

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY, DECEMBER 8, 2009

+ + + + +

The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Shane L. Dettman, Vice
Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHANE L. DETTMAN, Vice Chairman (NCPC)
MERIDITH H. MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

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The transcript constitutes the minutes from the Public Hearing held on December 8, 2009.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Shane Dettman 4

VAFII, 2100 M STREET, LP:

APPLICATION 17696-A:

Motion to Extend the Validity of the Order. . . . 5

VOTE TO APPROVE MOTION (3-0-2). 10

EDWARD HOYT:

APPLICATION NO. 18001:. 11

VOTE TO APPROVE 18001 (3-0-2):. 19

GOULD PROPERTY COMPANY, THROUGH SQUARE 374,

LLC:

APPLICATION NO. 18002:. 20

VOTE TO APPROVE 18002 (3-0-2) 43

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

2 9:45 a.m.

3 VICE-CHAIRMAN DETTMAN: This
4 meeting will please come to order. Good
5 morning, ladies and gentlemen. This is the
6 December 8th public meeting of the Board of
7 Zoning Adjustment of the District of Columbia.
8 Good morning again. My name is Shane Dettman,
9 vice-chairperson representing the National
10 Planning Commission. Joining me today are Mr.
11 Michael Turnbull representing the Zoning
12 Administrator and Ms. Meridith Moldenhauer,
13 mayoral appointee to the BZA.

14 Copies of today's meeting agenda
15 are available to you and are located to my
16 left in the wall bin near the door.

17 We do not take any public
18 testimony at our meetings unless the Board
19 asks someone to come forward.

20 Please be advised that this
21 proceeding is being recorded by a court
22 reporter and is also Web cast 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, and please turn off all beepers
4 and cell phones.

5 Does the staff have any
6 preliminary matters?

7 MR. MOY: Not for this morning,
8 Mr. Chairman.

9 VICE-CHAIRMAN DETTMAN: Thank you,
10 Mr. Moy.

11 That being said, let us proceed
12 with this morning's agenda. And, Mr. Moy,
13 will you be calling the one decision that the
14 Board has this morning?

15 MR. MOY: Yes, sir. Just for the
16 record, we have one decision making for the
17 Board this morning, the morning session, and
18 then at 1:00 in the afternoon there will be
19 two other cases for decision at 1:00.

20 This case, this is a motion or a
21 request to extend the validity of the order to
22 Application No. 17696-A of Hines VAFII, 2100

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1 M Street, LP pursuant to 3130 of the Zoning
2 Regulations. The original application was
3 approved on December 18th, 2007. And just for
4 the record, that original application was for
5 a special exception and multiple variance
6 relief to allow the expansion of an existing
7 office building with street level retail
8 through transferrable development rights by
9 adding three new floors in the C-3-C District
10 at premises 2100 M Street, N.W., Square 72,
11 Lot 75.

12 If the Board will recall, on
13 December 1st, 2009 the Board convened this
14 motion, deliberated and requested it to -- of
15 this request to extend the time limit of the
16 order. The Board rescheduled its decision to
17 December 8th to allow additional time for the
18 applicant to supplement the record attendant
19 to Section 3130.6 of the Zoning Regulations.

20 There are two filings in your case
21 folders, Mr. Chairman. The first is Exhibit
22 33, filed by the applicant, dated December

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1 3rd, and an Office of Planning report
2 identified as Exhibit 34. The Board is to act
3 on the merits of the motion.

4 And that completes the staff's
5 briefing, Mr. Chairman.

6 VICE-CHAIRMAN DETTMAN: Thank you,
7 Mr. Moy. And I think for purposes of our
8 deliberation, Ms. Moldenhauer is going to take
9 us through.

10 MEMBER MOLDENHAUER: Thank you.
11 What we had one, as Mr. Moy had stated, was
12 request some additional documentation to
13 satisfy 3130.6, especially the new language
14 which states that under Section C the
15 applicant must demonstrate that there is good
16 cause for such extension with substantial
17 evidence following three categories.

18 So the substantial evidence
19 requirement, we requested additional
20 information and we received Exhibit 33, which
21 I believe satisfies that requirement showing
22 good cause under Section (C) (1), which is an

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1 inability to obtain sufficient project
2 financing due to economic or market
3 conditionings beyond the applicant's
4 reasonable control. And in that, they
5 provided an affidavit which is Exhibit D,
6 attachment No. 1. And I believe this was an
7 affidavit by the vice-president of Hines GS
8 Properties, Incorporated. And under item 6
9 and under items No. 8, they discuss, and he
10 attests personally to the financial challenges
11 of this project over the last two years.

