

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 15, 2008

+ + + + +

The Regular Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to
notice at 10:00 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:

GREGORY N. JEFFRIES, Vice Chairman
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.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
STEPHEN RICE
TRAVIS PARKER

The transcript constitutes the minutes
from the Public Hearing held on January 15,
2008.

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
Ruthanne Miller	4
<u>MICHAEL WALKER</u>	
<u>APPLICATION NO. 17704, ANC-1D</u>	10
<u>Rescheduled for later in the day</u>	25
<u>Vote to Approve the Application</u>	212
<u>DISTRICT-PROPERTIES.COM LLC</u>	
<u>APPLICATION NO. 17701, ANC-8E</u>	25
<u>Rescheduled</u>	58
<u>DISTRICT-PROPERTIES.COM LLC</u>	
<u>APPLICATION NO. 17702, ANC-8E</u>	59
<u>Rescheduled</u>	90
<u>APPEAL OF ADVISORY NEIGHBORHOOD COMMISSION 1A</u>	
<u>APPLICATION 17671, ANC-1A</u>	97
<u>Rescheduled</u>	153
<u>LEON AND PEGGY ROBBINS</u>	
<u>APPLICATION 17620, ANC-6A</u>	153
<u>Vote to Approve the Application</u>	203
<u>MINSHALL STEWART PROPERTIES LLC ON BEHALF OF</u>	
<u>DONOHUE WILMINGTON ASSOCIATES LP</u>	
<u>APPLICATION 17594, ANC-2A</u>	213
<u>Rescheduled</u>	321
<u>ADJOURN</u> - Ruthanne Miller	324

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

2 12:20 p.m.

3 CHAIRPERSON MILLER: This hearing
4 will please come to order. Good afternoon,
5 ladies and gentlemen. This is the January
6 15th public hearing of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Ruthanne Miller. I am the Chair of
9 the BZA.

10 Joining me today is the Vice-Chair
11 Mr. Marc Loud to my right. Next to him is Mr.
12 Greg Jeffries from the Zoning Commission. To
13 my left I am very happy to welcome our newest
14 Board member Mary Oates Walker. Next to her
15 is Mr. Shane Dettman.

16 Also zoning us on the dias is Ms.
17 Lori Monroe from the Office of Attorney
18 General. Ms. Beverley Bailey from the Office
19 of Zoning and I believe Mr. Cliff Moy will be
20 joining us shortly.

21 Copies of today's hearing agenda
22 are available to you and are located to my

1 left in the wall bin near the door. Please be
2 advised that this proceeding is being recorded
3 by a court reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room.

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

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

22 The order of procedure for special

1 exceptions and variances is as follows: (1)
2 Statement and witnesses of the application;
3 (2) Government reports including Office of
4 Planning, Department of Public Works, DDOT,
5 etc.; (3) Report of the Advisory Neighborhood
6 Commission; (4) Parties or persons in support;
7 (5) Parties or persons in opposition; (6)
8 Closing remarks by the applicant.

9 Pursuant to Sections 3117.4 and
10 3117.5 the following time constraints will be
11 maintained. The applicant, persons and
12 parties, except an ANC in support, including
13 witnesses, 60 minutes collectively. Persons
14 and parties except an ANC in opposition
15 including witnesses, 60 minutes collectively.
16 Individuals, three minutes.

17 These time restraints do not
18 include cross examination and/or questions
19 from the Board. Cross examination of
20 witnesses is permitted by the applicant or
21 parties. The ANC within which the property is
22 located is automatically a party and a special

1 exception or variance case. Nothing prohibits
2 the Board from placing reasonable restrictions
3 on cross examination including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case except for any
7 materials specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning. After the
12 record is closed no other information will be
13 accepted by the Board.

14 The Sunshine Act requires that all
15 public hearings on each case be held in the
16 open and before the public. The Board may
17 consistent with its rules of procedure and the
18 Sunshine Act enter into executive session
19 during or after the public hearing on a case
20 for the purposes of reviewing the record
21 and/or deliberating on a case.

22 The decision of the Board in

1 contested cases must be based exclusively on
2 the public record. To avoid any appearance to
3 the contrary the Board request that persons
4 present not engage the members of the Board in
5 conversation. Please turn off all beepers and
6 cell phones at this time so as not to disrupt
7 the proceeding.

8 The Board will now consider any
9 preliminary matters. Preliminary matters are
10 those which relate to whether a case will or
11 should be heard today such as request for a
12 continuance, postponement, or withdrawal, or
13 whether proper and adequate notice of the
14 hearing has been given.

15 If you are not prepared to go
16 forward with a case today, or if you believe
17 that the Board should not proceed, now is the
18 time to raise such a matter.

19 Does the staff have any
20 preliminary matters?

21 MS. BAILEY: Madam Chair, members
22 of the Board, to everyone good afternoon.

1 Staff does not at this time, Madam Chair.

2 CHAIRPERSON MILLER: Okay. Let us
3 proceed with the agenda.

4 Would all individuals wishing to
5 testify today please rise to take the oath and
6 Ms. Bailey will administer it.

7 MS. BAILEY: Would you please
8 raise your right hand. Do you solemnly swear
9 or affirm that the testimony that you will be
10 given today will be the truth, the whole
11 truth, and nothing but the truth?

12 ALL: I do.

13 MS. BAILEY: Thank you.

14 CHAIRPERSON MILLER: Ms. Bailey, I
15 would just like to make a quick comment about
16 the schedule. We are running a little bit
17 late due to the deliberations we had this
18 morning in our meeting.

19 However, I anticipate that the
20 cases on the morning agenda will move fairly
21 quickly. I want to note that we will be
22 hearing 17671 of ANC 1A first on the

1 afternoon's agenda so anyone who is listening
2 to these hearings can plan their schedule
3 accordingly.

4 Now we are ready for the first
5 case when you are.

6 MS. BAILEY: The first case is
7 Application No. 17704 of Michael Walker
8 pursuant to 11 DCMR 3104.1, for a special
9 exception to construct an addition to an
10 existing garage serving a one-family row
11 dwelling under section 223, not meeting the
12 lot occupancy requirements (section 403, in
13 the R-4 District at premises 1811 Kenyon
14 Street, N.W. (Square 2599, Lot 54)).

15 Madam Chair, just to mention
16 briefly, although the property was not posted
17 for the requisite 15 days, it was posted for
18 eight days.

19 CHAIRPERSON MILLER: Thank you.
20 First, would you identify yourself for the
21 record, please.

22 MR. WALKER: I'm Michael Walker,

1 the applicant.

2 MR. DORMAN: Kendall Dorman with
3 Miebenson and Dorman Architects.

4 CHAIRPERSON MILLER: Okay. Why
5 don't you address as a preliminary matter the
6 question of posting that was raised. Our
7 rules require the 15 days and apparently it
8 was only posted for eight.

9 MR. DORMAN: I think that was my
10 fault because when I was reading the placard
11 I was kind of reading the five days when I was
12 supposed to put in the affidavit so I had the
13 placards a little before that and went over
14 there last Monday and put them up and took the
15 picture and came back in. I was confused by
16 the writing on the placards however.

17 CHAIRPERSON MILLER: Okay. One of
18 the things we look at in determining whether
19 to waive is whether or not the community got
20 notice otherwise. I understand the ANC has
21 already submitted a letter in support so they
22 had notice. How about the neighbors?

1 MR. WALKER: I sent a FedEx to
2 each of my immediate neighbors with the
3 historic applications which included the
4 enlarged garage and that was some months ago
5 when the historic application was first
6 prepared. Also, there is a notice to
7 neighbors within 500 feet or something. I'm
8 not sure what was in that but did that cover
9 the garage as well? It did? Okay. That was
10 done when?

11 MR. DORMAN: Early on in the
12 process.

13 MR. WALKER: Months ago.

14 CHAIRPERSON MILLER: Right. I
15 think it's 200 feet.

16 MR. DORMAN: We've also been in
17 contact with Mount Pleasant Historic and also
18 working with Jonathan Mellon at HPRB.

19 CHAIRPERSON MILLER: Okay. I
20 think that is sufficient for me. Does anybody
21 have a problem with that notice? We have
22 several layers of notice so sometimes if one

1 doesn't go accordingly, the others cover it.

2 Okay. You can proceed.

3 MR. DORMAN: I'll explain it. I
4 think I'll make it very simple. Basically Mr.
5 Walker wants to have a larger garage on there
6 to house his automobiles. One of his cars is
7 a classic car that he wants to put on there.
8 The only thing that we are asking for, I
9 guess, is under Chapter 223, and forgive me
10 because I can't speak lawyer talk, but that
11 allows him to go up to 70 percent lot
12 coverage. Everything else is within matter of
13 right, the height of the garage, the yards,
14 the lot -- excuse me, not the lot coverage but
15 the lot coverage is the only thing he's asking
16 for.

17 CHAIRPERSON MILLER: What does the
18 lot occupancy go up to?

19 MR. DORMAN: Seventy percent.

20 CHAIRPERSON MILLER: Oh, it's
21 exactly 70 percent?

22 MR. DORMAN: I'm sorry. What are

1 we asking for?

2 CHAIRPERSON MILLER: Yeah.

3 MR. DORMAN: We have modified the
4 design since we have actually submitted the
5 application. Right now the application is at
6 70 percent but we have cut off three feet from
7 the garage so we are at a little bit less. I
8 think we are at 64. That was due to 67.4
9 percent. The garage is 20 feet wide by 23.5
10 feet deep instead of the 26.5 feet that it
11 shows on the application.

12 CHAIRPERSON MILLER: So do we not
13 have the most recent plans in our file?

14 MR. DORMAN: No. We were working
15 with historic a little bit on that and
16 actually with OP, too, so you don't have it
17 although I can supply it easily.

18 CHAIRPERSON MILLER: Okay. So
19 basically what we have before us is probably
20 sufficient for today's purpose of addressing
21 the 223 but we would need the exact plans that
22 go along with the order.

1 MR. DORMAN: I guess my question
2 would be if you grant the 70 percent, if you
3 take less than 70 percent, you would be okay
4 with that too, though.

5 CHAIRPERSON MILLER: No, I don't
6 think so. What our order would say is that it
7 would authorize building in accordance with
8 the plans attached so you need to give us the
9 plans that you are going to go by. I think
10 for today's purposes if it's a minor
11 adjustment you can have your hearing and we
12 can address the issues and then you can
13 submit. How long would it take for you to
14 submit it?

15 MR. DORMAN: I can have it by the
16 end of the day.

17 CHAIRPERSON MILLER: Okay. Good.
18 Do you want to address the 223 further?

19 MR. DORMAN: I don't believe so.
20 Unless you have some specific questions for me
21 I think I'm okay.

22 CHAIRPERSON MILLER: Okay. I

1 think that the record is pretty full in this
2 is a pretty straightforward case. The
3 variance concern of the Office of Planning has
4 been withdrawn. If we could just ask you a
5 few questions and that should suffice.

6 In general 223 goes to the
7 addition not having an adverse effect on the
8 use or enjoyment of any abutting or adjacent
9 dwelling or properties specifically with
10 respect to light and air or privacy. Do you
11 want to address that question?

12 How does it not have an adverse
13 impact on light and air if you are adjacent
14 properties?

15 MR. DORMAN: Since it is an
16 accessory building, the only thing it has on
17 either side of it is actually the adjacent
18 garages to it so there wouldn't be an adverse
19 effect on light and air to the adjacent
20 property.

21 MR. WALKER: By the way, our next
22 door neighbors to the west just completed a

1 project where they added a very, very similar
2 two-car garage and new construction up from a
3 one-car garage. The neighbors to the east
4 have an existing two-car garage also right on
5 the alley so it is kind of in-line with what
6 is there already.

7 CHAIRPERSON MILLER: Okay, which
8 seems to address 223.2(c) which talks about
9 being in character scale and pattern of the
10 other dwellings along the alley. Correct?

11 MR. WALKER: Yes, I believe so.

12 CHAIRPERSON MILLER: Okay. Any
13 Board members have any other questions? Okay.
14 Why don't we turn to Office of Planning.

15 MR. JACKSON: Madam Chair, members
16 of the Board, my name is Arthur Jackson. I'm
17 a Development Use Specialist with the District
18 of Columbia Office of Planning. You have
19 three reports in your file. The first report
20 was prepared in which we analyzed the project
21 under 223 and we found that it met all the
22 considerations under 223 and were sufficient

1 with the standards that they are in.

2 We also mentioned that the project
3 would be subject to 2500.3 which limits the
4 occupancy of required rear yard by an
5 accessory building to 30 percent.

6 Then in our supplementary report
7 we reviewed that in light of a court case that
8 was decided December 10th and find that in
9 this case the application would be
10 inconsistent with the findings in that case
11 which actually looked at the required yard be
12 measured from the dwelling out instead of from
13 the rear yard in.

14 As such we withdraw our concern
15 about the variance needed for that provision
16 and we recommend approval of the application
17 as presented today. That concludes the Office
18 of Planning's summary of our reports and we
19 are available to answer questions.

20 CHAIRPERSON MILLER: Thank you.

21 Any Board questions?

22 MEMBER DETTMAN: Just one

1 question, Madam Chair.

2 Mr. Jackson, I know that the
3 applicant is required to provide one parking
4 space and it looks like at the end it's going
5 to be a three-car garage sort of with a lift.
6 I was just wondering does the six-foot
7 vertical clearance that is sort of articulated
8 in 2115.5 apply to a situation like this? If
9 it does, the lift might meet that requirement.
10 I'm not sure. I can't tell from the plans.

11 CHAIRPERSON MILLER: Mr. Dettman,
12 where is that requirement?

13 MEMBER DETTMAN: 2115.5 says,
14 "Except as provided in 2115.6 and 2115.7 all
15 parking spaces shall have a minimum vertical
16 clearance of six feet, six inches.

17 MR. JACKSON: I'm looking for that
18 section now.

19 MR. WALKER: Well, this is a
20 unique situation which I haven't really seen
21 before where they would have a lift over the
22 space. However, I think in the instances

1 where we have dealt with parking spaces in
2 commercial garages where they had that
3 limitation, we still looked for six feet above
4 the car in the life position.

5 The roof of the parking garage, I
6 believe, is 15 feet and I guess it depends on
7 how far the car is being lifted off the floor.
8 If it's six feet or under, I think it would
9 probably still meet the standards. I would
10 defer to the applicant to find out just how
11 far would the car be lifted above ground?

12 MR. WALKER: Well, I really wasn't
13 anticipating that and I don't have the
14 specifications of that lift but the car that
15 I am putting up there is very small. It is
16 less than four feet off the ground. It's a
17 little British sports car so I would be able
18 to lift the whole height of the lift. I know
19 that these are commonly used as like a
20 retrofit in residential garages and that is
21 primarily what they are for, for collectors.
22 It is not a commercial lift.

1 I don't have the exact number but
2 I believe from the pictures I've seen I know
3 that you can park SUVs and vans under them so
4 I assume that it has to go fairly high. I
5 don't have the specifications in front of me.

6 CHAIRPERSON MILLER: That's okay.
7 We understand this is self-certified and you
8 are seeking relief under 223 for the lot
9 occupancy issue. If it wasn't in compliance
10 then the Zoning Administrator could send you
11 back here for that. You don't need that
12 information necessarily for today's relief.

13 MR. WALKER: I would also say that
14 this lift is not permanently installed. It is
15 basically a portable unit that you can
16 disassemble and move somewhere. It is not
17 permanently installed.

18 CHAIRPERSON MILLER: Thank you.

19 Others? Do you have a copy of the
20 Office of Planning's report and do you have
21 any questions for the Office of Planning?
22 Okay. Is there anybody here with the ANC?

1 Okay. As I did note, I believe the ANC did
2 file a letter in support. Yes, ANC-1D.

3 It says, "Approve the zoning
4 variance for 1811 Kenyon Street, N.W." Even
5 though this isn't a variance, that's okay.
6 "Resolve that ANC-1D advises the Board of
7 Zoning Adjustment to approve Application No.
8 17704 for 1811 Kenyon Street, N.W. increasing
9 lot coverage to 70 percent. Commissioner
10 David Bosseman or his designee is authorized
11 to present the support to the Board.

12 Rationale - the ANC-1D has
13 reviewed the plans and inspected the site and
14 has neither issues nor concerns with the
15 proposed zoning variance passed by a four to
16 zero vote at the legally noticed public
17 meeting of ANC-1D on October 2, 2007, with a
18 quorum present, a quorum being four
19 commissioners."

20 So we will give this great weight
21 as it meets the great weight requirements.
22 Even though they call it a variance that's

1 okay. They don't really present any issues
2 for us to address. They support the
3 application.

4 Okay. Is there anybody here now
5 who is here to testify in support or
6 opposition to this application. Not hearing
7 from anyone do the Board members have any
8 final questions? Any closing arguments from
9 the applicant? Okay.

10 This is what I would suggest to
11 the Board members. Let me know if you feel
12 otherwise. Normally we would be prepared to
13 deliberate on this right now but since we
14 don't have plans, the plans go with our
15 decision. We would be approving the plans.

16 This is what I would suggest. If,
17 in fact, you really can get the plans in
18 today, if we are still in hearings this
19 afternoon, I would be amenable to coming to
20 your application last and ruling on it today.
21 Otherwise, we could deliberate on this next
22 Tuesday. There don't seem to be issues with

1 this application. It's just not complete.

2 MEMBER DETTMAN: How many copies
3 would you want?

4 CHAIRPERSON MILLER: I would ask
5 Mr. Moy.

6 MR. MOY: Our procedures call for
7 20 copies.

8 MR. WALKER: Is that 11 by 17?

9 MR. MOY: The drawings are -- I
10 forget the size but if you fold the sheet it
11 becomes 11 by 17. That would be that size.

12 MEMBER DETTMAN: I can provide
13 site plans and elevations. You already have
14 the photographs so I can get 20 copies for you
15 right away.

16 CHAIRPERSON MILLER: So you
17 anticipate that you'll get them to us today
18 and we can --

19 MEMBER DETTMAN: I'll call my
20 office and see how fast they can get them.

21 CHAIRPERSON MILLER: Okay, fine.
22 Then we'll fit that in.

1 MEMBER DETTMAN: So we'll just see
2 you when ready or you'll see us?

3 CHAIRPERSON MILLER: You should
4 let Mr. Moy know when they are available and
5 then we'll look at our schedule and determine
6 it. We may need to do this at the end of the
7 day after the hearings that are scheduled.
8 Other than that your application is complete.
9 There don't seem to be any issues so I'm sure
10 you are anxious to get a decision as quickly
11 as possible.

12 MEMBER DETTMAN: Okay.

13 CHAIRPERSON MILLER: Thank you.
14 We are ready for the next case when you are,
15 Ms. Bailey.

16 MS. BAILEY: Application No. 17701
17 of District-properties.com LLC, pursuant to 11
18 DCMR 3104.1, for a special exception to allow
19 the construction of a new twenty (20) unit
20 apartment building under section 353 at
21 premises 2825, Robinson Place, S.E., (Square
22 5875, Lot 862). The property is zoned R-5-A.

1 Members of the Board, the
2 applicant revised the initially filed plans
3 and instead of 20 units the number was reduced
4 to 17 units.

5 CHAIRPERSON MILLER: Thank you.
6 Are you ready? Why don't you introduce
7 yourselves for the record, please.

8 MR. SIQDER: My name is Mohammed
9 Siqder.

10 ZC VICE CHAIRMAN JEFFRIES: Can
11 you please speak into that mic? Thank you
12 very much.

13 MR. SIQDER: Good afternoon, Madam
14 Chair and Board members. My name is Mohammed
15 Siqder and I will present at this BZA
16 hearing --

17 ZC VICE CHAIRMAN JEFFRIES: I'm
18 sorry. I seriously cannot hear you. You are
19 going to have to speak into that mic. You can
20 brig it closer. Thank you.

21 MR. SIQDER: Good afternoon, Madam
22 Chair and Board members. My name is Mohammed

1 Sigder and I represent this hearing for 2825
2 Robinson Place for special exception under
3 section 3104. This project is for 17-unit
4 condominium building.

5 Here I am showing on this slide
6 Robinson Place and our vacant lot is
7 positioned here between these two apartment
8 complexes. Here we are showing the pictures
9 of the vacant lots. Next slide is same thing,
10 vacant lot and we are continuing to show it
11 here.

12 Here I am going to describe to you
13 the zoning requirements -- I mean, how they
14 are applying it. The height of the project is
15 39 feet and it allows us by code 40 feet. The
16 total area is 19,525 square feet and we are
17 keeping the same.

18 The lot width is 93.72 feet and we
19 are keeping the same lot width. The maximum
20 allowable FAR is .9 and we are providing .86
21 which is below the requirements. The lot
22 occupancy is 40 percent maximum allowable and

1 we are providing 39.5 percent.

2 Rear yard requirement is 20 feet
3 minimum. We are providing 71 feet and 7
4 inches. The side yard requirements is 8 feet
5 and 8 feet on both sides and we are providing
6 8 feet and 23 feet and 6 inches. Parking
7 requirements is 17 parking spaces and we are
8 providing 17. And by doing this I think we
9 confirm and comply with the Zoning Department.

10 The total number of units will be
11 17 and 11 units will have two bedrooms, two
12 full baths, and six units will have three
13 bedrooms and three baths. Here I am showing
14 the cellar plan. The cellar plan will have
15 four units. Two units will be two bedrooms
16 and two baths and two units will have three
17 bedrooms and three baths.

18 The first floor will have five
19 units. Yes, the first floor will have five
20 units with two bedrooms and two baths. The
21 rest of the floors like second and third floor
22 will be same as cellar which has two

1 apartments -- I mean, two units will be two
2 bedrooms and two baths and the other two
3 others will be three bathrooms and three
4 baths, the same as the second floor. Here I
5 am displaying the front view of the building.
6 Let me increase the size so everyone can see.

7 CHAIRPERSON MILLER: I just want
8 to interrupt for one second while you are
9 looking at that. For those of you who just
10 entered the room, I'm not sure if you are
11 aware that we are still in our morning session
12 so if you are here for the afternoon session,
13 it probably won't be for at least an hour.
14 Okay. Are you here for this morning's
15 session? Okay.

16 MR. SIQDER: So this will be the
17 front elevation of the building. We are
18 providing the big front. This is a big front
19 and this will be glass in like the hallway.

20 CHAIRPERSON MILLER: Excuse me.
21 How did you characterize it? You are
22 providing a what front?

1 MR. SIQDER: The front will be
2 brick.

3 CHAIRPERSON MILLER: Brick front.
4 Okay. Is that like the other buildings in the
5 surrounding area?

6 MR. SIQDER: Yes, surrounding
7 area.

8 CHAIRPERSON MILLER: Okay.

9 MR. SIQDER: I'm going to have a
10 slide with a view of the neighboring apartment
11 complexes. On the backside we are going to
12 provide vinyl siding. The left and right side
13 will also be vinyl siding.

14 The surrounding areas. This
15 project will be located in the Barry Farm in
16 Fort Stanton Section of Ward 8, ANC-8-01. The
17 project will be separated by Birney Elementary
18 School, Johnson Junior High School, and Ballou
19 Senior High School.

20 Here we are showing the
21 surrounding apartments in this neighborhood.
22 Here is Birney Elementary School and Johnson

1 Junior High School and Ballou Senior High
2 School.

3 The project also will be located
4 near major transportation arteries and mass
5 transit routes. We will have on the west side
6 295 and Martin Luther King Avenue. On the
7 south will be Alabama Avenue and Martin Luther
8 King Avenue will be on the west side and
9 Stanton Road will be on the east side.

10 We are providing 17 off-street
11 parkings and all parkings will be provided on
12 the rear side of the public building. There
13 is a recreation center and Barry Farms
14 recreation center. This is the site plan. We
15 are showing the location of the parkings and
16 this is the position of the building and this
17 is the entrance to the parkings and entrance
18 to the building.

19 Now my civil engineer, Niranjan
20 Sharma, is going to explain about the grading
21 as suggested by the Office of Planning.

22 MR. SHARMA: Thank you, Madam

1 Chair. Good afternoon. I'm Niranjan Sharma,
2 civil engineer, District-properties. I am
3 going to explain briefly about the grading
4 which we have proposed so as not to disturb
5 the environment. Basically we have taken care
6 of the grading plans now to allow any of the
7 run-off from the site to the adjoining
8 properties. Also we have proposed storm water
9 management plan on-site.

10 Let me briefly explain the
11 characteristics of the grading we have
12 proposed here. Basically we have tried to
13 maintain the existing grade and there are
14 basically two slopes which we are providing at
15 the site. The first one is at the end of the
16 face of the building which comes at the front
17 of the building.

18 There is a slope and it is only 2
19 percent which is, I think, allowable in this
20 case. All the parking lot runoff will be
21 taken care of by this slope and collected at
22 the end of the parking lot at this point as

1 shown on the next slide.

2 All the parking lot runoff will be
3 collected at this point at the drain so that
4 it doesn't travel above the surface. It will
5 be carried to storm water management plan
6 system which we are going to provide on site.

7 This briefly shows the grading and
8 the storm water management plan. When we look
9 at the profile of the lot vis-a-vis the
10 building the most part of hard work will be in
11 parking.

12 CHAIRPERSON MILLER: Can I
13 interrupt you for a second? We are running
14 under a certain time restraint and I am
15 wondering if you are tying any of your
16 presentation to the standards you need to meet
17 under 353 because we don't have to hear
18 everything about your project per se like
19 storm water management.

20 That is really not our area of
21 expertise except if you want to let us know
22 that there is not going to be an adverse

1 impact to surrounding properties but we don't
2 have to know all the details of that per se.

3 For instance, there's concerns
4 here about I know you are meeting the parking.
5 You have said that. How it relates to the
6 surrounding neighborhood, the surrounding
7 buildings, light and air and things like that.
8 I'm looking at 353 which you are proceeding
9 under.

10 MR. SIQDER: Yeah. I mean, we are
11 just showing the grading. We are not
12 hampering any sounding grading as well as it
13 will not adverse effect the neighborhood. As
14 you can see if we look into the neighborhood
15 here, most of the buildings in this block
16 almost all of them are apartment buildings.

17 ZC VICE CHAIRMAN JEFFRIES: Excuse
18 me. Can you come closer? Thank you.

19 MR. SIQDER: Sorry. Most of the
20 buildings in this neighborhood are apartment
21 complexes and there are only three, I think,
22 currently vacant and we will build two

1 buildings. One of them will be here and the
2 next one -- we have a hearing today -- will be
3 across this lot which is here. That's it.

4 This will not make any adverse
5 effect. Actually, that will make harmony in
6 this neighborhood. I think in my view this
7 will make it even better in the sense, I mean,
8 there will not be any illegal dumping or any
9 other illegal activities in this area. This
10 will bring the best I would say.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. Why don't we turn to the Office of
13 Planning now if that is all right with you
14 all.

15 MR. SIQDER: I'm sorry. I would
16 like to --

17 CHAIRPERSON MILLER: You want to
18 say something else? You have a witness?

19 MR. SIQDER: Yes.

20 CHAIRPERSON MILLER: Oh. I'm
21 sorry.

22 Would you introduce yourself for

1 the record, please?

2 MS. DRAYTON: My name is LaTanya
3 Drayton. I am just here in support of Mr.
4 Sigder and District-properties. I have worked
5 very closely with District-properties and Mr.
6 Sigder on 30 plus properties over the last
7 two-and-a-half years and just here to give
8 support and talk about the final product that
9 he does.

10 It is very well received, the ones
11 that I've been involved in. I think that they
12 provide affordable housing for first-time home
13 buyers in the District of Columbia which we
14 like to keep them here rather than forcing
15 them to go out to surrounding areas to find
16 affordable housing.

17 I'll just speak a little bit about
18 home ownership and how I think it instills
19 pride in the residents and they will take care
20 of the property a little bit better.

21 CHAIRPERSON MILLER: Can I ask you
22 to just be really brief with that?

1 MS. DRAYTON: Actually, I will
2 leave it at that.

3 CHAIRPERSON MILLER: Okay. Okay.
4 We are not going to necessarily be considering
5 this.

6 MS. DRAYTON: Okay.

7 CHAIRPERSON MILLER: Okay. That
8 is a good point.

9 MR. RICE: Good afternoon. My
10 name is Stephen Rice with the Office of
11 Planning. The Office of Planning would
12 generally stand on the record in support of
13 the application as proposed. The standards
14 have been met as far as the site plan, the
15 light and air provisions, the setback
16 requirements, the parking.

17 All of those have been met. This
18 project would also further some of the
19 policies laid out in the land-use policy
20 section of the comp plan, specifically
21 policies 1.4 and 1.4.1 which addresses filling
22 in gaps in the urban fabric with compatible

1 development.

2 The Office of Planning has not
3 received comments from any of the D.C.
4 agencies or from the ANC. We would prefer to
5 have at least ANC comments or some sort of
6 communication but I understand the applicant
7 has reached out but has not been able to make
8 that connection. Again, we are in general
9 support of the application. Just for time's
10 sake that's what we have. I'm open for
11 questions.

12 CHAIRPERSON MILLER: Okay. Let me
13 start with we have in our record, responses
14 from DHCD, Department of Housing and Community
15 Development in support, Exhibit 25.
16 Department of Transportation, Exhibit 24 in
17 support. Do you not have those? Are you not
18 aware of those?

19 MR. RICE: No, I haven't heard
20 anything from any of those agencies.

21 CHAIRPERSON MILLER: Okay. DHCD
22 was dated December 21 and DDOT was dated

1 December 5th. Just so you know that is in the
2 record and you can get a copy if you need it.

3 I have a question about the land-
4 use elements and the comprehensive plan. 1-4,
5 I think, refers to high quality design
6 standards. Is that something that you
7 evaluated in this application?

8 MR. RICE: That is one of those
9 topics we sort of don't know how to weigh
10 because it's not really captured in the scope
11 of Section 553 but we have spoken with the
12 applicant about making sure that the design
13 components are at least compatible with the
14 surrounding properties. He has been really
15 willing to make any corrections or any
16 changes.

17 As far as high quality, that is
18 hard to gauge. We are not uncomfortable with
19 what we have at this point. perhaps that is
20 a question you could ask the applicant about
21 but, as it stands, we are not opposed to it.

22 CHAIRPERSON MILLER: Well, when

1 you are evaluating it, for instance, if our
2 regs talk about compatibility with the
3 surrounding neighborhood or as they relate to
4 the surrounding neighborhood, that is
5 basically what you are looking at from what I
6 hear. I guess my question is what if the
7 buildings are not very attractive that are
8 existing now? Do you look at the proposed
9 building?

10 MR. RICE: I think we would prefer
11 to have something, of course, of higher
12 quality. I'm not sure when the buildings were
13 constructed that surround the property but
14 obviously we wouldn't want his project to
15 necessarily be of the same design. Yes, we
16 would like something that is of higher
17 quality.

18 CHAIRPERSON MILLER: So how about
19 not hypothetically. How about in this
20 particular instance how would you characterize
21 the existing buildings and then how would you
22 characterize this plan?

1 MR. RICE: The existing buildings
2 are very frankly bland. This project is
3 similar to the designs of those properties as
4 far as the materials. Does that sort of --

5 ZC VICE CHAIRMAN JEFFRIES: Did
6 you just say this is a bland design?

7 MR. RICE: It's similar to the
8 surrounding projects.

9 ZC VICE CHAIRMAN JEFFRIES: Okay.

10 CHAIRPERSON MILLER: So with
11 respect to that comprehensive plan land-use
12 element, you are saying even though you cite
13 it in here, because I guess you cite it for
14 the proposition that it's fulfilling that
15 because it is in-fill development, you are
16 saying you are not clear there is authority to
17 require a higher design because it's not set
18 forth in the regulation?

19 MR. RICE: If you are referring to
20 the land-use policy 1.4, I think my approach
21 for putting this in the report was mainly
22 because it is an in-fill project more so than

1 the high quality design part of it.

2 CHAIRPERSON MILLER: And when you
3 made reference to working with the applicant,
4 did you make any recommendations for an
5 improved design?

6 MR. RICE: Not specifically with
7 this project because he's also applying for
8 the same relief for a project directly across
9 the street. We did mention that it could have
10 more design beef but we didn't really say what
11 that means. I'm not sure if we have that
12 authority through this process.

