

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 26, 2012

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:51 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
RASHIDA MacMURRAY, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson
MARCIE COHEN, Vice-Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
STEPHEN MORDFIN
KAREN THOMAS
STEVEN COCHRAN
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on June 26, 2012.

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

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

2 9:49 a.m.

3 CHAIRPERSON JORDAN: We're now
4 moving to the public hearing for today, June
5 26. The time is 9:49 a.m.

6 And now joining us is Zoning
7 Commission Member Marcie Cohen.

8 Thank you. Go ahead and proceed.

9 MR. MOY: Yes. Before I call the
10 first case for the public hearing session,
11 anyone in the audience who is submitting any
12 documents, please if you can reproduce 12 copies
13 -- one for the record and one for the Board.
14 The reproduction machine is across the hall if
15 you need that.

16 The first case is Application No.
17 18359. This is the Application of Essie M.
18 Clark, pursuant to 11 DCMR 3014.1. This is for
19 a special exception to allow a one-story rear
20 addition to an existing two-family,
21 semi-detached dwelling under Section 223, not
22 meeting the side yard requirements under Section

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1 405, and lot occupancy requirements under
2 Section 403, in the R-4 District at Premises
3 5422 8th Street, NW, property located in Square
4 2994, Lot 40.

5 Okay. I stand corrected.
6 Single-family.

7 Mr. Chairman?

8 CHAIRPERSON JORDAN: Yes.

9 MR. MOY: I wanted to remind you to
10 swear parties.

11 CHAIRPERSON JORDAN: Oh, yes.
12 That's one part we've missed, isn't it?

13 All right. Let's do this. All
14 those who are planning to be a witness or give
15 testimony in any other cases on today's docket,
16 please stand and take the oath or affirmation
17 from Mr. Moy, the Secretary of the Board.

18 (Witnesses sworn.)

19 CHAIRPERSON JORDAN: Okay. Did we
20 make notes of everybody who did and didn't?

21 MR. MOY: Absolutely.

22 CHAIRPERSON JORDAN: Good. We're

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1 glad to see you back and that there's been some
2 corrections to this particular file. And we're
3 just trying all to get to the same place and
4 try to help you there.

5 And since the time this case was last
6 set for hearing, we've received an affidavit
7 of posting. We've also received a
8 representation letter.

9 And I think the file is pretty much
10 complete except we have another issue that we
11 need to get your consent for. And we would take
12 that in the form of you asking us to amend your
13 application and that relief is also necessary
14 from Section 401, the lot area. This particular
15 requirement -- Section 401 requires that you
16 have a minimum of 3,000 square feet for the
17 property, and you have 2700. So we would
18 include that if its your wish for us to include
19 that relief for you in any order that if we do
20 grant an order.

21 I find that the record here is pretty
22 complete and that there's nothing that I need

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1 to hear in addition to what's already in the
2 record. The record is pretty full. I think
3 all the documents now are up to date and will
4 provide enough guidance for us to render a
5 decision in this matter.

6 I'm going to ask any of the Board
7 Members if there's something that they may want
8 to add or that we need to hear from the Applicant.

9 VICE-CHAIRPERSON SORG: Mr.
10 Chairman, I would just ask one question of the
11 Applicant.

12 I also note in addition to our
13 record, we did receive a letter of support from
14 the adjacent neighbor. So thank you for that.

15 And then we also have a letter here
16 from Ms. Clark to the ANC. Now we still notice
17 that we don't have a report from the ANC. Maybe
18 you can talk a little bit about what your
19 communication was or your efforts there for the
20 record in talking to the ANC.

21 MR. CLARK: Yes, I attended the ANC
22 meeting on June 19, and I did have

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1 correspondences with Ms. Green and other members
2 of Ward 4 Commission.

3 After talking with her, she said she
4 was in full support of what we were trying to
5 do. I have an email. Don't -- do not know if
6 you have this or not because it was just printed
7 out not too long ago -- showing that she support
8 -- she give full support of her --

9 CHAIRPERSON JORDAN: Sir, that's a
10 letter from?

11 MR. CLARK: It's an email
12 correspondence. She did not write a letter,
13 but this is what she provided.

14 VICE-CHAIRPERSON SORG: No, we
15 don't have that. And it would be useful to make
16 copies to submit that.

17 So did you make a presentation?

18 MR. CLARK: Can you repeat that,
19 please?

20 VICE-CHAIRPERSON SORG: Did you
21 make a presentation?

22 MR. CLARK: Yes, yes.

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1 VICE-CHAIRPERSON SORG: You did?
2 And did the ANC take a vote?

3 MR. CLARK: It wasn't so much of a
4 -- of a vote, but everybody that was there
5 present, they just said that they did not have
6 a problem as far as the project.

7 VICE-CHAIRPERSON SORG: Okay.

8 MR. CLARK: So everyone provided
9 their support. So it wasn't like a five, four
10 vote.

11 VICE-CHAIRPERSON SORG: Okay.

12 MR. CLARK: It was just --

13 VICE-CHAIRPERSON SORG: Okay.

14 MR. CLARK: -- a letter of support.

15 VICE-CHAIRPERSON SORG: Thank you.

16 CHAIRPERSON JORDAN: Let's go down
17 the table. We're remiss in getting us to
18 identify the people who are here to testify or
19 are sitting at the table.

20 Yes?

21 MR. SHEPPARD: I'm Les Sheppard,
22 architect who designed the addition for the

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1 house.

2 MR. CLARK: Major Clark,
3 co-property owner.

4 MS. CLARK: Essie Clark, owner.

5 MR. JACKSON: David Jackson,
6 Barratt Construction.

7 CHAIRPERSON JORDAN: Any other
8 questions of the Applicant?

9 (No response.)

10 CHAIRPERSON JORDAN: Let's turn to
11 the Office of Planning and see if they have
12 anything to add to their report.

13 MR. LAWSON: Thank you, Mr. Chair.
14 I'm Joel Lawson of the Office of Planning.

15 I want to just introduce a new staff
16 member of the Office of Planning for the making
17 of the Office of Planning report. It's nice
18 to be here. It's been a couple of years actually
19 since I've been to the BZA. So it's nice to
20 be here. So good morning to everybody.

21 Stephen Gyor has joined the Office
22 of Planning and started doing BZA cases. We're

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1 very pleased to have him on our staff now. And
2 so you're going to be seeing a lot of Stephen.

3 Thank you.

4 MR. GYOR: Good morning. The
5 Office of Planning supports the Applicant's
6 request for relief and rests on the record.

7 CHAIRPERSON JORDAN: Good. Does
8 any Board Member have any questions for the
9 Office of Planning?

10 MR. GOINS: Could I ask one thing,
11 please?

12 I'd mentioned to Clifford. In the
13 write-up, it says that it's a two-story addition
14 to a one-story house, and it's a one-story
15 addition to a two-story house.

16 CHAIRPERSON JORDAN: All right.
17 Any other Board Member?

18 (No response.)

19 CHAIRPERSON JORDAN: No.

20 Does the Applicant have any
21 questions for the Office of Planning?

22 MR. GOINS: No, sir.

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1 CHAIRPERSON JORDAN: And do we have
2 DOT or any other governmental agency that's
3 here? No.

4 Any parties in the audience in
5 support of this application?

6 (No response.)

7 CHAIRPERSON JORDAN: Anyone in
8 opposition to this application?

9 (No response.)

10 CHAIRPERSON JORDAN: And now we
11 turn back to the Applicant. If there's anything
12 that you feel that you need to say to the Board
13 -- you don't have to say anything -- but if you
14 feel like you have say something, you can say
15 it.

16 MR. CLARK: Well, I would just like
17 to say thank you very much to you, Mr. Chairman
18 and the rest of the Board Members for approving
19 this application.

20 CHAIRPERSON JORDAN: It's not
21 approved yet but we're getting there.

22 (Laughter.)

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1 CHAIRPERSON JORDAN: Thank you.

2 Then I will close this hearing and
3 move into deliberation if the Board is ready
4 for deliberation.

5 Anyone? Ms. Cohen, did you --

6 ZC COMMISSIONER COHEN: No.

7 CHAIRPERSON JORDAN: Well, I'll
8 just flip it over to you then.

9 ZC COMMISSIONER COHEN: Mr.
10 Chairman, I move that the Commission approve
11 BZA Case 18359, a request for special exception
12 relief under 223 to construction an addition
13 to an existing single-family dwelling at 5422
14 8th Street, NW.

15 CHAIRPERSON JORDAN: Second?

16 VICE-CHAIRPERSON SORG: Seconded.

17 CHAIRPERSON JORDAN: Second. I'll
18 second.

19 Good. Motion made and seconded
20 that we approve Application 18359 for the
21 special exception noted with the additional
22 relief from the lot area requirement.

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1 Any further unreadiness?

2 (No response.)

3 CHAIRPERSON JORDAN: All those in
4 favor signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON JORDAN: Those opposed
7 nay.

8 (No response.)

9 CHAIRPERSON JORDAN: The motion
10 carries.

11 Mr. Moy?

12 MR. MOY: Yes. Staff would record
13 the vote as five to zero to zero on the motion
14 of Ms. Cohen to approve the application with
15 the relief as amended. Also second motion
16 Vice-Chairperson Sorg. Also in support of the
17 motion, Chairman Jordan, Ms. MacMurray and Mr.
18 Hinkle.

19 Again, the final vote is five to zero
20 to zero.

21 CHAIRPERSON JORDAN: And again,
22 this would be prime for summary order since there

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1 is no one in opposition and it's a decision in
2 favor of the Applicant, Mr. Moy.

3 MR. MOY: Yes, sir. Thank you, Mr.
4 Chairman.

5 CHAIRPERSON JORDAN: Thank you.

6 MR. CLARK: Now you've approved it.

7 MR. MOY: The next application for
8 the Board is Application No. 18366.

9 This is the application of Clifford
10 S. Reese pursuant to 11 DCMR 3104.1 for a special
11 exception under Subsection 203.4(b) to
12 establish a home occupation, a one-barber chair
13 in the basement level, and a one-family dwelling
14 in the R-5-A district at premises 51831 Colorado
15 Avenue, NW, property located at Square 2937,
16 Lot 837.

17 CHAIRPERSON JORDAN: Okay. If you
18 would identify yourselves, please.

19 And push the button. Make sure the
20 green button is showing. Okay.

21 MR. REESE: My name is Clifford
22 Reese.

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1 MR. DeBORGER: I'm Paul DeBorger,
2 settlement lawyer for the Applicant.

3 CHAIRPERSON JORDAN: Let me find
4 out where we are before we get started further
5 in this matter.

6 Mr. Jackson, have you had
7 conversations with the Zoning Administrator
8 about this case?

9 MR. JACKSON: No.

10 CHAIRPERSON JORDAN: Okay. I'm
11 just trying to figure out why this case is before
12 us and how come it hasn't been resolved earlier
13 since it appears that there's not a need for
14 this case to be in front of the BZA. And I think
15 you would agree with that also?

16 MR. JACKSON: Well, based on our
17 review with the Applicant and going over the
18 requirements, once all the information is
19 compiled, my report reflects that it meets the
20 standard for approval. However, based on the
21 Zoning Administrator's referral letter,
22 apparently they may not have had full

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1 information about the application at the time
2 and that's why it was referred.

3 CHAIRPERSON JORDAN: Let me say
4 this for the record. At some point, somebody
5 should have had communication and the Zoning
6 Administrator should have at least put down in
7 his issue what he found in opposition or what
8 the problem was so that we wouldn't have to guess
9 what that is. Or for anybody else -- and I don't
10 know if you've had conversation with the Zoning
11 Administrator and what he found was the problem,
12 but we don't see it in the record.

13 Does any of the Board Members have
14 any thoughts about this matter, please?

15 ZC CHAIRMAN HOOD: I would agree,
16 Mr. Chairman. When I first looked at this
17 application, I personally didn't know why it
18 was before us, not understanding what the
19 magnitude is and I thought that even if it was
20 before us, I'm not sure -- but I think this is
21 just a waste of time coming from the Commission
22 -- I mean, the Board. Excuse me. We're only

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1 talking about one chair, one barber. I mean,
2 at least this Applicant was nice enough to come
3 in front of us. So I mean, I can tell you, I
4 already know it exists everywhere else. But
5 I appreciate this Applicant.

6 I would encourage us to move full
7 speed ahead and don't spend a whole lot of time.

8 CHAIRPERSON JORDAN: Yes. I agree
9 with that.

10 Ms. Sorg?

11 VICE-CHAIRPERSON SORG: Thank you,
12 Mr. Chairman.

13 I agree with Mr. Hood and yourself
14 as well. I think it's unfortunate that we
15 haven't been able to get the correct information
16 or corroboration from the ZA of what their issue
17 is here. And it seems like this is a small
18 business person who could be doing their trade,
19 but instead he's gone through these channels
20 perhaps for no reason. And I wonder whether
21 or not it would be most expedient for us to go
22 forward with this even if we don't think that

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1 relief is required just so that we can give the
2 Applicant some practical relief.

3 Thank you.

4 CHAIRPERSON JORDAN: It's time for
5 your hearing. You have a right to have a
6 hearing. Or we can go forward and act, unless
7 you think that there's something you need to
8 add to the record, something you want to talk
9 about.

10 MR. DeBORGER: Nothing in
11 particular. I kind of had the same questions
12 that you guys are bringing up now. But we
13 believe that the formal letter saying that we
14 need to move forward and come in front of the
15 BZA. So we did what we were supposed to do and
16 tried to provide all the information.

17 CHAIRPERSON JORDAN: And we really
18 appreciate that.

19 Anyone have any questions of the
20 Applicant?

21 (No response.)

22 CHAIRPERSON JORDAN: Office of

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1 Planning, is there anything that you think you
2 need to add?

3 MR. JACKSON: No. The Office of
4 Planning stands on the record.

5 CHAIRPERSON JORDAN: Is there any
6 other governmental agency here? I don't
7 believe so.

8 Are there any parties in the
9 audience in support?

10 (No response.)

11 CHAIRPERSON JORDAN: Anybody in
12 opposition?

13 (No response.)

14 CHAIRPERSON JORDAN: We'll flip
15 back to the Applicant. And the Applicant
16 doesn't want to say anything, I don't think.
17 Yes. Gave me the head shake for the record.

18 Let's close this hearing and move
19 to deliberations.

20 The floor is open for the Board for
21 anybody who has anything they want in
22 deliberation.

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1 Any motion you want to make? Ms.
2 Sorg?

3 VICE-CHAIRPERSON SORG: I just have
4 a question with regard to procedure. Clearly,
5 I'm in support of this. I don't think these
6 people should even be here necessarily. It
7 seems fairly clear from what OP and what our
8 legal counsel has said that we don't need to
9 see them here.

10 But I'm wondering about if there's
11 something we can do about the filing fee that
12 was made here. And that's my only concern about
13 voting on this today.

14 These folks paid like 1500 bucks to
15 come here. And if we think it's not necessary,
16 I mean, I would be very pleased to vote in favor
17 of this case. But I'm wondering what that would
18 mean with regard to the monies that they paid.

