdivide the lot
16 as a condition of your financing?

17 MR. AGUS: Correct.

18 MR. SELFRIDGE: And that's what leads to
19 the list of variances that we see before us.

20 MR. AGUS: I'll leave that to the
21 architects, to explain which list applies and
22 which doesn't.

1 MR. SELFRIDGE: Okay.

2 CHAIRPERSON MOLDENHAUER: Thank you no
3 other questions at this time, you can move on to
4 your next witness.

5 MS. PRINCE: We'll precede with the
6 testimony of the Architect Patrick Burkhardt from
7 Shalom Bronnis Architects he's been qualified as
8 an expert numerous times but we've given you his
9 resume once again if you'd like to see it.

10 CHAIRPERSON MOLDENHAUER: Thank you we
11 have a copy of that and you can proceed.

12 MR. BURKHART: Thank you, good morning
13 Madam Chairman and Members of the Board, my name
14 is Patrick Burkhardt and I'm architect with Shalom
15 Buronnis Associates. The project site is seen in
16 this aerial photograph in the shaded portion
17 bounded in red on the east half of (Square 419)
18 in the Shaw neighborhood of Washington, it's
19 located at the northwest quadrant at the
20 intersection of 7th and R Streets N.W. Metro's
21 Greenline Subway Entrance is located directly
22 west of the site across an alley on the southwest

1 corner of the square. The current site
2 configuration is a simple rectangular shape and
3 contains approximately 38,000 square feet or .87
4 acres. An existing 10 story apartment building
5 provides 108 affordable rental units and occupies
6 the northern portion of the site. Surface parking
7 on the property occurs along the entire Westside
8 of the site accessed from an alley and at the
9 southern portion of the site beneath the concrete
10 canopy. The relatively narrow site is oriented
11 to 7th Street which is a 2-way north south street
12 with a right of way of 85 feet. R Street, N.W. to
13 the south of the property lines west bound one-
14 way street with a 90 foot right of way.
15 Vehicular access to the site is along the entire
16 western boundary where a 15 foot wide alley runs
17 north and south. An 18 foot side yard exists at
18 the north property line beyond which is an empty
19 lot that's under District control. The
20 development program calls for the subdivision of
21 the current site into two separate lots. Lot one
22 is comprised of the existing building on a site

1 area of approximately 24,900 square feet on the
2 northern portion, and lot 2 are comprised of the
3 remaining area at the southern portion of the
4 site with approximately 13,180 square feet. It
5 is on the second lot that the owner proposes to
6 build an 8-story affordable rental apartment
7 building that will occupy the shaded area in
8 orange. On this aerial view we have marked the
9 locations for which the following photographs
10 were taken, starting along 7th Street and working
11 counter clockwise around the site, starting here
12 and continue moving around the property. In this
13 view from 7th Street, looking N.E. we see the
14 metro entrance canopy at the southern portion of
15 the site. The existing 10 story building rises
16 90 feet with a windowed wall facing west and a
17 nearly blank brick wall on the south.
18 Neighboring 3 story garden apartments are seen in
19 the foreground just west of the alley. In this
20 view of the alley looking north you see the
21 surface parking along the west side of the
22 existing building in the covered parking beneath

1 the concrete canopy which merely provides cover
2 as there is no parking on top of it. In this
3 view on R Street looking east we see the southern
4 edge of our site to the left which is landscaped
5 with a mix of concrete surfaces, trees and ground
6 cover constructed over a pedestrian tunnel from
7 the metro entrance to the platform under 7th
8 Street which his actually in here. In this view
9 on R Street looking east we see the southern edge
10 of our site to the left which is from a different
11 vantage point at the southern portion of our
12 site, this is actually taken from an intersection
13 of (inaudible) and 7th Street looking west. In
14 this same view from that intersection looking
15 north along 7th Street we gain a general sense of
16 the scale of the existing building and its
17 context. The building under construction at the
18 left is the new Shaw Library since completed when
19 these photographs were taken. Moving north along
20 7th Street we see a concrete canopy over that
21 surface parking and we also see how the existing
22 building engages the sidewalk, and also note the

1 treatment of that south façade of the existing
2 building with the single bay of windows in the
3 center behind which is a stairwell, and other
4 than that feature it really is essentially a 90
5 foot high plain brick wall. In this view from 7th
6 Street looking south you see the east side of the
7 existing building which is nearly identical to
8 the west side in its architectural treatment. We
9 also see that the north side of the building is
10 very much like the south side with that same
11 center bay windows. Between the north face of
12 our building and the one story commercial
13 building at the corner is at that open lot which
14 is under District control. Then moving around the
15 site we see in this view looking south the west
16 side of the property with the surface parking
17 directly accessible from the alley. Our property
18 line is the distinction between the concrete
19 surface of the alley and the gray macadam on
20 which the cars are parked. Finally to conclude
21 our tour we're back at the south end of our site
22 looking across landscaped treatment over the

1 metro pedestrian tunnel. I'd also like to point
2 out the automobile that's parked on that surface
3 parking lot to the far right in the photograph.
4 So the project site is zoned C-2-B with the ARTS
5 Overlay which allows as a matter of right with
6 inclusionary zoning and FAR 4.5 a 70 foot height
7 limit, a lot occupancy of 80% with a 15 rear yard
8 requirement. With ARTS Overlay 50% of the ground
9 floor is to be a preferred commercial arts
10 related uses. The existing building on the site
11 was built prior to current zoning and at 90 feet
12 high exceeds the allowable height of 70 feet. In
13 the remainder of the square west of the north
14 south alley zone R-5-D. On this civil engineers
15 site survey the proposed lot 2 is indicated by
16 the red dash line, it includes a small
17 rectangular lot outlined in blue that's owned by
18 metro for which we have an agreement in place to
19 secure the air rights. The grade shaded area
20 indicates the concrete canopy over the surface
21 parking and all parking for the existing building
22 is at grade since that structure has no basement.

1 Surface parking occurs along the entire alley
2 including an area over the metro entrance tunnel
3 and provides a total of 48 spaces. It is that
4 area in gray that corresponds to the buildable
5 area on this portion of the site due to easements
6 in place on a property associated with the metro
7 entrance. On these drawings obtained from a mod
8 where 7th Street occurs horizontally along the
9 bottom edge of each plan. The upper drawing on
10 the left is a below grade plan indicating the
11 station imprint at the very top and a pedestrian
12 tunnel to the stations platform extending under
13 7th Street. The area in blue on that drawing
14 corresponds to that small parcel 846 owned by
15 metro in which they've placed a permanent access
16 easement, in the upper left drawing is an
17 enlargement of that plan indicating the permanent
18 access easement area. The lower drawing is an at
19 grade level plan that highlights in pink an area
20 where a permanent underground easement is in
21 place. Essentially the pink and blue areas are
22 no build zones, if you cannot penetrate those

1 areas to construct the buildings foundations.
2 However it is possible the cantilever structure
3 within certain physical limits over them and at a
4 height of approximately one story above, and with
5 these restrictions the buildable area or our
6 proposed lot is 55% of the total area and it is
7 for this existing irrevocable condition that we
8 seek certain zoning relief in order to build an
9 affordable rental apartment building that
10 approaches but does not exceed the allowable FAR
11 on the site. At this point I'd like to take you
12 briefly through the plans, this section focusing
13 primarily on the organization of the building on
14 the site and the resulting special configuration.
15 Due to the Metro easements this basement level
16 plan clearly shows the proposed buildings
17 constricted footprint, it's a simple rectangle
18 72.5 feet wide by 89 feet long positioned on the
19 north half of the site and abutting the existing
20 building which is on the top in this drawing.
21 The available area which to build is just simply
22 too small to provide below grade parking since

1 garage ramps, drive aisles, stairs and elevators
2 would consume nearly the entire space. On this
3 ground level plan you see the proposed building
4 footprint on the north portion of the site, the
5 residential lobby is shaped in blue and the main
6 entrance is from 7th Street. The shaded area in
7 tan is for commercial or preferred Arts use
8 retail and is approximately 52% of the enclosed
9 area of the ground level. Service and support
10 areas are shaded in gray, at the southern half of
11 the site on the subsurface easement area we
12 proposed to build 13 surface parking spaces, a 10
13 x 20 service delivery space and parking for 11
14 bicycles and again you can see that indicated
15 here with the 13 parking spaces, the service
16 delivery and bicycles positioned there. We also
17 proposed a screen service parking from adjacent
18 sidewalks with landscaping which would include
19 evergreen shrubs, ornamental trees and a wood
20 trellis fence. At the south east corner of the
21 lot along 7th Street a proposed sculpture court
22 with special paving and an opportunity to provide

1 a place for public art. Above ground level there
2 are seven nearly identical residential floors
3 stacked within a rectangular footprint of
4 approximately 7300 square feet that cantilevers
5 12 feet over the metro easement areas as
6 indicated by the dimension of the drawing. The
7 elevators and cores are located at the north side
8 and serve a simple double loaded quarters with 8
9 units per floor which provide a range of unit
10 sizes from a junior one bedroom at 450 square
11 feet to a 3 bedroom 2 bath at approximately 1100
12 square feet totaling 56 units. At the main roof
13 level a simple rectangular mechanical penthouse
14 enclosure is uniformly setback 18.5 feet from
15 parapets on 3 sides and is placed against the
16 interior lot line to the north or the top of this
17 plan. With the elevator access to a recreational
18 roof terrace which is located at the southern
19 portion of the plan we propose to build to the
20 height of 18.5 feet in area only over the
21 elevator bank and the machine room, and to reduce
22 the penthouse height to 12.5 feet over the

1 remaining area as that additional volume is just
2 not necessary for the type of mechanical
3 equipment serving this building. Perhaps this is
4 more clearly indicated on this penthouse roof
5 plan where the area we propose to build to the
6 maximum allowable penthouse height is at the top
7 of the drawing dimension 20 x 31 feet. In this
8 building section taken north south through the
9 center of the building facing west you see that
10 stair and elevator shaft at the right extending
11 the full 18.5 feet above the main roof level and
12 we see how the remainder of the proposed
13 penthouse is lowered approximately 6 feet
14 reducing the penthouse height will make it just
15 less visible from the surrounding sidewalks. I'd
16 also like to point out in this drawing how the
17 building cantilevers over the Metro easement
18 areas on floors 2-8 which is at the south portion
19 of our site you can see it on the left side of
20 the drawing. In this prospective view of the
21 proposed building we're on R Street looking
22 northwest across 7th Street, here we see the east

1 and south facades of the building which
2 demonstrate a distinctively modern approach
3 chosen to compliment and contrast the masonry
4 tradition of the context and also chosen to
5 provide a level design esthetic not typically
6 associated with affordable housing though clearly
7 modern the composition is one that is classically
8 organized with a defined retail base, a series of
9 uniformly articulated residential floors topped
10 by an attic story and a horizontal cap that is
11 suggestive (inaudible), at the corner a metal and
12 glass bay wraps the intersection of the two
13 facades and maximizes views to the monumental
14 core to the south east. The material palette
15 will include both gray and terracotta colored
16 fiber cement panels and painted aluminum
17 spandrels trim windows. The south elevation on R
18 Street continues that treatment of 7th Street but
19 is defined on the left by a vertical plane. Note
20 at the ground level the surface parking area is
21 screened from view with an undulating horizontal
22 slat wood trellis and evergreen landscaping. In

1 this perspective view from R Street looking north
2 east we see the metro entrance canopy in the
3 foreground and how it's curved glass form
4 compliments the folded plane that it both the
5 (inaudible) and projecting roof line of the
6 proposed building. We can also see how the
7 height of the new building is lower and the
8 existing building to the north. The new west
9 elevation features horizontally banded windows
10 with a reduced glass area and colored vertical
11 louvers to lower solar heat gain. These punch
12 windows are set within a light grey fiber cement
13 panel cladding joined horizontally. The new
14 composition incorporates larger groupings of
15 windows at the upper right and at the middle and
16 lower left in a playful spirit and direct
17 contrast to that gridded esthetic of the existing
18 building built of concrete and brick. So in
19 order to build the project that we've just seen
20 we require several areas of zoning relief most of
21 which are directly related to the metro easements
22 in place over 45% of the proposed site area.

1 First as a direct consequence of the metro
2 easements we seek a nine foot relief from the 70
3 foot height limit in order to construct an 8
4 story apartment building that will be slightly
5 less than the allowable 4.5 FAR on the site, a
6 site practically limited to lot occupancy of 55%.
7 Secondly we seek relief from the requirement for
8 20 parking spaces as we can provide 13 surface
9 spaces. The below grade area in which we can
10 build is just simply too small a footprint to
11 accommodate underground parking. Third we seek
12 relief from a 55 foot loading berth as we can
13 provide a service delivery space that's 10 x 20
14 feet and the experience with the existing
15 building which is an affordable rental building
16 indicates that the turnover of those tenants is
17 just far less than what you'd have in a market
18 rate rental building. Also these tenants just
19 simply have less personal possessions so
20 typically the move in, move out is done with a
21 service delivery size van. Fourth we seek relief
22 from the 15 foot rear yard extending across the

1 rear lot lines due to the step configuration of
2 the proposed lot along the alley. Finally we
3 seek relief from the requirement for uniform
4 penthouse height since the volume of space that
5 results is just simply not necessary and the
6 lowered height reduces the visibility and impact
7 of that proposed new penthouse. The division of
8 the current site into two lots creates a
9 condition of non-conformity for the existing
10 building pertaining to FAR and to require parking
11 since it was a building built in the 1970's
12 before current zoning was in place on the site.
13 First a reduced site area for the existing
14 building on lot one the FAR would increase from
15 3.11 to 4.41 which is over the matter or right
16 limit of 3.5 yet it is under the 4.5 allowable
17 for inclusionary zoning if such were applicable,
18 and therefore we seek relief of .91 FAR from the
19 3.5 limit currently on the portion of the site.
20 Second we seek relief from off street parking,
21 the current site provides 48 surface parking
22 spaces and with the division of the site into two

1 lots there will be a net loss of 10 spaces and
2 those are spaces primarily below the concrete
3 canopy on which we propose to build the new
4 building. To provide the same parking to unit
5 ratio of one space for each 4.3 dwellings for
6 both the existing building and the new building
7 25 of the resulting 38 spaces are assigned to the
8 existing building and 13 spaces assigned to the
9 new apartment building to be located respectively
10 within their new lot boundaries. Since the
11 existing 108 unit building requires 36 spaces
12 under current zoning and the proposed new lot one
13 configuration includes 25 spaces, we seek relief
14 for 11 spaces. Finally the project we are
15 building will seek lead certification with a
16 minimum of 40 points under USGBC's lead 2009 for
17 new construction. Basically this concludes my
18 portion of the presentation and I would be happy
19 to take any questions, thank you.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much Mr. Burkhart, do Board Members have any
22 questions? I'm still reviewing some of the

1 notes, I don't have any questions at this time,
2 and I may have questions a little later.

3 MR. BURKHART: Thank you.

4 MR. SELFRIDGE: Can you touch on the FAR
5 relief you need again for me please?

6 MR. BURKHART: FAR relief in terms of the
7 existing building; it's current lot is 38,000
8 feet when we subdivide and create lot one that
9 area goes from 38,000 to 24,900 square feet
10 therefore the existing FAR on the site which is
11 currently at 3.41 will be increased to 4.41 such
12 that we need an allowable .91 relief. It's
13 really kind of an unusual situation I think
14 Allison can explain further on it because the
15 site actually under it's current zoning is 3.5
16 FAR but it is within the ARTS Overlay which would
17 allow you up to a 4.5 with inclusionary zoning,
18 of course inclusionary zoning is affordable
19 housing so it's kind of a catch 22 it sort of
20 makes no real sense because the site would allow
21 for a 4.5 FAR, if the area's reduced...

22 MR. SELFRIDGE: If it was built today.

1 MR. BURKHART: It's kind of a moot point
2 to be honest in that sense with regards to the
3 current regulations with inclusionary zoning.

4 CHAIARPERSON MOLDENHAUER: It's and
5 existing building so IZ doesn't even apply so
6 your kind of trying to apply something that
7 doesn't really apply at all so I think you have
8 to look at it as though IZ doesn't apply.

9 MR. BURKHART: But for comparative
10 purposes we cite that.

11 MR. MR. SELFRIDGE: You would get it out
12 of the ARTS Overlay; you would get that
13 additional FAR.

14 MR. BURKHART: Correct, even in fact when
15 going to remove the building...

16 MR. SELFRIDGE: So I'm trying to
17 understand there's, your citing two reasons for
18 the need for relief, one is the WMATA easement
19 and the other one is a separation of the lots,
20 and I'm trying to understand what is related to
21 what, can you walk me through that or help me or
22 maybe it's a collaborative effort.

1 MR. BURKHART: I think it's probably a
2 collaborative effort.

3 MS. PRINCE: I may be in a better
4 position to explain that, and on the FAR issue I
5 think, I hope we explained that well enough but
6 our point on that is that by creating the
7 separate lot we do effectively increase the FAR
8 of the existing building. The existing building
9 is an all affordable project, had it been built
10 know could be a 4.5 FAR with the relevant
11 bonuses, it's a heavily grandfathered project in
12 some other respects like height. So although we
13 bring it out of conformity we in essence, it's a
14 very odd situation, with respect the vast
15 majority of the relief that we need relates to
16 the WMATA situation, the vast majority. The only
17 relief that is triggered by the subdivision is that
18 FAR relief, every other area of relief would be
19 required whether or not we actually subdivided
20 out the property. The rear yard, the loading,
21 the parking all of that would still be required
22 was we to construct this as an addition to the

1 existing building.

2 MR. SELFRIDGE: Okay can you walk me
3 through the loading, again I understand there's
4 only one loading space of 20 feet and I've got to
5 be honest I'm not sure that I would agree with
6 the rationale why you only need one, I think
7 people still have a lot of possessions, they may
8 not turn over as often but if you need it once
9 you need it. Can you walk through why you're
10 only requesting the variance for one loading
11 space of 20 feet?

12 MR. BURKHART: Well first of all the
13 requirement for the 55 foot loading berth would
14 be in place for a building that has 50 or greater
15 units which I think practically speaking is
16 difficult to do in the District as you've seen
17 this come up many times with apartment buildings.
18 So the existing does not have a 55 foot loading
19 berth. I think in terms of the issues of move-
20 in, move-out, it's been the observation of the
21 team with the ownership that the type of tenant
22 in the building just simply does not have a lot

1 of possessions and they tend to stay there for
2 relatively long terms it's a very low turnover
3 and perhaps Rob Agus could elaborate on that, and
4 so in terms of the site configuration we felt
5 that the service delivery space and clearly
6 indicated as such would provide the adequate
7 loading size for the typical move-in, move-out
8 with the building. The commercial area we have is
9 much to have at about 3,000 square feet to really
10 trigger much activity. It has to really do with
11 the fact the site really is so constrained, it's
12 limited in size, I mean we could do a larger
13 loading berth if we sought additional parking
14 relief but then we sort of throw out the ratio of
15 parking for the existing building and the new
16 building. So while there is a certain amount of
17 flexibility on this site with regards to the
18 exact loading berth size, something else would
19 have to give.

20 MR. SELFRIDGE: If I could bounce back
21 and forth a little bit Madam Chair, Mr. Agus what
22 kind of utilization do you have on the current

1 parking, is it full, and is it empty?

2 MR. AGUS: We had a number of years ago
3 started issuing permits to the residence who
4 applied for use of parking just to give as an
5 example and I believe there are 27 such permits,
6 using a broad term permit there, serving that
7 entire building, so we have excess parking
8 currently on site. In addition there's on street
9 parking on 8th Street, which is through the alley
10 to the other side as well, so that there has been
11 no lack of parking at the location.

12 MR. SELFRIDGE: So lot 847 with 25 spaces
13 you would essentially have enough for everybody
14 who wants it, give or take a couple of spaces?

15 MR. AGUS: We think so.

16 MR. SELFRIDGE: Then how many units was
17 it going to be in the new lot as well? How many
18 apartment units are we talking about?

19 MR. AGUS: It's 56.

20 MR. SELFRIDGE: There are 56 apartments in
21 the new building. I'm sorry remind me how many
22 are in the current building?

1 MR. AGUS: There are 108.

2 MR. SELFRIDGE: Mr. Burkhardt can you
3 speak to some of the lead features that you
4 talked about?

5 MR. BURKHART: Yes actually the site
6 because of it's location right at the Metro and
7 bus lines, as you know, sort of transportation
8 rich if you will, so that's one of the major
9 contributors in terms of the location relative to
10 leads issue, I mean these urban sites so often
11 under the current rating scheme have a lot going
12 for them, but in addition to that for this type
13 of building we are going to seek sort of the
14 standard types of materials which are renewable,
15 or recycled and working with the acquiring of
16 materials within a 500 mile radius, we're working
17 also with solar shading on the south side of the
18 building on the elevation, I didn't point that
19 out but there are series of bricquette to help
20 reduce the solar gain on the south. Then the
21 west side of the design the way it's configured
22 with the windows we have reduced the glass area

1 in order to reduce the amount of solar gain on
2 that side. We're looking at the opportunity of
3 potentially putting a green roof on top of the
4 penthouse, but again as an affordable building
5 you really have to watch every dollar very
6 carefully and we are committed to the
7 certification of the building, and the ownership
8 is very, very much involved and interested in the
9 idea of increasing the number of points that they
10 can afford to do, because they are so committed
11 to the sustainable stewardship of their assets.

12 MR. SELFRIDGE: I think that, that's all
13 I have Madam Chairperson.

14 CHAIRPERSON MOLDENHAUER: I've got some
15 follow up questions, one is a question regarding
16 the penthouse height and it looks like there's a
17 relief, what is the relief again that you're
18 seeking for that?

19 MR. BURKHART: Sure, we could build a
20 penthouse of the size that I indicated on the
21 drawing, 18.5 feet over the entire volume and we
22 have set it back at 18.5 feet from the 3 parapets

1 and its position on the north internal property
2 line. It just turns out that this type of an
3 apartment building that large volume of mechanic
4 space is just not necessary and it's an
5 additional cost for the construction of the
6 building. So the notion combined with the fact
7 that we are providing a roof top recreation area,
8 we need to have the elevators go up that high and
9 practically speaking you really do need 18.5 feet
10 to get the elevators up to your roof. So once
11 you're up there that portion of the penthouse we
12 propose at the 18.5 feet but we proposed to lower
13 the remaining portion which is about 2/3 of the
14 size of the penthouse footprint to a 12.5 height.
15 I think the perspective use indicated that that
16 lower penthouse height was esthetically more
17 pleasing than if you had pulled that volume 18.5
18 feet up over the entire footprint of the
19 penthouse because the height of the penthouse at
20 12.5 feet is about the height of the existing
21 building to the north with it's main roof, so
22 there's a nice balancing of the two I think from

1 an architecture and urban point of view.

2 CHAIRPERSON MOLDENHAUER: And is it my
3 understanding that you're connecting that relief
4 to the WAMTA easement is that correct?

5 MS. PRINCE: The penthouse relief is
6 really to create a smaller penthouse and it's a
7 special exception standard and were you not to
8 grant the penthouse relief we would simply go
9 with the larger penthouse but this is one of
10 those ironic situations where we need relief to
11 do less.

12 CHAIRPERSON MOLDENHAUER: The other
13 question then is for Mr. Agus, the question about
14 the current layout breakdown configuration you
15 have 108 apartment units in lot one, what's the
16 breakdown of 1 bedroom, 2 bedrooms, 3 bedrooms,
17 approximately? Do you have 3 bedrooms in the
18 current?

19 MR. AGUS: Yes we do, I believe we have 7
20 efficiencies and 7-3 bedroom units and then the
21 rest are divided between 1's and 2's, the
22 majority are 2's.

1 CHAIRPERSON MOLDENHAUER: What's the
2 current breakdown again, I heard it stated
3 earlier but...

4 MR. BURKHART: I'm sorry for the proposed
5 building?

6 CHAIRPERSON MOLDENHAUER: Yes.

7 MR. BURKHART: The breakdown actually
8 it's interesting we have a total of 7 floors that
9 are identical with 8 units per floor, that gives
10 us 56, and the way it's organized we have
11 essentially a unit mix that's 20%-2 bedroom, 20%-
12 studio(junior 1 bedrooms) and then 20% interior 1
13 bedrooms and 20%-1 bedroom with an exterior
14 window, so the total percentage is sort of broken
15 down into 20% of the type starting with a junior
16 one bedroom up to and including a 3 bedroom 2
17 bath. So it's a pretty broad range for the size
18 building that we have.

19 CHAIRPERSON MOLDENHAUER: So how many 3
20 bedrooms do you have?

21 MR. BURKHART: We have a total of 7.

22 CHAIRPERSON MOLDENHAUER: I'm just trying

1 to think out you know obviously I think typically
2 even for affordable housing obviously there's a
3 great need for larger bedrooms for larger units
4 and also though you're going to probably find
5 more need for parking for larger units with
6 families potentially living in those. So I'm
7 just trying to associate that obviously with the
8 parking relief that's being sought and the
9 existing requirement. Obviously you're saying
10 that you're not fulfilling all of your parking
11 but you only have 7-3 bedrooms in a 108 unit
12 apartment building so obviously here you'll have
13 7 out of 56-3 bedrooms as well.

14 MR. AGUS: Does anybody know what the
15 current...

16 MR. BURKHART: Unit mix in the current
17 building, we haven't worked on that building it
18 has been recently renovated I know that
19 information is available.

20 MR. AGUS: It's at least 7 it may be a
21 few more but it's very difficult to provide 3
22 bedroom units, we're committed to doing that in

1 the new building. I think most affordable
2 projects try to avoid that but we don't we are
3 pleased that we are able to do that in the new
4 building.

5 CHAIRPERSON MOLDENHAUER: Thank you I
6 don't have any other questions at this time.
7 Jeff do you have any questions? No, okay, are
8 there any other witnesses?

9 MS. PRINCE: We have Chris Kabatt from
10 Wells and Associates and given your questioning
11 about loading and parking perhaps he should come
12 up and make a direct presentation rather than
13 just answer questions.

14 CHAIRPERSON MOLDENHAUER: I think that
15 would be good, thank you.

16 MR. KABUTT: Good morning I'm Chris
17 Kabatt with Wells and Associates, I did a parking
18 and loading evaluation for this project. Getting
19 to the parking we believe that the ratio about 1
20 to 4 is appropriate for a building of this nature
21 and this location, for several reasons, one it is
22 right next to a metro station, they have direct

1 access to that portal across the alley. There's
2 on street parking available in the area of 7th
3 Street and 8th Street to the west has available
4 residential permit parking spaces during the day
5 and in the evening. There are bike lanes in the
6 area 7th Street and S Street, there's actually a
7 zip car space on the current site and it's my
8 understanding that that zip car space will be
9 continued to be onsite. Regarding the loading
10 again the existing building there hasn't been
11 much of a history of a 55 foot truck using that
12 existing building and in the case where such a
13 truck or a larger truck would be needed we feel
14 we could use the existing parking spaces on site
15 for a temporary time being to load the units or
16 another option would be to go to the city and ask
17 if we could temporarily use the metered spaces on
18 7th Street. Does that answer your questions or if
19 you have any others.

20 MR. SELFRIDGE: I'm just looking through
21 this booklet is there a loading plan, maybe this
22 is it on A7 the site plan, is there anything that

1 shows where the loading berth is and how you
2 approach it?

3 MR. BURKHART: Just looking at the civil
4 engineer site survey.

5 MR. SELFRIDGE: Can you cite a page
6 please? A6 maybe?

7 MR. BURKHART: Yeah sheet A6 in your
8 booklet is the same drawing slightly reformatted.
9 In terms of the existing building if you look,
10 which is at the north half of the dark shaded
11 area and the alley is on the right, if you look
12 at the middle of that existing building you
13 notice how it's indented, that's actually the
14 service area for the existing building. There is
15 not indicated on that drawing a loading berth per
16 se' but there is a dimension of about 10 x 24
17 feet that would allow a truck to back in from the
18 alley perpendicular to that loading area and then
19 pull back out. I'll show you here...

20 MR. SELFRIDGE: Yeah, if you don't mind.

21 MR. BURKHART: See this zone right here,
22 that's where the current building it loaded and

1 this being the alley and if you look at it
2 there's angled parking to this point and then
3 there's none and then angled parking picks up
4 again, so it's in this area that with the last
5 angled line right here that it's conceivable that
6 a truck comes down just backs in, unloads and
7 goes out of the alley.

8 MR. SELFRIDGE: Is that a one-way or two-
9 way alley?

10 MR. BURKHART: It's a two-way alley, at
11 15 feet wide.

12 MR. SELFRIDGE: And so this is the
13 loading space on the existing building?

14 MR. BURKHART: That is correct.

15 MR. SELFRIDGE: And that's going to be
16 shared between both buildings?

17 MR. BURKHART: No that would be used only
18 by the existing building.

19 MR. SELFRIDGE: Only by the existing
20 building and then what about on the new building,
21 help me on the new building I guess I'm having a
22 little trouble.

1 MR. BURKHART: Just a second here I'll
2 get to it. It should be on your sheet A8 it
3 should be the center drawing on that particular
4 sheet. So in terms of proposed loading for the
5 new building here again is the 15 foot alley with
6 direct access to our surface parking area here
7 and we propose the service delivery space
8 position here which is 10 x 20 feet so vans will
9 just pull in on our lot, back in, unload, take it
10 to the corridor and to the elevators or to the
11 retail space serviced at this point with the
12 doors and then back out.

13 MR. SELFRIDGE: Okay, and so that's where
14 you were speaking if you had to martial more
15 spots in theory you could because it's all on
16 your private parking lot?

17 MR. BURKHART: Correct.

18 MR. SELFRIDGE: Okay that's helpful, thank
19 you.

20 CHAIRPERSON MOLDENHAUER: Any other
21 questions from Board Members? Any additional
22 witnesses?

1 MS. PRINCE: No additional witnesses.

2 CHAIRPERSON MOLDENHAUER: Okay, then I'll
3 look to the audience to see if there are any
4 individuals in the audience in support or in
5 opposition of this case? Seeing none then we'll
6 turn to the Office of Planning for their report.

7 MS. THOMAS: Good morning Madam Chair,
8 Members of the Board, Karen Thomas with the
9 Office of Planning. The Office of Planning is
10 recommending the approval of this variance relief
11 and special exception relief in this case. We
12 see that this property is unique because it
13 involves the subdivision of an existing property
14 on a Metro Station, to facilitate new and
15 affordable housing. We believe that a confluence
16 of factors create the exceptional situation
17 including the lots narrow width and the WMATA
18 subservice easement together with the original
19 financial agreements regarding this property.
20 With respect to the height, the rear yard, we see
21 variance relief from the off street loading and
22 parking we do believe that the subservice

1 easement in large part effects the design of the
2 building and causes it to require this variance
3 relief. The special exception because with
4 respect to the varying height of the penthouse we
5 do believe that we appreciate the architects
6 rendering of the penthouse in this manner because
7 it reduces the overall massing on the building,
8 on the roof of the building as viewed from public
9 space. Therefore without going into much detail
10 I would stand on the record and take any
11 questions that you may have.

12 CHAIRPERSON MOLDENHAUER: Does the
13 Applicant have any questions for the Office of
14 Planning?

15 MS. PRINCE: We do not.

16 CHAIRPERSON MOLDENHAUER: Do any Board
17 Members have any questions for the Office of
18 Planning? Okay then thank you very much at this
19 point in time we'll turn to the ANC, is there
20 anybody in the audience here for the ANC? Seeing
21 no one, we just received a letter this morning
22 from the ANC, it's our "Exhibit No. 24" from ANC

1 2-C indicating that at a duly called meeting on
2 Wednesday January 5, 2011, with a quorum present
3 that they voted to unanimously support the
4 variance and special exception relief requested
5 by the Applicant. They identify some
6 considerations in their reports including
7 references to the fact that there's going to be
8 no public parking lot, they also identified some
9 other concerns regarding the benefit of the
10 affordability and the inability to meet the
11 zoning requirements and make it economically and
12 feasible to develop the lot. That being said
13 this letter would satisfy our ANC requirements
14 and we will give it great weight. At this point
15 in time we turn back to the Applicant for any
16 closing remarks.

17 MS. PRINCE: We do have one person in
18 support Tess Robinson; things were taken out of
19 sequence so I missed the opportunity to ask for
20 her to speak.

21 MS. ROBINSON: Good morning, how are you?
22 I've lived at Westmoreland the first property

1 for the last 36 years and I'm looking forward to
2 seeing the new property added on, the community
3 is a great community to live in, as I've said
4 I've been there for 36 years and it would help to
5 improve the community that we are living in, and
6 not only that beautify so I'm all for having the
7 affordable housing there and new structures to
8 come.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much.

11 MR. MOY: Madam Chair could she identify
12 herself for the record please?

13 MS. ROBINSON: I'm sorry Theodosia
14 Robinson, nick name Tessi, President of the
15 Tenants Association at Lincoln Westmoreland One.

16 CHAIRPERSON MOLDENHAUER: Thank you,
17 thank you very much for coming down and
18 presenting your testimony. Any additional
19 witnesses in support of this application? Seeing
20 none then does the Applicant have any closing
21 remarks?

22 MS. PRINCE: Just some brief closing

1 remarks. In summary this site really involves a
2 situation where without the requested variance
3 relief we won't be able to provide an affordable
4 housing project here because there would
5 literally be a loss of about 30% of the units
6 that we've proposed. The constraints imposed on
7 the footprint due to the WMATA easement so
8 greatly affect the ability to achieve the matter
9 of right density here that we would get to a
10 place where it's not worth it to go forward.
11 When we studied the property at the outset we
12 looked at the existing building and realized we
13 really we're going to change that. So how could
14 we structure the case, how could we structure the
15 plans so that we could achieve the density that
16 the Zoning Regulations allow without really
17 affecting the existing building and we came up
18 with the approach that we've outlined today and I
19 realize it's a lot of relief? As I said at the
20 outset it's a heavily constrained site, even if
21 we were to construct this building as an addition
22 to the existing building as I said we still need

1 almost all the relief that we're here before you
2 to seek today. As I mentioned the penthouse
3 relief is really to create a smaller penthouse.
4 Regarding the 55 foot loading berth as you know
5 we're in the middle of a major rewrite of the
6 Zoning Regulations and the actual need for a 55
7 foot loading berth for an apartment house has
8 been heavily questioned and has been something
9 that may well get eliminated in the rewrite
10 process. Finally the proximity of Metro can't be
11 underestimated here and I think that was a lot of
12 the reason for the Office of Planning's support
13 of the parking relief that we need here. We have
14 the advantage of being able to have studied the
15 use history, the parking use history of the
16 existing 108 units, so we know really what's
17 going on, on the site with the type of tenancy
18 that we expect in our new building as well and we
19 believe the 1 to 4 ratio really does work. In
20 addition to that we have as I said the Metro, the
21 bike, the bike parking on the site and it's a
22 balancing act we could eliminate some of the

1 parking and provide a loading berth but in fact
2 we think we can cope with loading on an as needed
3 basis without eliminating some of the parking.
4 So we greatly appreciate your time today and we
5 look forward to your action on this application.

6 CHAIRPERSON MOLDENHAUER: Thank you I
7 just have one follow up question, I know
8 obviously the intent of Lincoln Westmoreland
9 Housing is to provide affordable housing, I
10 understand that's the principle concept, but
11 would this project be feasible if that wasn't a
12 factor without requiring so much relief, I mean I
13 see it in a lot of the documentation and a lot of
14 the financing, or that is would not be
15 financially feasible without the additional
16 floor, without the additional relief, things of
17 that effect, so my question would be would this
18 project be feasible if it was done maybe two IZ
19 requirements but not above and beyond IZ
20 requirements which is obviously what's being done
21 here?

22 MR. AGUS: It would be non-feasible

1 because the Board would not permit it. We are an
2 organization committed to providing affordable
3 housing.

4 CHAIRPERSON MOLDENHAUER: Okay, I
5 appreciate that I just like to have that on the
6 record, thank you. Any other questions from
7 Board Members at this time? Thank you very much
8 and this concludes this hearing, the Board has no
9 additional questions and we'll set this for a
10 decision.

11 MS. PRINCE: Thank you I assume you'd
12 like a draft order?

13 CHAIRPERSON MOLDENHAUER: Thank you that's
14 fine we don't typically require that I think we
15 can set it for decision and then at that point in
16 time.

17 MS. PRINCE: Thank you.

18 CHAIRPERSON MOLDENHAUER: Thank you, okay
19 so this will be set for a decision on April 5th.

20 **Application No. 18183**

21 MR. MOY: The next application before the
22 Board is Application No. 18183, this is the

1 Application of 1515 14th Street LLC, pursuant to
2 11 DCMR 3103.2 and 3104.1 for a variance from the
3 open court with requirements under (Subsection
4 776.1) variance from the roof structure height,
5 limitations under (subsection 1902.1 sub A) a
6 variance from the off street parking requirements
7 under (subsection 2101.1) a special exception
8 from the roof structure requirements under
9 Section 411 and a special exception from the rear
10 yard requirements under (subsection 774.2) this
11 is to allow an addition to and renovation of an
12 existing building for retail service, arts and
13 office use in the ARTS/C-3-A District at premises
14 1513-1521 14th Street, N.W. property located in
15 (Square 241, Lot 129).

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much Mr. Moy, once the parties have gotten
18 themselves organized they can introduce
19 themselves for the record.

20 MR. FREEMAN: Good morning Madam Chair,
21 Members of the Board, my name is Kyrus Freeman
22 I'm an attorney with the Law Firm of Holland and

1 Knight here on behalf of the Applicant. Seated
2 to my immediate left is Mr. Chip Glaskow, also
3 with the firm of Holland and Knight, to my
4 immediate right is Mr. Georgio Furioso who's the
5 owner and Applicant for the project, to Mr.
6 Furioso's right is Irwin Andres who is associated
7 with the firm of Grove Slade and we will be
8 submitting him as an expert in transportation
9 planning and analysis, and at the far end is Mr.
10 Eric Colbert who is the Architect for this
11 project and we will also be submitting him as an
12 expert in architecture and design. I just
13 submitted their resumes both of which have been
14 qualified as experts before the Board and the
15 Zoning Commission in numerous occasions but I
16 wanted to make sure you had their resumes for
17 this case as well.

18 CHAIRPERSON MOLDENHAUER: Thank you, so
19 long as the Board Members don't have any issues I
20 don't see an issue with qualifying either as
21 experts, seeing a consensus we'll turn back to
22 you Mr. Freeman to start us off.