13 CHAIRPERSON MILLER: Others?

14 ZC VICE CHAIRMAN JEFFRIES: Even
15 though the land use element of the
16 comprehensive plan talks about 1.4.1 in-fill
17 development, saying that such development
18 should complement the established character of
19 the area and should not create sharp changes
20 in the physical development.

21 MR. RICE: Those two policies that
22 I made mention of in the report are policies

1 hat I pulled from the comp plan. These are
2 not necessarily standards that would stand
3 under the relief that is being requested but
4 I think I heard your point. We could use that
5 as grounds to advance the design components.

6 ZC VICE CHAIRMAN JEFFRIES: Let me
7 just say this. I'm going to make a statement
8 and then ask a question. As wonderful a
9 policy initiative as affordable housing is in
10 the District, we shouldn't just assume that
11 design is like third or fourth place when
12 there is affordable housing or work force
13 housing.

14 It still should be some
15 thoughtfulness around the design because these
16 buildings will be up and be present for
17 decades and decades and decades. It shouldn't
18 be sort of a secondary thing but it should be
19 something that I think is well thought out.

20 I for one have some concerns about
21 the elevations here, this east elevation. It
22 just looks a little flat to me. I don't know

1 if it really does complement the way that it
2 necessarily should.

3 I agree with the Office of
4 Planning in that this is an awkward situation
5 because Section 353 does not really adequately
6 address the design issues. This is not a
7 design review but I just wanted to state that
8 I do have some concerns about the design. I'm
9 not certain what is going on in the center of
10 this thing.

11 If you could go to your -- I'm
12 sorry to step away from you for a second.
13 What's happening in the center of the
14 elevation where the vertical circulation is
15 occurring? Is that glass? Go right here.
16 Yeah, those two voids. Is that glass?

17 MR. SIQDER: Yes. You can see the
18 floor plan here. I mean, the glass would be
19 this area to make it open for the hallway.
20 Instead of blocking it with brick we are
21 providing glass so it will be more open.

22 ZC VICE CHAIRMAN JEFFRIES: How

1 does the glass meet the brick?

2 MR. SIQDER: Glass meet with
3 brick?

4 ZC VICE CHAIRMAN JEFFRIES: If you
5 are looking at it frontally.

6 MR. SIQDER: Yeah, if you are
7 standing here you see brick here and you see
8 glass here.

9 ZC VICE CHAIRMAN JEFFRIES: Maybe
10 I have an older version here. What is this
11 element here?

12 MR. SIQDER: That is the old one.

13 ZC VICE CHAIRMAN JEFFRIES: This
14 is the old one.

15 MR. SIQDER: Yeah.

16 ZC VICE CHAIRMAN JEFFRIES: So
17 it's just brick now. It's just brick in the
18 middle that separates?

19 MR. SIQDER: If you see from the
20 front you see the brick here, brick here, and
21 brick here. This is the glass you are seeing.

22 ZC VICE CHAIRMAN JEFFRIES: This

1 is not that elevation.

2 MR. SIQDER: This is similar.

3 ZC VICE CHAIRMAN JEFFRIES: The
4 fenestration is different. The windows are
5 not the same. Oh, that one. Okay. You were
6 showing a different elevation. Okay. This is
7 the front elevation. It is still different.
8 Is there something more recent?

9 MR. SIQDER: Not really. It's the
10 same drawing.

11 MR. RICE: Those may be older. I
12 have at least three different renderings of
13 the front elevation so I'm not sure if I have
14 that one either.

15 MR. SIQDER: We submitted the
16 revised plan.

17 CHAIRPERSON MILLER: When did you
18 submit it?

19 MR. SIQDER: We submit it almost
20 like three weeks ago. We revised the drawing
21 with the recommendation of Stephen Rice and we
22 submitted it at least 10 days ago.

1 CHAIRPERSON MILLER: Ten days ago?

2 MR. SIQDER: At least, yes.

3 CHAIRPERSON MILLER: Is it dated?

4 MR. SIQDER: Yes.

5 CHAIRPERSON MILLER: What is it
6 dated on the front page?

7 MR. SIQDER: Attention to Mr.
8 Nehru. There was --

9 CHAIRPERSON MILLER: Did you date
10 the --

11 MR. SIQDER: Yes, I dated it.

12 CHAIRPERSON MILLER: -- the front
13 page?

14 MR. SIQDER: Yes.

15 CHAIRPERSON MILLER: Do you know
16 what it's dated?

17 MR. SIQDER: Yes. I think so,
18 yes.

19 CHAIRPERSON MILLER: I just want
20 to take a moment to say for anybody who is
21 here for the afternoon hearings that we are
22 still in the morning. Afternoon won't start

1 for at least an hour.

2 MR. SIQDER: It looks like we
3 modified somehow and it looks like we missed
4 the front view. I mean, it's not really -- I
5 mean, it looks to me there's not any
6 structural issues here, only the face of the
7 building, the brick. It was siding before and
8 we are providing the brick. That's all.

9 CHAIRPERSON MILLER: The
10 difference is you are saying it's brick
11 instead of siding?

12 MR. SIQDER: Siding. Right.

13 CHAIRPERSON MILLER: The facade,
14 the front?

15 ZC VICE CHAIRMAN JEFFRIES: Where
16 the stair is?

17 MR. SIQDER: It was siding before
18 everywhere.

19 ZC VICE CHAIRMAN JEFFRIES: Oh, it
20 was siding before.

21 MR. SIQDER: Right. We are
22 providing right now bricks on the front.

1 CHAIRPERSON MILLER: I'm not clear
2 what is happened with the most recent plan.
3 Did the Board receive them or not? We don't
4 seem to have them in our files.

5 MR. MOY: My reading, Madam Chair,
6 I guess I was coordinating a little bit with
7 the applicant, that we have three submissions
8 of drawings. The most recent is Exhibit 28
9 but there are no elevations to Exhibit 28.

10 The next is Exhibit 18 which
11 according to my files has no elevation
12 drawings. Then the first set, which was
13 Exhibit No. 7, which does have the elevation
14 drawings but my understanding is that in
15 Exhibit No. 7 those elevation drawings have
16 changed. Correct?

17 MR. SIQDER: Yes. It has been
18 changed from siding to bricks.

19 MR. MOY: So the only change is
20 the material?

21 MR. SIQDER: That's right.

22 CHAIRPERSON MILLER: So where

1 should we be looking at this in our files, 7
2 or 18?

3 MR. SIQDER: I'll submit to you
4 the new drawings.

5 CHAIRPERSON MILLER: You will
6 submit new drawings?

7 MR. SIQDER: Yes.

8 CHAIRPERSON MILLER: For purposes
9 of today's hearing are we able to go forward
10 now or are we not is my question.

11 MR. SIQDER: The only thing is
12 just the matter of the material we are using.
13 Otherwise the structure is remaining the same.
14 Only thing we are changing material from vinyl
15 siding to brick that we can submit to you if
16 you want.

17 ZC VICE CHAIRMAN JEFFRIES:
18 Hopefully you might take an opportunity when
19 you are resubmitting to perhaps revisit this
20 elevation a little bit and perhaps provide a
21 little bit more articulation since going to
22 the brick. Perhaps have a little top or

1 something.

2 I mean, obviously I'm not going to
3 judge you based on the design but I do think
4 the concern I have is that these will be new
5 buildings in this neighborhood and they might
6 set the stage for what is designed and
7 developed by other developers. If this is
8 going to be somewhat catalytic, then I think
9 you should be somewhat thoughtful.

10 I don't know but I wouldn't mind
11 if you would perhaps sit down with the Office
12 of Planning again and perhaps they can just
13 talk with you a little bit about some things
14 you can do to fix up these facades. Not just
15 this building but in our next case as well
16 because that --

17 MR. SIQDER: Actually, you are
18 seeing the two-dimensional building. It is
19 not three dimensional. That's why I think
20 it's having sort of --

21 ZC VICE CHAIRMAN JEFFRIES: You
22 mean this with the shadows and so forth?

1 MR. SIQDER: Yes.

2 ZC VICE CHAIRMAN JEFFRIES: I
3 understand the shadows but I still think this
4 is a fairly long building and it starts to
5 look very flat.

6 MR. SIQDER: That's right. I
7 mean, it depends. If we do too fancy, then
8 that might not be in harmony with the --

9 ZC VICE CHAIRMAN JEFFRIES: We'll
10 talk about that in your next case.

11 MR. SIQDER: If it's too fancy,
12 then the problem. I mean, we are trying to be
13 somehow in harmony with the neighbors.

14 ZC VICE CHAIRMAN JEFFRIES: We are
15 going to go to the next case. I'll talk about
16 that one, too. I hope that by the time you
17 leave there is probably some place in the
18 middle. That's all. I think here you are on
19 one end of the spectrum and then the one
20 across the street you are on the other end of
21 the spectrum.

22 MR. SIQDER: That's right.

1 ZC VICE CHAIRMAN JEFFRIES: It
2 would be nice if you can be somewhere in the
3 middle. Again, I just want you to be
4 thoughtful about it because other developers
5 who won't need to come into this room might
6 look at what you're doing and think that is
7 sort of the standard. I don't think it should
8 be.

9 CHAIRPERSON MILLER: I just want
10 to say what we were discussing before was we
11 are supposed to consider that it be in harmony
12 with the other structures in the neighborhood.
13 That being said, that doesn't mean that if
14 others are bland that means yours has to be
15 bland to be in harmony. The goal would be for
16 it to be better and in harmony.

17 MR. SIQDER: Sure. I'm pretty
18 sure that this -- I mean, I believe this will
19 be blending with the community. It will be
20 much better.

21 ZC VICE CHAIRMAN JEFFRIES: I'm
22 very excited about your development program.

1 I mean, you have large units, three bedrooms.
2 That is absolutely great. I don't think you
3 need to -- you know, the skin just needs to be
4 secondary. There should be some thought to it
5 as well.

6 MR. SIQDER: Sure.

7 CHAIRPERSON MILLER: Okay. Any
8 other questions for Office of Planning? Does
9 the applicant have a copy of the Office of
10 Planning's report?

11 MR. SIQDER: No.

12 CHAIRPERSON MILLER: Okay. You'll
13 get one. You should get one since this is
14 going to be continued. Do you have any
15 questions right now for the Office of
16 Planning?

17 MR. SIQDER: No.

18 CHAIRPERSON MILLER: Okay. Is
19 there anybody here from the ANC? If I
20 understand correctly, you stated that you
21 tried to get in touch with the ANC but have
22 been unable to?

1 MR. SIQDER: That's right.

2 CHAIRPERSON MILLER: Okay. Do you
3 have anything more to add than what you have
4 already said in writing? You can find a
5 person to talk to. You contacted Wanda
6 Lockridge?

7 MR. SIQDER: That's right.

8 CHAIRPERSON MILLER: And never got
9 a response?

10 MR. SIQDER: She never made any
11 schedule.

12 CHAIRPERSON MILLER: Who was she?

13 MR. SIQDER: She's, I think, from
14 ward -- not ward. There are different
15 sections like AT01, AT02. She is AT03 or a
16 board member of that section. Currently AT01
17 is vacant. Nobody is there, nobody to
18 contact, so I contact her and she never made
19 any schedule to meet.

20 CHAIRPERSON MILLER: Did you send
21 any of your material to the ANC in general?

22 MR. SIQDER: No, because I was

1 supposed to meet them at the meeting but there
2 was no meeting held. I mean --

3 CHAIRPERSON MILLER: All I can say
4 you are not required to but it is a good idea
5 to because the Board has a sense that the
6 community is behind you.

7 MR. SIQDER: I know but where to
8 bring it?

9 CHAIRPERSON MILLER: Is there a
10 mailing address for the ANC? You could mail
11 it.

12 MR. SIQDER: This whole thing is
13 vacant. No address and no person.

14 CHAIRPERSON MILLER: The thing is
15 there are single member districts and then
16 there is a whole ANC and if your single member
17 district person, if that position is empty you
18 can still send your application to the whole
19 ANC because they are the ones that would vote
20 on it anyway.

21 MR. SIQDER: I was not aware of
22 that process but I called the main number and

1 they told me to contact Wanda Lockridge which
2 I did. I was not aware if that position is
3 vacant I need to send to the main office. I
4 didn't know that.

5 CHAIRPERSON MILLER: Okay. I
6 don't want to dwell on this too much but we do
7 consider the impact on the community and if
8 the community is behind you, you know, that is
9 very reassuring to the Board.

10 MR. SIQDER: Definitely.

11 CHAIRPERSON MILLER: It is usually
12 worth an applicant's time to do whatever you
13 can do contact them. You have tried to
14 contact them and it didn't work.

15 MR. SIQDER: That's right.

16 CHAIRPERSON MILLER: All I'm
17 saying is I would suggest one other way would
18 be to mail it to the whole ANC.

19 MR. SIQDER: Okay. No problem.

20 CHAIRPERSON MILLER: Is there
21 anybody here who wishes to testify in support
22 or opposition to this application? Okay. Any

1 other questions from the Board? Do you want
2 to make a closing statement?

3 MR. SIQDER: I'll just make a
4 small statement that last year Mayor Fenty
5 went to this last year February 7. He made a
6 statement that this is very -- I mean, make a
7 change in this neighborhood. This project
8 would make a place to start on this change.
9 Right now it's vacant and to build affordable
10 homes I think would make a big change and I
11 hope it does.

12 CHAIRPERSON MILLER: Thank you.
13 Okay. I think what we have stated is that we
14 would put this off for decision making because
15 we are waiting for the up-to-date plan.
16 During this period Mr. Jeffries suggested that
17 you could talk with the Office of Planning a
18 little further about the articulation and the
19 design and the elevation and things like that.

20 I would suggest if it's enough
21 time, and you tell me if this is enough time
22 for you, we do have a meeting scheduled for

1 February 5th in which case we would need your
2 final documentation before that date. Is that
3 a reasonable date for a meeting on your
4 application or would you want it later? Okay.

5 Mr. Moy and Ms. Bailey, when would
6 his filings have to be into the record?

7 MS. BAILEY: Madam Chair, I would
8 suggest the 28th of this month.

9 CHAIRPERSON MILLER: Okay. Is
10 that feasible? The other thing is in these
11 proceedings the ANC is considered an automatic
12 party in our cases and parties get served with
13 the filings so you should send that to the ANC
14 as well as soon as possible in the event they
15 want to meet on it and vote on it.

16 MR. SIQDER: Sure.

17 CHAIRPERSON MILLER: Okay. Do you
18 have any other questions?

19 MR. SIQDER: No.

20 CHAIRPERSON MILLER: All right.

21 Then that concludes this case.

22 Ms. Bailey, do you want to call

1 the next case?

2 MS. BAILEY: The final case of the
3 morning is Application No. 17702 of District-
4 properties.com LLC, pursuant to 11 DCMR
5 3104.1, for a special exception to allow the
6 construction of a new sixteen (16) unit
7 apartment building under section 353 in the R-
8 5-A District at premises 2836 Robinson Place,
9 S.E., (Square 5875, Lot 861).

10 CHAIRPERSON MILLER: Okay. I
11 believe we have the same applicant in this
12 case. Why don't you introduce yourself for
13 the record anyway.

14 MR. SIQDER: Good afternoon again,
15 Madam Chair, and Board members. My name is
16 Mohammed Sigder and I am present at this
17 hearing.

18 CHAIRPERSON MILLER: Thank you. I
19 am wondering if perhaps you could just focus
20 in on the areas that are really significant to
21 353 and, based on our discussion the last
22 time, focus on those areas such as the

1 relation to the surrounding neighborhood,
2 parking, light and air, that kind of thing.

3 MR. SIQDER: In this case
4 basically it is across from the other project
5 so this is the current project we are going to
6 build. It's just across from the previous one
7 we discussed. This is basically the pictures
8 of the current lot and zoning requirements if
9 you want I can explain.

10 CHAIRPERSON MILLER: I think they
11 are in the record. Is it your position that
12 you comply with all the zoning requirements?

13 MR. SIQDER: All the zoning
14 requirements.

15 CHAIRPERSON MILLER: Okay. We
16 have seen that in the record so we can move
17 on.

18 MR. SIQDER: Basically this is a
19 16-unit building and each of them will be
20 three bedrooms and two full baths. This is
21 the floor plan for the cellar. Each of them
22 will be typical, three bedroom and two baths.

1 This is the front of the building. I hope
2 this is different.

3 CHAIRPERSON MILLER: Let me ask
4 you, this is pretty different from the one
5 that you showed us in the last application.

6 MR. SIQDER: That's right.

7 CHAIRPERSON MILLER: Why are they
8 so different?

9 MR. SIQDER: To make it different.
10 Something different. I mean, if we make the
11 same, it will bring -- I mean, monotonous, the
12 same type of building.

13 CHAIRPERSON MILLER: I'm not an
14 architect so that is why I'm asking how did
15 you decide to do this one this way and the
16 other one the other way and they are in the
17 same neighborhood. This one doesn't look
18 bland to me.

19 MR. SIQDER: Also it has something
20 to do with the building itself. There are a
21 lot of other issues like the lot size and the
22 building and how it is located. This building

1 cannot fit on the other lot so we have to do
2 a different design. I mean, I guess we did it
3 just to make something different. I mean,
4 that's what we thought.

5 MR. SHARMA: I'm Niranjan from
6 District-properties. This building is pretty
7 rectangular in nature as compared to the other
8 one, the previous one which had some ins and
9 outs.

10 If we look at the front of the
11 building in the other one, the previous one,
12 it had some level differences and differences
13 in the front elevation but this one as
14 compared to the other one is more rectangular
15 so we thought it would be nice to put some
16 elements in this one so that it doesn't look
17 bland.

18 The other one, the building itself
19 has some kind of shape. It's not like
20 straight. It has like ins and outs. The
21 previous building -- the front of the previous
22 building is not straight, not in the same

1 line. It has some projections versus this one
2 is pretty much flat so we decided to make
3 it --

4 ZC VICE CHAIRMAN JEFFRIES: Have
5 you been working with an architect?

6 MR. SIQDER: Yes.

7 ZC VICE CHAIRMAN JEFFRIES: And
8 the architect is not here?

9 MR. SIQDER: No.

10 ZC VICE CHAIRMAN JEFFRIES: You
11 know, I think the story line is pretty clear.
12 I mean, between looking at the front elevation
13 and then the drop-off on the right side
14 elevation and then the back elevation, you
15 know -- wait a minute. This is what I have.
16 There is something more current? Did I miss
17 something again?

18 MR. SIQDER: No, this is the
19 current one. We submitted the new one. We
20 submitted the new one.

21 ZC VICE CHAIRMAN JEFFRIES: Is
22 there something more current?

1 MR. SIQDER: We did this drawing
2 of the site elevation. We modified as per OP
3 requirements.

4 CHAIRPERSON MILLER: Ours is dated
5 March 7th. Right?

6 ZC VICE CHAIRMAN JEFFRIES: Yes,
7 that's the survey.

8 CHAIRPERSON MILLER: This is our
9 Exhibit 7. Do we have a similar problem that
10 a later one was submitted that we don't have?

11 MR. SIQDER: We totally submitted
12 all the revised drawings. This drawing has
13 been submitted.

14 MR. SHARMA: The basic change from
15 the one you probably have there is in the
16 first submission we had the front elevation
17 like the way it is now. The rest of the --
18 the right elevation was like this except this
19 is level.

20 Right elevation was like this. We
21 had vinyl siding on this left elevation but
22 after we received the comment from Office of

1 Planning we changed this elevation to make it
2 consistent with the other one. We have not
3 much changes after that.

4 MR. RICE: Madam Chair, may I --

5 CHAIRPERSON MILLER: Yes. Can you
6 enlighten us?

7 MR. RICE: Okay. I think the
8 confusion is I think the Board has some -- I'm
9 not sure if these are the original but
10 certainly not the updated plans. We did speak
11 with the applicant. We wanted the two sides
12 that would be viewed from both streets to be
13 consistent. At that time they both were vinyl
14 siding.

15 I don't want to imply that the
16 design that is presented is the best but we
17 did want those two sites to at least be
18 consistent and to not be vinyl siding. For
19 that reason they did resubmit to us and I
20 assume also with the Office of Zoning. I
21 don't know from that point what happened with
22 those actual drawings but they were submitted

1 at least to us. I can vouch for that.

2 MR. SIQDER: This drawing was at
3 the same time, on the same date.

4 CHAIRPERSON MILLER: When was
5 that, Mr. Rice? Do you know?

6 MR. RICE: I don't have the date
7 but a few weeks back before the submittal date
8 was past.

9 MR. SIQDER: I mean, it's missing
10 or something else happens I can submit it
11 again.

12 CHAIRPERSON MILLER: Okay. We can
13 resolve this later. Obviously either the
14 Office of Zoning, you know, messed up a little
15 bit or you didn't file it or whatever
16 happened. We can always get it in and we
17 won't rule on this today. Can we go forward
18 and finish this hearing? Is that a pretty
19 minor point that we don't need to have that in
20 front of us right now?

21 MR. RICE: I think we can go
22 forward.

1 CHAIRPERSON MILLER: Okay. Was
2 there more you wanted to say?

3 MR. SIQDER: Basically these are
4 more or less the same surrounding apartments.
5 It's the same school system and transportation
6 are all the same as like before and here we
7 are providing 16 off-street parkings. This is
8 the way it will be positioned.

9 This is Robinson Place here and
10 the entrance to the parking. We are not
11 required to explain about the grading system
12 but we did comply with the requirements from
13 the Office of Planning and we corrected those
14 issues. That's it for me.

15 CHAIRPERSON MILLER: I'm sorry.
16 Was there anything else you wanted to add?
17 That's okay. We'll get back to you anyway
18 because a lot of this is very similar to what
19 we did in the previous case and it's in the
20 record so we really just need to focus on a
21 few areas.

22 Mr. Rice.

1 MR. RICE: Good afternoon again.
2 My name is Stephen Rice. The Office of
3 Planning supports this application as well.
4 We feel that the requirements have been met.
5 Similar to the first case we have not received
6 comments from the agencies or the ANC.

7 I would ask that in this case
8 specifically given the backdrop of the rear of
9 the property I would like if the applicant
10 could speak on the grading system because
11 there is a sort of substantial change in
12 grade, roughly 36 or so feet.

13 At the time that our report was
14 submitted those details weren't in play but I
15 understand that they are now. I would
16 appreciate if we could speak to that.
17 Otherwise we do support this application
18 pursuant to Section 353. Thank you.

19 MR. SHARMA: Thank you, Madam
20 Chair. In this drawing we have shown the
21 existing pontus which is pretty sloped towards
22 the back of the lot towards Robinson Place.

1 Reviewing the requirements of the BZA we have
2 proposed to have not more than 12 percent
3 slope for the driveway and about 3 percent
4 slope at the parking lot.

5 For that we need to build a
6 retaining wall at the back of the lot from the
7 Jasper Street side and this will be reinforced
8 concrete retaining wall which will be
9 appropriately designed for this project.

10
11
12 About the storm water management,
13 we have a proposed system here which will
14 again ensure that none of the properties are
15 adversely -- none of the existing properties
16 are adversely affected. That is pretty much
17 it about the grading.

18 We see some differences in grade
19 to the adjacent lots and both sides also, and
20 particularly at the back of the building
21 around this area we are proposing a retaining
22 wall and four-feet high brick wall to mark the

1 lot from the adjacent properties. If there is
2 any particular question about it, I would like

3 ZC VICE CHAIRMAN JEFFRIES: Do we
4 have a copy of the retaining wall, a section
5 of the retaining wall?

6 MR. SHARMA: We have submitted
7 that and I think I have seen that.

8 ZC VICE CHAIRMAN JEFFRIES: I may
9 have missed it.

10 MR. SHARMA: As of today we don't
11 have the detailed design of the retaining
12 wall. This is only what we are proposing. We
13 have not calculated and designed the retaining
14 wall.

15 ZC VICE CHAIRMAN JEFFRIES: Will
16 it be visible in terms of neighbors?

17 MR. SHARMA: No, it won't be
18 visible by the neighbors but it will be
19 visible from Jasper Place which is at the back
20 of the lot.

21 MR. SIQDER: Jasper Street is
22 about 30 feet down. If this is Jasper Street,

1 it's almost like 30 feet down from our lot so
2 that is the reason why we are providing a
3 retaining wall.

4 ZC VICE CHAIRMAN JEFFRIES: I can
5 barely see that. I'm getting old.

6 MR. SHARMA: If you look at this
7 drawing, sir, the difference in label from the
8 front of the lawn.

9 ZC VICE CHAIRMAN JEFFRIES: What
10 elevation is that at front?

11 MR. SHARMA: This is Robinson
12 Place which is at the height of 177 feet. The
13 height of Jasper Place is almost 140 feet so
14 there is a difference of level of 30 feet from
15 the front to the back of the lot.

16 ZC VICE CHAIRMAN JEFFRIES: And
17 then the retaining wall again is where?

18 MR. SHARMA: Right at this place
19 so that we have some design flexibility to
20 make it a good one.

21 ZC VICE CHAIRMAN JEFFRIES:
22 Obviously it's visible from Jasper Place. Is

1 Jasper Place a very residential road?

2 MR. SIQDER: No. If you are
3 facing here, there are no houses here.

4 ZC VICE CHAIRMAN JEFFRIES: What
5 is on that street?

6 MR. SIQDER: They are just empty.

7 ZC VICE CHAIRMAN JEFFRIES: But
8 there might be future development?

9 MR. SIQDER: No, no. I think only
10 by Government.

11 MR. RICE: Directly across the
12 street from Jasper if you can sort of look at
13 the front page of OP's report it's a small
14 picture but it could offer a little
15 perspective on what is across the street.

16 I think directly across the street
17 from Jasper is Park Service land. There is an
18 apartment complex somewhat adjacent across the
19 street that would -- that the retaining wall
20 would be visible from some of those units
21 possibly even according to that image. I
22 think it's proposed at 24 to 25 feet high.

1 CHAIRPERSON MILLER: What is the
2 material of the wall going to be?

3
4 MR. SHARMA: It's going to be
5 concrete.

6 CHAIRPERSON MILLER: Concrete?

7 MR. SHARMA: Yes. As it will be a
8 high one we will have to reinforce it.

9 CHAIRPERSON MILLER: Will it have
10 any greenery or anything on it to mitigate
11 against bad appearance?

12 MR. SHARMA: Behind the retaining
13 wall there will be landscaping. We are
14 proposing greenery behind the retaining wall.
15 If you look at this -- this is a little bit
16 distorted. I'm sorry for that but if you look
17 at this portion, this is the retaining wall we
18 are proposing and this portion is going to
19 have greeneries and tall trees so that it
20 won't be directly visible from Jasper Place.
21 Proposed landscaping at this area.

22 CHAIRPERSON MILLER: Right. Okay.

1 That's in the landscaping plan, the trees?

2 MR. SIQDER: Yes.

3 MR. SHARMA: This is the
4 landscaping plan, ma'am.

5 CHAIRPERSON MILLER: I see it on
6 there. I'm not sure that I see it in my
7 documents. It's probably here. Trees take a
8 while to grow. Are you planning on getting
9 mature trees to begin with or what? You are?
10 Okay. Is there any issue on the other side of
11 the retaining wall or not because that's where
12 the cars are parking?

13 MR. SHARMA: Other side is car
14 parking. That's where they will park the
15 cars.

16 CHAIRPERSON MILLER: Do you have
17 any landscaping in the parking lot?

18 MR. SIQDER: Yes. These are the
19 greeneries and landscaping around the parking
20 lot.

21 MR. SHARMA: We have proposed some
22 landscaping between the parking lot and the

1 building. This is where it is going to be,
2 about six feet wide landscaping area. Also
3 this side so virtually the building is
4 surrounded with all this landscaping
5 greeneries and also the parking lot.

6 CHAIRPERSON MILLER: Is there a
7 percentage that's landscaped that is
8 identified?

9 MR. SIQDER: Yes.

10 ZC VICE CHAIRMAN JEFFRIES: What
11 is the character of Jasper Place? I'm driving
12 down Jasper Place and what do I see?

13 MR. SIQDER: If you are --

14 ZC VICE CHAIRMAN JEFFRIES: The
15 problem that I'm having is that this building
16 is almost in the round. It's almost being --
17 the way I see it, unless I'm missing
18 something, it's being viewed from all sides.

19 While you have created a front
20 facade, it doesn't seem like you can be
21 neglectful of the other facades because it's
22 going to be viewed. I'm trying to understand

1 if I'm driving or walking -- maybe I don't
2 walk on Jasper Place but I don't know what the
3 character of that street is.

4 It's in-fill but it is not like
5 you were inserting this building. It's sort
6 of almost like standing out here and a fairly
7 deep drop in the back in this retaining wall.
8 I just don't know what that looks like.

9 MR. SIQDER: If you see here --

10 ZC VICE CHAIRMAN JEFFRIES: I
11 haven't even gotten into the facade yet but
12 I'm on the retaining walls right now.

13 MR. SIQDER: I didn't get your
14 question. This is the lot and this is the
15 Jasper Street and this is the existing
16 apartment complex.

17 ZC VICE CHAIRMAN JEFFRIES: So if
18 I'm driving on Jasper Street what is the
19 character of the buildings? Those two
20 buildings -- perhaps I should be speaking to
21 Office of Planning but I'm just trying to
22 understand when I'm walking on Jasper Place or

1 driving what do I see?

2 MR. SHARMA: This is exactly what
3 we see.

4 ZC VICE CHAIRMAN JEFFRIES: That's
5 what we see. Okay. Then is the retaining
6 wall -- where is the retaining wall?

7 MR. SHARMA: Retaining wall would
8 be somewhere below the building. It's the
9 retaining wall between the Jasper Place and
10 the building. Below this building somewhere
11 in this area we will see the retaining wall.
12 There will be the retaining wall but it will
13 be covered by the landscaping which we have
14 proposed at the back of the retaining wall.

15 ZC VICE CHAIRMAN JEFFRIES: But
16 you're not showing the retaining wall in this
17 elevation.

18 MR. SHARMA: So, sir. This is
19 just the elevation of the building.

20 MEMBER DETTMAN: Madam Chair, just
21 a couple things. It sounds like we're going
22 in the direction of the previous case as well.

1 We are going to require some updated plans and
2 we are going to have a couple issues that need
3 to be addressed. These are just sort of my
4 thoughts. Just to follow up with the concerns
5 that it seems Mr. Jeffries has is with respect
6 to what would be the review of this building
7 from Jasper Place.

8 The way I see it, it looks like if
9 I was standing on Jasper Place looking at the
10 rear of t his building, it looks like I'm
11 going to see a four-foot high 12-inch wide
12 brick wall and then I'm going to see some
13 landscaping which appears to be a little bit
14 minimal I've got to say.

15 But then I'm looking at a 25 to
16 30-foot high retaining wall. Is that correct?
17 It's almost like a building on a hill. A 25-
18 foot concrete retaining wall is sort of an
19 issue.

20 MR. SIQDER: Yes, but it shows
21 here that this is the existing condition. You
22 have a drop of about 24 feet. Just in order

1 to -- I think this shows it much better.

2 MR. SHARMA: If we look at the
3 building --

4 MEMBER DETTMAN: I understand the
5 existing grading and the proposed grading but
6 what I'm saying is that I think this needs to
7 be looked at because I think a 25-foot
8 concrete retaining wall --

9 MR. SIQDER: No, this is not 25
10 feet.

11 MEMBER DETTMAN: It's showing the
12 elevation at the top of the wall at 165 and
13 then the landscaping is about 140.

14 MR. SIQDER: What we are proposing
15 here on this site --

16 MEMBER DETTMAN: What is the
17 elevation of the top of the retaining wall?

18 MR. SIQDER: 165.

19 MEMBER DETTMAN: What is the
20 elevation of the curb of Jasper around there?

21 MR. SHARMA: It varies and it's
22 not the same at all the places as we can see

1 in this building plan. This particular slope
2 is 141.

3 MEMBER DETTMAN: Right.

4 MR. SHARMA: If we consider this
5 particular slope, this is 147.

6 MEMBER DETTMAN: Okay.

7 MR. SIQDER: By the time we finish
8 it, particularly if we make this retaining
9 wall here, and we are providing here longer
10 trees and shrubs so it will not be visible,
11 this 24 feet.

