GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY,

OCTOBER 3, 2000

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., pursuant to notice, at 1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
RODNEY MOULDEN	Board Member
ANNE RENSHAW	Board Member
ROBERT SOCKWELL	Board Member

ZONING COMMISSION MEMBER PRESENT:

KWASI HOLMAN Commissioner

OFFICE OF ZONING STAFF PRESENT:

JERRILY KRESS	Director, Office of Zoning
SHERI PRUITT	Secretary to the Board of Zoning Adjustment
BEVERLEY BAILEY	Office of Zoning
PAUL HART	Office of Zoning
JOHN NYARKU	Office of Zoning

OTHER STAFF PRESENT:

MAXINE BROWN-ROBERTS	Office of Planning
STEVE COCHRAN	Office of Planning
ELLEN MCCARTHY	Office of Planning
MARY SANSONE	Office of Corporation Counsel

C-O-N-T-E-N-T-S

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(1:29 p.m.)

CHAIRPERSON REID: Good afternoon. The hearing will please come to order. We had a delay today. We did have a delay as far as the lunch getting here, so that kind of held us up. Please indulge us. We ask your indulgence.

Ladies and gentlemen, this is the October 3, public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert M. Sockwell, Rodney Moulden, representing the National Capitol Planning Commission, Anne Renshaw, and representing the Zoning Commission is Kwasi Holman, I think. He will be here momentarily.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons who plan to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The procedures for special exception and variance cases is as follows: One, statement of witnesses of the applicant; two, government reports, including Office of Planning, Department of Public Works, et cetera; three, report of the Advisory Neighborhood Commission; four, parties and persons in

support; five, parties and persons in opposition; six, closing remarks by the applicant.

Examination of witnesses is submitted by the applicant or parties. The ANC in which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

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

Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings.

The Board will make every effort to conclude the public hearing as near as possible to 6:00 p.m. If there are some cases that are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

At this time, the Board will consider any preliminary matters. Preliminary matters are those that pertain to whether a case really should be heard today, requests for postponement, continuance or withdrawal, whether proper and adequate notice of the hearing has been given.

If you're not prepared to go forward with the case

today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Any preliminary matters?

MS. BAILEY: Yes, Madam Chair, there are two preliminary matters. The first is application, the third application that's on the agenda. Number 16550 of Stacy Hamblin. The Applicant has requested that that application be postponed, and we have scheduled a new hearing date for November the 8th. That's November the 8th, 2000, starting at 1:00 in the afternoon, Application Number 16550. 16550 was postponed until that time.

The second preliminary matter has to do with the last case of the afternoon, and that's Application 16576, Toni G. and Lee Verstandig. That Application has been withdrawn. So, that's Application Number 16576 has been withdrawn.

And those are the two preliminary matters, Madam Chair, that I have. I don't know if any members of the audience have any preliminary matters. Do they?

CHAIRPERSON REID: I've already asked if they did, Ms. Bailey, and thank you very much.

We only have two cases this afternoon then, and that is 16538 and 16603, correct?

MS. BAILEY: Yes, Madam Chair.

CHAIRPERSON REID: Okay. Mr. Sockwell, did you wish to make a statement now or do you want to make it later?

MR. SOCKWELL: Make it after --

CHAIRPERSON REID: When we call the case?

MR. SOCKWELL: Yes, when we call the case.

CHAIRPERSON REID: Okay. All right. Thank you.

Will you please call the first case of the afternoon.

MS. BAILEY: Sure. Application Number 16538 of the Capitol Hill Investors, pursuant to 11 DCMR 3103.2, for a variance under Section 774.1 from the rear yard setback requirements for construction of a one-story structure on the lot which will house a neighborhood-serving retail use in a C2-A District at premises 407 8th Street, S.E. That's Square 908, Lot 826.

All those wishing to testify, would you stand to take the oath?

Do you swear the information that you give will be the truth?

(Witnesses sworn)

Please be seated.

Madam Chair, several items have come in since the packages were sent to you. There's a list that has been circulated, and I think you have all of those items. There's no party request -- there are no request from parties to participate in this hearing. All of the posting requirements have been met.

There is a correction, however. The Square is listed as 908, but I think the correct Square Number is 902. So, that correction needs to be noted.

There are several items in the file. I don't know if you're interested in me going through them, but other than that, the case is ready for you to hear at this time.

CHAIRPERSON REID: All right. Let us take just a second and see what is in this file. You're saying that these were submissions that came in when?

MS. BAILEY: After your package was sent to you.

MS. PRUITT: Madam Chair, these are the submissions that have been faxed to you since the package went out. We've just created another one, a whole package again for you in case sometimes the fax machines don't always work. So, you should have received these by fax, but we then also gathered them for you to make it a little easier to find information.

CHAIRPERSON REID: Thank you. All right. The first case -- persons involved in the first case, please stand. We haven't sworn everybody in, right? Oh, they are sworn, okay.

MS. GIORDANO: Good afternoon, Madam Chair, members of the Board. My name is Cynthia Giordano from Linowes and Blocher Law Firm. To my right is Maurice Kreindler who is the general partner of the partnership that owns the site.

We've submitted a fairly detailed statement into the record prior to the hearing, and the Office of Planning report is also quite detailed. So, we're just kind of try and quickly summarize unless the Board would like us to do a more detailed presentation.

CHAIRPERSON REID: No. I don't think that, from my recollection, I don't think that you had any opposition.

MS. GIORDANO: Right. We don't have any opposition. It's a very small project as well.

CHAIRPERSON REID: Is there anyone here that will testify in regards to this particular case, either in opposition or in support of? All right.

Okay, then, Ms. Giordano, you can just give us the salient points.

MS. GIORDANO: All right.

CHAIRPERSON REID: And, basically, truncate --

MS. GIORDANO: Okay.

CHAIRPERSON REID: -- summarize, and we can get you out of here fairly quickly.

MS. GIORDANO: All right. The variance relief that we're requesting, as indicated, is from the rear yard setback requirement of 15 feet. Basically, the reason for the variance to make the site a developable site. Without the variance, the site becomes virtually undevelopable, because we could only build a very small building. Even with the variance, the building is only approximately 2,000 square feet.

The site's located along 8th Street, which is the subject of a major revitalization initiative called the 8th Street Main Street Project, and the object there is to revitalize the street with retail uses. We are proposing to house in the

proposed project a retail use on the first floor and an office use for a small professional or other commercial user on the second floor.

The other purpose of the revitalization effort is to spruce up the buildings on 8th Street, and if this site can't be developed, there will be a small hole in the streetscape on 8th Street there, which is not a desirable result.

