

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 3, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN	Chairperson
JEFFREY HINKLE	Board Member (NCPC)
RASHIDA Y.V. MACMURRAY	Board Member

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
STEPHEN MORDFIN
MATT JESICK

This transcript constitutes the
minutes from the Regular Public Hearing held
on April 3, 2012.

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

2 9:34 a.m.

3 CHAIRPERSON JORDAN: Good morning.

4 Will the hearing please come to order?

5 Good morning, ladies and
6 gentlemen. We are located in the Jerrily R.
7 Kress Memorial Hearing Room at 441 4th Street,
8 N.W.

9 Today is April 3, 2012, a Public
10 Hearing of the Board of Zoning Adjustment of
11 the District of Columbia.

12 My name is Lloyd Jordan,
13 Chairperson. Joining me today is Rashida
14 MacMurray, Board Member, Jeffrey Hinkle, Board
15 Member and representing the Zoning Commission
16 is Marcie Cohen.

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

20 Please be advised that this
21 proceeding is being recorded by a court
22 reporter and is also being webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please, turn on and speak into the
6 microphone, first, stating your name and home
7 address. When you are finished speaking,
8 please, turn your microphone off, so that your
9 microphone is no longer picking up any sound
10 or background noise.

11 All persons planning to testify
12 either in favor or in opposition must have
13 raised his or her hand and been sworn in by
14 the secretary.

15 Also, each witness must fill out
16 two witness cards. These cards are located to
17 my left on the table near the door and on the
18 witness tables. Upon coming forward to speak
19 to the Board, please, give both cards to the
20 reporter sitting to my right.

21 Also, if you wish to file written
22 testimony or additional supporting documents

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1 today, please, submit one original and 12
2 copies to the secretary for distribution. If
3 you do not have the requisite number of
4 copies, you can reproduce copies on a machine
5 in the Office of Zoning located across the
6 hall.

7 The order of procedure for special
8 exceptions and variances: Statement of the
9 applicant and the applicant's witnesses; the
10 report and recommendations from the Office of
11 Planning; report and recommendations from the
12 other public agencies; the Advisory
13 Neighborhood Commission for the area in which
14 the property is located; parties and persons
15 in support of the application; parties and
16 persons in opposition to the application; and
17 then rebuttal and closing statement by the
18 applicant.

19 I do not believe we have any
20 appeals on for today. Is that right, Mr.
21 Secretary.

22 MR. MOY: That's correct.

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1 CHAIRPERSON JORDAN: Pursuant to '
2 3117.4 and 3117.5, the following time
3 constrains will be maintained: The applicant,
4 persons and parties, except the ANC, in
5 support, including witnesses, will have 60
6 minutes collectively.

7 Appellees, persons and parties,
8 except the ANC, in opposition, including
9 witnesses, will have 60 minutes collectively.

10 Individuals 3 minutes and
11 organizations 5 minutes.

12 These time constraints do not
13 include cross-examination or questions from
14 the Board. Cross-examination of witnesses is
15 permitted by the applicant or parties. The
16 ANC within which the property is located is
17 automatically a party in a special exception
18 or variance case.

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

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1 The record will be closed at the
2 conclusion of each case, except for any
3 material specifically requested by the Board.

4 The Board and the staff will specify at the
5 end of the hearing exactly what is expected
6 and the date when the person must submit the
7 evidence to the Office of Zoning.

8 After the record is closed, no
9 other information will be accepted by the
10 Board.

11 The District of Columbia
12 Administrative Procedural Act requires that
13 the Public Hearing on each case be held in the
14 open and before the public. Pursuant to '
15 405(b) and 406 of the Act, the Board may
16 consistent with its rules and procedures and
17 the Act enter into a closed meeting on a case
18 for purposes of seeking legal counsel on a
19 case per DC Code ' 2-575(b)(4) or in
20 deliberating on a case per DC Code '
21 257(b)(13), but only after providing the
22 necessary public notice and in the case of an

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1 emergency closed meeting, after taking a roll
2 call vote.

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

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

12 The Board will now consider any
13 preliminary matters. Preliminary matters are
14 those which relate to whether a case will or
15 should be heard today, such as a request for
16 postponement, continuance or withdrawal or
17 whether proper and adequate notice of the
18 hearing has been given.

19 If you are not prepared to go
20 forward with a case today or if you believe
21 that the Board should not proceed, now is the
22 time to raise such a matter.

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1 And, Mr. Secretary, do we have any
2 preliminary matters? If not, let us proceed
3 with the agenda.

4 MR. MOY: Yes, the only matter I
5 would like to note for the record, Mr.
6 Chairman, is that on the third case of the
7 morning, 18329, there is no Affidavit of
8 Posting, but staff would suggest that the
9 Board address that when they call the case.

10 CHAIRPERSON JORDAN: Mr.
11 Secretary, what about 18334? Wasn't there a
12 late affidavit that we need to deal with, too?

13 MR. MOY: That's correct, Mr.
14 Chairman. That did come in late yesterday. I
15 don't have any copies for you, but I do have
16 the original that I can pass to the Board to
17 take a look at. That did -- that is logged
18 into the record as of late last night.

19 CHAIRPERSON JORDAN: Oh, thank
20 you. All right. Then let's call the first
21 case, Mr. Secretary.

22 MR. MOY: Would the Board care,

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1 should I administer the oath?

2 CHAIRPERSON JORDAN: Yes, please.

3 MR. MOY: All right. If everyone
4 would stand, those who will be testifying this
5 morning?

6 (Whereupon, witnesses were sworn.)

7 MR. MOY: Ladies and gentlemen,
8 you may consider yourself under oath.

9 CHAIRPERSON JORDAN: Thank you.

10 MR. MOY: Good morning, Mr.
11 Chairman and Members of the Board, the first
12 three cases before the Board's morning session
13 is Application No. 18332. This is the
14 application of Ann Pina, pursuant to 11 DCMR
15 3104.1, for a special exception. This is to
16 allow a two story rear addition to an existing
17 one-family row dwelling under ' 223, not
18 meeting the lot occupancy ' 403, and court
19 requirements under ' 406, in the R-4 District
20 at premises 1439 East Capitol Street, S.E.
21 The property is located in Square 1058, Lot
22 44.

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1 CHAIRPERSON JORDAN: Okay. If the
2 parties would introduce themselves, please?

3 MS. PINA: Ann Pina, 1439 East
4 Capitol Street, S.E.

5 MS. TILGHMAN: Casey Tilghman from
6 Fowler Architects, 1819 D Street, S.E.

7 CHAIRPERSON JORDAN: Your last
8 name again?

9 MS. TILGHMAN: Tilghman.

10 CHAIRPERSON JORDAN: Thank you.
11 Welcome. Before we begin, I think this record
12 is pretty full in this case. And we could
13 probably move this along. However, before we
14 begin, I think I would like to ask Office of
15 Planning a particular question. Mr. Hinkle?

16 MEMBER HINKLE: Good morning, Ms.
17 Thomas.

18 MS. THOMAS: Good morning.

19 MEMBER HINKLE: I was curious
20 about the rear yard setback and how that is
21 calculated. My understanding is there is a 20
22 foot requirement, but this is a lot that has

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1 two or three, depending on how you look at it,
2 separate rear lot lines.

3 MS. THOMAS: Okay. Let me take a
4 look at it.

5 MEMBER HINKLE: I'm sorry.

6 MS. THOMAS: I know typically when
7 that is the case, the -- how the Zoning
8 Administrator takes a look at it is by an
9 average.

10 MEMBER HINKLE: Okay.

11 MS. THOMAS: Yes. If it's an
12 irregular-shaped rear yard. But let me --

13 MEMBER HINKLE: So you do a
14 calculation and you find, I think, the --

15 MS. THOMAS: Yes.

16 MEMBER HINKLE: -- the definition
17 is -- or the process is you find the mean
18 horizontal distance between the rear line of
19 the building and the rear lot line.

20 MS. THOMAS: Yes, that's typically
21 how we do it, yes. Um-hum.

22 MEMBER HINKLE: Did --

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1 MS. THOMAS: Let me just take a
2 look here. Yes, so it would be from the back
3 measurement from the alley, the longest part
4 of the dogleg there to the rear yard -- to the
5 rear of the house, sorry. I'm kind of
6 confused on this one here.

7 Where do you see that measurement
8 as 37 feet 6 inches on C-2? If you have that.

9 MEMBER HINKLE: Yes.

10 MS. THOMAS: Okay. That's the
11 longest measurement there. And it would be --
12 and I would take another measurement at this--
13 at the other end of that short -- of the
14 dogleg and it would be an average of the three
15 measurements here. The shortest, the second
16 shortest and then longest at 37.6.

17 MEMBER HINKLE: So I actually used
18 Exhibit 9, which is the plot plan, which has
19 some additional measurements on it.

20 MS. THOMAS: I don't have that.
21 I'm sorry, I don't have that.

22 MEMBER HINKLE: The plat?

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1 MS. THOMAS: Oh, the plat? Yes.
2 Okay.

3 MEMBER HINKLE: So at least from
4 these measurements --

5 MS. THOMAS: Yes.

6 MEMBER HINKLE: -- it looks like
7 the proposed addition is 11 feet. These are
8 my calculations. But it was just almost 11
9 and a half feet from, I'm not sure which
10 direction, but, that 10 foot wide --

11 MS. THOMAS: From the 10 foot--

12 MEMBER HINKLE: -- rear lot.

13 MS. THOMAS: From the 10 foot
14 portion?

15 MEMBER HINKLE: Right, from the 10
16 foot portion.

17 MS. THOMAS: Yes.

18 MEMBER HINKLE: And so my
19 calculation just taking the mean, I ended up
20 with 18.75 feet, which is less than the
21 required 20 foot.

22 MS. THOMAS: Yes.

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1 MEMBER HINKLE: Is that --

2 MS. THOMAS: If that's the case,
3 then we could also include relief from the
4 rear yard. I don't have --

5 MEMBER HINKLE: Yes, I'm sorry to
6 put you on the spot -

7 MS. THOMAS: Yes.

8 MEMBER HINKLE: -- to look at the
9 calculations.

10 MS. THOMAS: Yes.

11 MEMBER HINKLE: But I think that's
12 what I was trying here.

13 CHAIRPERSON JORDAN: Would that be
14 a special exception for the rear yard?

15 MS. NAGELHOUT: I can come within
16 the 223 relief, yes.

17 MS. THOMAS: Yes.

18 CHAIRPERSON JORDAN: Okay.

19 MEMBER HINKLE: And I don't have
20 the exact numbers, but --

21 MS. THOMAS: Yes, but --

22 MEMBER HINKLE: -- I think that

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1 is --

2 MS. THOMAS: -- I think to err on
3 the side of caution, we would -- we should --
4 we could include it.

5 MEMBER HINKLE: Okay.

6 MS. THOMAS: So that if they go
7 before to get -- pull their permits, they
8 won't have to be kicked back into this
9 situation.

10 MEMBER HINKLE: Okay. Thank you.
11 Thank you for your thoughts.

12 CHAIRPERSON JORDAN: Okay. If we
13 could go and get the input from the applicant
14 on the rear yard issue?

15 MS. TILGHMAN: We are fine with
16 including that if that's what you think is
17 necessary. That did not come up in our
18 preliminary discussions with Office of
19 Planning, but I don't see it being an issue.

20 CHAIRPERSON JORDAN: Okay. And so
21 what we would need to -- I guess we will take
22 this as an oral motion to amend, which we

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1 would accept, and then subsequently, I would
2 believe that we would need to just have you
3 amend the request for relief.

4 MS. TILGHMAN: That's fine. We
5 can do that.

6 CHAIRPERSON JORDAN: Okay. I
7 think if you -- as I said before that the
8 record is pretty clear and that it's not
9 necessary, unless you want to do a
10 presentation, and that we could go forward
11 with this.

12 MS. TILGHMAN: No, that's fine.
13 We would like to rest on the record. I would
14 just like to thank the Board this morning for
15 your time.

16 CHAIRPERSON JORDAN: Very good.
17 Thank you. Regarding this particular case, I
18 think the record is pretty full and the
19 evidence in the record as submitted will
20 provide that the request for the special
21 exception for the construction of a rear
22 addition to a single-family detached dwelling

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1 at 1439 East Capitol, S.E., has been met,
2 including the new amended request for relief
3 for the rear yard exception.

4 The application and the evidence
5 in the record clearly shows there is no
6 adverse impact to the light and air. There is
7 minimum increase in the footprint of less than
8 1 percent. The court to the east provides
9 adequate guard and not adverse impact to light
10 and air.

11 I find credible the information
12 submitted by the applicant as to no effect
13 upon the light and air to the neighbors.

14 The addition will not be unduly
15 compromising neighborhood property. No
16 windows will extend to the east side. The
17 privacy fence of the property will remain.
18 There will be no visual intrusions upon the
19 surrounding property.

20 I think the Office of Planning's
21 report show there is -- stated there is
22 minimal visibility issues due to the tree that

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1 is there. And also, the pictures show that
2 there is garages along the alley and other
3 things that limit the view in the back and so
4 those things would be, to me, acceptable.

5 And plus, the addition is similar
6 to other property in the neighborhood. The
7 pictures that were submitted and the drawings
8 show the relationship of the building to the
9 adjacent property and I think those were
10 adequate or good for us.

11 We find that there is no expansion
12 of the nonconforming use. The nonconforming
13 use actually remains, I believe, on this
14 property, according to the record. And the
15 ANC-6B has sent in a letter where it was a
16 quorum present voting 8-0-0 to support, which
17 this Board would give great weight to.

18 And this application, the record
19 clearly shows that there was an abundance of
20 neighbors' support for this application and
21 then there's support from Capitol Hill
22 Restoration Society.

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1 With that, I would move the
2 approval of this particular application for
3 special exception relief pursuant to 223, the
4 lot occupancy request of -- the lot occupancy
5 request, the open court request and the
6 request for the exception for the rear yard.

7 Is there any second?

8 MS. COHEN: Mr. Chairman, I would
9 second your resolution.

10 CHAIRPERSON JORDAN: Are there any
11 questions?

12 Seeing none, all those in favor
13 signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON JORDAN: Those opposed
16 nay? Mr. Secretary?

17 MR. MOY: Staff would record the
18 vote as 4-0-1. This is on the motion of
19 Chairman Jordan to approve the application for
20 special exception relief from ' 223 not
21 meeting the lot occupancy, open court and rear
22 yard requirements, as amended.

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1 Let's see, seconding the motion
2 Ms. Cohen. Also in support of the motion Ms.
3 MacMurray and Mr. Hinkle, a Board Member not
4 present, not participating. Again, the final
5 vote is 4-0-1. The motion carries.

6 CHAIRPERSON JORDAN: Thank you.

7 MR. MOY: Thank you.

8 MS. TILGHMAN: Thank you very
9 much.

10 MS. PINA: Thank you very much.

11 CHAIRPERSON JORDAN: And, yes,
12 order a summary opinion.

13 MR. MOY: Yes, sir. Thank you,
14 Mr. Chairman.

15 CHAIRPERSON JORDAN: Summary
16 order, please.

17 MR. MOY: The next application
18 before the Board is Application No. 18334.
19 This is the application of Robert Burrows,
20 pursuant to 11 DCMR 3103.2, for a variance
21 from the lot occupancy requirements under '
22 403, and the nonconforming structure

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1 provisions under subsection 2001.3, to allow a
2 two story addition to an existing one-family
3 dwelling in the R-1-B District at premises
4 4601 Western Avenue, N.W. The property is
5 located in Square 1488, Lot 810.

