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OFFICE OF PLANNING STAFF PRESENT:

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STEPHEN RICE

STEVE COCHRAN

KAREN THOMAS

This transcript constitutes the minutes from the Public Hearing held on July 24, 2007.

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P R O C E E D I N G S

Time: 10:12 a.m.

CHAIRPERSON MILLER: Good morning.

I'm sorry we kept everybody waiting here.

There may be some more PowerPoint.

Oh, they are finished? Great. Okay.

Then this hearing is going to come to order. This is the July 24, 2007, Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I am the Chair of the BZA. To my left is Mr. Marc Loud, who is the Mayoral appointee on the BZA, and next to him is Mr. John Mann who represents NCPC on the BZA. Next to him is Mr. Clifford Moy from the Office of Zoning, Sherry Glazer, Office of Attorney General. Bryan is next to her. He is an intern this summer in the Office of Attorney General, and Beverly Bailey with the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door.

1           Please be advised that this  
2 proceeding is being recorded by a court  
3 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           Then presenting information to the  
8 Board, please turn 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 table near the door  
18 and on the witness table. Upon coming forward  
19 to speak to the Board, please give both cards  
20 to the reporter sitting to my right.

21           The order of procedure for special  
22 exceptions and variances is as follows:

23           (1) Statement and witnesses of the

1 Applicant;

2 (2) Government reports, including  
3 Office of Planning, Department of Public  
4 Works, DDOT, etcetera;

5 (3) Report of the Advisory  
6 Neighborhood Commission;

7 (4) Parties of persons in support;

8 (5) Parties of persons in  
9 opposition;

10 (6) Closing remarks by the  
11 Applicant.

12 Pursuant to Section 3117.4 and  
13 3117.5, the following time constraints will be  
14 maintained. The Applicant, Appellant, persons  
15 and parties, except an ANC, in support,  
16 including witnesses, 60 minutes collectively;  
17 persons and parties, appellees, except an ANC,  
18 in opposition, including witnesses, 60 minutes  
19 collectively; individuals, three minutes.

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

1 parties. The ANC within which the property is  
2 located is automatically a party in a special  
3 exception or variance case.

4 Nothing prohibits the Board from  
5 placing reasonable restrictions on cross-  
6 examination, including time limits and limits  
7 on the scope of cross-examination.

8 The record will be closed at the  
9 conclusion of each case except for any  
10 materials specifically requested by the Board.  
11 The Board and the staff will specify at the  
12 end of the hearing exactly what is expected  
13 and the date when the persons must submit the  
14 evidence to the Office of Zoning.

15 After the record is closed, no  
16 other information will be accepted by the  
17 Board.

18 The Sunshine Act requires that the  
19 Public Hearing on each case be held in the  
20 open before the public. The Board may,  
21 consistent with its rules of procedure and the  
22 Sunshine Act, enter Executive Session during  
23 or after the public hearing on a case for

1 purposes of reviewing the record or  
2 deliberating on the case.

3 The decision of the Board in these  
4 contested cases must be based exclusively on  
5 the public record. To avoid any appearance to  
6 the contrary, the Board requests that persons  
7 present not engage the members of the Board in  
8 conversation.

9 Please turn off all beepers and  
10 cellphones at this time so as not to disrupt  
11 these proceedings.

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

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

23 Does the staff have any

1 preliminary matters?

2 MS. BAILEY: Madam Chair, to the  
3 members of the Board and to everyone, good  
4 morning.

5 Yes, and it has to do with  
6 Application Number 17643 of 3255 N Street  
7 Trust. That application was withdrawn, Madam  
8 Chair.

9 CHAIRPERSON MILLER: Thank you,  
10 and as I understand it, no action is required  
11 of the Board. Is that correct?

12 MS. BAILEY: None is required at  
13 this time.

14 CHAIRPERSON MILLER: Thank you.

15 Then at this point, would all  
16 individuals wishing to testify today please  
17 rise to take the oath, and Ms. Bailey will  
18 administer it.

19 MS. BAILEY: Would you please  
20 raise your right hand.

21 (Witnesses sworn.)

22 MS. BAILEY: Thank you.

23 CHAIRPERSON MILLER: Thank you,

1 Ms. Bailey. Would you call the first case,  
2 please?

3 MS. BAILEY: Pauline Ney, and that  
4 is Application Number 17446. This is a  
5 limited public hearing that was established  
6 today by the Board, and it is pursuant to 11  
7 DCMR 3104.1, for variances from the floor area  
8 ratio requirements under Section 402, lot  
9 occupancy requirements under Section 403, rear  
10 yard requirements under Section 404, and  
11 nonconforming structure provisions under  
12 subsections 2001.3 and 2002.4, to construct  
13 six residential units above an existing one-  
14 story retail structure. The property is zoned  
15 R-5-B. it is located at 2160 - 2162  
16 California Street, N.W. (Square 2530, Lots 99  
17 and 100).

18 Madam Chair, if you would just  
19 give me a moment. I read it as it is listed  
20 on the Public Hearing agenda, but as you may  
21 recall, that application was amended, and  
22 relief is being sought from variance from lot  
23 occupancy and from 2001.3.

1           Does that make any sense, Madam  
2 Chair? In other words, I read the case as it  
3 is listed on the Public Hearing notice, but as  
4 you may recall, during the hearing the  
5 application was amended.

6           CHAIRPERSON MILLER: Yes, right.  
7 Also, the way the decision reads, it also  
8 references 2002.4.

9           MS. BAILEY: Exactly.

10          CHAIRPERSON MILLER: Okay. I  
11 think we are fine on that.

12          MS. BAILEY: Sorry about that.  
13 Thank you.

14          CHAIRPERSON MILLER: That is no  
15 problem. Could you first start by identifying  
16 yourself for the record? Good morning.

17          MS. BROWN: Good morning, Madam  
18 Chair, Carolyn Brown from Holland & Knight on  
19 behalf of the Applicant, Pauline Ney.

20          MS. BEGGS: Kathleen Beggs on  
21 behalf of California Court, California House,  
22 which is an interested party.

23          MR. MATZ: Harry Matz on behalf of

1 the Woodrow Cooperative, which is also an  
2 interested party. Matz is M-a-t-z.

3 MS. PERLMUTTER: Sandra  
4 Perlmutter. I am Chair of ANC-2D.

5 CHAIRPERSON MILLER: Thank you. I  
6 just want to start off by saying that there  
7 are three members currently on the BZA who  
8 heard this case and who will be deciding this  
9 motion, and that's myself and Mr. Mann and Mr.  
10 Etherly, and Mr. Etherly is unable to be here  
11 today.

12 We are sitting here with a quorum,  
13 but we don't have Mr. Etherly as the quorum  
14 for our case. However, Mr. Etherly will be  
15 reading the record in its entirety, and I  
16 wanted to put that out in the event that  
17 anyone has an objection to that.

18 My guess is that you would want to  
19 proceed as scheduled. Otherwise, we would  
20 push off into the fall. Mr. Etherly will be  
21 able to read the full record, and that is not  
22 uncommon in these instances. But if you have  
23 a concern, we will hear it.

1 MS. BROWN: The Applicant has no  
2 concerns, Madam Chair.

3 MS. BEGGS: My neighbors here are  
4 also giving the face that says no objection.

5 CHAIRPERSON MILLER: Okay. I  
6 don't think there really should be a problem  
7 at all, because he will read the record and  
8 have the same information.

9 Now getting to how we proceed  
10 today, I just want to have an understanding of  
11 the two of you. Are you joined as one entity  
12 here for oral argument purposes and proceeding  
13 on this motion or are you separate in sharing  
14 your time, which we will get into also, the  
15 time, in a few minutes, how much time we are  
16 going to be allocating to this proceeding. It  
17 is a limited proceeding.

18 I want to get a feel from you as  
19 to -- We know what the issue is as far as from  
20 the last time, that there was newly discovered  
21 evidence -- is the way we see it -- newly  
22 discovered evidence that goes to a fact in  
23 this case that the Board relied on to a

1 certain extent for its legal conclusions, that  
2 being that what appeared to be a nonconforming  
3 use was actually a conforming use at the time  
4 of the hearing.

5 So last time we discussed this,  
6 there was a question of whether there were  
7 going to be some stipulations, so we weren't  
8 going to need a lot of fact testimony; and I  
9 am not sure where you all are on that, but we  
10 basically see it, once we understand what the  
11 fact is, if it is contested or not contested  
12 with respect to the use. If it is not  
13 contested, then the issue is whether that  
14 would change the Board's legal conclusions,  
15 and that would be a legal argument.

16 Legal arguments take less time  
17 than fact witnesses and cross-examination. So  
18 maybe we can get a feel for where you are on  
19 this. Anybody intend to present a witness,  
20 for some reason?

21 MS. BEGGS: I don't think that our  
22 side has a need to put on any witnesses, given  
23 the evidence that we have put in front of the

1 Board that, I think, is uncontested; but I  
2 have had no conversations with the Applicant  
3 with regard to what I have a continuing number  
4 of lingering questions with regard to what the  
5 use of the basement at the 2162 California  
6 Street property has been put to, and I am  
7 certainly not satisfied that those answers  
8 have been set forth in the brief that was  
9 supplied, which was unaccompanied by an  
10 affidavit or verification from the Applicant  
11 or from her son or from their architect, which  
12 is, I think, a long way of saying, is that I  
13 don't feel as though we are all the way there  
14 on the facts.

15 I think that we pretty much are  
16 all the way there on the law.

17 CHAIRPERSON MILLER: Okay. If you  
18 are not all the way there on the facts -- and  
19 I will turn to Ms. Brown in a minute. It's  
20 the key to the facts, but would you have  
21 witnesses that would go to the facts as well,  
22 or no?

23 MS. BEGGS: In this case, the

1 facts are peculiarly within the knowledge and  
2 control of the Applicant. We don't know. I  
3 don't know what is going on in that basement.  
4 I have no idea. I've never been down there,  
5 and nobody has ever invited me.

6 CHAIRPERSON MILLER: Okay. Ms.  
7 Brown, do you want to address that? Are there  
8 some facts still in dispute with respect to  
9 the use of those premises?

10 MS. BROWN: To my knowledge, no,  
11 Madam Chair. The information that was  
12 presented in our letter of July 10 to the  
13 Board is accurate. As you know, the rules of  
14 evidence are not the same here as they are in  
15 Superior Court or the Court of Appeals, in  
16 that it is not necessary to have affidavits.  
17 I was authorized to act on behalf of the  
18 owner, Pauline Ney, and her son, and these are  
19 the facts that they gave me. That is what is  
20 before you.

21 CHAIRPERSON MILLER: So you don't  
22 plan to put on a witness as well.

23 MS. BROWN: We do not.

1                   CHAIRPERSON MILLER: So this is  
2 legal argument, basically.

3                   MS. BEGGS: May I respond? I  
4 don't know how we can go about finding what  
5 the facts are. What we understand and what  
6 has not been disputed is that there is a  
7 residential apartment down in the basement of  
8 2162.

9                   There is also space that has been  
10 described previously as storage. There has  
11 been no representation by counsel or by  
12 anybody as to what that storage is, except we  
13 do have the letter of Brian Logan, who  
14 occupies the first floor space. What he says  
15 is that he doesn't rent the basement space,  
16 which leaves the obvious question, is what is  
17 the storage that they intend to convert to a  
18 nonconforming use?

19                   It appears to me, without  
20 representations to the contrary, and since the  
21 last time we were here on July 3rd Ms. Brown  
22 told us we could assume whatever we wanted  
23 about that basement, is that I think that that

1 is where, you know, Joseph Ney has his old  
2 football trophies or something like that, is  
3 that the entire basement has been returned to  
4 a conforming use, which I believe under  
5 Chapter 20 of the Zoning regulations leads to  
6 very troubling questions about whether it can  
7 be returned in any way, shape or form to a  
8 commercial or a business use.

9 I think that the regulations speak  
10 very directly on this point.

11 CHAIRPERSON MILLER: All right.  
12 Let me suggest this then, and others have  
13 ideas. It sounds like there aren't any  
14 witnesses at least to testify today. So we  
15 can go in the normal course of argument on  
16 your motion. You can identify where you think  
17 the facts are, where you think anything we  
18 don't know about the facts, what conclusions  
19 that would lead to, and make your argument.  
20 Then Ms. Brown can respond. Then the ANC can  
21 also weigh in.

22 Do you want to say something right  
23 now?

1 MS. PERLMUTTER: Thank you, Madam  
2 Chair. I have to get back to work. So is it  
3 okay to go at this time or would you like  
4 something -- I just can't wait for 60 minutes.

5 CHAIRPERSON MILLER: No, no, no.  
6 We are not even going to do 60 minutes,  
7 because this is an abbreviated hearing. We  
8 were thinking maybe 15 minutes each side and  
9 questions from the Board. But if you have  
10 time constraints and there are no objections  
11 by the other parties, I don't see any reason  
12 why you couldn't go first and make your  
13 arguments.

14 MS. BEGGS: No objection.

15 CHAIRPERSON MILLER: Okay. Go  
16 ahead.

17 MS. PERLMUTTER: Thank you so  
18 much, Madam Chair. My name is Sandra  
19 Perlmutter, and I am Chair of ANC-2D.

20 The ANC, as this case was  
21 presented -- gosh, I've lost track now -- a  
22 year ago, maybe more, voted against this  
23 Applicant and project. We feel very strongly,

1 and in a letter to you reiterated our  
2 position, and we feel very strongly about  
3 reiterating that position.

4 I will say this. Just given the  
5 brief exchange that I heard, I understand that  
6 this further development has to be decided  
7 based on the law, based on the regulations.  
8 I am not someone that has full knowledge of  
9 those things, and I trust that our residents  
10 here have done that research and will present  
11 a case to you.

12 I feel, frankly, we should not be  
13 sitting here. This, to me, having taken the  
14 extra time of this Board, our ANC and our  
15 residents to find at the eleventh hour  
16 additional information that could have been  
17 presented in a very fair way at the beginning  
18 of this process -- it feels -- Frankly, it  
19 feels an affront to me. I would say that, if  
20 I were you, although I'm not sitting in your  
21 seats, I would feel that it takes staff time.  
22 It takes time on your part as appointees and  
23 quasi-volunteers.

1           It feels very hard to me as an  
2           elected official to have a trust in this  
3           process when these kinds of things happen, and  
4           that is not anything personal to Ms. Brown who  
5           I have worked with before, who I respect, but  
6           I feel a little shaken, frankly, by what has  
7           happened here.

8           On the one hand, I'm happy that  
9           this hearing has been reopened, because we are  
10          against it, and it actually may turn out in  
11          our favor, given this latest development. But  
12          we shouldn't be sitting here. We really  
13          shouldn't be sitting here, given what has  
14          happened.

15          I know that what I am saying is  
16          not necessarily how this argument will be  
17          solved, but I feel, as a representative of the  
18          District of Columbia and as a responsible ANC  
19          Commissioner and as a resident in my  
20          neighborhood, when these sorts of things  
21          happen I hope and I pray that the process is  
22          respected to the utmost; and I feel a bit  
23          violated in that regard, and because if

1 someone uses the argument, well, this may not  
2 be -- the evidence that was discovered may not  
3 be relevant to the case, well, when an  
4 applicant shows our over 100 residents at a  
5 meeting a drawing of this building and in some  
6 way leaves a piece of it out, either knowingly  
7 or unknowingly, that doesn't feel great to me.

8 So I appreciate having the time to  
9 speak today. Once again, as an elected  
10 official, I feel I was elected to uphold the  
11 process, and in this case I will do that for  
12 my residents. But when someone comes before  
13 me and asks respectfully to have time on a  
14 concern of theirs, I would hope that they  
15 would uphold the process as well.

16 Thank you, Madam Chair.

17 CHAIRPERSON MILLER: Thank you  
18 very much. Are there any questions from the  
19 Board? Okay. I don't think that requires  
20 cross-examination. Thank you very much.

21 At this point then, I think that  
22 we should hear from you on your motion.

23 MS. BEGGS: And I will try to be

1 brief. First of all, I really want to say how  
2 thankful I am for the Board's indulgence of my  
3 illness that I've had over the last week and  
4 that our papers didn't get in until yesterday,  
5 when we had planned to try to get them to you  
6 on Thursday. That was totally my fault.

7 CHAIRPERSON MILLER: No problem.

8 MS. BEGGS: And I'm hoping you had  
9 a chance to read our very brief brief, which--

10 MS. BROWN: Could I just ask a  
11 point of clarification. Was there a request  
12 for a waiver for the late submission?

13 MS. BEGGS: Yes, there was. In  
14 fact, I gave you a call, and you returned it  
15 while I was at the doctor's, and then I called  
16 you again and you did not return that call.  
17 But, yes, that's what happened. But, yes, I  
18 did speak with Secretary Moy, and he told me  
19 that the materials could be FAX'ed to Board  
20 members.

21 CHAIRPERSON MILLER: I guess Ms.  
22 Brown is raising if these were late under our  
23 schedule, would the Board be so inclined to

1 waive the deadline. I would be.

2 MEMBER MANN: Yes, I would be  
3 inclined to waive the deadline as well.

4 CHAIRPERSON MILLER: Okay. I  
5 think there was good cause for doing so.  
6 Okay. Could you just review what has been  
7 filed so we actually make sure that we do have  
8 all the documents that have been filed on this  
9 Board, since they all came in pretty recently?  
10 I just want to make sure.

11 We do have your response to  
12 Applicant's supplemental response to motion  
13 for reconsideration.

14 MS. BEGGS: Is this since the July  
15 3rd hearing?

16 CHAIRPERSON MILLER: Yes.

17 MS. BEGGS: Since the July 3rd  
18 hearing, there was a July 10th filing by  
19 Holland & Knight on behalf of the Applicant,  
20 and there was a filing by us -- There was a  
21 response, and that's it.

22 CHAIRPERSON MILLER: Okay, we have  
23 that, and we have read it.

1 MS. BEGGS: Oh, I've left  
2 something out. There was also the ANC letter  
3 that was -- Harry, when is that dated?

4 MR. MATZ: A couple of days ago.

5 CHAIRPERSON MILLER: We have that.  
6 We've read it, okay.

7 MS. BROWN: Madam Chair, again a  
8 point of clarification. I have no objection  
9 to the acceptance of the late submission, but  
10 perhaps for the record, I was never informed  
11 of the reason for the delay.

12 Then, secondly, I have not  
13 received the ANC letter.

14 CHAIRPERSON MILLER: Okay. I  
15 think you ought to see that before you address  
16 the motion. Is that being shown to you right  
17 now?

18 MS. BEGGS: Yes, I just handed it  
19 to her. It does not show copies. It has the  
20 two ANC members who wrote the letter.

21 CHAIRPERSON MILLER: Right. Okay.  
22 So whenever you are ready to proceed -- So we  
23 were thinking about 15 minutes should be able

1 to accommodate --

2 MS. BEGGS: I can do that. I  
3 think that should be fine.

4 The last time we were here on July  
5 3rd, Mr. Etherly, with the concurrence of Mr.  
6 Mann, said that he thought that what this  
7 motion really boiled down to was four  
8 questions, and I would like to address them;  
9 because I don't think they were addressed in  
10 the filing that was made by the Applicant, and  
11 there is no way we can make a filing on it,  
12 because we just plain have no way of knowing.

13 The first one he asked is what's  
14 happening in the space now? We have a partial  
15 answer, and that is a concession that there is  
16 a residential apartment down there, that it  
17 has been there for about 10 years, that there  
18 is no representation -- As I say, there is no  
19 sworn testimony or affidavit or any other kind  
20 of verification as to what the rest of that  
21 space is committed to.

22 So we don't know the answer to  
23 that. For that reason, we think this should

1 be put over to an evidentiary hearing to  
2 answer that question, because we think it is  
3 critical under the regulations. We think it  
4 is a very significant fact.

5 We also don't know what is  
6 happening in the basement at the 2160  
7 California, the adjoining building. We don't  
8 know what is going on in the basement there.  
9 For all I know, there is another residential  
10 apartment down there, and we just can't tell;  
11 because we know that the drawings in the past  
12 have not accurately depicted the use of the  
13 space in those places, and but for the  
14 happenstance discovery -- By the way, I should  
15 tell you. I'm sure that none of you have  
16 walked down the street, but this place is --  
17 This basement area is off a very narrow --  
18 it's not even an alleyway. It's a trash  
19 passageway, and there is an iron gate that is  
20 usually closed.

21 None of us -- It's not the kind of  
22 place that any of us would routinely go by,  
23 except that if you noticed a light down there

1 or something like that. I took the oath  
2 today, and I have taken it before. I have  
3 lived there 20 years. I never had any idea  
4 there was an apartment down there, and I think  
5 that most of my neighbors, if I brought in a  
6 bus load of them, would tell you the same  
7 thing.

8 It's down steps. It's behind an  
9 iron gate, and it is hidden from ordinary  
10 view.

11 CHAIRPERSON MILLER: Can I ask two  
12 questions.

13 MS. BEGGS: Of course, yes.

14 CHAIRPERSON MILLER: Which do you  
15 think is the most -- What do you think is the  
16 important time period we are talking about,  
17 how the space was used at the time of the  
18 application and when we made our decision or  
19 how it is used now, or the future use. That's  
20 different, but isn't it critical, the findings  
21 of fact we were making with respect to when  
22 the application was made?

23 MS. BEGGS: I think on the law, I

1 think it's all of those things, and as I say,  
2 I don't think I need to repeat what we've put  
3 in our brief. I'm sure that these regulations  
4 are well known to the Applicant's counsel.

5 That is that, if they have  
6 discontinued the nonconforming business use  
7 for three years, they are not allowed to turn  
8 it back in. What they are proposing to do is  
9 change that basement back into a business use,  
10 and that under the rules, they are not allowed  
11 to do without a use variance, and a use  
12 variance is much harder, as I understand it,  
13 than an area variance, which is the only thing  
14 they ever applied for.

15 I suggest to the Board that that  
16 is the reason that this was all hidden from  
17 us, and that it wasn't disclosed on the  
18 papers, is that they didn't want to make the  
19 much more difficult showing that is required  
20 to get a use variance, and that's why they  
21 concealed that the basement had been returned  
22 to private residential uses.

23 So in terms of what date matters,

1 I think that the fact that it has been ongoing  
2 for 10 years is really the thing that, at  
3 least under the regulations as I read them,  
4 means that -- It means that they are no longer  
5 legally allowed to return that to a commercial  
6 use for any purposes.

7 Let me turn to Mr. Etherly's --  
8 I'm sorry, did I answer your question?

9 CHAIRPERSON MILLER: First of all,  
10 I'm sure it's in one of your letters and  
11 stuff, but the fact that you are saying it's  
12 been ongoing for 10 years as a residential use  
13 or conforming use --

14 MS. BEGGS: That appears to be  
15 conceded.

16 CHAIRPERSON MILLER: If that is  
17 conceded, then I guess why do we need to know  
18 more about the use?

19 MS. BEGGS: Mr. Matz is going to  
20 tell you.

21 MR. MATZ: I'll make this simple.  
22 I think that, since the Applicant didn't  
23 discuss what goes on in the rest of the

1 basement at 2162 California Street, we are  
2 entitled, and the Board should probably draw  
3 an adverse inference that the entire basement  
4 of 3262 California Street has reverted to  
5 conforming residential use. It has done so  
6 for over three years, and under 2005.1 that's  
7 the test, and it should be presumed --

8 CHAIRPERSON MILLER: You're saying  
9 it has been converted to conforming use, the  
10 entire basement, for the last three years?

11 MR. MATZ: I think we -- It's the  
12 only inference that, I think, we can draw from  
13 the facts that we know.

14 CHAIRPERSON MILLER: Which facts?

15 MR. MATZ: That there is an  
16 apartment in part of it. Other of it is  
17 marked storage. Brian Logan, who occupies the  
18 first floor, doesn't use it for storage. The  
19 only inference -- We could reopen the hearing  
20 to actually have fact finding on this or we  
21 could draw the inference, which seems to me to  
22 be fair, that the entire basement has  
23 converted to conforming use.

1 I don't know what the other  
2 options are. We don't know. The facts are  
3 entirely within the Applicant's control. They  
4 have not made them known, as Ms. Beggs has  
5 pointed out, and if you want to save time, we  
6 should probably just make that inference,  
7 which is reasonable, and move on.

8 Otherwise, we should reopen the  
9 hearing and have this in the fall or get an  
10 affidavit or another letter.

11 CHAIRPERSON MILLER: I just want  
12 to understand where you are going on this,  
13 because there are two things now. First of  
14 all, we heard that it appears that it may be  
15 uncontested that there is -- This certainly  
16 was some type of an apartment in part of the  
17 basement, and I think Ms. Brown will address  
18 that further, but that is referenced in her  
19 letter as well. But now you are going to  
20 another area, saying that the rest of that  
21 basement, we should infer, was also conforming  
22 use, because we don't know otherwise.

23 MR. MATZ: I don't know what else

1 to make of it, Madam Chairman.

2 CHAIRPERSON MILLER: I just wanted  
3 to make sure we understand your reasoning.  
4 Number one, because we don't know otherwise;  
5 and number two, because it really wasn't used  
6 for an office for Brian Logan or it wasn't --  
7 storage is vague or --

8 MR. MATZ: That part, we do know,  
9 and we have submitted to the Board Brian  
10 Logan's letter that he wrote to Marie Drisoll  
11 and our neighborhood counsel, and she  
12 specifically asked him that question upon  
13 having discovered the apartment, did he rent  
14 any part of the basement. His answer was  
15 unequivocally, no, I did not.