19 CHAIRPERSON JORDAN: That opened
20 the door.

21 No, I understand that. That would
22 be my issue.

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1 All right. We'll give it a shot.

2 All right. Thank you. We just had
3 our little chalkboard and the Xs and the Os and
4 who's going to run left, who's going to run right
5 and break for the pass.

6 Let me say this for the record. I'm
7 going to ask the Secretary, if he would, if we
8 can send a letter to DCRA letting them know about
9 the concern we have about this and this
10 particular matter. I think this has been a
11 waste of everybody's time. And we can
12 individually write and talk about it
13 additionally.

14 But what we've come up with in the
15 way of trying to get you back your money because
16 we think that that should never have been paid.

17 You paid serious money to be in front of this
18 Board for something that we don't believe relief
19 is necessary. And so, we will rule this to be
20 dismissed with strong indication in the record
21 and in our dismissal -- and let's do a dismissal
22 order -- that says we do not believe that relief

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1 is necessary from the Board for the relief that
2 you need, that it already speaks for itself.
3 And I think there's enough in the file.

4 Everyone in agreement with that?

5 VICE-CHAIRPERSON SORG: Yes.

6 Thank you.

7 CHAIRPERSON JORDAN: And we can do
8 that by consensus of the Board?

9 ZC CHAIRMAN HOOD: Should we do that
10 in a motion?

11 CHAIRPERSON JORDAN: Okay. Well,
12 actually you could do by consent of a body if
13 the body's all in agreement unless someone's
14 opposed. Then the record would reflect that
15 it's done by consent.

16 MR. JACKSON: Mr. Chairman? Mr.
17 Chairman? Over here.

18 CHAIRPERSON JORDAN: Okay. Let's
19 do this. We'll do a vote. But the law is clear
20 about we could do it by consensus. But let's
21 make everybody happy.

22 I move that we dismiss this with

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1 direction that an order actually be issued that
2 we do not believe that relief is necessary from
3 the Board of Zoning Adjustment in this matter.

4 ZC CHAIRMAN HOOD: Second.

5 CHAIRPERSON JORDAN: Motion made
6 and seconded.

7 All those in favor signify by saying
8 aye.

9 (Chorus of ayes.)

10 CHAIRPERSON JORDAN: Those opposed
11 nay.

12 (No response.)

13 CHAIRPERSON JORDAN: The motion
14 carries.

15 Mr. Jackson?

16 MR. JACKSON: Yes, I just want to
17 just for clarification.

18 So the Applicant's next step then
19 would be to take the order and then go back and
20 make application for his home occupation permit?

21 CHAIRPERSON JORDAN: Yes. Go back
22 to the ZA. Yes.

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1 MR. JACKSON: Okay. Just wanted to
2 clarify what his next steps would be.

3 CHAIRPERSON JORDAN: Okay.

4 ZC CHAIRMAN HOOD: Because I think
5 that filing fee used to be \$25. It probably
6 has been raised now. Okay. That's a big
7 difference between \$1500.

8 ZC CHAIRMAN HOOD: Mr. Moy?

9 MR. MOY: Mr. Chairman, would you
10 like the staff to set a priority on issuing this
11 dismissal order?

12 CHAIRPERSON JORDAN: Yes, please.

13 MR. MOY: Thank you, sir.

14 MR. DEBORGER: So I just wanted to
15 be clear that our next step would be to go back
16 to DCRA with the Board's decision and re-do our
17 application and go through that process?

18 CHAIRPERSON JORDAN: Yes.

19 MR. DEBORGER: Okay. Okay.

20 MR. CLARK: Thank you very much.

21 MR. MOY: The next application
22 before the Board is Application No. 18365.

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1 This is the application of CAS -- C-A-S
2 -- Riegler Real Estate Development pursuant to
3 11 DCMR 3103.2. This is for a variance from
4 the height requirements under Subsection 770.1,
5 variance in floor area ratio requirements under
6 Subsection 2604.1, variance from the lot
7 occupancy requirements under Subsection 2604.2,
8 and a variance from the off street parking
9 requirements under Subsection 2101.1.

10 This is for an addition to an
11 existing building for a mixed-use residential
12 building with ground-floor retail and the
13 construction of a separate row dwelling in the
14 C-2-A District. This is at premises 1250 9th
15 Street, NW and 902 N Street, NW, property located
16 in Square 368, Lot 912 and Lot 891.

17 CHAIRPERSON JORDAN: Would the
18 people at the table please introduce themselves.

19 MR. KADLECEK: Good morning. I'm
20 Cary Kadlecek from Goulston & Storrs on behalf
21 of the Applicant.

22 If we could please have a minute to

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1 set up our PowerPoint presentation.

2 CHAIRPERSON JORDAN: Let's hold off
3 on that a second to see where we are.

4 Continue to introduce yourself at
5 the table for us, please.

6 MR. GOINS: I'm Jeff Goins with PG&E
7 Architects.

8 CHAIRPERSON JORDAN: Your last name
9 again?

10 MR. GOINS: Goins.

11 MR. RIEGLER: I'm Kevin Riegler
12 with CAS Riegler Development.

13 CHAIRPERSON JORDAN: Okay. Now if
14 you need some time to set up.

15 You just passed us something. Is
16 it something we already have in the file?

17 MR. KADLECEK: That's just a copy
18 of the PowerPoint presentation.

19 CHAIRPERSON JORDAN: Okay.

20 Let's proceed. The Applicant can
21 do a presentation although I'm not jumped up
22 and down about a presentation. I'd rather to

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1 go there might be some issues with the record
2 and that Board Members need to have supplemented
3 so we can get right to the issues that will help
4 us with the determination.

5 But it's certainly your right to do
6 a presentation if you want to.

7 MR. KADLECEK: Yes. I think
8 there's a few pieces of the presentation that
9 go to the issues that seem to be relating to
10 --

11 CHAIRPERSON JORDAN: I think we
12 need to find out what the issues are for the
13 Board.

14 MR. KADLECEK: Yes.

15 CHAIRPERSON JORDAN: So those are
16 the real issues, right?

17 MR. KADLECEK: Yes, yes. Exactly.

18 But a lot of our presentation actually goes
19 to help explain that. So there's some diagrams
20 in there I think will help the Board understand
21 exactly what the practical difficult is with
22 respect to the FAR.

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1 CHAIRPERSON JORDAN: Let me ask the
2 Board specifically of any particular issues that
3 they have that need to be addressed.

4 Ms. Sorg?

5 VICE-CHAIRPERSON SORG: Yes.
6 That's pretty much what I was looking for is
7 talking about the practical difficulty related
8 to the FAR issue, obviously coming from the OP
9 report also. I think a little bit of
10 explanation of the economic information that
11 was submitted into the file. I don't have an
12 exhibit number, but this thing. And I mean,
13 everything else is pretty clear to me.

14 MR. KADLECEK: Okay. That's what
15 the premise of our presentation will be.

16 CHAIRPERSON JORDAN: All right.
17 Very good.

18 MR. KADLECEK: So hopefully we can
19 get this running in a second. I apologize for
20 the delay.

21 CHAIRPERSON JORDAN: We can talk
22 from the diagram that you submitted to us and

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1 you can take us to the page. We're not going
2 to wait for this to be up and running.

3 MR. KADLECEK: Okay.

4 CHAIRPERSON JORDAN: We're not
5 going to do it.

6 MR. KADLECEK: Okay.

7 CHAIRPERSON JORDAN: So let's go
8 ahead. If necessary, we can use the hand out.
9 You have a copy yourselves, don't you? You
10 gave it to the Board. You can talk us through
11 this.

12 MR. KADLECEK: Yes. We can just
13 talk it through.

14 CHAIRPERSON JORDAN: Okay.
15 Appreciate it. Thank you.

16 MR. KADLECEK: I'll give a brief
17 opening statement and then Jeff will begin with
18 his presentation.

19 Good morning again, Members of the
20 Board. As I stated before, my name is Cary
21 Kadlecek of the law firm of Goulston & Storrs
22 on behalf of the Applicant.

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1 With me this morning is John Epting
2 also of Goulston & Storrs, Kevin Riegler, Adam
3 Stifel and Robin Bettarel from CAS Riegler, the
4 Applicant, and Jeff Goins of PGN Architects.

5 In this case, the Applicant proposes
6 to construct a five-story, mixed-use
7 residential and retail building in a separate
8 flat while extensively incorporating an
9 historic structure. In order for the project
10 to be feasible, the Applicant requests area
11 variance relief for height, FAR and off street
12 parking. The original application also
13 requested relief for lot occupancy, but the
14 Applicant no longer requests this relief.

15 The need for variance relief in this
16 case arises out of the necessity to accommodate
17 the extensive preservation of the historic
18 building and the building design that results
19 from such accommodations. As Jeff and Kevin
20 will testify, a more typical design for such
21 a large property would not be what is proposed,
22 but the presence of an historic building

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1 resulted in several design challenges that
2 created a loss of productive space and many
3 inefficiencies. These challenges meant that
4 the design could be a conforming four-story
5 structure that would not be viable or the
6 proposed five-story structure that requires FAR
7 and height relief.

8 Since the requested FAR and height
9 relief are inexplicably connected, we
10 respectfully disagree with the Office of
11 Planning's position that the request for FAR
12 relief cannot be supported at this time. In
13 addition, the requested parking relief for one
14 space is negligible. Simply put, the required
15 parking space for the separate flat cannot be
16 accommodated since there would be no way to
17 access this required space.

18 The project before you is one that
19 is appropriate for the neighborhood and the
20 emerging vibrant mixed-use corridor of 9th
21 Street, NW. And the Applicant is hoping to help
22 create that.

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1 The project also reflects the zoning
2 and planning standards for other successful
3 mixed-use corridors such as 14th Street, NW and
4 8th Street, NE.

5 The Applicant has gone to
6 extraordinary lengths to be a good neighbor in
7 planning for this project. And as a result,
8 they have received nothing but support. They
9 reached out to and consulted with neighbors and
10 community association representatives on
11 multiple occasions, and they incorporated
12 community feedback the best that they could.
13 Accordingly, ANC-2F and the Blagden Alley Naylor
14 Court Association both support this project and
15 have submitted letters into the record.

16 With that, Jeff will begin his
17 presentation.

18 I'm sorry. Kevin will begin his
19 presentation, and then Jeff.

20 MR. RIEGLER: Good morning. I'll
21 be brief because obviously we know the brunt
22 of the presentation relates to the technical

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1 aspects of the design. But I did want to give
2 everyone a brief overview of our involvement
3 with the project and also the history of our
4 neighbor outreach -- neighborhood outreach.

5 I was just going to try to find a
6 quick slide. But as we all know, 9th Street is
7 a growing neighborhood with City Center, O
8 Street Market, the Convention Center, et cetera.

9 And we strongly believe it's the next 14th
10 Street, the next H Street, et cetera. The point
11 being, as you'll see in the design in both the
12 Arts and H Street overlay zones, the variance
13 that we're requesting would actually be by right
14 in those circumstances because we feel that OP
15 has actually thought through the growth pattern,
16 et cetera, of those parts of the City.

17 Main and Main location, it's
18 obviously 9th and N, literally across the street
19 from the Convention Center, a block away from
20 O Street Market. There's a handful of other
21 projects doing the work. So the point being
22 there's context to create a really great, great

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1 project. And we strive to do that.

2 The modern design, obviously every
3 developer and architect wants to create
4 something that differentiates their project
5 from the rest working within the confines of
6 historic and planning requirements. But in
7 particular on the height issue, the retail in
8 the C-2-A zone, it's a 50-foot height limit.
9 So actually achieving a five-story building with
10 providing 13-, 14-foot clear heights for retail
11 and the nine-foot clear heights for residential
12 is a challenge. So the brunt of the height issue
13 relates to just simply trying to adhere to modern
14 expectations as far as the market goes.

15 Lastly, this site was a former gas
16 station. So this is a certified registered
17 brown field site within DDoE. It is 90 percent
18 dirty as far as the containment in petroleum
19 soil. There's four underground storage tanks.

20 The existing building has been used for the
21 last ten years as a road skate park. The point
22 being is this is a re-vitalization effort to

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1 not only re-position a fairly important corner
2 of real estate property but also remediate a
3 fairly substantial environmental issue.

4 And quickly from a community average
5 standpoint, it took us a while to kind of work
6 through the mechanics to getting the property
7 under control. But over the last eight months,
8 we've been working very diligently with the
9 neighborhood groups -- anything from kitchen
10 tables and coffee shops to ANC meetings. And
11 as a Cary outlined, we have nothing but unanimous
12 support. We had interim uses, we had art walks,
13 community art events. As you know or may not
14 know, 9th Street and that little stretch is a
15 fairly prominent art corridor. There's a
16 couple of existing galleries, so we played off
17 that.

18 Again, just wanted to reiterate our
19 efforts to gain support.

20 MR. GOINS: Good morning.

21 I guess I'll jump right into kind
22 of the unique features and not go through the

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1 entire presentation and address the FAR.

2 The site is very unique in the fact
3 that it's across the street from the Convention
4 Center. So you have a commercial aspect to the
5 site. You have a rectangular site that abuts
6 a historic -- the historic structure is
7 off-center into the site. And then you end up
8 adjacent to the historic structure to the south,
9 you have a small narrow or sliver site. So the
10 way we approached the design was to kind of
11 book-end the historic building and to kind of
12 make the historic building a feature. So we're
13 saving the T-shape of the historic building
14 which is unique in a lot of ways. And through
15 the process -- there's a good picture of the
16 historic building. And there's the narrow
17 sliver -- the adjacent site. And adjacent here
18 to the north, you actually have a more typical
19 rectangular site. But when you put all three
20 of these together, it creates a lot of unique
21 conditions that to try to maximum the property
22 and come up with a design that worked.

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1 So here you can kind of see our
2 proposed site plan which is in essence -- this
3 is the ground floor, where you see a narrow
4 double-loaded corridor where we pushed a lot
5 of the density separate by a courtyard and a
6 single-loaded bar.

7 As I was mentioning, you have 9th
8 Street which is kind of a commercial corridor
9 there with the Convention Center adjacent, and
10 then down N Street, it's much more of a
11 residential corridor. So we had to work with
12 a lot of these designs.

13 And I thought I would show a couple
14 of just quick diagrams to kind of show like if
15 we were looking at this site without the historic
16 structure, we would probably end up with a
17 typical residential bar with a setback on the
18 fifth floor. Kind of where we are and we have
19 approved concept with HPO, this is kind of what
20 the net result is. We're preserving the
21 historic building here. And to actually make
22 it like the bookend feature that we were trying

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1 to do and actually use that and make that part
2 of the design feature of this project, we have
3 in essence 30 feet of setbacks on the -- there's
4 two setbacks here on the fourth floor and then
5 on the fifth floor.

6 And also with the sliver, we wanted
7 to step this building down to kind of be in
8 contextual relationship with the rest of the
9 buildings along the 9th Street corridor. So
10 what this kind of does is it pushes the density
11 towards the corner which is the more rectangular
12 site. And since that becomes as you move west
13 along N Street, it becomes a typical residential
14 corridor. So we stepped the building down.
15 So what we really end up doing here in essence
16 is having three buildings that inside function
17 as one design -- actually four because the
18 building on the end, we've actually made it a
19 townhouse that's not actually related on the
20 inside to the rest of the building.

