

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 18, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
PAUL GOLDSTEIN
MATT JESICK
ARTHUR JACKSON

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

JAMIE HINSON

The transcript constitutes the
minutes from the Public Hearing held on
September 18, 2012.

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

WARD TWO

18396 ANC-2F

Application of Parc Deux Restaurant LP 6

WARD ONE

18397 ANC-1B

Application of Florida Avenue
Residential LLC 16WARD TWO

18402 ANC-2E

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

(9:39 a.m.)

CHAIRPERSON JORDAN: Good morning, would the hearing please come to order. Good morning, ladies and gentlemen, we're located at the Jerrily R. Kress Memorial Hearing Room, at 441 4th Street, N.W. Today's date is September 18th, 2012. We're here for the public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, chairperson. To the left of me joining us today is Nicole Sorg, vice chair. To her left, Marcie Cohen, zoning commissioner. To my right is Rashida MacMurray, member of the Board. To her right, Jeffrey Hinkle, member of the Board.

Please be advised that this proceeding is being recorded by a court reporter sitting to my right, and is also being webcast live. Accordingly, we ask that you refrain from any disruptive noises or actions in the hearing room. The Board's hearing procedures and how

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1 we process applications will be found at the
2 table in the back by the back door.

3 So let's begin our hearing agenda
4 today. I'm asking all individuals who are here
5 to testify in any matter on the docket, please
6 rise and take the oath or affirmation from the
7 secretary.

8 Mr. Moy, will you please administer
9 the oath.

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

11 Do you solemnly swear or affirm that the
12 testimony you're about to present at this
13 proceeding is the truth, the whole truth and
14 nothing but the truth?

15 (Off microphone comments)

16 Ladies and gentlemen, you may
17 consider yourselves under oath.

18 CHAIRPERSON JORDAN: Thank you.
19 I'm going to also ask that anyone who testifies,
20 prior to your testifying please complete two
21 witness cards. Each person needs to complete
22 two witness cards and then give them to the court

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1 reporter sitting to my right, please.

2 Mr. Moy?

3 MR. MOY: Yes, sir. Good morning,
4 Mr. Chairman and members of the Board. Before
5 I proceed with the first application for the
6 morning session, I just want to announce for
7 the record that as a preliminary matter back
8 last week on September 18th, the Board acted
9 on Application Number 18398 of Kenneth and Ellen
10 Marks, which was originally scheduled for
11 today's hearing on today's docket. And at that
12 time, the Board rescheduled that application
13 to November the 7th, 2012, and that's for the
14 record.

15 The first application before the
16 Board this morning is Application Number 18396.

17 This is the application of Parc Deux Restaurant
18 LP, pursuant to 11 DCMR 3104.1. This is for
19 a special exception from the rear yard
20 requirements under section 774. This is to
21 allow a one-story addition to an existing
22 commercial building in the ARTS/C-3-A District.

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1 This is at premises 1601 14th Street, N.W.,
2 property located in Square 240, Lot 821.

3 CHAIRPERSON JORDAN: Will the
4 parties please come to the witness table,
5 please. Okay, good. Will you please identify
6 yourselves, please?

7 MS. BROWN: Good morning, Mr.
8 Chairman. I am Carolyn Brown with the law firm
9 of Holland & Knight. With me this morning are,
10 to my right is Richard Stokes of Stokes
11 Architects in Philadelphia, and to his right
12 is Mr. Michael Palermo of Starr Restaurant
13 Group, which is the parent of the Parc Deux
14 Restaurant.

15 And I'm prepared to proceed at your
16 direction.

17 CHAIRPERSON JORDAN: Let me take
18 one second to catch up with myself. This case
19 is on before us for a special exception under
20 774.2, 774.3 through .6, correct?

21 MS. BROWN: Correct.

22 CHAIRPERSON JORDAN: And I believe

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1 we received all agencies' reports in this
2 matter, have we not?

3 MS. BROWN: Yes.

4 CHAIRPERSON JORDAN: Wasn't there
5 a reference to the HPRB in one of the files,
6 in the issues in this case? I don't know, Mr.
7 Hinkle, is that something about HPRB that was
8 in one of the issues raised in this matter?

9 MEMBER HINKLE: Yes, thank you, Mr.
10 Chairman. I believe there was a comment in the
11 Office of Planning report in terms of the
12 Historic Preservation office staff approved the
13 addition to the existing structure, and I was
14 just wondering if there was a report from the
15 HPRB.

16 CHAIRPERSON JORDAN: Do you have a
17 copy of the report that --

18 MS. BROWN: I don't have a report.
19 I believe it might have been done at the staff
20 level.

21 CHAIRPERSON JORDAN: Okay. But
22 they approved it?

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1 MS. BROWN: Yes. It did go through
2 the HPRB review process.

3 CHAIRPERSON JORDAN: And Planning
4 hasn't seen a report, have you?

5 MR. JESICK: Good morning, Mr.
6 Chairman. No, we have not seen the actual
7 report, but we did speak with the Historic
8 Preservation office and they approved the
9 addition.

10 CHAIRPERSON JORDAN: Okay. No, we
11 were just checking to see if there was one, then
12 we probably would want to read it or at least
13 take a look at it.

14 Is there any particular issues with
15 this matter from what the Board has reviewed
16 this matter? Anyone?

17 MEMBER HINKLE: Mr. Chairman, I
18 just had a question for the applicants in terms
19 of conversations with residents, if you will,
20 I believe to the building to the east. Were
21 there conversations with them?

22 MS. BROWN: Conversations with, I

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1 believe it's a condo building to the east. I
2 don't know that there were direct conversations
3 with those residents, but I do know that the
4 fencing that is going in along the public alley
5 is a direct result of conversations with the
6 community. Whether or not it's with those
7 specific neighbors, but it's to their benefit
8 obviously.

9 MEMBER HINKLE: Okay, thank you.

10 CHAIRPERSON JORDAN: Is there any
11 other questions that we may have for the
12 applicant?

13 BZA VICE CHAIR SORG: I'll just ask
14 one, Mr. Chairman. It's important to know how
15 many seats the restaurant is going to have.
16 Unfortunately we didn't get full plans but
17 that's --

18 MS. BROWN: Mr. Stokes or Mr.
19 Palermo, do you have answer of approximate
20 number of seats?

21 MR. STOKES: Two hundred and
22 eighty.

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1 CHAIRPERSON JORDAN: Two hundred
2 and eighty?

3 MR. STOKES: Two hundred eighty,
4 approximately.

5 CHAIRPERSON JORDAN: Please make
6 sure that your microphone is turned on, and
7 you'll see the bright green light.

8 MR. STOKES: Got it. Two hundred
9 eighty seats.

10 CHAIRPERSON JORDAN: Thank you.

11 Ms. Brown, the Board has reviewed
12 the filings and believe that they're pretty much
13 on point. As you heard, I asked for questions
14 from people. I think were pretty clear about
15 what the applicant wants. You have the
16 opportunity, if you wish, to present testimony
17 if you like, otherwise you could waive that at
18 this point.

19 MS. BROWN: Mr. Chairman, we would
20 be happy to waive that. We believe the record
21 is full and we have support from the ANC and
22 the Office of Planning. So I think we're

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1 prepared to rest on the record. Thank you.

2 CHAIRPERSON JORDAN: And turning
3 now to the Office of Planning, is there anything
4 that you would like to add that's not in your
5 report?

6 MR. JESICK: Good morning, Mr.
7 Chairman, again. My name is Matt Jessick.
8 Office of Planning is happy to rest on the record
9 in support of the application.

10 CHAIRPERSON JORDAN: And I don't
11 think there's any other government agency that's
12 here today. Is there Department of
13 Transportation, DHCD?

14 Oh, Department, hey, we have your
15 report. Do you want to come forward and --
16 please. Don't be a stranger, come on up. Glad
17 to see you. Please tell us your name, please.

18 MR. HINSON: Good morning, my name
19 is Jamie Hinson. I'm a planner with the
20 Department of Transportation. And as with our
21 colleagues at the Office of Planning, we'll rest
22 on the record too. We have no concerns with

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1 this project.

2 CHAIRPERSON JORDAN: And we have in
3 the record from the Department of
4 Transportation, a letter of no objection.

5 Is there any other government agency
6 here to testify or provide support for this
7 matter? We do have a letter from the Department
8 of Housing and Community Development that
9 supports this project. So they're not here.

10 Does the applicant have any
11 questions of Planning or Department of
12 Transportation?

13 MS. BROWN: No, we do not. Thank
14 you.

15 CHAIRPERSON JORDAN: Is anyone here
16 from ANC-2F? As indicated, we do have a
17 recommendation of approval from ANC-2F that
18 meets our criteria for receiving great weight
19 in which they voted unanimously to support this
20 application.

21 Are there others in the audience who
22 want to speak in support of this application?

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1 Anyone in the audience who wants to
2 speak in opposition to this?

3 Ms. Brown, if you really think that
4 you need to do a rebuttal, you have the
5 opportunity to do a rebuttal.

6 MS. BROWN: I think I don't need
7 rebuttal. I would ask for approval, and if
8 appropriate, a bench decision and summary order.
9 Thank you.

10 CHAIRPERSON JORDAN: Then I will
11 close the hearing and close the record on this
12 matter and see if the Board is ready to move
13 into deliberation. I think so. So with that
14 let me just simply begin.

15 I think the record clearly shows
16 that the relief sought by the applicant and the
17 supporting documentation supports the relief
18 sought by the applicant for the special
19 exception, and therefore I would move that we
20 grant the relief requested in the application.

21 BZA VICE CHAIR SORG: Second.

22 CHAIRPERSON JORDAN: Motion made

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1 and seconded. Any unreadiness? Seeing none,
2 all those in favor signify by saying aye.

3 (Chorus of ayes)

4 CHAIRPERSON JORDAN: Those
5 opposed, nay. The motion carries.

6 Mr. Moy?

7 MR. MOY: Staff would record the
8 vote as five to zero to zero. That's on the
9 motion of Chairman Jordan to approve the
10 application requesting special exception relief
11 under section 774. Second the motion, Vice
12 Chair Sorg. Also in support of the motion are
13 Ms. Cohen, Ms. MacMurray and Mr. Hinkle. Again
14 the final vote is five to zero to zero and motion
15 carries.

16 CHAIRPERSON JORDAN: Thank you.
17 And I believe that this is prime, Mr. Moy, for
18 a summary order.

19 MR. MOY: Yes, sir. Thank you,
20 sir.

21 MS. BROWN: Thank you very much.

22 MR. MOY: The next application for

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1 the Board is Application Number 18397. This
2 is the application of Florida Avenue Residential
3 LLC, pursuant to 11 DCMR 3103.2 and 3104.1, for
4 variances from the parking requirements under
5 subsection 2101.1, loading requirements under
6 subsection 220.1, and lot occupancy
7 requirements under subsection 772.1, and
8 special exceptions from the roof structure
9 requirements under subsection 770.6, and
10 streetwall requirements under subsection
11 1903.3.

12 This is to allow the development of
13 a six-story mixed-use residential building with
14 ground floor retail/service uses in the
15 ARTS/C-2B District at premises along Florida
16 Avenue, N.W., 8th Street, N.W., and 9th Street,
17 N.W. Property located in Square 393, Lots 41,
18 44, 45, 46, and 826.

19 (Off the record discussion)

20 CHAIRPERSON JORDAN: While we take
21 a little break, I just want to go on the record
22 to indicate that the Board is going to start

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1 strictly, strictly, strictly enforcing parties'
2 submission of documents to the Board 14 days
3 in advance.

4 One thing that becomes not fair to
5 the applicant and the citizens that we get
6 sometimes last minute -- it's not this case.
7 Don't get me wrong. There's a lot of things,
8 not just this case but others, where we get
9 documents at the last minute and some of them
10 have already, I mean last week we got six inches
11 of paper during the time of the hearings, and
12 it's just not fair to the citizens or to
13 yourselves to give us documents at the last
14 minute, or the Board to examine it. It's just
15 not it. And so I'm just giving notice that we're
16 going to strictly enforce that rule unless good
17 cause can be shown.

18 Okay, if you would, Ms. Brown, do
19 introductions, please.

20 MS. BROWN: Good morning, again,
21 Mr. Chairman. Carolyn Brown with the law firm
22 of Holland & Knight. I am here on behalf of

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1 the applicant, Florida Avenue Residential LLC,
2 an affiliate of the JBG Companies. I am joined
3 this morning by Chip Glasgow of our office,
4 Lauren Jezienicki of JBG, John Maisto of BKV
5 architects, Erwin Andres of Gorove/Slade, and
6 Steven Sher, the director of zoning and land
7 use services at Holland & Knight. We also have
8 Bill Cummings of JBG in the audience as well.

9 And I'm prepared to move forward
10 with my opening statement at your direction.

11 CHAIRPERSON JORDAN: Let me take a
12 look here one second. It's my understanding,
13 Ms. Brown, just clear me, under the request for
14 relief from the number of vehicle spaces I
15 think I'm a bit confused.

16 MS. BROWN: And I don't blame you.
17 It has changed since our initial submission.
18 The two preliminary matters I wanted to bring
19 up, qualification of expert witness, the others
20 was to clarify the parking relief that we are
21 requesting.

22 In our initial submission we had

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1 requested relief from 13 spaces. As we worked
2 through the HPRB process we lost some units,
3 so that the amount of relief dropped. In our
4 pre-hearing submission we said that we only
5 needed relief from four spaces. Since that time
6 we were working through the egress issues out
7 of the garage and realized that we needed to
8 have another corridor to the egress stairs, so
9 we ended up losing two spaces. So I think you'll
10 hear today that we need relief from six spaces.

11 CHAIRPERSON JORDAN: Okay, thank
12 you. Regarding your expert witness, do you want
13 to tender --

14 MS. BROWN: Yes. We have three
15 expert witnesses. They were all qualified in
16 the companion project on July 10th. We have
17 Mr. John Maisto, an expert in architecture,
18 Mr. Erwin Andres, an expert in transportation
19 planning, and Mr. Sher, an expert in zoning and
20 land use.

21 CHAIRPERSON JORDAN: And since
22 they've all been previously granted expert

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1 status we will accept them for this hearing.

2 MS. BROWN: Thank you. Shall I
3 proceed, Mr. Chairman?

4 CHAIRPERSON JORDAN: Give me one
5 second. I want to make sure. Let me ask you,
6 you're aware there has been some letters
7 submitting an opposition to this?

8 MS. BROWN: Yes.

9 CHAIRPERSON JORDAN: Have you had
10 a chance to talk with those in opposition to
11 the application?

12 MS. BROWN: Yes. And you'll hear
13 from Ms. Jezienicki about the continuing
14 efforts, probably for almost a year, working
15 with the community on the issues that they've
16 raised.

17 CHAIRPERSON JORDAN: So if you will
18 look in your presentation to address those
19 issues that will be fine.

20 MS. BROWN: Absolutely.

21 CHAIRPERSON JORDAN: Anything in
22 particular in addition that the Board would like

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1 to hear?

2 ZC VICE CHAIR COHEN: Mr. Chairman,
3 I was not involved with the companion project,
4 so again, specifics would be very helpful for
5 me.

6 CHAIRPERSON JORDAN: Good,
7 appreciate it.

8 MS. BROWN: Thank you. We are here
9 today to seek two special exceptions and three
10 variances in order to construct a new six-story
11 residential building with ground floor retail
12 at the eastern end of the E Street Historic
13 District. The site is one of two former WMATA
14 sites at the corner of 8th and Florida Avenue
15 that have remained vacant since the Green Line
16 was constructed in the early 1970s.

17 The relief is very similar to that
18 requested and approved in the companion building
19 to the east across 8th Street, and that order
20 in this case, in fact, was just issued last
21 Friday. Each site has similar constraints that
22 make it practically difficult to comply with

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1 all the zoning constraints. The main
2 difference here is that this particular project
3 has three street frontages so we no longer need
4 the rear yard relief that we requested in the
5 previous case.

6 While the number of exceptions and
7 variances may initially sound like a lot, they
8 are here, relatively speaking, somewhat minor
9 in nature. One of the most important things
10 to keep in mind is that we are not seeking any
11 relief from FAR or from height. The building
12 will be no larger than is allowed under the
13 regulations. The relief we are seeking is to
14 ensure that this building can fit on this
15 irregular corner given the enormous constraints
16 placed on the development due primarily to the
17 Metrorail tunnels running directly beneath this
18 site, and to conform with the design direction
19 given by the Historic Preservation Review Board.

20 We are pleased to have the HPRB's concept
21 approval for this project, and the design in
22 the drawings today is what they approved at the

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1 end of July.

2 We're also very pleased to have the
3 support of Office of Planning, and we are also
4 pleased to have community support, ANC support,
5 DDOT support, support from council member Jim
6 Graham. In fact, the only people that are in
7 opposition to this are the business owners, not
8 any residents, the business owners on 9th
9 Street, and just a couple of them. And you'll
10 hear from them today, I'm sure.

11 Our prehearing statement sets forth
12 in detail how we meet our burden of proof for
13 the relief we seek, and we are prepared to
14 proceed with our next witness.

15 And if we could turn now to Lauren
16 Jezienicki. Thank you.

17 MS. JEZIENICKI: We have a
18 PowerPoint presentation. I wonder if the
19 lights could be turned off, please.

20 Lauren Jezienicki with the JBG
21 Companies. Good afternoon, members of the
22 Board. My name is Lauren Jezienicki. I'm the

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1 development manager for the Florida Avenue
2 project that we are presenting to you today.

3 This slide provides an orientation
4 of the site bordered by Florida Avenue to the
5 north, 9th Street to the west, 8th Street to
6 the east, and you'll see that they're mostly
7 vacant lots. There's a historic structure
8 existing, but other than that they've been used
9 as mostly service parking lots since the 1970s
10 when the Green Line tunnels were constructed
11 just below the surface here.

12 JBG, through a competitive RFP
13 process won the rights to purchase the two
14 northernmost lots, these two here, last summer,
15 and the remaining lots are controlled under our
16 purchase and sale contracts and we plan to close
17 in the next 30 days.

18 These mostly pavement covered lots
19 have sat vacant for nearly 4 decades, as I
20 mentioned. Prior developers have attempted to
21 redevelop these sites unsuccessfully, due to
22 the many site constraints, but we're very

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1 excited about the opportunity to break ground
2 in the near future.

3 The Duke Development Framework
4 Plan, published by the Office of Planning, has
5 identified this site as a real gap in the fabric
6 between the U Street corridor and the rest of
7 the neighborhood connecting Howard University,
8 the new Howard Theater, to this part of the
9 neighborhood. By filling these vacant sites
10 the project will deliver much needed affordable
11 housing stock, vast streetscape improvements
12 along Florida, 8th and 9th, and neighborhoods
13 serving retail and of course residential housing
14 two blocks from two Metro stations. The U
15 Street Station is here and the Shaw Station is
16 just here.

17 This sort of actually highlights a
18 lot of what I just mentioned. Next one.

19 In the months since the project was
20 conceived, Carolyn had mentioned, last summer
21 and as early as last November, we've met with
22 the city agencies several, several times.

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1 Carolyn mentioned that Office of Planning and
2 DDOT support the project, Historic Preservation
3 and the Historic Preservation Review Board at
4 their July meeting just approved the general
5 concept design for the project. Council member
6 Jim Graham's also in support, and we received
7 a letter of support from the ANC.

8 We've presented this project to the
9 community and neighborhood 22 times in the last
10 nine months or so. Most recently, last Monday,
11 the 10th, we met with the 9th Street business
12 owners to discuss their latest concerns. They
13 were three-folds.

14 The first was a construction
15 entrance on 8th Street, allowing construction
16 traffic to come up and down 8th and avoiding
17 9th. We agreed that this was something that
18 we would propose to DDOT as part of our
19 construction traffic maintenance plan, so it
20 was a concession that we were happy to make.
21 They also proposed removing balconies from the
22 courtyard. So you'll see in a better shot

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1 further in the presentation, but there are
2 currently balconies that look over the alley,
3 and the 9th Street business owners were
4 concerned that those would inhibit their privacy
5 into the back of their shops and restaurants.

6 And so we are removing those, and in place of
7 them putting Juliet balconies, effectively just
8 a sliding door that allows fresh air into the
9 units.

10 And the final concern is the
11 reconfiguration of the alley. I'll talk about
12 that a little bit more and you'll hear more about
13 it this morning. But effectively, there's a
14 public alley that currently bisects the square
15 coming from connecting T Street to Florida.
16 And while it's ten feet wide on the plat,
17 effectively it's about eight feet once you
18 account for utility poles. Currently, no
19 two-way traffic is allowed to pass and often
20 times there will be trucks idling in the alley
21 allowing no traffic to pass.