1 MR. FREEMAN: Thank you Madam Chair as
2 you're aware we're here today for essentially
3 five areas of relief in order to permit the
4 redevelopment of the existing site and as Mr. Moy
5 mentioned a variance from the open court with
6 requirements, relief from the roof structure
7 height limitations, a variance from the off
8 street parking requirements a special exception
9 from the roof structure requirements with respect
10 to walls of unequal height as well as a special
11 exception from the rear yard requirements and the
12 special exception standards for the rear as set
13 forth in Section 774.2. The Architect Mr.
14 Colbert will describe the project in more detail
15 as he goes through his presentation today,
16 however I'd like to make sure I note for the
17 record that Mr. Furioso has been active in the
18 community and has actually had a different
19 project design for this site, it was a
20 residential building that included 30 residential
21 units, art galleries and other retail uses on the
22 site, that project also required some Zoning

1 Relief and we had to come to the Board to get
2 some relief in that case, that was Case No.
3 17207. A copy of that order is included in our
4 prehearing submission and I mention that because
5 although the project has changed we are asking
6 for essentially the same relief with respect to
7 roof structure height, roof structure setback and
8 rear yard relief, so a lot of the issues that
9 we'll go over today, the Board has seen and the
10 Board in it's composition, not the current
11 composition but other members have found that the
12 site meets at least the first and second prongs
13 of the variance test. The manner in which the
14 Applicant meets the burden of proof is set forth
15 in our prehearing statement so to the extent that
16 we don't cover anything I think the record is
17 complete and indicates how we meet all of the
18 standards and we will have some additional
19 submissions today to submit in response to some
20 anticipated issues. We'd also like to thank the
21 Office of Planning we've worked diligently with
22 them and they've submitted a report indicating

1 that we meet all of the applicable standards for
2 relief. We've met with the ANC 2-F on at least 4
3 separate occasions and we're happy to report that
4 we have a letter of support included in our
5 record from ANC 2-F, that letter as you will see
6 if you have not already said meticulously goes
7 through describes the presentations and describes
8 how we've indicated that we meet the standards of
9 relief. We don't have a DDOT representative here
10 today but I think the representative from the
11 Office of Planning can at least confirm that
12 we've met with DDOT; DDOT did not have any issues
13 with our relief particularly with respect to
14 parking so we're very happy about that. They
15 asked for us to prepare and submit a load and
16 management plan which we submitted to DDOT, we
17 have a copy of that plan here today if the Board
18 would like to see it. We also agreed in response
19 to comments raised by the Office of Planning and
20 DDOT to provide 25 bike parking spaces as a form
21 of mitigation and you will see those on our plans
22 today. Our traffic expert will also talk about

1 the TMP plan proposed for the project. So in
2 summary I think the record includes ample
3 evidence demonstrated that the Applicant meets
4 the burden of proof for the requested relief as
5 will be further confirmed by our presentation
6 today, so we're ready to proceed or answer any
7 questions that you have or we're happy to
8 proceed.

9 CHAIRPERSON MOLDENHAUER: Thank you, you
10 can please proceed with your witnesses. I'd also
11 just like to note, I'm assuming that you've
12 received we just got a copy on the dais right now
13 of a letter from the Matrix Condominium at 1529
14 14th Street?

15 MR. FREEMAN: Yes Madam Chair we saw the
16 letter we have some materials to submit in
17 response to that but what we'll do is we'll wait
18 till they do their presentation and then respond

19 CHAIRPERSON MOLDENHAUER: Okay I just
20 want to make sure you had a copy of that as well.
21 Okay you can please proceed with your first
22 witness.

1 MR. FREEMAN: Our first witness will be
2 Mr. Georgio Furioso.

3 MR. FURIOSO: Good morning Madam Chair
4 and the Board, hi my name is Georgio Furioso I
5 live at 1612 16th Street which is about 2.5 blocks
6 from this site, I'm primarily a residential
7 developer and have been in the community almost
8 several decades over 20 years building mostly
9 residential buildings. As my attorney had
10 mentioned this was a residential building
11 actually 32 units with equal amount of parking
12 spaces but after seeing the neighborhood develop
13 which is Logan Circle 14th Street, U Street
14 Corridor Development I felt that it was kind of
15 important to see if we can bring more of what I
16 think is important to that community and that is
17 day time traffic. It is really an amazing
18 neighborhood to live in and I'd like to see us be
19 able to bring people who also see it as a daytime
20 activity. I think a lot of neighborhood
21 commercial endeavors have a difficult time when
22 there is no daytime traffic so this will be the

1 first office building, very small, not a very big
2 office building so hopefully not a major impact
3 that I would like to have seen come to our
4 neighborhood but one that I think could really
5 help with that daytime traffic and there's lots
6 more residential buildings being built up and
7 down 14th Street so we're the first office
8 building north of Sheridan Circle and I hope that
9 the community really sees what I think is going
10 to be an asset to that community, thank you.

11 MR. FREEMAN: If I could ask Mr. Furioso
12 to clarify one thing, by daytime traffic I
13 believe you mean like daytime activity and feet
14 on the street is that correct?

15 MR. FURIOSO: What I meant is people
16 coming in and out of the building during the day
17 rather than just early morning leaving as
18 residents and coming back as residents, thank
19 you.

20 MR. FREEMAN: Thank you unless there is
21 any questions what we'll do is maybe taking our
22 witnesses out of order and has Mr. Colbert walk

1 us through the design of the project.

2 MR. COLBERT: Good morning Madam
3 Chairperson, Members of the Board, My name is
4 Eric Colbert, with Eric Colbert and Associates
5 Architects in Washington, and I was very pleased
6 with Georgia asked me to help out with project,
7 as he said get, Massachusetts Avenue has
8 definitely been the dividing point between, you
9 know strictly between residents and the offices
10 to the south and so to have kind of a mixture of
11 uses in the neighborhood I think is a real
12 assets. We did go to the Historic Preservation
13 Review Board and this project was reviewed and
14 the first time which is kind of unusual for a
15 building of this size but it kind of shows the
16 responsiveness that my client has been willing to
17 show toward those historic issues and I'll show
18 the drawings to you later about how we were
19 required to setback over the existing building.
20 Then as also stated we received unanimous
21 approval from the ANC and their subcommittee with
22 the building and land use regulations. I would

1 also like to point out that Georgio was committed
2 to doing a lead certified building here, not just
3 a certified level but it looks like we may be
4 able to get gold but at a minimum we're going to
5 do a silver building and some of the amenities in
6 the building that we've included are geothermal
7 heating and air conditioning to dig wells under
8 the building before we build a garage and then
9 we're going to be doing a green roof for most of
10 the roof areas. We're going to have solar panels
11 and we're going to use high efficiency lighting
12 and heating and air conditioning systems in the
13 building. The first page after page after the
14 cover S1 is an indication of the areas of relief
15 that we're asking for and as Georgia testified
16 several years ago we obtained, I was not the
17 architect but Georgia obtained Board of Zoning
18 Adjustment approval for basically the same issues
19 that we're coming today because of the peculiar
20 nature of the site and the fact that it was in an
21 Historic District it really kind of suggested
22 that we had to set back the building in order to

1 satisfy the Historic Preservation Review Board so
2 what that did is it created about a little over 3
3 foot change in where we wanted to have the rear
4 of the building so that we didn't have to lose
5 useable square footage that was permitted under
6 part of the FAR. The other thing is because of
7 the narrowness of the site that's left over, you
8 know, there's the historic structure and to the
9 north there's a parking lot that's about 56 feet
10 wide where the new addition is going and I'll
11 show a document a little later on showing why we
12 couldn't have a ramp going down there, the only
13 way to really gain access and have any parking
14 spaces at all would be to provide a car elevator,
15 but in order to do that that's one of the areas
16 of relief that we actually have this time that
17 was not a problem in the previous Board of Zoning
18 Adjustment case because that point in time if
19 you're doing an addition to a historic building
20 you didn't need to provide any parking at all for
21 the addition, however that's changed so that's
22 why we have to come and ask for that as a relief.

1 Then similar to the previous project that was
2 just heard we're asking for relief from the
3 penthouse because the regulations state that the
4 penthouse has to all be one height and to be a
5 better neighbor to reduce the massing of the
6 penthouse the elevator override will extend up
7 the highest and then most of the other areas of
8 the penthouse will be just slightly over the 83.5
9 feet height restriction. These next two
10 documents are just photos of the existing
11 context, this is the existing building there's a
12 restaurant Posto and there's an art gallery on
13 the floor, and Georgia has really gained a lot of
14 credibility in this neighborhood because of his
15 commitment to providing arts uses and
16 neighborhood serving type residential projects in
17 the area. This lower right hand corner shows the
18 hole block and on the left hand side is the
19 Matrix project that my firm is also the project
20 architect for but we're setting but you can see
21 the setback that we have from over the Matrix and
22 our proposal will have the same type of set back

1 over the historic building. Originally a lot of
2 these structures were car dealerships up and down
3 14th Street and so we've been very active in
4 preserving the historic character of that. This
5 drawing number 01 shows the existing property in
6 this location and then this is the addition and
7 then you can see that we have a 10 foot alley
8 here and then this is houses that are fronting on
9 Kingman Place which is the next street over to
10 the east from 14th. This next drawing 02 is the
11 garage level that we're proposing you can see the
12 car elevator and then as I mentioned I can show
13 you how much space the ramp would take up,
14 probably about four or five times as much area of
15 the building to do the ramp as opposed to the car
16 elevator, but as it is we can get 12 spaces, we
17 also have a bicycle, another element of our lead
18 is the bicycle room not only here we're going to
19 provide a total of 25 spaces and then a shower
20 room and lockers for the bicyclist. This is a
21 solar level that's above the parking and the
22 reason that we need this is because since the

1 addition is so small and you'll see on the first
2 floor a lot of the area of the first floor is
3 taken up by the lobby that we have for the office
4 floors above that were left with very little
5 space so having the ability to have potential
6 retail and commercial tenants and possibly
7 restaurants be able to extend into a first level
8 is very critical in terms of leasing flexibility.

9 Drawing number 04 is the first floor plan and
10 here's the existing building, the Posto
11 Restaurant is on this side and then here's our
12 office lobby in the center, and then there's
13 commercial space that will be on the north side.

14 One thing I think that's very important in terms
15 of our impact on adjacent buildings is the
16 previous building that was approved had the new
17 core all the way over on the north side of the
18 building so the impact to the Matrix to the north
19 would have been much greater had that building
20 gone up before the construction than what we're
21 proposing where the elevator penthouse is much
22 more central to our development and setback much

1 further from the building to the north. Then I'm
2 not going to spend too much time dwelling on
3 these upper level plans but again in order to
4 maximize Georgia's ability to lease it and have
5 an economically successful project we had the
6 floors, the existing floors on the second and
7 third floor from my new construction line up with
8 the existing because even though these are
9 tenanted it's very important in the future that
10 there be the potential to have combined this
11 whole floor and have one tenant be able to go in
12 there. One thing I'll also point out to you is
13 that the residential development is actually
14 easier in this kind of historic environment
15 because the residential floors in the living and
16 dining room areas and the bedrooms you can just
17 skim coat the underside of the concrete slab and
18 that's a sealing of the apartment so there's a
19 much lower floor to floor height is required than
20 with the office development so like a residential
21 development may have a little over 9 feet floor
22 to floor whereas in the office we need a little

1 over 11 because the different types of heating
2 and air conditioning and structural requirements
3 in a suspended ceiling to be competitive a market
4 place it really has that requirement whereas the
5 other building that was previously approved had
6 seven stories total we're only going to have 6-
7 stories with this building, but we still would go
8 up to the same ultimate permitted building height
9 of 75 feet. And I'm just going to go forward to
10 the roof plan and this drawing number 10 on the
11 south side of the penthouse we're going to have a
12 screen wall that will be 12 feet high and that
13 will be around the cooling tower and emergency
14 generator and then on the north side of the site
15 there will be a mechanical room that's 10 feet
16 high just slightly above the height limit and
17 then this kind of beige area in the middle here
18 is our elevator penthouse and what Georgio would
19 like to do is since there are a lot of
20 constrictions on this building he felt it was
21 important even though it's relatively modest in
22 size to have a roof deck as an amenity for the

1 office building tenants. We're not asking for
2 any relief in terms of the requirement that the
3 penthouse be setback at a 1 to 1 ratio from the
4 edges of the building and the part of the
5 penthouse that sticks up about 17 feet where the
6 elevator is, is setback from the rear property
7 line a little over 50 feet. This is a, drawing
8 number 11 is a building section which is very
9 important because this area that's shaded in on
10 the right hand side of the drawing shows you what
11 we're asking for in terms of additional proximity
12 to the rear property line and it also shows you
13 on the right hand side of the sheet you can see
14 the approximate locations of the houses that are
15 facing Kingman Place so that it gives you a sense
16 of kind of proportionately how that relief will
17 impact the building. It doesn't have any impact
18 on the top floor because there's a requirement
19 that when you're adjacent to the residential
20 district in this area that you come up 50 feet
21 vertically from the rear property line and then
22 draw a 45 degree angle and the building cannot

1 extent over that which we have complied with so
2 our request for rear yard relief does not have
3 anything to do with the top floor of the
4 building. There is also a shading in here on
5 this drawing number 11 on the top where you can
6 see the shaded in areas are difference at the
7 section point between the matter of right
8 penthouse height and what we're asking for
9 additional just to achieve the functional
10 requirements of the building. Drawing number 13
11 is cut a little bit further south but it's
12 basically showing the same type of information in
13 terms of the relief that we're requesting.
14 Drawing number 14 is an architectural elevation
15 of the front of the building that we're proposing
16 and we've broken down the mass by, we're having
17 this element that kind of helps with the
18 (inaudible) of the building that's literally made
19 out of zinc and then the other parts will be a
20 glass curtain wall with shading devices that are
21 in the glass. I think the next drawing that I
22 would like to point out number 17 is very helpful

1 because this is very instructive in terms of the
2 massing of the building and shows you kind of
3 volumetrically what our penthouse is like in
4 terms of there be only one, the smallest portion
5 in the center which is only about 7.5% of the
6 total penthouse area is the area that sticks up
7 significantly from the 83.5 foot height limit.
8 What this also does is it shows you kind of a
9 break down and the massing of the building
10 volumes and the setback from the historic
11 structure that was required by the Historic
12 Preservation Review Board. Drawing number 19 is
13 a 3 Dimensional rendering of the post project so
14 we're continuing to work with the historic staff
15 to refine the details of the façade and different
16 elements, we're using a very expensive glazing
17 system for this project and what we're going to
18 do also is we're treating, we're not going to,
19 like some buildings and then even historically
20 they had a front façade and then when they turned
21 the corner they went with a much less expensive
22 brick or different, they might have had stone on

1 the front and used brick on the sides and back
2 and Georgio's committed to taking the richness of
3 the materials all the way around to the rear of
4 the structure so that we're sensitive to the fact
5 that this is going to be visible from the east
6 side and we want it to look at nice as possible
7 all the way around. This drawing number 20 is
8 important because there's a dark arrow and people
9 during the ANC meeting had mentioned that, you
10 know, asking about whether or not this building
11 would cast shadows on the houses on Kingman
12 Place, and we did the analysis and it turned out
13 that there was only one point at 5pm in the
14 middle of the summer when there would be shadows
15 because our building is not south of the houses
16 it's on the west side so it's only at certain
17 times of the year when the sun is setting that
18 there would be a point at which the angle of the
19 sun would go at this point, but that point on the
20 roof, the edge of the roof is actually the same
21 as if a matter of right building because the area
22 where we're asking for the relief is more than a

1 story down and doesn't impact the shading on the
2 existing structures. The other thing is there
3 are these two site lines here, one from a person
4 standing in the matter of right building and the
5 other one standing 3 feet further east in the
6 area that we're asking for a little rear yard
7 relief from and you can see that the view point
8 to the existing houses is essentially the same
9 with our without the relief. This drawing number
10 21 I don't think you have this and I can pass
11 this out to you. I think the Office of Planning
12 asked us just to look at what happens if you
13 actually did do a ramp in the building and
14 basically the whole one side of the building of
15 the garage would be taken up by the ramp so you'd
16 only end up with 6 parking spaces on each level
17 as opposed, on a level as opposed to 12 spaces
18 that we can currently provide with a car elevator
19 which, so this would be more of a matter of
20 rights scheme. The other problem with the scheme
21 is that in order to get down with a ramp you take
22 a big rectangular chunk out of the first floor

1 and the first floor is the area where you can get
2 the highest rent potentially and we're already
3 taking a big chunk out for the lobby to get to
4 the upper floor so it would be devastating for my
5 client to have to put this ramp in because of the
6 negative impact that it would have on the first
7 floor, and that's the end of my presentation,
8 thank you.

9 CHAIRPERSON MOLDENHAUER: Board
10 questions, I feel like, I don't see in the plans,
11 you indicated that there was going to be, I think
12 it's typically in the DDOT report, a shower for
13 the bicycle room, I don't see that shown on the
14 plans?

15 MR. COLBERT: That's actually on roof
16 plan, next to the roof deck.

17 CHAIRPERSON MOLDENHAUER: Can you tell me
18 which number that is?

19 MR. FREEMAN: Sheet 10.

20 CHAIRPERSON MOLDENHAUER: Sheet 10, thank
21 you.

22 MR. COLBERT: Yeah actually this is a

1 stairway for means of egress and then right next
2 to it is where the shower and the lockers would
3 be.

4 CHAIRPERSON MOLDENHAUER: If you were to
5 eliminate the additional desire to have a roof
6 patio or roof access would that eliminate your
7 need for the penthouse height relief?

8 MR. COLBERT: The portion that sticks up
9 the farthest is the elevator getting to the roof
10 deck so, but that's the biggest offender but the
11 mechanical room at 10 feet high would still be a
12 couple of feet above the 83.5 foot roof deck and
13 we would still need that.

14 CHAIRPERSON MOLDENHAUER: How high would
15 that be over the 83.5?

16 MR. COLBERT: About 2.5 feet, I think on
17 drawings...

18 MR. FREEMAN: It's 1.5.

19 CHAIRPERSON MOLDENHAUER: Okay 1.5 feet.

20 MR. COLBERT: Yeah actually I'm sorry
21 drawing number 11 shows you the 10 foot height
22 and then on the right hand side of the elevator

1 shaft it says 8 ft 6 in so you can see like Kyrus
2 said it's a foot and a half, thank you. And the
3 main reason for that is just, you know, our roof
4 is at the permitted 75 feet, there's just not
5 enough room to get all the mechanical equipment
6 in, the roof structure without going a little bit
7 higher than the 83.5.

8 CHAIRPERSON MOLDENHAUER: Any other Board
9 questions?

10 MR. SELFRIDGE: I just want to spend a
11 minute on that sheet 11 just to understand it a
12 little better. So the 8 foot 6 in to the right
13 of the elevator shaft is you're by right height
14 and then the 10 feet to the left of it is what?

15 MR. COLBERT: If you go back to the
16 previous page the area in blue is the part that
17 would have to stick up 10 feet and that has some
18 mechanical equipment in it for the office
19 building.

20 MR. SELFRIDGE: Okay so that's your
21 mechanical, and that's a foot and a half over the
22 by right. And then 17 foot which I think is the

1 big one which is 8.5 what does that represent?

2 MR. COLBERT: That's just the area over
3 the elevator shaft itself it's about 90 square
4 feet so it's about 7.5% of the total penthouse
5 area.

6 MR. SELFRIDGE: So that's the area over
7 the elevator.

8 MR. COLBERT: Correct, yeah that's the
9 beige colored area here is the highest point.

10 MR. SELFRIDGE: And then to the
11 chairpersons question if you removed the roof
12 deck would your elevator, would the area over the
13 elevator shaft still have to go that high
14 regardless of whether you have roof deck or not?

15 MR. COLBERT: It would not.

16 MR. SELFRIDGE: And how high would that
17 be without, would that be back to the 10 foot?
18 The foot and half over that you see at the
19 mechanical room, how high would it be?

20 MR. COLBERT: Exactly it would probably
21 make the whole thing would be 10 feet.

22 MR. SELFRIDGE: So the whole thing would

1 be 10 feet.

2 MR. COLBERT: Yeah.

3 CHAIRPERSON MOLDENHAUER: Am I correct,
4 just to kind of jump in here, then there would be
5 no need to have relief from 411 is that correct?

6 MR. FREEMAN: You'd still have relief
7 because the screen wall is 12 feet, so you'd
8 still have...

9 CHAIRPERSON MOLDENHAUER: Can you show
10 that to me on the diagram where the screen wall
11 is?

12 MR. FREEMAN: It's the area in green it's
13 hard to see on the drawing.

14 CHAIRPERSON MOLDENHAUER: Our copies are
15 color coded so that's a little easier. And is
16 that a requirement for the existing cooling
17 towers, can you go through that and explain that
18 to me?

19 MR. COLBERT: Yep the cooling tower and
20 the emergency generator are required to be
21 screened.

22 CHAIRPERSON MOLDENHAUER: By a certain

1 height is that...

2 MR. COLBERT: Well it's determined by the
3 height of the equipment.

4 CHAIRPERSON MOLDENHAUER: And how high is
5 the equipment?

6 MR. COLBERT: its 12 feet.

7 CHAIRPERSON MOLDENHAUER: So it is 12
8 feet. And there are no other options for a 10
9 foot cooling tower?

10 MR. COLBERT: No actually we spend
11 considerable energy getting it down to 12 feet
12 because a lot of the cooling towers that are
13 available commercially are 13 or 14 feet high so
14 this actually required some significant work to
15 get is lower.

16 MR. SELFRIDGE: So just to follow up with
17 the Chairperson here, so then what we're looking
18 at really is, what we're hearing is that it's 87
19 feet is really your minimum at this point, is
20 that the finished height of the cooling tower I
21 don't see that here?

22 MR. COLBERT: Okay, 85 is the top of the

1 mechanical room.

2 MR. SELFRIDGE: And then 2 feet for the
3 cooling tower?

4 MR. COLBERT: Yes.

5 MR. SELFRIDGE: So 87 is the top of the
6 cooling tower. The way that it's shown
7 ultimately 92 feet is the top of the penthouse as
8 drawn?

9 MR. COLBERT: That's correct.

10 MR. SELFRIDGE: Okay that's very helpful.

11 MR. HINKLE: What kind of materials are
12 being proposed for the penthouse?

13 MR. COLBERT: Metal panels.

14 MR. HINKLE: Metal panels, so they match
15 something that's being used on the façade?

16 MR. COLBERT: Exactly.

17 MR. SELFRIDGE: These drawings were very
18 informative so thank you, I guess going to, I'm
19 just going to work my way up, 14, 15, some of the
20 massing diagrams, I don't remember what page it
21 was, 17 maybe? So where's the Matrix in relation
22 to his project?

1 MR. COLBERT: The Matrix is here, yeah
2 the Matrix actually looks like 3 buildings this
3 is a historic structure and then we put in a new
4 building here and a new building here and then
5 they're connected over the top.

6 MR. SELFRIDGE: And you were the
7 architect on that right?

8 MR. COLBERT: That's correct.

9 MR. SELFRIDGE: So you may know how tall
10 is that building do you recall?

11 MR. COLBERT: It's probably about 70 but
12 I don't have that exact number.

13 MR. SELFRIDGE: Maybe if the condominium
14 owners are here they'll be able to speak to that.

15 MR. COLBERT: One thing I would like to
16 say about that is that when we took that through
17 the Historic Preservation Review Board the
18 statement that was made by the Board Members and
19 historic staff was that their vision for this
20 block was that because of the fact that the
21 Matrix butted up against a relatively smaller
22 building facing the street that they envision the

1 block as kind of having, starting off with lower
2 buildings on the corner and having a crescendo a
3 taller building in the middle in order to achieve
4 the height limit so that's why this one, the
5 height wasn't permitted to be as high as what was
6 approved for our building for the Historic Review
7 Board.

8 MR. SELFRIDGE: Okay thank you.

9 CHAIRPERSON MOLDENHAUER: Can you walk me
10 through the court relief that's being requested?

11 MR. COLBERT: Yes actually this drawing
12 number 18 is probably as good a place as any to
13 point that out. I had talked just briefly about
14 the desire to kind of break down the massing of
15 the façade and then created this zinc element
16 that's kind of like a smaller building within a
17 larger façade, in order to help articulate that
18 there's a 1.5 setback from the north side and
19 that set back is really our non-conforming court
20 and it's really just an architectural
21 articulation of the top floor to give it a nicer
22 scale, and there are a lot of historic precedence

1 for having a top floor that's either a mansard
2 roof or slightly set back.

3 MR. HINKLE: And that's in the response
4 to the Historic Preservation Review Board?

5 MR. COLBERT: That's correct, they
6 directed us to take that step and we worked with
7 them to achieve that.

8 CHAIRPERSON MOLDENHAUER: Is there a
9 drawing set that actually would show that, I see
10 it on; it's kind of easier to see on page 19...

11 MR. FREEMAN: Sheet 14 Madam Chair is
12 probably the best drawing that calls out that
13 area, it's really, it just occurs at the highest
14 level, the sixth floor.

15 MR. COLBERT: Right it's just right here
16 on sheet 14 it's only in one story and it's only
17 a foot and a half wide, so we're permitted as a
18 matter of right to build from zoning perspective
19 to bring the building all the way to the property
20 line but we're just setting it back a foot and a
21 half and that's creating a non-conformity.

22 CHAIRPERSON MOLDENHAUER: Thank you I

1 have no other questions, any other Board Members?

2 Seeing none, if you have another witness?

3 MR. FREEMAN: I actually have a couple of
4 follow up questions for our architect if you
5 don't mind. Just going back to the roof plan on
6 sheet 10 and I know Eric mentioned that the 17
7 foot high portion is 90 square feet, Eric could
8 you just, and we'll do it 3 different ways, for
9 the orange portion of could you just describe the
10 setbacks of that from each of the building edges?

11 MR. COLBERT: Yes this highest point is
12 about 50 feet 9 ¼ from the rear property line and
13 then to the north side is about 30 feet. I don't
14 have that exact number right here but I would say
15 maybe somewhere between over 25 feet from the
16 north edge of that penthouse to the property
17 line.

18 MR. FREEMAN: And what about from 14th
19 Street?

20 MR. COLBERT: From 14th Street it's about
21 44 feet from the property line.

22 MR. FREEMAN: So based on your experience

1 and expertise would anyone ever really see that
2 from the ground level?

3 MR. COLBERT: No.

4 MR. FREEMAN: Okay, with respect to the
5 10 foot high mechanical room we're not asking for
6 any relief from that from the setback
7 requirements are we?

8 MR. COLBERT: Not one of the components
9 of the penthouse needs relief from the setback
10 requirements?

11 MR. FREEMAN: And that's also you can
12 clarify what the plans show, how far as that set
13 back from the property lines?

14 MR. COLBERT: The mechanical the 10 foot
15 part is set back a little over 35 feet from the
16 going to the east property line and then going to
17 the north it's about a little over 12 feet
18 setback.

19 MR. FREEMAN: Did you say from 14th
20 Street?

21 MR. COLBERT: No I'm sorry from the north
22 property line it's setback a little over 12 feet

1 and then from the 14th Street it's setback a
2 little over 42 feet it's about almost 43 feet.

3 MR. FREEMAN: And again based on all
4 setbacks would you see that from either 14th
5 Street or Kingman Place?

6 MR. COLBERT: No, a pedestrian would not
7 see it.

8 MR. FREEMAN: Just another quick
9 question, you said the orange portion is
10 approximately 90 square feet that 90 square feet
11 constitutes about what percentage of the overall
12 roof structure?

13 MR. COLBERT: It's 7.5%.

14 MR. FREEMAN: Right, so it's a very small
15 percentage of the roof structure, right?

16 MR. COLBERT: That's right.

17 MR. FREEMAN: We talked a little bit
18 about whether or not you'd need that overrun,
19 could you just talk about why you actually need
20 the elevator to go to the roof other than the
21 roof, I know we talked about the roof deck but
22 are there other reasons you need the elevator to

1 go to the roof such as maintenance or things of
2 that nature?

3 MR. COLBERT: That's an excellent point
4 that having that there in addition providing a
5 very valuable amenity for the building will make
6 a dramatically easier to service the equipment
7 that's going to be located in the machine room
8 and then the emergency generator and the cooling
9 tower for service people to get up and down with
10 the elevator is going to be an enormous ability
11 as opposed to having to go through a roof hatch
12 or just walk up the stairs with heavy equipment.

13 MR. FREEMAN: And just general in your
14 experience recent projects in the city would you
15 say 100% of the buildings you've designed have an
16 elevator that go to the roof would you say or
17 some other percentage?

18 MR. COLBERT: I would just say the vast
19 majority, and particularly with an office
20 building.

21 MR. FREEMAN: On sheet 11, and we talked
22 about this a little bit, I just want to make sure

1 it's super clear, it's a little hard for me to
2 see it from this angle but with respect to the
3 rear yard set back could you clarify the amount
4 of relief that we're asking for, for the rear
5 yard special exception in terms of distance?

6 MR. COLBERT: Yes the area here is 3.5
7 feet.

8 MR. FREEMAN: Right, I just wanted to
9 make sure that was clear. On sheet 14 and this
10 goes to the Chair asked some questions about
11 this. The court as proposed is 1.5 feet, that's
12 what you said, the requirement is 12 feet, so in
13 order to meet the requirement you'd have to set
14 it back an additional 10.5 feet so could you just
15 describe some of the practical difficulties
16 associated with setting that back an additional
17 10.5 feet?

18 MR. COLBERT: Well I think the best way I
19 can rationalize that is that our intention was
20 not to do a setback at all it was really just an
21 esthetic manipulation of the façade and setting
22 this back 12 feet would not accomplish the goal

1 that we were trying to achieve of the massing of
2 the building, plus obviously you'd lose a lot of
3 valuable square footage but esthetically it
4 wasn't something that was deemed to be a
5 desirable.

6 MR. FREEMAN: And do you think that's
7 something that would affect the symmetry, balance
8 and design of the building in a positive or
9 negative way?

10 MR. COLBERT: I think it would be very
11 awkward and unattractive to just have an
12 arbitrary line at 12 feet.

13 MR. FREEMAN: That court is from the
14 northern property, on the northern property line,
15 what's the impact if any in your opinion of that
16 court relief to the properties to the north?

17 MR. COLBERT: I would say no impact.

18 MR. FREEMAN: On sheet 20 I think I heard
19 you say I just want to make sure it's clear, did
20 you say that the relief we're requesting from the
21 rear yard requirements and from the roof
22 structure requirements will not yield any

1 increased shadows on adjacent properties?

2 MR. COLBERT: I did say that, that the
3 basic elemental roof point at which the edge of
4 the light in the middle of the summer, you know,
5 in the evening would be the same whether the
6 building was a matter of right or whether the
7 granted rear yard relief occurred, because this
8 point would be the same and we're not asking for
9 additional setback in the rear yard until we get
10 a story below that.

11 MR. FREEMAN: And then your drawing shows
12 two people, I guess, looking to the east as I
13 think we all know the standard for the rear yard
14 relief is distance and angle of site line so that
15 is the standard set forth in the Zoning
16 Regulations for rear yard, so would you say does
17 the requested 3.5 feet have any impact whatsoever
18 on the angle or distance of penetration of site
19 lines?

20 MR. COLBERT: No as you can see the
21 representation of the two people looking from the
22 two points, one would be matter of right, the

1 other one as proposed with the relief requested
2 and the angle is virtually the same in either
3 case.

4 MR. FREEMAN: Okay and on sheet 21 your
5 drawing where you show the possibility of getting
6 6 spaces, so if 101 parking spaces are required
7 if you were to do that math approximately how
8 many levels of parking would you have to provide?
9 That's what 10 or 15 levels?

10 MR. COLBERT: Right.

11 MR. FREEMAN: In your experience have you
12 ever designed any building that had that many
13 levels of parking?

14 MR. COLBERT: No it wouldn't be possible
15 particularly in a small building like this. The
16 other thing I'd like to point out is that the
17 zoning permits a 14 foot wide drive down to the
18 parking but the reality is that you can't really
19 pass two cars on that so even though it's legal
20 to do this it's not a practical solution because
21 the ramp it would not be wide enough.

22 MR. FREEMAN: And you also talk about the

1 fact that you would lose a significant portion of
2 retail on the ground floor level, I know you've
3 worked on a lot of projects in the ARTS Overlay
4 would you say that the loss of that resale is
5 consistent or inconsistent with the goals of the
6 ARTS Overlay and how do you think that would
7 impact our project?

8 MR. COLBERT: Actually, interesting my
9 firm did the Room and Board which is further up
10 on 14th Street and that building is about the same
11 size as the addition that we're proposing and
12 they have no parking spaces and they seem to
13 function extremely well there. So even though
14 our parking that we're proposing is less than the
15 requirement I think that given the nature of the
16 development of this neighborhood that it's an
17 appropriate amount of parking but as you pointed
18 out correctly the additional 800 square feet that
19 would be carved out of the first floor space
20 would really have a, you know, make it, it's
21 already kind of somewhat marginal in terms of
22 leasing and I think it would put it in a category

1 that would really make it impossible.

2 MR. FREEMAN: And just to flip back I'm
3 sorry to kind of run back and forth between
4 sheets but on sheet 18 there was some questions
5 about, we talked about dimensions in general and
6 we'll hear from a representative from the Matrix
7 Condo Association but, and we'll have some other
8 exhibits as well, but approximately how far is
9 the highest portion of our roof structure that
10 measures 17 feet, approximately how far is that
11 from the Matrix Building?

12 MR. COLBERT: I would say that the
13 elevator penthouse to the center of the roof deck
14 is probably at least 60 feet.

15 MR. FREEMAN: Okay and if that building's
16 lower and you're standing on their roof does that
17 mean you'd have to be looking up to look at our
18 roof structures?

19 MR. COLBERT: Yes.

20 MR. FREEMAN: And from that distance with
21 that angle what would be the real impact of that
22 view if any?

1 MR. COLBERT: Well as the designer of
2 this building by intention was that that views
3 that were really important were the ones facing
4 out toward the west because you can see the
5 dimension of the building it's a rectangle but
6 the longer dimension is running north south
7 parallel to 14th Street so the intention for these
8 roof decks was really more than north and south,
9 I mean the east and west views not the north and
10 south because we already have a structure that's
11 there on the north and the south ends of the roof
12 deck.

13 MR. FREEMAN: So is the roof structure as
14 proposed on our building impacting, in your
15 opinion, and based on having designed the Matrix
16 impacting any views to the south of our building?

17 MR. COLBERT: I would say, actually
18 Georgio he was an art teacher and taught
19 architects and made an interesting point in terms
20 of perspective, if you held you finger up like
21 this, the size of your finger held at an arms
22 distance would be the same as the massing of that

1 apartment building when your standing and looking
2 at it from the middle of the Matrix so that you
3 could mask that penthouse with your finger, and
4 that's how minimal impact it would have on your
5 view.

6 MR. FREEMAN: So in a lay person's
7 perspective it would be very small.

8 MR. COLBERT: Right.

9 MR. FREEMAN: I think that's it for
10 Eric right now we will hopefully have some time
11 after the Matrix presentation to submit some
12 additional stuff in response to their
13 presentation but I don't want to presuppose what
14 they're going to say.

15 CHAIRPERSON MOLDENHAUER: Okay do you
16 have any other witnesses?

17 MR. FREEMAN: We have one last witness,
18 Irwin who's our traffic consultant who will...

19 CHAIRPERSON MOLDENHAUER: Before we hear
20 from him what we're going to do is we're going to
21 take a quick 5 minute break, thank you.

22 BREAK

1 CHAIRPERSON MOLDENHAUER: Okay I think if
2 everyone's ready we will reconvene.

3 MR. MOY: Madam Chair before you continue
4 with testimony I just wanted to know for the
5 record that the Applicant's reference sheet
6 number 21, we don't have a copy of that in our
7 record.

8 CHAIRPERSON MOLDENHAUER: Will we get a
9 copy of that today or tomorrow?

10 MR. FREEMAN: We will be submitting a
11 copy of many documents for your record so you
12 will definitely have sheet 21.

13 CHAIRPERSON MOLDENHAUER: Okay fabulous,
14 I believe there were some additional questions
15 for Mr. Colbert so before we go on to the next
16 witness I think we'll just follow up with a
17 couple of last minute questions.

18 MR. FREEMAN: Mr. Colbert we talked a
19 little bit about angle of site lines and you gave
20 us a finger example, could you just point it on
21 the sheets just clarify if you were standing on
22 the roof of the Matrix what portion of the

1 proposed structure you would see and some of the
2 visual impediments up there?

3 MR. COLBERT: Yes thank you for bringing
4 up that point, I just drew a line from someone
5 standing on the roof deck on the Matrix looking
6 up to the higher point of our penthouse, if you
7 look at drawing number 14 you can see that the
8 northern most point of our penthouse if you draw
9 a site line from the Matrix over it, there's
10 maybe only a couple of feet like a very small
11 triangle that's at the most a couple feet high of
12 the higher point that we're asking for on the
13 penthouse that would even be visible. I had said
14 that that was 60 feet back but actually a lot of
15 the roof deck which is very large on the Matrix
16 is significantly further away than that, thank
17 you.

18 MR. FREEMAN: That was just the
19 additional testimony I wanted to make sure we
20 had, if you're ready we can now proceed.

21 CHAIRPERSON MOLDENHAUER: I think the
22 Board actually also has a couple of questions.

1 MR. SELFRIDGE: Mr. Colbert just on, I
2 pulled out your section drawing, do you know
3 which number that is?

4 MR. COLBERT: It's 11 probably.

5 MR. SELFRIDGE: Okay, yeah, what are the
6 heights of the floors do you know off the top of
7 your head.

8 MR. COLBERT: The upper floors are 11ft.
9 4in. floor to floor.

10 MR. SELFRIDGE: When you say the upper
11 floors do you mean 2 through 6 or 5 and 6, what
12 do you mean by the upper floors?

13 MR. COLBERT: Umm, 4, 5, and 6, because
14 the other floors are designed to line up with the
15 existing building, floors 2 and 3 and 1.

16 MR. SELFRIDGE: And then is there a
17 minimum height that floor 1 need to be in the
18 ARTS Overlay?

19 MR. COLBERT: I'm not aware of any
20 restriction like that, I think that they have
21 street walls have to go out to the property line,
22 a certain percentage of the street walls, but

1 from a practical perspective you need to get
2 about 14 feet in order to give it good lease-
3 ability, 14 clear.

4 MR. SELFRIDGE: For good retail?

5 MR. COLBERT: Yeah, so we have a little
6 more than that, we have about 16 I think.

7 MR. SELFRIDGE: And then what would the
8 2nd and 3rd floor be then generally.

9 MR. COLBERT: Yeah, I think our second
10 floor is like 13 and then after that we go closer
11 to a little over 11 feet. So actually our new 3rd
12 floor would also be 11ft 4in.

13 MR. SELFRIDGE: So 3 through 6 are 11ft
14 4in?

15 MR. COLBERT: Yes.

16 MR. SELFRIDGE: Okay thanks you very much,
17 that's all I have Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Thank you, then
19 we can move onto the next witness.

