

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 12, 2008

+ + + + +

The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Ruthanne G. Miller,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the
minutes from the Special Public Meeting held
on February 12, 2008.

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

2 10:22 A.M.

3 CHAIRPERSON MILLER: This meeting
4 will please come to order. Good morning
5 ladies and gentlemen. This is February 12th
6 2008. This morning we have both a special
7 public meeting, and a public hearing. And
8 we're going to be beginning with the public
9 meeting.

10 And for those of you who are
11 waiting on the public hearing, I just want to
12 say that one case has dropped off the
13 calendar, so perhaps it won't be as long a
14 wait as you think. But we do have to go
15 through a public meeting first.

16 My name is Ruthanne Miller, I'm
17 the chair of the BZA. To my right is Mr. Marc
18 Loud, he's the vice-chair. And next to him is
19 Mr. Michael Turnbull from the Zoning
20 Commission. To my left is Mary Oates Walker
21 and Shane Dettman, board members. And next to
22 Mr. Dettman is Cliffard Moy from the Office of

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1 Zoning, Lori Monroe from the Office of
2 Attorney General, and Beverly Bailey from the
3 Office of Zoning.

4 So this is starting now, the intro
5 for the special public meeting, for February
6 12th 2008, of the Board of Zoning Adjustment.
7 Copies of today's meeting agenda are available
8 to you and are located to my left in the wall
9 bin near the door.

10 We do not take any public
11 testimony at our meetings unless the Board
12 asks someone to come forward.

13 Please be advised that this
14 proceeding is being recorded by a court
15 reporter, and is also webcast live.
16 Accordingly, we must ask you to refrain from
17 any disruptive noises or actions in the
18 hearing room. Please turn off all beepers and
19 cell phones.

20 Does the staff have any
21 preliminary matters?

22 MR. MOY: No, Madam Chair.

1 MR. MOY: Okay, then let's proceed
2 with the agenda.

3 MR. MOY: There's a -- Staff
4 understands the first case for decision is the
5 application number 17594. This is of Minshall
6 Stewart Properties, LLC, on behalf of Donohoe
7 Wilmington Associates, LP.

8 CHAIRPERSON MILLER: Just a
9 minute, we're going to revisit the order.

10 MR. MOY: Okay, correction. The
11 first case for decision is Application number
12 17707, of Kathryn Hodges, pursuant to 11 DCMR
13 3103.2, for variances from the lot area, lot
14 width requirements under Section 401, and a
15 variance from the side yard requirements under
16 Section 405, to allow the construction of a
17 new semi-detached dwelling in the R-2
18 District. This is at premises 5369 Hayes
19 Street, Northeast, Square 5209, Lot 29.

20 If the Board will recall, on
21 January 22nd 2008, the Board completed public
22 testimony, closed the record, and scheduled

1 its decision on February the 12th. The Board
2 allowed the record for the applicant to file
3 revised plans. Staff would note for the Board
4 that those plans are not forthcoming. So as
5 the record stands, the Board is to act on the
6 merits of the application for variance relief
7 to Sections 401 and 405.

8 And that completes the Staff's
9 briefing, Madam Chair.

10 MR. MOY: Thank you, Mr. Moy. I
11 just want to say, we switched the order just
12 because this one is a fairly straightforward
13 variance application, and not as complicated
14 as the other two cases that will be following.
15 So that was the reason for that switch.

16 And I think as Mr. Moy said, the
17 applicant came seeking three variances, and
18 then Office of Planning noted that the
19 applicant would need another variance. And
20 the applicant did not revise the plans to
21 alleviate the need for that variance. And I'm
22 going to actually turn this over to Mr. Loud

1 to explain this case more in detail.

2 VICE CHAIRMAN LOUD: Thank you,
3 Madam Chair. Good morning, colleagues.
4 Cutting straight to the heart of the matter,
5 I'm going to recommend denial of Application
6 17707 for the reasons that I'll share very
7 briefly, and then move formally for denial of
8 the application.

9 This is a variance case by way of
10 facts to construct a three story semi-detached
11 dwelling on a vacant lot in the R-2 zone,
12 address being 5369 Hayes Street, Northeast.

13 Multiple variances are required
14 based on the testimony that was given at the
15 hearing, as well as the Office of Planning
16 report. And I'll just go through each of
17 those briefly.

18 First, relief is needed from the
19 lot area, and width requirements, because the
20 property is currently too small. The lot area
21 is 2500 square feet, the width is 25 feet.
22 401.3 of our regs require at least a 3000

1 square foot lot and 30 foot width.

2 Secondly, the R-2 zone requires
3 eight feet wide minimum side yards on each
4 side, under 405.9. And in the instant case,
5 the applicant's plan would result in a side
6 yard of five feet on the West and zero feet on
7 the East.

8 And finally, and this is where we
9 have a bit of a -- where the applicant ran
10 into a bit of a hurdle. Under regulation
11 405.3, there's a requirement for side yard
12 variances on each free standing side, if the
13 new construction does not share a common
14 division wall with an existing building, or
15 building being constructed together with the
16 new building.

17 In this case, applicant's project
18 would share a common wall on its East lot
19 line. And reviewing the applicable regs
20 pertaining to the factual scenario that was
21 presented before us in this case, it is
22 relatively clear that the applicant could meet

1 the relief required for the lot and area
2 width, under Section 401.3, and side yards
3 under 405.9.

4 There being a clear indication
5 that this is a unique property, the lot was
6 created before the 1958 regs. It was a
7 conforming lot when it was created. It's very
8 small in its size.

9 And that the applicant could also
10 meet the practical difficulty, were the
11 applicant to try to build on this lot and
12 create two side yards of eight feet, they
13 basically have a nine foot dwelling, which
14 would be not marketable.

15 There was no indication that, with
16 respect to the first two areas of relief, that
17 there would be substantial detriment to the
18 public good. In fact, we encourage end field
19 development in residential neighborhoods. And
20 there's no indication that the intent of the
21 zoning regs would be compromised or harmed in
22 any way.

1 However, under 405.3, the Office
2 of Planning testified that there's no
3 practical difficulty, demonstrated by the
4 applicant with respect to the unique nature of
5 the land. Applicant's plans called for the
6 dwelling to be placed on the East lot line.
7 The OP testified that were the applicant to
8 relocate the dwelling and the project to the
9 center of the lot, as opposed to the East lot
10 line, that they would then be able to create
11 four-foot side yard variances, and not
12 severely impact the options available to the
13 adjoining property owner, with respect to
14 their use of the land in the future.

15 At the BZA hearing, we gave the
16 applicant an opportunity to submit revised
17 plans that would contour with the Office of
18 Planning's recommendations. They did not.
19 They chose not to do that. And so, we're
20 faced with the scenario where the applicant
21 cannot meet the practical difficulty test for
22 variance relief under Section 405.3.

