

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY, DECEMBER 1, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:00 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman
SHANE L. DETTMAN, Vice Chair (NCPC)
MERIDITH H. MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner
KONRAD SCHLATER, Commissioner

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.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN
PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on December 1, 2009.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

<u>APPLICATION NO. 18001</u>	10
Edward Hoyt, Applicant	
William L. Feeney, Architect	
Arthur Jackson, Office of Planning..	22
<u>APPLICATION NO. 18002</u>	39
Paul Tummonds, Pillsbury Winthrop...	43
John Pickard, Pickard Chilton.....	63
Garrett Preis, Could Property Company	46
Deborah Lukan, Pickard Chilton	
Stephen Cochran, Office of Planning	108
<u>APPLICATION NO. 17958</u>	
Commissioner Ronald Bland, ANC 4-C.	134
George Thanos, owner.....	136
Thomas Ndungu, Project Coordinator	
Henderson Walker, agent or owner...	138
<u>APPLICATION NO. 18003</u>	159
Allison Prince, Pillsbury Winthrop.	160
Jeff Utz, Pillsbury Winthrop	
William Erickson, Cato Institute...	166
Erin Andres, Gorove/Slade Associates	176
Jeff Barber, Gensler.....	170
Stephen Mordfin, Office of Planning	180
VOTE: Four-zero-one to approve....	190
<u>APPEAL No. 17988</u>	192
Preliminary matters.....	193
Thomas DeCaro, representing applicant	
Doris A. Parker-Woolridge, DCRA	
Matthew Green, DCRA	
Koo Yuen	

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

2 10:11 a.m.

3 CHAIRPERSON LOUD: Good morning
4 again. This morning's Hearing Calendar will
5 please come to order.

6 As indicated, my name is Marc
7 Loud, Chairperson. Joining me and having
8 introduced themselves earlier were Vice Chair
9 Shane Dettman representing the National
10 Capital Planning Commission. This is
11 Meridith Moldenhauer a Mayoral appointed, Mr.
12 Clifford Moy, Secretary of the BZA, Ms.
13 Sherry Glazer Office of Attorney General, and
14 Ms. Beverley Bailey, Zoning Specialist in the
15 Office of Zoning. And we've now been joined
16 by Mr. Michael Turnbull, representing the
17 Zoning Commission.

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

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Reporter and is also webcast live.

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

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

12 All persons planning to testify
13 either in favor or in opposition are to fill
14 out two witness cards. These cards are
15 located to my left on the table near the door
16 and on the witness tables. Upon coming
17 forward to speak to the Board, please, give
18 both cards to the reporter sitting to my
19 right.

20 The order of procedure for special
21 exceptions and variances is as follows:

22 Statement and witnesses of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 applicant;

2 Government reports, including
3 Office of Planning, Department of Public
4 Works, DDOT, et cetera;

5 The report of the Advisory
6 Neighborhood Commission;

7 Parties or persons in support;

8 Parties or persons in opposition,
9 and;

10 Closing remarks by the applicant.

11 Persons in support and persons in
12 opposition will be given three minutes;
13 organizations will be given five minutes.

14
15 Pursuant to Section 3117.4 and
16 3117.5 the following additional time
17 constraints will be maintained:

18 The applicant, persons and
19 parties, except an ANC, including witnesses,
20 are allotted 60 minutes collectively;

21 The appellees, persons and
22 parties, except an ANC, in opposition,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 including witnesses, 60 minutes collectively,
2 and;

3 As I indicated, Individuals are
4 given 3 minutes, organization 5 minutes.

5 These time restraints do not
6 include cross examination and/or questions
7 from the Board.

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

13 Nothing prohibits the Board from
14 placing reasonable restrictions on cross
15 examination.

16 The record will be closed at the
17 conclusion of each case, except for any
18 material specifically requested by the Board.

19 The Board and the staff will specify at the
20 end of the hearing exactly what is expected
21 and the date when the evidence must be
22 submitted to the Office of Zoning. After the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 record is closed, no other information will
2 be accepted by the Board.

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

9 Again please, turn off all beepers
10 and cell phones so as not to disrupt these
11 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 requests for a
16 postponement, continuance or withdrawal or
17 whether proper and adequate notice of the
18 hearing has been given. If you are not
19 prepared to go forward with a case this
20 morning or if you believe that the Board
21 should not proceed, now would the time to
22 raise such a matter.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Does the staff have any
2 preliminary matters?

3 MS. BAILEY: Mr. Chairman, again
4 good morning.

5 CHAIRPERSON LOUD: Good morning.

6 MS. BAILEY: No, sir. I do not.

7 CHAIRPERSON LOUD: Thank you.

8 Then why don't we proceed with the
9 agenda. And let's begin with individuals
10 wishing to testify please rising to take the
11 oath, and Ms. Bailey will administer the
12 oath.

13 (Witnesses sworn.)

14 MS. BAILEY: Mr. Chairman, should
15 I start?

16 CHAIRPERSON LOUD: Yes, ma'am. If
17 you could call the first case?

18 MS. BAILEY: Yes, sir.

19 Application 18001 is the
20 application of Edward A. Hoyt, and its
21 pursuant to 11 DCMR § 3103.2 for a variance
22 from the lot area and lot width requirements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 under section 401, and to a variance from the
2 side yard requirements under section 405, to
3 allow the construction of a new one-family
4 detached dwelling in the R-1-B District at
5 premises 5013 Belt Road, Northwest, Square
6 1756, Lot 64.

7 And, Mr. Chairman, I believe the
8 applicant amended the application to include
9 relief from the on site parking requirement
10 of section 2101.

11 CHAIRPERSON LOUD: Thank you, Ms.
12 Bailey. Indeed, you are correct. I did see
13 the amended request for relief in our file.

14 And it looks like the parties have
15 joined us at the table. So why don't we begin
16 with you introducing yourselves for our
17 record?

18 MR. HOYT: Yes, good morning,
19 members of the Board. My name is Edward
20 Hoyt. And I want to thank you for the
21 opportunity to present my project, Case No.
22 18001.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I believe the reporter has our
2 cards. We submitted those earlier, is that
3 correct?

4 May I proceed then.

5 CHAIRPERSON LOUD: Well, at this
6 point we were just looking to have you
7 introduce yourself for the record and for the
8 court reporter. And you have a gentleman
9 with you at the table who it would be
10 appropriate if he were to introduce himself.

11 MR. FEENEY: Yes. Good morning.
12 My name is William L. Feeney, I'm the
13 architect working with Mr. Hoyt on the
14 project.

15 CHAIRPERSON LOUD: Good morning to
16 you as well.

17 Let me begin by asking whether the
18 ANC is present here this morning? Okay. I
19 don't see them here. But generally speaking,
20 I'm sure as you know, this address was before
21 us recently and was occasioned by a number of
22 parties and persons in the community that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 were at odds with the request. I think a lot
2 of that has changed now, and I believe you
3 got the full support of the ANC and a number
4 of neighbors.

5 I think from our advantage point
6 we've reviewed the file and the submissions
7 and the pleadings. And with your support
8 we'd like to go straight to questions that
9 Board members may have, which I think may
10 truncate some of the hearing. And then we'll
11 turn to the Office of Planning and ask them
12 some questions and give you an opportunity to
13 ask them some questions as well if you'd like
14 to.

15 So, again, obviously I'm not going
16 to suggest that you not do your
17 presentations, but I think that when cases
18 are fully briefed in the file as yours is,
19 it's a good sign that Board members are
20 looking favorably toward the requested
21 relief, we just have some questions that
22 would help fill the gaps in our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understanding.

2 MR. HOYT: Certainly I did prepare
3 a short statement, but given your suggestion
4 I'd be pleased to proceed to the questions
5 and answers as you suggest.

6 CHAIRPERSON LOUD: Well, why don't
7 we do that? I think you'll have an
8 opportunity to the close to give some closing
9 remarks. If you want to weave what you had
10 intended as opening into that, by all means
11 you'll have a chance to do that.

12 Let me see from Board members.
13 Let me open it up for questions.

14 VICE CHAIRPERSON DETTMAN: Good
15 morning, Mr. Hoyt. Just a couple of
16 questions about the plans that you have in
17 the record, which is our Exhibit 11. I see
18 that you amended your application to include
19 parking. The plans that we have us show a
20 curb cut and new driveway. I take that that
21 will not be constructed.

22 MR. HOYT: That's correct. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will, obviously not include the parking space
2 on the property as we originally perceived.

3 VICE CHAIRPERSON DETTMAN: Do you
4 have any amended plans with you that you can
5 submit that indicate that?

6 MR. HOYT: We don't have this
7 right now, but we can certainly submit those.

8 VICE CHAIRPERSON DETTMAN: Okay.
9 And secondly, you provided an updated survey,
10 Exhibit 24 indicating that the side yards
11 actually were not exactly five feet but
12 slightly below or above that. Is this
13 information that you shared with Mr. Simons,
14 Ms. Grumbine and the neighbors that are
15 immediately adjacent? And has that changed
16 their support for the project at all?

17 MR. HOYT: I have not discussed
18 this with them. It has not changed their
19 support for the project. The discrepancy is
20 so slight it will really be immaterial.

21 VICE CHAIRPERSON DETTMAN: Okay.
22 Would you say their major concerns were that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they didn't want the side yards to be
2 decreased than what currently exists?

3 MR. HOYT: With respect to Mary
4 Grumbine and Jack Simmons the major concern
5 that they had regarding this project is that
6 it not encroach on their private property,
7 which is the easement on the other side. And
8 in deference to that concern I have made the
9 commitment to put a fence along that property
10 line. And to do so even before we proceed
11 with the construction.

12 VICE CHAIRPERSON DETTMAN: Thank
13 you, Mr. Chairman.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Dettman.

16 Other Board members, other
17 questions?

18 COMMISSIONER TURNBULL: Thank you,
19 Mr. Chairman.

20 Mr. Hoyt, and maybe it's looking
21 at your existing plans, and you're building
22 the house totally on an existing foundation,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is that correct?

2 MR. HOYT: On the existing
3 foundation, that's correct.

4 COMMISSIONER TURNBULL: And it
5 looks like in our Exhibit 11 Drawing A-0, it
6 looks like the foundation is not totally
7 complete. It looks like you're going to have
8 to add some.

9 It's kind of interesting. You've
10 got a unique condition here with your
11 footing. You've had to use vertical piers
12 going down 35 feet?

13 MR. HOYT: That is correct. This
14 work was undertaken by the developer who
15 owned the property previously.

16 COMMISSIONER TURNBULL: So you'll
17 be doing the same thing for any extensions on
18 your footings?

19 MR. HOYT: We anticipate having to
20 put in two at the front part of the property
21 in order to complete the foundation on the
22 very front part of the existing foundation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: What's the
2 spacing typically on those that you've got?

3 MR. HOYT: My understanding is
4 that it's about six feet.

5 COMMISSIONER TURNBULL: Six feet?

6 MR. HOYT: Something like that.

7 COMMISSIONER TURNBULL: Are you
8 the only one on the block that's had to do
9 that or is that a common condition for this
10 area?

11 MR. HOYT: I'm not sure of any
12 other house that has had to do this in the
13 area. Clearly, many of the houses were built
14 sometime ago that were in this square. But
15 I'm not aware of any other instance, no.

16 COMMISSIONER TURNBULL: It sounds
17 like the water table is very high in your
18 area or where you are?

19 MR. HOYT: That is correct. There
20 is water throughout that area of the square.

21 COMMISSIONER TURNBULL: Jumping
22 back to our going to Exhibit 24 which is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 survey which Mr. Dettman alluded to,
2 adjoining the property, Mr. Lemoine's
3 property which is adjoining yours, it shows
4 that there's a concrete retaining wall. It
5 notifies it all the way along the line of the
6 property, but then there's also a wood
7 retaining wall. Is that still there, is it
8 going to be removed. It seems like a
9 redundant thing that's there, but I'm just
10 curious what's on that five foot side yard
11 there?

12 MR. HOYT: There on Mr. Lemoine's
13 side of the property line there is a driveway
14 and a fence. The retaining wall, as I
15 understand it, has shifted somewhat as a
16 result of the construction that was
17 undertaken to put the existing foundation in.

18 And I have discussed with Mr. Lemoine what
19 his plans are in order to coordinate our
20 plans to be able to adjust that line and the
21 walls there.

22 I am not certain at this point

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what the solution will be to the wall, but I
2 am confident based on my extensive
3 discussions with Mr. Lemoine about this,
4 about the project more generally, that we
5 will come to a mutually satisfactorily
6 agreement as to how that wall will exist once
7 my project is finished and the repairs that
8 he needs to undertake on his driveway are
9 completed.

10 COMMISSIONER TURNBULL: Does the
11 property between your two, and where it
12 slope? Are yours sloping toward him? It
13 looks on your elevation on A-4 that it looks
14 like yours is a little bit lower.

15 MR. HOYT: That is correct. My
16 property is lower.

17 I do anticipate filling in some of
18 the gap there to bring the level closer to
19 the level on his side.

20 COMMISSIONER TURNBULL: And
21 basically you've got a raised basement. It
22 looks like most of its above grade. You've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 got a little bit under grade. I'm looking at
2 even on your prospective over there. And
3 then I guess you're going, the back of the
4 property is higher?

5 MR. HOYT: Yes. The grade slopes
6 from the back towards the front of the
7 property.

8 COMMISSIONER TURNBULL: It looks
9 like on the pictures that there is already a
10 curb cut at the easement, is that correct?

11 MR. HOYT: There is a curb cut on
12 the easement side. That is not on the 50 foot
13 approved property.

14 COMMISSIONER TURNBULL: Right.
15 Okay. All right. Thank you.

16 MR. HOYT: Thank you.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Turnbull.

19 MEMBER MOLDENHAUER: Could you
20 please just show where on the diagram or on
21 the lower one where the addition to the
22 footing is going to be made?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. HOYT: I'll let Bill Feeney
2 answer that question.

3 MEMBER MOLDENHAUER: Do you need a
4 microphone.

5 CHAIRPERSON LOUD: Mr. Moy has a
6 microphone.

7 MR. FEENEY: The existing
8 foundation is right here, and it stops short.
9 And we would just want to continue that to
10 complete the parameter. So its about a 15
11 foot long by 4 foot long leg. That would be
12 to the complete that.

13 And then the porch is on here.

14 MEMBER MOLDENHAUER: So the front
15 and rear porch are both on piers?

16 MR. FEENEY: Yes, similar to the
17 neighbor.

18 MEMBER MOLDENHAUER: All right.
19 Thank you.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Moldenhauer.

22 Just one quick follow-up question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from Mr. Dettman's question, Mr. Hoyt,
2 regarding the revised plans. How long do you
3 think it would take you and your architect to
4 get those to the Board?

5 MR. HOYT: This week.

6 CHAIRPERSON LOUD: This week?

7 Okay. All right.

8 I don't have any additional
9 questions.

10 Why don't we turn to the Office of
11 Planning. Good morning.

12 MR. JACKSON: Good morning, Mr.
13 Chairman, members of the Board.

14 CHAIRPERSON LOUD: Let me ask this
15 question, unless you want to approach it
16 briefly, could you just very, very, very
17 briefly articulate why you think this
18 applicant has made the variance test without
19 reading through your report? Just the
20 uniqueness, the practical difficulty, et
21 cetera, so we can get that on the record.
22 And I think we'll open it up for any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions that Board members have.

2 MR. JACKSON: All right. The
3 application that's before you, of course, is
4 to demolish the existing framing on existing
5 foundation and build a new building on that
6 foundation.

7 Now, the new conditions relate as
8 much to the sides of the property as anything
9 else, as this is the smallest lot on the
10 square. And in order to build the existing
11 building with an eight foot setback on both
12 sides, which would result in a very narrow
13 structure, that would be nothing like any of
14 the other buildings on the property.

15 We also find that the proposal to
16 provide five feet in terms of setback is
17 consistent would meet the requirements for a
18 reasonable setback noting that the property
19 to the north is essentially the rear yards of
20 adjacent properties and the properties to the
21 south has an existing dwelling that has had
22 the same setback with previous dwellings that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was on the property.

2 We also noted with the request to
3 waive the parking requirement that the impact
4 of actually providing the curb cut to provide
5 access to more parking space would diminish
6 the already minimal parking that's available
7 along the street, and that the applicant's
8 contacts with Department of Transportation
9 did not really support the idea or did not
10 seem to support the idea of creating an
11 additional curb cut along the street. As
12 you'll note on the aerial photograph that's
13 in your map there are already a series of
14 curb cuts along the street, more than three
15 within 50 feet.

16 So with that, we thought that
17 there is a practical difficulty with regard
18 to the applicant providing the required
19 setbacks in terms of the impact on the actual
20 pattern of the development and the resulting
21 impact on the character of the community. We
22 think that the applicant's proposal is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reasonable and that it will remove an
2 existing eyesore in the neighborhood. And
3 that working with the neighbors he's come up
4 with a solution that will not result in
5 significant change in the current status quo
6 in terms of physical impact on the property,
7 but would limit, as I say, an eyesore in the
8 community.

9 And we based on those terms we
10 think he's met the standards for granting of
11 approval, and we say so in our report.

12 That concludes a brief summary of
13 our report.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Jackson.

16 Are there any questions from,
17 first let's take Board members? Or does the
18 applicant have any questions for the Office
19 of Planning?

20 MR. HOYT: No, no further
21 questions from my side.

22 CHAIRPERSON LOUD: Okay. Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Jackson, you mentioned ANC's vote, I think,
2 in your report. And my file does not have an
3 ANC report. I don't know if -- my file was
4 put together rather early last week because
5 of the Thanksgiving holiday. So there could
6 be one -- okay.

7 MR. JACKSON: I believe I was
8 faxed a copy.

9 CHAIRPERSON LOUD: Right.

10 MR. JACKSON: You mailed a copy of
11 their -- let me check.

12 CHAIRPERSON LOUD: Any other Board
13 members have an ANC report? Okay. We don't
14 have an ANC report, but its been represented
15 by the Office of Planning that they did vote,
16 I guess, November 5. You may have some
17 information on that as well, Mr. Hoyt. On
18 November 5th, and they voted unanimously to
19 support the request. As of the hearing, we
20 don't have a copy of that so we would not be
21 able to give it great weight. But we may, in
22 fact, be leaving the hearing open for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submission of the revised plan which would
2 give them an opportunity to get that report
3 in.

4 I think we've covered pretty much
5 the entire scope for a hearing. But let me
6 just ask, out of caution, are there persons
7 in the audience who are in opposition to this
8 project?

9 Are there persons in the audience
10 who are in support of the project?

11 And we turn back to you, Mr. Hoyt,
12 and you can provide your closing remarks.
13 And if you wanted to include what you had
14 mentioned at the outset, this would be the
15 perfect time to do that.

16 MR. HOYT: Certainly.

17 Well, thank you. Again, I want to
18 thank the members of the Board for this
19 opportunity to present the project.

20 I believe the documentary record
21 is clear regarding the justification for the
22 project, the support for it in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighborhood, and the support of the other
2 stakeholder agencies.

3 And just by way of background, I
4 purchased the property in its current
5 unfinished state in July. I've been a
6 resident on the street living across the
7 street from this property since 2000. And
8 it's my intention in my purchasing the
9 property to build a house that will meet the
10 needs of my family than the house where we
11 currently reside.

12 And even before closing on the
13 property, I worked very closely with the
14 neighbors to arrive at a design that would
15 satisfy their concerns as well as meet my own
16 needs. And, as has been suggested, because
17 of the particular characteristics of the lot
18 and to avoid disturbing my neighbors with
19 unnecessary earth work and further
20 construction in the foundation, I propose to
21 retain the existing foundation which has
22 nonconforming side yards.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 My application, as has been
2 described, requests leave from the minimum
3 lot size and minimum side yard requirements
4 as well as the one space parking requirement.

5 And that is all detailed in the record.

6 The record also contains
7 documentation showing the support of
8 residents who live in front and on both sides
9 of the property. And we've discussed the
10 discrepancy which arised in the context of
11 the survey that I commissioned to begin work
12 on the installation of the fence, which one
13 of the neighbors has requested. And we've
14 discussed or represented the general features
15 of the project, which I believe are
16 consistent with the overall character of the
17 neighborhood.

18 That's really all that I wish to
19 present to you this morning. And I hereby
20 respectfully request that the Board approve
21 this application. And I guess my question
22 would be if that approval is subject to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presentation of the ANC's report and the
2 revised plans showing that no parking spaces
3 is contemplated on the lot.

4 CHAIRPERSON LOUD: Thank you. And
5 that's a good question, a perfect segue into,
6 I think, where we are in the case. It's not
7 subject to the ANC getting their report in.
8 If they get it, that's great. We'll give it
9 great weight. Their supportive of the
10 application. If they don't get it in, our
11 record just will not reflect great weight
12 support because we did not get the report.
13 But we have a number of other letters in the
14 record supportive of the application.

15 However, the revised plan is a
16 different setting. We really would need the
17 revised plan. You amended your request for
18 relief with respect to the parking space.
19 But the plans still show that curb cut. And I
20 think your architect mentioned he could get
21 that to us by Friday at the latest. So if we
22 could get that, I can't speak for the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Board members, but having heard the report
2 from the Office of Planning regarding how it
3 meets the variance test and looking at the
4 filing, I'm very supportive of the project
5 and would be looking to have it placed on our
6 calendar for next Tuesday as a decision where
7 we vote on it. But, again, it require a
8 submission of that revised plan.

9 MR. HOYT: Certainly. I commit
10 then to having those revised plans to the
11 Board this week.

12 And with respect to the ANC's
13 report, I was sent a copy of the report by
14 the ANC. But clearly for matters of
15 procedure, I would imagine that if the
16 appropriate of member of the ANC could
17 deliver it to the Board directly, that would
18 be preferable. And I will convey that
19 request to them, and I'm sure that there's no
20 problem in doing so.

21 CHAIRPERSON LOUD: Thank you.
22 They're a great ANC. We work with them on a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 number of cases and I'm assuming something
2 just happened with the transmittal because
3 they're typically very timely with their
4 reports. So if they can get that before next
5 Tuesday, really we'll make sure its a part of
6 our record when we deliberate on Tuesday.

7 Board members, were there any
8 other thoughts or reflections on this case?

9 VICE CHAIRPERSON DETTMAN: Mr.
10 Chairman, I agree with everything that you
11 said in terms of needing the plans in the
12 record.

13 And in terms of your support for
14 the project, I certainly share that support.

15 Just for the applicant, I would
16 suggest not only removing the driveway from
17 the plans, but also updating the dimensions
18 for the side yards based off of the survey
19 that you had as well as if you are able to do
20 this, I know that in our Exhibit 25 Mr.
21 Simons and Ms. Grumbine, they reference
22 plans, dated July 21, 2009. Our plans are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dated August 18th. So if there have been any
2 changes to the plans since the July 21st
3 plans, to present those to Ms. Grumbine and
4 Mr. Simons. I know that they were, as Mr.
5 Chair stated, they were party in opposition
6 to the appeal. They have a big interest in
7 this particular property. So whatever you can
8 do to continue their support for the project,
9 I would suggest you do that.

10 COMMISSIONER TURNBULL: Mr.
11 Dettman, are you looking for a letter then
12 from the people to say that they've seen the
13 revised plan or --

14 VICE CHAIRPERSON DETTMAN: I think
15 that that would be relatively easy for them
16 to do. It might be that no changes to the
17 plans have occurred since July 21st other
18 than the driveway and that we wouldn't need
19 anything from them. I guess it's just a
20 statement to the applicant that if you think
21 whatever has been done to the plans since
22 July 21st. might change their support for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 project, I suggest that maybe you run it by
2 them. Because what I wouldn't want to see
3 happen is all of a sudden the BZA getting a
4 letter saying, you know, that the plans have
5 changed and now we don't support the project.

6 MR. HOYT: Certainly the only
7 change to the plans since that time would be
8 the curb cut. There was no difference between
9 the plans dated late July and as of the
10 submission.

11 I have informed all of the
12 neighbors about the amendment regarding the
13 curb cut. But per your suggestion, I would
14 be pleased to show them the revised plans as
15 we submit them this week. And to make them
16 aware of the change it the actual
17 documentation.

18 CHAIRPERSON LOUD: Mr. Dettman,
19 let me ask a follow-up question. Are you
20 envisioning that when the applicant resubmits
21 the revised plans, that there perhaps be a
22 cover letter with the applicant representing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to us that he's presented the revision to the
2 Grumbine parties?