20 MR. ANDRES: Good morning Madam Chair,
21 Members of the Board, my name is Irwin Andres,
22 I'm a Principle for Grove Slade Associates, as

1 part of our scope for this project I included
2 identifying the parking requirements for the
3 project as well as the traffic and circulation
4 aspects of this as well as coordination with
5 DDOT. With respect to the access and circulation
6 it's fairly simple, the existing property has
7 currently has a curb cut serving a surface
8 parking lot that the new addition would eliminate
9 as part of that new addition the existing curb
10 cut on 14th Street would be removed and obviously
11 the surface parking would be removed with it. As
12 part of the proposed circulation plan we've
13 identified certain features that are accessed
14 through the alley which include the car elevator
15 which allows for the access to the proposed
16 parking, and in addition to the car elevator
17 we're also proposing a 30 foot by 12 foot loading
18 space that will allow for the loading to occur
19 efficiently and out of the existing alley that
20 serves the rear of the property. The proposed
21 car elevator which will provide access to a
22 minimum of 12 parking spaces will allow for

1 efficient movement of the vehicles into and out
2 of the proposed parking supply. The car elevator
3 operates roughly at a rate of 1.5 feet per second
4 so having the car elevator go up and down, that
5 movement, that full movement of bringing a car
6 down and then the elevator going back up, it
7 would take less than 40 seconds we've estimated
8 it to be in about the range of 30 to 35 seconds.
9 So given the proposed parking supply we believe
10 that the car elevator operation to serve that
11 parking supply is more than adequate, we believe
12 that there's plenty of capacity there to allow
13 for that, in addition to that however there is a
14 setback of approximately 8.5 feet from the face
15 of the car elevator to the alley so in the rare
16 occasion that two cars show up for the office use
17 in that event a car could actually wait in that 8
18 foot set back area which is outside of the alley
19 and on private property while the other car is
20 being moved up or down in the proposed car
21 elevator. Now with respect to the loading
22 activity, the loading conversation is

1 conversation we've had with DDOT that took some
2 coordination, as proposed our loading system will
3 consist of the delivery vehicles entering from Q
4 Street heading south bound in the 10 foot alley
5 and pulling into, I guess head in to the proposed
6 loading dock area and then positioning themselves
7 so that the vehicle sits within the loading area
8 but outside of the private alley. In
9 supplementing our application we've submitted a
10 loading management plan that identifies the
11 elements of how the loading will be managed
12 especially since in our coordination with DDOT
13 they've identified that the DPW trash trucks
14 occasionally have issues going through that alley
15 because of the width so our management plan has
16 been identified and developed to help coordinate
17 the truck activity as well as the DPW trash
18 activity. The major parking relief that we are
19 seeking is one of the major issues that we've
20 been brought on board to address and as I've
21 spoken to this Board previously the District of
22 Department of Transportation as well as the

1 Office of Planning have identified parking
2 initiatives to basically reduce traffic and
3 parking (inaudible) throughout the District. In
4 a general sense their view and not to speak for
5 them but their view generally is that when
6 possible to reduce parking and traffic demand,
7 you should reduce parking supply. As a traffic
8 engineer we in some respects believe that it's
9 true only if there are other modes for that
10 parking demand to shift to. Our difficulty with
11 that objective sometimes is that you limit the
12 parking supply and then you don't provide patrons
13 other modes to get there and then what you'll
14 have is parking spilling into neighborhoods. The
15 situation that we have with this project is
16 extremely unique and is actually well suited for
17 DDOTs and Office of Planning's objectives because
18 the goal here is to shift any parking and traffic
19 demand to the alternative modes that are best
20 served by the existing neighborhood. This area
21 in this neighborhood in the District is probably
22 one of the best served neighborhoods with respect

1 to alternative modes, we've detailed it in our
2 traffic report but the alternative modes that are
3 prevalent in this neighborhood just to break them
4 down by mode is transit, the existing transit
5 service consists of a circulator bus on 14th
6 Street, and express bus on 16th Street in addition
7 to those 2 bus lines there are 8 other additional
8 bus lines within a block and a half. With
9 respect to walking modes there's obviously a
10 significant concentration of residential
11 neighborhoods in the area that allow for
12 significant pedestrian activity to occur for
13 people who decide you know what instead of
14 working out of my house I'll rent some office
15 space and this is a good alternative for them.
16 In addition to that there's the Metro Stations,
17 the site is within walking distance of 3
18 Metrorail stations on different lines, there's
19 the U Street Cardoso Station which is
20 approximately 5 blocks to the north, DuPont
21 Circle and the Redline about 5 blocks to the west
22 and the McPherson Square Stop which serves the

1 blue and orange line approximately 6 to 7 blocks
2 to the south. So not only do you have the bus
3 lines you have good pedestrian access and
4 circulation, you have good Metrorail service and
5 in addition to that there's also good biking
6 facilities within a one block radius of the site
7 there are actually three capital bike sharing
8 stations which provide access up to probably a
9 range of about 45 capital bike share bikes.
10 Those bike share stations are actually
11 facilitated with the numerous bike lanes both on
12 14th Street, bike lanes on 15th Street and there
13 are bike lanes on Q and R Street also. So with
14 the bike facilities that are currently existing
15 in the public realm as well as the bike
16 facilities that we're providing in the building
17 that include 25 bike parking spaces both in front
18 of the building and under the building as well as
19 the bike showers we believe that if there's a way
20 to emphasize or encourage additional multi-
21 modality within this part of the District, this
22 is the site and this is the project to do that.

1 We've also supplemented our plan with a
2 commitment to transportation demand management
3 plan that identifies several incentives that
4 includes transit incentives, the dedication and
5 designation of a transportation services
6 coordinator that will identify and work with the
7 tenants to see how those tenants can use
8 alternative modes and then also a transportation
9 kiosk that will identify bus routes and bus
10 schedules and things of that nature. So given
11 the complementing benefits and characteristics of
12 the neighborhood and project itself we believe
13 that the proposed minimum parking supply of a
14 minimum 12 parking spaces is adequate. Now we
15 understand that potentially that there might be
16 times where there are visitors to the building
17 that may need to drive and we understand that so
18 what we did to supplement our study was to
19 perform an on street parking study to see what
20 the availability is of parking. The benefit of
21 the office use which Mr. Furioso had identified
22 is that the office use compliments the other

1 uses, the other residential uses in the area in
2 that it helps maximize the available parking
3 that's on street. It's been our experience that
4 the major on street parking demand occurs in the
5 evenings for several reasons, one a lot of the
6 residents who tend to drive get home in the
7 evenings and then there's also the restaurants
8 and bars in the area that also drive that demand,
9 so the competition for on street parking in the
10 day time is actually much less so that there's
11 the opportunity for this development to take
12 advantage of those on street parking flows, so
13 that in the event somebody does come to visit the
14 office building and they need parking they can
15 find on street parking especially since there's
16 metered parking on 14th Street, then there's also
17 two nearby off street parking lots that are
18 operated by Colonial Parking that provide
19 actually overflow parking for Studio Theater and
20 some of the other restaurant and bar uses in the
21 evening, so that capacity that's not taken up
22 during the day can be used by those visitors. So

1 in essence we've identified all the different
2 elements and all the different modes that lead to
3 the sufficient capacity and adequacy of the
4 proposed parking supply. With that I'm available
5 for questions.

6 MR. SELFRIDGE: Thank you Mr. Andres, did
7 you participate in any meetings with the
8 community or the ANC to get a read of peoples
9 concern about parking impact, or do you have any
10 knowledge of the neighborhood reaction or feeling
11 about that?

12 MR. ANDRES: Yeah well it's, you know we,
13 I have personally attended some of the ANC
14 development meetings as well as the ANC meetings
15 that were associated with our development and I
16 live probably 8 blocks to the south so I'm
17 familiar with this area and know actually I'm
18 familiar with the demand the peak demand relative
19 to the evenings with respect to the bars and
20 restaurants in that area, so I am familiar with
21 that and we've also supplemented that with our
22 parking study.

1 MR. SELFRIDGE: So do you care to share
2 the reactions?

3 MR. ANDRES: The reactions at the ANC
4 development meeting they did identify that they
5 realize that yes that on street parking
6 competition does take place primarily in the
7 evenings so that there is opportunities there or
8 capacity there for the infill of some of the on
9 street parking competition during the daytime.
10 It's also been our, some of the other reactions
11 we received were issues relative to the vehicles
12 parking in and out of the alley in the rear and
13 given the fact that we're providing such a low
14 amount of parking supply in the building that the
15 actual flows associated with that parking
16 compared to some of the other users in the
17 building including the Matrix which has I believe
18 an arrangement of about 30 parking spaces, we're
19 providing much less than that, that the flows
20 associated with our development can be handled by
21 the car elevator as well as the fact that we do
22 have an off street loading area or off street

1 waiting area in the event that the car elevator
2 is being used.

3 MR. SELFRIDGE: So in the meetings that
4 you went to very few people were concerned about
5 the parking impact during the day because they
6 felt there was enough capacity to handle any
7 overflow parking, is that?

8 MR. ANDRES: I wouldn't characterize that
9 statement as what everybody whole heartedly
10 believed in, you know they understood the benefit
11 of the project and understood that in this part
12 of town if you chose to live in Logan's Circle
13 you understand that there are existing parking
14 issues that will more than likely always take
15 place but you still decide to chose to live in
16 Logan's Circle. In addition to that the
17 residential streets surrounding the site are
18 protected by residential, RPP (Residential Permit
19 Parking) so that as an office user there's a good
20 chance that your not going to move your car every
21 two hours. As an office user if you decide to
22 drive chances are, well first of all chances are

1 if you chose to lease space in this office
2 building you will chose not to drive, you will
3 chose to take alternative modes. In the event
4 that somebody comes to visit you and needs to
5 drive there are opportunities on 14th Street with
6 meter parking and then there are opportunities in
7 some of the off street parking facilities and
8 parking garages that charge market rate, so you
9 do have options to park off our residential
10 permit parking streets.

11 MR. FREEMAN: If Mr. Furioso could add
12 about his community comments?

13 MR. FURIOSO: Meeting with the
14 neighborhood and having gone to all the meetings
15 I think there were some that really would like me
16 to have no parking, I think that was really more
17 the comment that stood out to me was that with
18 all the issues that are associated with the 10
19 foot alley that they would have appreciated to
20 have no parking come to the office building, that
21 was really more the overriding amazing comment to
22 me, I just wanted to put that in.

1 MR. SELFRIDGE: I think that's the way
2 things are going so I'm certainly in support of
3 that but at the same time I think there's usually
4 an impact when you add density so I think if you
5 want to move that way as a city its still
6 important to recognize that there are people who
7 are potentially impacted so we need to be
8 sensitive to that. You said there were two
9 Colonial Lots nearby, how close are they?

10 MR. ANDRES: Yes, one is a block away and
11 the other one is a block and a half to two blocks
12 away.

13 MR. SELFRIDGE: What time do they open
14 in the morning?

15 MR. ANDRES: They open at 9am; no I'm
16 sorry I believe its 7am.

17 MR. SELFRIDGE: At 7am and are they
18 usually full or is there a capacity that takes
19 from the overflow?

20 MR. ANDRES: There is capacity it's an on
21 demand parking, parking lot, so you pull up and
22 they normally have a space for you, in the event

1 that if it's that early and they do have a sign
2 that says it's full then obviously just like any
3 other parking lot you go to the next one.

4 MR. SELFRIDGE: Sure, thank you.

5 CHAIRPERSON MOLDENHAUER: Just a follow
6 up question, they don't have a monthly permit
7 parking at any of those locations?

8 MR. ANDRES: That option is available if
9 somebody chooses to use those facilities for
10 that, in that manner.

11 CHAIRPERSON MOLDENHAUER: So they do have
12 that, can you I'm looking at the diagram and I
13 see the access for the loading and where the
14 truck access from the alley but I don't seem to
15 conceptualize where there is the pull off for an
16 additional vehicle in the alley way, to me it
17 looked like you would have to pull up and then
18 back into the car elevator, is that correct or
19 can you just show that to me?

20 MR. ANDRES: Absolutely if you look at
21 page 14 of our traffic report, if you notice
22 there is an area that's 8ft 6in in width that

1 there's a looks like a little stair tower there,
2 once you get past that stair tower there is an
3 area there that you can wait in order for the car
4 elevator to be free in the event that two cars
5 arrive at the same time. Now what we've
6 identified for a 12 car parking garage that's
7 designated there's no competition for it, each
8 spot is spoken for. In a 12 space garage of that
9 size that garage will fill up roughly between 7am
10 and 9:30 so you have a 2 ½ hour period which is
11 150 minutes in order to fill up 12 parking spaces
12 so it comes out to roughly 1 car every 10 minutes
13 so even if one car comes every 3 or 4 minutes
14 there's still enough time with the car elevator
15 processing to accommodate that flow with nobody
16 waiting.

17 CHAIRPERSON MOLDENHAUER: But that would
18 be if someone came from P Street, not if somebody
19 came from Q Street, if they came from Q Street
20 they'd have to back in.

21 MR. ANDRES: Yes, well we've identified a
22 circulation system that would work for the users

1 of the garage.

2 CHAIRPERSON MOLDENHAUER: Is that part of
3 your additional supplemental plan that you
4 presented to DDOT or no?

5 MR. ANDRES: No what we submitted as a
6 plan for DDOT is our loading management plan
7 which doesn't include that.

8 MR. FREEMAN: Are you referring to trucks
9 or are you referring to vehicles, like cars?

10 CHAIRPERSON MOLDENHAUER: I was referring
11 to vehicles, cars.

12 MR. FREEMAN: So cars, so the load and
13 management plan that was submitted to DDOT just
14 applies to the trucks but on sheet 4 of the plans
15 Eric is probably a little better of a sheet
16 because that stairwell was pulled back so this is
17 slightly older version of the site plan so if you
18 were, and Irwin can confirm this but the alley is
19 north south, so you could theoretically travel
20 south and turn right or you could travel north
21 and turn left. A car would not have to back out.

22 MR. COLBERT: This is an important point

1 because the biggest concern that we received from
2 the community during the ANC meetings was people
3 that lived on the other side of the alley at
4 Kingman Place and originally the stairway
5 actually went all the way to the property line in
6 the back, there's a stair that's coming up from
7 the garage, and in response to some of their
8 concerns we actually pulled this back four feet
9 than it was originally so that's one change that
10 we made in response to those requests.

11 MR. FREEMAN: And just identify on the
12 plan the additional area that Irwin was talking
13 about that a car could pull into I think that it
14 measures 7ft.

15 MR. COLBERT: Yeah it's right in this
16 area. The other thing is that the garage is on
17 the other side or set back a couple of feet from
18 the property line too so that helps a little bit.

19 CHAIRPERSON MOLDENHAUER: I don't have
20 any further questions; do any Board members, any
21 additional witnesses from the Applicant?

22 MR. FREEMAN: That concludes our direct

1 presentation Madam Chair, we'll just respectfully
2 ask to reserve some time at the end for rebuttal.

3 CHAIRPERSON MOLDENHAUER: Actually I've
4 got a quick question for you Mr. Freeman. In
5 general based on the actual visual esthetics I
6 really don't have an issue with the court relief
7 but I was looking at it and it's a variance
8 standard can you tell me how you are relating the
9 uniqueness of the property to that relief that's
10 being requested?

11 MR. FREEMAN: The uniqueness of the
12 property as related to the court with standard
13 and as the Board has found on this site and other
14 cases that the existence of a historic structure
15 constitutes a uniqueness that can lead to
16 practical difficulty, so in this case the
17 confluence of a number of factors, the location
18 of the existing building on the site, the fact
19 that you have to go to HPRB and their design
20 mandates are what created the need for the court,
21 with such a small area and Eric can tell you, we
22 said Eric come on pull it 1.5 feet so that we can

1 get rid of this court relief because it's de
2 minimis but Eric was adamant that that's
3 something he doesn't think would get approved and
4 he's also adamant that we can't set it back an
5 additional 10.5 feet in order to meet the court
6 width requirement because you'd lose over 800
7 square feet of that 6th floor level, it definitely
8 impact the location of perhaps the columns and
9 the stair tower and how that floor is configured
10 and if you want have consistent floor plates.
11 The other costs Eric didn't mention this but he
12 can now associated with how mechanical, plumbing,
13 electric equipment is stacked, all of those
14 issues would be impacted if you have to set it
15 back the additional 10.5 feet.

16 CHAIRPERSON MOLDENHAUER: No other
17 questions from the Board so then at this point in
18 time we'll look to the audience for individuals
19 and associations in support or in opposition of
20 the case, anybody who wishes to testify can come
21 forward and take a seat. What I'm going to do is
22 I'm going to start off here on my left and we'll

1 work our way to the right and if you can
2 introduce yourself, is anybody just by a show of
3 hands here as an association? Okay so you'll
4 receive 5 minutes, everybody else will receive 3
5 minutes for individuals.

6 MR. RAPPOLT: Madam Chairman I'm here
7 with the Matrix Condominium Unit Owners
8 Association, I don't know if that qualifies me
9 for 5 minutes I don't think I'll need it but...

10 CHAIRPERSON MOLDENHAUER: It would
11 associations receive 5 minutes so if you're here
12 as a representative of the association you would
13 receive, associations and organizations receive 5
14 minutes versus 3 minutes, so we can put 5 minutes
15 on the clock, if you don't need it that's great,
16 if you do that's fine. So what we'll do is we'll
17 start please introduce yourself stating your name
18 and your home address and obviously you're
19 representing an organization the name of the
20 organization.

21 MR. RAPPOLT: I'm the Treasurer of the
22 Matrix Condo Unit Owners Association; my name is

1 Bill Rappolt I live at the condo 529 14th Street,
2 N.W. Washington, DC 20005. I'm here today.

3 MR. SELFRIDGE: Spell your last name.

4 MR. RAPPOLT: R-a-p-p-o-l-t, Rappolt.
5 I'm here today mostly because of a lack of
6 information, I feel as if the Applicant here
7 hasn't met their burden of proof, they need to
8 prove that they haven't adversely effected their
9 neighbors, Madam Chairman and the Board you've
10 isolated the issue perfectly what we're talking
11 about here is the elevator, we have no problem
12 with the fence in the back, we're not going to be
13 able to see it, that's 12 feet, we have no
14 problem with the 10 feet penthouse they've tried
15 to lower which is fantastic. We have the problem
16 with the elevator portion which is 8.5 feet above
17 the zoning guidelines. It's my understanding and
18 from the questions that you asked the architect
19 that this additional height is only because of
20 the terrace that they want to put in. He said it
21 can also be used for maintenance, it doesn't need
22 to be, they can have a stairway access, an

1 elevator certainly makes it easier but it's not
2 necessary. He also testified about the views
3 that the Matrix has on it's terrace, he said it
4 was built so that they could look west and east
5 which his not exactly true from living there,
6 while that might have been the design in reality
7 the west there's air conditioning units there,
8 it's kind of an eyesore you don't really look
9 west, if we could actually turn to page 3 of the
10 Staff report, I don't know if you have that in
11 front of you, I think this is like a Google Maps
12 image or something but it clearly shows the
13 Matrix Condo here on the left and the roof
14 terrace as you can see in the middle of the
15 building is this elevated observation deck it's
16 clearly facing east, there's also site lines from
17 that deck the south, that's where you see the
18 buildings around Franklin Square, that's where
19 you see the National City Church Steeple, that's
20 where you see the Washington Monument. The way
21 the site line is all the buildings downtown are
22 12 stories, so they're above our height so we

1 actually, it's not as if you look straight out
2 and you don't see the buildings, you see the
3 buildings and then those steeples, and Washington
4 Monument and all that come above those buildings.
5 So while the building itself might just block
6 that view it also the extra height has the
7 potential to block those other views. It maybe
8 the case that this doesn't block anything but the
9 point is I don't know. He said it's the width of
10 a finger or whatever, you know that's fascinating
11 that he has that opinion it's not based on
12 anything he wasn't even on top of the roof deck.
13 We contacted their attorney yesterday when we
14 realized that we had a problem, we let him know
15 about it ahead of time because I didn't want to
16 ambush him here. We also let the owner on top of
17 the roof deck to look, presumably he took some
18 pictures, I hope they're objective, I hope he
19 took them from on top of the observation deck and
20 not on the bottom floor. If he thinks that it
21 won't block that's also fascinating but he's not
22 the expert. They have an expert architect who

1 presumably is going to testify in this but he's
2 presented no evidence of it. He's also tired to
3 Ad hoc addition to his exhibits; slide 14 drew a
4 line to the edge of our building, that's not
5 evidence of anything. It's just my conclusion
6 here is that they haven't met their burden, so
7 what's missing here they don't know the height of
8 our building, they don't know the height of the
9 observation deck, they don't know the distance
10 from the elevator to the Matrix, they don't know
11 the distance from the elevator to the observation
12 deck and they haven't done any analysis of how
13 that elevator will effect our view of the skyline
14 facing south. That information shows that
15 nothings blocked then we're fine, we love this
16 project besides this. I mean it's a great
17 project, like he said it's great to have office
18 buildings in the neighborhood. The current
19 parking lot there is an eyesore, there's graffiti
20 on the walls there, and it will be great to have
21 a building there. But it's their burden to show
22 that they haven't adversely affected us.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much.

3 MR. WILDS: Good afternoon, I'm Tom
4 Wilds I live at 1516 Kingman Place, I'm a lay
5 person I don't know all the laws the legality of
6 building such a building but as a neighbor, I
7 guess first I want to thank the BZA for notice
8 and second I want to thank the developer who did
9 meet with us and move the staircase in a bit that
10 was a concession that I think all the neighbors
11 appreciate, with that said, I agree with the
12 gentleman on my right that one of the first
13 things I'd like to say is while you hold great
14 weight to the ANC's support of this project the
15 ANC doesn't represent us, the ANC did little to
16 nothing to inform us, they were ready to take a
17 vote without our input and it was because the
18 neighbors were angry that the developer met with
19 us, there was no reaching out to the neighborhood
20 to see where we were or what support we had. The
21 other issues, the height I'm concerned that the
22 gentleman spoke about that in the summer time at

1 5 o'clock that we wouldn't see the sun, I suspect
2 from what I was looking at that moment that's our
3 house, that's not our yard where we have gardens
4 and enjoy the outdoors so that will impact us if
5 that's correct. But most importantly it's the
6 parking, it's the alley and it's the elevator.
7 The parking right now, the parking lot serves in
8 the summer time at least 30 cars, they open up
9 the gate they sell parking spaces in the alley,
10 so we're not talking about 101 parking places
11 we're talking about 130 parking places. If you
12 go by our neighborhood anytime you'll often see
13 people parking in front of fire hydrants I know
14 that's illegal and that's a different issue and
15 maybe we should call the police, but the density
16 is overwhelming, there's no place to park hardly
17 ever. The alley is always congested, the
18 developer has kindly asked Posto Restaurant to
19 stop deliveries in the rear but that's only been
20 within the last couple of weeks. The alley is
21 often congested that you might have a loading
22 dock planned for this area but there's wide open

1 spaces now where trucks can come through and load
2 and unload but no, people park right in the
3 middle of the alley and often we all have to wait
4 for people to come and go, so the elevator, the
5 stairwell, the loading dock and they just
6 mentioned for the first time that I heard that
7 there would possibly be another restaurant in the
8 new building so this would just make it very
9 crazy. We have a very difficult time getting
10 into our garages now, if you looked at most of
11 our garages they're all dented up from even with
12 the set back the way it is up to a fence area
13 which I guess is like 15 or 20 feet so it's much
14 wider now than what's proposed. So bottom line
15 it's the parking, it's the height, it's the
16 elevator, it's the loading dock, it's all of it,
17 that while most of us if not all of us welcome
18 the idea of a building being there, no that its
19 inevitable and we would welcome another business
20 or apartments or whatever this space is overbuilt
21 and there just needs to be a different plan,
22 thank you.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much.

3 MR. WNUK: Good afternoon my name is
4 Joseph Wnuk; I live at 1514 Kingman Place
5 directly behind the proposed building. I just
6 want to state right off that it's not the
7 particular use of the building that is really a
8 problem for us it's, you know when we bought our
9 house we realized that there was going to be a
10 development behind our property and we actually
11 look forward to removing the lot and seeing a
12 building that would enhance the neighborhood.
13 However when we thought about a new building we
14 actually considered it within the constraints of
15 the existing Zoning Regulations, we never thought
16 that some of the issues that are now evolving
17 would have ever come up and particularly related
18 to off street parking. Now we see how the
19 potential of zoning being removed can increase
20 the building, become bloated and excessive and
21 possibly the reverse of what it's trying to do is
22 more of a detriment to the community. Our

1 buildings on Kingman Place now are Zones R-5-B
2 which is a high density residential zone, and the
3 potential for the two zones to be compatible is
4 there but the reality is that we're in the Logan
5 Circle Historic District which also limits our
6 buildings on Kingman place to 2 or 2 ½ stories
7 which is currently there. So the scale
8 difference between our buildings and those on 14th
9 Street are going to be excessive. I don't see in
10 the proposal that there's any relationship
11 between the two scales of the two zones. I think
12 it's important for you to understand that you as
13 the zoning, reacting to the zoning issue are to
14 maintain the quality of the neighborhood, the
15 relationships of the neighborhood, and this
16 should be something that you should be
17 considering. The reasons for these requests have
18 been expressed to us at several meetings as
19 being, the need being there because it was a way
20 that the developer could increase the potential
21 for his project, financial potential. I find it
22 unreasonable that he's already getting a benefit

1 in this Zone as an ARTS Overlay District of
2 getting a 2.0 FAR increase over what could have
3 ordinarily been there as a commercial building,
4 so automatically he's getting an increase, but he
5 is going further than that by asking for further
6 rear yard reductions, and height setbacks
7 particularly as it relates to the parking. The
8 Applicants stated in paragraph 3 of the
9 preliminary statement of compliance as to why the
10 restoration and conversion of this historic
11 structure created the need of relief from the
12 zoning restrictions. Apparently HPRB required a
13 setback of the Applicant's building above the
14 existing building, while we appreciate the HPRB's
15 concern about the new building it's relationship
16 to the older one, that concern really has not
17 reached across to us who back up to the building.
18 What he's building is a major wall behind us;
19 there is no sensitivity of the relationship of
20 that building and our property. The other issue
21 is the rear yard requirement. The proposal shows
22 a rear yard of 12 feet which is and normally it

1 would've been 15 so he's asking for 3 additional
2 feet along the rear of the property, for the life
3 of me I do not understand why 3 additional feet
4 over the height of I think 6 stories could make a
5 difference to the financial reality of this
6 building. I don't see how that increase is going
7 to affect him financially if that is what he is
8 trying to prove for the reason for this
9 particular project. The variance for relief for
10 off street parking is I totally disagree with the
11 Applicant's consultant, I don't think he's ever
12 tried parking at Kingman Place, frankly it seems
13 to be a step child of the District. At some
14 point Studio Theater Complex was allowed to
15 expand without parking. We on Kingman have felt
16 that decision daily, it's virtually impossible to
17 park on our street. Parking on the 14th Street
18 Corridor is normally difficulty but on every
19 given day there are probably more non-resident
20 parkers on Kingman and when there is a Studio
21 Performance parking is especially acute. I can
22 even quote examples of people who've tried to

1 park in the whole foods parking lot, purchase
2 food and park in the parking lot just so they can
3 find a place to park in the neighborhood. I
4 don't know about these so called other Colonial
5 Parking availability but obviously people are not
6 parking there they are parking on other areas of
7 the street and whether it's daytime or night time
8 I don't think they understand that people will
9 park on Kingman Place at anytime of day it
10 doesn't matter whether it's day or night. The
11 other thing I don't understand is the Applicant
12 has 30 parking spaces on this lot, now he is even
13 intending to reduce it down to 12; I find that
14 incomprehensible, if he's already got 30 why are
15 we reducing it down to 12. The apparent reason
16 was he could not go down any further to access
17 additional parking because there was the
18 potential of hitting underground contaminated
19 water, it was too expensive to build below grade,
20 blah, blah, blah, but then today we see on this
21 later addition an additional potential of ramping
22 supposedly down several levels and geothermal

1 pumps to lower levels, all of this would be prior
2 greater excavation than he has intimated in the
3 past, so I don't understand why at this time he
4 cannot add more parking.

5 CHAIRPERSON MOLDENHAUER: Mr. Wnuk you've
6 gone over your time is you almost finished?

7 MR. WNUK: One more paragraph, any way
8 the prevailing justification for the Applicants
9 request is that it will be more costly to adhere
10 to the zoning code and he needs variances and
11 special exceptions to make it financially
12 feasible. Unless I am unaware of information
13 made to the Board only we find this reasoning
14 unproven, comparative cost estimates and
15 calculations were never presented at any of the
16 previous CDC or ANC Committee hearings. We
17 believe the Applicant has neither proven his
18 financial justification, nor has he demonstrated
19 the differences in cost by adhering to the code
20 or not, thank you.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much Mr. Wnuk.

1 MS. SCHROEDER: Hello I'm Ingrid
2 Schroeder I live at 1518 Kingman Place. First of
3 all I wanted to say I really appreciate this new
4 structure that's going to be going up. I like
5 the fact that it's an office and not a condo or
6 hotel or something that's going to be looking
7 into my backyard in the middle of the night, I
8 think that's creepy. The fact that it's an
9 office I think is great. I also really
10 appreciate that Mr. Furioso changed the plans to
11 move that little rear stairwell back so that when
12 I try to back out of my parking spot I can
13 actually do it without running into a wall, so
14 that's really, I appreciate that. The other
15 thing I really appreciate is that he agreed to
16 put a trash room inside because we have a really
17 bad problem with rats and stuff so the trash room
18 will be inside so I think he's done a lot of
19 things to accommodate us. The concern, my
20 overriding concern and I actually have concerns
21 with all of the variances except for the
22 courtyard thing. My biggest concern is with the

1 setback, our alley way is extremely narrow and
2 it's tight, you know the thought of two cars
3 trying to pass each other back there is not
4 possible. It's also there are parts of the alley
5 that are connected to where the garages are that
6 have telephone poles sticking out so that takes
7 up an extra space there. I don't understand I
8 guess it never has been made clear to me why that
9 3.5 foot setback exception is needed and I'm
10 assuming that the zoning requirement were made
11 for reasons you guys are smart and you understand
12 traffic flows and you understand building
13 structures that I don't I just know that it's
14 really tight back there and I don't understand
15 why the 3.5 foot variance or exception is needed,
16 and the case has never been made to me other than
17 it gives us more office space. So I know that
18 I'm concerned with it, I'm concerned with it from
19 a traffic flow, I'm concerned with it from just
20 like a tightness and can emergency vehicles fit
21 back there and how is it going to work when
22 there's people waiting for a car elevator and I

1 have to get out and go to work with my own car
2 and are they really going to go into that, a
3 tight space of 7 feet and I can still back out
4 and get to work or am I going to be waiting 5
5 minutes to just leave my own property. So I
6 would say that the 3.5 foot setback is my biggest
7 concern and I've never heard a reason of why they
8 actually need it. On the parking issue you've
9 heard a variety of viewpoints on the parking, I
10 am also concerned about it, our parking in the
11 area is awful I'm lucky I have a parking spot I'm
12 hoping I can get in and out of it. So the
13 parking thing, you know, if they could put 100
14 spots in it would be great but I totally
15 understand why they can't so I've mixed
16 viewpoints on that my biggest issue though is the
17 setback requirement.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much.

20 MS. DOUGHTY: Hello my name is Andrea
21 Doughty and I'm speaking on behalf of the ARTS
22 District Confederation of which I'm President.

1 The Confederation is a non-profit organization
2 dedicated to promotion and advocacy of the arts
3 and the ARTS District. I'm also a resident of
4 the area I live less than one block from the site
5 and I regularly walk my dog down the alley way in
6 question on my way to Logan's Circle. I want to
7 be clear that I am not speaking as Chairman of
8 the ANC 2-F ARTS Overlay Committee which I am and
9 I did support the project in that capacity at the
10 last ANC meeting but you have the letter from ANC
11 2-F in your file, I'm speaking on behalf of the
12 ARTS District Confederation. I'm not going to
13 comment particularly on the technical aspects of
14 the application which I believe has been covered
15 very well by the Applicant's presentation, I want
16 to focus my comments on the public interest in
17 his case and the general purpose and intent of
18 the Zoning Regulations, of course as you are
19 aware both of these factors enter into the
20 special exception and variance tests in the case
21 of the special exception they are to be granted
22 where they are in harmony with the general

1 purpose and intent of the Zoning Regulations, in
2 the case of the variance test the element there
3 is provided relief can be granted without
4 substantial detriment to the public good and
5 without substantially impairing the intent
6 purpose and integrity of the zoning plan. Just
7 by way of background I'm an economist, I've
8 testified frequently at the BZA on behalf of the
9 community in relation to various applications and
10 have successfully lead community appellant's in a
11 precedent sitting appeal of a decision by the
12 Zoning Administrator in relation to a use not
13 permitted in the ARTS C-3-A Zone. I've also
14 testified frequently at the Zoning Commission
15 both in relation to chapter 19, of Title 11, the
16 uptown arts overlay district and also in relation
17 to the zoning review of the commercial corridors.
18 Most recently I drafted new zoning regulation
19 section 1901.6 in collaboration actually with Ms.
20 Allison Prince who you heard from in the previous
21 case that were adopted by the Zoning Commission
22 and case number 1007. In 2009 ANC 2-F initiated

1 a review of the zoning of the ARTS Overlay which
2 I chaired, that was a four month process involved
3 8 public meetings we had numerous expert and non-
4 expert witnesses testify throughout that 4 month
5 period. The recommendations of that process were
6 unanimously adopted by 3 effected ANC's and
7 broadly embraced by the Office of Planning
8 including the team working on the zoning
9 regulations review, as well as embraced by the
10 Zoning Commission in case 1007. Full disclosure
11 the Applicant Mr. Furioso was a member of that
12 ANC 2-F ARTS Overlay Committee in 2009. This
13 project epitomizes the next use type of project
14 that the ARTS Overlay Committee recommendations
15 were designed to achieve, namely increased
16 daytime foot traffic through encouragement of
17 office and retail uses so that genuine 18 hour
18 activity encouraged under Section 1900.2 not just
19 evening use would be achieved, because many of
20 the ARTS usage in the ARTS District do require
21 daytime foot traffic in order to survive. This
22 Application checks every box of the purposes of

1 the overlay as laid out in Section 1900.2 A-H I
2 think with possibly the exception of (Sub
3 Paragraph D), hence I would argue that the public
4 good element and the harmony with the general
5 purpose and intent of the zoning regulations of
6 both the special exception and variance tests are
7 met in this case, one semi-technical point with
8 respect to the point made by Mr. Colbert
9 regarding the first floor constraints I'd just
10 like to note that active first floor uses and
11 active street frontage are goals that are given
12 special prominence, accorded special prominence
13 in Chapter 19, see for example Sections 1901.1,
14 1901.6 and 1903, a viable first floor occupancy
15 is very important to vibrancy in the ARTS
16 District and for that reason and some of the
17 technical reasons described by the Applicant we
18 support the proposed parking and elevator
19 configuration in this case. In conclusion I
20 would just like to draw one issue to the Board's
21 attention, this project is exactly the kind of
22 mid-size mixed office retail development that is

1 needed on the 14th Street Corridor and elsewhere
2 within the ARTS District. In our experience it
3 is also very true that it is exactly this kind of
4 mid-size info project that can be exceptionally
5 difficult to achieve in the ARTS District due to
6 the combination of the Historic District
7 requirements, the existing building forms and
8 that financing and economic challenges associated
9 with this site, these sites and this size of
10 project. It takes dedication by a property owner
11 to put this kind of project together and Mr.
12 Furioso has demonstrated over a period of many
13 years both is commitment to his standards of
14 excellence and his development projects and also
15 his long standing commitment to supporting the
16 arts within the ARTS District. The ARTS District
17 Confederation urges the Board to approve the
18 requested relief and I thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much and thank everybody for coming forward. Do
21 Board Members have any questions for any of the
22 individuals that testified either in support or

1 in opposition?

2 MR. SELFRIDGE: Mr. Wilds you indicated
3 that it's overbuilt overall what would you like
4 to see different, I know you touched on parking,
5 alley, elevator, recognizing that there's some
6 constraints to this site and to build a building
7 it's got to be so big, there's going to be
8 constraints on parking, the alley is going to be
9 tight to some degree, I mean what would you do
10 differently that wouldn't actually derail the
11 project, how could it be improved marginally to
12 gain your support?

13 MR. WILDS: The example is the Matrix
14 building that you can build on such a lot and you
15 don't have to go down that far and it doesn't
16 have to be that high. Why have zoning
17 requirements if you're going to ask for an
18 exception to every one of them?

19 MR. SELFRIDGE: Built within the envelope
20 that's allowed, thank you.

21 CHAIRPERSON MOLDENHAUER: Any further
22 questions? Does the Applicant have any questions

1 for any specific witnesses? Seeing none that
2 what we will do is we'll turn to the Office of
3 Planning, I'd just like to note I see people
4 starting to come in for the 1 o'clock session we
5 are still on our morning session, so we're going
6 to also take a lunch after we finish with this
7 case and we'll identify what time we're going to
8 resume but it will probably be some time around 2
9 o'clock based on the fact that we have to finish
10 this case out still, so just to let people know
11 in the audience as they start to arrive I
12 appreciate that. Now we'll turn to Office of
13 Planning.

14 MR. GOLDSTEIN: Good afternoon Madam
15 Chair, Members of the Board, for the record my
16 name is Paul Goldstein. The Office of Planning
17 recommends approval of the Applicants request for
18 variance relief from Section 776 and 2101 and
19 special exception relief from 411, 1902 and 774.
20 As you heard the subject property is (Lot 129
21 and Square 241) and is zoned ARTS C-3-A. Zoning
22 relief is needed to accommodate the Applicants

1 proposal for a 6-story office, arts and retail
2 building that would incorporate the existing 3
3 story building which is a contributing building
4 to the greater 14th Street Historic District.
5 Generally under the ARTS C-3-A Zoning a building
6 may achieve a height of 75 feet and with the use
7 of bonus density can also achieve a 4.5 for area
8 ratio both of which are features of this report.
9 I'll briefly recap the areas of relief sited in
10 the Office of Planning Report, we've had quite a
11 bit of discussion of some of the technical
12 aspects I don't want to dwell too long just be
13 here for questions. There are 2 areas in the
14 proposal that required area variance relief, open
15 court and required parking. OP found that the
16 application satisfied the variance test for both
17 areas of relief. The property has some
18 exceptional conditions that lead to practical
19 difficulties. There's a presence of the historic
20 structure on the site which is being retained and
21 restored as part of the proposal and that
22 constrains the developable area on the site and

1 below the site. You might've only heard a little
2 reference to this the Applicant had provided
3 information about the ground water table that was
4 about 30 feet below ground, the Applicant
5 indicated that that also complicated below grade
6 development to a certain depth. Finally also the
7 6th floor of the north side of the building was
8 slightly recessed as part of that Historic
9 Preservation Review Board process in order to
10 more sensitively respond to a low building to the
11 north. These exceptional conditions created
12 practical difficulties; the court on the northern
13 edge of the 6th floor as you've heard will be set
14 back 1.5 feet. Courts aren't required in the
15 zone they're providing it and as a result of
16 providing it they therefore need relief, I wanted
17 to clarify something the Applicant said, I think
18 the fact that it's in the Historic District
19 itself is not in itself uniqueness, its that it
20 was part of the HPRB, I believe it was in
21 response to discussions with HPRB and HP staff
22 that this feature was added to the building which

1 then created the need for relief in this case.
2 Setting it back further probably would create a
3 design that didn't look as good and also require
4 some redesign as well. For the off street parking
5 the proposal request relief from the 101 required
6 parking spaces but then also 12 spaces are being
7 provided compact size with a car elevator. Based
8 on the uniqueness of the developable size, the
9 historic building on the property and also the
10 Applicant indicated not only is there maybe a
11 ground water issue, geothermal is the first I've
12 heard, I don't know if there's any connection
13 between the two or not, but does it make
14 practical sense to provide 10, that's an
15 approximately number of levels below grade to get
16 101 spaces, it didn't seem to make sense to us
17 that seems like a practical difficulty. I also
18 hear from some of the testimony today there's
19 some ambivalence about whether you want full
20 parking or no parking somewhere in-between, maybe
21 its not the extremes of either but we've heard
22 that there is a tight alley and if you provide

1 more parking there's going to be more use of that
2 alley, so I think there's some trade offs in
3 whether you provide more or less parking. The
4 Applicant has provided a relatively robust
5 transportation management plan that was something
6 that we had discussions with the Applicant about
7 to provide incentive and accommodate alternative
8 transportation. Based on my discussions with
9 DDOT they seem satisfied with this plan. There
10 were some additional recommendations which I
11 believe are going to be in submissions that the
12 Applicant is going to make before the end of the
13 hearing. As a result OP doesn't see the court
14 causing any impact on the public good or the zone
15 plan and I touched on it briefly regarding the
16 impact on the public good from the parking
17 relief, I think on balance it seems like with all
18 the TMP measures, we felt comfortable and DDOT
19 felt comfortable that there wouldn't be an
20 adverse impact to the public good. Concerning
21 the special exception relief, there are two areas
22 of relief that are required for the roof

1 structures. OP finds that the Applicant has
2 satisfied the special exception criteria although
3 there certainly was some more testimony that we
4 learned of today about possible impacts on the
5 Matrix and maybe this is something again that the
6 Applicant will address a bit more in their
7 rebuttal. The proposal calls for restructures
8 that vary between 10 and 17 feet in height,
9 that's about a foot and a half to three and a
10 half feet for some of the restructures and then I
11 guess it's about 8.5 feet at its highest point.
12 For Section 411 the requirement for uniform roof
13 structures I think you even heard it this morning
14 in a case to comply with a uniformed height would
15 actually trade a worse outcome for not only the
16 design of the building but for neighbors, there
17 just would be no benefit to have to raise roof
18 structure heights to become uniform. Regarding
19 1902.1 A of course the Applicant is seeking
20 relief from the 83.5 height restriction for the
21 roof structure, the elevator override goes up to
22 about 92 feet from grade. OP believes that the

1 overall project it does advance the purposes of
2 the ARTS Overlay District which is Subsection A
3 in the analysis and OP further believes that the
4 portion of the roof structure which exceeds the
5 height limit should not have an undue impact on
6 neighboring properties, it's a small part of the
7 roof structure and it's only 8.5 feet at its
8 highest for about I believe it was 90 square feet
9 set back I believe at least 40 or 50 feet,
10 there's been some more testimony from the
11 neighbors about that and perhaps maybe there's
12 some more rebuttal we could hear about that
13 issue. Concerning the rear yard relief the
14 Applicant as you heard proposed about 3.5 feet of
15 deficient rear yard for the ground through 5th
16 floor, its not really a need space test here it's
17 really an impact based test, it's a special
18 exception standard, so the question is what is
19 the impact of that additional 3.5 feet. Well the
20 building itself is going to be set back about 7.5
21 feet from the alley, I believe, at it's narrowest
22 which is more of a setback than you get for some

1 of the other buildings along the alley in fact.
2 Based on what we considered to be kind of a small
3 deficiency we didn't think that there was any
4 adverse impact from 3.5 feet less of rear yard
5 but that was our determination. OP believes that
6 the Applicant has satisfied the standards that
7 are found specifically in 774.3 - 774.6 and we
8 detailed those in our report. Finally I think
9 you've heard the Applicant indicated that the ANC
10 has supported the proposal but we haven't seen a
11 copy of it, I believe that Applicant has made a
12 copy of that letter to submit if it hasn't been.
13 That concludes my presentation I'm now available
14 for any questions, perhaps I wasn't as short as I
15 promised, I apologize for that.