12 And so based on that, and also
13 reviewing OP's report, which was dated
14 December 4th, 2008, which walks through the
15 test also, I think that they've satisfied the
16 requirements. And if there is no additional
17 discussion, I'll throw out a motion.

18 VICE-CHAIRMAN DETTMAN: Thank you,
19 Ms. Moldenhauer.

20 Let me, before we go onto a motion
21 -- I don't have anything to add. I think that
22 you addressed the provisions adequately.

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1 Mr. Turnbull, anything to add?

2 MEMBER TURNBULL: Yes, I would
3 concur with Ms. Moldenhauer's assessment of
4 this case.

5 VICE-CHAIRMAN DETTMAN: Great.
6 And as you stated, Ms. Moldenhauer, the sworn
7 affidavit that we received is consistent with
8 what the Board has accepted with respect to
9 the new Substantial Evidence Standard.

10 But before going onto the motion,
11 let me just ask a very quick question of the
12 Office of Attorney General.

13 Is this going to be a two-year
14 extension from the issuance of this particular
15 order from the date of the original order,
16 which was December 20th? Is that something we
17 need to decide right now?

18 MS. GLAZER: I think that's how
19 the Board has been interpreting the new
20 regulation.

21 VICE-CHAIRMAN DETTMAN: So it's a
22 two-year extension from the date of the

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1 issuance of the original order?

2 MS. GLAZER: I believe so, yes.

3 VICE-CHAIRMAN DETTMAN: Okay.

4 Great. I have nothing further. Do we have
5 a motion?

6 MEMBER MOLDENHAUER: I submit a
7 motion to approve application No. 17696 for
8 property 2100 M Street, N.W. to approve a two-
9 year extension under 3130.6 for good cause
10 shown.

11 VICE-CHAIRMAN DETTMAN: I can
12 second the motion.

13 Motion's been made and seconded.
14 Any further discussion?

15 (No audible response.)

16 VICE-CHAIRMAN DETTMAN: All those
17 in favor, say aye. Aye.

18 MEMBER MOLDENHAUER: Aye.

19 MEMBER TURNBULL: Aye.

20 VICE-CHAIRMAN DETTMAN: Opposed?

21 (No audible response.)

22 VICE-CHAIRMAN DETTMAN: And there

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1 doesn't appear to be any abstentions. So, can
2 we call the vote?

3 MR. MOY: Yes, sir. The final
4 vote is 3-0-2 on the motion of Ms. Moldenhauer
5 to approve the motion to extend the validity
6 of the order to application No. 17696-A.
7 Seconded, the chair, Mr. Dettman. In support
8 of the motion, Mr. Turnbull. And no other
9 Board Members participating. Again, that's 3-
10 0-2.

11 VICE-CHAIRMAN DETTMAN: Thank you,
12 Mr. Moy. And that was the only decision that
13 the Board has this morning, is that correct?

14 MR. MOY: That's correct.

15 VICE-CHAIRMAN DETTMAN: Great.
16 Then this public meeting will stand adjourned.

17 (Whereupon, at 9:53 a.m. off the
18 record until 2:05 p.m.)

19 VICE-CHAIRMAN DETTMAN: This
20 meeting will now come to order.

21 Good afternoon, ladies and
22 gentlemen. And let me just first start off by

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1 apologizing for the Board's half-hour delay in
2 getting out here. And we'll do our best to
3 make up as much time as possibly can.

4 This is the December 8th afternoon
5 public meeting of the BZA of the District of
6 Columbia. My name is Shane Dettman, Vice-
7 Chairman, representing NCPC. To my right is
8 Mr. Michael Turnbull representing the Zoning
9 Commission. To my left, Ms. Meridith
10 Moldenhauer, mayoral appointee to the BZA; Mr.
11 Clifford Moy with the Office of Zoning; Ms.
12 Sherry Glazer with the Office of the Attorney
13 General. And to my far left is Ms. Beverley
14 Bailey with the Office of Zoning.

15 Copies of today's meeting agenda
16 are available to you and are located to my
17 left in the wall bin near the door.

18 We do not take any public
19 testimony at our meetings unless the Board
20 asks someone to come forward.

21 Please be advised that this
22 proceeding is being recorded by a court

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1 reporter and is also Web cast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room. And at this time, please turn
5 off all beepers and cell phones.