3 VICE CHAIRPERSON DETTMAN: That
4 would be fine.

5 CHAIRPERSON LOUD: That would be
6 okay?

7 VICE CHAIRPERSON DETTMAN: That'd
8 be fine. My comments come out of concern for
9 the applicant. You know, this is a very good
10 project. I'm glad to see that the eyesore is
11 going to go away. And I don't want to have
12 late minute opposition pop up for him.

13 CHAIRPERSON LOUD: Okay. I think
14 that would be very helpful, as Mr. Dettman
15 said, to sort of buttress your position. I
16 do take note that they're not parties in the
17 case and so we don't want to leave the record
18 open for them to respond to what you're going
19 to be submitting. If you can just make a
20 good faith representation that you shared
21 that information. It's about an inch and a
22 half, right, the difference between the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. HOYT: That's correct.

2 CHAIRPERSON LOUD: Okay. So, yes.

3 MR. HOYT: And only for part of
4 that side.

5 CHAIRPERSON LOUD: Is it on the
6 north side on that?

7 MR. HOYT: Yes.

8 CHAIRPERSON LOUD: Okay. Yes.

9 MR. HOYT: So it's 20 feet deep,
10 which is approximately half the length of the
11 foundation.

12 CHAIRPERSON LOUD: Okay. All
13 right.

14 Any further reflections.

15 COMMISSIONER TURNBULL: Mr. Chair,
16 I would just concur with what you just
17 mentioned about the letter. I think it just
18 makes it's -- it's a precautionary follow-up
19 for the applicant that makes it that much
20 easier for us to get through it next week.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Dettman, for your insight on that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I believe we can schedule this
2 for next Tuesday as a decision. Let me take
3 a quick look at the calendar.

4 MS. BAILEY: Mr. Chairman, the
5 date that I have is December 8th for the
6 decision and the applicant is to file the
7 submissions that were discussed by Friday of
8 this week, that's December 4th.

9 CHAIRPERSON LOUD: Yes. Thank
10 you. That's correct. So, yes, we have three
11 hearings next Tuesday morning. So why don't
12 we schedule this as a decision in the
13 afternoon. All right. Mr. Turnbull will be
14 back next Tuesday.

15 And with that, when you are ready,
16 we can call the next case.

17 Thank you.

18 MS. BAILEY: Mr. Chairman, the
19 next application No. 18002. It's the
20 application of Gould Property Company,
21 through Square 374 LLC and it's pursuant to
22 section 11 DCMR § 3104.1 and 3103.2 for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 special exceptions to provide two rooftop
2 structures that are of varying heights under
3 subsections 411.11 and 771.1, and from the
4 loading requirements to provide to a non-
5 dedicated service and delivery space under
6 subsection 2201.5 and 2202.2, and variances
7 to provide elevator penthouses with a maximum
8 height of 22 feet under subsections 400.7 and
9 411.2, and 771.1, to allow the construction
10 of a new office building with ground floor
11 rental uses at 900 New York Avenue,
12 Northwest. The property is in the DD/C-3-C
13 District, Square 374, Lot 45.

14 CHAIRPERSON LOUD: Good morning.

15 MR. TUMMONDS: Good morning, Mr.
16 Chairman.

17 While we have our PowerPoint which
18 is coming up on the system, one preliminary
19 matter we do have is we had previously
20 submitted the rèsùmès of our proposed expert
21 witnesses. And we would have them reviewed,
22 admitted as expert witnesses now while we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wait for that to come up.

2 We submitted rèsùmès of John
3 Pickard and Deborah Lukan, they're the actual
4 firm of Pickard Chilton in our rehearing
5 statement, and we would request that they be
6 admitted as expert witnesses.

7 CHAIRPERSON LOUD: Okay. Let me
8 see if Board members want a few minutes to
9 review that again.

10 Have they both served as expert
11 witnesses before? Okay. That always helps.

12 Well, Members, are there any
13 questions regarding -- okay. Then we will
14 accept your proffered witnesses as experts
15 and accord them the weight that is given
16 experts in our proceedings.

17 I think before we start, and this
18 looks like a wonderful presentation that
19 we're getting to hear and great experts. It
20 really brings the project to life, I think
21 that certain Board members may have
22 questions, specific questions based on what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has been submitted already. And it may help
2 inform your presentation to hear some of
3 those questions at the outset.

4 So I'm going to turn first to Ms.
5 Moldenhauer and then open it up to other
6 Board members.

7 MR. TUMMONDS: Great.

8 CHAIRPERSON LOUD: Before we do
9 that, though, Ms. Moldenhauer, let's allow
10 them to introduce themselves on the record.

11 MR. TUMMONDS: Okay. Good
12 morning. My name is Paul Tummonds with the
13 law firm of Pillsbury Winthrop.

14 Also with me here this morning is
15 Christine Roddy of Pillsbury Winthrop.

16 MR. PICKARD: John Pickard with
17 Pickard Chilton.

18 MR. PREIS: Garrett Preis with
19 Gould Property Company.

20 MS. LUKAN: Good morning. I'm
21 Deborah Lukan with Pickard Chilton.

22 CHAIRPERSON LOUD: And everyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has been sworn in? Okay.

2 And counsel, we turn back to you.

3 MR. TUMMONDS: Did you want to
4 start with questions?

5 MEMBER MOLDENHAUER: I'm going to
6 start off with a couple of questions actually
7 to kind of guide you in some of the different
8 issues that I think some of my other Board
9 members also shared with me.

10 If you can touch on the issue of
11 uniqueness and exactly how the master plan is
12 tied to legally this property and how that
13 effects it, and then what those requirements
14 are. And then how that ties to the practical
15 difficulty. Because I think that that's one
16 area that we don't see as much of a
17 connection. And so if you can really focus on
18 that, I think we can move this along.

19 MR. TUMMONDS: Mr. Preis'
20 testimony is focused on that issue.

21 MEMBER MOLDENHAUER: Okay. Thank
22 you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Board members,
2 were there any other sort of framing? Okay.
3 So with that then, let's turn back to you,
4 counsel, and you can begin your presentation.

5 MR. TUMMONDS: And we'll lead us
6 right into the time when the PowerPoint
7 actually appears on the wall. But you also
8 have in front of you paper copies of the
9 PowerPoint presentation that we'll be making
10 this morning.

11 As Ms. Bailey stated, we're here
12 this morning on behalf of the Gould Property
13 Company through Square 374, LLC seeking
14 Zoning relief in order to construct an office
15 building with ground floor retail at 900 New
16 York Avenue, Northwest.

17 We believe that this is a simple
18 and straightforward application. The
19 building requires three areas of relief:

20 First, special exception relief to
21 allow a nondedicated service and delivery
22 space;

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (2) Special exception relief to
2 allow a roof structure of varying heights,
3 and;

4 (3) Variance relief to allow
5 elevator overruns that exceed the 18 foot 6
6 inch height limitation.

7 The project we are presenting
8 today is the result of extensive
9 collaboration with the District and is an
10 important component of the redevelopment of
11 the old Convention Center site.

12 The Gould Property Company is very
13 excited and proud to present to you today a
14 building exhibiting the highest quality of
15 design with significant sustainability
16 features.

17 The applicant bears the burden of
18 demonstrating that it satisfies both the
19 special exception and variance standards in
20 order to be entitled to the requested relief.

21 Our testimony today, as well as our previous
22 submissions, demonstrate the applicant's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 satisfaction of these standards.

2 The Office of Planning has
3 reviewed our application and supporting
4 materials and fully supports this
5 application.

6 As noted in our rehearing
7 submissions, granting this requested special
8 exception relief is in harmony with the
9 general purpose and intent of the Zoning
10 Regulations and will not adversely effect the
11 use of neighboring properties. Our witnesses
12 today will testify that providing the service
13 and delivery space, but not limiting its use
14 to solely delivery vehicles will adequately
15 serve the loading needs of the property and
16 will not have a negative effect on
17 neighboring properties.

18 Similarly, allowing rooftop
19 structures of varying heights will not be
20 discernable from the ground level, yet will
21 allow the applicant to minimize the presence
22 of the penthouses which is consistent with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the intent of the Zoning Regulations.

2 Finally, the applicant also seeks
3 variance relief variance relief to allow
4 elevator overruns of 22 feet tall in excess
5 of the 18 foot 6 limitation.

6 We will provide testimony
7 describing the technology that the applicant
8 is using, which makes it very difficult to
9 provide the elevator overruns within the
10 regulatory prescribed heights.

11 We will set forth in detail the
12 uniqueness of the property, the practical
13 difficulty the applicant faces in complying
14 with the Zoning Regulations, and the fact
15 that the requested relief will not provide
16 harm to the public good or the Zone Plan.

17 With that, I now see that our
18 PowerPoint is up and running, and I will ask
19 Mr. Preis to present his testimony.

20 MR. PREIS: Thank you, Paul. And
21 thank you, Commissioners.

22 My name is Garrett Preis. I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with Gould Property Company. Gould Property
2 Company is a local family owned and operated
3 real estate company here in the District. We
4 have been in business in the District since
5 1952 developing, designing and building a
6 variety of projects, including office,
7 residential, mixed use projects in downtown
8 Washington.

9 We are very committed to the
10 District and we generally build for the very
11 long term. We rarely sell our projects, and
12 I think with the long term approach you
13 should find that our design reflects that
14 commitment.

15 We also, we don't build just
16 buildings. We spend a lot of time building
17 our neighborhoods that we're involved with. I
18 can point to a few examples of our commitment
19 in that regard.

20 The gentleman I work with and for,
21 Kingdon Gould, III, was one of the founding
22 members of the Penn Quarter Neighborhood

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Association. He is a former Chairperson of
2 the Downtown BID.

3 We delivered a project known as
4 Market Square North at 401 9th Street ten
5 years ago. Prior to that we spent a
6 considerable amount of time improving the
7 area, whereas today you found an office
8 building, two apartment buildings,
9 apartments, market, et cetera. We have done
10 the same amount of effort in our project over
11 at Mass Ave in Chinatown where we're
12 transforming a neighborhood there.

13 And with this project at the old
14 Convention Center we are just delighted that
15 we can participate in the transformation of
16 an entire 10.4 acre parcel which we believe
17 will be certainly one of the best projects in
18 Washington, D.C. and a world class project,
19 one which the District will be, I think,
20 proud to display to the world in the coming
21 years.

22 I'll give a little background now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in particular to discuss the swap in the
2 master plan.

3 Our site is at the intersection of
4 9th Street and New York Avenue, just off of
5 Mount Vernon Square.

6 Prior to owning this site we owned
7 the site at 9th and Mass, which is
8 immediately across the street from the New
9 Convention Center Headquarters Hotel.

10 In the beginning of 1999 and 2000
11 we worked with the District, the Office of
12 Planning and the Mayor's Office with regard
13 to the prospect of developing the Convention
14 Center Headquarters Hotel. In fact, we were
15 selected to develop the hotel at our site in
16 2003, I think, 2002.

17 At the end of 2004 the District
18 really was pushing to have ownership of the
19 site for itself. So in 2005 we agreed to the
20 concept of a swap whereby the District would
21 get our site at 9th and Mass and we, in turn,
22 would be able to take ownership of the site

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at 9th and New York Avenue. And we closed on
2 that transaction in the end of 2007.

3 Our site, while independent, you
4 can see behind me is an integral part of the
5 overall master plan, and we've embraced all
6 of the principles, all of the design
7 principles of that master plan. The master
8 plan was developed by Hines/Archstone-Smith
9 and Sir Normal Foster along with the Shalom
10 Baranes team. And it creates a project that
11 is going to be unbelievable.

12 It calls for many, many
13 principles, but I'll focus on six that really
14 kind of highlight.

15 First, the superior design.

16 The second is re-establishing the
17 grid plan on the streets and introducing the
18 notion of alleyways to create a very
19 pedestrian and active development.

20 The plan also called for the use
21 of the major elements, including the
22 Northwest Park, I think you can see behind me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here, and in the middle of it the Central
2 Plaza.

3 The plan also required that we
4 maximize retail space throughout the project.
5 It's an item that we hold dear to ourselves
6 and have embraced as well. And the plan also
7 calls for terraces and multi dimensional
8 approach to use of the space. So not just
9 ground floor, not just intermediary, but all
10 the way up through to the roofs.

11 Lastly, the master plan also
12 called for a high level of sustainability
13 which includes, as I call it, a present
14 working and living environment.

15 Of all these items, there are
16 about four guidelines that really pertain to
17 our site specifically.

18 First, is the very high design
19 standard. And to that end we visited world
20 renown architects throughout the world and
21 ultimately we're privileged to work with John
22 Pickard and his partner Bill Chilton and Tony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Markese and Deborah Lukan here. And I think
2 they've created a project that is going to be
3 unique and genuinely world class.

4 We also were subjected to a
5 setback so that along, and John if you can
6 show it, along the north/south alley that
7 separates our project from what will be a
8 hotel, we believe, we've been required to
9 setback approximately 12 feet at the fourth
10 level. Okay.

11 And we also had a requirement to
12 put as much ground floor retail as we can in
13 our building. And we have introduced
14 approximately 30,000 square feet of retail
15 space with our goal to maximize retail by
16 taking retail, perhaps, up or down.

17 The terrace program we have, and
18 you'll see, is also another part of the
19 master plan that we have bought into. And we
20 will believe that an office building
21 shouldn't be an indoor space.

22 The last thing, which is very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unique and particular to our site, is a
2 limitation the master plan puts on our ground
3 floor plan. The master plan specifically
4 prohibited loading or driveway entrances
5 along I Street and, of course, the
6 north/south alley which is a pedestrian
7 alley. Therefore, all of our loading and
8 driveway entrances are on 9th Street.

9 When we set out on the design we
10 had Pickard Chilton work with our landscape
11 design architect, which is Gustafson, which
12 happens to be the same landscape architect
13 for the entire site, the balance of the site.

14 And they seized on an opportunity.

15 You have the Northwest Park over
16 here, the Central Plaza here and John and
17 Deborah and their team introduced what we
18 call a garden atrium as a major plan into the
19 area. What that has done has taken this
20 north/south alley and turned it into a
21 pedestrian promenade.

22 Just go to the next one.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This slide really just simply
2 points out the massive amount of retail on
3 the site. And we've completely adopted the
4 retail plan.

5 So here's our ground floor plan.
6 Our entrance is on New York Avenue. Here's
7 the pedestrian promenade. Here's I Street,
8 and I Street is envisioned to be the major
9 retail corridor for the site redevelopment.

10 Here's our atrium, our garden
11 which is pictured right here.

12 And here's our major loading dock
13 which has our primary three bays, service
14 bays. And then on the south side we've
15 introduced the service bay, which is our
16 fourth required loading zone.

17 What we're here today is seeking
18 relief for this particular bay. All we're
19 asking for is that the loading zone not have
20 to be dedicated exclusively for the loading.

21 We'd like to create that as a flex zone, we
22 call it flex zone, so we can use as a loading

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 zone and when it's not required as a loading
2 zone, we have the ability to transform that
3 into an egress lane.

4 The importance of having that
5 loading down on the south end there is to
6 help service the retailers, which are
7 substantial on the I Street side.

8 It's a smart use of space. A very
9 limited space. You can see on our site it's
10 really jam packed. By having that loading
11 zone we can also get the trucks off the
12 street, which is kind of our major desire is
13 to get the trucks off the street, load into
14 the retailers and the office space above.
15 It's a big building with a north core and
16 south core.

17 Let me move towards our second
18 issue of the rooftop. I want to give a
19 little background on our sustainability of
20 our building.

21 We are creating a highly
22 sustainable, high performance building which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be built to a minimum of LEED goal. We
2 have higher aspirations.

3 What is important is our building
4 not only should be a green building, but we
5 want it to look and feel like a green
6 building. And, John, if you'll help me. And
7 if you look at this model to my left here.

8 From any perspective, whether
9 you're inside or outside the building,
10 whether you're on I Street, New York Avenue,
11 Mount Vernon Square or coming from the
12 Convention Center or 9th Street, I Street
13 you'll see terraces, you'll always see
14 greenery. When you come to the garden atrium
15 the first thing that's going to strike you
16 not only is just the sheer volume of the
17 space, but you're going to see plantings on
18 the 9th floor and up top. The same is going
19 to be true on the exterior. But this, of
20 course, culminates as we get up to the roof.

21 I'm going to take an aside for the
22 moment. We have available for submission a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 full narrative, which I think is being handed
2 to you right now, of our sustainability
3 strategy. It's been a no-holds-barred
4 approach to creating the highest performance
5 building available to us.

6 The roof is really a central
7 feature to our project, as is the fourth
8 floor terraces and the 8th floor terraces,
9 the 9th floor terrace, the 10th terrace and
10 the rooftop. We're going to have a
11 substantial amount of space up for people to
12 enjoy. And the master plan specifically
13 calls out for a three dimensional approach to
14 use of kind of this block of space.

15 We view the roof as an extension
16 of the garden, as a space for everybody to
17 enjoy whether you're a worker in the
18 building, a visitor or a guest, or if you're
19 coming for a major function.

20 We're here before you seeking
21 relief on the height of the elevator
22 penthouse. And I'm going to attempt at this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 moment to explain why.

2 The use and access to rooftops has
3 evolved over the last 20 years, I would say.

4 Historically in Washington no one use the
5 rooftop. You would just go to your office.
6 Say, in the mid-'80s the development
7 community offered rooftop terraces as an
8 amenity. Washington doesn't have a skyline,
9 you know. We're not New York City, but
10 nevertheless people do like to get outside
11 and take advantage of kind of the outdoor
12 classroom, so to speak.

13 So traditionally you would go up
14 to the top floor of a building and then take
15 a stairwell, a single stairwell to the roof.

16 Then, of course, that doesn't provide any
17 sort of access to a handicapped individual.
18 So the next thing that people would do is
19 take the service elevator that the engineers
20 would use to go up to the mechanical
21 penthouse. That wasn't a very pleasant item.

22 So what evolved was the use of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what we call a side slung elevator systems
2 which you put the machine room on the side of
3 the car, and you would limit it to pretty
4 much one elevator that could take you up to
5 the roof from the top most floor, or excuse
6 me. A single elevator from the ground floor
7 up to the top. I've got some very simple
8 illustrations here.

9 These are all scale models, by the
10 way. This is a traditional elevator --

11 CHAIRPERSON LOUD: And I can't see
12 it. I don't believe I remember these guys.

13 MR. PREIS: This is a traditional
14 machine room elevator where you had your cab
15 and machine room on top. This would approach
16 something like 29 feet above your roof. If
17 this was a roof, it would take, say, 29 feet
18 or more above the roof. These were never
19 built in Washington because of the 19 foot 6
20 thing. So this kind of goes by the wayside.

21 What the development community
22 used what was we called side slung elevator.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We took the machine room and we took it off
2 the top, we put it on the side. This, of
3 course, takes up twice as much space on the
4 floor and up on the roof. Very efficient and
5 just barely, realistically, didn't even allow
6 developers to fit into the 18 foot 6. The
7 developers and architects used all sorts of
8 techniques including ramps and slopes to be
9 able to put this elevator up to the roof.

10 All these methods kind of provided
11 to be unacceptable in moving large quantities
12 of people from any level in your building up
13 to the roof quickly. So for instance if you
14 have, say, a barbecue or an event with 200 or
15 300 people and you have a single elevator
16 down in your lobby that goes to the roof, you
17 would have to have everybody get into that
18 single elevator to go up to the roof and then
19 when the event's over you would have
20 everybody get into that single elevator and
21 go down. And that could take 15/20 minutes
22 in a large party.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 What we are employing in our
2 project is the latest technology of
3 elevators, which are termed "machine room-
4 less elevators." And it's somewhat of a
5 misnomer because in fact a machine room-less
6 elevator has above the cab a space, what we
7 call a cartridge which is where all the
8 machinery happens. And so there is, in fact,
9 a requirement for a clearance of space above
10 the cab. It's, in fact, higher than what you
11 have in a -- excuse me. The height
12 requirement of the machine room-less elevator
13 is just slightly higher than the equivalent
14 of the adjacent gear elevator, the side slung
15 elevator.

16 So our goal for this project is to
17 bring all -- you don't see many developers
18 wanting or willing to do this, but we want to
19 bring all the elevator on each core up to the
20 roof. That way if you're on the lobby level,
21 you can go straight up to the roof. If
22 you're on the third floor, you say "Hey,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 let's go have a lunch on the roof." You can
2 go right up to the roof. You don't have to
3 go down to the lobby or down to the lobby
4 over to the other core to that single
5 elevator up to the roof, which can take a lot
6 of time.

7 The machinery-less elevators,
8 they're environmentally friendly, they're
9 high efficient and they're fast. And the
10 need and the use of speed allows up to
11 install only five elevators versus six, and
12 that is using less energy, taking up less
13 resources and getting people up and in and
14 out of the building, of course, up onto the
15 roof with less resources than you would if
16 you were to take the traditionally approach
17 and put a number of these side slung
18 elevators, which by the way the manufacturers
19 don't even want to sell to you anymore
20 because the technology is all about machine-
21 less elevators.

22 COMMISSIONER TURNBULL: Mr. Preis,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could you have a machine room-less elevator
2 that had a override of 18 feet six inches?

3 MR. PREIS: No, not at the speeds
4 we have for sure.

5 I was just going to note that
6 we've achieved all the setbacks, the one-to-
7 one setbacks. And if you look at the model,
8 the amount of space that we're talking about
9 is less than four percent of the roof area.

10 I'm going to turn this over to
11 John, and I appreciate your patience. Thank
12 you.

13 MR. PICKARD: Good morning.

14 Let me put this into some context.

15 Because you just heard a bit of a treatise
16 on elevators. But why are we talking about
17 this? It's important to understand who is
18 developing this project.

19 Kingdon Gould is a passionate
20 citizen of Washington, D.C. This is his city
21 and he sees this project with a long term
22 vision for the future. This is just not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about doing a building, this is about doing a
2 piece of the city.

3 Garrett said earlier that we
4 develop buildings, but we develop
5 neighborhoods. Well, this conversation is
6 about how do we make this a great piece of
7 this fabulous emerging District. So
8 everything we're doing is to try to bring
9 vitality and life to this place. Yes,
10 there's office space, but you see the energy
11 of the design is about the urban domain.
12 It's about how do we maximize retail. And so
13 the notion of a flex zone in the loading bays
14 is how do we get more retail that brings
15 energy to the street and brings energy to the
16 center, to what we call the garden or the
17 piazza.

18 We just don't want to do a
19 sustainable building. You know, LEED
20 certified, LEED gold is what's being
21 reported. I can assure you that's not the
22 target. We don't yet know whether we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make it to the next step, but our every
2 motivation is to get there.

3 So one of the concepts is to
4 create a roof that really comes to life. You
5 know, in the old days you'd just build a roof
6 and call it a day. And so what we're now
7 trying to do is to bring integration of
8 landscape throughout the entire project from
9 the street level to the very top. And it
10 will not be successful. You can just go up
11 and plant a bunch of weeds and, yes, we can
12 go ahead and take advantage of storm water
13 retention. That's check one box. But what
14 Kingdon has envisioned is a place that people
15 will go and they'll spend time. And it will
16 change about how you think about the
17 building.

18 And I will disagree. Garrett, you
19 said Washington, D.C. does not have a
20 skyline. That is incorrect. For a guy from
21 Connecticut, when I come into this city, I am
22 in awe. And so one of the things that I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think is quite terrific is this will be a
2 wonderful advantage point so that the guests
3 and tenants will be able to go out on that
4 roof and live their lives.

5 You know, the people that are
6 going to occupy this building spend more of
7 their lives in that building than they will
8 at home with their families. And so what
9 we're trying to do is to make the project
10 fabulous.

11 So, yes, we're seeking a great
12 building, but we're really trying to make a
13 great city.

14 And with that, I think you
15 undoubtedly have a few questions and we'd be
16 delighted to answer them in any detail.

17 MR. TUMMONDS: I'd just like to
18 wrap with one thing. Can I pull together the
19 information we provided to address your
20 question more succinctly?

21 With regards to uniqueness, we
22 noted in our rehearing statement that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Monoco case, Monoco v. Board of Zoning
2 Adjustment held that the history of the site,
3 as well as an agreement pertaining to the use
4 of the site, should be considered in making
5 the determination as to whether the property
6 could be considered unique. That was a case
7 where there was I think a similar situation
8 to this in that there were outstanding
9 agreements between the Republican National
10 Committee and the U.S. Capitol about where a
11 building be. And then that was used as to
12 say uniqueness doesn't have to be in just the
13 topography of the site, or the site has to be
14 in an irregularly sized shape.