16 We can resubmit that letter, but  
17 his answer is, no, he did not. So the  
18 question is what are they using it for, and  
19 there's only two possibilities. One, they  
20 have another undisclosed business down there.  
21 We certainly haven't heard that from the  
22 Applicant, or two, the whole thing is being  
23 used for personal residential uses, which is

1 what I suspect is the case. I think it is  
2 probably -- It is probably being used for the  
3 Applicant's personal storage, just not unlike  
4 I don't have an attic, but I have a storage  
5 bin in the bottom of my apartment, and I would  
6 call that personal use.

7 It's not commercial use. So the  
8 only evidence that we have before us says that  
9 it is not being used for commercial use right  
10 now. As I say, I don't know whether there is  
11 old high school yearbooks down there. I don't  
12 know. I can't see down there. It's  
13 underground.

14 Let me turn to the next question,  
15 which also has been left unclear by the  
16 Applicant. That was the question that Mr.  
17 Etherly asked. What is going to happen next?

18 That again is not clear, and it  
19 was completely not addressed in the July 10th  
20 submission of the Applicant. She didn't say  
21 anything about it, and there has been a never  
22 ending cycle of drawings of what they plan to  
23 do in this what appears to be residential

1 space, including a possibility of a health  
2 club, including apparently part of it is meant  
3 to be returned to the business use of a market  
4 that they intend to move from the 2160  
5 property to the 2162 property.

6 At least the most recent drawings,  
7 and those are by now, I think, March 14, 2006,  
8 if I'm not mistaken, but somewhere around that  
9 time -- the notion was is that half of the  
10 basement was going to be given over to -- The  
11 basement at 2162 -- let me be clear, because  
12 there are two separate lots -- that half of  
13 the basement at 2162 was going to be given  
14 over to the newly moved-over market, and that  
15 they wanted to change residential space to  
16 2160, which actually, to me, moves to the  
17 heart of what the Applicant's legal argument  
18 is, and I think we have briefed this, that  
19 based on some building permit law, they make  
20 the suggestion that they are allowed to switch  
21 around the spaces in the building.

22 I just don't find any support for  
23 that in the zoning laws that specifically read

1 on this point. There certainly has been no  
2 case cited that would support that  
3 proposition.

4 So I guess, moving to the last  
5 question, does this affect the result? We  
6 believe that we've set forth the law that  
7 says, yeah, it really does affect the result.  
8 The plan that they presented to the Board is  
9 not allowed under the current zoning  
10 regulations. It just plain isn't.

11 Again, you know, I don't think  
12 that I need to refer back to my brief, but  
13 there are three separate provisions in Chapter  
14 20 which talks about nonconforming uses in  
15 structures and how they can be changed, and  
16 all of them would appear to specifically  
17 prohibit this plan.

18 So in our view, there is a very  
19 significant effect on the result, and that is  
20 that they shouldn't be able to do it.

21 While I don't like to make this  
22 argument, and I really don't, I think that  
23 there is a significant legal impact on the

1 fact that the Applicant hid this from  
2 everybody, and I do think that the unclean  
3 hands doctrine is well settled.

4 Everyone knows about it who has  
5 been through the first minute of law school,  
6 and there is no question, you know, the cases  
7 are ancient, saying from the beginning that we  
8 all know zoning relief is equitable relief,  
9 and they are coming before this body asking  
10 for equitable relief, having hidden facts.

11 You know, I notice that it's --  
12 you know, it didn't escape any of our  
13 neighbors' notice nor mine that nobody on  
14 behalf of the Applicant showed up today except  
15 their lawyer, and last time as well.

16 So the Board can't ask them why is  
17 it that this was not disclosed and, you know,  
18 tell me what the rest of this building is used  
19 for.

20 I think I've probably exhausted my  
21 time.

22 CHAIRPERSON MILLER: Are there any  
23 questions from the Board at this time or shall

1 we hear from Ms. Brown? Mr. Mann, do you have  
2 a question right now?

3 MEMBER MANN: I just want to make  
4 sure that I understand a couple of things.

5 In order for us to accept your  
6 argument, do we have to accept that the entire  
7 basement was residential use at that one  
8 property?

9 MS. BEGGS: No, because the plan -  
10 - At least the most recent plans -- As I said,  
11 I think they are the March 14th plans. They  
12 clearly are going to give over part of what  
13 clearly is a residential use that the  
14 plaintiff said -- didn't think it was worth  
15 telling the Board that existed.

16 Plainly, part of that goes back to  
17 a commercial use, and that is prohibited under  
18 Chapter 20. So, no, but it becomes even more  
19 prohibited when you assume or infer that the  
20 entire basement has been given over to  
21 residential use.

22 MEMBER MANN: Okay. So you are  
23 asking us to accept that at least a portion of

1 the basement was used for residential use, but  
2 we don't have to find in order to buy your  
3 argument that the entire thing was used for  
4 residential use?

5 MS. BEGGS: That's correct. I  
6 think it is conceded that there was at least  
7 a portion of it that was turned over to  
8 residential use, and that I think it is  
9 conceded -- at least, I haven't seen anything  
10 to the contrary -- that the present plan would  
11 intrude on that space that has been turned  
12 over to residential use.

13 MEMBER MANN: Okay. And is there  
14 anything in the zoning regulations that you  
15 are relying on to define what residential use  
16 is or is this something that we are just being  
17 asked to consider, because it just seems  
18 logical that it appears to be residential use,  
19 in your view?

20 MS. BEGGS: Yes, that's actually a  
21 question that I have thought about, is that  
22 under the structure of the zoning laws as they  
23 exist, things are zoned one thing or another.

1 So if something is commercial, which this  
2 building is not zoned commercial -- it is  
3 zoned residential; it is an R-5-B district.  
4 So by the definition of the plan, actually,  
5 what exists there right now is a residential  
6 building. However, because it dates back to  
7 1905 or 1917, whenever, way, way earlier than  
8 there even were zoning laws, it is  
9 grandfathered in for the business use that it  
10 has been put to, and over time that has  
11 changed in the two buildings.

12 Certainly, I think that the one  
13 side has almost always been a little store, a  
14 little food store. But the other side has  
15 changed uses even in the 20 years that I have  
16 lived there. It's gone through a number of  
17 cycles, and nobody has ever complained about  
18 it. But I think that residential use -- I  
19 mean, if you look in the definitions -- I  
20 think it is Section 199 of the zoning  
21 regulations -- you won't find a definition of  
22 commercial or residential.

23 I think the reason for that is

1 that it is all a matter of how things are  
2 zoned.

3 MR. MATZ: If I may just amplify.  
4 Whatever residential use may mean, an  
5 apartment, no matter how meager or mean, is  
6 clearly residential. Storage that would be  
7 used for personal use strikes me as equally  
8 residential.

9 In response to your earlier  
10 question, enough has been conceded by the  
11 Applicant for us to win. It's just that we  
12 like to win big. So we wanted the whole  
13 basement, but enough has been conceded for us  
14 to win, given the drawings that they have  
15 submitted and given the relief that they say  
16 that they have sought, although they haven't  
17 sought all the relief they need; because it  
18 turns out they need, and have not sought, a  
19 use variance, and a use variance is probably  
20 something that is beyond their ability to get,  
21 given the facts of the case.

22 MEMBER MANN: Thank you.

23 CHAIRPERSON MILLER: Thank you.

1 I'll get back to your later, but I would like  
2 to hear more from Ms. Brown now.

3 MS. BROWN: Thank you, Madam  
4 Chair.

5 First, I want to respond that  
6 there was no malfeasance on the part of the  
7 Neys in trying to hide this. They simply --  
8 It is just a matter of classic  
9 misunderstanding.

10 They saw this just as space that,  
11 I think, the son, Joseph Ney, built out when  
12 he was in his twenties, sort of a place to  
13 crash in the city. He has never lived there.  
14 His friends use it periodically, but it is not  
15 a full fledged apartment either. But it is  
16 there with a shower, partially built out  
17 kitchen, and people do stay there  
18 periodically.

19 So that is why we say that, yes,  
20 if it doesn't meet the full definition of an  
21 apartment, it certainly is an abandonment of  
22 whatever commercial use might have been down  
23 there. So that is clear to us, and that was,

1 frankly, not brought to our attention until  
2 Mrs. Drisoll went onto the property and took  
3 the pictures, and that is when it became an  
4 issue on our side.

5           Secondly, the uses in the  
6 basement: The question has been raised about  
7 what is used in the basement of the deli  
8 market right now. If you were to look at our  
9 submission of July 10th on page 2 where we  
10 talk about the calculations in the basement  
11 area, we did not consider that as space that  
12 could be converted to noncommercial or  
13 residential use.

14           We didn't take that into account  
15 at all. So that the fact that we are -- It is  
16 being used by the deli for storage, but we  
17 didn't even calculate that as commercial space  
18 that is available to convert to noncommercial,  
19 if I'm making myself clear.

20           CHAIRPERSON MILLER: Well, are you  
21 basically saying that you are -- I don't know  
22 if conceding is the right word, but you are  
23 agreeing that there was an abandonment of the

1 nonconforming use with respect to the space  
2 that was occupied by her son as an apartment?

3 MS. BROWN: The 2162, yes.

4 CHAIRPERSON MILLER: Yes.

5 MS. BROWN: The west.

6 CHAIRPERSON MILLER: But all other  
7 space, you are saying --

8 MS. BROWN: Let me take it in  
9 part.

10 CHAIRPERSON MILLER: Okay, go  
11 ahead.

12 MS. BROWN: 2162, the western  
13 portion of the building -- There has been an  
14 allegation that, if there is storage down  
15 there, it can only be storage for one of two  
16 things, the apartment or old high school  
17 yearbooks of the Ney family.

18 There is a third possibility, and  
19 that is utilities for the building itself, the  
20 boiler, the maintenance equipment, general  
21 materials that have to do with maintenance of  
22 the building and the heating and that sort of  
23 thing. So that is -- And that is why we list

1 it as storage and utilities as the remaining  
2 space of about 724 square feet on page 2 of  
3 our letter.

4 With respect to the eastern  
5 portion of the property, 2160, my  
6 understanding is that it is used as the  
7 storage for the existing market on the site.  
8 I understand there is a bathroom facility down  
9 there as well for the market occupants to use,  
10 but it has not been converted to any  
11 residential or noncommercial space.

12 That being the case, we did not  
13 count that as commercial space in deciding how  
14 much of the nonconforming space we had to  
15 start with and how much of it is being  
16 reduced.

17 So right now, assuming that --  
18 Using the calculations I have here on this  
19 sheet, conceding that 700 square feet has been  
20 converted to -- or that the nonconforming use  
21 has been abandoned, and it is now dwelling, we  
22 have a total of just over 5,000 square feet of  
23 space devoted to commercial uses.

1           In the plan submitted to you and  
2 approved earlier, the amount of space devoted  
3 to commercial uses will be reduced to 2300  
4 square feet.

5           If we were to go back in and add  
6 the basement areas of 2160 that is used for  
7 the market, that would roughly be another 1400  
8 square feet. So it would be 6400 square feet  
9 of commercial space, dropping down to 2300  
10 instead of 5,000. But I think we are using  
11 the more conservative number here.

12           Now going to the point that Mr.  
13 Matz raised about drawing an adverse inference  
14 that the entire portion of 2162, the basement  
15 where the apartment is -- draw the adverse  
16 inference that it is all devoted to  
17 residential use, that would mean that we would  
18 start out with a total of roughly 4300 square  
19 feet of commercial space in the building  
20 instead of 5,000, dropping down to 2300.

21           So the outcome of the case does  
22 not change. The amount of commercial space is  
23 still being reduced significantly in the

1 building and the addition, and part of the  
2 ground floor space and basement level is being  
3 converted to residential.

4 That is what the zoning  
5 regulations promote, reduction of  
6 nonconforming uses. That is what we have here  
7 in this case.

8 I think it is also important to  
9 remember what relief we were seeking initially  
10 anyway. It wasn't about changing out uses.  
11 We didn't need that relief. This was strictly  
12 a nonconforming structure devoted to  
13 nonconforming uses that we wanted to have an  
14 addition.

15 Because it did not fit lot  
16 occupancy, we were immediately thrown into the  
17 BZA arena. We exceed lot occupancy on the  
18 second floor only. I believe it is 63  
19 percent. That is the only relief that we  
20 essentially needed to get here, plus an  
21 addition to a nonconforming structure.

22 So the fact that the amount of  
23 commercial space -- you know, we thought it

1 was 5700 square feet. Well, it turns out it  
2 is only 5,000 square feet, but it is still  
3 dropping to 2300 square feet; or if you want  
4 to say that it is 4,000 square feet, it is  
5 still dropping to 2300 square feet.

6 The result is the same. The  
7 (quote) "discover" of a hidden apartment has  
8 absolutely no impact on the outcome, and the  
9 fact that Ms. Beggs and the opponents are re-  
10 arguing the case about needing a use variance  
11 -- that's just not on the table. That has  
12 already been asked and answered and decided by  
13 this Board in your order.

14 Now they also raised the issue of  
15 swapping out uses, trading the market deli on  
16 one side, flipping it to the western portion.  
17 And as we state in our letter and as we stated  
18 at the hearing, and as you adopted in your BZA  
19 order, under Section 3202.3 these two  
20 buildings are considered one for zoning  
21 purposes. So you are allowed to move around  
22 the nonconforming uses within there.

23 There is a case precedent that you

1 have for the Broad Branch Market where a  
2 similar sort of redistribution of the  
3 nonconforming space was made in the building.

4 So other than the fact that a  
5 nonconforming use was abandoned in the  
6 basement of 2162, it has no material effect on  
7 the decision that you made.

8 I would be happy to answer any  
9 questions you have.

10 CHAIRPERSON MILLER: I think,  
11 basically, movants are arguing that there is  
12 an extension now of a nonconforming use to a  
13 conforming use area in that this apartment  
14 that exists there or existed there at the time  
15 that this application was actually conforming.

16 If I am correct, the space is then  
17 going to be used for nonconforming use. Is  
18 that correct? Commercial, storage for  
19 commercial? So, therefore, it would taking  
20 the place of a conforming use. Correct?

21 MS. BROWN: Yes, and based on the  
22 decision that you had in Broad Branch Market  
23 and based on Section 3202.3, you can -- As

1 long as you are reducing the overall square  
2 footage devoted to a nonconforming use, you  
3 can redistribute it within the building.

4 CHAIRPERSON MILLER: Okay. so we  
5 will take a look at the Broad Branch decision  
6 again, and with respect to --

7 MS. BEGGS: Excuse me, Madam  
8 Chair. This case has not been cited to us.  
9 Could we have a citation as well so that we  
10 can have a look at it as well?

11 CHAIRPERSON MILLER: Do you have a  
12 cite for it? I was going to go on the  
13 website.

14 MS. BEGGS: Does it matter what  
15 everybody knows about it?

16 CHAIRPERSON MILLER: No. She  
17 didn't come prepared with the full cite, but  
18 I'm in the same situation as you are except  
19 that we did make the decision. So I am more  
20 familiar with it. But you can go to our  
21 website and go to orders, and then put in  
22 Broad Branch, and it should come up with it.

23 Could you just remind us why this

1 is one building in this case?

2 MS. BROWN: Yes. If you turn to  
3 Section 3202.3 of your regulations, at the  
4 very end it says "Any combination of a  
5 commercial occupancy separated in their  
6 entirety, erected or maintained in a single  
7 ownership, shall be considered one structure."

8 So these two buildings were  
9 constructed at the same time by the same  
10 owner, have been in the same ownership  
11 continuously since -- I think it was 1917.

12 CHAIRPERSON MILLER: Okay, thank  
13 you. And with respect to your theory that,  
14 because there is actually -- I think you are  
15 saying less nonconforming use after the  
16 project than before, under our decision in  
17 Broad Branch that it is inconsequential the  
18 fact that 700 square feet was actually  
19 conforming space. Is that correct?

20 MS. BROWN: Essentially, yes.

21 CHAIRPERSON MILLER: Okay. So  
22 that if we then go to the movant's other  
23 argument that, well, the rest of the basement

1 should be considered residential because -- or  
2 we should infer that -- if that were the case,  
3 that would affect the calculations, and might  
4 that not affect the conclusion?

5 MS. BROWN: No, because instead of  
6 starting out with 5,000 square feet, taking  
7 into account the apartment use, if you say,  
8 all right, there is an additional 725 square  
9 feet that we should infer is also residential  
10 use, that means that instead of 5,000 we have  
11 roughly 4300 square feet of nonconforming use  
12 right now in the building. In the project it  
13 drops to 2300 square feet. So it is still a  
14 reduction.

15 CHAIRPERSON MILLER: Okay. I just  
16 want to make sure I follow you, because I  
17 thought that the apartment space was around  
18 700 square feet. Is that correct?

19 MS. BROWN: That's correct.

20 CHAIRPERSON MILLER: Okay. Then  
21 they are talking about more in the basement.

22 MS. BROWN: Right. And if you  
23 look at the chart on page 2 of our letter, you

1 will see that we have the calculations for  
2 2162 in the righthand column, and we have the  
3 first floor as roughly 1400 square feet  
4 devoted to the office/art gallery use.

5 There is nothing on the first  
6 floor that is noncommercial, and you drop to  
7 the basement. The commercial we have is 724  
8 storage/utility, and residential is  
9 approximately 700.

10 So what you end up -- and once you  
11 total all those calculations of conforming and  
12 nonconforming commercial and residential uses,  
13 there is approximately 5,000 square feet in  
14 the two buildings devoted to nonconforming  
15 commercial uses and 700 square feet devoted to  
16 residential use.

17 CHAIRPERSON MILLER: My question  
18 is, though, is some of that commercial space  
19 at issue, whether in fact it really is  
20 commercial space?

21 MS. BROWN: Right. So the next  
22 step is, if we assume that the storage/utility  
23 space is 724 square feet, we have the adverse

1 inference that that is residential. That  
2 means that the number roughly 5,000 square  
3 feet drops down to roughly 4300 square feet.

4 Then you look at the underlined  
5 portion of the letter. So instead of saying  
6 the commercial space will be reduced from  
7 5,000, it will be reduced from 4300 square  
8 feet to 2300 square feet, with roughly 1400  
9 square feet devoted to residential right now.

10 MEMBER MANN: In the Broad Branch  
11 decision, was there any question as to which  
12 uses -- or the number of square feet that were  
13 conforming and nonconforming from the  
14 presentation on which we made our decision?

15 MS. BROWN: I need to go back and  
16 reread the order, but my understanding is that  
17 there was a swap-out of uses and  
18 redistribution of it.

19 MEMBER MANN: But those numbers  
20 have been identified to the Board in advance  
21 of the decision. Is that your understanding?

22 MS. BROWN: That is my  
23 understanding.

1                   MEMBER MANN: And the assertion  
2 here is that, because the numbers were not  
3 provided to us regarding what was conforming  
4 and what was nonconforming, that that should  
5 affect our decision. You are asserting that  
6 that should not affect our decision.

7                   MS. BROWN: You are going to the  
8 unclean hands theory?

9                   MEMBER MANN: I wasn't necessarily  
10 going to say that, but based on the  
11 information that I heard this morning, it  
12 seems that because we didn't know about this  
13 information, that we might have come to a  
14 different conclusion. It sounds like you are  
15 saying that it doesn't matter whether or not  
16 we knew. The conclusion would still be the  
17 same.

18                   MS. BROWN: That's correct. Had I  
19 been aware to present this information to you,  
20 it would have been presented. The outcome  
21 still would not have changed. It would not  
22 have had a material impact on the decision.

23                   MEMBER MANN: And you direct us to

1 the Broad Branch decision as a corollary to  
2 that?

3 MS. BROWN: I direct your  
4 attention to Broad Branch for the theory that  
5 you can swap -- redistribute nonconforming  
6 spaces' square footage within a building, not  
7 the undisclosed or unknown square footage.

8 MEMBER MANN: Okay. Thank you.

9 CHAIRPERSON MILLER: And just as a  
10 follow-up on that, and we will be looking at  
11 that case again, but in your view, you would  
12 not have had to seek a use variance in this  
13 case. Is that correct?

14 MS. BROWN: No. No use variance  
15 is required to create more conforming uses in  
16 a building.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER MANN: And I guess this  
19 goes without saying, but then no use -- No use  
20 variance would have -- You wouldn't have had  
21 to seek a use variance under any situation  
22 where the mix of uses were changing?

23 MS. BROWN: I'm sorry. I didn't

1 hear the first part of it.

2 MEMBER MANN: So you are saying  
3 that no use variance, as you see it, would  
4 have been required under any sort of matrix of  
5 changes to the mix of uses?

6 MS. BROWN: There has never been a  
7 use issue raised except by the opponents, but  
8 no. We are simply putting in conforming  
9 residential uses, and we are taking away  
10 nonconforming uses.

11 MEMBER MANN: And so whether or  
12 not we knew about the presence of conforming  
13 uses -- that's irrelevant?

14 MS. BROWN: Correct, because the  
15 number of nonconforming is still being  
16 reduced. So if you factor in -- Residential  
17 districts are supposed to have apartments,  
18 dwellings. So it wouldn't be an issue.

19 MEMBER MANN: All right. Thank  
20 you.

21 CHAIRPERSON MILLER: Okay. I  
22 don't think I have any other questions. Do  
23 you have any final statements you would like

1 to make as the movant?

2 MS. BEGGS: Of course. First of  
3 all, my neighbors inform me that the Broad  
4 Branch Market case involved a single building,  
5 and critical to the Applicant's argument here  
6 is that this is one building. It is not.  
7 There are two separate lots. It is Lot 99 and  
8 Lot 100 on -- I don't know what square number  
9 it is.

10 What they are doing is -- If we  
11 break it down by building, it's always been  
12 considered two buildings from the history of  
13 the time that the place got erected in 1917.  
14 What they are doing is -- And by the way, I  
15 find the numbers totally impenetrable on page  
16 2 of the brief. But, clearly, what is going  
17 on is that, unless you do this, treating two  
18 buildings as one, you cannot come to any of  
19 these conclusions, because what is clearly  
20 going on at 2162 -- It even has a separate  
21 address. What clearly was going on at 2162 is  
22 an enlargement is commercial use, and what is  
23 going on at 2160 is definitely a diminution of

1 commercial use. There is no doubt about that.  
2 We can all agree with that.

3 The Applicant's entire legal  
4 argument is hinged on this provision that has  
5 to do with building permits, and nowhere do  
6 they even address Chapter 20, which deals with  
7 buildings dedicated to nonconforming uses.

8 I mean, maybe they don't like  
9 those provisions, but there's three separate  
10 ones that read directly on this point, and  
11 they are just telling the Board that Chapter  
12 20 should be ignored and that they should be  
13 allowed to take two separate buildings, treat  
14 them as one, and then say, well, we are  
15 diminishing the business use and, therefore,  
16 you should let us go ahead with it.

17 The only other thing -- and I  
18 don't think that there's much to this, but  
19 some of these representations -- I really do  
20 want to preserve my point regarding the use of  
21 that basement which, as I say, we are getting  
22 representations from counsel. Her client is  
23 not here. Her architect is not here.

1                   She talks about if there is a  
2 boiler. If there is a boiler, it is for the  
3 apartment, because what I do know is that  
4 Brian Logan's office has a compressor. There  
5 is no boiler for his office.

6                   So what she is even speculating,  
7 and I don't even know whether she knows,  
8 because she didn't testify -- I mean, she  
9 didn't swear in here. For all I know, it is  
10 rank speculation, but if there's utilities  
11 down there, that basement, as the pictures  
12 that were submitted to the Board show, has a  
13 refrigerator. It has a sink full of pots.

14                   You know, we are told there is no  
15 cooking facilities, but I don't know what a  
16 pot is doing in the sink if somebody is not  
17 cooking down there -- and you know, that it is  
18 not a full fledged apartment. Well, it looks  
19 like a full fledged apartment to me, based on  
20 the few pictures that I have seen.

21                   You know, somebody's got a whole  
22 bunch of neckties. There is cereal on the  
23 counter. It looks like an apartment, and the

1 notion that they didn't think it was material  
2 to this Board, I think, is belied by the fact  
3 that they didn't reveal it.

4 MEMBER MANN: Madam Chair, can I  
5 ask a question?

6 CHAIRPERSON MILLER: Please, yes.

7 MEMBER MANN: Ms. Brown asked us  
8 to look at Section 3202.3 --

9 MS. BEGGS: Yes, regarding  
10 building permit?

11 MEMBER MANN: -- to consider this  
12 a single building for zoning purposes, and  
13 your argument, I believe, is that we can't do  
14 that. Is that correct?

15 MS. BEGGS: My argument is that  
16 that section is completely inapplicable. I  
17 think that the provisions of Chapter 20 are  
18 the ones that read directly on this point, and  
19 the fact that something that has to do with  
20 building permits --

21 I will tell you -- Let me address  
22 that even a little further, because it is  
23 something that I thought about. It's not

1 clear to me --

2 MEMBER MANN: It would be helpful  
3 if you could address it by directing my  
4 attention maybe to the particular provisions  
5 of the regulation. So keep that in mind.