12 MEMBER DETTMAN: I would like to
13 see some attention paid to the retaining wall
14 and seeing what you can do to minimize that.
15 It looks like based on your proposed
16 contouring of the parking lot you are going to
17 have a drainage inlet and you are sort of
18 draining towards that. I don't know if you
19 can increase the slope from Robinson going
20 back to the parking lot which basically
21 decreases.

22 MR. SHARMA: No.

1 MEMBER DETTMAN: If you can't do
2 that, then address the materials of the
3 proposed retaining wall. Also I don't see a
4 planting plan on your landscape plan so
5 looking at these sort of symbols that indicate
6 shrubs, that could be some decorative grasses
7 or that could be eventually a 30-foot
8 flowering tree.

9 I think that sort of needs to be
10 worked out, too. If you can't build a
11 retaining wall out of brick, which is a little
12 bit more decorative than concrete, then
13 possibly your landscape plan could eventually
14 mask looking at that concrete wall.

15 MR. SHARMA: I have one more point
16 here. We already have some trees and shrubs
17 at the back of this lot and if possible we
18 will not disturb this green area.

19 MR. SIQDER: But if we provide the
20 brick -- I mean, in addition to concrete wall
21 and if that satisfies your requirements, we
22 will do the brick. We can do that if that

1 satisfies your requirement.

2 CHAIRPERSON MILLER: Well, I don't
3 know. We don't really dictate that but what
4 we are saying is I think you need to give us
5 a better visual of what this retaining wall is
6 going to look like with whatever you are going
7 to do to make it look more attractive.

8 One idea is brick but I don't think that is
9 even exclusive of the landscaping in front.

10 I think what Mr. Dettman is doing
11 is pointing out to you an issue so that in the
12 interim between now and when we decide your
13 case that is something that should be improved
14 and something that should be portrayed better
15 to us so we can pick up a piece of paper and
16 say, "Oh, that's what the retaining wall is
17 going to look like."

18 ZC VICE CHAIRMAN JEFFRIES: That's
19 going to be the height of the retaining wall.

20 CHAIRPERSON MILLER: Anything
21 further?

22 ZC VICE CHAIRMAN JEFFRIES: Can we

1 go back to the facades and the elevations? I
2 don't know where this sort of classical motif
3 came from in this neighborhood but it shows up
4 here. This is way over accessorized for the
5 neighborhood. You have gone over and above
6 the call of duty. I can see brick. I don't
7 know what the other materials are on the
8 facade. I have no understanding of that.

9 Again, similar to the last case, I
10 would really recommend that you speak with --
11 you know, sit down with the Office of Planning
12 and just give a little bit more attention to
13 how you resolve some of the design issues of
14 these facades. I only have one vote up here
15 so I'm not speaking for the other members but
16 I do have some serious concerns about your
17 elevation designs.J

18 MR. SIQDER: Just tell me, I mean,
19 what exactly is the concern. We'll just look
20 into that area.

21 ZC VICE CHAIRMAN JEFFRIES: They
22 don't look as if they are complementary to the

1 context of the neighborhood. From what I can
2 deduce from some of the pictures that you've
3 shown me the designs don't seem to be
4 complementary. They don't seem to be within
5 the context.

6 I don't think you have taken
7 enough indication from the building design in
8 the neighborhood. It doesn't have to be
9 exactly like other things. I appreciate that
10 you are trying to bring about some variety and
11 so forth. I just think you have perhaps gone
12 a little bit too far.

13 All I'm asking you to do, I'm not
14 here trying to design your buildings for you
15 but I do think that it might behoove you to
16 sit down with the Office of Planning again.
17 I'm not saying there should be a mass redesign
18 here but I think there are some things that
19 perhaps you can do so that these buildings
20 look like they are more in line with the
21 neighborhood.

22 Again, I'm just concerned. For

1 example, the materials on this elevation, I
2 mean, I don't know what those columns -- I
3 don't know if they're door columns or what.
4 I don't know what they are made of. I mean,
5 I just don't know what's going up. In
6 addition to revisiting some of the design, you
7 might want to indicate some materials and so
8 forth just because, again --

9 MR. SIQDER: Also I would like to
10 know because I didn't see any column so you
11 are asking me to take out -- I mean --

12 ZC VICE CHAIRMAN JEFFRIES: No,
13 I'm not asking you to take out columns. What
14 I'm saying to you is perhaps you should sit
15 down with the Office of Planning and perhaps
16 you should just discuss with them some design
17 alternatives for these elevations.

18 MR. SIQDER: Sure. Okay.

19 ZC VICE CHAIRMAN JEFFRIES: There
20 are two -- there are both sides of the
21 spectrum. I mean, they should be somewhat
22 more complementary to the neighborhood. I

1 can't sit here and design it for you but I
2 would really recommend that you sit down with
3 the Office of Planning and bring your
4 architect because that is what they are
5 trained for and that is what you are paying
6 them for.

7 CHAIRPERSON MILLER: Let me
8 interject for a second because we did get off
9 source with Office of Planning. Office of
10 Planning just began to reference the report
11 and I didn't even get a chance to ask Mr. Rice
12 whether or not it was his opinion that this
13 was in harmony with the surrounding
14 neighborhood.

15 Perhaps you said it in your
16 report, I don't know. I think Mr. Jeffries'
17 point is probably one that we share to a
18 certain extent. Just the question when we see
19 two properties in the same neighborhood across
20 from each other looking so dramatically
21 different, how is it -- are they both really
22 in harmony with the neighborhood.

1 MR. RICE: I think we could all
2 agree that there is an extreme on both ends
3 and that some sort of medium or middle ground
4 should be sought. Again, we didn't go into
5 the specifics of detail concerning the design
6 components because of what we were called to
7 do based on the Section 353 but I am willing
8 and I am very happy to meet with the applicant
9 to work with these concerns.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. I would say -- I mean, I think that your
12 concerns are legitimate in the 353. It talks
13 about referring to you for recommendation,
14 though, with respect to how they relate to the
15 surrounding neighborhood.

16 It doesn't list in the specific
17 areas design but it does list site plan,
18 arrangement of buildings and structures,
19 grading, landscaping. I would like to suggest
20 also that when we receive revised plans that
21 we also get a report from the Office of
22 Planning as to whether that is in line with

1 your views.

2 MR. RICE: For both projects?

3 CHAIRPERSON MILLER: Yes, I think
4 that would be valuable for the Board.

5 MR. RICE: Okay.

6 CHAIRPERSON MILLER: So it's
7 getting on the later side. Are there any
8 other questions for the Office of Planning?
9 The ANC is not here. We have gone through
10 that. Anybody here to testify in support or
11 opposition to this application? Not hearing
12 from anyone, are there any other remarks you
13 would like to make before we close this
14 hearing?

15 Okay. We are going to leave the
16 record open for a revision of plans in
17 accordance with the discussion we have had
18 today and for a report from the Office of
19 Planning in this case and in the previous
20 case.

21 I would just say it looks like
22 certainly that the project is a good project

1 and the Board doesn't have real concerns about
2 compliance with the regulations and things
3 like that. You have heard just the specific
4 areas that the Board has some concerns with
5 when considering the harmony with the rest of
6 the neighborhood.

7 Okay. We are going to put this
8 off for decision to February 5th as well. For
9 the filings in the last case did we say
10 January 29th?

11 MS. BAILEY: January 28th, Madam
12 Chair.

13 CHAIRPERSON MILLER: 28th. Is
14 that doable? I do have a question. Mr.
15 Dettman talked about more specific landscaping
16 plans. Is that a problem for you to meet that
17 deadline? You can do that? Okay. Any
18 questions?

19 MS. BAILEY: Madam Chair, I do
20 have a question if you don't mind, please.
21 There was a lot of discussion about the
22 graphics that was presented. Do you want a

1 copy to go into the record or --

2 CHAIRPERSON MILLER: I thought
3 everything that was on the graphics was in our
4 record. Is that not so? I'm sorry. Is there
5 something in the graphics that is not in our
6 file that we -- you will provide that?
7 Provide that as well.

8 Thank you, Ms. Bailey.

9 I think that concludes the hearing
10 on this case. Thank you very much. I think
11 -- well, I would suggest that we adjourn at
12 this time and then reconvene for the afternoon
13 hearings at 3:00. Do the Board members agree
14 with that? Take a little bit of time to
15 review the cases for the afternoon? Oh,
16 you're not here? Okay. That's what we'll do
17 then. We'll be back at 3:00.

18 Oh, for those of you who didn't
19 hear earlier, we have rearranged the schedule
20 from, I believe, what was advertised for the
21 afternoon hearing so we will be starting with
22 17671, appeal of ANC-1A, when we return.

1 Thank you.

2 (Whereupon, off the record at 2:11
3 p.m. for lunch to reconvene at 3:11 p.m.)

4

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

6 3:11 p.m.

7 CHAIRPERSON MILLER: Good
8 afternoon, ladies and gentlemen. This hearing
9 will please come to order. This is the
10 January 15th public hearing of the Board of
11 Zoning Adjustment of the District of Columbia.

12 My name is Ruthanne Miller. I'm
13 the Chair of the BZA. To my right is Marc
14 Loud, our Vice Chair. To my left is Mary
15 Oates Walker, our newest Board member just
16 joining us today for the first time. And
17 Shane Dettman is next to her.

18 Also zoning us on the dias is Ms.
19 Lori Monroe from the Office of Attorney
20 General. Ms. Beverley Bailey from the Office
21 of Zoning and I believe Mr. Cliff Moy will be
22 joining us as well from the Office of Zoning.

1 Copies of today's hearing agenda
2 are available to you and are located to my
3 left in the wall bin near the door. Please be
4 advised that this proceeding is being recorded
5 by a court reporter and is also webcast live.
6 Accordingly, we must ask you to refrain from
7 any disruptive noises or actions in the
8 hearing room.

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

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

1 right.

2 The order of procedure for special
3 exceptions and variances is as follows: (1)
4 Statement and witnesses of the application;
5 (2) Government reports including Office of
6 Planning, Department of Public Works, DDOT,
7 etc.; (3) Report of the Advisory Neighborhood
8 Commission; (4) Parties or persons in support;
9 (5) Parties or persons in opposition; (6)
10 Closing remarks by the applicant.

11 Pursuant to Sections 3117.4 and
12 3117.5 the following time constraints will be
13 maintained. The applicant, persons and
14 parties, except an ANC in support, including
15 witnesses, 60 minutes collectively. Persons
16 and parties except an ANC in opposition
17 including witnesses, 60 minutes collectively.
18 Individuals, three minutes.

19 These time restraints do not
20 include cross examination and/or questions
21 from the Board. Cross examination of
22 witnesses is permitted by the applicant or

1 parties. The ANC within which the property is
2 located is automatically a party and a special
3 exception or variance case. Nothing prohibits
4 the Board from placing reasonable restrictions
5 on cross examination including time limits and
6 limitations on the scope of cross examination.

7 The record will be closed at the
8 conclusion of each case except for any
9 materials specifically requested by the Board.
10 The Board and the staff will specify at the
11 end of the hearing exactly what is expected
12 and the date when the persons must submit the
13 evidence to the Office of Zoning. After the
14 record is closed no other information will be
15 accepted by the Board.

16 The Sunshine Act requires that all
17 public hearings on each case be held in the
18 open and before the public. The Board may
19 consistent with its rules of procedure and the
20 Sunshine Act enter into executive session
21 during or after the public hearing on a case
22 for the purposes of reviewing the record

1 and/or deliberating on a case.

2 The decision of the Board in
3 contested cases must be based exclusively on
4 the public record. To avoid any appearance to
5 the contrary the Board request that persons
6 present not engage the members of the Board in
7 conversation. Please turn off all beepers and
8 cell phones at this time so as not to disrupt
9 the proceeding.

10 The Board will now consider any
11 preliminary matters. Preliminary matters are
12 those which relate to whether a case will or
13 should be heard today such as request for a
14 continuance, postponement, or withdrawal, or
15 whether proper and adequate notice of the
16 hearing has been given.

17 If you are not prepared to go
18 forward with a case today, or if you believe
19 that the Board should not proceed, now is the
20 time to raise such a matter.

21 Does the staff have any
22 preliminary matters?

1 MS. BAILEY: Good afternoon, Madam
2 Chair, members of the Board, to everyone.
3 Staff does not at this time.

4 CHAIRPERSON MILLER: Therefore,
5 would all individuals wishing to testify today
6 please rise to take the oath and Ms. Bailey
7 will administer it.

8 MS. BAILEY: Would you please
9 raise your right hand. Do you solemnly swear
10 or affirm that the testimony you will be
11 giving today will be the truth, the whole
12 truth, and nothing but the truth? Thank you.

13 CHAIRPERSON MILLER: Ms. Bailey,
14 when you are ready to call the first case, I
15 believe the first case we will be hearing will
16 be 17671 of ANC-1A.

17 MS. BAILEY: Thank you, Madam
18 Chair. Appeal No. 17671 of Advisory
19 Neighborhood Commission 1A, pursuant to 11
20 DCMR 3100 and 3101, from a decision of the
21 Zoning Administrator, to issue Building Permit
22 No. 90426, dated December 15, 2006, for the

1 conversion of a single family dwelling into a
2 four (4) unit apartment at 1432 Monroe
3 Street, N.W. The property is zoned R-5-B and
4 it's located in Square 2676 on Lot 792.

5
6 Madam Chair, this application was
7 previously scheduled for October 23rd and
8 30th. It was continued today and there is a
9 motion before the Board from DCRA to dismiss
10 the appeal.

11 CHAIRPERSON MILLER: Thank you.
12 Are all the parties in this case at the table
13 at this point? Okay. Could you introduce
14 yourself for the record then please.

15 MR. TAYLOR: Dennis Taylor,
16 Assistant Attorney General, representing DCRA
17 and the Office of the Zoning Administrator.
18 With me is Mr. Matthew LeGrant, the Zoning
19 Administrator.

20 MR. COOPER: Robert Cooper from
21 the law firm of Cooper and Krickman on behalf
22 of the owner of the property, Mr. Peter

1 Dobrowski, who is sitting to my left. To my
2 right is Mr. James Phillips, the architect and
3 designer of this project at 1432 Monroe
4 Street, N.W.

5 MS. THEISEN: My name is Anne
6 Theisen. I live at 1514 Monroe Street, N.W.
7 I am ANC Commissioner for 1A-05 in which 1432
8 Monroe Street is located. I am Vice Chair of
9 the ANC and Chair of the Planning and Zoning
10 Committee of the ANC.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. Before we get to the motion to dismiss,
13 I just wanted to explore as a preliminary
14 matter whether or not the appeal might be
15 moved or what is happening with respect to a
16 revised permit.

17 In particular, attached to Exhibit
18 18 is a message from Linda Argo, DCRA, to Ms.
19 Theisen admitting that the floor area ratio
20 was incorrectly approved and saying that the
21 owner was going to be coming back with revised
22 plans and there would be a revised permit

1 issued and that Mr. LeGrant was going to be
2 consulting with the neighbors before approval
3 of any such permit if I understand this
4 message correctly. Now we are wondering what
5 is the status then of the permit that is being
6 appealed.

7 MR. TAYLOR: Madam Chair, there
8 has been considerable consultation among all
9 three parties in this matter. An application
10 for a revised permit has been submitted by the
11 building owner. In the opinion of the Zoning
12 Administrator that application cures the one
13 defect that was identified and is otherwise
14 consistent with all zoning regulations.

15 It was approved this morning by
16 the Zoning Administrator. It is my
17 understanding that it was also approved this
18 morning by structural. It is awaiting review
19 by the person who does the fire review so I
20 cannot tell you that the building permit has
21 issued. I don't think that it has. I expect
22 it will issue tomorrow but that is not today.

1 CHAIRPERSON MILLER: Okay. So, in
2 your view, the issuance of that permit, the
3 revised permit, will not moot the issues in
4 this case?

5 MR. TAYLOR: Yes, Madam Chair.

6 CHAIRPERSON MILLER: Now, in your
7 view.

8 MS. THEISEN: In our view these
9 matters prove our appeal. The e-mail from Ms.
10 Argo stating that FAR was exceeded is exactly
11 to point on our appeal. We feel that the
12 plans were approved incorrectly. These
13 particular plans should not have been
14 permitted. That is the basis in the case of
15 our appeal. We are asking that the BZA review
16 the circumstances and the plans and see that
17 they should not have been permitted in the
18 first place.

19 Further, we have not -- I think
20 that we had talked about having some
21 opportunity to discuss. We have not. Nothing
22 has really been moved forward but it is our

1 feeling that particular e-mail from Ms. Argo
2 just exactly proves our case.

3 Our appeal says that the plans as
4 permitted exceed FAR. The Zoning
5 Administrator does not have any discretion to
6 approve plans that exceed FAR and he did so.
7 Therefore, the plans were incorrectly
8 permitted.

9 CHAIRPERSON MILLER: Okay. How
10 are you aggrieved now?

11 MS. THEISEN: It goes to the
12 integrity of the process. The changes were
13 made because this appeal was made. If our
14 appeal had never been made then none of these
15 changes would have been made. I guess the ANC
16 feels that the residents of D.C. need to know
17 that there is a process by which their rights
18 are protected.

19 A building permit is issued, that
20 the plans are understood, that there is not
21 any tinkering kind of behind the scenes. If
22 there is a problem a building permit is

1 revoked, new plans are submitted, and new
2 action is taken on those new plans so then if
3 there are any further issues to address on the
4 new plans, those can be.

5 If we are in kind of a nebulous
6 area of new plans coming in and out, at what
7 point then does the opportunity to appeal
8 begin and end and that is our concern right
9 now.

10 CHAIRPERSON MILLER: Mr. Cooper.

11 MR. COOPER: Madam Chair, I guess
12 the point made here is there is an opportunity
13 for the community to respond to permits being
14 issued and I think that is clear. The system
15 works. There is also a built-in system of
16 flexibility in the event an issue is
17 determined or found to be an issue either in
18 the permitting review process or even in the
19 construction process plans get changed all the
20 time.

21 An inspector comes out and says --
22 even though it may have been approved in a

1 drawing, the inspector in the field doesn't
2 like it, then changes are made. I don't think
3 you then say because a change has to be made
4 the permit is absolutely revoked. I think
5 many of the buildings in town probably would
6 never have gotten built.

7 I think what is needed here is to
8 commend the ANC for bringing this to the
9 attention of the administrators at DCRA and
10 raising the point. I think the ANC raised a
11 number of points and there was one that was an
12 issue. It has been addressed by the owner.

13 What was required really was a
14 minor modification to the mezzanine level.
15 Thirty square feet was removed from the plan
16 and everything was in compliance with the
17 zoning regulations. It was an oversight that
18 was missed in the review process. I believe
19 the District will admit it. Ms. Argo has
20 already done so. Changes have been made,
21 revision is in process.

22 The Zoning Administrative has

1 reviewed the application, signed off on this
2 building permit application. Structural has
3 reviewed it, signed off on it. We would have
4 had a permit issued today but there was no one
5 from the fire department to look over the
6 final minor modification.

7 CHAIRPERSON MILLER: In your
8 opinion is the appeal moot?

9 MR. COOPER: Yes.

10 MS. THEISEN: Madam Chair, there
11 has to be a more reliable public process and
12 I certainly don't feel as though some of the
13 things that were said at our last hearing have
14 come about. Additionally, there are more than
15 just the corrections to the FAR that have been
16 made.

17 I think those additional
18 corrections also are pertinent points to our
19 case, not just the FAR. The plans there have
20 been proposed changes to plans including the
21 stair tower on the roof, the closed court
22 area, the parking pad. Every single one of

1 the issues that we brought up in our case have
2 had additional proposed plans submitted to the
3 Office of the Zoning Administrator.

4 I don't have any idea of the
5 status of those presented plans but it seems
6 to me the fact that every single issue that we
7 have addressed has been at least discussed
8 brings to light the fact that this case needs
9 to be discussed further and the issues be
10 brought before the BZA are not moot.

11 CHAIRPERSON MILLER: What issues
12 aren't moot? The FAR issue it appears is
13 moot. I think we should applaud you. I don't
14 think you should be upset. I mean, basically
15 you brought this to the attention of DCRA.

16 You filed an appeal and you got
17 the right result so you don't need the Board
18 to do anything because the result has already
19 come about. My question to you is is there
20 any other issue other than that where you
21 claim they are not in compliance and you need
22 the Board to make a decision?

1 MS. THEISEN: We don't know what
2 the standing is of anything at this point. We
3 have a set of permitted plans that at least
4 exceed FAR and potentially have other
5 problems. We believe they have many other
6 problems and the fact they have been corrected
7 supports that.

8 Right now there are no other
9 permitted plans so we really feel like in
10 order to defend the rights of the residents of
11 nearby this particular construction, we need
12 to know that the BZA agrees that, indeed, the
13 first permits were issued in error.

14 CHAIRPERSON MILLER: We deal here
15 with jurisdiction to begin with and in order
16 for the Board to have jurisdiction over a
17 case, there has to be an aggrieved person or
18 party and there has to be a live case or
19 controversy.

20 If the problem has been cured,
21 there is no live controversy. I wouldn't even
22 know what we would be addressing. We don't

1 have jurisdiction to just say, "Oh, you did
2 the right thing." That's not what we do. We
3 address controversies where we need to decide
4 something.

5 It appears from what I'm hearing
6 that they have revised the plans and addressed
7 the issue. If there is another issue that
8 they haven't addressed, you need to articulate
9 that so we know what controversy might still
10 be alive. I haven't heard that.

11 MS. THEISEN: The issues that we
12 have brought before us have not been -- I
13 haven't seen or been a part of any interaction
14 to discuss what these new plans are. I was
15 told that would happen. I was handed a set of
16 the plans. We were told that the community
17 and the public would be part of the process of
18 discussing these new plans. None of that has
19 happened.

20 We received -- I just received the
21 final drawing now in this hearing room.
22 Certainly I cannot say that our points are

1 moot because I don't have anything showing us
2 that, indeed, these issues have been resolved.

3 Nobody has come to me with
4 anything that is certain that says these are
5 the new plans. These plans have been
6 permitted and I don't know are the new plans
7 going to get a new set of permits? Are the
8 old plans, therefore, going to be revoked?

9 I would like to know what the
10 process is so that if there is another problem
11 we know how we can address that so that moving
12 forward we can maintain the rights of the
13 residents who are nearby this project.

14 CHAIRPERSON MILLER: Okay. Let me
15 just respond to that in two ways. First of
16 all, if there are revised plans you will have
17 60 days from your knowledge of those plans to
18 appeal anything new in those plans.

19 MS. THEISEN: Will they be issued
20 a new building permit?

21 CHAIRPERSON MILLER: I better let
22 Mr. LeGrant respond to those kind of

1 questions.

2 Also, Mr. LeGrant, what happened
3 to that last sentence then in the memo from
4 Ms. Argo that says, "Before any revised
5 building permit is issued to reflect revised
6 plans, Mr. LeGrant will offer you and other
7 interested neighbors the chance to review the
8 plans.

9 MR. TAYLOR: There are really two
10 questions there and I will go ahead and
11 address the first question which is the
12 process and what does a revised permit mean in
13 the overall scheme of things. A revised
14 permit does have a new permit number --

15 MS. THEISEN: Excuse me, Madam
16 Chair. I'm just wondering, Mr. Taylor is the
17 attorney. Can we have the Zoning
18 Administrator answer that question?

19 CHAIRPERSON MILLER: I understand
20 we are receiving evidence and we get that from
21 the witness and not the attorney. I don't
22 think this is really evidence. I think this

1 is an explanation of the process but, you
2 know, do other Board members have a concern
3 with this? I don't think this is evidence.

4 MR. TAYLOR: The revised permit
5 has been issued and it automatically becomes
6 a part of the original permit. The builder is
7 still under the restrictions of time lines
8 from the original permit and essentially the
9 new plans take the place of the plans for the
10 original permit and the original plans
11 disappear.

12 As far as the second question you
13 had, I will turn the microphone over to Mr.
14 LeGrant.

15 MR. LeGRANT: Madam Chair, members
16 of the Board, during this process we certainly
17 have consulted with Ms. Theisen and the
18 community and we have met at least on two
19 occasions. I did transmit, I believe,
20 approximately two days ago the revised plans
21 with the exception of the one sheet that
22 showed some additional information but a

1 revised plan set that was considered by my
2 office and approved today.

3 I was probably somewhat remiss in
4 not probably carving out some time to sit down
5 and walk through those plans specifically with
6 Ms. Theisen. None the less, they showed the
7 key issue in my mind, the FAR problem, and how
8 the FAR problem was cured with the revised
9 plans.

10 The plans also illustrate some
11 other aspects that were unclear in the
12 original building permit plan set. That has
13 been the extent of the consultation in this
14 latest phase but certainly prior to this we
15 have met and discussed the issues of the
16 application. I have also been to the site
17 twice to look at the site myself.

18 CHAIRPERSON MILLER: Let me ask
19 you how this revised permit whether that moots
20 all the issues in this case because the
21 message from Ms. Argo talks about FAR and you
22 have all talked about FAR and that there was

1 a change to correct the FAR and agreed that
2 was an error. Looking back at the appeal it
3 appears that the appellant is also challenging
4 height, on-site parking, and a closed court.
5 Have those issues been addressed or what is
6 the status of that?

7 MR. LeGRANT: In my opinion those
8 are not issues with the plans or permits that
9 have been issued to date. Some of them had to
10 do with enforcement with the actual
11 construction on the ground. It is my opinion
12 that all the other aspects upon my review with
13 the plans and the site are not zoning issues
14 that are a matter of the appeal and we are
15 prepared if the hearing goes forward to
16 address those.

17 MR. COOPER: If I may, Madam
18 Chair, on the issue of parking I think what
19 happened the original drawings did not perhaps
20 illustrate clearly the layout of the parking
21 pad and I think that is what these additional
22 drawings or revisions to the drawings really

1 further highlighted that, you know, here is
2 this measurement and this is exactly where it
3 sits.

4 The additional drawings were
5 requested of the owner to show something that
6 I guess the architect and the building thought
7 were obvious, that there was a solid brick
8 wall. We provided the District and ultimately
9 the ANC with a drawing of a solid brick wall
10 from the front of the building to the back of
11 the building, things of that nature.

12 They weren't significant changes.
13 They were more additional drawings to
14 illustrate what would have otherwise been an
15 obvious, I guess, that it's a party wall that
16 goes from point A to point B as a solid brick
17 wall. Those were the additional drawings that
18 were provided.

19 CHAIRPERSON MILLER: Just to kind
20 of sort what is here and not here, what about
21 this height issue?

22 MR. COOPER: To us it was never an

1 issue. It was below the permissible height.
2 The drawings clearly reflected the height of
3 the structure. There is a parapet wall. I
4 think it was an issue of understanding what a
5 ceiling roof height is and a parapet wall
6 height. I believe that was addressed by Mr.
7 Taylor early on.

8 Again, parking. It wasn't clearly
9 identified as parking. It showed part of the
10 rear yard. The additional drawing showed the
11 entirety of the rear yard all the way to the
12 alley's edge. And the closed court, there is
13 no closed court. There is no court at all.
14 It is an interior light well with a skylight
15 on top of it which does not create a court.

16 CHAIRPERSON MILLER: Okay. This
17 is my final question on this topic and that is
18 we've held that when there is a revised permit
19 that doesn't start the clock ticking again for
20 issues that haven't changed from the original
21 permit.

22 For instance, if nothing has

1 changed with respect to height or nothing has
2 changed with respect to on-site parking
3 whether it's even an issue, that hasn't
4 changed. FAR has changed. If you found a
5 problem in the permit with respect to the FAR,
6 your time to appeal starts again with this
7 revision.

8 However, with respect to these
9 other issues that are in your appeal, if
10 nothing has changed, you wouldn't be able to
11 then challenge them if you were -- erase them
12 if you were to challenge the revised permit.
13 My question to you, Mr. Theisen, is what
14 issues are still alive that you want the Board
15 to decide for real that you have raised in
16 your appeal?

17 MS. THEISEN: Like I said, some
18 things have been changed on the construction
19 site. We have gotten new plans at the very
20 last minute. I believe that at the last
21 hearing you gave a deadline of December 7th
22 for new submissions and we did not hear

1 anything really concrete up until that time.

2 We haven't had an opportunity to
3 review them closely. We have not had an
4 opportunity to meet with the Zoning
5 Administrator which we were promised. We
6 really feel like the fact that all of these
7 issues, every single issue that we asked to be
8 addressed, is suddenly being addressed and
9 having some kind of change made shows that the
10 permit was originally issued in error and we
11 would very much like the BZA to review the
12 case and to rule that, indeed, that is what
13 happened.

14 CHAIRPERSON MILLER: Okay. I'll
15 say this one more time. We only review live
16 cases and controversies. If the permit was
17 issued in error as DCRA has even admitted and
18 they have cured the problem with new plans and
19 a new permit, it's not within the Board's
20 jurisdiction to review it and make that
21 determination that you are asking.

22 MS. THEISEN: I'm afraid I'm very

1 confused because I don't know what our
2 standing is now. I feel very --

3 CHAIRPERSON MILLER: Let me
4 explain it to you. First of all, it looks to
5 me like you should feel very good about the
6 process in that you are successful. You
7 noticed a problem. You brought it to DCRA.
8 You filed an appeal. They changed the plans
9 in response and corrected the problem. That's
10 the best result you can get.

11 My question is if there is another
12 problem and there is a controversy, say, of
13 whether they are in compliance or not, a real
14 controversy, then that is something for the
15 Board to do. Otherwise, there is nothing for
16 the Board to do with this time.

17 If you are saying to me, "Oh, I
18 need more time to review the plans. I can't
19 tell whether my issues have been resolved,
20 that is something the Board can consider but
21 there is nothing for the Board to do today if
22 all you are asking us to do is say, "Yeah,

1 they made a mistake."

2 MS. THEISEN: I guess I would like
3 to review everything but FAR then. I haven't
4 had an opportunity to do that.

5 CHAIRPERSON MILLER: Okay. Are
6 you asking for a continuance so that you can
7 review to determine whether issues have been
8 resolved?

9 MS. THEISEN: No, I would like the
10 Board to review it.

11 CHAIRPERSON MILLER: Review what?
12 We'll hear it today then. What are you
13 saying? Review what?

14 MS. THEISEN: I would like to go
15 forward with the case on the other items
16 beyond FAR.

17 CHAIRPERSON MILLER: Okay. So you
18 are saying that you are going to be arguing
19 that those problems still exist.

20 MS. THEISEN: I believe that there
21 is a possibility that the height problem still
22 exist. The plans that we have --

1 CHAIRPERSON MILLER: Not that
2 there is a possibility. You have to ask the
3 appellant. If you have a complaint, you need
4 to articulate it and argue it. If you think
5 there may be a possibility, that doesn't --

6 MS. THEISEN: We believe that the
7 height was miscalculated because of the level
8 at which the initial measurements were taken.

9 CHAIRPERSON MILLER: Let me say
10 this. You have the burden of proof as an
11 appellant. If you are prepared to go forward
12 on your appeal, that is your choice. The
13 first item would be whether it's moot and you
14 would argue that you don't think it is
15 perhaps. Then the second argument would be
16 the timeliness and then we would get to the
17 merits.

18 Okay. Just so we have this
19 straight, what we understand is that the
20 revised plans affect the FAR and that the FAR
21 is no longer at issue in this appeal right
22 now. It is addressed in the revised plans.

1 What you will be appealing will be the other
2 items listed on your appeal that the revised
3 plans do not affect such as height, parking,
4 court. Is that correct?

5 Let me just ask you one -- I guess
6 you have met with Mr. LeGrant already. My
7 question is that it sounds like when I listen
8 to what is going on here that perhaps if you
9 had an opportunity to actually sit down with
10 Mr. LeGrant that there might not be any issues
11 left but I could be mistaken.

12 For efficiency we would say if
13 that is the option here, we would encourage
14 that but you are the appellant and today is
15 your hearing day. If you want to appeal all
16 those issues that are not affected by the
17 revised permit, we can do this right now.

18 MS. THEISEN: I would like to go
19 forward. Madam Chair, I do want to say as
20 well once again that part of my concern is
21 really the integrity of the whole building
22 permit process so that we as residents, so

1 that commissioners as representatives of
2 residents really can know for certain that
3 permits are issued properly. When they are
4 improperly permitted there is a set procedure
5 that addressed them without back-room dealings
6 and other things that could come up.