The ANC is supporting the project for that reason, along with the Capitol Hill Restoration Society. The project has not been designed yet. It's such a small project there really didn't seem to be a reason to design it until we knew that we were going forward with the variance. But the design of the project would be subject to Historic Preservation Review Board approval, because it's located in the Capitol Hill Historic District.

The developer is currently developing two buildings right around the corner on D Street, which have been approved by the Historic Preservation Review Board, and the Office of Planning submitted a copy of the elevation of those buildings in your packet. What we're proposing here would be very similar.

The reason for the variance is also the uniqueness of the site, which is related to its very small size, the fact that it is subject to an easement for fire access to the two D Street properties under common ownership, which are being developed at this time, and the fact that it is located within this 8th Street revitalization block.

So, without the variance, again, the project couldn't be developed. There would be basically just a paved lot which would be used for parking for the D Street sites, and so we feel that the variance is clearly in the public interest. It is in accordance with the purposes of the C2-A Zone, which is to create neighborhood retail opportunities, and we request that it be granted.

And I'm just going to ask the property owner very quickly to just give you very quickly his intentions on the property and what his history has been with the site.

MR. KREINDLER: My name is Maurice Kreindler, and I'm, as Ms. Giordano said, the principal of the developer.

We have owned this property for approximately eight years, and for about seven of the eight years that we have owned, we have been trying to develop the D Street side. And it's always been an issue of the prohibitively expensive cost structure of building small properties within the city limits, because it's difficult to stage things, and it's -- you lose all the economy of scale.

After prospecting for several years, we finally found a tenant who was ready to take part of this space, and we got some financing, and we were able to build that. And to nobody's surprise, it's costing us almost $150 a square foot to build on D Street. We don't anticipate that it will much cheaper to build on 8th Street, and the issue really is that if we can

only build 895, I think, whatever the number is, square feet on 8th Street, it would be so prohibitively expensive we could never justify building it, because at this point in time the rents just aren't there.

If we had the variance, it allows us to add a third additional gellae to the building which doesn't really sound like a lot when it's 300 feet. But when it's 1,200 instead of 900, it makes the project more viable.

We would very much like to be able to fill in the 8th Street lot with a building and facade that would match what we're doing on D Street, which was approved by both CHRS as well as HPRB, and we think it would be a welcome addition to the 8th Street streetscape.

MS. GIORDANO: That concludes our presentation.

CHAIRPERSON REID: Thank you. Board members, questions?

MS. RENSHAW: Madam Chair?

CHAIRPERSON REID: Yes.

MS. RENSHAW: Just a clarification. In the Board of Zoning Adjustment's Public Hearing Notice, it said the construction of a one-story structure. I just wanted to make clear that this is a two-story structure?

MS. GIORDANO: Yes, it is. When we originally filed the application sometime back, we had intended to do a one-story structure initially, and I think the developers experience

on D Street was because all the existing structures in the block, both blocks, are two-story, they wanted two-story structures to match. So, we have revised that, and it was very clear when we went before the ANC that it was a two-story structure and Capitol Hill Restoration Society as well.

MS. RENSHAW: Thank you.

CHAIRPERSON REID: Other questions? Mr. Sockwell?

MR. SOCKWELL: Let me hold my questions.

CHAIRPERSON REID: Okay, Mr. Holman?

MR. HOLMAN: No questions.

CHAIRPERSON REID: Mr. Moulden?

MR. MOULDEN: No.

CHAIRPERSON REID: While he's working on his question, did you have any complaints from any of the neighbors or anyone in the community in regard to your project?

MR. KREINDLER: If I could address that. I think that the neighbors are excited that we're doing it, frankly, because the problem is in an urban area like this with openings, part of our experience has been as much as we controlled it with gates and things, people still managed to get in with cars. And, frankly, it became a public nuisance. People would go there and drink, and then they would relieve themselves.

What we're planning to do once we in-fill the site with a building, the six-foot egress will have a lock which will only be opened from the inside going out or from the inside going

in. People who need to go in will have the combination, but we will have totally controlled access, because on the D Street side we will have closed off -- there will have been built from lot line to lot line. And therefore, it will no longer be a public nuisance, and I think that the neighborhood -- I know that the neighborhood is interested in that.

CHAIRPERSON REID: Okay. All right.

MR. SOCKWELL: Excuse me, what did you say the proposed retail use is going to be? It's going to be retail?

MR. KREINDLER: Yes, it's going to be retail. Frankly, the --

MR. SOCKWELL: Retail first floor, and second floor would be office.

MR. KREINDLER: That's correct. On the D Street side, we have leased part of it to Radio Shack, which I might point out is the Radio Shack anywhere in Capitol Hill. And we're talking to a number of uses for the available additional space.

MR. SOCKWELL: But it will be retail rather than -- well, it's too small to be pretty much anything other than retail.

MR. KREINDLER: It will be small retail.

MR. SOCKWELL: Okay. Thank you.

CHAIRPERSON REID: All right. Is anyone here from ANC? Okay. I think the ANC -- Ms. Renshaw, do you have a copy of the letter in support of this application.

The ANC, as I recall, was in support.

MS. RENSHAW: Did that come in today?

CHAIRPERSON REID: ANC 6B approval with conditions.

MS. RENSHAW: Yes, we have a letter dated September 25, 2000, signed by the Chairperson, Peter J. Waldron. And I just received this, so please excuse, I'm just scanning it right now.

The Commission was concerned how the lack of the setback in the back might affect trash collection, i.e. the use of the dumpsters. The Applicant told the ANC that the adjacent fast food restaurant, Popeye's, no longer wished to access the affected area behind 4078. In addition, he said he did not plan to have a food establishment in the new space, but if he did, he agreed that there should be a daily, five-day-a-week trash collection.

The ANC therefore voted six to nothing at its properly noticed meeting of September 12, 2000 to support this Application on the condition that the daily trash collection is required in the event that a food establishment uses space in the proposed building.

CHAIRPERSON REID: Okay. So, they would be afforded the great weight in which they're entitled.

Are there any other government reports? I don't think so.

MR. SOCKWELL: I have one more question.

CHAIRPERSON REID: Okay. And there are no other government reports? Okay.

Mr. Sockwell, question?

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: There is a government report, the Office of Planning.

CHAIRPERSON REID: You know what? I didn't look down there, and I remember seeing it come in. I'm sorry, please.

MS. BROWN-ROBERTS: That's okay. The Office of Planning supports the request for the variance due to the uniqueness and the hardship created by being such a small lot which is burdened by the easement, which further reduces the lot size.

CHAIRPERSON REID: Excuse me, let me just -- please give us your name.

MS. BROWN-ROBERTS: I'm sorry. I'm Maxine Brown-Roberts from the Office of Planning.

