

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 24, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER, Chairperson
NICOLE SORG, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member (AOC)
OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN
ARTHUR JACKSON

The transcript constitutes the
minutes from the Public Hearing held on
January 24, 2012.

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

9:33 a.m.

CHAIRPERSON MOLDENHAUER: This hearing will please come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Hearing Room located at 441 4th Street, N.W. This is January 24, 2012, public meeting of the Board of Zoning Adjustments for the District of Columbia.

My name is Meridith Moldenhauer, Chairperson. Joining me today to my right is Jeffrey Hinkle, representative of the National Capital Planning Commission. To my left is Vice Chairperson Nicole Sorg, mayoral appointee. To her left is representative of the Zoning Commission Michael Turnbull.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be advised this proceeding is being recorded by a court reporter and is also being webcast live.

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Accordingly, I must ask you to refrain from any disturbing noise or actions in the hearing room.

When presenting information to the Board, please turn on your microphone first stating your name and home address. When you are finished speaking, please turn off your microphone so your microphone is no longer picking up any sounds or background noise.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These witness cards are located to my left on the table near the door and on the witness tables in front of you.

Upon coming forward to speak to the Board, please give both witness cards to the court reporter sitting to my right. Also, if you wish to file any additional written testimony or additional supporting documentation today, please submit an original along with 12 copies to the secretary for

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If you do not have the number of requisite copies, you can go across the hall to the Office of Zoning and make those requisite copies on the machine across the hall.

The order of procedures for special exceptions and variances is as follows: (1) Statement of the applicant and the applicant's witnesses; (2) Parties and persons in support; (3) Parties and persons in opposition; (4) Reports of the ANC; (5) Government reports; and (6) Rebuttal and closing statement for the applicant.

Pursuant to Section 3117.4 and 3117.5, the following time constraints will be maintained: The applicant, appellant, persons and parties, except an ANC in support, will be given 60 minutes collectively.

The appellees, persons and parties, except an ANC in opposition, will be given 60 minutes collectively. Individuals

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will be given three minutes and organizations will be given five. These time restrictions do not include cross examination or questions from the Board.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party to a special exception or variance case.

Nothing prohibits the Board from placing reasonable restrictions on cross examination, including time limits and limitations on the scope of cross examination. The record will be closed at the conclusion of each case, except for any material specifically requested by the Board.

The Board and the staff will specify at the end of the hearing exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning. After the record is closed no other information will be accepted by the Board.

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The District of Columbia's Administrative Procedures Act requires that a public hearing on each case be held in the open before the public.

Pursuant to Section 405(b) and 406 of the Act, the Board may, consistent with its rules and regulations of the Act, enter into a closed meeting on a case for purposes of seeking legal counsel on a case pursuant to D.C. Code Section 2-575(b)(4), and/or deliberating on a case pursuant to D.C. Code Section 2-575(b)(13), but only after providing the necessary public notice and in the case of an emergency closed meeting taking a roll call vote.

The decision of the Board in these contested cases must be based exclusively on the record. To avoid any appearance to the contrary, the Board ask individuals not to engage members of the Board in conversation.

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

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these proceedings.

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

If you're not prepared to go forward with a case today, or if you believe that the Board should not proceed, now is the time to raise such a matter.

Mr. Secretary, do we have any preliminary matters?

MR. MOY: Madam Chair, we do have for the morning session a preliminary matter attended to Case No. 18286 of Donna Gedeon.

CHAIRPERSON MOLDENHAUER: Okay. Do we want to address that now?

MR. MOY: I think that would be appropriate if that's what the Board would desire to do.

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CHAIRPERSON MOLDENHAUER: I think we'll go ahead and do that.

MR. MOY: Should I take the oath first?

CHAIRPERSON MOLDENHAUER: I'm sorry.

All individuals wishing to testify, please rise and the oath will be administered.

MR. MOY: Do you solemnly swear or affirm that the testimony you are about to present in this proceeding is the truth, the whole truth, and nothing but the truth?

WITNESSES: I do.

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

With that, Madam Chair, good morning to you.

CHAIRPERSON MOLDENHAUER: Good morning.

MR. MOY: And members of the Board. That would be Application No. 18286,

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the application of Donna Gedeon pursuant to 11 DCMR 3103.2.

This is for a variance from the -- as advertised for a variance from the use provisions to allow a catering and meal delivery establishment in the basement and a portion of the first floor under Subsection 201.1, in the R-1-B District at premises 1204 Ingraham Street, N.W. located in Square 2930, Lot 74.

CHAIRPERSON MOLDENHAUER: Is the applicant present?

MR. MOY: Madam Chair, apparently not but my understanding is that she was going to be here this morning. I would suggest that we just move on.

CHAIRPERSON MOLDENHAUER: Was there a request for postponement orally?

MR. MOY: Yes, yes there was. I'm sorry.

CHAIRPERSON MOLDENHAUER: We have a letter. I'm sorry.

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MR. MOY: Yes.

CHAIRPERSON MOLDENHAUER: Why don't we just address the letter then. Our Exhibit No. 29 said that there was a request for postponement to May 8th. Why don't we just go ahead and grant that. Is May 8th available? I think it is available on our calendar.

MR. MOY: Both the morning and afternoon sessions are open.

CHAIRPERSON MOLDENHAUER: I understood there may be some individuals in the audience potentially here for the case but if we have a request for postponement, I think there is no issue in regards to potentially postponing it since obviously it's not going to prejudice any parties to potentially wait and provide the applicant additional time to work with the neighbors.

If there are individuals in the audience, I'll just make sure. You can just

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nod to indicate if May 8th is available for you. Is there any specific conflict for May 8th?

Okay. You can't testify off the record. If there is an issue, can you please come forward and state your name.

Ms. Gedeon, if you can just state your name for the record. You're not actually on the record. You need to put the --

MS. GEDEON: Donna Gedeon.

CHAIRPERSON MOLDENHAUER: Okay. Ms. Gedeon, we're addressing your request by letter dated January 23rd for postponement to May 8th.

MS. GEDEON: Correct.

CHAIRPERSON MOLDENHAUER: Okay.

Sir, if you could introduce yourself.

MR. BROOKS: Yes. Harold Brooks.

CHAIRPERSON MOLDENHAUER: Okay, Mr. Brooks. Your concern about postponement is?

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MR. BROOKS: The fact that we have -- in the neighbor it is inconvenient for us to meet at this time because people are working. Four people have come down for this hearing and we were not told about the postponement.

We would have appreciated time to know about the postponement. Then we need to find out whether people can make it on May 8th. That is a ways away. It is inconvenient for us as a neighborhood to face a postponement at the last moment.

CHAIRPERSON MOLDENHAUER: All right. I understand the challenge but I think at the time since it's so far away, you have an opportunity to make sure that it works for maybe not all of you but hopefully a majority of you. If someone can't attend on May 8th, I think there is enough time.

We are just now in January. It will give you enough time to potentially coordinate. Either have letters from other

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individuals. Maybe have somebody representing someone that can't attend. I think also right now it's not going to hurt the neighborhood since obviously we are holding off.

It's not as though the applicant is moving forward with anything. She's obviously not permitted to do anything but resident in the home until the time that she comes back and we have a full hearing on this.

I don't see any prejudice in this so I think we are going to grant postponement.

We will grant the postponement. We'll just hope that obviously between the next many months that is between now and May that it provides an opportunity for the community and Ms. Gedeon to have more conversations.

Maybe Ms. Gedeon obviously to put together a more full record of her request and that will obviously allow the neighbors if you are in opposition -- your opposition is still maintained to then potentially have an opportunity to have gathered your thought and

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collectively have presented material that is in opposition to whatever she presents.

If you don't get information between now and May, you have the opportunity to go either online to the Office of Zoning or physically come into the office and obtain records of everything that's been filed in the case. That way you can also stay abreast of what's going on.

MR. BROOKS: Well, we do have a letter from the ANC opposing the change of this.

CHAIRPERSON MOLDENHAUER: We have all the information. We do know that. What we are going to do, though, is we are going to postpone this to May 8th and that will hopefully allow some time, as I said, for the community to work together and to see whether there is an opportunity to reconcile. If there's not, then we'll come back on May 8th and we'll hash it out then.

MR. BROOKS: All right. Now, if

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we do come back on May 8th, can we have this in the afternoon after 5:00?

CHAIRPERSON MOLDENHAUER: We cannot schedule that. We have either 9:30 a.m. schedules or 1:00 schedules. We can put you at the very end of the day but I don't know if the end of the day is going to be 3:00 or the end of the day is going to be 7:00.

It all depends on the calendar and we can't predict that. If you would rather have it in the afternoon, we can do it in the afternoon being the last case of the day but then that also would require people to monitor the calendar online and to attend and be here in a timely fashion.

MR. BROOKS: Well, before you give us a time, give us time to confer with one another to see what is the best time for us to come together.

CHAIRPERSON MOLDENHAUER: What I'll do is we're going to postpone this to May 8th. I will let you speak with everybody if

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you have a morning or afternoon preference. Let Mr. Moy know and he will then put it either on the morning or the afternoon calendar for May 8th.

MR. BROOKS: Thank you.

CHAIRPERSON MOLDENHAUER: Okay.

Thank you. Thank you very much.

Before we get started with our first case for today, I'm just going to address just preliminary matters we have.

As the Chairperson of the BZA for the District of Columbia in accordance with Section 405(b)(4) of the District of Columbia Administrative Procedures Act, I move the BZA hold a closed meeting via telephone conference on Monday, February 6, 2012, for the purposes of seeking legal counsel, advice from our counsel, on the following cases scheduled for upcoming decision: Cases 18303, 18331, 18002, 18147, 18291, 18294, 18296, and 18297.

Is there a second?

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VICE CHAIR SORG: Second.

CHAIRPERSON MOLDENHAUER: There is a second. Will the Secretary please take a roll call vote on the motion.

MR. MOY: Yes. When I read the member's name if you can respond with yay, nay, yes, or no.

Mr. Turnbull.

MEMBER TURNBULL: Yay.

MR. MOY: Ms. Sorg.

VICE CHAIR SORG: Yay.

MR. MOY: Ms. Moldenhauer.

CHAIRPERSON MOLDENHAUER: Yay.

MR. MOY: Mr. Hinkle.

MEMBER HINKLE: Yay.

MR. MOY: Of course, we have Mr. Jordan not present today. That would give a vote of four to zero to one. The motion carries, Madam Chair.

CHAIRPERSON MOLDENHAUER: As it appears the motion has passed, I hereby give notice that the BZA will hold this

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aforementioned closed meeting via telephone conference pursuant to Section 406 of the District of Columbia's Administrative Procedures Act.

Notice will also be posted at the Office of Zoning's electronic reading room, placed on the Office of Zoning's electronic calendar on its website, and published in the District of Columbia Register as timely as practical.

That being said, I now move on and as Chairperson of the Board of Zoning Adjustment for the District of Columbia in accordance with Section 407 of the District of Columbia's Administrative Procedures Act, I move that the BZA hold a closed meeting on Tuesday, February 7, 2012, from 9:00 to 12:00 noon for purposes of conducting an internal training program pursuant to D.C. Code 2-575(b)(12). Is there a second?

VICE CHAIR SORG: Second.

CHAIRPERSON MOLDENHAUER: Will the

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Secretary please take a roll call vote on the motion before us now that it has been seconded.

MR. MOY: Yes, Madam Chair.

If members could respond with yay or nay.

Mr. Turnbull.

MEMBER TURNBULL: Yay.

MR. MOY: Ms. Sorg.

VICE CHAIR SORG: Yay.

MR. MOY: Ms. Moldenhauer.

CHAIRPERSON MOLDENHAUER: Yay.

MR. MOY: Mr. Hinkle.

MEMBER HINKLE: Yay.

MR. MOY: Of course, we have Mr. Jordan not present today so that would give a final vote of four to zero to one. The motion carries, Madam Chair.

CHAIRPERSON MOLDENHAUER: As it appears the motion has passed, I hereby give notice that the BZA will hold a closed meeting in the Jerrily R. Kress Memorial Hearing Room

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in the Office of Zoning's conference room to conduct an internal training on Tuesday, February 7, 2012 from 9:00 a.m. to 12:00 noon.

Notice will also be posted at the Office of Zoning's electronic reading room, placed on the Office of Zoning's electronic calendar on its website, and published in the District of Columbia Register as timely as practical.

Thank you. At this point in time I will move on to our calendar. We are going to change things up a bit in regard to the order. The next case that we'll call is the Bricklayers case, Mr. Secretary.

MR. MOY: Again, good morning, Madam Chairperson and members of the Board, this will be Application No. 18271, the application of Bricklayers Masons Helpers Building Union.

As advertised, the application reads as follows. Pursuant to 11 DCMR 3103.2 and 3104.1, for a variance from the rear yard

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requirements under Section 774, a variance from the side yard requirements under Subsection 775.5, variance from the closed court width and area requirements under Section 776, and a special exception for a reduction in the number of required parking spaces under Subsection 2108.1.

To permit additions to an existing building for use as a business trade school (128 students and 8 staff), in the FT/C-3-A District at premises 5332 1st Place, N.E. Property is located in Square 3071, Lots 82 and 83.

As the Board will recall, this application was postponed from an earlier public hearing session in November of 2011. At that time the applicant amended his -- the applicant had amended the application to seek other relief and staff would suggest that the Board clarify the relief that the applicant is seeking. Plans are identified in the records under Exhibit No. 10.

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That's completes the staff's preview, Madam Chair.

CHAIRPERSON MOLDENHAUER: Good morning. If the applicants can please introduce themselves.

I don't know if you are actually on the mic.

MS. BETHEL: Good morning. My name is Pam Bethel. I am the representative for the local 657. To my immediate left I have Mr. Warrick. To Mr. Warrick's left I have Mr. Rob Hofmann who serves as the architect of this project.

We have one additional witness to identify but not here yet and that's Mr. Toye Bello who served as a consultant to us in terms of the technical zoning issues. I want to extend --

CHAIRPERSON MOLDENHAUER: Before we get started there is a whole bunch of preliminary questions I have that are important for us to address before we can jump

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into the meat of the case. One of the issues is the parking relief that is being requested and we need to clarify.

There is some conflicting information in both the record and in the Office of Planning report. The applicant, Ms. Bethel, you, on behalf of the applicant, had indicated multiple times in your submission that there is no actual required parking because of a grandfathering of spaces based on the prior use.

MS. BETHEL: Yes.

CHAIRPERSON MOLDENHAUER: However, Office of Planning, and the ZA from my understanding, disagree with that statement and specifically indicated there are 19 spaces required based on the current use of the property and past uses of the property. Do you agree with the fact that your property is not grandfathered and there is a need for the 19 spaces?

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MS. BETHEL: No, we don't agree but, nevertheless, the Office of Planning has agreed to support a request for special exemption and we believe that we carry our burden of proof --

CHAIRPERSON MOLDENHAUER: That is a secondary issue. We need to address this one step at a time. If you don't agree with that, then I need actual evidence as to how the property is grandfathered, what was prior use was.

If you agree with them and you are going to just maybe disagree factually but then concede, if you concede we move forward then on the fact that there are the 19 spaces required. Office of Planning does not agree with you that it's a special exception.

They are indicating that you are going beyond the 25 percent reduction in spaces that would permit a special exception off site and, thus, would require a variance from my reading of the record.

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MS. BETHEL: Well, that is different than my understanding. My understanding --

CHAIRPERSON MOLDENHAUER: But you are asking for more than 25 percent reduction?

MS. BETHEL: My understanding is that the office was going to support our request for special exemption with respect to the parking spaces.

CHAIRPERSON MOLDENHAUER: Do you understand what I'm saying? You can obtain a special exception for parking relief offsite if you are reducing the parking requirement above 25 percent. Right now you're indicating that there's 19 spaces required and you are looking for an 11-space relief which is above 25 percent.

That would then change your required relief from a special exception relief to a variance relief. You still potentially have the opportunity to argue for off site relief but that --

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MR. BROOKS: Madam Chair.

CHAIRPERSON MOLDENHAUER: Maybe OP can chime in and provide us with some additional comments.

MR. JACKSON: Good morning. My name is Arthur Jackson of the D.C. Office of Planning. I should apologize to the Board but we did receive a copy of the applicant's submittal and we are supportive of a number of the points she puts forward.