16 CHAIRPERSON MOLDENHAUER: That's okay
17 they never usually are, for everybody. I've got
18 a couple of questions about did you any
19 discussions and I'm going to ask the same
20 question to the Applicant in a moment but did you
21 have any discussion with the Applicant about
22 satisfying maybe some of the parking requirement

1 based on some of the comments of the neighbors
2 and their concerns with off street parking and
3 seeking relief for that, for off site parking?

4 MR. GOLDSTEIN: I believe we did raise
5 that with the Applicant about seeing if there was
6 a possibility of having an agreement with some
7 other garage in the area, unfortunately that
8 didn't I guess that idea did not advance.

9 CHAIRPERSON MOLDENHAUER: You had raised
10 that?

11 MR. GOLDSTEIN: It was raised.

12 CHAIRPERSON MOLDENHAUER: Then, I think
13 most of my other comments are mostly directed
14 towards the Applicant based on some of the
15 additional information we heard from the
16 witnesses, so I have no other questions, any
17 other Board Members?

18 MR. SELFRIDGE: Thank you Madam Chair,
19 something I didn't say as the last panel got up I
20 wanted to thank them again for coming in, it's o
21 1 o'clock and you've been sitting here for four
22 hours to testify for 10 minutes so we really

1 appreciate you coming in and letting us hear your
2 views, I want to make sure that doesn't get
3 missed, I think we recognize what a long day it
4 is, so thank you. To Mr. Goldstein I just want
5 to follow up on what the Chairperson said about
6 mitigated the off street parking impact, it seems
7 to be that there was in your report there was a
8 suggestion that the Applicant could obtain
9 agreements to use off site excess parking at the
10 near by locations that it might mitigate some of
11 those impacts I guess you kind of answered my
12 question I think that you don't think that's gone
13 anywhere but could you maybe elaborate on what
14 you were thinking or what you would propose for
15 something like that.

16 MR. GOLDSTEIN: Yeah that was one
17 possibility I mean we weren't wedded to any
18 particular possibility it seemed like maybe that
19 could be an avenue that makes sense, certainly
20 they had, the Applicant had discussions with DDOT
21 directly in which they went over the mitigation
22 plan and ultimately came to an agreement about

1 what is a sufficiently robust TMP plan for the
2 site. We heard that communicated back from DDOT
3 that what's been proposed would be adequate.

4 MR. SELFRIDGE: Do you know if anybody had
5 any discussions with the garage and I can ask the
6 Applicant as but I don't if maybe OP reached out
7 or if you had any knowledge of something like
8 that.

9 MR. GOLDSTEIN: We did not personally
10 reach out; I can't speak for the Applicant if any
11 of those discussions occurred.

12 MR. SELFRIDGE: Okay thank you.

13 CHAIRPERSON MOLDENHAUER: Any other
14 questions from Board Members for the Office of
15 Planning? Thank you very much for your report;
16 does the Applicant have any questions for the
17 Office of Planning?

18 MR. FREEMAN: No Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Okay then at
20 this point in time we turn to see if anybody in
21 the audience is present from ANC 2-F, seeing no
22 one I'll indicate that we have a submission, I

1 don't have an exhibit number but it was received
2 on March 15th, dated March 9th, indicating that ANC
3 2-F had a publically noticed meeting on March 2,
4 2011, with a quorum present and voted 4 to 0 to
5 support the BZ application for 1515 14th Street,
6 LLC. That being said that letter and it's
7 additional information submission would receive
8 great weight under our standard, that being said
9 we'll turn back to the Applicant for some closing
10 remarks, before you have any closing remarks I
11 think the Board probably has some follow up
12 questions and I'm sure that you have some, you'd
13 already indicated that you want to supplement
14 based on the testimony of the, I'm just kind of
15 rattle off a couple of different things that I
16 want of have you address; one I think you've
17 already heard the issue of addressing potential
18 conversations, discussions, and you know why
19 potentially you are presenting a case for off
20 street satisfaction of parking requirements and
21 potentially both address the need for additional
22 parking and to potentially address the potential

1 concern of the alley use. Second I want to have
2 you go through the architectural requirements as
3 to, obviously the 3 foot setback on the alley the
4 additional second; third, fourth and fifth floors
5 don't seem to be as much of the issue as it is on
6 the ground floor with the alley issue and the
7 neighboring property owners on Kinsman Place. So
8 why that is absolutely necessary in regards to
9 your layout and design and addition to that I
10 think eventually I'm going to want to see maybe
11 after this hearing as a supplement some sort of
12 additional rendering, unless maybe you have
13 something or you can provide some additional
14 analysis today from the Matrix really see a
15 visual rendering of what the vantage point would
16 be from that terrace and the elevator terrace
17 onto the property providing additional support
18 for some of the testimony we heard today in
19 regards to potentially the minimal impact it
20 would have or what impact at all it would have,
21 we heard testimony that really right now we don't
22 know exactly what that view would be, and I know

1 that architecturally we've seen from other
2 applications that you can provide a rendering
3 that would really solidify that for us. I think
4 that's everything that I'm looking at right now
5 that I'd be interested in hearing about and
6 seeing, and also actually one other concern about
7 the special exception standard for the relief
8 would be some sort of additional light and air
9 study, we did see the line of site type of
10 diagrams but I think for some of the special
11 exceptions and based on the concerns that we've
12 heard from multiple neighboring properties on
13 Kingman Place I think that would be something
14 your architect can do, we see it in a lot of
15 special exception cases not something
16 extraordinary to ask the Applicant but it would
17 also provide us with more evidence and more
18 information to be able to make that decision, so
19 that being said unless any of other Board Members
20 have any other points we'll turn it back to the
21 Applicant, no okay, lets turn it back to the
22 Applicant for closing rebuttal and supplement.

1 MR. FREEMAN: Thank you Madam Chair I
2 think most of the points you raised were things
3 we were planning to address in our rebuttal and
4 Mr. Glaskow is submitting now some additional
5 materials. I'll try to address your comments in
6 the order that you raised them and also address
7 some of the comments that were raised by the
8 folks here earlier today. What your getting is a
9 copy of a couple of things, the first thing your
10 getting we heard a lot of reference to the Matrix
11 and that this project should meet it's
12 requirements the same way the Matrix did and that
13 the Matrix didn't ask for any relief which
14 actually is not the case, we represented the
15 developer of the Matrix, I'm giving you a copy of
16 the order, they got roof structure as well, they
17 got relief to have multiple enclosures, walls of
18 unequal height and relief to not meet the setback
19 requirements it's particularly important to know
20 that they got relief to not meet the setback
21 requirement on the southern most portion of their
22 site, so that's what this order will confirm.

1 Secondly I'm giving out and we'll have some more
2 information to that effect as well. Mr. Rappolt
3 did call me at about 3 o'clock yesterday to
4 express some concerns regarding the project and
5 he said all of these concerns would go away if we
6 would let them go on the roof for the 4th of July
7 which in my mind calls into question the veracity
8 of their concerns and you'll see that email to
9 that effect. Secondly as the Board had said in a
10 number of cases as had been held in a case of
11 Hilvasi vs Stilgitz an adjacent property owner
12 cannot claim a prescriptive easement across
13 someone else's property for light or air and I
14 think that goes to a lot of what we've heard
15 today. Attached to that is a BZA Order 17729-A
16 2008 interestingly the same Ward the same ANC,
17 and in that case which is much different from
18 this case but in that case the Board held that a
19 separation of 3 feet from abutting windows
20 provides sufficient light and air, in this case
21 our neighbors to the north are over 60 feet and
22 they're not complaining about light or air to any

1 windows, their issue is views from their roof
2 top. Our neighbors to the east are setback 40,
3 50, 60, 80 feet different range and we'll have
4 some studies visuals that show that the standard
5 for rear yard relief is angle and distance of
6 site lines that our rear yard relief is not
7 impacting those things whatsoever. Also included
8 you asked for a rendering or some type of visual
9 that shows the angle of site lines from the
10 Matrix and looking at their letter the Matrix
11 says and Eric will talk about this in more
12 detail, initially they raised fireworks well
13 fireworks are to the west of our site, they
14 raised views of the monument, the monument is to
15 the west of our site, they views to the National
16 City Church which is to the west of our site on
17 16th Street so the items that they specifically
18 listed and said were concerns are to the west of
19 the site and would not be blocked by the roof
20 structure, so I think, and again Eric will talk
21 about that but the gentleman from the Matrix said
22 well they haven't seen anything which shows the

1 view studies, well here are the view studies.

2 CHAIRPERSON MOLDENHAUER: Mr. Freeman,
3 have you provided this to the individuals?

4 MR. FREEMAN: I can right now, and with
5 that why don't we turn it over to Mr. Andres to
6 talk about our conversations with DDOT, the fact
7 that when this OP report was written there were 5
8 bike spaces and we increased that to 25 and how
9 DDOT in your analysis of the on street parking
10 situation, any impact that provided more vehicles
11 how that would impact the alley.

12 MR. ANDRES: Absolutely, with respect to
13 the questions relative to off street parking and
14 our transportation management plan; working with
15 the architect and our Applicant we've identified
16 more transportation demand management measures
17 which did DDOT felt comfortable in supporting the
18 parking variance that we've asked for, with
19 respect to the issue that you brought up
20 regarding off street parking and off street
21 contracts in essence if you were to provide those
22 contracts you're potentially negating the

1 efficacy of the TMP program that you're putting
2 in place but that doesn't preclude the ability
3 for any perspective tenants to enter into those
4 parking contracts and that's what the
5 transportation services coordinator is for, that
6 coordinator is there so identify potential TMP
7 measures that the tenants can agree to and
8 participate in and in the event that those don't
9 address those needs then that coordinator will
10 provide them the contact information to get those
11 parking contracts if they need it. So that
12 doesn't because the TMP doesn't specifically
13 identify it doesn't preclude it either.

14 MR. FREEMAN: There was some question
15 about parking, the inability of folks to find
16 parking in front of their houses on Kingman Place
17 could you just describe what the existing parking
18 restrictions are on Kingman Place?

19 MR. ANDRES: The restrictions on Kingman
20 Place are RPP, two hour RPP which is consistent
21 with many of the other residential streets in
22 Logan Circle, if anything if their issues related

1 to (inaudible) parking its an enforcement issue
2 that takes place in many residential
3 neighborhoods in the District but as I mentioned
4 before there is adequate on street parking on 14th
5 Street and we've proven that with the on street
6 parking surveys that we did and had them
7 submitted as part of our report.

8 MR. FREEMAN: Then we talked about we met
9 with DDOT they expressed some concerns about
10 making sure we were coordinating loading with DPW
11 in the alley, in your professional opinion what
12 would be the impact if any in a favorable or
13 adverse way of providing 100 parking spaces
14 within a 10 foot alley, do you think that would
15 be a positive impact to the extent their folks
16 that have complaints about the width of the alley
17 or an adverse impact?

18 MR. ANDRES: It would be an adverse
19 impact, obviously providing more parking in the
20 alley, served off of a 10 foot alley, 10 foot
21 alley is only wide enough for one vehicle just to
22 give you a sense of scale, the width of a regular

1 Honda Accord for example is about 6.5 feet so in
2 essence you can't have two cars passing each
3 other so in essence having additional parking
4 will just exacerbate the situation.

5 MR. FREEMAN: I think that concludes most
6 of our rebuttal about transportation and parking
7 unless the Board had any other questions on that
8 issue. Madam Chair did that answer your
9 questions?

10 CHAIRPERSON MOLDENHAUER: I have no
11 additional questions do any other Board Members?

12 MR. FREEMAN: And then we had some
13 additional comment on the rear yard light and air
14 ventilation, and a couple of folks have said you
15 have to show us why you need to do these certain
16 things, why you need to have this additional rear
17 yard, why you need to have the additional roof
18 structure relief but, and we try to explain that
19 and with all do respect the standard for the roof
20 structure relief and the rear yard relief is a
21 special exception it's not a need standard and we
22 don't have to prove need, the law provides if you

1 meet the standards for the special exception and
2 we'll go through that Eric, then it is presumed
3 appropriate, so Section 774.3 says apartment of
4 office window shall be separated from other
5 buildings that contain facing windows a distance
6 sufficient to provide light and air and to
7 protect the privacy of the building occupants.
8 Eric has a drawing in his plans that shows an
9 approximate scaled distance between the rear of
10 our building and the rear of the houses on
11 Kingman Place, as noted it's interesting and we
12 note this in our statement that distance is equal
13 to or greater than the Distance of Kingman Place
14 which is about 50 to 60 feet so our rear yard
15 distance is the same distance or more than the
16 distance that separate the east and west side of
17 the buildings on Kingman Place so Eric just walk
18 us through that drawing again please.

19 MR. COLBERT: Based on the angle of the
20 sun we determined that it would be at no time
21 during the...

22 MR. FREEMAN: Just talk about the site

1 lines.

2 MR. COLBERT: In addition to that issue
3 this is the 3.5 difference between the zoning
4 required rear yard and what we're asking relief
5 for and you can see the images of these two folks
6 standing there actually a little further apart in
7 reality more than 3.5 feet but the angle is so
8 minuscule that the view with as right building is
9 the same as with the relief building provided.

10 MR. FREEMAN: So in your opinion Eric are
11 you saying that the difference of that 3.5 feet
12 in looking at the drawings really has no impact
13 on the light and air to the buildings to the
14 east?

15 MR. COLBERT: That's correct.

16 MR. FREEMAN: And you show the angle of
17 site lines and those would be the same right
18 whether it's 3.5, whether we meet the rear yard
19 requirement or not?

20 MR. COLBERT: Yes there will be no
21 perceptible difference whether it's a matter of
22 right or relief.

1 MR. FREEMAN: So that's really the
2 standard for the rear yard, there are other
3 things about parking and loading. With respect
4 to the roof structure height, the standard has no
5 adverse impact to our neighbors to the north or
6 to the east. The standard is no adverse impact
7 on the zone plan, right and the Office of
8 Planning has said that they've determined that
9 the relief will have no adverse impact on the
10 zone plan. The other question Eric if you could
11 just quickly walk us through your two visuals
12 regarding the Matrix and their views and how
13 everything that they've mentioned will not be
14 blocked by our building.

15 MR. COLBERT: Basically at the end of the
16 day yesterday we received this letter from the
17 Matrix and has Kyrus mentioned they were asking
18 Georgio for permission to use his roof deck for
19 the 4th of July and then also they mentioned the
20 view of the Washington Monument so what I did was
21 I created these two exhibits one called drawing A
22 which shows the Google Earth where we have the

1 Matrix at the top of the site at the top of the
2 drawing and then the zone of the fireworks at the
3 bottom at the east on the reflecting pool, so
4 that shows the angle of the view to the fireworks
5 and also you can see the Washington Monument kind
6 of within that 22 degree angle between the view
7 to the fire works and just true south. If you
8 look at drawing number B what it does is we've
9 taken the roof deck which is colored kind of in
10 an orange or flesh colored tone on top of the
11 Matrix where it says Matrix roof deck and then
12 we've shown the proposed roof deck it says 1525
13 14th Street penthouse and as you can see that
14 where we're located in the penthouse is not
15 within the angle that could potentially be
16 blocked by our penthouse it's set further east
17 than that, also it's important to note that the
18 view that they have of the Washington Monument is
19 a small extension of it, projection above the
20 buildings that are on Franklin Square, but in any
21 case they will still have that visibility even
22 after our penthouse is constructed.

1 MR. FREEMAN: Just to go back to sheet 10
2 and I hate to belabor this point but I think what
3 I heard a number of people say is that their main
4 concern is with the elevator projection, well I
5 heard the word elevator, I don't know if that
6 meant car or the elevator on the roof, but
7 assuming the elevator on the roof, the portion
8 above the elevator override the 8.5ft portion
9 that we're seeking relief, I think this is
10 important, remind us again how far that is set
11 back from the northern property line and from the
12 eastern property line.

13 MR. COLBERT: The elevator penthouse that
14 sticks up is setback almost 60 feet from the rear
15 property line and then about 25 feet from the
16 north property line.

17 MR. FREEMAN: So would anyone ever see
18 that from the street?

19 MR. COLBERT: Actually, there's an
20 exhibit that was based on the elevation, number
21 14 where if you had someone standing on the deck
22 of the Matrix roof deck and this shows an angle

1 looking up that the edge that's closest to the
2 penthouse on the north side would block almost
3 all except a sliver of view to the higher point
4 of the elevator.

5 MR. FREEMAN: So would you ever see it
6 from the street?

7 MR. COLBERT: You'll never see it from the
8 street, pedestrian level no.

9 MR. FREEMAN: Thank you, oh one other
10 point it was said a number of times that our
11 building it over built, too big, where are we in
12 terms of FAR, are we over or under?

13 MR. COLBERT: No we're at the permitted
14 density.

15 MR. FREEMAN: So we're not asking for any
16 additional FAR right?

17 MR. COLBERT: That's correct. I have one
18 more point that I'd like to make and that is the
19 folks on Kingman do have their own parking in the
20 back and what Georgio has agreed to do is as a
21 matter of right we can put a fence along our
22 property line facing the alley but Georgio has

1 agreed to leave this open so that people can
2 actually turn on to our property to give them an
3 easier way to get in and out.

4 MR. FREEMAN: So in other words what your
5 saying is although we're not legally required to
6 provide any space on our private property in
7 order to allow people to access their buildings
8 Mr. Furioso has agreed to do that even though
9 he's not required to, is that what your saying?

10 MR. COLBERT: That's right.

11 CHAIRPERSON MOLDENHAUER: I think that
12 last point is definitely not necessary
13 considering we all live in the city, we all have
14 alley access and that's something that, earlier
15 it was mentioned that obviously I think Mr.
16 Furioso you live in the area, you consider
17 yourself to be a good neighbor I think that just
18 goes to...

19 MR. FURIOSO: Madam Chair may I make a
20 small point though, right now in the alley, the
21 10 foot alley there is actually 12 cars that are
22 perpendicular to the alley in other words there

1 are 12 car spaces right now that are
2 perpendicular that you know bang into their
3 garage doors and whatever havoc they do, though I
4 can't believe who does what because my air
5 conditioners get hit and I don't know who hit my
6 air conditioners, but my point only is that all
7 of that parking is going to be gone, those 12
8 spaces are servicing essentially the historic
9 building now, I removed two of them for a trash
10 room to help the Kingman people on the last go
11 around when we did the BZA I said I'll put a
12 trash room for both buildings, so I lost two
13 spaces there, then I have a loading berth I lost
14 the spaces there, then I've set the building back
15 7 feet with a car elevator so I have no parking
16 that I have now have 12 spaces, in other words
17 I'm replacing the 12 outside spaces with the 12
18 interior spaces, and one last point, I really got
19 a mixed message, on one hand they wanted me to
20 really get rid of all my parking and on the other
21 hand they wanted me to give them more parking, so
22 I kind of, the difficult place is to what is the

1 right balance and I offered a minimum of 12
2 spaces, that's all I need to say thank you.

3 CHAIRPERSON MOLDENHAUER: Thank you, I
4 hope we can wrap this up quickly, I think I'd
5 still, are you completed, I'm sorry Mr. Freeman
6 does that complete your...

7 MR. FREEMAN: Yes Madam Chair.

8 CHAIRPERSON MOLDENHAUER: I think we have
9 a couple of questions from Board Members, go
10 ahead.

11 MR. SELFRIDGE: Madam Chair just very
12 quickly I know we're running over, Mr. Colbert
13 there was discussion about an elevated part of
14 the roof deck I'm just trying to understand what
15 that is, if I look at the OP report on page 3 it
16 looks like there's a little platform on drawing B
17 there's a part that's not orange, do you recall
18 what's going on with that as the architect on
19 that building, is there an elevated portion and
20 where is it?

21 MR. COLBERT: Yeah actually the building
22 that the Matrix is built around the historic

1 building similar to ours and a lot of others
2 because it was automobile oriented it had this
3 enormous elevator inside and the elevator shaft
4 stuck up above the building and that's in the
5 center of the orange area.

6 MR. SELFRIDGE: What's to the right of
7 the orange area what is that, it's not shaded at
8 all?

9 MR. COLBERT: That's part of the elevated
10 section.

11 MR. SELFRIDGE: So that is although it's
12 not orange it is part of the deck?

13 MR. COLBERT: That's right.

14 MR. SELFRIDGE: So just on the study to
15 make sure I understand it completely, so if
16 you're on the elevated portion then perhaps there
17 would be more of a site line obstruction, is that
18 correct if you were looking directly south, I'm
19 just trying to understand and make sure I
20 understand the full vantage point.

21 MR. COLBERT: Let me just say one thing
22 about that when we did this building there was a

1 zoning regulation that doesn't exist down where
2 you had to have this enormous roof deck and any
3 apartment building that was built in a commercial
4 area and what it proved to be and I actually
5 testified personally to get rid of that because
6 the roof deck ended up being four or five times
7 bigger than what anyone would every reasonably
8 do, this is one of the last buildings where we
9 actually complied with that exact regulation and
10 I'm sure that people in the Matrix can tell you
11 because I know it's true on any of the other
12 buildings we've done that where we actually did
13 this is that basically this on a day to day basis
14 only a small portion of this would ever be used
15 and I've been up there many times since the
16 building has been finished and you know if I see
17 like a few people up there at a time it's a lot,
18 not to say that there wouldn't be parties there
19 occasionally but it's just way out of proportion
20 to what is reasonably required.

21 MR. SELFRIDGE: Okay, thank you Mr.
22 Colbert and for Mr. Furioso I want to back up and

1 say you know I think that there's a lot of parts
2 of this project and it's a great project and we
3 come in here and we start to pick it apart and
4 focus on the parts that maybe are more
5 objectionable or not as widely liked but I do
6 want to say that there is a lot of parts that are
7 really good and I think it's a great project and
8 you should be commended for a lot of the work
9 that you have done, I want to stop and say that,
10 it doesn't mean that there aren't issues that we
11 want to work our way through. Your parking lot
12 now that is going to be built on who parks there
13 during the day?

14 MR. FURIOSO: It has three components
15 originally the whole parking lot was one entire
16 parking lot used singularly but the people at
17 Kingman didn't like the fence, the 10 foot alley,
18 so I set the fence 20 feet back and rented the
19 six spaces which are the part that is on the lot
20 now to people in the building and in the wider
21 part of the parking lot there's actually about 17
22 spaces, those spaces get used during the day for

1 community use, people in the community they can
2 rent them monthly, title company, I help Mitchell
3 Gold who's the retailer across the street, Studio
4 Theater has a couple, so I rent those to the
5 neighborhood on a monthly basis. During the
6 night the restaurant rents it for patrons and
7 unfortunately they kind of lose money on it
8 because other restaurant users use it and it's
9 hard to police which restaurant you're going to.
10 So it has three functions, the back is for the
11 historic building; the main part is monthly
12 during the day and at night is being used for the
13 restaurant.

14 MR. SELFRIDGE: Okay so obviously those
15 will be gone so there might be more impact,
16 that's fine you don't have to offer a parking
17 lot. Have you had any discussions with Colonial
18 I know it was said that the tenants if they
19 wanted to they could try to rent it out but the
20 tenants are looking for a parking variance.

21 MR. FURIOSO: Let me just say and maybe
22 this is lost on a lot of folks. I'm attempting

1 to build a kind of building that I think is more
2 about the future rather than the past. In that
3 in the our 12 minimum spaces that I'm trying to
4 provide I have electric car chargers, I have gas
5 car chargers, I have bicycle rooms, I'm trying to
6 find a way and trying to do gold lead on a 30,000
7 square foot building if you know what that cost
8 is, is astronomically on a per square foot basis.
9 I'm trying to find the kind of tenant that
10 doesn't want to drive, I'm trying to find the
11 kind of tenant that is of that community possibly
12 rather than going to K Street or some other place
13 to find that working there is as great as living
14 there. So you know I'm not looking for maybe
15 that law firm, excuse me, that you know has a car
16 for every partner, I'm looking for a different
17 kind of tenant and I don't think I want to go and
18 encourage a lot more cars, that's part of my
19 business sort of mantra, I've been there several
20 decades and people try to get me to do
21 developments all over and I say if I can walk
22 there I will think about doing the development

1 but if I can't walk there I'm not going to
2 develop it, so it's more of my personal sort of
3 philosophy if you will.

4 MR. SELFRIDGE: Great, I'm getting looks
5 from the Chairperson so we'll stop there, thank
6 you very much.

7 CHAIRPERSON MOLDENHAUER: Definitely lets
8 wrap this up I think I'm still especially based
9 on Mr. Selfridge's identification which I think
10 was a good observation that this a supplement
11 that we received drawing B doesn't actually
12 address the elevated platform and I think I'd
13 like to see the renderings that I previously
14 asked for from that elevated platform just
15 looking at the overall impact on the public and
16 in addition to that I'd like to in regards to the
17 3 foot setback under the special exception
18 standard, Section 774.5 I think talks about off
19 street service functions including parking and
20 loading and I think that that potentially goes to
21 the set back on the ground floor level and if the
22 Applicant can address that potentially in a

1 supplement that would be appreciated. Is there
2 anything else that the Board would like to see in
3 a supplement from the Applicant prior to us being
4 able render a decision? Seeing none, I
5 appreciate these additional supplements obviously
6 its going to take us time to go through them, we
7 will want to read through these cases and this
8 additional information, so that being said what
9 we'll do is we'll set a date for the, I think two
10 additional documents that I asked for, do you
11 think the Applicant could get those to us in a
12 week or is that too soon for the architect? That
13 should be fine, okay. So what we'll do is we'll
14 say you guys can get that to us by Thursday the
15 24th of March we can then put this down for
16 decision on the 29th do we have time Mr. Moy? So
17 put this down then for decision on March 29th with
18 submissions being requested by the 24th. I know
19 that the Matrix is not a party to this case but I
20 would still request the Applicant serve the
21 treasurer as a interested individual that
22 submitted this documentation if the Board has any

1 additional information from some of the parties
2 that are present with information today, feel
3 like communication is always obviously best when
4 it's provided transparently so I would appreciate
5 any additional information provided to them as
6 well during that timeframe. Any questions from
7 the Applicant?

8 MR. FREEMAN: So is the record only open
9 for the submission of those two items, just so
10 I'm clear?

11 CHAIRPERSON MOLDENHAUER: Yes otherwise
12 the record is closed.

13 MR. FREEMAN: Thank you.

14 CHAIRPERSON MOLDENHAUER: That being said
15 I appreciate everybody coming down today to
16 testify on this case, I appreciate the efforts of
17 the Applicant and everybody, we are concluding
18 our morning session, this case has been set then
19 for decision for the 29th and all, sorry we'll set
20 this for April 5th for decision.

21 **Afternoon Session**

22 MR. MOY: Madam Chair before the Board

1 convenes for the afternoon session there is my
2 understanding a matter of possibly reopening the
3 special public meeting from this morning to add a
4 revision or to the decision that was made on
5 Application No. 18173 of Allison C. Warren.

6 CHAIRPERSON MOLDENHAUER: Yes thank you
7 we would like to reopen that case and what we're
8 going to do is we're going to address an issue
9 that was brought to our attention that there was
10 a supplement added in "Exhibit No. 24"
11 supplementing the relief requested by the
12 Applicant to include relief under 401 lot area
13 width and 2001.3 for additions to a non-
14 conforming structure. That being said since the
15 Applicant had specifically supplemented the
16 record and requested that additional relief even
17 though there was no additional posting for that
18 it was a similar variance and thus we would wave
19 the requirement for posting those addition
20 subsections because the variance standard was
21 already addressed, that being said we will reopen
22 the deliberation on that and what I will indicate

1 is that I think that the Applicant satisfies
2 those elements for a variance relief based on the
3 prior argument and prior articulation that we had
4 already stated earlier in the morning and I'll
5 incorporate that for the record in this
6 discussion and deliberation and then what I would
7 do is I would recommend that we withdraw our
8 prior decision and I will submit a new motion to
9 approve Application No. 18173 for a variance
10 request under 2003.2 for setback from alley
11 centerline 403 from lot occupancy, 401 from area
12 and lot width and 2001.3 for an addition to a
13 non-conforming structure. A motion has been made
14 is there a second?

15 MR. HINKLE: Second.

16 CHAIRPERSON MOLDENHAUER: A motion has
17 been made and seconded, all those in favor say
18 aye.

19 CHORUS: Aye.

20 MR. MOY: Before I give final vote Madam
21 Chair of course we have an absentee vote from Mr.
22 Turnbull who is participating on the application

1 and his absentee vote is to approve the
2 application as cited by the motion, contained in
3 the motion. So that would give a final vote of 3
4 to 0 to 2, this on the motion of the Chairperson
5 Ms. Moldenhauer to approve the variance relief
6 from lot occupancy 403 alley centerline setback
7 requirements under 2300.2 Sub B and a variance
8 relief from lot area, lot width under Section
9 401. Seconded motion Mr. Hinkle, yes 2001. So
10 anyway the final vote is 3 to 0 to 2 and I assume
11 that this is a summary order Madam Chair?

12 CHAIRPERSON MOLDENHAUER: Yes, thank you.
13 That concluding any additional morning business
14 this hearing will please come to order good
15 afternoon ladies and gentleman, this is the March
16 15, 2011, Public Hearing of the Board of Zoning
17 Adjustments for the District of Columbia, my name
18 is Meredith Moldenhauer, Chairperson, joining me
19 today to my right is Jeffrey Hinkle,
20 Representative of the National Capital Planning
21 Commission and to my left Representative of the
22 Zoning Commission Greg Selfridge. Copies of

1 today's meeting agenda are available to you and
2 are located to my left in the wall bin near the
3 door. Please be advised this proceeding is being
4 recorded by a court reporter and is also being
5 webcast live. Accordingly we must ask you to
6 refrain from any disturbing noises or actions in
7 the hearing room. When presenting information to
8 the Board please turn-on and speak into your
9 microphone first stating your name and home
10 address. When you are finished speaking please
11 turn-off your microphone so that your microphone
12 is no longer picking up sounds or background
13 noise. All persons planning to testify either in
14 support or in opposition are to fill out two
15 witness cards these cards are located to my left
16 on the table near the door and are also on
17 witness tables. Upon coming forward to speak to
18 the Board please give both cards to the court
19 reporter sitting to my right. The order of
20 procedures for special exceptions and variances
21 are as follows: 1. Statement of the Applicant and
22 Applicant's Witnesses. 2. Parties and persons in

1 support. 3. Parties and persons in opposition. 4.
2 Government Reports including Office of Planning
3 and Department of Transportation. 5. Reports
4 from the ANC. 6. Rebuttal and closing statements.
5 The order of procedure for an appeal application
6 is as follows; 1. Statement of the Appellant and
7 Appellant's witnesses. 2. The Zoning
8 Administrator or other government official cases.
9 3. Case of the owner, leasee or operator of the
10 property involved an intervener if not the
11 Appellant. 4. Other interveners in the case if
12 permitted by the Board. 5. The ANC within which
13 the property is located. 6. Rebuttal and closing
14 statements from the Appellant. Pursuant to
15 Section 3117.4 and 3117.5 the following time
16 constraints will be maintained, the
17 Applicant/Appellant persons and parties except an
18 ANC in support including their witnesses will be
19 given 60 minutes collectively. The Appellees
20 persons and parties except an ANC in opposition
21 including witnesses will be given 60 minutes
22 collectively. Individuals will be given 3

1 minutes and associations or organizations will be
2 given 5. These time restrictions do not include
3 cross examinations or questions from the Board.
4 Cross examination of witnesses is permitted by a
5 party or an Applicant. The ANC within which the
6 property is located is automatically a party to a
7 special exception or variance case. Nothing
8 prohibits the Board from placing reasonable
9 restrictions on cross examination including time
10 limitations or limitation on the scope of cross
11 examination. The record will be closed at the
12 conclusion of each case except for any materials
13 specifically requested by the Board. The Board
14 and the Staff will specify at the end of each
15 hearing exactly what is expected and the date
16 when the material must submitted to the Office of
17 Zoning. After the record is closed no other
18 information will be accepted by the Board. The
19 Sunshine Act requires that a public hearing on
20 each case be held in the open before the public.
21 The Board may consistent with its rules and
22 procedures and the Sunshine Act enter into

1 Executive Session during or after a public
2 hearing on a case for purposes of reviewing the
3 record or deliberating on a case. The decision
4 of the Board as in these contested cases must be
5 based exclusively on the public record, to avoid
6 any appearance to the contrary the Board requests
7 that persons present not engage the members of
8 the Board in conversation. Please turn off all
9 beepers and cell phones at this time as to not
10 disturb these proceedings. The Board will make
11 every effort to complete this hearing as near as
12 possible to 6pm, if the afternoon cases are not
13 completed at 6pm the Board will assess whether it
14 can complete the pending case or cases remaining
15 on the agenda. At this time the Board will
16 consider any preliminary matters, preliminary
17 matters relate to whether a case should or will
18 be heard today such as a request for
19 postponement, continuance or withdrawal or
20 whether proper or adequate notice of a hearing
21 was given. If you are not prepared to go forward
22 today or you believe that the Board should not

1 proceed, now is the time to raise such a matter.
2 Mr. Secretary, do we have any preliminary
3 matters?

4 MR. MOY: There are two possible items
5 Madam Chair, the first is a request for a
6 postponement to Application No. 18150 of Maryanna
7 Darwazeh my understanding from Staff
8 communication was that the agent was here earlier
9 this afternoon but had to leave to catch a flight
10 out of Washington and according to his
11 communication is that if the Board granted his
12 request that any date that the Board scheduled
13 would be fine with him. Secondly the first case
14 which is 18185 of Douglas Foster there is an
15 "Exhibit No. 22" where there was a request for a
16 postponement but Staff understand that the
17 Applicant was still planning on proceeding but
18 I'll let the Applicant speak for himself.

19 CHAIRPERSON MOLDENHAUER: Okay well why
20 don't we then take up the rescheduling of
21 Application 18150 first on this morning's agenda
22 after we swear in all the witnesses, all

1 individuals wishing to testify this afternoon
2 please stand and the oath will be administered.

3 MR. MOY: Do you solemnly swear or affirm
4 that the testimony that your about to present at
5 this proceeding is the truth, the whole truth and
6 nothing but the truth? Ladies and gentleman you
7 may consider yourself under oath.

8 **Application No. 18150**

9 CHAIRPERSON MOLDENHAUER: We'll take into
10 consideration the rescheduling of Application No.
11 18150 and why don't we put that for, is there a
12 date that looks good to you?

13 MR. MOY: I would suggest either the,
14 afternoon of April 5th or the afternoon of April
15 the 12th.

16 CHAIRPERSON MOLDENHAUER: Okay why don't
17 we put it on for the 5th?

18 MR. MOY: Okay very good thank you.

19 CHAIRPERSON MOLDENHAUER: Okay we'll call
20 the first case for the afternoon.

21 **Application No. 18185**

22 MR. MOY: That would be Application No.

1 18185 of Douglas Foster; pursuant to 11 DCMR
2 1202.1 and 3104.1 for a special exception to
3 allow rear sunroom addition to a one family semi-
4 detached dwelling under Section 223 not meeting
5 the lot occupancy, section 403 side yard, Section
6 405 requirements in the CAP/R-4 District at
7 premises 308 G Street, S.E. property is located
8 at (Square 795, Lot 810).

9 CHAIRPERSON MOLDENHAUER: Good afternoon
10 Mr. Foster if you could please state your name
11 for the record.

12 MR. FOSTER: My name is Ben Brownrig and
13 I'm representing Mr. Foster in this matter.

14 CHAIRPERSON MOLDENHAUER: Thank you, good
15 afternoon, we reviewed the Application and Mr.
16 Brownrig I think that the record seems very full
17 if you would like you can rest on the record
18 unless you have any additional supplemental
19 information.

20 MR. BROWNRIG: I did just bring along a
21 plot map that shows the location of the drawing I
22 don't think maybe you had seen that before.

1 CHAIRPERSON MOLDENHAUER: I believe we
2 have was is "Exhibit 2" but it doesn't look as
3 detailed as what you have so if you can actually
4 provide that to Mr. Moy and we'll all just take a
5 look at that. I have the D.C. Surveyors Office
6 Platt. Thank you yes we had "Exhibit No. 2"
7 which was the other Platt but I think this is a
8 little better of a diagram. Is there anything
9 else that you would like to supplement the record
10 with?

11 MR. BROWNRIG: No we did get approval
12 from the ANC Committee.

13 CHAIRPERSON MOLDENHAUER: We have that in
14 our record yes.

15 MR. BROWNRIG: I think your all set then.

16 CHAIRPERSON MOLDENHAUER: Wonderful,
17 thank you. Is there anybody in the audience for
18 this case that's either in support or opposition
19 of this case? Seeing none, then we'll turn to
20 the Office of Planning for their report.

21 MR. JACKSON: Good afternoon Madam Chair,
22 the Office of Planning reviewed the application

1 and we had one recommendation the application
2 called for a special exception for the lot
3 occupancy but this is a flat, and under a flat in
4 R-4 they're allowed the 60% lot occupancy and
5 even if you take into account the 4 feet of side
6 yard in the bulk of the overall building and with
7 the addition it does not it only comes up, it's
8 less than 50% total so we do not think the
9 application requires relief from the lot
10 occupancy requirement, it does require relief
11 from the setback requirement and it does require
12 relief from the, and of course it requires relief
13 from 2001.3 because it's a continuation of a non-
14 conforming characteristic. So with that we do
15 support the application we find that it meets all
16 the standards for approval under 223 and we do
17 not think there will be any adverse, and we note
18 that our historic preservation has reviewed the
19 application and did not note that there would be
20 any adverse impact on the character of the
21 neighborhood, with that I will close on that
22 summary note and we're available to answer

1 questions.