CHAIRPERSON REID: All right.

MS. BROWN-ROBERTS: In addition, the additional 15-foot rear yard further reduces the developable area of the lot. It is our opinion that it will not cause any substantial hardship or detriment to the public good, but will in effect enhance and help in the 8th Street corridor revitalization, provide use for a lot which has been undeveloped for some time, it would be architecturally compatible to the surrounding buildings, and the functions of the rear yard can be accommodated on the adjacent Lot 33, which is owned by the Applicant.

The Application is supported by the Capitol Hill Restoration Society, the Barracks Row Business Alliance, Barracks Row Main Street, Incorporated, and ANC 6A.

Therefore, the Office of Planning recommends approval of this variance with the condition if a food service use on the site, there will be daily trash pickups.

Thank you.

CHAIRPERSON REID: Thank you very much.

MR. SOCKWELL: I have another question.

CHAIRPERSON REID: Okay, Mr. Sockwell?

MR. SOCKWELL: With regard to the existing curb cut that fronts the lot, what is the proposal for dealing with that situation?

MR. KREINDLER: The curb cut would go away. We would repave the sidewalk and make the sidewalk continuously flat. And the trash would be taken out through the six-foot easement corridor.

MR. SOCKWELL: Okay. I just wanted to make sure that that was going to be removed and paved.

MR. KREINDLER: Absolutely. In fact, the Main Street 8th Street Project intends to -- is going to be commenced in the spring of 2001, and that is going to repave the entire sidewalk from D Street down to the Navy Yard with brick pavers and the whole thing. So, I imagine it will all happen at the same time.

MR. SOCKWELL: All right. So, it's possible that you might not have to incur the expense of doing the public space.

MR. KREINDLER: I suppose it depends on timing, yes. That would be nice.

CHAIRPERSON REID: Thank you. Further questions, Board members?

MS. RENSHAW: Just --

MR. HOLMAN: I -- oh, please.

MS. RENSHAW: Kwasi, go ahead, I've had my turn.

MR. HOLMAN: No, I just wanted to get your reaction to the Office of Planning's suggestion that it be approved with conditions regarding trash removal if there were a food service on the site.

MS. GIORDANO: We agreed to that condition at the ANC meeting, but it was five-day-a-week trash pickup is what we have agreed to.

MR. HOLMAN: Okay, thank you.

CHAIRPERSON REID: Ms. Renshaw?

MS. RENSHAW: Yes. I'm looking at the photographs that were part of our packet, and I just wanted to be clear that in this view of the subject property looking towards 8th Street, Southeast, are the dumpsters going to remain behind the building?

MR. KREINDLER: No, those dumpsters are construction dumpsters for the buildings on D Street that are currently being --

MS. RENSHAW: On D Street.

MR. KREINDLER: It's because it's an L-shaped lot. So, what you're looking at is all the construction site. The dumpsters will not be visible.

MS. RENSHAW: All right, thank you.

MR. KREINDLER: They won't be dumpsters, actually. It will be roll-off containers, but they won't be visible.

CHAIRPERSON REID: Okay, thank you very much.

Ms. Giordano, I think we're at closing remarks.

MS. GIORDANO: Okay. We would request, respectfully respect a bench decision and a summary order in this case since there is no opposition.

CHAIRPERSON REID: All right. Then two Board members bring the motion.

MR. SOCKWELL: I would move that we accept the Application -- approve the Application for variance from the rear yard requirements for this project.

MS. RENSHAW: Second.

MR. SOCKWELL: And it appears to meet the requirements of the ordinance. Certainly, the lot is extremely restricted in its capabilities for normal development, and the in-fill would certainly be an enhancement to the neighborhood. And that is certainly part of what's envisioned as the reactivation of that area as a retail support neighborhood for the surrounding community.

CHAIRPERSON REID: Thank you.

Comments?

MR. HOLMAN: Mr. Sockwell, what of the condition would you in terms of the trash removal and all that?

MR. SOCKWELL: I would support the condition that trash removal be -- that dumpsters, closed dumpsters be provided in a proper manner and that trash removal be commensurate with the use.

MS. KRESS: May I speak to that issue. We don't really condition variances. You can but you're putting ownership on this as something that's going to have to then travel with the property, and be true for all owners. Just typically we haven't been conditioning variances.

CHAIRPERSON REID: I think that Ms. Giordano mentioned that you were --

MS. GIORDANO: We agreed to it with ANC, yes.

CHAIRPERSON REID: Yes, by ANC agreement, then perhaps this would be achieved without us --

MS. KRESS: Exactly, without us stepping in with it as a formal condition.

CHAIRPERSON REID: -- conditioning it.

MS. KRESS: It would be my recommendation.

MR. SOCKWELL: Then we just would recommend that the agreement with the ANC be carried out at the discretion of --

MR. MOULDEN: And we accepted the Office of

Planning report too. And the report will indicate that too.

CHAIRPERSON REID: I think that I concur with my colleagues. I think that this is one of those types of cases wherein it flies with the objectives of the city and revitalizing the area down there in that particular community. And there is no adverse impact sensibly as well as the fact that it appears that rather than there being opposition, the community is so much in support of this they can hardly wait to see that site developed. And I think given the fact that the Office of Planning certainly supports it, the ANC supports, everybody down there, the Historic Preservation, but also the BBC -- what was it for, what does it stand for?

MS. RENSHAW: Barracks Row Main Street, Incorporated.

CHAIRPERSON REID: Yes, that they were very much in favor of it. And I certainly think is something that does not impair the intent or integrity of the zoning regulations or zoning -- the comprehensive plan or the zoning map, and I commend you on this project and wish you well.

All in favor?

Opposed?

MS. BAILEY: Staff will record the vote as five to zero. Motion made by Mr. Sockwell, seconded by Mrs. Renshaw to approve the Application with the two noted conditions, one being that the building is for two stories, and secondly, the square is

902, not 908, and to make reference to the condition in the order of the ANC.

MS. KRESS: They're not really conditions, not as we know them. They're recommendations and recognizing the recommendations of the ANC.

MS. BAILEY: Madam Chair, are you ready for the next case?

CHAIRPERSON REID: Just one second, please. A point of clarification -- and the Office of Planning report, yes, Mr. Moulden was pointing out that the Office of Planning also had indicated a condition in its recommendation in regard to the trash pickup. And I think, as Ms. Kress has very aptly pointed out to us, and also Office of Claims should take note, about the procedures and our ability to impose conditions on variance so that we will be consistent with what is customary.

All right. Thank you very much.

MS. GIORDANO: Thank you very much.

MR. KREINDLER: Thank you very much.