22 Our proposed reconfiguration would

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1 reroute the alley so that it exits onto 9th
2 Street. It would be widened from ten feet to
3 20 feet, allow two-way traffic, would be cleaned
4 and lit and managed by the new building, would
5 provide clearance for emergency vehicles and
6 room for trash trucks. Currently, city trash
7 trucks are idling on Florida. The garbage men
8 are walking down, picking up the barrels and
9 carrying them back up to the truck. So we would
10 avoid that situation.

11 The 9th Street business owners at
12 least at their meeting last week proposed that
13 the alley remain open in its ten-foot width and
14 have the building bridge over the alley, which
15 we believe is not as an ideal condition and is
16 not consistent with the Duke Redevelopment
17 Framework Plan.

18 Just one other small item to point
19 out is there is currently that historic building
20 on site, and working with the Historic
21 Preservation office they've asked us to relocate
22 that structure about 50 feet south on 9th Street,

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1 so that it would just be at the edge of our
2 assemblage and closer to the existing historic
3 buildings further down 9th. So with
4 that I'll turn it over to John Maisto who will
5 get into more of the architectural plans.

6 MR. MAISTO: Good morning, ladies
7 and gentlemen of the Board. My name is John
8 Maisto. I'm with BKV Group, architect of record
9 for this project. We are currently working with
10 Miller Hull Partnership in Seattle. They are
11 the design architect. Again, we're the
12 architect of record so we're producing the
13 construction documents. We've worked closely
14 with them and the owner and the neighborhood
15 with regard to the historic detailing, massing
16 structure, et cetera, to comply with the
17 Historic Preservation office standards.

18 The current configuration of the
19 building as you can see here on the ground floor
20 shows mostly retail use. Along Florida Avenue
21 is a portion of what could be interior retail
22 space being utilized for a widened sidewalk.

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1 The historic building is relocated to the
2 southwest corner of the site, and in more detail,
3 the alley easement 20 feet wide coming off of
4 9th Street and going down to the end of the
5 building before it goes back to being ten feet,
6 as the client doesn't have control of any of
7 the sites below.

8 The configuration of the massing of
9 the building is a five-story wood-frame
10 construction over a one-story concrete podium
11 over one level of underground parking, a roof
12 deck up on the top of the building that is mostly
13 used for mechanical but has some congregation
14 space for residents, amenity space.

15 On 9th Street -- sorry, going back
16 to the Florida Avenue, it has a 70-foot high
17 height limit, so we comply with the height
18 requirement in the city, measured from a
19 measuring point determined at the center of
20 Florida Avenue, an elevation that we chose.
21 It's a relatively flat site, so that 70-foot
22 compliance wraps all the way around actually.

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1 On 9th Street you can see the Florida
2 Avenue Bar is five stories, and as it goes back
3 toward 8th Street into the site, along 9th Street
4 the massing distinctly steps down, and there's
5 the alley entrance right there under a courtyard
6 for that building which is an amenity courtyard.

7 And then the relocated historic
8 building, which then ties into the fabric of
9 the existing historic neighborhood. So in some
10 ways this relocation of the historic building
11 is very beneficial to not only the building that
12 we've designed but also to the neighboring
13 buildings as it kind of knits it back together.

14 This is just a drawing showing the
15 assemblage of properties that comprise this
16 overall site which is delineated in red. And
17 as Ms. Jezienicki described, the current alley
18 is ten feet wide. This portion right here is
19 scheduled to be vacated. The new alley easement
20 is 20 feet wide, and all the way to the bottom
21 of the south end of our property it maintains
22 a 20-foot width.

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1 Some of the site constraints, this
2 slide is what we've proposed. One of the major
3 site constraints, which wasn't mentioned
4 earlier but was sort of something that started
5 the process other than the WMATA tunnels, is
6 this 60-inch combined sanitary storm line that
7 DC Water has on, you know, that's infrastructure
8 that exists.

9 DC Water requires a certain amount
10 of distance from their infrastructure before
11 you can build. We've negotiated with them.
12 They've accepted this distance here with the
13 exception of the corner at the garage. And
14 you'll see in a future slide that this corner
15 is chamfered a little bit because of the amount
16 of potential interference with that line.

17 The WMATA tunnels, northbound and
18 southbound Green Line tunnels are then
19 superimposed on this constraint. Very similar
20 to the building to the east, these tunnels are
21 only about 27 feet below grade which, you know,
22 requires then only a one-story parking garage.

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1 So that's a limitation that we've had to work
2 with.

3 The alley easement is also something
4 that has helped us in some ways to form the site
5 to push the mass of the building toward the
6 streets and separate, create a buffer between
7 our building, the historic building and the
8 neighbors to the south. As you can see here,
9 the historic building was right there and will
10 be relocated to the southwest corner.

11 This is a diagram that shows if you
12 were to be placed underground under the tunnels
13 and looking up through the grade, you can see
14 the WMATA fan structure on 8th Street, the
15 northbound tunnel, the southbound tunnel. This
16 DC Water sanitary and sewer line, and as you
17 can see it chamfers the corner of the parking
18 garage and takes some space away obviously while
19 the rest of the building cantilevers above.
20 So I think it's safe to say that we've respected
21 the existing conditions in our efforts to make
22 this building as efficient as possible.

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1 This particular slide shows what Ms.
2 Jezienicki was describing. Currently there are
3 balconies on this facade here. This is the west
4 facade of the south wing. The neighbors have
5 requested that these balconies be removed.
6 This doesn't show them removed yet as we are
7 going through our design exercise with Historic
8 at the staff level. We will be complying with
9 that. But just to give you a sense of these
10 balconies looking out over the alley, this is
11 the current ten-foot width right here, and as
12 it widens to 20 feet and then it goes underneath
13 the building out to, under the courtyard out
14 to 9th Street. This is the relocated historic
15 building right here.

16 So as you can see, the building sort
17 of wraps around again on the Florida Avenue at
18 its highest, 8th Street coming down and then
19 stepping down to the south as a deferential move
20 toward our neighbors. There's also, as you saw
21 in that elevation, sort of a massing move on
22 9th Street here where this mass steps down too

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1 so that there's a distinct stepping down from
2 Florida down 9th Street.

3 This is the parking level. There's
4 that chamfered corner. The main level slide
5 we've seen before, mostly retail. The historic
6 building relocated, and a space that would have
7 been dedicated to retail but that's actually
8 given over to the sidewalk. The current
9 sidewalks on Florida Avenue are quite narrow,
10 and in working with DDOT the owner has accepted
11 widening them to help the streetscape.

12 They've also given over five feet
13 along this western edge of the lot here to make
14 that alley 20 feet wide. So there's been a
15 consistent recognition of how this building
16 reacts with its neighbors with its context.

17 This is a typical floor. Double
18 loaded corridor, second, third and fourth floors
19 are stacked fairly efficiently like this. The
20 fifth and sixth floors are also stacked in this
21 manner but they step back along 8th Street, and
22 on the south end and on the west side of the,

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1 I guess you could say the north wing as moves
2 that were requested by the Historic Preservation
3 office to help blend this building into its
4 historic context a little bit more.

5 This is the roof deck with, as you
6 can see mostly used for mechanical equipment
7 that supplies heating and cooling obviously to
8 all the units, with certain areas being used
9 as amenity spaces. These areas obviously seem
10 small but they're also limited by the building
11 code. We can't assemble too many residents up
12 on a roof based on its construction type.

13 We are seeking a variance for
14 parking. I think there was a clarification
15 earlier that we're seeking a variance for six
16 spaces. The request is really for six spaces.

17 We had asked for 13 in the original application
18 back in March, but we are now only asking for
19 six.

20 We're also asking for loading
21 relief. Currently what's required is, for the
22 retail portion, two 30-foot loading berths, two

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1 100 square foot platforms and one 20-foot deep
2 loading space. And we are requesting relief
3 for one 30-foot loading berth and to delete one
4 100 square foot platform.

5 On residential, one 55-foot deep
6 loading berth is required, one 200 square foot
7 platform and one 20-foot deep loading space.
8 We are requesting relief to delete the 55-foot
9 loading berth and a 20-foot loading space, with
10 the idea that the retail and the residential
11 can share the 30-foot loading berth and the
12 platforms and loading spaces. It's

13 pretty evident that even if we didn't vacate
14 the alley that a 55-foot truck would not be able
15 to service this building via through the alley.

16 So I think it's clear that a 55-foot loading
17 berth really couldn't get to this building or
18 to any part of this building other than street
19 service.

20 We're also looking for a variance
21 on lot occupancy. It's 80 percent is required.

22 We exceed this on the second, third and fourth

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1 floors, but we comply on the fifth and the sixth
2 floors. So we're seeking a slight variance on
3 the lot occupancy.

4 We did an exercise just for the
5 purposes of understanding. If we did an 80
6 percent lot coverage, the building would then
7 get narrow along the Florida Avenue side which
8 would convert all of these one-bedroom, well,
9 mostly one-bedroom units into studios,
10 increasing the studio mix to up by 400 percent.

11 Some two bedrooms would become one bedrooms
12 and some three bedrooms would become two
13 bedrooms. So we actually change the unit mix
14 in a detrimental way if we were to comply
15 strictly with the 80 percent lot coverage,
16 which, you know, while we could keep the same
17 number of units, they're not as desirable for
18 families or for couples since they're studios.

19 From a technical standpoint too we would have
20 to reconfigure our elevator core. It would move
21 into a drive aisle. We'd have to reconfigure
22 the parking. So that's one of the reasons we're

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1 asking for the 80 percent lot coverage relief.

2 We're asking for a special exception
3 for roof structures. There are three roof
4 structures, two stairs and one elevator core,
5 and typically they should all be under one
6 structure. But because they're distant due to
7 exiting distances, to combine them under one
8 structure would just add bulk to the building
9 which I don't think is necessary.

10 We are seeking relief for the
11 streetwall. We need to have 75 percent of
12 streetwall, but because we have given over 100
13 percent of this sidewalk frontage to ensure that
14 the sidewalks are widened, there's still a
15 streetwall effect. However, it's actually not
16 as dramatic as it would be because the sidewalks
17 are now wider.

18 So it's our professional opinion
19 that what we are seeking is reasonable given
20 the site conditions, the DC Water
21 infrastructure, the WMATA tunnels, the alley
22 relocation and widening, the historic building

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1 relocation and the increased sidewalk width.

2 It should be noted that the alley
3 relocation and widening and the Florida Avenue
4 sidewalk widening are achieved by the owner
5 ceding valuable retail rental space, giving that
6 space essentially to the neighborhood and to
7 achieve some public good, I think. In addition,
8 the historic building relocation is significant
9 in that it helps blend the building, the larger
10 building back into the neighborhood context and
11 it also ties the historic building back into
12 an existing neighborhood fabric.

13 Each of these areas of relief that
14 I mentioned, I think, are achievable by
15 themselves, but in total the confluence of all
16 the factors creates a practical difficulty to
17 provide a fully compliant building, which is
18 why we're here. So we respectfully request that
19 the Board weigh these extenuating factors while
20 you consider this application. Thank you very
21 much.

22 MS. BROWN: We'll move on to our

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1 next witness, Mr. Andres from Gorove/Slade.

2 MR. ANDRES: Good morning, Chairman
3 Jordan, members of the Board. My name is Erwin
4 Andres, principal at Gorove/Slade Associates.

5 As part of our involvement in this
6 project, the scope consists of three points.
7 The first is, we help with the site plan review
8 and the circulation. We've coordinated with
9 the agencies that include the District
10 Department of Transportation and the Office of
11 Planning, and we also look to address the traffic
12 impact related to the development.

13 With respect to the variances, I'd
14 like to go through the variances quickly. With
15 respect to the parking variance, DDOT concurs
16 in their September 13th, 2012, the review
17 letter, that the parking variance is not an
18 issue. I just want to clarify it for the record
19 that the study that that letter references is
20 our Gorove/Slade May 25th, 2012, traffic study.

21 In that study, the number of units
22 were 163 units. The proposed plan updates that

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1 from 163 to 156 units. So in essence, the
2 traffic study that DDOT had reviewed actually
3 was for more units. So in essence, we're
4 reducing the number of units, and essentially
5 because of the reduction in units the variance
6 goes down as well.

7 So with respect to the variance of
8 six parking spaces, our defense of that variance
9 in our traffic study is we believe it's still
10 appropriate given that the site is located
11 approximate to two Metro stations, both the U
12 Street/Cardozo Station and the Howard
13 University/Shaw Metro station. There's eight
14 bus lines that serve the site, and in addition
15 to that there's future streetcar service that
16 will also serve the site. Given that and the
17 commitment to the transportation demand
18 management elements that have been identified
19 in our report, we believe that the parking
20 provided is sufficient especially since the
21 variance has been reduced from 13 spaces to six
22 spaces.

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1 With respect to the loading
2 variances, the loading required for the entire
3 development consists of two 30-foot berths, two
4 20-foot berths and one 55-foot berth. What we
5 are requesting is the variance for one 30-foot
6 berth and a 20-foot berth.

7 As part of our interaction with
8 DDOT, which is consistent with many of the other
9 projects in the District we've worked on, is
10 consolidating loading facilities. The
11 management of many of the new developments in
12 the District are fairly sophisticated where the
13 property managers look at the different times
14 and look at the different uses to take advantage
15 of the loading facilities such that the loading
16 facilities aren't necessarily overbuilt. And
17 in doing so that coordination is essential in
18 making this project work. So with respect to
19 the variances for loading, we've coordinated
20 with DDOT, and DDOT concurs in their September
21 13th letter, that the number of loading berths
22 provided is sufficient, and we are committed

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1 to manage the system so that it is an efficient
2 system. And as I said earlier, it is a system
3 that's practiced throughout the District.

4 With respect to the traffic impacts,
5 given the TDM commitments as well as the
6 proximity of the site to transit, we have
7 projected the vehicular traffic generation to
8 be relatively low. However, there are some
9 issues related to pedestrian crossings and some
10 congestion along the U Street and Florida Avenue
11 corridor.

12 As part of our mitigation of some
13 of these conditions includes the commitment to
14 install a new traffic signal at the intersection
15 of 8th and Florida. So as part of, actually
16 as part of this development as well as the
17 companion development, we are committed to
18 install a traffic signal.

19 And the last item I'd like to address
20 is with respect to the alley improvements. As
21 is mentioned earlier, the existing alley runs
22 north-south and is fairly narrow. Effectively

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1 it's, even though on the plan it's shown as ten
2 feet, given some of the protrusions and the light
3 poles the width is probably in a range of about
4 nine to eight feet, which makes two-way traffic
5 essentially impossible. As a result, if a
6 vehicle is coming down and another vehicle is
7 coming in the other direction, one of them
8 ultimately has to back up.

9 We are mitigating that situation by
10 not only providing a two-way 20-foot alley to
11 our loading dock and our garage entrance, but
12 we're also continuing it along the west side
13 of the south wing so that some of the neighboring
14 uses can take advantage of that wider alley.
15 And some of the other users that would be able
16 to take advantage of it, which have been brought
17 up earlier, are the trash trucks as well as any
18 other deliveries that are associated with the
19 neighbors to the south.

20 So given that if you have any
21 questions I am available for questions. Thank
22 you.

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1 MS. BROWN: Thank you. We will
2 move on unless you have questions.

3 CHAIRPERSON JORDAN: Yes.

4 MEMBER MACMURRAY: Good morning.
5 I have just a few questions. The reduction from
6 the 13 retail spaces to the six that you're
7 requesting, have you guys gone back to U Street?
8 Is that neighborhood association, are they
9 aware of that change for the parking spaces?

10 MS. JEZIENICKI: Yes, we met with
11 the U Street Neighborhood Association. They
12 actually sent in a letter just yesterday, so
13 it was a late submission, but they reviewed it
14 when we were requesting 13 parking spaces and
15 so we haven't gone back to them. That was just
16 in the last few weeks. So we haven't gone back
17 to them with the six spaces, but given that the
18 reduction is less than what they reviewed we
19 think it would be a favorable, they'd be in favor
20 of it.

21 MEMBER MACMURRAY: So just to
22 confirm, you said that they submitted a letter

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1 regarding the six spaces, or they're not aware
2 of the six spaces?

3 MS. JEZIENICKI: They submitted a
4 letter regarding the 13 spaces.

5 MEMBER MACMURRAY: Okay, that's
6 what we have. But my question was about the
7 six.

8 MS. JEZIENICKI: They only meet
9 monthly and the six spaces just happened. We
10 discovered it in the last two weeks. So they
11 will be made aware of it, and I think because
12 they're in favor of more parking, so less relief,
13 they'd be in favor of the fact that it went from
14 13 to six.

15 MEMBER MACMURRAY: And then the
16 second question is, I think you note that the
17 alley runs north to south, so your plans are
18 to close both sides, at some point, of the alley
19 to do that renovation?

20 MR. ANDRES: No, no, not at all.
21 In essence, it's not necessarily a full closure
22 it's a redirection. So right now if -- can you

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1 toggle back? Keep going. There's a graphic
2 that actually shows it clearly. Actually if
3 you can go back I'll do it off of this one.

4 Currently the alley runs
5 north-south, and essentially what's being
6 closed is the northern portion, and so the alley
7 essentially is making a left turn. So there
8 is a northern and a southern end. All it's doing
9 is it's being rotated 90 degrees.

10 ZC VICE CHAIR COHEN: Okay, I just
11 want some confirmation so I can make sure I
12 understand. So the existing retail, what is
13 their objection then to the completion of the
14 widening of the alley? I mean it seems to me
15 that it makes better sense what you're doing,
16 so I don't really understand what their issue
17 is. And they'll have a chance to explain, but
18 --

19 MS. JEZIENICKI: I think it would
20 be better for them to explain their, in meetings
21 with them they've just felt strongly that it
22 should continue to exit onto Florida. Some of

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1 the concerns were about loading and the fact
2 that the loading would be off of 9th Street.
3 But again, it would be two-way traffic and it
4 would allow, it's a managed loading dock and
5 it would allow traffic to flow in, go into the
6 garage or the loading dock and not idle at the
7 entrance to the alley. And so they are here,
8 so I think that they can elaborate a bit more.

9 ZC VICE CHAIR COHEN: And making
10 that left turn, what size truck can make that
11 left turn and what can't?

12 MR. ANDRES: Well, with respect to
13 the loading dock that we've incorporated in our
14 project, a 30-foot truck, which is basically
15 your box trucks, would be able to maneuver around
16 that corner into the necessary loading docks.

17 ZC VICE CHAIR COHEN: But not a 55.

18 MR. ANDRES: The 55 can, if
19 anything, barely get you into the driveway.

20 ZC VICE CHAIR COHEN: Right.

21 MR. ANDRES: So in essence, today
22 a 55-foot truck probably wouldn't make it in

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1 there and a 55-foot truck probably wouldn't make
2 it in through here.

3 ZC VICE CHAIR COHEN: Okay.

4 Mr. Chairman, I have a few more
5 questions for the architect. Is that okay to
6 move on?

7 CHAIRPERSON JORDAN: Absolutely.
8 Please do.

9 ZC VICE CHAIR COHEN: Thank you.

10 Again, I was not here for the
11 companion project, but I just wanted to know
12 what kind of vibrations will the building feel
13 from the Metro? Will there be any vibrations
14 going up into the building?

15 MR. MAISTO: If any they would be
16 almost negligible. I would consider that to
17 be similar to just living in a city off of a
18 busy street where you get the vibrations from
19 the road. But based on the fact that the Metro
20 tunnels are 27 feet below, they would get soaked
21 up by a very heavy mat footing in our building.

22 We have a three-foot mat footing in the building

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1 which actually is a benefit to soaking that up.

2 ZC VICE CHAIR COHEN: Thank you.
3 Now moving the historic building, how old is
4 that building? And I presume that the Historic
5 Preservation Board believes that moving it will
6 not damage it in any way.

7 MR. MAISTO: It's from the 1870s.
8 The exact date is --

9 ZC VICE CHAIR COHEN: That's close
10 enough.

11 MR. MAISTO: It's close enough. It
12 has been renovated several times. There's
13 history on that. The suggestion to relocate
14 it was actually by the Historic Preservation
15 office.

16 ZC VICE CHAIR COHEN: Right.

17 MR. MAISTO: And yes, there will be
18 some cracking, some damage, because that's what
19 happens when you move a building. However, it
20 would be done professionally obviously with a
21 subcontractor that knows what they're doing,
22 relocated to a place while construction is

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1 ongoing, then reset on a much more stable
2 foundation. It'll be over the garage of the
3 current building and reserviced by utilities,
4 and obviously then renovated to historic
5 standards. In fact, we're bringing the facade
6 back to a more appropriate historic moment.

7 ZC VICE CHAIR COHEN: Can we go to
8 the picture of the drawing of the joining of
9 the roof, please?

10 MR. MAISTO: It's coming. Right
11 here?

12 ZC VICE CHAIR COHEN: Yes. So you
13 cannot set the mechanicals back further from
14 the edge of Florida?

15 MR. MAISTO: They're actually
16 behind a screen.

17 ZC VICE CHAIR COHEN: And how tall
18 is that screen?

19 MR. MAISTO: Four feet. It's a
20 four foot tall screen.

21 ZC VICE CHAIR COHEN: It's a four
22 foot, so does that add, is that 70 feet in height,

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1 the building, plus four feet?