21 This slide I think is kind of an
22 important slide, but it kind of shows the nature

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1 of what we were working with and why we pushed
2 the density back and separated through the
3 courtyard.

4 And then I think one other thing to
5 kind of note, inside the historic structure,
6 we're raising the first floor to accommodate
7 modern retail. And two things have happened
8 also from doing that. We could really only get
9 three units inside the historic structure. So
10 if that was a typical site, you would be getting
11 12 or 14 inside that building. It has to do
12 with the second floor. But inside the historic
13 structure, those three units are duplexes
14 because the second floor would be lining up
15 inside the window of the third floor. So that
16 floor, to make sure all the floors are on the
17 same plane, we actually just made three duplex
18 units -- yes, ADA-compliant and building code
19 compliant. So inside the historic structure
20 on the second and third floor, there's only three
21 units which I think is another thing that we
22 were trying to re-capture some of that.

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1 And I think here kind of outlines
2 the setbacks and the FAR issue. You can kind
3 of see stepping the building down along N Street
4 here. It amounts to 716 square feet. This is
5 1500 square foot with the setbacks there along
6 the fifth floor. And then the fourth floor is
7 roughly 1,000 square feet.

8 The setbacks and working with the historic
9 structure amounts to about 2800 square feet in
10 setbacks alone.

11 And then I think the second thing
12 to kind of talk about is we've got an inefficient
13 design because we're pushing corridors, we're
14 having to create bridges that are over top of
15 each other which count toward FAR. So I think
16 that this slide kind of does a good job
17 explaining the lost FAR. The total FAR with
18 the bridges and the setbacks is 9,800 square
19 feet.

20 And I'll quickly go through the
21 elevations. But you can kind of see here the
22 bookend idea where this building steps down as

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1 it tries to relate along 9th Street -- the
2 feature, the historic building and then the
3 density along N Street and 9th. Here's an
4 enlarged elevation. You can see the setbacks
5 here, here and here.

6 And this is the N Street elevation.

7 And what happens here is you can see this
8 building steps down and tries to be much more
9 in scale as the residential block starts there.

10 So we're about ten to 11 feet taller than the
11 adjacent property there at the residential block
12 start.

13 And we had to design this as
14 basically a three-story walk-up. So this is
15 not actually within the same circulation pattern
16 of the existing design.

17 Here's kind of some blow-up sections
18 that kind of just explain the setbacks.
19 Twenty-three setback total on top of the
20 historic building. And this also explains kind
21 of our dilemma there with the duplex unit where
22 this floor would line up hitting the window.

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1 I think this section kind of does
2 a good job kind of explaining the overall
3 concept. The shaded blue here -- this is the
4 part of the building that we're saving. There
5 is an addition to the historic building that
6 is nonconforming that will be removed.

7 MR. RIEGLER: I do just want to
8 point out as far as the parking variance, as
9 you can see on kind of the bottom right corner
10 of that, that site plan -- you show the existing
11 structure. So while we're attempting to
12 maximum parking, we would have built all the
13 way under that and under that unexcavated area
14 on the far bottom right. But because of the
15 historic building that we're preserving, we
16 can't park under that obviously. So we're
17 shoring up going around all the edges, and
18 there's a huge cost with that and everything.

19 But I just wanted to clearly show
20 that the main reason for not having a full
21 floorplate, single-level garage which would
22 have easily been conforming was pertaining to

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1 that design and structural issue.

2 CHAIRPERSON JORDAN: Before you
3 move off of that, about costs, I see nothing
4 in the record indicating about the costs.
5 What's the costs of what that excavation would
6 have been, the additional costs?

7 MR. RIEGLER: I believe -- I don't
8 have an exact estimate -- the structural
9 engineers and construction team basically said
10 it's almost unfeasible to be able to essentially
11 support a three-story building and spatially
12 scrape excavators, et cetera, underneath the
13 building -- scrape all that out and create a
14 new structure that not only supports the old
15 existing building and have temporary shoring
16 involved but also create enough structure to
17 support a five-story building. So to be honest,
18 we never put a number to it because it was just
19 one of those premiums that wouldn't have been
20 even remotely feasible.

21 MR. GOINS: This would be the ground
22 floor showing the retail -- the existing

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1 structure of the T that we are preserving.
2 Separated by the courtyard, this is the rowhouse
3 that's part of the project. This would be the
4 second floor separated by the courtyard. And
5 you can see the bridges and corridors here and
6 here. Yes, and the FAR. I mean, we had to count
7 all of the bridges that are covered as FAR.
8 So it was a lot of square footage lost.

9 VICE-CHAIRPERSON SORG: Can I jump
10 in for one second just while you're on this
11 topic?

12 You said before -- and I didn't make
13 a note -- what is the square foot related to
14 the setbacks that you're talking about -- and
15 I'll have further questions about that -- and
16 the bridges?

17 MR. GOINS: Yes. The total is --
18 let me go back to that slide. It's 2700 square
19 feet that we're setting back --

20 VICE-CHAIRPERSON SORG: On these
21 setbacks?

22 MR. GOINS: Yes. Along the

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1 historic structure.

2 VICE-CHAIRPERSON SORG: And then?

3 MR. GOINS: And then it's 7,000
4 square feet with the bridges and --

5 VICE-CHAIRPERSON SORG: For the
6 circulation areas and so on. Okay. Okay.

7 MR. GOINS: And I think what I was
8 showing in the early diagram was like if we did
9 -- if we weren't trying to use this -- preserve
10 the historic building, which we want to do and
11 is part of the design features of this project,
12 I think you would have a typical normal
13 residential bar that would be an L-shape. And
14 it would be a very efficient design. And you
15 wouldn't have bridges crossing over a courtyard.

16 And I think that's kind of one of the
17 constraints that ended up as through the design
18 process preserving the building with setbacks.

19 We had to push the density somewhere, and what
20 we've in essence done is we've separated the
21 courtyard.

22 And the fifth floor here, you can

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1 kind of see the setbacks here -- this rectangular
2 shape here. The setback's here. And then the
3 elaborate corridors. What we're still ending
4 up with some corridors in the units that aren't
5 ideal through this design process. I think
6 we're having these 15-foot entry corridors to
7 some of the units. Not great space, but there
8 was really -- I mean, that's kind of where we
9 are. And that's the end result through some
10 of the decisions that kind of through the design
11 process have made and through the historic
12 preservation process as well.

13 MR. KADLECEK: Jeff, can you
14 explain whether you could build a partial fifth
15 floor that would be able to conform with FAR
16 limits?

17 MR. GOINS: I think through this
18 design process, what we've kind of done, if we
19 did build a partial fifth floor along the N
20 Street side, for example, you're still going
21 to have to bring -- the way that the two stairs
22 are working, the building code and egress

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1 conditions -- you're still going to have to bring
2 the bridge up, you're still going to have the
3 stair up. Even if you built a partial fifth
4 floor, those items would still have to come up
5 to accommodate the building code.

6 MR. KADLECEK: So if you were to
7 build a partial fifth floor that conformed with
8 FAR, how much of that partial fifth floor would
9 ultimately end up being dedicated to corridors,
10 bridges, et cetera? Just a rough idea.

11 MR. GOINS: It would probably be
12 around 30 percent or more. It would be north
13 of 30 percent.

14 MR. RIEGLER: I'll get into that in
15 a second, Mr. Jordan, when you asked about the
16 financial viability supplements that we gave
17 you. We have some more detailed information
18 relating to exactly how that analysis worked
19 out.

20 We'll jump to it.

21 So as you can appreciate, for a
22 project of this scale, there's a 25-page

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1 pro-forma and analysis that goes along, so
2 trying to simplify it enough to put it on one
3 slide.

4 So basically, you're going to see
5 the first one is analyzing the viability of a
6 partial fifth floor. And this is from a
7 financial perspective taking into account the
8 design that would be necessary. So I tried to
9 highlight a few of the key metrics that I would
10 look for as far as whether it's "viable."

11 The first one you can see, we have
12 a core factor of 14 percent. We have 14 units
13 on that top floor. The ratio of costs to value
14 is positive. So we have a market rate return
15 -- as you can see, the \$642,000. And again you
16 can probably imagine it's difficult to
17 specifically quantify the value of a floor
18 because you have this larger project with
19 amenities and the like. But square foot for
20 square foot, dollar for dollar, it's a positive
21 outcome that's by no means egregious.

22 If you build a partial fifth floor,

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1 to Jeff's point, just to get to our 3.0 bonus
2 density with the MIZ and all that, you'd jump
3 up the core factor to 40 percent. Maybe there's
4 a design that gets us down to 30, but the bottom
5 line is it's more than double of what a normal
6 13, 14, 15 percent core factor would be in a
7 project of this size. And then as you can see,
8 it's a net loss.

9 And so, in that scenario, you would
10 just simply not build the partial fifth floor.

11 And with land prices, the other premiums
12 associated with the historic building, the
13 environmental, et cetera, we're obviously as
14 developers banking on at least being able to
15 achieve the FAR that would be by right. So in
16 this particular case, with all the other
17 complications of design, we just simply wouldn't
18 do that.

19 So the last slot there at the bottom
20 simply shows that it's a \$690,000 swing to not
21 build it. And more importantly, you just simply
22 wouldn't build that fifth floor because it

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1 doesn't make financial sense.

2 The next one.

3 And so then -- and this is obviously
4 working with the Office of Planning on kind of
5 coming up with a framing of the situation here
6 -- we have on the left the four story. So okay,
7 we already vetted the fact that it's not worth
8 anyone to build that partial fifth.

9 So what if we just went down to floor
10 which "maximized," we'd end up with about a 2.8
11 FAR. And just walking through the basic numbers
12 on how that pro-forma would work, you have \$18
13 million of costs. You have a market value with
14 no MIZ deductive value because we all know that
15 has a cost of \$21 million which is at 16.82
16 percent, that's a marginal project in today's
17 financing and lending environment. Then you
18 take the value out, and you have a net profit
19 of \$1.5 million or more importantly an 8.5
20 percent margin.

21 So again, in today's lending environment and
22 investor environment, that's not enough of a

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1 cushion to take on the market fluctuations and
2 all the other risks associated with a project
3 of this scale.

4 The right side is simply our
5 pro-forma today, again in round numbers of where
6 we are. We have a \$21.5 million project. If
7 it was all market rate, we'd have a margin of
8 28 percent or the \$27 million as a value. But
9 that's not market rate because it doesn't take
10 into account MIZ. You'll see the deductive
11 value for the right column is different from
12 the left because with the five-story building,
13 we have additional units therefore have an
14 additional MIZ unit. So that valuation is
15 slightly higher. And then we have a 20 percent
16 margin.

17 Again, in a 25-page financial
18 analysis, there's 15 different scenarios and
19 15 different metrics that people are looking
20 for as far as what a healthy deal consists of.

21 But in the simplest form, today's lenders and
22 investors, et cetera, are looking for right

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1 around the 20. And that's simply talking about
2 the net value upon completion of the project
3 to the overall costs to deliver the project.
4 And that 20 percent provides everyone enough
5 comfort that if another 2007, 2008, 2009
6 happens, then there's enough downward
7 protection on the project to make it viable.
8 If we can't hit those numbers and that kind of
9 healthy margin with all the stress testing and
10 risks of environmental and other things that
11 go into a project like this, then the deal's
12 simply not viable.

13 MR. KADLECEK: Can you give us a
14 little bit of background on your experience with
15 real estate finance?

16 MR. RIEGLER: Sure. I've been in
17 the D.C. market for about 12 years. Before
18 starting our company about two and a half years
19 ago, I was with a couple other local developers.
20 Probably done \$600,000, \$700,000 million of
21 real estate financing and development in town
22 all in Washington, D.C. Obviously lived

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1 through the last down turn and all the
2 complications that go into getting a deal done
3 which is no deals got done. And obviously the
4 last year or two has been strong and the market's
5 coming back, and multi-family in particular is
6 coming back. But given all the -- I know that's
7 not all background but just to give a background
8 because I can talk about this for hours -- all
9 the other macro-economic pressures that get put
10 on real estate development with issues in Europe
11 and all the other things that affect these
12 things, there's a lot that goes into making this
13 work. And I guess the point being, I've seen
14 it all, at least in a relatively short career.

15 And that's my --

16 MR. KADLECEK: In your experience,
17 is there any lender or bank that would be
18 interested in a project that has only an 8.5
19 percent return?

20 MR. RIEGLER: No.

21 MR. KADLECEK: And then, is it your
22 opinion that every bit of bonus density that

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1 you would get in being able to accommodate
2 inclusionary zoning is really critical for
3 making this project viable?

4 MR. RIEGLER: Yes.

5 MR. KADLECEK: That concludes our
6 presentation. We're open for questions.

7 CHAIRPERSON JORDAN: Does anyone on
8 the Board have any questions for the Applicant?

9 Yes, Ms. Sorg?

10 VICE-CHAIRPERSON SORG: Thank you,
11 Mr. Chairman.

12 I have a few unrelated questions in
13 different areas.

14 You guys are right across the street
15 from the Convention Center. How tall is the
16 Convention Center?

17 MR. RIEGLER: It's on one of the
18 slides. Let's find it.

19 Over our height.

20 VICE-CHAIRPERSON SORG: I know.

21 MR. RIEGLER: Go back to that one.
22 It gives you at least a perspective.

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1 VICE-CHAIRPERSON SORG: Is it 90
2 feet?

3 MR. RIEGLER: I think it's 90 feet
4 at its highest point. But you have the dome
5 setback area and then you've got the retail area.
6 So I don't want to be cavalier with what's right
7 across the street.

8 VICE-CHAIRPERSON SORG: Roughly I
9 know but I didn't know if you guys had a specific
10 number. All right. Well, that's fine.

11 Can you tell me in your proposal with
12 the 3.4 FAR, what's the breakdown in terms of
13 FAR of commercial and residential?

14 MR. RIEGLER: The retail is
15 approximately 7,000 square feet.

16 VICE-CHAIRPERSON SORG: Okay. So
17 that's like --

18 MR. RIEGLER: So in the total up
19 there, I was --

20 MR. GOINS: It's 7,049 as the total
21 retail.

22 MR. RIEGLER: Retail? So

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1 whatever's left obviously is -- there's a couple
2 of shared service corridors and things like that
3 for trash. But other than that, the rest is
4 residential.

5 VICE-CHAIRPERSON SORG: Okay.
6 What's the total square feet? And I just had
7 my hands on it.

8 MR. RIEGLER: Fifty-seven.

9 VICE-CHAIRPERSON SORG: Okay.

10 MR. RIEGLER: So 50,000 of
11 residential.

12 VICE-CHAIRPERSON SORG: And then,
13 can you describe or characterize how the hard
14 costs related to the project are or are not
15 impacted by some of the unique factors like the
16 remediation and the historic building over a
17 --

18 MR. RIEGLER: A normal.

19 VICE-CHAIRPERSON SORG: A normal
20 --

21 MR. RIEGLER: Sure. The estimates
22 that we've received -- obviously at this point

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1 it's a range on the environmental. We've done
2 all of our phase two testing. And like I said,
3 90 percent of the soil samples that were pulled
4 up were heavily petroleum. Like I said, there's
5 four tanks that did leak -- were not closed
6 properly.