7 I just feel as though because of
8 the way this process has been handled without
9 proper revocation of one permit and reissuance
10 of another permit so that at every stage of
11 the game the people who are nearby know what
12 has happened, that proper notice is given for
13 changes so that opportunity is there for
14 people to weigh in.

15 It is really important that happen
16 and that did not happen here and that is
17 really kind of the basis of much of our case.
18 What we are asking is for our appeal to be
19 approved just in having the BZA state that,
20 indeed, this permit was originally -- these
21 plans were originally improperly and
22 incorrectly permitted and it should not have

1 been permitted as they were.

2 VICE CHAIRMAN LOUD: But I think,
3 if I understand sort of the exchange we are
4 having, the very point that you want
5 reinforced is the area that we are not going
6 to inquire into if we proceed further.

7 Whereas the parts of your argument
8 that are not as strongly supported, at least
9 based on the pleadings and the discussions
10 that we have exchanged so far, are the point
11 that we are going to go into the height issue,
12 etc.

13 Those are the points that the
14 record will speak to and that the record will
15 be available for everyone else to review at a
16 subsequent point. The very issue about the
17 FAR is the one that will not be part of what
18 we consider right now. As Madam Chair says,
19 there are limitations that we have in terms of
20 addressing the integrity issue without a live
21 dispute.

22 There are other places in the

1 District Government that address those kinds
2 of things and I am certain that you are aware
3 of many of them including counsel oversight
4 hearings, including inspector general,
5 including the director's office if you feel
6 that along the way in the process there have
7 been some very major missteps.

8 It's not necessarily BZA that
9 would be the vehicle for addressing that but
10 they are certainly out there. I just wanted
11 to share that and put that on the record as
12 you weigh whether or not you really want to go
13 forward with the elements of your case that
14 are still in play.

15 MS. THEISEN: I do feel that the
16 other issues are also important. I also very
17 strongly feel that the e-mail from Ms. Argo
18 and the fact that so many changes have been
19 made really do prove out case and I would like
20 to move forward.

21 CHAIRPERSON MILLER: Okay. Let me
22 just figure this out. I just want to say I

1 find this very disconcerting because I think
2 there are people here who have been waiting
3 all day who have real legal issues for this
4 Board to decide. What I heard from you sounds
5 like you're upset with the process, with what
6 is going on at DCRA, and that's a very general
7 concern.

8 We hear that and we don't have
9 oversight over DCRA so we can't order them to
10 do certain things and make the process better
11 that way. What appears here is they have
12 responded. Mr. LeGrant, I believe, I have
13 never known him to lie to this Board, has said
14 that he is willing to work with the community
15 and it appears that he ran out of time and it
16 is unfortunate.

17 It seems to me it would make much
18 more sense if you worked with Mr. LeGrant and
19 then pursued these other theories, which I'm
20 not sure what they are and you will have to
21 articulate specifically as an appellant what
22 the claim is that you are really making. We

1 don't play games here.

2 I mean, we really try to resolve
3 real disputes. This is your hearing and you
4 have the burden of proof. All I would say is
5 look at this in a different way. You have
6 been successful. Often court works that way.
7 You bring something to court and then they
8 settle beforehand and the court doesn't then
9 hear the case. They don't need to hear the
10 case. It is settled and you are victorious.

11 You have achieved your result and
12 that is the message that we are trying to give
13 to you. I don't know for sure the status of
14 those other claims. We have probably talked
15 about this enough and you have said many times
16 you want to proceed.

17 Mr. LeGrant, it is my
18 understanding that you would be happy to work
19 with the community on this issue so that they
20 understand the plans. I will wait for her to
21 confer.

22 MS. THEISEN: I'm sorry.

1 CHAIRPERSON MILLER: I would like
2 to recommend, but I am not going to order it,
3 is that you give Mr. LeGrant the opportunity
4 to work with you, show you the plans, get your
5 input, and then see if there is really a real
6 case or controversy and we could continue this
7 case and then proceed on that date if there
8 really is something specific that you need the
9 Board to decide.

10 MS. THEISEN: Is it possible to
11 continue the case?

12 CHAIRPERSON MILLER: Yes, it is
13 possible considering that you have not had an
14 opportunity to review the permit and the plans
15 and what we are hearing is to be able to
16 assess how that affects your case. Is there
17 an objection from opposing counsels?

18 MR. TAYLOR: I'll let Mr. Cooper
19 speak first on that.

20 MR. COOPER: One second, Madam
21 Chair.

22 MR. TAYLOR: While Mr. Cooper is

1 thinking on that topic, I would bring up there
2 is one other preliminary matter that I think
3 would need to be discussed today if the case
4 is going to be continued. At this point I
5 won't go any further than that. We may not
6 have to.

7 MR. COOPER: Madam Chairman, I
8 think that was the point my client was trying
9 to relay to me as well. Again, there are
10 those other three or four issues that were
11 raised in this appeal but obviously if this
12 appeal is untimely, then there is basically no
13 need for a continuance on that issue.

14 However, the additional issues
15 that were raised is no parking. One issue was
16 no parking. There are clearly two parking
17 spaces reflected on the drawings. It may not
18 have been as clearly reflected on the initial
19 drawings but it has been reflected.

20 CHAIRPERSON MILLER: Mr. Cooper, I
21 know. It sounds to me that perhaps these
22 issues will go away --

1 MR. COOPER: I believe so.

2 CHAIRPERSON MILLER: -- if you
3 talk about them. That is why I think the
4 Board is disinclined to even get into the
5 motion to dismiss first. If these issues go
6 away the case goes away anyway. It seems to
7 me it would be better if the case went away
8 upon an understanding with the community that
9 the building complies with the requirements.
10 Mr. LeGrant has already committed to meeting
11 with the community so why is that an issue?

12 MR. COOPER: I guess only in the
13 event that after these meetings that we are
14 still at the point where we are coming back
15 for another hearing, then the issue of whether
16 the original appeal was timely or not remains
17 an issue.

18 CHAIRPERSON MILLER: Oh, it does.
19 That would be the first item on our agenda.

20 MR. COOPER: I guess my client,
21 who is paying by the hour, says, "We're here.
22 Can it be addressed?"

1 CHAIRPERSON MILLER: We may be
2 here more hours than we need to be if we
3 address a motion to dismiss that we don't need
4 to address if it can be resolved, if the case
5 can be resolved by communication which seems
6 to be better for everyone.

7 MR. COOPER: I just thought I
8 would put that on the record.

9 CHAIRPERSON MILLER: I understand
10 that.

11 Ms. Theisen.

12 MS. THEISEN: Excuse me. No, we
13 just are very interested in being sure that
14 our rights are upheld and that we have the
15 opportunity to really look this over before
16 agreeing to dismiss and we would really like
17 to have the case continued so that we can look
18 at things more thoroughly and communicate more
19 with Mr. LeGrant which we haven't had an
20 opportunity to do having just received the
21 plans.

22 CHAIRPERSON MILLER: Okay. The

1 Board members agree that is the better way to
2 proceed at this point. How much time would
3 you like? We will set this down for another
4 date. If you all meet and determine that
5 there are no issues left in the case, then you
6 can let us know to dismiss the case.

7 You can submit something in
8 writing and it will be dismissed. If you do
9 not do that, I guess then we would plan to be
10 here on that date and we would start with the
11 motion to dismiss based on timeliness. Then
12 we would get into whatever case there might be
13 left in the appeal. How much time do you
14 need?

15 MR. LeGRANT: Before we leave
16 today I will certainly set the meeting within
17 the next week with Commissioner Tyson and the
18 neighbors.

19 MS. THEISEN: I would like to be
20 -- first of all to know that I have a total
21 approved plan set. I have been getting things
22 in bits and pieces so I would like a surety

1 that, indeed, everything is complete. I would
2 like some time to look over it. I have to say
3 that I don't think I would be able to meet
4 next week but I could commit to the week after
5 that.

6 MR. TAYLOR: Madam Chair, as soon
7 as we leave these desks, I will share my plan
8 set with them to compare with what they have
9 to make sure they feel satisfied in that
10 regard.

11 CHAIRPERSON MILLER: Okay. I
12 think we have to look over our calendar for a
13 tentative date to slip it in. Then I would
14 suggest a date to be determined in advance of
15 that date. Certainly if you are going to
16 dismiss the appeal, tell us as soon as
17 possible so we can adjust our schedule.

18 Two, if you are not going to
19 dismiss, then I think we should address what
20 is moot in the appeal in writing and what
21 isn't and what exactly the appellant plans to
22 appeal with specificity. Not just like height

1 but like what is wrong with the height.

2 Mr. Moy, are you looking at the
3 schedule?

4 MR. MOY: Yes, Madam Chair. Based
5 on what I've just heard, it seems at least a
6 minimum of two weeks depending on whether or
7 not the parties intend to meet more than --
8 intend to have more than one session. Just
9 off the top of my head I would say probably
10 setting a date perhaps the first or second
11 Tuesday of February.

12 CHAIRPERSON MILLER: Do we have
13 time on those dates? I would be hesitant to
14 add to the first date in February since we
15 have a lot of decisions scheduled in the
16 morning and that is what often pushes us to
17 run late.

18 MR. MOY: That's correct.
19 Considering the history on this appeal case,
20 staff would suggest maybe the earliest
21 February 12th or the afternoon of February
22 19th.

1 CHAIRPERSON MILLER: Are those
2 dates okay with you all in the event that we
3 have a hearing on this case?

4 MR. COOPER: The 19th would work
5 better for me, Madam Chair. The 12th I have
6 a conference.

7 MS. THEISEN: What day of the week
8 is that?

9 CHAIRPERSON MILLER: Tuesday the
10 19th.

11 MR. TAYLOR: The Government would
12 be comfortable with either date.

13 MS. THEISEN: The 19th would be
14 much better for me.

15 CHAIRPERSON MILLER: Okay, good.
16 It's the 19th then. That would be second in
17 the afternoon.

18 MR. TAYLOR: Madam Chair, this
19 might be the right time to bring up that other
20 matter of which I spoke. As I am sure you are
21 aware, regarding the motion to dismiss you
22 assigned a deadline for an opposition to that

1 motion be filed by November 20th and, indeed,
2 one was filed.

3 Then you assigned a deadline of
4 December 7 for the Government to reply to that
5 opposition and the Government, indeed, did
6 reply on December 7th. One week ago we were
7 served with another opposition to the motion.
8 If that is going to be part of the record,
9 then I would have to insist on being able to
10 submit a reply to that bite of the apple as
11 well.

12 CHAIRPERSON MILLER: I'm really
13 not sure what you are referring to. Are other
14 Board members? I'm not sure I've seen that.
15 Okay. I didn't notice that or I didn't see
16 the last one but I think that's the case.

17 Ms. Theisen, what is that about?

18 MR. TAYLOR: I guess formally,
19 Madam Chair --

20 CHAIRPERSON MILLER: You want an
21 opportunity to respond?

22 MR. TAYLOR: I would like to

1 object to filing that opposition a month and
2 a half late, especially since an opposition
3 was already timely filed. Therefore, it would
4 just be stricken from the record and there
5 would be no need to submit a reply.

6 CHAIRPERSON MILLER: I haven't
7 read it. I don't know if it made it into my
8 file. You are asking that it be stricken as
9 opposed to your filing a reply. Is that
10 correct?

11 MR. TAYLOR: That is correct.

12 CHAIRPERSON MILLER: Ms. Theisen,
13 do you want to address that quickly?

14 MS. THEISEN: I'm just wondering
15 if there is a rule for such a request or a
16 requirement for such a request. We replied to
17 his reply. I did not understand that was
18 prohibited in any way.

19 In fact, I asked if I would be
20 able to reply specifically because I knew that
21 I would not be able to meet the one week ANC
22 response deadline and I was not given a

1 complete answer but made to feel as though
2 there would be no problem with the submission
3 of additional information before this hearing
4 date.

5 CHAIRPERSON MILLER: Okay. I
6 wouldn't be inclined to strike it at this
7 point. There aren't any specific regulations
8 that govern the filing of motions and
9 oppositions and replies.

10 Unfortunately you haven't been
11 participating in our proceedings so you would
12 not necessarily know when we set a schedule
13 that we don't anticipate more pleadings. I am
14 hoping that you all are just going to come to
15 an agreement about this case and we won't have
16 to get into these issues.

17 At this point I don't think that
18 the Board is prepared to strike. The fairest
19 thing would be to leave open the opportunity
20 for DCRA to respond to that and that will be
21 the end of the filings on that question. I
22 would wait until you see whether the case can

1 just be resolved amicably.

2 MR. TAYLOR: Madam Chair, if I may
3 just make one point in response to the
4 assertion that the ANC did not have the
5 opportunity to review the response -- excuse
6 me, the opposition to the motion to dismiss.

7 Submitted along with their
8 opposition was a letter dated November 24,
9 2007, specifically saying that the November
10 14, 2007 meeting for which due notice was
11 given and a quorum and so forth, the ANC eight
12 in favor, zero opposed, zero abstentions to
13 approve attached response to the District of
14 Columbia's motion to dismiss BZA Case 17671.

15 While I understand what you are
16 saying, for matters of keeping me from doing
17 something at the last minute which I would not
18 want to do to you all, I would urge under
19 those circumstances to just stop the process
20 and say there has been a motion in opposition,
21 a reply to that opposition and in the process
22 as would typically be done in a court setting.

1 CHAIRPERSON MILLER: I think we
2 have a lot of people waiting to proceed on
3 their cases. I don't know how other Board
4 members feel but I haven't read it yet and I
5 would hesitate to strike something that I
6 haven't read just based on that.

7 However, we are not dealing with
8 this issue now. If we have to deal with this
9 motion to dismiss, I guess I could leave open
10 the possibility that the Board might decide to
11 strike this but that wouldn't leave you much
12 time to file any written response. I
13 understand your concerns.

14
15 MR. TAYLOR: If you would be
16 taking up that question at the next hearing,
17 then that would automatically mean another
18 continuance because that is when you would be
19 deciding whether or not to accept the filing.
20 It seems like we would lose something in
21 efficiency. Frankly, the fact that no one has
22 read it seems to be the most appropriate time

1 for it to be stricken.

2 CHAIRPERSON MILLER: Do others
3 have comments on this?

4 MS. BAILEY: Madam Chair.

5 VICE CHAIRMAN LOUD: I guess for
6 me on reflection just having observed where
7 the Commissioner started out in her position
8 with respect to wanting to move forward today,
9 where the Commissioner has ended up with
10 respect to that same position suggest that
11 there is a strong possibility that the
12 direction that Madam Chair is trying to move
13 everything in is going to bear fruit.

14 We could keep attaching sort of
15 these tangential issues to is in a way that
16 sort of extends everything out. I think the
17 course that you laid out earlier is the best
18 course to lay out. The Commissioner is
19 prepared now to meet with the Zoning
20 Administrator and to go over the few issues
21 that sound like remain in the case that might
22 resolve everything.

NEAL R. GROSS

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

1 To continue to sort of nit pick
2 around some of these other issues without
3 allowing for the spirit of reconciliation that
4 we saw emerge today, to me we could be here
5 forever deciding that. I think we ought to
6 continue to move in that direction and to
7 continue to encourage everybody to move in
8 that direction.

9 CHAIRPERSON MILLER: I agree.
10 Very well said. I think on that note we ought
11 to put closure on this and schedule the
12 tentative date for a continued hearing on this
13 case February 12th. Is that what we said?

14 MS. THEISEN: The 19th.

15 CHAIRPERSON MILLER: 19th.
16 February 19, second in the afternoon. Let's
17 set a date by which the parties would notify
18 us no later than a certain date if the case is
19 dismissed. Then if it's not dismissed, any
20 arguments that we haven't heard already
21 basically, one, whether the case is moot or
22 should be dismissed for some other reason,

1 then the appellant would set forth the exact
2 claims that you would be arguing at the
3 hearing with specificity.

4 MS. THEISEN: I'm sorry. What
5 date was that?

6 CHAIRPERSON MILLER: We don't
7 know. We are going to set a date back.
8 February 19th is the hearing. You are going
9 to get these plans and meet with Mr. LeGrant
10 this week supposedly. Right? Or next week at
11 the latest?

12 MS. THEISEN: Just a point on
13 that. If I could know by what date I will
14 have a set of the approved --

15 CHAIRPERSON MILLER: Exactly.
16 Okay.

17 MS. THEISEN: Nothing is approved
18 that I have.

19 CHAIRPERSON MILLER: Let's set
20 that date that she would have a full set of
21 the approved plans.

22 MR. TAYLOR: Madam Chair, with all

1 due respect to the Commissioner, I believe she
2 already has a set of approved plans. From the
3 zoning perspective the plans have been
4 approved.

5 I have a set of them right here
6 which should be identical to the set that she
7 has and I would be very happy after this
8 hearing to sit down with her to let her
9 compare those plans with this set to just make
10 sure. I am not sure that it is necessary to
11 have someone go to a print shop and come up
12 with another set of the same thing.

13 CHAIRPERSON MILLER: Well, they
14 have been revised. Correct?

15 MR. COOPER: If I may, Madam
16 Chair, in anticipation of presenting the four
17 sets to the District of Columbia to process
18 this revised permit, I provided the District
19 with three additional sets, one for Mr.
20 LeGrant, one for Mr. Taylor, and one for the
21 ANC.

22 Those were provided last week and

1 they were given to the ANC last week. There
2 was one additional page which Mr. LeGrant
3 requested of this entire wall, the west wall,
4 from front to back.

5 That was done by the architect on
6 Friday and I was able to get that to Mr.
7 LeGrant. They provided that one page to the
8 ANC today but all the other pages plus the one
9 page is the set that has been approved and is
10 working its way through the DCRA today.

11 MS. THEISEN: And is the copy that
12 I have been provided, do they have the stamp?

13 MR. COOPER: Obviously not.

14 CHAIRPERSON MILLER: But they are
15 saying they are the approved plans.

16 MS. THEISEN: If, indeed, we
17 review and find out that they are not, can I
18 know when I can be guaranteed that I will have
19 them. I mean, if we are to review these plans
20 and it is determined there is not a full set,
21 that what I've been given is not a full set,
22 can we determine a date by which I will have

1 the completed set before we leave the hearing
2 room?

3 MR. TAYLOR: Madam Chair, if it is
4 not a complete set, I will just give her my
5 set of plans.

6 MS. THEISEN: Thank you.

7 CHAIRPERSON MILLER: Okay. This
8 is what I want to set up and then we need to
9 put this to bed. The appellant would file the
10 exact claims that you are going to want us to
11 hear, the cases that are in controversy. If
12 it goes to height, you would be articulating
13 what regulation they are violating and why.
14 The height is supposed to be this and they are
15 that or whatever so they know exactly what
16 they will be defending.

17 I anticipate that the owner and
18 DCRA would file something saying if they are
19 going to move to dismiss based on any reason,
20 mootness, failure to state a claim,
21 timeliness, that would be your type of filing
22 should you choose to pursue something like

1 that. Then you would respond to each other
2 once and that's it. We need a time to set for
3 initial filings, same time, and then same time
4 response.

5 Ms. Bailey, are you looking at the
6 calendar for that?

7 MS. BAILEY: Madam Chair, to give
8 as much time as possible this is just a
9 suggestion. Please tell me if it's not
10 appropriate. January 28th would be the
11 initial filing date and then a response by
12 February 12th.

13 CHAIRPERSON MILLER: That's okay
14 with the Board. I also would say that the
15 January 28th date would also be a date
16 otherwise to let us know if the appeal will
17 not going forward, if it's going to be
18 dismissed or withdrawn. Are those dates okay
19 with the parties?

20 MR. COOPER: So that I'm clear, on
21 that either the appellant is going to clearly
22 anticipate her claims or tell the Board I've

1 withdrawn. Then the District of Columbia and
2 the other interested party will have an
3 opportunity to respond. That will be February
4 12th.

5 CHAIRPERSON MILLER: Yes, but I am
6 also giving you the opportunity to file on the
7 28th if you have any motion you want to file
8 that hasn't been filed already. We have
9 pending before us a motion to dismiss. If
10 DCRA wants to file another response to the
11 opposition that was filed, you can do it on
12 that date as well.

13 If you have any other grounds that
14 you would say that the case is moot or should
15 not go forward or anything like that, you
16 could also file that on the 28th and she would
17 have time to respond on the 12th.

18 MR. COOPER: We may not know until
19 the 28th what issues she is going to continue
20 with. How could we file an opposition on that
21 same day if we don't know what the --

22 CHAIRPERSON MILLER: You can file

1 it on the 12th.

2 MR. COOPER: February 12th. Okay.

3 CHAIRPERSON MILLER: I see what
4 you're saying.

5 MR. COOPER: Maybe a week after
6 the 28th. Let her make her filing on the
7 28th. The next week we would have to file our
8 opposition or motion or whatever and then the
9 12th is the final submission dates for
10 everyone.

11 CHAIRPERSON MILLER: Okay. I
12 think that works. Does that work? You
13 definitely have to file yours on the 28th so
14 everyone knows which way you're going, either
15 withdrawing, dismissing, or you have your
16 claims and which ones you are going to pursue.
17 Then they can respond that they are moot or
18 whatever and you can respond to them on the
19 12th.

20 MR. TAYLOR: Okay. I'm sorry to
21 be so anal, Madam Chair, but it's just part of
22 the nature of the profession, I guess. On

1 January 28th ANC will file something with you
2 determining whether they are moving forward
3 and on what issues.

4 Once that is determined, the
5 building owner and the Government would have
6 a chance to submit regarding that notification
7 of what issues are moving forward. On the
8 12th ANC submits their response to our filing.

9 It seems like there is one date
10 missing in here and that is the date between
11 the 28th and the 12th when the property owner
12 and the Government file their motions in
13 response to whatever issues may remain. Or,
14 in the alternative, we draft motions for
15 everything and then wordprocess them out once
16 we find out those issues don't exist.

17 CHAIRPERSON MILLER: Okay. We
18 really have to bring this to closure. What
19 you are not having is a reply opportunity at
20 this point. She will articulate the claims if
21 she has any.

22 You have the opportunity to

1 respond to dismiss them for whatever reason or
2 not, and then she can respond to your
3 dismissal, motion, or whatever. Now, it can
4 never end. You might want to respond to her
5 opposition but I don't think that is
6 necessary. It's not that complicated.

7 MR. TAYLOR: Madam Chair, that is
8 not what I was intending.

9 CHAIRPERSON MILLER: Okay.

10 MR. TAYLOR: On January 28th she
11 notifies the Board and the other parties of
12 what, if any, issues ANC is moving forward
13 upon. Then, as I understand it, we would make
14 any motions relevant to that that we wish to
15 make. On February 12th she then is going to
16 submit a response to any motion made by the
17 property owner or the Government. Are we
18 correct?

19 CHAIRPERSON MILLER: As it is set
20 up right now. It is Mr. Cooper's suggestion
21 that it not be simultaneous because you have
22 to know what's on the table.

1 MR. TAYLOR: So is there a date
2 for the motion that may be submitted by the
3 Government or the property owner to which ANC
4 would be responding.

5 CHAIRPERSON MILLER: You could do
6 that on February 12th.

7 MR. COOPER: No, the 4th, Madam
8 Chair.

9 MS. BAILEY: Madam Chair, February
10 5th could be that date.

11 CHAIRPERSON MILLER: February 5th.
12 That's correct. Once she has put down what
13 she wants to proceed with, then your motions
14 would not necessarily be exactly in response
15 to that but you would know what is on the
16 table and you could then file your motions.

17 MR. TAYLOR: Thank you, Madam
18 Chair, for that clarification. Now, one final
19 anal point. You are deciding whether to
20 accept the second opposition to the District's
21 motion to dismiss and then if you do accept
22 it, the time for there to be a sur-reply to

1 that opposition.

2 CHAIRPERSON MILLER: Okay. I
3 think what we stated was we make all our
4 decisions on the record. That's the way it
5 works. Otherwise we could say we'll make a
6 decision February such and such but that is
7 not the way the Board works.

8 Basically what is going to happen
9 is you have that February date to file your
10 papers and we will not have made a decision
11 about striking that other opposition. If you
12 want to file on something else, file it. It
13 doesn't mean we can decide that we are going
14 to strike it if we come to a hearing. This is
15 just the system that we have right now.

16 MR. TAYLOR: February 5th,
17 understood. Thank you.

18 CHAIRPERSON MILLER: Okay.
19 Anything else?

20 MR. COOPER: No, Madam Chair.

21 CHAIRPERSON MILLER: Do we need to
22 reiterate or do we have it, Ms. Bailey? What

1 do you think? I guess quickly run through
2 those dates.

3 MS. BAILEY: January 28th the
4 ANC's filing, February 5th response from the
5 parties, February 12th the ANC's response,
6 February 19th the Board will make a decision,
7 or continuation of the case I should say. I'm
8 sorry, February 19th continuation of the case.

9 CHAIRPERSON MILLER: On the 28th
10 if the case will be dismissed or withdrawn we
11 will be notified on that date. Okay. I think
12 it's clear. Thank you all. Good luck. I
13 hope you work it out. Hope we don't see you.

14 We are ready for the next case,
15 Ms. Bailey, whenever you are.

16 MS. BAILEY: Madam Chair, the next
17 case is Application 17620 of Leon and Peggy
18 Robbins and is pursuant to 11 DCMR 3103.2 for
19 a variance from the lot occupancy requirements
20 under section 772, a variance from the rear
21 yard requirements under section 774, and a
22 variance from the off-street parking

1 requirements under subsection 2101.1, to allow
2 the construction of a three story mixed-use
3 building at premises 1383 through 1385 H
4 Street, N.E.

5 The property is zoned C-3-A. It's
6 located in the H Street, N.E. neighborhood of
7 commercial overlay. This hearing is a
8 continuation from the June 12th and November
9 13th, 2007 Board's agenda.

10 CHAIRPERSON MILLER: Good
11 afternoon.

12 MS. FOWLER: Hi.

13 CHAIRPERSON MILLER: Would you
14 identify yourselves for the record, please.

15 MS. FOWLER: Jennifer Fowler, 1742
16 D Street. I'm the architect.

17 MR. ROBBINS: Leon Robbins, owner
18 of the property.

19 MR. RONNEBERG: Drew Ronneberg
20 with ANC-6A.

21 CHAIRPERSON MILLER: Okay. Well,
22 I think we are ready for something substantive

1 now.

2 MS. FOWLER: This is a little bit
3 more straightforward for you. We are
4 returning. Leon Robbins was here in November.
5 Just so you understand my role, he was advised
6 to bring somebody in to put together the
7 burden of proof and to also deal with the H
8 Street compliance document. He hired me to
9 take on that role so I'm here pumping him with
10 that.

11 The plans were done originally by
12 his brother who is an architect in Baltimore
13 who has done, I think, a beautiful job,
14 wonderful design. It's great use of the
15 property. I will try to address any questions
16 about the plans if they come up but I'm not
17 the architect of record as far as the drawings
18 are concerned. I'm assisting with the
19 documents.

20 We have just put in some new plans
21 and these were just modifications that came up
22 in speaking with Mr. Rice over the past few

1 weeks. Really minor changes from the previous
2 plans having to do with the store front.
3 Originally it was set back a couple feet from
4 the property line. We had to move it up to
5 the property line because of the H Street
6 overlay.

7 Also, a couple of inconsistencies
8 between the plans and elevations. It's really
9 just kind of making them so that everything
10 coordinates. There is nothing really new
11 pertaining to the case with the additional
12 plans.

13 We have also put in a plat, a D.C.
14 surveyor plat, which they had submitted
15 previously but it wasn't very clear where the
16 building stopped and started and wasn't
17 labeled so we just did some additional text on
18 there and are just bringing it to you today.
19 Nothing that really changes anything, just
20 additional information. We apologize for the
21 late submission on this. Should I go ahead
22 and go through the case?

1 CHAIRPERSON MILLER: Yeah. It
2 looks great but we are dealing with the H
3 Street overlay. I'm glad you are here to
4 address how it complies with that and the
5 variances.

6 MS. FOWLER: It's a very difficult
7 site to deal with. I'll go through first the
8 variances that we are asking for, variance of
9 lot occupancy to go up to 89.7 rather than the
10 75 percent by right and the variance for off-
11 street parking requirements.

12 The parking required would be one
13 spot and the calculations are in the burden of
14 proof. We are asking that be waived for this
15 project. We are asking for the additional lot
16 occupancy and just to address those two things
17 together.

18 The characteristics of the
19 property that make it unique, it is completely
20 landlocked. There are buildings to the east
21 and west and to the south. Directly to the
22 south is a ramp for a garage so it is

1 completely blocked in. There is no alley
2 access. It is impossible to provide parking
3 for this property.

4 According to the H Street overlay
5 we cannot introduce a curb cut on H Street.
6 We cannot set the building back from the
7 property line. There is absolutely no way we
8 can introduce parking underground or in the
9 front and there is nowhere in the back. I
10 think the parking waiver is probably the
11 easiest one to address because if you look at
12 it, it is pretty plain to see that it is not
13 possible.

14 CHAIRPERSON MILLER: How is not
15 being allowed to be set back from the property
16 line relate to the inability to provide a
17 parking spot?

18 MS. FOWLER: I suppose if we
19 didn't have the H Street overlay you could set
20 the building back and put parking in the front
21 which is exactly what they don't want and we
22 cannot put a curb cut anyway. That's it as

1 far as the parking.

2 The lot occupancy, one of the
3 challenges we are dealing with with this
4 property is the shape and the size. It is not
5 unique in its size relative to other
6 properties but, for instance, the shape of the
7 property. It has a jog at the rear.

8 There is kind of a funny court at
9 the back with another finger coming off the
10 back of it which has made it hard to deal with
11 the setbacks which is in another part of the
12 case. Also being in the H Street overlay
13 there are design requirements.

14 It is a higher standard of design,
15 a higher cost for construction. In order to
16 accommodate what he needs to make it
17 financially feasible to have enough frontal
18 space, he is requesting additional lot
19 coverage to be able to build a big enough
20 building to make it financially feasible. The
21 lot occupancy is kind of the main reason.

22 CHAIRPERSON MILLER: I'm just

1 wondering are you giving us a summary or is
2 this it? If this is it, then I would say can
3 you show me what you mean about this jog in
4 the rear or something. Can you say anything
5 more about the economics? Not that it's just
6 and feasible but kind of why is it that way.
7 Do you know what I'm saying? Just a little
8 bit more detail.

9 MS. FOWLER: Okay. I think the
10 applicant was -- they need to have a certain
11 amount of commercial rental space to make it
12 worth developing for his situation. The lot
13 coverage that we are asking for allows him to
14 do that.

15 I'm probably not addressing this
16 properly but we feel like the additional lot
17 coverage is not adversely affecting the
18 adjacent properties. I believe it does meet
19 the other tests if I can kind of continue and
20 go through that.

21 CHAIRPERSON MILLER: Go ahead.

22 MS. FOWLER: I do want to point

1 out that the FAR is well below. I think the
2 maximum allowed is 4.0 and we are only asking
3 for, I believe, 2.8 FAR. That is another part
4 of the argument. Those are the difficulties
5 with the site, the size and the fact that it's
6 land-locked and the fact that we are in the H
7 Street overlay adding additional constraints.

8 We feel like granting the relief
9 will not be a detriment to the public good
10 because, first of all, the rear yard that is
11 created by the additional lot coverage is not
12 going to be visible. It is bordered on three
13 sides by building so you have the building to
14 the west and to the east.

15 They have walls that extent all
16 the way to the back property. Then there is
17 a building to the south that borders it as
18 well. The additional lot coverage is not
19 impacting anyone adjacent to that. The
20 additional lot coverage will not add to the
21 traffic or noise or light.

22 Again, we are developing well

1 below what we are allowed to on this site
2 according to FAR so we are just asking for the
3 additional lot coverage so that he may have
4 more space on the first floor for retail to
5 accommodate the uses he would like to have
6 there.

7 We are well below the total FAR so
8 we are not increasing the traffic, noise, or
9 light that we would have had with the by-right
10 project. He also plans to provide additional
11 green space with roof decks, green roofs on
12 top of the property as well.

13 Granting the relief will not be
14 inconsistent with the general intent. We feel
15 like the building is very consistent with the
16 other buildings in the corridor. In scale and
17 massing it's very similar. The height is very
18 similar to other projects or other buildings
19 existing on the corridor.