6 At this time I'd like to ask, does
7 the staff have any preliminary matters?

8 MR. MOY: None that I can recall,
9 Mr. Chairman.

10 VICE-CHAIRMAN DETTMAN: Thank you,
11 Mr. Moy.

12 Then let us proceed with the
13 afternoon's public meeting. And can you call
14 the first case?

15 MR. MOY: Yes, sir. That would be
16 application No. 18001. This is of Edward A.
17 Hoyt, pursuant to 11 DCMR 3103.2 for a
18 variance from the lot area and lot width
19 requirements under Section 401, and a variance
20 from the side yard requirements under Section
21 405 to allow the construction of a new one-
22 family detached dwelling in the R-1-B

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1 District. This is at premises 5013 Belt Road,
2 N.W., Square 1756, Lot 64.

3 On December 1st, 2009, the Board
4 completed public testimony, closed the record
5 and scheduled its decision on December 8th.
6 The Board requested additional information to
7 supplement the record from both the applicant
8 and ANC-3E. Those filings, Mr. Chairman, are
9 in your case folders.

10 The ANC-3E resolution and report
11 is dated December 1st, 2009, Exhibit 29. The
12 applicant's supplemental filing as requested
13 by the Board is dated December 4th, 2009,
14 identified as Exhibit 30. The Board is to act
15 on the merits of the variance relief from
16 Sections 401, 405 and 2101.1. And that
17 completes the staff's briefing, Mr. Chairman.

18 VICE-CHAIRMAN DETTMAN: Thank you,
19 Mr. Moy. I can get us started here. As Mr.
20 Moy stated, the Board heard this case last
21 week and put it off for decision simply to
22 receive some amended plans from the applicant

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1 and to leave some time for the ANC to submit
2 its resolution. And we did receive an ANC
3 resolution from ANC-3E expressing support for
4 the application for a variance from the lot
5 dimensions, side yard requirements, as well as
6 the parking requirement. That's our Exhibit
7 29.

8 Furthermore, the applicant
9 submitted amended plans indicating the removal
10 of the proposed driveway along Belt Road,
11 updated the dimensions of the nonconforming
12 side yards based on a professional survey that
13 was conducted. And at the Board's urging, the
14 cover letter contains a statement from the
15 applicant that he had actually reviewed the
16 plans amended plans with the neighboring
17 property owners.

18 So that being said, I think I'll
19 rely heavily upon the Office of Planning's
20 report which recommends approval of the
21 requested variances and refer to it by
22 incorporation. I won't go through the three

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1 prongs of the test at length. OP notes that
2 it's the smallest record lot in the square,
3 and that given the development history of this
4 particular property and the improvements made
5 by the previous owner, and the extensive
6 foundation work that currently exists on the
7 property given the ground water problems that
8 exist in the area, collectively OP has found
9 that that does meet the first prong of the
10 variance test, and I certainly agree.

11 And with respect to the practical
12 difficulty, I think that test has been made as
13 well. The surrounding properties are all
14 improved with single-family homes, so there's
15 no way for the applicant to increase the size
16 of his property in order to meet the minimum
17 lot area and lot width requirements. The side
18 yard setbacks are nonconforming given the size
19 of the existing foundation. And the practical
20 difficulty there is the expense that would
21 have to be incurred by the current owner to
22 remove that foundation and put in something

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1 that does provide the requisite side yards.

2 And given the fact that the
3 property doesn't have a rear alley access, I
4 think that it would be practically difficult
5 for the property owner to provide the
6 necessary one parking space to be compliant
7 with the regulations, not to mention there is
8 an existing building restriction line in the
9 front yard which would prevent the owner from
10 locating their parking space in the front
11 yard.

12 So, I think that the variance test
13 has been met for all three areas of relief,
14 and I can turn it over to my fellow Board
15 Members for further comment.

16 MEMBER TURNBULL: Mr. Dettman, I
17 would agree with you wholeheartedly. I think
18 from a structural standpoint with the
19 foundations, the helical piers that this house
20 has to have for its foundation is a
21 significant handicap and I think that that is
22 a significant problem, that they have to do

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1 this for the ground water. But I concur with
2 your analysis of this project.

3 MEMBER MOLDENHAUER: I also concur
4 with both of your statements. I don't think
5 that there's any additional information that
6 I would need to add at this point in time.

7 VICE-CHAIRMAN DETTMAN: Thank you,
8 colleagues. Are we ready for a motion then?

9 (No audible response.)