6 MS. BEGGS: Yes. On that  
7 provision -- and I think it goes back to your  
8 prior question -- is it is not clear to me at  
9 all that under the regulations this is a  
10 commercial building. I don't even think that  
11 this regulation necessarily reads on a  
12 nonconforming use building.

13 You know, the regulations, as I  
14 say, don't break down -- In the definitions  
15 section, because I looked it up -- In  
16 definitions you can't look up commercial  
17 building and find an answer. The reason is,  
18 is the way the regulations are broken down is  
19 they divide up our city into areas, zones. So  
20 this building is actually a residential  
21 building that's been dedicated to a  
22 nonconforming use.

23 So it is not clear to me that

1 Section -- what are we talking about, 3202.3?  
2 -- applies at all, and it doesn't make any  
3 kind of cross-reference to the provisions of  
4 Chapter 20 that directly address nonconforming  
5 use buildings.

6 So I think it's for two separate  
7 reasons I don't think that it applies. One,  
8 it doesn't deal with the specifics of this  
9 case. It deals with getting a building  
10 permit, and I think it is meant to be  
11 addressed to buildings that are in commercial  
12 districts, which our neighborhood is not.

13 That was one of the things that  
14 was pointed out in earlier hearings before  
15 you, is that this building is not spot zoned  
16 commercial. And if it were, by the way, if  
17 this were a commercial building, then there  
18 would be no question but that they would need  
19 a use variance to turn it into a residential  
20 building. You can't turn commercial buildings  
21 into residences without a use variance.

22 So I don't think that they  
23 necessarily want this to be called a

1 commercial building unless they want to come  
2 back before you literally at square one. If  
3 their argument is that it is commercial, no  
4 part of this can be turned over to a residence  
5 without a use variance.

6 I'm sorry, you are looking like  
7 I'm not sure I answered your question.

8 MEMBER MANN: Well, I was just  
9 trying to find the provisions in Chapter 20  
10 that you want me to look to. So I was just  
11 perusing now.

12 MS. BEGGS: Yes. The provisions  
13 in Chapter 20 that I want to call the Board's  
14 attention to is, first, 2005.1 that says, if  
15 a nonconforming building -- or if a  
16 nonconforming use in a structure has for more  
17 than three years been turned back into a  
18 conforming use, then that's prima facie  
19 evidence that there is no intention to resume  
20 active operation as a conforming use.

21 More specifically, I want to call  
22 your attention to 2003.4, which says once a  
23 nonconforming use has been changed to a

1 conforming use, it shall not be changed back  
2 to the nonconforming use, which is exactly  
3 what I think they are proposing to do at 2162.

4 Finally, the provision at Section  
5 2002.3 says that a nonconforming use shall not  
6 be extended to portions of a structure not  
7 devoted to that nonconforming use at the time  
8 of the enactment or the amendment of this  
9 title, which I think -- I think the operative  
10 year there is like 1999 or 2000. So I don't  
11 think that we have a time issue there.

12 MEMBER MANN: Okay. Well, thanks  
13 for pointing those out. As I read those, I  
14 can understand the point that you are trying  
15 to make, but I guess I don't as it regards  
16 Chapter 20. But I'm not certain that I see  
17 anything that makes me understand why that  
18 would be in conflict with 3202.3.

19 MS. BEGGS: Because it is not a  
20 commercial building. It is not a commercial  
21 structure.

22 First of all, what that has to do  
23 with is how you get a building permit. It is

1 not how you get a zoning variance. Chapter 32  
2 has nothing to do with zoning variances. I  
3 think it presupposes that you've already got  
4 a variance. It's several more miles down the  
5 road, and what they want to do is splash that  
6 back.

7 By the way, the legal issue before  
8 the Board is very clear. It is are these two  
9 buildings two buildings, which is how they are  
10 zoned. It is how they are taxed. It is how  
11 they are listed if you go down to the property  
12 offices, you know, the Register of Deeds, and  
13 it is how they have two separate addresses.

14 Then they say, well, we could just  
15 call this one commercial building. Again, if  
16 it is one commercial building, they can't turn  
17 any part of it into a residence.

18 MEMBER MANN; I understand where  
19 you are drawing the distinction now. Thank  
20 you.

21 MS. BEGGS: I should say that it  
22 is -- The legal issue is very stark. It is  
23 whether these are two buildings or whether you

1 can say, well, no, they are really one.

2 CHAIRPERSON MILLER: Ms. Brown,  
3 did the Board actually say they were one  
4 building in the order or do you think the  
5 Board just implied it by the way the order was  
6 written and the case was treated?

7 MS. BROWN: I do know that there  
8 was testimony at the hearing on that specific  
9 point. That question was raised. It was  
10 responded to by our expert witness, Mr. Sher,  
11 and if you will give me a moment, I will see  
12 if I can find it here in the order.

13 CHAIRPERSON MILLER: Okay. What I  
14 would like to do -- and Ms. Brown, you can  
15 look for it now or later, actually. I was  
16 skimming the order to see if I could see it in  
17 the order. I didn't see it offhand. Doesn't  
18 mean it is not in there.

19 We would like to propose that we  
20 have one more filing in this case, and that  
21 would be -- It would be a version of proposed  
22 findings and conclusions in that what we  
23 envision would work in this case is that you

1 would identify the facts that are no longer  
2 correct, in your opinion, in the order that we  
3 issued, and put in the facts that you think  
4 are -- if there are some new ones to put in --  
5 that more accurately reflect what the Board  
6 should find, and then any conclusions of law  
7 that would be changed or substituted as a  
8 result.

9           So we have heard your argument on  
10 some of the issues, which I would anticipate  
11 you might address. Certainly, the use, it  
12 being a different use, how that would change  
13 the conclusion, and perhaps this one building  
14 versus two buildings issue; clean hands issue.  
15 I mean, we don't want to preclude you, but we  
16 want to focus on the specific discovery of new  
17 evidence.

18           We can then set a schedule. But  
19 is that clear to the parties? Do you think  
20 that is the right way to approach this or do  
21 you have anything else you want to say before  
22 we finalize it?

23           MS. BROWN: That is acceptable to

1 the Applicant.

2 CHAIRPERSON MILLER: Thank you.

3 MS. BEGGS: The only question I  
4 have is are we allowed to draw whatever  
5 inferences we want about the basement, given  
6 the lack of evidence proffered by the  
7 Applicant in regard to the use of the basement  
8 at 2162?

9 It would appear to change her  
10 legal argument, because she is saying, well,  
11 it's all one building, and that's for you guys  
12 to sort out as a matter of law. But for us as  
13 a factual matter when we are talking about  
14 findings of fact, it does matter to us,  
15 because we don't know.

16 MS. BROWN: If I could just  
17 clarify for the record. The information that  
18 is in our July 10th letter was information  
19 provided by the owner's son. It is current  
20 and accurate. So we considered that evidence  
21 as the record, but whether or not they want to  
22 dispute it or agree with it, that's fine.

23 MS. BEGGS: My only response to

1 that is that I find the July 10th letter  
2 incredibly ambiguous as to what the use of  
3 that basement is. I mean, is storage an attic  
4 or is storage something else? What has been  
5 depicted on the drawings, as we know, is a gas  
6 meter. Well, you know, we know that's about  
7 that big. An electrical panel, and we know  
8 that's about that big, and it's up against the  
9 wall and --

10 CHAIRPERSON MILLER: I think that  
11 you are -- I think what I want to say is that  
12 we are going to accept that as the facts  
13 presented by the Applicant. We are not going  
14 to say we need an affidavit or something like  
15 that. And if you think it is insufficient and  
16 you want to make an argument about inferences  
17 that can be drawn because it is insufficient,  
18 you know, you are free to do that, and the  
19 Board will consider it.

20 MS. BEGGS: I guess my response is  
21 I think it is not fair. I mean, Joseph Ney  
22 came here. He took an oath, and if I had had  
23 any idea -- I was one of the people who cross-

1 examined him, as did many of the other  
2 neighbors -- I certainly would have had a  
3 whole lot of questions about what was going on  
4 in the basement, because all of us assumed  
5 that it was -- Until the discovery of that  
6 apartment, all of assumed that was Brian  
7 Logan's space. We just assumed that.

8 CHAIRPERSON MILLER: Okay. Let me  
9 just say this. I think that, just listening  
10 today without having an opportunity to really  
11 reflect on this case, it seems like the  
12 Applicant's strongest case goes to the one  
13 building theory, in which case if that were to  
14 prevail, it wouldn't matter how specifically  
15 that space was being used.

16 MS. BEGGS: Okay.

17 CHAIRPERSON MILLER: You know, if  
18 we get to the point where it does, if the  
19 Board thinks that it turns on that, then maybe  
20 we will reopen --

21 MS. BEGGS: Agreed. Yes.

22 CHAIRPERSON MILLER: All right.

23 So, schedule? We are contemplating deciding

1 this on September 4, which is our first day  
2 back from recess. We have an August recess.

3 Does that allow enough time for  
4 the parties to do proposed findings? I don't  
5 really think you need to respond to each  
6 other. Do you? I mean, I think you have here,  
7 and the argument has been fleshed out.

8 MR. MATZ: Madam Chair, we could  
9 do a same date filing, and then maybe a week  
10 later to do a same day cross-filing, if there  
11 is anything further to say.

12 CHAIRPERSON MILLER: If we have  
13 enough time, I wouldn't preclude it. How  
14 would we do this, Ms. Bailey, for us to decide  
15 on the fourth?

16 MS. BAILEY: Since there is almost  
17 a little bit, actually, over a month between  
18 now and September 4th, I would suggest, Madam  
19 Chair, August 13th for the submissions, and  
20 then perhaps August 27th for the -- well,  
21 actually, August 20th. August 13th for the  
22 submissions and then August 20th, which is a  
23 week later, for the responses.

1 CHAIRPERSON MILLER: Okay. Is  
2 that all right with the parties?

3 MS. BROWN: That's fine. There is  
4 normally not a response to proposed findings,  
5 but if that is what the Board wants, that's  
6 fine.

7 CHAIRPERSON MILLER: I agree. I  
8 don't necessarily -- It is certainly not being  
9 requested, but since we have time, I don't  
10 necessarily want to preclude it, if there is  
11 something somebody feels anxious to respond  
12 to.

13 So can you make those deadlines?  
14 I think that's good for the Board to have it  
15 at least by the 20th, so we can have time to  
16 really study this issue. Okay. And the ANC  
17 would be served as well.

18 MS. BEGGS: Oh, absolutely, and we  
19 are agreed. No problem.

20 CHAIRPERSON MILLER: Okay. And  
21 Office of Planning is in this case, but they  
22 are not really participating in this part.

23 Okay, then if there are no other

1 questions, we are finished with this case.  
2 Thank you very much.

3 We are just going to take a very  
4 brief break and get our other Board member out  
5 here, who will be sitting with us from the  
6 Zoning Commission.

7 (Whereupon, the foregoing matter  
8 went off the record at 11:29 a.m. and went  
9 back on the record at 11:35 a.m.)

10 CHAIRPERSON MILLER: We are back  
11 on the record, and Mr. Parsons from the Park  
12 Service representing Zoning Commission is with  
13 us also. Ms. Bailey, would you call the next  
14 case, please?

15 MS. BAILEY: Madam Chair, the  
16 number is 17582, and it is the application of  
17 656 Pennsylvania Avenue LLC, 666 Pennsylvania  
18 Avenue Associates and 327 7th Street SE LLC,  
19 pursuant to 11 DCMR 3103.2, for a variance  
20 from the building height requirements under  
21 Section 770, a variance from the floor area  
22 ratio requirements under subsection 1572.3,  
23 and a variance from the off-street parking

1 requirements under Subsection 2101.1.

2 This is to construct an office  
3 addition to several contiguous buildings in  
4 the CHC/C-2-A District at premises 656  
5 Pennsylvania Avenue, S.E., 660 Pennsylvania  
6 Avenue, S.E., 325 7th Street, S.E., and 327  
7 7th Street, S.E. The property is located in  
8 Square 873 on Lots 115, 116 and 117.

9 CHAIRPERSON MILLER: Thank you.

10 Good morning.

11 MR. DePUY: Good morning, Madam  
12 Chair, members of the Board. For the record,  
13 I am Jacques DePuy, attorney with Greenstein,  
14 DeLorme and Luchs. Appearing with me as co-  
15 counsel is Stephanie Baldwin.

16 I don't believe there are any  
17 preliminary matters and, if you would like us  
18 to proceed, we are prepared to do so.

19 CHAIRPERSON MILLER: I have a  
20 couple.

21 MR. DePUY: Please.

22 CHAIRPERSON MILLER: I believe  
23 that there was a letter, a new letter of

1 authorization, filed today. Is that correct?

2 MR. DePUY: That is correct.

3 CHAIRPERSON MILLER: So I just  
4 wanted to recognize that and get that in the  
5 record.

6 I just have one other preliminary  
7 question for you, and that is why you are  
8 seeking a variance on the parking  
9 requirements.

10 MR. DePUY: The interpretation at  
11 the time we filed the application was that an  
12 addition triggered parking requirements, even  
13 if it's an historic building, and provided, of  
14 course, under the standard requirements that  
15 the addition is more than 25 percent increase  
16 in the gross floor area. This addition is, in  
17 fact, slightly more, not tremendously more but  
18 slightly more than 25 percent of the existing  
19 gross floor area.

20 So we felt we weren't exempt under  
21 the interpretation of the historic waiver for  
22 parking, and we did require a parking variance  
23 because of the fact that we exceeded the 25

1 percent test.

2 CHAIRPERSON MILLER: The original  
3 building, for which there is a BZA order on,  
4 was historic -- is historic. Correct?

5 MR. DePUY: That is correct.

6 CHAIRPERSON MILLER: And this  
7 involves an addition to that historic  
8 building. Is that it?

9 MR. DePUY: It involves an  
10 addition to several buildings on four lots  
11 that will be subdivided and combined into one  
12 record lot. So that the addition will be to  
13 a single building by virtue of the fact that  
14 the addition will, in fact, connect the  
15 buildings together into one.

16 The building, as our witnesses  
17 will testify -- Some are historic and some --  
18 Some are contributing historic structures, and  
19 some are not.

20 CHAIRPERSON MILLER: Okay. I just  
21 want to understand just better what is going  
22 on here, and I'm sure I will when we see the  
23 whole visual. But I know that there is a

1 pending regulation from the Zoning Commission  
2 that will change 2100.5 and how parking is  
3 treated for historic buildings, but I just  
4 want to be sure I understand. It is not in  
5 effect yet. So why 2100.5 doesn't apply, in  
6 your view.

7 MR. DePUY: As a proposed text  
8 amendment --

9 CHAIRPERSON MILLER: No, I know  
10 the text amendment isn't in effect yet. So  
11 you are going on the old reg. Is that  
12 correct?

13 MR. DePUY: That is correct, yes.

14 CHAIRPERSON MILLER: And because  
15 this is attached to the historic building, it  
16 is treated as an historic structure. Is that  
17 correct, in your view?

18

19 MR. DePUY: Yes.

20 CHAIRPERSON MILLER: Okay. so why  
21 doesn't it fall under 2100.5?

22 MR. DePUY: Because the  
23 interpretation by the Zoning Administrator for

1 additions to historic structures is that the  
2 parking requirements apply to the addition,  
3 not to the existing building.

4 CHAIRPERSON MILLER: Oh, okay. So  
5 your reason is because of the Zoning  
6 Administrator's interpretation?

7 MR. DePUY: That is correct.

8 CHAIRPERSON MILLER: Okay. Go  
9 forward with your presentation then, and thank  
10 you.

11 MR. DePUY: Thank you.

12 Rather than give a brief opening  
13 statement, I would like to reserve the right  
14 to give a closing statement. I would like to  
15 go right to our witnesses.

16 I would like to introduce first  
17 our witnesses, Amy Weinstein, distinguished  
18 architect and project architect with Jane  
19 Nelson who is also here for the Applicant;  
20 O.R. George, traffic consultant well known to  
21 the Board; and appearing on behalf of the  
22 owner is Mr. Kenneth Golding.

23 Our first witness will be Ms.

1 Weinstein, and we would ask her to proceed and  
2 give her statement to the Board.

3 MS. WEINSTEIN: Good morning. My  
4 name is Amy Weinstein, and I am the architect  
5 for this project, working in association with  
6 Nelson Architects.

7 For a commercial office project,  
8 this project is small and surprisingly  
9 complex. In the late 1800s the site, which  
10 you can see on the screen as circled,  
11 consisted of nine lots and a public alley.  
12 Today, the site has morphed over the years  
13 into three lots. The alley has been closed,  
14 and there are four independent buildings on  
15 the site, one of which is an original  
16 Victorian building that contributes to the  
17 historic district, as well as a historic art  
18 moderne structure from the 1940s that  
19 contributes to the historic district.

20 Each of the four buildings has  
21 already been renovated and/or added onto over  
22 the years, and some of them have received more  
23 than one renovation and addition.

1           The proposal is to join all the  
2           lots into a single subdivided lot, combine the  
3           four buildings into a single building, and add  
4           13,000 square feet of office space.

5           The new tenants in the office  
6           space will use the existing office lobby core  
7           at 660 Pennsylvania Avenue, which is the  
8           corner structure, as their lobby and core; and  
9           we propose to do all this while keeping the  
10          retail tenants on the ground floor, which  
11          serve the local neighborhood, in place and in  
12          operation.

13          This aerial photograph shows,  
14          first of all, Pennsylvania Avenue, 7th Street.  
15          The Eastern Market Metro station is directly  
16          catty-corner from the subject site across  
17          Pennsylvania Avenue. Due west of the project  
18          is a four-story office building known as the  
19          Penn Theater Project, and west of that is a  
20          five-story office building known as the Citi  
21          Corp building.

22          Due east of the project is a four-  
23          story Hines Junior High School structure,

1 which is actually the exact same height as the  
2 four-story 660 Pennsylvania Avenue building  
3 that is on the site.

4 Looking up 7th Street, there is a  
5 row of two-story Victorian houses, all  
6 converted to commercial use, that continues up  
7 to C Street where the Eastern Market is  
8 located, this photograph obviously taken  
9 before the fire. The temporary Eastern Market  
10 that is currently under construction is being  
11 built right here as we speak.

12 One of the interesting things  
13 about the square that the site is on is that  
14 it is not typical of Capitol Hill. It is one  
15 of the most densely developed in an area, an  
16 historic district, that has very few  
17 commercially zoned areas.

18 Here we are looking at it in site  
19 plan form with Pennsylvania Avenue here, 7th  
20 Street, the Eastern Market Metro station, the  
21 site in red catty-corner from the Metro  
22 Station, the four-story Penn Theater building,  
23 five-story Citi Corp.

1           Directly behind the Penn Theater  
2 building, I forgot to mention, is a four-story  
3 condominium residential building which was  
4 built as part of the Penn Theater C-2-A  
5 development, and then east of the site the  
6 Hines Junior High School, the four-story  
7 structure here. The Eastern Market is located  
8 up here.

9           The project itself, as I  
10 mentioned, has four existing buildings on it.  
11 There is the 660 Pennsylvania Avenue building  
12 on the corner, 656 to the west. There is a  
13 now private alley -- at one time it was public  
14 -- located just north of 660, and then 327 7th  
15 Street and 325 7th Street.

16           There is a public alley system in  
17 the interior of this block which makes the  
18 north boundary of the site here.

19           To understand what we are  
20 proposing to do today, I think it is necessary  
21 to take a very quick look at the history of  
22 the development of each of these parcels,  
23 because these buildings that exist are

1 literally the foundation for what we propose  
2 to build.

3 On the left here is a photograph  
4 about 10 years old of 325 7th Street. It is  
5 the contributing historic structure, a  
6 Victorian townhouse, and on the right is the  
7 way it looks today. Stanton Development  
8 purchased it about 10 years ago, restored the  
9 building, put on an appropriate historic  
10 storefront.

11 Then if you go down this public  
12 alley to the north of it and look back, you  
13 see that the two-story structure fronting onto  
14 7th Street had a one-story ell or dogleg  
15 attached to it, and about 10 years ago as part  
16 of the restoration Stanton Development added  
17 that red brick small one-story addition on top  
18 of the ell.

19 Moving down 7th Street, on the  
20 left is a photograph, again about 10 years  
21 old, of a nonconforming building that was a  
22 Post Office that Stanton Development got  
23 control of at a separate time that they were

1 able to buy 325.

2 We put a new facade on the  
3 building and renovated the insides of it, and  
4 two retailers moved in.

5 Now between -- On the lower left  
6 here, between the old Post Office building and  
7 666 was this 10-foot wide alley. Originally,  
8 it was public. Once Stanton Development owned  
9 all the properties on all its edges, they were  
10 able to close it. It is now a private alley.

11 At the time that we renovated 327  
12 7th Street over here, we put up gates here to  
13 visually screen what became the service yard  
14 for most of these properties.

15 A few years later Nelson  
16 Architects added -- designed and added this  
17 ATM addition to 327, and the opening into the  
18 alley was narrowed down at that time. That's  
19 the way it looks today.

20 This is a photograph inside that  
21 alley at the back end looking out toward 7th  
22 Street. That is Hines Junior High School  
23 across the street and, as you can see, all the

1 trash and services for the adjacent properties  
2 are handled within this alley. They are all  
3 pulled out to 7th Street currently, where the  
4 trash truck blocks traffic as it picks up the  
5 trash.

6           Around the corner on Pennsylvania  
7 Avenue, a photograph taken in 1999 of the  
8 noncontributing one-story structure located  
9 there known as the Sanpan Cafe. Stanton  
10 Development, when they got control of this  
11 project, we added a new facade to it, reusing  
12 the historic sign, and the Yes Natural Food  
13 Store moved in. That's the way it looks  
14 today.

15           Then finally, the keystone parcel  
16 in this site is the corner, 660 Pennsylvania  
17 Avenue. For many years, starting in 1939,  
18 Kresge built a five and dime on the corner,  
19 and two years later in 1941 they added another  
20 piece to it along Pennsylvania Avenue, and it  
21 remained like this until about 20 years ago  
22 when Kresge pulled out of urban areas. They  
23 took their red sign band with them, because it

1 was part of their corporate image, and Stanton  
2 Development got control of the property.

3 The first thing we did was restore  
4 the building, which was considered a good  
5 example of art moderne architecture. We  
6 restored it and replaced the Kresge red sign  
7 with a bas relief panel and moved individual  
8 retailers into it.

9 While we were doing that, we came  
10 before the Board of Zoning Adjustment here to  
11 request variances in order to be able to add  
12 these three floors of office space on top of  
13 the one-story Kresge five and dime.

14 I thought that I would very  
15 briefly touch on what those variances were as  
16 they relate -- the ones that relate to today's  
17 case.

18 We requested a height variance of  
19 eight feet. The reason for that is that the  
20 existing Kresge store was so tall -- it was  
21 about 22 or 23 feet tall -- that in order to  
22 not destroy the salient characteristic of the  
23 art moderne quality of it, which is that

1 horizontal band of brick, we had to move the  
2 first office floor up about eight feet higher  
3 than one would normally place an office floor  
4 above ground floor retail if you were building  
5 new. That, of course, then -- In fact, the  
6 original coping of the Kresge store became the  
7 window sill for that first floor office space.

8 That had the effect of pushing the  
9 other floors up eight feet, and put us eight  
10 feet above the 50-foot height limit. So that  
11 height variance was granted.

12 There was an FAR variance, and at  
13 the time in C-2-A you could only build 1.5  
14 FAR. Now you can build 3.0. We requested a  
15 variance of 3.7, which was granted, largely  
16 based upon, first of all, the unique shape of  
17 the site. There isn't a right angle in the  
18 whole site, and it complicates the ability to  
19 come up with a practical floor plan.

20 Perhaps more importantly was that  
21 the small size of the site and the minimum  
22 size of an elevator/two-stair core to serve  
23 the office space made it a very low efficiency

1 floor plate for speculative office  
2 development. So the variance was granted in  
3 order to get additional office space.

4 In addition to that, there was a  
5 parking variance, and that was because the  
6 entire ground floor consisted of this historic  
7 structure. It would have to be destroyed to  
8 get a ramp down and, even if you could get a  
9 ramp down to a basement garage, the footprint  
10 was too small to develop a garage.

11 So those were the variances  
12 granted about 20 years ago. I guess what I  
13 would like to say is that today many of those  
14 difficulties, practical difficulties, and kind  
15 of unique site characteristics still exist.

16 In addition to the art moderne  
17 structure, which originally you see on the  
18 bottom image above -- you see it now embedded  
19 in the larger 660 project. In addition to  
20 that historic structure, we also have the  
21 little Victorian guy at 325 7th Street.

22 One of these structures has  
23 already been added onto at its maximum

1 potential, obviously the 660 building. 325  
2 cannot be added on top of. Because of that  
3 type of Victorian brick cornice structure, the  
4 Historic Preservation Review Board has  
5 repeatedly and predictably turned down  
6 additions directly on top of it, unless you  
7 were to push the addition so far back you  
8 would be on the Penn Theater neighboring  
9 property and not on ours.

10 So we have -- We chose from the  
11 beginning not to even try to add onto that,  
12 and when we went to HPRB, that reasoning was  
13 confirmed.

14 The footprints of 327 -- We can  
15 only build then on 327 and 656 Pennsylvania  
16 Avenue, when you combine that footprint, as  
17 you see in light blue here, you can see that  
18 this space is not large enough to support its  
19 own elevator and two-stair and bathroom core.