6 CHAIRPERSON JORDAN: Good morning.
7 Would you introduce yourselves, please?

8 MR. MCGRAW: John McGraw.

9 CHAIRPERSON JORDAN: Is your
10 microphone on? Yes.

11 MR. MCGRAW: Good morning. My
12 name is John McGraw from McGraw Bagnoli
13 Architects.

14 MS. BURROWS: Good morning.
15 Suzanne Burrows and I reside at 4601 Western
16 Avenue.

17 CHAIRPERSON JORDAN: Thank you. I
18 believe this record is pretty full. However,
19 there is a couple of things.

20 One is there a Letter of
21 Representation? Did I miss the letter
22 authorizing representation? There is not an

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1 issue? Well, we have the applicant here, so I
2 guess that wouldn't be an issue.

3 We do have a question with the
4 issue on posting. And I believe the posting
5 on this property, the affidavit was late.

6 MR. McGRAW: The affidavit was
7 delivered to this office and I have it stamped
8 received the 23rd.

9 MR. MOY: Mr. Chairman, I believe
10 that is to your left.

11 CHAIRPERSON JORDAN: Okay.

12 MR. MOY: I mentioned that that
13 came in very, very late last night.

14 CHAIRPERSON JORDAN: So the
15 posting -- so we actually got the affidavit
16 last night?

17 MR. McGRAW: It was delivered the
18 23rd. I have a stamped copy from the -- your
19 office, so I don't know --

20 CHAIRPERSON JORDAN: Okay.

21 MR. McGRAW: -- what --

22 CHAIRPERSON JORDAN: Could you

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1 hand that to the secretary, please? And just
2 give us a second.

3 Mr. Secretary, I see it here on
4 this file, it's the 23rd. Okay. Good. Thank
5 you. We stand corrected.

6 And the other question, I believe
7 -- I wanted to before we begin is to
8 understand the relief that is requested. It's
9 my understanding that you are asking for
10 relief from a nonconforming structure pursuant
11 to 2001.3, the lot and width.

12 Is that where you are? I think we
13 have some issues with planning. Let me ask
14 planning. Planning, is that the only relief
15 that is necessary here?

16 MR. MORDFIN: Well, that's -- they
17 need relief from the lot occupancy to increase
18 it from 40 percent to 66 percent.

19 CHAIRPERSON JORDAN: And there is
20 no other relief that's necessary?

21 MR. MORDFIN: No. Well, there is
22 also 2001.3 because it's nonconforming.

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1 CHAIRPERSON JORDAN: I mean, but
2 there is not another issue here?

3 MR. MORDFIN: No.

4 CHAIRPERSON JORDAN: Okay. Okay.
5 I believe the record is pretty full in this
6 case. I think we have enough and we have all
7 reviewed the record and the record is pretty
8 extensive to grant the relief that is
9 requested, if necessary.

10 If there is something you want to
11 add, we can do so, but otherwise, I think we
12 will be ready to move forward.

13 MR. McGRAW: I don't think we have
14 anything to add. We have letters of support
15 from the direct neighbor.

16 CHAIRPERSON JORDAN: Yes. Okay.

17 MR. McGRAW: If you don't have a
18 copy, I'm happy to provide one.

19 CHAIRPERSON JORDAN: We are fine.
20 Well, then let us proceed.

21 Based upon review of the record, I
22 think the record is very clear. And as the

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1 evidence has been submitted in the record and
2 we have all reviewed that an unusual and
3 exceptional condition exists due to the
4 triangular-shape of this lot and the
5 nonconforming sides of the lot and existing
6 nonconforming lot occupancy.

7 There is a practical difficulty
8 existing with the Zoning Regulations, because
9 there is the inability to enlarge the house
10 while it is still compliant within the lot
11 occupancy requirement.

12 I do not find -- do not believe
13 there is any detriment to the public. The lot
14 has substantial open space around it and is on
15 the corner and the pictures clearly show that
16 there is no impact on shading, etcetera.

17 There is no significant harm and
18 there will be no harm to the Zoning
19 Regulations. The addition will allow
20 expansion of this dwelling and with the
21 expansion, it would be similar to others in
22 the neighborhood without resulting in an

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1 increase or decrease in the open space.

2 We have a positive report from the
3 Office of Transportation saying there is
4 negligible impact, even with the curb cut.
5 ANC-1C with a quorum present voted 5-1-1 to
6 support the grant of this relief and thus will
7 qualify us for great weight.

8 Anybody else got anything to add
9 to that? Otherwise, I would just move to
10 approve the requested variance from the lot
11 occupancy requirement under ' 403 to allow for
12 this two story addition. I so move.

13 MEMBER MacMURRAY: Mr. Chairman, I
14 second the motion.

15 CHAIRPERSON JORDAN: Any others?

16 MEMBER HINKLE: Mr. Chairman, just
17 before we vote, I don't see that we have that
18 letter from the adjacent neighbor in our
19 record. I think that would be helpful just
20 for a complete record to have that submitted.

21 MS. BURROWS: If I might
22 interrupt, we also have two letters in email

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1 format from neighbors across the street on the
2 Brandywine side of the property including the
3 direct neighbor on the Western Avenue
4 property.

5 CHAIRPERSON JORDAN: And we accept
6 your testimony with that and we can accept
7 that. If you could give those to the
8 secretary, that would be great.

9 MS. BURROWS: Okay.

10 CHAIRPERSON JORDAN: Thank you.
11 Any other unreadiness?

12 All those in favor of the motion
13 approving this request signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON JORDAN: Those opposed
16 nay. Mr. Secretary?

17 MR. MOY: Yes, staff would record
18 the vote as 4-0-1. This is on the motion of
19 Chairman Jordan to approve the application for
20 variance relief under ' 403 and 2001.3
21 nonconforming structure provision. Seconding
22 the motion Ms. MacMurray. Also in support of

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1 the motion Ms. Cohen and Mr. Hinkle.

2 We have a Board Member not
3 present, not participating. So again, the
4 final vote is 4-0-1. The motion carries.

5 CHAIRPERSON JORDAN: And if we can
6 have a summary order in this one?

7 MR. MOY: Thank you, Mr. Chairman.

8 CHAIRPERSON JORDAN: Thank you.

9 MR. MCGRAW: Thank you very much
10 for your time.

11 MS. BURROWS: Thank you.

12 MR. MOY: The next application is
13 Application No. 18329. This is the
14 application of Louis Bell and Florence
15 Jaumotte, pursuant to 11 DCMR 3103.2, for a
16 variance to exceed the limitation on the
17 number of stories under subsection 400.1, to
18 allow the construction of a two story addition
19 on an existing detached dwelling in the R-1-B
20 District at premises 1415 Otis Street, N.E.
21 The property is located n Square 4004, Lot 25.

22 Mr. Chairman, for the record,

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1 staff received by email this morning from a
2 representative on this application. There was
3 no attachment, which I believe is a
4 preliminary matter. And my understanding from
5 the staff is that he is on his way to the
6 hearing chamber.

7 Staff -- the Board can either move
8 forward with this application or recess until
9 the representative arrives.

10 CHAIRPERSON JORDAN: Let's stand
11 in recess. Let's stand in recess for -- let's
12 put a cap on this recess of 15 minutes. 15
13 minutes, we will stand in recess.

14 (Whereupon, at 10:00 a.m. a recess
15 until 10:13 a.m.)

16 CHAIRPERSON JORDAN: Let's come to
17 order and reconvene, please. Mr. Secretary,
18 is there any announcements?

19 MR. MOY: No announcement, unless
20 you want me to administer the oath?

21 CHAIRPERSON JORDAN: Yes. Well,
22 yes. And then we can -- anyone who is going

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1 to testify or make statements to the Board.

2 MR. MOY: Okay.

3 CHAIRPERSON JORDAN: Well, let's--
4 if we are just going to get an application --
5 a motion, is that what we are getting?

6 MR. MOY: Yes, sir.

7 CHAIRPERSON JORDAN: Then have we
8 gotten a motion prepared and submitted or is
9 this an oral motion?

10 MR. MOY: I believe the applicant
11 has some materials to pass to the Board, which
12 I believe is their motion.

13 CHAIRPERSON JORDAN: Okay. Then
14 we -- let's just go ahead. Then if you are
15 going to present it, Mr. Bello, then we need
16 to go ahead and just swear to take the oath
17 and then let's do it and move forward. Okay.

18 (Whereupon, witnesses were sworn.)

19 MR. MOY: Thank you.

20 CHAIRPERSON JORDAN: And anyway,
21 let's just go ahead and call the case as we
22 would normally, please.

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1 MR. MOY: Okay. Okay. And that
2 would be Application No. 18329. The
3 application of Louis Bell and Florence
4 Jaumotte, pursuant to 11 DCMR 3103.2, for a
5 variance to exceed the limitation on the
6 number of stories under subsection 400.1, to
7 allow the construction of a two story addition
8 on an existing detached dwelling in the R-1-B
9 District. This is at premises 1415 Otis
10 Street, N.E. The property is located in
11 Square 4004, Lot 25.

12 CHAIRPERSON JORDAN: If you would
13 introduce yourself for the record, please?

14 MR. BELLO: Mr. Chair, Board
15 Members, good morning. My name is Toye Bello.
16 I've been duly authorized to represent the
17 applicant in this case.

18 What we have here today is a
19 request for continuance of the case for a
20 short period to take into consideration OP's
21 recommendation and to augment our submissions
22 to speak to specifically the relief that we

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1 are looking for.

2 CHAIRPERSON JORDAN: And so, do
3 you have a handwritten motion? Is that
4 correct for the Board?

5 MR. BELLO: Yes, yes.

6 CHAIRPERSON JORDAN: Okay. Could
7 you give it to the secretary? I don't see any
8 reason why we shouldn't grant it. Is there
9 any reason why? Ms. Cohen?

10 MS. COHEN: Well, is it possible
11 for me to -- is it protocol for me to ask a
12 question of OP actually?

13 CHAIRPERSON JORDAN: Please, do.

14 MS. COHEN: Okay. Mr. Jackson, a
15 question. Your -- well, OP's suggestion is to
16 expand horizontally. Is that correct? I'm
17 sorry, he's not here.

18 CHAIRPERSON JORDAN: I thought
19 you. Okay. I didn't know who you were going
20 to ask.

21 MS. COHEN: Office of Planning.

22 CHAIRPERSON JORDAN: Yes, he's not

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1 here. Oh, Office of Planning, no, they are
2 not here. Yes, so --

3 MS. COHEN: Okay. Well, let me
4 just state this thought that I have for the
5 Board then.

6 It seems to me that the Office of
7 Planning is suggesting a horizontal expansion
8 and from the aerial that I see, it would be
9 more appropriate, and I, you know --

10 CHAIRPERSON JORDAN: Well, I
11 think, let's hold that for --

12 MS. COHEN: Okay.

13 CHAIRPERSON JORDAN: --later. And
14 just suggest that the parties have a
15 discussion with Office of Planning and what
16 have you. But dealing with the motion that is
17 in -- I mean, the request that's before us, I
18 see -- I would move that we grant this
19 application for a continuance.

20 MS. COHEN: I'll second that.

21 CHAIRPERSON JORDAN: All those in
22 favor signify by saying aye.

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1 ALL: Aye.

2 CHAIRPERSON JORDAN: Those opposed
3 nay. Mr. Secretary?

4 MR. MOY: Yes. Staff would record
5 the vote as 4-0-1, one Board Member not
6 participating. This is on the motion of the
7 Chairman Jordan to grant the request to
8 postpone the application. Seconding the
9 motion Ms. Cohen. Also in support of the
10 motion Ms. MacMurray and Mr. Hinkle.

11 The only other issue, Mr.
12 Chairman, is what time you would like to set?

13 CHAIRPERSON JORDAN: When can we
14 get this set? What's the dates there,
15 approximately?

16 MR. MOY: According to the
17 schedule on our future dockets, Mr. Chairman,
18 we have openings on -- in the afternoon of May
19 1st or May 8th or the afternoon of May 22nd.

20 CHAIRPERSON JORDAN: So we have
21 places at the last part of the agenda on the
22 21st did you say?

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1 MR. MOY: 22nd.

2 CHAIRPERSON JORDAN: 22nd. Is that
3 enough time?

4 MR. BELLO: Yes, Mr. Chairman.

5 MR. MOY: Yes, sir.

6 CHAIRPERSON JORDAN: Okay. That
7 will be fine. All right. Great. Thanks for
8 coming. Yes?

9 MR. THOMAS: My name is Timothy
10 Thomas. Oh, I'm sorry. Thank you, yes.
11 Timothy Thomas.

12 CHAIRPERSON JORDAN: Okay.

13 MR. THOMAS: ANC-5A08. Are they
14 asking for any exchange in any -- for the
15 relief requested, in the building?

16 CHAIRPERSON JORDAN: I don't think
17 they are yet. They just want to have time to
18 talk with planning, so right now, I think it
19 is preliminary, too soon to say what they are
20 -- if they are going to change any relief
21 requested.

22 MR. THOMAS: Okay.

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1 CHAIRPERSON JORDAN: Would you
2 agree with that?

3 MR. BELLO: That's correct.

4 CHAIRPERSON JORDAN: Okay. Great.

5 MR. THOMAS: All right.

6 CHAIRPERSON JORDAN: Thank you.
7 Appreciate it. That concludes our morning
8 session and we will reconvene at 1:00.

9 (Whereupon, the Public Hearing was
10 recessed at 10:20 a.m. to reconvene at 1:04
11 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:04 p.m.

3 CHAIRPERSON JORDAN: The hearing
4 will, please, come to order.

5 Good afternoon, ladies and
6 gentlemen. We are located in the Jerrily R.
7 Kress Memorial Hearing Room at 441 4th Street,
8 N.W.

9 Today is April 3, 2012, Public
10 Hearing of the Board of Zoning Adjustment of
11 the District of Columbia.

12 My name is Lloyd Jordan,
13 Chairperson. Joining me today is Rashida
14 MacMurray, Board Member, Jeffrey Hinkle, Board
15 Member, and representing the Zoning Commission
16 is Marcie Cohen.

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

20 Please be advised that this
21 proceeding is being recorded by a court
22 reporter and is also being webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please, turn on and speak into the
6 microphone, first, stating your name and
7 address, your home address. When you are
8 finished speaking, please, turn your
9 microphone off, so that your microphone is no
10 longer picking up sound or background noise.

11 All persons planning to testify
12 either in favor or in opposition must have
13 raised his or her hand and been sworn in by
14 the secretary.

15 Also, each witness must fill out
16 two witness cards. These cards are located to
17 my left on the table near the door and on the
18 witness tables. Upon coming forward to speak
19 to the Board, please, give both cards to the
20 reporter sitting to my right.

21 Also, if you wish to file written
22 testimony or additional supporting documents,

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1 please, submit one original and 12 copies to
2 the secretary for distribution. If you do not
3 have the requisite number of copies, you can
4 reproduce copies on a machine in the Office of
5 Zoning.