We did not think there was sufficient time to put in a supplemental, but we are available to address a lot of the issues that are raised by the applicant's submission because since we address most of the issues we had mentioned, and we are satisfied with the responses on most of them, I can go through those point by point to establish what they presented and what we were accepting.

There will be some relief but a lot of relief has been significantly reduced

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on the Office of Planning report. It's just a time factor. We couldn't get a formal report submitted and revised in time but I do have a point-by-point discussion that I can go through to address what has been presented by the applicant, what we're agreeing to, and what we are agreeing to disagree about.

CHAIRPERSON MOLDENHAUER: I think that because -- I mean, right now to get into that and if OP does disagree with certain facts and the case right now is not clear to us in regards to what relief is being sought, I think the Board would prefer maybe to provide some time to allow you to provide that in writing or as a supplemental report to us so the Board can clearly understand maybe where there are some conflicting issues.

I think it would also help the applicant to have it in writing because that way maybe they can specifically address them in writing as well.

One of the other issues that OAG

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was mentioning to me, if the applicant -- this is a ZA referral letter. If the applicant disagrees with the requirement in regards to the parking requirement, then you actually have to appeal the ZA determination and challenge that.

If this is a ZA referral case and is not a self-certified case, that would be how you would have to pursue. You can't simply come before the Board and argue that while you have the ZA referral letter that the ZA referral is inaccurate.

MS. BETHEL: We thought -- we've met with the Office of Planning, and we made accommodations and changes to the application and we thought we had reached an accord. Our position was, I guess, a plan B fallback position.

CHAIRPERSON MOLDENHAUER: We don't know any of that. I think that is one of the issues right now. Our file is not as clear. We don't know really where OP stands. OP is

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indicating that they are agreeing with you on something but they are still not agreeing with you on others.

Right now we don't know where that is. For the Board to have, I think, a productive hearing, we need to have a clear understanding of what relief is being sought.

If you're going to not argue the grandfathering of the parking spaces and go straight for the relief, we need to understand that as well in a clearer fashion. I think there are some additional comments the Board members have maybe in regards to other areas that the application may need to be supplemented on.

MS. BETHEL: May I speak for a moment?

CHAIRPERSON MOLDENHAUER: Yes.

MS. BETHEL: The application as amended or revised does not address the grandfathering. I guess our discussions with Mr. Jackson have been very good, very

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collegial, so we have just said we disagree.

We believed, however, we were entitled to special exception consideration. We believe that in our application of January 9th that we had articulated the basis and support for that.

CHAIRPERSON MOLDENHAUER: In your application on January 9th I see two spaces on page 2, section paragraph, and also on page 3, paragraph under Subsection 1 you specifically talk about the fact that you are not subject to any required parking.

It is confusing in that you're saying that you weren't required to but that you were going to seek this relief anyway. We just need to clarify those issues. I would also like to have some clarification from OP on the issue of the Port Taunton District Overlay.

I think that is an area where I have questions as to the applicant satisfying that standard. I think that would be helpful

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to actually have that in writing and have a supplemental report addressing that as well.

MR. JACKSON: Madam Chair.

CHAIRPERSON MOLDENHAUER: Yes.

MR. JACKSON: Okay. Just for clarification, are you saying that if the applicant -- the OP report has suggested that there were some different relief than was outlined by the Zoning Administrator's referral with the thought that the Board could decide whether that was correct or not.

It sounds as if, though, that if there is a variance from what the Zoning Administrator had recommended, the first thing the applicant would need to do if they agree with the OP preliminary review would be to appeal the Zoning Administrator --

CHAIRPERSON MOLDENHAUER: Or to go back to the ZA and ask for a supplement because it's not a self-certified application.

If it's a self-certified application, then the applicant could sit down right here in

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front of me and just simply say, "I want to modify my request."

MR. JACKSON: Okay.

CHAIRPERSON MOLDENHAUER: But right now since it's a ZA referral, the applicant has to work with the ZA and work with OP and make sure that there is a clear understanding of what relief is required and that might also be an opportunity for OP to have a conversation, for you to have a conversation with the ZA and make sure that everybody is on the same page before we formally go through the relief and review it.

MR. JACKSON: Okay. So the first step would be to confer with the ZA to see if they agree or disagree and really confirm what actual relief would be required for the project.

CHAIRPERSON MOLDENHAUER: Yes.

MR. JACKSON: Then the next step would be to get something from the ZA in writing in the file depicting where -- what

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the final determination is of the relief.

Then I guess the third step would be for the applicant and OP to provide additional information that responds to that referral even if -- it could be the case that the applicant's submission addresses that information based on the agreement but first we have to get that agreement and then come back to you with that information. Is that correct?

CHAIRPERSON MOLDENHAUER: Yes. One of the reasons why we're doing this, and this is my --

MS. BETHEL: I'm not sure I -- I apologize. I'm not sure I heard everything that Mr. Jackson said so if you could just repeat it so my notes can be complete.

CHAIRPERSON MOLDENHAUER: What he is indicating is that the first process is going to be to go back to the ZA and work with the ZA and OP to confirm what relief is exactly necessary.

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Have the ZA then essentially provide a revised ZA referral letter. I know that might be a sticky point for OAG but I think that we could probably have that. I think we've had it before in the past to provide a ZA referral letter if that's necessary.

Then based on the new relief that is clearly understood, work with OP and provide supplemental documentation to the Board articulating how one satisfies the relief that is now being needed. OP will provide a supplemental report.

The additional element I was going to point out is -- this is one of the reasons why I want to make sure we understand what relief is being needed is that there is a change in the relief and it's an increased standard for the relief such as it's no longer a special exception for the parking but it's a variance for the parking, then you need to renotice the community.

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That is the biggest issue right there. That is where -- what we'll do is we'll put this for a status hearing. We'll put this for a continued hearing. If there is a need to renotice the community, you may then need to work with the Office of Zoning to push this back so you have enough time to notice.

MS. BETHEL: I guess that's the single issue that is most confusing to the applicant because we thought that in the discussions and the revisions of our documents we only were requesting special exemption even if we didn't think that they had correctly calculated the numbers.

If we thought we had met our burden under the special exemptions, we thought that we were okay to proceed. You are absolutely correct, madam, if you're saying that the nature of the relief now falls in that of a variance. We argued our burden of proof on the requirements for special

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exception. I agree we'll have to go back and renotify -- repost the notices.

VICE CHAIR SORG: Can I jump in, Madam Chair, please?

Ms. Bethel, another point is -- number one, here is what I think the Chair is saying.

We have a letter from the ZA which was given to you. Unless the two agencies that are specialists in Planning and Zoning agree on what this is, you are going to be asking for the relief that is in our Exhibit 5. That's the first thing.

What the Chair is saying is that we want to get a clarification from the ZA. Are you asking for the relief that is in here or are you going to be asking for something else?

Secondly, the point I really wanted to make to you was the relief that you do agree on, let's go past the parking for a second, which is variance from the closed corridor, variance relief from side yard, so

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on and so forth. You have not addressed the variance test in your submissions in the way that is standardly done in these proceedings.

I think that a postponement here gives the opportunity to address views. OP, for example, in their original report which is our Exhibit 25 OP doesn't find that the variance relief from the open and closed court requirements is satisfied by you.

I think that this further postponement is something that gives you an opportunity to really address the three protests of the additional variances that you are also requesting and fill out this application in a way that is more organized and better understandable for the Board.

MS. BETHEL: Okay.

VICE CHAIR SORG: Don't get me wrong. I think it's a good use and I think we need to clean up the application.

MS. BETHEL: I apologize because my understanding was that we had acquired the

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requisite of, I guess you would say, meeting of the minds with District offices, the Office of Planning, and the Office of Zoning and we all agreed what was remaining of what the relief that the labor union needed was special exceptions and that was the way this document was prepared to address that. But if we're wrong, obviously we were incorrect.

VICE CHAIR SORG: It think as the Chair mentioned, if those are the conversations that you guys as the applicant are having with the Office of Planning, that's good but it's not, I think, yet reflected in the materials that we have.

MS. BETHEL: Okay.

VICE CHAIR SORG: Do you agree, Madam Chair?

CHAIRPERSON MOLDENHAUER: I agree. Why don't we do this. Why don't we put this on the calendar for the morning of February 14 which is --

MS. BETHEL: Which date, ma'am?

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CHAIRPERSON MOLDENHAUER: February 14, Valentine's Day. Mr. Turnbull is back on that date. There is an issue then about potential -- my phone. I know, awful. Sorry.

If there is an issue about notice, then you can simply provide us with a written submission that says that based on your discussions that you're going to ask us for an additional postponement in order to provide notice. If there is no notice, that's an earlier date and we can then at least jump in and there is not a lot of delay for the applicant in this case.

MS. BETHEL: We have a consultant who will be out of the country February 14th so I'm saying that's -- I can tell you now that is not a good date.

CHAIRPERSON MOLDENHAUER: Not a good date. Well, why don't we -- to have Mr. Turnbull back on the calendar we're looking pretty far out. Why don't we -- how about February 28th? February 28th in the

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afternoon.

MS. BETHEL: Madam Chair.

CHAIRPERSON MOLDENHAUER: First thing in the afternoon.

MS. BETHEL: Madam Chair.

CHAIRPERSON MOLDENHAUER: Yes.

MS. BETHEL: One of the persons who are part of our team is Mr. Toye Bello who was in another meeting this morning and he has asked me to ask you for permission to address the issues that are being discussed for a few minutes.

CHAIRPERSON MOLDENHAUER: We're not going to jump -- I think that we have pretty much provided some additional time to kind of jump in.

I think if you want to have any discussions, I think if you have them with OP but to jump in and try to -- we are going to postpone the case no matter what so I think the best thing to do is whatever discussions you have or potential additional information

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you may have on the facts, if you have them with OP or the ZA, I think that would be more productive at this point in time. Okay?

MR. BELLO: I appreciate that, Madam Chair. I apologize for being late. What I wanted to address is directed at the Board because, quite frankly --

CHAIRPERSON MOLDENHAUER: If it's a comment about trying to not postpone the case or postponing the case, at this point in time we are going to postpone the case until -- what did I say? -- February 28, first case in the afternoon.

MS. BETHEL: Thank you.

MS. GLAZER: Madam Chair, I don't know if this is redundant but I just want to make sure that the Board and the applicant are aware that an amendment must be sought and requested.

CHAIRPERSON MOLDENHAUER: By the ZA, yes.

MS. GLAZER: I don't know if the

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applicant is aware of the Board procedures. That is what needs to be done, not just filing of a revised prehearing statement as I think was done.

CHAIRPERSON MOLDENHAUER: What OAG is saying is if there are any changes from what OP is saying that the relief is needed versus the ZA, you actually have to get something from the ZA in order to do an amendment from the ZA's referral letter.

Is that correct? Am I clarifying?

MS. GLAZER: What I was saying is that the applicant needs to formally request an amendment of her application regardless of what the ZA does. The ZA may do nothing.

CHAIRPERSON MOLDENHAUER: It's a ZA referral case so the ZA is center here. It really can't -- it's not a self-certified application so it can't come from the applicant. It has to come from the ZA. If it's a self-certified application, then she could submit it herself or she could do it

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orally.

MS. GLAZER: It's still her application, though. As it stands, you are correct, she has to seek the relief that the ZA is referring. However, there is an issue about the parking relief.

CHAIRPERSON MOLDENHAUER: Okay.

MS. GLAZER: Just the procedural issue is that the application has to be amended if she is going to seek different relief.

CHAIRPERSON MOLDENHAUER: I think that is exactly what Ms. Sorg was just saying. It's in concern with the ZA so first obviously, as we indicated before, first priority of business would be to coordinate with the ZA and determine whether there is any change in relief from what the ZA was saying to what OP is saying. If there is, then in conjunction with the ZA's amended referral letter, you would then also need to submit an amendment to amend the request.

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MS. BETHEL: Depending on what they say.

CHAIRPERSON MOLDENHAUER: Depending upon what they say.

MS. BETHEL: I can't really say until I know --

CHAIRPERSON MOLDENHAUER: Until you -- that's why I say the first order of business is to work with the ZA and OP. Okay?

Thank you. This case is then postponed to -- what did we say? We said February 28th, first case for the afternoon on that day. Thank you.

MS. BETHEL: Thank you.

CHAIRPERSON MOLDENHAUER: The next case -- we are still kind of calling cases out of order today.

MR. MOY: Madam Chair, if I could interrupt for a moment. Staff just brought to my attention for the afternoon of the 28th the first case that we have is an application where the OZ is required to have a Spanish

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interpreter that is paid.

CHAIRPERSON MOLDENHAUER: Yes.

MR. MOY: I just conferred with Mr. Turnbull and he was fine if we held this application as the second case.

CHAIRPERSON MOLDENHAUER: It will be the second case but, obviously, we still start at 1:00.

MS. BETHEL: Okay. Thank you.

CHAIRPERSON MOLDENHAUER: Thank you.

Thank you very much, Mr. Moy, for letting the applicant and the parties know that. It will be the second case on the 28th.

As I say, we are calling cases a little out of order today. The next case we'll be calling is 1919 14th Street.

MR. MOY: That would be Application No. 18306. This is the application of 1919 14th Street, LLC, on behalf of 14th Street Properties, pursuant to 11 DCMR 3104.1 and 3103.2 for a variance for

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from the court requirements of Section 776.3; a variance from the off-street parking requirements of Section 2101.1; a variance from the compact space requirements of Section 2115.2; a variance from the off-street loading requirements of Section 2201.1; a special exception from the roof structure requirements pursuant to Section 411.11; and a special exception from the roof structure height limitation of Section 1902.1(a).

This is to allow the construction of a new residential building with ground floor retail and service uses in the ARTS/C-3-A District at premises 1905-1917 14th Street, N.W. Property located in Square 237, Lots 179, 194 & 195.

CHAIRPERSON MOLDENHAUER: What we'll do is I'll first introduce the parties and I believe we have some additional potential individuals. Are you standing up for this case? Okay. We'll call you in a moment.

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What we'll first do is we'll introduce the applicant and the applicant's witnesses.

MR. FREEMAN: Good morning, members of the Board. For the record, my name is Kyrus Freeman with the law firm of Holland & Knight. Seated to my immediate left is Mr. Chip Glasgow, also of the firm of Holland & Knight. We are here on behalf of the applicant.

Starting with my right, Mr. David Franco will be the witness on behalf of the applicant. Mr. Erwin Andres is a principal of Gorove/Slade. He will be our expert in transportation planning and analysis.

Mr. Moy is distributing a copy of his resume. I think you likely have it in the record but we would like to proffer him as an expert. To the far right is Mr. Eric Colbert with the architectural firm of Eric Colbert and Associates. We would also like to proffer him as an expert in architecture and design.

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You have his bio and he has also been accepted by the Board as an expert.

CHAIRPERSON MOLDENHAUER: Yes, Mr. Colbert was qualified as an expert, wow, back in '08. I'll just say that. Yes, numerous times we have recognized him as an expert and will continue.

We have individuals in the audience who are in opposition. Just so you understand what the process will be, we will allow the applicant to present their testimony and then at a certain point in time I'll ask is there any individuals either in support or in opposition.

You will then be able to come forward and provide your testimony at that point in time. The Board will then ask questions and have discussions with you at that point. We will get to you in the order of procedure. At this point in time I will turn to Mr. Freeman, Kyrus Freeman, to present the case.

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I don't know if you have to go through an in-depth issue. I don't know if you know what the parties in opposition are about but maybe kind of focus on some of those issues and that probably would be helpful. Actually what I'll do I'll open up the Board to any personal questions or comments. That way maybe you can focus your presentation.

MR. FREEMAN: Thank you, Madam Chair. I'll just --

CHAIRPERSON MOLDENHAUER: Board members are going to throw out some comments and provide some focus.

VICE CHAIR SORG: Just to indicate, Madam Chair, part of your implication is that it is a pretty full application, I agree, but if it were me, I would be interested to hear about the parking relief, which I think is pretty significant. And then particularly also the court would be two areas that I would want to hear about.

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Any Board members? Mr. Turnbull.

MEMBER TURNBULL: Yes. Thank you, Madam Chair. I would also like to have the applicant focus on the roof issues and would like a clear definition of the relief requested on that.

CHAIRPERSON MOLDENHAUER: Now back to you.

MR. FREEMAN: Thank you, Madam Chair, members of the Board. Again, Kyrus Freeman on behalf of the applicant. As you know, we are here seeking variance and special exception relief to permit the construction of a residential development.