2 MR. MAISTO: It's 70 feet to the
3 roof and then there's the four-foot screen which
4 is allowable.

5 ZC VICE CHAIR COHEN: Right.

6 MR. MAISTO: But given sight lines
7 from the street, you would only really see the
8 top of the screen, if any.

9 ZC VICE CHAIR COHEN: And what's the
10 material of the screen?

11 MR. MAISTO: It's a steel grating
12 material. Very sympathetic to the rest of the
13 materials that we're proposing for this site,
14 which are metal panels, cementitious siding and
15 steel detailing and masonry.

16 ZC VICE CHAIR COHEN: Mr. Chairman,
17 I may be asking some PUD questions, I'm a little
18 schizophrenic there. Thank you.

19 MR. MAISTO: You're welcome.

20 CHAIRPERSON JORDAN: Certainly.

21 Ms. Sorg?

22 BZA VICE CHAIR SORG: Thank you, Mr.

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1 Chairman. I'll just ask two general questions.

2 Can you remind me about how many units are in
3 the companion building or project?

4 MS. JEZIENICKI: So I want to say
5 it's 70, or 90.

6 BZA VICE CHAIR SORG: About 90?
7 That's fine.

8 MS. JEZIENICKI: Seventy stuck in
9 my head. About 90.

10 BZA VICE CHAIR SORG: Okay. And
11 then are you seeking any LEED certification?

12 MS. JEZIENICKI: We're actually
13 studying it now. So we are striving to be LEED
14 certified. We haven't filed the paperwork yet
15 but we're working with a green consultant to
16 do that.

17 BZA VICE CHAIR SORG: How does it
18 look?

19 MS. JEZIENICKI: Of the 26 points
20 I think we're just about there, so we're within
21 the range of achieving it. I mean we still have
22 to go through all the paperwork to file but

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1 --

2 BZA VICE CHAIR SORG: But if
3 anything it will be Silver.

4 MS. JEZIENICKI: Certified.

5 MR. MAISTO: Certified. To
6 achieve Silver would take some additional
7 effort.

8 BZA VICE CHAIR SORG: Oh, 26, right.
9 Okay, thank you.

10 CHAIRPERSON JORDAN: Anyone else?

11 ZC VICE CHAIR COHEN: It may be
12 worth it for marketing purposes.

13 (Off the record discussion)

14 CHAIRPERSON JORDAN: Anyone else,
15 questions?

16 MS. BROWN: Thank you. We'll now
17 turn to our last witness, Mr. Sher.

18 MR. SHER: Mr. Chairman, members of
19 the Board, for the record my name is Steven E.
20 Sher, the director of zoning and land use
21 services with the law firm of Holland & Knight.

22 I think my able colleagues, Mr.

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1 Maisto and Mr. Andres, have said much of what
2 I would have said. In terms of the relief that
3 we're asking for, lot occupancy, number of
4 parking spaces, number of loading berths and
5 the two special exceptions for the roof
6 structures to have three instead of one, and
7 to have the elevator core not meet the one-to-one
8 setback from that alley side, and then the
9 special exception from the requirements of the
10 ARTS overlay district to not have the building
11 facing on Florida Avenue at 75 percent on the
12 streetwall, in fact, what we're doing is
13 deliberately setting the building back from the
14 streetwall to provide the wider sidewalk which
15 has been encouraged of us to do, I think we have
16 demonstrated the criteria for the variance, the
17 exceptional extraordinary situation or
18 condition and the practical difficulty that
19 results, and the fact that we believe that the
20 relief can be granted without adverse impact.

21 With respect to the roof structures,
22 as Mr. Maisto said, we could connect the three

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1 separate roof structures by putting a screen
2 wall around them, but all that does is add
3 unnecessary mass to the roof because the
4 building code tends to require that the stair
5 towers be located at extreme ends of the
6 buildings so that you're not concentrating all
7 the access at one point.

8 The elevator core is conversely
9 located right at the middle of the building,
10 which is the ideal place for that, and because
11 of the configuration of the building below it
12 kind of dictates where those elevators want to
13 be and therefore we're three foot short of the
14 one-to-one setback for the elevator override.

15 And I think I've addressed quickly
16 the basis for not bringing the building out to
17 the streetwall along Florida Avenue. We're
18 providing a total of 16 feet from the curb to
19 the face of the building where the public space
20 is, I believe, ten, and we're setting back an
21 additional six rather than pulling the building
22 out to the streetwall on that first floor. So

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1 for all those reasons and for all the other
2 material that I have set forth and that you've
3 heard from my colleagues, I believe this is an
4 appropriate case for the Board to grant the
5 relief we have requested. Thank you.

6 MS. BROWN: Thank you. That
7 concludes our case-in-chief.

8 CHAIRPERSON JORDAN: Any other
9 questions of the applicant? Okay.

10 Let's move now to the Office of
11 Planning.

12 MR. GOLDSTEIN: Good morning, Mr.
13 Chair. For the record, my name is Paul
14 Goldstein with the Office of Planning. As you
15 have heard, the applicant has requested several
16 areas of relief to accommodate a new six-story
17 mixed-use building at 800 Florida Avenue. OP
18 is supportive, as is provided in more detail
19 in the report, for the area variances related
20 to parking, loading, lot occupancy and special
21 exceptions for the roof structures and minimum
22 street frontage design. If the Board

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1 finds it necessary I can certainly walk through
2 the areas of relief with greater detail, but
3 I think you've heard a fair amount already.
4 Other than that I can conclude my presentation,
5 take any questions that you may have. Thank
6 you.

7 CHAIRPERSON JORDAN: Ms.
8 MacMurray?

9 MEMBER MACMURRAY: I just have one
10 question. I noticed in your report that you
11 said their initial application was sufficient
12 by four. Would you accept that they're now
13 requesting six parking spots relief?

14 MR. GOLDSTEIN: The Office of
15 Planning has no objection at the slight change.

16 MEMBER MACMURRAY: Okay.

17 CHAIRPERSON JORDAN: Any other
18 questions for Office of Planning?

19 ZC VICE CHAIR COHEN: Actually it's
20 probably not for Planning, but in their review
21 they ask that the streetwall height would
22 measure 17 feet, which the Office of Planning

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1 encourages the applicant to confirm at the
2 hearing, so is that true?

3 MS. BROWN: I'll turn to our
4 architect to see if he has a measurement for
5 that.

6 MR. MAISTO: The ground floor
7 streetwall is 17 feet, but it is set back as
8 we just described.

9 ZC VICE CHAIR COHEN: Right. Okay,
10 thank you.

11 (Off the record discussion)

12 BZA VICE CHAIR SORG: Okay, I do,
13 thank you, Mr. Chairman, have one question.

14 In your analysis regarding exceptional
15 conditions, you do list the, at which the
16 applicant also contends, the reconfiguration
17 of the alley as an exceptional condition that
18 contributes to the variance test. Do you not
19 think that that is something that is a choice
20 imposed on the property by the applicant? I
21 mean you have several other, you know,
22 conditions that can apply, but my question is

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1 regarding that specific one.

2 MR. GOLDSTEIN: That's kind of a
3 tug-and-pull question. It certainly is
4 assisting their project in the design they want
5 to do. On the other hand, it is what appears
6 to be a helpful, a widening and reconfiguration
7 of the alley that would benefit just beyond their
8 own property. So how much you want to factor
9 it in, I kind of leave it to the Board. But
10 I think it is a rather exceptional condition
11 in having, I don't know that many projects that
12 have reconfigured an alley in this way and
13 widened it as part of the project.

14 BZA VICE CHAIR SORG: Okay. I'm
15 not sure I agree, but I mean I think that there
16 are several other exceptional conditions that
17 I do think are pertinent. Thanks.

18 CHAIRPERSON JORDAN: Okay. Any
19 other questions for Office of Planning?
20 Anyone? The applicant, any questions of
21 Planning?

22 MS. BROWN: No questions.

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1 CHAIRPERSON JORDAN: Good. Let's
2 move now to the Department of Transportation.

3 ZC VICE CHAIR COHEN: Excuse me.
4 Mr. Chairman, I just want to note that I believe
5 that it was referred that the Department of
6 Transportation did have a written report but
7 we never received it.

8 CHAIRPERSON JORDAN: Why don't we
9 respond to that. Go ahead, Transportation.

10 MR. HINSON: I'll try again, slide
11 down just a bit. Again, my name is Jamie Hinson.
12 I'm a planner with the District's Department
13 of Transportation.

14 We did complete a report and
15 thought, frankly, we had submitted it Friday.
16 Now Friday is late, and so my apologies on that.
17 That is not on time. We had problems in the
18 office with the case manager was sick, and so
19 we didn't get it in on time. We thought we had
20 submitted it. Again, my apologies on that.

21 CHAIRPERSON JORDAN: Friday's
22 still too late.

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1 MR. HINSON: Oh, I know.
2 Absolutely. And like I've said, my apologies.

3 The case manager who is managing the case had
4 been out for awhile, and I know it's not
5 acceptable, but I do want to explain that this
6 is not our practice. We're working very hard
7 on getting our reports in in a timely manner
8 so you can review them, and I don't, if I were
9 in your case, I don't like to look over the
10 reports when I get here nor to listen to anybody
11 else tell me what they say without having seen
12 them myself.

13 So I'll be glad to present what's
14 in the report going in a little more detail than
15 I might normally would have. Feel free to
16 interrupt and ask questions if you like, but
17 Mr. Chairman, if it's okay I'll go ahead and
18 go into detail and discuss if you like. Okay.

19 So in summary, I'll summarize my
20 points and then go through a couple of the
21 details of the points that are really worth
22 mentioning from the DDOT perspective.

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1 The request for loading variance,
2 DDOT has no problem with. The request for
3 parking variance, DDOT has no problem with.
4 And then the applicant, DDOT has participated
5 with the applicant to address potential
6 mitigation factors. One would be a signal
7 installed at the intersection of Florida Avenue,
8 N.W., and 8th Street. That is an appropriate
9 mitigation, and DDOT believes along with the
10 applicant that a vehicle trip generation
11 monitoring program should, indeed, be required.

12 So with that let me get into a few of the details
13 of things that are important to us.

14 Parking. The applicant is
15 proposing on the order of 70 spaces, give or
16 take, parking. This equates to about 0.3 spaces
17 per residential unit and on the order of one
18 space per 1000 square feet of retail. This is
19 an exceptionally, this is a low amount of parking
20 that will facilitate a low vehicle mode split
21 that will create or cause low vehicular impacts
22 on the neighborhood. It's supported by the

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1 applicants assumed mode split of 65 percent
2 non-auto and 35 percent auto. Frankly, that's
3 probably even high based on new information that
4 we're learning from research being conducted
5 by the Council of Governments for the
6 Washington, D.C. area.

7 Further, the applicant is quite
8 conservative in some of the assumptions they
9 make. Their vehicle trip generation
10 assumptions are most likely high. They're
11 assuming that almost all of the trips coming
12 into the site will turn over in the p.m. peak
13 period. So if there's 70-ish parking spaces,
14 they're assuming that almost all of them will
15 turn over. That they'll be full when the peak
16 hour starts, they'll empty and then be full again
17 when the peak hour ends. That's most likely
18 not going to happen. They're probably assuming
19 many more trips, meaning that the level of
20 service that they're showing is probably
21 considerably higher than it's actually going
22 to be. Hope that makes sense. I'll be glad

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1 to explain more.

2 They've also assumed a high level
3 of growth factor in the corridor at 1.6 percent
4 per year. Exceptionally high, most likely
5 showing that there are far more trips in that
6 corridor than that corridor will have the
7 ability to handle.

8 Side access as proposed from a new
9 alley that will be reconnected to 9th Street,
10 DDOT thinks that this change should provide
11 significant utility not only to the site but
12 to the adjacent neighbors. A 20-foot alley
13 would allow people to park, pass, takes the
14 stress off of 9th Street for any deliveries that
15 may happen on 9th Street. There's more room
16 in the back for those to happen now. DDOT feels
17 that's a positive benefit.

18 And there's one point where the
19 applicant notes that one intersection, and I
20 believe it's, can't remember if it's 7th and
21 Florida or 9th and Florida, will move to a level
22 of Service F, I believe it's 7th/Georgia Avenue

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1 at Florida. Most likely this is probably not
2 going to happen. The applicant again is
3 conservative. DDOT feels that while they're
4 showing that traffic may come to a level of
5 unacceptability, based on our experience in the
6 area with the assumptions they've made this is
7 not likely to happen. It's likely to stay less
8 than failing.

9 And then as far as the loading with
10 the 55-foot truck, DDOT very much believes that
11 requiring a 55-foot loading berth for facilities
12 that have minimal use for it is inappropriate.

13 And we've been consistently saying this across
14 the District. If there's not going to be truck
15 activity, 55-foot truck activity multiple times
16 a week it seems unnecessary, because ultimately
17 the applicant has to design a public space to
18 accommodate a 55-foot truck that begins to
19 encroach on pedestrian facilities, trees,
20 lights, the things that make a city urban. And
21 that's just not appropriate.

22 What we do ask is that the applicant

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1 work with DDOT to identify a space for a 55-foot
2 truck, because there are the occasional
3 cross-country, long distance, large moves that
4 need those types of trucks. And so we are very
5 glad to work with an applicant to identify a
6 spot that can accommodate that loading, and
7 we'll be glad to work with the applicant on that.

8 But we don't feel that the 55-foot berth is
9 necessary unless there are some other uses that
10 we're unclear on that would necessitate it.

11 So in conclusion, DDOT has no
12 concerns with approving the variances. We are
13 glad that the applicant has agreed to install
14 a signal at Florida and 8th. And we generally
15 agree to the trip generation monitoring as
16 described in our report, and we'll make sure
17 that that's passed to you.

18 The only other thing that I might
19 add to our report that I know you don't have
20 would be the timeline for the signal. And we
21 generally think that it's appropriate to have
22 the signal prior to the completion of

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1 construction or opening of the building.

2 So with that I'll conclude and take
3 questions.

4 CHAIRPERSON JORDAN: Questions?

5 Yes, Ms. Cohen?

6 ZC VICE CHAIR COHEN: For the
7 occasional 55-foot truck, where would you
8 contemplate putting that? Have you thought
9 about it?

10 MR. HINSON: Yes. Most likely on
11 the north, oh no, I guess that would be the east
12 side of 9th Street adjacent to the site. That
13 seems most appropriate. It's hard to imagine
14 putting it, a 55-foot truck being able to get
15 down to 8th, and we surely don't want it on
16 Florida.

17 ZC VICE CHAIR COHEN: One of the
18 concerns of the party in opposition is the
19 anticipated traffic onto a heavily traveled
20 commercial corridor and the potential, and I'm
21 quoting, "bottlenecks that may occur attempting
22 to enter and exit onto 9th Street." Can you

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1 comment?

2 MR. HINSON: And I can defer to the
3 applicants' analysis on this. The analysis
4 just doesn't show it.

5 CHAIRPERSON JORDAN: Just doesn't
6 show what?

7 MR. HINSON: I'm sorry. It doesn't
8 show a bottleneck. It doesn't show any problems
9 with getting in and out.

10 (Off the record discussion)

11 ZC VICE CHAIR COHEN: I'm sorry.
12 Can you please respond to that then?

13 MR. ANDRES: As part of our analysis
14 we do a capacity analysis which takes into
15 account the volumes of the turning movements
16 at certain locations. We do that at the offsite
17 intersections that DDOT asks us to do and then
18 we also do it at the actual entrance. And based
19 on our analysis of the entrance of that new alley
20 that we're creating, actually that we're
21 reconfiguring, and the garage access to that,
22 based on that, that intersection of the alley

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1 and 9th Street operates at acceptable levels
2 of service, which are based on industry
3 standards.

4 CHAIRPERSON JORDAN: Anyone else to
5 Office of Transportation?

6 MEMBER HINKLE: Yes. Thank you,
7 Mr. Chairman.

8 Going back to the 55-foot truck
9 loading, we keep seeing this request all the
10 time on the BZA, and if DDOT doesn't support
11 this how come the regs aren't changed?

12 MR. HINSON: I'll defer to
13 Commissioner Cohen on the end.

14 CHAIRPERSON JORDAN: We're not
15 having that kind of debate.

16 MEMBER HINKLE: Sorry. We still
17 continue to see this --

18 (Simultaneous speaking)

19 MR. HINSON: Right, exactly.

20 MEMBER HINKLE: -- and this is the
21 first time I've heard that DDOT does not
22 necessarily support the 55-foot loading docks.

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1 I guess my other question, if I can
2 find it, is there's a request in one of the
3 letters from the opposition that there's a limit
4 on the, or a prohibition on residents obtaining
5 the residential zone parking permits. Is that
6 something that DDOT would support?

7 MR. HINSON: Generally we don't
8 take a position on it, and we provide feedback
9 on what the applicant chooses. Our general
10 perspective, and I think I don't want to speak
11 for my colleague at OP, but I think it's both
12 of our agencies' position is that we don't ask
13 for applicants to do that but we're glad to
14 include analysis of it either way. So it's
15 really, my understanding is that it's their
16 choice. They're welcome to opt out of it if
17 that helps in the negotiation. They're welcome
18 to stay in it assuming that they're on a block
19 that has RPP or that's eligible for RPP parking.

20 MEMBER HINKLE: Part of my question
21 is, part of your analysis in terms of the
22 reduction of the required parking is that

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1 limiting the number of cars on the site would
2 limit the amount of traffic in the area. So
3 if you allow the other residents to obtain
4 parking permits doesn't that defeat the purpose
5 of, or part of your analysis?

6 MR. HINSON: It can. It absolutely
7 can. We also look at the area and the trends
8 in the area and the car ownership
9 characteristics. And this is one of the areas
10 of the city where car ownership and the trends
11 of travel just aren't with vehicle travel. I
12 mean people don't move to U Street in order to
13 bring multiple cars. Cars tend to be more the
14 exception rather than the rule from what we're
15 finding in this area. Now obviously that's not
16 to say that there aren't plenty of the cars in
17 the area. I know that. But the residents that
18 tend to be moving into these types of quarters
19 tend to be the residents that are not living
20 a car-focused life.

21 MEMBER HINKLE: Okay, thank you.

22 CHAIRPERSON JORDAN: Ms.

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1 MacMurray, did you want to --

2 MEMBER MACMURRAY: Mr. Chairman, I
3 was just going to echo Mr. Hinkle's comment about
4 the 55-foot truck.

5 CHAIRPERSON JORDAN: Right. And
6 she had already communicated that and so you
7 guys are on the same page about that and that's
8 probably something we need to address.

9 MEMBER MACMURRAY: Yes, I just
10 would make a comment to the applicant that the
11 sensitivity to the 55-foot truck and having
12 accommodations, and applaud you for working with
13 DDOT to make sure that there is a designated
14 area and that going through the project that
15 that is continually communicated.

16 CHAIRPERSON JORDAN: Any other
17 questions of the Department of Transportation?
18 Applicant questions of Transportation?

19 MS. BROWN: No questions.

20 CHAIRPERSON JORDAN: Any other
21 government agency?

22 Yes, we have another question.

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1 BZA VICE CHAIR SORG: Thank you, Mr.
2 Chairman. Just one question for the applicant.
3 Had you discussed this residential parking
4 permit issue with the opposition?

5 MS. BROWN: I can say that we are
6 providing all the required residential spaces.
7 We are requesting relief from the retail
8 spaces, so the RPP really would not be in play
9 here.

10 BZA VICE CHAIR SORG: Okay, so the
11 answer then is no.

12 CHAIRPERSON JORDAN: I think the
13 question was, have you discussed it?

14 BZA VICE CHAIR SORG: Have you
15 discussed it. Not whether or not you think it's
16 -- I just want to know if it's been entered into
17 the discussion.

18 CHAIRPERSON JORDAN: And I think
19 that question is something that we've kicked
20 around, whether or not people are having
21 discussions. I think that's kind of probative
22 in matter and we're just trying to find out.

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1 MS. BROWN: I'll let Ms. Jezienicki
2 answer that.

3 MS. JEZIENICKI: It had come up, I
4 think, at the U Street Neighborhood Association,
5 but was never a firm mandate. They felt
6 strongly about the traffic signal at 8th and
7 Florida, and were concerned about the parking,
8 but as we've shown it's a limited number of
9 spaces and it's really just for actual retail.
10 So it never became an issue of contention.

11 BZA VICE CHAIR SORG: Okay. I just
12 wanted to know if it had been brought up in your
13 meetings with the community. And also you
14 clarified the parking request at the beginning,
15 so we are clear about the nature of the parking
16 request.

17 CHAIRPERSON JORDAN: Is there
18 anyone here from ANC-1B? If not, we have a
19 letter in support from the ANC recommending
20 approval, which will receive great weight by
21 the Board, in that the vote was six zero to zero
22 in support of the application.