1 There was no ANC report in this
2 matter. As I indicated, the Office of
3 Planning recommended denial of the
4 application. And for the reasons I just
5 stated, I'm going to recommend denial as well.
6 And I'd like to move for denial of Application
7 17707.

8 CHAIRPERSON MILLER: Second.

9 Deliberation?

10 I would like to add also that not
11 only did the applicant not submit a revised
12 plan, but I believe she didn't address -- she
13 didn't seek a variance on 405.3, to try to
14 even make the case that there was a practical
15 difficulty in complying with that regulation.

16 Any other comments?

17 And we do give the great weight to
18 the Office of Planning. And their report was
19 very instructive on all of this.

20 Okay, if there's no further
21 deliberation, then all those in favor of the
22 motion that's on the table to deny the

1 application, say aye.

2 (Whereupon, there was a
3 chorus of "Ayes.")

4 All those opposed?

5 All those abstaining?

6 And, would you call the vote,
7 please?

8 MR. MOY: Yes, Madam Chair. Staff
9 would record the vote as four to zero to zero,
10 this on the motion of the Vice Chair Mr. Loud,
11 to deny the Application, seconded by Ms.
12 Miller, the Chair. Also supporting the
13 motion, Ms. Walker and Mr. Dettman.

14 Madam Chair, we also have an
15 absentee ballot from Mr. Anthony Hood, who
16 also participated on the case. And his
17 absentee vote is to approve the application.

18 So that would give a resulting
19 vote of four to one to zero.

20 MR. MOY: Thank you.

21 MR. MOY: The next application for
22 decision is Application number 17705, of Leon

1 and Heather Kafele, 11 DCMR 3104.1, for a
2 special exception to allow a third-story
3 addition and roof deck to an existing one-
4 family row dwelling under Section 223, not
5 meeting the lot occupancy requirements,
6 Section 403, and nonconforming structure
7 requirements under sub-section 2001.3, in the
8 R-4 District at premises 906 G Street,
9 Southeast. That's in Square 949, Lot 805.

10 On January 22nd, 2008, the Board
11 completed public testimony, closed the record,
12 and scheduled its decision on February 12th.
13 The Board requested post-hearing documents
14 from the opposition party and the applicants.
15 Suffice to say that the documents that are
16 filed in the record are three filings.

17 The first is from the party in
18 opposition, who filed a letter in response to
19 the applicant's submitted sun study, that's to
20 identify in the case folders as Exhibit 34,
21 it's dated February the 5th, 2008.

22 Also the applicant was allowed to

1 respond to the opposition party's filing. And
2 that is also in your case record, case
3 folders, identified as Exhibit 36.

4 And finally, the record was left
5 open to allow the Office of Planning to file
6 a supplemental report. And that's identified
7 as Exhibit 35.

8 And the Board is to act on the
9 merits of the application for the special
10 exception relief 223, not meeting Sections 403
11 and 2001.3.

12 And that completes the Staff's
13 briefing, Madam Chair.

14 CHAIRPERSON MILLER: Thank you
15 very much, Mr. Moy. This is a case under 223.
16 And we had opposition parties in this case who
17 were neighbors.

18 When this came to hearing, we
19 actually did look at this project from all
20 sides. And the only controversy that really
21 came to be an issue was the light and shadows
22 on these opposition parties. And I believe

1 that the sun and shade study was a major piece
2 of evidence in this case. And I am going to
3 let Mr. Dettman pick up from here, as he is
4 one of the Board members in this case that has
5 a lot of experience with respect to these kind
6 of studies.

7 MEMBER DETTMAN: Thank you, Madam
8 Chair. I'd be happy to sort of setup our
9 deliberations by taking the Board through the
10 zoning analysis of 223.

11 And if it's all right, I think our
12 discussions will revolve around, as you say,
13 the shadow study, and the impacts to light and
14 air. So with respect to 223.2, I'll address
15 that at the end.

16 This is a proposal to construct a
17 third story addition and roof deck on the top
18 of an existing row dwelling, located in the R-
19 4 district. The subject property's also
20 located in the Capitol Hill historic district.

21 The addition will raise the
22 overall height of the dwelling by

1 approximately five feet. The addition will be
2 constructed flush along the western and
3 northern walls of the dwelling, and set back
4 from the eastern and southern walls.

5 Also, as part of the proposal, the
6 applicant will be removing an existing ground
7 floor rear porch.

8 223.1 states that additions to
9 one-family dwelling or flat, in those
10 residences where a flat is permitted, that
11 does not comply with requirements of 401, 403,
12 404, 405, 406, shall be permitted as a special
13 exception.

14 As I stated, this is a one-family
15 dwelling that currently does not comply with
16 the lot area requirements, lot occupancy, rear
17 yard, and it also has a nonconforming open
18 court.

19 As I stated, 223.2 I'll address at
20 the end of my report.

21 223.3 states that the lot
22 occupancy of the dwelling or flat, together

1 with the addition, shall not exceed 70
2 percent. Currently the lot occupancy of the
3 subject property is 71.7 percent. The
4 proposed addition will not increase the lot
5 occupancy, since it's being proposed as a
6 third story addition above the existing
7 footprint.

8 However, as I stated, the
9 applicant will also be removing an existing
10 ground level rear porch, which will reduce the
11 property's lot occupancy to approximately
12 68.3, thereby bringing it into compliance with
13 what's allowed under 223.2, which is 70
14 percent.

15 2001.3 states that enlargements or
16 additions may be made to the structure,
17 provided that the structure shall conform with
18 the percentage of lot occupancy requirements.
19 As I just stated, with the removal of the rear
20 porch, it will come into compliance with
21 what's allowed under 223, 70 percent.

22 2001.3 states that the addition

1 shall conform to the use and structure
2 requirements. I believe it will.

3 And finally, it shall neither
4 increase or extend any existing, nonconforming
5 aspect of the structure. With the proposed
6 third story addition, the existing
7 nonconforming court, the extent to which it's
8 nonconforming will be increased because of the
9 minimal height increase of the dwelling.

10 It will increase the minimum open
11 court width by about one foot, ten inches.
12 However, with the removal of the existing rear
13 porch, the dwelling will then come back into
14 compliance with the required rear yard.
15 Currently it's about 17 feet, and I believe
16 it'll go to about 22 feet.

17 And so, quickly going back to
18 223.2, states that the addition shall not have
19 an adverse effect on the use or enjoyment of
20 an abutting or adjacent dwelling or property.
21 And A says, with respect to the light and air
22 available to neighboring properties.

1 The applicant, as part of their
2 filing, submitted a sun study. The sun study
3 was conducted using a tool called Sketch-Up,
4 and the data that was used was acquired from
5 the D.C. Office of the Technology Officer.
6 The study was conducted for all four seasons
7 of the year. It showed existing conditions as
8 well as what was being proposed.

9 And my observations of the sun
10 study is that, given the tight configuration
11 of the current built environment in the
12 Capitol Hill district, and that with that
13 tight configuration, there is a substantial
14 decrease in the amount of available sunlight,
15 the results of the shadow study to me doesn't
16 really indicate a reduction in the amount of
17 light and air that would constitute to be
18 undue. Or a substantial impact.