Our architect will go through the project plans in more detail but just to focus on some of the points that you raised. Our prehearing statement outlines in detail how we meet all the areas of relief. To the extent that we don't cover any of that, and specifically today, that is in the record.

We worked extremely hard with the

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Historic Preservation Office to present a design today which we think is consistent with the historic character of the neighborhood.

As we go through our presentation, and Commissioner Turnbull will focus on this in a little more detail, but also in the record as Exhibit 30 our shadow studies which demonstrate that the portion of the proposed roof structure above 83.6 has not adverse impacts and doesn't cast any shadows beyond the edge of the building roof. That is in the record and we can talk in more detail about that.

You also know we have the support of the Office of Planning. We worked extremely hard with them and we are very appreciative of their support. In addition, in the record there is a report from the Department of Transportation in which they specifically state they request our loading relief.

On page three they indicate that

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they fully support the reduction in parking given that this is a transit oriented development. You will hear our traffic expert talk in more detail about the loading and parking relief.

Finally, as you will hear from Mr. Franco, we have worked extremely hard with the community in order to gain support for the project throughout an extensive project -- throughout an extensive process.

The record includes a resolution in support from ANC-1B which is marked as Exhibit 28; a letter of support from the U Street Neighborhood Association which is marked as Exhibit 27; and letters of support from multiple neighbors marked as Exhibits 33, 34, 35, and 36.

In conclusion, we think the record is very full. With that we will turn it over -- if the Board is okay with that, we will turn it over to Mr. Franco to talk on behalf of the applicant.

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MR. FRANCO: Good morning. First, I must apologize for my slight cough. If I do have a couple coughs, please excuse it.

Members of the Board, I'm David Franco with Level 2 Development. I would like to thank you for the opportunity to be here today to seek your approval for our requested variances and special exceptions for BZA Case 18306.

I would like to take a few moments to first tell you about the development team; second, the project's evolution through our work with the community and historic preservation office; and last to discuss the requested variance and special exceptions.

Level 2 Development has partnered with Keener-Squire Properties to development this 144 mixed-use development with the variance and special exceptions request before you today.

Level 2 Development is a local development firm based on 14th Street and is

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responsible for over 450 apartments and 50,000 square feet of new retail space in the 14th Street corridor.

Level 2's principals Jeff Plum and myself are native Washingtonians whose parents operated retail establishments on and around 14th Street as far back as the 1950s. Today that tradition is carried on by my own men's retail store Universal Gear on 14th Street just a few blocks away from the subject property.

14th Street has always been part of our lives and we are deeply committed to her revival. Our partners at Keener-Squire have been engaged in the acquisition, renovation, construction, and management of residential property in northwest Washington, D.C. for over a quarter of a century.

At present they own or manage more than 2,000 apartment units. Both firms are exceptionally noted for their work with tenant associations and have been credited for

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preventing displacement of hundreds of families throughout northwest D.C.

Our proposed development includes 144 units comprised of small studios and one bedroom units, over 5,000 square feet of pedestrian friendly neighborhood serving retail, and 34 onsite parking spaces.

The proposed development has been through an extensive community review which first started through the HPRB review and approval process.

During this process the development team worked with local residents, the U Street Neighborhood Association, the ANC-1B design review committee, and the ANC-1B to refine the design and massing ultimately leading to the support of the design and massing by the aforementioned groups and subsequent HPRB approval.

The necessity for the variances and special exceptions stem for the most part from the exceptional site conditions which

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impose significant development constraints and practical difficulties. Some of these constraints were revealed through the results of subsurface investigations conducted by Professional Services Industries.

These investigations revealed a high water table and poor soil conditions on site. The economic impact of these conditions on construction are approximately \$700,000 as calculated by Ellert Bryant Structural Engineers.

Additional economic impact would be sustained by the project with an additional \$1.5 million in construction cost to build parking that would not be utilized bringing the total economic impact to \$2.2 million.

The development team worked with the committee to address their concerns on the proposed variances and special exceptions. We have demonstrated the development constraints and practical difficulties posed without the requested variances and that there are no

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adverse impacts resulting from the special exceptions.

The development team held meetings with the residents of neighboring Wallach Place and T Street and presented proposed variances and special exceptions and received a vote of support at the U Street Neighbor Association, the ANC-1B Design Review Committee, and the ANC-1B.

The development team commissioned Gorove/Slade to perform a traffic impact study which revealed there are no adverse impacts caused by the development and the proposed parking and unloading variances. We addressed the neighborhoods most significant concern regarding the impact of the development and the parking variances on the neighborhood street parking.

We offered to restrict the parking and its residents from obtaining restrictive parking permits and residential zone parking permits thereby alleviating the potential for

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additional cars on the street caused by the development. If the variances are granted, the development team agrees to be restricted from applying for zone parking for the building.

Given the unit mix and small size of the units, the demand for onsite parking will be minimal as residents prefer alternative transit methods. A survey of our team's portfolio of over 2,000 units revealed a 14 percent parking lease rate among similar unit types and sizes.

Applied to this project we would see a lease rate of 20 parking spaces for 144 units. The project will also feature a significant onsite bicycle storage facility to promote bicycle ownership and usage and will employ transportation demand management measures and performance monitoring to ensure a continuous and appropriate response to traffic management.

The development team will continue to work with DDOT to address concerns of

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pedestrian and bicycle safety relating to the alley exit onto Wallach Place.

Regarding the loading variances, given the small sizes of the units, the proposed 24 feet and 30-foot berths are sufficient to serve the retail and residential units. Additionally, trucks larger than 30 feet do not have the turning radius to access the alley.

We will also employ a loading management plan to restrict 55-foot trucks from unloading curbside to the project. Regarding the variances for compact space requirements, the limitations of the structural elements of the garage would reduce the overall number of parking spaces in the garage permitting 44 percent of the spaces as compact rather than the allowable 40 percent enables more parking spaces in the garage.

Regarding the variances for court requirement, HPO recommended seeking variance for the requirement to step the building back

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slightly on the south end to reduce massing and provide better transition to the adjacent historic structure. The court requirement would pose significant negative impact on the units, retail space, and garage and would be inconsistent with the design and massing approved by the HPRB.

The special exceptions of the roof structure requirements and height limitations are necessary to accommodate handicap accessibility to the roof and to limit the maximum height necessary.

In our goal to minimize the impact of the massing, the top of the main roof is at 73 feet as opposed to the 75 feet that is allowed offsetting the additional height proposed for the penthouse. Moreover, shadow studies demonstrated that there is no adverse impact caused by the proposed special exceptions.

In closing, given the site conditions posed by the subsurface conditions,

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practical difficulties of development, and lack of negative impact from the proposed variances and special exceptions, and the support by the Office of Planning, DDOT, U Street Neighbor Association and ANC-1B, we respectfully ask for your vote in favor of our request. Thank you.

MR. FREEMAN: What we would like to do now is maybe turn to the architect so that he can walk you through the plans and then we'll come back and have our traffic expert talk specifically about parking.

MR. COLBERT: Good morning Madam Chairperson and members of the Board. My name is Eric Colbert with Eric Colbert and Associates Architects. One thing I would like to say is this has probably been one of the most rewarding projects I've ever worked on and that is because of the way that we have really been able to interact with the community.

From the very beginning we met

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with the folks that were most immediately impacted on Wallach Street. They had already formed a very strong organization based on other things that have been happening in the area. We were able after like several rounds with them and the Historic Preservation Review Board to get their unanimous approval with the U Street Neighborhood Association and the ANC.

Then also working with the Historic Preservation Review Board all were overwhelmingly ultimately favoring the project, but that required a very extensive back and forth process where, as my client testified, we did reduce the total FAR for the project below what is permitted. Also the height of the building to the main roof line is less than what is allowed.

Being in the Arts Overlay District 50 percent of our ground floor will be for the preferred uses required by the Arts Overlay. Just to go over briefly some of the zoning issues that we talked about, the first

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document A1 is our garage level.

There are several items that have come together that make it very difficult for us to provide more than one level of parking and those relate to issues concerning ground water and the soils that are in this area. Also the fact that we have underpinning for two historic structures that abut our property so going down an additional level would be extremely costly.

Also as the traffic folks and Department of Transportation have already stated, also based on the other dwelling units that my client group has in the area which is pretty significant, the additional parking will not be required.

As David mentioned, we will be slightly over the 40 percent permitted compact spaces. We are asking to go to 44 percent. Then, in addition to that, we will not have the -- we are requesting relief from the 55-foot truck that is required for any apartment

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building that has more than 50 units.

Again, the neighborhood supports this because, first of all, based on turning diagrams, and the traffic consultant can get more involved in that, but it really isn't feasible for a 55-foot truck to enter that alley and park in the building in any case.

Also, given the small size of the units that we are providing, the people that will be coming here will not require a 55-foot truck but one approximately half that size in order to be able to accommodate our unit size with their possessions.

The other thing that we worked a lot with is we have a system of one-way streets so we have studied very carefully how the truck will come off T, back into the space, and then go back out with a minimum disruption to the residential alleys.

One of the other issues had to do with a court. I think one of the best ways to express that is to actually go to Wallach, the

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front 14th Street elevation shown on sheet No.

9. The historic staff guided us very carefully in the development of the facade design.

As you can see, we have a kind of balance that we've achieved around the front entrance to the building. The way it is set back you can see that on the south side there is a setback that is similar to the one on the north side.

In order to reduce the apparent height of the building, we've achieved using some techniques architecturally where we have this strong cornice line at the top of the sixth floor. Then the 7th floor is being set back and that is another thing that was a significant change from one of our first designs where the 7th floor did not have that recess.

But also with that strong cornice line and given the setback, it also seemed natural to have the setbacks on either the

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north and south side. That is where the court comes in because this setback on the south side does not achieve the 15-foot requirement for an open court in a residential building.

Instead of doing that arbitrarily, we felt that it would be appropriate to come and ask for that slight modification so the building could have the required balance as you go up.

This is not related to relief but I also wanted to point out based on a reduced FAR had to do with the fact that we were achieving these smaller building elements as you go across 14th Street and then turn a corner onto Wallach. We started the setbacks there, the more significant one, to capture kind of the scale of the smaller buildings that exist in the historic district.

The next area of relief has to do with the penthouse height. The most significant element of this, even though the main part of our penthouse will be under the

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83.5-foot restriction for the Arts Overlay, we are asking for an increase up to approximately a little over 90 feet only for the elevator override.

The reason for that is it is the only way that we are going to be able to achieve handicap accessibility for the roof deck recreation area and the associated support spaces that will be located on the roof.

Again, we worked with the community to locate the recreation areas on the roof outside so they will have minimal impact on the Wallach residents. We minimized the amount of area just over the elevator that has to exceed that height limit.

Also as part of doing that you can see that we end up with a penthouse that has more than one height. That is another special exception that we are asking for.

In order to reduce the overall bulk of the penthouse, it adds another area of

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relief so that we can have a stepping-down effect that is kind of mirrored as part of a design motif that also occurs in different parts of the building.

That is kind of a summary of what we are asking for. Thank you.

MR. ANDRES: Good morning Chairwoman Moldenhauer, members of the Board.

My name is Erwin Andres. I'm a principal for Gorove/Slade Associates. As part of our engagement in this project, we have been responsible for identifying and evaluating traffic and parking impacts related to the development.

What we have also done is worked with the planning and development team in our coordination with both the Office of Planning and District Department of Transportation.

The critical elements of the project impact relate to both the traffic generated by the site and the parking needs for the site.

Given that the site is heavily

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entrenched in a very transit-friendly neighborhood, there are approximately 13 bus lines, one express bus line, and eventual streetcar line, and a metro stop within two blocks of the site. We believe that there's extensive options for future residents of the site that we can take advantage of.

With respect to other alternative modes, there are seven zip car sites, two Capital Bike share stations, and a walk score of 94 which is significantly high in that there are many retail uses and mix of uses in the neighborhood that would incentivize people to either not have a car or, if they do have a car, be able to access a lot of the goods and services by foot.

With that, and the fact that we are providing more than 60 bike parking spaces on site, we believe that the number of parking spaces are sufficient to serve the eventual demand for parking related to the development.

What we have also done is we've

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benchmarked the number of spaces provided for the development with other similar type residential products in and around neighborhoods. We have outlined in detail that in our traffic study dated December 15, 2011.

We have made those comparisons and those comparisons confirm that the number of spaces provided per unit for the proposed development is in keeping with what's provided in and around the other neighborhoods and residential units near the project site.

With respect to the loading variance, what is currently required is 155-foot loading bay, one 20-foot loading bay, and a 200-square-foot platform. What we're proposing as part of the project is a 30-foot loading bay, a 24-foot loading bay, and a 200-square-foot platform.

In essence, what we're doing is we are not complying with the 55-foot loading bay requirement. However, as my colleagues before

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me have pointed out, the 55-foot trucks can't physically get to the loading dock even if we did provide the loading bay.

But I think what is more important is the proposed development won't require a 55-foot truck loading bay for two reasons. One, the size of the units. There is going to be a mix of smaller units. Essentially they won't require large loading deliveries related to the residential.

Then the other component is that there is only 6,000 square feet of retail which in the whole scheme of mixed-use developments it's a very small amount of retail. We don't believe that a large or 55-foot loading bay is required as part of the demand component for the mixed-use product.

Given that, in conclusion we believe that the project provides enough parking to serve the demands of the residents without impinging on the parking provided in the neighborhood and that the loading

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requirements are adequate.

That has also been confirmed by the District Department of Transportation's letter that also stipulates the transportation demand management measures that we are complying with as well. Thank you.

MR. FREEMAN: That concludes our direct presentation. I would just like to note that Erwin just summarized his traffic impact study which is included in detail in the record. We filed that on January 10th.

Also, with our submission on January 13 are the truck turn diagrams that show what he just described. We are prepared to answer any questions that the Board might have.

VICE CHAIR SORG: Thank you, Mr. Freeman. We did receive both of those documents. I think our Chair had to run out to a prior engagement but we have a quorum, of course, and can still continue with the hearing.

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Do Board members have questions for the applicant?

MEMBER TURNBULL: I can start us off. I guess I have a question on A2, the truck layout. You show the loading dock recessed in under the building and the trucks are in kind of a skewed angle area. Do you see them not pulling up to the loading dock at all or is this trying to accommodate two trucks at once? It looks kind of tight.

MR. COLBERT: Yes. The reason for the angle is that T Street is one way going east and Wallach is one way going west so trucks would come in from 14th Street going east on T Street and they would turn left into the alley, move up here and then back into these loading areas.

It does look tight here but there is a little more -- we're showing the space being 12-feet wide. Actually, the truck is probably more like seven-feet wide. This is not really the truck. It's kind of a space

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that is allocated for the truck.

MEMBER TURNBULL: Okay.

MR. ANDRES: To answer your question, Mr. Turnbull, yes, the reason for the skew of the loading bays is to allow for one truck to be in either or both of those spaces and still be able to maneuver in and out effectively.

MEMBER TURNBULL: So they never really pull up to the loading platform?

MR. COLBERT: In this case, which is similar to most of the things we do, there is not actually a raised -- the platform includes this entire area and, you know, that would be true. This is a trash room so that would be a lot of what the traffic would be and they would roll the containers out to the truck.

MEMBER TURNBULL: Okay.

MR. FRANCO: I would also like to point out that large consideration was paid to in designing where the loading dock is and how

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it is laid out and the angle to disincentivize trucks from pulling in from 13th Street down to Wallach Place in response to some of the neighbors concerns about vehicular, particularly truck, traffic down Wallach Place.

We, again, oriented the loading bays so that people would pull in from 14th Street, the more heavily trafficked area, onto T Street, take a left turn onto the alley, and then pull out from the alley onto Wallach Place which is beyond the residential area. The residential area is east of the alley. As they turn left there is a stop sign and they pull out onto 14th Street.

MEMBER TURNBULL: Okay. I guess my next question relates to this which is not really a zoning issue but it's kind of a building code issue. I mean, that is not our purview but I'm just curious. You have a lot of exits going through the loading dock.

You have a connected stair coming

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up from the garage and exiting through a loading -- I'm thinking it's kind of a hazardous area going through a loading dock.

I'm just curious how much exiting is going through there. I mean, that's just for you guys to figure out when you go and get a building permit. I'm just throwing that out.

Can we talk about the roof?

VICE CHAIR SORG: Mr. Turnbull, I don't mean to interrupt but I have a piggyback question on the loading and then you want to go to the roof?