CHAIRPERSON REID: One point: Ms. Giordano, I had said before I took the vote that I wished you well, which was kind of like overzealous in a sense. It should have been after the vote. I guess that was --

MS. GIORDANO: We appreciate it.

CHAIRPERSON REID: -- very presumptive on my part.

MS. GIORDANO: Thank you.

CHAIRPERSON REID: It is really great. Thank you.

Yes, next case, please.

MS. BAILEY: Application Number 16603 of Fidelity Limited Liability Company, CG Investments Contract Purchaser, pursuant to 11 DCMR 3102, for variances to construct an apartment house with possible ground floor retail under Section 1706 and subsections 773.3 and 774.1 from the floor area ratio, residential recreation space and rear yard setback requirements in an HR/SP-2. The site was potentially to be zoned to DD/C-2-C District at premises 466 through 480, Massachusetts Avenue, Northwest. That's 809 through 817 5th Street, Northwest, Square 517, Lot 50.

All those wishing to testify, would you please stand to take the oath?

Do you swear that information that you'll be giving to be the truth? Please say I do.

(Witnesses sworn)

You may be seated, please.

MR. SOCKWELL: Madam Chair? As this particular project is one within the office where I am employed and I've had some involvement with the case, I must recuse myself from participation in this hearing.

CHAIRPERSON REID: All right, Mr. Sockwell, very well.

MS. BAILEY: Madam Chair, there are a few notes, if I may, that I would like to go over if that's okay with you.

CHAIRPERSON REID: Yes.

MS. BAILEY: The Office of Planning report arrived a little late, so a waiver would be needed to have that into the record.

CHAIRPERSON REID: All right. I will so waive the record unless there's an objection from any of the Board members. Okay.

MS. BAILEY: Madam Chair, there are no parties to this case. Secondly, the Zoning Commission did hear the rezoning of this case. That information was sent to you. That rehearing was held by the Zoning Commission on September 21, and pending final action the site was rezoned from H.R. SP-2 to DD/C-2-C.

There are a few items that have come in since your packages were sent. Those items should be available to you, and I think those are primarily the matters that I wanted to bring to your attention.

CHAIRPERSON REID: Thank you very much, Ms. Bailey. All right.

Mr. Glasgow.

MR. GLASGOW: Good afternoon, Madam Chair.

For the record, my name is Norman Glasgow, Jr., the Law Firm of Wilkes Artis. Here with me this afternoon is Mr. Marty Sullivan of the same office, and seated behind and to my left in the front row, Mr. Greg Fazakerly, on behalf of the Applicant dealing with the aerial photograph is Mr. George Dove

and Mr. Rick Hammann of the architectural firm of Y Design Group.

Mr. Steve Sher, land planner with the firm of Holland & Knight is also in attendance. Mr. Dove and Mr. Sher will be submitted as expert witnesses. Both have been accepted as expert witnesses on several occasions in the past.

There will be some slight modifications of the drawings that will be discussed by Mr. Dove during the course of his testimony, and I wanted to enter into the record those plans.

CHAIRPERSON REID: Okay, Mr. Glasgow, just let me make an assessment here. Are there people here who are going to testify in this case? Is there any opposition to this case?

All right, Mr. Glasgow, I think that much of your case -- well, all of the case has been read by the Board members, and as such, you can expedite and give us the salient points, the highlights then on the record. You don't have any opposition, and it's a pretty straightforward case.

MR. GLASGOW: We believe so.

CHAIRPERSON REID: Okay. All right.

MR. GLASGOW: Thank you. So, I assume by that you have the copy of the statement of the Applicant in the record.

CHAIRPERSON REID: We do have this very thick document.

(Laughter)

MR. GLASGOW: Yes. We also have the Office of Planning report --

CHAIRPERSON REID: Yes.

MR. GLASGOW: -- which is very supportive in the record. You should have a letter from the downtown cluster of congregations in support of the Application, and there should be an ANC letter in support of the Application.

We have three areas of relief that are set forth in the statement: the residential recreation space variance, the rear yard variance, and an FAR variance.

We have our witnesses here to answer any questions. I'll now turn it over to Mr. Fazakerly unless there are any preliminary questions. But as you indicate, we believe the case is very straightforward and that we have met the burden of proof, as set forth in the statement of Applicant. We'll have the witnesses summarize their testimony for the Board.

CHAIRPERSON REID: Okay.

MR. GLASGOW: Thank you. Mr. Fazakerly, would you please identify yourself for the record and proceed with your testimony.

MR. FAZAKERLY: I am Greg Fazakerly, Chairman and Chief Executive Officer, CG Investments, and Chairman of DI Partners Advisory Board. I live at 4436 Edmond Street here in the District.

Based on the admonition of the Chair, I'm not even going to read my testimony. I'd like to thank you for the manner in which the staff of the city, the Zoning Commission, the staff

to them, the staff for your BZA, the Office of Planning -- I see a real change in the city, and I'd just like to say that at the outset. I think we're really seriously moving in the right direction in terms of dealing with these cases that we have to bring forward to you to protect the public interest and also to take a look at the interest of the city and economic development. I think the case stands on its own. I appreciate being here. I appreciate your time and attention in this matter. Thank you very much.

CHAIRPERSON REID: Well, thank you very much for your comments.

MR. GLASGOW: And Mr. Fazakerly, do you adopt the writing in the statement of Applicant as your testimony in this case?

MR. FAZAKERLY: I do indeed. Is that what we're supposed to do?

MR. GLASGOW: Yes.

MR. FAZAKERLY: Okay.

(Laughter)

MR. GLASGOW: Mr. Dove, would you please identify yourself for the record and proceed with your testimony?

MR. DOVE: Yes. My name is C.R. George Dove. I am principal of the Y Design Group with offices at 1025 Connecticut Avenue.

The project that we are discussing today is of a

personal very exciting in the introduction of multi-family residential in the downtown Washington area. I'm pleased to be associated with that kind of an effort. It's an exciting development.

The project is 14 stories in height. We are asking for a total of density 10.36 FAR. There are a variety of reasons for this, most of which are explained in the documents you've already received.

I think it's important to note that in looking at this particular site with the design of the office -- or the apartment building, there are significant constraints in terms of doing residential in a dense district. The maximum width that's allowed for light and air, the inability to fill a site with a block of space, but it has to be linear in nature. And, so in dealing with the odd shape of this site, it was important to respect the ultimate occupants' light and air and also maximizing the number of residential units we could get on the site.

I believe we succeeded in doing this. It is important to note that all aspects of the zoning ordinance are fully complied with, with the exception of the three variances that we're talking about today.