10 VICE-CHAIRMAN DETTMAN: I'll move
11 for approval of application No. 18001 of Ed
12 Hoyt, pursuant to 11 DCMR 3103.2 for a
13 variance from the lot area and lot width
14 requirements under Section 401, a variance
15 from the side yard requirements under Section
16 405. Finally, a variance from the parking
17 requirements of 2101.1, to allow the
18 construction of a new one-family detached
19 dwelling in the R-1 District, located at 5013
20 Belt Road, N.W. And is there a second?

21 MEMBER TURNBULL: Second.

22 VICE-CHAIRMAN DETTMAN: Motion has

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1 been made and seconded. If there's nothing
2 further, all those in favor say aye. Aye.

3 MEMBER TURNBULL: Aye.

4 MEMBER MOLDENHAUER: Aye.

5 VICE-CHAIRMAN DETTMAN: Opposed?

6 (No audible response.)

7 VICE-CHAIRMAN DETTMAN: And there
8 are no abstentions, so can we call the vote?

9 MR. MOY: Mr. Chairman, the staff
10 would record the vote as 3-0-2. This is on
11 the motion of the Chair, Mr. Dettman, to
12 approve the application for variance relief to
13 the lot area/lot width under Section 401; side
14 yard, 405; and parking provisions under
15 2101.1. Seconded by Mr. Turnbull. Also in
16 support of the motion, Ms. Moldenhauer. No
17 other Board Members participating. So again,
18 the final vote is 3-0-2.

19 VICE-CHAIRMAN DETTMAN: Thank you,
20 Mr. Moy. And if I recall, there was no
21 opposition to this application and we could do
22 a summary order?

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1 MR. MOY: Yes, sir.

2 VICE-CHAIRMAN DETTMAN: Thank you.

3 And I think we're ready for the second an
4 final decision.

5 MR. MOY: Yes, that would be
6 application No. 18002 of Gould Property
7 Company, through Square 374, LLC, pursuant to
8 11 DCMR 3104.1 and 3103.2. These are for
9 special exceptions to provide two rooftop
10 structures that are of varying heights under
11 Subsections -- and staff is going to read the
12 relief as was recorded at the Board's hearing
13 on December 1st, Mr. Chairman. And that would
14 be Subsections 411.11, 411.4, 411.5 and 777.1.
15 And from the loading requirements to provide
16 a non-dedicated service and delivery space
17 under Subsections 2201.5, 2202.2 and 2204.9.
18 And variances to provide elevator penthouses
19 with a maximum height of 22 feet under
20 Subsections 400.7(c), 411.2 and 777.1, to
21 allow the construction of a new office
22 building with ground floor retail in the DD/C-

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1 3-C District at premises 900 New York Avenue,
2 N.W. This is in Square 374, Lot 45.

3 The Board on December 1st
4 completed public testimony, closed the record
5 and scheduled its decision on December 8th.
6 The Board had closed the record. No
7 supplemental information was needed. So in
8 that regard, the Board is to act on the merits
9 of the multiple special exceptions and
10 variance relief. And that completes staff's
11 briefing, Mr. Chairman.

12 VICE-CHAIRMAN DETTMAN: Thank you,
13 Mr. Moy. Mr. Moy, were there any outstanding
14 issues that the Board needed to take up with
15 respect to the relief that was being requested
16 and some of the notes in OP's report?

17 MR. MOY: Well, there was one. If
18 you recall, in the OP report it wasn't
19 definitive -- well, the OP had mentioned on
20 page 5, I believe, with respect to whether
21 additional relief was required from Section
22 411.3. And as the Board left it at December

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1 1st hearing, it didn't close the loop on that
2 specific provision.

3 VICE-CHAIRMAN DETTMAN: Okay. I
4 see it here. Thank you. Actually, I think
5 the provision was 411.4, stating that, "When
6 roof levels vary by one floor or more, or when
7 separated elevator cores are required, there
8 may be one enclosure for each elevator core at
9 each roof level."

10 I think right at the end of the
11 public hearing we had inquired with the
12 applicant whether or not the two penthouse
13 enclosures were required. I think that they
14 answered in the affirmative, but did mention
15 that if that was necessary they would just
16 bridge that separation that they're proposing
17 in order to connect them. And I think where
18 the Board ended up with that question was
19 basically to incorporate 411.4 into their
20 deliberations essentially out of an abundance
21 of caution when the project got to the Zoning
22 Administrator.

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1 So, I think that we can go ahead
2 and do so, unless my colleagues feel
3 differently.

4 (No audible response.)