MEMBER TURNBULL: Sure. Go ahead.

VICE CHAIR SORG: Just on the loading, I mean, I know that the property is currently used as a post office so, you know, what are the sort of dimensions and how does the use currently work with the trucks there?

Do they have 55-foot trucks or do they use 30-foot trucks? Are they coming into the alley? Just based on understanding the

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dimensions of the recently submitted diagrams.

MR. FRANCO: I don't know what the dimensions of the trucks are but I could tell you I personally, along with John Cardon, my project manager, we rented a 30-foot truck and we went on site from 14th Street to pull into the alley and we barely made it into the alley with a 30-foot truck.

Exiting the alley we actually had to go across -- with the 30-foot truck we had to go across to U Street. We just could not make the turn onto Wallach Place. I suspect that the post office does not utilize trucks over 30 feet because, as I mentioned, it's physically impossible to get the truck in there.

VICE CHAIR SORG: Okay. That's a good story.

Back to you, Mr. Turnbull.

MEMBER TURNBULL: Thank you.

MEMBER HINKLE: Madam Chair,
before you go --

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VICE CHAIR SORG: I'm sorry.

MEMBER HINKLE: Vice Chair, I should say. Regarding the 55-foot trucks, I think I heard there is discussion about restricting the use of the curb slide. I'm just wondering how that works. If I were to show up moving in having come across country, typically they use the larger trucks, how would that be restricted?

MR. FRANCO: It would be restricted when we have a prospect that is leasing a unit in the building and they chose to move forward and execute leases, we would let them know that there are restrictions on the type of truck that could access the property.

MEMBER HINKLE: Thank you.

MEMBER TURNBULL: Going onto the roof here, the setback at the stairs from the roof edge is how much?

MR. COLBERT: The one on the north side is setback 7'10" and it's 7'10" high.

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MEMBER TURNBULL: And you're saying the roof there is 7'10"?

MR. COLBERT: Yes. You're only required to have 6'8" clear and a stairway so that would have a low ceiling.

MEMBER TURNBULL: I just want to make sure that we get the one-to-one setback. I just saw that. I saw your note on your drawing that says roof over stair 7'10" and I just wanted to verify that, indeed, it was 7'10".

MR. COLBERT: Right.

MEMBER TURNBULL: Why do you need such a -- I'm just curious on the height of the override for the elevator. You need to go up that high for the override?

MR. COLBERT: Yes. It's because we need to have the elevators go up to this level because of handicap accessibility. We've looked at a lot of different elevators. Almost the minimum requirement from the top floor to the top of the roof of the elevator

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penthouse I think was about 15 feet. That is what it ended up being.

Part of it is it's not just a kind of a cab but also for safety reasons there is always the possibility that someone is on top of the cab, that they are working up there.

The D.C. Code requires that you have this override space so that if the elevator did raise up while someone was up there working that they wouldn't get smashed between the roof and the top of the elevator cab. Plus, you know, the equipment needs to be above the elevator, too. Thank you.

MEMBER TURNBULL: And the equipment that you're showing on your roof plan is 13'6". The top of that is 13'6". I that right?

MR. COLBERT: That is sitting on the roof that is a little under 83.5 feet high.

MEMBER TURNBULL: Going onto your elevation on A8, it sort of shows that it's

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13'6" to the top of that equipment. Is that correct?

MR. COLBERT: Well, yes. There's a --

MEMBER TURNBULL: Am I reading that right?

MR. COLBERT: There's a little screen wall that obscures it from view that's 13'6" off the main roof.

MEMBER TURNBULL: And then the next bump up is the elevator -- is the remainder of the elevator penthouse?

MR. COLBERT: That's right.

MEMBER TURNBULL: On the penthouse plan -- you have two penthouses. On the penthouse plan the other stair -- well, the stair at the very end. You can see it on that one. The stair going down, what does that serve?

MR. COLBERT: This?

MEMBER TURNBULL: Yes.

MR. COLBERT: Outside stairs to

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allow a service person access to this roof for maintenance purposes only.

MEMBER TURNBULL: Oh, okay.

MR. COLBERT: People will not be going up there except during maintenance.

MEMBER TURNBULL: Okay. Can you talk a little bit about the retail that is going to be going in on the ground floor?

MR. COLBERT: In the Arts Overlay there is a requirement that 50 percent of the ground floor be occupied by preferred uses so we have two tenant spaces; one on the south side which is a little bit smaller, and then a larger one in the corner.

Then in the middle is our residential lobby. Then we actually have three apartments -- I'm sorry, four apartments on the ground floor that will face the east side of the building.

MEMBER TURNBULL: Maybe for the record talk about the preferred uses and how you satisfy that, what steps you have to go

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through to comply with that.

MR. FRANCO: Well, there's a long list of uses that fall under the arts in very early stages of looking at those uses. We just started the interview process with several commercial real estate brokers and had our first meeting with two of those prospects last week.

In the coming weeks we will continue to flush that out. I really can't speak further about the arts use but in terms of the commercial retail use we would be looking for, we would like a soft good type user retail use which we feel we need to bring more of those types of users onto 14th Street.

There are a lot of restaurants. Our choice is not to have a restaurant on the premises but apparel store, home goods store, something that would complement the other uses on the block.

MR. FREEMAN: Commissioner Turnbull, just to add to what Mr. Franco just

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said, in going through the zoning regulations Section 1907.1 and 1908.1 indicate this preferred use and that's what they'll use as a guide in terms of leasing out the space.

MEMBER TURNBULL: Okay. I just wanted to put it on the record. Thank you.

VICE CHAIR SORG: Any additional questions from Board members for the applicant?

Okay. Then I would like to go the Office of Planning, please.

MR. COCHRAN: Thank you Madam Vice Chair. For the record, my name is Steven Cochran with the Office of Planning. OP is recommending approval of the four requested variances and the two special exception requests from the Arts Overlay requirements.

For the most part we would like to be able to just rest on the report that we have already submitted, but I would also like to be able to address some of the questions about the parking relief, the court relief,

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and the roof concerns that you've had.

With respect to the parking, there is a combination of two unusual circumstances; the water table at 18 feet below. We know this is has existed on other parts of 14th Street. It's as low as 30 feet when you go about five blocks to the south. It's as high as about 12 feet when you go a little bit to the north of this site and they are at 18 feet.

Then you've got the 50 percent retail arts requirement on the ground floor, plus the lobby which precludes effectively using most of the first floor for parking. Frankly, from a planning standpoint we don't encourage using above-ground space for parking. Although it is permitted, it's discouraged.

The applicant has already noted all of the alternative transit around there. One thing they didn't notice is something that came up in the letter from the ANC. The ANC

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recommended that the relief be approved but contingent on the applicants agreeing to restrictions on the residential parking permit program for anyone that is living in the building.

OP has followed through on this. We've talked to DDOT. In fact, they can do it because on the west side of 14th Street there is an existing residential parking permit zone. That could not be modified without going through the whole voting in the neighborhood, etc.

On the east side where the applicant's site is there isn't a residential parking permit zone so DDOT could notify DPW that anybody showing this address cannot get a residential parking permit.

I'm not saying that it is something that OP is in favor of or not but we are simply pointing out that what the ANC has asked for is possible and DDOT would follow through if that were an instruction from BZA.

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It's not the kind of thing that DDOT typically initiates on its own.

With respect to the court, it's an open court. It's not required. The kinds of dimensions that are prescribed for an open court are typically to ensure that adequate light and air is available to whatever windows open onto the open court.

We are looking at an open court that is seven stories up in the air. The southern boundary of that open court is effectively air because it's only a property line and there is an historic property to the south that if it ever does get developed, it may well be restricted.

It would certainly have to be reviewed by Historic Preservation so there is some control over future and light and air to that open court up in the air.

With respect to the roof, again, it's a special exception, not a variance. We are really looking much more at impact than

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whether certain other stricter variance type tests are met. It is a special exception that is peculiar to the Arts Overlay which is itself an unusual overlay in the city, especially when it comes to height.

When the Arts Overlay talks about height, it's not restricting the height of a building. It's restricting the height of the building plus the roof structure together. The applicant's building would be about a foot-and-a-half less than a building would be allowed in this zone. I think it's 75 feet and they are going down to something like 72.5 or 73 or 73.5 feet, something like that.

But their roof structure while it's not -- it doesn't even come up to the 18'6" that is allowed in other zones, the combination of the building and the roof structure exceeds the restriction in the Arts Overlay.

There are a couple of things that the Arts Overlay -- well, one thing in

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particular that the Arts Overlay does to address the impact of roof structures and one is the 45 degree angle from any property line that is either adjacent to or across an alley from a residential parking -- excuse me, a resident zone. The applicant is across from a resident zone, across the alley from it, and has met the 45 degree angle requirement.

The other thing is to, in effect, do a ziggurat type of roof structure the way that the New York zoning laws and any number of zoning laws suggested back in the early 20th century. This is what the applicant has done.

They have asked for a special exception relief to have not one height for the roof structure but to gradually step it up so that it gets higher as it gets towards the center of the building which keeps the site angle acceptable from the street level, from the alley, and from adjacent residences.

On the parking and loading, since

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DDOT isn't here let me just mention a couple of things that they've mentioned in their report. They are going to be working with the applicant on striping at the alley and some signage, and even possibly the fisheye type mirrors to make sure that both pedestrians can see what's coming down the alley and anybody coming down the alley to see where the adjacent pedestrians are.

That pretty much concludes our report. I'm obviously open to questions.

VICE CHAIR SORG: Thank you very much. I just have one question, I think, so far. Based on the building and roof structure restrictions in the overlay, it sounds like the zoning doesn't seem to anticipate elevators coming to the roof. Would you say that's correct?

MR. COCHRAN: No, I don't feel comfortable saying that. If this were a variance, it might be a little bit more difficult because a roof deck is optional.

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Admittedly, we've gotten rid of all the residential recreation requirements in the last few years and about the only place left that a developer is going to be willing to give recreation is on the roof. I don't think it addresses it one way or another.

If it were a variance, we would be saying possibly that the applicant could reduce the height of the building to get over this problem. But since it's only a special exception and since we do think that having some recreation space in a residential building and, frankly, especially one that has units as small as these, then having that roof deck is a good idea. Since, in effect, you can permit it through a special exception we think it's fine.

We actually had some concern about the impact that it would have on the residents to the east. That is why we asked the applicant to do a shadow study and they did respond in a timely manner and that convinced

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us that there really would not be substantial negative impact on the residences nearby.

VICE CHAIR SORG: Did you also consider any privacy or enjoyment noise type impacts from the proposed roof deck?

MR. COCHRAN: No, I didn't look at the angles from the roof deck. I don't know whether you can hear over the roof deck. My impression was that it was set back a fair amount. You would be putting your life at risk if you really wanted to see what was going on in that neighbor's backyard.

MR. FRANCO: May I make a remark here?

VICE CHAIR SORG: Let me finish questions for the Office of Planning. Thank you.

MR. COCHRAN: So that's it. As far as privacy goes across 14th Street, the privacy concerns are people don't use curtains. That kind of concern would apply on the 5th floor of the building as well as on

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the roof.

VICE CHAIR SORG: Also not under our purview.

MR. COCHRAN: Right.

VICE CHAIR SORG: Any other questions for the Office of Planning?

MEMBER TURNBULL: Yes. Thank you, Vice Chair.

Mr. Cochran, good morning.

MR. COCHRAN: Good morning.

MEMBER TURNBULL: The actual -- the penthouse itself, though, actually goes over the overlay requirement, not just the elevator overrun.

MR. COCHRAN: That's correct.

MEMBER TURNBULL: 83'6" and then the whole penthouse is at 86'2" so the whole penthouse -- you are asking for relief for the whole penthouse, not just the overrun?

MR. COCHRAN: That's correct. I'm trying to remember the exact percentage of the roof that is occupied by the penthouse and

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anything that is over the maximum permitted in the overlay. It's in my report. I don't remember it right off hand but it's a relatively small percentage and it is setback just like some of the buildings that were constructed in Washington in the '20s and '30s.

MEMBER TURNBULL: Okay. Thank you.

VICE CHAIR SORG: Are there any other questions for the Office of Planning?

Does the applicant have questions for the Office of Planning?

MR. FREEMAN: No, Madam Vice Chair.

VICE CHAIR SORG: Okay. Thank you.

It does look like the applicant had a couple of comments so I will just take a minute to allow these two comments to be addressed.

MR. FRANCO: Thank you. The only

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remark that I wanted to make is the issue of the noise from the roof deck did come up in the very early planning stages when we were discussing the project with Wallach Place and T Street residents.

We agreed that the bulk of the rooftop deck would be on the west side of the roof and that we would not permit people from accessing the east side of the roof deck.

VICE CHAIR SORG: Thank you for pointing that out.

MEMBER TURNBULL: Just following up on that, is there going to be a railing? I see you have pavers on one side. Is that an EPDM roof or what?

MR. COLBERT: Actually, we are going to have a green roof.

MEMBER TURNBULL: A green roof.

MR. COLBERT: We'll have to have some kind of guardrail that will not allow people to go in that area anyway. Thanks.

MEMBER TURNBULL: Okay. Thank

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you.

MR. FREEMAN: We would also like to have our architect just talk a little bit more about the percentage of the roof structure that is requiring the relief.

MR. COLBERT: The penthouse is allowed to be .37 FAR or 5,694 square feet. The portion of the roof over the elevator is only 331 square feet, or .02 FAR. It's only seven percent of this little roof area and only two percent of the total lot area. It is setback 75 feet from the northern edge of the building.

MEMBER TURNBULL: Why are you just measuring the penthouse? I mean, the whole penthouse is above the height.

MR. COLBERT: Right. The part that sticks up 90 feet I'm saying is only 331 square feet which is only .02 FAR.

MEMBER TURNBULL: I understand that but I'm just curious that the whole penthouse is 86 feet which is three feet over

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the Arts Overlay so that's the real relief, too. I mean, it's not just the overrun. I think it's the whole three feet.

MR. COLBERT: Yes. Actually, this entire roof is less than the 83.5 feet. However, we have a screen around it which does extend up three feet from the main roof of the penthouse.

The roof inside there is under the 83.5 feet. It's just that the screen itself projects up about 2.5 feet above the 83.5 feet. But it's mainly the elevator room that is about 300 square feet that is projecting up and has a roof on it at about 90 feet.

VICE CHAIR SORG: Okay. The main portion of the penthouse, the useable recreation area, is 10.6 above the roof. Correct?

MR. COLBERT: Right.

VICE CHAIR SORG: And then you've got 13'6" where you are screening the rooftop equipment plus the additional overrun. You

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are saying that the relief is being required for that extra three feet going to the 13.6 plus the overrun.

MR. COLBERT: That's correct.

MEMBER TURNBULL: Let me just clarify one more.

VICE CHAIR SORG: Please. I was going to ask you if you wanted to.

MEMBER TURNBULL: The top of the penthouse, mechanical penthouse, is that at 86'2"?

MR. COLBERT: No. The main roof here is below the 83.5 feet. This line is just like a little screen wall and that does project up above the 83.5 feet about 2.5 feet higher.

MEMBER TURNBULL: Okay. It's just very confusing on your drawing. You don't really --

MR. COLBERT: On the building section it might be easier to express that.

MEMBER TURNBULL: Seventy-two feet

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and you're at 10'6". Seventy-two foot eight to the top of your roof, and then 10'6" to the top of your mechanical penthouse?

VICE CHAIR SORG: I think --

MEMBER TURNBULL: Okay.

MR. COLBERT: That's right.

MEMBER TURNBULL: Okay. I guess it was a little bit deceptive in Mr. Cochran's report, or maybe I misread it. I thought he had 86'2" to the top of the penthouse and then 90'4" to the top of the elevator override. Well, maybe not. With the enclosure and the screening for mechanical equipment rising to 86'2". So you're saying that the roof of the mechanical room is at 83'6"?

MR. COLBERT: Yes, just under that.

MEMBER TURNBULL: Okay. All right. Thank you.

MR. COLBERT: Thank you.

VICE CHAIR SORG: All right. Thank you very much.

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At this time we'll see if there are any persons in the audience in support of this application who would like to testify. Seeing no one, I will note for the record that we have received two letters in support, one in our Exhibit No. 33 from a neighbor, and one in our Exhibit No. 27 from the U Street Neighborhood Association. Now I'll see --

MR. FREEMAN: Madam Vice Chair, if I could just note there are three additional letters of support. One is from Scott Pomperoy, which is Exhibit 34, Sheryl Court which is Exhibit 35, and Eric Fiba which is Exhibit 36.