7 The estimate we have for all that
8 I believe was \$400,000 on the low end and
9 \$650,000 on the high end, the range being not
10 knowing how far it leaked. We don't believe
11 it affected groundwater which is good because
12 the project would have probably not happened
13 if that was the case. And then like I said,
14 the corner site is where the gas station was.

15 But ultimately, we have to do a vapor barrier
16 under the entire site in order to protect any
17 future leakage. So it's not like we can go into
18 that one discreet area, clean out the soil and
19 call it a day. We have to protect down the road
20 which are DDoE requirements and obviously from
21 an ownership perspective a liability.

22 The cost premiums with the historic

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1 building, to be honest I don't have a firm number
2 but I'll give you the scope of what's above and
3 beyond. So the building itself is not in great
4 condition. So we'll essentially re-build,
5 re-point, et cetera, the entire footprint of
6 that historic building. Like I pointed out,
7 in the garage, we have I think it's something
8 about 350 lineal feet of underpinning that we'll
9 have to do to create the footprint of this kind
10 of awkward parking garage design.

11 In order to do that, we also had to
12 push our garage all the way over to the southern
13 end of the site in order to underpin that because
14 otherwise we couldn't create an efficient garage
15 that's still not very efficient with added costs
16 associated with it.

17 And then as you can imagine on this
18 kind of bookended concept, there's integrating
19 an old building with what -- 70 percent new
20 building from an ADA standpoint getting all the
21 floor systems to line up to take an old
22 wood-frame building and make it a steel and

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1 concrete building. I don't know if there's
2 premium to it, but certainly complication and
3 not clean design. So there's a pretty healthy
4 construction contingency, I'll say, as far as
5 the risk that we'll undercover undoubtedly once
6 we get into building it.

7 CHAIRPERSON JORDAN: Ms.
8 MacMurray?

9 MEMBER MacMURRAY: Just following
10 up on that point about the design, from a
11 construction standpoint, did you get an order
12 that had to just use the facade of the facility
13 or you had a choice about how much of the existing
14 structure you could use?

15 MR. RIEGLER: No. Well, as Jeff
16 pointed out on the one slide, there's two
17 components. There's the original early 1900s
18 T-shaped apartment building which we had to keep
19 all of. We all know that when you get into
20 entering it, you don't end up keeping all of
21 it. But I'd say 70, 75 percent of the goal and
22 directive from HPRB was to keep as much as

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1 humanly possible. So we've incorporated that
2 in our unit layouts and elevator shafts and all
3 that kind of stuff. But then that rear masonry
4 you see in the new building gets torn down in
5 entirety. It was built in the '50s or '60s or
6 some time.

7 CHAIRPERSON JORDAN: Any other
8 questions of the Applicant?

9 ZC CHAIRMAN HOOD: Yes.

10 CHAIRPERSON JORDAN: Mr. Hood?

11 ZC CHAIRMAN HOOD: I had a question,
12 Mr. Chairman.

13 Mr. Kadlecek, did you all look at
14 the DDOT letter?

15 MR. KADLECEK: I was waiting for
16 that question.

17 ZC CHAIRMAN HOOD: Okay. So I
18 don't have to say anything more. You've already
19 responded. Okay.

20 MR. KADLECEK: As you probably can
21 see, they filed it after the deadline.

22 That being said, we had a brief

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1 chance to look at it this morning. It seems
2 that there's some miscommunications with DDOT
3 in the letter. I believe that they claim in
4 their report that we did not meet with them which
5 is not true. We actually have meeting minutes
6 that we can submit to the record if necessary
7 that we did in fact have a PDRM with them, have
8 talked about a lot of the issues that they
9 addressed in their report. And we're willing
10 to work with them on all the issues that deal
11 with public space, pedestrian safety and all
12 of that.

13 It appears from the brief time that
14 we reviewed the DDOT report that most of it
15 didn't go to the relief that we're requesting
16 on the parking space. Most of it seemed to go
17 to public space issues. And like I said, we're
18 willing to work with them on resolving those
19 public space concerns.

20 ZC CHAIRMAN HOOD: Okay. Even with
21 that being said, we still have to -- well, I
22 don't want to get into design. I'm just

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1 concerned about they said in the meeting it says,
2 "TDM will inform the residents and retailers."

3 Did you read that part -- page --

4 MR. KADLECEK: Sorry. I don't have
5 it front of me.

6 ZC CHAIRMAN HOOD: Okay. Well, it
7 talks about some of the same things that they're
8 encouraging you to do -- TDM measures. Are you
9 all willing to do some of those?

10 MR. RIEGLER: Absolutely.

11 MR. KADLECEK: Yes. I mean, I had
12 a conversation with Jeff Jennings who I believe
13 wrote the report. And we talked about some of
14 those. But to be candid, we are asking for
15 relief for one parking space. And I think that
16 the idea of TDM measures for one parking space
17 in a transit-rich neighborhood might be a little
18 bit of an aggressive request by DDOT.

19 Now that being said, we're certainly
20 willing to work with them to --

21 MR. RIEGLER: Metro cards, you know
22 the usual solution. We're literally across the

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1 street from the Metro and a stone's throw from
2 downtown. So parking seemed to be the least
3 of the concerns of most.

4 ZC CHAIRMAN HOOD: Okay.

5 MR. KADLECEK: We certainly didn't
6 -- and correct me if I'm wrong, Kevin -- we
7 certainly didn't hear any concerns about parking
8 from the neighborhood.

9 MR. RIEGLER: Yes. The prior
10 concerns of the PDRM mainly related to things
11 like the PEPCO vault location, where the ramp
12 starts and stops -- we had it originally starting
13 slightly in public space -- stormwater
14 management vaults, et cetera.

15 So in fact, I believe we have meeting
16 minutes. I don't know if they're in the ones
17 that Cary has. At least email confirmation from
18 the team we met with that they're actually in
19 agreement with all of the solutions to our
20 project and where we're going to put our PEPCO
21 vault and where we're going to -- certain areas
22 of streetscape and their blessing on the café

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1 seating on the corner and those kinds of things.

2 ZC CHAIRMAN HOOD: Mr. Chairman --
3 thank you.

4 Mr. Chairman, I would just be of
5 concern of why would we receive a letter of this
6 magnitude. So I'm not sure which way the
7 Board's going to move. I would just like to
8 get a clarification from Mr. Zimbabwe who it
9 says this letter's from and find out why this
10 almost looks like a PUD to me to some extent.

11 So I just wanted to know why.

12 Maybe Mr. Cochran can maybe help us
13 why we have such a hard core letter. I don't
14 want to say it's a standard form letter because
15 I've seen some similar to this. But I'm just
16 curious.

17 Okay. Thank you, Mr. Chairman.

18 CHAIRPERSON JORDAN: Ms. Sorg?

19 VICE-CHAIRPERSON SORG: Yes. I
20 just want to weigh in a little bit on this.
21 And I agree with Mr. Hood and his questioning.

22 This felt when I read it like a overreach, to

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1 say the least, from DDOT. I mean, obviously
2 we respect our transportation as to our working
3 and our agencies. But when it comes to this
4 letter, I tend to agree with them. They're not
5 asking for relief on voting. The two pieces
6 of this letter that could potentially have to
7 do with this project have to do with the
8 recommendations regarding loading management
9 and TDM. They have to go to public space. They
10 have to go to HPRB. So that's not really our
11 purview in that type of way, except as relates
12 to the roof that's being requested and for one
13 parking. I mean, we've seen people recently
14 request 40 parking spaces. And I feel one
15 parking space, it doesn't seem like something
16 that we need to be dealing with.

17 CHAIRPERSON JORDAN: And I'll just
18 add to that. At the end of the day though,
19 throughout this document -- although they put
20 all this other verbiage -- that they recommend
21 and support the application. So let's move off
22 of that point.

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1 And anyone else have anything for
2 the Applicant?

3 (No response.)

4 CHAIRPERSON JORDAN: Let's now turn
5 to the Office of Planning.

6 MR. COCHRAN: Thank you, Mr. Chair.

7 It's taken until the testimony this
8 morning, but at this point OP is comfortable
9 finding that we recommend that you approve all
10 of the requested relief, that the Applicant has
11 demonstrated if you include all of the
12 information today that they've met the
13 three-part test.

14 CHAIRPERSON JORDAN: And that was
15 a good save because you must have seen the note
16 I wrote where I questioned OP had not heard all
17 this. Do you have enough information? That
18 was a good save.

19 MR. COCHRAN: I have an unusual
20 field of vision.

21 (Laughter.)

22 MR. COCHRAN: It's been a

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1 complicated enough case that I'd like to not
2 stand on the record if you would allow it.

3 CHAIRPERSON JORDAN: Sure.

4 MR. COCHRAN: Okay. Looking at the
5 big picture, the kind of relief that the
6 Applicant is asking for would result in a project
7 that wouldn't be inconsistent with the
8 comprehensive plan. The area as indicated on
9 the plan as being for mixed use, medium
10 high-density project which this would certainly
11 fall within those boundaries. And there's no
12 harm to the public.

13 The Blagden Alley Civic Association
14 and various other ANCs around there have not
15 been shy in the past about expressing when they
16 feel that a project would be detrimental to the
17 neighborhood. They've actually come out in
18 support of this. So we're looking at it within
19 that larger context.

20 Parking, it's okay with DDOT.
21 There's no access problem. So we're certainly
22 comfortable on recommending the parking.

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1 When it comes to the exceptional
2 conditions, we agree that the historic
3 considerations on this, the location of the
4 building on the property, it's the centrality
5 of it that makes you basically work around the
6 building. The floor heights, they're higher
7 for the first floor. And especially this
8 morning, the Brownfields information that we
9 had not heard anything about before today. They
10 all add up to a number of exception conditions.

11 There are a couple of assumptions
12 that the Applicant had made in some of its
13 earlier writings that we would like to address
14 briefly just to make sure that those assumptions
15 -- nobody thinks that OP thinks that they're
16 valid. An applicant isn't entitled to get the
17 matter-of-right maximum on a floor area ratio
18 or height. That's a maximum. It's not
19 something that anybody should work with the
20 assumption that they can get. And IZ is never
21 a condition that leads to a practical
22 difficulty. It may make it more difficult, but

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1 it's a zoning regulation, and it's very
2 difficult to call a zoning regulation an
3 exceptional condition.

4 But when it comes to practical
5 difficulty with if you don't grant relief, it
6 would be a bit. It would otherwise be entitled
7 to four stories which would give you about a
8 2.83 FAR. Now we're looking at a situation
9 given the historic conditions, the designs that
10 those require and the environmental
11 difficulties where the Applicant needs at least
12 their 3.0 to begin to make a project work. If
13 you're going to go to 3.0, that means that you
14 have to go more than four stories because of
15 the space that's devoted to unproductive uses
16 in this despite the Applicant's actually clever
17 design on internal circulation. So that means
18 you're going up to the fifth floor.

19 We think that the Applicant has done
20 a good job of demonstrating that once you do
21 go to that fifth floor to get a decent rate of
22 return on this, then a partial fifth floor

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1 doesn't make any sense because if you're going
2 with a partial fifth floor that would get you
3 to the 3.0 FAR, then basically you've got a lost
4 leader. You're putting more into that fifth
5 floor than you're getting back which gets you
6 back to the same point where you were before
7 you added the fifth floor which means as the
8 Applicant has demonstrated, you do then need
9 that larger fifth floor -- as large as
10 essentially historic preservation would permit.

11 There's also something else the
12 Applicant did mention today. HPRB liked the
13 Applicant's going to four floors rather than
14 three floors on that portion of the building
15 that's to the south on 9th Street. And they like
16 that because it further blocked the view of the
17 upper-story setbacks which meant more FAR than
18 they otherwise might have done.

19 So when you consider all of that,
20 it seems like the Applicant has demonstrated
21 that the meet all of the three tests.

22 I would note that 15 percent was the

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1 typical rate on investment that we used to look
2 at before the recession. At 20 percent, I'm
3 not as familiar with rates of return on
4 investment after the recession. But I think
5 the Applicant has done a good job today at
6 demonstrating that they're significantly higher
7 than they were before investors became much more
8 skittish about investing, even in downtown
9 Washington.

10 And that concludes OP's testimony.

11 CHAIRPERSON JORDAN: Thank you.
12 Any questions from the Board to the Office of
13 Planning, please?

14 VICE-CHAIRPERSON SORG: I just want
15 to make a comment that I think that was
16 particularly well said.

17 CHAIRPERSON JORDAN: Yes. And
18 ditto from me.

19 Any other questions for the Office
20 of Planning from Board Members?

21 (No response.)

22 CHAIRPERSON JORDAN: Does the

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1 Applicant have questions for the Office of
2 Planning especially in light of how they just
3 pulled you through that?

4 (Laughter.)

5 MR. KADLECEK: And we appreciate
6 it. No questions.

7 CHAIRPERSON JORDAN: Okay.

8 We have kind of went through DOT's
9 report. I don't know if anyone is here from
10 DOT. But the DOT has submitted a letter of June
11 19th in support of this application if you look
12 outside the verbiage. But they said it in two
13 points, both in the beginning and the end that
14 they were supporting this project.

15 Is there anyone here from the ANC?

16 (No response.)

17 CHAIRPERSON JORDAN: We do have a
18 letter in support from the ANC supporting this
19 application. And they had a vote of nine to
20 nothing with a quorum. So we'll certainly
21 deference to that and to the vote of the ANC
22 in support of this application.

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1 Are there any parties here in
2 support of the application -- any persons?

3 Excuse me. Any persons?

4 (No response.)

5 CHAIRPERSON JORDAN: Any persons
6 here in opposition to the application?

7 (No response.)

8 CHAIRPERSON JORDAN: Let me go back
9 a second.

10 We do have a support letter from the
11 Blagden Alley Naylor Court Association in
12 support of this application.

13 Anyone in opposition?

14 (No response.)

15 CHAIRPERSON JORDAN: We'll turn
16 back to the Applicant to wrap up.

17 Oh, wait a minute. Yes?

18 Come to the microphone and identify
19 yourself, please?

20 Thank you, Mr. Hood.

21 Yes. Please identify yourself.

22 MR. HART: Pastor Hart from Salem

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1 Baptist Church right across the street from
2 where the construction site's going to be.

3 CHAIRPERSON JORDAN: Pastor, if I
4 may, were you here to swear in earlier this
5 morning?

6 MR. HART: Yes. And -- and I had
7 just come in and I wasn't sure --

8 CHAIRPERSON JORDAN: But you did
9 raise and your hand. And did you prepare a
10 witness card?

11 MR. HART: No, sir, I didn't.

12 CHAIRPERSON JORDAN: We need you to
13 do that -- fill out two of those cards.

14 Let's let you proceed. And then
15 give those cards to the court reporter, please.

16 MR. HART: Okay. Yes, sir.

17 But my concern, as -- as I might find
18 -- they might be small in nature and futuristic
19 --

20 CHAIRPERSON JORDAN: Are you
21 talking in support or in opposition?

22 MR. HART: In support.

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1 CHAIRPERSON JORDAN: Okay.