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1 I believe there was also approval,
2 if I'm not mistaken, by HPRB in this for
3 approval, correct?

4 Is there any other persons in the
5 audience who wish to speak in support of the
6 application?

7 Those who wish to speak in
8 opposition to the application? Yes, please.
9 Did you take the oath or affirmation, and prepare
10 the witness cards? Okay.

11 (Off the record discussion)

12 MS. JACKSON: My name is Dana
13 Jackson. My address is 4700 Blagden Avenue,
14 N.W., Washington, D.C. 20011. And I'm also here
15 with David and Barbara Lindeman, who are seated
16 directly behind me, and we are here representing
17 11 other property owners who have properties
18 in Square 393 in the 1900 Block of 9th Street.

19 (Off the record discussion)

20 Okay, thank you. We oppose
21 granting the proceeding with the development
22 of the west side as rendered. And in terms of

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1 the point about our failure, on the part of JBG
2 rather to accept our negative impact, or the
3 negative impact of design and construction on
4 us, I think Lauren pretty much outlined the
5 outcome of the September 10th meeting in which
6 we did recommend a Level 2 walkway for them to
7 consider as opposed to closing the alley.

8 The only other point I would make
9 is that we have written to the Hill to
10 Congressman Darrell Issa and Elijah Cummings
11 regarding the public alley. There is a public
12 hearing that's supposed to be held before the
13 D.C. City Council on October 4th, and we did
14 provide you with a copy of that 13-page document
15 just as background.

16 In terms of the project itself from
17 a BZA standpoint, it's our opinion that they
18 have failed to meet the three-part test. In
19 terms of what they are presenting in terms of
20 their proposal, we are of the opinion that it
21 represents a substantial detriment to the public
22 good and serves to compromise the zoning plan

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1 with the lack of sufficient parking and loading
2 facilities to serve the needs of the prospective
3 tenants, nor does it address the need for
4 affordable housing. These variances, if
5 granted to the new building, will also result
6 in negative impacts on the traffic patterns in
7 the surrounding neighborhoods.

8 In terms of the design issues which
9 have been identified already, it's our
10 understanding now that it will be 156 apartments
11 rather than the 163.

12 We do take issue with the
13 elimination of the loading berths, specifically
14 the 55-foot loading berth, and have some
15 concerns with some of the discussion that went
16 on today, even though it's been indicated that
17 there's going to be management of the loading
18 dock area. And just the fact that both
19 residents and retail occupants are expected to
20 share the loading berths and loading spaces is
21 still a concern.

22 The redesign and reduction in the

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1 height and density on the west side will serve
2 to negate the need for JBG to request approval
3 by the BZA for many of the zoning reliefs for
4 this site. Several of the zoning reliefs sought
5 would be unnecessary if the number of apartments
6 were significantly reduced.

7 Another design concern is the west
8 building's 9th Street entrance to its
9 underground parking and service locations.
10 Entry to the service locations and underground
11 parking garage on 9th Street would serve to make
12 the 1900 block of 9th Street the staging area
13 for services access to proposed building, i.e.,
14 making the west buildings their back door, and
15 would be incompatible with the ambience of our
16 commercial corridor.

17 Keeping the current configuration
18 of the public alley onto the 800 block of Florida
19 Avenue would serve to avoid disrupting the
20 heavily used 9th Street commercial corridor and
21 in turn prevent the resulting negative impact
22 on the operation of our commercial properties

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1 in that block. As most of the commercial
2 properties are assessed at more than \$1 million,
3 the owners' ability remain competitive without
4 diminishing the commercial appeal.

5 And functionality of our properties
6 would be severely compromised. The closure of
7 the north end of the public alley and the
8 creation of a 20-foot alley entrance for two-way
9 traffic onto 9th Street would serve to defeat
10 this purpose by, among other things, restricting
11 the ability of the large trash trucks that
12 service our properties, some of which are
13 restaurants, from accessing the rear.

14 The proposed entrance to the public
15 alley from 9th Street would require driving past
16 service locations to either turn right to enter
17 the remaining portion of the north-south public
18 alley, which is outside of the covered driveway
19 area, or proceed past the public alley to the
20 two-way underground parking garage. The 9th
21 Street property owners consider this public
22 alley proposal of 20 feet for two-way traffic

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1 to be too narrow and hazardous for our commercial
2 uses. DDOT's Design and Engineering Manual for
3 public space states, "all driveways should be
4 a minimum of 24 feet required for two-way
5 traffic."

6 A major concern that we have is
7 whether --

8 CHAIRPERSON JORDAN: Begin to wrap
9 up, please.

10 MS. JACKSON: Okay. Well, one
11 concern we have is our access for 24/7 use.
12 We know that the east side garage entrance has
13 an overhead coiling door and we have a question
14 about that.

15 In terms of traffic patterns, we
16 also just wanted to mention, and getting back
17 to this point about the bottleneck and staging
18 area, that we understand from DDOT that
19 driveways should be designed to avoid vehicular
20 backing and vehicular waiting within the street,
21 and whereas the driveway provides access to a
22 parking facility, the driveway shall provide

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1 sufficient off-street storage areas for
2 vehicles waiting to enter the parking facility.

3 And we fear that as it's designed it does not
4 satisfy that requirement and it will make a bad
5 situation worse. And finally --

6 CHAIRPERSON JORDAN: And so your
7 last sentence is, if you please.

8 MS. JACKSON: Last sentence is that
9 they're requesting an increased lot occupancy
10 for residential, but they failed, in our
11 opinion, to honor the mixed income development
12 tendency. So we're recommending at least 20
13 percent affordable housing.

14 CHAIRPERSON JORDAN: Okay, thank
15 you. Any questions for Ms. Jackson?

16 ZC VICE CHAIR COHEN: No. Mr.
17 Chairman, though I think I would want to disclose
18 that I have done business in the past with Mr.
19 Lindeman, and so I just think it's important
20 for me to disclose that. However, I do not think
21 it will impact my objectivity on this case.

22 CHAIRPERSON JORDAN: Thank you.

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1 Mr. Hinkle?

2 MEMBER HINKLE: Yes. Thank you,
3 Mr. Chairman. Since we're doing disclosures,
4 I just wanted to note that alley closings are
5 submitted to the National Capital Planning
6 Commission by the Office of the Surveyor for
7 review for impacts to federal interests. And
8 this was submitted to NCPC back in March of this
9 year, and I was the project officer for that
10 but I think my review in the Commission's finding
11 that this alley closing does not affect federal
12 interests does not necessarily impact my
13 participation in this application.

14 CHAIRPERSON JORDAN: Thank you.

15 All right, any questions for Ms.
16 Jackson?

17 BZA VICE CHAIR SORG: I have a
18 couple of questions, Mr. Chairman.

19 Hi, Ms. Jackson. How are you?

20 MS. JACKSON: Fine, how are you?

21 BZA VICE CHAIR SORG: So in your
22 testimony just now you read basically from this

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1 document that we received. But in a couple of
2 the points that you mentioned were in conflict
3 with some of the things that I think that the
4 applicant has stated today. So I just wanted
5 to ask you a couple of questions about that.

6 The first thing, one of the things
7 that you mentioned both in your testimony and
8 in the document we received today is that you
9 believe the alley entrance, the proposed alley
10 entrance emptying onto T Street is going to
11 restrict the traffic as opposed to the current
12 configuration going to Florida Avenue.

13 Why do you believe that the proposed
14 reconfiguration is smaller or more restrictive
15 than what you currently have?

16 MS. JACKSON: Well, you make
17 reference to T Street. You're talking about
18 --

19 BZA VICE CHAIR SORG: I'm sorry.
20 I'm sorry, Florida Avenue and 9th Street, sorry.

21 MS. JACKSON: Well, sort of picking
22 up on that point, in terms of the alley going

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1 straight through one of the things is the T
2 Street part is too narrow, and there is another
3 entrance into the alley from the 8th Street side
4 but it has a utility pole and you really can't
5 turn. So for us, the Florida Avenue in terms
6 of going straight and also coming in is the only
7 entryway that suits our needs in terms of our
8 commercial businesses. I think one
9 of the things that, you know, I've heard in the
10 discussion more related to DDOT is the focus
11 more on residential use even in terms of the
12 55-foot loading and all of that. But we have
13 commercial businesses in our blocks. We have
14 patrons who come to the area that drive. So,
15 you know, it seems like there's no consideration
16 being given to the commercial use.

17 But we do feel that we need to have
18 that straight in and straight out access as the
19 alley is configured. And as I just mentioned
20 too in terms of we're talking about two-way
21 traffic, and sure, they're going to expand it
22 to 20 feet, but it's our understanding that you

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1 have to expand it to 24 feet to accommodate
2 two-way traffic. And you're coming in off of
3 9th Street and you're going to make this turn,
4 even everybody keeps saying it's doable, but
5 in our opinion, since you either go straight
6 or you make this turn to go into the rest of
7 the public alley sort of coming onto their
8 property if you will, to do this just doesn't
9 seem to be workable.

10 From a personal standpoint, I'm
11 quite familiar with loading docks and managing
12 loading docks. I formerly worked for the
13 Washington Convention Center Authority when we
14 closed and opened the new building, and my
15 responsibility was managing all of that. And
16 on paper it looks like it's workable, but in
17 reality it doesn't. It doesn't. There are all
18 kinds of glitches that occur. Timing, we're
19 talking about 157 apartments or 156 apartments,
20 and in addition to that retail space on the
21 first, and then we have our commercial
22 properties that are trying to be competitive,

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1 and you're talking about impacting our block?

2 No. And we're in unison in terms of being in
3 opposition.

4 BZA VICE CHAIR SORG: How many
5 business owners or property owners are part of
6 your group?

7 MS. JACKSON: We represent all of
8 the properties starting with the Lindemans at
9 1923 9th Street, all the way down to the property
10 that my husband and I own, which is 1901. So
11 that's everybody. All of the signatures in the
12 document that we filed with Jim Graham's office
13 back in April represent all of the owners. In
14 terms of ownership, there are 14 property owners
15 total.

16 BZA VICE CHAIR SORG: So every
17 commercial building on the block of 9th Street
18 between T and U, or Florida Avenue?

19 MS. JACKSON: Yes, that's correct.
20 The only two that are not identified are the
21 ones that are part of the project. But however,
22 those two properties are currently occupied by

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1 businesses, so what the timing is in terms of
2 the impact on them and where they'll be
3 relocating to, I don't know.

4 BZA VICE CHAIR SORG: So in the
5 property that you own, 1901, what sort of
6 business operates in there?

7 MS. JACKSON: We lease the property
8 to a non-profit. It's the Ethiopian
9 Development and Community Service Organization.
10 And they have clients that come from not only
11 D.C. but the surrounding metropolitan area in
12 terms of in Virginia and Maryland. And some
13 come by cab, some drive and some take public
14 transportation, but just looking at the
15 clientele there's not a tendency that most of
16 them would use public transportation --

17 BZA VICE CHAIR SORG: And do you
18 provide parking for the clients of your tenants,
19 or with your property?

20 MS. JACKSON: The only parking that
21 we have with our property is offsite parking
22 for the tenant. We have two spaces. But in

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1 terms of the clients that come to the building,
2 they have to rely on street parking and whatever
3 other means of parking that's available.

4 And the other property owners have
5 restaurants. And so --

6 BZA VICE CHAIR SORG: How many
7 restaurants? I don't mean to interrupt you.
8 Tell me how many restaurants there are on the
9 east side of, to my recollection there is, 1905
10 is a restaurant. There is a coffee shop. And
11 I'm not aware --

12 (Simultaneous speaking)

13 MS. JACKSON: 1907, 1909.

14 BZA VICE CHAIR SORG: And those are
15 all restaurants with restaurant kitchens?

16 MS. JACKSON: Yes. Yes. And also
17 1919 and 1917, 1915, yes.

18 BZA VICE CHAIR SORG: Okay. All
19 right, thank you. Those are all my questions.

20 CHAIRPERSON JORDAN: Any other
21 questions for Ms. Jackson, please? I'm turning
22 to the applicant, any questions for Ms. Jackson?

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1 MS. BROWN: No questions.

2 CHAIRPERSON JORDAN: Thank you, Ms.
3 Jackson. We appreciate it.

4 Any other persons in opposition
5 wishing to testify? Okay, seeing none -- oh
6 yes, do you want to come forward then and --
7 And have you been sworn? Would you please do
8 so?

9 Mr. Moy?

10 MR. MOY: Yes, thank you, Mr.
11 Chairman.

12 Do you solemnly swear or affirm that
13 the testimony you're about to present in this
14 proceeding is the truth, the whole truth and
15 nothing but the truth? Thank you.

16 CHAIRPERSON JORDAN: And have you
17 completed two witness cards, please, and give
18 them to the court reporter. But please, why
19 don't you come and begin your testimony, and
20 you have three minutes to do so. And I
21 understand you're speaking in opposition to the
22 plan, is that correct? All right. If you will

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1 begin and tell us your name.

2 MR. DAVIS: Thank you. My name is
3 Rashem Davis. I'm a business owner on Florida
4 Avenue across the street from the front of where
5 the retail space will be, so I have a salon there.
6 And I just had a few questions.

7 They say that there's 70 parking spaces,
8 and this is for the retail. That's great, but
9 as far as the residents go we already have an
10 issue with zoning. They just recently turned
11 the zone into Resident-1 Zone only parking and
12 so it affected us, our clients that come to the
13 salon. They're not there very long, but we did
14 enjoy the fact that we had the two hours.

15 I'm not sure if their zoning is going
16 to have to change for those residents, or is
17 it still going to be Zone 1 only or two-hour
18 parking for them as well? A hundred and fifty
19 six units is a lot. That's a lot of cars, I
20 think, will be there that will affect us totally.

21 So just wondering, to me, I just feel like there
22 needs to be more parking. So I'm opposed to

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1 it as far as that.

2 It does sound good as far the retail
3 part bringing business into the area, but the
4 parking is going to be a big issue for not only
5 the staff, like well, the staff of my space too.

6 So just wondering what we can do about the
7 parking. Is there any way to get more or will
8 the zoning change, what?

9 CHAIRPERSON JORDAN: We appreciate
10 your statement and we understand your concern
11 about parking, but we don't control whether or
12 not there's going to be parking restrictions
13 regarding the Department of Transportation or
14 whoever.

15 MR. DAVIS: Okay.

16 CHAIRPERSON JORDAN: Nor do we
17 provide that the zoning in the area is going
18 to change, because we can't change zoning.

19 MR. DAVIS: Okay.

20 CHAIRPERSON JORDAN: Is there a
21 question, Ms. Sorg? Yes, anyone, questions?

22 ZC VICE CHAIR COHEN: No, but is it

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1 possible for DDOT to respond to the opposition's
2 issue about the traffic coming from both
3 directions, and do they see that as a major issue
4 that will impact those businesses as been
5 described?

6 MR. HINSON: Sure, glad to respond.

7 I might need to get the question repeated on
8 that part. The one that I heard was about RPP,
9 Zone 1 only parking that we've instituted. If
10 that's the question, I can answer that.

11 Basically what we've done is worked
12 in areas comparable to U Street, H Street
13 corridor or Barracks Row are the examples that,
14 actually not so much the H Street corridor, more
15 so Barracks Row, to protect neighborhood parking
16 from folks driving into the area. So it ends
17 up being a policy tradeoff, but that is something
18 that we control. We work toward providing
19 flexibility on the public space and the parking
20 facilities that we do have on street to provide
21 for businesses such as yours as well as to
22 provide for the needs of residents parking in

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1 the area.

2 But frankly, it's very hard to
3 balance those needs. It's just really
4 difficult because the needs are very high. And
5 then we note the availability of much transit
6 service in the area.

7 MR. DAVIS: Okay. Another
8 question. I heard that they're going to widen
9 the street on Florida Avenue and add a stoplight
10 there. That's great. But is there going to
11 be parking in the front of it as well, in front
12 of the, on Florida Avenue as well, like a meter
13 parking or anything like that?

14 CHAIRPERSON JORDAN: Mr. Davis,
15 really, one, we've gone beyond your three-minute
16 time.

17 MR. DAVIS: Oh, sorry.

18 CHAIRPERSON JORDAN: Two, you're
19 asking questions that it's not really before
20 us to answer during this hearing. So we accept
21 your statement that you made and appreciate your
22 coming down to do so.

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1 Some of the other questions that
2 you're asking, I think you might want to set
3 up a meeting especially with Transportation or
4 with a council member in the area to talk about
5 those concerns that you've raised, because it's
6 within their purview to really, to have
7 conversation with you about that.

8 MR. DAVIS: Awesome. Thank you.

9 CHAIRPERSON JORDAN: Thank you.

10 I don't know if the applicant has
11 any questions of Mr. Davis.

12 MS. BROWN: No questions.

13 ZC VICE CHAIR COHEN: I think I need
14 to clarify with DDOT. What I was hoping they
15 would do is the party in opposition's concerns
16 about the two-way traffic and making that turn.

17 MR. HINSON: Sure. I'm sorry. I
18 misunderstood. So in our Design and
19 Engineering Manual we actually have
20 specifications on how wide alleys should be.
21 For two-way alleys, the Design and Engineering
22 Manual says that they can be from 20 to 24 feet,

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1 and so they're allowable at 20 for two-way
2 traffic, whether it's in the back or in the
3 middle or at the road. So 20 to 24 is
4 acceptable. They're not acceptable below 20
5 for two-way traffic, nor do we want to see them
6 above 24 because then it becomes pedestrian type
7 issues and crossing distance issues.

8 ZC VICE CHAIR COHEN: Thank you.

9 CHAIRPERSON JORDAN: Thank you. A
10 rebuttal, please, if any, or closing.

11 MS. BROWN: I don't know that we
12 have one. I do just want to clarify one point.

13 I know that the opposition raised the question
14 about whether or not the alley would be
15 accessible to the business owners or whether
16 or not it would have a garage door there. The
17 garage door will only be at the garage entrance
18 on the private property area, and as part of
19 the alley closing process there will be an
20 easement free and clear the entire way through
21 from 9th Street down into the existing alley
22 system.

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1 And with that I would just simply
2 request, state that we believe that we have met
3 the burden of proof for the areas of relief that
4 we have requested and we would ask for your
5 positive action on the application. Thank you.

6 CHAIRPERSON JORDAN: Thank you.

7 Any other questions for today for
8 anyone on the Board? Okay. Then let's close
9 this hearing. And is the Board ready to
10 deliberate? I see a significant amount of heads
11 saying, yes, we can deliberate today.

12 (Off the record discussion)

13 CHAIRPERSON JORDAN: Yes, good.
14 Anyone have anything they want to say about the
15 application, begin us off?

16 Ms. MacMurray?

17 MEMBER MACMURRAY: Mr. Chairman,
18 I'll start. I do want to applaud the applicant
19 for coming up with the mixed use design to
20 improve an existing vacant lot that will be
21 aesthetically pleasing for the neighborhood.

22 I also recognize the current

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1 concerns of the existing commercial owners.
2 I know that the Board tries to encourage, when
3 we're having these developments and
4 improvements to the land, to strongly encourage
5 that dialogue between the existing owners and
6 the new proposed development so that it's in
7 beneficial to both parties and overall the
8 residents of the District.

9 I do have concerns in the fact that
10 they are unified in their opposition. It's not
11 just one commercial owner about the alley, and
12 wonder if there could be further dialogue or
13 discussions with them to, or any kind of design
14 that could alleviate some of their concerns and
15 if that's possible?

16 CHAIRPERSON JORDAN: Anyone else?

17 Ms. Sorg?

18 BZA VICE CHAIR SORG: We're
19 deliberating, right?

20 CHAIRPERSON JORDAN: Right.

21 (Off microphone comments)

22 BZA VICE CHAIR SORG: Right. So

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1 I'll just make a couple of points about this
2 project. I think, in general, as with the last
3 project that came before us, I think this is
4 a good-looking building. I think it's a modern
5 building. I think that the planning and
6 organization of the building on the site is
7 positive.

8 I know the area very well and I'm
9 really personally pleased to see these types
10 of additions that are modern and fill buildings
11 that don't try to disappear into a context, but
12 are of their time and contextual in what I think
13 is a fuller way. That is a personal opinion.

14 Another personal opinion regarding
15 this project, as a business owner in the
16 neighborhood, I do think that development in
17 this area will be a positive thing for the 9th
18 Street corridor, for the junction of U Street
19 and Florida Avenue heading down to Georgia
20 Avenue, so I look forward to that.

21 With regard to the variance and
22 special exception requests that was the personal

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1 point of view. And now with regard to the
2 regulations, as I mentioned in my questions to
3 the Office of Planning, I do think that there
4 are exceptional conditions which the applicant
5 puts forward relating to the property, and in
6 those I would include the sheet due to Florida
7 Avenue, the width from east to west as being
8 twice as large as the western side, the sidewalk
9 on Florida Avenue and its issues, the historic
10 structures and their necessity to be retained
11 and moved as well as the Metro tunnels, but I
12 personally wouldn't put the alley
13 reconfiguration that the applicant is choosing
14 to do as part of an exceptional situation
15 relating to the variance standard.