20 So the only feasible approach to  
21 constructing an addition here is to build the  
22 new office space as an addition to 660  
23 Pennsylvania Avenue, thereby using that

1 elevator core and stair tower.

2 Now in order to do that, we have  
3 to align these new floors with the floors of  
4 660, and as you recall, they were all up eight  
5 feet higher than they would normally be in new  
6 construction. So in fact, the new floors also  
7 will have that extra height when it is built.

8 The shape of the site is still  
9 unique. There is only one right corner, and  
10 it is up here in the existing 325 building.  
11 There are very few walls that are parallel.  
12 It is a trapezoidal shape, and a traditional  
13 orthogonal addition cannot be built.

14 Because of the existing structures  
15 that can't be built on, we end up with a very  
16 thin floorplate of office space wrapping on  
17 two sides of 660.

18 Another issue is the 10-foot old  
19 alley, now private, which has two existing  
20 masonry walls that have to remain in the  
21 project, because they are structural. This  
22 creates an extremely narrow 10-foot wide  
23 footprint to build on at the ground plane,

1 which makes -- It is very difficult from a  
2 practical point of view to be able to use that  
3 space efficiently, but we have tried our best,  
4 as you will see.

5 Then finally, there is the issue  
6 of existing foundations, since we will be  
7 building on top of 656 Pennsylvania Avenue and  
8 327. We have investigated the foundations of  
9 656 and, unfortunately, discovered that the  
10 foundations can only accept one more floor of  
11 office space.

12 We, of course, would have  
13 preferred to add two or three floors on top of  
14 656, because it does front onto the wider  
15 Pennsylvania Avenue, but structurally we can  
16 only add one floor.

17 We can add three floors on top of  
18 327, though the construction has to be kept  
19 very lightweight.

20 So you put all of these issues  
21 together, and you get what I am about to  
22 describe as a build/no build diagram as to  
23 where you can build and how much you can

1 build.

2 Here we have the site with the  
3 four different existing buildings on it. We  
4 can't build on top of 660. It has already  
5 been max'ed out. We can't build on top of  
6 325. It is a little historic structure. We  
7 can't build on the back or 656. It is part of  
8 the rear yard.

9 We can only build one story on top  
10 of 656 because of the foundations. We can  
11 only build two stories on this little piece  
12 and this little piece of 327, because we need  
13 to sculpt the mass of this office building  
14 addition to fit into the Historic District  
15 compatibility issues.

16 So what we end up with is we can  
17 build one story here, two stories here and  
18 here, and three stories here; and that is what  
19 we are proposing to do.

20 Very briefly, I would just like to  
21 explain specifically what we are doing. The  
22 existing condition is always on the left. The  
23 proposed is on the right.

1                   In the cellar we are building a  
2                   new cellar just under the private alley for  
3                   about 800 square feet. That will be  
4                   additional space for the medical office  
5                   building office use that is in that cellar  
6                   location.

7                   On the first floor the only new  
8                   gross floor area for FAR calculations is the  
9                   old alley, which will now be roofed over. One  
10                  of the things we are able to do in this  
11                  project is to create a trash room at the very  
12                  rear of the project and to now bring the trash  
13                  from all the buildings out through a system of  
14                  corridors into that trash room, and then trash  
15                  will now be picked up adjacent to it in the  
16                  public alley instead of blocking traffic on  
17                  7th Street.

18                  We will also be able to close off  
19                  the existing curb cut that once served that  
20                  public alley onto 7th Street, thereby gaining  
21                  one, maybe two, additional parking spaces on  
22                  the curb.

23                  The second floor is the wrap-

1 around thin plate of office use. The third  
2 floor is a much smaller plate of office, and  
3 then the fourth floor is even smaller as we  
4 start to sculpt the building for Historic  
5 District reasons.

6 On Pennsylvania Avenue here, the  
7 existing condition on the lower slide where  
8 you see the one-story Yes Natural Food Store,  
9 that will get one additional floor of office  
10 space that you see above; and on 7th Street  
11 where below you see the 660 building, the  
12 private alley, 327 and 325 -- this is where  
13 the mass of the addition will be most  
14 apparent.

15 These are the three floors of  
16 office that we are adding on top of 327 with  
17 this corner taken out in order to step the  
18 building down to the smaller Victorian  
19 structures, and we propose what we call a  
20 little sliver building to infill the alley,  
21 which will have the net effect of being  
22 compatible with the Historic District.

23 Instead of designing this addition

1 as just a continuation of 660, which would be  
2 very inappropriate, because Capitol Hill  
3 historically didn't build large footprints  
4 like that, by making each of these additions  
5 and buildings look different from each other,  
6 we are in keeping with the nature of Capitol  
7 Hill where individual developers would build  
8 two, three, four lots at the same time, very  
9 different looking buildings, and you get these  
10 very -- this real variety of buildings  
11 chockablock next to each other.

12 This project was reviewed by HPRB,  
13 and received conceptual approval.

14 This view on the lower view is  
15 looking south from the public alley to the  
16 north of the site. This is 7th Street and  
17 Hines Junior High School on the left. This is  
18 the north side of 325, the little Victorian  
19 guy, and 660 Pennsylvania Avenue beyond.

20 With the addition, we still see  
21 325 as it is, and now these are the additions  
22 on top of 327 with the top floor set further  
23 back away from us about 10 feet than this is.

1           The ornamental facade of the front  
2           of that building will continue and wrap around  
3           40 feet, at which point the entire rest of the  
4           project will be clad in copper in order to  
5           create a recessive kind of visual object in  
6           the cone of vision.

7           So here is a photograph looking  
8           from 7th Street at the 660, the private alley,  
9           327 and 325, and then with the proposed  
10          addition.

11          We see the little sliver building,  
12          the height of it being kept down somewhat from  
13          the cornice of 660 in order to break it, to  
14          make sure it's a different building, not part  
15          of 660 visually, and then the three floors of  
16          office added on top of 327 which step down  
17          toward 325.

18          The row of Victorian structures  
19          north of 325 are all a little taller than 325.  
20          So what you end up with is that very Victorian  
21          picture as skyline where every building is  
22          slightly different, and you get up and down  
23          all in one streetscape.

1           To speak specifically about the  
2           variances we are requesting, the height  
3           variance is for 6 feet 9 1/2 inches. The  
4           reason it is not for 8 feet is that we are now  
5           measuring the height of the building from the  
6           center line on 7th Street.

7           Originally, in the original BZA  
8           variance, we measured the height of 660 from  
9           Pennsylvania Avenue. 7th Street gently rises  
10          up toward Eastern Market. So we have lost  
11          about 1 foot 3 inches in measurement.

12          What is, I think, important to  
13          understand is that the floors of the new  
14          addition align with the floors of 660, as does  
15          the roof, top of the roof of the new addition  
16          align with the top of the roof of 660, which  
17          of course, is also the same height as Hines  
18          Junior High School across the street.

19          We don't believe that this height  
20          variance adversely impacts the public  
21          interest, because the height not only matches  
22          existing heights of 660 but also Hines Junior  
23          High School.

1           The design of the addition  
2 complements existing structures around it in  
3 a way that is somewhat unique to the Capitol  
4 Hill Historic District. Here we have a  
5 photograph looking head on at the site on 7th  
6 Street, and here we have it with the proposed  
7 additions.

8           Looking at the Capitol Hill  
9 Historic District -- and height was an  
10 important issue for Historic Preservation  
11 Review Board here, and we started to compare  
12 what we were proposing to many, many other  
13 examples on Capitol Hill where you get this  
14 height discrepancy, I will call it.

15           One Victorian builder's idea of a  
16 three and a half story house right next to  
17 another Victorian builder's idea of a three  
18 and a half story house, and you get this jump  
19 between the two, and then the tallest one is  
20 next to a very small two-story building.

21           I will just very quickly go  
22 through these. At the top are examples. At  
23 the bottom is the proposed: D Street, S.E;

1 8th Street, S.E., where you have the Folger  
2 Theater Building, this huge four-story  
3 building next to this tiny little two-story  
4 structure; a four and a half story apartment  
5 house on North Carolina; a very large three  
6 and a half story building on Constitution  
7 Avenue, again built right next to little two-  
8 story buildings and a real variety of height;  
9 a very large apartment house up on 12th  
10 Street.

11 The reason why these tall  
12 buildings are not visually disruptive in the  
13 Historic District is the amount of texture and  
14 detail at the ground plane of the buildings is  
15 similar to the amount of texture and detail in  
16 the surrounding Victorian townhouses, and when  
17 you consider that you have a 60 degree cone of  
18 vision as you walk down the street, these  
19 buildings actually blend in beautifully, and  
20 they are every bit as much loved in the  
21 Historic District as their smaller  
22 counterparts.

23 Lastly, on the same square as the

1 site that we are looking at today is the four-  
2 story Pennmark Condominium building, which is  
3 actually adjacent to this two and a half story  
4 building, but then this is the same row of  
5 two-story Victorian buildings that turn the  
6 corner and abut 325 down at our property.

7 So this extra height which would  
8 be added right here, as we see it, is the  
9 natural turning of the corner of the tall  
10 massing along Pennsylvania Avenue, just  
11 turning the corner on 7th Street and then  
12 stepping down toward the low buildings that  
13 lead up to Eastern Market.

14 Of course, you can see here that  
15 Hines Junior High School, four-story mass,  
16 extends all the way back to directly across  
17 from our proposed addition.

18 The FAR variance: We are  
19 requesting a variance to build 3.29 in lieu of  
20 the 3.0 allowed. This is, in our view, due  
21 really to having the original 660 structure as  
22 part of our project. That, of course, had a  
23 3.7 FAR.

1           To understand this fully, if we  
2 look at the hypothetical that, if we were to  
3 remove 660 from the project -- Let's say some  
4 trade association that had a lot of money  
5 bought everything but 660 and wanted to build  
6 their headquarters, because it is such a  
7 fabulous location; they weren't concerned  
8 about efficiency of office core and that type  
9 of thing.

10           What they could build as a matter  
11 of right would be a 3.0 FAR, which could look  
12 like this, one story on top of the Yes  
13 building, three stories on top of 327, and  
14 maybe they would tear down and put Yes out of  
15 business while they did it, the rear of Yes so  
16 they could extend those two stories over that  
17 rear portion of 656. And of course, they  
18 couldn't build on top of 325.

19           So here is a matter of right 3.0  
20 FAR, and what we are proposing is actually  
21 less than this. We are proposing this, which  
22 is 2.8 on those lots, because we can't build  
23 on top of 656, and we have sculpturally

1 modeled our building to step down for Historic  
2 District reasons.

3 So if you take away 660 and look  
4 at it, we are building less than allowable FAR  
5 on the rest of the parcels. It is only when  
6 you add 660 and have to average that 3.7 with  
7 the 2.8 that you get to 3.29.

8 Then finally, the parking variance  
9 that we are requesting for 20 spaces: If you  
10 were to look at trying to put parking on this  
11 site, this is what you would see. The  
12 entrance ramp would have to come off of 7th  
13 Street. DDOT would not allow a ramp off of  
14 Pennsylvania Avenue.

15 By the time you get down to the  
16 cellar level for a garage and you try to turn  
17 off that ramp, you can see that you could --  
18 although theoretically cars could park here,  
19 you would have to drive onto the neighboring  
20 Penn Theater property, which is not possible,  
21 in order to get the drive aisle wide enough so  
22 that you could turn into these spaces. You  
23 couldn't turn into this little space or get

1 through this narrow neck to get back into  
2 here.

3 So a parking garage is not only  
4 practically different. I would consider it  
5 practically impossible.

6 With that, it concludes my  
7 presentation.

8 MR. DePUY: Our next witness is  
9 Mr. George. Mr. George, if you would identify  
10 yourself and give your statement to the Board.

11 MR. GEORGE: Thank you. Good  
12 morning, Madam Chair and members of the Board.  
13 For the record, Osborne George of O.R. George  
14 Associates. I have provided two cards for  
15 your record.

16 I am assisted today by Saul Khan,  
17 one of our engineers who worked with me on  
18 this project and who will be assisting me in  
19 the presentation.

20 A lot of what Ms. Weinstein has  
21 said pertain to the issue of parking. So I  
22 think this enables me to be brief. Basically,  
23 our effort was to be able to support her

1 statement in the fact that the relief that the  
2 Applicant is seeking will not likely have an  
3 adverse impact or an objectionable impact  
4 based on considerations associated with the  
5 parking and, consequently, with traffic.

6 I think I can be brief. They say  
7 a picture tells 10,000 words. So we have a  
8 few exhibits which will help us tell our brief  
9 story.

10 Ms. Weinstein talked about the  
11 location of the property, and I would like to  
12 reiterate this. The property is situated  
13 along a major activity -- within a major  
14 activity node along a major arterial with easy  
15 access to Metrorail and Metrobus service.

16 I would like to point out that  
17 there are nine bus routes serving the area,  
18 six along Pennsylvania Avenue and three along  
19 8th Street just to the east. In addition  
20 again, as she has noted, the Eastern Market  
21 Metrorail Station, which is just to the south  
22 and east of the property, catty-corner, to use  
23 her words.

1           With the next exhibit, if we go to  
2 the next exhibit, she spent a lot of time  
3 talking about the land uses in the area,  
4 looking at the architecture. I will just cite  
5 the uses based on land use types.

6           In yellow -- can you use the  
7 pointer? In yellow shows the site, located  
8 within a dense mixed use lot. To the north is  
9 another mixed use lot that includes  
10 residential but is perhaps dominated by the  
11 Eastern Market and a large recreational  
12 facility, the Aquatic Club.

13           To the south of the property  
14 across Pennsylvania Avenue is a mixed use  
15 block, again with a mixture of commercial and  
16 residential uses. And importantly, to the  
17 east of the property across 7th Street is the  
18 Hines Junior Elementary School.

19           Of course, one of the things that  
20 was quite noteworthy for us is the fact that  
21 the property and the square on which it is  
22 located, Square 873, is substantially buffered  
23 from the adjacent neighboring residential

1 uses, which are all in blue and sort of skirts  
2 that area in red.

3 We initiated our study through  
4 discussions with DDOT. Their primary concern  
5 was potential mitigation measures. However,  
6 in order to satisfy the Board, we looked -- we  
7 inventoried parking.

8 We looked at usage of parking, and  
9 I think all of that is documented in our  
10 report. If the board has questions, we would  
11 be happy to answer, but again we confirmed  
12 that parking is in high demand, but again we  
13 have seen no major issues, particularly with  
14 respect to potential encroachment or perhaps  
15 current encroachment into the residential  
16 areas, partly due to the buffering, the land  
17 use buffering which I mentioned.

18 We go on to the next exhibit.  
19 Again, this presents some of the inventories  
20 that we did and the usage service, which is  
21 also documented in our report. So I think we  
22 can be brief on that.

23 The next slide, if we can go to

1 that, I think, speaks a lot. It shows the  
2 location of the site again, and the two things  
3 that were important is the fact that it is  
4 approximately three blocks from the central  
5 employment area, from the Capitol Hill area  
6 and the central employment area.

7 I think Section 2105 of the zoning  
8 regulations point out that, in addition to the  
9 historic characterization of the property, the  
10 fact that, if it was within the central  
11 employment area, it would technically be  
12 exempt from parking, according to Section 2105  
13 of the zoning regs. But again, we highlight  
14 that aspect of it here.

15 We are fortunate in that we had an  
16 opportunity to survey through the Applicant  
17 the existing modes of travel to the site, and  
18 this is shown in the pie chart.

19 It shows that a total of 55  
20 percent of trips to the site are taken  
21 regularly by non-vehicular modes. So there is  
22 a 45 percent vehicle mode, 42 or 43 percent  
23 transit, and a little bit over 12 percent walk

1 and bike. So again, a very transit oriented  
2 development.

3 Those factors notwithstanding, we  
4 estimate that potentially using rates  
5 suggested by the Institute of Transportation  
6 Engineers, that the 13,000 square feet that  
7 the Applicant proposes to add could generate  
8 approximately -- and if we show those trips at  
9 the bottom right -- approximately nine vehicle  
10 trips during the morning and afternoon peak  
11 hours.

12 The low trip generation and the  
13 consequent low parking demand notwithstanding,  
14 we think that it is always incumbent upon us  
15 as planners and upon applicants to look at  
16 ways in which they could potentially mitigate  
17 any type of traffic generation and parking  
18 demand, particularly located within such a  
19 high transit activity area.

20 So we would like to point out to  
21 the Board that there are several built-in what  
22 we call mitigation factors. Again, the favor  
23 of -- if we can go back to that, the built-in

1 mitigation factors, favorably situated transit  
2 oriented development location, proximity to  
3 the central employment area.

4 The site is buffered from the  
5 residential neighborhood, again, by the school  
6 to the east, by Pennsylvania Avenue itself, a  
7 major six-lane divided corridor, by the park  
8 to the west, and by the mixed use block to the  
9 north. And we would point out that all the  
10 residential neighborhoods surrounding the  
11 focal area of the site are covered by the  
12 city's residential parking permit  
13 restrictions, RPP.

14 As part of our study, we met with  
15 DDOT, and again they indicated that we should  
16 look at mitigation to the extent that it is  
17 possible, and we propose the transportation  
18 management plan which the Applicant has  
19 endorsed, and he will be speaking to that.

20 Number one, we suggest that the  
21 Applicant appoint a site transportation  
22 coordinator who would provide information with  
23 respect to transit usage, encourage carpools

1 and that type of thing. I think the Board is  
2 familiar with that element of the TDM plan.

3 Second, of course, I mentioned  
4 promotion of carpools, with prior assignment  
5 of reserved parking spaces, and I will talk to  
6 that in a minute.

7 The third item, Ms. Weinstein  
8 mentioned that as part of the site  
9 improvements the curb cut off 7th Street would  
10 be eliminated, creating perhaps two on-street  
11 parking spaces on the west side of 7th Street,  
12 convenient to the development.

13 It is quite interesting to note  
14 that the ZipCar and the FlexCar companies are  
15 very active in the area. There are eight  
16 spaces within the current square. There is an  
17 additional one space near to the Eastern  
18 Market Metro Station. We think that, if it  
19 could be negotiated with DDOT to reserve one  
20 space conveniently along the west side of 7th  
21 Street that this would also promote non-  
22 personal vehicle usage.

23 The last item I will mention is

1 the provision of bicycle racks. I think  
2 there's currently bicycle racks within the  
3 site. The Applicant plans to enhance that.

4 Lastly, the Applicant proposes to  
5 lease a number of spaces within the adjacent  
6 garage at the -- which building is that? --  
7 the Penn Theater building right next to the  
8 site, to lease a number of spaces which they  
9 would make available to the future tenants.

10 There are a couple of things I  
11 would like to point out as I close on that,  
12 Madam Chair. The Applicant currently leases  
13 15 spaces, which they make available to  
14 tenants who need those spaces, and at the  
15 present time only 10 of those are utilized.  
16 So five spaces are available. So I think this  
17 speaks volumes with respect to the demand.

18 That notwithstanding, we have a  
19 letter on the right which is written to the  
20 Applicant from the property managers of the  
21 adjacent property confirming that they are  
22 prepared to lease a minimum of five spaces,  
23 should the Applicant have such a need once the

1 project is built out.

2 I would like to close, and I think  
3 it is a pleasure to be able to -- I think,  
4 Jack, if you would permit me to introduce Ken  
5 Golding. Part of the reason is that I  
6 challenged him this morning as to why he was  
7 not wearing his three-piece suit, and he said  
8 he biked here. So in addition, I think it is  
9 quite appropriate to introduce him after  
10 having spoken so much about transit oriented  
11 development and reduction of traffic.

12 With that, I close, Madam Chair.

13 CHAIRPERSON MILLER: I just want  
14 to ask you a question before I move on, just  
15 while it is fresh in my mind, with respect to  
16 your calculations.

17 As I understand it, I believe the  
18 regs would require perhaps 20 spaces if they  
19 are applied to this building.

20 MR. GEORGE: That is correct.

21 CHAIRPERSON MILLER: But your  
22 assessment is that there is not going to be a  
23 demand for 20 parking spaces. Is that right,

1 that it is actually nine?

2 MR. GEORGE: No. The nine was our  
3 estimate of peak hour vehicle trips coming to  
4 the site.

5 CHAIRPERSON MILLER: Oh, okay.

6 MR. GEORGE: Yes, not of parking  
7 demand per se. Of course, some of the nine  
8 would be -- could be associated with parking.  
9 They could include perhaps dropoffs or  
10 carpoolers and that type of thing, not raw  
11 parking demand.

12 CHAIRPERSON MILLER: Did you do an  
13 assessment of that?

14 MR. GEORGE: The assessment of  
15 actual parking demand? Well, I accept the  
16 computation of the 20 parking spaces. If we  
17 assumed, based on our trip generation, that  
18 nine of those spaces -- nine trips coming to  
19 the site, and that's per IT, and applying the  
20 transit reduction factor which we showed  
21 through the pie chart, I think technically we  
22 could reduce that by roughly the 55 percent,  
23 which mean five to six spaces would be

1 demanded -- would be required.

2 CHAIRPERSON MILLER: Instead of  
3 20,k you would estimate five to six?

4 MR. GEORGE: Yes.

5 CHAIRPERSON MILLER: Because of  
6 factors such as proximity to the Metro?

7 MR. GEORGE: Proximity to Metro,  
8 and again, as we cited in our report, the fact  
9 that the current office improvements are all  
10 fully employed, and a detailed travel survey  
11 was performed of all those employees. So it  
12 is based on the current travel characteristics  
13 for the existing tenants.

14 I think the Applicant has pointed  
15 out to us that the additional space is  
16 projected to be needed for expansion by the  
17 existing tenants. So I think one can envision  
18 that the type of mode split would continue.

19 CHAIRPERSON MILLER: Right. Thank  
20 you very much.

21 MR. GEORGE: Thank you.

22 CHAIRPERSON MILLER: Any other  
23 questions by Board members? Okay.

1 MR. DePUY: Mr. Golding.

2 MR. GOLDING: Good morning, Madam  
3 Chairman, and members of the panel -- the  
4 Board. My name is Ken Golding. I am the  
5 President of Stanton Development Corporation  
6 and one of the partners in these properties.

7 I think we have some other reasons  
8 that are important to hear other than the  
9 zoning issues that are equally compelling,  
10 perhaps more so.

11 I am the President -- Acting  
12 President of the Market Row Association, which  
13 is an association composed of the owners of  
14 the stores or the tenants or the merchants on  
15 7th Street from North Carolina Avenue down to  
16 Pennsylvania Avenue on 7th Street opposite  
17 Eastern Market, all the way down that two-  
18 block area.

19 Subsequent to the fire that  
20 destroyed the Market, these merchants have  
21 told me repeatedly at meetings that they are  
22 worried and concerned about a dropoff in  
23 business. In addition, the 8th Street

1 rejuvenation, which is a Main Street America  
2 program, and the H Street, N.E., rejuvenation,  
3 a Harris Teeter store opening down the street,  
4 and the Navy Yard development, the baseball  
5 stadium, the N Street development -- all these  
6 things take away business from 7th Street,  
7 which is an historic retail street on Capitol  
8 Hill.

9           So there is a concern and a fear  
10 that their market share will be diminished,  
11 and we believe, and I know they believe, that  
12 40 new bodies on the street in this addition  
13 between Monday and Friday from 8:00 a.m. to  
14 5:00 p.m. would be a definite plus.

15           A second reason is that this  
16 addition solves some problems. You have heard  
17 about the trash. We can now relocate it to  
18 another alley and move it off the front. This  
19 will be a great improvement over the odor  
20 wafting from the alley trash down over the  
21 heads of the consumers and customers who are  
22 sitting at the outdoor cafe at Montmartre and  
23 Ben and Jerry and Bread & Chocolate and Murky

1 Coffee.

2 It is a terrible thing to have  
3 that odor on a hog summer day to come wafting  
4 down on the sidewalk, and we will no longer  
5 have trash pickup, which will be a tremendous  
6 plus.

7 Of course, we will have that  
8 parking space we can regain, and possibly put  
9 a ZipCar there.

10 We are working with the tenants to  
11 encourage them to take public transport. We  
12 have a transportation manager in our officer  
13 who will handle this issue for us.

14 We are putting in bike racks.  
15 There is a slide here of one of our bike racks  
16 we will put in -- we have already put in. We  
17 have a lot of local tenants from Capitol Hill.  
18 We will have nonprofits, and that's the bike  
19 rack on the right that we just installed, and  
20 it can take four bikes.

21 We have a lot of nonprofits, as I  
22 mentioned, and they tend to walk, bicycle or  
23 take mass transit, and we hope to have more

1 tenants like that.

2 Another reason that I think this  
3 is good urban planning, it is, after all, a  
4 \$15 billion Metro system. It is one of the  
5 lowest densities around the Metro system in  
6 Washington, and I think adding density would  
7 be a good thing rather than a bad thing.

8 Finally, as you can see, we have  
9 won many awards locally, nationally, and  
10 internationally. This particular project has  
11 won the Charter Award from the Congress on  
12 Urbanism, which is an international  
13 organization, and we were the only private  
14 developer to win in 2003 east of the  
15 Mississippi, and it was for this corner.