2 MR. HART: In support. And just
3 concern.

4 During the time of say like
5 re-stocking your retail place and things of that
6 nature there, N Street in itself is a very small
7 street. And when they bring in the trucks and
8 things of that nature there -- delivery trucks
9 -- and will they be coming in through 9th Street
10 or they'll be coming in through N Street?
11 Because a lot of times, it's -- it's a log jam
12 right there at 9th and N when it comes through
13 there with different things. People just
14 stopping and just talking. It's a log jam right
15 in there.

16 The other thing of it is, it's sort
17 of like I would say basically there is a -- a
18 business that is there now that they're --
19 they're handling let's say like support of the
20 community beautification. It's a nursery.
21 And in that, I -- I'm -- I'm questioning the
22 fact of when you're going to talk the

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1 construction starting. And if so, if it would
2 please you all if it would start after December,
3 and let me tell you why. Because this nursery
4 supports us as far as Christmas trees and things
5 of this nature here. And that it -- it really
6 helps the community. Nobody would have to go
7 and so forth and so on.

8 So like I said, it might be small
9 to some folks, but it's a concern to the
10 community. And I like to buy things from the
11 nursery for beautifications and things like
12 that.

13 So that's my basic concern. But I'm
14 in support of what you're trying to do there.
15 And I'll probably buy some coffee over there
16 myself.

17 (Laughter.)

18 MR. HART: Alrighty? So that's my
19 concern, Mr. Chairman.

20 CHAIRPERSON JORDAN: Pastor
21 Harden?

22 MR. HART: Hart.

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1 CHAIRPERSON JORDAN: Hart.

2 MR. HART: H-A-R-T.

3 CHAIRPERSON JORDAN: Oh, Hart.

4 Hart. Okay.

5 Thank you.

6 I'm going to ask the Applicant to
7 respond to the concern about the delivery.

8 MR. RIEGLER: Sure. We have not
9 finalized our loading plan to be candid. But
10 obviously DDOT will be heavily involved with
11 that process.

12 And we've proposed it is going to
13 be along N Street. But what we've talked to
14 them about is creating a loading zone with
15 certain hours that will be right by our service
16 entry. As you can imagine, 9th Street being a
17 major artery, going downtown for normal delivery
18 hours, they seemed unlikely to want to close
19 down any portion of 9th Street. But
20 we're openminded. The retail frontage is along
21 9th. Like most of these corridors, it's usually
22 front loaded through the front of the building.

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1 But we have designed a service corridor on the
2 N Street side because that was the only place
3 for it.

4 CHAIRPERSON JORDAN: Thank you.
5 Any questions for Pastor Hart from the Board?

6 ZC CHAIRMAN HOOD: Pastor, I'm just
7 curious. You said Salem Baptist, right?

8 MR. HART: Yes, sir.

9 ZC CHAIRMAN HOOD: Two questions.
10 Do you attend ANC meetings in the community?

11 MR. HART: Yes. We have a
12 representative there.

13 ZC CHAIRMAN HOOD: Okay. Because
14 that would have probably been a good venue to
15 express your concern.

16 How was your officers' day? Did you
17 have officers' day on Sunday.

18 MR. HART: Yes.

19 ZC CHAIRMAN HOOD: Okay. You never
20 know who's sitting there. Okay. Thank you.

21 (Laughter.)

22 CHAIRPERSON JORDAN: Ms. Sorg?

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1 VICE-CHAIRPERSON SORG: I'm just
2 actually asking a question of the Applicant
3 related to this. Do you have an idea what type
4 of retail you anticipate?

5 MR. RIEGLER: We think that the
6 art-related food and beverage kind of synergy
7 is what we'd like to find. We really want to
8 leverage the existing infrastructure -- if you
9 want to call it there -- with Longview Gallery
10 -- and there's probably ten galleries within
11 three blocks. We love that. It's a great sense
12 of place.

13 But then also we think that Main and
14 Main, 9th and N corner is just ripe for a
15 restaurant of some sort. And we believe that
16 neighborhood is really in need -- there's a
17 couple that have come online -- but in dire need
18 of really, staple, bus boy and poetish kind of
19 neighborhood launching restaurant. But it
20 remains to be seen.

21 VICE-CHAIRPERSON SORG: You may be
22 part of the contingent who wants to widen the

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1 sidewalks on 9th Street and --

2 MR. RIEGLER: No comment.

3 CHAIRPERSON JORDAN: Okay. Moving
4 right along. Thank you, Pastor Hart.

5 Anyone else? Any questions from
6 the Board to Pastor Hart?

7 (No response.)

8 CHAIRPERSON JORDAN: And the Pastor
9 had mentioned he's in support of the
10 application.

11 Anyone in opposition?

12 (No response.)

13 CHAIRPERSON JORDAN: No one in
14 opposition.

15 Let's now turn to the Applicant for
16 a wrap-up, please.

17 MR. KADLECEK: Sure. I'm just
18 going to make a couple brief concluding remarks.

19 I think through the testimony of
20 both our team and with the help of the Office
21 of Planning, it's become quite evident that
22 because of the extensive preservation of the

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1 historic building as really resulted in an
2 inefficient design with the bridges and the
3 corridors that just don't make this project
4 feasible without the relief we're requesting.

5 As we've discussed, a four-story
6 building is possible and would be conforming.

7 But we would be under the FAR that we're allowed
8 as a matter of right. And we disagree somewhat
9 philosophically with the Office of Planning on
10 that matter, but why it's important about that
11 here in this project is that it really is
12 important as Kevin demonstrated to achieve as
13 much of the FARs that we can. And it just
14 wouldn't be feasible to build a five-story
15 project or a partial fifth story as we've
16 discussed.

17 So given that, given the
18 overwhelming support of the community, we
19 believe that the case is ripe for a decision,
20 and we request that the Board vote to approve
21 it.

22 Thank you very much.

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1 And a bench decision, please.

2 CHAIRPERSON JORDAN: Anything
3 else? Ice cream cake?

4 (Laughter.)

5 CHAIRPERSON JORDAN: Any further
6 questions of the Applicant?

7 ZC CHAIRMAN HOOD: So we are trying
8 to work with -- make some kind of way to
9 accommodate the Pastor from Salem Baptist
10 Church? Is that what's taking place then?

11 But taking his number, I see a lot
12 of members taking the offers made. But we are
13 trying to do something?

14 MR. RIEGLER: Absolutely.

15 ZC CHAIRMAN HOOD: Okay. Good.
16 Thank you.

17 MR. KADLECEK: I will say Kevin's
18 pretty good on his word. And in fact --

19 CHAIRPERSON JORDAN: Pretty good?

20 MR. KADLECEK: He's quite good. In
21 fact, the ANC Commissioner wrote us an email
22 and said that he's heard nothing but support

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1 for the project. So that was real encouraging
2 for us to hear as well.

3 CHAIRPERSON JORDAN: Okay. Thank
4 you.

5 Well, then I will close this hearing
6 and ask the Board to deliberate in this matter.

7 Okay. The floor is now open for
8 deliberation by the Board.

9 Anybody? Going once? Going
10 twice?

11 MEMBER MacMURRAY: I'll start.

12 CHAIRPERSON JORDAN: Ms.
13 MacMurray?

14 MEMBER MacMURRAY: Thank you, Mr.
15 Chairman.

16 I'd like to say that coming in before
17 the presentation, I did have a couple of concerns
18 that you were able to address during your
19 presentation and with supplement having the
20 Office of Planning give a very eloquent
21 description of the issues and the additional
22 relief that initially they were not

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1 recommending.

2 So based on the information that
3 I've heard today, I am in support of the Board
4 approving this application.

5 CHAIRPERSON JORDAN: Anyone else?

6 VICE-CHAIRPERSON SORG: I would
7 agree with Ms. MacMurray, especially with regard
8 to incorporating the comments with regard to
9 showing a practical difficulty in building a
10 four-story building to incorporate the historic
11 structure and subsequently the demonstration
12 with regard to the feasibility or lack of
13 economic feasibility of a partial fifth floor.

14 And therefore and understanding
15 that a full fifth floor, with the setbacks of
16 course that are discussed with HPRB, would be
17 necessary for the viability of the project and
18 taking into the consideration the practical
19 difficulties that were demonstrated with regard
20 to the site -- environmental concerns and so
21 forth and historic preservation requirements.

22 Also with regard to the community,

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1 I do also see from the Applicant here -- and
2 certainly we're not in an arts district here,
3 but I think this is a burgeoning area and to
4 have people who are coming to the community who
5 are dedicated to this type of development that
6 takes into consideration cultural aspects and
7 things like that. And it's been rough for this
8 part of 9th Street for a little while, and so
9 I'm happy to see hopefully a good development
10 there.

11 So I could make a motion if you like.

12 CHAIRPERSON JORDAN: Sure.

13 VICE-CHAIRPERSON SORG: I'll make
14 a motion to approve Application No. 18365 with
15 the relief as requested.

16 MEMBER HINKLE: I'll second that.

17 CHAIRPERSON JORDAN: And the motion
18 being seconded, any additional unreadiness or
19 any unreadiness?

20 (No response.)

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

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1 (Chorus of ayes.)

2 CHAIRPERSON JORDAN: Those opposed
3 nay.

4 (No response.)

5 CHAIRPERSON JORDAN: The motion
6 carries.

7 Mr. Moy?

8 MR. MOY: Yes, sir. Staff would
9 record the vote as five to zero to zero, this
10 on the motion of Vice-Chairperson Ms. Sorg to
11 approve the application with the relief
12 requested as amended. Seconding the motion,
13 Mr. Hinkle. Also in support of the motion, Mr.
14 Hood, Chairman Jordan and Ms. MacMurray.

15 Again, the final vote is five to zero
16 to zero.

17 CHAIRPERSON JORDAN: And I believe
18 this is prime for a summary order, Mr. Moy, since
19 there's no one in opposition and there's a
20 decision in favor of the Applicant.

21 ZC CHAIRMAN HOOD: Mr. Chairman?
22 I'm sorry. I just wanted to ask one quick

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1 question.

2 Those underground storage tanks,
3 are they leaking? Did you say they were
4 leaking?

5 MR. RIEGLER: We don't think
6 there's anything left to leak out of them --

7 ZC CHAIRMAN HOOD: Okay.

8 MR. RIEGLER: -- at the moment.

9 ZC CHAIRMAN HOOD: So they've
10 already leaked?

11 MR. RIEGLER: They've leaked.

12 ZC CHAIRMAN HOOD: Okay.

13 MR. RIEGLER: And so, it's just --

14 ZC CHAIRMAN HOOD: Okay. That's
15 kind of what I meant. Were they left?

16 MR. RIEGLER: Yes. They are in the
17 system.

18 ZC CHAIRMAN HOOD: Okay. Thanks.

19 CHAIRPERSON JORDAN: Thank you.
20 We'll conclude this hearing.

21 MR. KADLECEK: Thank you very much.

22 MR. MOY: The next application for

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1 the Board is Application No. 18370.

2 This is the application of Omar
3 Haques, pursuant to 11 DCMR 3104.1. This is
4 for a special exception for a three-story rear
5 addition to an existing one-family row dwelling
6 under Section 223, not meeting lot occupancy
7 requirements under Section 403, court
8 requirements under Section 406 and
9 nonconforming structure requirements under
10 Section 2001.3. This is the R-4 District at
11 premises 1537 5th Street, NW, property located
12 in Square 510, Lot 820.

13 Other than that, Mr. Chairman, we
14 do have an ANC-2C letter that was filed
15 yesterday -- Monday, June the 26th.

16 CHAIRPERSON JORDAN: Please
17 identify yourselves, please.

18 MR. HAQUES: I'm Omar Haques. I
19 own the property.

20 MS. HAQUES: Megan Haques, spouse
21 of the owner.

22 CHAIRPERSON JORDAN: You've got to

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1 make sure your microphone is on there. There's
2 a button that you need to push and the light
3 should turn green. Okay.

4 MR. HAQUES: Omar Haques, owner of
5 the property.

6 MS. HAQUES: Megan Haques, spouse
7 of the owner.

8 MR. WILSON: Paul Wilson. I'm
9 architect for the owners.

10 CHAIRPERSON JORDAN: All right.
11 Before we begin, we believe that there's some
12 additional relief that needs to be added to your
13 request that you're not conforming to lot area
14 requirements of requirements of a minimum of
15 1800 square feet. You're presently 1367 and
16 what you propose is 1367. So we need you to
17 amend your request for relief.

18 We can do it orally now and just
19 follow up in writing, if that's acceptable to
20 you.

21 MR. HAQUES: We're fine.

22 CHAIRPERSON JORDAN: It's a request

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1 for a special exception for an addition to a
2 one-family dwelling under 223. I don't
3 see any real issues here. Does the Board have
4 any issues with this application? Any
5 questions you want the Applicant to address?

6 (No response.)

7 CHAIRPERSON JORDAN: Seeing none,
8 you can do a presentation if you want. The Board
9 believes that the record is full. There's no
10 questions in regards to the relief that you're
11 asking. You have the right to make a statement
12 or just to talk if you want to. However, we've
13 had some history of people talking themselves
14 into trouble. But certainly it's your option.

15 So I'm just going to ask you what do you want
16 to do?

17 MR. HAQUES: We're fine.

18 CHAIRPERSON JORDAN: Oh, boy.
19 Good man. That's what I would do.

20 Actually, you're right. We want
21 you to have the opportunity to speak if you want
22 to speak. And sometimes people just like to

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1 say stuff.

2 Okay. Let me turn to the Office of
3 Planning to see if there's anything that the
4 Office of Planning believes is necessary to be
5 said at this hearing that they didn't say already
6 in the record.

7 MR. GYOR: The Office of Planning
8 supports the Applicant's request for relief and
9 rests on the record.

10 CHAIRPERSON JORDAN: Since you're
11 new, you've had two easy ones here and we just
12 kind of let you go.

13 Anyone have questions for the Office
14 of Planning?

15 (No response.)

16 CHAIRPERSON JORDAN: Applicant,
17 questions of the Office of Planning?

18 MR. HAQUES: No.

19 CHAIRPERSON JORDAN: We have a DOT
20 report in here? I don't think so.

21 Any other government agency? I
22 don't think so.

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1 Anyone here from ANC-2C?

2 (No response.)

3 CHAIRPERSON JORDAN: We do have a
4 letter from ANC-2C in support which we'll give
5 great weight to.

6 We also have letters of support from
7 Donna Brews and Scott Sampson, is it?

8 MR. HAQUES: Simpson.

9 CHAIRPERSON JORDAN: Simpson.

10 And anyone here in opposition?

11 (No response.)

12 CHAIRPERSON JORDAN: We would
13 normally turn it back to the Applicant but the
14 Applicant said they'd rather keep their mouth
15 shut.