16 That being said, I do believe that
17 the application meets the variance and special
18 exception standards for lot occupancy. I think
19 that stepping the building back in the way that
20 it has been done is sensible with regard to
21 requirements from Office of Planning as well
22 as staying within the dictated FAR. I

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1 think that providing the required vehicle spaces
2 for the residents is important and has been
3 achieved by the application, and so I can be
4 in support, personally, of the six spaces being
5 requested for the retail uses.

6 Regarding the loading berth, I think
7 we've gone through that. And then with regard
8 to the roof structures, I think that as with
9 many of these projects, in a long and narrow
10 bar building such as this, having one big, giant
11 wall up on the roof is not aesthetically what
12 we want to see, so I can be in support of those
13 also.

14 That is all I needed to say. Thank
15 you.

16 CHAIRPERSON JORDAN: Anyone else?

17 Ms. Cohen?

18 ZC VICE CHAIR COHEN: Mr. Chairman,
19 I think that Commissioner Sorg was very concise,
20 and I would concur with her opinions.

21 CHAIRPERSON JORDAN: And I too
22 agree that there exists exceptional and

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1 extraordinary situation and certain conditions
2 for this building. It's a large irregular
3 shaped building. It's bordering on three
4 streets. That the issue with Metro running
5 under it provides the hindrance of being able
6 to provide the depth that's needed to do any
7 other type of digging, with the tunnel. That
8 the historic aspect, the building dealing with
9 the historic aspect and the requirements that
10 HPRB places on this building provides
11 exceptional, extraordinary situation and
12 condition, and practical difficulties that
13 arises out of that with the tunnels affecting
14 both the parking and excavation needs.

15 And then the issue with the lack of
16 occupancy. All these things are generally
17 affected by the same and that there wouldn't
18 be any substantial detriment to the public or
19 to the regs. And we've had substantial
20 conversations about the traffic, traffic
21 patterns and Department of Transportation has
22 weighed in.

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1 In regards to the special exception
2 for the roof, I just echo everything that my
3 fellow Board members have said that the roof
4 structure as proposed does indeed deserve the
5 special exception, and the same thing in regards
6 to the other aspects that was requested for the
7 special exception regarding the street
8 frontage. I think you're doing some aspects
9 of setbacks, you're widening the sidewalks,
10 you're increasing the tree box, all those things
11 really to encourage more pedestrian abilities
12 to walk up and down the street. So I think that
13 what you've proposed actually enhances the area.

14 With that I would move that this
15 Board grants the request of relief for both the
16 variances and the special exceptions as set
17 forth by the applicant.

18 BZA VICE CHAIR SORG: Second.

19 CHAIRPERSON JORDAN: Motion being
20 seconded that we grant the relief as requested
21 by the applicant for the variances and the
22 special exceptions be granted by this Board.

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1 Any unreadiness? Seeing none, all
2 those in favor signify by saying aye.

3 (Chorus of ayes)

4 CHAIRPERSON JORDAN: Those
5 opposed, nay. The motion carries.

6 Mr. Moy?

7 MR. MOY: Yes, sir. Staff would
8 record the vote as five to zero to zero. There's
9 a motion of Chairman Jordan to approve the
10 application for the variance relief requested
11 as well as the special exception. Variance
12 relief under section 2101.1, 220.1 and 772.1.
13 Special exceptions under 770.6 and 1903.3.
14 Second the motion, Vice Chair Sorg. Also
15 supported the motion, Ms. Cohen, Ms. MacMurray
16 and Mr. Hinkle. So again, the vote is five to
17 zero to zero.

18 Mr. Chairman?

19 CHAIRPERSON JORDAN: Thank you.
20 And this will end our hearing. I'm not asking
21 for a summary order in this matter. Thank you.

22 MR. MOY: The next and last

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1 application for the Board in its morning session
2 is Application Number 18402. This is the
3 application of Shophouse LLC, pursuant to 11
4 DCMR 3103.1 and 3103.2. This is for a variance
5 from the floor area ratio requirements under
6 subsection 771.2, nonconforming structure
7 requirements under subsection 2001.3, and rear
8 yard requirements under section 774, and a
9 special exception under section 733 for a fast
10 food establishment in the C-2-A District. This
11 is at premises 2805 M Street, N.W., property
12 located in Square 1212, Lot 802.

13 Mr. Chairman, just a note for the
14 Board. This morning the office is in receipt
15 of a filing from a party status requestor, and
16 I believe that's in your case folders. This
17 from Arent Fox.

18 The second filing is a comment
19 letter from the U Street Neighborhood
20 Association, which also was submitted this
21 morning.

22 (Off the record discussion)

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1 MR. MOY: Oh, I'm sorry. All
2 right, I stand corrected.

3 CHAIRPERSON JORDAN: What did you
4 say?

5 MR. MOY: All I said was that there
6 was a filing this morning from the Arent Fox,
7 one filing.

8 CHAIRPERSON JORDAN: Oh, okay.
9 Okay. Right, just the withdrawal for request
10 for party status.

11 MR. MOY: That's correct, sir.

12 CHAIRPERSON JORDAN: Okay, so let's
13 not even -- all right, good. We accept that.

14 I think we're going to call this Ms.
15 Brown's day, but anyway if you begin and identify
16 yourself and the people --

17 MS. BROWN: Yes. Thank you, Mr.
18 Chair and members of the Board. Good morning,
19 again. For the record, Carolyn Brown with the
20 law firm of Holland & Knight on behalf of the
21 applicant, Shophouse.

22 I am joined today by Carl Behler of

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1 Shophouse, Herb Heiserman of StreetSense
2 Architects, and Steve Sher, our director of
3 zoning and land use services at Holland & Knight.

4 We certainly did have a bit of
5 excitement at the end of last week when we saw
6 the party status request and opposition, and
7 since that time we have been on the phone and
8 working diligently to resolve their concerns.

9 And we're very pleased that at the
10 last minute we got it all resolved, and as you
11 see the withdrawal of the request for party
12 status in opposition and now they're in full
13 support.

14 CHAIRPERSON JORDAN: We appreciate
15 that. That's why we strongly can emphasize,
16 and we've talked about this in our Board
17 meetings, that dialogue helps. The part people
18 should have this conversation, the applicants
19 should be encouraged to do so with those who
20 offer opposition. It really helps us and it
21 helps yourselves across the board.

22 MS. BROWN: Absolutely. And I

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1 would note that their concerns were chiefly
2 concerned with the alley at the rear of the
3 property, the five-foot alley. And it's a
4 private alley that is accessible to all of the
5 commercial owners along that strip, and we
6 reassured them that we would not be blocking
7 that with any trash cans or otherwise impede
8 their access for deliveries along there. And
9 as shown on our plans, it's submitted to the
10 record, there will be a trash storage room in
11 the basement, which I think also helped allay
12 a lot of the concerns as well. And so the other
13 main concern was pest control and rat abatement,
14 and we're all on the same page so we're going
15 to work cooperatively on that.

16 CHAIRPERSON JORDAN: Good, thank
17 you. And we've had this property before us
18 before --

19 MS. BROWN: Correct.

20 CHAIRPERSON JORDAN: -- and we've
21 already granted part of the relief that you
22 wanted and you're just expanding it --

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1 MS. BROWN: Correct.

2 CHAIRPERSON JORDAN: -- to what
3 we've already previously rendered in this case.

4 Let me ask, is there any issues that
5 the Board needs to particularly address?

6 MEMBER MACMURRAY: I just want to
7 echo the chairman's applauding you of being able
8 to resolve that within a week and so that we
9 wouldn't have to have that party, and so great
10 job.

11 MS. BROWN: Thank you. And since
12 we do have a fairly full record and we do have
13 the support of Advisory Neighborhood Commission
14 2E in Georgetown, and support of Office of
15 Planning and DDOT, we can make a very abbreviated
16 presentation or rest on the record completely.

17 CHAIRPERSON JORDAN: Well, you've
18 been here before. That's the other part of
19 this.

20 Ms. Sorg, I think you had something?
21 (Off microphone comments)

22 CHAIRPERSON JORDAN: Okay, she's

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1 not ready yet.

2 MEMBER HINKLE: Mr. Chair, if I
3 could hear from the applicant how the trash is
4 actually being managed. We had some concerns
5 and some letters from some neighbors as well,
6 so I would like to understand what the process
7 is and what's been agreed to.

8 MS. BROWN: Sure. Mr. Behler, if
9 you could describe the trash pickup?

10 MR. BEHLER: Mr. Chairman and
11 members of the Board, hello. Good morning, my
12 name is Carl Behler. I'm director of
13 development of special projects with the
14 Chipotle Mexican Grill and Shophouse.

15 As of Friday when this issue came
16 about we were a little taken aback at the stance
17 that was being taken by our restaurant
18 neighbors. However, what we agreed to in
19 writing is that we will use the exact same trash
20 company that they will be using. That our trash
21 will not remain on the street at any time in
22 the rear alley or the front. Herb has designed

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1 us a very nice conditioned trash room in the
2 basement where all the trash will be stored until
3 the time the trash pickup occurs. We will take
4 it outside at the same time as the rest of the
5 neighbors, seven-day-a-week trash removal.

6 Other than that we also have two
7 recylable bins which will hold no foodstuff,
8 just glass and that sort of thing. That will
9 sit right outside of our rear door in an alcove
10 within our property lines, so we will have no
11 trash on the street at any time.

12 MEMBER HINKLE: Thank you. Just
13 curious, this is a private alley. Who owns that
14 alley and how is the agreement made in terms
15 of use?

16 MS. BROWN: Well, it's interesting.
17 We went to the surveyor's office and they told
18 us that they did not have it recorded as a public
19 alley. And I was only able to trace it back
20 to a 1924 deed that everybody along that strip
21 has access to the alley but it doesn't
22 specifically carve it out. So we haven't been

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1 able to trace it all the way back, but for our
2 purposes we're all cooperating so it doesn't
3 matter. Thank you.

4 MEMBER HINKLE: Thank you.

5 CHAIRPERSON JORDAN: Okay. Ms.
6 Sorg?

7 BZA VICE CHAIR SORG: Thank you, Mr.
8 Chairman. Oh, never mind, I just got my
9 question answered.

10 CHAIRPERSON JORDAN: Okay. All
11 right, we can come back if you have a question.
12 If there is anything, I think --

13 MS. BROWN: I think, Mr. Chair, that
14 we've covered. It's fully explained in our
15 statement so we're ready to proceed to the next
16 stage.

17 CHAIRPERSON JORDAN: Office of
18 Planning, is there anything you want to add?

19 MS. THOMAS: No, Mr. Chairman.
20 Karen Thomas from the Office of Planning. We're
21 fully in support of this application. It's been
22 here before us before, and we support the special

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1 exception relief as well to include fast food
2 in this location. Thank you.

3 CHAIRPERSON JORDAN: Does the Board
4 have any questions for the Office of Planning?
5 Did you have some conditions?

6 (Off microphone comments)

7 CHAIRPERSON JORDAN: Then the ANC
8 has the conditions, okay. Any questions from
9 the applicant to the Office of Planning?

10 MS. BROWN: No questions.

11 CHAIRPERSON JORDAN: And any other
12 departments? Also, Transportation left.
13 Okay, but we do have a letter of no objection
14 from Transportation for this matter.

15 Anyone present from ANC-2E? We
16 have a letter in the file for recommendation
17 of -- no, of no objection from ANC-2E by a vote
18 of six to seven, which we will give great weight
19 to.

20 Is there anyone in the audience in
21 support of the application? We do have two
22 letters of support. One from Michael Goldman,

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1 a neighbor that has no objection, and was
2 concerned about the trash and you've already
3 answered that. And Mark Brody, a neighbor who
4 is in support, again, the only issue was about
5 the trash and you've answered that.

6 Is anyone else in support in the
7 audience? Any persons in opposition who wish
8 to speak here today?

9 Then we will turn back to you, Ms.
10 Brown, for any rebuttal or closing.

11 MS. BROWN: Thank you, Mr.
12 Chairman. I do want to emphasize that we do
13 agree to the conditions and remarks in the ANC
14 letter, and otherwise we would respectfully
15 request your favorable action on this
16 application. Thank you.

17 CHAIRPERSON JORDAN: So you
18 voluntarily, have you done it in writing with
19 the ANC or --

20 MS. BROWN: We did it orally at the
21 meeting that we would have no objection to having
22 these conditions in the order. We did not

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1 submit anything in writing to that effect.

2 CHAIRPERSON JORDAN: Yes, Ms. Sorg.

3 BZA VICE CHAIR SORG: Thank you, Mr.
4 Chairman. I think that would be great, but I'm
5 not certain whether that's something we can do.

6 I mean my concern about this application is
7 with the fast food portion, you know, and it
8 runs to the property.

9 So I think that the operations of
10 Shophouse are great and, you know, in terms of
11 the use of fresh ingredients and no fryers and
12 X, Y and Z that's been discussed at length in
13 your application, but that's not what we're
14 really looking at. Because if we grant this,
15 just a note, if we grant this special exception
16 for fast food, you know, the property owners
17 can go ahead, and hopefully Shophouse will be
18 there for a very long time, but can go ahead
19 and rent to McDonald's if they want. So I just
20 want us to be clear of what we're really looking
21 at here.

22 MS. BROWN: And Ms. Sorg, not to,

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1 you know, unnecessarily put restrictions on
2 ourselves, but that was a concern of the ANC
3 that it could be at some future --

4 CHAIRPERSON JORDAN: Let me say,
5 that's something that we're not going to, we
6 appreciate the ANC. We appreciate what they're
7 doing and really appreciate the conversation
8 they had, but maybe you need to put that in
9 writing to them as some type of other agreement,
10 because I don't think we're inclined to put
11 something like that in the order.

12 BZA VICE CHAIR SORG: Would that be
13 something that we could do?

14 CHAIRPERSON JORDAN: As you said,
15 we're starting to get into an area which is not
16 our area, and this order, what happens to this
17 property whether or not you're there or not kind
18 of becomes conditioned upon what we do.

19 MS. BROWN: One suggestion that we
20 had with the ANC is this does get to whether
21 or not there would be any objectionable
22 conditions by the granting of the special

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1 exception, and the fact that all food orders
2 would be custom-made and that we would no
3 refrigeration and no cooking oil waste so that
4 there wouldn't be a cooking oil in the back.
5 We're happy to put at least two of, I mean I
6 think two of those could get to the objectionable
7 conditions if that would be acceptable to the
8 Board.

9 BZA VICE CHAIR SORG: I agree with
10 Ms. Brown. I would actually be inclined,
11 because I mean I understand that conditions,
12 you know, within orders from the Board do have
13 to go to potentially visible or, you know,
14 objectionable conditions. And I do think that
15 we can anticipate some of those from the analysis
16 of the neighborhood by OP and some of the
17 submissions by the applicant.

18 CHAIRPERSON JORDAN: Well, we
19 understand what you talked about, and let's
20 either move to close this particular hearing
21 and then we can go into deliberation and have
22 our own discussion about it.

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1 MS. BROWN: And if I could just
2 correct a mistake. I just said there will be
3 no freezer, but there will be refrigeration.
4 Thank you.

5 CHAIRPERSON JORDAN: Is there
6 anything else? Because we can just move to
7 close the hearing.

8 MS. BROWN: No. No fryers will be
9 used. But other than that we are finished with
10 our presentation, thank you.

11 CHAIRPERSON JORDAN: Then let's
12 close the hearing and the record in this matter
13 and move to deliberation.

14 Anyone have a feeling one way or
15 another about these conditions? I heard Ms.
16 Sorg. Anybody else wants to weigh in on the
17 conditions?

18 Ms. Cohen?

19 ZC VICE CHAIR COHEN: Well, I would
20 like to see the same thing in the order if that's
21 legally possible.

22 CHAIRPERSON JORDAN: I'm going to

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1 ask OAG to weigh in on this publicly for us.
2 Would you please? The Office of Attorney
3 General.

4 MS. NAGELHOUT: Sure. This is Mary
5 Nagelhout with the Office of the Attorney
6 General. My concern is that the Board is being
7 asked to approve a use that's permitted by a
8 special exception and it would not be limited
9 to this particular user. You do not have the
10 authority to approve a fast food establishment
11 for Shophouse to the exclusion of a fast food
12 establishment by any other use in the future.

13 Any conditions that the Board adopts
14 have to be tailored to mitigate identified
15 adverse impacts. And so you've dealt with the
16 trash issue generally, and I don't really see
17 what's the adverse impact of a freezer, no
18 freezer, customized order preparation. You
19 don't want to delve into the minutia of the
20 operation of the business.

21 ZC VICE CHAIR COHEN: I think that
22 it's, you know, of frying is smell. I mean it

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1 smells bad. I think neighbors can state that.

2 BZA VICE CHAIR SORG: I think
3 neighbors have stated that in the form of the
4 ANC recommendation to which we give great
5 weight.

6 CHAIRPERSON JORDAN: Okay. Any
7 other feel, anybody?

8 BZA VICE CHAIR SORG: I would just
9 add, I mean I do think that we would want to
10 craft what I believe should be conditions on
11 a potential order so that they are tailored in
12 their language to speak to general use
13 restrictions rather of course than to this
14 specific thing. You know, like I don't think
15 we have to talk about coriander or whatever.

16 CHAIRPERSON JORDAN: Well, we're at
17 the point and you have the mic. Why don't you
18 make the appropriate motion in regards to the
19 application and any conditions that you want
20 to add to it, let's do it.

21 BZA VICE CHAIR SORG: Well, okay,
22 sure. I'm going to stumble because I'm not

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1 exactly sure how I think they should be worded,
2 but I'll say that incorporating the applicant's
3 reasoning and the various reports from OP and
4 the ANC report, that I think that the applicant
5 has met the burden of proof with regard to the
6 two area variances and use variance as well as
7 the special exception in which they are
8 requesting. But I would be in favor of a
9 conditioning in order, I would move to approve
10 the application with the condition that subject
11 to slight changes in language.

12 (Off microphone comments)

13 CHAIRPERSON JORDAN: Go ahead. I
14 was going to just do it in two parts, but just
15 go ahead. That's good.

16 BZA VICE CHAIR SORG: Go ahead, I
17 think that's fine. We can do that.

18 CHAIRPERSON JORDAN: Let's do this.
19 I move that we grant the relief requested, and
20 we'll handle this in two parts. Grant the
21 relief requested by the applicant for the use
22 variance, the area variances and the special

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1 exception. Based upon the record, I think
2 they've clearly made the case for these. Is
3 there a second?

4 ZC VICE CHAIR COHEN: Second.

5 CHAIRPERSON JORDAN: Motion made
6 and seconded that we grant the request of the
7 applicant for use variance and the area
8 variances and the special exception as
9 submitted. All those in favor signify by saying
10 aye.

11 (Chorus of ayes)

12 CHAIRPERSON JORDAN: Those
13 opposed, nay. The motion carries. Is there
14 a second motion regarding conditions?

15 BZA VICE CHAIR SORG: Yes, I think
16 I got it. I would move to include three
17 potential conditions in order for approval.
18 First condition that an establishment in this
19 location will operate with a customized order
20 and service format.

21 Second condition being that an
22 establishment in this location will not operate

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1 a deep fryer. And third condition that an
2 establishment in this location, sales of food
3 for consumption on premises will -- no, scratch
4 that. That food for take-out orders will be
5 subordinate to provision of food for consumption
6 on premises.

7 CHAIRPERSON JORDAN: You're
8 leaving out the freezer.

9 BZA VICE CHAIR SORG: I'm leaving
10 out the freezer, yes.

11 CHAIRPERSON JORDAN: Okay.
12 Because again, I don't see how that impacts.

13 MEMBER HINKLE: Mr. Chairman, can
14 I add --

15 CHAIRPERSON JORDAN: Yes, go ahead,
16 add.

17 MEMBER HINKLE: -- some
18 modifications to --

19 CHAIRPERSON JORDAN: You were
20 adding some other --

21 BZA VICE CHAIR SORG: That was a
22 first draft.

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1 MEMBER HINKLE: In terms of the deep
2 fryer, I would add nor store cooking oil exterior
3 to the building. And then that the trash would
4 be stored on the premises and removed on a daily
5 basis.

6 CHAIRPERSON JORDAN: Okay,
7 anything else? Did you have something? Okay.

8 MEMBER HINKLE: Removed via the
9 alley on a daily basis.

10 MEMBER MACMURRAY: As opposed to M
11 Street?

12 MEMBER HINKLE: Yes.

13 CHAIRPERSON JORDAN: Okay. So we
14 have five conditions. Four? The fifth one,
15 the trash, no cooking oil, I mean just
16 paraphrasing what they were. That the
17 carry-out food be subordinate to, no deep
18 frying, and something about, what was their
19 first?