15 Uniqueness can go to factors
16 extraneous to the land. We believe that the
17 master plan, which only applies to properties
18 on the old Convention Center Plan, is one of
19 those requirements that does make development
20 of this site unique. And that part was
21 viewed as in the question of how we tie this
22 uniqueness to the practical difficulty

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 standard. And I would point to the series of
2 the D.C. Court of Appeals case in Gilmartin
3 and Tyler and Barber that talk about what
4 does practical difficulty mean. I know that
5 you have a lot of cases before you that say
6 practical difficulty means unnecessarily
7 burdensome, it doesn't mean impossible. But
8 I think in this case also, too, that there's
9 other factors to be considered.

10 And now I'm quoting from the Tyler
11 case. That we look at the severity of the
12 variances requested. The only variance
13 relief we're requesting is for the four
14 percent of the roof structure that is 22'6",
15 by that I mean 22 feet talk rather than 18
16 feet 6. A very minor amount of relief that
17 we're requesting.

18 The other issues are the weight of
19 the burden of strict compliance. I think
20 we've tried to show that today with the
21 importance of the master plan saying "create
22 an environment that is not just at the ground

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 floor," like we have at the atrium. But it's
2 created an environment up on the roof that is
3 more than -- I'm not going to quite call it
4 weeds that John mentioned, but something that
5 is visually appealing; not just to people who
6 are in this building, but the people who are
7 in other buildings looking over across the
8 city and seeing this building.

9 And the idea of allowing as many
10 people to get to use that building as quickly
11 as possible, I think that will make a more
12 vibrant and active space. If it's easy to
13 get up there with five elevators versus one,
14 versus taking elevators up to another level
15 and having to walk up stairs, that will make
16 it more likely that it will be successful.
17 Having a successful roof up there will be
18 important to this project, but we also
19 believe it will be important to other
20 projects that follow. Projects that are in
21 the master plan, say, that are beholdng to
22 these same constraints that we are, but also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 other projects in the city. We really
2 believe that this will be an opportunity for
3 other developers, other architects to see
4 that we can do more to make those rooftops
5 really inviting, wonderful spaces.

6 So I think that's how we believe
7 that we do tie the uniqueness prong to the
8 practical difficulty prong.

9 With regards to the loading, this
10 is, you know, one of the odd situations are.

11 Because we're in the Downtown Urban Renewal
12 area we have more of a special exception
13 standard than a variance standard for
14 allowing our loading flex zone space to be
15 used for multiple uses. But, again, we think
16 it does tie to the master plan goal of
17 maximizing retail use on the ground floor.
18 We could provide a solely dedicated loading
19 space and not have the flex zone space; we
20 don't think it benefits either the project or
21 the city's goals of having more retail at
22 that level.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And then the final special
2 exception relief is the idea of having
3 multiple roof structures. As we noted, only
4 four percent of our roof structure is not of
5 a uniform height. It is that four percent
6 we're requesting the variance relief from.
7 We believe that minimizing the heights of the
8 majority of our roof structures is important,
9 again, to create a wonderful environment up
10 on the roof.

11 And with that, I think we're ready
12 to answer any questions you may have.

13 CHAIRPERSON LOUD: Thank you.

14 Let me open it up Board members
15 and see if there are any questions.

16 VICE CHAIRPERSON DETTMAN: I just
17 have two questions right now, and they're
18 more questions for clarification.

19 Mr. Tummonds, your special
20 exception for roof structure, is it two
21 provisions? Is it for multiple enclosures
22 and then multiple heights?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. TUMMONDS: We have taken the
2 position that because we have separate
3 elevator cores we do not need the relief for
4 multiple enclosures. I think the Office of
5 Planning noted that in its report. We
6 believe that that is a precedence that has
7 been followed in other cases. If you think
8 it's necessary to say "Okay, we are going to
9 view the requirement that these are two
10 separate cores, but you are having two
11 separate structures," we'd then require that
12 relief.

13 Obviously, what we would do to fix
14 that issue is we'd kind of create some sort
15 of cover, if you will, to connect the two
16 cores. Again, going to the idea of that
17 doesn't benefit really the intent of
18 minimizing the appearance of the roof
19 structures.

20 VICE CHAIRPERSON DETTMAN: I think
21 that the provision says that if roof varies
22 by multiple levels or if two cores are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 required. Would you say that the two cores
2 are required in this instance?

3 MR. TUMMONDS: Yes, absolutely.

4 VICE CHAIRPERSON DETTMAN: Okay.

5 MR. TUMMONDS: Yes.

6 VICE CHAIRPERSON DETTMAN: The
7 other question I have is that in the ISO that
8 you've provided us, the rendering and then
9 looking at the model, it looks like the
10 amount of roof structure that goes to 22 feet
11 has a little bit of a setback and it looks
12 like you're going directly to the edge in the
13 model. Is that just simply --

14
15 MS. LUKAN: The rendering is
16 correct.

17 VICE CHAIRPERSON DETTMAN: Okay.

18 MS. LUKAN: All prior to realizing
19 that we should set this back a little further
20 --

21 VICE CHAIRPERSON DETTMAN: Okay.

22 CHAIRPERSON LOUD: Although your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 voice projects wonderfully, you probably
2 still need a mic just to make sure the court
3 reporter is able to pick it up.

4 MS. LUKAN: All right. Is that
5 better?

6 Is that we set this back even
7 further so that you have more than the one-
8 to-one relationship with the 22 feet. It's
9 actually 23 feet and places where the notch
10 is not, it's 33. So it's actually pretty far
11 setback.

12 VICE CHAIRPERSON DETTMAN: Okay.
13 So the portions of the roof structure that
14 are 18'6" are set back 18'6", for the
15 portions that are 22, they're 22 plus? Okay.
16 Thank you.

17 MEMBER MOLDENHAUER: Just some
18 clarification on the master plan. Are the
19 master plan elements that Mr. Preis spoke of;
20 the encouraging of roof structure, of retail,
21 those different elements, are those a
22 requirement on the project or are mostly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those strongly recommended? What are the
2 exact, I guess, requirements? Because in the
3 master plan, which is Exhibit M, you know
4 there seems to be some additional elements
5 that are alleyways that are identified. I
6 just want to understand exactly what are the
7 specific requirements versus elements of
8 recommendation.

9 MR. PREIS: Yes. When we agreed
10 to the swap, we agreed to abide by all the
11 guidelines set forth in this, like, 100 pages
12 document. What you have in front of you is
13 just like a snippet of it, if that's a word.

14 To the extent we depart from the
15 guidelines, we would have to go back to Hines
16 and to the city and ask for really relief
17 from that. And we really embraced the
18 guidelines that we voluntarily subjected
19 ourselves to.

20 MR. TUMMONDS: So I think in
21 answer, as a condition of the sale transfer
22 of this property they are required to abide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 by the master plan. And if they don't abide
2 by it in certain ways, they have to go
3 through a review process to explain why they
4 can't do that. So, again, it is more than
5 just an aspirational set of guidelines. It
6 was a term of the sale.

7 MEMBER MOLDENHAUER: And then I
8 would assume that as part of this condition,
9 that Hines/Archstone has approved the current
10 plan as it exists?

11 MR. PREIS: I would say that's a
12 correct statement. And we have from the very
13 beginning of our design process, which goes
14 back to September 2008, we have been very
15 forthcoming with Hines/Archstone-Smith, the
16 District and have shown the project to all
17 the stakeholders along the way.

18 MEMBER MOLDENHAUER: Okay. Mr.
19 Tummonds mentioned that one of the master
20 plan elements is to encourage roof structures
21 that are sustainable, greens that are not
22 only enjoyable to the users of the building,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but also to potentially individuals that are
2 going to be in the condo across the street or
3 in the hotel across the street, or even maybe
4 in the Renaissance Building on the other
5 side of 8th Street. How with these varied
6 roof structures and then a closed garden area
7 is that going to meet that goal?

8 MR. TUMMONDS: I thin, first of
9 all, is the idea of there will be controlled
10 access to get up to the roof. I think the
11 idea is that, you know, if you go to events,
12 these would be an event that just not a
13 resident or a tenant in this office goes to,
14 but an event held by the AIA, would be able
15 to enjoy that roof space through that.

16 Someone walking off the street, if
17 I have a hotel room at the Ramada Residence--

18 MEMBER MOLDENHAUER: Maybe you're
19 not understanding. I'm saying people
20 viewing. I mean, a lot of also the aspects
21 of there was a comment made earlier, I forgot
22 who made it, but issues of not able to view

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the varied roof structures from the ground
2 level from the sidewalk. But at the same
3 time in as, you know, we were talking about
4 the fact that nowadays people are using their
5 roofs as additional space to have events, to
6 have a lunch, to do these different things.
7 So it's not only just important to have it be
8 attractive from the interior but also from
9 other viewing locations. That's where I was
10 mentioning the Renaissance and those other
11 locations. So I'm just trying to ask the
12 question of how does the current design with
13 these varied roof structures satisfy the
14 elements of the master plan?

15 MR. PICKARD: You can appreciate
16 that we're working with Ms. Gustafson who is
17 one of the most respected landscape
18 architects. We don't have all the details
19 refined, but there is a commitment to do
20 rich, lush landscaping. And I use the word
21 "we," because I've got a little experience in
22 this and the architects on the panel may

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understand. So often a green garden is
2 grass, it's not much. The aspiration here is
3 to make it beautiful. Not just beautiful for
4 the users, but beautiful for those around who
5 look at it. And so there's also delicate
6 trellis that provides shelter, that also will
7 encourage people to use it. It also actually
8 cools the air that serves the building.
9 There are a whole series of elements that we
10 haven't gotten into in this presentation that
11 go to make it not only beautiful and lively,
12 but smart and sustainable.

13 MEMBER MOLDENHAUER: Thank you.

14 COMMISSIONER TURNBULL: Thank you,
15 Mr. Chair.

16 If you could go back to the atrium
17 perspective?

18 I'm just curious. I mean, and
19 first of all I want to compliment your
20 project. This looks very good.

21 What's puzzling to me with all the
22 sustainable and green top, this looks like a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rather naked acre. I mean this looks -- if I
2 was the owner and you were selling me this, I
3 would say this is -- I don't accept this.

4 This really doesn't hit me as a sustainable
5 green environment or someplace that I -- this
6 looks like a boring lobby in a hotel that was
7 built many, many years ago. And I'm shocked.

8 To me this doesn't meet the criteria of the
9 plans.

10 MR. PICKARD: Let me back up and
11 let's talk about the atrium. Depending on
12 your position in the design team, it's been
13 referred as a piazza or a garden atrium.
14 Let's start with why is it there.

15 One of the things that we're
16 trying to achieve is a civic space. We do
17 not want it to be a hermetically sealed
18 heated, 100 percent air conditioned space
19 that you've experienced in the city, like a
20 high hotel. So one of the keys is the garden
21 atrium acts as a kind of a temperature buffer
22 and that will reduce the deltas between the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 temperature you're trying to seek inside the
2 habitable space and the exterior.

3 So there are a series of large,
4 I'll call them French doors at the base which
5 are on the left side of that rendering that
6 in proper weather will open up and will allow
7 breezes to come through. We've done this on
8 other projects where we will naturally cool
9 the space. And we are trying to strike a
10 balance between, I'll call it, an Italian
11 piassa, which is relatively hard scaped and
12 people assemble, the tables and chairs are
13 out there, you're comfortable. You know,
14 you're not as comfortable perhaps in the dead
15 of winter as you might be if its an air
16 conditioned or heated space, but we're trying
17 to make an urban space that works 12 months a
18 year.

19 You've identified, I'll be honest,
20 a debate that's going on within our team how
21 much landscape versus how much hardscape.
22 How large are the trees? I would be the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first to tell you as a person, not
2 necessarily speaking for Pickard Chilton,
3 that the trees are sufficiently scaled for
4 this important space. And that's a debate we
5 will continue to have.

6 But I will tell you there is a
7 complete commitment to do whatever we can to
8 make this space come to life. And I can also
9 tell you Gould's been very sensitive to not
10 just their perspective or the perspective of
11 our design team, but the perspective of Hines
12 and the master planners. But we've had
13 multiple work sessions. And I'd like to say
14 that what you're seeing in a kind of a joint.

15 And I'm also not going to tell you it's 100
16 percent done, but it's where the music stops
17 for this presentation.

18 MR. PREIS: If I may add one item?

19 What you don't see in the rendering very
20 well, but you can see on the board behind is
21 the fact that within the atrium we've
22 included retail space on both the north and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the south side. To reiterate what John said,
2 the intent here is to have almost a
3 transparent space. To make the space between
4 the promenade and the interior to be almost
5 seamless. So we really want people to be
6 just kind of wondering in and out of the
7 space between the promenade and the retail
8 space.

9 So if I had one criticism of the
10 rendering, there aren't enough people in the
11 space. And as John said, we've had debates
12 as to do we want to be able to have civic
13 events in the space. So the more you add to
14 the space, the fewer people you can have in
15 there. So it is a thermal barrier and it is
16 actually from a sustainability perspective, a
17 very big deal. And I can go into that in
18 more detail if you like.

19 Thank you.

20 COMMISSIONER TURNBULL: Well,
21 thank you.

22 Again, I guess maybe it's at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 point of development where you are. But, you
2 know, it looks like a grayish black terrazzo
3 down there. And it just seems a little
4 unfriendly. I just don't see the excitement.

5 I see the idea of the shops. I think that's
6 an excellent idea. It's just I think the
7 drawing either doesn't pick it up, but I
8 don't see the little terrazzo, the piassa
9 that you're trying to reach for.

10 MR. PICKARD: Just for point of
11 clarification, Mr. Turnbull. I don't
12 disagree.

13 COMMISSIONER TURNBULL: Okay.

14 MR. PICKARD: I mean I think
15 you've identified an area where we need
16 further refinement. We have not concluded on
17 the landscape. We have not concluded on the
18 pallet of that.

19 COMMISSIONER TURNBULL: Okay.

20 MR. PICKARD: And it is our
21 intention that that space comes to life. And
22 we hope it's restaurant, that they're going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to flow in, and that at least 50 percent of
2 that floor is tables and chairs. That's the
3 vision. And I can't tell you we're going to
4 necessarily get all the way, but that's the
5 goal.

6 MR. PREIS: You may be focused on
7 the floor, which is one item. But I will say
8 that the choice of materials to date are the
9 interior of the atrium is actually quite
10 warm. A lot of wood. We're talking about
11 ceramics and terra cotta, perhaps.

12 So we at Gould do try to create
13 very warm living environments. That's a
14 statement that I can say on behalf of our
15 team.

16 COMMISSIONER TURNBULL: Okay. You
17 have a significant overhang on this piece
18 here. Could you go into that? How are --

19 MR. TUMMONDS: The projection?

20 COMMISSIONER TURNBULL: Yes.
21 Right.

22 MR. PREIS: If you could clarify?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Are you talking about the garden roof?

2 COMMISSIONER TURNBULL: Yes. I
3 mean that's a pretty significant
4 embellishment, if you want to call it that.
5 You're not asking for relief, obviously,
6 anyway at this point.

7 MR. TUMMONDS: Well it's the idea
8 the BZA can't grant us relief to extend in a
9 public space.

10 COMMISSIONER TURNBULL: Right.

11 MR. TUMMONDS: That's a request
12 that we have to make in front of the DCRA,
13 BLRA. And that is the applicant who has had
14 discussions with DCRA on the ability to have
15 projections into public space for that.

16 MR. PREIS: If I may add to that?
17 This particular model, I think that
18 projection is a bit overstated, for one. And
19 perhaps, John, you can talk to the setback on
20 the promenade, if you could point out how its
21 setback.

22 We will need to draw attention.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We're trying to make the promenade a really
2 active alleyway. And take it from an alley
3 to a promenade. And so working with Office
4 of Planning, in particular at one point when
5 Tony Markese and Deborah and John kind of
6 added this column outside, the idea was to
7 make it almost like a beacon or like a
8 lighthouse, so to speak. So if you're down
9 in the central plaza here, you could be
10 looking up here and you'll see there's a
11 reason to come up to what we call the third
12 plan element into the atrium. So that's the
13 purpose of kind of that projection.

14 MS. LUKAN: And to help, you know,
15 if you have the piece of paper over our
16 property line, it really doesn't stick out
17 that much. I looks like a lot because of the
18 setback on 4th Street. But it only projects,
19 I believe, four feet beyond the property
20 line, or something like that.

21 COMMISSIONER TURNBULL: And I
22 guess you're also dealing with the ZA on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 terrace, the whole overhang all around the
2 building?

3 MR. TUMMONDS: That's correct.

4 COMMISSIONER TURNBULL: Okay. I'm
5 just curious going back to your comment on
6 the elevators, we've had, I don't know, how
7 many PUDs before the Zoning Commission?
8 Fifty or more. That have elevators going to
9 the top and they're all ADA accessible and
10 just one or two elevators, maybe more. I've
11 never seen anybody yet come before us for the
12 height. I'm just curious are they doing
13 wrong? You found something different. Do we
14 have to change the code requirements? Or I'm
15 just curious why now all of a sudden you're
16 like, no, you can't do it.

17 And I just approved a PUD about a
18 week ago that didn't do it. So I --

19 MR. PREIS: Well I think your key
20 word in your statement there was "one or two
21 elevators." And if we were satisfied with
22 just one elevator to the roof, you could use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a side slung elevator. But then you end up
2 severely limiting your capacity.

3 So the heart of our argument is
4 that we want to be able to bring all the
5 elevators to the roof. And if you were to
6 bring side slung elevators to the roof, you'd
7 use twice as much roof space to bring it up
8 to the roof. If you were in a condominium,
9 you really don't have that many people, for
10 instance.

11 MR. TUMMONDS: And I would note,
12 too, that one of the areas in the Zoning
13 Regulations rewrite that has come before the
14 Zoning Commission was the idea of height and
15 measurement, and in that discussion Mr.
16 Cochran led that group, was the discussion of
17 we really need to look at 18'6". Is 18'6"
18 based in any sort of reality now? And there
19 was some preliminary discussions about maybe
20 it should be 20. And I'll let Steve and the
21 Office of Planning refer to that. But I
22 think through this process I've certainly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 learned more than I probably ever wanted to
2 know about elevators. And I think we are
3 going to learn about elevators. And through
4 that Zoning Regulations rewrite process we're
5 going to be able to say -- you know, we're
6 going to make up with a number that makes
7 sense that's based on something in the
8 marketplace, elevator manufacturers. But
9 obviously to make sure that it's
10 appropriately cited. But 18'6" I think we
11 recognize that that's from 1958, what is that
12 new number going to be? Is it going to be
13 20? Is it going to be something different?
14 That's what we'll have to take a long hard
15 look at when we go through the rewrite of the
16 Regs.

17 COMMISSIONER TURNBULL: Well, I
18 think you've kept the one-to-one setback, so
19 you still tried to meet the intent of the
20 penthouse.

21 Okay. Thank you.

22 MR. PREIS: I might just add one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 item. The 18'6" really never works. And if
2 you go up to most buildings, you'll find that
3 when you get up to the roof you're going to
4 end up walking up a ramp is a trick that the
5 architects have used to kind of make that
6 work.

7 COMMISSIONER TURNBULL: Those
8 sneaky architects.

9 VICE CHAIRPERSON DETTMAN: Mr.
10 Preis, would you say that the need for the 22
11 feet based on this kind of evolving
12 technology of machine room-less elevators
13 minus the master plan, is this a technology
14 that you would pursue anyways based on the
15 desire to really activate the roof?

16 MR. PREIS: Yes. They're the only
17 elevators you can pretty much buy now.

18 VICE CHAIRPERSON DETTMAN: Okay.
19 So regardless of where you're located in the
20 city, this is really the direction that the
21 technology is going, the direction that the
22 development community is going in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gaining access to the roof and the use of
2 elevator technology?

3 MR. PREIS: Yes. But in this
4 particular case we have really focused on
5 maximizing that roof more so than we would at
6 other sites.

7 VICE CHAIRPERSON DETTMAN: Okay.

8 CHAIRPERSON LOUD: I just wanted to
9 ask one of the members of your team to walk
10 me through very briefly the four of the six
11 master plan elements that for this particular
12 project were driving the exceptional
13 situation. I think you mentioned superior
14 design as one. The prohibition on curb cuts
15 on I Street as a second. Maximizing retail
16 space as a third. And what was the fourth?

17 MR. TUMMONDS: Applying terraces
18 and utilizing all planes.

19 CHAIRPERSON LOUD: Okay. Just
20 with respect to the maximizing retail, is
21 that something that the project would have
22 done anyway being in the Central Business

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 District and there being, whether you're part
2 of this master plan or not, there being a
3 real push to have ground floor retail,
4 walkability, pedestrian friendly
5 environments? In other words, is the master
6 plan driving the ground floor retail or is
7 that just something that would have been done
8 anyway, or is it the scale of it? Is it the
9 fact that that it's 30,000 square feet?

10 MR. PREIS: There is a target in
11 our agreement, a specific target, so the
12 scale is --

13 CHAIRPERSON LOUD: Is the target a
14 percentage of the total square footage or is
15 it quantified as 30,000 square --

16 MR. PREIS: Square footage.

17 CHAIRPERSON LOUD: And that is
18 30,000 roughly?

19 MR. PREIS: I think it's closer to
20 40,000, but it doesn't necessarily specify on
21 ground floor. We, of course, want to
22 maximize the ground floor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: All of your
2 retail is on the ground floor?

3 MR. PREIS: Yes.

4 CHAIRPERSON LOUD: Okay.

5 MR. TUMMONDS: And this is, you
6 know, a minor point but again in regards to
7 the relief that we need for the loading, is
8 not variance relief. It's special exception
9 relief. So we don't have to have the tie to
10 the uniqueness in the master plan as much.
11 The special exception thing is to show like
12 if it's a right thing to do, it makes sense.

13 CHAIRPERSON LOUD: Okay. Just to
14 follow-up on that: I didn't fully understand
15 the flex zone discussion and how it --

16 MR. TUMMONDS: The oddity of it is
17 that we're required to provide a service
18 delivery space. Section 2201.5 says that
19 space can only be used as a service delivery
20 space. We call it a flex zone and the relief
21 that we're requesting is we have a space
22 there that can be used for service

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deliveries, but also at the end of the day
2 when most of the cars are coming out of the
3 parking garage, it can be used as another
4 means of egress to get out of the lot. So
5 it's a flex zone in that it is used for both
6 egress out of the lot, but it's also used as
7 a service and delivery space for the majority
8 of the day.

9 CHAIRPERSON LOUD: Okay.

10 MEMBER MOLDENHAUER: So a follow-
11 up on Chairman Loud's question then. Even
12 with a special exception use, would this flex
13 use of using it as a second form of egress,
14 so now you're going to potentially have --
15 would there also be egress, or is it just a
16 loading location on the northern portion of
17 the lot?

18 MR. PREIS: Just loading.

19 MEMBER MOLDENHAUER: Just loading.

20 So where else would vehicles be exiting the
21 building? So this actually be required in
22 order to have ingress and egress for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building garage?

2 MR. TUMMONDS: No, no. I'm sorry.

3 MEMBER MOLDENHAUER: I trying to -
4 - if you can clarify that?

5 MR. TUMMONDS: Yes, exactly.

6 Sure. Sure.

7 MEMBER MOLDENHAUER: Thank you.

8 MR. TUMMONDS: Right now we have
9 one means of egress on the south side, one
10 means of egress into the parking garage, one
11 out dedicated solely for ingress/egress.

12 The flex zone where we've now
13 shown a little truck there, that at certain
14 times of the day can be a second means of
15 egress out. For like at the end of the day
16 when the majority of people are leaving the
17 office building.

18 MEMBER MOLDENHAUER: Thank you.
19 That clarifies the situation.

20 CHAIRPERSON LOUD: Let me see, did
21 you have any additional presentations for our
22 view?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. TUMMONDS: No, that's it.

2 CHAIRPERSON LOUD: All right. Are
3 there any additional questions for the
4 applicant? Yes?

5 VICE CHAIRPERSON DETTMAN: I'm
6 just wondering with respect to the flex space
7 when it's actually going to be available for
8 exiting the parking garage. Did your traffic
9 consultant or DOT look at whether two cars
10 simultaneously turning south on 9th Street is
11 going to cause any kind of congestion and
12 confusion, like that?