6 The order of procedure for special
7 exceptions and variances is: One, statement
8 of the applicant and the applicant's
9 witnesses; two, report from recommendation
10 from the D.C. Office of Planning; three,
11 reports and recommendations from other public
12 agencies; four, the Advisory Neighborhood
13 Commission for the area within which the
14 property is located; five, parties and persons
15 in support of the application; six, parties
16 and persons in opposition to the application;
17 and seven, rebuttal and closing statement by
18 the applicant.

19 Pursuant to ' 3117.4 and 3117.5,
20 the following time constraints will be
21 maintained: The applicant, the appellant and
22 persons and parties in support, excluding the

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1 ANC, have a collective 60 minutes.

2 The appellees, persons or parties,
3 except the ANC, in opposition, including
4 witnesses, 60 minutes collectively.

5 Individuals 3 minutes and
6 organizations 5.

7 The time restraints do not include
8 cross-examination or questions from the Board.

9 Cross-examination of witnesses is permitted
10 by the applicant or parties. The ANC within
11 which the property is located is automatically
12 a party in a special exception or variance
13 case.

14 Nothing prohibits the Board from
15 placing reasonable restrictions on cross-
16 examination, including time limit and
17 limitations on the scope of cross-examination.

18 The record will be closed at the
19 conclusion of each case, except for material
20 specifically requested by the Board. The
21 Board and staff will specify at the end of the
22 hearing exactly what is expected, the date

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1 when the parties must submit the evidence to
2 the Office of Zoning.

3 After the record is closed, no
4 other information will be accepted by the
5 Board.

6 The District of Columbia
7 Administrative Procedural Act requires that
8 the Public Hearing on each case be held in the
9 open and before the public. Pursuant to '
10 405(b) and 406 of the Act, the Board may,
11 consistent with its rules and procedures and
12 the Act, enter into a closed meeting or closed
13 emergency meeting on a case for purposes of
14 seeking legal counsel on a case per DC Code '
15 2-575(b)(4) and/or deliberating on a case
16 pursuant to DC Code ' 2-575(b)(13), but only
17 after providing the necessary public notice
18 and taking a roll call vote.

19 The decision of the Board in these
20 contested cases must be based exclusively on
21 the public record. To avoid the appearance to
22 the contrary, the Board requests that persons

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1 present not engage the Members of the Board in
2 conversation.

3 Please turn off all beepers and
4 cell phones at this time, so not to disturb
5 these proceedings. The Board will now
6 consider any preliminary matters.

7 Preliminary matters are those
8 which relate to whether a case will be or
9 should be heard today, such as a request for
10 postponement, continuances, withdrawals or
11 whether proper and adequate notice of the
12 hearing has been given.

13 If you are not prepared to go
14 forward with a case today or if you believe
15 the Board should not proceed, now is the time
16 to raise such a matter.

17 Mr. Secretary, do you have any
18 preliminary matters?

19 MR. MOY: Mr. Chairman, there are
20 applications for party status request to the
21 first case in the afternoon, which is Case No.
22 18330.

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1 CHAIRPERSON JORDAN: And let's
2 take that up when we call it. And now, I'm
3 going to ask all individuals wishing to
4 testify today, please, stand and take the
5 oath. Mr. Secretary, would you, please,
6 administer the oath?

7 MR. MOY: Yes. Thank you.

8 (Whereupon, witnesses were sworn.)

9 MR. MOY: Ladies and gentlemen,
10 you may consider yourself under oath.

11 CHAIRPERSON JORDAN: You can call
12 the first case.

13 MR. MOY: Good afternoon, Mr.
14 Chairman, Members of the Board. The first
15 application for the Board, I believe, is --

16 CHAIRPERSON JORDAN: We are going
17 to take Case 13324.

18 MR. MOY: Very good. That would
19 be Application No. 18324. This is the
20 application of Roane-Worsley LLC, pursuant to
21 11 DCMR 3103.2, for variance relief to allow
22 the conversion of a flat, a two unit dwelling

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1 to a three unit apartment house under
2 subsection 401.3 in the R-4 District at
3 premises 1337 Maryland Avenue, N.E., for
4 property located in Square 1028, Lot 35.

5 CHAIRPERSON JORDAN: If the
6 parties would come forward, please? Do we
7 have anyone for Case 18324? 18324, going
8 once, we are going twice, sold.

9 What's the pleasure of the Board?
10 Do we wish to dismiss it or just to -- Mr.
11 Secretary, do you have a recommendation?

12 MR. MOY: Staff would suggest that
13 the Board proceed with 18330 and after that
14 case should the other party appear, then --

15 CHAIRPERSON JORDAN: I guess that
16 is considered to be fair, since they might
17 have been hedging their bet regarding the
18 docket. But the 1:00 docket means 1:00
19 docket. No time is set or certain. And the
20 Board rules allow for the Board to rearrange
21 its cases.

22 MR. MOY: Absolutely.

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1 CHAIRPERSON JORDAN: So to make
2 the record straight. Thank you. If you will
3 case the next case then?

4 MR. MOY: Yes, thank you, Mr.
5 Chairman. That would be Application No.
6 18330. This is the application of FCP
7 Champlain LLC, pursuant to 11 DCMR 3104.1 and
8 3103.2, for a variance from the floor area
9 ratio requirements under ' 402, and a special
10 exception to allow an increase in building
11 height under ' 1403, to permit the development
12 of a residential building in the RC/R-5-B
13 District. This is at premises 2337 Champlain
14 Street, N.W., property located in Square 2563,
15 Lot 887. Just one packet.

16 CHAIRPERSON JORDAN: Okay. All
17 right. If the parties will introduce
18 themselves, please?

19 MS. SHIKER: Good afternoon. My
20 name is Christine Shiker with the Law Firm of
21 Holland & Knight. I'm counsel for the
22 applicant in the case.

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1 MR. KEHLER: Good afternoon. My
2 name is Charlie Kehler. I'm with Altus Realty
3 Partners and the applicant.

4 MR. GOINS: Good afternoon. I'm
5 Jeff Goins with the PGN Architects.

6 MR. SHER: And I'm Steve Sher with
7 the Law Firm of Holland & Knight, Director of
8 Zoning and Land Use Services.

9 CHAIRPERSON JORDAN: Thank you.
10 We have before us, as a preliminary matter,
11 two party status requests. Are the party
12 status request folks here? Could you take a
13 seat, please?

14 MS. HORVITZ: Good afternoon.
15 This is Lauri Horvitz and I'm here on behalf
16 of the party status applicants, the Erie
17 Apartments and Mr. Wiedis individually.

18 CHAIRPERSON JORDAN: Okay. Now, I
19 understand we have party status requests, two
20 party status requests. Erie Condominium and
21 then Richard Wiedis, is it? It appears that
22 both are adjacent or live adjacent to the

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1 property in question.

2 However, it also appears that the
3 issues are the same for both requests for
4 party status. And so we would only allow one
5 to go forward, unless there is something you
6 can tell me why the issues are different for
7 the party status of Erie Condominium or
8 Richard Wiedis?

9 MS. HORVITZ: Certainly. You are
10 correct. Mr. Wiedis does reside in the Erie.
11 He is probably the most affected resident
12 within the Erie. And he would also very much
13 appreciate an opportunity to advocate for
14 himself to the extent that there are any
15 differences between the Erie and his own
16 interests individually. And he would do cross
17 separate and apart from my efforts.

18 But there is, obviously, a
19 significant overlap in issues.

20 CHAIRPERSON JORDAN: Okay. Well,
21 it's my inclination to deny one or the other,
22 so that you can decide who it is going to be,

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1 if that's okay with the Board. Does the Board
2 agree that the two just be consolidated?
3 Because I mean, they are verbatim, plus you
4 already have listed in Erie Condominium
5 witness list Mr. Wiedis taking the lead in
6 that, so it's just unnecessary.

7 Is that -- so that would be the
8 Board's ruling.

9 MS. HORVITZ: Thank you. In light
10 of that, it would be the Erie Condominium that
11 would participate as a party if that's
12 acceptable to the Board.

13 CHAIRPERSON JORDAN: Sure. Thank
14 you. Yes. Okay. All right. Would the
15 applicant proceed first?

16 MS. SHIKER: Good afternoon,
17 again, Members of the Board. My name is
18 Christy Shiker with the Law Firm of Holland &
19 Knight. And I am here today representing the
20 applicant in BZA Case 18330. It is for
21 variance and special exception relief for
22 property located at 2337 Champlain Street.

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1 Our team has already introduced
2 themselves, but again, to my right is Charlie
3 Kehler representing the applicant; Mr. Goins,
4 the architect for the project; and Mr. Sher
5 the Director of Zoning and Land Use Services
6 for Holland & Knight.

7 As a preliminary matter, I would
8 like to request qualification of my expert
9 witnesses. We have submitted Mr. Goins as an
10 expert in architecture and we have submitted
11 Mr. Sher as an expert in zoning and land use.

12 Both of these gentlemen have been accepted as
13 experts many times before this Board. We have
14 also submitted their r sum s at Tabs F and G
15 of the prehearing submission. And I would
16 request that you qualify them again today in
17 their respective fields.

18 CHAIRPERSON JORDAN: If you would
19 just give us one second first.

20 MEMBER MacMURRAY: Can I have the
21 correct spelling of your last name, please?

22 MR. GOINS: G-O-I-N-S.

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1 MEMBER MacMURRAY: Okay. Thank
2 you.

3 CHAIRPERSON JORDAN: Let's do it
4 this way. It has been represented to me by
5 the Secretary that Mr. Goins has been
6 previously approved as an expert. Is that
7 correct?

8 MR. GOINS: Yes, numerous times.

9 CHAIRPERSON JORDAN: And Mr. Sher,
10 I think, he might be in there somewhere. I
11 thought they were going to name this room for
12 him. But anyway, we're good. So we will
13 accept both experts.

14 MS. SHIKER: Thank you very much.
15 If the Board would like, I could enter an
16 introductory statement and then begin the
17 witnesses.

18 CHAIRPERSON JORDAN: I do think we
19 are pretty clear as to where we are. And we
20 could probably help particularly as there are
21 some questions about light and shade and some
22 other things, if you could go through that?

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1 MS. SHIKER: Absolutely.

2 CHAIRPERSON JORDAN: We have all
3 read your prehearing statement and we have all
4 reviewed the file, so we are pretty much up on
5 that.

6 MS. SHIKER: Okay. Wonderful. So
7 what I'll do is I'll give a brief introduction
8 and then I will turn it over to our witnesses
9 to present some specific information with
10 respect to the questions that you have.

11 You know, as you have seen in the
12 record, we are very pleased we built a
13 coalition of support with the Office of
14 Planning, with District Department of
15 Transportation, the ANC, but we, of course,
16 know that the Erie Condominium is opposed to
17 the project and has concerns over light, air
18 and views.

19 We have met with them. We have
20 met at least on two occasions and we have
21 presented to the ANC on four occasions. And
22 since originally submitting the application,

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1 we have made changes trying to address these
2 concerns, specifically our original request
3 was for a building that had a maximum height
4 of 50 feet. We have reduced that to the
5 maximum height of the parapet being 40 feet 9
6 inches.

7 We have also reduced the size of
8 the roof structure to the maximum extent
9 possible and set it back as far away as we can
10 from the Erie Condominium. Mr. Goins will, in
11 just a moment, describe in detail how those
12 absolute height elevations match up.

13 I know there are some questions in
14 the record about how tall the Erie building
15 is, how tall our building is and how they
16 match up and Mr. Goins is going to talk about
17 that in detail.

18 We also believe that by setting
19 back the penthouse, we really have created a
20 superior condition to some of those conditions
21 that could have been as a matter-of-right.
22 And we have also, as Mr. Goins will talk

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1 about, limited the area of the active rooftop
2 space. And we are going to talk a lot about
3 that to the north and south sides of the
4 penthouse.

5 So the closest active rooftop
6 space is going to be over 23 feet from the
7 Erie and this is to make sure that we are
8 allowing them use and enjoyment of their roof
9 structure with no adverse impact.

10 I think what I'll do is go
11 directly to Mr. Goins to talk through the
12 project, the light, the air, the views and
13 then to the extent that you have any questions
14 to Mr. Kehler, we could do those during
15 question and answer and then I'll have Mr.
16 Sher conclude by talking through the standards
17 and how we meet each prong of the burden,
18 which we have set forth in our statement as
19 well. Mr. Goins?

20 MR. GOINS: Yes, good afternoon.

21 MS. COHEN: Mr. Goins, before you
22 start, I would like somebody to tell us

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1 exactly the location using one of your maps,
2 maybe A-01A, where is the area in relationship
3 to this building exactly.

4 MR. GOINS: Okay. You can kind of
5 see on this first slide here. I have hatched
6 -- the site is currently a vacant parking lot.

7 And so we have hatched it there in the yellow
8 color there. The Erie is the property
9 directly north of that hatch, the yellow hatch
10 right there.

11 And if you go to --

12 CHAIRPERSON JORDAN: When you use
13 the term north, you mean up or down?

14 MR. GOINS: I mean up. Yes,
15 Champlain goes north to south. It is wedged
16 in between 18th and Ontario Road, which are on
17 the -- you will see them on -- 18th on the
18 west and Ontario on the east.

19 But the property is directly
20 abutting our property to the north.

21 And I'll skip through some of
22 these slides and go right to --

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1 CHAIRPERSON JORDAN: Just give us
2 one second. Can we have the lights dimmed,
3 please?

4 MR. GOINS: I mean, this is a
5 slide showing the Reed-Cooke Overlay. And
6 once again, I have highlighted the site, the
7 yellow color. And our site is in the Reed-
8 Cooke R-5-B Overlay. The adjacent property
9 right to the north is right outside of the
10 overlay.

11 And you can kind of get a sense.
12 I'll go right towards -- to the site plan,
13 since the Board is familiar with the case.

14 The site is kind of unique in the
15 fact that it is sort of a transverse sloping
16 site, meaning it goes from north to south and
17 also east to west. And particularly, it goes
18 from north to southwest. So it has some
19 practical difficulty there.

20 The first thing we looked at was
21 numerous different design ideas, whether it
22 was a T-shape, an L-shape and the end result

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1 was very poor air and light for the majority
2 of the units. The only units that we could
3 provide air and light for were along Champlain
4 Street.

5 So we started developing this idea
6 of a courtyard where we could create an
7 intimate courtyard, provide air and light and
8 also have air and light along Champlain
9 Street.

10 So what, in essence, we have is a
11 double-loaded bar along Champlain Street
12 separated by a courtyard with a single bar in
13 the back.

14 The garage entrance -- the second
15 unique thing about this site which made it
16 very challenging is we had to put the garage
17 on the high side of the site. This is
18 counterintuitive to what you want to do. The
19 bend in the south part of the site there made
20 a garage ramp nearly impossible to get to
21 work. So we -- it kind of pushed us to put
22 the garage at the high end of the site.

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1 The net result of this is we have
2 had to raise the building to get the garage to
3 work. And I'll kind of go to the section to
4 kind of show that.

5 One of the things, other things,
6 that I wanted to say is we met with the Office
7 of Planning in the beginning. We set the
8 building back off the front property line 5
9 feet. And it's actually greater on the other
10 end. But the property has a bend, so there is
11 a point there where it is not 5 feet, but at
12 the two ends of the property along Champlain
13 Street, we really wanted to create a
14 pedestrian-friendly property.

15 And I think you will see that in
16 some of the elevations and perspectives,
17 because Champlain is a very narrow street with
18 parking on both sides. And most of the
19 buildings are 40 to 50 feet in height.