2 CHAIRPERSON MOLDENHAUER: I'm just
3 looking at our "Exhibit No. 5" which is the
4 letter from the ZA indicating that they were
5 under the impression that 403.2 lot occupancy
6 relief was required but you think that is an
7 error and obviously that under 223 they're
8 allowed to go up to 60%?

9 MR. JACKSON: If you refer to Section 403
10 percentage of lot occupancy and the Zoning
11 Regulations, under 403.2 it lists a row house,
12 flat, church and public school is allowed 60% lot
13 occupancy, that's 403.2. Now I think the
14 confusion comes in, in that the original
15 submission from the Applicant had calculations on
16 it that really pertain more to impervious surface
17 so it was a calculation for impervious surface so
18 that the numbers on the map actually were over
19 60% but that included the patio area behind the
20 house, if you look at the original Platt that was
21 submitted there are notes on there about the
22 patio area behind the house, it includes the side

1 area so it encompassed a much larger area so that
2 was the confusion, the submitted map shows what
3 exists for the purpose of calculating a
4 impervious surface, the submission the Applicant
5 provided today actually reflects what's proposed
6 and that proposed area is actually around 47% of
7 the lot. And again under 403.2 a flat is allowed
8 to occupy up to 60% of the lot so in that case
9 the proposal as submitted does not require zoning
10 relief for lot occupancy percentage.

11 CHAIRPERSON MOLDENHAUER: And you're
12 saying that this is a flat, because I'm looking
13 at one of the notices and this indicates that
14 it's a one family semi-detached dwelling, I want
15 to make sure that we have that accurate as well.

16 MR. JACKSON: Well in the packet there's a
17 submission for 308 H Street there's a certificate
18 of occupancy and that certificate is for a flat.

19 CHAIRPERSON MOLDENHAUER: I'm just going
20 to turn back to the Applicant's representative;
21 the property is going to continue to be used as a
22 flat not a single family dwelling?

1 MR. BROWNRIG: Correct.

2 CHAIRPERSON MOLDENHAUER: I want to make
3 sure you're not going to then go seek a change of
4 use or something to a single family dwelling then
5 all of a sudden our decision here would be...

6 MR. BROWNRIG: No he wants to sit on his
7 deck and hangout.

8 CHAIRPERSON MOLDENHAUER: So let's
9 continue to be a flat, okay. I have no other
10 questions for the Office of Planning, does anyone
11 else? One other quick question for the Office of
12 Planning before we conclude. Did you consider
13 the requirements for special exception under the
14 CAP Overlay District, Section 1202?

15 MR. JACKSON: I reviewed that but I can
16 look at it again.

17 CHAIRPERSON MOLDENHAUER: Any additional
18 concerns or issue regarding 1202.1?

19 MR. JACKSON: No.

20 CHAIRPERSON MOLDENHAUER: Okay then I have
21 no further questions for the Office of Planning.
22 Does the Applicant have any questions for the

1 Office of Planning?

2 MR. BROWNRIG: No questions.

3 CHAIRPERSON MOLDENHAUER: Do any Board
4 Member have any additional questions? Seeing
5 none then we turn to see if anybody is in the
6 audience from ANC 6-B seeing no one I'll
7 reference that we do have "Exhibit 27" which is a
8 letter dated March 9, 2011, indicating that at a
9 regularly called and properly noticed meeting on
10 March 8, 2011, with a quorum present ANC 6-B
11 voted unanimously to support the Application 10
12 to 0, so that letter would receive great weight.
13 That being said we'll turn back to the Applicant
14 for any closing remarks.

15 MR. BROWNRIG: None.

16 CHAIRPERSON MOLDENHAUER: Thank you then
17 at this point in time we'll conclude this hearing
18 I think that this is a fairly straight forward
19 223 relief, there's also the need for relief
20 under the CAP District as we obviously identified
21 as well and I think that there's really no
22 concern about satisfying those requirements, we

1 did as require submit documentation to the
2 architect of the capitol and nothing was
3 received, thus based on that I think we can move
4 forward. Office of Planning had no concerns
5 about any conflict in this addition to have any
6 issue with the CAP overlay District or 1202.1.
7 That being said this is a only actually the only
8 requirement is really not for the lot occupancy
9 seeing as we've confirmed this is a flat and it
10 going to continue to be used as a flat and thus
11 has a 60% lot occupancy in the R-4 Zone so the
12 only relief that we're seeking here that is
13 required to be sought is relief for side yard
14 setback, or side yard under 405 and I see no
15 issues under the 223 standard as to why that
16 shouldn't be approved especially with community
17 support from the ANC and no additional concerns
18 being raised regarding light and air and no
19 violations or no concerns with violating the
20 Zoning Requirements or the Zone Plan. That being
21 said any additional deliberation from the Board
22 Members? Seeing none I'll submit a motion,

1 motion to approve Application No. 18185 for
2 Douglas Foster; pursuant to 11 DCMR 1202.1 and
3 under 3104.1 for special exception to allow a
4 rear sunroof addition to a flat in a semi-
5 detached dwelling under Section 223 not meeting
6 the side yard under 405 requirements in the CAP
7 and R-4 District of premises 308 G, S.E. motion
8 has been made is there a second?

9 MR. HINKLE: Second.

10 CHAIRPERSON MOLDENHAUER: Motion has been
11 made and seconded, all those in favor say aye.

12 CHORUS: Aye.

13 MR. MOY: Staff would record the vote as
14 3 to 0 to 2 this is on the motion of the
15 Chairperson Ms. Moldenhauer to approve the
16 application for special exception relief under
17 223 not meeting lot occupancy 403 and side yard
18 405 and also approve of the Capitol District
19 under 1202.1, second motion Mr. Hinkle, also in
20 support of the motion Mr. Selfridge, no other
21 Board Members participating so again the final
22 vote is 3 to 0 to 2 to approve.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much seeing that there's no opposition we would
3 like to waive the requirements and request that a
4 summary order be issued.

5 MR. MOY: Thank you Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much.

8 **Application No. 18186**

9 MR. MOY: The next application for Board
10 Action is Application No. 18186 of Ethel H.
11 Taylor; pursuant to 11 DCMR 3104.1 for a special
12 exception to operate a self service dog washing
13 and grooming facility under Section 736 in the C-
14 2-A District, this is at premises 7714 Georgia
15 Avenue, N.W. (Square 2957, Lot 34).

16 CHAIRPERSON MOLDENHAUER: Good afternoon
17 if the parties will please introduce themselves.

18 MR. TAYLOR: Good afternoon my name is
19 Joseph Taylor I'm the architect for my client and
20 my address is 1610 Tulip Street, N.W. Washington.

21 MS. TAYLOR: Good afternoon Ethel Taylor
22 2130 Suberry Place, N.W. Washington, D.C.

1 CHAIRPERSON MOLDENHAUER: Thank you, is a
2 Mr. Long Zen in the audience? Apparently this is
3 an individual that sought party status in this
4 case in opposition, seeing that he's not present
5 there was an application for party status however
6 you must be present in order to seek party
7 status. We will consider his concerns did you see
8 a copy of this.

9 MR. TAYLOR: Yes we did.

10 CHAIRPERSON MOLDENHAUER: We'll obviously
11 address it as we go forward but we'll continue on
12 without him since he's not present that being
13 said I'll turn to you Mr. Taylor to start us off.

14 MR. TAYLOR: Thank you Madam Chair, the
15 only thing I would like to stipulate is that a
16 memorandum of intended use stated that the owner
17 would be changing the name on an existing canopy
18 and that would convey that the existing canopy
19 would stay in place, she has since decided that
20 she will be replacing the canopy and the new
21 business name will be on the new canopy and
22 replacing the existing canopy the color will

1 change from red to a spicy orange if you will,
2 other than that there are no changes in our
3 application to note for the record. We have
4 copies of the proposed awning with the name
5 change if you would like to submit in the record
6 other than that nothing has changed from the
7 application.

8 CHAIRPERSON MOLDENHAUER: Okay thank you
9 I think it would be helpful to have that in our
10 record and I would appreciate if you can just
11 provide a copy of those to Mr. Moy. That being
12 said I think that the record is quite full my
13 only concern are those that are potentially
14 raised by one of your neighbors Mr. Longzen
15 regarding potential waste or smells in that
16 regard. I know that you have provided a contract
17 proposal for RJS disposal services, you can just
18 elaborate on the steps that your going to take to
19 ensure under Section 736.3 that there's going to
20 be no issues of waste disposal or anything to
21 that effect of potential odor control that your
22 going to take on the property.

1 MR. TAYLOR: The odor control is to be
2 managed on two front, one the waste container,
3 the biodegradable charcoal filtered container
4 within the business will manage waste as you
5 collect it in the process of doing business of
6 grooming and shampooing the dog clientele and so
7 that's part of the waste removal management while
8 the waste is in the facility and it's removed,
9 presently the contract calls for weekly removal
10 and that will be adjust so that's on one front,
11 the second front the mechanical system will be
12 upgraded and in the course of doing that charcoal
13 filters will be on the return air system to
14 filter the air, a new code requirements require
15 for air changes and fresh air intake and so
16 there's exhaust required but the exhaust will be
17 filtered as it's exiting the premises. So the
18 charcoal filters on the waste and charcoal
19 filters on the air with some upgrades will manage
20 the migration of odors from the business
21 operation.

22 CHAIRPERSON MOLDENHAUER: Thank you that

1 provide additional insight especially addressing
2 that one concern, is there any other Board
3 questions for the Applicant?

4 MR. SELFRIDGE: Mr. Taylor where's that
5 going to vent through the air exchange is that
6 going to vent through the roof or through the
7 wall?

8 MR. TAYLOR: The concept calls for roof
9 top exhaust and this is preliminary but that's
10 the approach we plan to take.

11 MR. SELFRIDGE: It seems like roof top
12 would be it would even mitigate it more, that
13 would be all.

14 CHAIRPERSON MOLDENHAUER: Any additional
15 questions from Board Members? Seeing none then I
16 appreciate your comments and we'll turn to see if
17 there's anybody in the audience in support or in
18 opposition of this case. Seeing no one in the
19 audience in support or in opposition we'll turn
20 then to the Office of Planning for their report.

21 MR. MORDFIN: Good afternoon Chair,
22 Members of the Board I'm Stephen Mordfin with the

1 Office of Planning and the subject application is
2 in conformance with the criteria for the granting
3 of a special exception to permit a dog grooming
4 establishment because the use would be located
5 within a masonry building with no windows and
6 would be improved with new acoustical ceiling
7 tiles, sound attenuation, sound deadening boards
8 and sound proof drywall along the common walls
9 with the adjoining uses to control noise. A new
10 HVA system with charcoal filters to control odor
11 from emanating from the site and odor
12 neutralizing compose bins for waste storage with
13 weekly pick up. The Applicant informed the
14 Office of Planning that the waste would be stored
15 within the building and placed outside only on
16 collection day. The site also does not abut
17 either an existing residential use or residential
18 district and no external facilities are proposed,
19 therefore the Office of Planning recommends that
20 the application be approved, thank you.

21 CHAIRPERSON MOLDENHAUER: Any questions
22 of Office of Planning?

1 MR. TAYLOR: No questions.

2 CHAIRPERSON MOLDENHAUER: Any Board
3 questions for the Office of Planning? No
4 additional questions then at this point in time
5 we'll turn to see if anybody is in the audience
6 from ANC 4-A? No one in the audience is present
7 from 4-A but we have our "Exhibit No. 10" which
8 is a letter dated December 27, 2010, which
9 indicates that on December 7, 2010, at a properly
10 noticed meeting there was a vote in support of
11 the recommended approval of the Application to
12 reopen a self service dog service facility at
13 7714 Georgia Avenue, N.W. they indicate that a
14 quorum was present at that meeting. That being
15 said this letter does satisfy our requirements
16 and that letter will receive great weight. In
17 addition to that I would just like to note for
18 our record that we also have a letter "Exhibit
19 No. 29" from Council Member Bauer's Office
20 indicating that he acknowledges the ANC support
21 and also states that he is pleased to do the same
22 and hope that Board of Zoning Adjustment reviews

1 this variance application favorably. That being
2 said we will then turn back to the Applicant for
3 any closing remarks.

4 MR. TAYLOR: No closing remarks thank
5 you.

6 CHAIRPERSON MOLDENHAUER: Thank you, then
7 at this point in time we will conclude the
8 hearing and we'll enter into deliberation, this
9 case is before us for a special exception under
10 736 which is a pet grooming establishment, the
11 standards of this are that a pet grooming
12 establishment shall be located and designated to
13 create no objectionable conditions to adjacent
14 properties resulting from animal noise, odors or
15 waste. The Office of Planning indicated that
16 based on their review there would be no such
17 objectionable conditions, there will be no
18 windows, the additional HVAC and charcoal filters
19 that have been identified, we did ask questions
20 of the Applicant regarding some of those concerns
21 about a potential concern that we received from
22 Mr. Longzen however I think that those were

1 addressed and in addition to that we have no
2 other objections for any other neighboring
3 property owners. Under Section 736.3 indicating
4 that all animal waste shall be placed in a closed
5 disposal container and shall utilize a qualified
6 waste disposal company to collect and dispose of
7 all animal waste at least weekly. Odor control
8 should be controlled by means of any air
9 filtration system or equivalent effective odor
10 control system. We've heard the architect
11 testify to the charcoal filter HVAC which he
12 confirmed was going to be filtered through the
13 roof, I think that will as Mr. Selfridge
14 indicated mitigate any potential odor problems
15 for neighboring properties and I think that based
16 on the required trash removal as identified by
17 their "Exhibit 11" that will also mediate any
18 concern about any waste on the property. Last is
19 that the pet grooming establishment shall not be
20 but any existing residential use and this
21 property does not, in addition to that 736.5
22 external yards and other external facilities for

1 keeping animals shall not be permitted, no
2 external yards or exterior facilities are
3 proposed here, the sale of pet supplies is
4 permitted as an accessory use, the Applicant
5 informed the Office of Planning that, that is not
6 going to be a part of this application and that
7 the Board can impose any additional requirements
8 as they deem fit, at this point in time I don't
9 see any additional requirements that we would
10 require on the Applicant the Applicant did
11 indicate that they were going to change the
12 awning which I see no substantial impact in the
13 neighborhood for that, we have ANC support, we
14 have a letter from the Council Member in support
15 and we have no individuals here voicing any
16 additional concerns regarding the granting of
17 this special exception. That being said I would
18 recommend approval of this Application but see if
19 there's any additional deliberation before we
20 move forward.

21 MR. HINKLE: Madam Chair I think the
22 Applicant has made some strong efforts in terms

1 of mitigating the sound, neutralizing any
2 potential odors as well as controlling any
3 potential waste so I'm supportive of this
4 Application.

5 CHAIRPERSON MOLDENHAUER: Thrown out for
6 discussion potentially terming the application
7 for a period of five years I don't think it's
8 going to be necessary, this is a preexisting use
9 where they're reestablishing this facility would
10 any other Board Members feel that a potential
11 term would be necessary?

12 MR. HINKLE: Not if it's reestablishing
13 an existing use.

14 CHAIRPERSON MOLDENHAUER: That's my
15 understanding, no I'm sorry it was a shoe story
16 previously so this is a new use in the community,
17 I mean do people feel that it's necessary or not,
18 other Board Members?

19 MR. SELFRIDGE: I think the one concern I
20 had I did mention was just how the waste was
21 going to be picked up whether it's going to be
22 set on the curb or whether someone come in and

1 pick it up because I think there's a big
2 difference between the two of those and what I
3 thought I heard was that it would be sat on the
4 curb and I guess that gives me a little pause is
5 that sets in so to the degree that's appropriate
6 that that can be addressed still I think that
7 that would be important, I can't see putting it
8 on the curb in August and the truck breaks down
9 it could be a bit of a nuisance.

10 CHAIRPERSON MOLDENHAUER: Why don't we
11 break from our deliberation and I'll reopen the
12 hearing and see if the Applicant can answer that
13 question?

14 MR. TAYLOR: If you don't mind I'd like
15 to answer it now. For the scheduled pick up
16 while the waste is in the container within the
17 business it's a composting container and the
18 temperature goes up to 140 to just begin to kill
19 germs and bacteria so it's composting while it's
20 awaiting, when they sit it out for pick up the
21 entry to the retail space is recessed four feet
22 so it will not be out on the sidewalk or the curb

1 it will be recessed and not interfering with the
2 line of traffic and the public sidewalk so
3 there's a just under four foot recess for the
4 container to be set for pick up and it would be
5 out within a close timeframe of the scheduled
6 pick up point in time so it will not be sitting
7 on the curb or in the public sidewalk.

8 CHAIRPERSON MOLDENHAUER: Is there anyway
9 that you can have the contractor come in and pick
10 it up from inside?

11 MR. TAYLOR: It can be picked up when the
12 business is in operation so it won't have to be
13 set out at all they can come inside to retrieve
14 it and leave with it so it will not be outside
15 waiting pick up, it will be within the business
16 premises waiting to be picked up.

17 CHAIRPERSON MOLDENHAUER: I think that
18 would be a condition we would want to see, I
19 think that's...

20 MR. TAYLOR: We can manage that just by
21 operation and schedule with the understanding
22 that they come in to retrieve it.

1 MR. SELFRIDGE: I think that would give
2 me, I think that would be the way to go and I'd
3 certainly be much more comfortable moving forward
4 and frankly not conditioning it I think if you
5 can resolve that issue I don't know where the
6 problems would arise so I don't feel a need to
7 bring the Applicant back in.

8 CHAIRPERSON MOLDENHAUER: Not term it but
9 condition it though. I thank you for taking the
10 time to answer those questions. Then what I
11 would do is I would recommend approval of
12 Application No. 18186 under Section 736 for a
13 special exception to permit a pet grooming
14 establishment with an individual condition that
15 the trash be picked up from inside the facility
16 and not placed on the curb, a motion has been
17 made is there a second.

18 MR. HINKLE: Second.

19 CHAIRPERSON MOLDENHAUER: Motion has been
20 made and seconded all those in favor say aye.

21 CHORUS: Aye.

22 MR. MOY: Staff would record the vote as

1 3 to 0 to 2 this is on the motion of the
2 Chairperson Ms. Moldenhauer to approve this
3 special exception relief under Section 736 for a
4 pet grooming establishment under the condition
5 that the trash pick up is inside the facility as
6 opposed to being on the curb. Also Staff would
7 also like to add that there was a name change on
8 the canopy and the wall mounted sign and as well
9 as a change in color from red to what spicy
10 orange, that is shown on the drawings on "Exhibit
11 No. 12" in the record. Seconded the motion is
12 Mr. Hinkle, also in support of the motion Mr.
13 Selfridge. Again the approval vote is 3 to 0 to
14 2.

15 CHAIRPERSON MOLDENHAUER: Thank you Mr.
16 Moy for that summary and we would like to waive
17 our requirement seeing that there was no
18 opposition even though and opposition had been
19 requested we didn't see a formal opposition here
20 present at the hearing thus a summary order is
21 requested.

22 MR. MOY: Very good Staff will do so

1 Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much, have a good day.

4 MR. TAYLOR: Thank you very much.

5 **Application No. 18174**

6 MR. MOY: The next application for Board
7 Action is Application No. 18174; this is of Gary
8 Cohen of Gary Cohen pursuant to 11 DCMR 3103.2
9 for a variance from the lot occupancy
10 requirements under Section 772 and a variance
11 from the off street parking requirements under
12 (subsection 2101.1). This is to allow the
13 conversion of an existing one story commercial
14 building a Laundromat to a 3 story apartment
15 building in the C-2-A District at premises 732
16 15th Street, SE. (Square 1077, lot 808).

17 CHAIRPERSON MOLDENHAUER: Thank you very
18 much Mr. Moy and once the Applicant has set
19 everything up if he could introduce himself for
20 the record.

21 MR. GOINS: Sure I'm Jeff Goins with PGN
22 Architects, I'm representing the client, he's in

1 route, he might make the hearing or not so.

2 CHAIRPERSON MOLDENHAUER: Okay we have
3 Applicants who are represented by architects all
4 the time and unless we have any specific
5 questions for him that come up hopefully you can
6 answer all of our questions and we can go forward
7 for today. So if you can start us off, I think
8 if you can walk us through the variance
9 requirements and how this property satisfies
10 those and how the application satisfies that.

11 MR. GOINS: Sure, this property is
12 located along the Pennsylvania Avenue Corridor on
13 the south east portion of Capitol Hill at 15th
14 Street, so it's 15th and Pennsylvania Avenue, SE.
15 It's actually about an eighth of a mile before
16 you go across the bridge into Anacostia so it's
17 on the far south east side of Capitol Hill. I
18 think it's an existing one story Laundromat
19 currently and the adjacent property is a Domino's
20 that occupies the site to the south and across
21 the street on 15th Street is a vacant commercial
22 property that is two stories. The existing

1 building occupies roughly 68% of the lot as it
2 currently sets for commercial use. When we
3 convert this to residential use it will not
4 comply with the 60% lot occupancy so the first
5 area of variance the building it at 68% we're
6 requesting to keep that existing building intact.
7 The addition that we're going to build the three
8 story addition on top of this one story structure
9 will maintain the 60% and be compliant with all
10 current C-2-A Zoning height, massing, and FAR and
11 lot occupancy, its just the first floor that we
12 will not comply and I think from the client's
13 perspective it would require removing roughly
14 eight feet of the existing structure and it kind
15 of has some unique characteristics that lays out
16 well for a residential unit so he wants to keep
17 that existing structure. The second variance
18 that we're requesting is parking variance, the
19 property will be 5 residential units when it's
20 completed, the lot as it's currently laid out and
21 constructed as the lot is there's no way to
22 actually provide legal parking, you could do that

1 with a curb cut off of 15th Street but I don't
2 think that's advisable in the residential
3 neighborhood. There is an alley at the rear of
4 the property it's Freedom Way and as you can see
5 the actual lot cants away from Freedom Way and
6 what that does it actually, his lot that abuts
7 the alley is only 5 feet which is not a legal
8 drive. The actual rear yard is 32 feet, it's
9 just there's no way possible to actually get in
10 that 32 feet, I think he would probably tell you
11 he would provide parking if he could. I think
12 from a variance standpoint the site, you know
13 I've got a transportation map there it's a
14 perfect property that requires a parking variance
15 that meets the requirements, there's 12 bus
16 routes that actually stop in front of the
17 property, it's one block from the metro, there's
18 two bike sharing locations within a quarter of a
19 mile, and there's also two zip car locations
20 within two blocks. There are ample
21 transportation requirements that could be met.
22 Those really are the two variances that we're

1 seeking; the rest of the property will comply
2 with all current zoning. I think that concludes
3 my testimony, if you have questions I'd be glad
4 to answer.

5 CHAIRPERSON MOLDENHAUER: Thank you; I
6 actually have a couple of questions about the
7 parking. We have a letter here from DDOT
8 indicating that the Applicant had agreed to
9 potentially mitigate some of the impact of not
10 having parking by having a one time smart trip
11 card provided of a 100 dollar value to each new
12 resident and a one time Capitol Bike Share annual
13 membership of 75 dollars for each new resident is
14 that something that the Applicant is willing to
15 agree to?

16 MR. GOINS: Yes that is correct.

17 CHAIRPERSON MOLDENHAUER: Now is this
18 going to be a condo unit or an apartment
19 building?

20 MR. GOINS: I think it's currently being
21 designed as a condo but I'm pretty sure that's
22 the way it's going to stay, and I did want to say

1 in my testimony that we did have four public
2 meetings in the ANC there was, I think you'll see
3 from the letters of support we've received a fair
4 amount, and as well there was a petition against
5 the parking variance as well we held four public
6 meetings so there was a lot of feet backs with
7 the neighbors.

8 CHAIRPERSON MOLDENHAUER: And what was the
9 major feedback that you received?

10 MR. GOINS: Most were concerned about the
11 parking variance; there was a lot of concern. I
12 think some of the problem is the actual buses
13 actually turn on 15th off of Pennsylvania Avenue
14 so across the street from Pennsylvania Avenue
15 there's plenty of room for street parking it's
16 just the buses to make that turn they don't allow
17 people to park across the street right there
18 currently.

19 CHAIRPERSON MOLDENHAUER: Can you point
20 out what you mean by across the street, I'm
21 sorry. So you're saying that some of the
22 neighbors are concerned about individuals parking

1 their car on off street sites such as on that
2 street on 15th Street creating additional I guess
3 parking trouble with the buses being on that
4 route as well.

5 MR. GOINS: Yes, there was concern with
6 the neighbors generally I don't think I heard any
7 of the lot occupancy concerns, most of it was
8 parking and at our ANC hearing we had a large
9 group that showed up in support, there was a
10 petition against it but no one showed up in
11 opposition at the hearing.

12 CHAIRPERSON MOLDENHAUYER: And I don't
13 believe that I saw but is there any like bike
14 racks or anything like that or a common area that
15 would be provided to either the unit owners or to
16 the apartment tenants for bikes or for mopeds or
17 things of that effect on the facility?

18 MR. GOINS: I'm sure the client would be
19 very pleased to provide that.

20 CHAIRPERSON MOLDENHAUER: I don't have
21 any other questions; any other Board Members have
22 any questions for the Applicant? Not at this

1 time, okay then I appreciate that and then what
2 we'll do is I'll look to see is there anybody in
3 the audience in support or in opposition to this
4 case. Seeing no one in the audience then we'll
5 move forward to the Office of Planning's report.

6 MS. BROWN-ROBERTS: Good afternoon Madam
7 Chairman and Members of the Board I'm Maxine
8 Brown-Roberts from the Office of Planning. I am
9 going to stand on the record because I think the
10 Applicant covered the majority of the issues that
11 is also covered in my report except for one thing
12 regarding the area of relief, the submission
13 asked for relief from Section 3102.3 and 772.1
14 for the lot occupancy and 2101 for the parking,
15 it is the Office of Planning's belief that the
16 actual Section for relief should be from 2101.3
17 because this is an addition to a non-conforming
18 structure so we would have two variances, one
19 from 2001.3 and 2101 for the parking. That was
20 the basis on which we reviewed the Application
21 and we recommend approval as stated in our report
22 and I'm available for any questions.

1 CHAIRPERSON MOLDENHAUER: Do any Board
2 Members have any questions for the Office of
3 Planning? I guess my only question would be did
4 you hear any of these concerns that the
5 Applicant's agent was talking about in regards to
6 concerns over the parking?

7 MS. BROWN-ROBERTS: No I spoke to the
8 chairperson for the ANC and actually they didn't
9 bring that up they told me that they had no
10 concerns and that it was approved they didn't
11 express any other thing. I think from my
12 information from talking with the Applicant those
13 came maybe when they had the community meetings
14 and not at the actual ANC meeting if I'm correct.

15 CHAIRPERSON MOLDENHAUER: Okay, I have no
16 other questions do Board Members have any
17 additional questions for the Office of Planning?
18 Seeing none then we'll turn to see if the ANC is
19 present, or does the Applicant have any questions
20 for the Office of Planning?

21 MR. GOINS: Nope.

22 CHAIRPERSON MOLDENHAUER: No okay, we'll

1 turn to see if anybody is present from the ANC?
2 Seeing no one present from ANC 6-B we have an ANC
3 letter which is our "Exhibit No. 23" dated
4 February 9, 2011, indicating that at a regularly
5 called and properly noticed meeting on February
6 8, 2011, with a quorum present ANC 6-B voted 9 to
7 1 to support the Application and so this letter
8 satisfies our requirements and would receive
9 great weight. That being said I'll turn back to
10 the Applicant for any closing remarks.

11 MR. GOINS: I have none, thank you.

12 CHAIRPERSON MOLDENHAUER: Does the Board
13 have any final questions for the Applicant prior
14 to potentially going into deliberation. Seeing
15 none then we will conclude this hearing and I
16 appreciate your time and will enter directly into
17 deliberation, I will start us off; this is an
18 application for a variance for actually 3
19 Sections, Section 772.1 for lot occupancy,
20 Section 2101.1 for parking and Section 2001.3 for
21 addition to a non-conforming structure. This is
22 prior commercial use which is being transformed

1 into a residential five unit building and I think
2 that it satisfies the variance standard
3 considering that the prior existing structure
4 would have to be semi-demolished in order for the
5 building to satisfy or to qualify and meet the
6 zoning requirements. Obviously anything that
7 creates a difficulty and a substantial difficulty
8 for the owner to potentially have to demolish a
9 portion of the property especially when they're
10 looking for a simple an 8.8% relief here for lot
11 occupancy which I think is very minimal and it is
12 an existing condition. That being said I think
13 then in addition to that the issue of parking, we
14 heard testimony that the property is unique in
15 regards to the fact that the access way is too
16 small to provide off street parking. I think
17 that it is true I'm sure the Applicant if he
18 could provide parking especially if they're going
19 to do condos would probably prefer to create
20 parking on the property rather than not being
21 able to so I don't see a problem with that, I
22 think that I wouldn't want to have this project

1 conditioned as recommended by DDOT we have a
2 letter from DDOT which is out "Exhibit No. 28"
3 which recommended approval of this application,
4 they had a condition that approval on having the
5 Applicant provide a one time smart trip card of
6 100 dollars to each new resident and a one time
7 Capital bike share annual membership of 75
8 dollars to each new resident and I think I would
9 agree with those two conditions potentially to
10 mitigate any impact of not having parking but I
11 think that while there is a need to mitigate it
12 and I would recommend that I think that the
13 potential challenge here or the need for relief
14 is very small considering that your talking about
15 a 5 unit building in an area that is very Metro
16 transit, has a lot of density in that regard and
17 a lot of availability close by considering it's
18 proximity to Pennsylvania Avenue, multiple bus
19 routes and the metro. That being said I would
20 recommend approval of this Application but I'll
21 open up the floor for any additional deliberation
22 just also noting that we have ANC support of this

1 application. Any additional deliberation from
2 Board Members?

3 MR. SELFRIDGE: Thank you Madam Chair I
4 would just reiterate what you said regarding the
5 parking I'm often concerned about impacts in
6 residential areas but I think that it's a 5 unit
7 building a block from the Metro, I think the
8 impacts are minimal, I think it's impractical to
9 expect that they could put parking in the back
10 it's a 5 foot clearance to get through and I just
11 don't think you can do it, and ANC 6-B also
12 supported the variance from the off street
13 parking requirements so to me I think that's
14 significant and helps me support this
15 application.

16 CHAIRPERSON MOLDENHAUER: Wonderful, well
17 then that being said and I appreciate the
18 additional reference we are always very concerned
19 about a variance standard especially parking
20 relief from that in a residential area. I would
21 recommend approval of this application, recommend
22 approval of Application No. 18174 under 11 DCMR

1 3103.3 for relief under Section 772.1 of lot
2 occupancy and 2101.1 for parking and under 2001.3
3 for an addition to a non-conforming structure to
4 allow a two story addition to an existing one
5 story building at address 732 15th Street, S.E. a
6 motion has been made is there a second?

7 MR. HINKLE: Second.

8 CHAIRPERSON MOLDENHAUER: Motion's been
9 made and seconded all those in favor say aye.

10 CHORUS: Aye.

11 MR. MOY: Staff would record the vote as
12 3 to 0 to 2 this on the motion of Chairperson
13 Moldenhauer to approve the application for the
14 variance relief under lot occupancy 772.1 for
15 parking requirements under 2101.1 and for
16 addition to a non-conforming structure provision
17 under 2001.3, also the two conditions as cited in
18 the DDOT report under "Exhibit 28". So again the
19 vote is 3 to 0 to 2.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much Mr. Moy and seeing that there's no
22 opposition in this case we'd like to waive our

1 requirements and ask that a summary order be
2 issued.

3 MR. MOY: Very good thank you Madam
4 Chair.

5 CHAIRPERSON MOLDENHAUER: Thank you, and
6 call the next case.

7 **Appeal No. 18151**

8 MR. MOY: That would be Appeal No. 18151
9 of the Van Ness South Tenants Association;
10 pursuant to 11 DCMR 3100 and 3101 from an August
11 13, 2010, decision by the Director of the
12 Department of Consumer Regulatory Affairs to
13 grant building permit No. B1009105 allowing the
14 renovation of an existing apartment building for
15 dormitory use for the University of the District
16 of Columbia Students in the R-5-D District at
17 premises 3003 Van Ness Street, N.W. property
18 located in (Square 2049, lot 806).

19 CHAIRPERSON MOLDENHAUER: Okay it looks
20 like we've got everybody lined up here and so
21 what we're going to do is we'll start off here on
22 my left with the Appellant and if everybody could

1 just go down the row and I'll have everybody
2 introduce themselves for the record.

3 MS. ELLIOTT: Tanisha Elliott on behalf
4 of the Appellant a witness.

5 MR. LEDERER: Brian Lederer on behalf of t
6 he Appellant.

7 MS. PERRY: Karen Perry on behalf of the
8 Appellant.

9 MR. WILSON: David Wilson on behalf of
10 the Appellant I will give part of the opening
11 statement and the closing statement.

12 MR. KOPECKY: David Kopecky on behalf of
13 the property.

14 MR. BROWN: Patrick Brown from Greenstein
15 Deloma and Lox I'm half of the property owner.

16 MR. PRINCE: Allison Prince of Goldstein
17 and Storrs on behalf of UDC.

18 MR. AVITABILE: Dave Avitabile of
19 Goldstein and Storrs on behalf of UDC as well.

20 MR. SURABIAN: Good afternoon Assistant
21 Attorney General Jay Surabian on behalf of DCRA.

22 CHAIRPERSON MOLDENHAUER: Okay obviously

1 we'll get started with the Appellant's case which
2 will as I indicated earlier will be give 60
3 minutes collectively for all of it's witnesses
4 including open and closing remarks. I just want
5 to procedurally then address the intervener's in
6 this case, Mr. Brown and Ms. Prince are you going
7 to collectively give, I'm assuming obviously you
8 have 60 minutes collective, 30 minutes each is
9 that sufficient for both of you? I think Mr.
10 Surabian you will be on the clock I'm just trying
11 to make sure that procedurally we're correct here
12 for the District, how long you will need for
13 you're...

14 MR. SURABIAN: For the two witnesses
15 probably 40 minutes maybe less.

16 CHAIRPERSON MOLDENHAUER: Okay so we'll
17 say 40 minutes I just want to make sure that we
18 all have our timing that way we keep ourselves on
19 track today, that now kind of addressing the
20 timing issue, the first thing we have is the
21 preliminary matter which is the prehearing
22 statement that we received, it was a late filing

1 by the Appellant, we received it on March 2nd,
2 "Exhibit No. 29", there was a request that
3 obviously we waive our requirement and they
4 provided a rationale for that, we then received
5 another filing from the intervener in the case on
6 behalf of UDC in opposition to the Appellant
7 untimely filing in the prehearing statement. The
8 Board has reviewed both of those and in regards
9 to trying to provide the Board as much
10 information as possible so that way we can make
11 an educated decision we are going to admit the
12 prehearing statement and we have reviewed that to
13 date we will also admit obviously that position
14 even though that's something that was also in
15 addition to that and that went beyond even
16 replying just to the opposition including some
17 additional arguments and we have reviewed that
18 and we are admitting that as well. We have
19 reviewed both of those documents prior to this
20 hearing, that being said I think that those are
21 all the preliminary matters we have before us
22 this afternoon. What we'll do is we'll turn to

1 the Appellant to start us off; it looks like we
2 received an additional packet of exhibits Mr.
3 Wilson?

4 MR. WILSON: I think mostly all but one
5 of the exhibits was attached to the prehearing
6 statement so we can just put these into the
7 record individually and I hope everybody has been
8 given a copy.

9 CHAIRPERSON MOLDENHAUER: And everybody
10 has been given a copy of this new package?

11 MS. PRINCE: We've not received a copy of
12 the new package.

13 CHAIRPERSON MOLDENHAUER: I think Mr. Moy
14 had made copies.

15 MS. PRINCE: These were submitted today?

16 CHAIRPERSON MOLDENHAUER: I think that
17 it's best that way we are all using the same
18 exhibit numbers, I always like it when we are all
19 using the same exhibit numbers, so if you can
20 make sure everyone has a copy of this. What I'll
21 do is I'll give everybody a quick moment to
22 review it and make sure there are no general

1 objections to anything in the documents.

2 MS. PERRY: If we do need more I have
3 more with me.

4 CHAIRPERSON MOLDENHAUER: It looks like
5 everybody has a copy now.

6 MR. BROWN: Madam Chair just for clarity
7 they said everything was previously filed except
8 one item and if we could clarify which one item
9 that is.

10 MR. WILSON: "Exhibit 7".

11 MS. PRINCE: Madam Chair if I could just
12 note that until today we had no idea of the
13 witnesses that would be present today it was not
14 included in the prehearing statement that you've
15 accepted into the record and I think that really
16 has affected our ability to respond to some of
17 the issues that may get raised.

18 CHAIRPERSON MOLDENHAUER: I think what
19 we'll do is I think pretty much all the witnesses
20 were previously here at prior hearings except for
21 the fact of one, Ms. Elliott and so what I'll do
22 is I think we'll go forward if there is any

1 obvious issues we can always raise those again
2 and potentially address those in a supplemental
3 brief or something to that effect if there is an
4 issue of surprise or an issue that needs to be
5 replied to after the hearing is over. That being
6 said I think we've now addressed all preliminary
7 matters and we'll turn to Mr. Wilson or Ms. Perry
8 whoever's going to start us off and we have the
9 clock set for 60 minutes, you can begin.