13 MR. PREIS: I think as part of our
14 statement we've provided our consultant's
15 report. And there is a sufficient gap, if
16 you will, between 9th and New York and I
17 Street to allow the traffic flow through.
18 Does that answer your question?

19 VICE CHAIRPERSON DETTMAN: Yes. I
20 think your answer is that it's been looked
21 at. I mean, is 9th Street going to be
22 restripped to let drivers know that that is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 double right hand turn south? Is it going to
2 be alternating, one car at a time coming out
3 of the garage in order to make the right hand
4 turn to go south on 9th?

5 MR. PREIS: Well, since it is a
6 one-way street, I think that it makes fairly
7 easy to kind of have a car at the curb lane
8 and a car at kind of second from the curb
9 lane kind of pull out simultaneously.

10 MR. TUMMONDS: And I would say,
11 and this is an instances where I know that
12 you've seen a lot of cases recently where DOT
13 has said no new curb cuts, no new curb cuts
14 on the streets. This is an instance where
15 they've had to say we recognize that you
16 can't put it on I, you can't put on New York,
17 you can't put in the alley, it has to be on
18 9th Street. So they've had a lot of
19 discussions and PDR meetings where the
20 applicant has been about, okay, not just
21 having the second means, but about you know
22 this is kind of going against what we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 saying and how are we going to make traffic
2 on 9th work. And so there has been a lot of
3 discussion with DDOT on that issue.

4 MR. PICKARD: Yes. One of the
5 specific questions was if you could exit from
6 the garage and take an immediate left onto I
7 Street. And that was answered
8 satisfactorily? If you can do that, you can
9 easily get two cars out.

10 VICE CHAIRPERSON DETTMAN: I
11 noticed in the excerpt of the master plan
12 that you provided us that in terms of the
13 building blocks, your site is actually broken
14 up into two buildings. And I was wondering
15 if that garnered any discussion with Hines,
16 the city in terms of consistency with the
17 master plan in that respect?

18 MR. PICKARD: At that point when
19 the master plan was created, the entire PVs,
20 which is the section north of I Street, it
21 was unknown exactly what was going to be
22 there. What we've done in our design is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 create a similar effect with the two
2 buildings with the garden atrium off the
3 promenade with an exit over to 9th Street.
4 But it was indicated in the master plan also,
5 it was stated specifically on the exhibits,
6 that it didn't require it to be two
7 buildings.

8 VICE CHAIRPERSON DETTMAN: And,
9 finally, the part of the atrium that goes
10 above the top floor, is the idea there that
11 from the roof you'll be able to walk and kind
12 of sit and look down on the atrium? Is that
13 it? Okay.

14 All right. Thank you.

15 CHAIRPERSON LOUD: You'll need a
16 microphone. There is a portable microphone.

17 MS. LUKAN: Do you mean the garden
18 at the top and walking around the parameter?

19 VICE CHAIRPERSON DETTMAN: Yes.
20 Like from the roof is there a bank of glass
21 that there'll be a door that you can walk in
22 and then look down?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LUKAN: The only doors are for
2 access for cleaning and maintenance. But we
3 actually have the glass and some landscape up
4 there to have a very nice view on the roof
5 when you're on the roof looking down into the
6 garden. And we've done some renderings and
7 we see how nice of a view that could be. But
8 we didn't for multiple reasons bring people
9 into that space on a high level. There's
10 safety, there's all kind of --

11 MR. PREIS: There's a lot of
12 mechanical.

13 MS. LUKAN: And we're concealing
14 with nice landscape. You know, we're working
15 very closely with our landscape architects to
16 make sure that everything on that roof is a
17 beautiful experience.

18 COMMISSIONER TURNBULL: I just had
19 a follow-up question following up on the 9th
20 Street discussions. Looking at what you've
21 submitted in Exhibit 30. It's got the how
22 the traffic pulls out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So the first -- the curb lane is a
2 bus lane, buses and taxis, I guess, or
3 primarily? There's no parking?

4 MR. PREIS: That's going to change
5 back.

6 COMMISSIONER TURNBULL: It's going
7 to change back? Change back to?

8 MR. PREIS: There will be a
9 parking lane. It'll be a rush hour typical
10 parking lane that after hours will convert to
11 the driveway.

12 COMMISSIONER TURNBULL: I see.
13 Okay. Because I guess I was confused.
14 Because you'd come out looking on those
15 sheets. I see a bus lane, I mean a bus zone,
16 then I see a bus only lane and then basically
17 two lanes of traffic. And I guess you say
18 it's going to change from --

19 MR. PREIS: Well, today it's a bus
20 lane.

21 COMMISSIONER TURNBULL: Okay.

22 MR. PREIS: But that is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 temporary use, it's my understanding. That's
2 where they are parking buses.

3 COMMISSIONER TURNBULL: Oh, I see.

4 MR. PREIS: That will revert back
5 to a typical standard TC rush hour type lane.

6 COMMISSIONER TURNBULL: Oh. So
7 parking during regular hours and then during
8 rush hours no parking?

9 MR. PREIS: I believe that's the
10 case.

11 COMMISSIONER TURNBULL: And there
12 will be a bus only lane, or not?

13 MR. PREIS: I believe the bus only
14 -- I mean, that's literally a bus parking
15 lane right there.

16 COMMISSIONER TURNBULL: So that
17 would go away also?

18 MR. PREIS: That would go.

19 COMMISSIONER TURNBULL: So you'd
20 have three lanes of traffic going one way? I
21 guess I was just trying to get back to what
22 Mr. Dettman was trying to talk about; is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the two lanes come out one is going to be
2 going into what is now said the "Bus Only"
3 lane and the other one, just trying to make
4 to maneuver to come out, two cars going out
5 at once. Obviously, you've got to be looking
6 at the left to see who is coming. But as you
7 merge if you're in that temporary or that
8 multi-use space, you're going to go into the
9 first immediate lane. And then the other one
10 has a choice of going to one of the other
11 two.

12 I'm just to visualize, understand
13 it.

14 MR. PREIS: The diagram and the
15 civil drawings, which I believe is what
16 you're looking at --

17 COMMISSIONER TURNBULL: Yes.

18 MR. PREIS: -- shows the existing
19 condition of the extra lane.

20 COMMISSIONER TURNBULL: Okay.

21 MR. PREIS: Yes. That zone is
22 going to disappear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Disappear?

2 Okay. Thank you.

3 MR. TUMMONDS: I apologize. But
4 this was intended to do -- this is the swept
5 area diagram to show how trucks are coming.
6 So that's why they didn't change the
7 delineation of the travel lanes on 9th
8 Street.

9 VICE CHAIRPERSON DETTMAN: Mr.
10 Tummonds, this is my last question for the
11 day, is on page 3 of the OP report I notice
12 there's a footnote 2 that says "Applicant
13 considers atrium to be a tower and sun shade
14 canopies, et cetera to be serving as
15 architectural embellishments." Do you know
16 the significance of that footnote?

17 MR. TUMMONDS: Yes. I mean I
18 think the significance of that is I think
19 they wanted us to make sure that we're aware,
20 and we're very aware of the fact that our
21 shade canopy if it is considered to be a roof
22 structure, we would not satisfy the one-to-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 one setback.

2 VICE CHAIRPERSON DETTMAN: Same
3 goes for the atrium, can you tell?

4 MR. TUMMONDS: Yes.

5 VICE CHAIRPERSON DETTMAN: Do you
6 have any examples of previous BZA cases,
7 matter-of-right projects, PUDs where
8 something similar to what you're proposing
9 for the atrium was considered a tower?

10 MR. TUMMONDS: We haven't been to
11 that. But I think the atrium, I think you
12 know there's lots of instances where we say
13 that's -- the parlance of the 1910 HUD Act,
14 tower, dome, pentacle, you know, minaret,
15 spire; I think that absolutely, that notion
16 of the vertical element that we have there
17 certainly would satisfy those types of
18 categories.

19 VICE CHAIRPERSON DETTMAN: Thank
20 you.

21 CHAIRPERSON LOUD: Okay. I don't
22 believe there are any Board questions further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at this time. If so, we can come back to them
2 later.

3 Why don't we turn to the Office of
4 Planning. It was a very extensive report. I
5 don't think we need you to walk through it
6 literally. but what you may want to focus on
7 are tying some of the requested variance
8 relief to the variance test, the uniqueness
9 test and so forth. And just highlighting
10 anything in your report that you want us to
11 take into consideration.

12 MR. COCHRAN: Absolutely. For the
13 record, my name is Steve Cochran from the
14 Office of Planning.

15 Let's start with the three part
16 test for the roof relief. The applicant has
17 stated, and OP actually cited areas, that the
18 master plan for the site is the principle
19 condition that gives this property
20 uniqueness. If you look on page 4 of the OP
21 report you'll see several direct quotes that
22 as Mr. Tummonds says they're not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aspirational. They're guidelines in the
2 sense that in the Downtown Development
3 District certain things are called preferred
4 uses. Well, they're not preferred, they're
5 required. The same thing is true is the use
6 of the words "goals, objectives" et cetera in
7 this.

8 The plan emphasizes sustainability
9 in both the active and green uses of the roof
10 areas. And one of the things that I think
11 that the applicant didn't mention is that the
12 master plan also emphasizes the strong desire
13 to have floors of about 9 foot 6, which is a
14 higher by almost six inches than a typical
15 office floor. As a matter of fact, the
16 applicant is going to be providing only 12
17 floors as I recall of office structure in
18 what a typical official building would
19 provide 13 floors. So that's a very good
20 thing. The practical difficulty stems from
21 trying to achieve that master plan goal.

22 The applicant has talked about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their desire to have more than one elevator
2 going to the roof to enhance its usability
3 and its ADA compliance. I'm not going to go
4 into a rehearsal of the dissertation on
5 elevators, because I had but I think there's
6 no need to do that. Again, emphasizing that
7 the side slung elevator is slower. The
8 machine room-less elevator is almost twice as
9 fast as a standard elevator. We've seen
10 examples where developers have tried to use
11 the side slung elevators. It causes a great
12 deal of difficulty. You wind up having to
13 depress a part of the elevator structure down
14 into the top floor in order to get it to
15 within the 18 feet 6 inches.

16 We explored a lot of this, you
17 might remember Mr. Dettman, when we were
18 looking at revising the roof structure at
19 overall height regulations as part of the
20 Zoning review and rewrite endeavor. And we
21 got various suggestions that it go to 20
22 feet. And then I believe it was Mr. Esocoff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 who gave a fairly lengthy description of why
2 we would need to go to 22 feet to accommodate
3 the new technology.

4 She also mentioned that these
5 newer elevators are also more energy
6 efficient and contribute to the
7 sustainability of the building.

8 The relief would not cause
9 substantial harm to either the nearby
10 buildings or to the intent of the Zoning
11 Regulations. Again, the applicant's
12 mentioned that they occupy only four percent
13 of the roof, they're set back anywhere from
14 one-to-one to a little bit more than one-to-
15 one. And in terms of the views from adjacent
16 buildings, well this is going to be a 130
17 feet high. To be looking down on the roof,
18 I'm sure it will be enjoyable for the people
19 at the top of the Washington Monument, but by
20 in large people will be seeing it an
21 elevation if they're on top of a nearby
22 building, and it's well designed for that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think that the applicant has
2 adequately addressed the special exception
3 under 411 for the roof structures to be more
4 than one height. We certainly wouldn't want
5 to bring the entire roof structure up to 22
6 feet. Rather it's important to minimize
7 things by letting only the part of the roof
8 that's needed to 22 feet be that.

9 And again, we would certainly
10 support any kind of relief from section 411.3
11 if needed if the Zoning Administrator decides
12 that you need that relief to have -- I'm
13 sorry. Yes, the multiple structures.

14 Thanks very much. I'm talking too
15 much. I'm losing my train of thought.

16 Okay. As far as the special
17 exception for the loading area -- excuse me,
18 the service delivery goes. Again, as Mr.
19 Tummonds said that is a special exception.
20 There is no need to prove uniqueness.

21 DDOT has looked at the plans.
22 DDOT has not had any problem with allowing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the area to be used jointly for service
2 delivery during most of the day and for an
3 access lane to add a third egress lane for
4 the parking garage in peak hours. OP
5 certainly has no problem with that.

6 The garage is going to have about
7 361 spaces and it's good to be able to get
8 those cars out. It may actually lead to
9 fewer pedestrian vehicle conflicts because
10 you'll be able to get the cars more quickly.

11 And I should mention, there's
12 confusion over 9th Street. OP and DDOT are
13 actually looking at a whole revision to the
14 transportation plans in the Mount Vernon
15 Square area. And consideration of this
16 building is part of the discussion on how 9th
17 Street will be restripped. But it looks at
18 this point that it will continue to be a one-
19 way street going south, especially because it
20 leads directly into the freeway entrance.

21 I think I'll skip all my laudable
22 words for how important this building is to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the future of D.C. and just let it go at
2 that.

3 CHAIRPERSON LOUD: Thank you. And
4 again, it was a very good report.

5 Let us see if there are any
6 questions either from Board members first and
7 then turning to the applicant.

8 It doesn't appear that Board
9 members have any questions, or did I speak
10 too soon? Mr. Dettman? Okay. It doesn't
11 appear that there's any questions from the
12 Board.

13 I want to note for the record that
14 the ANC did submit a report. I don't believe
15 they're here. ANC 2-F, our Exhibit 31. And
16 they voted unanimously five to zero to
17 approve it says a Zoning variance request for
18 the project. Excuse me. As well as the
19 special exception relief. So that's a pat of
20 our record and it will be given great weight.

21 There to do appear to be any
22 persons in the audience who want to testify

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that are in support or opposition.

2 We'll turn it back to you for
3 closing.

4 MR. TUMMONDS: Thank you.

5 Once again, we thank you for your
6 opportunity today. We've obviously had a
7 long and I think a very important discussion
8 about our discussion about our project. And
9 we appreciate the attention that you've
10 obviously paid to our project.

11 With that, we believe, as I
12 mentioned in our opening, that we have
13 satisfied the variance and special exception
14 relief standards. And we ask that you
15 approve this application at your convenience.

16 Thank you.

17 CHAIRPERSON LOUD: Thank you.

18 I think we have a couple of
19 options here, directions in which we could
20 move.

21 One would be to move to
22 deliberation today and to try to work our way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 through the various tests and the evidence
2 that's been presented. And certainly if
3 Board members feel that the record is full
4 enough to do that, we don't have any need for
5 additional time to reflect. We can do that.

6 The other option would be to give
7 ourselves a little time to review the record
8 again fully and then set it for a decision at
9 the earliest possible time. We would want to
10 delay it at all.

11 And let me just sort of weigh in
12 personally. Having sort of approached this
13 case as part of the Thanksgiving holiday and
14 having been out of town for much of that, it
15 would probably help me to have a little more
16 time to work through all of what's been
17 submitted along with this morning's
18 testimony. So I'm not certain that I'd be
19 ready to vote today, but let me just get a
20 sense from other Board members as to where
21 each of are on it.

22 VICE CHAIRPERSON DETTMAN: I'm in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agreement with you, Mr. Chairman.

2 MEMBER MOLDENHAUER: I would agree
3 also.

4 CHAIRPERSON LOUD: Then why don't
5 we do this? I think within -- I'm sorry.

6 COMMISSIONER TURNBULL: I will
7 respect my colleagues' wishes and go on with
8 you.

9 CHAIRPERSON LOUD: Okay. You
10 don't want to vote one to whatever the vote
11 might be? All right.

12 Why don't we try to set this then
13 for as soon as we can so that we can
14 deliberate. I don't think it's a very
15 complicated issue and I think the evidence
16 speaks to both variance test and the special
17 exception test very well. So I think we just
18 need a little more time to reflect on some of
19 the things brought out today.

20 If we could look into December
21 15th because we've already added two decision
22 for next week, does that look good? I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have my calendar in front of me. Maybe Ms.
2 Bailey can help out as well.

3 MS. BAILEY: Mr. Chairman, you do
4 have a special public meeting for December
5 15th in the morning.

6 CHAIRPERSON LOUD: Okay. I'm
7 getting a lot of pressure up here to do this
8 next week. So it looks like -- I mean, it is
9 a full record. It won't take that long to go
10 over what's been added to the record today.
11 And the exhibits and the report from OP and
12 the fact that the ANC supports it, all makes
13 it a lot easier to deliberate. So perhaps we
14 could do it on December 8th in the afternoon.

15 We got three cases that afternoon. Did we
16 put one decision on for the afternoon
17 already?

18 MS. BAILEY: You did. You did
19 earlier.

20 CHAIRPERSON LOUD: That'll be a
21 really quick one.

22 VICE CHAIRPERSON DETTMAN: That

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 should be quick.

2 CHAIRPERSON LOUD: A very quick
3 one.

4 So why don't we put it on for the
5 afternoon, December 8th. And I don't think
6 we need anything additional for our record. I
7 think we have everything that we need.

8 VICE CHAIRPERSON DETTMAN: Mr.
9 Chairman?

10 CHAIRPERSON LOUD: Yes?

11 VICE CHAIRPERSON DETTMAN: If it's
12 all right and for the applicant's sake
13 because next week we'll be in deliberation
14 and won't hear any testimony, but OP's report
15 on page 1, it was very helpful that they laid
16 out the provisions of relief and then said
17 "if necessary, this relief as well." And so
18 maybe we could just take a second to go
19 through the provisions of relief that are
20 necessary for this project so that there's no
21 question next week we can just step right
22 into it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I can make a suggestion. I
2 think that with respect to OP's first bullet
3 point on page 1, they said from 777.1, 411.2
4 and then if necessary, 400.7(c). 400.7(c) is
5 the 18'6" requirement. And so I think that
6 we should incorporate 400.7(c) into that
7 since we're looking to go above the 18'6".

8 The special exception relief, I'll
9 skip to the third bullet. It notes 2202.2 --
10 sorry. It notes 2201.1 and 2204.9, however
11 the applicant did amend to seek relief under
12 2201.5 and 2204.9. Mr. Tummonds, is that
13 correct?

14 MR. TUMMONDS: Yes.

15 VICE CHAIRPERSON DETTMAN: So I
16 think their amendment reflects that it should
17 be 2201.5

18 And then finally, with respect to
19 the multi-penthouse enclosures I would
20 recommend that we incorporate 411.5 and 411.4
21 just based on how the Board has approached
22 similar cases in the past. And then in that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case if the ZA does make a determination that
2 relief would be necessary, the applicant
3 would already have the relief if the Board
4 were to grant the application.

5 CHAIRPERSON LOUD: Thank you, Mr.
6 Dettman. I'm definitely amenable to that.
7 It's better to get all the relief out of the
8 way and then not need it when you get to the
9 ZA, assuming the vote is a favorable vote as
10 opposed to --

11 COMMISSIONER TURNBULL: We
12 appreciate, we agree with all Mr. Dettman's
13 recommendations.

14 CHAIRPERSON LOUD: Okay. Further
15 from Board members? Okay.

16 Then this matter will be set for
17 final decision on December 8th in the
18 afternoon. It'll be one of the two decision
19 cases we hear next Tuesday afternoon. And we
20 will deliberate it as briefed today, as well
21 as framed by Mr. Dettman in our discussion
22 here this afternoon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Okay?

2 MR. TUMMONDS: Thank you very
3 much.

4 CHAIRPERSON LOUD: Thank you.

5 Is there anything further for this
6 morning's Hearing Calendar, Ms. Bailey?

7 MS. BAILEY: No, Mr. Chairman.
8 That's it.

9 CHAIRPERSON LOUD: Okay. Then
10 this morning's Hearing Calendar is adjourned.

11 (Whereupon, the hearing was
12 adjourned at 12:07 p.m., to resume this same
13 day at 2:41 p.m.)

14

15

16

17

18

19

20

21

22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:41 p.m.

3 CHAIRPERSON LOUD: And I think we
4 can move directly into the Hearing Calendar.

5
6 Good afternoon. This is the
7 December 1st Public Hearing of the Board of
8 Zoning Adjustment.

9 My name is Marc Loud, I'm the
10 Chairperson of the BZA. Joining me today are
11 Vice Chair Shane Dettman representing the
12 National Capital Planning Commission.
13 Commissioner Konrad Schlater from the Zoning
14 Commission. Mrs. Meridith Moldenhauer to my
15 left, a Mayoral appointee here at BZA. Mr.
16 Sherry Glazer, Office of Attorney General.
17 And on my far left Ms. Beverley Bailey,
18 Zoning Specialist in the Office of Zoning.

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

22 Please, be aware that this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proceeding is being recorded by a Court
2 Reporter and is also webcast live.

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

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

13 All persons planning to testify
14 either in favor or in opposition are to fill
15 out two witness cards. These cards are
16 located to my left on the table near the door
17 and on the witness tables. Upon coming
18 forward to speak to the Board, please, give
19 both cards to the reporter sitting to my
20 right.

21 The order of procedure for special
22 exceptions and variances is:

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Statement and witnesses of the
2 applicant;

3 Government reports, including
4 Office of Planning, Department of Public
5 Works, DDOT, et cetera;

6 The report of the Advisory
7 Neighborhood Commission;

8 Parties or persons in support;

9 Parties or persons in opposition,
10 and;

11 Finally, closing remarks by the
12 applicant.

13 Pursuant to Section 3117.4 and
14 3117.5 the following additional time
15 constraints will be maintained:

16 The applicant, appellant, persons
17 and parties, except an ANC in support,
18 including witnesses 60 minutes collectively.

19 And, Ms. Bailey, please keep us on task in
20 terms of keeping the time this afternoon
21 should we overlook that;

22 Secondly, appellees, persons and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 parties, except an ANC in opposition,
2 including witnesses, 60 minutes collectively,
3 and;

4 Finally, individuals 3 minutes,
5 organizations 5 minutes, individuals
6 representing organizations 5 minutes.

7 These time restraints do not
8 include cross examination and/or questions
9 from the Board.

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

15 Nothing prohibits the Board from
16 placing reasonable restrictions on cross
17 examination including time limits and
18 limitations on the scope of cross examine.

19 The record will be closed at the
20 conclusion of each case, except for any
21 material specifically requested by the Board.

22 The Board and the staff will specify at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 end of the hearing exactly what is expected
2 and the date when the persons must submit
3 evidence to the Office of Zoning. After the
4 record is closed, no other information will
5 be accepted by the Board.

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

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

15 The Board will make every effort
16 to conclude the Public Hearing as near as
17 possible to 5:00 p.m. today. And we really
18 encourage you to help us stay on task with
19 that time by avoiding duplication of
20 testimony, overlapping witnesses, et cetera.

21 If the afternoon cases are not
22 completed by 5:00, the Board will access

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whether it can complete the pending case or
2 cases remaining on the agenda. And if we
3 cannot, what we will do is continue the case
4 to the next available date on the BZA
5 calendar.

6 At this time the Board will now
7 consider any preliminary matters.
8 Preliminary matters are those that relate to
9 whether a case will or should be heard today,
10 such as requests for a postponement,
11 continuance or withdrawal or whether proper
12 and adequate notice of the hearing has been
13 given. If you are not prepared to go forward
14 with a case today or if you believe that the
15 Board should not proceed, now is the time to
16 raise such a matter.

17 Does the staff have any
18 preliminary matters?

19 MS. BAILEY: No, Mr. Chairman.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey,

22 Then let's proceed with this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 afternoon's --

2 MS. GLAZER: Chairman Loud?

3 CHAIRPERSON LOUD: Yes.

4 MS. GLAZER: I believe on the
5 first case Community Auto Service, there was
6 a request for a postponement from the ANC.

7 CHAIRPERSON LOUD: Okay. All
8 right. Thank you. It just came in?

9 MS. GLAZER: It came it recently.
10 I don't know when.

11 CHAIRPERSON LOUD: Okay. So why
12 don't we then take that up as part of our
13 calling the case forward.

14 And I think what we should do now
15 is move to have all of our witnesses sworn in
16 that are going to be testifying this
17 afternoon.

18 MS. BAILEY: All those persons
19 wishing to testify, would you please stand to
20 take the oath?

21 (Witnesses sworn.)

22 MS. BAILEY: Mr. Chairman, we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going directly into Community Auto Service
2 Center, is that correct?

3 CHAIRPERSON LOUD: Yes, let's
4 begin with Community Auto Service Center. I
5 think the initial issue we'll take up is the
6 request for a continuance filed by ANC 4-C.