Beside me there are two boards. To the right is a site plan. Below, you see the shaded area that is the site. It's bounded by 5th in the west, I in the north and Mass Avenue in the north. East, the alley is below and then continues on to

Massachusetts Avenue in a perpendicular way. The entrance will be off of I Street with a central courtyard, which I think creates a gracious approach to a building of this size that's unavailable in most areas of the District. It happens that the shape of the site helps that to be occurred.

The pictorial on the left is a picture of what the building would look like from Mass Avenue. It fits very well within the envelope that we've allowed here. It's important to note that we do comply fully with the Act of 1910 in terms of setback from Mass Avenue.

We'll take this opportunity to mention that the revised drawings you have today simply change one number, which is to make sure that the setback from Mass Avenue is in fact correct. We had in error put nine feet on the second setback; it's 11 feet. It's no implication of this case. It's just makes it tie together appropriately for when we go forward.

I think you need to understand that this project is in design at this point. We have prepared a pretty detailed presentation for you today, and this represents in almost all instances the actual building that will be built. In some of the interest of clients who may be going ahead with the project, there are a couple of areas of flexibility that I'd like to enter in the record just so that there's no question about them when and if they come back. They do not have any direct bearing on the case in terms of the variances.

One is that the loading area may be shifted slightly more towards 5th Street. There may be a pedestrian entrance from 5th Street, which would actually enhance the connection between the main lobby and the cultural activities down 5th Street and Metro. So, I think this would probably happen in the course of things. We basically introduced the main entrance on the north side of the building. This would extend another entrance on the 5th Street side.

We also would like to be able to look at having only one core instead of two cores internally; there are two noted. There is, in the way we deal with projections, in terms of whether the ability to enclose them or not, we'd like to note that there may be some enclosed balconies, which will not result in any increase in FAR. In other words, any FAR implications would be redistributed throughout the building.

And, also we have shown a two-step setback from Mass Avenue, which relates to my topic on the changed dimension. And we would like to reserve the ability to make it a single step, meaning coming up to 110 feet, coming back, and then going up to the 130 feet instead of the interim step. That has no major appearance effect on the building or massing. It just may be a simpler structural issue.

And I believe those are the major issues I wanted to enter.

MR. GLASGOW: Mr. Dove, was there also a request by

some of the residential developers looking at the project to have flexibility with respect to five percent deviation from the 440 number of units?

MR. DOVE: Yes. The number of units obviously is dependent on the actual mix that is developed. We've done a mix which we believe is close, but there may well be an additional five percent or less five percent number of units with the same gross area designated to residential use.

MR. GLASGOW: Right. That would be no change in the gross floor area of the building requested.

MR. DOVE: No change in the gross floor area.

MR. GLASGOW: Does that conclude your testimony, Mr. Dove?

MR. DOVE: Yes. I believe I could go on a lot more, but for brevity's sake we'll stop.

(Laughter)

Thank you.

MR. GLASGOW: Thank you. I'd like to call the next witness, Mr. Steven Sher.

MR. SHER: Good afternoon, Madam Chair and members of the Board.

For the record, my name is Steven E. Sher, the Director of Zoning and Land Use Services with the Law Firm of Holland & Knight.

What you have before you today is an Application

for three variances. As you've heard before, a variance on the rear yard requirement, a variance on the residential recreation space requirement, and a variance on the FAR limitation. As the Board is well aware, the standard for granting of a variance requires that the Applicant demonstrate that there is some exceptional or extraordinary situation or condition of the property, that the strict application of the regulations would cause a practical difficulty for the owner, and the relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan.

What you have here is a property by virtue of its shape creates in large part the practical difficulty for the variance. As you can see from the drawings mounted on the easel, the property at its eastern end is substantially narrower than it is at the western end. It's about 175 feet north to south along 5th Street, and it's only about 55 feet at the end where it's not quite a triangle.

As Mr. Dove has mentioned, the appropriate dimensions for an apartment building would be wider than what the width of the lot is at that eastern end of the property. And accordingly, if we then had to provide a rear yard of 15 feet sliced across the rear, that would cut even further into the appropriate footprint for an apartment building.

You can see that the building is kind of jigsawed

to fit the site, and even at that, that's including no rear yard. If the rear yard were required to push that building even further, you would substantially cut into the appropriate design for an apartment house.

As to the residential recreation space, for a building of this size at the 15 percent requirement, you've got to provide an area equivalent to 1.55 FAR. You just don't have that much open space on the lot to provide, and if you wind up having to put that inside the building, you just substantially cut back the number of residential units that you could provide on the site.

The property would contain approximately 450 residential units, plus or minus, depending on the size of the units within the building. That number of units at this location is the right number in order to come up with a feasible project. And if necessary, Mr. Fazakerly could give you more detail on why that number is the right number here.

This site has been referred to by the Office of Planning in an earlier report as a hinge. It is sort of the breakpoint between the residential corridor proposed and occurring coming up from Pennsylvania Avenue along 7th Street and then transitioning into the area to be developed east of Mount Vernon Square. This site sits right at the connection between those two areas.

The more residential we can get at this site, the

more you enhance that connection. This is the first new residential development to be built in this area of the city. It takes a significant number of units to amortize the fixed cost of building a building in the first place and to establish that residential presence in this area.

Accordingly, I am of the opinion that the property meets the standards for the granting of the area variances that have been requested, that the strict application of the regulations does create significant and practical difficulties for the owner, that the variances could be granted without substantial detriment to any surrounding properties, building a separator from adjoining properties such that the lack of a rear yard does not have any adverse impact on the light and air of adjacent buildings, that approval of the Application would be a significant contribution to city policy, encouraging residential in this part of Downtown, and that this Application should be granted.

MR. GLASGOW: Thank you for your testimony, Mr. Sher.

That concludes the direct presentation of the Applicant.

CHAIRPERSON REID: Okay. Questions, Board members?

Mr. Holman?

MR. HOLMAN: No, I'm prepared to make a motion when it's appropriate, Madam Chair.

CHAIRPERSON REID: Okay.

MS. RENSHAW: Madam Chair?

CHAIRPERSON REID: Yes, Ms. Renshaw.

MS. RENSHAW: Just a question of the Applicant, please. On the drawings that you have passed out, you indicate a garden in the back off the alley; is that correct? Am I looking at this correctly?

MR. DOVE: That is correct.

MS. RENSHAW: And without Mr. Sockwell it's kind of difficult for me to read the dimensions, so if you could help me out. He is my map reader.

MR. DOVE: That particular indentation is 15 feet.

MS. RENSHAW: Is that sufficient for a building of this size?

MR. DOVE: It's only a supplemental area. In other words, what we are doing along that alley on the south side is to not have a solid wall of building and to configure the building so that there are some ins and outs and additional light and air at those particular points. That garden is primarily there to enhance the lower level apartment user.