VICE CHAIR SORG: Thank you for pointing that out. I don't believe I have those in my record. Okay. Three additional letters of support noted for the record.

Now we will see if there are any persons in the audience in opposition to the application who would like to testify? Please come forward. Looks like we've got

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three people and three chairs.

Before we begin, just to make the proceedings clear, each person in opposition when you begin please state your name and home address for the record. Then you'll be given -- oh, we've got four people, or five. You guys can organize yourselves. You'll state your name and home address for the record and then you'll be given three minutes to give your testimony.

Why don't we start with you, sir. Please make sure that the green light is on. Thank you.

MR. MCKAY: Hi. Good morning. Dan McKay, 1315 T Street, N.W. What I'm here to do is present a couple of things. One is to clarify this ANC support letter that was referenced by Mr. Cochran. I would like to read a statement and also to present a little rebuttal to the overwhelming support that has been presented by the applicant here.

We have 54 signatures from folks

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in the neighborhood, not three or four letters but 54 signatures of folks opposing this development. Specifically the exemption for the roof and the exemption for the off-street parking exemption. That we can submit for evidence.

I would just like to read a statement here because I had also looked into this contingency that the ANC had agreed and put in their letter. I would like to just read a comment about that.

"There is a misunderstanding between Section 7 in the community comments and the District of Columbia Planning Office.

The Planning Office Report states that ANC-1-B voted to support the application provided the applicant agreed to restrict residents from the proposed development from obtaining residential parking permits."

Since the ANC has great weight and the ANC's specific language is important, I would like to read directly from that letter

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from the BZA -- to the BZA, sorry. The ANC-1-B letter dated January 11, 2011, which I believe you have in evidence.

"On the condition that residents of 1905-1919 14th Street, the applicant's address, are restricted from obtaining residential zone on-street parking permit from the D.C. Department of Motor Vehicles regardless of the ownership of the building and for the life of the building. The ANC supports this special exception."

This was actually a negotiated agreement with the neighbors as a concession for all the other things that we are conceding here; the height, the oversize, the traffic that is being added to the street, just on the condition that we wouldn't add these cars to our neighborhood.

Some follow-up. Since no D.C. office of person with purview -- we've done some follow-up -- has claimed or demonstrated this restriction capability in writing to us

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or through the applicant, the citizens of ANC-1B as supported by this letter, the ANC's letter, and the signatures respectfully request BZA reject the parking variances requested by L2 and 14th Street and insist that they provide the required parking.

Actions have been taken by ANC-1B residents to contact DDOT, BZA, OPM and we have requested but not received any convincing, legally binding, or other documentation that this is possible, forthcoming, or enforceable.

In conclusion, we have exactly the opposite. In citing 2411 of the D.C. Code for residential parking Damon Hardy at DDOT, acting citywide program manager, indicates that the proposed parking ban is not enforceable.

The BZA, the folks in this room, please, cannot commit to enforce this restrictions which the folks are in favor of. We respectfully request that this request for

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parking variance be denied.

Not enforcing the required parking will set a dangerous precedent for future projects on 14th and U Street. The Utopia project which is just across the street was required by BZA to have enough parking space to meet legal requirement because of the impact on local parking. The traffic study in that case demonstrated that traffic and parking would be affected on nearby streets.

In conclusion, the DMV restrictions for no permit for the life of the building was a critical component in the neighborhood's concession. The applicant for the requested parking variance which there was also widespread objection to those as well.

Not providing the parking or formal DMV restriction would increase already over-taxed street parking and the related congestion significantly increases the risk of pedestrian and vehicular injury and death. There is already a significant parking

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problem, traffic problem, especially on weekends and evenings.

Without some kind of real mitigation which, you know, the folks have talked about the Metro and talked about the buses. I live there. People use them but there is still a parking problem already so we need some relief.

VICE CHAIR SORG: Thank you very much, Mr. McKay.

Do Board members have questions? We'll do that at the end.

Moving on, please.

MS. KELLY: Hi. My name is Lisa Kelly. I live at 1314 Wallach Place, N.W. and I would just like to read this statement.

The OPM report states that relating to item No. 3 can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zoning regulations and map.

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Off-street parking and percentage of compact spaces. The applicant has provided a traffic impact study and proposed mitigation strategies and has demonstrated that the relief could be granted without substantial harm to the public or the zoning regulations.

The site is located on a principal arterial roadway within two blocks of a metro station that is served by several Metro bus lines and the D.C. Circulator, four Capital Bike Share stations and nearby private parking.

The transportation management plan would unbundle parking spaces from dwelling units and would restrict residents from obtaining RPP residential parking permit stickers from the District which would discourage residents from owning vehicles and parking them on nearby streets.

The applicant would also provide 60 more onsite bicycle spaces than are required by zoning regulations. The building

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designated TTM coordinator would be charged with providing building residents with information about transportation alternatives to private automobiles. Initial residents would be provided with Smart Trip cards containing \$25.

The applicant's statements that parking and traffic will be mitigated by bicycles and proximity to the Metro are unfounded and simplistic. The applicant has not provided a traffic study to the residents of ANC-1B.

At current density levels the parking systems are not functional and traffic is untenable. Metro buses are consistently late. By the way, we've already lost four bus stops on 14th Street due to construction. The Metro system also has ongoing outages.

Current residents already use cars and tax the roadways, parking to the limit with the extreme case in evenings and weekends. It is utterly simplistic to expect

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that a \$25 Metro card and proximity to the buses and Metro will change the use of the Metro and bus systems.

Additionally, even without D.C. parking permits the 140 or 144 units will add a parking and traffic load as friends and relatives visit or meet on evenings and weekends which is currently the worse traffic and parking load.

This issue has not been considered in the discussion of the transportation mitigation plan. Federal and city employees which have reimbursable public transportation do not use the Metro system. Thank you.

VICE CHAIR SORG: Thank you very much, Ms. Kelly. Share the microphone with your neighbor.

Please introduce yourself, your name and home address for the record.

MS. MARIZ: My name is Caroline Mariz and my address is 1315 T Street, N.W. The applicant's project does not meet the

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goals of the comprehensive plan for the District of Columbia which calls for mid-density in this area. At approximately 20 feet by 20 feet these apartments, the 144 apartments, are basically dorm or hotel size rooms.

There is no significant benefit to the community offered by the project as the units are too small to be sustainable and will encourage high turnover and transient residents and subsequent deterioration which will logically follow.

The comprehensive plan is being ignored in the development of this and other buildings in the area to the detriment of the community. There is a compulsion to follow the plan unless there is an overwhelming reason not to follow it. What is the rationale for not following the comprehensive plan?

I would like also to mention that as of today we have not seen a written commitment from DMV that they will not issue

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parking permits for residents of 1905-1917 14th Street. As of today, we have not seen any transportation or traffic study contrary to what is written in the OP recommendation.

We also have not seen a construction management package. What about the study regarding destabilization of settlement points? We are in an historic residential neighborhood.

Houses near the future construction site had cracks following last year's earthquake. We have not seen any shadow study and no overswing study or request has been presented to the residents, the neighbors.

May I also inform you that ANC's minutes are not published since September so the 54 people who signed, this is just a teeny tiny portion of people who realize what is going to happen.

Finally, I would just like to mention that residents are ready to appeal

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should the BZA not oppose the variances or postpone the hearing to get the required study and to further understand mitigation plans. Thank you.

VICE CHAIR SORG: Thank you very much, Ms. Mariz.

MS. McAD00: My name is Karen Hardy McAdoo and I'm here with my husband.

MR. McAD00: I'm Larry McAdoo.

MS. McAD00: We are here to just share our opposition to the off-street parking variance request.

VICE CHAIR SORG: Before you begin, I'm sorry. Can you please state your home address for the record.

MS. McAD00: Oh. We are the adjoining neighbor to the site at 1350 Wallach Place, N.W. We own that property. That is a two-story townhouse office that we've had since 1989. We practically live there but it's not my official residence.

VICE CHAIR SORG: Is that across

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the alley, if I can interrupt you for one second?

MS. McAD00: No.

MR. McAD00: No.

MS. McAD00: It's directly adjoining the property.

VICE CHAIR SORG: Okay.

MS. McAD00: We are the only residential property that is attached to the site.

MR. McAD00: Commercially zoned.

VICE CHAIR SORG: Aha. Please continue. Thank you.

MS. McAD00: We just wanted to share our opposition to the off-street parking issue, our concern about height and overall the construction plan. We are the only neighbor directly adjoining the site. We've owned our building since 1989.

We are a small family business and we practically work and live at the office. I feel that we are most impacted in many ways.

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Some of my concerns specifically have to do with during the construction so I feel it's very important that these has been no construction management plan shared with us. I think that needs to be shared.

Our entire building, two stories, will be dwarfed by this seven-story building.

Whether it's been scaled back, it still has a tremendous affect on us. When they talk about the 45-degree angle study, which I've never seen, the shadow study that they have, are they talking about -- I heard them mention from the building across the alley but what about my building which is directly adjoining this? I have great concern about that.

During construction our entire environment will be impacted. Where residents may be away during the day and may be concerned about hours of construction, we are going to have to deal with noise, demolition, pile driving, safety, dust, cranes swinging over our air space, parking spaces that will

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be closed during construction.

I may have clients who need to access it because they are elderly and will have limited access to my property. My front door is literally like two feet away from the property line so I have concerns about overall safety.

In addition, the underpinning and the potential for damage to our property is tremendous. We are concerned that we may be sort of out of business for the next 18 months, or not in a very convenient place to work. So the disruption to our building.

I would like just know about the safeguards that they put in place to protect our building, noise, soil erosion control methods, dust control, those sort of concerns.

I haven't heard that. I think it's important that before this building is approved that is shared with us. It also affects the community in general but directly affects us.

Our opposition to the parking, I'm

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really concerned about the impact of 144 units on our street and the affect it will have on the residents. I cannot imagine with all of the employees in the area, in addition to people like myself who just have an handful of employees, but still parking is a major issue for us.

I can't imagine that -- let me say this first. Our business is property management, real estate sales and so I have been managing properties, multi-family, smaller buildings, for many years. I have other properties that are located two blocks from the Metro and we still have a large percentage of people who rent every day who want parking spaces.

I can't imagine that these parking spaces would not be marketable if they were required to comply with the existing zoning requirements that would require them to have more than 34 parking spaces.

More importantly, we also continue

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to see even if all the residents didn't meet all of those five that there will continue to be the visitors, the guests, the overnight people who will take more parking spaces. It's a big concern to us that you would waive that requirement.

As an owner of the property, but not a resident, I am not entitled to a residential parking sticker so this has a tremendous impact on me as well, the loss of parking space.

The truck berth is a tremendous concern of ours also because I am on the alley. In one way I feel like I'm in support of not wanting to have very large trucks, 55-foot trucks there. At the same time, even a 30-foot truck is a problem there. Just the traffic that will come to this alley now and hit my building.

We've already had that problem over the years numerous times of a truck coming through the alley and hitting our

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building. That is a big concern to us. Also the location of the truck loading or some way that loading for tenants would happen in front of the building and not in the alley with some sort of freight elevator.

I think it is very important that we see a shadow study. I just want to express our concern that the parking not be granted, variance on parking, our concern about the height of the building and the affects of that on our property. Quite frankly, I feel like we're going to be --

VICE CHAIR SORG: I would ask you to try and wrap up if you can. Thank you.

MS. McAD00: Quite frankly I'm concerned about just overall the marketability of my building being dwarfed by this huge property adjacent to my building.

VICE CHAIR SORG: Thank you.

Thank you, Mr. McKay and Ms. Kelly and Ms. Mariz and --

MR. McAD00: McAdoo.

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VICE CHAIR SORG: -- Mr. and Mrs. McAdoo. I got it. Just a couple of notes. We really appreciate you coming down. It's important for us to hear from the community. That is an integral part about what this body is for.

A couple of notes. A few of you brought up issues regarding construction and construction safety, underpinning safety concerns and so forth with regard to construction. That is not something that is in our purview.

I am sure that this applicant will comply and will be providing, as many folks have, information -- voluminous information to the neighborhood regarding the construction plans and so forth and the management of that, but it's not something that this body can control. I'm sure they have heard your concerns about that.

With regard to the documents, shadow studies, and so forth, all of the

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documents that are submitted to us are open to the public. You can come down to this office.

The applicant has submitted shadow studies. You are welcome to look at those.

Because you're individuals coming to testify and not parties to the application, applicant is not required to directly give those to you but those are open for you to see. You are more than welcome after this hearing to take a look and talk to the folks in the Office of Zoning to do that so that you can see all the information in the application.

That being said, do any Board members have questions for these individuals?

MEMBER TURNBULL: I would just like to thank you all. I would say if you have testimony, written testimony, please submit it to Mr. Moy for the record.

Mr. McKay, I just want to note that you are right. This body cannot dictate or put the RPP enforceable. That is not

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something we can do. I mean, the applicant can go to the ANC, write a letter of agreement saying, "This is what we intend to do."

Again, even they can't enforce it. It's an agreement. It's a letter of intent what they plan to do but we can't enforce it and the ANC can't. I mean, if you want something on the record, that is the best they can do is to write a letter of intent saying this is what they are going to do but that's all we can -- there is nothing else.

Coming from the Zoning Commission, on a PUD we can put construction management plans in but it's a little different scenario there. In this case, obviously the applicant is going to have great concern with not only the McAdoo's property but the property on the other side, the historical property.

It's in their best interest to make sure that they have documented everything on the building so that nothing comes back that there's a lawsuit. I'm sure they will

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probably contact them and try to set up some type of an agreement where they can inspect the properties and document it so that they are covered in the future if anything happens.

Again, it's not something that is enforceable by this body. As the Vice Chair said, we do have a shadow study here. There is one in the documents that have been provided by the applicant. I think that's it.

VICE CHAIR SORG: Thank you, Mr. Turnbull.

I think the question about the RPP restrictions is something that after the hearing we definitely wanted to --

MR. MCKAY: We do not have -- I don't believe we have the 54 signatures submitted.

VICE CHAIR SORG: No. As Mr. Turnbull said, once we finish the proceeding or once we are finished with this question, you can submit any documentation that you want to the secretary, to Mr. Moy, and that will be

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entered into the record.

I do have one questions for Mr. and Mrs. McAdoo. Have you been contacted or engaged by the applicant?

MS. McAD00: We have met with them. Initially they had not reached out to us at all and we heard about the building through the lister. We were totally not even aware of it. After we made that sort of public, then they did reach out and met with us individually.

We had some initial conversation with the Planning Division and we saw them again. I think we shared some of those same concerns then. I don't think that's changed. We haven't spoken since then.

VICE CHAIR SORG: Okay. Thank you.

MR. McAD00: It's true.

VICE CHAIR SORG: Who's talking? Any further questions for the individuals? I thank you all very much for coming down again.

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We appreciate your testimony

MR. McADOO: Thank you.

VICE CHAIR SORG: At this point I will note for the record that we have in Exhibit 31 a letter from DDOT in support of this application, as well in our Exhibit No. 28, ANC report which I do believe meets our requirements for great weight, in support with the caveat that we have discussed on the record and I think we'll look further into subsequent to the closing of this hearing.

At this point I will turn back to the applicant for any closing remarks.

MR. FREEMAN: Thank you, Madam Vice Chair. As we started by saying earlier, we think the record is full and clearly demonstrates how we meet all of the requirements for the requested special exception and variance relief.

With respect to the comments about RPP, the applicant, as Mr. Franco said in his testimony and as indicated in our prehearing

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statement, we are okay with adding a condition to the order that says -- that provides that the applicant shall include language in all documents related to the lease of the residential units that the residents can't get an RPP permit.

We are perfectly happy with including that as a condition of the BZA approval so we have committed to that both in public -- in a number of public forums. We are 100 percent on board with including that as a condition of the order.

The language that I'm reading from is a Zoning Commission Case 06-31A, Condition 17. I can read the specific language again. It says, "The applicant shall include language in all documents related to the lease of the residential units that residents of the units in the building are prohibited from applying for residential parking stickers from the District of Columbia." Again, that's what we said at the ANC and we're, again, happy to

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have that as a condition of the order.