7 So if the parties for Community--
8 yes. Auto Service are here.

9 MS. BAILEY: Application of
10 Community Auto Service Center, pursuant to 11
11 DCMR § 3103.2, for a variance from the use
12 provisions under subsection 701.1 and a
13 variance from the off-street parking
14 requirements under subsection 2101.1 to
15 establish an automobile repair and service
16 establishment in the C-1 District at premises
17 4408 Arkansas Avenue, Northwest. Square 2819,
18 Lot 808.

19 The ANC representative is here
20 this afternoon, Mr. Chairman. And we have a
21 letter for authorization from ANC 4-C, which
22 I'll pass out at this time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey.

3 Why don't we have the parties who
4 are at the table introduce yourselves?

5 COMMISSIONER BLAND: I'm Ronald
6 Bland, and I'm representing the ANC 4-C. I
7 live at 1605 Buchanan Street, Northwest,
8 Washington, D.C. 20011.

9 CHAIRPERSON LOUD: Good afternoon.

10 COMMISSIONER BLAND: Good
11 afternoon.

12 MR. THANOS: My name is George
13 Thanos. I'm the property owner. Live at
14 1504 Constance Street, Silver Spring,
15 Maryland.

16 CHAIRPERSON LOUD: Good afternoon
17 to you.

18 MR. NDUNGU: Good afternoon. My
19 name is Thomas Ndungu from 512 Elderwood
20 Road, Silver Spring, Maryland. I'm the
21 Project Coordinator.

22 CHAIRPERSON LOUD: Good afternoon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You'll be giving testimony this afternoon?

2 MR. NDUNGU: Yes, I possibly will.

3 CHAIRPERSON LOUD: Okay.

4 MR. WALKER: My name is Henderson
5 Walker. I'm the agent or the owner. My
6 address is 7600 Georgia Avenue, Northwest,
7 Washington, D.C.

8 CHAIRPERSON LOUD: Good afternoon
9 to each of you.

10 I think there's a motion. Let me
11 ask Mr. Thanos and your representatives, have
12 you received a copy of the motion from ANC 4-
13 C to postpone the hearing?

14 COMMISSIONER BLAND: I think Mr.
15 Walker can answer that question.

16 CHAIRPERSON LOUD: All right.
17 Yes, sir. Were you aware of the request for
18 a postponement to today's proceedings?

19 MR. WALKER: I heard that it was
20 in the works. I heard that someone had sent
21 a motion in for that.

22 CHAIRPERSON LOUD: Okay. All

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 right. As long as you're aware of it and you
2 have a copy of it.

3 Then, Mr. Bland, let's turn to
4 you. I don't want to spend an extraordinary
5 amount of time on this, but you've requested
6 a postponement. And I think the reason that
7 you've indicated that you seek a postponement
8 is because the applicant did not appear at
9 one of your meetings to provide information
10 about the project?

11 COMMISSIONER BLAND: Yes. The
12 agenda item for the applicant was on our
13 agenda for October and November, but they did
14 not -- no one appeared on behalf of the
15 owner. And we have not had the opportunity
16 to hear the question of the parking variance.

17 The owner and his representative did appear
18 before the Commission in June, on June 9th
19 and they spoke to the request for the
20 variance for their Certificate of Occupancy,
21 which was going from auto sales to only
22 repair of vehicles. So that was heard and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Commission voted to support that
2 variance, that petition for variance. But
3 there was no discussion on the question of
4 parking or the question of relief from the
5 existing parking requirements under the
6 current occupancy order that they have.

7 So basically the ANC has just not
8 had the opportunity to hear the owner's
9 request for the parking variance. And our
10 position at this point would be to simply if
11 the BZA is so inclined, to keep the record
12 open until after December the 8th. And this
13 would be on the agenda for the ANC. We
14 really would like to hear the parking
15 question. Because parking is always an issue
16 neighborhood-to-neighborhood.

17 So we would like to weigh in on
18 this, otherwise if the decision is made today
19 that part of the petition relating to
20 parking, there would no ANC input.

21 CHAIRPERSON LOUD: Okay. I'm
22 going to turn to Mr. Thanos' representative.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But before I do, let me just ask you ca you
2 foresee a scenario whereby the case would go
3 forward today. We'd hear testimony and
4 evidence from the witnesses that are gathered
5 today, but that we just would not make a
6 decision until we got the report from the
7 ANC?

8 COMMISSIONER BLAND: Yes.

9 CHAIRPERSON LOUD: Okay. So you
10 wouldn't object to our going forward today on
11 the record before us?

12 COMMISSIONER BLAND: No.

13 CHAIRPERSON LOUD: Okay. Did you
14 want to add anything to that, Mr. Walker?

15 MR. WALKER: No.

16 CHAIRPERSON LOUD: Okay. Then
17 what I think we ought to do, colleagues, is
18 go forward today. We'll have a discussion,
19 but I think there's probably consensus for
20 leaving the record open for the ANC report.
21 And if in fact you've invited them twice and
22 they've not appeared twice, there can always

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be a vote and a report based on the perceived
2 or alleged nonappearance.

3 Yes, sir?

4 MR. WALKER: Well we did to
5 personally --

6 CHAIRPERSON LOUD: He mentioned
7 that, that there was a June meeting that your
8 team or representatives did appear at. But I
9 think what I'm suggesting is that rather than
10 us leaving the record indefinitely, that if
11 at some point it just appears that your ANC
12 doesn't have the information you need to
13 support the application, that you may want to
14 take a vote and make sure that you get a
15 report into BZA. So we can figure out the
16 dates when you would need to get that into us
17 toward the latter part of the hearing.

18 MR. WALKER: We will certainly
19 appear at the next meeting.

20 CHAIRPERSON LOUD: Okay. And
21 that's going to be?

22 COMMISSIONER BLAND: December 8th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: December 8th.

2 Okay.

3 MR. WALKER: Yes.

4 CHAIRPERSON LOUD: All right.

5 Thank you.

6 Well, with that then why don't we
7 proceed to the presentation of your case, Mr.
8 Thanos through Mr. Walker.

9 MR. WALKER: Thank you.

10 At our last meeting with the
11 Board, this Board, the Office of Planning
12 would not make a recommendation on our
13 application. The issue, in part, that needed
14 to be addressed, the zoning parking
15 requirements for this site is 14 parking
16 spaces. We have since amended our
17 application addressing the concern of the
18 Office of Planning. We have now requested
19 that you guys file the use variance relief
20 under paragraph 701, the site contains
21 specific uniqueness. The area of variance
22 relief under paragraph 2.101 reduction of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 parking requirements and seek special
2 exception relief to allow parking off site
3 under paragraph 2302 if needed.

4 We have met all the conditions
5 required for these requested as noted in the
6 Office of Planning Memorandum, dated November
7 23, 2009. The Public Space Committee has
8 approved our request for public space parking
9 for three cars. And the Office of Planning
10 supports our request for parking requirements
11 reduction down from three parking spaces if
12 approved by the Board.

13 We feel confident that the three
14 very important parking spaces in front of the
15 building on the public space as noted in the
16 diagram I've presented to you, is adequate to
17 handle the parking needs during the business
18 operation because it is a very small business
19 operation. Thus, we respectfully request a
20 reduction from 14 spaces to three spaces.
21 However, if the Board feels that more spaces
22 will be required, we're prepared to seek any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lease agreement with the AKA Sorority located
2 next door for additional space as required by
3 the Board.

4 We propose to provide hedges
5 across the front and side of the site. Also,
6 the guidelines will change, will be installed
7 across the entrances to ensure that no
8 vehicles will be parked on the site during
9 the nonworking hours, which are from 7:00
10 a.m. to 5:30 p.m. through Saturday.

11 That completes my presentation.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Walker.

14 Let me see if there are any
15 questions for you from the Board, and then
16 we'll turn to Mr. Bland to see if the ANC has
17 any questions.

18 I think Board members are
19 reviewing what was just passed out by Ms.
20 Bailey.

21 Let me ask a quick question as
22 that's being reviewed, and then I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Commissioner Schlater has some questions for
2 you.

3 We met September 8th, at the
4 September 8th hearing on the use variance
5 part of the request for relief. I think one
6 of the notes that I made, at least for my
7 record, is that the number of C-1 uses that
8 as to which there was gap in the record as to
9 why the applicant could not use the property
10 in accordance with any of those. For example,
11 it included a lift for servicing vehicles and
12 that's clearly one that jumped out. But I
13 wanted to know if you wanted to speak to that
14 and put something on the record regarding
15 that?

16 MR. WALKER: I think it would be
17 very difficult to do that. The site is
18 really established primarily to fix vehicles
19 with lifts in the building. It's a very old
20 -- one story building with some four levels
21 that are not level. So I think it would be
22 very costly to try to make the building to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 accommodate some other means. And of course
2 that area is a very low business portion of
3 the city on the street that its located. And
4 it would be very hard to put a business on
5 that street, it would take some time to
6 generate a good income. So it's very costly
7 on the owner to try to use the building for
8 some other use.

9 CHAIRPERSON LOUD: Okay. And as
10 you know, the use variance being different
11 from the area variance in that you have to
12 show undue hardship, did you have any
13 thoughts on some of the other C-1 uses and
14 why this property couldn't be used in
15 conformity with the zone?

16 MR. WALKER: You know, the changes
17 are very costly on the owner and it would
18 certainly take some time to establish a
19 business in that big of area, and that would
20 be costly to tear the building down or
21 renovate the building extensively and then
22 wait and hope that the business will come to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fruitation.

2 CHAIRPERSON LOUD: Okay. I
3 believe Commissioner Schlater may have had
4 some questions.

5 COMMISSIONER SCHLATER: Thank you.

6 Is it Mr. Henderson?

7 MR. WALKER: Walker.

8 COMMISSIONER SCHLATER: Walker,
9 excuse me.

10 Mr. Walker, in terms of the
11 operations of the shop, some of the auto
12 shops that I'm aware of you're doing service
13 on a number of cars in a given day. And
14 between the time when the car is being
15 serviced and when it gets picked up or before
16 its in service it needs to be stored
17 somewhere, correct? So I guess my question
18 is is three spaces sufficient to accommodate
19 all the cars that are going to be serviced in
20 a given day.

21 MR. THANOS: Well, I can answer
22 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SCHLATER: Okay.

2 MR. THANOS: We can put inside the
3 building eight vehicles. And Mr. Ndungu is a
4 one man operation. He can only handle so much
5 anyway with a helper.

6 COMMISSIONER SCHLATER: Yes.

7 MR. THANOS: It's a -- for the
8 neighbors. Like I say, we can store eight
9 inside.

10 COMMISSIONER SCHLATER: Can eight
11 be stored inside while doing work on other
12 vehicles, or --

13 MR. THANOS: We can put eight in
14 the row of the buildings, like 100 feet long,
15 I think. And we have a lift. One on the
16 bottom and six across. But it is a one man
17 operation. And if he gets eight vehicles,
18 he's doing well, you know. But it is a one
19 man operation with a helper.

20 MR. NDUNGU: I'd like to add on
21 something also. Also is the nature of what
22 we intend to do. We are talking about minor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maintenance repairs. By that I mean there
2 are things that -- if you look at some of our
3 diagrams, we have a small waiting room there
4 for people to wait for their cars. So it's
5 something that should be done right there
6 when the customer waits. So I do not see us
7 having such an overflow into a parking lot,
8 given what we have inside is not enough.
9 It's too early -- very light mechanical work,
10 maintenance.

11 MR. THANOS: You know, like a
12 Jiffy Lube, you wait ten minutes to get your
13 oil changed and greased and, bomb, out the
14 door.

15 COMMISSIONER SCHLATER: Okay.
16 Just so I get this straight because I guess
17 in reading the Office of Planning report it
18 said there were going to be these three
19 spaces in public space and then potentially
20 the applicant was going to lease these
21 additional spaces from the sorority. Is the
22 applicant's preference not to lease those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spaces?

2 MR. WALKER: If required. If
3 required.

4 COMMISSIONER SCHLATER: If
5 required. So it would seem that it's up to
6 the Board here to decide whether to require
7 these additional spaces?

8 MR. WALKER: Yes. Yes.

9 COMMISSIONER SCHLATER: And just
10 so we get your testimony on the record here,
11 you do not believe that it should be required
12 that those additional 11 spaces be provided
13 because you have sufficient on site parking
14 to meet the needs of the shop?

15 MR. WALKER: Yes.

16 MR. THANOS: Again, it's a small
17 operation what is now planned. It's one man
18 with a helper. They can only handle so much.

19 COMMISSIONER SCHLATER: Okay. Mr.
20 Chairman, no further questions.

21 CHAIRPERSON LOUD: Thank you.

22 Do additional Board members have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions? If not, we can go straight to the
2 ANC. Why don't we do that, and then if Board
3 members have questions, we can come back.

4 Yes, sir. Mr. Bland, did you have
5 any questions?

6 COMMISSIONER BLAND: Yes. The
7 auxiliary parking spaces on the sorority lot,
8 do you have some sort of memorandum of
9 understanding or something that would
10 indicate that the sorority is in agreement
11 with this?

12 MR. WALKER: Yes. I have a letter
13 that they sent agreeing to sign a contract
14 with us should the Board agree.

15 COMMISSIONER BLAND: Okay.

16 CHAIRPERSON LOUD: Can you provide
17 Mr. Bland and the ANC with a copy of that?

18 MR. WALKER: Okay.

19 MS. BAILEY: Was this also
20 provided in the record?

21 CHAIRPERSON LOUD: Just a moment.

22 I'm going to make sure that --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: Mr. Chairman, the
2 letter from Alpha Kappa Alpha Sorority is in
3 the record. The contract, the park and lease
4 agreement contract unsigned copy is not in
5 the record. Did you want to make copies at
6 this time?

7 CHAIRPERSON LOUD: Let me ask the
8 ANC, do you have a copy of the AKA letter?

9 COMMISSIONER BLAND: No.

10 CHAIRPERSON LOUD: Okay. So as a
11 party, he would need a copy. And you should
12 always make sure you copy the ANC because
13 they're automatically a party.

14 With respect to the unsigned
15 letter, perhaps we can establish a foundation
16 for it very briefly, just some testimony
17 about what it is, what it purports to be.
18 But I don't see any harm in making sure that
19 the ANC has a copy of that as well,
20 especially since they asked them some
21 questions regarding it.

22 So Ms. Bailey will try to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 copies of that and have that available. But I
2 think we ought to proceed forward with
3 respect to the additional testimony and
4 additional questions you might have, Mr.
5 Bland, if any.

6 COMMISSIONER BLAND: I have no
7 further questions.

8 CHAIRPERSON LOUD: Okay. Why
9 don't we then turn back to you, Mr. Walker.
10 If there's additional -- I didn't know if you
11 were planning to have additional witnesses
12 for your part of the case, or if you've
13 concluded your part of the case. We'll come
14 back to you for closing.

15 MR. WALKER: I've concluded.

16 CHAIRPERSON LOUD: Okay. And Mr.
17 Thanos, you don't have any additional
18 witnesses?

19 MR. THANOS: No, sir.

20 CHAIRPERSON LOUD: Okay. Why
21 don't we then turn to the Office of Planning.
22 Good afternoon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GOLDSTEIN: Good afternoon,
2 Mr. Chairman, Board members of the Board.

3 For the record, my name is Paul
4 Goldstein and I'm a Development Review
5 Specialist with the Office of Planning.

6 The Office of Planning recommends
7 support of the applicant's request for use
8 variance relief under section 701 and area
9 variance relief from section 2101 to change
10 the use of the existing business from
11 automobile sales to a motor vehicle service
12 and repair use.

13 Just for the record, the property
14 is located at 4408 Arkansas Avenue,
15 Northwest, which is Square 2819, Lot 808 and
16 is zoned C-1.

17 As background, since the September
18 postponement of the case, as you've heard,
19 the applicant has amended the application to
20 request relief from the minimum number of
21 required parking spaces and for a special
22 exception to permit off site parking should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 such relief be necessary.

2 As you've heard alluded to, at the
3 November 19th Public Space Committee Hearing
4 the applicant received conditional approval
5 for three parking spaces in front of the
6 building with some conditions. And
7 additional, you've heard about the actions to
8 secure 11 spaces in the next door neighbor
9 surface parking lot should that be necessary.

10 Back to the present, I'll briefly
11 walk through the relevant criteria.

12 The applicant applied for a use
13 variance from section 701 because repair
14 garages are not permitted in C-1 zones. OP
15 determined that the applicant satisfied the
16 first prong of the variance test. That the
17 property is unique due to its past and
18 current automotive related use and its
19 present outfitting for automobile repair.

20 One clarification from our report
21 that I'd like to just note is that OP did
22 discover some old Certificates of Occupancy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for other uses on the site just recently from
2 the late '50s, early '60s for other types of
3 uses. But the record is pretty barren from
4 that time to the 2000s, where it's been a
5 used car lot with some automotive repair
6 going on, although not on the Certificate of
7 Occupancy. But OP still believes that the
8 property is unique. It's had some past
9 automotive repair use and it's currently
10 configured for it. And the uniqueness
11 imposes an undue hardship on the applicant
12 and granting relief should not cause a
13 substantial detriment to the public good or
14 the Zone Plan.

15 Concerning the area variance, OP
16 supports a variance for the complete
17 reduction in the required number of parking
18 spaces. It's my impression that the three
19 spots in public space would not be counted as
20 the required parking spots. So, in fact,
21 that you would actually need a total
22 reduction as opposed to a reduction to three

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spaces. The three are mitigation, in a
2 sense, but I don't believe that you would
3 count them as required parking spaces if
4 they're in public space. That's my belief.

5 OP does not think -- well, let me
6 just say should the BZA determine that the
7 repair use is appropriate for the site, then
8 the property would have an exceptional
9 condition as it relates to providing on site
10 parking due to the existing building covering
11 their entire lots. And a complete reduction
12 should not be detrimental to the public good
13 because the applicant, as you've heard, as
14 proposed to mitigate the impact with those
15 three parking spots.

16 Just building on that, the
17 applicant has indicated the garage use would
18 not have an intense parking need. And with
19 the three spaces it should be able to satisfy
20 its parking needs.

21 If the Board would prefer to
22 entertain a combination of reducing the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 number of required parking spaces and off
2 site parking by a special exception, OP would
3 also be supportive of relief under those
4 circumstances.

5 To conclude, the OP supports the
6 requested use and area variance relief. And
7 that concludes my presentation. I'm now ready
8 for any questions that you may have.

9 CHAIRPERSON LOUD: Thank you, Mr.
10 Goldstein.

11 Why don't we turn to the ANC
12 first, and then we'll come back and see if
13 Board members or the applicant have any
14 questions for you.

15 Mr. Bland, do you have any
16 questions?

17 COMMISSIONER BLAND: No.

18 CHAIRPERSON LOUD: Okay. Board
19 members are there any questions? There do
20 not appear to be questions for the Office of
21 Planning.

22 Let me just ask a clarification

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question. Initially the Office of Planning
2 opposed the application, is that correct?

3 MR. GOLDSTEIN: I believe we
4 actually did not have an opinion on the
5 application at the time.

6 CHAIRPERSON LOUD: Okay. All
7 right. And you were awaiting this October
8 Public Space Meeting on the parking spaces?

9 MR. GOLDSTEIN: Yes. I think it
10 actually took place in November.

11 CHAIRPERSON LOUD: November.

12 MR. GOLDSTEIN: But you're
13 correct.

14 CHAIRPERSON LOUD: All right.
15 Thank you for the clarification.

16 This is a point of the proceeding
17 that we would normally turn to the ANC for
18 the presentation of its report. But we
19 understand from the earlier exchange that
20 your ANC will be meeting next week and we're
21 going to leave the record so that you can get
22 that report into us, okay?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER BLAND: That's good.

2 Yes.

3 CHAIRPERSON LOUD: All right. Now
4 we turn back to the additional testimony in
5 the case from persons in the audience who
6 would be supportive of this application, now
7 would be the time to come up. You would be
8 given three minutes, or if you represent an
9 organization, you'll be given five minutes.

10 And seeing none, if you are
11 opposed to this application and you're in the
12 audience now would be the time to come up.
13 And again seeing none, we turn back to you,
14 Mr. Thanos, or your representative Mr. Walker
15 for any closing remarks that you might have.

16 MR. WALKER: I have none.

17 CHAIRPERSON LOUD: Okay. Thank
18 you for your presentation. Thank you for
19 your patience. I thank the ANC as well for
20 showing up and making sure that we were fully
21 apprised of the conditions with the ANC and
22 the applicant in terms of exchanging

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information.

2 I don't think we're going to
3 deliberate this case today because we're
4 going to keep the record open for a report
5 from the ANC. So what I'd like to suggest is
6 that I think we can deliberate it in a couple
7 of weeks. What do you think? Okay. We can
8 deliberate in a couple of weeks. That would
9 give you a week to get the ANC report in
10 following your December 8th meeting, if you
11 could get it in within a couple of days, say,
12 by next Friday. Do you think that's doable?

13 It's on a Tuesday.

14 COMMISSIONER BLAND: The 11th.

15 CHAIRPERSON LOUD: Would be the
16 11th, okay. All right.

17 So then if we were to keep our
18 record open for you to get that in by Friday,
19 December 11, then we would be able to
20 deliberate on the case on Tuesday, December
21 15.

22 Okay. I'm looking at the calendar

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 now. Let's see what Tuesday looks like. It
2 looks like we could put it at 1:00 p.m. very
3 easily. So why don't we do that? Tuesday,
4 December 15 for deliberation. Friday,
5 December 11 for the filing of the ANC report.

6 COMMISSIONER BLAND: Okay.

7 CHAIRPERSON LOUD: Is there
8 anything further on this case?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON LOUD: Thank you, Ms.
11 Bailey.

12 Thank you again to the parties.

13 And when you're ready, Ms. Bailey,
14 you can call the next case.

15 MS. BAILEY: Application 18003.

16 This is the application of the Cato
17 Institute, and it's pursuant to 11 DCMR §
18 3104.1 and 3103.2, for a special exception
19 from the loading requirements under
20 subsection 2201.1 and 2202.2, and a variance
21 from the rear yard requirements under section
22 775, to allow the construction of an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expansion to the Cato Institute's
2 headquarters office building. The property
3 is located in the DD/C-2-C District at 1000
4 Massachusetts Avenue, Northwest and 1012 10th
5 Street, Northwest. The property is also
6 known as Square 342, Lots 57 and 58.

7 CHAIRPERSON LOUD: Good afternoon.

8 And why don't we have the parties that are
9 at the table introduce themselves.

10 Let me ask, is the ANC present for
11 this case? Okay.

12 Then when you are ready, you can
13 start by introducing your team.

14 MS. PRINCE: Sure. I'm Allison
15 Prince with Pillsbury. With me is Jeff Utz.

16 MR. ERICKSON: William Erickson,
17 Vice President for Finance Administration for
18 Cato Institute.

19 MR. ANDRES: Erwin Andres with
20 Gorove/Slade Associates.

21 MR. BARBER: Jeff Barber with
22 Gensler.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Good afternoon
2 to all.

3 I believe we're ready to move
4 directly into the case, and I'll turn it over
5 to you, Ms. Prince.

6 MS. PRINCE: Great. We'll try to
7 keep our presentation fairly abbreviated
8 because I think it's a pretty straightforward
9 application.

10 Good afternoon, Board members of
11 the Board. As I said, I'm Allison Prince here
12 with Jeff Utz, we're both with Pillsbury.
13 We're appearing before you today on behalf of
14 the Cato Institute.

15 Cato Institute has the fairly
16 iconic building located at the corner of 10th
17 Street and Mass Ave. I think you may be
18 familiar with it. It was constructed in 1990
19 with relief from this Board, I might add.

20 We're now proposing to expand the
21 existing building in a way that involves a
22 one story addition to that building as well

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as an addition along the south side of the
2 building. Basically what we're doing is
3 taking advantage of the fact that we've been
4 able to purchase the building located
5 directly south of the building, the National
6 Medical Association building along 10th
7 Street. That's a building that Cato has had
8 its eye on for many, many years. It's a
9 pretty unsightly building. And Cato proposes
10 to demolish it and replace it with the
11 addition that you'll see in the plans today.

12 The project will ultimately
13 contain a total of seven stories and a height
14 of 94 feet. We're adding about 34,000 square
15 feet of office to the existing building,
16 resulting in a total of 68,000 feet.