MS. RENSHAW: Is this a walled garden?

MR. DOVE: Yes.

MS. RENSHAW: It is a walled --

MR. DOVE: The key about this, actually, now that I mentioned it, is that immediately adjacent to this is the main recreation area or gathering area of the apartment building. So,

there would probably be a glass wall, and this garden will really be an extension of the interior space. So, visually, it softens that particular area.

MS. RENSHAW: I understand. Thank you.

CHAIRPERSON REID: Mr. Moulden?

MR. MOULDEN: Okay. Could you tell me where your loading area would be located?

MR. DOVE: This area of the building right here. It's on an angle so we can get in easily.

MR. MOULDEN: Okay. That's towards the rear of the building? Is that the rear?

MR. DOVE: Yes. This is the service alley right here.

MR. MOULDEN: Okay. Now, the design of the building, did that go through any review process through the city?

MR. GLASGOW: No, sir, this is not in any historic district.

MR. MOULDEN: Okay.

CHAIRPERSON REID: Okay? Ms. Renshaw?

MS. RENSHAW: Yes, Madam Chair, two matters just to bring up. In another case before the BZA recently, we added some language about antenna and rooftop structures being done in agreement with the ANC. I would like to recommend that that be part of consideration. Can we do that?

MS. KRESS: Again, you're dealing with variances.

They're not special exceptions.

MS. RENSHAW: Can we suggest?

MS. KRESS: Certainly.

MS. RENSHAW: Can we strongly suggest? And strongly suggest about training and employment opportunities for local residents? Madam Chair?

CHAIRPERSON REID: What is your suggestion?

MS. RENSHAW: The suggestion is as follows: That we suggest that the developer work with the ANC to have a criteria for antenna and rooftop structures; in other words, that it --

CHAIRPERSON REID: I don't know if --

MS. RENSHAW: A review process, something like that.

CHAIRPERSON REID: Well, let me put it this way, Ms. Renshaw: There are the customary regulatory procedures that our developer will have to go through and comply with. And I think that those types of things would be contained therein and handled within that process.

MS. KRESS: Let me just speak to the antennas, and the antennas is now currently a large problem, because of a certain tower in this city. The antennas that are dealt with here are very specifically covered in the regs. And the height and the screening, the regulations, I believe it's 701 -- somebody help me, I don't have my regs right here -- 771? At any rate, the kind of antennas that you're worried about on top of this building I

think have very tight regulations and will be tightly controlled by DCRA, because these are antennas and not towers.

MR. COCHRAN: Madam Chair, may I add? The only reason that the Office --

CHAIRPERSON REID: State your name, please.

MR. COCHRAN: Thank you. The only reason that the Office of Planning -- my name is Steve Cochran, for the record, Office of Planning. The only reason OP even brought it up at all the last time was because I believe Ms. Renshaw is referring to New Jersey Avenue. And the only reason we brought it up there is because it's the first large building to go up on the street.

It may -- market conditions, we hope, won't have it be a prominent building for long, but it may remain a very prominent building near the Capitol, and it's the only reason that OP thought it was appropriate that your suggestion from the last time be considered, that there be consultation with the ANC on it. But that was an exceptional building. It seems that the regulations would adequately, more than adequately cover the usual flush mounted antennas with mounted antennas, et cetera, that the FCC requires be allowed.

CHAIRPERSON REID: Okay. Thank you.

And in regard to -- did you say employment?

MS. RENSHAW: Training and employment opportunities.

CHAIRPERSON REID: All right. Then perhaps the

Applicant can speak to that issue as to if there is any plan or any policy that has already been established in regard to training or employment of local residents.

MR. FAZAKERLY: On this particular issue, as you all know in our statement, we are endeavoring to make use of the combined lot development here, and I am endeavoring to sell this property to residential developers to do the residential which has to be done first before commercial can be done. So, I can't opine to that, but I do know from my practical experience working on the Convention Center in my pro bono position there that every construction company and development firm is looking for workers, not turning workers away. And, so I don't think there would be any issues with availability of workers.

They put signs on these jobs now saying, laborers wanted or carpenters wanted. So, it's not as typical as it was five years ago. This is a real issue. That definitely exists at the Convention Center now where we're having great success of employing people wherever we can find them, including the Shaw community. But you must understand I'm selling this to residential developers, which are doing everything they can to make these project successful, and I can't opine for them.

CHAIRPERSON REID: Ms. Renshaw, did you get a response? You're a little bit distracted there.

MS. RENSHAW: I apologize. We were taken up with a few technical matters on antennas. But if I could ask the

Applicant if he could quickly review what he said, I would appreciate it.

MR. FAZAKERLY: I was saying that I'm selling this property. I hope to make use of the combined lot development section of the code. I'm a commercial office developer, as you know, and done many buildings in the Downtown, particularly in this area of the District. It's my hope that I'll be able to make use of this to build a commercial building in another lot, all right? And, so I'm trying to sell the residential rights and make this as an attractive project as possible so that the residential gets built as quickly as possible. So, those residential developers -- you're not speaking to the actual developer of this thing.

Now, in my experience at the Convention Center, where I'm Chair of the Development Committee there, and where we're very involved in LSDBE and other issues of employment, I can tell you that my experience with construction companies in Downtown you just go around and it says, laborers wanted, carpenters wanted. If people can walk to these jobs and do anything, they're going to do it.

So, the practicality of the economy today in construction, in job opportunity for anything that we put in the Downtown where our residents live, you all are contributing to a positive thing where the economy then takes on from there. We're desperate for workers in all these jobs downtown. Worker shortage

is our problem. You go by some of these sites and you see Miller and Long, for instance, you will see sometimes ten people sitting down in an area and a guy drawing with chalk. He's actually training people on the job; that's what's going on.

So, we've been quite successful. We've exceeded at the Convention Center. We've exceeded our LSDBE requirements. We've exceeded all of our expectations in job training and availability of workers, because in fact it's just a practical reality. Market economics are taking over the issue that you're trying to discuss today much more than it ever did five years ago.

That was what I said.

CHAIRPERSON REID: Thank you. Thank you very much.

All right, any other questions, Board members? You want to hold until after in case you do have some we can ask at the end?

All right. Mr. Glasgow, does that conclude your presentation?

MR. GLASGOW: Yes, it does, Madam Chair.

CHAIRPERSON REID: Okay. Let's see, the ANC report? Is there a representative from ANC here?

All right. Then we do have a letter from the ANC, I believe.