Ninety-nine percent of the other comments that you heard were with respect to construction. Obviously we will comply with all applicable building code requirements as we go through the construction process.

Height. We are not asking for any height relief. The only relief that we're asking for is a 331 square foot portion of the roof structure. It's not the entire roof structure. It's not the entire building. I think our architect walked us through that.

You have our traffic studies, you have our shadow studies, and you have the report from DDOT which, again, specifically says that they fully support the reduction in parking and that they are comfortable with the proposed loading.

We think we covered all of the issues that have been discussed today and we are prepared to answer any further questions that the Board might have.

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Mr. Franco would like to add something as well. Thank you.

MR. FRANCO: I would just like to add that we have worked very, very hard with the residents of both Wallach Place and T Street on refining the design and the massing. We had probably about four or five working sessions with them.

We went through about six different iterations of the design to come up with something that the Wallach Place and T Street residents in the neighborhood felt good about and ultimately got HPR approval.

When it came time to look at the variances, we again went back to the Wallach Place residence and discussed how we could gain their support. The overwhelming consensus was, "If you put in this restrictive RPP in place, we will support it." We agreed to that. We went to various neighborhood association meetings and provided that proffer to the community.

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The bottom line is we want to keep the cars off the street. We want to minimize the impact of our residents on neighborhood parking. The way to do that is for us to have the restrictions.

If we don't have the restrictions, if we don't get the variance for parking, we are going to have residents that will come with their cars and choose not to park in the parking garage and instead park on the neighborhood streets. For the most part, most of the residents understood this and that is why they are agreeing to the variance with the restriction of the RPP in place.

I think lately in the past week there has been a flurry of emails and concern in the community because there was uncertainty, or lack of confidence, that we would comply with this restriction or that would be enforced.

All the emails that went out the basis of those were this is not enforceable.

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They are not going to comply so, therefore, we can't support the variance. Thank you.

VICE CHAIR SORG: Thank you very much.

MEMBER TURNBULL: Madam Chair, I wonder if I could just ask one question.

VICE CHAIR SORG: Absolutely. Please go ahead, Mr. Turnbull.

MEMBER TURNBULL: I guess this is for Mr. Franco. It was brought up by one of the individuals in opposition. I think it was Caroline Mariz. The concern came up about the studios/one bedroom mix and the concern about the transient nature of the building. I wonder if you could talk about that for a bit.

MR. FRANCO: Sure. We believe there is a big market for residents that are demanding or want the ability to live in the 14th Street neighborhood but are priced out of the neighborhood because of the cost. So our model is to build smaller units that are more affordable than the units that are out there

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in the market place. We're providing a supply for the demand that is out there.

MEMBER TURNBULL: And you don't see two bedrooms as part of the market in this area?

MR. FRANCO: We believe there is plenty of supply in the market for two bedrooms at this point and plenty of supply coming on the market.

MEMBER TURNBULL: Okay. All right. Thank you.

MR. FRANCO: You're welcome.

VICE CHAIR SORG: Any final questions from the Board?

Okay. What I would like to do we will close this hearing at this time, conclude this hearing, and we'll set this case for decision on February 7th. We'll leave the record open for a couple of things and I'll let my fellow board members jump in to see if there is anything additional that they require.

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A few things. As we mentioned to those individuals who came down to testify, any testimony and/or letters, petitions that resulted from that, please do give them to the secretary so they can be entered into the record on this application.

To the applicant. I was just looking in your submissions and I don't see any specific language discussing the RPP restriction. I have two points on that. No. 1, for the applicant, I would request that you submit exact language for the proposed condition. Obviously there is some in the ANC report but I would like it to come from you as well.

Additionally, there has been some discussion in the hearing regarding whether this is an enforceable condition, in fact, at all. Mr. Turnbull brings up that there is a difference, of course, between proffers that come in PUD cases before the Zoning Commission and can be included in conditions there.

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Generally speaking BZA conditions have to be, I believe, enforceable sort of through an agency. I mean, here we certainly can see the condition mitigating a clearly possible adverse impact.

I would like to get maybe an opinion, I don't know, from either further coming from OP or OAG or DDOT clarifying whether this is something that as a BZA condition can be enforced in that way.

Is there anything before we move on that other Board members would like to see before making a decision?

You can ask if you have a clarification.

MR. FREEMAN: I do have just one or two quick clarifications. One, with respect to the letter and the petition, I think that was submitted.

VICE CHAIR SORG: Yes, I did see that come in to Mr. Moy.

MR. FREEMAN: Okay. So after that

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the record is closed for everything other than our letter.

MR. MOY: My understanding, Madam Chair, was that if the Board allowed the record to be open from other individuals who had testified this morning.

VICE CHAIR SORG: Yes, that's correct.

MR. MOY: Okay. For written narrative.

VICE CHAIR SORG: Written testimony from those folks that came down to testify today.

MR. FREEMAN: Okay.

VICE CHAIR SORG: Not just what was in hand at this very moment.

MR. FREEMAN: Okay. We will submit proposed language regarding the RPP. I also want to note one other thing and this was in our prehearing statement is that the applicant is asking for flexibility as we go through with the refinement of the design to

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have flexibility with respect to the design in order to address any HPO or HPRB comments. That is something the Board has approved already. If the Board is so inclined, we would include that proposed language as well.

VICE CHAIR SORG: So noted. Thank you.

MR. FREEMAN: Thank you.

VICE CHAIR SORG: All right.

MS. GLAZER: Madam Chair, sorry to interrupt. Would the Board consider allowing the ANC to comment on the applicant's proposed language since it may appear to differ slightly from what they proposed.

VICE CHAIR SORG: You know, I think that the ANC has proposed their language. Yes, I guess we'll leave the record open for specific comments on the ANC on proposed language if any.

MR. GLASGOW: Madam Vice Chair, given the language that they had, it would seem that if the Board wants to do it in the

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alternative between quoting their language or our language, I mean, we are agreeing to the condition. That's the point.

VICE CHAIR SORG: Right. Yes.

MR. GLASGOW: It's not to have a further debate on that. We've agreed.

VICE CHAIR SORG: Yes, I hear you.

MS. GLAZER: Madam Chair, I think the difference is there is a difference. It's not just the language. The ANC is requesting that the Board find future residents which the Board cannot do, as you know. Whereas the applicant is proffering that they will bind the owner and that the owner will restrict access to the parking.

VICE CHAIR SORG: No, I understand. I understand.

MS. GLAZER: I think it accomplishes the same -- it's in the spirit of what the ANC proposed and it is likely that the ANC won't object to that but the ANC is not here to comment.

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VICE CHAIR SORG: I hear what you're saying. I'm not going to -- I hear everybody's opinion here and I think what we'll do is we will look at language based on what you submit, based on what the ANC has submitted.

Because you're agreeing and you're proffering, you know, this restriction, I don't anticipate that there will be much comment from the ANC. In the end the Board will in considering whether a condition to any possible order, what is enforceable and under our rules and regulations.

I'm sorry. I can't take any further comments. Is that clear to everybody?

I'm sorry. I can't actually allow you to comment off the record if you're not on a microphone and we have closed the portion of the hearing.

I'm very sorry. We hear all the concerns of the neighbors and the Board is definitely open to, you know, having the

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received the testimony from today and we are really glad you came down but at this point we've closed the hearing.

Mr. Moy.

MR. MOY: Madam Chair, just a real quick note. Does the Board wish to have a deadline for the filings?

VICE CHAIR SORG: Yes. I think since we've put this on decision for next week --

MR. MOY: The 7th.

VICE CHAIR SORG: Oh, just kidding. Let's say that a deadline for submissions would be Friday the 3rd.

Okay. Is everybody clear?

MR. MOY: Yes, Madam Chair.

VICE CHAIR SORG: Okay. Thank you very much. This hearing is closed and we will -- we've set this for decision on February 7th. Thank you very much.

(Whereupon, at 11:45 a.m. off the record until 11:54 a.m.)

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VICE CHAIR SORG: Okay. We are back on the record here.

Mr. Moy, if we can call the next case.

MR. MOY: Yes, Madam Chair, with pleasure. That would be Application No. 18307 of Jeffrey R. Snedaker pursuant to 11 DCMR 3104.1 for a special exception to allow a rear deck addition to an existing one-family row dwelling under Section 223, not meeting the lot occupancy, Section 403, and rear yard, Section 404 requirements in the R-3 District at premises 225 Ascot Place, N.E. Property is located in Square 3557, Lot 56.

VICE CHAIR SORG: Thank you very much, Mr. Secretary.

I just want to clarify one thing in this case before we get started which is perhaps not even necessary but you're here requesting special exception 223 relief.

In one of your submissions you make reference to seeking an area variance and

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I just want to clarify that you are clear on the relief that you're requesting. That would be a different type of relief which is not to our understanding, although this is self-certified and not necessary in this case.

Why don't you at this time you introduce yourself and your home address for the record and then you can clarify my question.

MR. SNEDAKER: Jeffrey Ryan Snedaker, address 225 Ascot Place, N.E., Washington, D.C. 20002. My understanding of what I needed to get a variance for was the amount of space I need from the end of my house to the alley way, and then also -- pardon me. And then the amount of occupancy that I need as well.

Right now I'm at 50 percent if you count total lot space so this is going to take me over the 50 percent by like 4.7 percent I believe.

VICE CHAIR SORG: That's correct.

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I am just clarifying for the record that you are, in fact, here for special exception relief and not area variance relief. As it sounds from your way of saying, it is incorrectly worded in your Exhibit 1 application.

MR. SNEDAKER: I don't believe that --

VICE CHAIR SORG: That's fine. You just need to confirm this is the correct relief. It is here actually in our Exhibit No. 1. You just need to confirm that you are here for special exception 223 relief and we're all good.

MR. SNEDAKER: Yes, I'm here for that relief.

VICE CHAIR SORG: Okay. Thank you very much.

I think this is a pretty simple application. The information that we've been provided I think is adequate. If you would like to make a statement for the record, then

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that is fine.

MR. SNEDAKER: The only thing I would have to say there are several other decks on my street. I never received any letters about those being built so I'm not sure what happened there.

I think is going to add value to not only my property but also the community as a whole also will give me a space for being able to have dinner outside and enjoy some outdoor space, which I currently do not have.

I guess that's about the only thing I would have to say and I appreciate your consideration.

VICE CHAIR SORG: All right.
Thank you very much, Mr. Snedaker.

Do Board members have questions for the applicant?

Mr. Turnbull.

MEMBER TURNBULL: Thank you, Vice Chair.

I just want to make sure for the

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record that the only drawing we have is Exhibit No. 8 which is this sketch. We have a set of pictures which are Exhibit No. 6. I'm just trying to -- the drawing doesn't really clarify for me exactly how this -- you have an existing wrought iron stair and there is a fence that goes across. Does the wrought iron fence stay?

MR. SNEDAKER: The wrought iron fence is actually my neighbor's fence.

MEMBER TURNBULL: And then you have one on the other side?

MR. SNEDAKER: That's my other neighbor's fence.

MEMBER TURNBULL: Oh, that's your other neighbor's. So you are sandwiched in between. The two wrought iron fences are remaining. You are taking off your wrought iron stair?

MR. SNEDAKER: That's correct.

MEMBER TURNBULL: And you're putting up a wooden deck.

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MR. SNEDAKER: Correct.

MEMBER TURNBULL: Just as an aesthetic, is this pressure treated wood? Cedar? Is this redwood?

MR. SNEDAKER: It will be pressure treated.

MEMBER TURNBULL: Pressure treated.

MR. SNEDAKER: Correct.

MEMBER TURNBULL: And are the other decks in the area pressure treated also? Are they stained or painted?

MR. SNEDAKER: I assume they are pressure treated. I mean, I don't honestly know. I hope they are.

MEMBER TURNBULL: You can always come back and stain pressure treated.

MR. SNEDAKER: Most of them look like they are not stained at all. They are just put up without any stain.

MEMBER TURNBULL: Okay. It looks like there is some existing lighting. I guess

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what I want to look at is the overall impact when it's done. You are going to rip off what's there.

You are going to come up with a wooden deck and railing on top of it. Any lighting that is going to go on? Additional lighting at the back here? You had some -- I mean, you had some lighting underneath. It looks like you've stepped down. There is like a little area way at the back here. I'm not really sure.

MR. SNEDAKER: Yes. When you step off of the public alley, it's actually -- when you park my car, it goes down.

MEMBER TURNBULL: Goes down.

MR. SNEDAKER: Yeah.

MEMBER TURNBULL: Okay. What I'm concerned about is when you're all done and you've got your deck in place, any additional downlighting you are going to have for on the deck, lighting the deck to be able to use it at night.

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MR. SNEDAKER: I mean, I have --

MEMBER TURNBULL: I don't see any lighting at the back of your house now.

MR. SNEDAKER: The street light are so bright I don't know if I actually want more additional lighting than that to be honest.

MEMBER TURNBULL: Okay. Normally if someone is going to come back with lighting, we want to make it clear that the lighting has to be downlighting. It's not going to be spreading out into your neighbor's lighting.

MR. SNEDAKER: Right now I have no current plans to add any additional lighting.

MEMBER TURNBULL: Okay. And you're not doing anything to the existing grade so the drainage, whatever the drainage now, is what's there.

MR. SNEDAKER: That's absolutely correct.

MEMBER TURNBULL: Okay. Again, we

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get into issues where somebody comes in and they are going to add a deck and they change the slope. The nextdoor neighbor is worried about the runoff going to their property so you're not involved in any of that. Okay.

Where is -- how far away from the property line is your stair then? Does it go right to the alley then?

MR. SNEDAKER: The current stairs?

MEMBER TURNBULL: No, your new stair. How far away? It looks like you got a tree.

MR. SNEDAKER: There's a tree, yeah. The deck will actually only extend eight feet from the house to compensate for the tree and then it will extend out 10 feet once I get around the tree so I can keep the tree for the shade.

MEMBER TURNBULL: Oh, okay. I see. You do have the tree you're cutting back. The stair goes down and then you're bumping out to 10 feet. Okay. Thank you.

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MR. SNEDAKER: You're welcome.

VICE CHAIR SORG: Thank you, Mr. Turnbull.

Couple of follow-up questions. We don't have anything in the record from any neighbors. Can you give a comment on whether you have spoken to your adjacent neighbors who may be affected by this project?

MR. SNEDAKER: I did. They guaranteed me they were going to send letters of support but they didn't. Both of them have told me they are fully in support of it. They were very thankful I'm doing it this way instead of just putting it up overnight.

They have all given me their support. My neighbor across the street that looks at my house from the other side is very excited about the deck. As far as I know, everyone is very supportive.

VICE CHAIR SORG: Okay. Thank you for noting that. Does that include the neighbor to the rear?

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MR. SNEDAKER: Yes.

VICE CHAIR SORG: Okay.

I don't have any other questions.
Do other Board members?

Seeing none, we will go to the
Office of Planning.

MR. MORDFIN: Good afternoon,
Madam Chair and members of the Board. I'm
Steven Mordfin with the Office of Planning.
The subject application is in conformance with
the criteria for the granting of a special
exception pursuant to Section 223.

Because rowhouses are permitted
within this zone, light and air would not be
unduly affected because the proposed deck
would have no walls, only a railing.

Privacy and use of enjoyment would
not be unduly compromised because to the west
is a parking pad and to the east the deck
would be buffered by the tree on the subject
property and the landing and deck on the
adjoining lot.

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The deck would be similar to others and, therefore, would not intrude upon the character, scale, and pattern of houses within the neighborhood. Graphical representations were submitted. Lot occupancy would be 64.7 percent, less than the maximum 70 percent permitted.

The Office of Planning makes no recommendations for special treatments and the subject application would not result in the introduction or expansion of a nonconforming use. Therefore, the Office of Planning recommends approval of the application. Thank you.

VICE CHAIR SORG: Thank you very much. Good fast talking.

Do Board members have questions for the Office of Planning?

Does the applicant have any questions for the Office of Planning?

MR. SNEDAKER: No.

VICE CHAIR SORG: Okay. Thank

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you.

Maybe we do?

MEMBER HINKLE: Not to the Office of Planning. I have a question for the applicant.

VICE CHAIR SORG: Please. Go ahead.

MEMBER HINKLE: I was just looking at the plot. Do you have a fence along the alley way?

MR. SNEDAKER: No.

MEMBER HINKLE: No? How close to the alley way are the stairs coming down as proposed?

MR. SNEDAKER: As proposed they will be about two feet away, maybe three.