20 Ms. Sorg, what was your first
21 condition?

22 BZA VICE CHAIR SORG: Customized

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1 order and service format operation.

2 CHAIRPERSON JORDAN: All right.
3 That's where we are. And so is that your motion
4 to amend the approval that we just did? We will
5 amend it to include those conditions. Yes, does
6 those conditions work good with you? Okay.
7 It hit generally what your agreement is. Okay.

8 BZA VICE CHAIR SORG: Yes. Then I
9 would move to amend the order with the conditions
10 as you just noted them.

11 CHAIRPERSON JORDAN: All right,
12 second. Motion made and seconded to amend the
13 order approving the application. Any
14 unreadiness? All those in favor signify by
15 saying aye.

16 (Chorus of ayes)

17 CHAIRPERSON JORDAN: Those opposed
18 nay. The ayes carry.

19 Mr. Moy, do you want to carry us
20 through all that, please?

21 And I look forward to seeing OAG's
22 carving out of these conditions. Wish you the

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1 best. No, but Ms. Sorg is available and Mr.
2 Hinkle will be available to help carve those
3 out when the draft orders come.

4 MR. MOY: Shall I go ahead? Okay,
5 on the first vote which was a vote of five to
6 zero to zero, this was on the motion to approve
7 the use variances and special exceptions.
8 Motion by Chairman Jordan and seconded by Vice
9 Chair, or rather Ms. Cohen in support of that
10 motion, and to Ms. Sorg, Ms. MacMurray and Mr.
11 Hinkle. So that was on the vote of five to zero
12 to zero and the motion carried.

13 The second vote count was on an
14 amendment to add conditions. There were five
15 conditions. And that vote was on a vote to five
16 to zero to zero on a motion of Vice Chair Sorg,
17 seconded by Chairman Jordan. All supported
18 that motion, Ms. Cohen, Ms. MacMurray and Mr.
19 Hinkle. And should I go over those conditions
20 or are we all set on those five conditions?

21 CHAIRPERSON JORDAN: I believe it's
22 going to take some review of the tape to get

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1 us there so --

2 MR. MOY: Very good.

3 CHAIRPERSON JORDAN: And so I
4 believe we can do a summary order with the
5 conditions in place.

6 MR. MOY: Okay. Thank you, sir.

7 CHAIRPERSON JORDAN: Okay. Well,
8 thank you. That concludes this hearing, and
9 we stand in recess until 1:00.

10 (Whereupon, the above-entitled
11 matter went off the record at 11:49 a.m. and
12 resumed at 1:07 p.m.)

13

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(1:04 p.m.)

And we're here for the public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Lloyd Jordan, chairperson, and to my left is vice chair, Nicole Sorg, and to her left is Marcie Cohen, Zoning Commission member. To my right is Jeffrey Hinkle, member of the Board of Zoning Adjustment.

Please be advised that the proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, we must ask that you refrain from any disruptive noises or actions in the hearing room.

The Board's hearing procedures and

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1 how we will process applications can be found
2 on the table by the back door.

3 So let's begin this afternoon's
4 hearing schedule, and I'm going to ask all
5 individuals wishing to testify today to please
6 rise and take the oath or affirmation from the
7 Board's secretary, Mr. Moy.

8 MR. MOY: Do you solemnly swear or
9 affirm that the testimony you're about to
10 present in this proceeding is the truth, the
11 whole truth and nothing but the truth?

12 Ladies and gentlemen, you may
13 consider yourselves under oath.

14 CHAIRPERSON JORDAN: I'm also going
15 to ask that prior to you taking the witness table
16 that you hand the court reporter two witness
17 cards for each person. Fill out and complete
18 two witness cards and then hand them to the court
19 reporter prior to your testimony, please.

20 Mr. Moy, would you begin today's
21 docket? This afternoon's docket. We had a
22 morning docket, this afternoon's docket.

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1 MR. MOY: Yes. Good afternoon, Mr.
2 Chairman and members of the Board. The first
3 of two applications for the afternoon session
4 before the Board is Application Number 18403.

5 This is the application of Roslyn Taylor,
6 pursuant to 11 DCMR 3104.1 for a special
7 exception under section 205. This is to allow
8 a child development center for 12 children and
9 2 teachers in the R-1-B District at premises
10 4428 Ord Street, N.E. Property located in
11 Square 5117, Lot 838.

12 CHAIRPERSON JORDAN: Thank you.

13 Would you please identify
14 yourselves, please?

15 MR. HUGHES: Good afternoon, Mr.
16 Chair and members of the Board. For the record,
17 my name is Dennis Hughes with the firm of Holland
18 & Knight. I'm joined here by Ms. Roslyn Taylor
19 of Lia's Rainbow LLC, property owner and
20 applicant.

21 CHAIRPERSON JORDAN: Thank you.

22 This has at least one question, and

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1 I need some clarification right up front.
2 Regarding the off-street parking requirement,
3 can you talk to us about that? Do you have
4 off-street parking that's going to be part of
5 this project?

6 MR. HUGHES: Mr. Chair, the
7 property contains more than adequate parking
8 for the use.

9 CHAIRPERSON JORDAN: Off-street
10 parking?

11 MR. HUGHES: Yes.

12 CHAIRPERSON JORDAN: Okay.
13 Because I saw in the various documents there
14 was discussion of public parking, and I just
15 wanted to make sure it's not --

16 MR. HUGHES: There is quite a bit
17 of street parking as well, but the property does
18 have space for multiple cars.

19 CHAIRPERSON JORDAN: Okay, talk to
20 me about it. Tell us where that parking is,
21 how it's going to be operated.

22 MR. HUGHES: If I could draw your

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1 attention to our pre-hearing statement filed
2 September 4th.

3 CHAIRPERSON JORDAN: Yes.

4 MR. HUGHES: A couple of exhibits.
5 If the Board will refer to the plat, Exhibit
6 A.

7 CHAIRPERSON JORDAN: Exhibit A.

8 MR. HUGHES: And pardon my
9 pointing, but the location of the parking is
10 right here.

11 CHAIRPERSON JORDAN: In between the
12 area that's close to where it says south 140,
13 the boundary line there.

14 MR. HUGHES: Correct. And if the
15 Board will then turn to the photos which are
16 included as Exhibit C. The first photo shows
17 a view to the south, and you can see the asphalt
18 driveway and the parking just off to the side.

19 CHAIRPERSON JORDAN: Okay, good.
20 Okay, thank you.

21 Also, do you know when the dwelling
22 was built? Do you happen to know? I guess it

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1 really doesn't make a difference now since we're
2 going to have enough room for parking. So
3 before we thought where parking might be an issue
4 that if you might have been able to get at least
5 a space credit.

6 Does the Board have any particular
7 questions they need to ask this applicant about
8 anything since we've resolved the potential
9 parking issue?

10 Yes, Ms. Cohen?

11 ZC VICE CHAIR COHEN: I just want
12 to ask, the children that will be staying
13 overnight, are they going to be like in one room
14 or do they have separate bedrooms that they'll
15 be sleeping in? How is that going to work?

16 MS. TAYLOR: Normally how it works
17 is -- oh, I'm sorry. My name is Roslyn Taylor,
18 applicant and owner of Lia's Rainbow LLC. In
19 my facility I have a preschool classroom and
20 infant area. Normally in a regular home child
21 care they don't normally have that capacity of
22 space. And in the preschool classroom is where

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1 all the kids are going to be, and the infant
2 area, which is the larger area of the two, is
3 where the infants and toddlers are going to be
4 sleeping. We have cribs, beds that are off the
5 ground for the overnight kids, as well as cots.

6 So they are separate.

7 CHAIRPERSON JORDAN: Mr. Hughes, we
8 think that the record is very full in this matter
9 and we are comfortable with what you've already
10 filed. Certainly you have the opportunity if
11 you wish to provide testimony or do something
12 else to supplement, but at this point we don't
13 think it's necessary unless you, I don't want
14 to take away your ability to do so if you want.

15 MR. HUGHES: Thank you, Mr. Chair.

16 I don't think we need to, I don't need to talk
17 much more. I would like to thank the Office
18 of Planning and recognize its report and
19 support. There were a number of conditions.
20 We're agreeable. The applicant's agreeable to
21 those. We do have one item about the trash
22 removal, at the time the Board would like. We

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1 could address that now or come back to that.

2 CHAIRPERSON JORDAN: Go ahead.

3 MR. HUGHES: The Office of Planning
4 at the time the report was filed recommended
5 trash removal three times weekly. We've since
6 spoken or corresponded with Mr. Cochran, and
7 I don't want to put words in his mouth, he can
8 clarify. But I believe we've arrived at a
9 mutual arrangement that it would be removed once
10 weekly by DPW. There would be three supercans.

11 Currently there are two supercans on the
12 property. The applicant has purchased an
13 additional one, and from her experience that
14 would be more than adequate to address any trash
15 issues.

16 CHAIRPERSON JORDAN: Thank you.
17 And that leads into a segue to the Office of
18 Planning. Is there anything additional you
19 want to add to your report?

20 MR. COCHRAN: No, Mr. Chair. Given
21 those changes that we've agreed to, the Office
22 of Planning just stands on its report

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1 recommending approval with the conditions.

2 CHAIRPERSON JORDAN: Is anyone here
3 from any other government agency? We do have
4 a report from the Department of Transportation
5 recommending, oh excuse me, providing no
6 objection to the application. We also have a
7 report from the State office of education in
8 support of the application.

9 And is anyone here from the Advisory
10 Neighborhood Commission 7D?

11 (Off microphone comments)

12 CHAIRPERSON JORDAN: Okay, good.
13 Thank you. I appreciate that. We do have a
14 letter from ANC-7D, which meets our requirement
15 for great weight, supporting this application
16 and recommending its approval.

17 Is there anyone in the audience who
18 wish to have a three minute or less statement
19 regarding their support for this application?

20 Support? Yes. For support, yes. Come
21 forward, please, and identify yourself. Yes,
22 did you earlier get sworn in, and did you provide

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1 the witness cards to --

2 MS. TALIAFERRO: Yes, I did.

3 CHAIRPERSON JORDAN: Thank you.

4 And would you identify yourself?

5 MS. TALIAFERRO: My name is
6 Shirlene Taliaferro.

7 CHAIRPERSON JORDAN: Please, you
8 can proceed.

9 MS. TALIAFERRO: I'm here as a person
10 of the community. I've been living in the
11 community for 42 years. And I am happy to come
12 here today, this afternoon, to speak for Ms.
13 Taylor. Upon meeting her it was such a pleasure
14 to know that we had someone in the community
15 that had the passion to care for kids, and just
16 her professionalism alone told me that the kids
17 would be in good hands. And I'm more than happy
18 to come today to speak for her.

19 CHAIRPERSON JORDAN: Thank you.
20 And we really appreciate you taking the time
21 to come down to inform us of your thoughts.

22 Is there any questions from the

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1 Board to Ms. Taliaferro? Does the applicant
2 have questions? Good. Thank you, I really
3 appreciate it.

4 We also have on record a letter of
5 support from, is it Arys Scales, from the DC
6 Promise Neighborhood Initiative in support of
7 this application. Additionally, we have a
8 letter from the Police Department Patrol
9 Services and School Security in support of this
10 application. There is a letter, yes, I just
11 read one, then there's another from Ms. Linda
12 Brooks in support. Is there another? Okay,
13 in support of the application.

14 Presently, the file doesn't include
15 anything in opposition, but let me ask. Is
16 there anyone in the audience in opposition to
17 this application? If you are, would you please
18 come to the witness table and identify
19 yourselves. I did see you two take the oath,
20 yes. And be sure -- any open spot. There's
21 nothing particular. You don't have to get away
22 to be in, but that's okay. Make sure your

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1 microphone is on by pushing the push button until
2 the green light glows at you.

3 And you need some water you say?

4 MS. SCOTT-NICHOLSON: Yes, I need
5 some water. I really would like to be clear,
6 clear, clear. Please. Is there a water
7 fountain? I'm sorry, I'm not sure --

8 CHAIRPERSON JORDAN: We're going to
9 give you some --

10 MS. SCOTT-NICHOLSON: I appreciate
11 that.

12 CHAIRPERSON JORDAN: We aim to
13 please.

14 MS. SCOTT-NICHOLSON: I hope so.

15 CHAIRPERSON JORDAN: And while
16 she's drinking water, will you identify
17 yourself, please?

18 MR. NICHOLSON: Craig Nicholson.
19 Craig Nicholson.

20 CHAIRPERSON JORDAN: Pull back a
21 little bit and talk to us. Okay.

22 MR. NICHOLSON: Craig Nicholson.

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1 MS. SCOTT-NICHOLSON: I wanted to
2 go first.

3 CHAIRPERSON JORDAN: Mr.
4 Nicholson, where do you reside?

5 MR. NICHOLSON: 4430 Ord Street.

6 CHAIRPERSON JORDAN: Yes, and you
7 can identify yourself please, for us.

8 MS. SCOTT-NICHOLSON: My name is
9 Phoebe Scott-Nicholson.

10 CHAIRPERSON JORDAN: And you reside
11 where?

12 MS. SCOTT-NICHOLSON: 4430 Ord
13 Street, N.E., Washington, D.C. 20019.

14 CHAIRPERSON JORDAN: Okay. And I
15 heard you say that you would like to proceed.
16 So you have three minutes for us, please.

17 MS. SCOTT-NICHOLSON: I'm going to
18 go as fast as I can.

19 CHAIRPERSON JORDAN: Well, you have
20 three minutes. So you can do it whichever you
21 want to, slow, fast, whichever way.

22 MS. SCOTT-NICHOLSON: Okay. I'm

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1 speaking solely against this daycare, not so
2 much that because that, well, yes, it is a bother
3 to have a daycare next to you. Lilly Pond is
4 an area of peace, seniors, a lot of seniors,
5 especially on the half that she lives on, well,
6 towards the half that she lives at. I
7 mostly want to speak because I'm terribly upset
8 that here, right now, that she is also
9 petitioning to have children stay at the house.

10 Did I hear that right, sir? Can you --

11 MR. NICHOLSON: Just better keep
12 going.

13 CHAIRPERSON JORDAN: Yes, but
14 please --

15 MS. SCOTT-NICHOLSON: Yes, sir.
16 Okay, I'm sorry. Roslyn Taylor gets abused
17 terribly in that home.

18 CHAIRPERSON JORDAN: Pull back from
19 the mic if you speak so we can hear you clearly.

20 We can hear it even though you're not -- okay?

21 MS. SCOTT-NICHOLSON: Yes. Roslyn
22 gets abused in her home -- oh, back up? Oh,

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1 you can hear me from right here. Okay, great.

2 Roslyn gets abused by the owner,
3 Gary Gordon, in the house, and I don't mean a
4 slap or a tap, sir. It sounds like she is like
5 really, really, really beat bad in that home.

6 Her daughter runs out the house and she screams
7 through the parking lot.

8 Our windows are right there. Her
9 house is on the side. She has what I call sort
10 of a side house. Her house faces my house.
11 We're across the, it's a lot in between us for
12 which that's the space that separate us. She
13 also has part of that property for which that
14 other end is also part that I don't own.

15 I'm renting and have been there for
16 seven years. I have been in that area all of
17 my life. Born and raised on Ridge Road which
18 is right up the street. My mother name is Phoebe
19 Scott Hayes. We work the whole community. I
20 grew up doing this. A community activist.

21 A daycare? Lovely. But Roslyn and
22 Gary running a daycare? Excuse me, we will see

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1 it on the news. We will see it on the news.
2 The neighbors, the day that this happened, one
3 time in particular I'm talking about, she
4 doesn't know it but the neighbors were on the
5 porch and she lost all reputation.

6 Roslyn, how -- excuse me. How can she
7 get beat like that in front of her children and
8 let this man do this to her? That girl was
9 terrified. I honestly, honestly it affects me
10 real bad because I was abused in 19 by a
11 boyfriend, and to sit up here, and it has brought
12 back really bad memories for me. I can still
13 hear that girl scream, I mean screams of terror.

14 I called my sister. I called my
15 brother who used to be a U.S. marshal who works
16 now for the D.C. government at the --

17 MR. NICHOLSON: Get to the point,
18 dear.

19 MS. SCOTT-NICHOLSON: Okay, to the
20 point, to the point. Sorry about that. I often
21 do that. But I want to tell you guys, I have
22 nothing against this lady. I helped this lady

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1 in the beginning when she first moved there.
2 I brung her flowers. She had an incident with
3 the neighborhood, the whole neighborhood.

4 CHAIRPERSON JORDAN: I'm going to
5 ask you to wrap up, please.

6 MS. SCOTT-NICHOLSON: Yes?

7 CHAIRPERSON JORDAN: You're going
8 to have to stop, so you got a final sentence
9 you want to say?

10 MS. SCOTT-NICHOLSON: It's a lot.
11 It's been a short time since she's moved here
12 and they have caused havoc. She hangs with
13 young girls of her daughters and they literally
14 call me names every day that I walk out my door.

15 CHAIRPERSON JORDAN: Let me say
16 this. We appreciate you coming down and voicing
17 your concern. It appears that most of the
18 things you talked about has no effect upon the
19 zoning regulations in which we can control.
20 The office of the State Board of Education would
21 be the one where if there's anything about the
22 quality of care of the children is the place

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1 where you would go with that.

2 But we're required to deal strictly
3 with the zoning regulations in that regard,
4 although some of the things you talked about
5 raise some concern to us, and within that
6 purview, but we will deal with that. But the
7 other larger issue, I just want you to know that
8 probably the better place for that conversation
9 or some of your other concerns --

10 MS. SCOTT-NICHOLSON: Okay, but --

11 CHAIRPERSON JORDAN: -- would be
12 the State Board of Education.

13 I'm going to go to Mr. Nicholson now.

14 MR. NICHOLSON: Let's talk about
15 the parking. Since they moved there we've been
16 battling with them over the property. Yes,
17 there is a borderline which they are constantly
18 over. They're really parking on grass. It's
19 not really no parking lot. We are in the process
20 of getting the owners to put a fence there
21 because they think the property is theirs.

22 MS. SCOTT-NICHOLSON: The whole

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1 thing. It's not all theirs.

2 MR. NICHOLSON: And once --

3 (Simultaneous speaking)

4 CHAIRPERSON JORDAN: Excuse me a
5 second. Ms. Nicholson, I'm going to have to
6 ask you either to back away from the microphone
7 or, and if --

8 MS. SCOTT-NICHOLSON: I'm sorry,
9 sir. I really am.

10 CHAIRPERSON JORDAN: Okay.
11 Please, Mr. Nicholson.

12 MR. NICHOLSON: We're in the
13 process of getting the owners to put a fence
14 there, and it's really going to shrink up their
15 property. If there's a fence they're not going
16 to be able to have their back parked in the grass
17 on our side of the property, which again we're
18 renters. We pay per month. And that
19 whole property is our responsibility but, you
20 know, she went around us and looked up the
21 landlord and started going through him, you
22 know, so he's not here to testify whether he

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1 gave her permission or not to park on the
2 property, because she is. That's not a parking
3 lot. It's a piece of gravel on top of grass.

4 CHAIRPERSON JORDAN: All right.
5 Thank you. We appreciate your statement.

6 Any questions for the Nicholsons
7 from the Board, please? Any questions?

8 Ms. Cohen?

9 ZC VICE CHAIR COHEN: Mr. Chairman,
10 I understand that we're going to have to make
11 a decision based on zoning, strictly zoning.
12 But to hear an accusation of abuse, I feel very,
13 very ill at ease about that and I would suggest
14 that -- I mean the police department already
15 said it was okay, so I don't know if they've
16 ever --

17 CHAIRPERSON JORDAN: I think the
18 conversation about abuse, Ms. Cohen, was not
19 toward the children but something happened with
20 the adults.

21 ZC VICE CHAIR COHEN: Sitting for
22 the children, and that's --

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1 CHAIRPERSON JORDAN: Well, I think
2 that I understand your concern. We all have
3 concerns. That's why I was directing the
4 Nicholsons that this is not the forum, because
5 that's not our forum to deal with. We would
6 have a concern about it, we certainly have a
7 concern. We certainly, anything that the
8 operation thereof that's a detriment to the
9 community and et cetera.

10 But drilling down into the
11 allegations, because right now we just have
12 allegations, and I just think that we have to
13 be careful ourselves in as how we handle it.

14 MR. NICHOLSON: Mr. Jordan?

15 CHAIRPERSON JORDAN: Just a minute,
16 please. How we handle it, so I mean --

17 ZC VICE CHAIR COHEN: I think I was
18 getting to, all right. I'm just going to defer
19 to you.

20 CHAIRPERSON JORDAN: Yes. I
21 understand.

22 MS. SCOTT-NICHOLSON: I have

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1 witnesses.

2 MR. NICHOLSON: Can I comment on Ms.
3 Cohen?

4 CHAIRPERSON JORDAN: Is there
5 something you want to hear? Because she didn't
6 ask a question. She was making a statement to
7 us.