10 MS. PERRY: Thank you Chair Moldenhauer,
11 my name is Karen Perry I'm president of the Van
12 Ness South Tenants Association, in addition to
13 being the ANC 3-F-0-2 Commissioner which is this
14 area this appeal was brought on behalf of the
15 residents of Archstone Van Ness, it's an appeal
16 of the building permit granted by DCRA to allow
17 the construction of 21 walls and 21 apartment
18 units to permit four UDC Students to be crammed
19 into each unit, but it should also be noted now
20 that UDC has obtained more permits and they now
21 have 31 units. Also at the Council hearing last
22 week UDC oversight hearing they stated they

1 intended to have 100 units in our building which
2 would be a total of 400 students, this building
3 permit we feel violates the zoning laws in
4 several respects. We feel it was granted for an
5 impermissible use to convert these apartments
6 more or less into rooming houses that are not
7 allowed in the R-5 District, it was granted
8 without any prior review by the ANC and I'll
9 address that later. It was granted without
10 sufficient information in the application to
11 allow a determination of compliance with the
12 zoning regulations. The fact that DCRA had to
13 issue a stop work order and that the construction
14 was being done by UDC and not the owner of the
15 building should have sent up a red flag, that
16 more information was necessary before the
17 granting of the permit. Just some background on
18 our building, the Van Ness Complex was
19 constructed before 1970 as a luxury residential
20 housing it consisted of 3 buildings, Van Ness
21 North which is now cooperative, Van Ness East
22 which is now a condominium and Van Ness South

1 where we have two wings to the building, one a
2 west wing, one a south wing and we're connected
3 by a central lobby and reception area. All of
4 the buildings are connected to each other via
5 underground garages and we connect to the Giant
6 Food Plaza, we all share the same swimming pool.
7 We have maintained our rental status and we are
8 subject to the rental housing laws of the
9 District, we're currently owned by the Archstone
10 Group, although we are listed in the best
11 addresses of Washington as Van Ness South, hence
12 the name Van Ness South Tenants Association
13 recently Archstone did change our name to
14 Archstone Van Ness and just so you know we're not
15 a fly by night organization we were incorporated
16 in 1979 and we've maintained our certificate of
17 good standing ever since. We are an 11 story
18 building with 625 units, we have amenities for
19 the tenants include a business center, and
20 exercise room and a social room and has I
21 mentioned before the shared swimming pool. We
22 have a wide variety of tenants living in the

1 building from elderly and disabled tenants to
2 young working couples with small children,
3 students from Howard Law School and other local
4 universities and Diplomats whose embassies are
5 located close by. At 9am on August 11, 2010,
6 inspectors from DCRA issued a notice of
7 infraction to UDC for construction occurring at
8 Archstone VanNess without a building permit. At
9 4:30 on the same day UDC inspectors issued a
10 second notice of infraction with another fine of
11 2,000 for unlawfully continuing work when a stop
12 work order was in place and those are in "Exhibit
13 1" that you have. Two days later on August 13th,
14 Archstone UDC filed an application for a
15 construction permit, the agent for the owner was
16 listed as Eric Matthews a contractor employed by
17 UDC, the description of the work was adding 21
18 walls to 21 apartment rooms, this application has
19 numerous defects, first of all the owner of the
20 building is shown as Archstone UDC, no such
21 entity exists and UDC has no ownership in 3003
22 Van Ness Street, N.W. The building is shown as

1 12 stories with 100 apartments on each floor, our
2 building is 11 stories, and there are 33
3 apartments on each floor on the west side and 25
4 apartments on each floor in the south side. Part
5 of the building permit application is a zoning
6 form, none was filled out and none was submitted
7 nor did anyone from zoning sign off on the
8 building permit application. Structural
9 engineering signed off on the application even
10 though they did not know what units construction
11 was to take place in, no construction drawings
12 were submitted and our building has over 15
13 different floor plans. The application was
14 signed by Eric Matthews, Eric Matthews was the
15 agent hired by UDC he is not the owner or agent
16 of the owner Archstone, he is not an Archstone
17 approved vendor and just so you know Archstone
18 has approved vendors in each of the disciplines
19 be it mechanical, plumbing, down to the fact that
20 all the paint must now be by Glidden, the
21 building permit issue did not identify the units
22 where 25 walls were to be added to convert these

1 units from one bedroom apartments to two
2 bedrooms. Because the environmental
3 questionnaire part of the building permit was not
4 filled out accurately and that the Applicant
5 checked that the building was not built before
6 1978 no lead hazard control questionnaire was
7 filled out to determine if a permit was needed to
8 conduct lead abatement, a serious safety and
9 health concern. This property was built before
10 1970 as our first residents moved in; in 1970 in
11 fact some of them still live in the building.
12 UDC has notified their students that the building
13 does contain lead, that's in one of their
14 attachments. Amazingly less than 2 days after
15 DCRA issued the stop work order and expedited
16 hearing was held and DCR issued the building
17 permit that same afternoon and that's "Exhibit
18 3". The building permit has further defects, the
19 building permit did not identify the units where
20 they were to be added and it should be noted here
21 that actually 42 walls were added, 21 doors and
22 ventilation was also added in some of the units.

1 The owner of the property is misidentified as
2 Smith Property Holdings 4411 Connecticut Avenue
3 rather than Smith Property Holdings Van Ness LP.
4 Smith Property Holdings 4411 Connecticut is the
5 Park Connecticut a totally different building.
6 These defects are more than just administrative
7 errors it is an entirely false application for a
8 building permit and attends to obscure the impact
9 on the real zoning violations and the use of
10 these units. The building permit violates the
11 zoning regulations and other laws essential to
12 maintaining the integrity of the Zoning Laws,
13 Section 3202.2 of the Zoning Regulations
14 recognizes that each application for a building
15 permit must be accompanied by sufficient
16 information to allow a determination of
17 compliance with the Zoning Regulations, the
18 application submitted for the building permit
19 does not do so, the application provides no
20 notice of the intent to change the use of the
21 units in which walls were to be constructed from
22 apartment to rooming house. The DCRA then failed

1 to consider compliance with the Zoning
2 Regulations by rushing the permit through without
3 having zoning signing off on the permit even
4 though the red flag was there that it was UDC
5 doing the construction not Archstone. These
6 defects may have been caught had UDC notified ANC
7 3-F and our Ward Council Member as required prior
8 to the issuance of the building permit that UDC
9 had leased property at Archstone Van Ness. D.C.
10 Code (subsection 1-309-10B) requires that 30 days
11 written notice of such District Government
12 actions or proposed actions including; 1. The
13 intent to acquire an interest in real property
14 either to purchase or lease or 2. The intent to
15 change the use of property owned or leased by or
16 on behalf of the government shall be given by
17 first class mail to the Office of the Advisory
18 Neighborhood Commissions, each effected
19 commission. The Commissioner representing a
20 single member district effected by said actions
21 and to each affected Ward Council Member. DCRA
22 also violated DC Code Section 6-641.09B which

1 further specifies that a building permit shall
2 not be issued to or on behalf of the District
3 Government unless proper notice has been given
4 under Section 1-309.10. The Department of
5 Consumer and Regulatory Affairs shall issue a
6 cease and desist order to enjoin any construction
7 project that is issued in non-compliance with
8 this section. ANC review of the District
9 Government Actions is an essential component of
10 the enforcement of the zoning laws and
11 maintaining the integrity of the zoning system.
12 UDC's leasing of units at Archstone Van Ness and
13 then converting them into rooming house use which
14 is not allowed in the R-5 District in which
15 Archstone Van Ness is located might have been
16 avoided had the legally required review
17 procedures been followed. David Wilson will now
18 address how the building permit violates 11 DCMR
19 (Subsection 3202.1) because it changes the use of
20 the property in violation of the Zoning
21 Regulations, thank you.

22 MR. WILSON: I'm David Wilson I'm a

1 tenant in the Archstone Van Ness Apartment
2 Building, I've lived there for over 8 years since
3 2002, and I'm also a member of the Van Ness South
4 Tenants Association. I wanted to address how the
5 permit violates 11 DCMR Section 3202.1 in so far
6 as it changes the use of the property from
7 apartment use to rooming house use in violation
8 of the zoning regulations. As you'll note most
9 of our argument is primarily a legal argument
10 where we have limited evidentiary testimony today
11 for that reason, so we think this should be a
12 fairly easy thing for the Board to address. To
13 start with Section 3202.1 of the Zoning
14 Regulations provides; "a building permit shall
15 not be issued for the proposed direction
16 construction, conversion or alteration of any
17 structure unless that structure complies with the
18 (inaudible) style". The building permit allows
19 the construction of interior walls to subdivide
20 one bedroom apartments into two bedroom
21 apartments capable of accommodating four UDC
22 students fundamentally and unilaterally changes

1 the use of those rental units in violation of
2 zoning regulations. The basic issue that we
3 think the Board needs to consider is what
4 category of use these units fall into
5 particularly have the walls have been put up and
6 the UDC students have moved in. UDC contends
7 that these fall within the definition of
8 apartments in the zoning regulations. The term
9 apartment is defined at Section 199.1 as follows;
10 apartment: one or more habitable rooms with
11 kitchen and bathroom facilities exclusively for
12 the use of and under the control of the occupants
13 of those rooms. We think the defining criteria
14 for an apartment is this last clause, exclusively
15 for the use of and under the control of the
16 occupants of those rooms. We think that
17 characteristic has been changed when UDC moves
18 their students into these rooms and I will try
19 and go through the factors that we think are
20 significant in determining this change. The UDC
21 student occupants of the converted units are not
22 tenants of Archstone Van Ness and unlike tenants

1 do not have exclusive use and control of the
2 rooms they occupy. The Office of Residents Life
3 UDC administers the off campus student housing at
4 Archstone Van Ness, it charges students 8,400
5 dollars per academic year for units housing four
6 students. These units include a student bed, a
7 dresser, desk and chair provided by UDC and as
8 our testimony I think will indicate virtually
9 nothing else, and this could be verified as
10 "Exhibit 4" which is a page from the website of
11 the UDC Office of Residents Life facility
12 information. The Office of Residents Life closes
13 the off campus housing, the housing at Archstone
14 VanNess during winter break, this is shown in the
15 Office of Resident Life, important dates part of
16 the website which is attached to "Exhibit 5".
17 Closing the rooms hardly indicates that the
18 occupants of those rooms have exclusive use and
19 control of those facilities. The terms and
20 conditions of the occupancy agreement for off
21 campus housing which the student occupants must
22 sign expressly provides; "occupancy is a

1 privilege and not a right" this is far different
2 than the legal relationship of a tenant to the
3 building that he lives in as controlled by DC
4 Laws. The occupancy agreement is found at
5 "Exhibit 8", that's on page 1 of the occupancy
6 agreement. A tenant has clear legal rights of
7 exclusive use and control of a rental unit
8 pursuant to a lease signed with a landlord. The
9 UDC students occupying units at Archstone Van
10 Ness have never signed leases with Archstone Van
11 Ness or UDC and accordingly have no such legal
12 rights of exclusive use and control. The
13 student's occupancy of 21 units is solely at the
14 severance of UDC. The occupant's agreement
15 apprises that "the Director of Residents Life and
16 the Vice President of Student Affairs reserves
17 the right to authorize or deny unit/room or
18 roommate changes and reserves the right to
19 require a student occupant to move from one unit
20 to another unit during the year as necessary. If
21 you can be moved around from one unit to another
22 unit without your consent solely at the will of

1 the university that hardly would classify you as
2 being an exclusive user and occupier of that
3 unit. Similarly the occupancy agreement provides
4 a "guests are permitted as a privilege", an
5 overnight guest "requires the completion of a
6 guest registration form and the written approval
7 of Director Residents Life". Again the student
8 simply has no control over his or her room and
9 exclusive right to use it. The occupancy
10 agreement provides further that "authorized
11 employees of the University of the District of
12 Columbia, the Office of Resident Life Staff who
13 are facility staff have the right to enter your
14 room or unit for administrative purposes,
15 repairs, to inspect for compliance with health,
16 fire or building codes, to inspect for compliance
17 with University and Resident Policies and for any
18 other situation which the University or residents
19 deems to be a danger to health, safety or
20 property, that again is an occupancy agreement
21 two which is "Exhibit 6". The significant thing
22 that's been raised by, I believe it's UDC that

1 this isn't much different than what maybe in your
2 lease or sale but this still gives total control
3 to the University because the University can
4 determine what they call compliance with
5 University and Residents policies, that's a very
6 broad category which again means they have total
7 control over these students, they can move them
8 in and out at will. The total control of the
9 student rooms by UDC around the occupants is also
10 evidenced by the provisions the occupancy
11 agreement " failure to comply with any University
12 rules and regulations may lead to termination of
13 your occupancy agreement, that obviously can't
14 happen with a tenant who must be evicted in
15 accordance with the laws of the District of
16 Columbia and has all sorts of rights to stand on,
17 the student has none whatsoever and his occupancy
18 of that room can be terminated at the discretion
19 of the University at any time. The accepted form
20 also contains proof that the students occupants
21 have no exclusive right or control of the units
22 by requiring the students to acknowledge that "I

1 understand that I am an occupant and not a
2 resident and that I have no rights in the housing
3 as a resident or resident, there's a mistake
4 there, this is again in the acceptance form
5 that's attached to the occupancy agreement. If
6 you are not a resident it's further indication
7 that you have no control over the space you're
8 living in, it's normally a tenant who occupies
9 the apartment would be a resident of the District
10 of Columbia and entitled to various legal
11 implications of that. Further evidence that UDC,
12 the UDC Office of Residence Life may take
13 complete control of the units and that students
14 have no such control is that the keys to the
15 rooms are issued to the students and lost keys
16 are replaced by UDC, not Archstone. Resident
17 assistants have their own units at Archstone Van
18 Ness and monitored the students of converted
19 areas and for this I would bring your attention
20 to "Exhibit 7" which is the UDC Application for
21 campus plan. In that it says the university has
22 placed resident's advisors in the apartment

1 building who live in the building and provide a
2 direct liaison between students and neighbors as
3 well as support the Universities education
4 mission and when necessary enforce its code of
5 conduct, again something that doesn't sound akin
6 to living in an apartment building. The students
7 must also attend mandatory housing meetings that
8 are in the acceptance at "Exhibit 6", the UDC
9 campus police respond to any disruptions
10 involving the converted units rather than
11 Archstone, Archstone disavows responsibility for
12 the UDC units although these are located within
13 the Archstone housing accommodation. If tenants
14 complain about disturbances emanating from the
15 UDC units, Archstone instructs the tenants to
16 direct their complaints to UDC and refuses to
17 accept responsibility notwithstanding their
18 legal obligation of the leases with tenants
19 (inaudible) of their premises; this again is in
20 the application, the UDC application for campus
21 plan, "Exhibit 7". If they're not apartments
22 then what are they? The tenant association

1 acknowledges that not being zoning lawyers and
2 initially thought these must be dormitories and
3 filed this appeal on the basis that these were
4 dormitories, however having reviewed the
5 situation more and having listened to the
6 comments of UDC and Archstone on this we concur
7 with them that these units as converted and
8 occupied by the UDC students do not really
9 qualify and meet the definition of dormitory
10 under the Zoning Regs, now that definition is not
11 included in the Zoning Regs and therefore the
12 Zoning Regulations instruct that the definitions
13 filed in Webster's unabridged dictionary be used.
14 Under the definition in Webster there's two
15 possibilities; 1. A room intended primarily to
16 be slept in especially a large room providing
17 sleeping quarters for many persons and sometimes
18 divided into cubicles. Now this might be the
19 sort of thing you find in a fire house where the
20 fireman sleep in the upstairs waiting to respond
21 in a large single room, that currently does not
22 cover the currently situation. UDC and Arch

1 stone primarily rely on the second definition in
2 Webster's which is a resident hall providing
3 separate rooms or suites for individuals or for
4 groups of two or three or four with common toilet
5 and bathroom facilities but usually without
6 housekeeping facilities. Now that sounds a lot
7 like the dormitories that a lot of us lived in
8 when we were in college, where you had a resident
9 hall which is a totally separate building which
10 was full of rooms which did not generally have
11 cooking facilities and generally did not have a
12 bathroom and that shared a common bathroom
13 facility in the building, that again does not
14 describe the units at Archstone Van Ness. The
15 BZA has generally used the term dormitory in
16 connection with students and in reference to the
17 use of an entire building, and I would suggest
18 the case of Watergate West, 8B the Board of
19 Zoning Adjustment (inaudible), 762 in 2003 where
20 there was a purchase of the former Howard Johnson
21 Hotel by George Washington University that
22 converted the entire hotel into a "dormitory",

1 that again is the entire building. This one at
2 the moment has 31 units, 21 of which are effected
3 by this building permit that are used as
4 dormitory like use and that out of a total of 625
5 units an entire building so UDC has no ownership
6 of the building either. It's often useful to
7 look when definitions are confusing or puzzling
8 in anyway to look to other areas where there
9 might be similar definitions and since this is
10 the District Government it's appropriate to look
11 at the definition of dormitory in other parts of
12 the District Law particularly the most pertinent
13 one probably isn't in the rental housing act
14 which does define dormitory. The dormitory there
15 is defined to mean any structure or building
16 owned by an institution of higher education or
17 private boarding school in which a least 95% of
18 the units are occupied by presently matriculated
19 students of the institution of higher education
20 or a private boarding school, that again seems to
21 fit into the Howard Johnson mode of having an
22 entire building that's filled with rooms for

1 students and often common bathroom facilities and
2 no cooking areas. Therefore it's our conclusion
3 that the converted use of the units that
4 Archstone Van Ness really don't fall within the
5 definition of dormitory in the zoning
6 regulations, the definitions that we found most
7 appropriate is the definition of rooming house,
8 rooming house is a defined term within the zoning
9 regulations at Section 199.1 it is defined to
10 mean a building or part thereof that provides
11 sleeping accommodations for three or more persons
12 who are not members of the immediate family,
13 resident operator or manager and in which
14 accommodations are not under the exclusive
15 control of the occupants, a rooming house
16 provides accommodations on a monthly or longer
17 basis, the term rooming house shall not be
18 interpreted to include an establishment known as
19 or defined in this title as a hotel, motel, Inn,
20 bed and breakfast, private club, tourist home,
21 guest home or other transient accommodations.
22 The 21 converted units that were allowed to be

1 covered by this building permit all fall within
2 the requirements here. The units are part of a
3 building that provides sleeping accommodations
4 for three or more persons, the persons occupying
5 the units are not members of the immediate family
6 of the resident operator or manager, the
7 accommodations are not under the exclusive
8 control of the occupants and the accommodations
9 are provided on a monthly or longer basis. In
10 our view the fundamental distinction between an
11 apartment and a rooming house as defined in the
12 Zoning Regulations is that the apartment is
13 exclusively for the use and under the control of
14 the occupants while in a rooming house the
15 accommodations are not under the exclusive
16 control of the occupants. The facts that we have
17 shown clearly make it apparent that the student
18 occupants of these units have no exclusive
19 control and use of their rooms; therefore we
20 think this falls within the definition of a
21 rooming house. UDC in it's latest filing argues
22 that there's a further distinction that the

1 presence or absence of cooking facilities is an
2 important distinction between an apartment or
3 rooming house, this is not true as both
4 apartments and rooming houses can have cooking
5 facilities, the definition of apartment clearly
6 provides such, the definition of rooming doesn't
7 say anything about cooking facilities but then
8 when you go to the other provisions of the
9 regulations particularly the provisions as to
10 whether a rooming house is permitted as a matter
11 of right it makes clear that a rooming house
12 could have both variations with or without
13 cooking units because there is says and I'm
14 looking at Section 330.6 which is the
15 qualification of rooming houses allowed as matter
16 of right in an R-4 District which is then adopted
17 into an R-5 District, there it says a rooming or
18 boarding house shall be permitted as a matter of
19 right in an R-4 District provided, and then you
20 go down to D, that cooking facilities are not
21 provided in any individual unit, well if a
22 rooming house is defined to exclude rooms that

1 have cooking facilities you wouldn't need to have
2 this exception, clearly you can't read it
3 consistent with the definition of rooming house,
4 it clearly indicates that they can both have
5 cooking facilities and not cooking facilities and
6 if it has cooking facilities its treated
7 differently than a rooming house that doesn't
8 have cooking facilities. Which brings us to our
9 point as to why we think the building permit
10 really is in violation of the Zoning Regulations
11 and that's because use of a rooming house in the
12 manner that it's used in Archstone Van Ness is
13 not permitted as a matter of right and therefore
14 you change the use of these units by granting
15 this building permit to subdivide put walls in
16 such that they don't, have been converted for
17 use, to an impermissible use. This is clear as I
18 mentioned before under the regs starting with the
19 regulations applicable to R-4 Districts found in
20 Section 3030.6 where it clearly states that a
21 rooming house is generally permitted as a matter
22 of right in an R-4 District and moreover under

1 Section 350.4A any use permitted as a matter of
2 right in the R-4 District is also allowed in the
3 R-5 District, however as I mentioned there's a
4 qualification to the rooming houses that are
5 allowed as a matter of right in an R-4 District.

6 The Zoning Regulations provide in Section 330.6
7 rooming or boarding house shall be permitted as a
8 matter of right in an R-4 District provided and
9 you then go down to D again, cooking facilities
10 not provided in any individual unit. Now all the
11 21 converted units have a kitchen with cooking
12 facilities therefore these are not allowed as a
13 matter of right The building permit has therefore
14 been unlawfully issued because it does not comply
15 with the Zoning Regulations in so far as it
16 changes the use of the 21 Van Ness Apartments to
17 a rooming house use not allowed by the Zoning
18 Laws, thank you. Now I think we can move to the
19 witnesses which will have fairly short testimony.

20 If I could start with Ms. Tanisha Elliott.

21 MS. ELLIOTT: Tanisha Elliott.

22 MR. WILSON: Where do you live?

1 MS. ELLIOTT: Archstone Van Ness.

2 MR. WILSON: And how long have you lived
3 in Archstone VanNess?

4 MS. ELLIOTT: I moved in August of 2008.

5 MR. WILSON: And what is your occupation?

6 MS. ELLIOTT: I am a graduating law
7 student at Howard University.

8 MR. WILSON: So have you previously lived
9 in dormitories?

10 MS. ELLIOTT: Oh yeah, absolutely
11 undergrad.

12 MR. WILSON: Do you have the opportunity
13 to live in a dormitory while you're attending..

14 MR. SURABIAN: Madam Chair if I could just
15 object for a second I'm told that the witnesses
16 were not sworn.

17 CHAIRPERSON MOLDENHAUER: I believe I
18 asked that the witnesses be sworn in and everyone
19 was here and sworn in, we did do that at the
20 beginning I just want to make sure that everyone
21 was here, thank you.

22 MR. SURABIAN: Okay thank you.

1 CHAIRPERSON MOLDENHAUER: Matt LeGrant
2 will have to swear in before he testifies, and
3 any other witnesses for the District that I did
4 not see here earlier so we will address that
5 before they testify, thank you.

6 MR. WILSON: Did you have an opportunity
7 to live in a dorm while you continued studies at
8 Howard Law School?

9 MS. ELLIOTT: Yeah I had an opportunity
10 to live on the main campus in the student housing
11 where some of the law students opt to live, it
12 is, you have, it's buildings for undergraduates
13 and graduate student housing yeah, but I chose
14 not to live there.

15 MR. WILSON: And why did you choose not
16 to continue to live in a dorm, you had previously
17 been living in a dorm?

18 MS. ELLIOTT: Well undergrad I did, yeah
19 for several years. Because I'm going to when I
20 started law school my parents and I thought it
21 would be more practical to live some where that's
22 not dorm like, not for student housing, I was

1 ready to move into my own apartment, more
2 responsibility and it was less disturbances and
3 more of a mature environment so we chose to move,
4 I chose to pick Archstone I like the environment
5 there.

6 MR. WILSON: And have you noticed a
7 change in Archstone since the UDC's units have
8 started to move it.

9 MS. ELLIOTT: Yeah it kind of changed the
10 character of the building it kind of reminds me
11 now of my dormitory days, a lot of students are
12 in the building in the common areas, I have
13 several students living on my floor, so yes it is
14 quite different.

15 MR. WILSON: Approximately how many
16 students do you have on your floor?

17 MS. ELLIOTT: I live on the 8th floor I
18 know it's probably at least 3 units maybe more,
19 I'm not sure so if there are four people in each
20 unit around 12 students if not more.

21 MR. WILSON: And how is that affected the
22 character of the floor that you live on compared

1 with before the students moved in?

2 MS. ELLIOTT: Well it's a lot of, it's a
3 lot more noise on the floor, a lot more traffic
4 in the hallways, the wash and dryer room is
5 always filled, it's kind of hard to get in there
6 and wash my clothes, the noise level picked up
7 mostly especially when my back door is open, my
8 patio is open.

9 MR. WILSON: And how has that affected
10 your use of the common areas such as the business
11 center and the gym?

12 MS. ELLIOTT: They are not as accessible
13 as when I first moved in, I loved the fact that
14 Archstone had a business center that I could
15 print and use the computers whenever I need it,
16 now the wait is way longer because of course
17 being a student your going to need the computers,
18 and living in my dorm undergrad we had a computer
19 room because it was necessary but now were
20 sharing the computers with the students and so
21 it's not as accessible. Also the gym too the gym
22 is filled up more often.

1 MR. WILSON: Have you been in any of the
2 UDC student rooms?

3 MS. ELLIOTT: I have yes.

4 MR. WILSON: And how would you describe
5 those rooms?

6 MS. ELLIOTT: Again very similar to my
7 dorm, basically the only furniture that's in
8 there is the beds, two beds in each room and a
9 dresser, there is no living room furniture, one
10 of the students said they were not allowed to
11 have living room furniture.

12 MR. WILSON: And we've heard some
13 complaints of possible drug use in the building
14 since the students have moved in, have you had
15 any indication of any of that?

16 MR. KOPECKY: Madam Chair I've tried to
17 be patient but we're going pretty far beyond the
18 Zoning Regulations and it's not a special
19 exception or variance case, all of this is at all
20 relevant and it's inflammatory, I object to the
21 relevance I was patient for awhile but now we're
22 talking about drug use and facilities and things

1 that go so far field that aren't going to lead us
2 anywhere important.

3 CHAIRPERSON MOLDENHAUER: I hear your
4 objection, I do think that obviously any
5 reference to illegal uses has nothing to do with
6 the zoning regs so I'll just ask you to kind of
7 focus your questions a little bit more, I think
8 that some of the prior testimony was important to
9 kind of hear her understanding of what they
10 physically look like, things to that degree just
11 to try to provide the Board with some perspective
12 but I'll just ask that Mr. Wilson if you can
13 continue your questioning but make sure that you
14 keep it to those relevant issues.

15 MR. WILSON: The primary purpose of the
16 questioning is trying to address the distinction
17 between apartment use and dormitory like use or
18 rooming house use. I think we're pretty much
19 finished did you have anything else you'd like to
20 add Ms. Elliott?

21 MS. ELLIOTT: No only the fact that I
22 chose to live at Archstone because it was a more

1 suitable environment for me going to school,
2 going to a professional school and I chose not to
3 stay in student housing when I had an opportunity
4 to, even of course it was much cheaper so I made
5 the decision to stay at Archstone but now it's
6 almost like I could have chose to stay in student
7 housing because it's vary similar now, that's all
8 I have to say, thank you.

9 CHAIRPERSON MOLDENHAUER: Mr. Wilson at
10 this point in time I'll allow cross examination
11 so I'll turn first to Mr. Brown.

12 MR. BROWN: No I don't have any
13 questions.

14 MS. PRINCE: No questions.

15 MR. SURABIAN: Just a couple, Ms. Elliott
16 I'm an attorney for the Department of Consumer
17 Regulatory Affairs I just have a couple of
18 questions regarding your testimony. Can you
19 describe your apartment unit how it's laid out?

20 MS. ELLIOTT: My unit it's laid out
21 similar to one of the UDC units it's a bedroom, 2
22 bedroom unit and I have a living room area, my

1 dining area and then the kitchen.

2 MR. SURABIAN: You have a kitchen; you
3 have a bathroom, 2 bedrooms, and a living room.

4 MS. ELLIOTT: Yes.

5 MR. SURABIAN: And is that off of a
6 hallway you walk through a door, and is that a
7 locking door to the hallway that you can lock?

8 MS. ELLIOTT: Yes, oh to get into my
9 actual unit? Yes right.

10 MR. SURABIAN: Are the units on your
11 floor where the students live are they laid out
12 differently than yours?

13 MS. ELLIOTT: I'm not sure how they are
14 laid out I don't have like a personal knowledge.

15 MR. SURABIAN: Have you been in those
16 units?

17 MS. ELLIOTT: Yeah I have, the one that I
18 seen it's similar to how my apartment is laid
19 out.

20 MR. SURABIAN: It has a kitchen, and you
21 can lock the door to the hallway?

22 MS. ELLIOTT: Yes, of course.

1 MR. SURABIAN: No further questions.

2 CHAIRPERSON MOLDENHAUER: Do Board
3 Members have any questions?

4 MS. ELLIOTT: Excuse me I'm sorry there
5 is no living room when I went in it was just an
6 empty space, so it's pretty much bedroom, if you
7 want to make it a living room I guess you could,
8 there's not furniture there's nothing in there
9 it's just two bedrooms.

10 MR. SURABIAN: Okay do you have a
11 roommate?

12 MS. ELLIOTT: No I don't, I live by
13 myself.

14 MR. SURABIAN: Okay, thanks.

15 CHAIRPERSON MOLDENHAUER: Any Board
16 Member questions for this witness? Seeing none
17 then Mr. Wilson you can move on to your next
18 witness.

19 MR. WILSON: Mr. Brian Lederer will be
20 the next witness, can you identify yourself
21 please.

22 MR. LEDERER: Brian Lederer, I live at

1 3003 Van Ness Street Apartment W 228, Washington,
2 DC, 20008, I'm a member of the tenant
3 association, an officer. I've lived in the
4 building since 1992, I'm a professional, we have
5 a two bedroom, two bathroom apartment, my wife is
6 a professional she worked for many years at the
7 World Bank we lived in this building as a
8 building of professionals, I served as the
9 peoples counsel of the District of Columbia,
10 Chairman of the Office of Employee Appeals,
11 Chairman of the Ward Three Democratic Committee,
12 I'm legal counsel to that and that speaks to what
13 we expect out of this building.

14 MR. WILSON: Mr. Lederer have you had
15 occasion to examine the units that were being
16 converted into UDC Student facilities?

17 MR. LEDERER: Yes I have, at the time
18 when the units were being converted some were
19 more advanced than others, I looked at 10, 12, 15
20 of them and I noticed a common feature they were
21 all of the apartments of various layout that were
22 being converted into a rooming house type of

1 situation they were putting up walls that were
2 taking living rooms and making them into
3 bedrooms, taking foyers and making them into
4 bedrooms basically eliminating the functionality
5 of the dining room and the living room,
6 interfering with the flow of the ventilation. I
7 saw furniture that was just cookie cutter
8 furniture everyone of them its all the same two
9 single beds, two dressers, a couple of chairs,
10 depending on how many bedrooms that were there
11 before they might, they basically looked like
12 they were being set up for four people, two
13 people in each bedroom and so the apartment use
14 was destroyed by the conversion.

15 MR. WILSON: Has the apartment use by the
16 UDC students changed the manner in which the
17 common facilities of the building are used?

18 MR. LEDERER: Absolutely I mean first of
19 all since they don't really have living rooms
20 they don't really have dining rooms, they live a
21 lot in the public areas of the buildings which is
22 not the way it was before, they live in the

1 hallways, they live downstairs in the common room
2 they hang out around the computer room, they hang
3 out around the mail room, it's not that they're
4 nice people but you know it's a different
5 character, so it's changed the character of the
6 place it was a professional place for lawyers and
7 doctors and people who worked in professional
8 capacities lived, professionals that worked for
9 organizations, that's the way it seemed to us, so
10 now it's like oil and water, they're nice people
11 but this rooming house use has really changed the
12 character of the building and it isn't
13 appropriate in my view.

14 MR. WILSON: Is there anything further
15 you'd like to add Mr. Lederer?

16 MR. LEDERER: I just wanted to say the
17 furniture was like cookie cutter furniture it's
18 all the same you know its like they went to some
19 supply house and they bought standard college
20 single beds, standard college dorms it reminded
21 me of when I took my niece to college what she
22 had in her room and two people lived in the room.

1 Anyway I think that's it.

2 MR. WILSON: That concludes our
3 questioning of Mr. Lederer.

4 CHAIRPERSON MOLDENHAUER: Actually I'm
5 going to go back and as a question of Ms.
6 Elliott, I think you may know the answer better
7 than Mr. Lederer. To your knowledge do you know
8 what year these students are mostly?

9 MS. ELLIOTT: What year, the ones I have
10 met seems to be like between the sophomore, I met
11 some sophomores I met some juniors I can't recall
12 meeting a freshman but mostly sophomores and
13 juniors.

14 CHAIRPERSON MOLDENHAUER: I'm just
15 curious, I appreciate that, thank you. Cross
16 examination.

17 MR. LEDERER: She asked her but I do talk
18 to the students and they're probably freshman,
19 sophomore, juniors, I don't see very many
20 seniors, and I enjoy talking to them but I'm
21 still talking to students.

22 CHAIRPERSON MOLDENHAUER: I appreciate

1 that.

2 MR. LEDERER: Like to talk about
3 basketball one of them is a big Laker's fan and
4 is concerned about the Lakers until they beat the
5 spurs, so that's fun but that's not what I expect
6 in this building.

7 CHAIRPERSON MOLDENHAUER: Thank you for
8 the testimony, any cross examination?

9 MS. PRINCE: Good afternoon I just have a
10 question you talked about this building being an
11 apartment house of professionals, can you point
12 me to any section in the regulations that
13 restricts an apartment house use to
14 professionals, any kind of age limitations, the
15 occupants of units or any kind of restriction
16 against student occupancy anywhere in the
17 definition of apartment house.

18 MR. LEDERER: Of course it's not in there
19 what it is, is they changed the character of the
20 building that's what I was speaking to. These are
21 upscale luxury apartments with a lot of space,
22 our apartment is 1500 square feet, two bathroom,

1 many closets, and it changes the character of the
2 place, of course there's no requirement that you
3 rent it to professionals.

4 CHAIRPERSON MOLDENHAUER: Mr. Surabian?

5 MR. SURABIAN: No questions.

6 CHAIRPERSON MOLDENHAUER: Any other
7 questions from the Board, Mr. Wilson any further
8 witnesses?

9 MR. WILSON: Our last witness is Karen
10 Perry, could you identify yourself please.

11 MS. PERRY: My name is Karen Perry and
12 I've lived in the building for more than 20
13 years, I came there as a student, liked it
14 stayed, and contrary to Mr. Lederer's two
15 bedroom, two bath apartment I only have a one
16 bedroom and all of the 21 units that we are
17 talking about were one bedrooms, some of them 800
18 square feet, some 900, all different layouts none
19 of them with a two bedroom, two baths.

20 MR. WILSON: Ms. Perry in the campus plan
21 that the university is applying for that's
22 attached at "Exhibit 7" it states that the

1 university has also worked closely with building
2 management to establish a strong communication
3 pattern for monitoring and responding to UDC
4 student related complaints. The building
5 management refers complaints to UDC's Office of
6 Residential Life which documents and follows up
7 on each complaint and then it goes on to say the
8 hand full of complaints received over the course
9 of the fall of 2010 semester typically consistent
10 of noise issues that are common in any apartment
11 complex with wood floors and the university has
12 worked with students to (inaudible) the situation
13 and ensure a more harmonious living environment
14 for all residents. Do you have any experience
15 with regards to problems with the students and
16 possible police involvement or anything?

17 MS. PERRY: I can testify that the UDC
18 Campus police have now been patrolling our
19 building they're there quite often, I know of
20 several incidences involving UDC students with
21 not only the UDC campus police but also the DC
22 police being involved.

1 MR. WILSON: You have seen the UDC Police
2 actually enter the building?

3 MS. PERRY: Many, many times.

4 MR. WILSON: And you're assuming this has
5 to do with the units that the UDC students are
6 living in; it wouldn't be for any other purpose?

7 MS. PERRY: UDC has no authority in our
8 building so they just don't drop by just to say
9 hello, they are there for the UDC unit students,
10 and then some of the problems in the building.

11 MR. WILSON: In your opinion how is the
12 general demeanor of the building changed?

13 MS. PERRY: It's changed quite a bit, we
14 have always had students living in our building
15 they come in with a room mate they sign a lease,
16 parents co-sign a lease for them, this is
17 entirely different, these students have no stake
18 in the building, they come into the lobby and
19 everything else in pajamas, whatever you want to
20 say because they're rooms are so cramped and they
21 have no privacy they make a lot of their cell
22 phone calls and phone calls sitting out in the

1 hallways sitting on the floor bouncing balls and
2 basketballs around because most of the students
3 living in our building are athletes and the
4 testosterone level is high, let me put it that
5 way, but the demeanor of the building has really
6 changed, the laundry rooms, the trash rooms,
7 there's a lot more, you know adding 100 and
8 something people to a building does change it.

9 MR. WILSON: I understand that some of
10 these units that have been subdivided from a one
11 bedroom apartment into basically four bedrooms
12 they have actually treated those more as separate
13 rooms by doing such things as bringing
14 refrigerators in despite the fact they share a
15 common kitchen, have you had any experience with
16 that?

17 MS. PERRY: I have in fact the apartment
18 next door to me I saw a refrigerator, you know
19 the little ones being moved in, the kind you
20 would put into a hotel room closet or if you had
21 a sickly parent or something into a bedroom. One
22 of the girls next door to me an athlete brought

1 in her own refrigerator into her room because the
2 students don't like to share the refrigerator is
3 because what they said to me is why should I buy
4 the food and so and so eats it so a lot of them
5 have their own refrigerators and hot plates.

6 MR. WILSON: Is there anything else you'd
7 like to add to your testimony.

8 MS. PERRY: Not that I can think of right
9 now.

10 MR. WILSON: Thank you that concludes our
11 testimony.

12 CHAIRPERSON MOLDENHAUER: Any cross
13 examination?

14 MR. BROWN: No not for me.

15 MS. PRINCE: No.

16 MR. SURABIAN: No questions.

17 CHAIRPERSON MOLDENHAUER: Any Board
18 questions?

19 MR. SELFRIDGE: Thank you Madam Chair,
20 Ms. Perry I just want to clarify something Mr.
21 Wilson said, he said that they've essentially
22 been split into four bedrooms now I've heard that

1 there's been two bedrooms, is that your testimony
2 that there are four bedrooms out there now?

3 MS. PERRY: I think what he meant are
4 four people in each apartment. They were one
5 bedroom apartments where two actually more than
6 21 walls were added because to create the second
7 bedroom you had to put in a wall in this way and
8 a wall in that way and so you basically took the
9 living room, dining room, you had to add the
10 doors too, so there are, but in each room, and
11 I've been in some of the rooms including the one
12 next door to me and I also walked the building
13 the night they posted the 21 permits so I've been
14 in everyone of the 21 units we're talking about
15 here, basically each room has two single beds,
16 two dressers, two lamps, and some rooms depending
17 on the size of the apartment some rooms have the
18 desks in them, in other cases where you would
19 walk into the apartment and you normally had like
20 a little entrance foyer or whatever, you would
21 have two big desks, each desk is probably the
22 size of each one of these tables, so there's four

1 desks, four lamps, four beds, four whatever.

2 MR. SELFRIDGE: Thank you, in your opening
3 statement you talked about 30 day notice that the
4 District Government has to give, can you expound
5 on that a little bit more I'm not sure I picked
6 up and where, is this the zoning code, what are
7 you talking about?

8 MS. PERRY: It's the actual what is it,
9 let me find it, it's the DC Code it's not the
10 Zoning Code it's the overall District Code, its
11 DC Code 1-309.10B.

12 MR. SELFRIDGE: Can you read that again
13 real quickly?

14 MS. PERRY: Do you want me to read the
15 whole thing? Would that be easier, what if I
16 showed you? Thirty days written notice of such
17 District government actions or proposed actions
18 including; 1. The intent to acquire an interest
19 in real property either through purchase or lease
20 or 2. The intent to change the use of property
21 owned or leased by or on behalf of the government
22 shall be given by first class mail to the office

1 of Advisory Neighborhood Commissions, each
2 effected Commission, the Commissioner
3 representing a single member district affected by
4 said actions and to each effected ward
5 councilmember. The DC Code (subsection 6-
6 641.09B) further specifies that a building permit
7 shall not be issued to or on behalf of the
8 District Government unless proper notice has been
9 given under Section 1-309.10 which is the code I
10 had previously cited, which also says that the
11 Department of Consumer and Regulatory Affairs
12 shall issue a cease and desist order to enjoin
13 any construction project that is issued and non-
14 compliance with this Section, and we never got
15 notice either did our Council Member.

16 CHAIRPERSON MOLDENHAUER: Let me just
17 actually ask a quick question before you add
18 anything about this issue. Can you tell me how we
19 have jurisdiction over this, I mean this is
20 something that is a DC Code issue to me I don't
21 see how it would then be incorporated into the
22 Zoning Regs in which we would have jurisdiction,

1 so can you tell me how we have jurisdiction over
2 the Section?

3 MS. PERRY: Well in the Zoning Regs ANCs
4 are also entitled to notice?

5 CHAIRPERSON MOLDENHAUER: Notice of what?

6 MS. PERRY: Notice of any case that comes
7 before you, be it an appeal, a special exception,
8 a variance, use variance, ANCs are notified.