20 This section is probably one that
21 kind of demonstrates the ramp. Christy
22 mentioned that we have actually lowered the

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1 building an additional 15 inches, since our
2 original design. So we have the garage ramp
3 at the actual -- the absolute maximum it can
4 be by code right now. So and we are just
5 barely getting underneath that bar along the
6 northwest part of the double-loaded bar there
7 you will see.

8 Here is another section you can
9 kind of see the grade conditions here. Here
10 is one of the high parts. I didn't mean to do
11 that. There is the high part of the grade.
12 Here is one of the lower parts of the grade
13 there to go through and you can see it again
14 down here.

15 And you can kind of see what is
16 happening with the site. So the end result of
17 a lot of the raising the building, our garage
18 counted against our FAR to the tune of, I
19 think it is, 3,182 square feet. It is almost
20 equal to what we are asking.

21 The only difference is there is a
22 lobby of about 300 square foot. For ADA

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1 reasons, we had to get that to work. So that
2 is not included in that calculation.

3 And you can also kind of start to
4 see the sections that we have set the
5 penthouse back 18 feet off Champlain Street
6 and also 18 feet off our property line as
7 well.

8 Here is kind of just some
9 perspectives to kind of give you a sense of
10 the courtyard and kind of what we are trying
11 to create with the project. I think Christy
12 mentioned we were trying to create a superior
13 project and I think a lot of the other
14 schemes, it just wasn't possible to achieve a
15 lot of the air and light and some of the other
16 ideas.

17 Here is kind of a bird'seye view
18 looking into the courtyard. I think the
19 courtyard goes from 25 feet to 27 feet in
20 width.

21 Now, to get to, I think, probably
22 the meat of the case here is the height and

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1 the penthouse. I think we really tried to
2 blend in this project contextually along
3 Champlain Street and so you can kind of see
4 this is a streetscape elevation here.

5 The adjacent property to us, which
6 is the approved Brass Knob, is at a height of
7 50 feet and 2.64 FAR. This is the PN Hoffman
8 building, which is a PUD, at 2.75 and 50 feet.

9 And we are right here and we are at 48.9 feet
10 in measuring.

11 Now, our measuring point is
12 measured -- well, I'll do that on the next
13 slide.

14 And here is the Erie, which is
15 adjacent to us as well. I think you can kind
16 of get a sense of the penthouses there, too.
17 We really tried to blend in with and be
18 contextual with the block.

19 CHAIRPERSON JORDAN: What's the
20 height difference between Erie and this
21 building?

22 MR. GOINS: I'll show you in the

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1 next slide. Here is kind of an enlarged
2 elevation. You can kind of get a sense of
3 that. The slide I wanted to get to was this
4 one.

5 Our measuring point is measured
6 from the median from the north to the south.
7 Our median point is right in the middle of the
8 building. We are at 48.9 to the top of the
9 parapet there. And I think some of the
10 confusion has been that the site is sloping
11 upwards right here. So at the abutting corner
12 right here where the Erie is, we are 46.4 and
13 they are 46 -- let me verify that. 46.5. We
14 are 46.4 right adjacent to them, they are
15 45.11. That's at that absolute corner
16 condition right here. So the end result is
17 that our parapet is 5 inches taller than
18 theirs.

19 We have kind of confirmed this
20 with -- we went out there. We counted brick.
21 We shot a laser. We got structural drawings
22 that were part of the permit. We have also

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1 verified this with the condo plat that has
2 been -- that was filed. So we are fairly
3 certain of the accuracy of that condition.

4 And so the measuring point to be
5 remembered is 48.9. We are at 46.4 on that
6 corner condition there. And I kind of did a
7 little blow up section there to kind of show
8 you really what has happened.

9 They have -- their parapet also
10 acts as a guardrail, which is 3 foot 6. We do
11 not have that condition, so we have the
12 minimum parapet condition.

13 And I'll show you, this is just to
14 kind of show you the seven outdoor private
15 spaces that are part of that penthouse. We do
16 not have a penthouse on the rear bar at all.
17 So we have limited it to the seven people and
18 this is restricted to the areas kind of
19 denoted here. It will be just an open
20 guardrail condition, 42 inches tall.

21 And I have got these two red
22 asterisks here, because we did two

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1 perspectives to kind of show you the view from
2 there. And one is from the front as if you
3 were standing on the Erie and one is at the
4 rear standing on the Erie.

5 This is the first perspective.
6 I'm showing you the 18 foot setback to our
7 penthouse here, which, as Christy mentioned,
8 stands 9 feet tall. This is standing on the
9 Erie with their -- and this is the 5 inch
10 condition, the parapet difference.

11 Now, the original idea of the
12 design, there is a plane. I think you kind of
13 saw it in the original perspective and there
14 is another perspective that will show a kind
15 of quick animation and I'll show as well.

16 This is kind of an architectural
17 embellishment. We really wanted it to be like
18 two planes intersecting at that point. That
19 was kind of our main idea for the design. So
20 there is an architectural embellishment here
21 of 1 foot 4 for that plane where it does
22 exceed our parapet height.

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1 This is the rear view. As you can
2 see, there is no adverse effect at all with
3 the penthouse being setback on both
4 conditions, as Christy mentioned, at 18 feet
5 and 23 feet. So this would be an actual view
6 looking towards the Monument and you can see
7 the Monument there.

8 We did some shadow studies and I
9 think the main thing I want to point out about
10 the shadow studies, whether it is a matter-of-
11 right design or a proposed design, there is no
12 impact or there are identical impact.

13 MEMBER MacMURRAY: What is the
14 "are identical impact?"

15 MR. GOINS: Well, the shadow
16 either wouldn't be cast or it would be cast
17 identical, specifically, in the rear. In the
18 front, it is the identical condition. We
19 don't cast a shadow along the Erie.

20 CHAIRPERSON JORDAN: Let me go
21 back. Are you saying you don't cast a shadow
22 on the Erie?

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1 MR. GOINS: We do not. We do not
2 cast.

3 CHAIRPERSON JORDAN: Okay.

4 MR. GOINS: Yes, this is the
5 summer condition here. This would be our
6 proposed condition as it is now. This is
7 winter at 11:00. This is summer at 11:00 a.m.

8 And you've got to -- the project is almost
9 directly north, so, you know, the sun is going
10 to rise and at 11:00 a.m. there is going to be
11 no shadow. The shadow will be at the rear.
12 The sun will be in the rear of the property.

13 So you can kind of see here in the
14 afternoon here we cast a small shadow here and
15 -- in the summer and in the winter there is a
16 shadow there. And in the summer there is a
17 small shadow there. And this would be
18 proposed at 40 feet, so this would be the
19 condition at 40 feet. It's the same shadow
20 whether it's at 40 feet or 50.

21 And it is to be noted also that we
22 have pushed this building back 5 feet off the

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1 property line. I mean, we were trying to
2 create a pedestrian-friendly. We are really
3 trying to blend in with the context of
4 Champlain Street, too.

5 So this is the condition that is
6 pushed back 5 feet from the property line.
7 Here is the rear condition. And you can see
8 it's the same whether it is the proposed or a
9 matter-of-right scheme. The shadow that is
10 cast is identical.

11 And then in the winter, there is
12 no shadow. The sun is too low. And then at
13 4:00 there wouldn't be a shadow on the rear of
14 the property at all. Around 12:00 there is
15 this -- this shadow is in the center of the
16 property at the rear.

17 Here is kind of the street
18 perspective and I guess you can kind of get a
19 sense for this plane idea. We really wanted
20 to kind of get a sense for the setback here
21 where we really wanted to kind of open up this
22 area here. I think it is around 7 feet here

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1 with our lobby entrance there and it's 5 feet
2 off the property line there.

3 There are entrances to the lower
4 units right here. We have three units located
5 along the front there, so that's another
6 reason we did that. Oh, yes, and this is the
7 proposed Brass Knob that is we -- this is the
8 approved BZA drawings there. So our property
9 is right here. This would be the Brass Knob.

10 And we do have a quick animation
11 and I think what we really wanted to show in
12 the animation was a sense of, one, Champlain
13 Street, our attempt, and I think we have done
14 it successfully, is to blend in with the
15 height, the massing of the existing conditions
16 along Champlain Street.

17 And also the kind of -- at the end
18 of the animation, you will see the -- we kind
19 of lift the camera up to about 40 feet, so you
20 can kind of see the 5 inch and you can
21 actually see the penthouses.

22 Also, it also shows that you can't

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1 even tell the 5 inches from the street level
2 at all. It is virtually -- so this is the --
3 that's the PN Hoffman project there. This
4 would be the approved Brass Knob. It has the
5 setbacks there, but there is -- it goes
6 taller.

7 Here is our project. There is the
8 plane idea. I think we are 40 feet in the air
9 here. Here is the penthouse condition and you
10 can kind of see the 5 inches there and there
11 is the plane idea with our architectural
12 embellishment.

13 And I think that kind of concludes
14 my part of the testimony and I'll turn it back
15 to Christy.

16 MS. SHIKER: Before I ask Mr. Sher
17 to speak, I just want to clarify something
18 with Mr. Goins. You said that you were fairly
19 certain about the elevation. Is that a
20 correct statement or have we confirmed this
21 both of the structural plans as well as the
22 recorded documents in the Office of the

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1 Surveyor regarding the condominium?

2 MR. GOINS: We are very certain.

3 MS. SHIKER: Thank you. I would
4 then ask Mr. Sher to testify as to compliance
5 with the standards.

6 MR. SHER: Mr. Chairman, Members
7 of the Board, for the record my name is Steven
8 E. Sher, the Director of Zoning and Land Use
9 Services with the Law Firm of Holland &
10 Knight.

11 You have my outline of testimony
12 before you. I'm going to skip very lightly
13 over the first few pages. Basically, they
14 indicate -- Jeff has already talked about
15 where the site is and what it looks like and
16 what the frontages are.

17 We are in the Reed-Cooke R-5-B
18 District. We are subject to Inclusionary
19 Zoning, which means that we have a 20 percent
20 increase in FAR over the 1.8. So 2.16 would
21 be what is allowed as of-right and we are
22 asking for a variance from that, which I'll

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1 get to in a minute.

2 And then the Reed-Cooke Overlay
3 takes the normal 50 foot height in R-5-B and
4 reduces it to 40 feet, but we are, again,
5 asking for a special exception to get back to
6 the 50 feet.

7 So, okay. Then why are we here?
8 What are we asking for? We are asking for two
9 things: A variance from the FAR requirements.

10 As indicated, the matter-of-right under R-5-B
11 is 2.16 FAR or 29,922 square feet. We have
12 proposed 2.41 or a variance of 0.25 FAR or
13 3,464 square feet. And I'll get back to that
14 in a minute.

15 The second thing we are asking for
16 is a special exception under ' 1403.1. As I
17 said, the maximum permitted height is 40 feet.

18 We are proposed at 48.75 feet or 8.75 feet
19 over what is allowed. The special exception
20 would allow you to get up to 50. We are
21 asking for 48.75.

22 Okay. The basis/standards for a

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1 variance three part test. Exceptional or
2 extraordinary situation or condition of the
3 property, point number one.

4 Point number two, a strict
5 application creates a practical difficulty for
6 the owner.

7 Point number three, that the
8 relief can be granted without substantial
9 detriment to the public good and without
10 substantially impairing the intent, purpose
11 and integrity of the Zone Plan.

12 Okay. In addressing how we meet
13 those standards, point number one, what's
14 exceptional about the property? Well, you
15 start off saying it looks kind of square and
16 normal. It's undeveloped at the moment, so
17 there is nothing on it.

18 But then as Jeff pointed out, when
19 you start looking at the site, there is a 9
20 foot difference in grade between the northeast
21 corner back on the alley and the southwest
22 corner on Champlain Street.

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1 So in effect, the high point is up
2 at the northwest and the low point --
3 northeast and the low point is down at the
4 southwest. You want to usually take your
5 access to underground parking from the low
6 point on the site. You don't want to have to
7 start up in the air, drop down through the
8 building and then get to your parking garage.

9 In this case with 40 units in the
10 building, we are required to have 20 parking
11 spaces. We have nine on the surface at the
12 rear, but we need to have 11 somewhere within
13 the building. That somewhere within the
14 building is in the one level that is partly
15 below-grade.

16 To get to that one level, you have
17 got to start -- as we said before, we can't
18 come in off the low point on the site, which
19 is on Champlain Street, because nobody wants
20 us to interrupt the streetscape and DDOT and
21 OP and everybody said take your access from
22 the rear. So we are bringing out access in

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1 from the rear.

2 It is difficult to the point of
3 being burdensome to take your access from the
4 southeast corner on the alley there, because
5 we are missing a piece of the lot at that
6 point. It's where the lot jogs on that south
7 lot line and trying to take your parking ramp
8 down and into the building at that point is
9 constrained by that.

10 So we are forced to bring the
11 parking ramp in from the high point on the
12 site at the northeast corner. And in order to
13 get there and get into the building and get
14 down to the parking garage level where we have
15 11 additional spaces, we had to raise that
16 level up higher than we would have liked.

17 Once we did that, we wound up
18 having to include that parking garage level in
19 the gross floor area of the building.
20 Ordinarily, you put the parking below-grade
21 and it doesn't count against FAR. It's not
22 the kind of use that the regulations are

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1 normally encouraging in the building. It is
2 accessory. It's incidental for the units.
3 You have to have it. But it normally doesn't
4 count against FAR.

5 So what we have is a situation
6 where the way the building is designed, the
7 amount of square footage in the building about
8 offsets the amount of the variance that we
9 have asked for, the amount of extra square
10 footage, because we had to raise that ceiling
11 up to get it out of the grade. So that's
12 letting me just clarify that point. So that's
13 the reason for the need for the additional
14 FAR.

15 In terms of the substantial
16 detriment point, the project is exclusively a
17 residential project, which the Reed-Cooke
18 Overlay encourages. The whole point of Reed-
19 Cooke was to take an area that was a
20 combination of residential and light
21 industrial and the light industrial was a mix
22 of automobile repair, warehouses, printing

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1 establishments and whatnot and transitioning
2 that to a predominantly residential
3 neighborhood.

4 A lot of those light industrial
5 uses are gone or are in the process of being
6 replaced. This is a vacant site, so what we
7 are doing here is constructing a building.
8 But the point is it's a residential project,
9 which is, obviously, consistent with the R-5-B
10 Zoning, but it is what the Reed-Cooke Overlay
11 was intended to encourage when you read the
12 purposes in Chapter 14.

13 And then the second point here is
14 that the extra floor area that we get through
15 the variance does not increase the number of
16 units in the building. What it does is allow
17 for that parking to get into that lowest
18 below-grade level.

19 So I think through that set of
20 explanations, we have addressed the question
21 of why the property should be granted a
22 variance from the FAR requirement in the

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1 amount of about 3,000 and some odd square
2 feet.

3 The second area of relief that we
4 have asked for is a special exception to
5 increase the height. And as the Board is
6 familiar, a special exception is a situation
7 where the regulations allow a particular use
8 or feature, provided that the Board has to go
9 through or make a set of specific findings as
10 to compliance with the criteria in the
11 regulations.

12 The criterion in the regulations
13 are set forth in ' 1403.1 and I won't repeat
14 them. They are on page 6 of the outline.
15 What I do want to go to is how we comply with
16 those standards and that starts in Roman
17 Number VII at the -- towards the bottom of
18 page 6.