8 Go ahead, Ms. Cohen, if you have --

9 ZC VICE CHAIR COHEN: Yes. How
10 many times have the police been called to the
11 site?

12 MR. NICHOLSON: To be honest with
13 you, the whole neighborhood saw it and nobody
14 bothered to call. I work in the evenings. My
15 wife tells me a bunch of stories.

16 And she threw a cookout for the
17 police a month and a half ago, so she probably
18 got somebody to write a letter.

19 MS. SCOTT-NICHOLSON: Yes, that's
20 why. Yes.

21 MR. NICHOLSON: And for the police
22 in the D.C. government.

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1 (Off the record discussion)

2 MS. SCOTT-NICHOLSON: And our life
3 may be at stake saying this.

4 CHAIRPERSON JORDAN: Ms.
5 Nicholson, I'm going to ask you, would you please
6 adhere to our policy?

7 (Off the record discussion)

8 MS. SCOTT-NICHOLSON: I'm just
9 going to pray.

10 (Off the record discussion)

11 CHAIRPERSON JORDAN: All right.
12 I'm going to ask the applicant if they have any
13 cross examination of the parties, the persons
14 in opposition.

15 MR. HUGHES: No, Mr. Chair.

16 CHAIRPERSON JORDAN: Okay. Let me
17 ask you, in regards to the parking spot, who
18 owns the place where there's parking, and do
19 you have proof of use?

20 MR. HUGHES: Proof of use?

21 CHAIRPERSON JORDAN: That you can
22 lawfully use the space. Do you own the space

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1 where the parking's going to be?

2 MR. HUGHES: Yes, Mr. Chair. And
3 to your question earlier, the building is a
4 pre-'58 building. I visited the site last week
5 and the parking that I saw was on Ms. Taylor's
6 and Mr. Gordon's property.

7 CHAIRPERSON JORDAN: All right.
8 Any other questions the Board needs? Ms. Sorg?

9 BZA VICE CHAIR SORG: I do have one
10 question, Mr. Hughes. Ms. Taylor is renting
11 the home, or are you the owner?

12 MR. HUGHES: I'm sorry. Ms. Taylor
13 and Mr. Gordon, they are the owners.

14 BZA VICE CHAIR SORG: Oh, okay.

15 MR. HUGHES: The folks that are
16 speaking in opposition are renting the
17 neighboring property.

18 BZA VICE CHAIR SORG: Okay. I just
19 wanted to make sure. Thank you.

20 CHAIRPERSON JORDAN: And let me
21 turn to Planning. Have you been out to the
22 property?

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1 MR. COCHRAN: No, Mr. Chair, I
2 haven't been out to the property. The one
3 question that we did have was just about the
4 parking arrangements. They're required to have
5 two spaces. We had asked the applicant to
6 provide additional information about the
7 parking arrangements. There's probably
8 adequate parking on the street, but the
9 regulations do require demonstration of the
10 parking arrangements off-street. It would have
11 been helpful to have that but from the photos
12 it still looks like there was a loosely paved
13 area.

14 CHAIRPERSON JORDAN: So you have no
15 further questions? Good.

16 All right, let's turn back to the
17 applicant for any rebuttal or closing, please.

18 MR. HUGHES: No, Mr. Chair, thank
19 you very much. As you introduced the
20 application we believe that the record is quite
21 full. We have support from the Office of
22 Planning, no opposition from the Department of

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1 Transportation. We have the support of ANC-7D.

2 We have multiple letters of support from
3 property owners and neighbors including one
4 letter of support from a grandparent, I believe,
5 or a parent of one of Ms. Taylor's students.

6 Grandparent?

7 MS. TAYLOR: Yes, sir.

8 MR. HUGHES: And we believe that the
9 Board has a full record to grant approval of
10 this application. Thank you.

11 CHAIRPERSON JORDAN: Does the Board
12 have any other questions that we want to ask?

13 Ms. Cohen?

14 ZC VICE CHAIR COHEN: Ms. Taylor,
15 are the accusations accurate?

16 MS. TAYLOR: They're inaccurate,
17 ma'am. It never happened.

18 ZC VICE CHAIR COHEN: Why would
19 somebody say this then?

20 CHAIRPERSON JORDAN: We can't
21 really, Ms. Cohen, we really can't ask why
22 somebody would say it, but you can ask the direct

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1 questions.

2 MS. TAYLOR: I would like to address
3 it though. When we initially bought the house
4 in 2010, we exchanged numbers with the neighbors
5 in the community as a neighborhood watch.

6 Sometimes when I get off work at
7 10:00 p.m. at night, initially I used to speak
8 to the lady across on my left. 10:00 p.m. at
9 night she would call, oh, do you know where your
10 property line at? Who is at your house? Who
11 is in from New York at your house? Different
12 questions that was no business of hers.

13 So what my husband and I did, we went
14 to our lawyer and we sent a letter to the owner,
15 who lives in New York, asking her to have her
16 tenants cease and desist from harassing us and
17 stop using our phone number for that purpose,
18 which I term it as harassing. And the owner
19 send her nephew to us, spoke to us about it,
20 and they agreed that they were mischievous, and
21 since then they haven't done, you know, well,
22 Ms. Nicholson she has stopped speaking to us,

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1 stuff like that.

2 I'm a college graduate, Ms. Cohen.

3 My oldest daughter is 25, she's a hairstylist.

4 My 22-year-old, she serves in the U.S. Army.

5 I have a 13-year-old. I have a six-year-old
6 and have a 19-month-old son. And since we've
7 been in that neighborhood I have done a lot for
8 the community. I've been helping the parents.

9 I've hosted on August 17th, 2012, I hosted a
10 family fun safety day to include the police
11 officers of the 6th District precinct, because
12 most of the people and the children in that area
13 are afraid to go to the police officers when
14 stuff happens.

15 When we initially moved in also,
16 rocks were thrown at our house and vehicle, and
17 my vehicle was broken by one of those rocks.
18 My 6-year-old was sitting right where the rock
19 was thrown at that time. Thank God nothing
20 happened to her. And I did share that with the
21 neighbor, and she said normally when someone
22 new moves into that neighborhood they're

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1 initiated.

2 ZC VICE CHAIR COHEN: All right,
3 thank you.

4 MS. TAYLOR: That's what she said.
5 But we did get help from the neighbor, and since
6 then we haven't had that incident.

7 ZC VICE CHAIR COHEN: Thank you.

8 MS. TAYLOR: And my husband also
9 works at Pepco. He's a supervisor.

10 CHAIRPERSON JORDAN: Any other
11 questions that the Board has? Okay.

12 Is there anything else to be
13 presented that you want to present to us? Then
14 I'm going to close the hearing on this matter,
15 and then move back to the Board to see if they're
16 willing to deliberate or not.

17 Guess we'll move into deliberation,
18 or not? Okay, we'll move into deliberation.

19 The first thing that I want to say
20 in regards to the record here is that we do have
21 a letter from the police department encouraging
22 us to support this application. In fact,

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1 saluting the applicant for support with children
2 in the neighborhood as a safe haven, a safe
3 house, and that you've been supportive of
4 students, people who didn't feel safe utilizing
5 your facility. And so I just wanted to make
6 sure, and that's already part of our record.
7 And they clearly support this application.

8 Anyone else have anything they may
9 want to say about this?

10 MS. SCOTT-NICHOLSON: I do.

11 CHAIRPERSON JORDAN: Ms.
12 Nicholson, you absolutely have, actually you
13 can move away from the mic and take a seat back
14 in the audience, if you would, please.

15 MS. SCOTT-NICHOLSON: Those are all
16 lies.

17 CHAIRPERSON JORDAN: And so I think
18 the record is clear from our files and from
19 testimony that we've had here based upon the
20 zoning regulations that they meet the
21 requirement for the special exception to allow
22 for a child development center.

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1 We have the report from all the
2 government agencies. We have the letter from
3 ANC which should be given great weight. The
4 State Office of Education has submitted their
5 recommendation for approval. So I would move
6 that the request of the applicant for special
7 exception be granted.

8 ZC VICE CHAIR COHEN: I'll second
9 it.

10 CHAIRPERSON JORDAN: Motion made
11 and seconded that the application be granted.
12 Any unreadiness? All those in favor signify
13 by saying aye.

14 (Chorus of ayes)

15 CHAIRPERSON JORDAN: Those
16 opposed, nay. The motion carries.

17 Mr. Moy?

18 MR. MOY: Yes, staff would record
19 the vote as four to zero to one. This is on
20 the motion of Chairperson Jordan to approve the
21 application for special exception relief under
22 section 205 for a CDC. Second the motion, Ms.

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1 Cohen. Also in support of the motion, Vice
2 Chair Sorg and Mr. Hinkle. No other Board
3 member is present. Final vote, four to zero
4 to one on the application. Thank you, sir.

5 CHAIRPERSON JORDAN: And Mr. Moy,
6 can we have a summary opinion in this, please?

7 MR. MOY: Yes, thank you, sir.

8 CHAIRPERSON JORDAN: Thank you.

9 Thank you very much, appreciate it.

10 MR. HUGHES: Thank you.

11 MS. TAYLOR: You're welcome.

12 (Off the record discussion)

13 MS. SCOTT-NICHOLSON: Mr. Jordan,
14 he's going to still beat her real bad, and the
15 kids. And to the women of this, please --

16 CHAIRPERSON JORDAN: Ms.
17 Nicholson, I'm going --

18 MS. SCOTT-NICHOLSON: -- you've got
19 the address. Keep their order. Just look back
20 at them. Check --

21 CHAIRPERSON JORDAN: Ms.
22 Nicholson, please. Ms. Nicholson, I don't want

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1 to have to have you removed.

2 MS. SCOTT-NICHOLSON: I'm moving.

3 CHAIRPERSON JORDAN: Thank you.

4 MS. SCOTT-NICHOLSON: You're all
5 going to see.

6 (Off microphone comments)

7 MR. MOY: The next application
8 before the Board is Application Number 18404.

9 This is the application of Chaney Enterprises
10 LP, pursuant to 11 DCMR 3104.1, for a special
11 exception to allow the construction of a
12 concrete manufacturing facility under section
13 802.17, in the C-M-1 District at premises 3 D.C.
14 Village Lane, S.W., property located at Square
15 6264, part of Lot 801.

16 I also have in my hand, Mr. Chairman,
17 that just given to me by the applicant, a copy
18 of the affidavit of maintenance, which I'll
19 mention the applicant will brief the Board on,
20 as well as another copy of a site plan and another
21 letter that he'll address. Thank you.

22 CHAIRPERSON JORDAN: Let me ask,

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1 did all persons who are going to testify take
2 the oath?

3 MR. KADLECEK: Yes, they did.

4 CHAIRPERSON JORDAN: And we have
5 witness cards prepared and given to the court
6 reporter?

7 MR. KADLECEK: Yes, we've given
8 witness cards.

9 CHAIRPERSON JORDAN: Please
10 identify yourself, please.

11 MR. KADLECEK: Good afternoon,
12 members of the Board. My name is Cary Kadlecek
13 from the law firm of Goulston & Storrs. I'm
14 the attorney on behalf of the applicant.

15 MR. WYROUGH: Good afternoon, my
16 name is Page Wyrough. I'm counsel for Chaney
17 Enterprises and manager of this particular
18 project from a permit standpoint.

19 MR. KADLECEK: The two exhibits
20 that I just gave you, one of them is actually
21 just a replacement for Exhibit D in the September
22 4th submission. You'll see that one got kind

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1 of cut off, so I just wanted to make sure you
2 have a more full picture of that site plan, but
3 it's the exact same exhibit.

4 And then the second exhibit that we
5 gave you is a letter from the landscape architect
6 for the site, and we'll discuss that.

7 (Off the record discussion)

8 CHAIRPERSON JORDAN: Trying to take
9 a look at this file again. And so this is just
10 an exchange of exhibits? I have two documents.

11 One is an exchange of exhibit and one is about
12 the trees?

13 MR. KADLECEK: Right. That's
14 correct. The letter from the landscape
15 architect is about the trees with respect to
16 the condition that OP is recommending.

17 CHAIRPERSON JORDAN: Okay. Trying
18 to see where we are. I don't see anything --

19 (Off the record discussion)

20 CHAIRPERSON JORDAN: We believe
21 that the record is very full in this matter.
22 However, we may want to have some questions

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1 answered so we can get to specifics of what we
2 need to be. And I'm going to turn to Ms. Cohen,
3 please.

4 ZC VICE CHAIR COHEN: Thank you, Mr.
5 Chairman. For batch plants, the main concern
6 that I have are the emissions to the air, which
7 can be, I'm not sure how to pronounce,
8 respirable.

9 So there needs to be a containment
10 plan like a best available control technology.

11 So how are you controlling emissions to the
12 air? I notice that you're going to use water,
13 but is that sufficient? So can you discuss that
14 please?

15 MR. WYROUGH: I will discuss it as
16 best I can with my somewhat legal layman's
17 understanding of it, and then I'll defer to Mr.
18 Jeffrey Slagoe who is in charge of the operations
19 at this particular plant to the extent that you
20 want a more technical answer. The
21 emissions if you will that you just referred
22 to with respect to water, pertain only to dust

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1 generated by trucks on the road. And the use
2 of a water truck to keep the dust down is used
3 what, three or four times a day or as needed,
4 and that is more than sufficient with respect
5 to just dust on the road that the tires turn
6 up.

7 With respect to any emissions from
8 the plant itself, we procured an air quality
9 permit, and several questions during the
10 permitting process came up both from DDOE as
11 well as Metropolitan Police who's got an
12 evidence lab next door. We supplied both DDOE
13 and the Metropolitan Police with all of the
14 specifications for the ready mix concrete
15 portable plant which were there.

16 There's a dust collection mechanism
17 which is physically at the top of the plant.
18 It is 99-some odd percent efficient. There is
19 a plan that calls for the bags to be, for
20 instance, to be replaced periodically. The air
21 permit was issued, I think was three or four
22 pages long and had a number of different

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1 conditions associated with the issuance of the
2 permit which should address, and compliance with
3 those conditions should address any concerns
4 that you may have with respect to emissions at
5 the plant itself.

6 ZC VICE CHAIR COHEN: Is that permit
7 in the record, the air permit?

8 MR. KADLECEK: No, that permit is
9 not in the record but we can supply it if
10 necessary.

11 ZC VICE CHAIR COHEN: I think you
12 should, for the record.

13 MR. WYROUGH: So with that, if you
14 have any more specific questions, Mr. Slagoe
15 can certainly answer them.

16 ZC VICE CHAIR COHEN: When you say
17 "as necessary" when the changing of the filters
18 --

19 MR. WYROUGH: The filters calls for
20 periodic, what I meant was as necessary during
21 the drier months, I meant as necessary for the
22 use of the water truck to keep dust on the road

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1 down. That was as necessary. There's a
2 specific maintenance schedule and replacement
3 schedule with respect to the mechanical
4 operation of the plant itself.

5 ZC VICE CHAIR COHEN: Thanks.

6 CHAIRPERSON JORDAN: Ms. Sorg?

7 BZA VICE CHAIR SORG: Thank you, Mr.
8 Chairman. You know, I just feel like there's
9 some history here with the company and why it's
10 here and what, you know, that I'm kind of not
11 understanding. And like, for example, in your
12 pre-hearing statement there's an indication
13 that the Department of Real Estate Services,
14 now DGS, selected Chaney Enterprises for this
15 site.

16 So I wanted to understand a little
17 bit of the history of, you know, what's the
18 purpose of moving to this area? And also I guess
19 the plant is currently operating, is that the
20 case?

21 MR. WYROUGH: That's correct.

22 MR. KADLECEK: Right. I can,

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1 unless Page would prefer, I can give you a little
2 bit of an overview about how we got here.

3 BZA VICE CHAIR SORG: That would be
4 lovely.

5 MR. KADLECEK: So as you saw alluded
6 to in the pre-hearing statement, the Department
7 of Real Estate Services issued this request for
8 offers to which the parent company for Chaney
9 responded and won the bid to ground-lease the
10 property to operate a portable batch concrete
11 plant there.

12 The portable batch concrete plant
13 supplies, I believe, 95 percent or more of that
14 product to DC Water's Blue Plains facility,
15 which is constructing new facilities pursuant
16 to a consent decree arising out of a lawsuit
17 by the EPA. So its purpose is really to supply
18 this infrastructure improvement at the DC Water
19 facility.

20 After Chaney won the request for
21 offers they obtained a building permit and
22 subsequently obtained a certificate of

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1 occupancy for it. One of the opponents if you
2 will in the request for offers dug around a
3 little bit because they didn't win the
4 solicitation, realized that there was no
5 approval from this Board for the special
6 exception, and an appeal was filed which was
7 subsequently dropped.

8 At the same time, the Department of
9 Consumer and Regulatory Affairs issued a
10 revocation of the building permit and the
11 certificate of occupancy. We spoke with them
12 once they issued that letter and effectively
13 they agreed not to basically order a cease and
14 desist pending the outcome of this special
15 exception case. So that's how we ended up here
16 today.

17 MR. WYROUGH: The only thing that
18 I would clarify with respect to that is, is that
19 Virginia Concrete, who filed the complaint, was
20 not an unsuccessful bidder on the location for
21 itself with respect to the request for proposals
22 that came out of DRES. They were the

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1 unsuccessful bidder on the bulk of the contracts
2 for the supply of the ready mix concrete at Blue
3 Plains.

4 BZA VICE CHAIR SORG: Right. I
5 understand. So the request for offers for the
6 lease to build the batch plant, that was
7 connected with an RFP to provide the concrete
8 for the Blue Plains?

9 MR. WYROUGH: No, DRES put the
10 property out on the street for essentially
11 saying, anybody's got an interest in doing
12 something on this property, come tell us what
13 it is you want to do on this property, tell us
14 how you would treat the property. And I forget
15 how many proposals came in, but it involved a
16 number of different uses, one of which was
17 placing this portable batch plant on it.

18 The lease with the District
19 essentially said, you can go in, you can lease
20 the property for a specified period of time and
21 you can tear down one or more or none of the
22 buildings which currently exist. We have torn

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1 down three buildings and we have plans hopefully
2 to tear down the old boiler plant for the
3 hospital in itself, but as it turns out the
4 District and us were under a misimpression that
5 the property had been completely abated of
6 asbestos because the D.C. had actually let a
7 contract to do the remediation. Turns out they
8 did one of the most miserable of remediation
9 you're ever going to see and it's going to cost
10 a significant amount of money to go back in and
11 properly remove all the asbestos from the boiler
12 building. So that's a work in progress, but
13 hopefully over the course of the next few years
14 we will be tearing that building down as well.

15 BZA VICE CHAIR SORG: Okay, so it
16 wasn't connected with the company's award of
17 the work for DC Water?

18 MR. WYROUGH: No, but I think DRES
19 recognized the benefit to Blue Plains from being
20 so close to the project.

21 BZA VICE CHAIR SORG: Thank you.

22 CHAIRPERSON JORDAN: Any other

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1 questions we have? Good.

2 Well, I think like as we said the
3 record's full. I think we have enough to go
4 on. However, if you feel that you need to do
5 a presentation or present any other evidence,
6 feel free.

7 MR. KADLECEK: Yes, we thank you,
8 Mr. Chair. We don't have a presentation, but
9 there are a few conditions that the Office of
10 Planning recommended in their report that we
11 would like to address. So I'm going to ask Mr.
12 Wyrrough a couple questions about those
13 conditions and hopefully explain why we find
14 those conditions acceptable or not.

15 My first question. Mr. Wyrrough,
16 have you had an opportunity to review the Office
17 of Planning report?

18 MR. WYROUGH: Yes, I have.

19 MR. KADLECEK: With respect to the
20 condition recommending a seven-year term of
21 approval, can you please explain why that would
22 be too short of a term for approval?

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1 MR. WYROUGH: The site was leased
2 at a reduced rate and there have been
3 conversations between DRES and Chaney about
4 extending the term of the lease beyond its
5 current seven-year period which are connected
6 to the District charging a higher rent than it
7 currently provides as well as dealing with the
8 asbestos in the building that I just described.

9 If we limit it to three years we're
10 going to find ourselves in a position where we're
11 going to get to the end of the lease term, the
12 lease may or may not be extended, and it will
13 be difficult to coordinate the renewal and
14 extension of that lease with the extension of
15 the special exception, and we would prefer not
16 to find ourselves in a position where we have
17 to go incur the costs associated with renewing
18 or extending this special exception until we
19 know we're going to be there for a longer period
20 of time.

21 Currently the lease provides that
22 we will be there for seven years. We'd ask that

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1 you consider it allowing to go to ten. We're
2 going to try and get a three-year extension on
3 it, and if the District says no then we'll be
4 gone and the special exception won't mean
5 anything anyway. If the District says yes, then
6 we'll be out of there in ten years. So from
7 a cost standpoint and a logistical standpoint,
8 we would ask that you consider allowing us to
9 stay there for ten years and let the issues with
10 the District with respect to the lease run their
11 natural course.