17 Cato needs both a variance and a
18 special exception to allow this addition to
19 go forward. The variance effects the rear
20 yard. Basically what Cato is doing is in
21 filling its existing rear yard and then
22 reconstructing on the NMA site in a way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that's consistent with the existing footprint
2 of the NMA building. And in so doing, the
3 building proceeds all the way to the southern
4 lot line. But an alley separates the building
5 from the building to the south of that
6 allowing for ample light and air. And we'll
7 explain today why we believe the variance is
8 justified to allow the project to proceed.

9 In addition, there's a modest
10 special exception required with respect to
11 loading. The building once expanded, it
12 crosses that 50,000 square foot threshold
13 which triggers the need for an additional
14 loading berth and service delivery space.

15 Because the building is a single
16 user building and because we just barely
17 cross that threshold, Cato is very
18 comfortable that the existing loading
19 associated with the building will be adequate
20 to meet the building as expanded.

21 I think you all know the variance
22 test very well, but basically in this case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the property is very unusual. The lot has a
2 very unusual configuration, as you can see
3 from the plats that we attached. And the
4 existing building footprint responds to that
5 configuration in a way that creates a
6 generally unique condition.

7 And there are practical
8 difficulties in not securing the rear yard
9 relief that we need. The architect will
10 explain them further, but basically the
11 program that we're trying to implement on
12 this site is to add a new auditorium space
13 that needs to be located where we're
14 proposing to put it. And there would be
15 serious practical difficulties if we did not
16 get the rear yard relief that we need in
17 order to accomplish that.

18 And finally as shown by the
19 complete lack of opposition and the support
20 of the Advisory Neighborhood Commission,
21 which they took at a meeting on November 5th,
22 we believe there will not be any adverse

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts on the neighborhood and we have not
2 heard any concerns at all. In fact, what
3 we've heard is that this building is quite
4 loved in the neighborhood and the community
5 is generally very happy that we're respecting
6 the appearance of the building and the way in
7 which we're handling the addition.

8 Finally, with respect to loading,
9 we have a basic special exception standard
10 that governs relief from loading in the
11 Downtown Urban Renewal Plan area where we
12 are. And we feel very strongly as a single
13 user building with very limited loading and
14 no retail that the existing loading will be
15 more than adequate to accommodate the loading
16 needs of the building.

17 So without further delay, I will
18 introduce Bill Erickson, who has been Cato
19 for a very long time and happens to live next
20 door to the building. And he'll make a brief
21 statement on behalf of Cato, and then we'll
22 proceed with the architects. And if you'd

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 like to hear from the traffic engineers, we
2 can have them present testimony as well.

3 MR. ERICKSON: Good afternoon. I
4 am Bill Erickson and here representing the
5 Cato Institute in the BZA Case No. 18003.

6 Thank you for the opportunity to
7 appear before you this afternoon.

8 The Cato Institute is the owner of
9 the building at 1000 Massachusetts Avenue,
10 Northwest, which serves as our headquarters.

11 The building is well known for its iconic
12 glass enclosed cube that rests in the plaza
13 in front of the building on 10th and
14 Massachusetts Avenue.

15 The structure, apparently, is six
16 stories and has a height of 89 feet and an
17 FAR of 3.37.

18 More broadly, Cato is a nonprofit
19 policy research foundation founded in 1977
20 intended to increase the understanding of
21 public policies based on principles of
22 limited government, free markets individual

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 liberty and peace.

2 For years Cato has needed to
3 expand our operating headquarters building,
4 but we have wished to remain on the current
5 site. We are committed to the Downtown
6 District of the city and have watched it come
7 back to life since we constructed the
8 headquarters building in 1993. We are truly
9 a pioneer in this area of the city.

10 For several years now we've been
11 attempting to purchase 1012 10th Street,
12 Northwest, the four story National Medical
13 Association building immediately to the south
14 of our headquarters building. We were finally
15 successful in doing this this year.

16 As stated by Allison, we are
17 proposing to expand the Cato building into
18 the NMA site for additional office space.
19 The expansion will also add one story to our
20 current six story structure, for a total of
21 seven stories on both lots. The resulting
22 structure will have a height of 94 feet,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which notice this is only five feet higher
2 than the existing structure, and an FAR of
3 5.15. The resulting building will be entirely
4 office use and will be 100 percent occupied.

5 Our project will feature a great
6 deal of attention to design in order to
7 maintenance and enhance the current well
8 received design.

9 The property is surrounded by high
10 density development, both commercial and
11 residential. Immediately to the west of the
12 property is the 130 foot residential
13 condominium development at 1010 Massachusetts
14 Avenue, in that building in which I own a
15 unit.

16 To the south of the property is an
17 eight story office building with ground level
18 retail, a small two story structure and a
19 vacant lot. The property also shares for 342
20 with an eight story downtown youth hostile.

21 East of the property on the other
22 side of 10th Street is the Henley Park Hotel.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2 To the north of the property
3 across Massachusetts Avenue is the park
4 created by the intersection of Massachusetts
5 Avenue, 10th Street and L Street.

6 The land to the west and east of
7 the property is zoned DD/C-2-C. The land
8 immediately to the south of the property on
9 the other side of the alley at the south of
10 the property is zoned DD/C-3-C.

11 We have engaged with the community
12 surrounding the property for some time. We've
13 had numerous meetings with ANC 2-F and ANC 2-
14 F Single Member District representative for
15 this property. We received unanimous
16 approval at all levels of the ANC.

17 We are excited about the
18 possibility to begin this project and we
19 believe the District and downtown
20 neighborhood will benefit greatly from this
21 project, as well Cato.

22 I would also like to add that at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the annual homeowners association meeting on
2 November 17th of the 1010 Massachusetts
3 condominium, I introduced the rendering to
4 that community that we see over here. And
5 without exception, it was welcomed as a
6 positive addition to the community.

7 So I would now like to turn the
8 presentation over to our architect, Jeff
9 Barber.

10 MR. BARBER: Thank you.

11 I think Allison and Bill have
12 already laid out very clearly the
13 requirements of the project. And I thought I
14 would go through some of the visuals that we
15 brought just to explain the parts and pieces
16 that they describe.

17 So the first thing I have here is
18 the existing site plan on the left. North,
19 which is at the top of the page,
20 Massachusetts Avenue to the north, 10th
21 Street to the right. The existing building
22 for Cato is here with an approach to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 garage ramp here and then the building to the
2 south, NMA, is in this location right here.

3 So when we modify the site plan
4 and extend the existing building, it comes
5 down, as they mentioned, to the same position
6 at the southern edge of the lot as the
7 current building does.

8 I can easily go back if you have
9 questions. But I'll go through them.

10 So then this is just posted on top
11 of a Google map of the surrounding region.
12 You can see the enlarged building and the
13 glass atrium, the glass enclosed atrium to
14 the northern end.

15 Going back briefly to the site
16 plan, there are currently alleyways to the
17 west and to the south, which will both remain
18 in the future plan.

19 One more view of the same, but
20 just differentiates where the mechanical
21 penthouse is in the future building. The
22 mechanical penthouse in the existing building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is in this location, and it will extend and
2 bit south as well.

3 Some views of the existing
4 conditions. This is the one taken furthest
5 south on the east side. And then farther up
6 on the east side of the building. And then
7 to the northeast corner. The iconic glass
8 enclosed atrium to the northern side. And
9 the red masonry construction otherwise.

10 And you'll see in the accompanying
11 image to the right that we have really wanted
12 to honor the existing building by going with
13 a white metal panel structure adjacent and
14 over the top of it so that we didn't want to
15 try to extend, but we've honored the massing
16 and the shape and the color of the existing
17 structure.

18 Some other existing photos in the
19 alleyway to the west. This is 1010 Mass
20 Ave., which 130 feet tall to our west. And
21 then looking at the alleyway entrances for
22 loading and services for the existing NMA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building here. That's the alleyway to our
2 west and this is the southern part of that
3 alleyway.

4 This is a perspective view from
5 the northeast showing the existing building
6 and the addition both to the southern side
7 and then this one new story over the top.
8 The most northern part of that addition is an
9 outdoor area partially enclosed by a pergola,
10 and that will be a roof deck.

11 We have two constructed renderings
12 of this. This again from a similar location
13 but higher up showing the roof deck, the
14 partial enclosure. This is from the
15 northeastern side. And the penthouse there,
16 the penthouse is set well back from the
17 current front facade of the existing
18 building.

19 Then a view of the building from
20 the alleyway on our west showing the existing
21 building, the new construction and a bit of
22 extension on the lower floor which is part of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the auditorium space on the ground floor.

2 The auditorium is the one
3 programmed element that really drives the
4 construction of the new building. And what we
5 wanted to explain is that there's an existing
6 core of elevators and stairs in the existing
7 building which terminates right here. So
8 that needs to stay where it is. It's the
9 expensive central part of the building. And
10 so the only place for us to get 200 seats in
11 the auditorium is to go to the south. And
12 therefore, we've needed to build all the way
13 to the southern property line in that
14 fashion, and then we use the stairs to exist
15 out of that space.

16 It also shows the slight
17 extension, not beyond our property line but
18 towards the alleyway on our west.

19 This illustration shows that we
20 are accommodating the same number of service
21 berths in our new scheme as in the existing
22 scheme. The existing has 100 square foot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 platform, a 12 by 30 berth and a 12 by 20
2 berth. In the new scheme we have the
3 existing platform of 100, a 12 by 20 here and
4 a 12 by 30 right outside here, but well
5 within our own property line.

6 The final illustration was just to
7 show that we could have built a much taller
8 building by right, but we're not proposing to
9 do so.

10 Those are the exhibits I have.

11 CHAIRPERSON LOUD: Thank you. I
12 don't believe there are any questions, but
13 let's double check and make sure. No, there
14 do not appear to be.

15 I think you have one final
16 witness?

17 MS. PRINCE: We have one final
18 witness.

19 CHAIRPERSON LOUD: Okay.

20 MS. PRINCE: If you'd like to hear
21 from the traffic engineer?

22 CHAIRPERSON LOUD: I think that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be good. Perhaps to highlight some of
2 the major findings. And then I think if
3 Board members have more specific questions,
4 they can ask and follow up.

5 MR. ANDRES: Good afternoon,
6 Chairman Loud, members of the Board, my name
7 is Erwin Andres, a principal of Gorove/Slade
8 Associates.

9 Briefly, the site is well served
10 by transit. It's located in the downtown
11 area. There are four Metro stations probably
12 within a seven to ten minute walk of the
13 site. The Circulator, that runs from Union
14 Station to Georgetown, is half a block away
15 as well as bus lines on both 11th Street and
16 9th Street. So given that there is an
17 auditorium use and the fact that the building
18 has been around since 1993, the trips that
19 are generated by the site are primarily
20 transit trips or cab trips, but not vehicular
21 trips given that parking on site is
22 constrained. What's proposed on site with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 respect to parking is adequate and meets the
2 Zoning requirements. There are 42 parking
3 spaces proposed. The requirement is only 24
4 spaces. So parking is handled fairly
5 adequately with what's proposed.

6 There are off-street parking lots
7 in the area, however we don't believe that
8 the Cato Institute will require any of those
9 spaces given that there is heavy transit
10 usage for their functions as well as for
11 their daily activities.

12 With respect to loading, we are
13 seeking relief for one 100 square foot
14 platform as well as one 30 foot loading
15 berth. Given that the user is only one user
16 and in keeping with DDOT's initiatives to
17 consolidate infrastructures such as loading
18 docks, this is actually a great example of
19 how that can be accomplished without adverse
20 impact.

21 The primary uses that would
22 require the loading are, obviously, the trash

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and paper deliveries; deliveries that are
2 constant with an office type use, as well as
3 some catering deliveries associated with some
4 functions.

5 So other than that, it's my strong
6 opinion that the proposed development will
7 not have any adverse traffic or parking, or
8 loading impacts for that matter.

9 Thank you.

10 CHAIRPERSON LOUD: Thank you.

11 Let me see if there are any
12 question for you. And that was your last
13 witness?

14 MS. PRINCE: That was our final
15 witness.

16 CHAIRPERSON LOUD: Okay. For you
17 or for any of the witnesses that Ms. Prince
18 brought forward.

19 COMMISSIONER SCHLATER: A quick
20 question. I just had a question, one of the
21 areas of relief is for the rear yard
22 variance. Could you just speak to the relief

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as it relates to the plan of the new
2 building?

3 MR. BARBER: Yes. So I got two
4 demonstrations here. This, again, was the
5 existing plan. We're going to demolish this
6 building. The existing building is built to
7 the southern lot line.

8 This is the alleyway that is
9 currently existing and will remain in its
10 full width.

11 So with the new configuration we
12 then build to the south and that 12 foot
13 alleyway remains.

14 This is the wall that will abut
15 that alleyway. It's the wall of the
16 auditorium itself.

17 CHAIRPERSON LOUD: If there are no
18 additional questions, why don't we turn to
19 the Office of Planning. We'll have an
20 opportunity to ask further questions should
21 some surface as we proceed forward.

22 Good afternoon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MORDFIN: Good afternoon. I'm
2 Stephen Mordfin with the Office of Planning.

3 And the subject application is in
4 conformance with the criteria for the
5 granting of an area variance because the
6 property is unique because of its shape, the
7 nonrectangular building located on it,
8 including the glass cube at the front and the
9 desire of the applicant to retain the
10 existing structure. This uniqueness results
11 in a practical difficulty because the
12 applicant is unable to design a rectangular
13 space to accommodate an auditorium without
14 relocating core features of the building.
15 And the granting of this variance would not
16 adversely effect the Zone Plan because the
17 request would allow the applicant to continue
18 this street wall along 10th Street to the
19 alley and the rear lot line would be located
20 in the same location as a side wall as the
21 existing NMA building.

22 Therefore, the Office of Planning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recommends approval of the variance to the
2 minimum required rear yard.

3 Subject application is also in
4 conformance with the provisions for the
5 granting of a special exception to reduce the
6 number of loading facilities required because
7 all access to loading would continue to be
8 from the public alley. The application
9 indicates that the additional loading spaces
10 are not needed by the use and the square
11 footage of the proposed building is only
12 minimally more than the 50,000 square feet
13 that generates the additional loading
14 facilities required.

15 The proposed building complies
16 with the loading requirements for a 50,000
17 square foot building, but requires relief
18 from the loading requirements for buildings
19 that are up to 200,000 square feet in area.

20 And there should be no adverse
21 effects on adjacent properties because all
22 loading will be from the public alley and no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 loading would extend across a public street
2 or a public way. And no comments were
3 received from DDOT and OP does not recommend
4 any conditions on the approval of the
5 application.

6 Therefore, the Office of Planning
7 recommends approval of the application as
8 submitted by the applicant.

9 Thank you.

10 CHAIRPERSON LOUD: Thank you. It
11 was a very good report.

12 Just a quick question on the ANC
13 report. I was a little unclear. You said
14 that they voted to approve it, but then you
15 said they didn't respond. So was that just
16 that the committee voted to approve? I'm
17 sorry.

18 MR. MORDFIN: That was the
19 Community Development Committee that voted to
20 approve it. But the full ANC I did not
21 receive a response from.

22 CHAIRPERSON LOUD: All right. Now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I understand. And I don't actually have a
2 copy of an ANC report in my file. It doesn't
3 look like other Board members do as well.
4 So, perhaps, there's nothing to give great
5 weight to, but perhaps the applicant can
6 clarify whether the full Commission took up
7 the vote.

8 Are there any questions for the
9 Office of Planning? There do not appear to
10 be any.

11 As indicated, this is normally
12 where we turn to the ANC for its report, but
13 they don't appear to have submitted one to
14 the BZA.

15 And so we'll turn to any potential
16 witnesses that are in the audience that are
17 in favor of this project, now would be the
18 time to come up and give your three minute
19 testimony.

20 If there are persons or parties in
21 the audience who are opposed to the project,
22 now would be the time to come up and you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be allotted three minutes. And if you
2 represent an organization, not the ANC,
3 that's either in favor or opposed to the
4 project, now would be the time to come up.
5 And seeing none, then we turn back to you,
6 Ms. Prince, for closing.

7 MS. PRINCE: Thank you for your
8 time. Briefly, the ANC, the full ANC did
9 take action on November 4th. We understood
10 the letter had been sent in, apparently it
11 hasn't found its way into the file. So we
12 had not only the unanimous decision of the
13 Committee, but the full ANC at its November
14 4th meeting.

15 CHAIRPERSON LOUD: Okay.

16 MS. PRINCE: Just in summary, this
17 is a classic variance case where the geometry
18 and the configuration of the existing
19 building on the site drive the need for the
20 variance. And just from a pure practical
21 standpoint, we're not really changing the
22 existing footprint of the existing NMA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building in any meaningful way because it
2 goes right up to the alley.

3 In terms of the loading relief, I
4 think just like we don't want to over park,
5 we don't want to over load. And Cato's had
6 an operational history in this building for
7 18 years. They know their loading needs
8 better than anyone and they're very, very
9 comfortable with the loading as it's called
10 for under the plans.

11 We would really appreciate your
12 action as soon as possible. Cato's ready to
13 proceed. One of the few owners who is ready
14 to proceed with the project at this time.

15 And we thank you for your time
16 today.

17 CHAIRPERSON LOUD: Thank you.

18 I think the record is full. I
19 think we are going to launch deliberation
20 today and, hopefully, see it to conclusion.
21 And I think Mr. Dettman is going to lead us
22 off.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON DETTMAN: Thank
2 you, Mr. Chairman.

3 And in light of the fact that
4 there's support for the project from OP as
5 well as the ANC, and that there's no
6 opposition here today, I think we can do this
7 very quickly.

8 Relying heavily upon OP's well
9 prepared report, with respect to the variance
10 test I think that the variance from the rear
11 yard requirements, the burden has been met
12 there.

13 With respect to the first prong,
14 the applicant states that their desire to
15 retain the existing architecture of the
16 building, and in particular the kind of
17 signature front facade of the Cato building,
18 the glass cube or the glass facade, that kind
19 of leads to -- or the applicant's desire to
20 retain the original configuration of the
21 existing building, again the architecture.
22 In addition to that the location of the core

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the building and to a certain extent the
2 applicant's programmatic requirements for
3 caring out their mission, certainly I think
4 satisfy the first prong of the test.

5 And with respect to whether or not
6 there's exceptional conditions give rise to a
7 practical difficulty, I think that burden's
8 been met as well. In order to meet the
9 required rear yard setback from the alley it
10 would require the Cato Institute either to
11 reduce or change their programmatic needs in
12 terms of the size of the auditorium space
13 that they need, or actually relocate the
14 core, or alter the front facade of the
15 building which they desire to retain.

16 So moving on to the third prong of
17 the test, I think the relief can be granted
18 without any substantial detriment to the
19 public good or harming the Zone Plan in that
20 essentially they're retaining the condition
21 that currently exists on the alley in that
22 their rear wall will match the side wall of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the existing NMA building.

2 And again, we don't have any
3 opposition to the case. The applicant
4 testified to the fact that they actually
5 reviewed the plans with the neighboring
6 building at 1010 Mass and that it was well
7 received and supported by the multiple owners
8 in that building. And certainly that's the
9 building that would be most uniquely effected
10 by the proposed addition.

11 And finally with respect to the
12 special exception request from loading. I
13 think that the requirements of 2202.2 have
14 been met satisfactorily, especially since
15 this is a single user building. It's not
16 like a multi-tenant office building that's
17 going to have varying loading requirements at
18 different of the day or week. I think that
19 the loading requirements for the Cato
20 building can take place on a very regular
21 basis and all in one shot. So I don't see
22 any potential for adverse effects on adjacent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 properties with respect to traffic or noise
2 and what have you.

3 So I think the applicant has met
4 the burden, Mr. Chairman. And I'm prepared to
5 make a motion if there's nothing further.

6 CHAIRPERSON LOUD: That was an
7 excellent analysis and recap. I certainly
8 have nothing to add to it. Let's see if
9 Board members have. Well, I tell you what,
10 why don't you make your motion and in the
11 contest of your motion we can ask for further
12 deliberation.

13 VICE CHAIRPERSON DETTMAN: I'll
14 move for approval of Application 18003 of the
15 Cato Institute, pursuant to 11 DCMR § 3104.1
16 and 3103.2, for a special exception from the
17 loading requirements under subsection 2201.1
18 and 2202.2, and a variance from the rear yard
19 requirements under section 775, to allow the
20 construction of an expansion to the Cato
21 Institute's headquarters office building in
22 the DD/C-2-C District at premises 1000

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Massachusetts Avenue, Northwest.

2 CHAIRPERSON LOUD: Motion
3 seconded.

4 Motion has been made and seconded.
5 Is there further deliberation? Hearing none,
6 all those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON LOUD: All those who
9 are opposed?

10 And can you read back the vote,
11 Ms. Bailey?

12 MR. BARBER: Thank you, Mr.
13 Chairman.

14 The vote is four-zero-one to grant
15 the application. The motion was made by
16 Board member Dettman, seconded by Mr. Loud.
17 Ms. Moldenhauer and Commissioner Schlater
18 support the motion.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey. There's no opposition in the record,
21 especially from a party. So I believe this
22 can be a summary decision.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BARBER: Thank you.

2 CHAIRPERSON LOUD: Okay. Anything
3 further in this case? Thank you. Appreciate
4 your patience this afternoon.

5 I believe we have one final case
6 set for this afternoon, but I don't see the
7 DCRA counsel. I don't know --

8 MR. BARBER: They're on their way,
9 Mr. Chairman.

10 CHAIRPERSON LOUD: They're on
11 their way? So why don't we do this? Why
12 don't we break for about ten minutes, give
13 them a chance to arrive, and then reconvene
14 at 3:50.

15 (Whereupon, at 3:42 p.m. a recess
16 until 4:13 p.m.)

17 CHAIRPERSON LOUD: Good afternoon.
18 This hearing is back in order.

19 This is the December 1st Afternoon
20 Hearing Calendar for the Board of Zoning
21 Adjustment. And I believe this is the final
22 case of the afternoon. And there are some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 witnesses that need to be sworn in, Ms.
2 Bailey. So I don't know if you want to swear
3 them in first and then call the case, or call
4 the case and then swear them in.

5 MR. BARBER: I'll swear the
6 witness in, Mr. Chairman.

7 CHAIRPERSON LOUD: Okay.

8 MR. GREEN: Mr. Chairman? Mr.
9 Chairman?

10 CHAIRPERSON LOUD: Yes, sir?

11 MR. GREEN: I have a small
12 procedural question.

13 CHAIRPERSON LOUD: Yes, sir.

14 MR. GREEN: I have another witness
15 that's on call. And we're not certain as to
16 what the situation is in terms of your
17 scheduling. But if he comes, we'd like to
18 have him sworn at that time, if it please the
19 Board.

20 CHAIRPERSON LOUD: Yes, that's not
21 a problem to swear the witness in once he
22 gets here. We can't swear him in before he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gets here.

2 MR. GREEN: I understand.

3 CHAIRPERSON LOUD: But I don't
4 know how late we'll go tonight, and I know
5 for certain we're not going to be here until
6 five witnesses get their testimony. What we
7 will probably do if it gets to that point, is
8 just continue that part of the case that
9 we're not able to hear tonight over to the
10 first available date on the calendar. So you
11 may want to stay in contact with your
12 witness.

13 MR. GREEN: Oh, we will.

14
15 CHAIRPERSON LOUD: Okay. Is that
16 why the witness is not here?

17 MR. GREEN: That's correct, sir.

18 CHAIRPERSON LOUD: Okay.

19 MR. GREEN: Thank you.

20 CHAIRPERSON LOUD: Okay. That's a
21 smart decision.

22 (Witnesses sworn.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: And just by a
2 show of hands I wanted to see how many the
3 witness who just raised their hands, I know a
4 few cases, are going to be witness for the
5 appellant. Okay. Four witnesses for the
6 appellant and then for the DCRA one witness,
7 potentially a second witness is going to show
8 up. Okay. All right.

9 MR. DeCARO: Mr. Loud, Mr. Thomas
10 back there is a citizen and he's here on his
11 own. I mean, I'm not going to be calling
12 him. I haven't identified him as a witness,
13 although he's lived in the neighborhood for
14 52 years and he may be able to shed some
15 light on the history of the site, if that
16 becomes necessary. But I just found out
17 about his existence very recently and he's
18 here as a private citizen.