MEMBER HINKLE: Okay. Thank you. I was curious.

VICE CHAIR SORG: Thank you, Mr. Hinkle.

At this point I'll turn to the audience to see if there are any individuals

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in support or in opposition to this application wishing to testify.

Seeing no one, I will see if there is anyone from ANC-5C in the audience. Seeing no one again.

I will indicate that we have not received a report from the ANC but the Office of Planning notes in their report that they were informed by telephone that the ANC in this application have no issues with the application which was taken up at a meeting December 13th which we cannot provide any great weight not having any information from the ANC itself. With that I see if there are any final questions for the applicant.

Then I will turn to you to see if the applicant has any closing statements.

MR. SNEDAKER: No closing statements. I don't know if this is something for me to say on the record or not but I did speak to Ms. Farmer and she said that there were no complaints at the ANC meeting they

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held in December.

I'm a flight attendant so I was out somewhere in the country at that point and wasn't able to attend but she assured me that no one had any complaints and they did bring it up at the meeting.

VICE CHAIR SORG: And Ms. Farmer is your single member district?

MR. SNEDAKER: ANC-5C.

VICE CHAIR SORG: Okay. Is that all for your closing?

MR. SNEDAKER: That's it, yes. Thanks.

VICE CHAIR SORG: Okay. Great.

At this time we will close this hearing and move into deliberations. I will start us off. I think this is a very straightforward case looking for special exception relief under 223 for lot occupancy which is rather small scale, only 4.7 percent, still underneath the 70 percent allowed for special exception relief. As well, rear yard

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relief under 404.

I think the applicant -- I'll incorporate the OP report which I think goes through very well the issues in the case. I don't have an exhibit number for it.

Some things that are notable from the hearing, I think the applicant has testified that he has -- while we don't have letters from adjacent neighbors and neighbors to the rear, he testified that he spoke with these neighbors and they are supportive of the project and we have not seen any opposition today in the hearing.

I appreciate the applicant's design of this deck. So as to retain the existing tree, he held back a little bit on some of the square feet. It's a relatively small scale project and meeting the 223 requirements, I think we can be supportive of this application and I will open it up for any further deliberation.

See none -- or seeing something.

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MEMBER TURNBULL: Vice Chair, I was just going to concur with your analysis.

VICE CHAIR SORG: Okay. Then I will submit a motion to approve Application No. 18307, Application of Jeffrey Snedaker for special exception to allow rear deck addition to an existing one-family row dwelling under Section 223, not meeting the lot occupancy, Section 403, and rear yard, Section 404 requirements in the R-3 District at premises 225 Ascot Place, N.E.

A motion has been made. Is there a second?

MR. TURNBULL: Second.

VICE CHAIR SORG: Motion has been made and seconded.

MR. MOY: Staff would record the vote as three to zero to two.

VICE CHAIR SORG: Wait. I didn't vote.

MR. MOY: Oh, I'm sorry.

VICE CHAIR SORG: All those in

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favor say aye.

BOARD MEMBERS: Aye.

VICE CHAIR SORG: Mr. Secretary.

MR. MOY: Sorry for being a little quick on the trigger, Madam Chair. Staff would record the vote as three to zero to two.

This is on the motion of Vice Chair Ms. Sorg to approve the application for a special exception relief. Seconding the motion, I'll yield to Mr. Turnbull since he's not here every week. No?

MEMBER TURNBULL: I don't care. All right.

MR. MOY: Mr. Turnbull it is. Also in support of the motion Mr. Hinkle. We have two Board members not present and not participating. Again, the final vote is three to zero to two. The motion carries.

VICE CHAIR SORG: Thank you very much. I would request that we waive our requirement and issue a summary order, please.

MR. MOY: Thank you.

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VICE CHAIR SORG: The best of luck. Thank you.

MR. SNEDAKER: Thank you.

VICE CHAIR SORG: When you're ready, Mr. Secretary, we can move on to the final case of the day.

MR. MOY: Yes. Thank you. That would be Application No. 18304 of, I believe it's pronounced, Rui E. Lu, Andy's Carryout, pursuant to 11 DCMR 3103.1, for a special exception to allow a fast food establishment under Section 733, in the C-2-A District at premises 5001 Georgia Avenue, N.W. Property located in Square 3007, Lot 67.

VICE CHAIR SORG: Good afternoon.

If you can just introduce yourselves for the record stating your name and home address. You are going to have to press the microphone button and see that the green light becomes bright. There you go.

MS. WILLIAMS-LOFTON: My name is Deborah Williams-Lofton, 2800 Sherman Avenue,

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MR. ZHENG: My name is Charlie Zheng. My address is 5001 Georgia Avenue, N.W.

VICE CHAIR SORG: And you are the applicant?

MS. WILLIAMS-LOFTON: Charlie is the applicant's son.

VICE CHAIR SORG: The applicant's son. You are --

MS. WILLIAMS-LOFTON: Agent representing --

VICE CHAIR SORG: -- agent representing the applicant. I don't believe that we have any letter of authorization in the file. Let me take a quick look. Oh, I could be wrong.

MR. MOY: Then the OIG sends it, it's under Exhibit No. 1, Madam Chair.

VICE CHAIR SORG: Okay.

MS. GLAZER: Seven I believe.

VICE CHAIR SORG: I see. Yes.

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Okay. Thank you very much for clarifying that.

I think that we do have a pretty full record in this case so whatever statement that you would like to make, please proceed.

MS. WILLIAMS-LOFTON: I basically would just like to say that I think all the material has been submitted and I think that they meet the burden of proof for a special exception and hopefully you guys will grant them the special exception.

VICE CHAIR SORG: Okay. Thank you. Let's see if there are any questions from Board members for the applicant. I will start with one question. Have you reviewed the OP report?

MS. WILLIAMS-LOFTON: Yes.

VICE CHAIR SORG: And one of the recommendations of the Office of Planning is a condition that would require the owner, or lessee, applicant to screen the trash receptacles that are located in the front of

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the property. I want to see if the applicant is agreeable to that or has any comment.

MS. WILLIAMS-LOFTON: The only problem with that is those receptacles are not just for the carryout itself. There are two other businesses there, check cashing as well as the cash station where they go inside to pay for like a little carryout. It's like on a little line so all three businesses and all the receptacles are, if I'm correct, for that use.

VICE CHAIR SORG: Is that correct?

MS. WILLIAMS-LOFTON: Can I add to that?

VICE CHAIR SORG: Certainly you can.

MS. WILLIAMS-LOFTON: Not to say that is not impossible to do but the owners wouldn't just be on the carryout. The other establishments will get together if they come up with some type of plan where all of them have access. I mean, if that's what the Board

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wishes, I'm not saying that they couldn't fence in the receptacle.

VICE CHAIR SORG: Um-hum. Is that something that you think the owner of the property would be amenable to then, or would it be undertaken as a collective of the tenants?

MS. WILLIAMS-LOFTON: I don't think that is something that he can actually answer on his own --

VICE CHAIR SORG: Sure.

MS. WILLIAMS-LOFTON: -- without the other business owners at hand.

VICE CHAIR SORG: Okay. That's fine. The applicant has been operating in this location for some prior time?

MS. WILLIAMS-LOFTON: Since he got the temporary C of O.

VICE CHAIR SORG: Okay. How long has that been?

MS. WILLIAMS-LOFTON: I have it. I just have to look for it. I apologize.

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VICE CHAIR SORG: No problem.

MS. WILLIAMS-LOFTON: It's just been a matter of months. September.

VICE CHAIR SORG: Okay. Thank you.

Do other Board members have questions of the applicant at this point? Seeing none --

Oops, sorry, Mr. Turnbull.

MEMBER TURNBULL: I guess the only question -- I mean, what we're looking at here is a new owner who took over in September but the existing business was there for 23 years. The new owner is now applying for a Certificate of Occupancy for a special exception to -- I mean, the business has been there. It's just a new owner taking over?

MS. WILLIAMS-LOFTON: Yes.

MEMBER TURNBULL: Okay.

VICE CHAIR SORG: Thank you for putting that on the record.

Any additional questions? Okay.

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Let's move to the Office of Planning, please.

MR. JACKSON: Good morning, Madam Vice Chair and members of the Board. This is Authur Jackson again with the D.C. Office of Planning.

Basically you have the Office of Planning's report before you so we'll stand on the record and we are available to answer questions.

VICE CHAIR SORG: Thank you very much. I don't have any questions. I think the report is definitely very full. Do other Board members have questions for the Office of Planning?

MEMBER HINKLE: I do, Madam Chair.
Thank you.

Can you explain a little bit how you came across the condition that you're looking at in terms of screening the trash draft behind the facility?

MR. JACKSON: Certainly. If you look at the standards for this special

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exception, there is a requirement that the dumpsters be enclosed -- be screened so they are not visible from the street. I think it's number 733.3 -- 733.4.

"The dumpsters shall be housed in a three-sided enclosure the height of such." The point of that is to keep the enclosures -- the screened enclosures. In this particular case the applicant -- if you look at the last photograph in the packet that was submitted by the applicant, I'm not sure but I think these are his dumpsters.

There are five or six of these that are along this metal fence that is the neighboring property to the north. Let's go back again to the Office of Planning report and look at the aerial. The property is bounded with the green border and it's on a corner.

To the north is a collision repair center. All the dumpsters are lined up along that metal fence. Looking back at the last

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photograph in the applicant's submittal of photographs, you see the metal fence which is about seven feet tall and you see a pair of dumpsters.

There are four or five there. We strongly encourage screening of the dumpsters on the property but it wouldn't make any sense for just the applicant to screen their dumpsters if there are three or four adjacent to it.

We were suggesting that it would be good to encourage the property owner to formally provide a screen for all the dumpsters which will help improve the streetscape and will also support ongoing revitalization efforts along Georgia Avenue.

I know this is an unusual circumstance but as a practical matter we would like to see them screened but only the applicant screening it would not meet the goal of the regulation in our opinion which is why we are encouraging the applicant to --

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encourage the owner to formally create an area for all the dumpsters to be located and screened. That is the genesis of this request.

Now, whether -- it sounds like it may be a possibility for further discussion with the applicant or with the owner. In this case the most beneficial impact that could result from this case would be to finally upgrade the screening of all the dumpsters as opposed to just the two that belong to the applicant.

MEMBER HINKLE: I appreciate the thought in terms of screening the trash. Certainly there is a number of benefits there.

Have you had discussions with the owner of the property on this?

MR. JACKSON: No. We just referred that back to the applicant to pursue.

MEMBER HINKLE: Do you have any recommendations as to how this screening could be done? I mean, I see the building. It

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looks like it sits against the property line to the east. Have you looked at the site a little bit?

MR. JACKSON: Yes, we did visit the site and the applicant was kind enough to let us use the facilities while we were there.

In any case, the dumpsters are located around the northern property boundary. That really is the most practical place for them only because the traffic circulation in and out of the property takes a lot of the other space.

The only green space on the property is down at the lower portion of the property near the street and there are no indications where they are currently located has resulted in any difficulties with picking up and returning the trash. It appears to function in terms of servicing so that seems to be the place to locate it.

In our recommendation we did not -- we are open to -- we are flexible on the types of screening that would be applied.

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We're not asking for a concrete or masonry enclosure only because it might not make sense to create a masonry enclosure in that space.

Perhaps board-on-board enclosure or wooden picket fence. But we think it would be a significant improvement on that corner to have those dumpsters enclosed so they were not so obvious for people traveling along Farragut Street and Georgia Avenue.

Again, in discussions at the site the applicant had not picked -- had not indicated that there were any -- they had requested a term for the special exception. The use itself has been established for so long we supported this having no term once the approval.

This would be the best opportunity if they had no term on the special exception to address this issue of screening. Again, screening the dumpsters would make this a much more pleasant space to walk by. I think it would support the overall Georgia plan in

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terms of revitalization of the commercial corridor.

MEMBER HINKLE: Okay. Thank you.

VICE CHAIR SORG: Does the applicant have any questions for the Office of Planning?

MS. WILLIAMS-LOFTON: The only question I think I would have, again, it would have to come back, I guess, to the owners or the tenants as well as whoever they hired to construct this. You have to think of the exiting of the gas station. I don't know the measurements around building a fence.

They have to come out so far and they have to think there are cars backing up to the gas station and entering or leaving out, pulling in off of Georgia Avenue, Farragut, and then making that exit right there by it. I mean, if you were to put up some type of surrounding for the trash cans, will that impede or interfere with that in any kind of way.

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MR. JACKSON: I would say that would be something to take into account. I see where they are currently located is right next to that metal picket fence which was not shown in the previous photographs of the property so that is fairly new. It would like some analysis.

The Office of Planning would encourage the applicant to discuss with the property owner what could be done and come up with a proposal if the Board decided that's something they thought they should pursue. Again, I think it would be a benefit to the property in the long run.

It would benefit the corridor in that it would increase the serviceability of the -- it would help revitalize the corridor which is in the long-term Georgia Avenue study.

It would also, frankly, meet the standard that's in the zoning regulations for the existing use. That is what we are putting

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forth as a possibility. Obviously it hasn't been pursued yet but I think it's worth consideration.

VICE CHAIR SORG: Thank you very much.

Back to the applicant. Have there been discussions with the owners about this issue?

MS. WILLIAMS-LOFTON: Not as of yet, no.

VICE CHAIR SORG: You have not contacted them and asked them whether they would be willing to provide a type of enclosure?

MS. WILLIAMS-LOFTON: They are willing to do anything as far as to keep their business open and be in compliance. We have met with the ANC and what their wishes and wills are.

Whatever is proposed to them, they are willing to forth or set forth so this is the wishes of the courts and the planning and

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they have no problem. Like I say, just dealing with the trash can issue, that is just not on them because it's with the other business.

VICE CHAIR SORG: That's what I'm talking about. If you have addressed the issue of enclosing the garbage with the owners of the building?

MS. WILLIAMS-LOFTON: No, I have not.

VICE CHAIR SORG: Okay.

MS. WILLIAMS-LOFTON: When you say the owners of the building, it's the owner of the property and then you --

VICE CHAIR SORG: Property, yes.

MS. WILLIAMS-LOFTON: -- have the owners of the individual businesses that are on that --

VICE CHAIR SORG: Property owner.
Thank you.

MEMBER TURNBULL: I was just going to say the owners of the businesses are really

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only tenants on the property.

VICE CHAIR SORG: Right. Another thing. Mr. Jackson indicated five dumpsters that are located along the metal fence there. In your earlier comments you indicated one.

MS. WILLIAMS-LOFTON: I just said dumpsters.

VICE CHAIR SORG: Okay. So there are five and those are all used by all of the tenants?

MS. WILLIAMS-LOFTON: You have approximately two dumpsters, three dumpsters that you use to put your trash in, but all of the tenants dumpsters are there so it might equal five. You know what I'm saying?

Each tenant there has there own dumpsters that they utilize but they are lined up next to each other so if I was just to get Andy's Carryout the box in there because that's what it requires. Realistically that makes no sense. It would make more sense if they were to get the other tenants to enclose

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theirs as well.

VICE CHAIR SORG: Right.

MS. WILLIAMS-LOFTON: So I'm only responsible for Andy's because that's the one represented.

VICE CHAIR SORG: Of course.

Do other Board members have questions for the applicant?

MEMBER TURNBULL: I think, at least speaking for myself, I mean, I think as far as the use continuing, I really don't have an issue with that. I think the Office of Planning's concern about the dumpsters is a valid concern. The problem is that there is more than just this one business. I think you probably need to go back to the owner and tell them about what the issue is.

Also, I think, to put it in better light for yourself is that any one of those uses if they change owners and come back for a special exception, even if he says, "I'm not going to do it," say, "You're not going to be

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able to lease that space to another facility unless you comply."

The Office of Planning is pushing for compliance. I think that is one issue that you can say that as a condition of a new owner going in, they are asking that the dumpsters be screened. I'm not sure where that's going to go.

It's awkward because you are the only one applying for a special exception for a new use and you are sort of asking -- Office of Planning will say it doesn't make sense just for two but it really makes sense for all of the dumpsters to be screened. I mean, I guess maybe we can talk about this.

VICE CHAIR SORG: I agree with you, Mr. Turnbull.

MEMBER TURNBULL: I'm trying to put -- obviously we want them to stay in business. We want them to continue on but I think we would like to clean up the dumpster idea.