19 Finally, 223.2 also talks about
20 the privacy of use and enjoyment of
21 neighboring properties. The addition doesn't
22 appear that will exacerbate any existing views

1 into neighboring properties, nor create any
2 other adverse views into neighboring
3 properties.

4 And C says the addition, together
5 with the original building as viewed from the
6 street, shall not visually intrude upon the
7 character, scale, and pattern. Working with
8 HPRB, the applicant has gone to great lengths
9 to try to minimize the third floor addition by
10 setting back from the east, and what will be
11 the front of the property. So there's
12 substantial setbacks there.

13 There is no abutting alley, so
14 views abutting alley do not apply.

15 And I think that concludes my
16 analysis of this application, Madam Chair.

17 CHAIRPERSON MILLER: Well, let me
18 ask you this. There's some diminishment in
19 light, with respect to these neighboring
20 properties of the opposition parties, isn't
21 that correct?

22 MEMBER DETTMAN: That's correct.

1 CHAIRPERSON MILLER: And, then,
2 how do you draw the conclusion that it's not
3 unduly adverse?

4 MEMBER DETTMAN: I think that
5 there can be sort of an over-reliance on sun
6 studies. That it gives a definitive
7 conclusion that it's undue and it's not undue.

8 I think that interpretation of a
9 sun study is a little bit subjective. And so,
10 just by looking at the existing conditions
11 versus the proposed, and seeing the amount of
12 sunlight that the neighbors along 9th street
13 currently have, and how much that will be
14 reduced, I guess it would be my own opinion
15 that it would not be substantial.

16 CHAIRPERSON MILLER: Did the study
17 show that it was just going to be reduced
18 during a window of time, in specific seasons?
19 I think it was, were they not like three-hour
20 periods of time, but really for less than an
21 hour, something like that?

22 MEMBER DETTMAN: The sun study was

1 conducted between the hours of eight and
2 eleven-thirty. And the reason for that is,
3 after eleven-thirty, the orientation of the
4 dwellings along 9th Street, the sun is
5 basically on the opposite side of the house.
6 And so, direct sunlight to the rear of these
7 properties is gone by that time of day.

8 Looking at the sun study, it seems
9 that during the Spring and Fall, there's
10 almost no impact. During the Summer and
11 Winter, there seems to be an impact to the
12 existing amount of direct sunlight that the
13 properties at 536 and 534 9th Street are
14 receiving.

15 And again, going back to my point
16 that it's sort of my opinion that the
17 diminishment of the amount of sunlight that
18 these two structures are getting, I don't
19 believe to be undue.

20 CHAIRPERSON MILLER: I think also,
21 there were photos that were submitted by the
22 opposition party that showed certain

1 diminishment of light. And I think if I
2 recall from the testimony, though, of the
3 applicant's witnesses, that they also showed
4 that there was still indirect sunlight coming
5 in -- indirect light, coming in, even if it
6 wasn't direct light, at certain times.

7 MEMBER DETTMAN: That's right.
8 There was a lot of discussion about those
9 photos, with respect to what is the difference
10 between direct sunlight, and reflected or
11 ambient light. I don't have those photos in
12 my record.

13 However, the sun study essentially
14 analyzes direct sunlight. And the photos --
15 most of the photos that were submitted by the
16 opposing parties, I think it was agreed upon
17 by the Board and the applicant that those
18 photos were showing more sort of reflected
19 light into I believe what was a kitchen.

20 CHAIRPERSON MILLER: Is there
21 other comments on this?

22 I mean, I think that was the main

1 issue. And I think we also have to look at
2 this in the context of a city, and these
3 buildings being very close together. And how
4 much -- We have to make a judgement call about
5 one or two hours of one season, in the context
6 of what was there before, how much light they
7 were getting before, and is that undue.

8 So I would agree with you that in
9 this case, it does not appear that there's a
10 great diminishment in light. At least I
11 wouldn't qualify it as unduly adverse.

12 I would also note that ANC-6B
13 supports a special exception. They filed a
14 report on December 12th 2007. And it meets
15 our great weight requirements. They voted 7-
16 0-1 to support the applicant's request for
17 special exception to allow third floor rear
18 addition and roof deck on existing one-family
19 row dwelling not meeting lot occupancy and
20 nonconforming structure requirements as
21 presented.

22 And it says, "the Commission is

1 taking this action after reviewing multiple
2 views of the property with rationale and
3 justifications for the special exception based
4 upon the applicable D.C. codes and the support
5 of the adjacent neighbors." I assume they
6 mean the other neighbors, because there were
7 the two that were in opposition that
8 participated in this case.

9 So they were in support, and as
10 was Office of Planning, to whom we give great
11 weight. Are there other comments on this?

12 Do we have a motion on this then?

13 MEMBER DETTMAN: Madam Chair, I
14 move to approve Application 17705 for a
15 special exception to allow a third story
16 addition and roof deck to an existing one-
17 family row dwelling, under Section 223, not
18 meeting the lot occupancy requirements of 403,
19 lot area requirements of 401, and the open
20 court requirements of 406, and the
21 nonconforming structure requirements of
22 Section 2001.3.

1 CHAIRPERSON MILLER: Second. No
2 further deliberation?

3 VICE CHAIRMAN LOUD: I'll second,
4 Madam Chair.

5 CHAIRPERSON MILLER: I just
6 seconded.

7 VICE CHAIRMAN LOUD: Did you
8 second?

9 CHAIRPERSON MILLER: I did. I
10 just seconded.

11 Okay. I just, I want to note also
12 that I think that the applicant did make good-
13 faith efforts in trying to work this out with
14 the abutting neighbors. Doing a sun study I
15 think in part to try to be able to
16 characterize the impact of the light decrease
17 that could occur on their properties. And met
18 with them, and tried to work out any concerns.
19 They also built that mock structure.

20 And then we did give the
21 opposition parties time to try to get some
22 expert to look at this latest sun study, and

1 they were not able to do that, for whatever
2 reason.

3 So I don't think there really is
4 evidence in the record that does show that
5 there are really adverse impacts from the
6 proposed project.

7 Any further deliberation?

8 All those in favor, say aye.

9 (Whereupon, there was a
10 chorus of "Ayes.")

11 All those opposed?

12 All those abstaining?

13 And would you call the vote,
14 please?

15 MR. MOY: Yes, Madam Chair. The
16 Staff would record the vote as four to zero to
17 zero, this on a motion of Mr. Dettman to
18 approve the application, seconded by Mr. Loud.
19 Also in support of the motion are Ms. Miller
20 and Ms. Walker.

21 We also have an absentee ballot
22 from Anthony Hood, and his absentee vote is to

1 approve the application, which would give a
2 resulting vote of five to zero to zero.