16 So then, I think in this matter we'll
17 close this hearing. And we're ready for
18 deliberation.

19 Turning to the Board, anybody want
20 to say anything?

21 (No response.)

22 CHAIRPERSON JORDAN: Then I would

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1 move that we grant the application for a special
2 exception with the additional relief from
3 Section 401, lot area.

4 Is there a second?

5 ZC CHAIRMAN HOOD: Seconded.

6 CHAIRPERSON JORDAN: Motion made
7 and seconded that we approve the application
8 with the additional relief as stated.

9 All those in favor signify by saying
10 aye.

11 (Chorus of ayes.)

12 CHAIRPERSON JORDAN: Those opposed
13 nay.

14 (No response.)

15 CHAIRPERSON JORDAN: The motion
16 carries.

17 MR. MOY: Staff would record the
18 vote as five to zero to zero. This is on the
19 motion of Chairman Jordan to approve the
20 application for the relief as amended.
21 Seconding the motion, Mr. Hood. Also in support
22 of the motion, Vice-Chairperson Sorg, Ms.

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1 MacMurray and Mr. Hinkle.

2 Again, the final vote is five to zero
3 to zero. The motion carries.

4 CHAIRPERSON JORDAN: Thank you, Mr.
5 Moy. We're applying for a summary order in this
6 matter.

7 MR. MOY: Thank you.

8 CHAIRPERSON JORDAN: We just had a
9 kill the mosquito.

10 MR. MOY: Right. I see it.

11 CHAIRPERSON JORDAN: Oh, you missed
12 it? Watch it there. There's a deadly mosquito
13 flying around the room.

14 All right. Thank you. Thank you
15 for coming to the hearing.

16 MR. HAQUES: Thank you.

17 CHAIRPERSON JORDAN: Our next case,
18 please?

19 MR. MOY: Yes, sir. The next
20 application before the Board is Application No.
21 18351.

22 This is the application of Elaias

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1 Boulew, I guess -- B-O-U-L-E-W -- pursuant to
2 11 DCMR 3103.2 for a variance from the use
3 provisions under Subsection 330.5 to permit the
4 continued commercial use of the groundfloor as
5 a fast-food establishment in the R-4 District
6 at premises 715 Euclid Street, NW, property
7 located at Square 2884, Lot 47.

8 CHAIRPERSON JORDAN: Okay. Would
9 the persons at the table introduce themselves
10 for us, please?

11 MR. KEYS: Good morning, Mr.
12 Chairman. It's George Keys, Jordan & Keys,
13 representing the Application, Elaias Boulew and
14 Julius D. Bell who's the tenant in the property.

15 And Mr. Chairman, I would have to
16 say that neither witness was available when you
17 swore in.

18 CHAIRPERSON JORDAN: Very good.

19 MR. KEYS: So they'll need to take
20 an oath.

21 CHAIRPERSON JORDAN: Would you
22 identify yourselves so we know who? Yes. Make

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1 sure the green button --

2 MR. BELL: My name is Julius Bell.

3 CHAIRPERSON JORDAN: Bell?

4 MR. BELL: Yes. B-E-L-L.

5 CHAIRPERSON JORDAN: Very good.

6 Thank you.

7 MR. BOULEW: My name is Elaias
8 Boulew. I'm the owner of 715 Euclid Street,
9 NW.

10 CHAIRPERSON JORDAN: Okay.

11 Would the two of you please stand
12 and raise your right hand and be sworn in or
13 affirmed, please?

14 (Witnesses sworn.)

15 CHAIRPERSON JORDAN: Thank you.

16 We have before us a request for a
17 variance under 330.5 for allowing a commercial
18 restaurant use for fast-food establishment in
19 an R-4.

20 I think we kind of recognize and have
21 been through this whole process through the
22 record that for a long time this property has

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1 to some extent it's been a restaurant of some
2 sort or fast food. And it may be back 20, 30
3 years. However, the chain might have been
4 broken in regards to the location of the
5 documentation. I think that's kind of what
6 happened. But we've kind of recognized that
7 it's been used for this function for a long time.

8 And we also found records all the way back to
9 what -- 2001?

10 MR. KEYS: I think we've got a chain
11 of use as a food service going back to '49.

12 CHAIRPERSON JORDAN: Okay.

13 MR. KEYS: So it's over 60 years.

14 CHAIRPERSON JORDAN: I know it's
15 been a while. I'm saying documentation kind
16 of walked away somewhere. It's not unusual
17 during the period of time -- transitions and
18 governments and what have you and from paper
19 to other stuff.

20 Let me check with the Board first
21 before you begin, Mr. Keys.

22 Does the Board have any issues with

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1 this -- anything you need to dwell down into?

2 (No response.)

3 CHAIRPERSON JORDAN: Mr. Keys?

4 Office of Planning, any issues that
5 you see that we need to discuss?

6 MS. THOMAS: Thank you. I'm Karen
7 Thomas with the Office of Planning.

8 We fully support this request for
9 variance relief. And we think there's
10 substantial evidence to suggest that this type
11 of use was established at this location for quite
12 some time. And in the absence of records, I
13 think it's just as a procedural request from
14 the Zoning Administrator.

15 CHAIRPERSON JORDAN: Okay.

16 I think your report also recites
17 some conditions. Have we discussed that with
18 the Applicant?

19 MS. THOMAS: Yes. Just subject to
20 the minor conditions. Just because it's a food
21 establishment within a residential zone.

22 CHAIRPERSON JORDAN: You've had

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1 discussions with the Applicant?

2 MS. THOMAS: Mr. Keys expressed no
3 concerns with the conditions. Just for a trash
4 receptacle. We didn't want to see excessive
5 signage just because it's another little street
6 there.

7 MR. KEYS: Mr. Chairman, we have no
8 problem with the conditions suggested by the
9 Office of Planning.

10 CHAIRPERSON JORDAN: Very good.

11 Is there a DOT? A letter of no
12 objection has been filed in this case.

13 And the ANC-1B at a meeting on June
14 7th, I believe, voted unanimously in support
15 of that? Is that correct, Mr. Keys?

16 MR. KEYS: That's correct, Mr.
17 Chairman.

18 CHAIRPERSON JORDAN: All right. I
19 don't believe we have a letter in the file, do
20 we? But you actually attended the meeting?

21 MR. KEYS: I did not. Mr. Bell
22 could testify.

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1 MR. BELL: I attended the design
2 committee first meeting which was back in late
3 May. And I went to the ANC meeting in June.
4 It was June 6th or 7th. I had the unanimous
5 approval of the ANC regarding this matter. And
6 Mrs. Laurie McKenzie should have sent the letter
7 because she told me as early -- as late as last
8 week that the letter would come to the Board
9 and it would be no problem.

10 CHAIRPERSON JORDAN: Is there
11 anyone here in opposition to this application?

12 (No response.)

13 CHAIRPERSON JORDAN: All right.
14 Let's turn back to the Applicant.

15 Is there anything that you think we
16 need to hear from you, MR. Keys?

17 MR. KEYS: Well, yes. Just the
18 context. When Mr. Bell came to me and said I
19 need some help with this. I'm getting problems
20 regarding my certificate of occupancy. I
21 looked at it and my initial thought was this
22 is a continuation with nonconforming use. I

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1 mean, this shouldn't be a problem. This should
2 go as a normal administrative matter.

3 Two things happened. One, the
4 records -- the official records were kind of
5 incomplete. And then secondly, the zoning
6 category has changed. And so this went from
7 being the immediately prior certificate of
8 occupancy, which was part of the first exhibits
9 we submitted to the Board. That certificate
10 of occupancy identified the property as a deli.

11 Well, when the zoning regulations were amended
12 2008, 2009, to re-classify food service
13 establishment, deli disappeared. The concept
14 disappeared. And what became important for Mr.
15 Lagrant in looking at this non-conformant use
16 was whether the prior use had exhibited the same
17 kind of cooking onsite that my applicant was
18 conducting. And there was nothing in the record
19 to prove that.

20 We went and we couldn't find the
21 prior owner. And even though both Mr. Bell and
22 the owner of the property could testify, that

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1 would be a self-serving declaration as to what
2 existed.

3 I asked Mr. Moy to pass out to you
4 something that we wanted to include in the record
5 which is a letter that a food and health
6 inspector -- Ronnie Taylor from the Department
7 of Health -- sent to Mr. Lagrant just affirming
8 to his knowledge that cooking equipment was used
9 in the preparation of food on that site when
10 it was operated as Sarah Seafood which is the
11 prior holder of the C of O before Mr. Bell came
12 to the site.

13 I don't think Mr. Lagrant found that
14 to be a sufficient proof. And so, we decided
15 to continue the pursuit of the use variance.
16 And we have submitted an application. And I
17 can quickly run through the basis for the use
18 variance or I could elicit testimony as you --

19 CHAIRPERSON JORDAN: Mr. Keys, you
20 had us when you said hello. Anyway, you had
21 me at hello. You had me at hello.

22 I don't mean to cut you off. If you

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1 think that you really want to just talk, then
2 we have until 1:00 o'clock.

3 MR. KEYS: Chairman, I think it's
4 time to go to lunch.

5 CHAIRPERSON JORDAN: Let me cut you
6 off. I'd just thought I'd help you out there.

7 Thank you.

8 Any questions or anybody want --
9 yes, please, Ms. Sorg.

10 VICE-CHAIRPERSON SORG: Thank you,
11 Mr. Chairman.

12 I just want to ask of the Applicant
13 do you have any plans for renovating the
14 restaurant or improving the streetscape and
15 street frontage?

16 MR. BELL: We're going to -- the
17 building's been yellow for three years since
18 I've been there. I just wanted it to stand out.

19 I think we're going to put some paint --

20 VICE-CHAIRPERSON SORG: I have no
21 problem with yellow. That's not my problem at
22 all.

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1 MR. BELL: All right. I think
2 we're going to just spruce up the outside.
3 We've done a renovation inside the store. The
4 store looks very nice. We did that in the
5 earlier part of this year. December -- late
6 part of last year, early part of this year, we
7 did that in conjunction to my business going
8 inside of Harris Teeter grocery store. So we
9 had a big inspection inside of the building.

10 But as far as the upkeep and outside
11 of the building, there's a school there that's
12 Banneker High School that's in the middle of
13 the block. We get a lot of debris and stuff
14 there. We have -- the owner of the property
15 has someone come out once a week, and I have
16 a couple of my associates as well. We're taking
17 care of debris and trash and stuff outside.

18 The city also just this week came
19 by and they're taking care of all the graffiti
20 and stuff that's on some of the commercial
21 buildings on that block as well.

22 So I think overall, it is in pretty

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1 good condition. But it could be done a little
2 bit better than what's being done currently.

3 VICE-CHAIRPERSON SORG: Good. I
4 mean, I know that you have from what we've heard
5 a good record with regard to keeping the street
6 clean and the trash and so forth. But I do think
7 that generally speaking, the streetscape
8 improvement that the District is trying to
9 achieve is like a collaborative effort between
10 the agencies and the business owners. So that's
11 good to hear.

12 CHAIRPERSON JORDAN: Okay. Anyone
13 else have any questions for the Applicant?

14 (No response.)

15 CHAIRPERSON JORDAN: Anything
16 else, we're good, Mr. Keys. So we'll close this
17 hearing and move now to deliberations.

18 Board, what's your feeling?

19 (No response.)

20 CHAIRPERSON JORDAN: I would move
21 that we grant the relief requested of the
22 Applicant for the use variance based upon the

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1 record.

2 Is there a second?

3 MEMBER MacMURRAY: Seconded.

4 CHAIRPERSON JORDAN: Motion made
5 and seconded that we approve this application.

6 Any unreadiness?

7 MEMBER HINKLE: Mr. Chair, does
8 that include the conditions recommended by the
9 Office of Planning?

10 CHAIRPERSON JORDAN: Yes. With
11 the conditions. Thank you very much. Because
12 they were accepted by the Applicant also.

13 Any unreadiness?

14 (No response.)

15 CHAIRPERSON JORDAN: All those in
16 favor signify by saying aye.

17 (Chorus of ayes.)

18 CHAIRPERSON JORDAN: Those opposed
19 nay.

20 (No response.)

21 CHAIRPERSON JORDAN: The motion
22 carries.

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1 MR. MOY: Staff would record the
2 vote as five to zero to zero, this on the motion
3 of Chairman Jordan to approve the application
4 with the three conditions as stated in the Office
5 of Planning report. Second motion, Ms.
6 MacMurray. Also in support of the motion, Mr.
7 Hood, Vice-Chairperson Sorg and Mr. Hinkle.

8 Again, the final vote is five to zero
9 to zero. And the motion carries, Mr. Chairman.

10 CHAIRPERSON JORDAN: Thank you.
11 And we'll have a summary order, please.

12 Thank you. We'll conclude this
13 morning's session and go into recess until this
14 afternoon at 1:00 o'clock.

15 MR. KEYS: Thank you, Mr. Chairman.

16 (Whereupon, at 11:33 a.m., the
17 above-entitled matter went off the record and
18 resumed at 1:12 p.m.)

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

1:12 p.m.

CHAIRPERSON JORDAN: Okay. If
we'll come to order, please.

Good afternoon, ladies and
gentlemen. We're here located at the Jerrily
R. Kress Memorial Hearing Room at 441 4th Street,
NW.

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1 Today's date is June 26. The time
2 now is 1:10.

3 We're here for the public hearing
4 of the Board of Zoning Adjustment of the District
5 of Columbia.

6 My name is Lloyd Jordan,
7 Chairperson. To my left is Nicole Sorg, Vice-
8 Chair. And to her left is representative of
9 the Zoning Commission, the Chairman, Mr. Anthony
10 Hood. And to my right is Jeffrey Hinkle, Board
11 Member.

12 Please be advised this proceeding
13 is being recorded by a court reporter and is
14 also being webcast live. Accordingly, we ask
15 that you refrain from any disruptive noises in
16 the hearing room and any actions that are
17 disruptive.

18 The Board's hearing procedures are
19 contained in a document by the door if you need
20 to read that to find out how we process and how
21 we go through hearings.

22 And today's hearing agenda, I don't

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1 know if we have any preliminary matters, but
2 if we do we'll take them up with the cases.

3 Let me ask that all individuals who
4 will testify or present evidence here today
5 stand and take the oath or affirmation from the
6 Secretary, if you would do that, please.

7 (Witnesses sworn.)

8 MR. MOY: Good afternoon, Mr.
9 Chairman, Members of the Board.

10 We do have one major preliminary
11 matter for the afternoon session cases. And
12 that would go to the owner of Application No.
13 18369. This is the D.C. Government c/o
14 Paramount Development, LLC and Blue Sky Housing,
15 LLC.

16 CHAIRPERSON JORDAN: Okay. And
17 the preliminary matter is?

18 MR. MOY: A request for a
19 postponement, Mr. Chairman.

20 CHAIRPERSON JORDAN: Okay. So
21 call that case, would you please?

22 MR. MOY: Yes, sir.

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1 That would be Application No. 18369.