5 VICE-CHAIRMAN DETTMAN: Great.

6 Well, I can start us off here. And the Board
7 has before them a request to construct a new
8 commercial office building located at the
9 corner of 9th Street and New York Avenue, N.W.
10 There are several areas of relief being
11 requested, both variances and special
12 exceptions. And I think Mr. Moy did a great
13 job of taking us through those provisions.

14 Essentially, what's being
15 requested is relief from the loading
16 requirements to provide a dedicated service
17 delivery space. What's be proposed with the
18 plans is a flexible space located along the
19 9th Street side of the building. And
20 essentially what it is, is the applicant
21 intends to provide two exit lanes from the
22 underground parking garage and essentially the

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1 one exit lane, the southern lane, can be
2 closed off and temporarily used during loading
3 hours or whenever there's a need to provide
4 a service delivery space.

5 With respect to the roof structure
6 relief, the applicant made a case for needing
7 additional height from the maximum eighteen-
8 foot-six-inch penthouse enclosure height,
9 stipulating that they have a desire to provide
10 access to the roof from every single elevator.
11 And the particular type of technology that the
12 applicant is using that's referred to as a
13 machine room-less elevator, actually needs
14 additional height over the carriage in order
15 to accommodate the cartridge or the necessary
16 mechanics associated with that type of
17 elevator, and they needed an area variance
18 from that.

19 Finally, there were special
20 exceptions requested for again multiple roof
21 top enclosures and the special exception
22 relief in order to provide roof top enclosures

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1 that have varying heights. I think the
2 majority of the penthouse enclosures are
3 around eighteen-feet-six-inches. And then the
4 area that's above the elevator penthouse rises
5 to height of about 22 feet. And in the
6 testimony the applicant established that
7 though they have varying heights of roof top
8 structures, they actually do meet the one-to-
9 one setback requirements under 400.

10 I think the Office of Planning
11 provided us with a very thorough report, and
12 that's our Exhibit No. 32. They recommend
13 approval of the variances and special
14 exceptions. And in reliance upon that report,
15 I can take us through the areas of relief.

16 With respect to the area variance
17 requests under 400.7(c), I was persuaded more
18 so by the fact that the technology that
19 they're planning on using, this kind of new
20 elevator technology, this machine room-less
21 technology that is kind of the going rate for
22 providing elevators and roof top access in new

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1 buildings, and the applicant's testimony that
2 the older technologies, the side-slung
3 elevators and the -- I forget the other type
4 of elevator technology, they're actually
5 starting to be phased out. They're harder to
6 get. They're more cumbersome in terms of what
7 it looks like on top of the roof top.

8 So, in terms of the fact that the
9 applicant wants to use new technology and the
10 point at which this technology exists requires
11 additional clearance height above the carriage
12 in excess of what's contemplated by the Zoning
13 Regulations, the eighteen-feet-six-inches, I
14 think that that does create a practical
15 difficulty upon the property owner.

16 I know that the applicant had
17 proffered that the existence of the old
18 Convention Center site master plan also
19 contributed to their exceptional circumstance
20 in meeting this requirement. I wasn't
21 entirely persuaded that that actually
22 contributed to their exceptional circumstance.

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1 However, I do think that the variance test has
2 been made because of the argument that was put
3 forth with respect to this technology.

4 And I think that the third prong
5 has been met simply because although we would
6 be granting this additional height, it still
7 is in compliance with the setback provisions
8 of 400 and 411. And so this additional height
9 will not result in any kind of substantial
10 detriment to the public good by way of views
11 from the streets and from other buildings. I
12 think some of the other improvements that are
13 being contemplated on the roof in terms of
14 activating that space and using that space for
15 outdoor space will help to hide the additional
16 height that's been granted.

17 So, I think what I'll do is turn
18 it over to my colleagues with respect to the
19 area variance request and kind of get your
20 thoughts on that.

21 MEMBER MOLDENHAUER: Thank you,
22 Mr. Dettman. I have to agree with you. In

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1 other words, I think that they have met the
2 area variance request, but I do think that my
3 analysis differs with yours slightly.

4 I don't think that the technology
5 change is unique or at all an exceptional
6 circumstance that should weigh in to
7 satisfying the uniqueness standard of the
8 variance test. I think that here, while I do
9 say that I think they've met it, I think
10 they've met it just by a scintilla of
11 evidence, I think that really if this had been
12 a challenged application, they would have
13 needed to go much more in depth into how the
14 master plan actually provides additional, I
15 guess, support for this being an exceptional
16 circumstance.