19 Okay. How do we comply with those
20 specific standards listed in 1403.1? Well,
21 residential is one of the most favored uses of
22 the overlay. So we are taking a vacant site

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1 and replacing it with an apartment house with
2 40 units.

3 Vehicular access and egress is
4 supposed to minimize conflicts with pedestrian
5 ways. Well, again, we have put the garage
6 entrance off the alley, rather than off the
7 street, as you could have seen from the flyby
8 that Jeff did. Champlain Street is a
9 relatively narrow street. And so rather than
10 impinge on the pedestrian space there, we
11 brought the access in off the alley off the
12 rear.

13 The parking that we are providing
14 meets all the requirements of the regulations
15 as to the number of spaces, the access, the
16 size and so forth. The specific requirement
17 about paragraph (d) applies only to a C-2-B
18 District where -- R-5-B not C-2-B, so that
19 isn't applicable.

20 With respect to noise, this is a
21 residential use. The apartments will generate
22 no noise that would be unexpected or unusual

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1 for that use in any way different from what
2 could happen in any other residential building
3 in that neighborhood. I'm not going to speak
4 to whether the guy in Apartment 3 turns his
5 stereo up too loud, but it's a residential use
6 and it is going to be the same as the
7 residential uses up and down that street.

8 I think that standard was intended
9 more to deal with expansion of existing
10 industrial or commercial uses rather than
11 residential.

12 With respect to the outdoor
13 storage, we're not going to have any outdoor
14 storage of materials or no processing,
15 fabricating or repair on the site.

16 In terms of the height of the
17 building, as Jeff went through a couple of
18 minutes ago, the top of the parapet on the
19 north wall of this building is only 5 inches
20 higher than the top of the parapet on the
21 south wall of the Erie Condominium. Says he
22 holding his hands about 5 inches apart.

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1 That's the difference in height between the
2 top of the parapet on the Erie and the top of
3 the parapet on our building.

4 We think that and I think that
5 that results in a minimal impact on views from
6 that building. Yes, if you were sitting at a
7 certain angle, that distance would cut off a
8 view of something. I'm not sure what it cuts
9 the view off of, but I don't believe that it
10 is significant or substantial or material in
11 terms of the view from that adjoining
12 building.

13 The elevator penthouse which is
14 required to get access through the building
15 doesn't actually take you to the roof. You
16 get to the roof only from the seven units on
17 the top floor of the building. This is not a
18 communal use of the roof. These are seven
19 individual roof terraces for the four units on
20 the front and the three units on the back or
21 is it the other way around? The other way
22 around.

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1 Four units on the back and three
2 units on the front. Each one has an internal
3 stair leading up into the penthouse and then
4 out onto the roof terrace.

5 The penthouses are only 9 feet
6 tall above the level of the roof. They could
7 be 18.6 as a matter-of-right, but they are
8 only 9 feet tall. They are set back 18 feet
9 from the edge of the roof, so they are set
10 back 2:1, rather than 1:1 which is sort of the
11 normal rule of thumb for the setback of roof
12 structures.

13 As we said before, the individual
14 roof terraces are on the east and west sides
15 of the penthouse, so they are at least 20 feet
16 removed from the north wall of our building
17 overlooking the Erie to the north. And only
18 the two units at the upper most end of that
19 would have any access to those, so you are
20 talking about a couple of people who if they
21 are up on the roof and not reading their book
22 or looking at the sun or looking at the

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1 Monument to the south would even have an
2 opportunity to look to the north at the roof
3 of the adjoining building.

4 So for all of those reasons, I
5 reach the following conclusions. The size,
6 shape and topography of the lot combine the
7 form and exceptional condition of the
8 property, which limits how far the lowest
9 floor can be lowered into the ground, the
10 practical difficulty results from the
11 requirement to provide 20 parking spaces on
12 the site and the need to put some of those
13 spaces in the building.

14 We can't put them all outside,
15 some of them have to go in the building. Once
16 you have to put them in the building, you've
17 got to figure out how to get them into the
18 building, therein lies the rub.

19 The inability to change the access
20 point and the required clearances for access
21 result in a portion of the lowest level being
22 charged against FAR. There go the FAR

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1 variance noting again that the extra floor
2 area that we picked up does not result in more
3 units. It just accommodates the parking.

4 The residential development is the
5 most favored use in the RC Overlay. Again,
6 the goal of that overlay was to transform the
7 former mixed residential and industrial area
8 to predominantly residential. The height is
9 comparable to and compatible with heights on
10 adjoining properties to the north and south
11 and I think the animation that Jeff showed was
12 a very good illustration of that.

13 Great care has been taken in the
14 design to minimize the impacts on the building
15 to the north. And as we just finished going
16 over again, the parapet and the roof are
17 within proximity of those two buildings.

18 And for all those reasons, I
19 believe we have met the burden of proof under
20 the regulations and the application should be
21 granted.

22 MS. SHIKER: Thank you. That

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1 concludes our direct presentation and we would
2 be happy to answer any questions that you
3 have.

4 CHAIRPERSON JORDAN: Any questions
5 from the Board?

6 MS. COHEN: Mr. Sher, you did
7 mention something about Inclusionary Zoning.
8 You are not asking for a variance of that, are
9 you?

10 MR. SHER: No. We are going to
11 provide the square footage required under the
12 regulations.

13 MS. COHEN: And how many units
14 does that translate to, the 1,870?

15 MR. SHER: About four, I believe.
16 I think Mr. Kehler can answer that.

17 MR. KEHLER: Yes. The total
18 amount of square footage dedicated to
19 affordable housing is 3,740. 1,870 is for
20 moderate income households and 1,870 is for
21 low income. And it is, approximately, four.
22 It is four units.

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1 MS. COHEN: Thank you.

2 CHAIRPERSON JORDAN: Any other
3 questions? If not, there is no further
4 questions from the Board, if we can have the
5 party in opposition have any cross-
6 examination, please? And if you remain at the
7 table, it will help us out substantially.

8 MS. HORVITZ: Good afternoon
9 again. This is Lauri Horvitz on behalf of the
10 Erie Condominium. I have a series of
11 questions and I will try to tell you who I'm
12 directing it to, but if I don't specify,
13 whoever is best capable, I would appreciate
14 it.

15 CHAIRPERSON JORDAN: If you would
16 just direct it to the party, we will let them.

17 MS. HORVITZ: Right. Exactly.
18 Exactly.

19 Now, I have heard a lot of
20 reference to 5 inches difference between the
21 Erie and the proposed development project.
22 That's 5 inches from the top of the two

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1 parapet walls, correct?

2 MR. GOINS: Yes.

3 MS. HORVITZ: And the roof of the
4 two buildings are not at the same level,
5 correct?

6 MR. GOINS: Yep, yes.

7 MS. HORVITZ: I thought I heard
8 testimony that the parapet wall for the Erie
9 is, approximately, 3.5 feet tall. Is that
10 correct?

11 MR. GOINS: That is correct.

12 MS. HORVITZ: And the parapet wall
13 for the FCP project is about 5 or 6 inches.
14 Is that correct?

15 MR. GOINS: Yes, that's correct.

16 MS. HORVITZ: So the roof line
17 difference is not, in fact, 5 or 6 inches, is
18 it?

19 MR. GOINS: No.

20 MS. HORVITZ: The difference in
21 the roofs where people are actually standing
22 is how many feet?

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1 MR. SHER: It's 2 feet 10 inches.

2 MS. HORVITZ: Well, let's break
3 that down. I saw that in your presentation,
4 Mr. Sher, although you didn't testify to it.

5 You have a 3.5 foot parapet wall,
6 right? And then on top of that you have a 5
7 inch parapet wall. I mean, isn't it closer to
8 a 4 foot difference between the two roofs?

9 MR. SHER: I don't believe it is,
10 no.

11 MR. GOINS: No, it's not.

12 MS. HORVITZ: Well, how tall is
13 the FCP building at the roof?

14 MR. SHER: To the top of the roof,
15 the plan on Sheet A4.1 shows the roof to be,
16 of our building, at elevation 198.10.

17 MS. HORVITZ: At the north corner
18 or at the general measuring point?

19 MR. SHER: I think the elevation
20 is pretty much the same all the way across the
21 roof, right?

22 MR. GOINS: Yes.

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1 MS. HORVITZ: Okay.

2 MR. SHER: It's 198.10.

3 MS. HORVITZ: Okay. So what is
4 the elevation of the Erie then? Is there any
5 graphic depiction of that?

6 MR. SHER: The roof of the Erie is
7 196.0, as I understand it.

8 MS. HORVITZ: And what is the
9 basis of that?

10 MR. SHER: Well, measurements
11 taken by Mr. Goins, Mr. Kehler, plans that we
12 have seen in the condo documents, which show a
13 height to the top, to the ceiling of the top
14 story of, approximately, 1 foot less than
15 that.

16 MS. HORVITZ: Can I -- so what is
17 that difference?

18 MR. SHER: It's the difference
19 between 196 and 198.11, which is --

20 MS. HORVITZ: Okay.

21 MR. SHER: -- 2 feet -- I'm sorry,
22 198.10. 2 feet 10 inches.

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1 MS. HORVITZ: Okay. So it's not 5
2 inches, it's closer to 3 feet. Is that right?
3 That's your testimony?

4 MR. SHER: The difference between
5 the height of the building? The top of the
6 roof on one building and the top of the roof
7 on the other is 2 feet 10 inches. The
8 difference between the two parapet levels is
9 only 5 inches, because there is a higher
10 parapet and a lower parapet.

11 MS. HORVITZ: Right. But the
12 people who are standing on the roof at the
13 Erie are about 3 feet below where people would
14 be standing on the roof of the new structure,
15 correct?

16 MR. SHER: Approximately.

17 MS. HORVITZ: Okay. Now, I heard
18 testimony that there are going to be some
19 restrictions on the use of the roof. Is --
20 are there gates or fences or walls that are
21 going to restrict that use?

22 MR. SHER: Yes. There is going to

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1 be -- around the roof terrace, there is going
2 to be a 42 inch open railing. Thank you.

3 MS. HORVITZ: And do your graphic
4 depictions of what the views are going to see
5 from the Erie include those railings?

6 MR. SHER: They do not.

7 MS. HORVITZ: Are the restrictions
8 in use going to be reduced to a condition in
9 the zoning order?

10 MR. SHER: As to the location of
11 the terrace? I'm not sure when you say
12 restrictions on use.

13 MS. HORVITZ: Well, let me clarify
14 then. The applicant has made the
15 representation that people will not be
16 congregating near the Erie, that they are
17 going to be essentially cordoned off by
18 railings near their own penthouses, so as to
19 minimize adverse effects.

20 And my question is is that going
21 to be included as a condition proposed to the
22 Board of Zoning Adjustment?

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1 MR. SHER: I don't think we would
2 have any objection to that if the Board wanted
3 to impose that as a condition. We have shown
4 where the terraces are.

5 MS. HORVITZ: Can you tell me what
6 percentage of the roof is going to be occupied
7 by penthouse structures?

8 MR. SHER: No.

9 MS. HORVITZ: Is it your
10 understanding, Mr. Sher, that there is a limit
11 on the percentage of a roof that can be
12 occupied by penthouse structures under the
13 Zoning Regulations?

14 MR. SHER: Not in an R-5-B
15 District.

16 MS. HORVITZ: So it's not your
17 understanding that penthouse structures would
18 be limited to a third of the roof?

19 MR. SHER: That is correct. They
20 are not limited to a third of the roof in a
21 district where there is no limit on the number
22 of stories.

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1 MS. HORVITZ: So do you know
2 whether the penthouse structures that are
3 being proposed in this application exceed a
4 third?

5 MR. SHER: I don't know. Mr.
6 Goins may know.

7 MR. GOINS: No. No, I don't know.

8 MS. HORVITZ: You don't know?

9 MR. GOINS: No.

10 MS. HORVITZ: And what are the
11 anticipated uses of the penthouse structures?

12 MR. GOINS: It's for the access
13 for the seven units below.

14 MS. HORVITZ: And --

15 MR. GOINS: And the mechanical
16 equipment, yes.

17 MS. HORVITZ: Okay.

18 MR. GOINS: It will be restricted
19 to the mechanical equipment and access to the
20 roof.

21 MS. HORVITZ: So there won't be
22 any finished interior space on the roof?

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1 MR. GOINS: Well, the mechanical
2 rooms will be finished, but, no otherwise.

3 MS. HORVITZ: No showers,
4 bathrooms?

5 MR. GOINS: No.

6 MS. HORVITZ: Okay. I believe
7 there was a reference in the presentation to
8 the fact that the applicant contends that the
9 Erie is not in the RC Overlay District. Why
10 was that significant to the applicant to point
11 out without conceding the point?

12 MR. SHER: A, it's a matter of
13 fact. And B, it indicates that the Erie
14 building could have been built to the same
15 height or a slightly higher height than what
16 we -- than this is proposed for. It isn't,
17 but it could have been.

18 MS. HORVITZ: And does that change
19 the zoning analysis? Are you saying that the
20 Erie is less entitled to zoning protection
21 because it could have been taller?

22 MR. SHER: No, I never said that

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1 at all.

2 MS. HORVITZ: If there is a
3 question about whether a property is or is not
4 within an overlay, Mr. Sher, are you familiar
5 with procuring a Zoning Certification from the
6 District of Columbia Government?

7 MR. SHER: I believe I have done
8 that on a number of occasions, yes.

9 MS. HORVITZ: And when -- is it
10 then the applicant's, of that Zoning
11 Certification, right to rely on that
12 certification for purposes of understanding
13 whether they are or are not in a particular
14 zone or overlay?

15 MR. SHER: I would assume if I got
16 a certification from the Office of Zoning, if
17 I believed it to be correct, I would rely on
18 it.

19 MS. HORVITZ: Okay. Are you aware
20 that there was a BZA Order in 2008 in which
21 the Erie was determined by the BZA to be
22 within the RC Overlay?

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1 MR. SHER: I don't think I
2 testified to that, but I don't -- I am not
3 familiar with that order, if there is one.

4 MS. HORVITZ: And you are not
5 familiar, are you, with a Zoning Certification
6 letter in 2002 that was procured by and
7 through Holland & Knight for the Erie?

8 MR. SHER: I'm not, no. I'm
9 looking at the Zoning Map from the Office of
10 Zoning, dated April 2, 2012.

11 MS. HORVITZ: I noted that there
12 were some -- first of all, the packet that was
13 hand -- there was a packet. It was handed out
14 today. Was that just filed today?

15 MS. SHIKER: Correct. That was a
16 copy of the PowerPoint presentation for the
17 record.

18 MS. HORVITZ: And those shadow
19 studies and the depictions on the roof, were
20 they just provided to the Erie today?

21 MS. SHIKER: Those shadow studies
22 were presented to the ANC and I'll ask Mr.

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1 Kehler to confirm whether they were provided
2 directly to the Erie.

3 MR. KEHLER: When I met with Mr.
4 Wiedis in January, I provided our initial
5 shadow studies. They weren't as comprehensive
6 as this, but they certainly showed the
7 Champlain elevations.

8 MS. HORVITZ: You certainly though
9 didn't provide, at any point until today,
10 visual renderings of the view from the Erie
11 roof, did you?