16 We know what we are doing. We are  
17 very proud of what we do, and we think our  
18 architect, who has done most of the work for  
19 us along with Jane Nelson, is a very capable  
20 team. Thank you.

21 CHAIRPERSON MILLER: Thank you.  
22 Can I just ask you in general, Mr. Golding, is  
23 what is driving the project in general the

1 need for the nonprofits to expand? Is that  
2 where this originated from, or what?

3 MR. GOLDING: There are many  
4 reasons. That is certainly one of them. I  
5 mean, if they haven't got room to expand,  
6 there is a fear that they will leave. So that  
7 is a concern.

8 Other concerns, of course, are, as  
9 I mentioned, the improvements to the site,  
10 moving trash and doing better fire and public  
11 safety egress and so forth.

12 CHAIRPERSON MILLER: Any other  
13 questions from the Board? Do you have other  
14 witnesses?

15 MR. DePUY: No, we do not.

16 CHAIRPERSON MILLER: I have a  
17 couple of questions then either for Ms.  
18 Weinstein or for you, I guess, in general.

19 I was wondering, why is it that  
20 you are consolidating all the buildings into  
21 one lot or consolidating the lots?

22 MS. WEINSTEIN: That will allow  
23 all the buildings except for 325, which

1 remains stand-alone, to together meet all the  
2 building code requirements of egress and all  
3 that type of thing. They need to all be on  
4 one lot.

5 CHAIRPERSON MILLER: Any other  
6 questions?

7 COMMISSIONER PARSONS: Yes. Ms.  
8 Weinstein, I want to congratulate you,  
9 congratulate the whole team. I just think  
10 this is a fabulous project. You know, in  
11 lesser hands this could have been a mess. It  
12 really could have, but I've got to ask you  
13 about the sliver building.

14 It's just a wonderful piece of  
15 sculpture, but what is happening behind it?

16 MS. WEINSTEIN: Good question.  
17 Remember, it's like a 10-foot slot, though it  
18 actually widens to 13 feet right out at the  
19 building edge. So there is two feet of glass  
20 floor to ceiling on either edge of that copper  
21 piece for windows into office space.

22 Also, I will say that it is not  
23 100 percent designed yet, and we probably get

1 refined and everything, but it is intended as  
2 a sculptural expression of a kind of memory of  
3 the alley, the space that was the alley, and  
4 just the way the Victorians would add these  
5 wild, outrageous-like touches to their  
6 building, it's just an individualistic  
7 expression that will be developed further and  
8 get further HPRB review.

9 COMMISSIONER PARSONS: Okay.

10 Well, good luck. Thanks.

11 CHAIRPERSON MILLER: Is someone  
12 here from the ANC? Okay.

13 All right, in which case then, we  
14 can go to the Office of Planning. Good  
15 afternoon at this point.

16 MR. WOODS: Good afternoon, Madam  
17 Chair, members of the Board. I think that I  
18 can be brief in this matter.

19 The Office of Planning recommends  
20 approval of the requested variances, and I  
21 will stand on the record in the matter. If  
22 you have any questions, I would be happy to  
23 answer them.

1 CHAIRPERSON MILLER: Just in  
2 general, did you talk with DDOT with respect  
3 to the conditions that they were proposing?

4 MR. WOODS: Actually, no. I just  
5 was able to look at the DDOT report. But  
6 there's nothing in there that we would not be  
7 for.

8 CHAIRPERSON MILLER: Did you see a  
9 traffic management plan? I think that was  
10 referenced in the hearing today.

11 MR. WOODS: Right. The traffic  
12 management plan was forwarded to DDOT for  
13 their review.

14 CHAIRPERSON MILLER: Did the  
15 Applicant file that with the Board yet, the  
16 traffic management plan, because I don't  
17 recall where that is?

18 MR. DePUY: Yes. We filed Mr.  
19 George's report which contains a traffic  
20 management plan with our prehearing.

21 CHAIRPERSON MILLER: Just for the  
22 record, I have Mr. George's report attached to  
23 the prehearing statement, but I'm not sure

1 whether the traffic management plan is  
2 attached or, if it is, can you just bring it  
3 to our attention where it is?

4 MR. GEORGE: Madam Chair, again  
5 for the record, Osborne George.

6 On page 12 of our report at the  
7 top, it is titled "Mitigation and  
8 Transportation Demand Management." And the  
9 items begin at the bottom of page 12 and  
10 continue on page 14.

11 CHAIRPERSON MILLER: Okay. So  
12 that is what was being referred to here as the  
13 traffic management plan?

14 MR. GEORGE: Yes.

15 CHAIRPERSON MILLER: Okay. Got  
16 it.

17 MR. GEORGE: I would also mention  
18 that DDOT in their referral of July 11th also  
19 references our study and itemizes the items  
20 that they consider important to be part of  
21 that plan.

22 CHAIRPERSON MILLER: Okay. I  
23 guess I want to turn to probably the Applicant

1 at this point, if there's no other questions  
2 for Office of Planning, just with respect to  
3 the question of conditions.

4 DDOT at least phrased it that way,  
5 you know, that they recommended four  
6 conditions, I believe, and then now we have a  
7 traffic management plan that contains certain  
8 provisions that, I think, are probably  
9 somewhat similar.

10 My question is, well, number one,  
11 in general conditions whether you want to  
12 address whether conditions are necessary or  
13 whether you already have commitments or plans  
14 or something to that effect which would -- not  
15 negate, but make conditions not necessarily  
16 required or whether you are fine with the  
17 conditions or however you want to address  
18 that.

19 For instance, let me just look at  
20 DDOT now that I have it in front of me. One  
21 is: I'm looking at DDOT report dated July 11,  
22 2007. It is marked as our Exhibit Number 33.

23 The first thing is assigning a

1 site transportation coordinator. Maybe you  
2 can just respond to them one by one.

3 MR. DePUY: That is acceptable.  
4 We've testified that we will do so, and that  
5 would be an acceptable condition.

6 CHAIRPERSON MILLER: Well, can you  
7 tell me how that would work? You know, what  
8 the coordinator would do or where you would --  
9 you know, certain responsibilities you already  
10 have in mind, what they would do?

11 MR. DePUY: Mr. George has  
12 recommended certain tasks that that  
13 coordinator be given.

14 CHAIRPERSON MILLER: Oh, I see.  
15 In the plan, here it is. Okay. So they would  
16 provide information about Metro and carpooling  
17 and things like that. Correct?

18 MR. GEORGE: Yes, that is correct.

19 CHAIRPERSON MILLER: Okay. So  
20 that is the same.

21 Reserving additional parking  
22 spaces with neighboring parking operators.  
23 You already have a letter indicating that

1       there are five spaces reserved. Is that  
2       correct?

3               MR. GEORGE: Yes, that is correct.

4               CHAIRPERSON MILLER: Is that in  
5       the record?

6               MR. DePUY: Yes. We submitted a  
7       copy of the letter, and it was in one of the  
8       slides that Mr. George referred to.

9               MS. BAILEY: Madam Chair, that was  
10       handed to you at the start of the hearing on  
11       this case. At the very top it has "Zumont  
12       Real Estate." Is that the correct letter?

13              CHAIRPERSON MILLER: I see it.  
14       Okay.

15              MR. DePUY: If the Board is  
16       considering a condition with respect to this  
17       item number 2, we would request that it be  
18       carefully worded, because as Mr. George  
19       indicated, the demand may not be there.  
20       Secondly, of course, these parking operators  
21       can't make long term commitments.

22              So we are operating with the best  
23       kind of commitment we can get in writing, but

1 it is not equivalent to a lease or any kind of  
2 a long term commitment.

3 CHAIRPERSON MILLER: Okay. You  
4 already addressed promotion of carpools as  
5 something that you are doing in your  
6 transportation management plan. Correct?

7 MR. GOLDING: Yes, that's correct.

8 CHAIRPERSON MILLER: Okay. I see  
9 that. Then the fourth one is the ZipCar  
10 space.

11 MR. DePUY: And again, on that we  
12 are committed to that, but it is subject,  
13 obviously, to working out an arrangement with  
14 either ZipCar or FlexCar that they want this  
15 particular location and that the arrangements  
16 are acceptable.

17 So we would certainly make good  
18 faith efforts to do so.

19 CHAIRPERSON MILLER: Any other  
20 questions? Do you want to make a closing  
21 argument at this point?

22 MR. DePUY: I would like to make a  
23 brief close.

1                   CHAIRPERSON   MILLER:   I'm very  
2                   sorry.   I skipped.   Is there anybody here in  
3                   the audience who wishes to testify in support  
4                   or opposition to this application?   Okay.   Not  
5                   hearing from anybody, go ahead.

6                   MR. DePUY: Thank you.   I will be  
7                   brief.   We believe that the testimony and the  
8                   evidence of record is very strong that this  
9                   site is unique with respect to its shape, with  
10                  respect to the fact that there are a number of  
11                  buildings,   some   contributing   historic  
12                  buildings,   some not, that constitute this  
13                  property, a private alley which is a unique  
14                  condition, an existing historic structure that  
15                  originally was at a height of 20 feet which,  
16                  as testimony from Ms. Weinstein has indicated,  
17                  drove the original building at 660 and also  
18                  drives the height of the addition because of  
19                  the need to line up the floorplates.

20                  We believe there has been ample  
21                  testimony that these unique conditions create  
22                  a variety of practical difficulties for the  
23                  owner in dealing with this unique site, and

1 have caused the addition to take the shape and  
2 be of the size that is proposed before the  
3 Board, and finally, that the variances can be  
4 granted without any adverse impact on  
5 neighboring properties or without detriment to  
6 the comprehensive plan, because of the  
7 mitigation steps that have been agreed to by  
8 the Applicant, because of the site's location  
9 so close to Metro, and because the additional  
10 employees will, in fact, be contributors to  
11 the neighborhood rather than a detriment to  
12 the neighborhood.

13 So we believe that we have  
14 provided ample evidence for the Board to make  
15 a decision and, if the board is so inclined,  
16 we would appreciate a bench decision. Thank  
17 you.

18 MEMBER MANN: Madam Chair, can I  
19 ask a question?

20 On the order that was previously  
21 granted for this property in 1988, 14767, were  
22 there any conditions in that order?

23 MR. DePUY: We will look, and I

1 will respond momentarily.

2 MEMBER MANN: Okay, thank you.

3 MR. DePUY: There were two  
4 conditions. The first was -- and I will read  
5 them: "Construction shall be in accordance  
6 with the plans marked as Exhibit Number 11 as  
7 amended by Exhibits Number 21(d) and 35 of the  
8 record." As a parenthetical, this was before  
9 the regulations were revised to indicate that  
10 Applicants had to build in accordance with  
11 plans.

12 Number 2: "The plans may be  
13 revised in accordance with the final approval  
14 of the Historic Preservation Review Board."

15 MEMBER MANN: Thank you.

16 CHAIRPERSON MILLER: In this case,  
17 the project has already been reviewed by the  
18 Historic Preservation Review Board. Is that  
19 correct?

20 MR. DePUY: This proposal before  
21 you has been given conceptual approval.

22 CHAIRPERSON MILLER: Do you  
23 anticipate that there will be revisions upon

1 further HPRB review?

2 MR. DePUY: I would say design  
3 refinements rather than revisions. Is that a  
4 fair summary, Ms. Weinstein?

5 MS. WEINSTEIN: Yes. Nothing that  
6 would increase the variances or change the  
7 zoning.

8 CHAIRPERSON MILLER: Right.  
9 Nothing that would impact the zoning  
10 decisions?

11 MS. WEINSTEIN: Exactly.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you.

14 COMMISSIONER PARSONS: Madam  
15 Chairman, I move we approve this application.

16 CHAIRPERSON MILLER: Second.  
17 Discussion? Do you have anything else to say,  
18 Mr. Parsons, in moving it? Mr. Parsons, would  
19 you like to make any other remarks right now  
20 in moving it?

21 COMMISSIONER PARSONS: No, I  
22 completely agree with Mr. DePuy's summary.

23 CHAIRPERSON MILLER: Okay.

1                   MEMBER MANN: Madam Chair, the  
2                   only -- This is not necessarily deliberating  
3                   on the merits of the case, but my observation  
4                   or my suggestion would be that I don't think  
5                   it is necessary to condition, should we  
6                   approve this application.

7                   I don't find it necessary to  
8                   condition this, because the Applicant has  
9                   proffered that they are going to do all these  
10                  transportation management things, and they  
11                  have done it in the past, and that wasn't  
12                  conditioned in the past, and it seems to have  
13                  worked very successfully for them.

14                  So although I am certainly not  
15                  opposed to creating those conditions, I don't  
16                  think that it is necessary that we  
17                  specifically call out those conditions.

18                  COMMISSIONER PARSONS: I would  
19                  agree.

20                  CHAIRPERSON MILLER: Okay. If we  
21                  are going to jump there, I guess basically how  
22                  I see that part is that they have good  
23                  conditions and policies in their

1 transportation management plan, and maybe we  
2 don't need to condition the order, because  
3 they are doing it that way anyway. But I  
4 would hope that it would be published  
5 somewhere, available somewhere, so that the  
6 tenants would know of it. But we don't have  
7 any reason to believe they are not going to  
8 follow that plan.

9 We don't have really adverse  
10 conditions that need to be mitigated, as far  
11 as I can tell, except they have a good plan.

12 Since we are jumping around, but I  
13 would like to throw out to the Board my view  
14 that a variances is not required for the  
15 parking requirements in that these buildings  
16 are considered one building, and under 2100.5  
17 as it stands today, as the regs are in effect  
18 today, no additional parking spaces are  
19 required for a building in an historic  
20 district that is certified by the state  
21 historic preservation efforts that are  
22 contributing to the character of that historic  
23 district.

1 I understood the Applicant to say  
2 that they sought that variance based on the  
3 interpretation by the Zoning Administrator,  
4 and we recently reversed the Zoning  
5 Administrator on that specific interpretation  
6 in another case, if you all recall.

7 COMMISSIONER PARSONS: Well, what  
8 would be the result? Would you dismiss the  
9 case?

10 CHAIRPERSON MILLER: No, no. But  
11 they just wouldn't need a variance. I mean,  
12 the result would be the same, because if you  
13 are in favor of granting the variance, no  
14 parking is required; and I'm just saying no  
15 parking is required, because the reg says no  
16 parking is required. So they don't need a  
17 variance from the reg.

18 It's the same thing. The other  
19 variance is a high floor area. We granted  
20 them. We don't deny the variance. We would  
21 say it is not required. Same result. They  
22 don't need -- They can't do the parking.  
23 It's impossible, as we heard, and as you

1 agree. Isn't that correct?

2 COMMISSIONER PARSONS: Yes.

3 CHAIRPERSON MILLER: Okay. So  
4 it's the same result. It's just one says you  
5 don't need a variance, no parking is required.  
6 The other says I grant the variance, because  
7 you can't do the parking. It's impossible.

8 COMMISSIONER PARSONS: Well, what  
9 you are doing is setting up a situation, short  
10 lived as it is, that you are disagreeing with  
11 the Zoning Administrator, who sent them here  
12 in the first place.

13 CHAIRPERSON MILLER: Right. But  
14 that's because.

15 COMMISSIONER PARSONS: So what  
16 value is that?

17 CHAIRPERSON MILLER: Because the  
18 Zoning Administrator often gets appealed to  
19 the Board, and the Board has the final say,  
20 unless it goes to the Zoning Commission,, as  
21 to what the correct interpretation of the  
22 regulations is; and we just recently had that  
23 specific issue before us, and we said that the

1 Zoning Administrator interpreted the  
2 regulation incorrectly. So we are being  
3 consistent.

4 COMMISSIONER PARSONS: Oh, you  
5 have had a very similar case to this recently?

6 CHAIRPERSON MILLER: We have had a  
7 case in which the interpretation of 2100.5  
8 came up in which the Zoning Administrator said  
9 they are adding to it and they need to just do  
10 the additional spaces; and we said, no, it is  
11 an historical structure, because it's  
12 attached, it is one building; no additional  
13 parking is required.

14 COMMISSIONER PARSONS: So that is  
15 what triggered the Zoning Commission to  
16 clarify this regulation?

17 CHAIRPERSON MILLER: Oh, I don't  
18 know. We've been doing this for a long time,  
19 and it may be that the Office of Planning was  
20 involved in that, too. so this was just one  
21 case. But we've been saying this for a long  
22 time, and maybe the Zoning Commission  
23 disagrees on that point.

1 Do you want to say something?

2 MR. WOODS: Madam Chair, are you  
3 referring to before this particular section  
4 went to the Zoning Commission?

5 CHAIRPERSON MILLER: Yes, right.

6 MR. WOODS: Existing at that time  
7 Section 2100.5?

8 CHAIRPERSON MILLER: Yes.

9 MR. WOODS: The Applicant may want  
10 to address this, because the way I read it is  
11 that no additional parking spaces would be  
12 required in a historic district for an  
13 addition to a building that has been  
14 determined to be contributing.

15 The two buildings in this  
16 particular case that are contributing are not  
17 the ones that are actually being added onto,  
18 except for the fact that in this case we are  
19 considering all of the buildings to be more or  
20 less one development, one building.

21 CHAIRPERSON MILLER: I don't want  
22 to make too big a deal, but is there something  
23 -- You want to address the facts of this,

1 whether or not -- I thought that is what I  
2 asked you before, but --

3 MR. DePUY: Well, I think Mr.  
4 Woods' comment is a good one, and that is that  
5 there are two noncontributing buildings here,  
6 and we wouldn't want any question going  
7 forward with the Zoning Administrator as to  
8 whether we were doing an addition to  
9 contributing or -- in this case, contributing  
10 and non-contributing buildings.

11 So I would say that our preference  
12 would be to continue with the request for the  
13 variance from the parking requirement, so that  
14 there is no potential confusion in the future.

15 CHAIRPERSON MILLER: But are you  
16 saying -- and then we'll just go on. You  
17 know, I'm just throwing this out to my Board  
18 and we can rule otherwise. But are you also  
19 saying, though, that it is one building?

20 MR. DePUY: It will be one  
21 building, once the four lots are subdivided  
22 and the addition is constructed, which will at  
23 that point mean that the improvements will

1 constitute one building. But currently, there  
2 are separate buildings on separate lots.

3 CHAIRPERSON MILLER: Right. Are  
4 the additions to the historic building?

5 MR. DePUY: I think it is probably  
6 fair to say that the addition is to all the  
7 buildings, contributing and non-contributing.

8 CHAIRPERSON MILLER: Okay. All  
9 right. Then I'm just going to hear from  
10 others. It's not a big deal, because you  
11 know, it's the same result. It's the same  
12 result and, if you are uncomfortable with  
13 that, fine. I'm not, really, but --

14 MEMBER MANN: I understand what it  
15 is on principle, but I think in order to suit  
16 the Applicant's needs and the fact the Zoning  
17 Administrator sent them for variance relief  
18 for parking, I think we should take that path.

19 MEMBER LOUD: Yes, I would support  
20 Mr. Mann and Mr. Parsons. I think it's been  
21 a masterful presentation, and just out of an  
22 abundance of caution, having reached this  
23 point to allow them to cross the finish line

1 with it.

2 Also, Mr. Parsons' motion speaks  
3 specifically to their application, and I was  
4 wondering if your comments were just personal  
5 insights or you are changing Mr. Parsons'  
6 motion.

7 Mr. Parsons' motion is for  
8 approval of Application Number 17582 as it  
9 came before the Board.

10 CHAIRPERSON MILLER: Okay. Yes,  
11 and I don't want to belabor this. So it's  
12 fine. His application was right for -- His  
13 motion went to the application, and this was  
14 a part of the application, and this was my  
15 comment on part of the application. But I am  
16 not making any motion at this point. It's  
17 just discussion.

18 I'm not trying to do a friendly  
19 amendment or anything. Just I throw it out  
20 for discussion, and it appears that the  
21 sentiment of the Board is really that -- and  
22 from the Applicant -- that it just might  
23 complicate things unnecessarily, and either

1 way it is the same result.

2 So I'm willing to move on, and  
3 also say that this is a beautiful project. I  
4 think it meets the three-prongs of the  
5 variance test. I think Mr. Parsons is right.  
6 We don't need to probably go into too much  
7 detail, because we had an excellent summation  
8 by the Applicant. But I mean, even with just  
9 uniqueness and stuff, you just begin with the  
10 angled property and go from there, and all the  
11 practical difficulties that arise from  
12 connecting to the Kresge's building and all  
13 that.

14 No adverse impact. It's adaptive  
15 reuse. It keeps their nonprofits there in the  
16 community. It's sensitive to historic  
17 preservation.

18 Ah, which brings me to one other  
19 point I wanted to make. The Capitol Hill  
20 Restoration Society did also weigh in on this,  
21 and they have a letter at Exhibit 31 talking  
22 about impact on Capitol Hill, and they are  
23 supportive, but they did want to, I believe,

1 have a condition that 20 additional off-site  
2 parking spaces would be provided and/or  
3 establish a WMATA Smart Benefits Program.

4 I think we already addressed the  
5 measures that the Applicant is taking, which  
6 are appropriate.

7 Also, that the ANC supported the  
8 application in a letter, report, to which they  
9 are afforded great weight, noting that the  
10 Applicant would save significant problems in  
11 following the zoning regulations as strictly  
12 applied.

13 DDOT's report was supportive and  
14 suggested conditions which it appears that the  
15 Applicant is doing on its own.

16 Any other comments? Okay, then I  
17 think we can do a vote.

18 All those in favor, say Aye. All  
19 those opposed? All those abstaining? Would  
20 you call the vote, please?

21 MS. BAILEY: The vote is recorded  
22 as four-zero-one to approve the application as  
23 advertised. Mr. Parsons made the motion. Ms.

1 Miller second. Mr. Mann and Mr. Loud support  
2 the motion. Board Member Etherly is not  
3 present at this time.

4 CHAIRPERSON MILLER: Okay. Then I  
5 would also suggest that we waive our rules and  
6 regulations for a full order of findings of  
7 fact and conclusions of law in this case, as  
8 there is no opposition, and issue a summary  
9 order. I believe that is the consensus of the  
10 Board.

11 Okay, thank you very much. Best  
12 of luck.

13 I think we are ready for the last  
14 case of the morning, Ms. Bailey.

15 MS. BAILEY: And that is  
16 Application Number 17646 of District-  
17 Properties.com, LLC, pursuant to 11 DCMR  
18 3104.1, for a special exception to allow the  
19 construction of a new sixteen-unit apartment  
20 building under Section 353. The property is  
21 located at 5126 Bass Place, S.E. It is zoned  
22 R-5-A. It is located in Square 5310 on Lots  
23 22, 23 and 24.

1           Madam Chair, the affidavit in the  
2 case said the property was posted today, but  
3 we believe that that isn't correct, that the  
4 Applicant did post the property prior to  
5 today. However, it was inadvertently -- The  
6 correct date that it was posted was  
7 inadvertently not stated on the affidavit of  
8 posting.

9           CHAIRPERSON MILLER: Thank you.  
10 Could you identify yourself for the record,  
11 please?

12           MR. SIKDER: Good afternoon, Madam  
13 Chair and Board members. My name is Mohammad  
14 Sikder. I am the owner of this subject  
15 property and development.

16           CHAIRPERSON MILLER: Okay. Could  
17 you address Ms. Bailey's question about the  
18 posting?

19           MR. SIKDER: Yes. I think we made  
20 an inadvertent mistake. It should be 6/24,  
21 but then I instead of 6 just put 7.

22           CHAIRPERSON MILLER: Okay. So you  
23 posted it June 24th?

1 MR. SIKDER: Yes.

2 CHAIRPERSON MILLER: Is someone  
3 here from the ANC? Would you like to come  
4 forward, as you are a party in this case? It  
5 looks like there is room at the table for you.  
6 Could you identify yourself for the record?

7 MR. INOUE: David Inoue, I-n-o-u-  
8 e, ANC Commissioner for 7E-06.

9 CHAIRPERSON MILLER: Okay. And I  
10 believe we have a party status application in  
11 this case from David Joppy. Is he here? Can  
12 you come forward, please? May I ask what your  
13 name is? Could you speak into the mike, give  
14 your name and position?

15 MS. ROBINSON: My name is Naomi  
16 Robinson, ANC-7E01. I am Chairperson of ANC-  
17 7E.

18 CHAIRPERSON MILLER: And which --  
19 I haven't pulled your report yet, but which  
20 one of you is representing the ANC in the  
21 case?

22 MS. ROBINSON: He is.

23 CHAIRPERSON MILLER: Okay. So he

1 will be speaking for the ANC? Okay.

2 Mr. Joppy, you submitted a party  
3 status application. Can you identify your  
4 name, and give your address for the record,  
5 please?

6 MR. JOPPY: I'm sorry. I didn't  
7 hear you.

8 CHAIRPERSON MILLER: Could you  
9 give your name and address for the record,  
10 please?

11 MR. JOPPY: My name is David  
12 Joppy, yes, ma'am.

13 CHAIRPERSON MILLER: And your  
14 address?

15 MR. JOPPY: My address is 5121  
16 Bass Place.

17 CHAIRPERSON MILLER: Okay. You  
18 submitted -- You need to turn off your mike  
19 when I speak or when someone else -- because  
20 it reverberates.