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MS. WILLIAMS-LOFTON: I didn't mean to interrupt you. I'm sorry. Honestly, I really do not think the owner would object to that. The owner has several businesses throughout the Washington, D.C. area. I think he's been down here several times.

MEMBER TURNBULL: Okay.

VICE CHAIR SORG: Okay.

MS. WILLIAMS-LOFTON: He is fully aware of --

MEMBER TURNBULL: He knows the issues.

MS. WILLIAMS-LOFTON: -- the issues of opening a new business.

MEMBER TURNBULL: Okay.

MS. WILLIAMS-LOFTON: I really don't think he would have a problem or an objection. It's just a matter of how to erect it so it does not impede anybody else's space.

VICE CHAIR SORG: Okay. What my suggestion would be is let's finish the hearing and then we can get to any suggestions

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and things that we might want to hear after the hearing in advance of scheduling for decision just so we can procedurally get through the rest of the things that we need to.

I think this is the key issue that we are going to be discussing as relates to any deliberations. What I'll do know is I will see if there are any individuals in the audience in support or in opposition to this application wishing to testify.

Seeing no one, I will see if there is anyone from ANC-4D in the audience. Seeing no one, I will note that we do not have in our record any communication from the ANC in this case.

Oh, look. We do have a letter. If you could submit that to the secretary so he can take a quick look at it. Go ahead. Okay. So we'll note that for the record that the applicant has submitted a letter from the ANC. This is actually a letter from the

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chairperson and the single member district commissioner in this case.

While we will note Ms. Brockington's support as the SMD, this is not a letter that would meet our requirements for great weight, notice requirements and so forth for great weight for support of the ANC but is duly noted as support of the ANC commissioner.

MS. WILLIAMS-LOFTON: We did meet with the ANC and there were no objections.

VICE CHAIR SORG: Okay. Thank you for adding that to the record. At this point I will turn back to you to see if you have any closing statements you wish to make.

MS. WILLIAMS-LOFTON: No. As stated, the business has been in existence in D.C. for over 20 something years. My applicant is just basically a new owner and is trying to establish takeover from this business and continue the service of carryout at the same location. We are just hoping that the court will rule in their favor and award

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them this special exception. Just the continuing of business that is already in existence.

VICE CHAIR SORG: Thank you very much. I appreciate it.

I think while ordinarily I would have really like to decide this case today so that we can get you on your way to your C of O because I see no issues with supporting this application for special exception with regard to the continuing use, with regard to nearly all of the provisions in 733, I do think we have a question regarding 733.4.

Obviously I am only giving my own opinion. I would certainly invite my fellow Board members to jump in. I do think that I would like personally a little bit more information before we make a decision in this case that may include any possible conditions with regard to any screening of any trash areas.

This is a fairly singular issue in

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that we have a tenant here who is not the property owner and is sharing a trash refuge area with several of their owners. What I would like to see is hopefully an agreement from the property owner about their willingness to comply with 733.4.

Personally I would take the Office of Planning's suggestion. Instead of looking toward a brick enclosure or concrete and so forth, you know, would request just a simple food fence enclosure.

That would be something before making a deliberation and decision on this case I would like to see whether there was that willingness there and if so or if not I think to me that would influence how I would consider any possible conditions in a potential order. I want to see if any Board members have anything else to add.

MEMBER HINKLE: No, I agree. That would be helpful. I think this is a fairly strong case for the special exception. My

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only hold up is the issue on the fence and I think that would really help address the issue whether or not the owner is willing and able to actually construct some sort of screening for all the businesses.

VICE CHAIR SORG: Okay. Mr. Turnbull, please.

MEMBER TURNBULL: I would just add that I would agree that -- I'm looking at Exhibit 10 that shows Certificates of Occupancy going back to '49 when there was a gas station. We have 1989 when you've got a delicatessen in this one space.

Then in '98 you have another new owner coming in and now we are going on again.

There is a history of this part of the property being used as a delicatessen, as a carryout restaurant. I think special exception is appropriate just to carry on the same usage.

I would agree with you about the enclosure. I would think in talking to the

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owner of the property that if he has some issues I'm sure he could talk with Mr. Jackson at OP just to confirm what the issues are.

If that seems to be -- and he's amenable to going ahead and providing that, he could then put together -- it doesn't have to be elaborate but at least a small little site plan would show us where it would go, a little sketch of what this enclosure might look like.

It doesn't have to be fancy or drawn out but just something as to what you would intend to do would be beneficial on our part if he's amenable to doing that.

VICE CHAIR SORG: I think that is something that Mr. Jackson can also --

MEMBER TURNBULL: That's right.

VICE CHAIR SORG: -- help, you know, what would be appropriate for the Board.

MEMBER TURNBULL: That's what I say. I think you can go back and talk to the owner of the property. I think Mr. Jackson would be more than willing to sit down and at

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least go over some of those issues.

VICE CHAIR SORG: So that being said, is that clear to you?

MS. WILLIAMS-LOFTON: It is. But, at the same time, that was just a suggestion from the Office of Planning. I don't feel or don't understand why that would hold up whether you will issue them a permanent C of O even though we said that we will go back to the owner and, you know, discuss it. I'm quite sure he would not have any problem doing so because this is the wishes of the Court.

VICE CHAIR SORG: Well, a couple of things to note here. No. 1, obviously we don't issue the C of O. You just need the BZA approval to go to DCRA and get it. That is the first thing.

The second thing is that I think that the thrust of our looking at waiting on a decision here in this case so that you could talk to the owner about complying with what is actually not a suggestion. It is actually a

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requirement under the zoning regulations to enclose the refuge dumpster area in fast food establishments.

OP is making a suggestion actually, which we've all agreed with, to reduce the onus of the requirement. The requirement actually wants you to build a brick enclosure for these things. We're saying -- I think what we were wanting to do is give you an opportunity to go to the property owner to say, "Hey, this Board is looking at requiring compliance here."

I think my thought on that was a certain amount of discomfort with requiring the tenant and business owner and one of three establishments on this property requiring them to bear the burden of constructing something that was for all of the users in this property which is something that, in my opinion, ought to be on the onus of the property owner.

What we were looking, I think, to do was to send you to speak with the property

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owner, obtain some kind of letter saying I will or I won't pay for the construction of what we're talking about, which is a wood fence, and bring that information as evidence back into the record.

What we would do then is that -- you have clearly heard there is some support for this application. I think that would allow us to craft any conditions or to consider whether we would include any conditions. You can see the possibilities flowing from there.

If you would like to agree today to that condition as the tenants to screen all of the dumpsters, I mean, that is something that -- I guess if that's your interest to go for today, I could be willing to do that. I think what we are trying to do is give you an opportunity and I'll open it up to see what other Board members think about that.

MEMBER TURNBULL: I think the only issue there is that if you say you are going

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to put up screening and you don't comply with that, then the ZA could revoke your C of O.

VICE CHAIR SORG: Exactly.

MEMBER TURNBULL: It's kind of a big bite to chew to agree to that.

MS. WILLIAMS-LOFTON: I would say issue your approval with that stipulation and I guarantee the owner will put it up.

VICE CHAIR SORG: I want to see of OAG wants to weigh in on this.

MS. GLAZER: My only thought about this is this is actually subject matter that is part of the criteria, as the Vice Chair pointed out. Compliance would mean a brick enclosure, as you state, for the property. If the Board wants to change that, I guess you could view it as just waiving that condition.

VICE CHAIR SORG: I think that's how we're looking at it.

MS. GLAZER: Or waiving that part of the criteria and modifying it in some

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respect pursuant to OP's suggestion and based on the testimony that you've heard. I don't see any legal impediment to proceeding in the way that the applicant wishes but the order would have to say that she will comply with that provision --

VICE CHAIR SORG: As modified.

MS. GLAZER: -- as modified by providing this enclosure. The only other issue is whether the Board wants to see a site plan before making that decision. That was mentioned.

MEMBER TURNBULL: I guess the other thing OP is looking to screen all of the trash and the applicant really --

VICE CHAIR SORG: Sorry to interrupt you.

MS. WILLIAMS-LOFTON: I do understand that. Just the way the language that the Vice Chair just said, to me they have no choice because you just said you will revoke the C of O. Therefore, they would be

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out of business.

The owner has no -- I mean, can't do anything but comply because he is fully backing us to come down here and get it. He doesn't even understand why we have to go through this whole process. I mean, he's aware that we do have to but doesn't understand why because it's not a new business.

It's an existing business so just to know that we've gone through this and gone thus far to get this far, I don't think he would do anything to hinder them from continuing their business.

Therefore, I'm saying I know if we came back to him and said we must do this on the property or they are going to revoke our license and then our business will be shut down that he will comply. That's all that I'm saying.

VICE CHAIR SORG: When you say owner in this case, do you mean business owner

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or property owner?

MS. WILLIAMS-LOFTON: Property owners.

VICE CHAIR SORG: Okay.

MEMBER TURNBULL: I guess we could accept a drawing for the record?

VICE CHAIR SORG: No.

MEMBER TURNBULL: The other thing is is there a time limit? I mean, how do you impose this?

MEMBER HINKLE: My other question is can we impose a wall around all of the dumpsters?

VICE CHAIR SORG: That was my question to OAG. Exactly. That's what I really wanted to get to.

MEMBER HINKLE: One tenant, one C of O.

MS. GLAZER: The proceeding is really brought by the owner. The tenant is acting as the agent's owner in my opinion.

MS. WILLIAMS-LOFTON: I'm acting

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as the agent --

VICE CHAIR SORG: If you could just allow her to finish her thought and then you can go ahead.

MS. GLAZER: The owner's agent. I don't know if I misspoke. Anyway, the Board is concerned with the property and the property owner. The Board could direct the owner to provide the enclosures on the property. It's the same property. It doesn't matter. The Board is concerned with the property, not the different businesses.

VICE CHAIR SORG: Right.

MS. GLAZER: So the property has X number of enclosures.

MEMBER TURNBULL: But they don't represent the owner of the property.

VICE CHAIR SORG: She's saying they do.

MEMBER TURNBULL: You're saying they do?

MS. GLAZER: They are an agent. I

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believe that the owner has authorized the tenant to bind him.

MEMBER TURNBULL: Okay. All right.

VICE CHAIR SORG: I think -- I mean, I feel okay about that. I mean, the applicant has clearly proffered that they are willing to take on a condition like this. My only question for the other Board members is, you know, are you comfortable to make a decision without a site plan showing a trash enclosure?

MEMBER HINKLE: Madam Vice Chair, I would prefer to have the site plan before we make a decision.

VICE CHAIR SORG: Okay. I agree. It is something that is really customary.

Mr. Turnbull, do you have any comments?

MEMBER TURNBULL: No. I guess the only other thing would be you would have to write very clearly in the order what kind of

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enclosure you want.

VICE CHAIR SORG: Absolutely.
Absolutely.

MEMBER TURNBULL: That would be
the only other way. We would have to --

VICE CHAIR SORG: Yes. I agree.

MEMBER TURNBULL: Mr. Jackson
would have to give us input back on that. Mr.
Hinkle makes a good point which is what we
normally do is we see a site plan.

VICE CHAIR SORG: Absolutely
agree.

MS. GLAZER: Madam Chair, just one
more statement. You could then have the site
plan and the order could state that the
enclosures shall be constructed around the
dumpsters in accordance with Exhibit X.

VICE CHAIR SORG: Exactly. That,
I think, is the way that we customarily
proceed.

This is what we're going to do.
We will put this -- we understand that you

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want to proceed with as much speed as you possibly can to go to get your permit and C of O. Perfectly understood.

What we are going to do is -- this will be a little bit dependent on you. The only thing that we are going to require before we make a decision is for you to prepare a very simple sketch, a site plan, showing where the enclosure will be for all of the trash dumps --

I mean, dumpsters on the property and indicating the material which we have, I think, in our comments indicating that we agree with OP's suggestion to look at deviating from Section 733.4 which requires a masonry enclosure and looking at a food picket fence or something which they suggest.

I would suggest that you go ahead and meet with Mr. Jackson. I think he could help you to interpret those things. What I would like to do in the interest of getting you forward and getting a decision for you is

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to pile on another case for our February 7th decision date.

What we would ask for you -- that's the next -- no, that's not next week. It's two weeks. Okay? What we will do is we are going to close the hearing and we are going to set this for decision in the afternoon on February 7th.

What we are going to request from you in advance of that is for you to submit a site plan working with Mr. Jackson to show an enclosure around the trash receptacles. It would be helpful to submit a letter from the property owner saying, "I'm going to provide this for the tenants under my own dime."

If not, what we really need because we've heard your testimony that you are the agent of the property owner and your testimony indicates that you are willing to do this. The document that we really definitely most need is that site plan so that we will write a potential order from that document.

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Sounds good?

MS. WILLIAMS-LOFTON: Okay.

Sounds good.

VICE CHAIR SORG: Okay. So we will conclude this hearing and put this application for decision on February 7th with a deadline for submissions on Friday, February 3rd.

MS. WILLIAMS-LOFTON: Can I ask one more question?

VICE CHAIR SORG: Certainly.

MS. WILLIAMS-LOFTON: If I come back here February 7th with the site plan, but also the work is done, is that acceptable or do you have to approve the site plan before any work is done?

VICE CHAIR SORG: We are not an enforcement body so all you have to bring me is a piece of paper, the site plan, and you need to submit it to this office by close of business on Friday, Feb. 3. You want to definitely remember that date because after

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that there won't be allowed any submissions without an exception prior to the hearing on the 7th.

No actual construction has to be done. You just need to show us what you intend to do and how you intend to comply with the provision as we've discussed them today in the hearing. Does that make everything clear for you?

MS. WILLIAMS-LOFTON: Yes.

VICE CHAIR SORG: Okay. Great.

MS. WILLIAMS-LOFTON: Will I get a letter with all of this?

VICE CHAIR SORG: No. I hope you're taking notes.

MS. WILLIAMS-LOFTON: I am.

VICE CHAIR SORG: But you are obviously more than welcome anytime to come and talk to Mr. Moy or anybody in the Zoning office should you have any questions about the requirements.

Definitely make sure if there is

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any doubt in your mind or questions about that they are a resource for you for sure. And Mr. Jackson who I definitely suggest that you meet with and he will do that for you.

MS. WILLIAMS-LOFTON: Okay.

VICE CHAIR SORG: Okay.

MS. WILLIAMS-LOFTON: Thank you.

VICE CHAIR SORG: All right.

Thank you very much.

Yes, Mr. Secretary.

MR. MOY: Madam Chair, another action before you adjourn. Earlier this morning the Board voted for action on a closed meeting for Monday, February 6th. This morning you've added two more cases to the --

VICE CHAIR SORG: Way ahead of you.

MR. MOY: Okay. Good.

VICE CHAIR SORG: One more piece of business before we close today. As Chairperson of the Board of Zoning Adjustment for the District of Columbia and in accordance

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with Section 405(b)(4) of the District of Columbia Administrative Procedure Act, I move that the BZA hold a closed meeting via telephone conference on Monday, February 6, 2012 for the purpose of seeking legal advice from our counsel on the following additional cases scheduled for upcoming decision: Case No. 18304, Application of Rui E. Lu, Andy's Carryout; and Application No. 18306, Application of 1919 14th Street, LLC.

Is there a second?

MEMBER TURNBULL: Second.

VICE CHAIR SORG: Will the Secretary please take a roll call vote on the motion before us now that it has been seconded.

MR. MOY: Yes. Board members, when I call your name if you could respond by either yay or nay.

Mr. Turnbull.

MEMBER TURNBULL: Yay.

MR. MOY: Ms. Sorg.

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VICE CHAIR SORG: Yay.

MR. MOY: Mr. Hinkle.

MEMBER HINKLE: Yay.

MR. MOY: Of course, we have two Board members not participating with us this today. That would give us a total vote of three to zero to two on the motion of Chair Sorg. Seconding the motion Mr. Turnbull. Final vote three, zero, two. The motion carries.

VICE CHAIR SORG: Excellent. As it appears the motion has passed, I hereby give notice that the BZA will hold this aforementioned closed meeting via telephone conference pursuant to Section 406 of the District of Columbia's Administrative Procedures Act.

Notice will also be posted at the Office of Zoning's electronic reading room, placed on the Office of Zoning's electronic calendar on its website, and published in the District of Columbia Register in as timely a

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manner as practical.

With that, that concludes our hearing for today.

(Whereupon, at 12:55 p.m. the hearing was adjourned.)

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