12 MR. KEHLER: No.

13 MS. HORVITZ: Now, directing your
14 attention to the shadow studies that you
15 discussed in your direct where you are
16 comparing the proposal to matter-of-right
17 development, and I guess I'm referring to page
18 9 of the packet that was handed out today, is
19 there an assumption with the matter-of-right
20 analysis that the penthouses could be on the
21 lot line with the Erie?

22 MR. GOINS: I think that was just

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1 showing a maxed out condition at 40 feet, what
2 would be -- what could be done. I mean, we
3 didn't propose that, but that's just an
4 example. We wanted to do a shadow study
5 showing the proposed versus a 40 foot height
6 with a maximum 18 foot penthouse.

7 MS. HORVITZ: Right. And my
8 question was in order to make that comparison,
9 you assumed that there could be an 18 foot 6
10 inch penthouse directly on the lot line with
11 the Erie and, therefore, that the shadows
12 would be no worse under your proposal. Is
13 that what you did?

14 MR. GOINS: Yes.

15 MS. HORVITZ: Okay. And is it the
16 position of the applicant that, in fact, a
17 penthouse could, as a matter of right be built
18 at 18 feet 6 inches on this exterior wall next
19 to the Erie?

20 MS. SHIKER: Yes. It's not an
21 exterior wall. That's -- I'm sorry. It's not
22 an exterior wall at the lot line party wall

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1 and the Board has consistently held that no
2 setback is required and this follows from the
3 Belmont decision of some years ago.

4 MS. HORVITZ: So is it significant
5 to you if, in fact, the Erie could only be
6 built as of-right to 40 feet, would that
7 change your analysis of whether this is an
8 exterior wall?

9 MS. SHIKER: No.

10 MS. HORVITZ: It would not?

11 MS. SHIKER: It would not change
12 our analysis of the exterior wall.

13 MS. HORVITZ: And do you have any
14 understanding as to whether there are any
15 pending changes to the Zoning Regulations that
16 would alter the treatment of those penthouse
17 structures so they could not sit on the lot
18 line as you have depicted as of-right?

19 MR. SHER: The whole set of Zoning
20 Regulations is under consideration for
21 changes. My recollection is that --

22 CHAIRPERSON JORDAN: I'm just

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1 going to say that that's really not relevant
2 as to the changes that are coming up and I
3 thought there might have been an objection,
4 but it wasn't and so --

5 MS. HORVITZ: Fine. There was --
6 there has been some discussion of the garage
7 and the need or occasion by the design of the
8 garage. And I would like to direct some
9 questions on that.

10 First of all, in order to build
11 the garage as you have proposed it, how many
12 feet specifically does the applicant need to
13 bump up its height?

14 MR. GOINS: It's approximately 5
15 feet.

16 MS. HORVITZ: So for purposes of
17 the garage, you would only need a special
18 exception of 5 feet, correct?

19 MS. SHIKER: I don't think the
20 witness understands the question.

21 MS. HORVITZ: Okay. I'll rephrase
22 it. I thought it was the applicant's

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1 testimony that one of the reasons why the
2 additional height was necessary, for which a
3 special exception is being sought was because
4 the building needed to be elevated to fit the
5 garage, correct?

6 MR. GOINS: Well, actually, it has
7 a lot to do with the actual ramp, to get the
8 ramp condition to work. There is a maximum
9 slope that you can do for the ramp. I mean,
10 it's both. I mean, the ramp and the height of
11 the garage are working together against us.

12 MS. HORVITZ: Right. But in order
13 to solve that problem, the one that you have
14 alleged, you would need a 5 foot special
15 exception, right?

16 MS. SHIKER: I think that the
17 testimony that she is referring to was related
18 to the FAR variance and conversion of non-FAR
19 space to FAR space, which happens when you
20 raise the building. That testimony did not
21 relate to the special exception standard.

22 MS. HORVITZ: So if your variance

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1 request -- I'll strike that.

2 Let's talk about the design of the
3 garage. Is it the applicant's testimony that
4 it cannot excavate deeper to accommodate a
5 garage fully below-grade?

6 MR. GOINS: There is significant
7 difficulty in doing that.

8 MS. HORVITZ: Is there -- have you
9 done say soil testing or drilling of some sort
10 that would speak to environmental conditions,
11 soil conditions that present a problem?

12 MR. GOINS: No.

13 MS. HORVITZ: Are there any
14 environmental conditions on the site that
15 cause the excavation to be particularly
16 hazardous or challenging?

17 MR. GOINS: The site --

18 CHAIRPERSON JORDAN: I'm going to
19 rule that out of order, because it's really
20 not relevant to what is before the Board, at
21 this point.

22 MS. HORVITZ: If I might explain

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1 my rationale? I mean, it has been represented
2 to this body that this is really the only way
3 they can build the garage and that they need
4 both the variance and I would contend also the
5 height that is a consequence. And the
6 standard speaks to whether there is something
7 exceptional about the site that requires --
8 that justifies the relief being sought.

9 And there are certainly a number
10 of types of circumstances which this body has
11 previously recognized that constitute such
12 exceptional circumstances.

13 CHAIRPERSON JORDAN: But I don't
14 think they presented to this body an
15 environmental reason.

16 MS. HORVITZ: Well, I just wanted
17 to --

18 CHAIRPERSON JORDAN: I might be
19 mistaken. I thought that's the line of
20 questioning was there an environmental reason
21 for the digging or that they were going to
22 encounter during the digging. I thought that

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1 was your question. I might be incorrect.

2 MS. HORVITZ: No. And that was my
3 question. And my point is that I would like
4 to establish that there -- through questioning
5 that there are not the kinds of circumstances
6 that have previously been recognized as
7 persuasive by this body to justify.

8 CHAIRPERSON JORDAN: I will
9 continue to make that overruled. I would find
10 that to be not relevant.

11 MS. HORVITZ: Okay.

12 CHAIRPERSON JORDAN: We could do
13 that all day.

14 MS. HORVITZ: Yes, we could.

15 CHAIRPERSON JORDAN: There is a
16 thousand and one reasons why to meet that
17 particular test.

18 MS. HORVITZ: Very good, very
19 good. This is directed at the architect. I'm
20 sorry, Mr. Goins? Okay. Okay. Did you
21 consider or review any plans that allowed for
22 the building of a condominium on this site,

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1 which did not require either a variance or a
2 special exception?

3 MR. GOINS: We looked at, I think
4 I testified, numerous options.

5 MS. HORVITZ: So were there
6 drawings at least in the early stages that
7 allowed for adequate parking below-grade?

8 MR. GOINS: Not for a superior
9 design and not for the things that I testified
10 to. We were trying to create a project that
11 was pedestrian-friendly, blended in with the
12 context of the neighborhood.

13 A lot of the scenarios, whether it
14 be the garage or whether it was a T-shape or
15 an L-shape resulted in a very poor unit.

16 MS. HORVITZ: So you made a design
17 choice. Is that a fair statement, that it
18 would be better for the design of the building
19 if you could elevate the garage and not
20 excavate entirely?

21 MS. SHIKER: I would object. I
22 think that question has been asked and

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1 answered. He has testified to it on his
2 direct and he has explained that they did
3 again evaluate different options that did not
4 work.

5 CHAIRPERSON JORDAN: Yes. I will
6 overrule the objection and just have the
7 witness answer the question. Rephrase the
8 question and ask, because I think I was
9 unclear, too, as what the response was.

10 MS. HORVITZ: Thank you. I
11 thought you testified that in order to get the
12 kinds of units that you were aspiring to
13 build, you opted for a design that required
14 this particular garage. Is that a fair
15 characterization of your testimony?

16 MR. GOINS: Well, I would say that
17 I think through the weeks and weeks we worked
18 on it, I think that this is probably the -- I
19 would probably testify that this is the only
20 option for -- to get the units to work with
21 the air and quality.

22 MS. HORVITZ: So your testimony is

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1 that you could not build a building with 40
2 residential units on this site without the
3 variance relief?

4 MR. GOINS: I would say that not
5 near -- not with good design.

6 MS. HORVITZ: Okay. So it is a
7 matter of your design aesthetic that is
8 driving your answer, correct?

9 MR. GOINS: Well, it's not a
10 personal aesthetic. But I think the practical
11 difficulty with entering on the low side is
12 it's a structural issue. It's an inefficient
13 issue. It comes down to you are digging up a
14 large portion of the area just to get the ramp
15 to work.

16 And, at some point, it just
17 doesn't make sense. I mean, you are putting
18 an S- or Z-shaped ramp to get down and there
19 is significant practical difficulties to do
20 that.

21 MS. HORVITZ: So if I understand,
22 there are other designs either an S or an L or

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1 some curving ramp that would allow an
2 underground garage on this site? Is that
3 correct?

4 MR. GOINS: We didn't pursue
5 those.

6 MS. HORVITZ: Are they available
7 to you if you had chosen to pursue them?

8 MR. GOINS: I don't know. I
9 didn't -- we didn't pursue them.

10 MS. HORVITZ: Could you clarify
11 what percentage of the lot the applicant is
12 proposing to excavate?

13 MR. GOINS: It's right at 60
14 percent. That's our lot occupancy, so that's
15 it.

16 MS. HORVITZ: Okay. Is there any
17 reason you can't excavate the additional 40
18 percent?

19 MR. KEHLER: To create more
20 subterranean and true subterranean below-grade
21 garage, you end up creating a ramp with a
22 series of switchbacks to get down sufficiently

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1 to make it truly below-grade.

2 And so you get this law of
3 diminishing returns where yes, you are
4 excavating more, but more and more of that
5 space is taken up by the ramp to get down to
6 that lower level. So I mean, it's --

7 CHAIRPERSON JORDAN: So I'm
8 understanding you are saying it kind of
9 balances out regardless if you go down, you
10 either do more of the other to -- so it would
11 still have the same net effect? Is that what
12 you are saying?

13 MR. KEHLER: Yes.

14 MS. HORVITZ: But if you were to
15 excavate additionally, could you build the
16 building without the additional 5 feet that
17 you are asking for associated with the garage
18 in height?

19 MR. GOINS: No.

20 MS. HORVITZ: So you are asking
21 for the additional height of 5 feet to build
22 to your particular design, based on your

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1 analysis of the garage situation. Is that
2 correct?

3 MS. SHIKER: We are asking for the
4 extra height under a special exception
5 standard that was created in the Reed-Cooke
6 Overlay that allows for additional height when
7 you are fulfilling the policies of the Reed-
8 Cooke Overlay.

9 The variance standard is a
10 different standard, as Mr. Sher testified to,
11 which deals with the existence of practical
12 difficulties on this site. And in order to
13 get the garage in and put the parking in, we
14 have testified that we have to raise the
15 building, which converts non-FAR space to FAR
16 space, which justifies the FAR variance.

17 It's not related to the special
18 exception, which is a different standard.

19 CHAIRPERSON JORDAN: And that is
20 actually sustained. Counsel, I'm going to ask
21 you if you would keep in the same perspective
22 with the relief requested, the requirements of

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1 the law, regarding those.

2 We are kind of going back and
3 forth. We are using some times kind of a
4 variance argument in those things that fit
5 within special exception and vice versa. So
6 if you could go per the relief that's
7 requested per that issue, it would help us, I
8 believe.

9 MS. HORVITZ: Very good. And I
10 apologize. It's unusual because as I
11 understand the matter, it's -- in this unique
12 circumstance, they are actually related to --
13 one design decision relating to the garage is
14 impacting their need for the special
15 exception. And I apologize for the confusion
16 as a result.

17 So let me just make sure I
18 understand the last response. Isn't it true
19 that the Reed-Cooke Overlay has more purposes
20 than were mentioned in the direct testimony
21 and that they include the objective of
22 limiting height and density?

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1 MS. SHIKER: I believe that '
2 1400.2(a)(2) says "maintain heights and
3 densities at appropriate levels." I don't
4 believe it says limit.

5 MS. HORVITZ: All right. But the
6 whole -- correct me if I'm wrong, but this is
7 zoned in zoning district that would normally
8 allow 50 feet, correct?

9 MS. SHIKER: Correct.

10 MS. HORVITZ: And the overlay
11 restricts the height of the buildings to 40
12 feet, correct?

13 MS. SHIKER: Correct.

14 MS. HORVITZ: Unless you meet the
15 special exception standards, correct?

16 MS. SHIKER: That's correct.

17 MS. HORVITZ: And the purpose
18 behind lowering the height in the RC Overlay
19 is to restrict the height and density of this
20 part of the city, isn't that right?

21 MS. SHIKER: I don't believe that
22 logically follows, because the purpose says to

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1 maintain appropriate densities and heights at
2 appropriate levels. And I believe that's what
3 our testimony went to today.

4 MS. HORVITZ: So is it the
5 testimony of the applicant that any building
6 in the RC Overlay can be 50 feet and that the
7 40 foot presumptive height, the regulatory
8 height is not applicable?

9 MR. SHER: As a matter-of-right it
10 would be 40 feet, if you can prove to the
11 Board that you meet the standards for the
12 special exception, then the Board is
13 authorized to allow a height up to 50 feet.
14 You cannot build 50 feet as a matter-of-right.

15 MS. HORVITZ: And the standard by
16 which the applicant needs to prove its
17 entitlement to that special exception on
18 height requires the applicant to establish a
19 burden that it will not adversely affect a
20 neighboring property, correct?

21 MR. SHER: Among others.

22 MS. HORVITZ: Right. That's all I

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1 have.

2 CHAIRPERSON JORDAN: Thank you.
3 Board, any follow-up, at this point? All
4 right. Office of Planning, please.

5 MS. THOMAS: Mr. Chairman, good
6 evening. Karen Thomas with the Office of
7 Planning.

8 As demonstrated in our report, the
9 applicant has met the standard for special
10 exception to increase the height of the
11 building and a variance requirement to
12 increase the FAR over that allowed.

13 I think we have heard adequate
14 testimony from the applicant in this matter.
15 And we would stand on our record and recommend
16 approval of the application. Thank you.

17 CHAIRPERSON JORDAN: Does the --
18 any questions from the Board to the Office of
19 Planning? Okay. Any questions from the
20 applicant to the Office of Planning?

21 MS. SHIKER: We don't have any
22 questions. Thank you.

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1 CHAIRPERSON JORDAN: Any questions
2 from the party in opposition for the Office of
3 Planning?

4 MS. HORVITZ: I do have a few. In
5 the Office of Planning report it states that
6 the proposed height of the building will only
7 be 5 inches greater than the building to the
8 north and, therefore, should not substantially
9 affect the neighboring property. That's in
10 the report at page 4.

11 Is that a correct factual
12 statement?

13 MS. THOMAS: The zoning height of
14 the building would be 48 feet. But when
15 measured close together, the effective height
16 -- the -- I'm sorry. The actual height will
17 be 5 inches over the parapet.

18 MS. HORVITZ: Right. But the
19 heights of the buildings are not only -- they
20 are not 5 inches apart. Rooftop to rooftop,
21 correct?

22 MS. THOMAS: Rooftop to rooftop,

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1 they will be different.

2 MS. HORVITZ: And did the Office
3 of Planning appreciate that when it wrote its
4 report?

5 MS. THOMAS: Yes, we did.

6 MS. HORVITZ: The Office of
7 Planning report also stated that "The proposed
8 height of the building should not
9 substantially affect the neighboring
10 property," and I'm quoting from the report at
11 paragraph-- at page 4.