20 We feel like the increase in lot
21 occupancy will have a minimal impact on the
22 area because it is very, very dense. Most of

1 the properties on that block are pretty much
2 maxed out on lot occupancy already. It is
3 actually going to be less dense than many of
4 the other properties adjacent.

5 The variance for off-street
6 parking I think I have already kind of
7 addressed that. It is really the alley access
8 and the curb cut. The same kind of goes as
9 far the public good and detriment. I think
10 eliminating one parking space is not going to
11 substantially impact the immediate area really
12 because we are just talking about one parking
13 space is the difference.

14 Most of the property, except for
15 the parking garage behind, but most of the
16 adjacent properties do not have parking. They
17 don't have access in the rear. It's only when
18 you get further down the block that you have
19 some rear access via an alley. Most of the
20 properties nearby do not have parking on site.

21 I will go ahead and proceed with
22 the special exceptions unless we you want to

1 ask questions about the variances now or wait
2 until --

3 CHAIRPERSON MILLER: It can wait.

4 MS. FOWLER: Okay. The two
5 special exceptions, the first one is for the
6 rear yard setback requirements. The minimum
7 rear yard setback is 12 feet and what we are
8 providing varies between zero feet and 20 feet
9 because of that jog in the property.

10 The second one is special
11 exception for commercial FAR of 1.9. The H
12 Street overlay spells out that they wanted 1.0
13 FAR for commercial which basically means the
14 first floor commercial. What he wants to do
15 is create a second floor, kind of a mezzanine.
16 It's not even a full floor but -- I'm sorry.

17 There is a mezzanine and then
18 there is an office on the second floor. The
19 first floor would be retail or commercial and
20 then a commercial mezzanine and then a second
21 floor would be office space. That adds an
22 additional .9 FAR above what is allowed with

1 the overlay. This is the H Street overlay.

2 CHAIRPERSON MILLER: I'm sorry. I
3 didn't follow that exactly. So what adds to
4 that, the mezzanine and the second floor both?

5 MS. FOWLER: I think with the
6 mezzanine he is still under the 1.0. I think
7 it is really the second floor that is pushing
8 him above the 1.0.

9 CHAIRPERSON MILLER: The mezzanine
10 is for commercial as well?

11 MS. FOWLER: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MS. FOWLER: Again, just to
14 reiterate, the total FAR allowed is 4.0 and we
15 are at 2.0 so really we are just asking for
16 the additional .9 FAR for the interior space
17 being commercial.

18 I just want to note the
19 nonresidential uses on the first floor
20 mezzanine and second floor will be one of the
21 uses enumerated in the H Street overlay as a
22 preferred use. They have a list of preferred

1 occupancies and we will comply with that
2 request.

3 The proposed exceptions will be
4 consistent with the intent of the zoning
5 regulations. Again, the building is
6 consistent in scale and massing of the other
7 buildings. The decrease in the rear setback
8 will have minimal impact because it is
9 actually going to be not as far back as the
10 adjacent properties.

11 The interior court in the back is
12 not going to be visible from any public way or
13 really from any window or anywhere really
14 except when you are standing back there. None
15 of the adjacent properties have the required
16 setback.

17 In fact, the ANC in the meeting
18 when this project was presented actually
19 preferred that the building cover more lot
20 rather than less in order to not create a well
21 effect in the back. That was one of the
22 things that they asked to consider. They were

1 endorsing the additional lot coverage. I'll
2 let Drew speak to that.

3 Again, the area is very dense.
4 The square is extremely dense and it is not
5 inconsistent with what you have there. There
6 is really no negative impact on any of the
7 adjacent properties.

8 In terms of the FAR, the
9 additional FAR for commercial use, again, the
10 exterior of the building is consistent with
11 the other properties nearby. The additional
12 .9 FAR is not adding to the massing of the
13 building. It's not making it any bigger.
14 It's just changing what is happening on the
15 inside.

16 The additional FAR will be used
17 for office space which because of the amount
18 of square footage needed for occupant it's not
19 a high-occupancy area space. It's not going
20 to be retail store up on the second floor.

21 It's just going to be office space
22 so it's very few additional occupants in terms

1 of adding additional traffic or noise to the
2 area. We feel like that additional commercial
3 space is not going to impact the adjacent
4 properties.

5 I think those are my main points.
6 I will respond to any questions.

7 CHAIRPERSON MILLER: I'm not sure
8 if I remembered this correctly or not. I
9 thought that I read that the second floor was
10 going to be used for maybe a comedy club or
11 something like that.

12 MS. FOWLER: The offices would be
13 supporting the comedy club which would be on
14 the first floor. You would have the first
15 floor and the mezzanine which would be kind of
16 the public spaces and then the second floor
17 would be ideally the same tenant. It would be
18 kind of the back-of-the-house office. Again,
19 he doesn't have a tenant lined up. It's kind
20 of designed generic kind of space.

21 CHAIRPERSON MILLER: Either way
22 it's considered office.

1 MS. FOWLER: Yes. Right.

2 COMMISSIONER TURNBULL: Just a
3 point of clarification. Is the first -- I
4 thought the first floor was for the relocation
5 of a retail clothing store. Am I a little
6 off? I just thought I heard you say that the
7 first floor was going to be a comedy club.

8 MS. FOWLER: He is exploring
9 different uses for the first floor. I believe
10 either of those would be within the H Street
11 overlay preferred uses.

12 COMMISSIONER TURNBULL: So it
13 really hasn't settled on use yet.

14 MS. FOWLER: Yeah. Mr. Robbins
15 does own a clothing store at 9th and H Street
16 and I think his original intent was to move
17 the clothing store there but once he got
18 further into the process he realized actually
19 with the overlay there encouraging arts and
20 entertainment in that section of the street,
21 of the H Street corridor, and that is when he
22 started thinking about more of a comedy club

NEAL R. GROSS

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

1 or some kind of arts related use.

2 CHAIRPERSON MILLER: I asked this
3 before and perhaps Mr. Robbins can address it.
4 Just somewhat generally but because we are not
5 going to look into your bank accounts or
6 anything like that but one of the grounds for
7 the variance was economic reasons. To make
8 the project feasible you needed more
9 commercial space. Can you just elaborate a
10 little bit about why that is true on this
11 property?

12 MR. ROBBINS: Part of the issues
13 are the overlay wants a really nice brick
14 building. They wanted balconies. They wanted
15 streetscapes. They wanted to open up the
16 front of the business of all the floors to H
17 Street instead of kind of closing it off.
18 They wanted this feel.

19 I don't want to say like New
20 Orleans but they wanted this feel where you
21 can stand out on a balcony and overlook the
22 corridor to make it feel more alive. Those

1 are really expensive things to build on such
2 a small lot.

3 It would help to bring in a little
4 extra money to give the city or the
5 neighborhood the types of things they want.
6 The type of construction I'm planning is not
7 typically bound on the corridor at this time.
8 If you go down at that end, I mean, this is
9 going to be one of the nicer projects down
10 there.

11 I'm kind of a catalyst of
12 construction. It might not look like much to
13 the Board because you all see really big
14 projects but to me and to H Street this is a
15 pretty big project. Bigger than the rents are
16 going to pull to make it feasible.

17 I think I need that additional
18 income to give them the type of building they
19 want as well as what I want. It would be
20 cheaper if it was smaller to do a simpler
21 design and not to do balconies, not to do all
22 that brick and arch and trim, but I think it

NEAL R. GROSS

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

1 would be better for everybody.

2 I think OP might agree from the
3 meetings I've gone to and the ANC that if
4 someone could do a really nice project and
5 kind of get it going instead of just taking a
6 building and calling it a bar. I mean,
7 literally nothing has been done down there.

8 There's lots of occupancies.
9 Renovations are -- I would love for the Board
10 to take a ride down H Street one day and you
11 will see there is nothing like this yet. I'm
12 sure it's coming but they have been talking
13 about this since 1968 literally. They are
14 talking about a gateway on that end and it
15 looks as if I'm the gateway at this time. I
16 know it's not much but it's all they've got.

17 Yet, to do the project to the
18 quality of construction that everybody sort of
19 wants, I would like to have a little
20 additional income so I don't lose my shirt
21 completely. Not to delve into my personal
22 bank accounts but it would help to break even.

1 CHAIRPERSON MILLER: It looks
2 beautiful from the pictures that we see. I
3 guess this is just not to make or break the
4 variance. I just want to understand, for
5 instance, how nice you have made it with
6 respect to the balconies and the brick and the
7 green roof and things like that that you're
8 doing. Is some of it driven -- you didn't do
9 a green roof?

10 MR. ROBBINS: Right. There are
11 gardens but I didn't say green roof. Now
12 you've gone too far. There will be no green
13 roof for the record.

14 CHAIRPERSON MILLER: What did I
15 say?

16 MR. ROBBINS: That was too far.

17 CHAIRPERSON MILLER: Darn. Okay.
18 In any event, is it in part driven by the
19 requirements of the overlay and in part you
20 are just responding to the community to make
21 it very nice?

22 MR. ROBBINS: To be honest, I

1 don't understand the overlay. I'll be
2 perfectly candid with everyone here. I've
3 gone to meetings and I have tried to design
4 something that I thought everyone wanted and
5 with the feedback it is. I don't know really
6 what I can build as a matter of right. I do
7 plan to live there so I would like it to be
8 nice. This would be good for me, too.

9 CHAIRPERSON MILLER: You know what
10 I saw in here? Planted roofs.

11 MR. ROBBINS: Planted roofs. You
12 will see on that roof, right. I would like to
13 have as much green space and I would like it
14 to be quality green space. I am told that
15 green space actually cost as much as
16 construction and I should treat the square
17 footage price of my green space the same as
18 interior space so that is my goal.

19 CHAIRPERSON MILLER: What do you
20 have in mind for that planted space?

21 MR. ROBBINS: More specifically
22 you want the type of plantings I'm going to

1 use?

2 CHAIRPERSON MILLER: What does
3 that mean? In pots or what does that mean?

4 MR. ROBBINS: Absolutely. There
5 will be no sod on that roof. It will be a
6 membrane type structure. I will be able to
7 hang out up there but it will not be a green
8 roof. I wish the climate was better and I
9 could pull off a green roof. I don't think
10 green roofs are economically feasible.

11 Certainly not on this scale
12 without Government help. I'm not looking for
13 Government help with taxes or anything but I
14 would like to enjoy this outside space as much
15 as my interior space so patios, decking,
16 plantings in pots.

17 CHAIRPERSON MILLER: Okay. Any
18 other questions? Anything else?

19 COMMISSIONER TURNBULL: Madam
20 Chair.

21 CHAIRPERSON MILLER: Yes, Mr.
22 Turnbull.

1 COMMISSIONER TURNBULL: You had
2 talked about the occupancy of the building on
3 the second floor as an office. Again, this is
4 not so much a zoning issue as occupancy
5 related to exits. Are there enough exits? It
6 looks like there is one exit coming down from
7 the second floor for the commercial and the
8 house, the residential area, and there is one
9 from the store. Do you satisfy all the
10 requirements?

11 MS. FOWLER: To be honest, I
12 haven't done a zoning -- an egress study on
13 this. I assume that any of those things the
14 architect will work out prior to permitting to
15 make sure that it does meet all the egress
16 requirements.

17 COMMISSIONER TURNBULL: Okay.

18 MS. FOWLER: I am not prepared to
19 answered that question.

20 COMMISSIONER TURNBULL: The only
21 other question I had, and I guess it's looking
22 at the architecture, it's a fascinating little

1 plan. I think there is a lot going on in a
2 very small space. I think from that
3 standpoint it's very good.

4 I'm just looking at from the
5 section I see one thing but when I look at the
6 front elevation I see the elevator and it
7 looks like on the roof there is an overrun but
8 that doesn't really show up on the elevation.
9 It looks like there ought to be another little
10 bump-out. It looks like I'm really looking at
11 a gable roof in section but that doesn't
12 really show up on the front elevation.

13 MS. FOWLER: Are you looking at
14 the most current plan, the one we just passed
15 out?

16 COMMISSIONER TURNBULL: This one.
17 It's the one we just got.

18 MS. FOWLER: Okay. Yeah.

19 COMMISSIONER TURNBULL: I think
20 it's a fine point but it doesn't look like
21 it's totally quite accurate up at the roof.

22 MS. FOWLER: I see. It looks like

1 the roof design and the section is slightly
2 different than what they are showing in the
3 elevation.

4 COMMISSIONER TURNBULL: Right.

5 MS. FOWLER: Yeah. I agree with
6 you that there needs to be some more
7 coordination.

8 COMMISSIONER TURNBULL: Okay.
9 Thank you.

10 MS. FOWLER: I think the overall
11 height would not change.

12 COMMISSIONER TURNBULL: Would not
13 change. I can understand that. Thank you.

14 CHAIRPERSON MILLER: Any other
15 questions? Okay. Do you have more or should
16 we turn to the Office of Planning at this
17 point?

18 MS. FOWLER: I think I'm fine for
19 now. Thank you.

20 CHAIRPERSON MILLER: Okay.

21 MR. RICE: Excuse me. Good
22 afternoon, Madam Chair and Board. My name is

1 Stephen Rice again for the third time today.
2 The Office of Planning does support this
3 application.

4 Normally I would stand on the
5 record but if needed I could go into detail
6 for each section. It depends on if time
7 permits. I think the record is pretty full.
8 There have been a few corrections that I would
9 at least like to note positive corrections.

10 As noted in my report, there are a
11 number of H Street design guideline provisions
12 that were needing to be addressed.
13 Specifically I spoke with the applicant. I
14 would like to say for the record the applicant
15 has poured everything he could into this
16 project. He has been really diligent on
17 responding to issues. I just want to make
18 sure that is something that is really known.

19 But as far as one of the sections,
20 which is Section 134.12 of the design code --
21 I'm sorry. I think that is the reference.
22 The previous drawings didn't show that the

1 frontage would kick out to the property line.

2 There is a reference that says at
3 least 75 percent of that should be to the
4 property line. The applicant has made that
5 correction. As well as an issue with the
6 retail or the office mezzanine on the first
7 floor. Well, between the first and second
8 floor.

9 There is a section that states
10 that any -- that there should be a continuous
11 floor to ceiling height of at least 14 feet
12 for the ground floor. The applicant is
13 proposing 18 feet and that break-up is at the
14 rear of the structure. I don't think that
15 zoning provision was intended to apply to
16 something at the rear of the property.

17 I think it was intended for the
18 front only to make that clear. We did note
19 that in the report. Otherwise, the
20 requirements for the relief for both the two
21 variances as well as the special exception
22 have been met and I am open for questions.

1 Thank you.

2 CHAIRPERSON MILLER: Could you
3 explain a little further what you are saying
4 about the floor to ceiling height not
5 necessarily applying to the rear of the
6 building?

7 MR. RICE: Okay. You have the
8 zoning code in front of you I think.

9 CHAIRPERSON MILLER: Yes.

10 MR. RICE: It should be section
11 1324.12. I don't have it in front of me but
12 it does state that the floor to ceiling height
13 should be at minimum 14 feet through the first
14 floor. The fact that is not the case because
15 there is a break-up at the rear of the
16 structure with the mezzanine, I think it does
17 meet the intent which is to prevent lower
18 ceilings at the frontage.

19 I wanted that to be something that
20 wouldn't hang up the project or anything so I
21 wanted to -- I think that is an interpretation
22 question but as far as OP is concerned, I

1 think the intent was met.

2 CHAIRPERSON MILLER: Is it
3 possible that relief is required and in what
4 form would that be if that is the case?

5 MR. RICE: I think that is my
6 point.

7 CHAIRPERSON MILLER: You don't
8 think so?

9 MR. RICE: I don't think relief is
10 needed. I think the intent was for any break-
11 up at the front of the property, not what we
12 have here. Correct me if I'm wrong but that
13 is our interpretation of it.

14 CHAIRPERSON MILLER: Could you
15 just spell it out a little further like why
16 you think it was only intended for the front?

17 MR. RICE: That is what I took
18 from it. Again, if that is not yours or the
19 Board's interpretation, we can go into that.
20 I don't think the fact that there is a break-
21 up at the rear that would cause any type of
22 issues with what the purpose of the H Street

1 overlay is. It's not even something that
2 would be visible from the street frontage.
3 It's internal.

4 CHAIRPERSON MILLER: Do the
5 requirements of the overlay really speak to
6 the frontage and the use?

7 MR. RICE: I don't have a copy of
8 the regs in front of me.

9 CHAIRPERSON MILLER: We can give
10 you one. Ms. Monroe is going to give you a
11 copy.

12 MR. RICE: Madam Chair, if I could
13 offer just a comment. If you look at the
14 plans, if you look at the first-floor plan,
15 the retail area extends back to what is called
16 the office and storage area. The 18 feet
17 covers what is basically the occupied retail
18 space. The sort of work loft or office up on
19 the mezzanine are really in that back area
20 which is office and storage.

21 I think as OP as said, technically
22 the open retail commercial area to the public

1 is at 18 feet throughout and you really have
2 just an office and storage area at the back.
3 I guess you are getting into fine points but
4 I think the intent is made that the retail
5 area has been met with the requirement.

6 CHAIRPERSON MILLER: I can see
7 that very clearly. I think it makes good
8 sense. It is just kind of a rare time when I
9 would look at a regulation that required
10 something and then say, well, it doesn't
11 because it is in the intent of the broader
12 scheme of the regulations.

13 That is really somewhat why I'm
14 just exploring this. Often it's the case that
15 it makes so much sense and, therefore, we
16 grant relief. You are saying you don't think
17 relief is necessary because it's in accordance
18 with the scheme of the overlay.

19 Maybe the overlay is the type of
20 animal that is a little bit different and then
21 if it's in the spirit of it, we can interpret
22 the provision broadly. I just want to know,

1 you know, this is the first time I'm looking
2 at this so why are you concluding that?

3 MR. RICE: I think it has a lot to
4 do with just the history of this case. this
5 is, I think, the applicant's third or fourth
6 time before the Board and I just wanted to
7 make sure that everything was covered. That
8 is why I even mentioned this part in the
9 report.

10 In fact, it was something that I
11 had realized later in the process that could
12 be misinterpreted or another point of needed
13 relief. That was the approach that OP came
14 from as far as wanting to cover that.

15 CHAIRPERSON MILLER: What is the
16 height between the mezzanine and the floor?

17 MR. RICE: I don't know. It's not
18 indicated on the drawings.

19 CHAIRPERSON MILLER: My question
20 goes to if the height of the rest of it is 18
21 feet and this were 14 feet, then it is still
22 not in compliance per se?

1 MR. RICE: You mean the mezzanine
2 if the height of the second tier isn't 14
3 feet?

4 CHAIRPERSON MILLER: From the
5 floor to the mezzanine. The Mezzanine is
6 blocking the clear --

7 MR. RICE: Um-hum.

8 CHAIRPERSON MILLER: Okay. It
9 would almost mean like you couldn't have a
10 mezzanine but they don't say that.

11 MR. RICE: Exactly.

12 CHAIRPERSON MILLER: Right. Okay.

13 MS. FOWLER: May I ask a question?

14 CHAIRPERSON MILLER: Sure.

15 MS. FOWLER: Is a mezzanine even
16 considered a floor? I mean, it's not a floor.
17 They are referring to floors in the
18 guidelines. I don't know how that changes
19 anything.

20 MR. RONNEBERG: Madam Chair, I was
21 involved in that.

22 CHAIRPERSON MILLER: Oh, good.

1 MR. RONNEBERG: I was involved in
2 helping draft the regulations. The intent was
3 if you go into -- I think a good example is if
4 anyone has been to L'Enfant Plaza you feel
5 like you are like a mole in a mole hole pretty
6 much. Lowering the ceiling really detracts
7 from the sense of space.

8 The fact that it does cost
9 additional money to build a higher ceiling
10 and, therefore, people might not do it as a
11 matter of right. We wanted to ensure that was
12 done because overall it creates a much better
13 environment for retail. That was why the 14-
14 foot ceiling height was put into the
15 regulations.

16 CHAIRPERSON MILLER: Okay. I
17 don't know if others have questions. I just
18 wanted to ask you, Mr. Rice, you seem to, I
19 think, have a little different reasons for why
20 a greater lot occupancy is in order in this
21 case. Is that correct? Than what we heard?

22 MR. RICE: As far as the practical

1 difficulty?

2 CHAIRPERSON MILLER: And the
3 exceptional condition.

4 MR. RICE: I think the size -- I
5 mean, the actual shape of the lot does play
6 into it. For the residential portion of it
7 there is a 75 percent max for lot occupancy
8 given the fact that it is land locked and I
9 think the ANC as well as the applicant was
10 pretty open to a complete coverage to prevent
11 the pit effect or well in the back.

12 OP was comfortable with either but
13 since the residential floor practically mimics
14 the footprint of the lower floors, we felt
15 that would serve as a unique situation as well
16 as just the fact as it is in between two
17 properties and the property to the rear also
18 blocks it in. We felt that did warrant a
19 unique situation.

20 CHAIRPERSON MILLER: Any other
21 questions? Ms. Fowler, do you have a copy of
22 the Office of Planning report?

1 MS. FOWLER: I don't. I have seen
2 it. I don't have a copy.

3 CHAIRPERSON MILLER: Okay. Do you
4 have any questions for the Office of Planning?

5 MS. FOWLER: I don't think so.

6 CHAIRPERSON MILLER: Okay.

7 MS. FOWLER: It's pretty clear.

8 CHAIRPERSON MILLER: Okay. At
9 this point then we can turn to Mr. Ronneberg
10 with the ANC.

11 MR. RONNEBERG: Commissioners. I
12 will be brief. We are very excited about this
13 project coming to H Street basically for two
14 reasons. First of all, I think it's an
15 example that shows design guidelines work. I
16 know this is the only place in all of the
17 zoning code where design guidelines are
18 referenced.

19 I think the high quality of this
20 building shows the kind of things that our ANC
21 and all of H Street wanted it to bring and
22 this is it. This bears fruit. Just wanted to

1 make that point.

2 The other thing is I think another
3 reason why we are so excited about this is it
4 shows that small-scale in-fill is possible,
5 that you don't need to consolidate many lots
6 and build a big enormous building.

7 This shows that actually both of
8 those together are possible so we are very
9 excited about that. The eastern end of H
10 Street lacks some of the advantages of the
11 western end. It doesn't have the
12 transportation and the proximity to Union
13 Station.

14 Yet, we are seeing the economic
15 revitalization and I think that is because we
16 do preserve these small-scale lots and we
17 don't have the land speculation that is
18 occurring on the western end.

19 I would like to ask about one very
20 minor point and that is in the H Street design
21 compliance document there is one architectural
22 design guideline they say they don't comply

1 with. It's the one about transom windows and
2 transom windows are optional.

3 I would like to give them an
4 opportunity to submit a new document to say
5 that they comply with that because it is an
6 optional requirement and they chose not to use
7 transom windows.

8 The reason why that is so is
9 because we are very interested in seeing all
10 projects have compliance with the
11 architectural requirements and this is one I
12 think they actually do comply with because
13 it's optional and I would like to give them
14 the benefit of claiming that they comply with
15 all of them.

16 CHAIRPERSON MILLER: In the
17 document they submitted where exactly are you
18 referring to?

19 MR. RONNEBERG: The compliance
20 with the strategic plan design guidelines.
21 There is the development guideline and an
22 architectural standard which they claim they

1 do not comply. It's really a rear setback and
2 that was addressed as part of the special
3 exception for zoning relief.

4 The second one says architectural
5 standards and store configurations, transom
6 windows are encouraged above the doors and
7 storefronts. They said there are no transom
8 windows. This is an optional requirement. I
9 would like to get an opportunity to resubmit
10 and say they comply with that because it is,
11 in fact, optional.

12 CHAIRPERSON MILLER: Okay. You
13 are reading that as they are saying they don't
14 comply but they are not really saying they
15 don't comply. They are just saying they're
16 not going to have those windows.

17 MR. RONNEBERG: It's under the
18 heading, "Guidelines for which the project
19 does not comply."

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Are you done?

22 MR. RONNEBERG: Yes, I am. I

1 testified in this case before it was
2 continued. To summarize, we fully support the
3 zoning relief that was requested by the
4 applicant for the reason stated by the
5 applicant. We very much look forward to
6 having this building come to H Street.

7 CHAIRPERSON MILLER: Thank you.
8 And you did testify before and you were
9 extremely helpful whenever we have been
10 considering these H Street guidelines because
11 the Board doesn't get to work with them very
12 often and I know you helped write them and
13 everything. Thank you very much.

14 I don't know, Ms. Fowler, do you
15 have an opinion about making any changes to
16 your submission?

17 MS. FOWLER: I guess -- I mean, is
18 this actually part of the -- is this something
19 that gets reviewed during the permit phase?
20 I guess I'm not really clear who reviews this.
21 Is this something we would have to comply with
22 and submit with our permit application?

1 CHAIRPERSON MILLER: I can't
2 really answer that. I mean, I think for BZA
3 purposes it's in the record.

4 MS. FOWLER: It seems to me like
5 it's probably fine the way it is if you are
6 okay with it. I think they just want -- the
7 ANC just wants a copy. Is that what I'm
8 understanding? Of the revised --

9 MR. RONNEBERG: We would just like
10 the next person that comes along and says --
11 and asks for real relief from the
12 architectural standards we would like to claim
13 that. In previous cases the applicants all
14 had 100 percent compliance and it is for
15 future cases that I am interested in having
16 seen revisions to the document.

17 CHAIRPERSON MILLER: Mr. Rice, do
18 you know the process when they go for
19 permitting? Normally there is the BZA order
20 with the plans attached. Is there something
21 further required for the H Street overlay?

22 MR. RICE: I'm not sure with the H

1 Street overlay. This is relatively new. I
2 think it's the third or second case we've had
3 so it's not something that is really jelled
4 yet.

5 MS. MONROE: Madam Chair, I think
6 if you want to know the best thing to do here
7 is if you look at the overlay itself, which is
8 part of the zoning regulations but still
9 within zoning, 1325 the special exception
10 requirements, A is, "The project is consistent
11 with the design intent of the design
12 requirements of 1324 (which is the overlay)
13 and the design guidelines in the strategic
14 development plan." You have to be consistent
15 with the intent.

16 If you go further down still under
17 special exceptions 1325.4, "Applicant shall
18 demonstrate the projects requiring special
19 exception shall be consistent again with the
20 design intent of the design requirements of
21 the overlay and the design guidelines of the
22 development plan." It's there that you have

1 to be consistent with the intent right within
2 the regulations. That would be within the
3 Board's purview to look at.

4 CHAIRPERSON MILLER: I guess the
5 question might be if we issue an order making
6 a finding that it is consistent except for the
7 relief that we give and the relief is
8 justified, then I would think that is all that
9 permitting would require like the normal
10 situation. That's as much as we know. We
11 don't know definitively.

12 COMMISSIONER TURNBULL: But does
13 that mean that we can't decide on anything
14 until we get a submittal for the revised plan?

15 CHAIRPERSON MILLER: I think all
16 we were talking about is the document that was
17 filed laying out how they comply with the
18 guidelines or don't which is this document.
19 That is for their burden of proof and so, no,
20 I don't think we need anything to be
21 supplemented. You have corrected it or
22 addressed it on the record so we have our

1 record.

2 COMMISSIONER TURNBULL: I was just
3 considering that they wanted to see a
4 supplemental showing some attempt at transoms.

5 MR. RONNEBERG: No, I'm sorry.
6 The point is I think they comply 100 percent
7 with the architectural elements of the design
8 guidelines. Under the heading of, "Guidelines
9 which we do not comply," they listed an
10 optional guideline. Because they chose not to
11 use transoms doesn't mean that they are out of
12 compliance with that guideline because it's
13 optional. Does that make sense?

14 COMMISSIONER TURNBULL: Are you
15 looking for something? I'm confused.

16 MR. RONNEBERG: No, we're looking
17 for very minor -- we are looking to move that
18 architectural guideline down in the list to
19 the section where it says, "Guidelines for
20 which we comply."

21 COMMISSIONER TURNBULL: Okay.

22 MR. RONNEBERG: It is very minor

1 and only for future cases

2 CHAIRPERSON MILLER: It sounds to
3 me like he wants to be able to take this
4 document and say look how this property owner
5 complied like 100 percent. As it is written
6 now it doesn't look like they comply 100
7 percent but you could do that anyway.

8 MR. RONNEBERG: That's true, Madam
9 Chair.

10 CHAIRPERSON MILLER: I have a
11 question about this 100 percent under window
12 and door configurations. Maybe I didn't have
13 the document in front of me at the time but it
14 says, "Doors will be less than 24 inches from
15 the corner on the first floor." Does that
16 mean the doors aren't complying? It's under
17 the category of, "Guidelines for which the
18 project does not comply."

19 MR. RONNEBERG: I think you have
20 the old copy. I think that was intended for
21 a corner lot, a building on a corner lot, and
22 they are not a corner lot.

NEAL R. GROSS

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

1 MS. FOWLER: We went back and
2 forth about this and it was a little confusing
3 in the guidelines.

4 CHAIRPERSON MILLER: Okay. So now
5 I'm following you. There are errors here when
6 you actually are in 100 percent compliance
7 which is fantastic. Okay, our record will
8 reflect that. Okay. Anything else?

9 MR. RONNEBERG: That's it. Thank
10 you, Madam Chair.

11 CHAIRPERSON MILLER: Okay. Any
12 other questions for the ANC? Is anybody else
13 here to testify in support or opposition to
14 this application? Any final questions from
15 the Board? Any closing remarks?

16 MS. FOWLER: Thank you so much for
17 your time and thank you to Mr. Rice for his
18 report and Mr. Ronneberg for appearing for us.

19 CHAIRPERSON MILLER: Okay. We
20 were talking very briefly off the record about
21 whether or not we want to decide this case
22 today. We have conflicting concerns. One is

1 that we have one other full hearing coming up
2 and we have another party waiting for a brief
3 decision that was carried over from today.

4 I think what I would like to do is
5 suggest that we do deliberate on it. It won't
6 be as full as some of our other deliberations.
7 I think that's all right. There is no
8 opposition in the record. Give me a moment.

9 Okay. I'm going to move approval
10 of application No. 17620 of Leon and Peggy
11 Robbins pursuant to 11 DCMR 3103.2 for a
12 variance from the lot occupancy requirements
13 under Section 772, a variance from the rear
14 yard requirements under Section 774 and a
15 variance from the off-street parking
16 requirements under subsection 2101.1 to allow
17 the construction of a three-story mixed-use
18 building at premises 1383-85 H Street, N.E.
19 Do I have a second?

20 COMMISSIONER TURNBULL: Second.

21 CHAIRPERSON MILLER: When we first
22 started to hear this case at the last hearing,

1 I have to say it all seemed very complicated
2 and a big undertaking to comply with all these
3 H Street guidelines. In addition, there were
4 special exceptions and variance relief that
5 was required.

6 I think that in the interim the
7 applicant has done a great job in working with
8 the ANC and working with the Office of
9 Planning and getting an architect to help put
10 together the papers that we needed to see that
11 it met the requirements.

12 I think based on the evidence
13 we've heard today which is incredibly full,
14 the Office of Planning Report, burden of
15 proof, compliance of the project with the H
16 Street strategic plan guidelines, that it does
17 meet all the requirements.

18 Without reiterating everything
19 about the variance relief, I think the parking
20 thing was crystal clear with respect to there
21 not being any place to create a parking spot.
22 We have seen this before where a building is

1 landlocked and they can't do any curb cuts in
2 the front. In the end there is no adverse
3 impact to the neighborhood at all.

4 Also we saw with the lot occupancy
5 a variety of reasons but in particular I think
6 these are very demanding guidelines. As the
7 applicant was saying, sometimes the economics
8 did get involved in this to some extent. Also
9 the shape of the property.

10 This applicant has gone far beyond
11 apparently the guidelines to create something
12 that is really a beautiful addition, it
13 appears, to the H Street overlay. Not just in
14 looks but even in vitality and in the way it
15 is going to be used to service the community
16 with respect to arts and entertainment. That
17 is all in accordance.

18 We didn't hear anything about any
19 adverse impact whatsoever from any other
20 relief that would be granted be it the special
21 exception or the variance. ANC supports,
22 Office of Planning supports, community is in

1 support. I think we may have gotten a couple
2 of letters in opposition but very, very minor.