2 This is the application of D.C.
3 Government c/o Paramount Development, LLC and
4 Blue Sky Housing, LLC. This is pursuant to 11
5 DCMR 3103.2 for a variance from the lot occupancy
6 requirements under Section 772, variance from
7 the rear yard requirements under Section 774,
8 variance from the parking requirements under
9 Subsection 2101.1. This is to construct a
10 seven-story apartment building in the DD/C-2-C
11 District at premises 1031 4th Street, NW,
12 property located in Square 526, Lot 815.

13 CHAIRPERSON JORDAN: Okay. All
14 right. Are the parties here for 18369?

15 MS. BATTIES: Good afternoon, Mr.
16 Chair, Members of the Board. Leila Batties with
17 the law firm of Holland & Knight. We were
18 recently engaged as counsel for the Applicant.

19 The Applicant has recently taken
20 control of parcels that were adjacent to the
21 original subject property. And as a result,
22 the project being proposed has changed from a

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1 seven-unit project to an 88-unit project.

2 CHAIRPERSON JORDAN: Oh, just a
3 minor thing then.

4 MS. BATTIES: So obviously, they'll
5 need time to amend their drawings to reflect
6 the proposed modification. And we'd ask that
7 this item be postponed to a hearing date in
8 October.

9 CHAIRPERSON JORDAN: Okay. Do we
10 have your entry? Do we have an authorization
11 on this?

12 MS. BATTIES: The attorney for the
13 Applicant -- or the prior counsel for the
14 Applicant -- has requested -- submitted the
15 request for postponement. They asked me to come
16 down here this afternoon to monitor this item.

17 CHAIRPERSON JORDAN: I didn't see
18 anything that gave them the authorization
19 either.

20 But anyway, let's move forward and
21 take it as a request for a proposed postponement.

22 Board Members have any issues or

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1 questions regarding postponement?

2 VICE-CHAIRPERSON SORG: Mr.
3 Chairman, it doesn't seem there's any prejudice
4 in postponing. Also it seems like it's going
5 to be big changes afoot.

6 CHAIRPERSON JORDAN: Sure.
7 Certainly.

8 Anyone else? Any other Board
9 Member?

10 (No response.)

11 CHAIRPERSON JORDAN: Well, let's
12 postpone this to a date. What date do we have,
13 Mr. Moy?

14 MR. MOY: Well, you have your choice
15 of dates, Mr. Chairman. We have an October 30
16 hearing date which can be placed in the morning
17 of October 30, or in the morning of October 23.

18 CHAIRPERSON JORDAN: What do we
19 have on that morning? You said October 30th?

20 MR. MOY: Yes. October 23, we have
21 one, two, three, four cases in the morning and
22 a decision session in the afternoon. And on

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1 October 30, we have one, two, three -- three
2 cases in the morning, one appeal case in the
3 afternoon.

4 CHAIRPERSON JORDAN: Okay. That
5 morning, please.

6 MR. MOY: For which day?

7 CHAIRPERSON JORDAN: The 30th?

8 MR. MOY: The 30th. Perfect.

9 MS. BATTIES: Thank you.

10 CHAIRPERSON JORDAN: Very good.
11 Thank you.

12 MR. MOY: The first case for the
13 Board -- or rather the second would be
14 Application No. 18227, Application of 1700 New
15 York Avenue, LLC on behalf of the Corcoran
16 Gallery of Art, pursuant to 11 DCMR 3103.2 for
17 a modification to BZA Order No. 18277, granting
18 a variance from the parking requirements of 11
19 DCMR 2101.1. This is to provide 38 parking
20 spaces in lieu of 44 parking spaces previously
21 approved for the development of an office
22 building as an addition to the existing building

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1 in the SP-2 District at premises 1700 New York
2 Avenue, NW, property located in Square 171, Lot
3 34.

4 CHAIRPERSON JORDAN: Good
5 afternoon. Please identify yourselves for the
6 record.

7 MS. SHIKER: Good afternoon, Mr.
8 Chairman and Members of the Board.

9 My name is Christy Shiker with the
10 law firm of Holland & Knight. I'm joined by
11 Chip Glasgow of the law firm of Holland & Knight
12 as well. And I can introduce our team for us
13 if you'd like for me to.

14 CHAIRPERSON JORDAN: Whichever way
15 you want to do it. If someone's going to be
16 at the table and testify, then we need you to
17 do that.

18 MS. SHIKER: So we are also joined
19 today by Oliver Carr who's representing the
20 Applicant. He is the President and CEO of Carr
21 Properties. Austen Holderness is also here
22 from Carr Properties. I have to my right Mr.

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1 Andrew Rollman from Smith Group Architects, the
2 architect for the project. Chris Woody from
3 Smith Group Architects is also in the audience.

4 And we have Erwin Andres, our traffic
5 consultant from Grove Slade.

6 CHAIRPERSON JORDAN: So you want to
7 modify the previous order by reducing by six
8 parking spaces, is that correct?

9 MS. SHIKER: That is correct. It's
10 five zoning parking spaces and five nonzoning
11 parking spaces total.

12 CHAIRPERSON JORDAN: Okay. Let me
13 defer to the Board for a second.

14 Does anyone have any questions? I
15 think we've reviewed this application. Ms.
16 Sorg?

17 VICE-CHAIRPERSON SORG: I would
18 just add. So let's see, we've been talking
19 about this case for a little over 18 months and
20 the steam tunnel and the parking variance have
21 been high on the list of things we've been
22 talking about. So I think we've got a lot of

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1 history and a very full record with regard to
2 the change -- the modification.

3 CHAIRPERSON JORDAN: Okay. Anyone
4 else? Any other Board Member?

5 (No response.)

6 CHAIRPERSON JORDAN: Let me check.
7 Is there anything that we need in addition from
8 the Office of Planning?

9 MS. THOMAS: No, Mr. Chair. I'll
10 just stand on the record. Thank you.

11 CHAIRPERSON JORDAN: And I'll get
12 back to you. I'm just trying to see where we
13 are doing the assessment.

14 Is there anyone in the audience
15 that's here for opposition for this variance?

16 (No response.)

17 CHAIRPERSON JORDAN: Okay. And
18 again, the ANC has supported it.

19 So I believe that it's up to you how
20 you want to handle your portion of the agenda
21 for a hearing. But I think the Board is
22 comfortable enough that the record is full and

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1 there's a previous history in regards to the
2 issue and the reason why you're asking for this
3 variance. And so, the record is pretty
4 complete.

5 I want to defer to you to give you
6 the option of whether or not you think a
7 presentation is necessary. But we ourselves
8 are probably ready to deliberate.

9 MS. SHIKER: We'd be happy to rest
10 on the record. Thank you.

11 CHAIRPERSON JORDAN: Okay. And
12 excuse me. Anyone here from the ANC-2A? I know
13 we do have a letter in support. That was three,
14 zero to one to support.

15 (No response.)

16 CHAIRPERSON JORDAN: And I asked if
17 there was anybody in opposition, anyone in
18 support.

19 Well, good. I will close the record
20 for this hearing and then ask the Board if
21 they're ready to deliberate.

22 (No response.)

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1 CHAIRPERSON JORDAN: And hearing
2 that we are, what's the wishes of the Board?
3 Anyone?

4 (No response.)

5 CHAIRPERSON JORDAN: All right.
6 I'll just move that we grant the relief requested
7 under 18227-A for the variance as requested.

8 Anyone want to second it?

9 VICE-CHAIRPERSON SORG: Second.

10 CHAIRPERSON JORDAN: Motion made
11 and seconded.

12 Any unreadiness?

13 (No response.)

14 CHAIRPERSON JORDAN: All those in
15 favor signify by saying aye.

16 (Chorus of ayes.)

17 CHAIRPERSON JORDAN: Those opposed
18 nay.

19 (No response.)

20 CHAIRPERSON JORDAN: The motion
21 carries.

22 Mr. Moy?

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1 MR. MOY: Yes, sir. Staff would
2 record the vote as four to zero to one, this
3 on the motion of Chairperson Jordan to approve
4 the request of the application for relief for
5 modifications. Second the motion, Vice-
6 Chairperson Sorg. Also in support of the motion
7 are Chairman Hood and Mr. Hinkle. And we have
8 one Board Member not present, not participating,
9 not voting.

10 So again, the final vote is four to
11 zero to one. The motion carries.

12 CHAIRPERSON JORDAN: Thank you. I
13 believe we have a summary order.

14 MR. MOY: Yes, sir.

15 MS. SHIKER: Thank you very much.

16 CHAIRPERSON JORDAN: Thank you.

17 MR. MOY: The next application for
18 the afternoon session is Application No. 18372.

19 This is an application of 2321 4th
20 Street LLC on behalf of H Street Community
21 Development Corporation. This is pursuant to
22 11 DCMR 3103.2 for a variance from the lot

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1 occupancy requirements under Section 772,
2 variance from the off street parking
3 requirements under Subsection 2101.1, variances
4 from the loading requirements under Subsection
5 2201.1, and a variance from the loading berth
6 minimum vertical clearance height requirements.

7 This is under Subsection 2201.6. All this is
8 to allow the construction of a new residential
9 apartment building with groundfloor retail and
10 services and service uses in the C-3-A District
11 at premises 2321 4th Street, NE, property located
12 in Square 3629, Lot 808.

13 CHAIRPERSON JORDAN: Very good.

14 Thank you, Mr. Moy.

15 Will the persons at the table
16 introduce themselves, please?

17 MR. FREEMAN: Good afternoon,
18 Members of the Board, Chairman Jordan. My name
19 is Kyras Freeman. I'm a partner with the law
20 firm of Holland & Knight here on behalf of the
21 Applicant in this case.

22 I have a number of people here who

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1 I can proffer to testify as experts and answer
2 any questions or we're otherwise willing to
3 proceed as the Board determines proper.

4 CHAIRPERSON JORDAN: Let's see
5 where we are before we do any of that.

6 ZC CHAIRMAN HOOD: Mr. Chairman?

7 CHAIRPERSON JORDAN: Yes?

8 ZC CHAIRMAN HOOD: I just wanted to
9 acknowledge that I have done work with H Street
10 over the years. I've been disconnected with
11 them I think about ten years now, and I don't
12 think that would have any rationale or reason
13 for me not to participate in this case. And
14 I just wanted to put that on the record and make
15 sure everything stays clean.

16 CHAIRPERSON JORDAN: Okay. Not a
17 problem. You don't have any --

18 ZC CHAIRMAN HOOD: I have no
19 objections.

20 CHAIRPERSON JORDAN: You don't have
21 any financial interests in it in the H Street
22 Development, do you?

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1 ZC CHAIRMAN HOOD: No, I don't.

2 CHAIRPERSON JORDAN: Thank you, Mr.
3 Hood.

4 Let's take a second. I'm scrolling
5 through the record.

6 That's what I was looking for. I
7 don't have an OP report.

8 MR. MORDFIN: The Office of
9 Planning report was marked as Exhibit 28. And
10 it was filed on 6/21/12. And it's recommending
11 support.

12 CHAIRPERSON JORDAN: No, I'm just
13 looking at the staff report. We're going to
14 get copies and take a look at it to see if we
15 have any issues.

16 Although the Office of Planning is
17 here.

18 Let's do this. Let's have the
19 Office of Planning report. If you'd give us
20 an oral report, then we will then take a minute
21 when we get your report to see if we have any
22 issues.

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1 MR. MORDFIN: Okay.

2 Good afternoon.

3 CHAIRPERSON JORDAN: And I'm going
4 to ask you to not summarize it. Just kind of
5 give it to us because we have not seen the report.

6 MR. MORDFIN: Good afternoon,
7 Chair, Members of the Board. I'm Stephen
8 Mordfin with the Office of Planning.

9 And the Office of Planning did find
10 the application to be in conformance with the
11 criteria for the granting of the four variances.

12 This property is unique due to its
13 triangular shape and the fill that is on site
14 that resulted from the demolition of the
15 previous improvements to the site. These
16 result in difficulty in providing below-grade
17 parking due to the soil conditions and also to
18 the triangular shape of the property with the
19 result that all onsite parking and loadings are
20 proposed to be provided on the first level of
21 the building.

22 The provision of parking on the

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1 first level also limits the amount of area
2 available for parking and loading resulting in
3 the request to reduce the size of the loading
4 berth and the number of parking spaces that are
5 proposed to be provided. The need to provide
6 all onsite parking on the first level of the
7 building also increases the lot occupancy of
8 the building.

9 The Applicant is also unable to
10 provide also a 14-foot high ceiling above the
11 loading berth because it can only be provided
12 on the groundfloor where the ceiling height will
13 be 12 feet. Increasing the ceiling height to
14 14 feet would result in reducing the ceiling
15 heights of the floors above to seven and a half
16 feet which would be an unusually low height for
17 the apartment units on the upper floors.

18 The granting of a variance to the
19 loading berth would not result in a detriment
20 to the public good because of the small size
21 of the proposed apartments and the retail spaces
22 and so the smaller trucks that would be expected

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1 to utilize this site. Smaller trucks also do
2 not require the additional ceiling height.

3 The granting of a variance to off
4 street parking would not result in a detriment
5 to the public good because of the multitude of
6 transportation options available including bus,
7 rail, bicycle and zip car.

8 And the granting of a variance to
9 lot occupancy which would only be necessary
10 should the retail spaces proposed for the
11 groundfloor prove not to be successful to allow
12 the Applicant the flexibility to utilize those
13 spaces as residential. And the maximum lot
14 occupancy for a building without residential
15 on the groundfloor is 100 percent, but if they
16 do put residential there, it reduces it to 80
17 percent. Hence the need for the variance.

18 And there would be no substantial
19 harm to the zoning regulations because the
20 variances would allow for loading facilities
21 adequate to serve the site, flexibility of use
22 within this mixed-use zone district, and

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1 adequate parking as is concluded in the traffic
2 study that was submitted as a part of the
3 application.

4 And therefore, the Office of
5 Planning recommends approval of the
6 application.

7 Thank you.

8 CHAIRPERSON JORDAN: Thank you.
9 Just give us one second to read through your
10 report.

11 Has the Board had adequate time to
12 read through the report? Do you need additional
13 time?

14 Mr. Freeman, I think the record is
15 pretty substantial. So you can do a
16 presentation if you would like. However, if
17 we can ask more pointed questions on any issue.

18 For instance, if you would just
19 dwell just a bit about how the first four
20 dwelling units impact the lot occupancy issue.

21 MR. FREEMAN: Right. Thank you,
22 Mr. Jordan. And for that, I'll call Mr.

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1 Bonstra.

2 Bill Bonstra -- his résumé is
3 included in our pre-hearing submission which
4 is Exhibit 26 of the record. Mr. Bonstra has
5 appeared the Board on a number of occasions.
6 So we'd like to proffer him as an expert in
7 architecture.

8 CHAIRPERSON JORDAN: It's
9 accepted.

10 MR. BONSTRA: Thank you. Good
11 afternoon. My name is Bill Bonstra with the
12 firm Bonstra Haresign Architects. I'm excited
13 to be working on this project and presenting
14 to you today.