9 CHAIRPERSON MOLDENHAUER: But that's
10 different, right now the owner is indicating they
11 don't need a use, they don't need any of those
12 variances.

13 MS. PERRY: I think what we're saying is
14 this building permit never should have been
15 issued by DCRA and there is no other place to
16 appeal it but to you.

17 CHAIRPERSON MOLDENHAUER: Any additional...

18 MS. PERRY: The Mayor gives the authority
19 to the BZA to hear appeals of building permits
20 and the granting of building permits pro or con
21 whether you're for them against them, and this
22 does change the use of a building which does fall

1 under zoning.

2 CHAIRPERSON MOLDENHAUER: And I think
3 that that is what's under appeal today, I think
4 the question is are there any additional
5 requirements or just could we apply DC Code
6 309.10B and I don't think we can unless I hear
7 another argument or some additional information
8 from you...

9 MS. PERRY: If you'll allow me I can do
10 some more research on it but I think you know
11 that it is an important distinction when it's a
12 District Government Building.

13 CHAIRPERSON MOLDENHAUER: It's something
14 that maybe we can leave open for supplemental.

15 MS. PERRY: See I don't have my code with
16 me so I would like you to please leave the record
17 open for more on that.

18 CHAIRPERSON MOLDENHAUER: I'll highlight
19 that and we'll get to that at the end, so is
20 there any other points from any other parties?

21 MR. SURABIAN: Madam Chair we've dealt
22 with the notice issue in other cases and quite

1 frankly that the Board has already determined in
2 other cases that concerning the ANC notice
3 statute that's not within the jurisdiction of the
4 Board because it doesn't concern the Zoning Act
5 and this is no different than those past cases,
6 and then furthermore it's our position that the
7 notice was required because the use was not
8 changed even in that event DCRA still complied
9 with the notice provisions because we're required
10 to give notice when the permits issued which was
11 done.

12 CHAIRPERSON MOLDENHAUER: And obviously
13 Mr. Surabian you'll get a chance to articulate
14 any additional information in your argument, and
15 that's obviously why I asked that question, I
16 just want to pose the question to the Appellant
17 because obviously you have the burden and I'm
18 wanting to let you know kind of where my thoughts
19 are in the fact that we have had other cases
20 where we've not applied that an I've determined
21 that we don't have that jurisdiction.

22 MS. PERRY: You know I can't speak to

1 that without looking it up and verifying what Mr.
2 Surabian says, however, just, you know, this
3 permit was issued two days after the stop work
4 order, the ANC was not noticed, once the permit
5 was granted we did appeal it on a timely basis
6 but we were not noticed, other than in the
7 District Register or whatever month or two months
8 after the permit was granted, so just to correct
9 that. Well obviously we hear that on the record
10 and we'll allow you to potentially address the
11 other issues. Is there anything else from Mr.
12 Wilson or Ms. Perry on your case?

13 MR. WILSON: That concludes our case.

14 CHAIRPERSON MOLDENHAUER: Okay then at
15 this point in time we'll turn to Mr. Brown.

16 MR. BROWN: Don't we hear from the...

17 CHAIRPERSON MOLDENHAUER: The District
18 first, yes sorry, thank you. I was looking at
19 the line up but we'll turn to Mr. Surabian first.

20 MR. SURABIAN: Thank you, I have two
21 witnesses today, my first witness will be the
22 Deputy Chief Building Inspector David Naples.

1 MS. PERRY: Ms. Moldenhauer if I may his
2 two witnesses have not been sworn in.

3 CHAIRPERSON MOLDENHAUER: Yes you're
4 correct, Mr. Moy if you could please swear in any
5 additional witnesses that were not present
6 earlier that will be testifying.

7 MR. MOY: With pleasure Madam Chair, do
8 you solemnly swear or affirm that the testimony
9 that your about to present at this preceding is
10 the truth, the whole truth and nothing but the
11 truth? You may consider yourself under oath.

12 MS. PERRY: Additionally I believe you
13 said the District was going to take 40 minutes
14 not the 60 minutes that was posted?

15 CHAIRPERSON MOLDENHAUER: I had actually
16 mentally noted that and I was going to track it
17 myself but we can do that on the board just so
18 that we have.

19 MR. SURABIAN: Thanks for reminding us.
20 Quickly the Appellant has raised a few issues
21 regarding the permit and frankly none of them
22 really impact, implicate the zoning regulations,

1 concerning the missing information on the permit
2 or the application and the discrepancies there
3 that does not implicate the Zoning Regulations.
4 The most important thing here is that the scope
5 of work does not violate the Zoning Regulations
6 and in fact under DCRA's policies it has no
7 implication under the Zoning Regulations for that
8 reason it was not reviewed. Whenever you're
9 adding interior petition wall it just doesn't
10 affect the Zoning Regulations in any form.
11 Secondly as I argued earlier the notice issue is
12 not relevant here, it's not a zoning area and
13 that provision quoted by the Appellant, and you
14 know 1309-10B is further inapplicable because
15 there was no change of use. Getting to the
16 largest issue its DCRA's position that the best
17 classification of the use arrangement at the
18 property is that of an apartment, an apartment is
19 one or more rooms with kitchen and bathroom
20 facilities exclusively for the use and under the
21 control of the occupants of those rooms. That's
22 exactly what the students living there are doing

1 and I don't think we heard any testimony to the
2 contrary. That being said I'll call my first
3 witness, David Naples. Can you state your name
4 for the record?

5 MR. NAPLES: David Naples, Deputy Chief
6 Building Official for DCRA.

7 MR. SURABIAN: What are your job
8 responsibilities as the Deputy Chief?

9 MR. NAPLES: In sum I oversee the daily
10 operations of the inspections unit in the
11 District Government.

12 MR. SURABIAN: And do you have any, can
13 you quickly describe your background, experience?

14 MR. NAPLES: I've been a code-professional
15 for going on 12 years, I hold 25 certifications
16 through the international code-council including
17 that of Master Code Professional, I hold 13
18 additional certifications through the labor and
19 industry Board through the State of Pennsylvania,
20 I'm a licensed building code administrator in the
21 State of Florida and I started out as a building
22 inspector 12 years ago and I worked my way up to

1 management position that I presently hold.

2 MR. SURABIAN: And are you, do you have
3 experience inspecting properties for compliance
4 with the building code?

5 MR. NAPLES: Yes I do many years.

6 MR. SURABIAN: Are you familiar with the
7 District of Columbia Building Code?

8 MR. NAPLES: Yes I am.

9 MR. SURABIAN: And are you familiar with
10 3003 Van Ness Street?

11 MR. NAPLES: Yes I am.

12 MR. SURABIAN: And how did you become
13 familiar with that property?

14 MR. NAPLES: Back in I believe it was mid
15 July of last year Commissioner Perry and Mr.
16 Lederer requested a meeting with me to discuss
17 the ongoing construction that they've seen at
18 this property, I took that meeting and then
19 listened to the evidence that they provided and
20 within a day or so dispatched an inspector to
21 investigate as we had no record of any permits
22 for such construction activity on file at the

1 time.

2 MR. SURABIAN: And what did the inspector
3 find at the property?

4 MR. NAPLES: The inspector found exactly
5 what was stated by Commissioner Perry and Mr.
6 Lederer was that work was being performed inside
7 the apartment units in the absence of the
8 required building permit.

9 MR. SURABIAN: And what was the nature of
10 the work?

11 MR. NAPLES: It was the installation of
12 partition walls within the units themselves.

13 MR. SURABIAN: And did you determine that
14 that construction was illegal?

15 MR. NAPLES: At that time what made it
16 illegal was that fact that no permit had been
17 issued, that's correct.

18 MR. SURABIAN: Did you inspect the
19 property for yourself?

20 MR. NAPLES: Yes I did.

21 MR. SURABIAN: And you describe the work
22 as being installation of partition, could you

1 maybe elaborate more as to exactly what that
2 involved?

3 MR. NAPLES: Essentially what we had seen
4 is there was no change to the actual footprint of
5 the units themselves what was being done was
6 within the walls of unit as they existed
7 previously, we saw the installation of a non-load
8 bearing dividing wall, it's not really a devising
9 wall as the code would define it, it was
10 basically a non-structural wall that divided one
11 space into two smaller spaces.

12 MR. SURABIAN: And based on your
13 observation what purpose did those walls serve?

14 MR. NAPLES: As it was explained to us it
15 was being done to change what was previously
16 considered habitable space into bedrooms also
17 considered habitable space.

18 MR. SURABIAN: And did you speak with
19 somebody at the property?

20 MR. NAPLES: I spoke with the owner's
21 representative, Mr. Kopecky, yes I did at the
22 time of my inspection, and sorry I drew a blank

1 on his name for a second there.

2 MR. SURABIAN: And did you ever meet or
3 talk to the contractor?

4 MR. NAPLES: Yes I did I approached the
5 contractor actually the day we were out there to
6 inspect and asked him to show me a copy of his
7 permits which authorized him to do the work and
8 he refused to speak with me, walked away, said a
9 few choice words and didn't speak with me again
10 until we had him in for an appeal hearing to the
11 stop work order.

12 MR. SURABIAN: So again, the walls were
13 non-load bearing and it didn't change the
14 footprint of the unit?

15 MR. NAPLES: Correct.

16 MR. SURABIAN: Where there any changes to
17 the exterior of the building?

18 MR. NAPLES: Not that we noticed, no.

19 MR. SURABIAN: Did you notice if any
20 additional units were created?

21 MR. NAPLES: We noticed no additional
22 units being created.

1 MR. SURABIAN: Did you notice any change
2 to the bathrooms or the kitchens of the unit?

3 MR. NAPLES: No we did not.

4 MR. SURABIAN: Did the, did you inspect;
5 although the construction wasn't permitted did
6 you inspect it for compliance with the
7 construction codes?

8 MR. NAPLES: We looked at it initially to
9 determine whether or not a permit would be
10 required and took note of the framing techniques
11 being used, they were all steel stud framed, then
12 were attached properly for what we had seen, that
13 was a cursory inspection just to support the stop
14 work order and notice of infraction. Subsequent
15 to the permit being issued I did dispatch another
16 inspector to do a final inspection upon
17 completion of the walls and they appeared to be
18 code compliant at that time.

19 MR. SURABIAN: So then are you saying
20 that after the construction was complete it was
21 inspected for compliance?

22 MR. NAPLES: It was inspected again, yes.

1 MR. SURABIAN: And were there any
2 violations?

3 MR. NAPLES: None.

4 MR. SURABIAN: And did you inspect for
5 safety or fire code compliance?

6 MR. NAPLES: That wasn't the specific
7 intent of the inspections; the inspections
8 actually were being conducted just to confirm
9 that the walls were constructed in accordance
10 with the international building code standard for
11 those walls. Typically when we send an inspector
12 out they're multi-disciplined inspectors and they
13 do have a habit of noting any fire safety issues
14 or life safety issues when they're going through
15 the building, none were noted but again that was
16 not the sole intent of his initial inspection.

17 MR. SURABIAN: Did you do any review for
18 fire safety issues?

19 MR. NAPLES: We did, before the permit
20 was issued I actually raised the concern that I
21 had about the installation of these walls and the
22 subdivision of the units with the chief at the

1 time Don Lasaro, and I ran through some
2 calculations on the south tower based on the
3 floor plans that I was provided, the south tower
4 in looking at the plans seems to be, it only has
5 one emergency means of egress stair tower located
6 in the footprint of the building that we can see,
7 so in the event of a fire emergency if the
8 elevators are shut down there's only one stair
9 tower to actually egress the building as opposed
10 to the west tower which depict four towers based
11 on I guess the increased occupant load, I don't
12 know what the code would have called for back in
13 1970 but based on what was built the minimum
14 width of the egress stair tower is 48 inches, and
15 I did some calculations based on what today's
16 standard would apply to that particular building
17 and at 48 inches of egress stair width one floor
18 would actually support up to 160 occupants, I did
19 that on the south tower, again I went through
20 each of the units and most of the units that I
21 can identify are one bedroom or efficiency type
22 units which I would classify as one bedroom, and

1 then on the lower end I guess the south end of
2 the wing there are 2 two bedroom units which
3 would indicate with just one occupant of each of
4 those bedrooms a 27 person occupant load again
5 allowing, the building code based on the limiting
6 factor the means of egress would allow up to 160
7 people, I did do some further calculations that
8 under today standard the egress width would
9 actually would accommodate the 160 people that
10 live, the calculation is .3 inches of width per
11 occupant and that's based on a non-sprinkler
12 building, I don't have any information to
13 indicate that it's sprinkler that would actually
14 allow a greater occupant load up to 240 if it is
15 sprinklers.

16 MR. SURABIAN: So I guess, so the permit
17 that was issued when you did those calculations
18 prior to issuing the permit you felt that the
19 work was compliant with the code, and did the
20 DCRA take enforcement action concerning the
21 permitting, we did we issued a stop work order
22 was posted on the property and we issued a notice

1 of infraction subsequent to the stop work order.

2 MR. SURABIAN: And did you require that
3 UDC obtain a permit?

4 MR. NAPLES: Yes.

5 MR. SURABIAN: And did they do so?

6 MR. NAPLES: They did.

7 MR. SURABIAN: And I'm going to show you,
8 I'll use the Appellant's exhibits "Exhibit 2".

9 Is that the application? Do you recognize that?

10 MR. NAPLES: It appears to be, yeah.

11 MR. SURABIAN: I asked him to identify
12 the document he was looking at. If you could
13 turn to page 4, could you identify the
14 handwriting on page 4?

15 MR. NAPLES: Yeah the handwriting on page
16 4 is mine, its signed and dated, based on the
17 scope of work and that there was a non-structural
18 modification to an existing footprint standard
19 framing practices applied under the prevue and
20 the (inaudible) of the code official we waived
21 the requirement for any construction plans, there
22 really was no need to highlight a non-structural

1 wall in any way for this permit.

2 MR. SURABIAN: And is there, you've cited
3 a provision of the building code is there an
4 authority to waive that requirement of the
5 building code?

6 MR. NAPLES: Yes DCMR title 12 Section
7 106.1.

8 MR. SURABIAN: And why did you feel
9 comfortable using that provision?

10 MR. NAPLES: Again based on experience and
11 what I had seen on site and knowing the scope of
12 the work that was going on, again non-load
13 bearing partition walls, they were basically just
14 holding up their own weight. They were inspected
15 to comply with industry trade practices of so
16 many sheet metal screws per stud, so many nails
17 per sheet of drywall, there really was no need to
18 require any type of architectural structural
19 diagrams or plans to be submitted there was
20 nothing to evaluate they weren't holding up any
21 weight.

22 MR. SURABIAN: After the permit was issued

1 there was a final inspection?

2 MR. NAPLES: Yes a final inspection was
3 performed and approve.

4 MR. SURABIAN: And it was approved?

5 MR. NAPLES: Yes.

6 MR. SURABIAN: No further questions.

7 CHAIRPERSON MOLDENHAUER: You have one
8 more witness, okay what we'll do is we're just
9 going to take a quick 10 minute break between
10 this witness and your next witness, your right
11 lets go through the cross examination, Ms. Perry
12 or Mr. Wilson.

13 MR. WILSON: I just have one question,
14 for Mr. Naples and I think Ms. Perry has a
15 question or two. My question was who he thought
16 the Applicant was for the building permit, on
17 here it lists the owner of the property and
18 building as Archstone/UDC, was it Archstone, was
19 it UDC was it both?

20 MR. NAPLES: It looks as though it was
21 both, I don't oversee the permitting section I
22 oversee the inspection section, so this

1 application wasn't actually filed with me
2 personally.

3 MS. PERRY: I have a couple, Mr. Naples
4 you referred to the meeting that Brian Lederer
5 and I had with you and I believe you sent an
6 inspector named Martin Olson to our building at
7 the time, those units that Mr. Olson found
8 following the meeting with Mr. Lederer and I were
9 totally different than the units in question
10 right now, is that not true?

11 MR. NAPLES: I don't have that
12 information.

13 MS. PERRY: If you look at the timeline
14 the two inspections are not at all the same, you,
15 Martin Olson inspected and I think he found 40
16 units that didn't have a building permit and that
17 was not the UDC units and I have the whole, and I
18 can provide the Board it when I get to the Xerox
19 machine the whole chain of emails showing the
20 dates of the different inspections. You said
21 Zoning has to take into account safety and
22 everything else, that's part of the code, the

1 intended zoning regulations, we're talking now
2 just about the 21 permits that were granted for
3 the rooms for UDC, were they inspected for light
4 and air, or windows after the walls were put up?

5 MR. NAPLES: I believe they were inspected
6 for compliance with the code and that would
7 incorporate that type of inspection.

8 MS. PERRY: Okay you also talked about
9 the elevators and the staircase and how many
10 people they can accommodate and you said you
11 estimated one person per bedroom in each of the
12 24 units on the south side including the two
13 bedroom. You're aware though that a 2 bedroom
14 can accommodate 5 people by code 2+1 for every
15 bedroom. Actually there are requirements in the
16 housing code that allows a certain amount of
17 square footage per occupant yes.

18 MS. PERRY: Well then isn't it true and
19 I'm going to quote from an email "by our
20 calculations and this was explained in great
21 detail to Mr. Kopecky just about an hour ago,
22 they can legally accommodate 3 occupants in a one

1 unit based purely on the square footage
2 requirements in 14 DCMR so based on that if your
3 inspection showed 4 beds in these apartments and
4 4 students doesn't that pose a safety issue?

5 MR. NAPLES: We did inspections prior to
6 occupancy we have no idea how many occupants came
7 into the units after our inspection.

8 MS. PERRY: So you really don't know about
9 the number of people actually living on any floor
10 in the south tower?

11 MR. NAPLES: No I don't.

12 MS. PERRY: So you don't really know how
13 safe this really is for the use of the staircases
14 etc?

15 MR. NAPLES: No ones' ever raised any
16 overcrowding objections to our department to
17 investigate we purely investigated the permitting
18 issue.

19 MS. PERRY: Were you aware that in some
20 of the units they actually had to put in
21 ventilation because the convectors in the rooms
22 were blocked?

1 MR. NAPLES: I was not aware of that.

2 MS. PERRY: Okay that's all the questions
3 I have.

4 CHAIRPERSON MOLDENHAUER: Any Board
5 questions of Mr. Naples, seeing none, is there
6 any redirect?

7 MR. SURABIAN: Is it significant under
8 the building code whether the owner or a leasee
9 applies for a building permit?

10 MR. NAPLES: Again not my area of
11 expertise the code allows, it's basically the
12 responsibility of the property owner to take full
13 responsibility for securing permits but they can
14 have an agent act on their behalf which is
15 something we see quite often.

16 CHAIRPERSON MOLDENHAUER: Just to make
17 sure no additional questions of Mr. Naples,
18 seeing nodding of heads, that's no. Then at this
19 point Mr. Naples thank you very much, you're
20 excused, I just want to make sure that Mr. Wilson
21 and Ms. Perry understand that Mr. Naples will not
22 be back so if there's any additional questions he

1 is leaving.

2 MS. PERRY: Ms. Moldenhauer if it's
3 possible if something comes up later on in this
4 hearing would we be able to submit questions that
5 Mr. Naples could answer...

6 CHARIPERSON MOLDENHAUER: I'm asking
7 right now if that if you have any other questions
8 that you asked them at this current time.

9 MR. LEDERER: Did he consider an agent of
10 Archstone Van Ness?

11 MR. AVITABILE: Procedural objection
12 typically parties can only have one person cross
13 examination and I think...

14 MR. LEDERER: Somebody can ask that
15 question.

16 MS. PERRY: I'll ask it then, since UDC
17 has no interest in our building ownership or
18 otherwise how can UDC obtain a permit, that's
19 like me going to DCRA and saying I'm agent and I
20 can get a permit to put something in Mr. Hinkle's
21 house.

22 MR. BROWN: We're going, we're trying to

1 let people talk but we're going so far afield of
2 the zoning regulations and our mission here, one
3 it confuses us, two it's taking up precious time.

4 CHAIRPERSON MOLDENHAUER: I think that Mr.
5 Naples already actually testified that he doesn't
6 know the answer to that, so I think one is
7 actually an issue of relevance, I was going to
8 simply allow it but I don't think Mr. Naples, do
9 you know the answer to that question?

10 MR. NAPLES: I stand by the answer I
11 already gave; I don't oversee the issuance of
12 permits on a daily basis.

13 CHAIRPERSON MOLDENHAUER: I think that we
14 can just address the issue that way and there are
15 no other questions? Thank you very much, then
16 what we will do, I appreciate your time and we'll
17 dismiss you as a witness at this point in time
18 and we'll take a quick 10 minute break.

19 **10 min break**

20 CHAIRPERSON MOLDENHAUER: Okay maybe
21 somebody can grab the other parties in the
22 hallway and well get started. Okay we're back on

1 the record now and we are still with the
2 District's case Mr. Surabian I think that you're
3 ready to call your next witness?

4 MR. SURABIAN: Yes I am my next witness
5 is Matthew LeGrant.

6 MR. LEGRANT: Good afternoon Members of
7 the Board.

8 MR. SURABIAN: Please state your name and
9 title for the record.

10 MR. LEGRANT: Yes, Matthew LeGrant, I'm
11 the Zoning Administrator with DCRA.

12 MR. SURABIAN: Madam Chair Mr. LeGrant is
13 going to be providing I guess what I'll
14 characterize as some expert testimony and he's
15 been previously acknowledged as an expert by the
16 Board I can conduct a (inaudible) if the Board is
17 interested in hearing that.

18 CHAIRPERSON MOLDENHAUER: Is there any
19 objections by the Appellant?

20 MR. WILSON: I'd be interested in
21 knowing what he's an expert about.

22 CHAIRPERSON MOLDENHAUER: Okay then I'd

1 ask that you clarify that for the record.

2 MR. SURABIAN: He's an expert in the
3 interpretation of the Zoning Regulations.

4 MS. PERRY: We haven't seen anything.

5 MR. WILSON: This is a legal argument
6 really it's not a factual witness; you don't
7 bring in lawyers to testify to the law.

8 MR. SURABIAN: Well the Board has to in
9 this case involves the Board is to be
10 understanding the application of the regulations
11 and he's an expert in land use and zoning who
12 could shed some light on how the regulations
13 interact with each other and what they mean.

14 MR. WILSON: The Application Law in the
15 specific instances maybe within his prevue of
16 expertise but I don't think just interpreting
17 what the law means is something that he can
18 testify as an expert on.

19 MR. SURABIAN: Well we have a very real
20 situation where there's a certain use occurring
21 in a building and Mr. LeGrant is going to based
22 on the factual testimony we received about what

1 that use is he's going to give his opinion on
2 what that is under the regulations.

3 CHAIRPERSON MOLDENHAUER: Mr. Wilson
4 we've qualified Mr. LeGrant as an expert in other
5 cases and provided his testimony to provide
6 insight into the District Government and his
7 prior experience as to the interpretation of the
8 Zoning Regs, is that something that your
9 objecting to or are you objecting to his
10 experience as being an expert or as having an
11 expert on the topic?

12 MR. WILSON: I'm objecting to his
13 testimony as to what the law is as an expert on
14 what the law means, I mean that is within the
15 prevue of the Board and the Board doesn't take
16 expert testimony on what the meaning of the law
17 is, I think the Board interprets the law and
18 applies that using your own knowledge and
19 experience.

20 MR. SURABIAN: Actually the Board
21 frequently gets testimony from not only from MR.
22 LeGrant but other Zoning and Planning experts in

1 the District as to what the Zoning Regulations
2 mean.

3 CHAIRPERSON MOLDENHAUER: We do accept
4 testimony from different experts, I can think of
5 probably three off the top of my head that are
6 here on a regular basis and have different type
7 of experiences both in the District and other
8 jurisdictions and they provide their
9 interpretation to us, we obviously are the
10 finally arbiters of the interpretation and we
11 make the decision however we do typically accept
12 expert testimony so I think if your going to be
13 objecting on that grounds I will move forward and
14 qualifying him as an expert if your going to
15 object as to whether he qualifies as an expert in
16 Zoning we can have Mr. LeGrant questioned and you
17 can ask any additional questions in that regard.

18 MR. WILSON: Okay I'd appreciate a
19 gaudier in that regard.

20 MR. SURABIAN: Mr. LeGrant please if you
21 could briefly summarize your educational and
22 professional background for the Board.

1 MR. LEGRANT: Certainly, I hold two
2 degrees, I hold a Bachelors in City and Regional
3 Planning from California Polytechnic State
4 University San Luis Obispo. I have a Masters
5 Degree in City Planning from the University of
6 California at Berkley, my professional experience
7 includes approximately 27 years of planning and
8 zoning experience, I worked in the city of
9 Berkley, CA I was actually doing current planning
10 and zoning interpretation and application for 16
11 years I worked for the City of Alexandria, VA for
12 one year doing planning and application of that
13 city's zoning regulations and I've been employed
14 with the District of Columbia in the Office of
15 Zoning Administrator for 5 years. For the first
16 two years as the Deputy Zoning Administrator and
17 then for approximately the last 3 years as the
18 Zoning Administrator.

19 MR. SURABIAN: In the District of
20 Columbia have you had an opportunity to work with
21 the zoning regulations?

22 MR. LEGRANT: I have.

1 MR. SURABIAN: And have you worked in the
2 interpretation of those regulations?

3 MR. LEGRANT: I have and I do on a daily
4 basis.

5 MR. SURABIAN: And have you applied them
6 as to the various applications that you receive?

7 MR. LEGRANT: Absolutely, the office that
8 I have now I have a staff of 10 individuals that
9 I supervise for the purpose of the Office of
10 Zoning Administrator is to administer, enforce
11 and interpret the Zoning Regulations as my staff
12 does the bulk of the review of the building
13 permit applications and certificate of
14 occupancies and home occupation permits,
15 subdivisions, they report to me and I'm the final
16 administrative step on interpreting and applying
17 (out of mic range).

18 MR. SURABIAN: And have you done that
19 same type of work for the past 20 years or so?

20 MR. LEGRANT: Oh yes the different
21 jurisdictions and usual municipalities I was
22 involved in what is sometimes called current

1 planning, or sometimes known as zoning divisions
2 in the various jurisdictions.

3 MR. SURABIAN: Have you had an
4 opportunity to apply the regulations regarding
5 rooming houses in the District?

6 MR. LEGRANT: I have.

7 MR. SURABIAN: Have you had an
8 opportunity to work with the regulations
9 concerning apartment buildings in the District?

10 MR. LEGRANT: Yes.

11 MR. SURABIAN: I'd like to admit Mr.
12 LeGrant as an expert.

13 CHAIRPERSON MOLDENHAUER: Mr. Wilson do
14 you have any questions?

15 MR. WILSON: Obviously Mr. LeGrant has a
16 very impressive background and I recognize his
17 expertise being the relating to the application
18 of the zoning regulations of the District of
19 Columbia which he has had experience with the
20 past five years I understand, but the application
21 goes by his office which is obviously charged
22 with the jurisdiction of administering these, I

1 would not think that the Board should accept his
2 expertise with the technical legal interpretation
3 of various words within the zoning regulations
4 themselves which I think is a pure legal matter
5 that I don't think his expertise arises to since
6 he's not a lawyer.

7 MR. SURABIAN: The nature of his job is
8 to take the words of the zoning regulations and
9 to give them meaning and apply them in real
10 settings, and that's exactly what he's going to
11 be testifying too.

12 CHAIRPERSON MOLDENHAUER: Based on the all
13 the arguments I've heard we're going to accept
14 Mr. LeGrant as an expert, the Board obviously
15 will consider his testimony and will evaluate
16 what portions of that we deem are areas where we
17 need to provide our own expertise and our own
18 interpretation. That being said Mr. Surabian if
19 you could continue or you can start your
20 examination.

21 MR. SURABIAN: Mr. LeGrant are you
22 familiar with the apartment complex at 3003 Van

1 Ness?

2 MR. LEGRANT: I am.

3 MR. SURABIAN: And are you familiar with
4 the building permit that was issued by DCRA on
5 August 13th?

6 MR. LEGRANT: I became aware of it
7 following, post issuance, I first became aware of
8 this situation, this case I believe in August
9 2010 at different meetings of DCRA, the we have
10 divisional meetings that were organized by the
11 director to look at inspections, permitting,
12 zoning, an enforcement to get everybody looking
13 at cases and I recall hearing about this case
14 sort of second hand because it came up as a case
15 of illegal construction in a filing of a stop
16 work order it was not at that point in time it
17 was expressed to me there was no zoning issues so
18 I was not involved directly but that's when I
19 first became aware of it. Following the issuance
20 of a building permit I became aware later
21 actually the filing of this appeal then looking
22 back at the record including this building

1 permit.

2 MR. SURABIAN: Are you aware of this
3 property has a certificate of occupancy?

4 MR. LEGRANT: Yes.

5 MR. SURABIAN: And do you know what use
6 that certificate occupancy approves?

7 MR. LEGRANT: Right the current
8 certificate of occupancy that applies to this
9 property is certificate of occupancy no. B175541
10 issued August 29, 1996, it authorize the use as
11 quoted rentals, apartment house, 625 units.

12 MR. SURABIAN: And is your office
13 responsible for insuring compliance with
14 provisions of the zoning regulations concerning
15 certificates of occupancy?

16 MR. LEGRANT: Yes.

17 MR. SURABIAN: And do you believe this
18 certificate is in compliance?

19 MR. LEGRANT: Yes.

20 MR. SURABIAN: And you became familiar
21 with the building permit after it was issued have
22 you reviewed the building permit?

1 MR. LEGRANT: I have.

2 MR. SURABIAN: And does that permit, what
3 construction does that permit authorize?

4 MR. LEGRANT: The building permit
5 authorizes construction of interior devising
6 walls I believe 21 of the existing apartment
7 units.

8 MR. SURABIAN: And was the permit
9 reviewed by your office?

10 MR. LEGRANT: No it was not.

11 MR. SURABIAN: And would your office
12 typically review a building permit for interior
13 partition walls?

14 MR. LEGRANT: Well what DCRA has put
15 together is a protocol to exempt certain building
16 permits that don't trigger any need for a zoning
17 review because they don't impact the zoning
18 regulations, that protocol is laid out in
19 administrative issuance, that was developed here
20 I believe two or three years ago that sets forth
21 a criteria for our intake staff to determine
22 which applications, take staff to route the

1 applications to the applicable disciplines
2 whether it be structural, fire, mechanical, and
3 so forth under the building code and then my
4 office the Office of Zoning Administrator in the
5 case of a building permit for interior work that
6 does not change the number of units for
7 residential use in a residential zone our
8 administrative issuance sets forth that when
9 there's no change in the number of units, no
10 changes in the footprints of those units, number
11 of kitchens, and that there's a valid certificate
12 of occupancy for a multi-family apartment use
13 then it is not routed to zoning for review.

14 MR. SURABIAN: And do the zoning
15 regulations limit the number of bedrooms you can
16 have in an apartment unit?

17 MR. LEGRANT: They do not.

18 MR. SURABIAN: And so if one were to add
19 a bedroom to an apartment unit that would not
20 impact the zoning regulations?

21 MR. LEGRANT: It does not.

22 MR. SURABIAN: Does it affect the parking

1 required at the apartment.

2 MR. LEGRANT: No the parking for our
3 residential uses is applicable to this refer to
4 the number of units does not vary depending on
5 the number of bedrooms.

6 MR. SURABIAN: And is it relevant under
7 the zoning regulations whether UDC or whether the
8 property owner undertakes the construction?

9 MR. LEGRANT: No.

10 MR. SURABIAN: And have you reviewed any
11 documents concerning the floor plan or the layout
12 of these units in the building?

13 MR. LEGRANT: Yes, the filing of the
14 appeal I met with David Naples who testified
15 before me about the construction to get a clear
16 understanding of what the building permit
17 entailed. He showed me sort of a dichromatic
18 layout of the apartment units and described what
19 occurred in terms of the construction authorizing
20 that building permit.

21 MR. SURABIAN: And did you reach any
22 conclusions as to whether as to what the use of

1 those units were?

2 MR. LEGRANT: Yes based on the
3 information provided to me as well as looking at
4 the building permit, the use of the building is
5 an apartment house and the individual units are
6 apartment units.

7 MR. SURABIAN: With the fact that
8 students are living there effect your analysis?

9 MR. LEGRANT: No.

10 MR. SURABAIAN: Would the fact that the
11 University of the District of Columbia has leased
12 space relevant to your analysis?

13 MR. LEGRANT: No, I regulate, we look at
14 the use of the property and of course the
15 building forms that houses that use.

16 MR. SURABIAN: Did you; are you familiar
17 with the definition of dormitory in the
18 regulations?

19 MR. LEGRANT: Well as noted earlier the
20 definition of the word dormitory itself is not
21 set forth in the Zoning regulations, the Zoning
22 Regulations under Section 199.1 set forth those

1 terms that are defined and it further states for
2 those terms that are not defined we look to
3 Webster's and looking at Webster's there is a
4 definition of dormitory that I did look at and
5 review.

6 MR. SURABIAN: And did you find that the
7 use of these apartments fit under that
8 definition?

9 MR. LEGRANT: No and if I may read I
10 think we heard it before but to reiterate the
11 second meaning of the word dormitory in Webster's
12 is as follows, a residents hall providing
13 separate rooms or suites for individuals or
14 groups of 2, 3 or 4 with common toilet bathroom
15 facilities usually without housekeeping
16 facilities.

17 MR. SURABIAN: In your interpretation
18 what are housekeeping facilities?

19 MR. LEGRANT: Kitchens.

20 MR. SURABIAN: And is how that is
21 different than an apartment?

22 MR. LEGRANT: Well the apartment and there

1 is a definition of apartment if I may quote it is
2 set forth in 199.1 an apartment is one or more
3 habitable rooms with kitchen and bathroom
4 facilities exclusively for the use and under the
5 control of the occupants of those rooms.

6 MR. SURABIAN: And does it appear that
7 the units have a kitchen and bathroom for the use
8 of the occupants?

9 MR. LEGRANT: Yes based on the plans that
10 I saw and the discussions I had with Inspector
11 Naples and all the information that I've seen
12 there's no question that the units in question,
13 that all those units had kitchens and bathrooms.

14 MR. SURABIAN: The Appellant raised the
15 distinction of an occupant versus a tenant, is
16 that a distinction that's relevant?

17 MR. LEGRANT: No, no.

18 MR. SURABIAN: And why not?

19 MR. LEGRANT: Well the term that's used
20 in the definition of apartment is occupant or the
21 tenure of the individual whether they were there
22 a tenant or an owner for example in a multi-

1 family building that's arranged in a condominium
2 ownership arrangement, those may be owners but
3 what's important is the individuals residing
4 there look to the code and utilize the term
5 occupant.

6 MR. SURABIAN: Are you familiar with the
7 definition of rooming house?

8 MR. LEGRANT: Yes.

9 MR. SURABIAN: Do you believe that these
10 units are being used as rooming house.

11 MR. LEGRANT: No, rooming house which we
12 have a definition I will read under 199.1 a
13 rooming house is a building or part there of that
14 provides sleeping accommodations for 3 or more
15 persons who are not members or the immediate
16 family of the resident operator or manager and in
17 which the accommodations are not under exclusive
18 control of the occupants. A rooming house
19 provides accommodations on a monthly or longer
20 basis, the terms rooming house shall not be
21 interpreted to include establishment known as or
22 defined in this title as hotel, motel, inn, bed

1 and breakfast, private club, tourist home, guest
2 house or other transient accommodations. So
3 looking at the physical arrangement of the units
4 in this building and analyzing that given the
5 definitions the closest or the most relevant
6 definition that applies is apartment because they
7 have a kitchen that is present and the rooming
8 house of course presumes in saying the statement
9 of a resident operator or manager that there is
10 an individual there that maybe part of a primary
11 household that is renting out rooms to
12 individuals that are not related to that family
13 and so to try and make the distinction that I
14 look at and analyzing situations like this is
15 what is the relationship of the people involved
16 in living in this particular space and what is
17 the physical facilities that are present?

18 MR. SURABIAN: Can you describe sort of
19 applying the definition of a rooming house can
20 you describe what a rooming house arrangement
21 might look like?

22 MR. LEGRANT: Well in our experience a

1 rooming house has a couple of key characteristic
2 for example when our inspectors go out to look at
3 situations to see if there's a rooming house use,
4 some of the key aspects are the individual rooms
5 to have separate leases that make their control
6 that space distinct from the rest of the unit, do
7 they have locked doors to their bedrooms, or
8 keyed locks to present access to only the person
9 using that room. We have in addition to the
10 definition to rooming house we have a definition
11 of the code that's called rooming unit which I
12 will read. A one or more habitable rooms forming
13 a single habitable unit used or intended to be
14 used for living or sleeping purposes but not for
15 the preparation or eating of meals. The terms
16 rooming unit shall not include tenement or a
17 bachelor apartment so the rooming houses that
18 I've seen there is someone designated like the
19 older term is landlord, landlady, collecting the
20 rent and then the individuals rent these rooms
21 that they may have leases of and may have locked
22 doors to prevent access from other persons.

1 MR. SURABIAN: So it's a, is a rooming
2 house a single dwelling unit where the
3 individuals bedrooms are being rented out?

4 MR. LEGRANT: It could be, it could be,
5 there's a common area with maybe a general common
6 facility, maybe a living room and then bathrooms
7 and then it could be rooms, bedrooms, but we
8 might think of it as a dwelling in a house or it
9 could be a building that maybe there's 16 rooms
10 that in total it's the arrangement of the
11 individuals that are relevant in that physical
12 facility to see if it's a rooming house use.

13 MR. SURABIAN: And like was under the
14 definition a rooming house is characterized by
15 the presence of a resident manager or operator?

16 MR. LEGRANT: That's correct.

17 MR. SURABIAN: Is there a resident
18 operator or manager living in the apartment unit,
19 if you're aware?

20 MR. LEGRANT: In this case not that I'm
21 aware of, no not by any person.

22 MS. PERRY: MR. Surabian can you repeat

1 that question I didn't hear it.

2 MR. SURABIAN: I think the question was
3 whether there was a resident manager or operator
4 residing in an apartment unit if he had any
5 information about that. No further questions.

6 CHAIRPERSON MOLDENHAUER: Any questions
7 Mr. Wilson?

8 MR. WILSON: Mr. LeGrant you've testified
9 that you looked at the certificate of occupancy
10 for Archstone Van Ness and you seemed to find
11 that somehow dispositive of the issue that we
12 have at hand, I mean if we decided the issue
13 otherwise as we've argued it wouldn't it be
14 better to say that calls into question the
15 certificate of occupancy that's been issued for
16 the building rather than bootstrapping on that
17 certificate of occupancy to reach a decision as
18 to what the use of the rooms by UDC actually are,
19 I mean that really isn't relevant is it?

20 MR. SURABIAN: Objection, I can't follow
21 that question? I think it's a complex question.

22 MR. WILSON: Let me try to restate it if

1 I can. You have at least as I understood it
2 based part of your decision on what the
3 certificate of occupancy for Archstone Van Ness
4 says, is that correct?

5 MR. LEGRANT: Well if I can try to
6 clarify, you know I was asked about the
7 certificate of occupancy on this property, I was
8 further asked whether the construction that was
9 occurred on the building permit changed the use,
10 in my view it does not, I don't think I got to
11 the conclusion but maybe I'll use the opportunity
12 here to say well that then does not change
13 because there's been no change in the number of
14 units, no change in the use of those units then I
15 believe that the current certificate of occupancy
16 still applies to the use.

17 MR. WILSON: Alright so your arguing back
18 from your decision that the use hasn't changed
19 therefore the certificate of occupancy is
20 correct?