12 MR. KADLECEK: Thank you. With
13 respect to the conditions about additional
14 landscaping on the site, can you please explain
15 why changing the species of trees from Leyland
16 cypress to red cedar would not be advisable?

17 MR. WYROUGH: Well, the Office of
18 Planning expressed their concern about the
19 condition of some of the trees. Those trees
20 have been since replaced with Leyland cypress
21 again, not the red cedar referenced in the
22 report. You've got the letter from our

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1 landscaper, and apparently there's just a
2 professional difference of opinion between our
3 landscaper on the viability of red cedar versus
4 Leyland cypress. He doesn't think that putting
5 the red cedar out there will guarantee any, that
6 there will be any greater chances of success
7 for the red cedar to survive.

8 We have no problem with putting
9 additional plants in there, we just have to be
10 coordinated with the Office of Planning to
11 determine how many more and where. But our
12 preference at this point based on the
13 recommendations of our landscaper is we'd like
14 to stick with the Leyland cypress.

15 It's a difficult site. There's
16 probably several feet of concrete and asphalt
17 that has been put in the ground over time, and
18 digging a hole to put anything out there and
19 getting it to survive is a difficult exercise
20 at best, which is why all these Leyland cypress
21 are in pots.

22 MR. KADLECEK: Okay, thank you.

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1 And finally, with respect to the condition
2 regarding moving the Dumpster from its current
3 location to somewhere inside the perimeter of
4 the facility, can you explain why that would
5 be disruptive to the plant operations?

6 MR. WYROUGH: Well, again, I'm not
7 quite sure if they are talking about the Dumpster
8 which is near where the old laundry building
9 was, which has since been demolished which is
10 currently used as a parking area. It was put
11 over there because the area where the actual
12 plant is located is very, very tight, and moving
13 the Dumpster outside of its current location
14 inside the actual plant area would make the
15 logistics of operating that plant somewhat
16 difficult.

17 MR. KADLECEK: Okay. I have one
18 more. Can you explain why, as written, there's
19 a condition that asks for extending the fence
20 across the site once the boiler building is
21 removed? Can you explain, as it's written, why
22 that wouldn't necessarily be feasible?

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1 MR. WYROUGH: It's kind of an odd
2 layout. The District has a warehouse which is
3 immediately adjacent to our property and part
4 of which is a pharmaceutical warehouse. And
5 there's use of a common driveway to that
6 warehouse. In addition, on the other side of
7 our facility the District stores asphalt
8 millings. So the Department of Transportation
9 needs to go physically through our site to get
10 to the asphalt millings and they have keys to
11 the gates.

12 The concern about wrapping the
13 entire site in a fence which would include the
14 area where the Leyland cypress are and the cars
15 are currently parked is, and then putting this
16 opaque membrane on top of it, which I suppose
17 in theory we wouldn't have an objection to, but
18 I'm not sure how the District is going to feel
19 about putting a fence up with an opaque barrier
20 on it adjacent to its pharmacy warehouse, for
21 security reasons.

22 I mean we had an electrical crew out

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1 there. It was a warren's den of wires and they
2 went on top of the roof of the pharmacy building
3 during construction to shut down the
4 electricity, the next thing they knew they had
5 half the District police officers down there,
6 thought they were trying to break into the
7 warehouse and were going to arrest them all.

8 So I'm not sure how the District
9 would feel about us putting an opaque barrier
10 between the street and this pharmacy warehouse.

11 MR. KADLECEK: Thank you. That
12 concludes our questions and responses regarding
13 the conditions in the Office of Planning report.

14 CHAIRPERSON JORDAN: Does the Board
15 have any additional questions of the applicant?

16 BZA VICE CHAIR SORG: Yes, thank
17 you, Mr. Chairman. I think regarding a couple
18 of the questions that you were just asking about
19 the conditions, it feels like perhaps you can,
20 if you disagree with the letter is what I think
21 is going on of some of the proposed conditions
22 that are included in the OP report, it seems

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1 to me that what's more important to do is to
2 get to the spirit of those things.

3 For example, you have submitted some
4 materials regarding the Eastern red cedar versus
5 the Leyland cypress, and in my reading of this
6 request from OP, the important thing about the
7 trees is the native species versus the
8 non-native species, which I could be wrong.
9 We could ask OP when we get to them, but I think
10 there's a potential, and none of us in here,
11 I don't think right now, are landscape
12 architects or landscapers, but I think there's
13 a potential that that is what they're looking
14 for, and I'm not sure that that's a bad idea.

15 Secondly, with regard to your line
16 of questioning on the extension of the screen
17 across the site, you know, you'd be agreeable
18 to a potential condition that's, you know,
19 indicated that the tenant would secure the site
20 to the satisfaction of the District government
21 relevant agencies. I mean I think that's the
22 spirit of what they're getting at.

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1 MR. KADLECEK: And that's fine. I
2 mean we do agree with the spirit of a lot of
3 these, but as written we didn't want to be bound
4 by conditions as written because of what the
5 implications might be on other parties like the
6 Department of General Services that have an
7 interest in the property and an interest in the
8 lease.

9 So, you know, part of what we were
10 trying to get at is just some more clarity, and
11 I think maybe what Office of Planning's intent
12 was with respect to screening might differ from
13 the intent that like Mr. Wyrrough was saying about
14 other District agencies that may not want things
15 screened precisely because of security reasons.

16 So it would have to be some sort of compromise
17 between what the different District agencies
18 would have in the property.

19 BZA VICE CHAIR SORG: Okay. Yes,
20 that's understandable. I just wanted to point
21 out a couple of those things.

22 MR. KADLECEK: No, and we

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1 appreciate that.

2 CHAIRPERSON JORDAN: Any other
3 questions for the applicant? Then let's turn
4 to the Office of Planning, please.

5 MR. JACKSON: Good afternoon, Mr.
6 Chairman and members of the Board. My name's
7 Arthur Jackson in D.C. Office of Planning. I
8 appreciate the applicant considering these
9 conditions and having a very interesting
10 response.

11 But I wanted to clarify some of what
12 was being indicated. The statement that the
13 Leyland cypress, the local -- I'm sorry, the
14 native species was put forward because being
15 native it would be seen as being more survivable
16 was the reason it was suggested. However, I
17 would go to the Exterior Image landscaping
18 letter and just underline the portion where it
19 says the Leyland cypress installed,
20 container-grown, with proper maintenance and
21 regular watering in extremely cold and heat
22 and dry conditions and so on, will survive.

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1 And I think, refer to the photograph in the back
2 of the Office of Planning's report which show
3 the trees dying. I guess the issue is
4 really proper maintenance and that the trees
5 survive, and it's not a case of every time they
6 die they replace it. I mean you don't really
7 have a functional screening system if that's
8 the case.

9 And we think there may be some
10 misunderstanding about their recommendation for
11 the fencing. On the submitted grading
12 plan/landscaping plan it shows a fence going
13 across along the lease line across the property.

14 The green line extends across the property to
15 the western boundary and down along that side.

16 Really that's all we're talking about is that
17 the vinyl slats or screening would be along that
18 line.

19 We weren't talking about extending
20 the line up to where the trees are, we're just
21 saying that when the building goes, the boiler
22 building goes that the fencing be extended

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1 across the property where the boiler building
2 is because that's where all the equipment is.

3 That's where the trucks are. That's where the
4 maintenance facility is. That's the area that
5 needs to be screened by the fence and the green
6 and the opaque slats or the fabric. I just
7 wanted to make sure that was clear.

8 MR. KADLECEK: With that
9 clarification we have no objection to that
10 condition.

11 MR. JACKSON: Okay. That's really
12 what I was talking about. I guess the
13 description, really I was just saying going
14 across the property, because right now there's
15 no boundary except for the building itself.

16 And as to the Leyland cypress, the whole
17 issue is if there's going to be a screen it needs
18 to screen. And at this point they're spaced
19 too far apart to really be effective screen.
20 And of course they're dying. That doesn't help
21 anybody either.

22 So the issue again, besides the

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1 maintenance, is to get them closer, a more
2 effective screen. And I think as indicated,
3 the suggested approach would be to either put
4 it inside the fence with the plant or put it
5 inside the landscaping around the parking lot,
6 so that essentially shift it inside the parking
7 lot.

8 You'll note that around that area
9 on the police department property, on the WMATA
10 property and with the evidence facility and with
11 the, I guess the Job Corps facility, all their
12 Dumpsters are closed or shifted so they're not
13 physical on the street. So we're just saying,
14 put it inside of that fenced-in area where you
15 have your other vehicles, the aggregate
16 containers, just so it's screened from the
17 street.

18 Again, looking long term, we
19 suggested the minimum time, but we know this
20 is a long-term project. But the whole purpose
21 of the C-M district as is written is to allow
22 for a mix of virtually any type of retail office

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1 or commercial use that's allowed in the regular
2 C districts along with some light manufacturing
3 and production.

4 The existing concrete facility is
5 allowed by special exception and it has certain
6 standards so it does not limit the potential
7 of the surrounding properties. In the long term
8 in ten years, we could see the whole area
9 redeveloped with other types of industrial or
10 assembly or potentially profitable use for the
11 District, but not residential. We know it's
12 not going to be residential.

13 We would hate to see that over the
14 long term that the opportunity to redevelop some
15 of the other surrounding properties with other
16 beneficial uses that would be suitable for the
17 District to be somewhat reduced by this plant,
18 although it's a valuable service, that's not
19 quite operating in the way that the ordinances
20 anticipated that it would.

21 So we're not unsupportive of their
22 extending it to ten years, but we would like

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1 to see that if they're going to be there ten
2 years, which is a decade, ten years is a long
3 time, we would like to see it screened in such
4 a way that it not be detrimental to the potential
5 redevelopment of the surrounding properties.
6 That's what all we're shooting for.

7 And we would like to note that the
8 applicants were very open to our visits from
9 the Office of Planning and other agencies to
10 talk about this. We talked to other departments
11 and agencies that are involved in this type of
12 review, Department of Public Works, the
13 Department of Environment, we talked to the
14 Department of Transportation, and they didn't
15 raise any real concerns about the operational
16 side, but we think as important as how well it's
17 operated it needs to be properly screened and
18 that screen to be maintained. And that's really
19 the focus of our comments, and we're available
20 to answer any questions that you may have.

21 CHAIRPERSON JORDAN: Does the Board
22 have any questions?

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1 Let me ask you. Let me go back.
2 Where did you say the fence should, for the
3 fencing you --

4 MR. JACKSON: Well, the fencing on
5 there, the green line on the landscaping/grading
6 plan is really where the fencing would go.

7 CHAIRPERSON JORDAN: Okay. How
8 would we describe that for our record?

9 MR. JACKSON: The fencing along the
10 northern and eastern lease line of -- does this
11 line actually have a name?

12 MR. WYROUGH: Well, the boiler
13 building that I referred to is, there is no
14 northern line here by the access point. So I
15 think what Office of Planning is getting at is
16 that if we tear that building down that they
17 want to see the fence extended, which we have
18 no absolutely no objection to and we have
19 absolutely no objection to put the screening.

20 So correct me if I'm wrong, I think from your
21 standpoint is that if and when the boiler
22 building is removed that there would be fencing

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1 and screening put completed on the property
2 consistent with this exhibit.

3 MR. JACKSON: Right. Because it's
4 in replacement of the boiler building, yes, or
5 from the side of the boiler building, I guess.

6 MR. WYROUGH: I mean physically we
7 can't do it now because there's a building in
8 the way.

9 CHAIRPERSON JORDAN: Any other
10 questions for Planning? No? Does the
11 applicant have a question for Planning?

12 MR. KADLECEK: I just have one
13 question for a point of clarification. When
14 you were talking about the landscaping of the
15 trees that are, I guess, further to the north
16 where they're indicated now, are you saying that
17 that location of landscaping is acceptable but
18 you just want more of it? Is that what I'm
19 understanding?

20 MR. JACKSON: Well, looking at the
21 photograph in the back of the Office of
22 Planning's report, obviously they're so far

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1 apart they don't provide an effective screen.

2 MR. KADLECEK: Okay.

3 MR. JACKSON: Of course, so besides
4 the maintenance it needs to be denser.

5 MR. KADLECEK: Okay, so denser and
6 more maintenance, but the locations indicated
7 on the landscape plan is okay? I'm just trying
8 to understand --

9 MR. JACKSON: Oh, yes. Yes, it is.

10 MR. KADLECEK: -- that you don't
11 want it in other --

12 MR. JACKSON: Yes, that boundary is
13 good. And I also note that it doesn't appear
14 that the opening in the landscaping is shown
15 on the site plan. It seems like the access is
16 further south but there's an opening further
17 north of there.

18 So it's still, if you can be fairly
19 consistent with that and make it thicker so it
20 is effective, of course I guess you'll just talk
21 to your landscape designer, the landscape
22 architect to make sure you don't do anything

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1 that would also inhibit the growth of the trees.

2 But if you're going to be, it needs to be
3 effective to be worthwhile, so that's what we're
4 shooting for.

5 MR. KADLECEK: Okay, thank you.

6 MR. JACKSON: You're welcome.

7 CHAIRPERSON JORDAN: Regarding
8 your Condition Number 4, regarding the landscape
9 plan, so you're accepting this that's been
10 distributed to us today as the landscape plan?

11 MR. JACKSON: Well, let's say this
12 is schematic of where the landscaping would go.

13 But because I'm not sure if this is to scale
14 and I'm not sure how big the trees actually get,
15 I guess the point is, if the trees, the trees
16 in the photograph appear to be about the same
17 size as the pot. So if that's how large they're
18 going to get they need to be much closer to be
19 an effective landscape screen. But I would
20 defer to the applicant and the landscape
21 architect to come up with a better plan.

22 But the location around the edge of

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1 the property on the northern and the eastern
2 quarter is the location that makes the most
3 sense, because basically you're screening that
4 area from the roadway. And we're not that
5 concerned about the warehouse or the vehicle
6 impound area to the west. We're more concerned
7 about the potential development, the
8 environmental sites to the east.

9 CHAIRPERSON JORDAN: All right, any
10 other questions for the Office of Planning from
11 anyone? Okay.

12 Let's move to any other government
13 agency. Is the Department of Transportation
14 here? No, but we have a letter from them voicing
15 their no objection to the application.

16 Is there a representative of ANC-8D
17 present? We have a letter of support from
18 ANC-8D supporting the application which we would
19 give great weight to. Are there any persons
20 in the audience in support of the application?

21 Are there any persons in the
22 audience in opposition to the application?

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1 Then we'll move to the applicant for rebuttal
2 and closing, please.

3 Let me go back a second. We do have
4 a letter in the file of opposition from 28 CMI
5 Ready Mix, an opposition which we have in the
6 file.

7 But go ahead, proceed then.

8 MR. KADLECEK: The only issues we
9 would like to address is just trying to clarify
10 the conditions that would be put in the order.

11 The first one that we are suggesting
12 and comfortable with is a ten-year term on the
13 order, as Mr. Wyrrough has explained, the benefit
14 of having a ten-year term as opposed to the
15 seven-year term, and having to come back here
16 and basically make the same case for something
17 that is already --

18 CHAIRPERSON JORDAN: How about a
19 seven and a three?

20 MR. KADLECEK: A seven and a three?

21 CHAIRPERSON JORDAN: Conditional
22 three, yes.

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1 MR. KADLECEK: Conditional on
2 getting the lease extension? That's fine.

3 The other condition with respect to
4 the landscaping, it seems like maybe we can,
5 and I'll leave the wording up to the Board on
6 having some sort of condition with the
7 landscaping that would basically be working in
8 conjunction with OP to come up with a plan that's
9 consistent with what we submitted but, you know,
10 in it has a level of tree density that is
11 acceptable to the Office of Planning, or
12 something along those lines so that we don't
13 have to have some sort of vague understanding
14 about, you know, what's the appropriate number
15 of trees on the site.

16 And then with respect to the
17 fencing, we're comfortable with the fence line
18 that's outlined on the plan that we submitted
19 today, obviously contingent on the boiler
20 building being demolished.

21 And then finally with the Dumpster,
22 we're comfortable removing that from its

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1 location so it's then behind some of the
2 screening and on the property.

3 Mr. Chairman, we have nothing
4 further.

5 MR. JACKSON: Mr. Chairman, one
6 point of clarification.

7 CHAIRPERSON JORDAN: Yes?

8 MR. JACKSON: The slats as opposed
9 to the fabric?

10 MR. KADLECEK: We're comfortable
11 with fabric.

12 MR. JACKSON: Okay, I just wanted
13 to get that clarification.

14 MR. KADLECEK: Yes. Fabric,
15 opaque screening on the fences.

16 CHAIRPERSON JORDAN: Trying to keep
17 up with all this. Okay. Any other questions
18 from anyone to the applicant? No? Okay, good.

19 Then we will close this hearing and move into
20 deliberation. Anyone have a view on this? All
21 right.

22 I believe that the applicant has

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1 successfully met the requirements for a special
2 exception as requested under 802.17 for a
3 concrete manufacturing facility. And so I
4 would move that we grant the special exception
5 as requested, with conditions. And the
6 conditions would be one, that the special
7 exception approval shall be for ten years
8 conditioned upon the applicant receiving a lease
9 extension, and if not, the term shall be seven
10 years.

11 That the applicant submit to Office
12 of Planning a landscape plan acceptable to
13 Office of Planning. That the applicant place
14 a fence consistent with the landscape schematics
15 submitted today on September 18, 2012. And did
16 I miss one?

17 (Off the record discussion)

18 BZA VICE CHAIR SORG: Just one point

19 --

20 CHAIRPERSON JORDAN: That's on the
21 fencing, if the boiler building is demolished
22 the fencing needs to be consistent with the

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1 landscape schematic, yes. And did I miss one?

2 BZA VICE CHAIR SORG: Oh, okay.

3 You haven't gotten to the landscaping yet.

4 CHAIRPERSON JORDAN: No, I just --
5 go ahead. What else do you want to add?

6 BZA VICE CHAIR SORG: Well, they
7 were talking about supplying a sort of more
8 detailed or accurate landscape -- okay.

9 CHAIRPERSON JORDAN: That has to be
10 acceptable to Office of Planning.

11 BZA VICE CHAIR SORG: Oh, got it.
12 Okay.

13 CHAIRPERSON JORDAN: Did I miss
14 anything else, anyone? Good? Okay.

15 The fabric, yes, what did we agree
16 on the fabric? Because I'm up in the air on
17 the fabric. Is it opaque screening or what is
18 it?

19 MR. KADLECEK: Opaque vinyl fabric.

20 CHAIRPERSON JORDAN: Opaque fabric
21 screening of some sort. Okay, good.

22 ZC VICE CHAIR COHEN: Actually, can

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1 I ask Mr. Jackson a question?

2 CHAIRPERSON JORDAN: Sure.

3 ZC VICE CHAIR COHEN: Mr. Jackson,
4 you do specifically mention vinyl screening,
5 but vinyl is made of PVCs which are carcinogenic.

6 So I mean maybe you were not aware of that or
7 have no position on it or maybe, I just want
8 to bring that up for your information.

9 CHAIRPERSON JORDAN: But you're off
10 of that now, right?

11 MR. JACKSON: Off what?

12 (Off microphone comments)

13 CHAIRPERSON JORDAN: Yes, we're at
14 the fabric now.

15 MR. JACKSON: We're not opposed to
16 another material being used for the fabric
17 screening.

18 CHAIRPERSON JORDAN: Okay. Then
19 that is my motion. Any unreadiness? All those
20 in favor signify by saying aye.

21 (Chorus of ayes)

22 CHAIRPERSON JORDAN: Those

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1 opposed, nay. The motion carries.

2 Mr. Moy?

3 MR. MOY: Staff would record the
4 vote as four to zero to one. This is on the
5 motion of Chairman Jordan to approve the
6 application for the relief requested and as
7 conditioned by the Chair and Board. Seconded
8 by whom? The motion was seconded by whom?

9 ZC VICE CHAIR COHEN: I'll do that.

10 MR. MOY: By Ms. Cohen. Thank you,
11 Ms. Cohen. Also in support of the motion of
12 Chair, Vice Chair Sorg and Mr. Hinkle. No other
13 Board members are present. So again the final
14 vote is four to zero to one. The motion carries.

15 CHAIRPERSON JORDAN: And I believe
16 this is right for a summary order.

17 MR. MOY: Yes, sir.

18 CHAIRPERSON JORDAN: Good. Then
19 that concludes this hearing.

20 MR. KADLECEK: Thank you very much.

21 CHAIRPERSON JORDAN: We thank you
22 for coming.

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1 And is there any other business that
2 needs to come before the Board today?

3 Mr. Moy?

4 MR. MOY: No, sir.

5 CHAIRPERSON JORDAN: Well, good.
6 Then if there's nothing else that the Board has
7 then we are adjourned.

8 (Whereupon, the above-entitled
9 matter went off the record at 2:18 p.m.)

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