21 You submitted a party status  
22 application, and first of all, we want to make  
23 sure you really want to be a party in this

1 case, as opposed to testifying in this case;  
2 because anybody can testify in the case, but  
3 to be a party you have higher responsibilities  
4 and privileges, and you have to show that they  
5 should be afforded to you because you are  
6 impacted differently from others in the  
7 general public, and we need to give you party  
8 status because, for instance, the ANC won't  
9 represent your interests or something like  
10 that, like the other neighbors.

11 So do you intend for us to  
12 consider you for party status or do you just  
13 want to testify?

14 MR. JOPPY: I oppose it.

15 CHAIRPERSON MILLER: What?

16 MR. JOPPY: Yes, I'll testify at  
17 the end.

18 CHAIRPERSON MILLER: Okay. So why  
19 don't you have a seat in the audience, and we  
20 will call you when it's the time to hear  
21 testimony from the public. Okay? You can sit  
22 down comfortably in those seats, and we will  
23 call you later to testify. Thank you very

1 much.

2 So at this point then, unless  
3 anybody has a question -- You have a question?

4 MR. INOUE: Actually, we did have  
5 a question about the application. It was  
6 brought to my attention by a friend of one of  
7 the residents that there may be some variances  
8 that may be required for this property, and I  
9 wasn't sure exactly what the zoning  
10 regulations were for the parking area.

11 The proposal is for a 12-foot  
12 aisle between the two rows of parking, and  
13 there may be a requirement for a 20-foot  
14 aisle, and also that this property has four  
15 stories including the basement, and that there  
16 is a limit for three stories; and there is no  
17 mention of a variance request in the  
18 application.

19 CHAIRPERSON MILLER: Okay. We do  
20 have a copy of the ANC letter which raises all  
21 those issues. I don't think it is appropriate  
22 in our procedures for us to just answer those  
23 questions right now.

1                   What we are going to do, though --  
2                   We are very aware of those concerns, and we  
3                   are going to raise them with the Applicant and  
4                   with the Office of Planning, and then we will  
5                   get to you. So it will be covered by the time  
6                   we finish this.

7                   MR. INOUE: Thank you.

8                   CHAIRPERSON MILLER: So our order  
9                   of procedure is to hear from the Applicant  
10                  first, and then we will go to the Office of  
11                  Planning and then the ANC.

12                  MR. SIKDER: The name of our  
13                  company is District-Properties. We are a  
14                  small developer in Washington, D.C.  
15                  Currently, we own this property at 5126 Bass  
16                  Place, Southeast, Washington, D.C. with three  
17                  vacant lots at 22, 23 and 24.

18                  We plan to develop it with 16  
19                  condominiums with 16 off-street parkings on  
20                  these vacant lots. Pursuant to Section 353.1,  
21                  all new residential development in R5-A zone  
22                  shall be reviewed by Board of Zoning, as a  
23                  special exception under 3104, in accordance

1 with standards and requirements.

2 Therefore, we are requesting for a  
3 special exception under 3104 for construction  
4 of these 16 condominiums.

5 These 16 condominiums will be  
6 three-story plus cellar. The cellar is -- It  
7 has 3 feet 9 inches above grade level. It is  
8 less than 4 feet, as required by zoning, and  
9 by constructing these 16 units will not cause  
10 any adverse effect on the neighborhood. It  
11 will make harmony with the existing community,  
12 which is comprised of mixed use facilities.

13 Building on the lot will actually  
14 benefit the neighborhood, since vacant lots  
15 often become an attraction for dumping and  
16 other illegal activities.

17 Finally, there will be no burden  
18 on the street parking, since we are providing  
19 16 off-street parkings.

20 Furthermore, pursuant to District  
21 zoning regulations, the proposed use will not  
22 substantially impair the integrity of any  
23 validly approved zoning regulations or

1 functional zoning maps, and the proposed use  
2 will not adversely affect the health, safety  
3 or welfare of residents or workers in this  
4 area, and this property development will not  
5 be detrimental to the use or development of  
6 adjacent properties or the general  
7 neighborhood.

8 I hope BZA will consider this  
9 proposed development to develop these 16 unit  
10 condominiums. Thanks.

11 CHAIRPERSON MILLER: Thank you.  
12 Are there Board questions?

13 MEMBER MANN: Yes. The plans that  
14 we have in our file at Exhibit 7 appear to be  
15 somewhat different than the plans which were  
16 reproduced in miniature that the -- and are  
17 represented in the Office of Planning report.

18 Do we have the most current plans  
19 in our file or have those not been submitted?

20 MR. SIKDER: I guess -- We revised  
21 the parking, actually the aisle, 20 feet as  
22 per the requirements by Office of Planning.  
23 I guess we didn't file it. That's all. I

1 mean, the plan is revised, but I just  
2 submitted since I talked -- Office of Planning  
3 is submitting.

4 MEMBER MANN: Okay. So they have  
5 not been filed.

6 MR. SIKDER: That's right.

7 MEMBER MANN: Okay. But the  
8 Office of Planning has reviewed the revised  
9 plan?

10 MR. SIKDER: Yes, sir.

11 MEMBER MANN: It appears on the  
12 Office of Planning's reduced plan that they  
13 have put in their report that there are drive  
14 aisles that are 10 feet wide. Is that  
15 correct?

16 MR. SIKDER: The revised -- In  
17 between the aisle is 20 feet.

18 MEMBER MANN: Actually, not drive  
19 aisles, but the driveways to reach the --

20 MR. SIKDER: That is 10 feet,  
21 right.

22 MEMBER MANN: Do you know if that  
23 is in accordance with the regulations?

1 MR. SIKDER: That's right, sir.

2 MEMBER MANN: You believe the 10  
3 feet is in accordance with the regulations?

4 MR. SIKDER: Yes, it is. We did  
5 meet the requirements, yes.

6 MEMBER MANN: Okay. I'm not  
7 certain if it does, but --

8 CHAIRPERSON MILLER: Do you know  
9 where that's found in the regulations?

10 MR. SIKDER: I mean, I couldn't  
11 find anywhere it says it requires more than 10  
12 feet, I mean, for the driveway.

13 CHAIRPERSON MILLER: What are you  
14 relying on for the 10 feet figure?

15 MR. SIKDER: No, I am relying on  
16 actually all the parking requirements. I  
17 couldn't see anywhere that it says any  
18 specific requirements that it needs more than  
19 10 feet for the driveway.

20 MEMBER MANN: I just have a  
21 question for the Chair as to whether or not  
22 maybe the first threshold we have to get over  
23 is getting the correct plans into the record

1 or if we can go -- just go ahead based on the  
2 representation that plans have been reviewed  
3 by OP.

4 CHAIRPERSON MILLER: Well, if we  
5 know what we are looking at, which would be  
6 the reduced plan, we can -- in OP's report, I  
7 believe we can go forward and have this  
8 hearing and consider all the issues, since we  
9 know what is being represented to us. But I  
10 don't believe we could decide on it without  
11 having the actual plan. So that would have to  
12 be submitted afterwards.

13 Do you have a landscaping plan?

14 MR. SIKDER: Yes. I have the  
15 plan, but the same -- I think it is the same  
16 thing is given to Office of Planning. Yes, I  
17 have landscaping plan.

18 CHAIRPERSON MILLER: Okay. You  
19 have a landscaping plan, but you just haven't  
20 submitted it to the Board.

21 MR. SIKDER: Yes. No, I did  
22 submit it, but it has been revised as per  
23 Office of Planning. I have the revised plan.

1 It has been not submitted. That's true.

2 CHAIRPERSON MILLER: Okay. Do you  
3 have a lighting -- Does it show lighting as  
4 well?

5 MR. SIKDER: Yes.

6 CHAIRPERSON MILLER: It does?  
7 Your revised?

8 MR. SIKDER: Yes.

9 CHAIRPERSON MILLER: Is it easy to  
10 make a copy at this point for us to look at,  
11 or no?

12 MR. SIKDER: Yes. I have three  
13 copies.

14 CHAIRPERSON MILLER: You have  
15 copies?

16 MR. SIKDER: Yes.

17 CHAIRPERSON MILLER: Okay. Could  
18 you give them to Ms. Bailey, and she will  
19 distribute them to us, please? Thank you.

20 MEMBER LOUD: Good morning, and  
21 thanks for your testimony this morning. I  
22 just have a quick question for you.

23 You've got planned anyway 16 two-

1 bedroom, two-bath units? Is that correct?

2 MR. SIKDER: That's right.

3 MEMBER LOUD: How much are the  
4 units going to be sold for?

5 MR. SIKDER: My view it should in  
6 between 175 to 200.

7 MEMBER LOUD: I'm sorry, between?

8 MR. SIKDER: Between 175 to 200.

9 MEMBER LOUD: Okay. Thank you.

10 COMMISSIONER PARSONS: Madam  
11 Chair, I have a question.

12 I'm concerned about your revised  
13 site plan, because what you had to do to  
14 accomplish the 20-foot wide aisle is to put  
15 the parking of automobiles directly up against  
16 the four bedrooms in the cellar, and  
17 previously you had a setback, a sidewalk or an  
18 area between those parked cars and the  
19 windows.

20 Now it appears to be that the cars  
21 will be four feet away from the windows, which  
22 will, I think, be very undesirable on blocking  
23 light and air and, who knows. An idling car

1 outside a window just doesn't make sense to  
2 me. So is there any other way to reconfigure  
3 this to get this requirement taken care of?  
4 I can't think of one, and you need those 15  
5 spaces in order to conform with the  
6 regulations, I presume.

7 MR. SIKDER: That's right. That  
8 will be difficult, yes, without -- by looking  
9 at the parking space.

10 COMMISSIONER PARSONS: I'm sorry.  
11 Could you speak into the microphone?

12 MR. SIKDER: Oh, I'm sorry. I'm  
13 saying I don't know of any other way to  
14 configure because of the space limitations.  
15 But -- unless we can make some landscaping or  
16 some way to avoid the direct view of the car  
17 and the window maybe, I mean, if that is  
18 acceptable. I mean, we can clear some space  
19 up, I mean, I am pretty sure.

20 COMMISSIONER PARSONS: Thank you.

21 MR. SIKDER: But space-wise, I  
22 don't think we can -- It would be difficult to  
23 relocate the parking space. The only thing I

1 can think about make some maybe screening or  
2 -- I'm not going to think about it right now,  
3 but --

4 COMMISSIONER PARSONS: Well, is  
5 that area adjacent to the building 1 foot 9  
6 inches -- is that proposed to be a sidewalk,  
7 a concrete sidewalk, or landscaping?

8 MR. SIKDER: Yes, concrete  
9 sidewalk, yes. Not concrete sidewalk. I mean  
10 -- Yes, I think that portion is a concrete  
11 sidewalk. Right. That's right.

12 COMMISSIONER PARSONS: But you are  
13 suggesting that might become landscaping, you  
14 say?

15 MR. SIKDER: I mean, we can create  
16 some structures that could hide the direct  
17 view from the window to the car. I mean,  
18 that's your objection. I mean, I can talk to  
19 my architect if they can come up with some  
20 idea.

21 COMMISSIONER PARSONS: All right.  
22 thank you.

23 CHAIRPERSON MILLER: Any other

1 questions for the Applicant? Does the ANC  
2 have any questions for the Applicant?

3 MR. INOUE: Not at this moment.

4 CHAIRPERSON MILLER: Okay. This  
5 is your moment, though.

6 MR. INOUE: Is this my moment to  
7 make my statement?

8 CHAIRPERSON MILLER: No. This is  
9 your moment if you have any questions. Okay.

10 COMMISSIONER PARSONS: Madam  
11 Chair, I can't help but notice the colored  
12 renderings on the table. We don't have those,  
13 do we?

14 CHAIRPERSON MILLER: No, we don't  
15 have those. I didn't even know they existed.

16 MR. INOUE: These were given to us  
17 at the ANC meeting where Mr. Sikder came to  
18 present. It is one of several different  
19 iterations I received of the proposal, which  
20 is one of the frustrations I have had about  
21 this.

22 CHAIRPERSON MILLER: Okay. You  
23 don't have any questions, though, cross-

1 examination, do you? Or do you? If you do,  
2 then this is your time to do it.

3 MR. INOUE: I guess my question  
4 would be tat the fact that we have seen so  
5 many different iterations of this property  
6 that, obviously, some of them were out of  
7 conformance with zoning. But now I see this  
8 one that does appear to be in conformance with  
9 zoning regulations, and with all these changes  
10 going on, I don't know really what to be  
11 following at this point.

12 CHAIRPERSON MILLER: I would  
13 suggest to you at this point you should have  
14 the same things that the Board has, which  
15 would be the -- Do you have the Office of  
16 Planning report?

17 MR. INOUE: I do not believe I  
18 have that.

19 CHAIRPERSON MILLER: Okay. We  
20 need to get you a copy. All right, we will  
21 get you a copy of that. Does that have the  
22 dimensions that we are looking at, that are  
23 being represented to us as the revised plan.

1                   We also have a landscaping plan.  
2                   Do you have that?

3                   MR. INOUE:   Yes, I believe I just  
4                   received that.

5                   CHAIRPERSON MILLER:   Okay.   And a  
6                   floor plan behind it.   Okay.   We just have  
7                   black and white.   So that is what we are  
8                   dealing with right now.   That is what is  
9                   before us, and the plans that were in the  
10                  record with the application, however as  
11                  revised by these documents.

12                  MR. INOUE:   I guess a question for  
13                  Mr. Sikder:   You had mentioned that there  
14                  would be no impact on the traffic.   However,  
15                  putting in 16 units here is going to  
16                  significantly increase the number of people  
17                  living on this street.

18                  Have you done a study on what the  
19                  exact traffic impact will be?

20                  MR. SIKDER:   My answer to the  
21                  person is that we are providing 16 parking --  
22                  off-street parking.   So I do not know how it  
23                  would be impacted.

1 MR. INOUE: However, if you  
2 compare it to the number of residences on the  
3 street right now, even with 16 additional cars  
4 on that street is going to be probably perhaps  
5 doubling the number of cars that could be  
6 going down this street.

7 MR. SIKDER: In my view, I don't  
8 think that should be any concern, because  
9 since we are providing the off-the-street  
10 parking, which is required actually by zoning  
11 requirements, and we are providing it, and I  
12 do not know why it should impact on other  
13 people on the street.

14 MR. INOUE: Well, cars do make  
15 noise.

16 CHAIRPERSON MILLER: Wait. Okay,  
17 this is not a time to argue or anything, and  
18 you will have your chance to testify that it  
19 will have an impact.

20 MR. INOUE: Okay, I apologize.

21 CHAIRPERSON MILLER: That's okay.  
22 I mean, people aren't used to this. All  
23 right. Do you have any other questions?

1 MR. INOUE: I think I will reserve  
2 for when I make my statement later.

3 CHAIRPERSON MILLER: Okay. Good  
4 afternoon, Mr. Rice.

5 MR. RICE: Good afternoon, Madam  
6 Chair, Board. My name is Stephen Rice.

7 I would like to say that the  
8 applicant has submitted various plans and  
9 updates, and my report was based off of the  
10 information you have in front of you, which is  
11 the most recent information.

12 The Office of Planning does  
13 recommend approval for the special exception  
14 pursuant to Section 353 of the zoning regs.  
15 Square 5310 is primarily a mixture of small  
16 apartment buildings as well as detached single  
17 family homes. The 16 unit proposal will  
18 provide 16 parking spaces, 12 of which will be  
19 located at the rear of the property,  
20 vertically along the rear property line, and  
21 four along the rear of the building.

22 The project will have two 12-foot  
23 wide driveways on both sides of the building.

1 Both will be one-way driveways, and the  
2 building does meet all of the setback  
3 requirements.

4 The intent of Section 2117.13 is  
5 to ensure that adequate lighting to the  
6 parking lot and driveway will be provided,  
7 while minimizing spillage onto the neighboring  
8 properties, and the Applicant has adequately  
9 met that intent.

10 Nearly nine percent of the total  
11 area devoted to parking will be landscaped,  
12 where only five percent is required.

13 The provided proper screening --  
14 Well, there will be a 45 foot wide -- high,  
15 I'm sorry -- brick wall that will surround the  
16 property at its rear and on its east and west  
17 sides. A four-foot high fence will go along  
18 the front of the property which will be  
19 landscaped with shrubs to reduce the visual  
20 impacts from Bass Place.

21 The building will be below the 40  
22 feet that is permitted in the zone, the R5-A  
23 zone. The units will have plenty of windows

1 to adequately facilitate light and air to each  
2 unit. However, given the distance of the  
3 three-story -- the height and the distance of  
4 the three-story building in relation to the  
5 east one-story property, the Office of  
6 Planning does recommend that the windows be  
7 oriented in a way that they will not directly  
8 be aligned with the windows of the existing  
9 unit, and I spoke with the Applicant about  
10 them.

11 I don't know if it is reflected in  
12 the plans, but he said that it shouldn't be a  
13 problem.

14 The site will maintain the  
15 existing grade, which is practically flat, and  
16 the Applicant has indicated that an  
17 application for services from DC-WASA has been  
18 submitted.

19 Copies of the plans were forwarded  
20 over to the D.C. Department of Education, DDOT  
21 and DCHD, but comments were not received from  
22 these agencies.

23 I understand that there was a

1 special meeting held at ANC-7E-06 on July  
2 10th, and I haven't received comments from  
3 that meeting, but the general tone is that the  
4 neighborhood does not support multi-family --  
5 new multi-family developments, and I would  
6 assume that that is probably the direction  
7 that they have decided to vote in. I'm not  
8 sure. I haven't received those comments, and  
9 that is pretty typical in the Marshall Heights  
10 neighborhood.

11 The Applicant has adequately met  
12 the special exception provisions of Section  
13 353, and further the proposal is consistent  
14 with the general intent of the comp plan, the  
15 zoning regs and the zoning maps.

16 It will advance the objectives of  
17 the far northeast, southeast area element by  
18 providing infill development on a lot that is  
19 currently vacant, and it will also provide  
20 needed housing opportunities for families to  
21 attract families to this area.

22 The Office of Planning, therefore,  
23 recommends that this proposal be approved,

1 based on the provisions of Section 353.

2 Thanks.

3 CHAIRPERSON MILLER: Questions  
4 from the Board?

5 MEMBER LOUD: Good afternoon, Mr.  
6 Rice, and thank you for your report. It was  
7 very, very helpful to me. I want to ask you  
8 a couple of questions based on some of the  
9 information in your report.

10 Specifically, as you discussed the  
11 comp plan, zoning maps in the far northeast  
12 and southeast area element, one of the things  
13 that you note -- and, I guess, repeating what  
14 is in the zoning map and comp plan -- is that  
15 the low density character that typifies most  
16 of far northeast and southeast neighborhoods  
17 should be maintained, and while it is  
18 recognized that the area contains much vacant  
19 land with the potential for infill  
20 development, this development should generally  
21 be similar in density to what exists today.  
22 Then it goes on to talk about the policy  
23 support for attracting families to far

1 northeast and southeast.

2 How would you apply that policy  
3 direction to the proposal for 16 units on that  
4 block?

5 MR. RICE: Well, I don't know if  
6 you have the map, but there is an aerial map  
7 that showed Square 5310. There are plenty of  
8 apartment structures on this block and also  
9 within the surrounding area.

10 I don't know the exact number of  
11 units for those apartment buildings, but they  
12 are similar in size and, I would assume, even  
13 in density; maybe not 16 units, but pretty  
14 close to 16 units, from the range of 10 to 16  
15 or so. I don't know the exact amount, but I  
16 don't think that it would be inconsistent with  
17 what is currently there.

18 MEMBER LOUD: A couple of follow-  
19 up questions. You visited the block?

20 MR. RICE: Yes, I have been to the  
21 site.

22 MEMBER LOUD: How many residential  
23 structures are on the block?

1 MR. RICE: Multi-family or any?

2 MEMBER LOUD: Period.

3 MR. RICE: On this block -- On  
4 this side of the block, there's three or four  
5 single detached homes, but at the rear of this  
6 property there is a vacant parking lot which  
7 is enclosed on both sides by two apartment  
8 buildings. All are within one block.

9 Do you have the image that I'm  
10 referring to?

11 MEMBER LOUD: I have the image.  
12 It's a little unclear to me, and your  
13 responses are very helpful. Across the street  
14 from this block, because you were beginning to  
15 describe the rear of the property -- Across  
16 the street from the property, how many  
17 residential structures are there?

18 MR. RICE: I don't know exactly,  
19 but based on this image, I see at least five  
20 or six, including one three-story apartment  
21 building, but the block is, of course, larger  
22 than this image.

23 MEMBER LOUD: I guess I am trying

1 to get a handle, and I can probably ask the  
2 ANC when they come up -- a handle on how many  
3 of the properties are single family  
4 residential. There is an allegation in -- or  
5 statement in the record that the majority of  
6 the properties are single family residential  
7 and that this would be an aberration, this  
8 particular development, at least on that  
9 block.

10 I just wanted to see if you could  
11 corroborate that with recollections from your  
12 personal visit.

13 MR. RICE: The general make-up is  
14 -- It's a mixture of both. If we look at  
15 units, I would say that there are probably  
16 more apartment units than single family units.  
17 It may not appear that way, because, of  
18 course, the single family homes take up more  
19 physical space or they are more scattered.

20 Again, I don't know exactly the  
21 number of units.

22 MEMBER LOUD: And I don't want to  
23 be unfair to OP, but would a summary of your

1 testimony be that, because there are already  
2 an abundant or relatively large number of  
3 moderate density multi-family units there,  
4 that OP finds that this proposed 16 unit  
5 development would not be offensive to the  
6 policy of supporting single family  
7 construction in this area?

8 It sounds like that is what I'm  
9 hearing, but I want to make sure that I  
10 haven't heard it wrong.

11 MR. RICE: I think that's correct,  
12 but let me say it in my words.

13 I don't think, based on what is  
14 currently there, that a 16-unit apartment  
15 building would be inconsistent with what is  
16 there now.

17 MEMBER LOUD: Thank you.

18 COMMISSIONER PARSONS: Madam  
19 Chair, I would like to follow up on this  
20 dialogue.

21 This, to me, is a classic case of  
22 tipping the balance. That is, at what point  
23 does a neighborhood or development within it

1 begin to change the zoning, change the feel of  
2 the place?

3 So I wanted to go to page 3 of  
4 your report, getting back to the same  
5 comprehensive plan. In the second paragraph,  
6 you have a sentence that I don't yet  
7 understand. It says, "A mix of single family  
8 dwellings and low rise two-to-four-unit  
9 apartment buildings may also characterize  
10 moderate density areas."

11 Now did you mean to say two-to-  
12 four-unit or two to four stories?

13 MR. RICE: Stories. I'm sorry. I  
14 think that is a typo. It should be stories.

15 COMMISSIONER PARSONS: Okay, but  
16 let's keep going on that, because when I look  
17 at this photograph, I don't see four-story  
18 buildings here. I see three-story buildings,  
19 but I may not be counting correctly. So help  
20 me with that, please. Are these three-story  
21 apartments?

22 MR. RICE: Those are three-story  
23 apartments.

1                   COMMISSIONER PARSONS: So what  
2 then would justify going to a higher level  
3 than the existing, given the guidance in the  
4 comprehensive plan?

5                   MR. RICE: I would say that,  
6 although it says two to four, it should say  
7 two to three stories. Four stories wouldn't  
8 be justified.

9                   COMMISSIONER PARSONS: So then why  
10 would you recommend this project?

11                  MR. RICE: Because it is  
12 considered three stories, because the cellar  
13 floor isn't considered a story, although it is  
14 four levels.

15                  COMMISSIONER PARSONS: I  
16 understand that from a regulatory standpoint,  
17 but what is it creating? It is creating more  
18 mass than the existing buildings, I believe.

19                  Now can you describe this parking  
20 lot to the rear? Is that a church parking  
21 lot? Does that belong to these apartment  
22 buildings? What is that for?

23                  MR. RICE: I think that the church

1 that is across the street from the parking lot  
2 does own that, but there is parking for the  
3 apartment building to the northwest located on  
4 its property.

5 COMMISSIONER PARSONS: Right. So  
6 let's give you a hypothetical. It's not fair,  
7 but I'm going to do it anyway: That the  
8 church begins to realize that something is  
9 happening here. You know, there's apartment  
10 buildings. There is a new approval for one,  
11 and they come forward and say, gee, we would  
12 like to build the same thing that's just been  
13 built adjacent to us, and how would you feel  
14 about that? Are we getting to the point then  
15 where my theory is coming true, that this is  
16 no longer the community as we know it? Would  
17 you recommend -- I'll stop. That's not fair,  
18 but you see where I'm going with this.

19 Okay, thanks for your help.

20 CHAIRPERSON MILLER: Others? I  
21 want to do a few follow-ups myself, and I hope  
22 this isn't redundant of what Mr. Loud asked.

23 Again, I just want to bring your

1 attention to page 3 where you talk about the  
2 far northeast and southeast area element, and  
3 it says, I think, in relevant part that, while  
4 it is recognized that the area contains much  
5 vacant land with the potential for infill  
6 development, this development should generally  
7 be similar in density to what exists today.

8 Okay. I kind of interpret it like  
9 Mr. Parsons, I think, that you are saying,  
10 well, there are apartment buildings there  
11 apartment buildings there; so it is consistent  
12 with what is there today. But then it goes on  
13 and says, "This is one of the few areas in the  
14 city with opportunities to build three- and  
15 four-bedroom homes suitable for families with  
16 children, support the development of the many  
17 scattered vacant lots in the Marshall Heights  
18 community with new low density residential  
19 development, especially one- and two-family  
20 homes. This will provide ownership  
21 opportunities for area residents and housing  
22 stock needed to attract families back to far  
23 northeast and southeast."