3 The next application for decision,
4 and the final one for the special public
5 meeting, is Application Number 17594 of
6 Minshall Stewart Properties, LLC, on behalf of
7 Donohoe Wilmington Associates, LP, pursuant to
8 11 DCMR 3103.2, for a variance from the court
9 width requirements under Section 776, a
10 variance from the transferable development
11 rights 45 degree setback requirements under
12 sub-section 1709.20, and a variance from the
13 loading requirements under Section 2201, to
14 allow the redevelopment of an office and
15 retail building in the C-3-C District at
16 premises 2175 K Street, Northwest. That's in
17 Square 73, Lots 883 and 884.

18 Staff notes for the record that
19 the applicant has amended the Application to
20 include variance relief from Section 2516.7,
21 to permit two buildings to share the same
22 measuring point, and special exception relief

1 from Section 2516 for multiple buildings on a
2 single record lot. Relief from loading
3 requirements, Section 2201, is no longer
4 required.

5 On January 15th, 2008, the Board
6 completed public testimony, closed the record,
7 and scheduled its decision on February the
8 12th. The Board requested a number of post-
9 hearing documents. Those were filed by the
10 applicant on February the 5th, and is
11 identified in the case folders as Exhibit 69.
12 The Office is also in receipt of -- in your
13 record folder from the applicant, an agreed
14 upon Development and Construction Management
15 Plan. And that exhibit number is Exhibit 70.
16 This was received yesterday, February the
17 11th. And that should be treated as
18 preliminary matter.

19 Staff's going to end here, and
20 complete its briefing, Madam Chair.

21 CHAIRPERSON MILLER: Thank you Mr.
22 Moy. So, our first matter, as Mr. Moy has

1 indicated is to determine whether we should
2 waive our rules to enter into the record the
3 Development and Construction Management Plan
4 that was submitted to the Board yesterday.

5 I believe yesterday, or we got it
6 today. In any event, after the date that we
7 had set for filings.

8 And I would recommend that we do
9 so. The parties have indicated that this is
10 an important document for the residential
11 building and party. And it's important to
12 show how certain, certainly construction
13 issues, are going to be mitigated in the
14 context of building this project.

15 So, is there any objection to
16 that?

17 Okay. So, by consensus of the
18 Board then, we're going to accept into the
19 record the Development and Construction
20 Management Plan, and that's Exhibit Number 70.

21 This case has certainly had a long
22 history. But right now, we are dealing with

1 applications for variances. And as Mr. Moy
2 said, there are a few different types of
3 variances that are being requested here.

4 One is for court width
5 requirements, under Section 776. And another
6 is a variance from the transferable
7 development rights, 45 degree setback
8 requirements under sub-section 1709.20.

9 These are the basic variances I
10 think that we need to be considering first.
11 And then we can go into additional variances
12 that were -- and special exception relief that
13 was requested at the last hearing, and we
14 allowed the applicant to amend the application
15 to include them.

16 So I just want to set up the
17 variance test, which will be the context in
18 which we consider the request for those two
19 variances to begin with. The first is that
20 there be a unique or exceptional condition.
21 The second being that there be a practical
22 difficulty that arises out of that unique or

1 exceptional condition in complying with the
2 regulations. And the third would be that
3 there'd be no substantial detriment to the
4 public, or the zone plan, if such relief is
5 granted.

6 I think the with the first two,
7 the first is a variance from the court width
8 requirements under 776, and then as I was
9 saying also the variance from the transferable
10 development rights, the 45 degree setback
11 requirements under sub-section 1709.20. And
12 I think that both of those clearly arise out
13 of the applicant's adding three stories in
14 accordance with the transferable development
15 rights.

16 And I think I'm going to ask Mr.
17 Turnbull if he would like to characterize
18 exactly what would be happening with respect
19 to the court and the 45 degree angle.

20 MEMBER TURNBULL: Certainly, Madam
21 Chair. 1709.20 mentions that if the height of
22 the receiving building exceeds the height that

1 the provisions of the title allows, as a
2 matter of right for a building located on an
3 abutting lot, including a lot that is
4 separated from the receiving lot by an alley,
5 no part of the receiving building shall
6 project above a plane at a 45 degree angle
7 from a line that is as follows. A, directly
8 above the zone district boundary line between
9 such abutting lot, and the receiving lot. And
10 B, above such boundary line by the distance of
11 the matter of right height that this title
12 allows for such abutting lot.

13 I believe that the applicant's
14 team quite succinctly showed on one of their
15 diagrams that you could not really -- if you
16 did this by -- and they showed a setback, that
17 they would have to relocate the elevator core
18 on the top several floors. That is a big
19 expense, it's also an inconvenience to the
20 occupants trying to get to those upper floors.

21 I think in not only showing that
22 the practical difficulty of trying to

1 accommodate the 45 degree angle, they also
2 showed that they were trying to ameliorate the
3 effect of the additional building by putting
4 a green roof on the existing floor directly
5 across from the residential structure.

6 They also showed that they were
7 trying to treat the facade structure of that
8 face that would be abutting the residential
9 building in such a way to not make it look --
10 try to make it look as handsome as it could,
11 without going overboard.

12 And I think -- but the main case
13 is the practical difficulty of the elevator
14 core. I think they did their due diligence by
15 showing that it is difficult to do.

16 The only question that I would
17 have on this, and maybe it's met, maybe the
18 intent of 7029 is met by granting this, but
19 the question I have is whether or not there
20 would also be additional relief from 411,
21 which would be the penthouse. And I don't
22 know whether that would be a stretch or not,

1 but, and maybe that's an issue for the zoning
2 administrator. Maybe the 1709.20 meets the
3 intent of the setback to carry it all the way
4 through to the penthouse. That would be the
5 only clarification that I would add onto that.

6 CHAIRPERSON MILLER: Okay. Well,
7 let's try to compartmentalize this a little
8 bit.

9 We can get to whether they need
10 additional relief later. Though I do believe
11 -- I was going to discuss that later. We did
12 kind of raise that in the hearing. And they
13 didn't think so, as I understood. And
14 therefore it would probably be my
15 recommendation that, when that occurs, that
16 they proceed at their own risk. And then if
17 the zoning administrator determines that they
18 need additional relief, it would come back to
19 us. But --

20 MEMBER TURNBULL: I would concur.

21 CHAIRPERSON MILLER: Okay. With
22 respect to the court and the 45 degree angle.

1 On the uniqueness test, it's my understanding
2 that -- First of all, what's been happening in
3 this case is in some instances they're saying,
4 because of the appeal case, we determined that
5 there were two buildings here instead of one,
6 that it created certain practical
7 difficulties. And that was part of its
8 uniqueness. Our deciding that they were two
9 buildings.

10 But just taking this as is, with
11 respect to the 45 degree angle, if it were
12 just one building -- I mean, if we hadn't even
13 had the appeal, there was an exceptional
14 situation just to begin with in the fact that
15 it was built that way, and you can't move the
16 core. Isn't that correct, whether or not --
17 Does our appeal affect that, the need for
18 variance in this case? With respect to the 45
19 degree angle? Do you know?