12 Is that the legal standard
13 substantial adverse effect?

14 MS. THOMAS: We use that term
15 because everything, as Mr. Sher rightfully
16 pointed out, would have some type of impact.
17 You would see a difference, but would it
18 adversely -- how adverse that impact would be?
19 It would be on a comparative standard. So
20 substantially or not, we use that term.

21 MS. HORVITZ: Could the applicant
22 at the building phase of this project build a

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1 larger parapet wall that blocked views as of-
2 right?

3 MS. THOMAS: I don't believe so,
4 no. Whatever plan is submitted has to be
5 submitted to the permitting. Whatever plan is
6 submitted to the Board is submitted to
7 permitting and that's the plan that is
8 approved.

9 MS. HORVITZ: And the applicant
10 isn't proposing to provide any additional
11 affordable housing over the IZ requirements,
12 are they?

13 MS. THOMAS: Not as to our
14 understanding, no.

15 MS. HORVITZ: And in the Reed-
16 Cooke Overlay, isn't there a standard by which
17 additional height can be procured by a
18 developer from 40 to 50 feet if additional
19 affordable housing is provided over and above
20 the IZ requirements?

21 MS. THOMAS: No.

22 MS. HORVITZ: That's all I have.

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1 CHAIRPERSON JORDAN: All right.
2 Thank you. Do we have any other Government
3 agencies? DDOT, I think, has a report in, if
4 I'm not mistaken. Let me check my notes here
5 one second. Is there a DOT report here?
6 Okay.

7 MS. THOMAS: Mr. Chairman, there
8 is a transportation report.

9 CHAIRPERSON JORDAN: Yes, okay.
10 It's in the record. Correct. I have it. So
11 they are not here present. Okay. Is the ANC
12 present? A representative of the ANC?

13 We do have a letter from ANC-1C
14 that had a quorum present and voted to support
15 this relief requested by the applicant by a
16 vote of 5-1-1. And we would give great weight
17 to the ANC's vote and request.

18 We will now move to parties in
19 support. Are there parties in support? Any
20 other testimony, anybody else in support?

21 Moving to parties in opposition.
22 You will have no more than a half hour for

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1 presentation, if we find that necessary.
2 Okay. Would you put your --

3 MS. HORVITZ: Sorry, I turned it
4 off, so as not to bother you.

5 CHAIRPERSON JORDAN: Thank you.

6 MS. HORVITZ: I would like to
7 introduce as the Erie's first witness, Mr.
8 Wiedis.

9 MR. WIEDIS: Good afternoon. I
10 would like to hand the Board just a packet of
11 exhibits which show from the residents'
12 perspective what the rooftops on the Erie look
13 like. And when I walk the Board through these
14 exhibits, I'll be pointing out the substantial
15 adverse effects that the proposed design will
16 have on the Erie.

17 And I also want to introduce Mr.
18 Rouzy Vafaie, who is with me from the Erie.
19 He is one of the other unit owners.

20 CHAIRPERSON JORDAN: Could you
21 spell your last name for me, please?

22 MR. WIEDIS: It's -- mine or?

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1 CHAIRPERSON JORDAN: Mr. --

2 MR. WIEDIS: Mine is W-I-E --

3 CHAIRPERSON JORDAN: Yes, I have
4 your's. I'm sorry, Mr. Vafaie?

5 MR. WIEDIS: Vafaie.

6 MR. VAFAIE: It's V, as in Victor,
7 A, as in apple, F, as in Frank, A, as in
8 apple, I-E.

9 CHAIRPERSON JORDAN: Thank you.

10 MR. WIEDIS: Ladies and gentlemen,
11 my name is Richard Wiedis and I reside at 2351
12 Champlain Street, Washington, D.C. I am the
13 President of the Erie Condominium Association.
14 And I am also the owner of Unit P1 in the
15 Erie.

16 I have lived in the District for,
17 approximately, 25 years since coming to the
18 District to go to law school. After law
19 school, I went to work for the United States
20 Department of Justice where I spent 15 years
21 working as a federal prosecutor. Now, I'm an
22 attorney for a local technology company.

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1 When I moved to Adams Morgan in
2 1991, I bought a small two-bedroom apartment
3 there and lived there for, approximately, 15
4 years. And then in 2009, in the depths of the
5 financial crisis, I sold my unit on Kalorama
6 Road and made a significant financial decision
7 to purchase a unit in the Erie.

8 The Erie has eight units and at
9 the time that I bought my apartment, the
10 developer was experiencing some financial
11 difficulty because of the housing crisis at
12 the time. But I decided nevertheless to
13 invest in that unit and I'm very proud of my
14 home.

15 My unit has a very beautiful roof
16 deck as do the owners of the three other Erie
17 residents who live on the top floor, including
18 Mr. Vafaie.

19 If the Board would look at Exhibit
20 1, Exhibit A I should say, you can see the
21 beautiful views that we have of the
22 Washington, D.C. skyline, including sunsets

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1 that in the summer cast significant light down
2 onto our roof decks.

3 We also have beautiful views of
4 the Washington Monument, which you can see by
5 looking at Exhibit B, and of the Washington,
6 D.C. skyline.

7 CHAIRPERSON JORDAN: If you would
8 do me a favor, kind of line us up
9 directionally what we are looking at?

10 MR. WIEDIS: Sure.

11 CHAIRPERSON JORDAN: Which
12 direction here.

13 MR. WIEDIS: With looking at
14 Exhibit A, you are looking to the southeast.
15 Is that right? Southwest. And if you are
16 looking at Exhibit B, you are looking directly
17 to the south. And you would be looking
18 directly into the proposed project and its
19 roof deck as you are standing on the roof of
20 the Erie.

21 So the Erie, my understanding is,
22 the roof of the Erie the very top where you

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1 are standing is 40 feet, because the Erie was
2 built as a matter-of-right to 40 feet. The
3 developer when he built the Erie understood
4 that he was in the Reed-Cooke Overlay.

5 And, in fact, we have got a letter
6 from the developer saying that he understood
7 that he was in the Reed-Cooke Overlay and was
8 only allowed to build up to 40 feet. And I
9 believe he got a certificate from the District
10 that limited his height to 40 feet. So that
11 was his only choice.

12 There is a parapet wall on the
13 roof of the Erie. You can see that yellow
14 parapet wall, if you look at Exhibit B and at
15 Exhibit B-1, that rises about 3.6 feet.

16 Now, while the applicant has told
17 the Board that his building will rise only 5
18 inches above the parapet wall, the reality is
19 that if you are standing on the roof of the
20 Erie, which is at 40 feet, you will be
21 significantly below the roof area of the
22 applicant's building, which I think even the

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1 applicant has now admitted is 3 to 4 feet
2 higher than the roof of the Erie.

3 So when you are standing on the
4 roof of the Erie, if there is any objects or a
5 parapet wall or a 2 or 3 foot fence, which I
6 believe the applicant referred to, that's
7 going to have a substantial adverse effect on
8 the views of the Washington skyline and the
9 Washington Monument for those at the Erie.

10 And we believe that the disruption
11 in those views and perhaps shadows cast from
12 the penthouse units, which will be 9 feet
13 further higher than the roof of the
14 applicant's building will substantially affect
15 the value of the Erie units, because we will
16 no longer be able to see the Washington
17 skyline as well.

18 There will be privacy concerns.
19 Even though the applicant has testified that
20 some of the decks are going to be setback, it
21 will be easy for other people to see onto our
22 roof decks and interfere with the use and

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1 enjoyment of our property.

2 And we think that if they were
3 held to matter-of-right at 40 feet, we
4 recognize as District residents that yes,
5 there is going to be construction in the area,
6 but the disruption to our use and enjoyment of
7 the property and the adverse effects would be
8 substantially less.

9 Mr. Vafaie and I both purchased
10 our units believing that other developers
11 would be limited to the matter-of-right, 40
12 feet, unless they could show that they meet
13 the requirements of the special exception
14 relief and that there would not be any adverse
15 effects on the neighbors.

16 And we think that it is very clear
17 that there will be adverse effects on the
18 residents of the Erie. The Erie board got
19 together with all of our residents and we
20 actually voted a resolution that we all felt
21 that having this building with a roof that is
22 anywhere from 3 to 9 feet above our roof would

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1 cause adverse effects on the Erie.

2 That is going to decrease our
3 property values and hurt our investments. And
4 that will decrease the values of the square
5 footage in the building and will affect not
6 only the penthouse rooftop owners, but
7 everybody in the building. And we feel that
8 as residents who made initial investment in
9 this property, that we would ask that the
10 Board preserve our investment, since we were
11 there first, and ask that the applicant stay
12 within matter-of-right.

13 So if you look further into some
14 of the exhibits, you can see -- if you go to
15 Exhibit D, the Washington Monument. You can
16 see how having a rooftop structure that is
17 even 5 inches higher on top of the parapet
18 wall, if you look at Exhibit E, if there is
19 people and objects and furniture and fences
20 and trees on top of that roof, which is 4 or 5
21 feet higher, that's going to substantially
22 affect our views.

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1 And certainly, I think Exhibit A
2 shows the sunlight coming onto the roof of the
3 Erie and that is going to be disrupted if the
4 applicant is allowed to go up higher.

5 You can also see, if you look at
6 Exhibit F, the fireworks can be viewed from
7 the Erie rooftop. That's our developers'
8 family. It's not my family. I'm not going to
9 take credit for those beautiful children, but
10 we will all be affected in that we will not be
11 able to see the fireworks in that way.

12 If you look at Exhibit G, that's
13 the picture of me standing on the roof of the
14 Erie and I have got an object placed up there
15 to illustrate in part what it will be like.
16 Obviously, that's perhaps over-stated.

17 I might add to the Board that
18 although the applicant is claiming that they
19 have been cooperative with us through this
20 process, it wasn't until today that we
21 actually saw the perspectives that they have
22 presented to us. And I wish that they could

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1 have presented that earlier, because perhaps
2 we could have worked cooperatively with them
3 to try to reach a solution that would be less
4 adversely impacted to us.

5 Now, I might add also that I met
6 with Mr. Kehler and talked about this project.

7 And although his architect and his experts
8 are testifying today that they can't build
9 this building without practical difficulties,
10 Mr. Kehler flatly admitted to me in our
11 meeting that they can build this building and
12 stay within matter-of-right up to 40 feet and
13 that they will build this building, even if
14 they aren't granted the special exception.

15 And that statement was very
16 important to me, because it illustrates, I
17 think, that the applicant can't meet their
18 burden under the law of showing that they
19 actually need the increased height to be able
20 to go forward with the building.

21 You can see from Exhibit I that
22 this is a very, very large lot. It is very

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1 deep. There is nothing particularly limiting
2 about it. And I think the applicant has
3 testified that they can actually build a
4 garage that goes down below and they can get
5 their required 11 parking spaces and they
6 don't need to build the extra 9 feet above
7 what they are entitled to under the law.

8 And given the tremendous adverse
9 effect on the neighbors and the detriment that
10 it is going to cause to our property values
11 and the use and enjoyment of our property, we
12 think that the equitable thing to do is to
13 allow the applicant to design their building
14 to go up to 40 feet.

15 So on behalf of the board of the
16 Erie and myself personally, we would ask that
17 the Board, the Zoning Board deny the
18 applicant's request for special exception
19 relief and require them to build as a matter-
20 of-right to 40 feet.

21 CHAIRPERSON JORDAN: Thank you.

22 MR. VAFAIE: Hi. Do I need to say

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1 my name again or --

2 CHAIRPERSON JORDAN: If you would,
3 say your name again.

4 MR. VAFAIE: It's Rouzy Vafaie.
5 I'm a resident at Unit P2 of the Erie. I
6 think Mr. Wiedis and our lawyer have actually
7 made all the valid points. I'm not really
8 going to add too much to it, except that when
9 I actually purchased my unit, which was also
10 in late 2009, it was a significant financial
11 investment.

12 And I would like to underline that
13 it was an investment. I wasn't going to buy
14 and move in one year or anything. And I was
15 reassured that the view that I was, basically,
16 buying was not going to be obstructed in any
17 way and the law was, basically, what I was
18 trying to understand at that time.

19 With this development, everything
20 about my roof will be changed. Anywhere from
21 the view to the privacy and every aspect of it
22 will be. And I just think that is -- you

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1 know, I don't know the legal jargon there, but
2 it's very unfair.

3 As I, you know, bought this place
4 hoping to, you know, hold on to it for a
5 couple of years, to now just take a financial
6 loss if I were to sell it.

7 CHAIRPERSON JORDAN: Any --

8 MS. HORVITZ: That concludes our
9 presentation.

10 CHAIRPERSON JORDAN: Good. Thank
11 you. Thank you for your presentation. Any
12 questions from the Board? I just have a
13 couple of quick questions.

14 Is the roof deck, at the Erie, an
15 open roof deck you can walk north, south, east
16 and west around it or is it just limited on
17 certain sides?

18 MR. WIEDIS: There are four
19 penthouse units which surround the entire top
20 of the building.

21 CHAIRPERSON JORDAN: And so they
22 are restricted to their particular unit? One

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1 person can't walk all the way around? They
2 can only go to where their particular unit
3 separated maybe by rails or something?

4 MR. WIEDIS: Correct. There are--
5 there is fences and/or gates between the four
6 private spaces on top of the building.

7 CHAIRPERSON JORDAN: So everyone
8 doesn't have access or view from that south
9 and southwest portion from these pictures?

10 MR. WIEDIS: That's correct. You
11 access the roof deck through spiral staircases
12 that go up to the roof. There is some
13 liveable area there and, yes, each one of the
14 four top units has a different view.
15 Although, I have been on all four and they are
16 all going to be affected by the new building
17 and substantially more affected if they build
18 up to 48.9 feet rather than if they were
19 limited to 40 feet.

20 CHAIRPERSON JORDAN: And that was
21 my second question. I thought I heard in your
22 testimony, and I think you just repeated it

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1 then, if the building was even built at the
2 matter-of-right 40 feet, there is still going
3 to be some effect or some visual effect or
4 impairment to the same view, even if it's at
5 40 feet.

6 MR. WIEDIS: I think it would be
7 substantially less.

8 CHAIRPERSON JORDAN: Okay.

9 MR. WIEDIS: Especially given --
10 you know, when you have a roof deck with
11 liveable area, naturally, you're going to have
12 objects, trees fences, whatever else you might
13 have up there and I think there is going to be
14 irreparable adverse effects if the applicant
15 is allowed to go up to the 50 feet, many of
16 which would be considerable reduced if they
17 are required to stay within the limits of the
18 Reed-Cooke Overlay.

19 CHAIRPERSON JORDAN: Okay. Any
20 other questions, Board? Yes?

21 MS. COHEN: Where do the residents
22 park that live in the area? Is there an

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1 underground garage?

2 MR. WIEDIS: There are underground
3 spaces in the Erie and there is also above-
4 ground spaces behind the building.

5 MS. COHEN: Totaling how many? Do
6 you know?

7 MR. WIEDIS: If you can give me a
8 second to count in my head, I can tell you.
9 There is probably seven or eight downstairs.

10 MR. VAFAIE: Four upstairs.

11 MR. WIEDIS: Yes, and four above-
12 ground, which also points out, I think, a
13 fallacy in the applicant's argument. I mean,
14 the Erie which is a much, much smaller lot
15 there are at least eight spaces below ground
16 and, yes, we have a steep ramp, but the
17 developer was able to excavate enough to have
18 eight underground spaces for only eight units.