1                   Okay. So that language is in  
2                   there, but it looks like a 16-unit apartment  
3                   building is not consistent with that language,  
4                   whereas a single family home is. Can you  
5                   address that?

6                   MR. RICE: I would say that,  
7                   although that is written, I don't know if it  
8                   is limited only to the development of one- and  
9                   two-family homes, because the R-5A does permit  
10                  multi-family development.

11                  So although it is stated, I don't  
12                  know if it is limited to that.

13                  CHAIRPERSON       MILLER: My  
14                  understanding is, yes, it does permit the  
15                  development of this type of project, and  
16                  that's why they are here. But we are looking  
17                  at it under a special exception, you know,  
18                  whether it is in harmony with the zoning  
19                  regulations then and the character of the  
20                  neighborhood, etcetera, and no adverse  
21                  impacts.

22                  So we are looking at it a little  
23                  broader. So, therefore, I think that is why

1 we consider these type of elements of the  
2 comprehensive plan, and it is in here. And so  
3 -- It is in your report, and so why shouldn't  
4 we consider it that way, I guess, is my  
5 question? Why don't you consider it?

6 MR. RICE: I didn't ask the  
7 Applicant to reduce his units, because we  
8 generally don't get into the business of  
9 directing what exactly should be done. We do  
10 our analysis based on what is submitted, but  
11 I do clearly understand your point.

12 CHAIRPERSON MILLER: Go ahead.

13 COMMISSIONER PARSONS: I was going  
14 to change the subject a little bit. Are you  
15 finished? I didn't mean to --

16 CHAIRPERSON MILLER: Well, I am  
17 finished with that subject. I have one other  
18 question. Do you want to go first or do you  
19 want me to finish? This is maybe the same  
20 point you have.

21 I think in the Office of Planning  
22 Report it looks like there is a dimension of  
23 the driveway that changes from 12 feet to 10

1 feet, and I wanted to ask you if that is in  
2 accordance with the regulations, as far as you  
3 know? Do you know what I'm talking about?

4 MR. RICE: Yes. I don't have the  
5 regs in front of me, but I think it is 10  
6 feet.

7 CHAIRPERSON MILLER: Okay.

8 MR. RICE: I think.

9 CHAIRPERSON MILLER: Now is that  
10 in accordance with the regulations, to your  
11 knowledge?

12 MR. RICE: Yes, the 10 feet that  
13 he has should be in accordance with the regs,  
14 according to the most recent drawing.

15 CHAIRPERSON MILLER: Where does  
16 the 12 feet come from, and then where does the  
17 10 feet come from with respect to the  
18 authority in the regulations?

19 MR. RICE: Are you asking where is  
20 it stated?

21 CHAIRPERSON MILLER: Yes, how do  
22 we know that that is wide enough? We know  
23 that we are talking about the 20 feet for the

1 drive aisles. We know we look at the  
2 regulation. I think we have all been able to  
3 find where that one is.

4 With respect to the one-way  
5 driveways, where is that regulation?

6 MR. RICE: I see. Where is it  
7 cited in the regs?

8 CHAIRPERSON MILLER: Do you know?

9 MR. RICE: I don't have that  
10 citation in front of me. I'm sure I could  
11 probably find something that -- We had a  
12 reason to say that. I just don't know exactly  
13 where it is located.

14 CHAIRPERSON MILLER: Okay.

15 MR. RICE: But altogether, I think  
16 that the width is sufficient for a one-way  
17 driveway.

18 CHAIRPERSON MILLER: Okay. And  
19 one other question, and I don't know if I'm  
20 usurping Mr. Parsons or not, but he raised a  
21 concern about the revision now having the cars  
22 right up against bedroom windows. Do you have  
23 an opinion on that?

1                   MR. RICE: I didn't look at it in  
2                   that way, but I do think that that is a valid  
3                   point, given that the setback from the  
4                   original plans will be closer to the building  
5                   and will bring those four cars closer, and  
6                   also the heights or the orientation of the  
7                   windows in the cellar, although there are  
8                   windows on all four -- well, two sides. That  
9                   could raise a concern.

10                   CHAIRPERSON MILLER: Thank you.  
11                   Go ahead.

12                   COMMISSIONER PARSONS: Perhaps you  
13                   have seen the ANC letter. I don't know that  
14                   you have, but let me read a sentence to you  
15                   and see what you react to.

16                   It says: "Finally, it is our  
17                   understanding that the Office of Planning is  
18                   currently undertaking a reexamination of the  
19                   zoning for this area with their study  
20                   scheduled to be completed in October."

21                   Are you aware of such a study?

22                   MR. RICE: There is a study --  
23                   Well, I guess we can call it a study -- for

1 the R-5A District. I don't know the timeline  
2 of that study. I can't say that it will be  
3 completed in October, and I don't know the  
4 details of the study personally.

5 COMMISSIONER PARSONS: Okay, thank  
6 you.

7 CHAIRPERSON MILLER: Any other  
8 questions from the Board? Does the Applicant  
9 have any questions for the Office of Planning?

10 MR. SIKDER: Yes. The right side  
11 of this proposed building, there is an  
12 existing single family house, and the concern  
13 was the window --

14 CHAIRPERSON MILLER: Wait. I am  
15 going to stop you, just because we have  
16 certain procedures. You are going to have a  
17 chance to rebut anything and make statements,  
18 but if you have a question, you can ask it  
19 now.

20 MR. SIKDER: No.

21 CHAIRPERSON MILLER: Okay. All  
22 right. Does the ANC have any questions for  
23 the Office of Planning?

1 MR. INOUE: No, I don't.

2 CHAIRPERSON MILLER: Okay. At  
3 this time then, we will turn to the ANC for  
4 your presentation.

5 MR. INOUE: I am here today to  
6 represent what is pretty clearly, from the  
7 people in back of me, pretty widespread  
8 opposition from the immediate neighbors of  
9 this proposed development. I believe they  
10 have with them today a petition signed by many  
11 of the residents in the area, and I think  
12 their presence speaks volumes as to their  
13 concerns.

14 I believe that one of the key  
15 issues here is that whether this development  
16 is in keeping with the character of the  
17 existing properties and also whether there  
18 might be any detrimental effects to the  
19 existing properties or potential development  
20 of the area.

21 I think that when Mr. Rice was  
22 talking about how it doesn't appear that there  
23 are as many single family homes because they

1 are more scattered, I think that says exactly  
2 what part of the point here is, that the  
3 detached family homes are more scattered.  
4 There is more space in between the homes, and  
5 therefore, that creates a lower density of  
6 people here.

7 By my own recollection, I believe  
8 that the current number of homes there on the  
9 side of the street where the proposed  
10 development is, four of the five properties  
11 are single family homes. There is one  
12 apartment building on the corner, and then on  
13 the other side of the street, six of the seven  
14 are single family homes with that one  
15 apartment building immediately across the  
16 street.

17 So, clearly, a majority of the  
18 properties are single family detached homes,  
19 and if you count living units, then clearly  
20 those apartment buildings are weighted much  
21 more heavily if you count them as just living  
22 units relative to a single family home, which  
23 only counts as the one living unit.

1           So I don't think that that is a  
2           real fair comparison in saying what the  
3           majority of the land is developed as. If you  
4           look at the land itself, I think the majority  
5           is developed as single family detached homes.

6           Furthermore, there is the concern  
7           for the two single family homes which are  
8           immediately adjacent to this proposed  
9           development. For them, this will create a  
10          very large building that will be right next to  
11          them, and they will be looking out of their  
12          homes, and I think that there could be a  
13          potential economic impact on them.

14          Many of these people have lived on  
15          this street in their single family homes for  
16          many years. They have seen their property  
17          values increase. In fact, the two most recent  
18          developments on the street have been single  
19          family homes across the street from this  
20          proposed development.

21          I believe -- I'm not sure if there  
22          were any pictures in here of those properties,  
23          but those are two large single family homes

1 that recently -- I believe one of them has  
2 been sold. It is occupied now. The other one  
3 is still being built at this time.

4 So the current trend in  
5 development of the street as well is for  
6 single family homes, not for apartment  
7 buildings or condominiums such as is proposed  
8 here.

9 I had also been told by the  
10 residents of the street that one of these  
11 properties that is being proposed to be  
12 developed as the condominium building was  
13 previously a single family home many years ago  
14 but has since been torn down, which is why it  
15 is now an empty lot.

16 So in keeping with the previous  
17 development of this property as well, I would  
18 suggest that single family homes would be much  
19 more preferred.

20 Finally, in the actual apartments  
21 proposed -- or condos proposed, they are  
22 proposing two-bedroom condominiums, which  
23 really are not so conducive to families living

1 there.

2 The District has certain  
3 regulations as to children of opposite sex  
4 living in the same room beyond a certain age.  
5 If you were to have a two-bedroom home, this  
6 might create difficulty if the family has more  
7 than two children of a certain age, that there  
8 is not going to be the space for a four or  
9 more person family to be living in these  
10 units. So to really say are these really  
11 conducive to promoting families living in the  
12 district is somewhat questionable.

13 That's all that I have right now.  
14 I'm open to questions.

15 CHAIRPERSON MILLER: Do you happen  
16 to know what that age is? I'm just curious.

17 MR. INOUE: I believe it is five  
18 years old, but I'm not absolutely sure.

19 CHAIRPERSON MILLER: Also, is  
20 there any building of single family homes  
21 going on in this area?

22 MR. INOUE: Yes, exactly right  
23 across the street, the two properties that

1 were just -- There is the one that was just  
2 completed probably within the last year or so  
3 -- I think even less than that -- and there is  
4 another one being built right now right across  
5 the street.

6 MEMBER LOUD: Thank you for your  
7 testimony. A couple of quick follow-up  
8 questions.

9 You testified that 10 of the 12  
10 properties on the block were single family.  
11 is that the 5100 block of Bass Place, S.E.?

12 MR. INOUE: Yes.

13 MEMBER LOUD: Okay.

14 MR. INOUE: That block only, not  
15 extending to the back side.

16 MEMBER LOUD: Thank you. And the  
17 two that are not single family -- what are  
18 they? How many units are they?

19 MR. INOUE: I'm not sure exactly  
20 what the number of units in those apartments  
21 are. They are smaller profile buildings, I  
22 believe, than what is being proposed here.  
23 They don't seem to be quite as large as 16

1 units, but I apologize. I don't know the  
2 exact number.

3 MEMBER LOUD: Thank you.

4 CHAIRPERSON MILLER: Does the  
5 Applicant have any questions of the ANC?

6 MR. SIKDER: Well, I mean, just to  
7 give a --

8 CHAIRPERSON MILLER: You need to  
9 speak into the microphone, and I just --

10 MR. SIKDER: My position is that  
11 the zoning is out of 5-A. I think that D.C.  
12 -- I mean, the zoning was done such a way that  
13 it is designed for multi-family.

14 CHAIRPERSON MILLER: Wait, wait.  
15 This is where I thought you might be going  
16 here. This is just questions. You are going  
17 to get your opportunity to make a closing  
18 argument.

19 MR. SIKDER: Okay. So I don't  
20 have any questions.

21 CHAIRPERSON MILLER: That's okay.  
22 Any questions?

23 MR. SIKDER: No.

1                   CHAIRPERSON MILLER: Okay. There  
2 individuals in the audience, I believe, who  
3 wish to testify on this case. Do you want to  
4 raise your hand, and I can see how many you  
5 are. Oh, okay, come on forward then. You can  
6 fit at the table.

7                   Are any of you going to be  
8 testifying in support? Okay. We are just  
9 going by our procedures. All right. Then you  
10 will be testifying in opposition, and are you  
11 ready? We can start on this side. Introduce  
12 yourself.

13                   MS. JACKSON: Hi. My name is  
14 Deborah Jackson. I live at 5116 Bass. My Mom  
15 got sick. So I had to take her out. So I was  
16 wondering was it addressed, the drive-through  
17 on the plans? It was addressed? It's been  
18 modified, but we don't have a copy of it.

19                   CHAIRPERSON MILLER: Basically, we  
20 asked Office of Planning about this regulation  
21 and measurements. I think it is going to be  
22 supplemented, because it wasn't exactly  
23 resolved, the question, at least to my belief,

1 where it changes from 12 feet to 10 feet.  
2 That is the only thing that hasn't been  
3 resolved. Go ahead.

4 MS. JACKSON: Okay, thank you. I  
5 would like to say that my family have been in  
6 that area for over 80 years. When my Dad  
7 moved out there, wagon trails through Bass  
8 Place. He fought for sidewalks in that area.

9 We are for improvement, but we  
10 would like things to stay in accordance with  
11 the buildings that's already there, not --  
12 One-bedroom apartments just don't -- or even  
13 condos just don't draw families. Families  
14 care about communities. Everyone knows that,  
15 and we would like the community to continue  
16 growing.

17 He fought for sidewalks. We  
18 didn't have sidewalks. Money was going  
19 someplace else, and we finally got sidewalks  
20 out there.

21 So we want to see the area  
22 improve, but to have this huge building -- If  
23 you would actually see the small street and

1 small houses and this huge building, it's very  
2 invasive to the small neighborhood.

3 The streets aren't wide. It's  
4 going to have to go one way. They are going  
5 to have to change the streets and everything  
6 for a building that large.

7 The trash can -- This huge trash  
8 can that's going to be on my side of the  
9 street, on my side of the property for a 16-  
10 unit building -- When I look out my window, I  
11 am going to see a huge blank wall, not trees,  
12 not sunset that I'm used to seeing, but this  
13 huge wall of apartment.

14 Of course, yes, there's two  
15 apartment buildings in the area, smaller  
16 buildings. They have been there for years.  
17 We don't want to see anymore apartment  
18 buildings.

19 I guess that's all that I have to  
20 say. Thank you.

21 CHAIRPERSON MILLER: Thank you.

22 MR. JOPPY: First I would like to  
23 ask the Board apology for my hearing. But I

1 very much oppose the 16-unit building due to  
2 the same reasons, the parking, the crowds that  
3 they bring, and also the danger of the  
4 children with the big building close to the  
5 street.

6 It's just not enough room for this  
7 type of building in that area. Thank you.

8 CHAIRPERSON MILLER: Thank you.

9 MS. HOLSEY: Good afternoon. My  
10 name is Amenetta V. Holsey, and I live at 5229  
11 Bass Place, S.E. I, too, is one of the  
12 neighbors that oppose this condo.

13 I stand with my fellow neighbors  
14 to say that this large condo building is not  
15 going to be in compliance to the historical  
16 single detached single family homes that is on  
17 the street of the proposed condo.

18 So again, I oppose that. Then one  
19 major thing is that there are some condos kind  
20 of like in the area on C Street, three  
21 buildings of condos, and only five of them  
22 have sold.

23 So we, in doing our homework, we

1 found out that, if the condos don't sell, that  
2 the developer could come back to Office of  
3 Planning or Office of Zoning and ask for them  
4 to be apartments, which brings in more havoc.  
5 We are trying to get away from that.

6 So that is my view. Thank you.

7 CHAIRPERSON MILLER: Thank you.  
8 Thank you very much for coming down.

9 Does the Applicant have any  
10 questions for these witnesses? Okay. ANC?  
11 I am not seeing any Board questions.

12 MR. INOUE: Actually, I believe  
13 that you all had a petition that you wanted to  
14 present to the Board of Zoning. Do you have  
15 that with you?

16 CHAIRPERSON MILLER: Put that in  
17 the record? Has the Applicant seen it as  
18 well?

19 MR. INOUE: I don't believe so.

20 CHAIRPERSON MILLER: Okay.  
21 Applicant needs to get a copy as well. We can  
22 make more copies later, if need be, or you  
23 can, whatever, at the Office of Zoning.

1           Okay. I think at this point then  
2 we are ready for closing arguments by the  
3 Applicant. Now is the time, if you wanted to  
4 make some more remarks.

5           MR. SIKDER: In closing remarks, I  
6 would like to say that the zone R-5-A -- I  
7 mean, it is designed for development of multi-  
8 family and three-story -- at least three-story  
9 with a cellar possibly.

10           I mean, I do not see that -- I  
11 mean, if we comply with all the rules and  
12 regulations, I mean, the requirements of  
13 height, lot width, FAR, parking and lighting  
14 and all trash collection and lighting and all  
15 -- I mean all requirements -- I do not see why  
16 -- I mean, why should not be approved?

17           The concern I think Mr. Inoue told  
18 me is arguing that two-bedroom -- that had a  
19 different type of buyer. I mean, we see all  
20 the time, I mean, the two-bedroom is not  
21 necessarily would be not family oriented  
22 people. I do not see there is a point of --  
23 I mean, as he is saying this discouraging to

1 make the two-bedroom apartment, and maybe that  
2 would not be family oriented.

3 So I mean, then also -- I mean, I  
4 do not know what the other reason would be,  
5 you know, should not be approved this  
6 development. That's all.

7 CHAIRPERSON MILLER: Okay, thank  
8 you. I just want to quickly say that this  
9 isn't quite matter of right. It is subject to  
10 a special exception, and we have to look at  
11 adverse impacts in that context.

12 Okay. So at this point I think  
13 that we have completed the hearing, but in  
14 order to make a decision I believe we need to  
15 have a copy of your revised plan so that we  
16 know exactly what we are ruling on, you know,  
17 what is your plan; and the ANC needs that as  
18 well, as they are a party in the case.

19 So all final revisions, site plan,  
20 landscaping plan, lighting -- we need to have  
21 that. And it sounds like you have already  
22 done it, and it just hasn't been given to the  
23 Board yet or the ANC.

1           So I would like to know -- We  
2 would like to schedule this for decision next  
3 Tuesday, if we could. But in order to do  
4 that, we need your plans within the next  
5 couple of days, I believe. Today is Tuesday.

6           Sir, can you file the plans by  
7 Thursday, since you already have them, because  
8 what I want you to do also is the ANC is a  
9 party in the case, and so I would need you to  
10 serve the ANC with those plans as well. If  
11 Office of Planning doesn't have them, they  
12 should get a copy as well.

13           Then I want to give the ANC and  
14 Office of Planning any -- if there's anything  
15 on those revised plans that you feel you need  
16 to respond to, you can do that. This is a  
17 really quick turnaround, though. We are going  
18 into recess in August. That is part of the  
19 reason we would like to get this done and not  
20 have it sit for a month.

21           I guess I would say maybe the ANC  
22 could have until Monday morning or something,  
23 and then we could FAX if you have any

1 comments. We've got your report, you know,  
2 that was at your hearing. We know your  
3 concerns. So it's only if there is anything  
4 new on this plan that you feel you need to  
5 bring to our attention.

6 MR. INOUE: Really, it would  
7 probably be impossible for us as an ANC to  
8 respond, because we don't meet again until  
9 August.

10 CHAIRPERSON MILLER: Okay. So we  
11 won't factor that in. Do you have an  
12 objection to that?

13 MR. INOUE: I think the only  
14 objection I would have is if there were any  
15 sort of a zoning variance that was present in  
16 the revised plans, and I rely upon you all to  
17 use your knowledge of the laws.

18 CHAIRPERSON MILLER: The thing is  
19 that it should be consistent with what we have  
20 before us today, what we were looking at in  
21 the Office of Planning plan that had those  
22 dimensions, and then what was distributed to  
23 us and to you as well. So I believe we are

1 going to be just getting the official plans.  
2 So there shouldn't be anything that you really  
3 need to respond to. So okay, but we will  
4 watch.

5 Okay, Ms. Bailey.

6 MS. BAILEY: Madam Chair, I was  
7 out of the room. So I think I heard what was  
8 said, but if I could just briefly recap,  
9 please.

10 The Board is asking the Applicant  
11 to file a lighting plan and a landscaping  
12 plan?

13 CHAIRPERSON MILLER: Right. I  
14 believe it was already given to us in small  
15 form here, a little Xerox copy, and also to  
16 the ANC. But we want to make sure. He is  
17 going to file the final revised plans, and I  
18 think that also includes landscaping plans and  
19 site plan, floor plans, whatever. We are  
20 going to have what is required.

21 MS. BAILEY: And those documents  
22 are due on July 26th, which is Thursday of  
23 this week?

1 CHAIRPERSON MILLER: Is that  
2 possible? Yes. Okay.

3 MS. BAILEY: And the Board is  
4 scheduled to make a decision on July 31st,  
5 which is next Tuesday.

6 CHAIRPERSON MILLER: Yes, and we  
7 are leaving the record open for the ANC and  
8 Office of Planning to comment, but we don't  
9 really expect any, because it's basically what  
10 has been before us. However -- and ANC said  
11 they really can't do that logistically, but  
12 they have seen the numbers. It's what you  
13 have seen, just not the official.

14 I would like to ask the Office of  
15 Planning, though, if they have a further  
16 opinion on that 10 feet question on the  
17 driveways, if they could respond to that.  
18 That would be great. Thursday is fine with  
19 us. Okay, by Thursday, the same day.

20 Do you have any questions on this  
21 case? Otherwise -- Yes? Come to the table.

22 MS. ROBINSON: I would like to  
23 have a copy of all the revised plans that you

1 asked for today. As Chairperson, I would like  
2 to have for our office.

3 CHAIRPERSON MILLER: Okay. What I  
4 said was, I told the Applicant that he needs  
5 to serve the ANC with the revised plans. Now  
6 I don't know between the two of you who, but  
7 you are the same ANC. So, yes, you will get  
8 them; and if, for some reason, you need to  
9 comment, if you can logistically, our record  
10 is open for that, but I recognize that you  
11 probably won't, because you can't meet as a  
12 meeting. But what I was saying is what you  
13 have seen in the OP report and what was passed  
14 out today should be consistent with what will  
15 be filed. Just going to file it in larger  
16 form for us to have the real plans.

17 MS. ROBINSON: I just want copies  
18 of them. Thank you.

19 CHAIRPERSON MILLER: Yes. As a  
20 party, you are entitled to that. Okay.  
21 Anything else on this case? Thank you very  
22 much.

23 Okay. This completes the morning

1 session, and I know there are people in the  
2 audience waiting for the afternoon session.  
3 I think you should take a lunch break.

4 We would normally speed things up,  
5 but a meeting was scheduled for us over our  
6 lunch break. So we need to take the hour to  
7 conduct that business.

8 So we will be back here in an  
9 hour. Thank you.

10 (Whereupon, the foregoing matter  
11 went off the record at 1:59 p.m.)

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1 hearing room.

2 When presenting information to the  
3 Board, please turn on and speak into the  
4 microphone, first stating your name and home  
5 address. When you are finished speaking,  
6 please turn your microphone off so that your  
7 microphone is no longer picking up sound or  
8 background noise.

9 All persons planning to testify  
10 either in favor or in opposition are to fill  
11 out two witness cards. These cards are  
12 located to my left on the table near the door  
13 and on the witness table.

14 On coming forward to speak to the  
15 Board, please give both cards to the reporter  
16 sitting to my right.

17 The order of procedure for special  
18 exceptions and variances is:

19 (1) Statement and witnesses of the  
20 Applicant;

21 (2) Government reports, including  
22 Office of Planning, Department of Public  
23 Works, DDOT, etcetera;

1 (3) Report of the Advisory

2 Neighborhood commission;

3 (4) Parties or persons in

4 support;

5 (5) Parties or persons in

6 opposition;

7 (6) Closing remarks by the

8 Applicant.

9 Pursuant to Section 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 in a special  
23 exception or variance case.

1           Nothing prohibits the Board from  
2 placing reasonable restrictions on cross-  
3 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 material 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.

12           After the hearing is closed, no  
13 other information will be accepted by the  
14 Board.

15           The Sunshine Act requires that the  
16 Public Hearing in each case be held in the  
17 open before the public. The Board may,  
18 consistent with its rules of procedure and the  
19 Sunshine Act, enter Executive Session during  
20 or after the Public Hearing on a case for  
21 purposes of reviewing the record or  
22 deliberating on the case.

23           The decision of the Board in these

1       contested cases must be based exclusively on  
2       the public record. To avoid any appearance to  
3       the contrary, the Board requests that persons  
4       present not engage the members of the Board in  
5       conversation.

6               Please turn off all beepers and  
7       cellphones at this time so as not to disrupt  
8       these proceedings.

9               The Board will make every effort  
10       to conclude the Public Hearing as near as  
11       possible to 6:00 o'clock p.m. If the  
12       afternoon cases are not completed at six, the  
13       Board will assess whether it can complete the  
14       pending case or cases remaining on the agenda.

15               At this time, the Board will  
16       consider any preliminary matters. Preliminary  
17       matters are those that relate to whether a  
18       case will or should be heard today, such as  
19       requests for postponement, continuance or  
20       withdrawal or whether proper and adequate  
21       notice of the hearing has been given.

22               If you are not prepared to go  
23       forward with a case today or if you believe

1 that the Board should not proceed, now is the  
2 time to raise such a matter.

3 Does the staff have any  
4 preliminary matters?

5 MS. BAILEY: No, Madam Chair, no  
6 preliminary matters from staff.

7 CHAIRPERSON MILLER: Thank you.  
8 Then let's proceed with the agenda, and would  
9 all individuals wishing to testify today  
10 please rise to take the oath.