20 MEMBER TURNBULL: I get, in some
21 sense, it does.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER TURNBULL: I think that
2 when you're adding onto a building and you're
3 trying to meet that requirement of the 45,
4 there's no way possible for them to physically
5 create a building that would do that.

6 CHAIRPERSON MILLER: Okay, because
7 this building does have a unique zoning
8 history in general --

9 MEMBER TURNBULL: Right.

10 CHAIRPERSON MILLER: -- in that it
11 was built at the same time --

12 MEMBER TURNBULL: Time.

13 CHAIRPERSON MILLER: -- as the
14 other building, and connected in various ways.
15 And shared various feature with that building.

16 MEMBER TURNBULL: Right.

17 CHAIRPERSON MILLER: Okay. And I
18 understand --

19 MEMBER TURNBULL: But some of
20 those features were never incorporated, and
21 that's why it was determined that it was
22 really two separate buildings.

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1 CHAIRPERSON MILLER: Right. But
2 the fact that it was structured that way, did
3 that give rise to the practical difficulty in
4 meeting the 45 degree angle requirement? When
5 they added the three floors?

6 MEMBER TURNBULL: I believe it
7 did.

8 CHAIRPERSON MILLER: Okay. And I
9 think in the -- with respect to the court
10 relief, it certainly did. Because --

11 MEMBER TURNBULL: Right.

12 CHAIRPERSON MILLER: -- they were
13 now out of compliance in general, with the
14 court relief, court requirements.

15 MEMBER TURNBULL: That's correct.

16 CHAIRPERSON MILLER: Okay. And
17 then, for the third part of that problem, I
18 think you were saying that there wasn't
19 substantial detriment to the public or
20 neighboring properties. Particularly with
21 respect to the way they've redesigned and
22 created the green roof, that's --

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1 MEMBER TURNBULL: Yes. I think
2 with their mitigating features, and I think
3 that the, if you want to call them the
4 opponents in this case, I think were
5 satisfied, I think, which was the tenant's
6 association in particular. That the tenants
7 who lived directly across at that top level of
8 the residential building, I think felt
9 satisfied that the conditions that the -- That
10 the buildings had done substantial benefit to
11 them, by creating more light and making it
12 more pleasant.

13 It was better than what they had,
14 with the existing penthouse directly across.
15 So, if anything, the situation was improved.

16 CHAIRPERSON MILLER: That's right.
17 And also, they also did shadow studies showing
18 this improvement.

19 MEMBER TURNBULL: That's correct.

20 CHAIRPERSON MILLER: And by the
21 revised plans, they were also moving the
22 mechanical penthouse further away from the

1 condominium roof deck, so that also was an
2 improvement. Correct?

3 MEMBER TURNBULL: Yes.

4 CHAIRPERSON MILLER: Okay. Any
5 other comments on those variances?

6 Okay, we can always come back to
7 it.

8 I think, at the hearing they
9 requested additional relief. Why don't we
10 take them one at a time.

11 The first, as I recall, is special
12 exception relief under 2516 for multiple
13 buildings on a single lot. Basically 2516.1
14 says, if approved by Board of Zoning
15 Adjustment as a special exception under 3104,
16 two or more principle buildings or structures
17 may be erected on a single lot, subject to
18 provisions of the Section.

19 And the issue is, because of the
20 appeal case, stating that they were two
21 buildings instead of one, that they needed to
22 seek relief under this provision to come into

1 compliance. And I would note that Office of
2 Planning did support relief under this
3 provision.

4 Okay, how many comments on this?

5 I'm not sure if it has been used
6 this way before, but Office of Planning
7 thought, in this unusual situation, that it
8 was appropriate to do so. So we can look at
9 this provision and see if they meet the
10 requirements.

11 2516.2 says the section applies
12 to construction on a lot that is located in or
13 within 25 feet of a residence district. And
14 they meet this requirement.

15 2516.3 talks about filings with
16 the Board. There are no new rights of way and
17 -- They do make reference to easements.

18 2516 point -- I assume that they
19 need to meet all these requirements. 2516.3
20 says in addition to other filing requirements,
21 the applicant shall submit to the Board, with
22 the new application, four site plans for all

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1 new rights-of-way and easements, and existing
2 and preliminary landscaping and grading plans
3 with approximate building footprints;
4 provided A, the applicant shall also submit,
5 either with the original application or at a
6 later time, final landscaping and grading
7 plans and two sets of typical floor plans and
8 elevations; and B, if the applicant elects to
9 submit the plans referenced in 2516.3 A, at a
10 later date the Board's original approval shall
11 be conditional subject to a later public
12 hearing and final decision on the project as
13 a whole.

14 Okay, this really is used often
15 for a new development. So a lot of these
16 don't really seem applicable. So the question
17 is, I think, in general -- I don't think that
18 there's an issue with meeting these except
19 when we get to 2516.7, which says, where not
20 in conflict with the Act to Regulate the
21 Height of Buildings in the District of
22 Columbia -- I'm just going to skip through it

1 -- the height of a building governed by the
2 provisions of this section, in all zone
3 districts, shall be measured from the finished
4 grade at the middle of the front of the
5 building.

6 Okay, this is where it got a
7 little grey, in that the applicant, who is
8 representing the office building which is
9 really at issue in this case, was saying they
10 needed a variance from this provision to bring
11 the residential building into compliance. And
12 I think that's where this gets a little muddy.
13 Because we have said that they're two
14 buildings. And the residential building is
15 really not before us.

16 The relief that we should be
17 granting goes to the office building in this
18 case. So, correct me if I'm wrong, but I
19 believe that the office building would meet
20 this provision, 2516.7, that their measurement
21 is not in conflict. And that they don't have
22 any problems meeting 2516 requirements in

1 general.

2 So we could grant the relief to
3 give them special exception under 2516, to
4 bring them into compliance, for multiple
5 buildings, two or more principle buildings or
6 structures on a single lot.

7 Comments?

8 MEMBER DETTMAN: With respect to
9 the additional relief that was -- And to my
10 recollection, I'm not sure if it was actually
11 officially requested at the hearing. I
12 thought that the applicant may have said, if
13 the Board was so inclined. That they sort of
14 brought this up in an abundance of caution.

15 However, with respect to 2516.1,
16 and 2516.7, I'm not sure if they even apply to
17 this particular case. I understand the
18 applicant's intent on bringing it up, to sort
19 of try to bring the residential building back
20 into compliance. But nonetheless, the
21 original relief is sort of dedicated to the
22 office building.

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1 I'm actually not even sure that
2 2516.1-.7, it's even necessary to address, to
3 take up to approve or deny.

4 CHAIRPERSON MILLER: I only
5 brought it up because 2516.1 says that to be
6 approved, as I understand it, to be approved
7 as a special exception to allow two or more
8 principle buildings in a single lot, they've
9 got to meet the requirements of the rest of
10 the section.