MS. RENSHAW: Madam Chair, we have a letter from Lawrence Thomas, dated September 7; however, he did not indicate that he was Chairman of this ANC, and it's not on letterhead, I

might add. But it's to advise us that ANC 2C met on September 6, of 2000, a public meeting and a quorum was present, and the ANC voted four to zero to support the above referenced project, which is rezoning DD/C-2-C and the apartment house project in Lot 50, Square 517, as it's in the best interest of the community and the future development of that area.

And they recognize that there is a surface parking lot on the subject property and that the proposed apartment building, which will be encouraged through the DD/C-2-C zoning is a benefit to the community and a preferable alternative to the existing HR SP-2 zoning. And it's signed Lawrence Thomas.

CHAIRPERSON REID: Now, do we know who he is?

MS. RENSHAW: As I know, he is Chairman of 2C?

MR. GLASGOW: He's the Chairman of ANC 2C.

MS. RENSHAW: But I would request that for the BZA files that a letter be submitted on 2C letterhead, this same letter and signed as chairman.

CHAIRPERSON REID: Well, that request would come from staff to the ANC, because it is -- the lawyers are missing that. The fact that it is from the ANC and he doesn't put his title, so that would be just for completion purposes.

MS. KRESS: It has legally met our requirements as far as what we need to have in the letter. So, legally, it has met our requirements, and so all we have to do, just if you want it for our records is ask them if they wouldn't mind putting it on

their stationary and getting it to us.

CHAIRPERSON REID: And then without it on stationary and without the identification of the title --

MS. KRESS: It is still legal.

CHAIRPERSON REID: -- we can still give them the great weight? Okay. Well, then they will be afforded the great weight to which they're entitled. And we'll have them submit the proper letter for the file. Thank you very much.

Okay. The Office of Planning report?

MR. COCHRAN: Thank you, Madam Chair. Steve Cochran, Office of Planning.

We strongly support the Application. You will see basically all of the facts summarized in the table on page 3. We have only the following provisos that we hope that you will attach to your decision: That the building's gross square footage shall be no more than 467,470 square feet, that the building's FAR shall be no greater than 10.36, that the project's recreation space shall be no less than the larger of 18,200 square feet, or 3.9 percent of the building's gross footage. And we're recommending that those be added as conditions, because as Mr. Fazakerly explained, he will be selling the project.

CHAIRPERSON REID: All right. Did you -- are you done?

MS. MCCARTHY: Yes, Madam Chair. We just wanted to explain that in terms of -- these are not being expressed as

conditions so much as our understanding of the numbers that were involved in the report, because as Mr. Fazakerly had indicated, there were some approximations because of the fact that there will be a different developer developing the project.

And I would add that the Office of Planning would have no problem with the request that Mr. Fazakerly had made that there be some flexibility accorded to the developer in the size of the units that might actually reduce the unit count but would still keep the square footage the same for the project.

I guess we just did have one clarifying question, which was in what Mr. Dove had explained about the possibility of changing the setbacks to only two. We just wanted to clarify for the record what the impact was on the recreation space on the roof, whether that change in setbacks affected the rooftop recreation area at all.

MR. DOVE: Our intention is that the numbers will remain the same. Ultimately, we will recapture whatever space is impacted by that. It's a relatively nominal change just along a small part of the facade.

MS. MCCARTHY: As you know, Madam Chair, the Office of Planning is strongly supportive of the need to reach our housing targets in the Downtown and the comprehensive plan, and we feel that the variances that are requested will, by increasing the density and the number of units on that site, will help us reach those goals. So, we are very supportive of the project.

CHAIRPERSON REID: Okay. Thank you.

Ms. McCarthy, let's see, I have two reports. Now, one is September 13, and one is October the 2nd.

MS. MCCARTHY: Is the earlier one the report from the rezoning?

CHAIRPERSON REID: Oh, I'm sorry. I'm sorry. The Zoning Commission. I just looked at the date.

MS. MCCARTHY: Right. I think we attached that to provide explanation.

CHAIRPERSON REID: Gotcha. The one that we received, the only question I have in regard to it is the -- with the recommendation and then you had -- how did you say you wanted those conditions that you had put in there handled given the fact that we just talked about the fact we can't condition variances per se.

MS. SANSONE: Madam Chair, on a variance you can include conditions that run with the land and would go from owner to owner. So, these conditions, unlike the last ones we looked at, really go to the structure, the size, its dimensions. And, so if the Applicant is comfortable with those carrying on into the future, it would be okay legally to condition a variance with these.

MS. KRESS: We have not done this before. This is a precedent you all are going to be doing. She's just saying if you want to there is the opportunity. It's the Corporation

Counsel's interpretation that legally we can do this. I personally have a problem with that.

CHAIRPERSON REID: Well, let's get some clarification. Ms. Sansone, are you saying that in this instance, and can you just basically explain further in what instances is it permissible to impose conditions on a variance and when we can't, because typically we don't. So, just reiterate for us more clearly how it is that in this instance you would suggest or you would recommend that we could impose the conditions.

MS. SANSONE: Madam Chair, these are requests for area variances, and the types of conditions that are being proposed go to the area restrictions. They go to the gross square footage, the FAR, and the amount of recreation space. This differs from the previous application which went more to the use.

These conditions that are proposed here would carry from owner to owner. If the ownership changes property, this building property would always have to meet these particular area requirements. So, it's different in that regard, and it would run with the property in perpetuity.

So, it's different from a use variance or a special exception. These are conditions on the area restrictions, and that is why you legally could include them in a variance order. If it were a condition that went to something, some feature about the ownership or the use of the property, it would not be appropriate, but these are going to dimensional requirements.

CHAIRPERSON REID: So, in essence, what you're saying, Ms. Sansone, is that while we cannot impose conditions in use variances, that we can impose them in area variances in some instances? Is that what I'm understanding you to say?

MS. SANSONE: That would be correct. These really don't go to the operation of the property so much. They go to the area restrictions, and they can carry on forever.

CHAIRPERSON REID: Okay. I have no problem with that if it's permissible.

MR. MOULDEN: Madam Chair?

CHAIRPERSON REID: Go ahead.

MR. MOULDEN: I think what she's specifying is development standards and controls. This will carry on in the future. And I've seen cases where you can put restrictions or controls on the actual -- these are bulk regulations dealing with size, the magnitude of setbacks, just bulk areas. So, that has been done in other cases, and it's a known practice in zoning applications in other areas.

CHAIRPERSON REID: Okay.

MS. MCCARTHY: Madam Chair, we had intended these less as conditions than recognizing that normally a BZA case is defined exactly by the plans that are submitted, because normally you've got very precise plans in front of you. The project you're dealing with, in this instance, because the Applicant was acknowledging there may be a slight variation, we were trying to

provide useful guidance to the Zoning Administrator's Office that if the plans came back and they weren't exactly like this, as long as they fit within this overall umbrella or this overall envelope, it was something that there should be no questions raised about or no problems with, in addition to the fact that there's the flexibility that's provided to the Zoning Administrator under the rules to deal with that.