3 I think that about covers it in a
4 quick way for me. Does anybody want to add
5 anything on this case? I think basically what
6 I have touched upon is the variance relief,
7 special exception relief at the rear yard or
8 whatever. I think we talked about how it
9 didn't have any adverse impact on anyone in
10 the rear. It is all in harmony with the H
11 Street overlay.

12 I think if there is anything that
13 I haven't said, which I'm sure there is plenty
14 that I haven't said at this point, and if no
15 one else adds in, I would say the variance is
16 a special exception and compliance with the H
17 Street guidelines are fully addressed by the
18 Office of Planning and the applicant and has
19 been also by the ANC.

20 In the interest of time, I think
21 that is all I would like to say. Any other
22 comments on this wonderful project? Okay.

1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining?

5 VICE CHAIRMAN LOUD: Abstain. I
6 need to clarify for the record that I was not
7 here November 13th when this case was first
8 called and have not read the record on the
9 case and I don't know how far the Board got
10 into the case on November 13th. So as to not
11 even run the risk of tainting the vote, I just
12 want to make it clear that I am not going to
13 vote on the matter.

14 CHAIRPERSON MILLER: Yeah.

15 VICE CHAIRMAN LOUD: I think it's
16 a great project, though.

17 MEMBER WALKER: For the record, I
18 will state that I was also not here on
19 November 13th when the case was first heard.
20 However, the entire record was provided to me
21 and I have reviewed it in full.

22 CHAIRPERSON MILLER: Okay. Then

1 would you call the vote, please.

2 MS. BAILEY: Madam Chair, would
3 you please tell me who seconded it? I didn't
4 hear who seconded the motion. Mr. Turnbull?
5 Thank you.

6 The vote is recorded as four zero
7 one to grant the application as amended and
8 the amended version added the special
9 exception relief from section 774.1 and
10 1323.3. Mrs. Miller made the motion, Mr.
11 Turnbull seconded it, Mr. Dettman and Mrs.
12 Walker supporting the motion, and Mr. Loud
13 abstaining.

14 CHAIRPERSON MILLER: Thank you.
15 Thank you very much.

16 MR. ROBBINS: Thank you.

17 CHAIRPERSON MILLER: We will come
18 by and see it sometime.

19 What we are going to do is take at
20 least a five-minute break. There was a case
21 this morning -- I see you are sitting in the
22 back -- where we heard the whole case and we

1 are just waiting for the plans in order to
2 deliberate on it.

3 If it's ready to be deliberated
4 on, the plans are here, what we want to do is
5 when we come back -- we'll have the plans?
6 Okay. We'll deliberate on it quickly so we
7 can let you go.

8 (Whereupon, at 5:26 p.m. off the
9 record until 5:42 p.m.)
10
11
12
13
14
15
16
17
18
19
20
21
22

1

2

3

4

5

6

7

E-V-E-N-I-N-G S-E-S-S-I-O-N

8

5:42 p.m.

9

CHAIRPERSON MILLER: We are back
on the record. I want to make one point first
and that is that the case that we just decided
that should be a summary order as there is no
opposition in that case.

14

Okay. Then we have decided just
to interject into our schedule a case that we
heard this morning, the application of Michael
Walker, case No. 17704. We said that we would
deliberate on this case when we got the up-to-
date revised plans that accurately reflect the
project.

21

22

That is what has been handed to us
this afternoon. If no one has a question with

NEAL R. GROSS

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

1 respect to the plans, we can deliberate on the
2 application at this point. Does anybody have
3 a question as the party is in the audience if
4 we do. Okay. We'll take a moment.

5 Okay. We are wondering if the
6 party could come forward just to explain the
7 plans briefly and to respond to any questions
8 on them. Thank you.

9 Ms. Bailey, do you need to
10 announce something about the case officially?

11 MS. BAILEY: Madam Chair, I think
12 it would suffice to say that the Board is
13 returning to Application No. 17704 of Michael
14 Walker that was taken up earlier this
15 afternoon.

16 CHAIRPERSON MILLER: If you could
17 just perhaps direct our attention to certain
18 that part of the plans that represent where
19 the garage is being added and has been revised
20 from the plans that we saw earlier. I know
21 that certain pages show different things so
22 maybe you can just highlight what is shown on

1 the different pages.

2 MR. DORMAN: If you look on page
3 one which is basically the site plan, it shows
4 the existing garage and then the proposed
5 garage addition. This was shortened from 26
6 feet, six inches, I believe this morning, and
7 now it's 23 foot, six inches.

8 It was shortened about three
9 inches -- three feet. Therefore, instead of
10 the 70 percent lot coverage that was being
11 requested it has been reduced to 67.4 percent
12 which shows on the first sheet, sheet 0, under
13 the project data. The 67.4 percent is also
14 listed in the title of sheet No. 1.

15 CHAIRPERSON MILLER: So when we
16 look at these plans and we see other drawings
17 such as on page 1, the proposed second-story
18 addition of a one-story house, is that
19 something that has nothing to do with this
20 case that you don't need relief for that?

21 MR. DORMAN: Yes, because that was
22 done in conjunction with the garage to go to

1 HPRB.

2 MR. WALKER: There was no increase
3 in footprint.

4 MR. DORMAN: These are kind of the
5 plans that were the result of some of the
6 owner's revised goals and community and HPRB
7 input.

8 CHAIRPERSON MILLER: Any other
9 questions? Okay. Thank you very much. Okay.
10 Again, the hour is late and this case also has
11 the support of Office of Planning and the ANC.
12 The Office of Planning originally had a
13 concern and thought there might be a variance
14 with respect to the rear yard but that was
15 withdrawn after the Schonberger BZA case.

16 It's a recent Board of Appeals
17 case that was decided January 10, 2008 which
18 determined that the required rear yard could
19 be measured from the dwelling out towards the
20 rear lot line rather than from the rear lot
21 line. That variance disappeared. This is now
22 under just 223.

1 The applicant has shown and
2 submitted revised plans that show that lot
3 occupancy is below 70 percent which is a
4 requirement to seek relief under 223. The
5 addition to the garage is on an alley and we
6 talked about how it was in accordance with the
7 character, scale, and patterns of the houses
8 along the alley.

9 It doesn't affect the privacy of
10 use and enjoyment of neighboring properties or
11 the light and air which are factors under 223.
12 There is in essence no adverse impacts that
13 have been brought to our attention and if in
14 harmony with zoning regulations and zone plan
15 in the neighborhood. For those reasons I
16 would support granting the application.

17 Others? Okay. I can't remember.
18 Did I move it already and second it or no?
19 Okay. Then I would move approval of the
20 application of Michael Walker pursuant to 11
21 DCMR Section 3104.1 for special exception to
22 construct an addition to an existing garage

1 serving a one-family row dwelling under
2 Section 223 not meeting the lot occupancy
3 requirements of Section 403 in the R-4
4 District of premises 1811 Kenyon Street, N.W.
5 Do I have a second?

6 MEMBER DETTMAN: Second.

7 CHAIRPERSON MILLER: Further
8 deliberation? We had a full hearing on this
9 this morning. I think it is fully addressed
10 in the record. I have addressed the major
11 points of the 223 and special exception.
12 Again, we do have the support of the ANC. All
13 those in favor say aye.

14 ALL: Aye.

15 CHAIRPERSON MILLER: All those
16 opposed? All those abstaining?

17 Would you call the vote, please?

18 COMMISSIONER TURNBULL:

19 Abstaining.

20 CHAIRPERSON MILLER: Abstaining?
21 Mr. Turnbull was not on the case this morning.
22 Do we have an absentee vote from Mr. Jeffries?

1 MS. BAILEY: No.

2 CHAIRPERSON MILLER: Okay. I
3 think he intended to but, in any event, would
4 you call the vote then as it is?

5 MS. BAILEY: Madam Chair, the vote
6 is recorded as four zero one. The motion was
7 made by Mrs. Miller, seconded by Mr. Dettman,
8 supported by Mr. Loud and Mrs. Walker. Mr.
9 Turnbull abstaining and Mr. Jeffries is not
10 present at this time. Four zero one to grant
11 the application.

12 CHAIRPERSON MILLER: Thank you.
13 This can be a summary order as well as there
14 is no party in opposition in the case.

15 MS. BAILEY: Thank you.

16 CHAIRPERSON MILLER: Thank you.

17 Okay. I think we are ready for
18 the final case on today's agenda.

19 MS. BAILEY: And that is
20 Application No. 17594 of Minshall Stewart
21 Properties LLC on behalf of Donohoe Wilmington
22 Associates LP, pursuant to 11 DCMR 3103.2, for

1 a variance from the court width requirements
2 under section 776, a variance from the
3 transferable development rights forty-five
4 degree setback requirements under subsection
5 1709.20, and a variance from the loading
6 requirements under section 2201 to allow the
7 redevelopment of an office and retail building
8 in the C-3-C District of premises 2175 K
9 Street, N.W., (Square 73, Lots 883 and 884.)

10 A couple of housekeeping matters,
11 Madam Chair, that I would like to bring to the
12 attention of the Board. There were previous
13 motions filed by the applicant. Based on my
14 understanding those motions are no longer
15 applicable. Specifically, the motion to
16 dismiss the application and the motion
17 regarding the Board's jurisdiction.

18 Secondly, staff believes that
19 clarification may be needed regarding whether
20 Mr. Michael David Wascom and Ms. John and Sara
21 Shuman whether they have joined the additional
22 parties or exactly what their party status

1 situation is.

2 Then, thirdly, we understand that
3 the opposition has withdrawn their opposition
4 of the case and that Mr. Cornish Hitchcock and
5 Mr. Stephen Gell will be making those
6 presentations to the Board.

7 CHAIRPERSON MILLER: Thank you.
8 Why don't we start with introductions.

9 MR. EPTING: I'm John Epting with
10 Pillsbury Withrop Shaw Pittman. Dave
11 Avitabile is with me and I have also John
12 Stewart from Minshall Stewart Properties and
13 J.P. Spickler, architect from Fox Architects.

14 MR. GELL: I'm Stephen Gell. I'm
15 representing two unit owners, Thomas Scholz
16 and Florence Harmon.

17 MR. HITCHCOCK: Con Hitchcock.
18 I'm here on behalf of the Westend Place
19 Condominium Association which is at 1099 22nd
20 Street.

21 CHAIRPERSON MILLER: Oh, you're
22 all together. Okay. Good. It's my

1 understand, too, that the motions that Ms.
2 Bailey made reference to are not at issue
3 anymore. Correct?

4 MR. EPTING: We killed those with
5 the appeal. We're done with those.

6 CHAIRPERSON MILLER: Okay. Now,
7 the party status of the individuals that were
8 named, I don't recall whether we ever followed
9 up on that. Are they here? Would you like to
10 come forward then, please? I don't know
11 whether to say good afternoon or good evening.

12 MS. SHUMAN: It's almost morning.

13 CHAIRPERSON MILLER: Good morning.

14 MS. SHUMAN: Sara Shuman and I am
15 the wife of John Shuman and we are applicants
16 for party status. I apologize for his
17 absence. He is just out of the hospital.

18 CHAIRPERSON MILLER: I assume you
19 would be joint parties anyway. I mean, you
20 are not separate individuals with different
21 cases.

22 MS. SHUMAN: No, we're not.

1 CHAIRPERSON MILLER: Let me ask
2 you because this was continued from a while
3 back, did you file an application for party
4 status?

5 MS. SHUMAN: My husband did.

6 CHAIRPERSON MILLER: Your husband
7 did?

8 MS. SHUMAN: Yes.

9 CHAIRPERSON MILLER: In his name
10 alone?

11 MS. SHUMAN: In his name and also
12 he submitted an amended written statement as
13 a part of his party status application which
14 should be in the file.

15 CHAIRPERSON MILLER: I have the
16 amended one, I believe, before me. Do you
17 have an exhibit number on yours or no?

18 MS. SHUMAN: No, I do not.

19 CHAIRPERSON MILLER: Okay. It
20 says, "Amended written statement of John
21 Shuman."

22 MR. AVITABILE: It's Exhibit 54 in

1 the record.

2 CHAIRPERSON MILLER: Right. She
3 doesn't have it. Oh, okay. Thank you. Okay.
4 This is what I normally say when we are
5 starting off a case and we have applicants for
6 party status. Not everyone understand the
7 difference between participating in the case
8 as a party or participating as a person.

9 Every person can participate in a
10 BZA application for a variance or special
11 exception. If they participate as a person,
12 they don't get any scrutiny by the Board.
13 They just automatically can participate. We
14 could limit the testimony to three minutes in
15 accordance to what I read earlier. Sometimes
16 we do and sometimes we don't but we could.

17 The difference between basically
18 participating as a person or as a party is
19 that for party status you need to show that
20 you are affected in a way that is different
21 from the general public which would entitle
22 you to participate in the case. You have a

1 much greater interest than the normal person.

2 That would entitle you to all the
3 privileges of any other party, the applicant,
4 ANC. They are automatically a party. You
5 could have the privilege of cross examination
6 of witnesses, presenting a case, filing
7 motions or whatever. That being said, do you
8 want to be a party based on that or do you
9 have any questions?

10 MS. SHUMAN: I understand what
11 you're saying. I do wish to be a party but,
12 in the interest of time, I would make only one
13 point and that is that the recent sun studies
14 that have been submitted, together with a
15 letter from Mr. Epting and including Exhibit
16 B, something that clearly denotes that our
17 particular home would be affected directly
18 even though his letter states that there is no
19 impact on the townhomes across 22nd Street.

20 CHAIRPERSON MILLER: Where are you
21 located exactly in relation to the subject
22 property?

1 MS. SHUMAN: Directly opposite the
2 office building on 22nd Street. We are on the
3 west side.

4 CHAIRPERSON MILLER: Okay. As you
5 are concerned, if we grant relief and the
6 addition is made that you will have more shade
7 on your property?

8 MS. SHUMAN: Yes, but that is a
9 very minor consideration.

10 CHAIRPERSON MILLER: That's minor.
11 What are your major concerns?

12 MS. SHUMAN: Our major concern is
13 with the loading dock issue. I think they
14 have made very light of that issue and I would
15 like to in the interest of time, especially if
16 you want to get rid of me quickly, allow me to
17 show you some photographs that detail --

18 MR. EPTING: Madam Chair, we are
19 not asking for loading relief.

20 MS. SHUMAN: Evidently, there has
21 been something filed that I have no knowledge
22 of after November 13th.

1 MR. EPTING: In our November 13th
2 filing we dropped our loading relief.

3 CHAIRPERSON MILLER: I'm
4 interrupting. Could you just explain a little
5 bit like what it was before really briefly and
6 how you are dropping it affects the property
7 across the street or removes the issue?

8 MR. EPTING: I think the case has
9 a long history. When we originally started
10 out we thought we were one building with the
11 other building. We thought we complied with
12 -- we asked for variance from 1709.20 which we
13 still have. We had some issues with the Court
14 which I think we resolved during the process
15 because we were one building. We originally
16 asked for a loading variance.

17 When we filed the appeal we
18 dropped the loading variance and the court
19 variance because we only wanted to deal with
20 the appeal issue and we made provision in the
21 building at our expense to do loading in the
22 building. That is where we still are today.

1 CHAIRPERSON MILLER: Okay. So
2 there is a real substantive change. You are
3 going to be loading in the building instead of
4 outside. Is that correct? If it were outside
5 it would affect her but you now brought the
6 loading in?

7 MR. EPTING: No. Because we are
8 doing an addition it triggered additional
9 loading that we have now so we are actually
10 providing that additional loading also even
11 though we don't think we need it. We have
12 loading now. The residential building has
13 loading now but the office addition triggers
14 additional loading which we are providing. I
15 think it complies with the zoning regulations.

16 CHAIRPERSON MILLER: Okay. So I
17 understand it then as you are saying, you
18 don't need relief now?

19 MR. EPTING: That's correct. We
20 are have --

21 CHAIRPERSON MILLER: But you still
22 will be doing additional loading than what you

1 have been doing. Correct? If you get the
2 addition?

3 MR. EPTING: The addition requires
4 us to provide additional loading and we are
5 doing that as required by the zoning
6 regulations so we don't need relief from the
7 BZA to do it.

8 CHAIRPERSON MILLER: Okay. I'm
9 just playing devil's advocate here for her
10 because she hasn't even seen it. If you did
11 not get -- if we did not grant you the
12 addition, would you then not have the
13 additional loading?

14 MR. EPTING: That's correct. We
15 would not be providing the extra loading
16 space. Loading like parking works in various
17 thresholds. If you do like one more unit or
18 whatever you get more parking. Loading is
19 similar.

20 You do over X amount of square
21 footage of office and you may trigger another
22 loading space. That is what we have done here

1 because of the size of the addition. We have
2 decided to go ahead and fit it into the
3 building because we thought it was the right
4 thing to do.

5 CHAIRPERSON MILLER: Okay. This
6 is hard for you because you don't know the
7 facts now of what they are doing. Is that
8 correct?

9 MS. SHUMAN: I just would like to
10 state that if I am given the opportunity I
11 would attempt to show you through photographs
12 the current conditions of the loading as they
13 exist for the past several months and ask how
14 they expect to improve it when there is no
15 additional space at the rear of the building.

16 CHAIRPERSON MILLER: Okay. I am
17 going to let the other party -- I'll let Mr.
18 Epting address that because part of the point
19 of party status like shifting is that if there
20 is something you want to address that might
21 not be at issue in the case, then there might
22 be an objection to your getting party status.

1 I think there's a question here whether that
2 might be the case.

3 Is that right, Mr. Epting?

4 MR. EPTING: In my mind it is. If
5 their issue is loading, we are complying with
6 design regulations so we are not asking for
7 relief from load because we felt that was
8 something we should do. I mean, as you
9 understand, this case has had a torturous
10 history and we were trying to minimize the
11 relief we requested.

12 CHAIRPERSON MILLER: I think the
13 point is, and other members can differ with me
14 if I am not presenting this correctly, but
15 they have changed the relief they are seeking
16 now than from what they were originally
17 seeking. I believe that you would need to
18 show how you would be uniquely impacted by the
19 relief they are seeking.

20 MS. SHUMAN: One picture is worth
21 a thousand words.

22 CHAIRPERSON MILLER: Let me say

1 this. You may participate as a person. Show
2 us the picture and testify. You don't even
3 have to be questioned about that. You can do
4 that as a person. It is this party status
5 issue that subjects you to this kind of
6 scrutiny which would allow you to cross
7 examine and things like that. If you are
8 asking me can you just put in this picture and
9 testify, then I would say, yes. You can do
10 that. Not right now. You are not at the
11 right point.

12 MS. SHUMAN: That's the problem.

13 CHAIRPERSON MILLER: If you have
14 to go, then we can discuss that with Mr.
15 Epting. I would be amenable to -- often when
16 things get this late we do try to adjust the
17 schedule for those that have to leave. I
18 think where we are at is rather than go
19 through this whole party status issue that all
20 Ms. Shuman would like to do is present some
21 pictures and testify and that is it. Would
22 you be amenable to her going out of order and

1 doing that at this point? Then she can leave.

2 MR. EPTING: Sure.

3 CHAIRPERSON MILLER: Okay. All
4 right. I'm assuming you want to do this right
5 now and then just --

6 MS. SHUMAN: I would really
7 appreciate that.

8 CHAIRPERSON MILLER: Okay. I
9 think that's what we will do.

10 MS. SHUMAN: My husband and I
11 reside at 1004 22nd Street, N.W. immediately
12 across 22nd Street from the applicant's
13 property and are accordingly affected by the
14 variance request which I'm not really sure
15 what they are requesting anymore but, in any
16 case, I would also like to ask you to include
17 my husband's written amended statement into
18 the record. For time's sake I will not ask to
19 read it into the record but I know it's in
20 there.

21 Many of our objections relate to
22 the additional traffic congestion which will

1 result from the addition. All traffic
2 concerns are based on the fact that the
3 existing loading dock is insufficient for the
4 existing building much less the addition of
5 three more floors.

6 We witness gridlock daily due to
7 trucks making deliveries to this building
8 while parked illegally on K Street, 22nd
9 Street, even on the bridge over K Street and
10 at the approach to Washington Circle.
11 Starbucks has even resorted to receiving
12 deliveries as late as 10:30 at night in order
13 to avoid the hassle. I doubt this is
14 permitted by the city.

15 The fire hydrant, which is
16 directly in front of the office building on
17 the 22nd Street side, is blocked many hours
18 out of each day, especially by delivery
19 trucks.

20 In order to document these
21 statements I ask the following photos be
22 admitted into the record as proof of this

1 public safety hazard. I am sorry but I didn't
2 have time to make copies of these photos so
3 may I present them to you and describe them or
4 how would you like me to handle this?

5 CHAIRPERSON MILLER: They can be
6 copied. We can copy them. Okay.

7 MS. SHUMAN: I don't have a color
8 printer.

9 CHAIRPERSON MILLER: That's okay.

10 MS. SHUMAN: Do you want me to
11 show them to you and describe them?

12 CHAIRPERSON MILLER: Do you need
13 them in front of you to describe them? If you
14 do, you can just use them and we can make
15 copies and give them to the applicant as well.

16 MS. SHUMAN: The first one shows a
17 Starbucks delivery being made during the
18 daytime. This goes back to May of last year.
19 You will note that there is a fire hydrant on
20 that corner and the truck is clearly parked in
21 front of the fire hydrant.

22 The next one is a photo of Staples

1 business delivery truck that is parked in a
2 traffic lane on the bridge over K Street, on
3 22nd Street, the bridge that goes over K.

4 CHAIRPERSON MILLER: Can I ask you
5 something? How many photos do you have?

6 MS. SHUMAN: I have about seven or
7 eight.

8 CHAIRPERSON MILLER: Do you want
9 to just put maybe a number on back of each one
10 so we will be able to refer to them later as
11 photo 1, 2, 3.

12 MS. SHUMAN: Staples is 2. No. 3,
13 another Starbucks delivery. This one is on
14 the K Street approach to Washington Circle.
15 There is no parking allowed there whatsoever
16 at any time.

17 No. 4 is a photograph of the
18 Rolling Greens truck that takes care of the
19 beautiful plants in the lobby of this office
20 building. They are clearly parked in front of
21 the fire hydrant which I have marked with a
22 little red silly face on the photo.

1 In that photo you will also notice
2 across the street in very bad focus is a row
3 of historic townhomes which is known as the
4 Schneider's Triangle. My house is directly
5 across. It's behind the one-way sign.

6 No. 5 shows the bus stop on K
7 Street at the corner of 22nd. Unfortunately,
8 there is no bus. There is a mail delivery
9 truck and a FedEx truck and then there is a
10 car. Then behind that something that looks
11 like laundry service all in a no parking zone
12 during the day on November 5th of last year.

13 Next we have the typical log jam
14 on K Street on that same date, November 5th,
15 attempting to get into the alley that leads to
16 the loading dock in question. There is a car
17 attempting to run over the curb, cannot get
18 into the alley.

19 There is already one car waiting
20 in the alley and one behind that one. Then
21 there is a UPS delivery truck with no driver
22 also illegally parked and traffic is just

1 totally blocked on the K Street access road.

2 That's No. 6.

3 No. 7 more clearly shows that same
4 scene from a further distance. No. 8 is the
5 actual loading dock for the building in
6 question which shows that there's room there
7 for one truck, one garbage dumpster, one car,
8 and that's about it.

9 However, the next one shows from
10 the opposite viewpoint that there are several
11 trucks in that alley but the traffic is
12 blocked such that the car, also in the photo,
13 cannot get egress from that parking area.

14 What you are seeing in the photo
15 is an apartment building on L Street that also
16 backs up on that same alley that leads to the
17 loading dock in question.

18 No. 10 is my personal favorite, my
19 very own loading dock in front of my house
20 with a Starbucks delivery going on. There is
21 a huge truck. The man is unloading it and
22 taking the goods across the street to

NEAL R. GROSS

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

1 Starbucks. That's No. 10. My house is marked
2 clearly with the red dot.

3 I ask you to consider under these
4 circumstances why the applicant has downplayed
5 his request for the variance related to the
6 loading dock issue. When considering this
7 imagine yourself in the ambulance stuck behind
8 the FedEx truck with its siren whaling
9 attempting to transport you to George
10 Washington University Hospital. I ask you to
11 consider that before rendering your judgment.
12 I thank you very much for your patience and
13 your indulgence.

14 CHAIRPERSON MILLER: Thank you.

15 MS. SHUMAN: And I also apologize
16 for this afternoon.

17 CHAIRPERSON MILLER: Ms. Bailey,
18 should she give you the photographs and
19 someone perhaps could copy them for the
20 applicant and the Board?

21 I have one question for you and
22 that is have you reported what sounds like

1 parking violations to the District Government?

2 MS. SHUMAN: The problem with
3 reporting them is that usually resolve
4 themselves in a short time and the police can
5 never get there in time.

6 CHAIRPERSON MILLER: And have you
7 brought them to the attention of the applicant
8 outside of this proceeding?

9 MS. SHUMAN: I did the other night
10 in a very rude manner and I am embarrassed to
11 tell you but I had so many empty Starbucks
12 cups in my gutter that when I took out the
13 trash the other night I picked up those
14 Starbucks cups and I dumped them in front of
15 Starbucks. That's my most recent attempt.

16 CHAIRPERSON MILLER: Okay. Are
17 there other questions from the Board? Other
18 questions from the applicant?

19 I do want to say also that we are
20 taking the pictures into -- the photos into
21 the record and applicant's will have them as
22 well. Then Exhibit 54, which is your

NEAL R. GROSS

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

1 husband's amended written statement is in the
2 record and we consider it as written, have
3 read it before and we will look at it again.

4 MS. SHUMAN: I appreciate that.

5 CHAIRPERSON MILLER: Okay. Thank
6 you very much. Thank you for waiting around.

7 MS. SHUMAN: Thank you.

8 CHAIRPERSON MILLER: Okay. I
9 think the other preliminary matter that we
10 were going to address, or have addressed, is
11 the letter from Mr. Gell.

12 MR. GELL: Madam Chairman, do you
13 want me to start?

14 CHAIRPERSON MILLER: Yes.

15 MR. GELL: Over the past several
16 weeks we have been in negotiations to see if
17 there wasn't some possible way that the
18 parties could come together so that my clients
19 who are the most affected of all the owners in
20 the condo building, most affected because they
21 are on the top floor and they also have roof
22 top patios that are directly opposite the

1 structure that would be built to see if there
2 was some way to get a change in the building's
3 design that would accommodate their needs for
4 light, for privacy, and so forth.

5 We ended negotiations and I am
6 glad to say that they were successful. The
7 applicant has altered his plans. My clients
8 are satisfied with that. However, there are
9 few details in the agreements that still need
10 to be worked out. You can see those in front
11 of you.

12 There is a co-op agreement not
13 only with us, with my clients, but also with
14 the condominium association which is I think
15 in pretty final form. Then there is a
16 construction management agreement which is
17 also -- which has some holes in it that just
18 need some additional time.

19 Therefore, we felt that it was
20 appropriate for us to withdraw our opposition
21 but it is contingent on the Board's accepting
22 these documents as part of the record and also

1 making them part of the Board's order so that
2 if we don't reach an agreement, then obviously
3 we withdraw our withdrawal.

4 What we are seeking to do is
5 really provide maybe a speedy way for the
6 Board to deal with this case but perhaps deal
7 with a few of the minor issues after the
8 hearing so that we wouldn't have to hold
9 things up. With that in mind, we do formally
10 withdraw. Have I confused you?

11
12 CHAIRPERSON MILLER: Well, I must
13 be tired. We don't have these agreements in
14 the record right now. Right?

15 MR. GELL: I think they are about
16 to be.

17 MS. MONROE: Yes, we do.

18 CHAIRPERSON MILLER: We do have
19 them in the record. What exhibit numbers are
20 they?

21 MS. MONROE: They were just handed
22 out now. There are no exhibit numbers on

1 them.

2 MR. EPTING: I was going to
3 introduce them when I got to my statement.

4 MS. MONROE: I just want to say
5 something now on that. I don't know what the
6 Board is going to do but I hesitate to include
7 them in the order and the reason being we
8 don't have any authority to enforce them. If
9 you have these agreements and you violate
10 them, you can't come back to the Board and
11 ask us to enforce those agreements. I just
12 want to make that clear.

13 MR. GELL: I think there are
14 provisions that very often are in Board order,
15 some of the provisions. We have identified
16 some of those so that it wouldn't be the
17 entire document of the cooperation agreement
18 but certain sections of it that would be
19 included. And the construction management
20 plan which has very commonly been included in
21 Board orders.

22 CHAIRPERSON MILLER: Let me just

1 pick up on what Ms. Monroe has said.

2 Sometimes we make reference to agreements that
3 the parties have entered into and these
4 references are to show that we don't believe
5 there are going to be adverse impacts because
6 you have entered into these agreements and we
7 make reference to them. They are not, as Ms.
8 Monroe said, agreements that we are
9 incorporating that can be enforced by our
10 order.

11 Second, though, if there are
12 certain provisions, we have done this, too,
13 that are in agreements and you want them in
14 our order and we find those specific
15 provisions will mitigate adverse impacts that
16 are in our record. We will consider them as
17 we would consider any conditions. If you are
18 saying en mass we are going to accept the
19 whole agreement as part of our order.

20 MR. EPTING: I think it's two
21 separate things almost. Steve may have to
22 speak for himself but the condition that we

1 wanted is for us to be required to finalize
2 the construction management plan as part of
3 the condition of BZA approval much like we
4 have to do the plans in compliance with BZA
5 approval.

6 I don't know that the whole
7 agreement would have to be bound into the
8 order itself because the plan has --
9 agreements have enforcement mechanisms within
10 themselves but the condition would be -- I
11 mean, as Steve were saying, we have worked the
12 last couple weeks to pull all this together.

13 We finished one cooperation
14 agreement and had it signed. We have an
15 agreement with Mr. Hitchcock and principle
16 about a cooperation agreement and terms for
17 construction management. We have not been
18 able to finalize three or four terms under
19 that construction management plan.

20 We ourselves would like to make
21 that sort of proffer that is part of asking
22 for your approval. You would require us to

1 finish the plan. I think if we limit the
2 condition that way, maybe we would be okay
3 because it would be much like the way we've
4 got to build in accordance with the plans.

5 MS. MONROE: Can I say then in Mr.
6 Gell's letter we could go with No. 1 and 2 but
7 not No. 3. I say that because No. 1, the
8 first condition, says the plan is fine.
9 Second one, an executed cooperation agreement
10 and construction management agreement between
11 Florence Harmon and Tom Scholz. That is what
12 you are after.

13 No. 3 is their incorporation by
14 reference of the order. That's what we don't
15 want I think. I mean, I think you don't want
16 to incorporate the reference as part of the
17 order.

18 MR. EPTING: But it would be okay
19 to condition our approval on finalizing that
20 plan?

21 MS. MONROE: To me that falls
22 under No. 2 in the letter. I just don't want

1 the Board to say, "Okay, we accept the
2 letter," and then be stuck doing all three of
3 those things.

4 MR. GELL: I didn't mean to
5 interrupt but I think we can accept something
6 like that with one caveat and that is that in
7 the cooperation agreement there is a specific
8 obligation on the part of the developer to
9 request that certain parts of that be
10 incorporated. Therefore, what you need from
11 us and from them is perhaps extracted out of
12 the agreement as those provisions that could
13 be incorporated if you so choose to do it.

14 CHAIRPERSON MILLER: Okay. Can we
15 maybe cross this bridge when we get to it? In
16 essence what I was saying is we impose
17 conditions in order to mitigate adverse impact
18 and ones that we can enforce, you know, that
19 are clearly enforceable.

20 Therefore, if there are certain
21 conditions that are clearly related to
22 mitigating adverse impacts that have been

1 identified in our record, even if they are in
2 another agreement, we can incorporate them in
3 our order. We would look at them and analyze
4 them on that basis.

5 MR. GELL: The difference for us,
6 Madam Chairman, is that in order to enforce
7 them we would not necessarily have to go to a
8 judge for a TRO. It could be enforced either
9 that way or it could be enforced through the
10 zoning enforcement mechanisms if it's in the
11 order.

12 CHAIRPERSON MILLER: If it is a
13 zoning issue that we can enforce. If it is
14 construction management, that isn't usually
15 something that zoning can enforce. That is
16 what we have said. However, our reference to
17 construction management agreement is something
18 that sometimes is made to show that there
19 won't be adverse impacts perhaps.