11 So, I didn't read through all of
12 the requirements, because I think a lot of
13 them are not really relevant, because it's
14 already in existence. But because there was
15 an issue with respect to 2516.7, I brought it
16 up. But really that is a separate issue with
17 respect to the residential building, because
18 the office building meets it.

19 So, I think the first question is,
20 should we apply 2516 to the office building,
21 and grant special exception, to allow two or
22 more principle buildings on a single lot?

1 MEMBER TURNBULL: Madam Chair, I
2 guess I agree with Mr. Dettman's rationale on
3 a lot of this in that we're sort of muddying
4 the waters here between the two buildings.
5 And although it's meant -- although the
6 applicant has benevolent feelings about this,
7 and is trying to help the adjacent building,
8 I'm wondering if we're stretching the relief
9 that's really needed on this.

10 CHAIRPERSON MILLER: No, I agree
11 with you, I'm trying to separate this --

12 MEMBER TURNBULL: Yes.

13 CHAIRPERSON MILLER: -- because --
14 and I'm probably not being that clear, but
15 2516.7 is one of the regulations that would
16 apply to the office building because to be
17 granted the special exception to have two or
18 more buildings on the lot -- They have two or
19 more buildings. Even -- this is one -- even
20 though we're dealing with one building, this
21 one building now is sharing a lot with the
22 other building. So therefore, I think that

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1 this relief would go to the office building,
2 as well as the residential building.

3 The last area of relief was what I
4 think you're talking about, is the variance
5 from 2516.7 for the residential building. And
6 if I understand where you're going, I think
7 I'm going in the same direction, that that's
8 probably not appropriately before us, because
9 this is an application by the office building,
10 not by the residential building, since they've
11 been divided to two buildings. I think that's
12 what muddies the water when we start to give
13 that relief.

14 But I'm not sure if we've granted
15 relief under 2516 to buildings already in
16 existence as of now. Maybe we have, and I
17 think that's really my question. Do you think
18 that special exception should be granted to
19 the office building under 2516?

20 MEMBER DETTMAN: Madam Chair, I
21 could see the Board approving a special
22 exception to 2516.1, because it sort of does

1 apply to the office building as well as the
2 residential building. But with respect to
3 2516.7 --

4 Trying to think about how his
5 could be used in the future. When someone
6 looks to build two buildings and tries to
7 present a case for a shared measuring point.
8 I think that could potentially be a little
9 dangerous. And again, it doesn't really apply
10 to the office building. So I could see us
11 forgoing 2516.7.

12 CHAIRPERSON MILLER: The variance
13 from it for the residential building, right.
14 I also didn't see a good case presented to the
15 Board, actually. With respect to the variance
16 three-pronged test on that issue.

17 And it wasn't clear to me -- we
18 were talking about whether that would be
19 waiving the compliance with the Height Act,
20 there were just all these questions raised
21 with that one, with respect to the residential
22 building because they need a variance from it.

1 Whereas the office building is only a special
2 exception.

3 MS. MONROE: Madam Chair, I just
4 want to just say one thing. I just want you
5 to be clear, if you grant special exception
6 from 2516, it's from the whole section, not
7 just 2516.1, it's not a separate. It's from
8 the whole section. But if you grant a
9 variance from a particular provision, it would
10 just go to that provision. Okay.

11 CHAIRPERSON MILLER: Right, I
12 think we understand that, but maybe we're not
13 making that clear. And we're not actually
14 going through all the provisions because they
15 don't -- this is already built, so it seems
16 like we don't need to read through all of
17 them, for what they would be doing.

18 That's why somewhat I have a
19 question whether it even applies. I mean,
20 like 2516.10 says before taking final action
21 on this application, the Board will refer to
22 the D.C. Office of Planning for coordination,

1 review, report, on things like public safety,
2 the environment, public education, recreation,
3 parking and loading and traffic and -- You
4 know, all these things, it's an issue that
5 we're not necessarily doing it because the
6 building is already erected.

7 I think the question, in general,
8 should we be using this regulation to do that,
9 to build this building into compliance, but --
10 I don't see any particular issues with these
11 provisions. I mean, I think because the
12 building's been here, it's obviously
13 unnecessary to do all these things. And I
14 think they are in compliance with the
15 regulations.

16 I highlighted 2516.7 only for the
17 fact that they don't need a variance from this
18 one. Unlike the residential building.

19 I think we have two choices here,
20 perhaps. I mean, one is, we can look at the
21 general intent of all this and think that most
22 of the provisions don't apply because it's

1 already there, and grant it. Or we can say
2 that the applicant didn't go through all these
3 different provisions and address why it should
4 or should not apply.

5 MS. MONROE: Let me interject for
6 a second. This have happened before. You may
7 remember, because you sat on -- The 8th
8 Street, remember the 8th Street overlay case?
9 There were special exceptions, and not all of
10 the provisions within the special exception
11 section applied in that case.

12 And the Board in that case, and I
13 think it's in case -- and I think it's in the
14 order -- decided that they could basically
15 grant the special exception. Because often
16 not every single provision will apply in every
17 case.

18 And in this case, that might be
19 similar. But special exception as a whole was
20 granted. It's not that the provisions were
21 not met, it's that they didn't apply, and
22 that's a different issue.

1 It happens. Occasionally, it does
2 happen.

3 CHAIRPERSON MILLER: Yes, I mean I
4 think in general it certainly meets the
5 special exception tests. And a lot of the --
6 some of the provisions we did look at in the
7 application, certainly the effect on the
8 neighbors, the present character and future
9 development of the neighborhood.

10 I think this is an extremely --
11 the point I think Office of Planning was
12 bringing to the hearing was that this is an
13 extremely unusual situation, and this looked
14 like the provision that was necessary because
15 of the zoning history here.

16 So I think if the Board members
17 want to look through these specific provisions
18 and make sure they don't see a problem with
19 any of those sections, I think we could go
20 ahead and grant that relief.

21 Unless any Board members has pause
22 about it.

1 MEMBER TURNBULL: No, Madam Chair.
2 I think in light of the comments by the
3 Office's General Counsel, I think we could go
4 ahead and grant this.

5 CHAIRPERSON MILLER: Okay then,
6 any other comments on this one?

7 I think even I would say -- Office
8 of Planning also didn't have an issue with
9 granting a variance from 2516.7. But we
10 didn't have a written report on that, we only
11 had testimony at the hearing. And I think
12 that, for me, that was raised as a totally
13 different questions.

14 One is that, I don't think they
15 met the three pronged test addressing that
16 variance test. And also it goes to the
17 residential building, and we were talking
18 about the office building here for the relief
19 that's being sought. And it also raises the
20 question about compliance with the Height Act.

21 So I think those are pretty
22 serious issues that would give me great pause

1 in granting a variance there.