17 From the little information that
18 we've gotten, it is a condition that is
19 special to this piece of property, which is
20 why I feel that it does satisfy it. And I
21 think that those conditions do make this
22 property unique. But again, I think that

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1 there's a little bit of a lack of information
2 on that regard. But I think that does satisfy
3 it. And that because of those unique
4 guidelines and conditions which were, I think.
5 from what we heard from the applicant, a part
6 of the initial sale and conditioned on the
7 sale and purchase of that property, that then
8 that goes towards the practical difficulty.
9 And the practical difficulty does incorporate
10 some aspects and some elements of the issue of
11 the elevator and the new technology. That
12 goes for the fact of that it's actually
13 required by those guidelines to have these
14 additional roof terraces and sustainability
15 issues, and things to that effect.

16 So, I think that they have met
17 these burdens and I think that I would open it
18 up for any additional comments.

19 MEMBER TURNBULL: I think you've
20 both made arguments that get us through the
21 variance test on this. And I would say that
22 the relief that they're requesting is de

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1 minimis considering that we're going from
2 eighteen-six to twenty-two. And it's set back
3 significantly. I mean, I think it meets the
4 intent of what the regulation calls for, given
5 the new circumstances that they have. So, I'm
6 fully on board with that.

7 VICE-CHAIRMAN DETTMAN: Great.
8 And then we can move onto the special
9 exception per 411.11 in order to have roof
10 structures of varying heights. I'll just turn
11 to that provision in the Regulations very
12 quickly and articulate the standard that needs
13 to be met. And I won't read it in its
14 entirety, because it's a long provision. But
15 411.11 states that, "Where impracticable
16 because of operating difficulties, size of
17 building lot or other conditions relating to
18 the building or surrounding area that would
19 tend to make full compliance unduly
20 restrictive, the Board is empowered to improve
21 by way of special exception," and it lists off
22 the provisions that the Board can grant

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1 special exception from. And one of them is
2 the provision in 411 that requires roof
3 structures of a uniform height.

4 I think that the applicant,
5 without actually articulating all of the
6 testimony that they provided, I think the
7 applicant has met its burden for this
8 particular special exception. I think that in
9 order for them to accomplish some of their
10 goals for what they have in mind for the roof
11 in terms of activating it and making it a
12 place where it can be enjoyed, which is
13 driving their desire to use this new elevator
14 technology for ease of access and ADA
15 compliance and whatnot, I think that it
16 certainly is not impossible for them to
17 accomplish those goals by using conventional
18 elevator technology. However, despite that,
19 I think that it would be impracticable to
20 require them to fit this all within eighteen-
21 six.

22 I also think that it would be

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1 impracticable to require them to increase the
2 height of the rest of the remaining portion of
3 their roof structures to match the 22 feet of
4 the elevator penthouses, especially since the
5 potential for an increased impact to adjacent
6 neighbors and the Zone Plan if we were to
7 require them to put that additional bulk on
8 the roof top.

9 So again, I think that the burden
10 has met by the applicant for the special
11 exception under 411.11. And again, I can turn
12 it to my colleagues for additional comments.

13 MEMBER TURNBULL: I think you've
14 done an excellent job of going through that
15 and I would concur with you.

16 MEMBER MOLDENHAUER: I would also
17 concur and I don't think it's necessary to add
18 any additional facts.

19 VICE-CHAIRMAN DETTMAN: Okay. So
20 we can move onto the third special exception,
21 which is the loading special exception for the
22 dedicated service delivery space relief. And

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1 that would be under 2202.2, which stipulates
2 that within the Downtown Urban Renewal Area
3 the BZA is authorized to grant special
4 exceptions to reduce or eliminate the required
5 amount of loading berths and service delivery
6 loading spaces, and to approve the use of off-
7 site loading facilities. And it's subject to
8 a series of conditions, five of them in fact.

9 I am simply going to reply on the
10 Office of Planning's report and state for the
11 record that I think that the applicant once
12 again has met its burden under 2202.2.

13 Colleagues, if you'll remember,
14 most of the discussion around this particular
15 area of relief had to do with the impacts to
16 the flow of traffic along 9th Street, whether
17 or not when these two exit points were open
18 for traffic coming out of the parking garage,
19 whether or not that was going to create a
20 bottleneck with two cars simultaneously
21 turning right onto 9th Street and the impact
22 on a car coming out of this property and

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1 turning left onto I Street, which is very
2 close by. And I was persuaded by the
3 applicant based on their testimony that that's
4 been looked it, it's been coordinated with
5 DDoT. There are some improvements that are
6 contemplated for the existing traffic pattern
7 along 9th Street in conjunction with the
8 redevelopment of the site. We do have a
9 traffic study that was provided. It wasn't a
10 full-blown traffic study, but it did look at
11 these issues and concluded that it was not
12 going to create any objectionable conditions
13 with respect to traffic and parking and
14 whatnot.