15 In regards to your question about
16 the lot occupancy, as a commercial space, the
17 lot occupancy on the ground level would be 100
18 percent. But if the commercial areas are not
19 successful and our needs are met to convert those
20 to residential units, then the lot occupancy
21 of 80 percent would govern for the first level
22 of the building.

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1 CHAIRPERSON JORDAN: Okay.

2 MR. BONSTRA: And as such we would
3 need relief for that.

4 CHAIRPERSON JORDAN: Any other
5 questions anyone from the Board?

6 Mr. Hinkle?

7 MEMBER HINKLE: Yes. Thank you,
8 Mr. Chair.

9 This gets to the issue of the height
10 to the loading.

11 I'm looking at page 13 of the June
12 12th plans for the two sections. And I see on
13 the lower section, there's a height of the garage
14 entry that's 13 feet. But if you looked in the
15 upper section, it looks like the doorway. And
16 correct me if I'm wrong. That's 11 feet tall?

17 So I guess my question is how tall
18 would the garage door be to that loading area.

19 MR. BONSTRA: Right. I believe we
20 discovered that after the submission was made
21 as far as the door itself, our goal would be
22 that the door would also allow 12 feet clear.

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1 MEMBER HINKLE: Okay. Thank you.

2 MR. BONSTRA: But this was
3 incorrectly shown on that. But the elevations
4 I believe clearly depict the 12-foot opening.

5 MEMBER HINKLE: The 12-foot
6 opening. Great. Thank you.

7 ZC CHAIRMAN HOOD: Mr. Chairman?

8 CHAIRPERSON JORDAN: Yes, Mr. Hood?

9 ZC CHAIRMAN HOOD: Question. And
10 maybe Mr. Jones and Mr. Brewer can answer this.

11 I'm just curious. In answer to the
12 plan where the trucks that make deliveries or
13 since we're asking for the loading berth
14 reduction, are we looking at smaller trucks,
15 or is that something that we're going to put
16 in place to use smaller trucks to make
17 deliveries?

18 Well, maybe Mr. --

19 MR. FREEMAN: I'll take a quick stab
20 at it.

21 In response to the loading truck
22 issue, we've done two things -- well, three.

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1 One is going to be a person or a site to
2 coordinate loading and delivery. Two, they're
3 going to provide no trucks larger than 30 feet
4 can come to the site to load particularly given
5 the size of the units. And three, they're going
6 to have that height restriction how you often
7 see on bridges. That will be in the documents
8 and likely some signage on the site as well.

9 ZC CHAIRMAN HOOD: So, Mr. Brewer
10 and Mr. Jones are in concurrence with that?
11 Since I couldn't get them to the mic. Okay.
12 Thank you.

13 Thank you, Mr. Chairman.

14 CHAIRPERSON JORDAN: Any other
15 questions of the Applicant?

16 (No response.)

17 CHAIRPERSON JORDAN: Mr. Freeman,
18 you have a right to do a presentation if you
19 want but I thought we'd just kind of get to the
20 heart of our questions if that would be helpful
21 and if we didn't have any questions about
22 something else, then you wouldn't have to go

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1 through anything else.

2 MR. FREEMAN: Very, very helpful.

3 I'd just like to point out two additional things
4 for the record.

5 Marked as Exhibit 27, DDOT supports
6 the parking and loading relief. Marked as
7 Exhibit 24, there's a thorough letter from
8 Advisory Neighborhood Commission 5C that notes
9 the number of communications and the
10 presentations the Applicant has made to the
11 community. And they recommend approval of our
12 application.

13 And finally, last but not least,
14 dependent on what the Board does today, we would
15 request that the record be left open. We
16 literally just received the fax letter of
17 support from our Councilmember McDuffie, also
18 in support of the project. So we'd like to
19 submit that for the record since their office
20 took the time to prepare the letter.

21 CHAIRPERSON JORDAN: You don't want
22 the record to stay open. You just wanted the

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1 opportunity to submit that.

2 MR. FREEMAN: Submission of this
3 one item.

4 CHAIRPERSON JORDAN: Certainly.
5 It'll be accepted.

6 MR. FREEMAN: Thank you.

7 CHAIRPERSON JORDAN: Any other
8 questions of the Applicant, anyone?

9 (No response.)

10 CHAIRPERSON JORDAN: Okay. Let's
11 take another minute. We just got the Office
12 of Planning report and still kind of thumbing
13 through it.

14 I don't see anything that's
15 shocking. But we want to make sure that
16 everyone has completed reviewed the record and
17 are comfortable.

18 MR. FREEMAN: Thank you.

19 ZC CHAIRMAN HOOD: This is right on
20 the old Maverick Room on the site? I'm just
21 curious.

22 MR. FREEMAN: It was a hotel. I

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1 don't know if it was the Manor Home site.

2 ZC CHAIRMAN HOOD: I said Maverick
3 Room -- Maverick Room. I'm just curious if
4 anybody knows. Okay. That's okay.

5 MR. FREEMAN: It's a different
6 name. I'd rather not say the name that it's
7 gone by in the community. But it was a hotel
8 at one point that was demolished about ten years
9 ago.

10 ZC CHAIRMAN HOOD: Must have been
11 oversight. Okay. Thank you.

12 CHAIRPERSON JORDAN: Yes, go ahead,
13 Ms. Sorg.

14 VICE-CHAIRPERSON SORG: Thank you,
15 Mr. Chairman.

16 Just taking a second look at the DDOT
17 report here, I know that you've been working
18 with them and have a significant transportation
19 study included in your submission. And
20 actually DDOT I think seems to think that you've
21 crossed most of your ts and dotted your Is as
22 far as they're concerned except for the proposal

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1 of backing in the delivery and trash trucks.
2 That's been managed.

3 MR. FREEMAN: We can have Mr.
4 Bonstra speak to that, or Nicole White, our
5 expert in transportation planning. But they've
6 moved some columns such that now trucks can
7 actually make the maneuver that DDOT requested.
8 So we're compliant with that condition.

9 MR. BONSTRA: Okay. That's fine.

10 MR. FREEMAN: And what we'll do for
11 the record, if you like, we had a PowerPoint.
12 And included in the PowerPoint is a turn diagram
13 that shows that revised movement. So we can
14 go ahead and submit that as well.

15 MR. BONSTRA: We have 15 copies of
16 all those drawings if you'd like that now or
17 --

18 CHAIRPERSON JORDAN: You can just
19 submit it.

20 MR. BONSTRA: Do it later? Sure.

21 CHAIRPERSON JORDAN: Okay. Any
22 other questions for the Applicant?

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1 VICE-CHAIRPERSON SORG: Sorry. I
2 just have one more question.

3 Just remind me of what's the unit
4 mix and the average unit size. I was just
5 looking for it again.

6 MR. BONSTRA: I knew you were going
7 to ask me the tough questions.

8 VICE-CHAIRPERSON SORG: That's
9 hardly a tough question.

10 MR. BONSTRA: Okay. Can we have
11 Kenton answer that? I don't know exactly where
12 to find that.

13 We have 160 units. There are one-
14 and two-bedroom units. And I don't know -- 60
15 percent one bedroom and 40 percent two bedroom.

16 VICE-CHAIRPERSON SORG: And do you
17 know roughly the sort of square foot average
18 size of those units?

19 MR. DRURY: I'm Kenton Drury with
20 the Applicant. Project Manager.

21 They are around 800 square feet --
22 750 and 800 square feet -- somewhere in that

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1 range -- total.

2 VICE-CHAIRPERSON SORG: Thank you.

3 MR. DRURY: On the smaller side --
4 efficient side.

5 VICE-CHAIRPERSON SORG: Got you.

6 CHAIRPERSON JORDAN: Anyone else?

7 (No response.)

8 CHAIRPERSON JORDAN: Returning to
9 the Office of Planning, we've already been
10 there.

11 Any questions for the Office of
12 Planning from the Board?

13 (No response.)

14 CHAIRPERSON JORDAN: Does the
15 Applicant have any questions of the Office of
16 Planning?

17 MR. FREEMAN: No, Mr. Chairman.

18 CHAIRPERSON JORDAN: Anyone here
19 from the Department of Transportation?

20 (No response.)

21 CHAIRPERSON JORDAN: We do have a
22 Department of Transportation report that has

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1 been referred to earlier. They have no
2 objections, especially in light of this change
3 that -- at least their concern -- in the plans.

4 Anyone here from ANC-5C?

5 (No response.)

6 CHAIRPERSON JORDAN: We do have a
7 letter in support from ANC-5C who voted ten to
8 one to one to support the project which we would
9 give great weight to.

10 Is there any individual here in
11 support of the application?

12 (No response.)

13 CHAIRPERSON JORDAN: Others who are
14 not in support?

15 (No response.)

16 CHAIRPERSON JORDAN: Anyone in
17 opposition?

18 (No response.)

19 CHAIRPERSON JORDAN: No.
20 Anything, Mr. Freeman, you want to wrap up?

21 MR. FREEMAN: No. Just thank you
22 for your time this afternoon. We believe the

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1 record is complete and demonstrates that we meet
2 all of the applicable standards for relief.
3 And therefore, we would ask that the Board grant
4 our application as soon as possible.

5 Thank you.

6 CHAIRPERSON JORDAN: We will close
7 the record and close this particular hearing.

8 Is the Board ready to deliberate or
9 do they need something more?

10 (No response.)

11 CHAIRPERSON JORDAN: Board?
12 Board, are we ready to deliberate?

13 (No response.)

14 CHAIRPERSON JORDAN: I think this
15 is one where the record is very full. I think
16 the record clearly shows that the site has
17 dimensions and grading issues and subsurface
18 conditions, and the street frontage provides
19 some uniqueness to the situation. And also the
20 topographical changes that we have with this
21 land.

22 So it's something I can support.

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1 And I think that you've demonstrated that
2 there's some difficulties in meeting the
3 requirements without this variance.

4 Anybody else?

5 ZC CHAIRMAN HOOD: I would agree
6 with you, Mr. Chairman. Also, the way they
7 increased the lot occupancy would be necessary
8 should the proposed retail space prove to be
9 unsuccessful -- the way that's all worked out.

10 I think the Office of Planning's
11 report is great and motion that we incorporate
12 that. I think all the bases on the 772, 2101.1,
13 2201.1 and 2201.2 will all be covered. And I
14 think not be substantially harmful to the intent
15 and integrity of the zoning plan.

16 CHAIRPERSON JORDAN: I think you
17 just hit on something else.

18 We will accept the Office of
19 Planning's report, unless there's some
20 objections, and make it part of the record.

21 (No response.)

22 CHAIRPERSON JORDAN: Anyone else?

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1 Ms. Sorg?

2 VICE-CHAIRPERSON SORG: Mr.
3 Chairman, I will agree with your comments and
4 the comments of Chairman Hood.

5 And just also quickly note for the
6 record with regard to the sort of third prong,
7 I suppose, that a contributing factor which is
8 the affordable nature of the units that are being
9 constructed here and how that with regard to
10 that problem plays into my thoughts regarding
11 the variances that are being requested. So I
12 can also be in support.

13 Thank you.

14 CHAIRPERSON JORDAN: And I would
15 move that we approve the Applicant's request,
16 the request made under 18372.

17 Is there a second?

18 MEMBER HINKLE: Second.

19 CHAIRPERSON JORDAN: Motion made
20 and seconded that the application is approved
21 with the requested relief.

22 Any additional deliberation?

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1 (No response.)

2 CHAIRPERSON JORDAN: All those in
3 favor signify by saying aye.

4 (Chorus of ayes.)

5 CHAIRPERSON JORDAN: Those opposed
6 nay.

7 (No response.)

8 CHAIRPERSON JORDAN: The motion
9 carries.

10 Mr. Moy?

11 MR. MOY: Yes, sir. Staff would
12 record the vote as four to zero to one, this
13 on the motion of Chairman Jordan to approve the
14 application for the relief requested.
15 Seconding the motion, Chairman Hood. Also in
16 support of the motion, Vice-Chairperson Sorg
17 and Mr. Hinkle. And we have a Board Member not
18 participating, not present, not voting.

19 So again, the count was four to zero
20 to one.

21 CHAIRPERSON JORDAN: Very good.
22 And seeing that this decision is in favor of

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1 the Applicant and there's no one in opposition,
2 this is ripe for a summary order, please.

3 MR. MOY: Yes. Thank you, sir.

4 CHAIRPERSON JORDAN: We'll
5 conclude this particular hearing.

6 MR. FREEMAN: Thank you.

7 CHAIRPERSON JORDAN: And thank you
8 for coming. We're sorry we made it so
9 difficult. But you do such a good job, Mr.
10 Freeman. I mean, you dot all the Is and cross
11 the Ts and understand your file. I need to say
12 that.

13 MR. FREEMAN: Could you say that
14 again? No.

15 (Laughter.)

16 CHAIRPERSON JORDAN: No, a lot of
17 times people don't understand their files.

18 Is there any other business that
19 needs to come before the Board this afternoon?

20 MR. MOY: Yes, sir. The
21 announcement for a Board Closed Meeting.

22 CHAIRPERSON JORDAN: Yes, let's

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1 close the meeting. Why not?

2 Okay. As Chairperson of the Board
3 of Zoning Adjustment for the District of
4 Columbia and in accordance with Section 405 B4,
5 B13 of the District of Columbia Administrative
6 Procedure Act, I move that the BZA hold a closed
7 meeting via telephone conference on July 9th,
8 2012 -- 4:00 o'clock -- 4:00 p.m. for the
9 purpose of seeking legal advice from our Counsel
10 and deliberating upon the following cases
11 scheduled to come before us: Case 18407, Case
12 18064, Case 18330, Case 18272.

13 Is there a second?

14 MEMBER HINKLE: I'll second.

15 CHAIRPERSON JORDAN: Motion made
16 and seconded.

17 Mr. Secretary, would you please take
18 a roll call vote?

19 MR. MOY: Yes. When I call your
20 name, if you could reply with a yes or no --
21 yea or nay.

22 Chairman Hood?

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1 ZC CHAIRMAN HOOD: Yes.

2 MR. MOY: Vice-Chairperson Sorg?

3 VICE-CHAIRPERSON SORG: Yes.

4 MR. MOY: Chairman Jordan?

5 CHAIRPERSON JORDAN: Yea.

6 MR. MOY: Mr. Hinkle?

7 MEMBER HINKLE: Yes.

8 MR. MOY: And Ms. MacMurray is not
9 present, not participating in this roll call
10 vote.

11 CHAIRPERSON JORDAN: And so the
12 motion passes?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON JORDAN: Since the
15 motion is passed, I hereby give notice that the
16 BZA will hold aforementioned closed meeting via
17 telephone conference pursuant to Section 406
18 of the District of Columbia Administrative
19 Procedure Act.

20 Notices also will be posted in the
21 Office of Zoning electronic reading room, placed
22 in the Office of Zoning's electronic calendar

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1 and its website and published in the *District*
2 *of Columbia Register* in as timely manner as
3 practicable.

4 Thank you.

5 If there's no other business coming
6 before the Board, then we would stand adjourned,
7 or be adjourned.

8 (Whereupon, at 1:50 p.m., the
9 hearing was adjourned.)
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