19 CHAIRPERSON LOUD: Thank you.
20 Appreciate that.

21 MR. BARBER: Mr. Chairman, this is
22 an appeal, and the number is 17988 of Koo L.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Yuen and it's pursuant to 11 DCMR § 3100 and
2 3101, from an April 30, 2009 Notice of Intent
3 to Revoke Building Permit No. B85608 by the
4 Zoning Administrator, Department of Consumer
5 and Regulatory Affairs for a gasoline service
6 station at premises 5010 Benning Road,
7 Southeast. The property is zoned C-1. It's
8 located in Square 5340 on Lot 68.

9 Mr. Chairman, members of the
10 Board, I believe there's some preliminary
11 matters associated with the application.

12 CHAIRPERSON LOUD: Thank you, Ms.
13 Bailey.

14 Let me just say that with respect
15 to appeals that the only witnesses that
16 appear are those that are called by parties
17 unlike, say, special exceptions or variances.

18 So if it's your intention to call them, I
19 forget your mentioning --

20 MR. DeCARO: Mr. Thomas.

21 CHAIRPERSON LOUD: Mr. Thomas,
22 sorry I forgot your name. If it's your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 intention to call Mr. Thomas, he could appear
2 as a witness or any of the other parties, or
3 potentially intervenors were to call him.

4 But it's not my understanding that he could
5 offer testimony independently like in special
6 exception, variance cases.

7 MR. DeCARO: Thank you, Mr. Loud.

8 I will be calling him in that case.

9 CHAIRPERSON LOUD: Okay. Let me
10 just ask by way of a brief proffer, you have
11 three different witnesses. Is there any
12 potential overlap in testimony or duplicative
13 testimony?

14 MR. DeCARO: No. No. Mr. Yuen
15 here is familiar with the whole case, and so
16 he would overlap the other two. I don't
17 anticipate, to tell you the truth despite the
18 voluminous nature of this record so far, I
19 don't anticipate this hearing to take
20 particularly long.

21 CHAIRPERSON LOUD: How long do you
22 think your case will take?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Well, I think
2 probably an hour. I would say the entire
3 case. And what I would propose to do is, if
4 you will, sort of in a nature of bifurcating
5 asking for this Board to make a decision on
6 the Motion for Summary Judgment. And if the
7 Board grants the motion for summary judgment,
8 it would be -- in other words, on the grounds
9 of, I guess, duration or persistent of the
10 original special exception.

11 If the Board is inclined to grant
12 that motion, then that I guess would be the
13 end of the case. There would be no need to
14 put on any witnesses or take on any further
15 proceedings in this case.

16 If the Board denies that, then our
17 other positions are estoppel, laches and
18 things like that which would require the
19 witnesses.

20 CHAIRPERSON LOUD: And the one
21 hour projection is an hour for everything, or
22 just for the summary judgment part of it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Soup to nuts. Soup
2 to nuts.

3 CHAIRPERSON LOUD: All right.

4 MR. DeCARO: And I don't mean to
5 interrupt and I know this is rather
6 complicated. There are two other matters.
7 We allege that we didn't get the notice of
8 the April 30th letter. I mean, we could put
9 that testimony on. As a matter of fact, we
10 did file a timely appeal. I'm going to
11 withdraw that issue from the Board's
12 consideration. Okay. And Ms. Woolridge had
13 filed a request for an extension of time to
14 file some pleadings. We didn't file any
15 opposition to that, and I will not be
16 opposing that.

17 CHAIRPERSON LOUD: Okay.

18 MR. DeCARO: And so that's, you
19 know, where we get started I suppose.

20 CHAIRPERSON LOUD: So that leaves
21 the Motion for Summary Judgment, the
22 opposition to it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Right.

2 CHAIRPERSON LOUD: And then the
3 response to the opposition?

4 MR. DeCARO: And then, yes. Yes.

5 CHAIRPERSON LOUD: Okay. What I
6 would suggest, again, is that we set aside a
7 little time here at the beginning before we
8 get into the hearing to have you brief the
9 Board on the Motion for Summary Judgment and
10 the opposition to the Motion for Summary
11 Judgment. But we're going to put a real
12 limit around this. I think this is a lot of
13 legal argumentation and you all have already
14 put a tremendous amount in the record and
15 should be able to brief us in about ten
16 minutes. Really, ten minutes each side to
17 highlight why you feel you're entitled to a
18 summary judgment, the facts that you don't
19 think are in dispute. And then for the DCRA
20 to respond with the same ten minutes. And
21 then we can decide at that point whether to
22 move forward, whether not to move forward or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if there's some third way to proceed.

2 MR. DeCARO: Thank you.

3 And if you please the Board, I'd
4 like to proceed on that basis right now.

5 CHAIRPERSON LOUD: Okay. So
6 there's not going to be any testimony
7 evidence from any of your witnesses on this.

8 We're just going to be looking for you to
9 brief us and sort of educate us on your legal
10 theory of the case.

11 MR. DeCARO: Okay.

12 CHAIRPERSON LOUD: Okay?

13 MR. DeCARO: Yes.

14 CHAIRPERSON LOUD: So let's put a
15 timer on it. We'll give you ten minutes and
16 then we'll turn to counsel for DCRA.

17 MR. DeCARO: Okay. I'd like to
18 start out with the April 30, 2009 Notice of
19 Intent to Revoke. That Notice of Intent to
20 Revoke is based on the theory that the site
21 lost its character as a service station on
22 May 28, 1993 when there was a Certificate of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Occupancy issued for a coin operated
2 laundromat.

3 The Notice of Intent to Revoke
4 does not address the existing special
5 exception or the prior use of the property as
6 a gas station for an extended period of time.

7 This Board has decided the case of
8 MLW, and I attached a copy of the case to my
9 Motion for Summary Judgment and discussed it
10 in there, and I'm not going to go through a
11 whole lot of legalese on that. But let me
12 just say that that case, this Board held that
13 once a special exception has been granted, it
14 becomes a characteristic of the parcel of
15 land for which the special exception was
16 granted and it runs with that land. And that
17 a delay -- I guess if a use of the property
18 is delayed under the special exception, the
19 special exception grant does not go away by
20 virtue of intervening uses or the lapse of
21 time, or anything else like that.

22 In the MLW the property continued

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be used for its original use, and then
2 later on the applicant came in and started
3 working to construct the building in
4 conformity with the special exception. And
5 this case there was a point of time when the
6 gasoline service station was discontinued,
7 the tanks were removed. When the applicant
8 bought the property it didn't have
9 underground storage tanks and because without
10 underground storage tanks you don't have a
11 gasoline station. It did have an existing
12 service station building on the site, but it
13 didn't have any existing service station. It
14 was not there.

15 But the use of the property had
16 previously been approved by the predecessor
17 of this Board as a service station. And then
18 in further proceedings in 1978 it was
19 expanded from a four pump station to a six
20 pump station. We're proposing to go back to
21 the four pump station. This application, the
22 drawings and everything else like that, is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 four pump station.

2 So what we have to address, I
3 guess, the Zoning Administrator's Notice of
4 Intent to Revoke; the basis that's set forth
5 in there which is what is before this Board,
6 is that there was a discontinuance of use and
7 that that somehow eviscerates the grant of
8 the special exception. And there are no
9 regulations, cases or anything else like
10 that, any precedential material and there was
11 one cited by the Zoning Administrator to the
12 effect that mere discontinuance of use or
13 intervention of a different kind of use on
14 the site is sufficient to terminate the
15 special exception on the site.

16 The special exception was granted
17 in this particular case, which is in the
18 exhibits. It doesn't have an expiration
19 date. And it doesn't have any particular
20 terms that would be violated. It just says
21 that "the establishment will not create a
22 dangerous or objectionable traffic condition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or serious increase in hazard to life and
2 limb," and that sort of thing.

3 And so basically since the special
4 exception runs with the land; if you have a
5 covenant or a characteristic that runs with
6 the piece of land, that means that that can
7 be conveyed along with the land. In other
8 words if you convey the land to somebody
9 else, it goes along with it, it goes along
10 with the land and it just becomes a
11 characteristic of the land just like its
12 location, address, characteristics and any
13 other.

14 And so, basically, you know that
15 is our position on summary judgment. And
16 thank you.

17 CHAIRPERSON LOUD: Board members,
18 we can ask questions now allow DCRA to
19 respond with its argument and then ask
20 questions. Okay. Why don't we do that?
21 DCRA, we turn to you now.

22 MS. PARKER-WOOLRIDGE: Good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 afternoon. My name is Doris A. Parker-
2 Woolridge and I'm counsel for DCRA.

3 In reference to a Motion for
4 Summary Judgment, the Board can only grant a
5 summary judgment if there are no issues in
6 dispute. However, in this case there are
7 several issues in dispute.

8 One, for instance, that the
9 existing gas station was grandfathered in on
10 May 12, 1958. That there was no change from
11 1986 from a gas station to a delicatessen to
12 a laundromat. And that the use of the
13 gasoline station discontinued for over 21
14 years. These issues are in disputes.

15 There are about 12 that we have
16 listed in our brief, and I'm not going to go
17 through all 12. But those are some of the
18 things that are in dispute.

19 If there's any material facts in
20 disputes, this Board cannot grant a summary
21 judgment to the appellant.

22 The appellant indicated that MLW

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is, I guess, a case precedent for them. MLW
2 is not applicable to this case. In MLW, LLC
3 that case the Board granted a special
4 exception to the owner to operate a five unit
5 apartment building. And there was no
6 discontinuance or there was no break in uses,
7 I should say. In this case there was a break
8 in uses.

9 In 1967 5010 Benning Road was used
10 as a gas station. In the early '80s it was
11 then changed to a delicatessen. Then in the
12 early '90s it was changed to a laundromat.
13 So there was a break in uses, and so there is
14 a difference.

15 The real reason why we're here
16 today is because when the applicant filed his
17 application with DCRA there were some
18 misrepresentations and false statements in
19 the application. Had the applicant indicated
20 that there was no existing gas station at the
21 premises, we wouldn't be here today. The
22 applicant would be filing for a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exception, number one.

2 The Zoning Administrator, he would
3 not have signed off on the application.

4 At the premises now there is only
5 a building. There is no gas station. There
6 are no pumps. My understanding now the
7 appellant has installed tanks, underground
8 storage tanks. And how I don't know, because
9 according to the plans and to the application
10 DCRA did not approve the installation for any
11 underground storage tanks.

12 When a person files an application
13 at DCRA, we're looking for truthful
14 information. We want to know what type of
15 structure's at the premises. We didn't get
16 that from the applicant. And again, that's
17 why we're today.

18 There are many, many disputes.
19 Many, many facts are in dispute that causes
20 this Board to actually hear this case.

21 Again, when an application is
22 filed for a building permit at DCRA, we rely

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the information as presented to DCRA.
2 DCRA can't second-guess. We got to have
3 clear and concise information on the plans as
4 well as on the application. In this case, we
5 did not get that.

6 I'm not going to go over all the
7 different items that we address in our
8 motion. But the main thing is that if there's
9 a genuine issue in dispute, the Board cannot
10 grant a summary judgment in this case.

11 CHAIRPERSON LOUD: Thank you very
12 much. And thank both of you for briefing us
13 in probably close to ten minutes instead of
14 the allotted 20.

15 Let's see if Board members have
16 specific questions about where we are right
17 now.

18 MR. DeCARO: Mr. Loud, I mean with
19 the Board's indulgence, I would usually get
20 to rebut. And if I could respond to her, I
21 would really appreciate it.

22 CHAIRPERSON LOUD: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Give me three
2 minutes.

3 CHAIRPERSON LOUD: Okay.

4 MR. DeCARO: Okay. Issues in
5 dispute: We're not disputing any of the
6 issues. We're giving her all of the matters
7 that she's raised, and even given that we
8 believe we're still entitled to summary
9 judgment because under the MLW case.

10 I mean, there are no regulations.

11 I mean, there's a discontinuance in use
12 regulations for nonconforming use. This is
13 not a nonconforming use. And so that doesn't
14 apply, and nothing else applies.

15 And so, MLW they say there was no
16 break in use, but actually what happened
17 there it was the property continued to be
18 used for its original use for many, many
19 years before the use was changed. And that
20 is analogous, if not exactly identical to
21 what happened in this particular case.

22 And the most -- I mean the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 drawings that we show show the tank
2 installation, show the canopy installation
3 and also show that if you take a look at the
4 drawings that were approved and if you look
5 at the application, there's a check-off on
6 the application for tanks. The tanks are
7 page -- let me see here. It's they're --
8 actually they have a nice exhibit. It's
9 their Exhibit 23 and it's the fourth page.
10 And it says -- it talks about underground
11 storage tanks, yes, okay. Scope of the
12 project. And that's on page 4 of the
13 original application. And the tanks were
14 approved.

15 And they say the application was
16 misleading. And, you know, we dispute that
17 of course, as you can imagine. But if you
18 take a look at what is before you today,
19 which with all respect you should be entitled
20 to rule on, we have the Notice of Intent to
21 Revoke, dated April 30, 2009. That says the
22 permit was issued in error "because the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of Zoning Adjustment had not granted the
2 special exception for the change of use from
3 a coin operated laundromat to a gas station."

4 Although they claim that they were misled by
5 the application in this letter, that is not
6 the reason given for proposing to revoke the
7 building permit.

8 And I'd also like to bring to the
9 Board's attention as a final matter that DCRA
10 has filed I guess with the Office of
11 Administrative of Hearings a stop work order
12 and it is a Notice to Revoke Building Permit.

13 This was filed by the Building and Land
14 Regulation Administration, not by the Zoning
15 Administrator. Mr. Lennox Douglas filed that
16 on October 16, 2009. We filed a timely appeal
17 to that.

18 And that proceeding raises the
19 issue of whether or not the application is in
20 their view proper, properly disclosed.

21 And so, you know, for those
22 reasons I think you are able to and should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 grant our Motion for Summary Judgment.

2 Thank you.

3 CHAIRPERSON LOUD: Thank you.

4 What's the date on the special
5 exception?

6 MR. DeCARO: The date on the
7 special exception, the date on the original
8 special exception is --

9 MR. YUEN: November 17, 1965.

10 MR. DeCARO: Right. That's
11 Exhibit 2.

12 MR. YUEN: That's the public
13 hearing date.

14 I'm sorry. Before the Board of
15 Zoning Adjustment, D.C. Public Hearing,
16 November 17, 1965 Appeal No. 8427 Eli Busada
17 and other appellants.

18 MR. DeCARO: It was granted on
19 November 24, 1965.

20 MS. PARKER-WOOLRIDGE: Board
21 members, it's Exhibit 2, Appellee's Exhibit
22 2.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Thank you.

2 CHAIRPERSON LOUD: Okay. Thank
3 you.

4 Let me ask this question of
5 counsel for DCRA. Do you contend that there
6 are any facts in dispute regarding the
7 existence of the special exception from
8 November 24, 1975?

9 MS. PARKER-WOOLRIDGE: Yes, we do.
10 '65.

11 CHAIRPERSON LOUD: And what are
12 the facts you contend are in dispute?

13 MS. PARKER-WOOLRIDGE: We contend
14 that in 1965 the BZA only authorized three
15 bay and two islands for a gas station at the
16 premises. And when you look at the plans,
17 you look at the application and the plat it
18 shows four islands. So there's a difference.

19 And somewhere along the line it
20 looks like in 1986 there was a gas station
21 that decided to install or have six pumps.
22 It's not clear from the BZA order as to how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 many pumps were authorized, or it didn't
2 specify in the 1965 order.

3 CHAIRPERSON LOUD: But, as I
4 understand, that's not the basis of the
5 Notice of Intent to Revoke, though, is it?

6 MS. PARKER-WOOLRIDGE: The Notice
7 of Intent to Revoke was based on two things:
8 Misrepresentation and false statements as
9 well as not obtaining a special exception for
10 a gas station by the BZA. So the Notice of
11 Intent to Revoke indicated 706.1 as a
12 violation of the Zoning Regulations. That's
13 why we're here today for this.

14 CHAIRPERSON LOUD: Well, would
15 this 1975 special exception --

16 MS. PARKER-WOOLRIDGE: '65.

17 CHAIRPERSON LOUD: Was it '75 or
18 '65? '65.

19 MR. YUEN: Correct myself. It's
20 November 17, 1965.

21 CHAIRPERSON LOUD: Okay. I
22 thought I heard your counsel say November 24-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -

2 MR. DeCARO: That was the day that
3 it was granted.

4 MR. YUEN: Also 1965.

5 CHAIRPERSON LOUD: Okay. Thank
6 you very much.

7 MR. YUEN: About a week later
8 after the hearing the Board issued the
9 approval.

10 CHAIRPERSON LOUD: Okay. What I
11 think I hear the appellant saying is that
12 unless there's a factual dispute around the
13 special exception and assuming arguendo that
14 they're correct, that the special exception
15 that was granted established a conforming use
16 which renders mute the argument about a
17 discontinuance period. And just assuming
18 arguendo that they're correct about all of
19 that. But unless there's some material
20 factual dispute around the special exception,
21 that we could hear this as a Motion for
22 Summary Judgment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PARKER-WOOLRIDGE: Mr. Loud,
2 in reference to Exhibit 2, in this case the
3 Board did grant it for a gasoline station.
4 But in 1982 as well as 1986, I believe, the
5 uses changed at the premises. So it is the
6 Government's position that once that use
7 changed, it no longer ran with the land. So
8 we're saying that there was a break in the
9 uses, so therefore there was no more a
10 special exception as a gasoline station. And
11 if that is the case, then the appellant had
12 to file an application before this Board for
13 a another special exception.

14 CHAIRPERSON LOUD: Okay. And if
15 that's not the case, then you would agree
16 that there are no facts in dispute and that
17 the issue before the Board is whether or not
18 the special exception granted in 1965 is
19 something that created a conforming use which
20 would be beyond reach of the discontinuance
21 period and that we'd really be looking at
22 just a legal answer to the argument raised by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 counsel?

2 MS. PARKER-WOOLRIDGE: Beg the
3 court's indulgence.

4 CHAIRPERSON LOUD: Okay. Tell you
5 what, what I would suggest because you need a
6 little time to confer. You may have
7 concluded, you may need a little more time.
8 Why don't we take a five minute break,
9 absolutely five minutes. No more. And we'll
10 return and then we can sort of wrap up this
11 phase of where we are. Okay? All right.

12 (Whereupon, at 4:42 p.m. off the
13 record until 4:54 p.m.)

14 CHAIRPERSON LOUD: We're back on
15 the record. Thank for your patience with the
16 case.

17 It would be fruitful to have both
18 of you brief us on this issue. I think where
19 we would like to go with this is to have each
20 of you conclude your briefing on the summary
21 judgment part of this, and in particular for
22 DCRA if you can, and certainly not limiting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it to this, but if you can in the additional
2 part of your briefing highlight your
3 understanding of the MLW case and why that
4 would not apply in this particular case. And
5 if you have additional case authority that
6 would tend to suggest that once a pre-1958
7 authorized use that would be authorized by
8 special exception thereafter and become a
9 conforming use, if you have case that would
10 suggest that that's not the case, perhaps to
11 share that with us. An then walk through an
12 analysis of your authority.

13 And then for the appellant to
14 further embellish your general line of
15 argument that because a special exception use
16 was established at the Benning Road site,
17 that it became conforming and that it's not
18 subject to the discontinuance provisions of
19 the regs.

20 I think once we hear that, I think
21 we'll be in a posture to not necessarily hear
22 any evidence today that would go to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 merits or the additional issues raised, the
2 nonsummary judgment issue raised, and then we
3 can set this for a decision just based on the
4 briefing on the summary judgment.

5 If when we get to the decision we
6 make a determination that we feel like it,
7 perhaps, should proceed further, then we'll
8 just schedule it again for hearing.

9 Does that make sense?

10 MR. DeCARO: Yes, sir.

11 CHAIRPERSON LOUD: All right.

12 Board members, did I leave any
13 gaps there? All right.

14 So then why don't we do that? I
15 believe we were still with DCRA's counsel.
16 Yes.

17 MS. PARKER-WOOLRIDGE: I'm sorry.
18 We're not clear. Could you repeat that one
19 more time?

20 CHAIRPERSON LOUD: I think bottom
21 line is with respect to the Motion for
22 Summary Judgment on the table to use this as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an opportunity to fully brief the Board
2 members on why it is DCRA believes that the
3 special exception line of argument raised by
4 the appellant would not apply in this case.
5 And the authority that you would have to
6 support your position. And why you don't
7 believe MLW would support their position.

8 MS. PARKER-WOOLRIDGE: But for
9 clarification, I thought Mr. Loud, that you
10 indicate a pre-1958 because we're not saying
11 this is a pre-1958.

12 CHAIRPERSON LOUD: I think that
13 was unartfully said. I think the point I was
14 just making there was that the use was
15 authorized prior to 1958.

16 MS. PARKER-WOOLRIDGE: The use was
17 not authorized.

18 CHAIRPERSON LOUD: It was not
19 authorized?

20 MS. PARKER-WOOLRIDGE: Right.

21 CHAIRPERSON LOUD: Okay.

22 MS. PARKER-WOOLRIDGE: It was not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 authorized according to the application in
2 1967, it indicated that he did not know. The
3 owner did not what type of use for the very
4 first gas station. So it was not a pre-1958.

5 CHAIRPERSON LOUD: Well, I stand
6 corrected on that. And if you weave that
7 into the argument that you're going to make
8 regarding whether or not the special
9 exception, that I think we all agree, was
10 established in 1965 --

11 MS. PARKER-WOOLRIDGE: Okay.

12 CHAIRPERSON LOUD: -- is
13 conforming or is not nonconforming, then use
14 that as an opportunity to do it. But I do
15 stand corrected on that.

16 MR. GREEN: Mr. Chairman?

17 CHAIRPERSON LOUD: Yes, sir?

18 MR. GREEN: Yes, Matthew J. Green,
19 Jr. here for the Department of Consumer and
20 Regulatory Affairs.

21 How do you want us to now proceed
22 today, this evening, this afternoon, tonight

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in light of your ruling? Do you want us now
2 to stop, back up, go home, come back? Is
3 that your final answer to what you want us to
4 do this evening?

5 CHAIRPERSON LOUD: Well, I'll
6 certainly ask colleagues to weigh in, but I
7 don't want you to pack up and go home or
8 stop.

9 I think that you had raised an
10 interpretation of the existing standard that
11 differed from that offered by the appellant's
12 regarding the special exception usage and
13 whether it continues and makes the property
14 conforming. And we wanted to hear that point
15 elaborated on by counsel for DCRA and that
16 point supported by reference to case
17 authorities or whatever you want to allude to
18 to support your position.

19 MR. GREEN: Once a briefing is
20 done on that and a determination is made by
21 the Board --

22 CHAIRPERSON LOUD: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GREEN: -- is it not a fact
2 that that act would be depositive as to a
3 determination as to how Mr. Yuen would
4 proceed? In other words, once you ruled on
5 that and you made a determination on the
6 summary --

7 CHAIRPERSON LOUD: Yes.

8 MR. GREEN: -- then the whole
9 process just stops. We don't put a case on.
10 Nobody puts anything on.

11 CHAIRPERSON LOUD: Right.

12 MR. GREEN: So in order to get to
13 that point, what are we going to do this
14 evening? I mean, you know, are we going to
15 call our witnesses or not?

16 CHAIRPERSON LOUD: No, we're not--

17 MR. GREEN: Are we going to leave--
18 -

19 CHAIRPERSON LOUD: We're not going
20 to call any witnesses this evening.

21 After you brief the BZA on the
22 summary judgment issues that we're talking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about, we're going to, in effect, take the
2 issue under advisement.

3 MR. GREEN: Okay.

4 CHAIRPERSON LOUD: I doubt if
5 we're going to rule on it today, although I
6 could be wrong. We're going to do the
7 equivalent of taking it under advisement and
8 review the legal arguments made. And then
9 we're going to set it for a decision for a
10 couple of weeks down the road. by which time
11 we would have reflected on what was presented
12 and what's in the pleadings and what came out
13 during the argumentation. And we'll make a
14 decision at that decision meeting.

15 Now that decision meeting may
16 result in the case still moving forward or
17 the case not moving forward. But I think
18 that's what I'm offering as a procedure.

19 MR. GREEN: So you will accept
20 further filings on this, is what you're
21 saying? And you're saying that as far as
22 tonight's proceeding is concerned after you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 finish, it's over?

2 CHAIRPERSON LOUD: Well, my
3 thought about further filings is that
4 everybody knew that the hearing was scheduled
5 for today. Everybody has copies for the
6 Motion for Summary Judgment, the oppositions
7 to it, the responses to it.