15 So, based on the special exception
16 criteria of 2202.2, as well as the general
17 criteria of 3104, I think the case has been
18 made there as well. And that's all I have to
19 add with that.

20 Mr. Turnbull?

21 MEMBER TURNBULL: I would agree
22 with you, Mr. Dettman. I think the only issue

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1 that came up, and I remember their drawings
2 indicated the existing bus lane. There was
3 bus parking. There was the bus lane. And
4 then there was a question we came up. We
5 didn't know 9th Street would remain one-way or
6 two-way. I think I had a concern about two
7 lanes going out at the same time. But, I
8 think in the discussion that we had it sounded
9 like there is some more work to be done. But,
10 it seemed like a very feasible way to
11 ameliorate the amount of traffic coming out of
12 the garage. So, I was satisfied.

13 MEMBER MOLDENHAUER: I agree with
14 both of you. I think that there was that
15 discussion. I think one of the statements
16 that was made by the applicant also about the
17 bus zone was that that's currently a temporary
18 bus zone provided for buses to New York such
19 as the BoltBus and MegaBus. The same use
20 would not exist once D.C. City Center was
21 actually developed and this parcel was also
22 developed. So, I think that they did address

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1 those issues. I think that the ability to
2 have that flexibility will enhance the flow of
3 traffic, that it will actually improve that
4 issue rather than hinder it. And I think also
5 that the flexibility was important because of
6 their desire to have so many retail bays on
7 that first floor. So, I think it all enhances
8 the general zoning requirements and zoning
9 plans for the area.

10 VICE-CHAIRMAN DETTMAN: Thank you,
11 Ms. Moldenhauer.

12 I think that takes care of the
13 three areas of relief that are being
14 requested.

15 Mr. Moy, in the interest of time,
16 when we make the motion can I refer to your
17 document that you prepared here, the amended
18 advertised language instead of reading the
19 long advertisement?

20 MR. MOY: Absolutely, as you wish.

21 VICE-CHAIRMAN DETTMAN: I think
22 that we're confident that the language that

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1 you read with the incorporation of, what was
2 it, 411.4, that would be the language or the
3 relief that the Board would be voting on.

4 And so that being said, I'll make
5 a motion to approve the application for relief
6 from the dedicated service delivery space
7 requirement, the roof structure requirements
8 for uniform height, as well as an area
9 variance to allow additional height in excess
10 of the maximum eighteen-foot-six-inch
11 requirement. And is there a second?

12 MEMBER TURNBULL: Second.

13 VICE-CHAIRMAN DETTMAN: Thank you,
14 Mr. Turnbull.

15 I think before we take a vote
16 there is one additional comment that I wanted
17 to make. We have a motion that's been made
18 and seconded for approval of the application
19 and the areas of relief that have been
20 required.

21 Simply for the record, I wanted to
22 stipulate or make a comment about the footnote

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1 that's actually on page 3 of the Office of
2 Planning's report, which states that the
3 applicant considers the atrium to be a tower
4 per 770.3, and sunshades, pergolas, etcetera,
5 to be serving as architectural embellishments.
6 And again, for the record I wanted to
7 stipulate that in fact I disagree with the
8 applicant's property on what they consider the
9 shade canopy be and its compliance with 400.3.

10 And, you know, for those of you
11 that have been involved in the discussions in
12 height and whatnot, I mean, this is a
13 longstanding discussion. You know, I read
14 400.3 that stipulates towers, spires, domes,
15 minarets, pinnacles serving as architectural
16 embellishments. I look at what's being
17 proposed here by way of a shade canopy or a
18 pergola and disagree that that actually can be
19 read in to comply with 400.3. I understand
20 that from a local perspective that
21 determination is left to the Zoning
22 Administrator, but as the NCPC representative

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1 on the Board, stipulate that I do absolutely
2 disagree with that.

3 And furthermore, since the
4 building is being constructed to a height of
5 130-feet, which is the maximum under the
6 Zoning Regulations as well as the 1910 Height
7 Act; and the applicant testified to this, if
8 it is found that this particular shade
9 structure is determined by the ZA to be not in
10 compliance with 400.3, they would simply have
11 to amend their plans or remove the canopy,
12 because further relief is not available under
13 the 1910 Height Act.