2 Other comments?

3 Let me also say this. I think by
4 -- if we were to deny this relief, it's not,
5 it wouldn't preclude the residential building
6 from seeking relief in the future if
7 necessary. But with respect to the case
8 that's here before us, the case is really
9 involving the office building seeking relief
10 in order to build the three floors to take
11 advantage of the trans -- developmental
12 rights. Transferable development rights.

13 Okay. So. Do we have any other
14 comments on that? Different feelings?

15 VICE CHAIRMAN LOUD: Madam Chair,
16 just so I'm clear. It's not that we're
17 denying relief under 2516.7, we're declining
18 to take that under consideration at this point
19 in time. Is that a fair statement of where we
20 are?

21 CHAIRPERSON MILLER: No, I don't
22 think -- That's not my impression. I think we

1 would be denying it. Denying relief to the
2 office building.

3 VICE CHAIRMAN LOUD: Under 2516.7?

4 CHAIRPERSON MILLER: Right.

5 VICE CHAIRMAN LOUD: I didn't
6 understand that the office building needed
7 that relief.

8 CHAIRPERSON MILLER: Well it
9 doesn't. I think perhaps what's cloudy here
10 is perhaps we're saying that the office
11 building can't bring that relief on behalf of
12 the residential building. In this case.

13 They didn't present the test that
14 was convincing enough to us perhaps as to why
15 they could, if they could. They just didn't
16 meet any tests, legal tests, as far as I could
17 see.

18 I mean the special exception does
19 affect both the residential and the office
20 building, but it does directly affect the
21 office building. The variance request from
22 the 2516.7 goes only to the residential

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1 building, which is not an applicant in this
2 case.

3 Just for procedural clarification,
4 it's my understanding that at the hearing, the
5 applicant sought to amend the application to
6 include both the special exception relief and
7 the variance relief. And that we granted
8 their application to amend the application,
9 and then we heard arguments on those issues.

10 Anything else on this?

11 Okay. A couple of things, before
12 we vote on anything. I was looking back on
13 the record to see about the ANC's position on
14 this case, and the ANC took a position a while
15 ago, on April 8th, 2007. It's Exhibit Number
16 39. As far as I can see, that's the last
17 report or representation with respect to the
18 ANC that's in our record. They were not at
19 the last hearing, I believe.

20 They took a position opposing the
21 application. They expressed -- The
22 application at that point was for the variance

1 on the 45 degree setback requirements, loading
2 requirements, and court width requirements.
3 They expressed concerns about light and air,
4 shadow over residences, increased traffic and
5 deliveries. They felt that the applicant
6 hadn't demonstrated practical difficulties
7 under the variance test. They expressed
8 concern with the height. And they expressed
9 concern about whether there was adequate
10 communication with neighbors.

11 Now, that was a long time ago.
12 Since then, the applicant has revised the
13 plans. And I think in my view, and probably
14 shared by the Board, addressed light and air
15 to the residents. Certainly by the revised
16 plans that create the green roof and the
17 setback from them.

18 We also at the hearing discussed
19 loading issues. They're not seeking relief
20 from the loading requirements, but they did
21 say that they have come into compliance with
22 the requirements. And they will be having

1 greater loading capacity now.

2 And the loading issues that I
3 think we heard about, or delivery trucks, were
4 more enforcement issues I think with respect
5 to parking enforcement. Like Starbucks trucks
6 coming and blocking neighbors' houses and
7 things like that.

8 I think that's all we have from
9 the ANC, if I'm not mistaken. So we'll get
10 back to that later.

11 And then we have proposed
12 conditions on this.

13 Shall we vote on the relief first,
14 and then get into the proposed conditions?
15 Will that be amenable?

16 Okay, we're going to have further
17 discussion on the variance relief and special
18 exception relief. And then vote on that, and
19 go to the -- Well no, then we'll propose a
20 motion, and then discuss the conditions, and
21 then vote on everything.

22 Mr. Dettman, you have some

1 concerns about the variance and special
2 exception relief?

3 MEMBER DETTMAN: Just quickly,
4 Madam Chair. I guess in the end, I'll be, I'm
5 opposed to the project.

6 The basis for their variance is
7 sort of rooted in this idea that they have
8 this appendage, this residential building that
9 was part of a joint development. And I'm sort
10 of flipping through their presentation. I
11 mean, it says, the joint development is the
12 exceptional and unique condition.

13 It's only exceptional and unique
14 because it wasn't built according to the plans
15 that were approved by the BZA. And that sort
16 of flushed itself out eventually when the
17 previous ZA said that this was two buildings.
18 And this is where we are today.

19 I commend the applicant for doing
20 what they had to do in order to work the
21 issues out with the residential portion of the
22 building by pulling the wall back and creating

1 a green roof. However, in doing that, they
2 created this potential setback issue that they
3 may or may not need relief from, from 411.

4 However I think that the three
5 additional floors, in raising the penthouse to
6 that level, could potentially increase the
7 visibility of this penthouse from 22nd Street.
8 And I was persuaded by the pictures that were
9 submitted into the record by Mrs. Schuman
10 showing the problems with traffic congestion
11 and loading. Traffic and loading along K
12 Street and 22nd Street.

13 And so, in the end, for those
14 reasons, I'll be voting against the project.

15 CHAIRPERSON MILLER: I agree with
16 you to a certain extent that a lot of the
17 problems that the applicant seems to be
18 blaming the appeal decision on really were not
19 necessarily the source of the problems. But
20 I think it is still exceptional and unique in
21 that it was built that way. Even if it had
22 been -- Perhaps if it were built to plans it

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1 wouldn't need the variances that it's seeking.

2 On the other hand, that was a long
3 time ago, it wasn't the current owner as far
4 as I know. And therefore, they've inherited
5 that situation. And I think the fact that the
6 building shares unique qualities with all the
7 things that are shared, the equipment, the
8 chair, the garage, etcetera, does make it
9 unique in and of itself, separate from the
10 zoning history.

11 Thus our analysis on the variance,
12 it was the zoning history that made the
13 exceptional situation.

14 The other thing is, I mean I have
15 some concerns with respect to the testimony we
16 heard about the loading and the traffic. But
17 I think the relief being granted, I don't
18 believe leads to adverse impacts. I think
19 that the relief actually has resulted in an
20 improvement for the residential building.

21 Others?

22 MEMBER TURNBULL: Madam Chair, I

1 would agree with your analysis. I think that
2 there is a uniqueness as dictated by the
3 history of the project. I think that any
4 uniqueness by the fact that the way the
5 buildings are structured now. I think also we
6 heard testimony -- I mean, if you look at what
7 the loading dock is trying to ameliorate,
8 existing conditions with what is there now.

9 I think we were also -- There's a
10 reasonable expectation, or a reasonable amount
11 of control that can only be expected on a
12 loading dock or from trucks stopping and
13 loading on front. There's a question whether
14 some of the trucks that were stopped off --
15 parked on front were actually maybe making
16 deliveries to the residential building. And
17 there's a lot of people in residential
18 buildings that, in houses and everywhere else,
19 to get UPS, FedEx trucks in. I don't
20 necessarily think you can just look at all of
21 those extra trucks parked out in front on the
22 commercial, the business building.