8 MR. GREEN: Yes.

9 CHAIRPERSON LOUD: So everybody
10 should have come prepared to argue that. So
11 I'm not seeing necessarily the need to keep
12 the record open.

13 And in addition to all of that, I
14 thank the time that we're talking about
15 argumentation that's going to take place
16 right now, is the time to go into any
17 additional arguments that one would want to
18 raise regarding the Motion for Summary
19 Judgment.

20 MR. GREEN: All right, Mr.
21 Chairman. I'll hobble along. Thank you.

22 CHAIRPERSON LOUD: Thank you, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Green.

2 MS. PARKER-WOOLRIDGE: Thank you.

3 It's the fundamental right for the
4 ZA to regulate uses to demarcate the
5 beginning and ending of a site. In this
6 particular case if the special exception was
7 not -- I'm sorry. When the delicatessen and
8 the laundry service were used at the
9 premises, it extinguished the authorized use
10 of the special exception for a gas station
11 that was approved in 1965.

12 If the Board is determined that a
13 use is never extinguished, then that means
14 that someone may not use this premises for 40
15 years and come back says "Hey, I have a
16 special exception." So at some point these
17 special exceptions must end.

18 And another use is used at the
19 premises or is installed or used at the
20 premises, then that Certificate of Occupancy
21 is extinguished, it's gone. And there is the
22 next use that comes in, as in this case there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was the laundry service that extinguished the
2 Certificate of Occupancy for the
3 delicatessen.

4 As far as the MLW case, again
5 there are some similarities and there's only
6 one that I could see, and that is that the
7 BZA authorized a special exception to use the
8 premises as in that particular case for a
9 five unit apartment building. And that case
10 is different than this case for the fact
11 that, again, there was a break in use for
12 this particular case; not just one time but
13 two times and over a 21 year period.

14 In MLW, LLC that was no break in
15 use. They just did not use it for a period
16 of time; that's a difference.

17 The appellant's right to use that
18 gas station terminated when the delicatessen
19 was being operated at 5010 Benning Road. And
20 also when the gas station -- when the
21 laundromat was being operated, it also
22 terminate the Certificate of Occupancy, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 uses for the delicatessen. Otherwise, you'll
2 have several uses at one premises. And
3 that's not the case here: Both, they
4 extinguish the other.

5 Beg the Board's indulgence.

6 One last comment. In reference to
7 the existing gas station, it is our
8 understanding now it's the appellant's
9 position that there is no existing gas
10 station from his pleadings. Although, when
11 he filed his application it indicated an
12 existing gas station. That is an issue that
13 is in dispute because when he filed his
14 application, the information in the
15 application is what caused DCRA to approve
16 the permit for an existing gas station.

17 If you look at the decision for
18 Exhibit 2 for 8217, there was no existing gas
19 station there. There was no existing gas
20 station. That became an existing gas
21 station. They don't know what the use was.

22 In this case there was an existing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gas station previously. And respondent was
2 ware of it, but yet in his application he
3 indicated an existing gas station although
4 there was no existing gas station at the time
5 when he filed his application.

6 One of the differences is, is the
7 fact that to the District is that he
8 committed fraud just to install this gas
9 station or to operate the gas station then
10 when he could have come before this Board and
11 asked for a special exception, just like the
12 owner did in 1965 to obtain a special
13 exception.

14 And further, this is not new to
15 the appellant. The appellant has been before
16 this Board before for a special exception for
17 a gas station. The appellant had been
18 informed before the DA office that in order
19 to operate a gas station in C-1 under 706.1,
20 you must obtain a special exception and that
21 use also changes. If the use change, then
22 you have to obtain a new Certificate of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Occupancy. You can't just go back 21 years
2 later and start operating a gas station.

3 Thank you.

4 CHAIRPERSON LOUD: Thank you.

5 Before we go to the appellant, did
6 Board members have any questions? Yes.
7 Okay.

8 COMMISSIONER SCHLATER: I think
9 I'd like to actually have DCRA and its
10 attorneys specifically address the order in
11 the case we're all talking about here, which
12 is Appeal No. 17591 of MLW, LLC. I'm just
13 going to read a paragraph from that order.

14 And it says: "Regardless of
15 whether the use of the subject property as a
16 five unit apartment building as authorized by
17 BZA Order No. 8665 is considered a conforming
18 use, it is undisputed that the use is not a
19 nonconforming use, and it thereby is not
20 subject to the discontinuance restrictions of
21 section 2005.1. The discontinuance
22 restrictions under 2005.1 are by definition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 only applicable to a nonconforming use."

2 In a different part of that order
3 it says: "Although the District's courts
4 have not addressed this precise question,
5 courts in other parts of the country have
6 upheld the concept that a use approved by a
7 variance or special exception becomes a
8 conforming use and otherwise partakes to a
9 large degree in the character of the vested
10 right running with the land."

11 So, I guess in reading -- I want
12 to get your response to that. Because to me
13 in reading that language in that order its
14 telling me that once you get a special
15 exception for the land, it runs with the
16 land. It is a conforming use and is not
17 subject to the discontinuance rules within
18 the nonconforming use language.

19 MS. PARKER-WOOLRIDGE: Thank you.

20 It is the District's position that
21 until another use -- if there's another use,
22 then that's a break in the authorized special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exception that's been granted by the Board.

2 In MLW, my reading of MLW, there
3 was no breakage in the use. And we still
4 state that the opposition is that it is
5 different than the instant use. Because the
6 use before this Board there are two different
7 types of breakage in the use from a gas
8 station. So in MLW it continued to run with
9 the land, based on the reading of the order,
10 however in this particular case it did not --
11 it cannot continue to run with the land if
12 you have two different uses after the gas
13 station had been discontinued.

14 COMMISSIONER SCHLATER: I
15 certainly understand the logic behind that
16 argument. And until I read this case, I
17 think I would have agreed with your logic.

18 I guess in the legal analysis of
19 the case, I don't know if I can -- on page 5
20 it says "Revocation of the appellant's
21 Certificate of Occupancy was based on the
22 Zoning Administrator's determination that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 apartment building was a nonconforming use
2 and, therefore, subject to the discontinuance
3 of nonconforming use provisions set forth in
4 section 2005.1."

5 To me that says the Zoning
6 Administrator determined that this was a
7 nonconforming use and, therefore, it was
8 subject to the discontinuance of
9 nonconforming use provision.

10 I think it's pretty clear and it
11 seems applicable here. So I'm trying to give
12 you an opportunity to address that specific
13 argument within the order.

14 MS. PARKER-WOOLRIDGE: Again, and
15 I'll restate the same thing, that in MLW, LLC
16 there was no breakage. They're the same type
17 of use continued. There was a period of time
18 which they did not rent the apartment
19 building, as in this case it's completely
20 different.

21 And the DA also is trying to deal
22 with the continuity of use at the premises as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 well.

2 COMMISSIONER SCHLATER: Well, I
3 guess --okay. I'm just going to read one
4 more thing from the order and then have you
5 guys respond to it.

6 On page 5: "On or about October
7 19, 2006, the Zoning Administrator sent a
8 Notice of Revocation of COO No. 61776 NLW.
9 The Zoning Administrator alleged that the
10 Zoning Administrator had determined that the
11 nonconforming use was discontinued for a
12 period of three or more years, and as a
13 result under 11 DCMR the current as a five
14 unit apartment building is not allowed by the
15 Zoning Regulations."

16 It seems pretty clear from that
17 language that the Zoning Administrator in
18 fact did find that the apartment building was
19 discontinued for a period of three or more
20 years, and therefore it is applicable in this
21 case. And I want to give you an opportunity
22 just to respond to that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PARKER-WOOLRIDGE: But I
2 believe that the Board had determined that
3 when the use had not discontinued, but when
4 the use had stopped for a period time, the
5 special exception still existed. There was
6 no termination of special exception. And
7 what we're saying in this case there was a
8 termination of special exception once the
9 delicatessen was operated at 5010 Benning
10 Road and then when it then changed into a
11 laundry service: That that terminated the
12 special exception.

13 COMMISSIONER SCHLATER: Okay. So
14 let me get this straight. In this case
15 you've got an apartment building that may
16 have gone vacant for more than three years,
17 and therefore it discontinued its use. But
18 it didn't become --

19 MS. PARKER-WOOLRIDGE: But it
20 remained --

21 COMMISSIONER SCHLATER: -- a
22 hotel, or a restaurant, or some other use,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 delicatessen?

2 MS. PARKER-WOOLRIDGE: Right. It
3 remained and it continued to be an apartment
4 building. The use did not change there.

5 COMMISSIONER SCHLATER: Okay. At
6 least I understand the argument there. Even
7 though the Zoning Administrator did argue
8 that it was a nonconforming use because the
9 use had been discontinued for a period of
10 three years. You're saying the distinction
11 here is it never became something else
12 besides an apartment building, it just went
13 vacant.

14 MS. PARKER-WOOLRIDGE: Right.

15 COMMISSIONER SCHLATER: Okay.
16 Thank you.

17 VICE CHAIRPERSON DETTMAN: Ms.
18 Woolridge, you may have already answered this
19 but just simply, do you agree with MLW in
20 that the granting of a special exception
21 establishes a conforming use on a particular
22 piece of property?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PARKER-WOOLRIDGE: You mean if
2 the use does not change, its still --

3 VICE CHAIRPERSON DETTMAN: No, no,
4 no, no. The simple statement in the MLW case
5 that said "the granting of a special
6 exception" -- I can read it word-for-word,
7 but I'm pretty sure the gist of it is the
8 granting of a special exception establishes a
9 conforming use on a piece of property,
10 period.

11 MS. PARKER-WOOLRIDGE: Beg the
12 Board's indulgence.

13 Again, for that use, yes, special
14 exception was granted for that particular
15 use.

16 VICE CHAIRPERSON DETTMAN: Okay.
17 So in 1965 when the Board granted a special
18 exception for the use of this property as a
19 gasoline service station, in 1965 that
20 special exception established a conforming
21 use on that property?

22 MS. PARKER-WOOLRIDGE: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON DETTMAN: And if
2 it's a conforming use, what's the
3 significance of you pointing out that it was
4 discontinued?

5 MS. PARKER-WOOLRIDGE: For the
6 instant case?

7 VICE CHAIRPERSON DETTMAN: Sure.
8 You drew the distinction between MLW and this
9 case in that the gas station that was
10 established in '65 was abandoned,
11 discontinued, I don't remember the word you
12 used. But what's the significance of
13 pointing that out if we both agreed that in
14 1965 a conforming use was established?

15 MS. PARKER-WOOLRIDGE: Well, the
16 difference is again is that in MLW the use
17 was a continuing use, it was the same use.
18 There was not a breakage, there wasn't a
19 separate use, it wasn't a different use. It
20 was the same use at the period of time when
21 it discontinued rental property, it was still
22 rental property.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON DETTMAN: Okay.

2 MS. PARKER-WOOLRIDGE: In this
3 particular case, in the '80s it changed its
4 use. It changed its use from a gas station
5 to a delicatessen and then to a laundry
6 service. So the difference there is that the
7 uses, there was a change in the use at the
8 premises.

9 VICE CHAIRPERSON DETTMAN: And as
10 it applies to the Zoning Regulations, Title
11 11, what's the significance of the breakage
12 of that use?

13 MS. PARKER-WOOLRIDGE: The
14 significance of the breakage of the use means
15 that the Zoning Administrator he has the
16 fundamental right to determine what type of
17 use would be at that particular premises.
18 Like in a C-1 if you have to have a special
19 exception as for a new gas station, then it's
20 incumbent upon that person to go before the
21 Board to obtain approval from the Board to
22 operate a new gas station.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Beg the Board's indulgence.

2 Pursuant to 11 DCMR where it says
3 "No building, structure or premise, premises
4 shall be used in no building or structure or
5 part of a building or structure shall be
6 constructed, extended, moved, structurally
7 altered or enlarged except in conformity with
8 this title."

9 The Zoning Administrator has the
10 authority to regulate these new buildings.

11 If this is a new gas station, then
12 he should have the authority to regulate this
13 new gas station and not one that's been
14 discontinued for over 21 years.

15 VICE CHAIRPERSON DETTMAN: Can you
16 just tell me the provision you read from?

17 MS. PARKER-WOOLRIDGE: 11 DCMR
18 101.5

19 VICE CHAIRPERSON DETTMAN: And if
20 in 1965 by way of the special exception it
21 established a conforming use on this
22 property, in what way does putting a gas

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 station on this property make it noncompliant
2 with 11 DCMR?

3 MS. PARKER-WOOLRIDGE: The
4 District is not saying they cannot have a gas
5 station there. The District is saying that
6 they have to follow 11 DCMR, which means if
7 you're going to have a new gas station, you
8 need to come before this Board and obtain
9 approval for a new gas station. It's process
10 and procedural.

11 VICE CHAIRPERSON DETTMAN: My last
12 question is can you point to a provision in
13 the regulations that prevents this gas
14 station from going back to this property,
15 even though it's a conforming use established
16 in 1965? Like if it was a nonconforming use
17 and it went away for more than three years,
18 you could point 205?

19 MS. PARKER-WOOLRIDGE: Right.

20 VICE CHAIRPERSON DETTMAN: But we
21 both agree that its a conforming use
22 established in 1965. So can you point to a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provision that if it was established
2 tomorrow, it would be in violation of the
3 Regs?

4 MS. PARKER-WOOLRIDGE: Beg the
5 Board's indulgence.

6 There is no provision in the 11
7 DCMR that we are aware of. However, this
8 will be a good opportunity for the Board to
9 make a decision on this matter since it's a
10 new issue, obviously.

11 CHAIRPERSON LOUD: Just a follow-
12 up question to both Commissioner Schlater and
13 Board member Dettman related to his last
14 question about is there a provision in DCMR
15 that supports the position you're taking.
16 Are you familiar with any case law that
17 support the position that you're taking,
18 either in Atlantic 2nd or any jurisdiction?

19 MS. PARKER-WOOLRIDGE: Right. We
20 researched it. We could not find any
21 provision to support this type of argument.
22 It's new. And if I'm not mistaken, I thought

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it was indicated in the
2 MLW decision, and there may be another case,
3 but this has never been addressed before.
4 And I believe I saw it in here.

5 CHAIRPERSON LOUD: I think it says
6 "In this" -- but let me just take a look. I
7 thought they were saying in this region, but
8 I could be wrong.

9 VICE CHAIRPERSON DETTMAN: I think
10 it says the District Court have not addressed
11 this precise question.

12 CHAIRPERSON LOUD: Right. And it
13 goes on to say: "Courts in other parts of
14 the country have upheld the concept that a
15 use approved by a variance of a special
16 exception becomes a conforming use and
17 otherwise partakes, to a large degree, the
18 character of invested right," et cetera.
19 Then it cites a New Jersey case, Atlantic 2d.
20 case, but a New Jersey case.

21 But you're not familiar with any
22 with any --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PARKER-WOOLRIDGE: No, we're
2 not.

3 CHAIRPERSON LOUD: -- case law
4 that would support your position?

5 MS. PARKER-WOOLRIDGE: No.

6 CHAIRPERSON LOUD: The position
7 that you're taking?

8 MS. PARKER-WOOLRIDGE: No.

9 CHAIRPERSON LOUD: Okay. Are you
10 familiar with other cases doing the research
11 that you did undertake that would tend to
12 corroborate the position taken by the
13 appellant in this case?

14 MS. PARKER-WOOLRIDGE: No. I
15 looked at some of the cases that the
16 appellant has submitted. And one in
17 particular, I believe, was George Washington
18 which talks about the nonconforming use, but
19 the was considered nonconforming to another
20 nonconforming use. So there was no -- so that
21 special exception was fine. But this is not
22 the case. This is a different. MLW is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different from George Washington.

2 CHAIRPERSON LOUD: And again, just
3 sort of as a final thought for me. Just so I
4 understand the bedrock of your position.
5 Your position is based on what? On sort of
6 an ongoing interpretation by the Zoning
7 Administrator of section 101.5?

8 MS. PARKER-WOOLRIDGE: That's
9 correct.

10 CHAIRPERSON LOUD: Okay.

11 MS. PARKER-WOOLRIDGE: That the
12 Zoning Administrator has authority to
13 regulate new gas stations, as in this case
14 it's the new gas station. It's a different
15 use. Again, it's a different use from the
16 previous use which was a laundromat.

17 CHAIRPERSON LOUD: Okay. Thank
18 you. I don't have any additional questions.

19 And unless Board members do, I think we can
20 turn to the appellant for its final thoughts
21 on this. And then we can schedule this for
22 the next phase of proceeding.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: Mr. Loud, I'd like to
2 address your point. Not only did I do
3 considerable amount of research, I had
4 Holland & Knight do a lot of research. And
5 they didn't come up with any cases that were
6 specific to the DCMR type regulations.
7 Because every jurisdiction has its own zoning
8 cases, and most jurisdiction that went one
9 way or the other, have a specific provision
10 in the code that pertains to whether or not
11 an intervening use will have an effect on the
12 existing use. And if the code says that,
13 then the case is irrelevant because DCMR
14 doesn't say that.

15 So I would have to say that I
16 didn't find anything either. Okay. But what
17 I did find, the D.C. Superior Court has come
18 up with -- this is not relevant enough to
19 give you copies unless you want copies. But
20 MLW was sued in the D.C. Superior Court in
21 Case No. 2006-CA-0027909B. And those who
22 subscribe to *CaseLaw Express* can pull that up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the court's website. That case relies on
2 the case of 338 Connecticut Avenue, LLC vs.
3 the District of Columbia, which you may be
4 familiar with. That's a Federal case, 3353
5 F.3rd, 1068 and that case was decided in
6 2003. And in that case the Federal Court for
7 D.C. decided that the developer had a
8 proprietary interest protected by due process
9 in the continuing effect of preliminary
10 permits issued by the District.

11 So in other words, I'm going a
12 little afar afield here from a Zoning case,
13 but there is a precedent for the notion that
14 if you have enhanced your piece of real
15 estate by obtaining certain permits or
16 zoning, that you have a property interest in
17 that enhancement, in those final rulings.

18 And I guess they're talking about
19 the Zoning Administrator's regulation of a
20 new gas station. But actually what we have
21 here is we have anything you do with a gas
22 station in the District of Columbia is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pervasively regulated by a number of
2 different agencies. In fact, this particular
3 application was signed off on by all those
4 agencies over a 2½ year period after the
5 expenditures of hundreds of thousands of
6 dollars by the applicant. And the applicant
7 has a million dollars in this project to
8 date, I'm told.

9 So the Zoning Administrator, it's
10 not that gas stations are unregulated in the
11 District of Columbia. They're every -- you
12 know, the kind of tank, the way the tanks are
13 installed, the fittings between the pipe and
14 the tank. Everything. The pollution
15 control. The whole thing is extremely well
16 regulated. The layout of the site. And we
17 have passed all of those tests. And so it's
18 not like the Zoning is what is protecting the
19 public from a gas station that might
20 otherwise have some kind of a problem.

21 And so, you know, the other point
22 I'd like to make is that under -- if you look

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at Exhibit 14, and I'm using the District's
2 exhibits because that's the best copy. That
3 shows the delicatessen, no seating,
4 Certificate of Occupancy June 29, 1982. We
5 don't know on this record, now we may have
6 some evidence later on, but we don't know on
7 this record that the gas station was
8 discontinued in 1982. You know, we know it
9 was discontinued sometime between '78 and '93
10 when the laundromat was put into place.
11 Because you have to take the tanks out within
12 30 days after you stop using it as a gas
13 station. When they started using it as a
14 laundromat, they would have had to
15 discontinue 30 days prior to that or more by
16 removing the tanks. And so that's the only
17 evidence that we have by inference of how
18 long the gas station persisted.

19 But I mean from '65 to I guess
20 '82, even, is a considerable period of time.

21 And going back to the permit, this
22 permit application was originally submitted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on October 25, 2005. The building permit was
2 issued in 2008 sometime. And so, you know, I
3 mean the District of Columbia and its
4 regulators had a very hands-on look at this
5 thing. And they spent a lot. You can see
6 from the documentation that they spent a lot
7 of time taking a look at it.

8 Now, I mean the word "fraud"
9 really got my attention.

10 VICE CHAIRPERSON DETTMAN: Mr.
11 Chairman, I'm just wondering, are we getting
12 outside the boundaries of kind of the issue
13 that we asked both parties to address, and
14 that was specifically the MLW and whether a
15 special exception establishes a conforming
16 use?

17 MR. DeCARO: Well, I certainly
18 don't want to go outside the boundaries. I
19 may --

20 CHAIRPERSON LOUD: Thank you, Mr.
21 Dettman. Yes, and I think we want to keep it
22 there because we don't want to open it up for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 further rebuttal and then further rebuttal
2 and then further rebuttal. So I agree with
3 where Mr. Dettman was heading.

4 MR. DeCARO: Okay.

5 CHAIRPERSON LOUD: And was kind of
6 hopeful that you were bringing your summation
7 to a close.

8 MR. DeCARO: Yes, sir. Yes, sir.

9 I would say, okay, well then
10 leaving that point aside. A break in use and
11 a discontinuance and a conforming use are the
12 same thing. Once you have a conforming use,
13 if you look at the Zoning Regulations they
14 say for a particular zone there are several
15 different uses that you can have in that zone
16 as a conforming use. And you can have like a
17 delicatessen and a laundromat. And you
18 discontinue the delicatessen and you set up a
19 laundromat. And it's not necessary to get a
20 special exception there because you have a
21 conforming use for the site.

22 And, of course, delicatessens are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regulated by the Health Department,
2 laundromats are regulated by whoever
3 regulates laundromats. And so the regulation
4 part of making sure that that business
5 doesn't harm or adversely impact the
6 residents of the District of Columbia is not
7 necessarily a Zoning function. And, you
8 know, I don't think it's proper to sort of
9 attempt to use the Zoning Regulations to do
10 that.

11 And basically that would be our
12 point.

13 And if you look at the MLW case, I
14 mean I think just for the purpose for
15 addressing what you specifically asked for, I
16 mean they started building and they
17 discontinued the use for a period of time.
18 And that's the basis on which the Zoning
19 Administrator in that case attempted to stop
20 the work or whatever he did.

21 And there was a discontinuance and
22 a resumption of a conforming use in this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case. And I think even there wasn't
2 necessarily a radically different use of the
3 site in the MLW case, I think the rationale
4 would apply here.

5 Thank you.

6 CHAIRPERSON LOUD: Thank you.

7 I think that we are fully briefed
8 on the issue of the Motion for Summary
9 Judgment. I think the next step is to set a
10 date for our deliberation on what we've
11 heard.

12 I'd like to recommend December 15.

13 I think the morning for a decision. And
14 then it looks like if it would need to go
15 beyond December 15th for a hearing, we could
16 do December 15th in the afternoon for a
17 hearing. There's currently two cases
18 scheduled in the afternoon.

19 MR. DeCARO: I think December 15th
20 is fine with me.

21 CHAIRPERSON LOUD: Okay.

22 MR. DeCARO: Witnesses, are you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 available on December 15th? Thank you. No,
2 no, we're coming back on December 15th to
3 continue the hearing.

4 CHAIRPERSON LOUD: Well, what I'm
5 suggesting is both. That December 15th in
6 the morning for a decision on the summary
7 judgment. And depending on the outcome of
8 that, simultaneously setting up the afternoon
9 for a hearing. Obviously, if we don't need a
10 hearing, we don't go to a hearing. But if we
11 do --

12 MR. DeCARO: What time in the
13 morning would that be?

14 CHAIRPERSON LOUD: You don't have
15 to actually come for that. You can watch it
16 on webcast. But it would be 9:30 in the
17 morning. We start our decisions at 9:30 in
18 the morning.

19 MR. DeCARO: Okay. Thank you.

20 CHAIRPERSON LOUD: But your
21 attendance is not required. And there would
22 be no testimony taken at the decision.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DeCARO: No. I understand
2 that.

3 CHAIRPERSON LOUD: Okay. All
4 right. Very good.

5 So if all hearts and minds are
6 agreed on that, then we'll continue it until
7 December 15th, a.m. and p.m. as necessary.

8 MR. BARBER: Mr. Chairman, is the
9 record closed on this at this point?

10 CHAIRPERSON LOUD: At this point I
11 would think the record is closed on it.
12 Having shown up here today to go forward, I
13 think we've gotten all the information in the
14 record that we need.

15 (Whereupon, at 5:36 p.m. the
16 Public Hearing was adjourned.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701