20 MR. GELL: We would like that,
21 yes.

22 CHAIRPERSON MILLER: I guess Ms.

1 Monroe just wants to be clear and I concur
2 with her that we can't undertake incorporating
3 a whole agreement that covers issues that
4 aren't really within our jurisdiction.

5 MR. GELL: Fair enough.

6 CHAIRPERSON MILLER: Okay.

7 MR. HITCHCOCK: Madam Chair, on
8 behalf of the Western Place Condominium
9 Association I wanted to second the remarks
10 that Mr. Gell made. The association voted and
11 the Board has authorized me to withdraw the
12 association's opposition to the application
13 based on two reasons.

14 One is the scaled-back nature of
15 the proposal as it is before you this evening.
16 The second is the matter that we have just
17 been talking about, the commitment by the
18 developer to make a satisfactory cooperative
19 agreement and the construction agreement. One
20 of the conditions we are talking about, Mr.
21 Epting and I worked on something similar to
22 this in another case.

1 Actually, it was a PUD case where
2 we didn't get all the paperwork done in time
3 to get to the hearing. This is when
4 Commissioner Turnbull may remember about B&A
5 building but it was considered. We got the
6 paperwork in prior to the conclusion. I think
7 that is where we are now.

8 You will see the paper dealing
9 with the construction management agreement and
10 the cooperation agreement talk about a number
11 of specific facets that would mitigate the
12 impact on my clients who live right next door
13 as well. I will leave it at that since we
14 have had the other discussion just in the last
15 few minutes.

16 CHAIRPERSON MILLER: Okay. I just
17 want to figure out where are we, though, with
18 respect to the withdrawal. The Board has said
19 we are not going to necessarily assure that we
20 are going to incorporate by reference these
21 agreements and the order, your No. 3. Are you
22 still withdrawing now or are you --

1 MR. GELL: We are withdrawing with
2 the understanding that the Board would not
3 grant the variances without a condition that
4 the parties come to an agreement on these
5 documents that we have not finished.

6 CHAIRPERSON MILLER: Okay. This
7 feels a little bit uncomfortable to me because
8 it sounds like you are making a demand on the
9 Board to do something right now before we've
10 heard the case. We don't do that. I mean, I
11 can ask my Board members if they want to
12 commit at this point.

13 MR. HITCHCOCK: Could I try from a
14 different angle?

15 CHAIRPERSON MILLER: Okay.

16 MR. HITCHCOCK: You have a
17 decision date, presumably your February
18 decision date sometime in the next few weeks.
19 Hopefully all things being equal we will be
20 able to have something done and submitted in
21 form close to what you have or will have in a
22 few minutes by that time.

NEAL R. GROSS

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

1 The Board would have before it the
2 specific paper in finalized form. We are not
3 there yet and are reluctant in case there may
4 be things falling apart to say we give up
5 totally not knowing how these last few items
6 will play out. It's a matter of time. I've
7 got 67 owners in our building. I wish we
8 could turn on a dime but often we can't.

9 MR. EPTING: I could pose another
10 option. Basically we have to be in compliance
11 with the plans. We have to submit something
12 to the Zoning Administrator and we have to
13 work out the language saying that we have
14 complied and we have reached a construction
15 management agreement with Western Place and
16 Ms. Harmon so we can try to structure it more
17 like where is the obligation for us going
18 forward. We have to meet that obligation
19 before we can pull a building permit. That to
20 me becomes more like a zoning condition.

21 CHAIRPERSON MILLER: Okay. I
22 mean, it becomes more like a proffer or

1 representation or commitment on your part that
2 that is what you would be doing.

3 MR. EPTING: Exactly.

4 CHAIRPERSON MILLER: Okay. With
5 respect to this letter, I don't want to dwell
6 on it very much longer but it sounds like
7 within the next few weeks or something this is
8 all going to resolve itself and the Board is
9 certainly in favor of you all entering into
10 agreements in working it out.

11 Do you want to just hold this in
12 abeyance or do you want to just say -- I don't
13 think you are going to get an answer by the
14 Board what the Board is going to do at this
15 point with respect to the specifics.

16 MR. GELL: I understand. If we
17 weren't 98 percent there I wouldn't even
18 suggest that. I think we will reach an
19 agreement and we are willing to hold back on
20 our withdrawal if it's all right with the
21 developer because we did make a commitment
22 that we would withdraw at the hearing.

1 MR. HITCHCOCK: I would second
2 that from our point.

3 CHAIRPERSON MILLER: Mr. Epting?

4 MR. EPTING: Are you asking me a
5 question?

6 CHAIRPERSON MILLER: They are
7 saying that because -- suggesting maybe
8 because this isn't quite resolved yet and we
9 understand where it's going but I don't think
10 the Board wishes to say at this point having
11 not even seen these agreements what it is
12 going to do. We are suggesting they hold in
13 abeyance or withdraw if that is okay with you
14 considering they made this agreement or
15 representation to you.

16 MR. EPTING: Could we have another
17 option basically of proceeding with the
18 hearing and maybe you holding in abeyance your
19 approval of us. I mean, I would like to have
20 a bench decision tonight but it doesn't sound
21 like I'm going to get one.

22 We have worked hard on this.

1 Basically it puts the onus on us to get the
2 documents done and let you know. At that
3 point you would be free to make your decision
4 if that works pretty much the same way.

5 MR. GELL: Yes.

6 MR. EPTING: Otherwise we would be
7 postponing this hearing for like the fifth
8 time.

9 CHAIRPERSON MILLER: I don't see
10 any reason why the hearing should be
11 postponed.

12 MR. EPTING: Let's hold the
13 decision in abeyance. That puts the gun to
14 our head to finish it.

15 CHAIRPERSON MILLER: Good. Okay.
16 We are ready to go on to the merits. Correct?

17 MR. HITCHCOCK: Thank you, Madam
18 Chair.

19 CHAIRPERSON MILLER: Thank you.

20 MR. EPTING: Are you ready?

21 CHAIRPERSON MILLER: We are ready.
22 Are you ready?

1 MR. EPTING: I've been ready since
2 9:00 this morning.

3 I'm John Epting with Pillsbury
4 Withrop Shaw Pittman. Dave Avitabile is with
5 me. We appreciate the Board's patience in
6 this case because I know it has been a long
7 and drawn out case with a lot of variations.

8 As you were remarking in the ANC
9 appeal earlier, you wanted controversy and we
10 certainly brought you one, but we have brought
11 you a compromise. In our January 2nd plans we
12 did show how we revised the plans. Mr.
13 Stewart is going to address that but we do
14 believe we now are basically in compliance
15 with 1709.20.

16 We do have -- we do need court
17 relief and the court relief goes to the appeal
18 17667 where the Board's decision determined
19 that the office building was separate from the
20 residential building and that basically
21 created a court situation for us which we will
22 show you that we have now two courts that

1 require relief.

2 We have a rear court that is
3 currently 30 feet wide and it should be 36.21
4 feet and we have a front court that is
5 currently 16 feet wide and it should be 33.08
6 feet.

7 Finally, there is a third area of
8 relief that is requested and this is on behalf
9 of both the office building and the Westend
10 Place Condominium Association. As you know,
11 the regulations require one building on one
12 record lot. As a result of the appeal
13 decision we now have two buildings on the
14 single record lot.

15 We would like to make explicit in
16 the order what we believe the Board did
17 implicitly, to confirm that the two buildings
18 are permitted as multiple buildings on a
19 single record lot. The Board has that
20 authority under special exception 2516.

21 If the Board were to grant that
22 relief, we would request that the following

1 conditions apply, that the parking garage
2 continue to be a shared feature of both
3 buildings going to the unique nature of the
4 buildings the way they were built as
5 previously approved by the BZA and that the
6 measuring point on K Street continue to be
7 shared for both buildings.

8 That is in both of our building's
9 interest. As we have discussed, in maybe more
10 detail than I expected, no zoning relief
11 required any longer for the courts -- for the
12 loading. I'm sorry.

13 We are going to try to be brief
14 today. I was originally going to go through
15 the standards in Gil Martin but I'm really not
16 going to do that as much today. Before
17 turning to Mr. Stewart I would like to provide
18 a quick rundown of how the case satisfies the
19 standards of approval for area variances.

20 We have addressed these in detail
21 in our November 13th filing, pages 8 through
22 17, and page 2 of our January 2nd filing. We

1 have even provided revised shadow studies that
2 show both a matter of right proposal and the
3 proposal we are doing.

4 We believe that these materials
5 coupled with the Office of Planning's report
6 show that the project meets the variance
7 standards and we are prepared to either stand
8 on the record today or address that further.

9 The Board has granted similar
10 variance relief in other TDR cases in this
11 neighborhood due to exceptional circumstances
12 and practical difficulties. The first one was
13 BZA case 16877 which is 2020 K Street just
14 down the street from this building, court and
15 rear yard relief.

16 In BZA decision 17644 the Board
17 granted rear yard and parking relief for 2021
18 L Street. That was this summer. Bench
19 decision for both of those. Most recently in
20 December 2100 M Street, and this is
21 significant in that the Board granted parking
22 and loading relief and relief from the 45

NEAL R. GROSS

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

1 degree setback requirement which is exactly
2 similar to this case.

3 2100 M had the same issue where it
4 couldn't move its building core and mechanical
5 penthouse and, therefore, the proposed
6 addition intruded into the required setback.
7 We have provided that order as part of our
8 exhibits that we submitted. It's order 17696.

9 We have also submitted as an
10 exhibit a PowerPoint presentation that we are
11 going to go through, the signed cooperation
12 agreement with Ms. Harmon and Mr. Scholz, a
13 draft cooperation agreement with the condo
14 association, and a draft construction
15 management plan.

16 I think instead of summarizing, I
17 think the Board is well aware that this is a
18 rather unique building. It's got unique
19 circumstances. It is split zoned. It was
20 developed originally as one building so both
21 the past zoning history and the recent zoning
22 history is actually a unique situation, maybe

NEAL R. GROSS

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

1 one of the more unique that I know of.

2 Practical difficulties. The Board
3 has just found that because this was one
4 building to begin with, the penthouse was set
5 further. It wasn't set back one to one so,
6 therefore, the core is within the 1709.20
7 setback already and the Board has found
8 previously that to do two cores and try to
9 comply matter of right is a practical
10 difficulty and we will go through that, too.

11 Finally, in terms of impacts
12 shadow studies have shown that there is no
13 impact and actually to some degree the
14 proposal is an improvement over the existing
15 situation.

16 We believe even for the townhouses
17 across the street when you compare the shadow
18 studies to what could be done as a matter of
19 right there is no difference in impacts. I
20 believe having the Office of Planning support
21 shows that we have met the standards and
22 minimized the impacts

NEAL R. GROSS

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

1 With that I would like to go ahead
2 and turn it over to John Stewart to summarize
3 the project and mainly the discussions with
4 the neighbors and the revisions to the plans.

5 CHAIRPERSON MILLER: Can I ask a
6 question first?

7 MR. EPTING: Sure.

8 CHAIRPERSON MILLER: With respect
9 to understanding the context of the specific
10 variances. With respect to the Board's
11 decision on the appeal that this was two
12 buildings instead of one, which variances were
13 affected by that? All of them or just certain
14 ones, you know, as a result of that? Because
15 we decided that way you now need the variance?

16 MR. EPTING: Certainly for the
17 court we needed a variance.

18 CHAIRPERSON MILLER: You didn't
19 need the court variance before?

20 MR. EPTING: I believe that we
21 complied with the court variance before
22 because once you get to a certain level, the

1 whole area above the residential building
2 became a court.

3 We need to -- we have triggered
4 the special exception relief for 2516 because
5 of the two buildings on one lot and we need
6 the relief to do the parking. Normally the
7 parking has to be within your building.

8 In our case our access to the
9 parking and a portion of the parking is in,
10 for lack of a better term, the residential
11 building. We are not asking for variance to
12 that but that would be part of the single
13 building. That's it. Also we ask the ability
14 to measure the building heights for both
15 buildings from K Street. The final variance
16 is the same one, the one from 1709.20.

17 CHAIRPERSON MILLER: You would
18 have needed that anyway?

19 MR. EPTING: Not if -- well, under
20 our theory --

21 CHAIRPERSON MILLER: You are not
22 going to need a variance at all if we rule the

1 other way?

2 MR. EPTING: That's correct.

3 CHAIRPERSON MILLER: Okay. So all
4 of them. Right?

5 MR. EPTING: That's correct.

6 CHAIRPERSON MILLER: Where do we
7 have the authority to say that the measuring
8 point on K Street can be shared for both
9 buildings?

10 MR. EPTING: In my view that was
11 implicit in your decision that you made on the
12 appeal. We are actually going to look for
13 that section. Basically the Board is deciding
14 that no connection is required so, therefore,
15 the buildings can still be measured from the
16 same place.

17 MR. AVITABILE: The other reason
18 would be in Section 2516 which is the
19 provision that deals with law control.
20 Section 2516.7 says that you are supposed to
21 measure the height of each building from the
22 finished grade in the middle of the front of

1 the building. What the Board could do is
2 waive that requirement.

3 MS. MONROE: I need to interrupt.
4 2516 is only residence district. 2517 is non-
5 residence. Which one are you going for?

6 MR. AVITABILE: 2516 is for
7 residence districts as well as lots located
8 within 25 feet of a residence district so we
9 are definitely in 2516. The lot is split so
10 and so. That is the other problem.

11 CHAIRPERSON MILLER: I just want
12 to make sure I understand your argument. I
13 don't know if we have authority to grant
14 variances and whatever. This is a new type of
15 request. One point you are going to develop
16 further is that it is somehow implicit in our
17 appeal order. Your other point is that we can
18 waive 2516.7. Right? Is that what you're
19 saying?

20 MR. AVITABILE: Yes. 2516 is
21 generally if approved by the Board of Zoning
22 Adjustment as a special exception subject to

1 the provisions of this section. That is one
2 of the provisions of the section.

3 MR. EPTING: Normally the zoning
4 regulations require you to have building and
5 one record lot but there is a provision for
6 theoretical buildings which this would be so
7 it makes some sense if you are allowing
8 theoretical buildings that you could measure
9 from the same measuring point.

10 We talked to Matt LeGrant about
11 this. Anything we are trying to clean up from
12 the appeal what exactly was decided.

13 CHAIRPERSON MILLER: What's the
14 other side? What if you measure each building
15 separately?

16 MR. EPTING: As we pointed out in
17 the appeals, you would have to measure the
18 residential building from further down 22nd
19 Street and the grade drops off rather
20 dramatically and the building would be too
21 tall in our view under zoning. I don't think
22 there is any way to get your way out of that

1 because it's a height act issue.

2 MR. GELL: Sorry. I just want to
3 add my two cents worth. This is very much to
4 protect the condominium building as well
5 because under normal conditions the condo
6 building couldn't be that high.

7 Since it was built under the 1980
8 approval by the Board, we didn't want there to
9 be -- and the board has then ruled that it was
10 not a single building because the connection
11 wasn't made we didn't want that to be left as
12 a potential threat against the condo building
13 by somebody who would claim that two stories
14 have to be lopped off the building.

15 This is really just kind of a
16 correction -- not a correction but
17 accommodation that the Board would be making
18 or clarification perhaps that the Board did
19 not intend by its ruling for the one building
20 that the condo building was nonconforming or
21 if it's nonconforming it is still a legal
22 building. That is the reason we are

1 supporting this.

2 CHAIRPERSON MILLER: Is this 2516
3 relief being sought in order to address some
4 of these issues in the appeal order as opposed
5 to being related to the relief that is needed
6 in the case?

7 MR. EPTING: That is correct. We
8 were asked, and they can correct me, to
9 basically try to help to correct this issue.
10 It doesn't affect the commercial building
11 because clearly we can measure from K Street.
12 It is a remainder issue to the appeal.

13 MS. MONROE: So wouldn't the
14 residential building have to bring a special
15 exception or are you bringing it for them on
16 their behalf? You said that before. You said
17 you were bringing it on their behalf. Is that
18 the agreement?

19 MR. EPTING: That is part of the
20 agreement, yes.

21 MR. AVITABILE: Well, let's be
22 clear. The general special exception relief

1 for multiple buildings we need as well. When
2 we want to go in to get our building permit to
3 do this addition, the Zoning Administrator is
4 going to require that we either show that we
5 are on a separate record lot or that we have
6 relief from multiple buildings on a single
7 record lot.

8 That relief we need. What we are
9 just asking is since the Board has the
10 authority to grant that special exception
11 relief, in so doing it considers the unique
12 nature of this property and its prior decision
13 in the appeal and takes into consideration the
14 shared parking garage and shared measuring
15 point that was part of the original building
16 when it was approved in 1980.

17 MR. EPTING: Right. I think,
18 again, if you go back to the premise of 2516
19 is to allow you to have theoretical buildings
20 on the site. Then you go to, which Dave
21 recited before, 2516.7 that talks about the
22 middle of the front of that, I want to read,

1 theoretical building.

2 CHAIRPERSON MILLER: I thought you
3 were looking for something. Are you?

4 MS. MONROE: No.

5 CHAIRPERSON MILLER: I'm just
6 looking over these regulations. Okay. What
7 you are saying is, and I don't know that I've
8 seen this, it sounds like you are amending
9 your application to add additional relief
10 under 2516.

11 MR. EPTING: If necessary, yes,
12 because when we originally filed we didn't
13 have the outcome of the appeal. The best way
14 I thought to say it was that it seemed that is
15 what the Board did, implicitly say there are
16 two buildings on this record lot. The Board
17 ruled that there was no above-grade
18 connection.

19 If there is no above-grade
20 connection, then we must have two buildings on
21 the lot. Then we were left with meeting with
22 LeGrant that we've now got. We are trying to

1 address as stand-alone buildings. We thought
2 some relief was necessary and we haven't
3 changed any other form of the application and
4 the buildings haven't moved.

5 I think it has been duly noticed
6 in terms of it's been out there. We were
7 arguing about one building versus two
8 buildings. You do have the residential
9 building here supporting this. I apologize if
10 this is confusing but it is.

11 MR. HITCHCOCK: If I may, I think
12 the effort here is not to try to reopen the
13 appeal issue or the Board's determination.

14 MR. EPTING: Not at all.

15 MR. HITCHCOCK: As a practical
16 matter from the condo association's
17 perspective we are trying to make sure there
18 are no unintended consequences or that the
19 Board's order might be read more broadly than
20 was needed to decide the case.

21 We don't know what necessarily the
22 future would bring but I think it's an

1 opportunity to clarify the scope of what the
2 Board had in mind and deal also with how the
3 case has progressed since that time. Is that
4 a fair statement, Mr. Epting?

5 MR. EPTING: Yes. We could do it
6 however the Board sees fit. The order is not
7 out of the appeal but clearly it seems to me
8 and I think it seems to Mr. LeGrant that we
9 now have two buildings on one lot.

10 CHAIRPERSON MILLER: I just want
11 us to know what we are doing. I just want to
12 ask Mr. Parker here from the Office of
13 Planning. Good evening, Mr. Parker.

14 MR. PARKER: Good evening.

15 CHAIRPERSON MILLER: My question
16 is I have read the Office of Planning report
17 in this case. I don't think that the Office
18 of Planning addressed 2516 relief. Is that
19 correct?

20 MR. PARKER: We didn't get into
21 the whole one building two building issue that
22 was part of the PO. No, we haven't addressed

1 that at this point.

2 MR. EPTING: And part of this
3 actually to Mr. Parker's credit came probably
4 after he was working on his report. This has
5 been part of the subject of negotiations with
6 the neighbors.

7 CHAIRPERSON MILLER: I'm not
8 saying that you shouldn't seek the relief or
9 anything. All I'm saying is that is why we
10 are not necessarily prepared to be addressing
11 it because it is a surprise to us. I haven't
12 seen it.

13 There is the question of, you
14 know, it sounds like an amendment to your
15 application and we allow parties to amend but
16 then we address the question of do we need to
17 require notice to the public when you have an
18 amendment.

19 Sometimes we say not necessarily
20 because the affected parties are all here and
21 sometimes otherwise. I think it is good to
22 get on the record your position on that and

1 deal with these things one at a time. That is
2 the first issue I see with respect to this
3 issue.

4 MR. EPTING: Well, in terms of
5 notice, I mean, our primary various relief has
6 not changed. We still need 1709.20 and we do
7 need the court relief variance because of what
8 happened in the appeal.

9 The appeal case was also duly
10 noticed and that decision was orally made so
11 we are taking the literal words of that appeal
12 which are in the record of that case in saying
13 that we are trying to apply that to this case.
14 The Board has made a decision that affects our
15 case so we are trying to apply it. I think
16 that would be the notice requirement in my
17 mind.

18 MR. AVITABILE: And finally --

19 MR. EPTING: We wouldn't be doing
20 this if the appeal hadn't said that.

21 MR. AVITABILE: Finally, to add to
22 that, the other major party that is affected

1 by this relief, which is the residential
2 building, is here with us agreeing that it's
3 desired relief as well as the counsel for two
4 of the individuals who live in that building.

5 MR. EPTING: And when you get any
6 kind of impact standard or notice standard,
7 the functionality of the buildings is not
8 changing. It doesn't affect how the buildings
9 look in any way. We are not going to propose
10 to do anything different but we need that
11 theoretical zoning approval that the Board
12 seems to have done in the appeal.

13 CHAIRPERSON MILLER: Ms. Monroe,
14 do you see a concern about notice with respect
15 to amending this application?

16 MS. MONROE: I don't. I don't see
17 a concern because we are going through two
18 special exceptions. It's a lesser test so I
19 don't think it's a problem. Can I mention
20 what I -- this is a question basically to you
21 guys.

22 Did you consider a variance from

1 3202.3, the single building on an individual
2 lot as opposed to a special exception? It
3 would be the same. You would have the same
4 test. You could make the same arguments.

5 3202.3. I don't want to amend for you but --

6 MR. EPTING: Dave just reminded me
7 I don't want to even relive the appeal but I
8 thought the Zoning Commission's decision in
9 the DOT building when Wayne Quinn was trying
10 to use the different measuring heights and he
11 didn't want to do a connection I thought the
12 Zoning Commission said you couldn't do that in
13 terms of measuring from one point. I thought
14 that was the result of that case.

15 MS. MONROE: You mean that would
16 not allow you to use 3202.3?

17 MR. EPTING: Exactly.

18 MS. MONROE: Okay.

19 MR. EPTING: I'm trying to dodge
20 it from that way. It seems to me and I know
21 in situations that 2516 you can use it in many
22 cases and we do when the other buildings don't

1 have street frontage. Therefore, you are
2 clearly measuring it from whatever street you
3 got.

4 MS. MONROE: I think you can use
5 it here and I don't think you have a notice
6 issue. I was trying to avoid having to go
7 into different kind of relief.

8 MR. EPTING: That is my memory of
9 that case. I don't want to ever read it
10 again.

11 CHAIRPERSON MILLER: Okay. I
12 guess we have been saying that we don't see a
13 problem necessarily with your amending the
14 application given that it relates to issues
15 that were in the appeal and that doesn't
16 change what you're doing with the variance
17 relief you're seeking.

18 The most affected parties are here
19 and want this to happen so I don't have a
20 problem with that unless other Board members
21 do. You may have to supplement but in looking
22 at 2516.7, and again it could be because it's

1 late in the day, but if you can just again
2 tell me where we have the authority to waive
3 that provision.

4 MR. EPTING: Again, 2516 is a way
5 that developers can -- they typically do it
6 when they don't have street frontage so,
7 therefore, you would be measuring any of the
8 back buildings from the same street as the
9 front buildings. We clearly use it in those
10 situations.

11 Here we happen to have street
12 frontage but we are choosing a different front
13 to measure the height. I don't think the
14 provision of additional street frontage should
15 change the fact that normally that section is
16 used to measure height from the same place for
17 the one big theoretical building no matter how
18 many you have.

19 MR. AVITABILE: Right. That is
20 one approach. The other approach is also the
21 fact that simply the way this section of the
22 regulations is structured it opens with 2516.1

1 which says, "If approved by the Board as a
2 special exception, two more buildings may be
3 located on a single lot subject to the
4 provisions of this section."

5 Then 2516.7, which is what governs
6 the idea that you have to measure your
7 building from the finished grade at the middle
8 of the front of the building, the Board would
9 have the authority under its special exception
10 authority under 2516.1 to say, Okay.

11 As part of our special exception
12 we are not going to require that both of these
13 buildings be measured by the grade at the
14 middle of the front of the building. We are
15 satisfied that they can use that shared
16 measuring point off of K Street since that is
17 the way they were originally constructed and
18 nothing is happening to change that.

19 CHAIRPERSON MILLER: Okay. I
20 don't know how others are reading this. I may
21 need to think about this later but I look at
22 this and it says, "If approved by the BZA as

1 a special exception two or more principle
2 buildings or structures can be erected on a
3 single subdivided lot subject to the
4 provisions of this section."

5 I think, oh, subject to the
6 provisions of this section. That means
7 subject to 2516.7 which says the height of a
8 building shall be measured from the finished
9 grade, blah, blah, blah. I don't see where it
10 says I can waive these provisions. It may be
11 in here and I'm missing it but --

12 MS. MONROE: Can I intervene for a
13 second?

14 CHAIRPERSON MILLER: Yes.

15 MS. MONROE: Not to waste time.
16 In the past there has been a special exception
17 with multiple provisions they have to meet and
18 they can't meet when they ask for a variance
19 from that provision. I don't know if it's a
20 great idea but the Board has done it in the
21 past. There is no waiver issue then. It just
22 becomes another variance. You make the same

1 test if that is what you want to do.

2 MR. EPTING: Sure.

3 MS. MONROE: The question I have
4 if you want a variance from that are you sure
5 it's not going to conflict with the height
6 act? Just be sure because it opens with "we
7 are not in conflict with the height act." I
8 just want to make sure we are okay on that.

9 MR. EPTING: As long as we can
10 measure from K Street.

11 MS. MONROE: That's what you're
12 after. Right.

13 MR. EPTING: Exactly.

14 MS. MONROE: That's one way to do
15 it.

16 MR. EPTING: If that is a better
17 way to do it, then we would ask for a
18 variance. It's all part of the notice issue
19 I think, too. Again, we apologize for this
20 but, like I said, we are trying to read the
21 appeal and find out what our relief would be
22 for this case and also try to correct what I

NEAL R. GROSS

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

1 am saying is a potential problem in the future
2 for the residential building.

3 CHAIRPERSON MILLER: Okay. With
4 respect to the shared garage, where does that
5 fit in? I understand why you want it. It
6 exist right now but is this a variance as well
7 from something or are you saying it's a
8 special exception in here in 2516?

9 MR. AVITABILE: I don't think that
10 we need any -- I think it's just simply saying
11 that the Board is not drawing an artificial
12 line down the middle of that parking garage.
13 The parking garage is still shared. There is
14 no line in the middle that demarcates what is
15 office and what is residential.

16 Furthermore, as we all went over
17 in great detail last fall, the definition of
18 building really only talks about what is above
19 grade and not below grade and explicitly says
20 that connections below grade don't change the
21 status one way or another.

22 I think the Board recently

1 considered how an underground parking garage
2 worked in the appeal dealing with Wardman Park
3 and ruled that an underground parking garage
4 is part of the building that is above it even
5 if it goes beyond the dimensions of the
6 building above it.

7 So here you essentially have a
8 parking garage that is both fully a part of
9 the residential building and fully a part of
10 the office building. This just all goes back
11 to the original BZA approval in 13148 which we
12 talked about at length during the appeal and
13 how the shared parking garage and the access
14 off of L Street all were due to the
15 exceptional condition of the property.

16 CHAIRPERSON MILLER: Okay. You
17 know, I don't see that it's up to us to tell
18 you all the relief you need because of the
19 appeal case and so I'm just asking. I thought
20 that you were seeking relief and, if you were,
21 I was going to say from what provision. If
22 you're not --

1 MR. EPTING: No, we are just
2 pointing out that we need -- basically it's
3 almost like an easement under the residential
4 building to continue to use that access and
5 that parking.

6 CHAIRPERSON MILLER: Are you
7 seeking something from the Board?N

8 MR. EPTING: No, we are just
9 clarifying.

10 CHAIRPERSON MILLER: You are not
11 asking the Board to --

12 MR. EPTING: No.

13 MR. AVITABILE: No. The Board
14 already approved that 25 years ago. We are
15 just asking that doesn't change.

16 CHAIRPERSON MILLER: Okay.

17 MR. EPTING: We are trying to
18 spell out the best we can, and maybe not so
19 clearly, all the various things that happened
20 with the appeal and the things we have to deal
21 with in terms of when we go back to the Zoning
22 Administrator.

1 CHAIRPERSON MILLER: Okay. I just
2 wanted to be clear about what is before the
3 Board, what relief you are seeking, especially
4 since the 2516 issues weren't in writing
5 before us and you are just articulating it for
6 the first time. Right?

7 MR. EPTING: That's correct.

8 CHAIRPERSON MILLER: Okay.

9 MR. EPTING: We were somewhat
10 surprised when the residential building came
11 to us and started talking about that.

12 CHAIRPERSON MILLER: All right. I
13 think this all started from my question to
14 you --

15 MR. EPTING: That's okay.

16 CHAIRPERSON MILLER: -- about
17 explaining what relief you are seeking related
18 to the appeal case and it is all related to
19 the appeal case.

20 MR. EPTING: I thought this might
21 be easy today but I should have known better.
22 I think it's the building. Maybe it's not

1 even me. With that, I will go ahead and turn
2 it over to Mr. Stewart.

3 MR. STEWART: Thanks, John. I'm
4 John Stewart with Minshall Stewart Properties.
5 I'm actually going to talk about the building
6 a little bit.

7 David, go two slides ahead.

8 As you have heard, we have spent
9 quite a bit of time with the Westend
10 Condominium Association, Tom and Florence and
11 I -- I can't read my notes -- and their
12 architect to come up with several design
13 changes from our original submission.

14 You can see from the drawing on
15 the right-hand side we have basically taken
16 the full addition and set back all three
17 floors and the penthouse 20 feet back from the
18 property line with the residential building.

19 It is a bit expensive and it does
20 create a little bit of an issue for us in that
21 now we have a dead-end corridor. We will show
22 you that on the next slide but it's a

NEAL R. GROSS

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

1 compromise and we think it's a pretty good
2 one. Actually with this additional setback it
3 will eliminate almost all of the shadow
4 impacts.

5 Go to the next one. Here you can
6 see the dead-end corridor. Essentially what
7 I'm saying, for those of you who may not know,
8 the corridor doesn't go all the way around the
9 core which is the more desire situation for
10 market for leasing, ingress and egress out of
11 the various office suites.

12 In addition to that, the second
13 thing we did we moved the existing mechanical
14 penthouse which essentially, you can see it
15 there, it's the cross-hatched area in green.
16 Show where it is now. Point to the cross-
17 hatched area, David. Right there. We simply
18 rotated that.

19 I say simply. It's actually quite
20 expensive and complicated but we rotated that
21 to the north so that we could pull the core
22 in. The result of that is you have a very

1 nice 2,200 square foot sort of extension of
2 the roof decks. For Tom Florence it happens
3 to be on our side of the property. When I say
4 extension we are not going to allow them to
5 access it but it will be there for visuals and
6 things like that.

7 The first thing we did, and this
8 at Florence and Tom's request, we agreed to
9 make this a green roof. J.P. Spickler will go
10 into the details as to exactly what the
11 planning material will be put in the strictest
12 sense of what we all think of as a green roof
13 that's what we are going to put there.

14 It will provide a nice amenity for
15 Tom and Florence and, frankly, any of the
16 other condo residents who can see it but,
17 unfortunately, my tenants aren't going to be
18 able to see or access it so it is solely for
19 the use of the condominium tenants.

20 The fourth thing we did, going to
21 the next slide, is we eliminated almost all of
22 the windows on the rear facade of the

1 building. When I say rear, that's the north
2 facing facade, the one that faces Florence and
3 Tom's and the condominium building frankly.

4 In the middle where the core area
5 is we wouldn't have had windows anyway. We
6 certainly would have more than what is shown
7 here. You do see some windows sort of
8 flanking on the edges. Those windows will
9 have a pretty effective -- very effective
10 privacy screening so that our tenants don't
11 look down onto the roof decks of Tom and
12 Florence.