21 MR. LEGRANT: That's right.

22 MR. WILSON: No the certificate of

1 occupancy has any bearing on what the use may or
2 may not be currently, that's all I wanted to
3 clarify, and I think you agree with that.

4 MR. LEGRANT: If the use had changed then
5 the certificate of occupancy would be in question
6 because it would not reflect the current use and
7 we would have to investigate that avenue.

8 MR. WILSON: Okay thank you, now you've
9 said in a rooming house you can have a range of
10 rooms which would mean like 21 rooms might be
11 able to scattered around because I think the
12 definition says part of a building that those
13 could constitute a rooming house, all 21 separate
14 rooms.

15 MR. LEGRANT: Well...

16 MR. WILSON: You testified you used 10 or
17 15 or something so you may have...

18 MR. LEGRANT: Well I believe what I said
19 was the question from Mr. Surabian was, well he
20 started with the dwelling, could a dwelling be a
21 rooming house and I said yes if there's three or
22 more persons, that's the criteria the definition

1 is 3 or more persons, sometimes, we didn't go
2 into detail well maybe there's multiple persons
3 in a room or maybe they have separate rooms but
4 then I think I went on to say that I've seen
5 situations of buildings where it's that has
6 multiple rooms and that's maybe the 8 or 10 rooms
7 or more, it kind of distinguishes from what we
8 might think as a dwelling.

9 MR. WILSON: A dwelling's a much broader
10 term.

11 MR. LEGRANT: Yes I would agree that
12 dwelling is a broader term.

13 MR. WILSON: So the rooming house you
14 could have a rooming house where you have 21
15 separate rooms that has an aggregate act as a
16 rooming house if they meet all the other
17 requirements of a rooming house?

18 MR. LEGRANT: I've never seen in my
19 experience applying the terms rooming house to
20 rooms that are not physical connected, I've n
21 ever seen that scenario.

22 CHAIRPERSON MOLDENHAUER: Can I just jump

1 in; can you clarify what you mean by not
2 physically connected?

3 MR. LEGRANT: Well that are scattered
4 throughout a building if because the definition
5 says building or portion of the building, it's
6 been my experience a portion of a building that's
7 used as a rooming house would be where there's
8 all those aspects of the rooming house, the rooms
9 themselves and the common areas are physically
10 connected through an interior access so you can
11 go in through one entry door to a space and then
12 go to those individual rooms that in total could
13 be a rooming house as a portion of a building.

14 MR. WILSON: But you don't deny that the
15 definition only speaks in terms of a building or
16 a portion of a building so...

17 MR. LEGRANT: That's true.

18 MR. WILSON: You also discussed the you
19 thought an important addition of a rooming house
20 was characterized by the presence of a resident
21 manager, would you consider the Resident
22 Assistance that are employed by UDC that live at

1 Archstone Van Ness to be such a resident manager?

2 MR. LEGRANT: I don't know if they reside
3 in the units?

4 MR. WILSON: They reside in separate
5 units, they have their own unit that they alone
6 live in and they monitor and govern the student's
7 activities.

8 MR. LEGRANT: I've interpreted to mean
9 resident manager as somebody that lives within
10 the rooming house itself.

11 MR. WILSON: Well if you consider the
12 rooming house to be the aggregation of the 21
13 units within the building and they're also within
14 the building, the would live within the building
15 is that not correct?

16 MR. LEGRANT: They would live within the
17 building but I guess it would not be within that
18 particular unit.

19 MR. WILSON: Now my main concern with
20 your testimony is that you don't seem to have
21 dwelled upon the essential criteria for
22 differentiating an apartment from a rooming house

1 which is the exclusivity of the use and control
2 of the rooms which occurs and is the fundamental
3 criteria in the definition of apartment, but it's
4 absence is the fundamental criteria in the
5 definition of rooming house. We have gone
6 through and shown how these students do not have
7 control of their rooms, the university does, and
8 you have not addressed that, have you looked at
9 that issue?

10 MR. LEGRANT: Well I guess in terms of
11 your question, your question is about the control
12 aspect in a rooming house or the purposes under
13 the control of the occupants...

14 MR. WILSON: Well these definitions are
15 very short and fairly opaque but the one thing
16 that clearly stands out in the definition is that
17 to be an apartment the occupant has to have
18 exclusive control and use of the rooms, it also
19 stands out in the definition of rooming house
20 that the occupants do not have control of their
21 rooms, so this would it seem in determining
22 whether it was an apartment or rooming house

1 you'd have to focus on this issue primarily that
2 would be the fundamental characteristic to define
3 the two and that's why we went through an
4 exhaustive analysis of the difference between the
5 tenants who live in apartment units at Archstone
6 Van Ness and the UDC students who have none of
7 the same characteristics in control and exclusive
8 use that the tenants have. Have you
9 investigated that?

10 MR. LEGRANT: Yes and again I'll put it
11 in general terms of I've looked at examples of
12 rooming houses that I differentiate what I've
13 seen here from my experience and my
14 interpretation of the definition of rooming
15 house. In the rooming houses I've seen the
16 aspect of not being under exclusive control of
17 the occupants is that these individuals who
18 typically are not related have to use a common
19 area to enter their rooms and so they don't have
20 exclusive use of like the bathroom or the living
21 room or the front door to get to their units, so
22 it's not under their exclusive control.

1 MR. WILSON: But none of that appears in
2 the definition of rooming house does it?

3 MR. LEGRANT: Well it's...

4 MR. WILSON: Embossing all of that upon
5 what you think ought to be there but the
6 definition doesn't say that does it?

7 MR. LEGRANT: It's in my application of
8 this term to rooming houses that I have seen and
9 I've issued certificates of occupancy to that's
10 the analysis that I bring to it.

11 MR. WILSON: Thank you.

12 MS. PERRY: If I may I have a couple of
13 quick questions, isn't it true that the
14 construction code requires the permit applicant
15 to provide any information necessary to determine
16 compliance with the zoning regulations, isn't
17 that in 12 DCMR Subsection 106.1.12?

18 MR. LEGRANT: You citing title 12?

19 MS. PERRY: Yeah.

20 MR. LEGRANT: I have to say I administer
21 Title 11 Zoning Regulations and Title 12 I look
22 to my counterparts at DCRA that are responsible

1 for that administration.

2 MS. PERRY: Okay isn't it also true that
3 a community based residential facility can
4 resemble an apartment building and didn't you
5 testify to that in the peaceaholic's case? So
6 isn't it possible that a rooming house could also
7 resemble an apartment building?

8 MR. LEGRANT: If you could remind me the
9 context that I stated, the peaceaholics of course
10 I recall the case.

11 MS. PERRY: It was a case that
12 peaceaholics had it was before this Board that
13 peaceaholics had filed for a building permit for
14 a 13 unit building and as it turned out they were
15 not using, and the C of O was for an apartment
16 house, DCRA issued them a building permit but as
17 it turned out they were using it as, they planned
18 on using it as a, there was no zoning review of
19 the case or of the building permit and as it
20 turned out they were using it more as a community
21 based residential facility and in that case you
22 were quoted "the Zoning Administrator further

1 acknowledged that CBRF's constitute such a use
2 and they can be located in a building who's plans
3 resemble numerous other uses including an
4 apartment building, so I guess what I'm asking
5 you if a community based residential facility can
6 look like an apartment building couldn't a
7 rooming house also look like an apartment
8 building?

9 MR. LEGRANT: Well...

10 MR. PERRY: And since there was no zoning
11 review...

12 CHAIRPERSON MOLDENHAUER: Ms. Perry can
13 you please, I think you've asked a question, I
14 think you need to provide time to have an answer
15 thank you.

16 MR. LEGRANT: In that case of course it
17 was alleged it was a community based residential
18 facility DCRA's position it was not, it was an
19 apartment house and I believe the Board concurred
20 with the District in that regard, but yes one of
21 the key aspects is different, it's how it's used,
22 what's the arrangement of the individuals, what's

1 the relationship between the individuals, could
2 manifest itself into different building forms I
3 guess that would be the way I would answer that.

4 MS. PERRY: I can only speak for myself
5 and I'm sure you've gone to the beach and you've
6 rented maybe a room for two weeks, a month, it's
7 a rooming house, it's had a kitchen, it's had a
8 bathroom or small kitchen, small bathroom, you
9 rent it by the month, you still have a key to it,
10 you enter it, you don't always have to enter it
11 through the central lobby, you can but it's
12 basically a rooming house.

13 MR. SURABIAN: Object, there's no
14 question.

15 MS. PERRY: Well I think he's describing
16 a rooming house but aren't there rooming houses
17 that also look different than what your
18 describing that are used for short term use?

19 MR. LEGRANT: I guess you should tell me
20 what aspect I was describing?

21 MS. PERRY: Well you were saying why
22 these were apartments and why this could not be a

1 rooming house.

2 MR. LEGRANT: I believe I testified in
3 that regard yes.

4 MS. PERRY: And if a student can be moved
5 at a moments notice from one unit to another unit
6 isn't akin to transient use?

7 MR. LEGRANT: Well...

8 CHAIRPERSON MOLDENAUER: Ms. Perry, you
9 have to, you ask a question you need to give
10 time, because otherwise our court reporter can't
11 take things down, we have to maintain some level
12 of decorum, Mr. LeGrant if you could answer that
13 question.

14 MR. LEGRANT: The provisions of the
15 zoning code require this District at least 90 day
16 tenure in a rooming house use but for apartments
17 it's 30 day tenure so I would say if those
18 residents don't reside in their apartments for
19 less than 30 days that could be an issue.

20 MS. PERRY: So the fact that UDC has the
21 option to move people around it could happen in
22 the first week, since they assign the roommates

1 if roommates have fights and they get moved it
2 could be within 30 days which would be a
3 transient use by your definition am I correct?

4 MR. LEGRANT: If an individual student
5 or otherwise is less than 30 days then that would
6 be in conflict with the definition of the word
7 apartment.

8 MS. PERRY: Thank you very much.

9 CHAIRPERSON MOLDENHAUER: Any further
10 questions. Mr. Brown do you have any questions
11 or cross examination of Mr. LeGrant?

12 MR. BROWN: Just one quick one, I thought
13 you were very pointed on the issue that you're
14 concerned with occupants of the property not
15 their relationship to the property as far as
16 ownership or leasing.

17 MR. LEGRANT: Are you at all concerned
18 about the status of the occupant, for instance
19 the person is a student, or profession or
20 unemployed or some other category does that
21 matter to your determination?

22 MR. LEGRANT: No it does not.

1 CHAIRPERSON MOLDENHAUER: Ms. Prince.

2 MS. PRINCE: Could you please confirm the
3 zone in which a rooming house is first permitted
4 as a matter of right?

5 MR. LEGRANT: It's allowed in R-4 District
6 and above.

7 MS. PRINCE: And the R-4 District is a
8 more restrictive district than the R-5 District?

9 MR. LEGRANT: It is.

10 MS. PRINCE: Therefore even if one were
11 to find that the subject use constituted a
12 rooming house use would that use be permitted as
13 a matter of right in this zone, the R-5-D zone?

14 MR. LEGRANT: Yes it would.

15 MR. SURABIAN: I just have like three
16 redirect questions?

17 CHAIRPERSON MOLDENHAUER: I think we'll
18 hold off, I think we have some questions from the
19 Board and then you may want to have redirect
20 following them that would be more productive.
21 Mr. LeGrant I guess my question is what in your
22 opinion would qualify to exclude something from

1 not qualifying as an apartment based on the last
2 phraseology of exclusive use and control. So
3 what would be an example to you of something, I'm
4 just trying to think hypothetically what would
5 create somebody not having exclusive use or
6 control so that they would not qualify as an
7 apartment?

8 MR. LEGRANT: Well using the example I
9 gave earlier about a rooming houses when people
10 have their doors to the bedrooms have keyed locks
11 then that bedroom itself is only under the
12 control of that individual, the I believe the key
13 aspect of differentiating an apartment from a
14 rooming house use has been suggested here, has to
15 do again with the physical facility and then the
16 arrangement of the individuals. One thing I did
17 not go into in my testimony is often in
18 enforcement cases we differentiate a rooming
19 house from, a group of individuals operating as a
20 family versus a rooming house, so we look at the
21 definition family and then what how those
22 individuals are related, if there are six or less

1 unrelated individuals can still live as a family
2 that are operating as a household and doing
3 housekeeping together and using the kitchen, so
4 in a rooming house those individuals are not
5 sharing meals, they're not using the kitchen in
6 common and that would be in part to the way that
7 I differentiate I guess a rooming house from
8 apartment.

9 CHAIRPERSON MOLDENHAUER: Is it your
10 impression or your understanding that you could,
11 could you have a rooming house and an apartment
12 in the same building?

13 MR. LEGRANT: Yes.

14 CHAIRPERSON MOLDENHAUER: Because I think
15 actually we had a case an appeal Rosen where we
16 talked about it was in Adams Morgan where there
17 was a discussion about how half of it could be a
18 rooming house and half of it could be an
19 apartment building, do you recall that or no?

20 MR. LEGRANT: I'm not familiar with it.

21 CHAIRPERSON MOLDENHAUER: I'd have to
22 look at it as well it may be something that we

1 might be able to shine some light on it, because
2 that was a case where we did evaluate a building
3 in an of itself where there was part apartments
4 and part rooming houses, but I think I digressed
5 from the major issue here. The Section 330.6D
6 says that a rooming house in an R-4 Zone cannot
7 have a cooking facility provided in an individual
8 unit?

9 MR. LEGRANT: Correct.

10 CHAIRPERSON MOLDENHAUER: Is the term
11 rooming house or boarding house provided anywhere
12 else in the regs other than in that Section to
13 your knowledge?

14 MR. LEGRANT: Besides the definition, no
15 the terms define in the definitions and then
16 they're described with those limitations in the
17 330.6.

18 CHAIRPERSON MOLDENHAUER: So isn't that
19 correct then to say that any rooming house
20 absolutely not be able to have a cooking facility
21 there's no other section in the regs that talk
22 about a rooming house with a cooking facility?

1 MR. LEGRANT: The way that I've seen
2 these manifested is in a rooming house there may
3 be a kitchen for the use of the primary household
4 like the landlord or the landlady and then
5 they're renting out rooms only for sleeping
6 purposes and those individuals are not given
7 kitchen privileges or not being fed as part of
8 their rent, to differentiate that from a Board
9 house, a boarding house in addition to the
10 sleeping accommodations that your given in your
11 rooms you also are given board is the old term if
12 you get room and board you get fed and may the
13 predisposition was that the landlord, or landlady
14 provided meals as part of your rent.

15 CHAIRPERSON MOLDENHAUER: But I'm also
16 talking about Section D which I've got cooking
17 facilities so if in a rooming house if there was
18 a cooking facility within the individual unit not
19 in the house in general but in the individual
20 unit would that still qualify as a rooming house?

21 MR. LEGRANT: Well no because you can't
22 have a when you say individual unit do you mean

1 the room?

2 CHAIRPERSON MOLDENHAUER: I'm trying not
3 to use a term that's not in the actual
4 definition, it says cooking facilities are
5 provided in any individual unit, it doesn't use
6 the word room it actually uses individual unit.

7 MR. LEGRANT: I guess I look back to
8 again the definition of rooming unit which states
9 one or more habitable rooms forming a single
10 habitable unit used or intended to be used for
11 living or sleeping purposes but not for the
12 preparation or eating of meals so I would say you
13 can't have a kitchen and rooming unit for the
14 meal portion.

15 CHAIRPERSON MOLDENHAUER: I don't have
16 any other questions do any other Board Members
17 have any questions for Mr. LeGrant.

18 MR. SELFRIDGE: Madam Chair I just want
19 to qualify a couple of things, we've heard a lot
20 today. If somebody holds a lease and they sublet
21 an apartment it's still an apartment.

22 MR. LEGRANT: Well if you have a dwelling

1 unit such as an apartment or lets say a single
2 family home the code allows you to, you can
3 sublet or have roomers or boarders up to one or
4 two boarders as a matter of right use, it's the
5 third number that kicks in, that's how I see the
6 regulations they sort of fit, like okay you can
7 rent one or two roomers or boarders matter of
8 right in any dwelling unit, you get three then
9 you move into the rooming house situation.

10 CHAIRPERSON MOLDENHAUER: So if here
11 you're talking about having four students in a
12 room does that then push this into the rooming
13 house category?

14 MR. LEGRANT: Well because the definition
15 predisposes a to use the words for three or more
16 persons who are members of the immediate family
17 of the resident operator or manager, it
18 predispose as your family there then is renting
19 out these rooms to like unrelated individuals and
20 if there's no immediate family there's' no
21 resident operator or manager present in that
22 unit, I don't see how it could be a rooming

1 house.

2 MR. SELFRIDGE: But that's different from
3 subletting if I have an apartment and I sublet it
4 to somebody else and I sublet it to three people
5 but I don't live there it doesn't make it a
6 rooming house does it?

7 MR. LEGRANT: It depends on how the
8 individuals organize themselves. We have a
9 definition of family if I may, family is defined
10 as one or more persons related by blood, marriage
11 or adoption, or not more than 6 persons who are
12 not so related including foster children living
13 together as a single housekeeping unit using
14 certain rooms and housekeeping facilities in
15 common, provided that the term family shall
16 include religious community having not more than
17 15 members, so if those individuals up to 6
18 related individuals are sharing the kitchen are
19 using those house keeping facilities in common
20 the code tells me we treat them as a family.

21 MR. SURABIAN: I just want to make sure
22 the Zoning Administrator understands Mr.

1 Selfridge's question, correct me if I'm wrong
2 what your asking is whether a situation where an
3 individual holds a lease and then moves out and
4 sublets there apartment to a new individual who
5 moves in, does the effect the zoning?

6 MR. LEGRANT: No, I'm sorry.

7 MR. SELFRIDGE: But you do raise an
8 interesting point, you can have up to six people
9 who are unrelated and it wouldn't be qualified as
10 a rooming house?

11 MR. LEGRANT: If they share the
12 housekeeping...

13 MR. SELFRIDGE: If they share the
14 housekeeping, if they share the kitchen, and I
15 think you defined housekeeping as kitchen right?

16 MR. LEGRANT: So then 6 seems to be a key
17 number here?

18 MR. LEGRANT: The number and how the
19 individuals range themselves that's true.

20 MR. SELFRIDGE: So if we had four people
21 who were sharing an apartment and they shared a
22 kitchen that wouldn't be a rooming house?

1 MR. LEGRANT: I would agree it would not.

2 MR. SELFRIDGE: Thank you.

3 CHAIRPERSON MOLDENHAUER: Okay any
4 redirect.

5 MR. SURABIAN: Just a couple of
6 questions, under the zoning regulations are a
7 group of students treated differently than a
8 family living together in a same space?

9 MR. LEGRANT: If they qualify for the
10 definition of family no they do not.

11 MR. SURABIAN: And is it possible for a
12 group of students to qualify under the definition
13 of family?

14 MR. LEGRANT: Yes.

15 MR. SURABIAN: And if a UDC resident
16 assistant lives in his or her own apartment unit,
17 is it possible for that person to be considered a
18 resident manager under the regs.

19 MR. LEGRANT: No I've interpreted the
20 word resident to be within that unit.

21 MR. SURABIAN: And is the words in the
22 regulations the word control in the regulations,

1 control the unit, does that, would you say that
2 the occupant still has control if the landlord is
3 able to access the unit to inspect it
4 periodically no that does not affect the control.

5 Many rental situations provide for a manager to
6 have access to a unit and similarly if the
7 manager or owner or leaser can access the unit
8 for maintenance does it affect the control.

9 MR. LEGRANT: No.

10 MR. SURABIAN: If hey want to if an owner
11 of a property wants to bring someone in because
12 they want to sell the property and they want to
13 show the property to a perspective buyer does
14 that affect the control of the occupant?

15 MR. LEGRANT: No.

16 MR. SURABIAN: If someone leases an
17 apartment and then leaves they decide they don't
18 like the apartment and they break they're lease
19 and leave before 30 days is that in your view
20 under the regulations change the use of the
21 property.

22 MR. LEGRANT: No, if the lease is made

1 for 30 days if the person left less than 30 days
2 maybe technically it might create an issue but it
3 would be almost impossible to enforce because the
4 persons' gone.

5 MR. SURABIAN: So in your enforcement of
6 the 30 days you're interested in sort of the
7 intention of the parties?

8 MR. LEGRANT: Right.

9 MR. SURABIAN: No further questions.

10 CHAIRPERSON MOLDENHAUER: Thank you then
11 that concludes the District's case. Thank you
12 then next we'll turn to Mr. Brown. I figured you
13 have witness unless Ms. Prince do you have any
14 witnesses?

15 MR. BROWN: Mr. Kopecky is here to answer
16 questions, but I don't want to belabor this
17 anymore, we filed several things before, I think
18 the key is that from my client's prospective as
19 the owner of the property is that these 24
20 apartment units are being leased on a one year
21 lease to the University of the District of
22 Columbia, they're to be used and maintained as

1 apartment units, that what we've heard today from
2 everybody involved in the definitions
3 particularly Mr. LeGrant that the status of the
4 occupants doesn't matter, that these are students
5 doesn't matter, and then you look to the
6 configuration and functionality of the units
7 which remains unchanged from when they were
8 previously occupied by other occupants who might
9 have been students or not. I think the focus is
10 on what these units are, they are apartments,
11 they remain apartments and will continue to be
12 apartments in the future and that there's been no
13 conversion to a dormitory which all of this
14 discussion of dormitory and rooming house while I
15 it's interesting and exciting for zoning folks
16 it's really irrelevant because in the R-5 Zone a
17 dormitory or a rooming house is permitted so at
18 the end of the day your not going to find it a
19 rooming house or a dormitory but even if you did
20 from a zoning perspective so what, they're
21 permitted uses and so I don't think it
22 accomplishes the Appellant's objectives which is

1 not to have the students occupying the building.

2 With that I'll open up to questions for myself
3 or from Mr... Kopecky who's responsible for the
4 building and responsible for maintaining it as an
5 apartment building?

6 CHAIRPERSON MOLDENHAUER: I'll first look
7 to Mr. Wilson, I'm sorry those witness so there's
8 no cross examination, do any Board Members have
9 any questions? Seeing none, then Ms. Prince.

10 MS. PRINCE: Just a few comments for the
11 record, I think we're all clear that this
12 building is an apartment house it has always been
13 an apartment house, the question is does the use
14 of the units and the configuration of the units
15 as they're currently laid out somehow change the
16 use, and I think the answer is absolutely not, 4
17 students can live in an apartment together as a
18 single housekeeping unit under the zoning
19 regulations a family if they're unrelated. If
20 they're using the same kitchen, and kitchens
21 really become a central part of our discussion
22 here because rooming units can't have a kitchen,

1 so even though it really isn't a zoning concern
2 to be considered a rooming house as opposed to an
3 apartment house because rooming houses are
4 permitted in a more restrictive zone, it's simply
5 not what we have here, we have a situation where
6 the occupants of the unit can open the door and
7 all can use the same kitchen and function in this
8 unit that way we think about an apartment. The
9 status of the occupants is students they're
10 laundry habits, their cell phone habits are
11 simply irrelevant under the zoning regulations
12 and this isn't a new issue, GW has multiple
13 students in two different apartment houses,
14 apartment house C of O, AU has multiple students
15 in an apartment house on Mass Ave, the Berkshire,
16 apartment house C of O, there's nothing about the
17 use of the units by the students that somehow
18 changed the situation, but there's a bigger more
19 global issue that I think should give the Board
20 some comfort and that is what we're really
21 hearing about is concern about the effects of UDC
22 on the neighborhood and that is truly a campus

1 planning kind of process and that is a process
2 that is underway, we have a hearing on the campus
3 plan on May 2nd, so I don't think we need to
4 belabor this issue when it's really not the real
5 issue, the real issue what impacts do UDC have on
6 their campus or the general neighborhood and we
7 will get to that in May but it's not properly
8 before this Board at this time, thank you.

9 CHAIRPERSON MOLDENHAUER: I just have one
10 question you threw out some examples in the city
11 and having gone to Georgetown that to me is just
12 a little more of a personal knowledge, if you
13 have four students living in a house in
14 Georgetown that doesn't change the use of that
15 house from a single family dwelling, isn't that
16 correct?

17 MS. PRINCE: Six unrelated people can
18 live together in a single family home without
19 changing the status of that house as a single
20 family home.

21 MR. AVITABILE: If I might just add to
22 that because having also gone to Georgetown I can

1 comment as well, if you think about the
2 townhouses that Georgetown and maintains as part
3 of it's housing they're provided through the
4 housing process, the housing policy, very similar
5 policies to the ones that the Appellants have
6 detailed here but that doesn't change the fact
7 that they are for all intense purposes a single
8 family dwelling under the zoning regulations even
9 if they are controlled or maintained by the
10 University.

11 CHAIRPERSON MOLDENHAUER: I think the
12 difference there though and I think even Ms.
13 Prince said, those would actually be owned by the
14 institutions thus covered with the campus plan
15 the use more restrictions, more public notice,
16 things to that effect I think one of the kind of
17 public policies issues in this case is the fact
18 that this is not owned by the institution not
19 owned or kind of controlled in that regard by
20 that is owned by a separate company and I think
21 that's kind of the distinction and the difference
22 here but I do appreciate that I'm just trying to

1 make sure I understand kind of parallel examples.
2 That being said I'm just going to, going to Mr.
3 Wilson one of the things I can't shake in my head
4 in regards to a question that I want to ask is
5 what's the difference potentially between having
6 a group of students or having the university
7 acquire multiple units and maybe having an
8 investor acquire a grouping of apartment units to
9 do furnished executive rentals?

10 MR. WILSON: If you had an investor doing
11 rentals presumably he'd have a sublease and there
12 would be a legal relationship there, it gets to
13 the question of exclusive control and use,
14 anybody that would come in and rent an apartment
15 or so wouldn't allow himself to be thrown out at
16 somebody else's will, he basically said yeah I've
17 signed a lease, I've signed an agreement to
18 occupy this and do what I want with this unit,
19 that is not the situation with the students. The
20 fact that they're students we're not trying to
21 complain that somehow students cause them into
22 different things, if somehow this was some sort

1 of other group that was doing this it would be
2 the same result.

3 CHAIRPERSON MOLDENHAUER: Well that's why
4 I'm trying to give you the example of furnished
5 executive housing because I think, maybe lets
6 say furnished corporate housing where one
7 corporation goes out and buys a grouping of units
8 and they say if I terminate you at will I can
9 then terminate your contract and I hire you one
10 day you get, you fail to use the apartment one
11 day, the next day you do something at the office
12 which I don't like and bam your fired and then
13 all of a sudden your out, I'm trying to create
14 parallels in my mind which have nothing to do
15 with the students and create why that would then
16 create a different use.

17 MR. WILSON: Well it would create a
18 different use if you don't meet that essential
19 criteria of exclusive use and control, that seems
20 the dominant feature in the very, very short
21 definition of apartment in the regulations. And
22 is contradicted and the only thing that stands

1 out with respect to rooming house is the
2 contradiction where you don't have exclusive
3 control and we seem to, the other side seems to
4 have not want to focus on that issue as to the
5 control or not, that the occupant has of the room
6 that he's in, he or she. I think that's the
7 distinguishing characteristic here.

8 MR. BROWN: I think that some of these
9 are rent control issues, and housing code issues
10 and I think we're starting to blur the lines
11 here, I'm not convinced that UDC could throw
12 somebody out if they wanted to anyways, I think
13 that the conditions of a lease are governed by
14 rent control and department of housing and
15 community development at HCD and I don't think
16 that they're relevant here necessarily, so I just
17 think we need to try and keep them clear, we're
18 talking about the idea of the use and if the use
19 is an apartment then I don't think how a lease is
20 written whether its legal or not is relevant
21 here,, I just want to separate the issues because
22 I feel like they're starting to blur...

1 MR. WILSON: It's a question whether it
2 is a lease or not it's not just how it's written
3 or whether it's subject to rent control or not,
4 but when there's a lease there's a legal
5 relationship and you've got protections and
6 you've got control of your premises within a
7 certain legal framework, you don't have such a
8 framework here, you have the university that says
9 we have the right to reassign you to any room at
10 any time for any reason, there is no appeal, or
11 legal right to appeal to anybody, they can just
12 move students back and forth from these rooms,
13 they could move you out for violation of
14 university policies whatever that maybe,
15 basically there's no control by these students
16 over these rooms, they have no legal relationship
17 with the landlord in the building they have no
18 lease to their room they're not a tenant in that
19 sense, they are solely there at the sufferance of
20 the University of the District of Columbia,
21 that's a very different legal concept.

22 CHAIRPERSON MOLDENHAUER: Let me ask you,

1 can I ask you as question then, what is, you're
2 making a distinction whether I don't know yet if
3 I agree with you in regards to the difference in
4 a lease and an occupancy agreement. But say that
5 there is a distinction, what's the, if I violate
6 my lease there still is some sort of contractual
7 relationship here, between an occupancy agreement
8 that the student has with the university and a
9 lease relationship that potentially a landlord
10 and a (inaudible) would have, so how do you then
11 distinguish that, I mean there's still
12 contractual terms if I were to violate my
13 sublease I could get thrown out and if I violate
14 my occupancy agreement I could be moved, I mean
15 I know that there are relationships where
16 developers execute leases with tenants where they
17 say we're going to be able to relocate you in any
18 unit in the building during construction or
19 renovation so I'm just trying to understand what
20 then the difference is here between the legal
21 relationship that you're arguing between a
22 landlord and a tenant or a sub tenant and an

1 occupancy agreement in this instance and a
2 student, its' easier to use student here, because
3 that's the factual situation.

4 MR. WILSON: I don't think you can
5 generalize, I don't think you can say occupancy
6 agreements fall within this, they all become
7 rooming houses or something and leases fall
8 within that. I think you have to look at the
9 particular factual circumstances of each one,
10 it's a subjective test as to whether there is
11 exclusive use and control of that unit to make it
12 qualify as an apartment whereas if there's not
13 such exclusive use and control then it can
14 qualify as a rooming house and looking at all the
15 idea of it, which give the university enormous
16 authority over these occupants of the, lets not
17 refer to them as students because that confuses
18 the issues I think but the occupants that are in
19 there are very much at the will of the person
20 that has allowed them to move in there in the
21 first place, this we think is much more similar
22 to the definition of rooming house than it is to

1 the definition of apartment, it's purely a legal
2 issue.

3 CHAIRPERSON MOLDENHAUER: Let me ask Ms.
4 Prince a question then, about the use and
5 control, I think in somewhere maybe in the
6 package that we have there is a reference to
7 having an RA in this facility is that correct, a
8 resident assistant or some sort of management
9 agent from the university in this building can
10 you speak to that.

11 MS. PRINCE: It is correct that in an
12 effort to try to mitigate any potential impacts
13 that the students might have UDC does have
14 resident advisors who reside in apartments as
15 well. We find it ironic that UDC's effort to
16 mitigate the exact impacts that have been
17 discussed today are now being used to assert that
18 that's a level of control that doesn't result in
19 these units being considered apartments. I mean
20 when we think about apartments is an apartment
21 not an apartment anymore if I leave my apartment
22 and I tell my sister she can stay there for two

1 months but if she does anything wrong she needs
2 to leave, is it not an apartment anymore? It's
3 an apartment, everyone occupies these units
4 subject to certain limitations, certain
5 constraints whether it be a lease or a use
6 agreement and we have that here, the regulations
7 no where refer to a landlord tenant relationship,
8 they just don't nor do they refer to the
9 ownership of units, that's why we don't
10 distinguish between apartments and condominiums.
11 They're all apartments under the Zoning
12 Regulations. So I think that you know we're just
13 really going down a path that doesn't make any
14 sense here when we get into do these students
15 have control, they have keys, they go in, they
16 use their kitchens, they sleep in their rooms,
17 they sleep in their bathrooms, yes they have an
18 occupancy agreement with the university but I
19 don't believe that takes away their exclusive use
20 of the units, no one else is living there with
21 them, it's the four students that live in that
22 unit control that unit.

1 CHAIRPERSON MOLDENHAUER: I would you
2 address the potential comparison between having a
3 rooming house manager, or and I may not be using
4 the right terminology in regards to the
5 definition of a rooming house you're talking
6 about the difference between obviously having the
7 owner or the property manager being separated and
8 apart from them the rooming house rentals and the
9 resident assistant.

10 MS. PRINCE: I think it's big difference,
11 I think that a rooming house manager lives in the
12 rooming house which is typically a separate
13 structure but doesn't have to be and the rooming
14 house manager controls those common areas, most
15 importantly the kitchen and the occupants of a
16 rooming house only have their rooms their
17 individual locked separate rooms and no right to
18 use the kitchen so the fact that there are people
19 that live in separate apartments in this
20 apartment house that have the ability to comment
21 on the behavior of students to report back to UDC
22 to make sure there aren't adverse impacts doesn't

1 convert it, they're not akin to the operator of a
2 rooming house, these students have their
3 kitchens, they cook they live in their units as
4 people live in apartments they just are observed
5 to a greater extent than perhaps you know one
6 would normally see but I don't believe that
7 changes the status of the units as apartments.

8 MR. SELFRIDGE: I'm sorry could this
9 resident manager be similar to building supers or
10 private security or is there any real difference
11 here.

12 MS. PRINCE: I don't believe there is, I
13 think it's simply adults that live in other units
14 that can report on behavior.

15 CHAIRPERSON MOLDENHAUER: Any further
16 questions from Board Members? Then Mr. Wilson
17 I'll turn back to you and you'll have a few
18 minutes I think, you had about 10 minutes left on
19 your clock for a closing rebuttal so I'll provide
20 that to you at this moment.

21 MR. WILSON: I'll have a very short
22 closing rebuttal but could I ask for a short 5

1 minute recess just to allow us to get our
2 thoughts together.

3 CHAIRPERSON MOLDENHAUER: Not a problem
4 it is 6:41 so we'll reconvene at lets say 6:50.

5 **Break**

6 CHAIRPERSON MOLDENHAUER: So Mr. Wilson
7 we'll turn to you for closing remarks.

8 MR. WILSON: Alright thank you Madam
9 Chair, I won't attempt to go back over all the
10 arguments that have been made because I think
11 those have been discussed in depth but I'll just
12 pick out a few matters to add here at the end. I
13 would note that zoning, there's was never an
14 application for the building permit, any
15 discussion of the uses and what impact it might
16 have on zoning regulations nor did zoning review
17 the building permit with respect to what the uses
18 that maybe made of the apartments and which were
19 be converted by the installation of walls, with
20 respect to use and control we've had testimony
21 that things as small as being able to pick your
22 own furniture in your room are governed by UDC

1 and not by the students which is yet another
2 indicia of what we think is the controlling fact
3 here as to whether or not use of control rests
4 exclusive in the occupants of the room or whether
5 or not they lack that. With respect to a rooming
6 house having a kitchen I don't know how there
7 could be any debate that a rooming house clearly
8 could have, the definition of a rooming house
9 clearly could include a rooming house with a
10 kitchen, since you have the provision that say
11 that it will not be a matter or right in an R-4
12 Districts hence in R-5 Districts, if you have a
13 rooming house with a kitchen well you never have
14 that exception in there but for the fact that the
15 rooming house may have a kitchen and clearly that
16 doesn't mean that changes the definition of
17 rooming house it merely means you've got to get a
18 special exception if you want to have such a
19 rooming house with a kitchen in an R-4, R-5
20 District, that is not the (inaudible), the regs
21 are very clear on phrase the legal reading but
22 you can't read that any other way than saying

1 that rooming houses include the facilities with
2 kitchen as well as facilities without kitchens,
3 finally to put in the broadest context you know
4 we've been waltzing around this for quite a few
5 hours here now but it's basically the standard
6 duck argument if it walks like a duck and quacks
7 like a duck it's probably a duck. I think
8 everybody in this room has probably been to
9 college and lived in a dorm at sometime, they
10 know what that experience is like and what that
11 is all about living in a dorm. A lot of people
12 have also lived in apartments and they know what
13 apartments are like, those are two very different
14 experiences, now we're saying this doesn't fall
15 within the definition of dorm within the
16 regulations which are very technical specialized
17 definition but it's a dorm like living atmosphere
18 and it's a totally different use than an
19 apartment atmosphere and that's the crux of our
20 case its very clear that the use that's being
21 made is being changed from what we all would
22 associate with a normal apartment use to a

1 different use that is more akin to a dormitory
2 use which we think within the regulations
3 strangely enough falls within the prevue of the
4 definition of rooming house, that's the crux of
5 the argument, thank you.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much Mr. Wilson. At this point in time then I
8 think that there were some requests earlier to
9 provide some additional submittals is that still
10 something that the Appellant is requesting, yes I
11 see the confirmation. Then what I'd like to say
12 is can we, I'd like to put a timeframe on that,
13 is there any way you can get a, would any of the
14 interveners or the District like to also submit
15 any documentation or do you feel it's not
16 necessary or is it necessary.

17 MR. SURABIAN: To be honest I don't think
18 that it's necessary I think we really made all
19 the arguments. Well if the Appellant files
20 something I would want to respond but
21 independently I don't need to file anything.

22 MR. BROWN: I agree I'm having a hard

1 time imagining not withstanding earlier
2 discussion what more could be filed in this case
3 but if we're going to leave the record open I
4 think we need to have an opportunity to respond
5 to it.

6 CHAIRPERSON MOLDENHAUER: Lets say this
7 then would you be able to get, Ms. Perry I think
8 you've been tasked with doing any additional
9 submissions it is comes up, would you be able to
10 get something into our office by Friday the 25th?
11 Okay so we'll give you a deadline of Friday the
12 25th for any additional submissions if there's any
13 replies to that then they'll have to be in our
14 office by the 31st of March and then we will put
15 this on decision for April 5th.

16 MS. PRINCE: One final comment we've had
17 problems with timely filings here and this is a
18 short time frame, can we agree that anything
19 filed after the 25th simply won't be accepted so
20 that we're not forced to scramble and turnaround
21 a response in a day or two?

22 CHAIRPERSON MOLDENHAUER: I think Ms.

1 Perry will you confirm that you will meet that
2 deadline of the 25th.

3 MS. PERRY: I will do my best I promise.

4 CHAIRPERSON MOLDENHAUER: Okay.

5 MS. PERRY: Is it possible just to have
6 until...

7 CHAIRPERSON MOLDENHAUER: The do my best
8 part is the...

9 MS. PERRY: Since today is the 15th and
10 it's late and I have other ANC responsibilities
11 this month is it possible to have until that
12 Monday, the 28th.

13 CHAIRPERSON MOLDENHAUER: We'll give you
14 the weekend and I think council can probably more
15 quickly turnaround a response so I think the 28th
16 then will be for the Appellant and then the 31st
17 if we can have it in time for this information to
18 get to our office we can review it in time for
19 that Tuesday hearing will be the 31st.

20 MR. SURABIAN: Is the Board going to put
21 any boundaries on the issues they'll accept?

22 CHAIRPERSON MOLDENHAUER: No I don't

1 think we are, I think we've identified certain
2 areas, I think Ms. Perry identified an area that
3 she wanted to expound upon, obviously if any of
4 those areas where Ms. Perry provides additional
5 supplemental materials are either outside the
6 jurisdiction or things of that effect which
7 interveners of the District feel obviously that
8 would be part of your reply.

9 MS. PERRY: And it's quite possible I
10 might not find how that code affects zoning, I
11 mean I'm being honest I just want the ability to
12 be able to look.

13 CHAIRPERSON MOLDENHAUER: Absolutely, and
14 so, but I'm not restricting you to just that one
15 issue, this is an opportunity for you to possibly
16 supplement if you feel that it's necessary, we
17 have heard from you, we've heard from your
18 witnesses and your closing, but we'll put this on
19 decision for April 5th. Thank you that concludes
20 the hearing today.

21

22