CHAIRPERSON REID: Okay. Thank you very much.

Mr. Holman?

MR. HOLMAN: I just feel a little uncomfortable about setting the precedent today. I would be much more comfortable with doing it as a proviso given that we're not dealing with the actual developer today, and there may be some further refinements that may occur along the way. But I'm certainly in support of the Application.

And I'd like to hear from Ms. Sansone what the effect of provisos are as compared to what's being suggested?

CHAIRPERSON REID: Just let me interject something. I think that -- from what I understand from Ms. McCarthy is that the intent here is that the objective is to have parameters by which this development can go forward. Given the fact that they ask that there be some deviation and rather than that deviation become unwieldy or unlimited, you want to make sure that it was kept within a certain parameter. And that is the reason why you suggested these conditions.

Now, back to Ms. Sansone and Mr. -- well, Ms. McCarthy too, I'm not clear on provisos. It's semantics. If in fact you're going to impose the conditions, then you do, given the explanation we were given. But if you don't, then what is the difference between doing it under the auspices of conditions or provisos, which is something new? I don't remember seeing anything in the zoning regulations that allow for a proviso. So, I'm a little taken aback by that.

MS. SANSONE: Madam Chair, I'll take a stab at this. I believe what the Office of Planning is getting at is normally the approval of the variance would have to match up with the plans that are on the file. And if the Applicant wanted to change the plans, they'd normally come in and request the modification and go through that.

And what Ms. McCarthy is suggesting is maybe treat the proposed conditions or provisos here as more similar to a plan. I don't think in this case it particularly would make that much of a difference. It seems like there's enough flexibility being provided that if these are listed as conditions or somehow written into the order, as long as the intent's getting clear to the Zoning Administrator of what the parameters are, I think that's probably the most important thing. And, so how we accomplish that --

MR. FAZAKERLY: Madam Chair? Madam Chair, may I say something?

CHAIRPERSON REID: Yes.

MR. FAZAKERLY: May I have your permission to say something? In this case, all right, and Mr. Kress and all of you have heard me say this before, that certainty is a very important thing in our process. In this case, this is actually very helpful what's being suggested here, because it means the various residential developers I'm dealing with I can tell them with certainty what the guidelines are of -- the bounds, all right? And we all know that it's not more than, not less than.

So, in this particular case, we're okay either way with how you do it, but if you were to impose this, okay, the certainty -- I still have certainty that I can discuss, which I think is important. It gives us an opportunity to achieve the objective, which is to have a residential developer proceed, and they want to proceed as quickly as possible sometimes. So, I'm all right either way, but in the case of this imposition it's actually helpful.

MR. GLASGOW: Madam Chair, in the drafting of the order, we can work with staff and with Corporation Counsel, I think, to have some language that mutually satisfies everyone consistent with what the Board's intent, staff's intent, and Mr. Fazakerly, because I think everybody's on the same page as to what we're trying to achieve.

CHAIRPERSON REID: Okay. What you're proposing is to be able to accomplish it without necessarily putting in

conditions per se, but just incorporate that as a matter of your particular application?

MR. GLASGOW: That's correct. We'll be able to draft something with Corporation Counsel to deal with that.

CHAIRPERSON REID: Okay. Ms. McCarthy, would that be satisfactory?

MS. MCCARTHY: Yes.

CHAIRPERSON REID: Okay. Ms. Renshaw?

MS. RENSHAW: Yes.

CHAIRPERSON REID: Mr. Holman?

MR. HOLMAN: Yes.

CHAIRPERSON REID: Okay. Mr. Moulden? Okay. Then I don't think anyone has any objection to your doing it in that manner.

MS. RENSHAW: Madam Chair, one small question?

CHAIRPERSON REID: Yes.

MS. RENSHAW: On page 3 of the Office of Planning's report, when Mr. Cochran of the Office of Planning was reviewing the proposed elements, we got down to recreation space at 3.9, that is 18,200 maximum, but Mr. Cochran used the words "not less than." So, wouldn't that be minimum instead of maximum?

MR. COCHRAN: 3.9.

MS. RENSHAW: You said not less than.

MR. COCHRAN: Yes, but in the table this isn't a condition. As a condition, we want to be sure that there is no

less than either 3.9 percent or 18,000 square feet, whichever winds up being greater. We had to do it that way in case the square footage of the final development winds up being less. And we still want to hold the developer to the greater of 3.9 percent of 18,200 square feet.

For the purposes of today, whether that word -- you can strike the word "maximum" from the table.

MS. RENSHAW: All right, thank you.

CHAIRPERSON REID: All right. Let's see, there are no persons here in opposition, no people testifying in support. So, I guess we'll hear closing remarks by the Applicant.

MR. GLASGOW: The only closing remark I'd have is I'd like to ask for a bench decision today so we can move forward with this important project. Thank you.

CHAIRPERSON REID: Okay. Board members, would you like to make a decision on this today? If so, can I have a motion?

MR. HOLMAN: Madam Chair, I move for approval of BZA Application 16603, located in Square 517, Lot 50 of the variances requested being a variance in the rear yard setback, the recreation space requirement, and the maximum permitted FAR, with language to be mutually agreed upon by the Office of Planning and the Applicant regarding the maximum gross square footage, maximum floor area ratio, and recreation space requirements.

MR. MOULDEN: I second.

CHAIRPERSON REID: All right. I would concur. I think that the Applicant certainly met his burden of proof, and has demonstrated that the property is unique, unusual, and that it would pose a practical difficulty to comply with existing zoning regulations. There does not appear to be any opposition to this particular project, and that it doesn't impair the intent and integrity of the zoning -- the comprehensive plan of the zoning map.

Also, it appears that this is something that is in keeping with the objective of the city to bring residential housing to Downtown and a very worthwhile project that it would be very good to see go forward.

Okay. Any other comments?

All in favor?

Opposed?

MS. BAILEY: Staff will record the vote as four to zero to approve the application. Motion made by Mr. Holman, seconded by Mr. Moulden. Ms. Renshaw and Ms. Reid to approve. Mr. Sockwell not present, not having heard the case.

CHAIRPERSON REID: Okay. Is there anything else we need to do?

All right. Ms. Pruitt, is there anything else that we need to do, any reminders or any --

MS. PRUITT: Not for public meeting, no.

CHAIRPERSON REID: This is a hearing.

All right. That concludes today's hearing. Thank you very much.

(Whereupon, the Board of Zoning Adjustment Public Hearing was concluded at 2:42 p.m.)