1 So I think the fact that the
2 loading dock is a sincere effort on the part
3 of the applicant to address any future issues
4 dealing with loading and deliveries to their
5 building. I think they're trying to
6 ameliorate the situation. And they even
7 talked about trying to at least -- tenants
8 within the building should be notified what
9 the hours of the loading dock are, and try to
10 enforce that with any delivery companies that
11 come.

12 Beyond that, I don't know how much
13 more an applicant can do. I think there's
14 always going to be a situation where you're
15 going to have people who are just going to
16 pull up in front and double park or whatever.

17 But I think they've made a
18 reasonable attempt to satisfy the problem.

19 CHAIRPERSON MILLER: I agree.
20 Anybody else?

21 Okay. So, what I'm proposing is
22 that I put forth a motion, and see if it's

1 seconded, and then we can add conditions to
2 that, and then vote after we've discussed the
3 conditions.

4 So, I would move approval of
5 application number 17594 of Minshall Stewart
6 Properties, LLC, on behalf of Donohoe
7 Wilmington Associates, LP, pursuant to 11 DCMR
8 Sections 3103.2, for a variance from the court
9 width requirements under section 776, a
10 variance from the transferable development
11 rights 45 degree setback requirements under
12 sub-section 1709.20, is a special exception
13 under 2516, for multiple buildings on a single
14 record lot, and denial of variance relief from
15 section 2516.7. Do I have a second?

16 MEMBER TURNBULL: Second.

17 CHAIRPERSON MILLER: Okay, I think
18 I characterized that correctly. We had some
19 proposed conditions by the applicant. And I
20 know the applicant was in consultation with
21 the opposition parties who withdrew their
22 opposition.

1 The first one was that the project
2 shall be constructed in accordance with the
3 architectural plans marked as Exhibit 60 in
4 the record.

5 I assume those are the right
6 plans. I don't have an issue with that. Our
7 orders require that projects be constructed in
8 accordance with the architectural plans
9 presented to us. So, does anybody have a
10 concern with that?

11 Is that the consensus of the Board
12 then to conclude that.

13 The second is, the project shall
14 include the construction and maintenance of a
15 green roof on the roof of the eighth floor of
16 the office building measuring approximately
17 2200 square feet.

18 I would assume that that's
19 reflected in the plans as well, but I'm not
20 positive. Would that be reflected in the
21 plans, Mr. Turnbull? Green roof?

22 MEMBER TURNBULL: On the minis, on

1 the little PowerPoint set that we had
2 received, the green roof was reflected.

3 CHAIRPERSON MILLER: Okay. And I
4 would suggest adoption of this condition as
5 well. I think I didn't say earlier that our
6 standards basically are that the condition be
7 addressed to mitigate an adverse impact. And
8 that clearly was put in the plans to address
9 an adverse impact to the residential building.
10 And that it be clear and enforceable. And
11 this meets all those tests.

12 And then -- Is that the consensus
13 of the Board then? With that condition?
14 Okay.

15 Then the third one that was
16 proposed was that the applicant shall abide by
17 the terms of the Development and Construction
18 Management Plan with the West End Place
19 condominium association and its members
20 included as Exhibit I believe that's 70 at
21 this point of the record. And I would not be
22 in favor of this condition in that the Board

1 does not have any enforcement authority over
2 Construction Management Plans.

3 We talked about this a little bit
4 at the hearing, saying that they do represent
5 some indication that there's not going to be
6 an adverse impact related to the construction
7 of the project that we would be approving.
8 But what we said was -- and I think it's been
9 the policy of this Board, and I think it
10 should continue -- that this is on the record,
11 and that we can reference those in the record.
12 And it might mitigate any adverse impacts.
13 But that it's not something that we require
14 enforcement with. So I would not recommend
15 inclusion of that condition.

16 Other comments?

17 I think that was all their
18 conditions. I don't have any proposed
19 conditions. Does anybody else?

20 Okay. Any further comments before
21 we vote on this application?

22 Okay. There's a motion on the

1 table. Was it seconded? Okay.

2 MEMBER TURNBULL: Second.

3 CHAIRPERSON MILLER: Okay. That's
4 been seconded. Further deliberation? All
5 those in favor, say aye.

6 (Whereupon, there was a
7 chorus of "Ayes.")

8 All those opposed?

9 MEMBER DETTMAN: Opposed.

10 CHAIRPERSON MILLER: All those
11 abstaining?

12 And, would you call the vote
13 please, Mr. Moy?

14 MR. MOY: Yes, Madam Chair. The
15 Staff would record the vote as four to one to
16 zero, this is a motion of the Chair Ms. Miller
17 to approve the application with the relief as
18 stated, as well as the two conditions that
19 were proffered by the applicant, seconded by
20 Mr. Turnbull. Also in support of the motion
21 are Ms. Walker, Mr. Loud. And Mr. Dettman
22 opposed the motion.

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1 So again, the final result is four
2 to one to zero.

3 CHAIRPERSON MILLER: Thank you,
4 Mr. Moy. I believe that the applicant and the
5 opposition parties who withdrew their
6 opposition requested that this be a summary
7 order, in that summary orders take a lot less
8 time to get out of our office than do full
9 orders.

10 However, the situation in this
11 case right now is that we have on record the
12 ANC -- which is automatically a party to this
13 case -- opposing the application.

14 I think the Board has a question
15 in its mind whether in fact the ANC really is
16 still opposed to the application, in that it
17 has been greatly revised, and the most
18 affected parties in support.

19 So what the Board is going to do
20 is -- We have the authority to move at any
21 time before we issue a final order, within ten
22 days of that final written order, to reopen

1 the record or reconsider. So what we would do
2 is, we would entertain a report from the ANC,
3 were they to decide that they are no longer in
4 opposition to this application.

5 And if that were to come in,
6 within 60 days, the Board would entertain
7 reopening the record for us to decide to issue
8 a summary order instead of a full order, in
9 that this order will be in the queue. So if
10 we were to get a report from the ANC sooner,
11 rather than later, a summary order could be
12 issued. However, if we do not receive
13 anything from the ANC, then this would be a
14 full order.

15 Okay. Anything else on this?

16 All right. That concludes
17 deliberation on this case. Do we have any
18 other cases for this morning's special public
19 meeting?

20 MR. MOY: No, Madam Chair.

21 CHAIRPERSON MILLER: Okay. Then
22 this meeting is adjourned.

1 And I would just like to say to
2 the audience that's here, the Board's going to
3 take a quick break, and then come back for the
4 public hearing. I think it will be at least
5 15 minutes, so in case anyone wants to take a
6 break themselves.

7 (Whereupon, the above
8 matter was concluded at
9 11:38 p.m.)

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