14 I think noting that for the record
15 is consistent with the way the Zoning
16 Commission has treated similar cases. I've
17 been informed that case No. 0721, the Zoning
18 Commission, at its May 12th, 2008 meeting,
19 took a similar position and essentially
20 deferred to the Zoning Administrator on almost
21 the exact same issue. And in that case it was
22 NCPC's report to the Zoning Commission

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1 stipulating that a particular project violated
2 the Height Act and the Zoning Commission
3 stated, "While the Commission would be
4 reluctant to approve plans that clearly
5 violate the Height Act, no clear-cut
6 infraction has been presented. Nevertheless,
7 the ZA should not view the Commission's
8 approval of this modification as obviating the
9 need for a careful review of these plans for
10 compliance with the Height Act and the Zoning
11 Regulations."

12 And I think that that should hold
13 true for this BZA proceeding as well. So
14 again, I just wanted to get that on the record
15 and give my colleagues and opportunity to make
16 any comments before we go ahead and take a
17 vote.

18 MEMBER TURNBULL: I would agree
19 with everything you said. And speaking for
20 the Zoning Commission, we have had on any
21 number of planned unit developments pergolas
22 and trellises which are horizontal features

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1 which do not comply with the strict
2 interpretation of minarets, domes and
3 everything else. And this does bring a
4 question into whether it's a violation of the
5 Height Act, but that's not before us. And
6 you're absolutely right, but I do think we
7 need to comment on it. And I would agree with
8 you 100 percent.

9 I guess I also question whether
10 the one element, a tower is really a tower.
11 But again, that's not before us.

12 MEMBER MOLDENHAUER: Being the one
13 lawyer and not architect or planner on the
14 Board, I definitely have, I guess, less of a
15 knowledge on different definitions. And I
16 think that, you know, in the future it would
17 be good to kind of have more of an in-depth
18 discussion about this, but obviously it was
19 not before us and thus we weren't able to get
20 into it. But I think that it's something that
21 we should all look at in a little more detail.

22 VICE-CHAIRMAN DETTMAN: Thank you,

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1 Ms. Moldenhauer and Mr. Turnbull.

2 In my remarks I was reading
3 actually an excerpt of a Zoning Commission
4 order. Would we consider putting similar
5 language in our order to make that note to the
6 Zoning Administrator?

7 MEMBER TURNBULL: I would be in
8 favor of that.

9 VICE-CHAIRMAN DETTMAN: Okay.

10 MEMBER MOLDENHAUER: I thought it
11 would initially be a summary order, so I think
12 it would just be a matter of timing. I don't
13 know if that would delay the order.

14 MS. GLAZER: In the past, as the
15 Board is aware, OAG has assisted and can
16 assist this time in doing a hybrid order, if
17 that's your request.

18 VICE-CHAIRMAN DETTMAN: And that's
19 a essentially a summary order with an extra
20 paragraph?

21 MS. GLAZER: That's correct.

22 VICE-CHAIRMAN DETTMAN: Okay.

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1 Well, I would be amenable to that. And it
2 seems as if it's the consensus of the Board to
3 include that in the body of the order.

4 So that being said, a motion's
5 been made and seconded. I can amend the
6 motion to have that extra paragraph put into
7 the order to stipulate our views with respect
8 to the sunshade or pergola.

9 So again, motions been made and
10 seconded. All those in favor say aye. Aye.

11 MEMBER TURNBULL: Aye.

12 MEMBER MOLDENHAUER: Aye.

13 VICE-CHAIRMAN DETTMAN: Opposed?

14 (No audible response.)

15 VICE-CHAIRMAN DETTMAN: And
16 there's no abstentions. Mr. Moy, can you call
17 the vote, please?

18 MR. MOY: Yes, sir. Staff would
19 record the vote as 3-0-2 on the motion of the
20 Chair, Mr. Dettman, to approve the application
21 with language to be included in what appears
22 to be a summary order. Seconded by Mr.

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1 Turnbull. Also in support of the motion, Ms.
2 Moldenhauer. No other Board Members
3 participating. Again, 3-0-2.

4 VICE-CHAIRMAN DETTMAN: Thank you,
5 Mr. Moy. And that actually completes our
6 afternoon special public meeting, is that
7 correct?

8 MR. MOY: That's correct.

9 VICE-CHAIRMAN DETTMAN: Great. So
10 the public meeting will stand adjourned.

11 (Whereupon, the meeting was
12 adjourned at 2:45 p.m.)

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