13 The fifth thing we agree to do is
14 to use a glare reducing sort of paint on that
15 facade which is important but the other thing
16 to understand about the way that wall faces it
17 does face north so it never actually gets
18 direct sunlight.

19 This is the major design changes
20 that we are undertaking. J.P. will go into a
21 lot more detail as to the technical aspects of
22 all that. The last thing that we are still

1 working on, as you all know, is the
2 construction management agreement. We are
3 ecstatic from the ownership side that we are
4 able to get this far from a case that has been
5 rather difficult.

6 With that I will turn it back over
7 to John.

8 MR. EPTING: Unless there are
9 questions, we'll go to J.P.

10 MR. AVITABILE: Okay. We are
11 going to do a slightly different format.

12 COMMISSIONER TURNBULL: I wonder
13 if I could just ask one question. You made
14 the comment about glare-reducing paint. That
15 elevation you were showing shows brick.

16 MR. SPICKLER: That's correct.

17 COMMISSIONER TURNBULL: So what's
18 the paint?

19 MR. STEWART: It will be painted a
20 light color, sort of an off-white sort of
21 color.

22 COMMISSIONER TURNBULL: Oh, you're

1 painting the brick?

2 MR. STEWART: Yes.

3 COMMISSIONER TURNBULL: Thank you.

4 MEMBER DETTMAN: Would you quickly
5 be able to tell me what are the distances --
6 you relocated a piece of the penthouse. Could
7 you tell me the distances from all the walls?
8 It looks like currently it's up against one of
9 the exterior walls. You relocated it and
10 freed up some space.

11 MR. STEWART: Yeah, that is
12 actually one thing I neglected to mention.
13 Remember the penthouse is on the roof so it's
14 not certainly on a rentable area. There is an
15 18-foot wall there right now that Florence and
16 Tom's roof deck are basically adjacent to. By
17 rotating that around -- it not just rotates.

18 It also moves up three stories so
19 a couple of positives happen with that result.
20 Any of the noise from the cooling tower and
21 the chiller and pumps that are in that room
22 are now, gosh, I guess 40 feet higher roughly

1 and it's rotated around so that it is further
2 away from the roof decks. I don't know the
3 exact distances. J.P. might be able to give
4 you those numbers.

5 MR. SPICKLER: It's maintaining
6 the one-to-one setback requirement from the
7 edge.

8 MEMBER DETTMAN: Okay. Just so
9 I'm visualizing correctly, the space that is
10 now going to be a green roof that's, I think,
11 18'6". Right? What you have is your three
12 extra floors. The penthouse goes up and that
13 piece of the penthouse gets relocated and then
14 you have three other sides which you are
15 saying meet the 18'6" requirement.

16 MR. SPICKLER: Right.

17 MEMBER DETTMAN: Thank you.

18 MR. AVITABILE: Okay. What we are
19 going to do for our -- now we are going to
20 speak with J.P. Spickler about really walking
21 through the variance requirements. What I
22 would like to first ask J.P. if he could

1 please describe the structures that currently
2 exist on the property.

3 MR. SPICKLER: Good evening. This
4 slide is a close aerial view of the project
5 site and it demonstrates many of the
6 exceptional and unique conditions of the
7 property and its structures. First, you see
8 the office structure here and the residential
9 structure here.

10 They are adjacent to one another
11 as you can clearly see. As discussed at
12 length during the appeal hearing, these two
13 structures were conceived as part of a joint
14 development encompassing all of this.

15 Second, as a result of their joint
16 development, the office structure's mechanical
17 core, which is located here, which includes
18 its elevators, stairs, is located to the rear
19 of the building close to the residential
20 structure here.

21 Third, as you can see, the office
22 structure's penthouse is located adjacent to

1 the residential structure. That is this
2 structure here. In the next photo you can see
3 the mechanical penthouse again of the office
4 structure here located adjacent to the
5 residential structure and in this photo here.

6 Fourth and finally, because they
7 were developed jointly they share certain
8 structural features as well as building
9 systems that are detailed in an easement
10 agreement between the two buildings.

11 One of these features is the air
12 intake shaft between the two structures. That
13 is this element here, this vertical element
14 top to bottom, and here on the east side of
15 the building and here on the west side of the
16 building.

17 MR. AVITABILE: Thank you, J.P.
18 Why is the location of the penthouse and the
19 building core such an exceptional condition?

20 MR. SPICKLER: The building core
21 contains all of its elevators, stairs, and
22 many of its mechanical systems. It is a fixed

1 feature of the building much like its exterior
2 walls and its floor slabs. Go to the next
3 slide. It cannot be moved without substantial
4 demolition work. What you see here in this
5 section is the existing building core.

6 Also, the location of the
7 penthouse and the core results in an 18-foot
8 tall wall immediately south of the two
9 residential roof decks as you can see in the
10 building section. This is the existing
11 mechanical penthouse. This is the existing
12 adjacent residential roof deck which currently
13 has an 18.5 foot wall adjacent to it.

14 In these photos you can see the
15 roof decks. Here are the roof decks and their
16 structures. This is Ms. Harmon's roof deck
17 here to the east and then this is Mr. Scholz'
18 roof deck here to the west. This wall
19 separates the two. What you see here is the
20 roof structure of the office building.

21 MR. AVITABILE: Thank you, J.P.
22 So what are the challenges with the addition?

1 Why do we need this variance relief?

2 MR. SPICKLER: The challenge is in
3 the layout and design of the existing office
4 structure and its building core. Section
5 1709.2 of the zoning regulations requires a 45
6 degree setback from certain adjacent buildings
7 when the adjacent building is in a residential
8 zone.

9 However, as I mentioned, the
10 building core is a fixed object. When we
11 expand the building, we expand its core.
12 Unfortunately, the vertical expansion of the
13 core intersects with the 45-degree setback
14 which you can see here. The vertical
15 expansion of the core intersects with the 45-
16 degree setback which is this line.

17 It is unduly burdensome to comply
18 with the regulation for you can't bend a core
19 45 degrees. To comply we would have to
20 construct a second building core for the
21 addition and its tenants.

22 They would have to change

1 elevators in order to reach the upper floors
2 and in the case of an emergency tenants would
3 have to change stairwells in order to exit the
4 building. This would be a by-right option
5 with the second core here.

6 MR. AVITABILE: Thank you. So you
7 just stated that it is a practical difficulty
8 to comply with the setback because of the
9 building core. How does the proposed addition
10 violate the setback requirements?

11 MR. SPICKLER: We revised the
12 design of the addition in order to meet the
13 intent of the setback requirement. As a
14 result, all three floors of the addition have
15 been setback approximately 20 feet to the
16 building core's north face. You see the
17 compromise proposal on the right here.

18 That came about after our
19 discussions with the residential neighbors.
20 The 9th and the 10th floors are setback
21 further than required under Section 1709.2.
22 That is this area here. It is the 11th floor

1 and the penthouse that require variance to
2 permit alignment over the existing core. That
3 is this area here.

4 MR. AVITABILE: Thank you. Now,
5 what about the practical difficulty in
6 complying with the court requirements?

7 MR. SPICKLER: The reasons are
8 similar to the practical difficulty for the
9 setback, much like the building's core, the
10 exterior walls of the building. As a result,
11 the dimensions of the courts are fixed. The
12 dimensions of the courts are also constrained
13 by the public streets, public alley, and
14 adjacent property lines.

15 In this case the outcome of the
16 appeal itself is an additional practical
17 difficulty because it requires courts and
18 yards on both properties that they were
19 neither designed nor intended to have.

20 You can see, as was mentioned
21 earlier, this was one court and is now two,
22 the red and yellow. This was one court, the

1 green and the blue, and is now two. To comply
2 we would have to demolish portions of the
3 existing structure or otherwise get relief
4 from the regulations.

5 MR. AVITABILE: Thanks. And,
6 finally, why do we need relief from the lot
7 control requirements?

8 MR. SPICKLER: It is the result of
9 the appeal decision that now there are
10 multiple buildings on a single record lot.
11 Right now there is no connection between the
12 two buildings. We don't know if we could
13 build an above-grade connection that would
14 meet the currently accepted definition because
15 it would be difficult to locate in the given
16 layout of the two buildings.

17 MR. AVITABILE: Thank you, J.P.
18 Now turning to the third part of the variance
19 test, could you please describe the impact of
20 the proposed additions?

21 MR. SPICKLER: We originally
22 revised the design to setback only the top two

1 floors of the three-story addition. However,
2 after discussion and negotiation with the
3 neighbors to the north, we agreed to setback
4 all three floors. The result is a design that
5 is basically consistent with the setback
6 intent.

7 The 9th and 10th floors are
8 setback in excess of the requirement while the
9 11th floor and the penthouse align with the
10 existing core elements and, therefore, require
11 relief. Again, the 9th and the 10th floor
12 setback there further than required, the 11th
13 floor and the penthouse aligning over the
14 existing floor requiring relief.

15 Indeed, the design actually
16 represents an improvement over the existing
17 condition. As shown earlier there is
18 currently an 18-foot tall high mechanical
19 penthouse wall adjacent to the two roof decks
20 to the south. This will be completely
21 eliminated. There is the existing condition
22 and, again, here is the new condition where

1 that wall is eliminated and the setback
2 increased.

3 As you can see in the next slide
4 on the plan, in order to accommodate the
5 setback we relocated the portion of the
6 penthouse as was mentioned earlier. That was
7 adjacent to the residential structure here in
8 the existing roof plan. To the east side new
9 roof of the addition located here. It is
10 being moved up from here to here.

11 In its place we have agreed to
12 install a 2,200 square foot green roof which
13 will be a visual and environmental amenity
14 that benefits both the immediate neighbors and
15 the District as a whole. That is the area
16 represented in green.

17 Finally, as you can see, as shown
18 earlier by John, in the north elevation we
19 have limited the number of windows on the
20 north facade here. We have used privacy
21 screening on the few windows that are there.
22 We are also using specific glare-reducing

1 material. This was all at the request of Ms.
2 Harmon and Mr. Scholtz, the privacy and
3 reduction of glare.

4 MR. AVITABILE: Thank you, J.P.
5 And, finally, have you analyze any of the
6 other impacts of the requested variances? Do
7 you believe that the relief can be granted
8 without substantial detriment to public good?

9 MR. SPICKLER: Yes. We believe
10 that the relief requested can be granted
11 without substantial detriment to the public
12 good and without impairing the intent,
13 purpose, and integrity of the zoned plan. As
14 these sections show, the proposed addition is
15 not within the human cone of vision as viewed
16 from the townhouses across 22nd Street.

17 This is a section through the
18 building. This is 22nd Street and the
19 townhouse is on Schneider's Triangle. Again,
20 from the human cone of vision on the top of
21 the townhouse you can't see the addition.
22 There are no impacts on view site lines from

1 the townhouses in Schneider's Triangle.

2 The top section is the existing
3 condition. Again, the cone of vision from the
4 street and from the top of the townhouse. The
5 second shows the matter of right addition.
6 The third shows the addition with the
7 requested variance. Obviously, the latter two
8 are the same at that instance.

9 We have also generated shadow
10 studies for the summer and winter solstice
11 comparing the proposed addition to both the
12 existing condition and the matter of right
13 addition. The summer studies show that there
14 is no difference in impact on the adjacent
15 condominium building between the existing
16 condition and the proposed addition with the
17 setback.

18 Indeed, the studies suggest a
19 slight improvement during certain time periods
20 due to the elimination of the penthouse. You
21 have the existing condition here again with
22 that wall adjacent to the residential decks

1 and then the proposed addition with the
2 setback so the air and light is actually
3 improved on the residential decks adjacent.
4 This is at 9:00 a.m. and this is at 11:00 a.m.

5 At 1:00 and 3:00 p.m. you can see
6 the similar condition as viewed from the west,
7 the existing condition and the proposed.
8 Again, the improvement is made to the decks
9 here and here.

10 Additionally, when we compared to
11 a matter-of-right addition there was no
12 difference in the impact on Schneider's
13 Triangle. The only period of time when there
14 is some impact is at 9:00 a.m. in the summer.
15 As this slide shows, there is no difference in
16 the impact between the matter-of-right option
17 and the addition with the setback.

18 This is the addition with the
19 setback at the top, again at 9:00 a.m. and
20 11:00 a.m. This is a matter-of-right addition
21 with the 45-degree compliance. Here is the
22 townhouses along Schneider's Triangle. You

1 can see there is no difference between the
2 proposed and matter-of-right addition at 9:00
3 a.m. At 11:00 a.m. and later in the day it's
4 not an issue.

5 The winter solstice in the morning
6 view is the worst case scenario. As for the
7 winter solstice in the morning there is no
8 appreciable difference in impact between the
9 matter-of-right condition and the proposed
10 addition with the setback.

11 The bulk of that difference is on
12 the roof of the residential structure's
13 mechanical penthouse, not its roof decks.
14 Specifically, again matter of right on the
15 bottom and proposed on the top. The area of
16 impact is there and there, there versus there.

17 The same is true even when the
18 comparison is between the existing condition
19 and the proposed addition. The bulk of the
20 shadow falls on the mechanical penthouse, not
21 the residential roof decks.

22 In the afternoon there is, again,

1 no appreciable difference in impact. The bulk
2 of the difference is, again, on the mechanical
3 penthouse of the residential structure rather
4 than the roof decks. That is the area here
5 and here, here and here.

6 This is also true even when the
7 comparison is to the existing condition. This
8 is the existing condition and the proposed,
9 existing and proposed. These are at 1:00 p.m.
10 and three p.m. There is no detriment to the
11 public good as a result of the addition.
12 Furthermore, the revised design with the
13 setback is consistent with the intent, I
14 believe, and the purpose and the integrity of
15 the zone plan.

16 MR. AVITABILE: Thank you, J.P.

17 MR. EPTING: Madam Chair, that
18 concludes our direct presentation.

19 CHAIRPERSON MILLER: Thank you.
20 Let me see if we have some Board questions.
21 I have one. You are not picking variance
22 relief with respect to the penthouse. Is that

1 correct?

2 MR. AVITABILE: That's correct.

3 No relief is required.

4 CHAIRPERSON MILLER: Is it setback
5 equally all around?

6 MR. AVITABILE: It is setback
7 equally from all three sides that are exterior
8 walls. The fourth wall where it is flush with
9 our wall, that is not an exterior wall. That
10 is an interior wall and the Board has
11 previously ruled that the setback requirement
12 doesn't apply.

13 MEMBER DETTMAN: Would you happen
14 to have application numbers for cases where
15 the BZA ruled that was an interior wall?

16 CHAIRPERSON MILLER: I know what
17 it is.

18 MR. EPTING: It's the Belmont
19 Tower case.

20 MR. AVITABILE: It's the Belmont
21 Tower case and I think actually the D.C. Court
22 of Appeals just ruled on that. I just don't

1 know the number off hand.

2 CHAIRPERSON MILLER: We have it.
3 I'll give it to Mr. Dettman. He didn't sit on
4 that case but I did. They did uphold that
5 part of the order.

6 MR. EPTING: We're not trying to
7 brighten your ground on that issue.

8 CHAIRPERSON MILLER: Are there
9 other Board questions? Okay. I don't want to
10 beat a dead horse but I kinda do. This
11 overview that we have, I guess it's going to
12 be amended to a certain extent because it has
13 shared parking garage under special exception
14 lot control unless I don't understand my
15 question before that I thought that was not
16 included.

17 MR. AVITABILE: That was simply
18 meant to point out that in the process of
19 asking for multiple buildings we weren't
20 asking for the parking garage to be separate
21 as well. The parking garage stays part of
22 both. It is just what is on top.

1 CHAIRPERSON MILLER: Okay. All
2 right. Is that your presentation?

3 MR. EPTING: That's it.

4 CHAIRPERSON MILLER: Okay. Why
5 don't we turn to Office of Planning then.

6 MR. PARKER: Good evening, Madam
7 Chair, members of the Board. For the record,
8 my name is Travis Parker with the Office of
9 Planning. In light of the hour and at the
10 pleasure of the Board, I am happy to stand on
11 the record as submitted. We agree with the
12 applicant's analysis of the variance test and
13 we support the compromised solution that has
14 been reached and we recommend approval of the
15 variances as proposed.

16 CHAIRPERSON MILLER: In your
17 report --

18 MR. PARKER: The original or
19 supplemental?

20 CHAIRPERSON MILLER: Dated January
21 8, supplemental, 2008. You make reference, I
22 believe, to variance relief related to the

1 existing loading dock.

2 MR. PARKER: That was a holdover
3 from the previous report. That has been
4 withdrawn.

5 CHAIRPERSON MILLER: Okay.

6 MR. PARKER: Not applicable.

7 CHAIRPERSON MILLER: I guess I
8 would get back to the applicant on this but
9 Ms. Shuman raised a question about loading as
10 an impact of our granting relief on this
11 application. Do you see that issue at all?

12 MR. PARKER: No. I mean, the
13 issues that she raised were with the existing
14 building and the existing loading situation.
15 Adding an addition and meeting the
16 requirements they are actually going to be
17 adding loading capacity so I don't see a
18 relation between that and what is being
19 requested.

20 CHAIRPERSON MILLER: Do you have a
21 comment on additional relief under 2516 that
22 has been discussed?

1 MR. PARKER: Only that almost any
2 other circumstance OP would be incredibly
3 opposed to a variance from what is being
4 requested but because of the circumstance we
5 find ourselves in related to the appeal, there
6 doesn't seem to be any other options for the
7 residential building.

8 In general we would hate the
9 precedent of getting a variance from that
10 section for measuring height through a
11 different building but I think that is the
12 only option we have here.

13 CHAIRPERSON MILLER: The rationale
14 for doing that in this case is to -- maybe you
15 can articulate it again but I am under the
16 impression it has nothing to do with
17 protecting the residents of the residential
18 building?

19 MR. PARKER: Based on the appeal
20 decision the residential building is not
21 conforming with the height act. The relief
22 being requested would bring them back into

1 conformance with the height act. Those two
2 buildings were built considering them to be
3 one building and the appeal made them two and
4 now the residential building is not in
5 conformance with the height act if they are
6 two buildings.

7 CHAIRPERSON MILLER: It is your
8 opinion that by our granting variance relief
9 from that provision in 2516 that would bring
10 them into compliance?

11 MR. PARKER: The height act is
12 still the purview of the Zoning Administrator
13 but, yeah, I think that is the only way.

14 COMMISSIONER TURNBULL: I wonder
15 if I could just ask one question. You're not
16 asking for loading relief but how are you
17 accommodating additional loading? Just
18 curious.

19 MR. EPTING: I'll let J.P. answer
20 that.

21 MR. SPICKLER: Actually the
22 building is currently just under 90,000 square

1 feet. With the addition we trigger over
2 100,000 square foot requirement for two
3 service bays -- one service bay and two
4 loading bays so we are building a new loading
5 bay within the cellar level of the existing
6 office building to meet the required number of
7 service and loading berths.

8 COMMISSIONER TURNBULL: Okay.

9 MR. EPTING: We are taking space
10 out of the existing building and creating a
11 new one so it is an expensive proposition.

12 COMMISSIONER TURNBULL: Thank you.

13 MR. SPICKLER: The current loading
14 is all on surface in back of the building. We
15 are building a new loading berth in the
16 building.

17 COMMISSIONER TURNBULL: So you
18 would be going into the garage?

19 MR. SPICKLER: It is at terrace
20 level above the garage.

21 COMMISSIONER TURNBULL: Terrace
22 level. Okay.

1 CHAIRPERSON MILLER: Will any of
2 the current loading be going into the new
3 loading area or that is only to address the
4 new loading requirement?

5 MR. AVITABILE: That's only for
6 the new loading requirements. The existing
7 loading was on the site and is still there.
8 It's in that rear loading area.

9 CHAIRPERSON MILLER: Mr. Parker,
10 again, I guess with respect to Ms. Shuman's
11 concerns about the loading, will additional
12 loading requirements then also bring
13 additional truck traffic which was one of her
14 concerns?

15 MR. PARKER: I can imagine the
16 addition office space is going to have
17 additional loading needs. The vast majority
18 of the loading needs for this project and most
19 projects is coming from the retail uses that
20 aren't going to change. It seems to me the
21 new loading being provided is more than the
22 new loading that is actually going to be

NEAL R. GROSS

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

1 needed.

2 CHAIRPERSON MILLER: And we don't
3 have any report from DDOT. Do we? Okay.

4 Are there other questions for
5 Office of Planning?

6 Could the applicant address that
7 issue about the trucks?

8 MR. EPTING: Sure. I would love
9 to address that issue. I don't think Ms.
10 Shuman presented any zoning issues under the
11 jurisdiction of the BZA. First, we have two
12 building here and she saw a number of trucks.
13 We don't know where those trucks are going.
14 Staples could be going to a residential
15 building.

16 Clearly Starbucks, as Mr. Parker
17 pointed out, does trigger a lot of loading
18 issues. That is, as I think you pointed out,
19 an enforcement issue for DPW or DDOT and not
20 a zoning issue per se. A zoning issue
21 requires you to provide a certain amount of
22 zoning. Then whether the trucks use it or not

NEAL R. GROSS

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

1 becomes an enforcement issue.

2 The problem if you are downtown K
3 Street or 17th Street, I mean, the trucks seem
4 to want to just pull out in front of the
5 building and run in. There is nothing zoning
6 can do about that. The other point of all the
7 pictures she is showing that is the existing
8 building.

9 I agree with Mr. Parker again that
10 adding what is a relatively small amount of
11 office space with a whole new loading area is
12 not going to tip the scales here. I know that
13 we have learned these neighbors probably
14 better than I ever wanted to and they love
15 Starbucks.

16 That is almost a Catch 22 there.
17 The Starbucks loading truck is never going to
18 pull all the way around the corner and through
19 the alley to load. They are just not going to
20 do that but that is not a zoning issue. I
21 think that is my answer.

22 CHAIRPERSON MILLER: Let me just

1 ask you this. Sometimes we see that you have
2 to provide more loading space just because the
3 regulations require it, not necessarily
4 because your office users are definitely going
5 to actually require that. Is there any
6 possibility that some of these trucks could go
7 in the cellar area?

8 MR. EPTING: Absolutely. I mean,
9 they could do it.

10 CHAIRPERSON MILLER: They are not
11 excluded. It's not just --

12 MR. EPTING: No, no. They could
13 absolutely do it.

14 CHAIRPERSON MILLER: This might
15 actually improve the situation.

16 MR. EPTING: It could improve the
17 situation and they could go through the
18 building. There is a back door into the
19 Starbucks if they chose to go that way. The
20 UPS trucks could, too. We can't require them
21 to do it under zoning.

22 CHAIRPERSON MILLER: Okay. I

1 would say that is probably not before us
2 because we are not talking about the existing
3 buildings. We are talking about the new
4 addition. However, zoning sometimes does
5 require certain conditions such as the trucks
6 will have to go in the back instead of the
7 front.

8 MR. EPTING: We can do that to the
9 degree that we could require loading the
10 stuff. Like coming to our building we could
11 require them to do that. Things like UPS
12 trucks, the more random delivery things that
13 have no contact with us, we certainly can't do
14 anything about.

15 Certainly we could through our
16 tenants put in some condition to the degree
17 practical that loading would all be done
18 through the loading dock. Otherwise we are
19 providing it at great expense and it's not
20 helping us any but we can certainly do that.

21 Like I said, that may help some
22 but it's not going to help -- there is a lay-

1 by on K Street where trucks pull in front of
2 and Ms. Shuman has shown that. That is also
3 a generic issue across the CBD so it's not
4 just this building.

5 CHAIRPERSON MILLER: I think that
6 is basically the only adverse impact that we
7 have heard in this case.

8 MR. EPTING: I agree.

9 CHAIRPERSON MILLER: For instance,
10 Starbucks is your tenant. Is that correct?

11 MR. EPTING: That's correct.

12 CHAIRPERSON MILLER: So it's
13 possible that Starbucks could be required to
14 use the new loading area.

15 MR. EPTING: They can require
16 their people to do it. Whether or not they
17 would do it or not I can't address. If I'm a
18 delivery guy and I deliver to Starbucks, I'm
19 going to pull in front and load and take my
20 chances on getting a parking ticket or
21 whatever but we could certainly ask Starbucks
22 to tell their people to come around the

NEAL R. GROSS

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

1 corner.

2 MR. AVITABILE: To add a bit of
3 just personal experience, our firm's office
4 building requires all deliveries to be made at
5 the rear loading dock and it does work. I
6 think we can do everything we possibly can in
7 our power to do that. Ultimately you can't
8 control those FedEx and UPS random deliveries.

9 Particularly considering that this
10 is a hybrid office and residential block, this
11 could very well be UPS trucks stopping there
12 and making deliveries to the residences, to
13 the condo building. Everyone is getting
14 deliveries from those types of trucks so it's
15 not just the office use.

16 MR. EPTING: Dave is right. Our
17 building does do that but basically we have a
18 law firm occupying almost the entire building
19 and we have no retail there so it's not quite
20 the same.

21 CHAIRPERSON MILLER: Okay. I
22 think it's something to think about.

1 MR. EPTING: Sure.

2 CHAIRPERSON MILLER: Any other
3 questions? Mr. Parker, your light is on.

4 MR. PARKER: Oh. If there is no
5 cross examination, I am running incredibly
6 late.

7 CHAIRPERSON MILLER: Oh, I'm
8 sorry.

9 MR. PARKER: That's all right.

10 CHAIRPERSON MILLER: Cross
11 examination?

12 MR. EPTING: No.

13 CHAIRPERSON MILLER: Thank you
14 very much.

15 MR. EPTING: Thank you. I think
16 that basically concludes our statement. We
17 have worked very hard to reach an agreement
18 here. We believe we have satisfied the three
19 prongs of the test. I guess we discussed, we
20 would like you to hold your decision in
21 abeyance until we have reached the final
22 construction management plan.

NEAL R. GROSS

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

1 We do want to be bound by the
2 plans that were submitted January 2nd. We
3 would like a condition. Again, we have
4 reached this with the community that we
5 maintain the green roof and install it, those
6 two things.

7 I think that is a zoning issue.
8 The other two things about the construction
9 and cooperation agreement we'll just get
10 signed before your decision. We do ask for
11 your approval in the near future.

12 CHAIRPERSON MILLER: Okay. This
13 is what I would like to suggest, especially
14 since there are those few outstanding issues
15 which we are going to be waiting for anyway.
16 Perhaps if you could submit one more filing
17 which would clearly identify the relief that
18 is being sought since it's been amended today.
19 I would suggest that you put in writing
20 requested conditions.

21 MR. EPTING: That would be
22 terrific.

1 CHAIRPERSON MILLER: Yes, so we
2 could see them and analyze them. If the
3 rationale is not obvious, you can give us the
4 rationale since we are not going to be able --
5 I don't think we are going to have another
6 hearing which we would ask you questions.
7 What I would anticipate is you would give us
8 this writing and we would evaluate it and then
9 we would give you a decision.

10 MR. EPTING: That's terrific.

11 CHAIRPERSON MILLER: Okay. You
12 mentioned the green roof or whatever that
13 would go in there. Then we talked about
14 loading perhaps if you want to think that one
15 through, and any conditions related to the
16 agreements that you want us to consider.
17 Referencing the agreements or specific
18 conditions.

19 MR. EPTING: Okay. We would be
20 glad to do that. That's great.

21 CHAIRPERSON MILLER: Okay.
22 Anything else? Okay. How quickly are we

1 going to do this?

2 MR. EPTING: We had a rough day or
3 so. I think within a week we could. I think
4 that would be -- we would file something by
5 February 5th. Otherwise, if we didn't have it
6 by then we would file something saying that we
7 didn't have it ready and propose a different
8 date.

9 What we have to do between now and
10 then is we have to get -- Mr. Hitchcock has
11 got to get the Board together which is a
12 number of people. Mr. Gell has got to get
13 Florence and Tom together which is less hard.
14 We've got to get Davis to meet -- Davis
15 Construction is our contractor, to sort of
16 meet with both of us. We have to pull all
17 those things together.

18 CHAIRPERSON MILLER: Okay.

19 MR. EPTING: It sounds like two
20 weeks should work.

21 CHAIRPERSON MILLER: Okay. The
22 Board is not in a hurry. It is really your

1 application.

2 MR. EPTING: We're in a hurry.

3 CHAIRPERSON MILLER: So, you know,
4 don't look to us like is that too late.

5 MR. EPTING: No. I think in terms
6 of pressure we would like to have a deadline
7 on ourselves anyway to keep us moving.

8 CHAIRPERSON MILLER: Okay.
9 Basically our situation is February 5th is our
10 next decision date.

11 MR. EPTING: I understand.

12 CHAIRPERSON MILLER: If you
13 provide it by February 5th it is probably too
14 late for us.

15 MR. EPTING: I understand.

16 CHAIRPERSON MILLER: It's also a
17 very full day.

18 MR. EPTING: I understand.

19 CHAIRPERSON MILLER: I'm not
20 necessarily anxious to put it on that date.
21 The next decision date is March 4th. It was
22 naturally go on that date but if there is an

NEAL R. GROSS

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

1 urgency for us to schedule a special public
2 meeting we can consider it.

3 MR. EPTING: I think we would
4 strongly appreciate that given how we have
5 worked hard on this and we have taken a good
6 bit of the Board's time over the past year.
7 I know we would like to get a decision.

8 CHAIRPERSON MILLER: I know this
9 case has been continued so we don't want to
10 drag it out either. I think probably the 12th
11 or the 19th then for us. I supposed if it's
12 in the 5th the Board doesn't need more than a
13 week to look it over.

14 Mr. Moy, does the 12th look okay
15 to you for adding a special public meeting for
16 this case? I think our one concern is, you
17 know, this is pretty late and we don't want to
18 do this too much to parties, have them go too
19 late. Can you tell does it look like it would
20 be reasonable to put it on the 12th?

21 MR. MOY: For a special public
22 meeting?

1 CHAIRPERSON MILLER: Yes.

2 MR. MOY: I would say that is
3 possible. We already have three cases in the
4 morning but the Board has done that before.

5 MR. EPTING: I think the issues
6 are pretty crytalized here.

7 MR. MOY: Those three cases are
8 more special exception cases.

9 CHAIRPERSON MILLER: Okay. Let's
10 put it on the 12th.

11 MR. EPTING: Thank you.

12 MS. BAILEY: Madam Chair, not
13 meaning to complicate the matter but will you
14 be accepting a response from the parties?
15 Just asking.

16 CHAIRPERSON MILLER: I don't think
17 there are any parties that will be responding.
18 Am I correct? I don't think so. We have this
19 withdrawal issue. I don't think so.

20 MR. EPTING: As part of this we
21 had it worked out with the parties the
22 construction management plan and stuff so you

1 will basically -- our filing will signify that
2 they are approving it. Would the Board want
3 us to submit a draft order?

4 MS. MONROE: I think it depends on
5 whether you decide you want a summary order
6 since you have no more parties and whether you
7 want a full order. That's up to you.

8 CHAIRPERSON MILLER: If there are
9 no parties in opposition -- if there will be
10 no parties in opposition you won't need to
11 submit a full order.

12 MR. EPTING: I would love to have
13 a summary order. Yes.

14 CHAIRPERSON MILLER: What would be
15 useful though?

16 MR. EPTING: The conditions.

17 CHAIRPERSON MILLER: You have
18 already briefed some of the issues but if you
19 can make them clearer with respect to the
20 relief you are seeking, that would be helpful.

21 MR. AVITABILE: I think the draft
22 summary order would both clarify the relief

1 requested and the proposed conditions so it
2 would actually capture a lot of what the Board
3 is looking for.

4 CHAIRPERSON MILLER: I think the
5 Board pretty much understands the variance
6 analysis but you are adding some more claims.
7 I'm just saying in lieu of a full order if you
8 do the variance test for the specifics that
9 you're seeking, that would be useful.

10 MR. EPTING: Yes. Thank you.

11 CHAIRPERSON MILLER: Great. Okay.
12 Anything else? I think that concludes this
13 case. Thank you. Have a good night.

14 Do we have anything else on the
15 agenda for today?

16 MS. BAILEY: No, Madam Chair.

17 CHAIRPERSON MILLER: I don't think
18 so. I think we can call it a night. This
19 hearing is adjourned.

20 (Whereupon, at 7:42 p.m. the
21 hearing was adjourned.)
22