19 I would venture a guess that the
20 applicant's project is three or four times as
21 large, that may be -- that's an estimate. But
22 it is -- you can see from the pictures how

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1 huge this lot is. I mean, there is a parking
2 lot on the space right now that has, you know,
3 50 spaces.

4 MR. VAFAIE: It's over 100.

5 MR. WIEDIS: Right. Maybe over
6 100. So from people that have -- that I have
7 talked to and I will say with all honest to
8 the Board, we couldn't afford to bring our own
9 architect in here, but other knowledgeable
10 people that I have talked to, as I understand
11 hearsay is acceptable here, have told me that
12 there are many, many ways that they could
13 either excavate more space underneath the
14 building or design a garage so they don't
15 require the extra height.

16 And I think that's my biggest
17 problem under the law with this application
18 is, you know, Mr. Kehler has admitted they
19 don't need the extra height to build the
20 building, which is different from say the case
21 with the King's Creek building where the
22 developer came and they got a special

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1 exception.

2 But in that case, the BZA ruled
3 that without the extra height, King's Creek
4 wasn't going to be able to build the building.

5 So they needed to get the special exception,
6 otherwise, there would be no building at
7 King's Creek.

8 Here, that's not the case. The --
9 while the building is clearly going to benefit
10 the neighborhood, Mr. Kehler has admitted we
11 can have this very nice building. It's a
12 beautiful building, but it can also be built
13 without the special exception relief and it
14 can be built without substantially affecting
15 the rights of the Erie residents.

16 MS. COHEN: Are you implying then,
17 do I understand you that you said that the
18 footprint that the Erie is on is much smaller
19 than the footprint of the to be built building
20 next door?

21 MR. WIEDIS: Much, much smaller.
22 I can --

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1 MS. COHEN: How many units is the
2 Erie again?

3 MR. WIEDIS: Eight.

4 MS. COHEN: Eight.

5 MR. WIEDIS: Eight compared to 40,
6 I think.

7 MS. COHEN: Okay. Thank you.

8 CHAIRPERSON JORDAN: Questions
9 from the applicant?

10 MS. SHIKER: I just have two
11 questions. The first question is where does
12 the Erie take its access from to access its
13 below-grade parking spaces?

14 MR. WIEDIS: The front of the
15 building.

16 MS. SHIKER: From Champlain
17 Street?

18 MR. WIEDIS: Correct. And there
19 is a curb cut --

20 MS. SHIKER: Thank you.

21 MR. WIEDIS: -- in front --

22 MS. SHIKER: Thank you.

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1 MR. WIEDIS: -- of --

2 CHAIRPERSON JORDAN: Give him the
3 courtesy to finish answering the question,
4 please.

5 MR. WIEDIS: There is a curb cut
6 in front of the proposed project as well,
7 which theoretically could be used to access in
8 front of the building. I don't know if the
9 Holland & Knight lawyers can negotiate that
10 with DDOT, but the curb cut is already there.

11 So I don't know whether they have considered
12 the possibility of entering from the front
13 instead of from the back, which they claim is
14 the reason for the special exception of
15 height.

16 MS. SHIKER: Okay. Thank you. My
17 second question is are you aware of an
18 easement agreement that gives you a right to a
19 view across the adjacent property?

20 MR. WIEDIS: Are you asking me is
21 there an agreement? I --

22 MS. SHIKER: I'm asking if you are

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1 aware of an agreement that would give you a
2 right to a view across an adjacent property?
3 Are you aware of a recorded document or an
4 easement agreement?

5 MR. WIEDIS: Is there one?

6 MS. SHIKER: I'm asking if you are
7 aware of anything.

8 CHAIRPERSON JORDAN: Just answer
9 the question, not answer back with a question.
10 If you would just answer.

11 MS. SHIKER: Yes or no.

12 MR. WIEDIS: No, I don't know of
13 any. I haven't searched for one. I don't
14 know that one is required under the law.

15 MS. SHIKER: Thank you.

16 CHAIRPERSON JORDAN: Any other
17 questions?

18 MS. SHIKER: That's all my
19 questions. Thank you.

20 CHAIRPERSON JORDAN: We will move
21 to rebuttal and closing, please.

22 MS. SHIKER: Mr. Goins, I'm just

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1 going to ask you a few questions on rebuttal.

2 Exhibit A that was submitted by
3 the Erie Condominium, will this view west be
4 impacted in any way by our building?

5 MR. GOINS: No.

6 MS. SHIKER: On Exhibit G, there
7 is a tall something blocking the view. Can
8 you, please, confirm again what is the
9 difference between the parapet heights?

10 MR. GOINS: 5 inches.

11 MS. SHIKER: What is the
12 difference between the roof heights?

13 MR. GOINS: 2 foot 10.

14 MS. SHIKER: In terms of the
15 elevations of the properties where they abut
16 each other at the property line, can you again
17 tell us how you confirmed the exact
18 elevations, not zoning heights, but elevations
19 of the two projects?

20 MR. GOINS: Yes. Initially, we
21 counted brick. The second time we went out,
22 we shot a laser. Then we were able to get the

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1 structural drawings, so we actually have the
2 structural drawings from the structural
3 engineer that designed the property that also
4 confirmed the elevations and last but not
5 least, the condo plat, which has the elevation
6 height on it.

7 So we are certain that those
8 heights are correct.

9 MS. SHIKER: And we have copies of
10 those for the Board, if they would like to see
11 those. All right.

12 At this time, I would like to
13 thank you for the opportunity to present our
14 case today. Based on the testimony you have
15 heard and the full record before you, we
16 believe we have fully demonstrated that we
17 have met the burden of proof for the special
18 exception for height under the Reed-Cooke
19 Overlay and for a variance from the FAR
20 requirements.

21 The evidence establishes that
22 there will be no more adverse impact on the

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1 adjacent property to the north.

2 The case law is clear that an
3 adjacent property owner is not entitled to a
4 view across property. That was originally
5 established in the Hevazi v. Stiglitz case and
6 this Board has reaffirmed that finding time
7 and time again.

8 And I have copies of orders where
9 the Board specifically finds there is no right
10 to a view across the property. However, the
11 applicant has very sensitively designed this
12 project to preserve those views to the maximum
13 extent possible. I think you have seen that
14 through the view documents that we have given
15 to you.

16 And by maintaining the penthouse
17 as low as possible and as far away from that
18 Erie's roof as possible, we have also agreed
19 to limit the active rooftop space to more than
20 20 feet away from the Erie, which will provide
21 them privacy as they use the rooftop deck.

22 And we have also found no evidence

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1 in the record that would establish that
2 replacing this active parking lot with a well-
3 designed residential building that fits into
4 the context of the street, how that will cause
5 an adverse impact on the Erie.

6 And we, therefore, ask for a
7 favorable ruling from the Board at the
8 earliest convenience. Thank you.

9 CHAIRPERSON JORDAN: I would like
10 to thank both parties for well-put together
11 presentations and it's difficult and I really
12 appreciate you all doing it in the manner in
13 which you did it.

14 We are going to close the record,
15 except that we are going to request that both
16 parties provide the Board findings of fact and
17 conclusions of law. And I will give you,
18 let's say schedule-wise, two weeks to do that,
19 Cliff? And we can reschedule this for a
20 decision.

21 What's a decision date? Let's
22 work our way backwards.

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1 MR. MOY: Yes, sir. That -- our
2 next decision date is May the 15th.

3 CHAIRPERSON JORDAN: Okay. How
4 many cases do we have on that docket?

5 MR. MOY: We have, Mr. Chairman,
6 the decision for two cases in the morning that
7 are expedited and in the afternoon, we have a
8 full appeal.

9 CHAIRPERSON JORDAN: Okay. If we
10 can have the findings of fact and conclusions
11 of law to us by April 17th and then both
12 parties exchange those findings of fact and
13 also make sure you serve the findings of fact
14 as well as send it to the Board and by April
15 24th submit any rebuttal response to the
16 opponents' findings of fact and conclusions of
17 law.

18 Do you follow me? So you are
19 going to provide findings of fact and
20 conclusions of law by the, what did I say,
21 17th.

22 MR. MOY: 17th.

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1 CHAIRPERSON JORDAN: And you are
2 going to do the response, if you want to, to
3 the other party's findings of fact and
4 conclusions of law, which will be filed by the
5 24th. You don't have to if you don't want to,
6 but we want that. Okay. That's the date on
7 which to file.

8 No other documents to be filed but
9 those things.

10 MS. SHIKER: All right. Thank
11 you.

12 CHAIRPERSON JORDAN: And then we
13 are going to put this for? The decision was
14 May 15th, did you say?

15 MR. MOY: May 15th, correct.

16 CHAIRPERSON JORDAN: May 15th.
17 Okay. This concludes this hearing.

18 MS. SHIKER: All right. Thank
19 you.

20 MS. HORVITZ: Thank you very much.

21 MS. COHEN: Mr. Chairman, is it
22 possible to get DDOT to advise us about the

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1 entry on Champlain?

2 CHAIRPERSON JORDAN: There -- yes,
3 I guess we can make a request for DDOT to take
4 another look at it and submit a report, but
5 they already submitted a report.

6 MS. COHEN: They did, yes.

7 CHAIRPERSON JORDAN: Yes. Okay.

8 MS. COHEN: Just so --

9 CHAIRPERSON JORDAN: But you want
10 them to take another look at it?

11 MS. COHEN: Yes, please.

12 CHAIRPERSON JORDAN: Okay.

13 MS. COHEN: Just that one issue.

14 CHAIRPERSON JORDAN: Okay.

15 MS. THOMAS: Can I --

16 CHAIRPERSON JORDAN: Yes?

17 MS. THOMAS: -- also say as a
18 matter of policy also from OP's standpoint, we
19 do not encourage curb cuts. We are not
20 encouraging curb cuts. And DDOT's policy, as
21 we understand it, is --

22 CHAIRPERSON JORDAN: Well, that's

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1 kind of opening back up for the record.

2 MS. THOMAS: All right.

3 CHAIRPERSON JORDAN: Let's just
4 kind of leave that.

5 MS. THOMAS: Okay.

6 CHAIRPERSON JORDAN: And we will
7 do that within the additional request for
8 supplemental from DDOT. Okay. All right.
9 Thank you.

10 MR. MOY: Mr. Chairman?

11 CHAIRPERSON JORDAN: Yes?

12 MR. MOY: If the Board is
13 requesting an additional report from DDOT, do
14 you have a deadline you would like to get
15 their report to the Board?

16 MS. COHEN: The same time.

17 MR. MOY: Same time, April 17th?

18 CHAIRPERSON JORDAN: Yes, if we
19 could.

20 MR. MOY: Okay. Very good.

21 CHAIRPERSON JORDAN: Yes, thank
22 you.

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1 MR. MOY: Yes.

2 CHAIRPERSON JORDAN: If we can
3 take a brief -- well, wait a second. Mr.
4 Secretary, would you call the remaining case
5 on today's docket, please?

6 MR. MOY: Yes, sir. That would be
7 Application No. 18324. This is the
8 application of Roane-Worsley LLC, pursuant to
9 11 DCMR 3103.2, for variance relief to allow
10 the conversion of a flat, a two unit dwelling,
11 to a three unit apartment house under
12 subsection 401.3, in the R-4 District. This
13 is at premises 1337 Maryland Avenue, N.E.,
14 property located in Square 1028, Lot 35.

15 CHAIRPERSON JORDAN: Are the
16 parties present for the -- this is the second
17 time we have called this case and it does not
18 appear that there is anyone here on this
19 application.

20 If we could -- I would move the
21 Board issue a notice letter that -- give them
22 -- that they need to respond to the Board, let

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1 us know, I guess a Show Cause, why we should
2 not dismiss this hearing.

3 And if we could have a date for
4 when that needs to be in, Mr. Secretary?
5 Well, we need to get it within a week. They
6 can send that by the 17th. We just need to
7 send out notice.

8 How many days do they need for a
9 notice? 10 days?

10 MR. MOY: Well, in the past, the
11 Board has allowed a minimum of at least a week
12 to respond, but depending on the Board, one or
13 two weeks, I think, would be sufficient. I
14 mean, that's at your discretion.

15 CHAIRPERSON JORDAN: Okay.

16 MR. MOY: We could set the hearing
17 schedule for them for either April 10th or
18 April 17th. It's your choice.

19 CHAIRPERSON JORDAN: Let's move
20 for the 17th.

21 MR. MOY: Very good. Okay.

22 CHAIRPERSON JORDAN: And make that

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1 a Show Cause, too.

2 MR. MOY: All right.

3 CHAIRPERSON JORDAN: If that is
4 acceptable for the Board, all those in favor
5 of that motion?

6 Oh, let me have a second, please,
7 if I can.

8 MS. COHEN: I'll second.

9 CHAIRPERSON JORDAN: All those in
10 favor signify by saying aye.

11 ALL: Aye.

12 CHAIRPERSON JORDAN: Those opposed
13 nay? Thank you.

14 And so the motion carries.

15 Is there any other business, Mr.
16 Secretary that we need to take care of today?

17 Oh, yes, there is.

18 MR. MOY: There is, there is.

19 CHAIRPERSON JORDAN: Yes. Okay.
20 As Chairperson of the Board of Zoning
21 Adjustment for the District of Columbia and in
22 accordance with ' 405(b)(4) and 405(b)(13) of

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1 the District of Columbia Administrative
2 Procedural Act, I move that the BZA hold a
3 closed meeting via telephone conference on
4 April 9, 2012 at 4:00 p.m. for the purpose of
5 seeking legal advice from our counsel and
6 deliberating upon the following cases
7 scheduled for upcoming decision:

8 Application No. 18353, Rodrigo
9 Lopez; Application No. 18358 of Andrew
10 Serfass; Application No. 18361, George
11 Boguslawski; Application No. 17964 of Emory
12 United Methodist Church; Application No. 18227
13 of The Corcoran Gallery of Art.

14 Is there a second?

15 MEMBER MacMURRAY: Mr. Chairman, I
16 second.

17 CHAIRPERSON JORDAN: Will the
18 secretary, please, take a roll call vote on
19 the motion before us now?

20 MR. MOY: Yes. When I call the
21 name, if respondent can reply with yes or no?

22 Ms. Cohen?

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1 MS. COHEN: Yes.

2 MR. MOY: Ms. MacMurray?

3 MEMBER MacMURRAY: Yes.

4 MR. MOY: Mr. Chairman?

5 CHAIRPERSON JORDAN: Yes.

6 MR. MOY: Mr. Hinkle?

7 MEMBER HINKLE: Yes.

8 MR. MOY: And we have no other
9 Board Members present today this afternoon.
10 So that would give a total vote or final vote
11 of 4-0-1. The motion would carry.

12 CHAIRPERSON JORDAN: As it appears
13 that the motion has passed, I hereby give
14 notice that the BZA will hold this
15 aforementioned closed meeting via telephone
16 conference pursuant to ' 406 of the District
17 of Columbia Administrative Procedure Act.
18 Notice will also be posted in the Office of
19 Zoning Electronic Reading Room, placed on the
20 Office of Zoning's Electronic Calendar on its
21 website and published in the District of
22 Columbia Register in as timely a manner as

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1 practical.

2 With that, we would stand
3 adjourned for today. Thank you.

4 (Whereupon, the Public Hearing was
5 concluded at 2:56 p.m.)
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