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

16 (Witnesses sworn.)

17 CHAIRPERSON MILLER: Ms. Bailey,  
18 would you call the first case, please.

19 MS. BAILEY: Application Number  
20 17644 of Potomac Development Partners LLC,  
21 pursuant to 11 DCMR 3104.1 for special  
22 exceptions from the rear yard requirements  
23 under Subsections 774.1 and 774.2, and the

1 parking requirements under Section 2108, to  
2 permit the redevelopment and expansion of an  
3 existing office building through the  
4 acquisition of transferable development  
5 rights, at premises 2021 L Street, N.W. The  
6 property is zoned C-3-C. It is located in  
7 Square 100 on Lot 103.

8 CHAIRPERSON MILLER: Thank you.  
9 good afternoon. Would you identify yourselves  
10 for the record, please?

11 MR. UTZ: I am Jeff Utz of  
12 Pillsbury Winthrop Shaw Pittman.

13 MR. HICKOK: Mike Hickok, Hickok  
14 Cole Architects.

15 MR. RIVERS: I am Mark Rivers with  
16 Potomac Development Partners.

17 MR. EPTING: I am John Epting with  
18 Pillsbury Winthrop Shaw Pittman.

19 CHAIRPERSON MILLER: I just want  
20 to ask if the ANC is here. No? Okay.

21 Can I turn it over to you.

22 MR. UTZ: Thank you. Good  
23 afternoon, members of the Board of Zoning

1 Adjustment. As I said, my name is Jeff Utz of  
2 Pillsbury Winthrop Shaw Pittman, and I am  
3 appearing before you today on behalf of 2021  
4 L Street Investors LLC, the Applicant in BZA  
5 Case Number 17644.

6 We appreciate the opportunity to  
7 come before you today and present our case.  
8 The applicant is proposing to redevelop the  
9 property located at 2021 L Street, N.W. for  
10 office and retail use.

11 We would like to note that  
12 originally the Applicant's name was Potomac  
13 Development Partners LLC. The Applicant has  
14 been changed to 2021 L Street Investors, which  
15 is the owner of the property.

16 The Applicant proposes to purchase  
17 transferable development rights in order to  
18 renovate an existing eight-story office  
19 building with street level retail and  
20 underground parking.

21 The applicant will add two floors  
22 of office use and a bump-out on the second  
23 through sixth floors in the rear yard of the

1 building, and maintain the ground floor retail  
2 space.

3 As a result, the Applicant is  
4 requesting special exception relief under  
5 Section 3104.1 of the District of Columbia  
6 zoning regulations from the parking  
7 requirements of Section 2108, and from the  
8 minimum depth of rear yard requirements of  
9 Section 774. The building will conform to the  
10 zoning regulations in all other ways.

11 The Applicant has attempted to  
12 include all possible information in the record  
13 for the case and, if the Board would like, the  
14 applicant would be willing to stand on the  
15 record or to present our case.

16 CHAIRPERSON MILLER: There is a  
17 full record. There isn't any opposition, but  
18 I think it would be a good idea just to  
19 highlight your case, and also to show us with  
20 your graphics those areas where you are  
21 seeking relief from, such as where the rear  
22 yard is and why you need that relief there.

23 MR. UTZ: Okay.

1 CHAIRPERSON MILLER: Thank you.

2 MR. UTZ: Thanks.

3 CHAIRPERSON MILLER: Is that okay  
4 with the rest of the Board members? Okay.

5 MR. UTZ: Okay. So let me just  
6 describe in a little more detail the two areas  
7 of relief we are requesting, and then maybe I  
8 can turn it over to Michael Hickok, our  
9 architect.

10 Under Section 2108 of the zoning  
11 regulations, parking is required to be  
12 provided in varying amounts based on the usage  
13 of the building. The proposed redevelopment  
14 plan is for 79,371 square feet of office and  
15 retail use, which would create a requirement  
16 for 42 parking spaces.

17 The Applicant proposes to provide  
18 33 parking spaces and is, therefore,  
19 requesting a special exception for the 25  
20 percent reduction in parking, special  
21 exception under the zoning regulations.

22 Under Section 774, the rear yard  
23 requirement is 2.5 inches per foot of height

1 above 20 feet. The proposed expansion of 110  
2 feet would create a rear yard requirement of  
3 23.9 feet.

4 The Applicant proposes to have a  
5 rear yard of 12 feet on the second through  
6 fifth floors and then for half of the sixth  
7 floor, and then 32.8 feet for the remainder of  
8 the building. Therefore, the Applicant is  
9 requesting a 10.9 foot special exception from  
10 the rear yard requirement for floors two  
11 through five and then the portion of the sixth  
12 floor.

13 I can turn it over now to the  
14 architect to go ahead and show those specific  
15 areas and maybe give a little more detail  
16 about the layout of the project.

17 CHAIRPERSON MILLER: Could you  
18 just refresh our recollection? Under 2108,  
19 you are seeking a 25 percent reduction in  
20 parking? Is that right?

21 MR. UTZ: Correct.

22 CHAIRPERSON MILLER: Okay. And  
23 what is that tied to?

1           MR. UTZ: The special exception is  
2 tied to the five-factor test under 2108. It  
3 is the location and the nature of the  
4 structure, the maximum number of people who  
5 are expected to use the building, the amount  
6 of traffic congestion that the building will  
7 create, the quantity of existing parking on  
8 the property or in the neighborhood, and then  
9 the proximity to public transportation and, in  
10 particular, the Metrorail stations.

11           So we show that we've got a strong  
12 case here meeting those five factors, given  
13 the location of the property and so forth.

14           CHAIRPERSON MILLER: Okay. And  
15 basically, that is more fully developed in  
16 your papers, but the fact -- you address all  
17 those five factors? Okay.

18           MR. UTZ: Correct.

19           CHAIRPERSON MILLER: Thank you.

20           MR. UTZ: Okay. I would like to  
21 turn it over to Michael Hickok, who -- Also,  
22 we had submitted his resume with our 14-day  
23 submission to qualify him as an expert before

1 the Board. He has been qualified as an expert  
2 before as well.

3 MR. HICKOK: Good afternoon.

4 CHAIRPERSON MILLER: Wait a  
5 second. Do Board members have any concerns or  
6 questions with respect to qualifying him as an  
7 expert? Okay. Then you are accepted as an  
8 expert in architecture.

9 MR. HICKOK: Good afternoon. Mike  
10 Hickok, Hickok Cole Architects.

11 I am going to be very, very brief  
12 and show you first the areas where we are  
13 expanding the building and how we are  
14 expanding it, and I will try to make this  
15 little thing work.

16 The existing building: This is  
17 the L Street facade. We are adding two floors  
18 to the top of the building here. We are not  
19 expanding it from side to side, simply adding  
20 two floors on top.

21 That is, obviously, the existing  
22 building. I'll talk a little more about the  
23 proposed elevation later. This is a section

1 taken through the building with L Street on  
2 this side, alley on this side. The lower  
3 portion of the building remains as is. We are  
4 adding one, two, three, four and a half  
5 stories of space to the rear of the buildings  
6 on floors two through six.

7 In plan, this lower portion is the  
8 full width of the building. This is a portion  
9 of that sixth floor. This is the area where  
10 we are seeking relief from setback from the  
11 center line of the alley.

12 The other area where we are  
13 seeking relief is in the basement parking.  
14 The footprint of the building is essentially  
15 fully parked for a depth of two floors, and so  
16 we are not proposing to add more parking at  
17 those levels.

18 The existing building: As you can  
19 see, there has been a series of renovations up  
20 and down K Street and L Street corridors,  
21 which I think are good for the office building  
22 basis in D.C. I think they are also good in  
23 maintaining the kind of grain and scale of

1 D.C., especially when compared to a full block  
2 renovation that has also taken place from time  
3 to time.

4 So what we are proposing is  
5 entirely new facade. The entire facade of the  
6 building will be stripped, including the  
7 ground floor. We are proposing a new facade  
8 that is of curtain wall, two different kinds  
9 of curtain walls.

10 This surface, the side on the  
11 righthand vertical and over the top are  
12 slightly canted facing west to gain a slightly  
13 different light quality from a western  
14 exposure. The main portion of the facade is  
15 facing south.

16 Below, we will have all new  
17 storefront, new entry. The lobby of the  
18 building is essentially being renovated in  
19 place.

20 Any questions?

21 CHAIRPERSON MILLER: Nothing in  
22 architect. Could you just remind me what a  
23 curtain wall means?

1 MR. HICKOK: A curtain wall is  
2 essentially an all-glass facade. It means  
3 that in those areas where you have the  
4 spandrel, the area from the floor to the  
5 ceiling is not a different material. It is  
6 not wood. It's not -- I mean, it's not stone.  
7 It's not precast concrete. It is all curtain  
8 wall. It's all glass.

9 Those areas may be obscured by  
10 having reflective glass or opaque glass, but  
11 the material is still glass.

12 CHAIRPERSON MILLER: Thank you.  
13 Any other questions?

14 MEMBER LOUD: Just very briefly.  
15 Did you already speak to and I just missed it,  
16 or one of your colleagues will speak to floors  
17 two through five and parts of six, and the  
18 need for the special exception in the rear?  
19 And very briefly, not in any great detail.

20 MR. HICKOK: In order to take  
21 advantage of the density allowed to us under  
22 the purchase of TDRs, it is necessary to build  
23 into that setback in order to realize that

1 density. Did you understand where the setback  
2 was -- where we are in violation of setback,  
3 where we are asking for relief?

4 MEMBER LOUD: It's in the rear of  
5 the building.

6 MR. HICKOK: Yes.

7 MEMBER LOUD: Which is not  
8 depicted in any of these.

9 MR. HICKOK: It is not depicted in  
10 elevation, no. We show a section. I think in  
11 the materials that we handed out -- Is it in  
12 a different package that they received?

13 MR. UTZ: It is shown in the 14-  
14 day submission, but it is also on the second  
15 board toward the bottom. That is also one of  
16 the pages that is in the plans that  
17 accompanies the 14-day submission.

18 MR. HICKOK: Those one, two, three  
19 bays -- It's a single bay on the back of the  
20 building that is being added.

21 MR. UTZ: And then the top is the  
22 half of the sixth floor that's already by that  
23 point got a --

1 MR. HICKOK: Yes, this.

2 MEMBER LOUD: Okay. Thanks.

3 CHAIRPERSON MILLER: Could you  
4 just address why there is no adverse impact on  
5 neighboring properties from -- if relief is  
6 granted here?

7 MR. HICKOK: We are in a -- It is  
8 a nonresidential neighborhood. There are no  
9 neighbors. Residential neighbors will not be  
10 impacted. In terms of light and air, because  
11 this addition is only on the lower floors --  
12 this is the south face of the building. The  
13 sun enters the alley in this manner from the  
14 south. So the top of the building will cast  
15 more shadow than the addition on the back of  
16 the building will in any case.

17 We are within walking distance,  
18 short walking distance, of three different  
19 Metro lines. So there is adequate pedestrian  
20 access.

21 It is a more efficient design, a  
22 more efficient footprint of the building,  
23 given its greater density. I think that

1 covers the parking aspect of it. I mean --  
2 I'm sorry -- that covers the setback aspect of  
3 it.

4 CHAIRPERSON MILLER: Would you  
5 remind me, what is behind the building? You  
6 are doing a rear addition. What is behind  
7 that?

8 MR. HICKOK: We are doing a rear  
9 addition. If you can see in this site plan,  
10 there is an existing building here across the  
11 alley. There is an existing building here,  
12 which is on the corner adjacent to us. All of  
13 this is service and garage access off the  
14 alley.

15 MR. UTZ: If you would like, Mr.  
16 Rivers, who is here from the Applicant, could  
17 discuss his contact with the property owner  
18 immediately behind. He is the most impacted  
19 by the rear yard special exception.

20 CHAIRPERSON MILLER: Okay. We  
21 would just need that really briefly. That  
22 would be fine.

23 MR. RIVERS: The property to the

1 north of the alley is Lafayette Center, which  
2 is a three-building complex owned by Beacon  
3 Capital Partners. I met with Beacon Capital  
4 and their representatives a couple of weeks  
5 ago, and they have no objection to our  
6 application.

7 MR. EPTING: Mark, could you state  
8 your name?

9 MR. RIVERS: Mark Rivers with  
10 Potomac Development Partners.

11 CHAIRPERSON MILLER: I just wanted  
12 a clarification about the name change. The  
13 owner is no longer Potomac Development  
14 Partners, though, and the new one is 2021 L  
15 Street Investors?

16 MR. UTZ: When the application was  
17 filed, Potomac Development Partners was the  
18 contract purchaser, and it was actually 2021  
19 L Street Building Corporation was the owner at  
20 that time, and they submitted a letter of  
21 authorization for Potomac to submit the  
22 application.

23 Since then, 2021 L Street

1 Investors has purchased and closed on the  
2 building, but they are an affiliate of Potomac  
3 Development Partners LLC.

4 CHAIRPERSON MILLER: I just  
5 brought it up again, because Mr. Rivers  
6 identified himself with Potomac Development.

7 MR. EPTING: Why don't we let Mark  
8 talk about the differences? It is the LLC  
9 that is part of Potomac Development and Lowe  
10 Enterprises.

11 MR. RIVERS: 2021 L Street is an  
12 investment group that I formed in order to  
13 acquire and redevelop this property. So it is  
14 fairly typical for developers to establish a  
15 single purpose entity to own and operate real  
16 estate, which is what we did here.

17 The reason the application was  
18 first submitted in Potomac Development  
19 Partners' name is because at that time the  
20 investment entity had not yet been created.

21 CHAIRPERSON MILLER: Okay.

22 MR. RIVERS: So there is not an  
23 assignment to an unaffiliated party. This is

1 an affiliated party with my company.

2 CHAIRPERSON MILLER: Is it the  
3 same authorization? I mean, do we have an  
4 authorization problem? Do we have a different  
5 company or do we just have a different name,  
6 basically?

7 MR. RIVERS; No, I'm the managing  
8 member of both companies.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you. Any other questions from the Board? Do  
11 you have more on your case presentation at  
12 this point?

13 MR. UTZ: No. I think that we  
14 would just be willing to stand on the  
15 testimony so far and the record.

16 CHAIRPERSON MILLER: Okay, and  
17 then we will turn to Office of Planning. Good  
18 afternoon, Mr. Cochran.

19 MR. COCHRAN: Good afternoon,  
20 Madam Chair and other members of the Board.

21 For the record, my name is Stephen  
22 Cochran. I am representing the District of  
23 Columbia Office of Planning.

1           OP's report had recommended  
2 approval, subject to the submission of certain  
3 information. The Applicant has submitted that  
4 information. Therefore, OP recommends that  
5 you approve this application. We recommend  
6 that without any reservations.

7           I would be happy to go through the  
8 tests briefly, if you desire. It sounds like  
9 you had a few more questions than I had  
10 anticipated. We had thought we would stand on  
11 the record, but if you would let me know.

12           CHAIRPERSON MILLER: First, I want  
13 to ask: Do we have the revised plans that the  
14 Office of Planning has? Okay.

15           Mr. Cochran, it sounds -- I mean,  
16 I am looking at your report on page 5 through  
17 6, I think, where you went through and showed  
18 how each of the tests were met for the rear  
19 yard and for the parking.

20           So I don't really have further  
21 questions. I think what you would have done  
22 would be just to reiterate what you wrote out  
23 here. So unless you have something to add --

1 MR. COCHRAN: That's correct,  
2 Madam Chair. I have nothing new to say.

3 CHAIRPERSON MILLER: I think it is  
4 an excellent report. I don't have any  
5 questions. Do other Board members? Okay.

6 Does the Applicant have a copy of  
7 the Office of Planning report?

8 MR. UTZ: We do.

9 CHAIRPERSON MILLER: And do you  
10 have any questions for the Office of Planning?

11 MR. UTZ: We do not.

12 CHAIRPERSON MILLER: Okay. Any  
13 other questions of the board for the  
14 Applicant? Okay. Would you like to make a  
15 closing argument?

16 MR. UTZ: Sure, we will make a  
17 brief one, if that is okay. We would just  
18 like to run quickly through the standards,  
19 just the satisfaction of the special exception  
20 standards for the proposed project.

21 We believe that there will be no  
22 negative impact on the zone plan or intent as  
23 a result of the special exceptions, if

1 granted. The special exceptions will not  
2 change the overall permitted density or height  
3 at the property. Given the type and location  
4 of the requested relief, the relief will not  
5 negatively impact the use of the surrounding  
6 neighborhood, in accordance with the zone  
7 plan.

8 Specifically regarding the parking  
9 relief requested, the parking garage is an  
10 existing subterranean structure, and it would  
11 be difficult, if not impossible, to excavate  
12 to meet the existing parking garage.

13 The site is a short walk, four or  
14 five blocks approximately, from four Metro  
15 stations and three Metrorail lines and is  
16 surrounded by abundant commercial parking  
17 facility options.

18 Specifically regarding the rear  
19 yard relief, there will be perceptible loss of  
20 amenities such as light, air, privacy and off-  
21 street service functions that the rear yard  
22 provides.

23 The upper floors of the building

1 will maintain a rear yard significantly deeper  
2 than required. Further, the windows of the  
3 commercial office building behind the  
4 property, which are the only windows  
5 potentially affected by the rear yard  
6 condition, are already almost totally shaded  
7 due to the narrowness of the alley.

8           Regarding our community contacts,  
9 ANC-2A, I believe, submitted a letter of no  
10 opposition to the project. We have met with  
11 them at a normally scheduled and duly noticed  
12 ANC meeting, and the immediately adjacent  
13 neighbor most impacted by the rear yard  
14 condition said that they had no opposition to  
15 the application as well.

16           We would like to request a bench  
17 decision and a summary order, if that would  
18 please the Board. Other than that, that  
19 brings our presentation to a close, and we  
20 greatly appreciate the opportunity to present  
21 to the Board. Thanks.

22           CHAIRPERSON MILLER: Thank you.

23 Do we have a motion?

1                   MEMBER LOUD: Madam Chair, I move  
2 for approval of Application Number 17644,  
3 pursuant to 11 DCMR Section 3104.1 for special  
4 exceptions from the rear yard requirements  
5 under Subsection 774.1 and 774.2, and the  
6 parking requirements under Section 2108, to  
7 permit the redevelopment and expansion of an  
8 existing office building through acquisition  
9 of transferable development rights at premises  
10 2021 L Street.

11                   COMMISSIONER PARSONS: Second.

12                   MEMBER LOUD: As the grounds for  
13 and in keeping with the brevity of the  
14 presentation this afternoon, I would like to  
15 incorporate by reference the report of the  
16 Office of Planning as well as the very fine  
17 closing statement of counsel as grounds for  
18 the motion.

19                   CHAIRPERSON MILLER: Further  
20 comments? I think that's true. I think that  
21 both the Applicant and the Office of Planning  
22 did a very thorough job in making the case  
23 here for the special exception relief, and in

1 fact, if I were to go through a full  
2 deliberation here, I would probably read what  
3 the Office of Planning laid out on pages 5  
4 through 6 where they go through each of the  
5 tests under 774 and 2108.

6 I think I also will just  
7 incorporate that by reference. I think that  
8 the Applicant has shown visually and  
9 articulated well that there is no adverse  
10 impact on neighboring properties in this case,  
11 and it is in harmony with the zone plan.

12 So anybody else have any comments  
13 they want to make? All right, in which case  
14 then I would like to call the vote then.

15 There is a motion on the table.  
16 It has been seconded. All those in favor, say  
17 Aye. Aye. All those opposed? All those  
18 abstaining?

19 As there is no party in  
20 opposition, I would suggest that we waive our  
21 rules and regulations for a full order of  
22 findings of facts and conclusions of law in  
23 this case, and issue a summary order. And I

1 believe I have the consensus of the Board.

2 Summary order.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you very much.

6 MR. UTZ: Thank you.

7 MS. BAILEY: Madam Chair, are you  
8 ready for the next?

9 CHAIRPERSON MILLER: Yes. Thank  
10 you.

11 MS. BAILEY: Application Number  
12 17647 of 1899 L Street Tower LLC, pursuant to  
13 11 DCMR 3103.2, for a variance from the floor  
14 area ratio requirements under Subsection  
15 771.5, to allow the expansion of an office use  
16 by enclosing a two-story arcade at premises  
17 1899 L Street, N.W. The property is zoned C-  
18 4, and it is located in Square 140 on Lot 89.

19 CHAIRPERSON MILLER: Good  
20 afternoon. Would you identify yourself for  
21 the record, please?

22 MS. RODDY: My name is Christine  
23 Roddy, and I am with the law firm of Pillsbury

1 Winthrop Shaw Pittman.

2 MS. CARTWRIGHT: I am Pam  
3 Cartwright. I am a principal at Michael  
4 Winstanley Architects Planners.

5 CHAIRPERSON MILLER: Okay. You  
6 are here for a variance with a little higher  
7 standard than the case before. So why don't  
8 I let you start with making your case in  
9 general.

10 We have all read the record, and  
11 we know it involves enclosure of an arcade,  
12 but why don't you make your case and address  
13 those three prongs of the variance test.

14 MS. RODDY: Okay. As I said, my  
15 name is Christine Roddy with Pillsbury  
16 Winthrop, and I have with me here today Pamela  
17 Cartwright of Michael Winstanley Architects  
18 and Planners.

19 As a preliminary matter, we would  
20 like to present Ms. Cartwright as an expert in  
21 interior design as well as facility planning.

22 CHAIRPERSON MILLER: Do we have a  
23 resume or do you want to tell us about her?

1 MS. CARTWRIGHT: Oh, it was  
2 attached to --

3 MS. RODDY: We submitted her  
4 resume in the 14-day submission.

5 MS. CARTWRIGHT: Sorry.

6 MS. RODDY: But she is available  
7 for questions.

8 CHAIRPERSON MILLER: Do Board  
9 members have any questions? Could you just do  
10 a tiny summary? I'm having trouble finding --  
11 Oh, here it is. Never mind.

12 Have you testified before the BZA  
13 before?

14 MS. CARTWRIGHT: No, I have not.

15 CHAIRPERSON MILLER: Okay. Do you  
16 want to just highlight your experience that is  
17 relevant to this case?

18 MS. CARTWRIGHT: My experience in  
19 this case: As a principal at Michael  
20 Winstanley, I act as the project manager for  
21 the project. I am the architect --

22 CHAIRPERSON MILLER: Not your  
23 experience with this case, but that's relevant

1 to it.

2 MS. CARTWRIGHT: Oh, relevant to  
3 this case, nothing specifically in downtown  
4 Washington, but throughout the region I act as  
5 architectural project manager for Georgetown  
6 University -- for George Mason University,  
7 Catholic University, a number of academic  
8 institutions as an architectural project  
9 manager.

10 CHAIRPERSON MILLER: Any questions  
11 or objections from the Board? Okay. So you  
12 want to be qualified as an expert in  
13 architecture or something narrower?

14 MS. CARTWRIGHT: I am not an  
15 architect.

16 CHAIRPERSON MILLER: What are we  
17 asked to be qualifying her as?

18 MS. RODDY: An expert in interior  
19 design as well as facilities planning.

20 MS. CARTWRIGHT: I am here today  
21 representing the firm, and as the project  
22 manager for the project have been involved  
23 with the project throughout the process.

1 Michael is not available.

2 CHAIRPERSON MILLER: I see. Okay.  
3 I mean, I guess I don't have a problem,  
4 really, with that. But I mean, if you have  
5 been involved with the project throughout, we  
6 are going to be valuing your testimony.

7 MS. CARTWRIGHT: I will be able to  
8 answer your questions and, if there is  
9 something I don't have the answer to, I  
10 certainly will provide the information.

11 CHAIRPERSON MILLER: Okay. That's  
12 fine. We will accept her as an expert  
13 witness. Okay, now that we've got that down.

14 MS. RODDY: Thank you. Well, we  
15 are here this afternoon for 1899 L Street  
16 Tower -- the application of 1899 L Street  
17 Tower LLC. They are seeking variance relief  
18 from Section 771.5 of the zoning regulations,  
19 and they are seeking to increase the  
20 permissible FAR of a building located in the  
21 C-4 zone district.

22 This building is located at 1899 L  
23 Street, and it is indeed in the C-4 zone

1 district, and it currently has an FAR of 10,  
2 which is permitted.

3 Unlike many of the other buildings  
4 in this area, this building has a two-story  
5 arcade. It is one of the few in the area that  
6 has this feature. The Applicant is renovating  
7 the entire building, and as a part of those  
8 renovations it will be enclosing both stories  
9 of the arcade.

10 In 2002 the Zoning Commission  
11 approved regulations that permitted the  
12 enclosure of an arcade for retail use without  
13 an FAR consequence. So pursuant to those  
14 regulations, the Applicant will be enclosing  
15 the first floor of the arcade for retail use.  
16 That will raise the FAR of the building from  
17 a 10 to a 10.1.

18 We are enclosing the second floor  
19 of the arcade, however, for office use, which  
20 is why we are here today for an FAR variance.  
21 That will increase the FAR from a 10.1 to a  
22 10.2, and I would just like to note that the  
23 application has received the unanimous support

1 of the ANC.

2 We have the support of the Office  
3 of Planning, and we only have one witness  
4 today, and that will be Ms. Cartwright. I  
5 will let her speak to some of the renovations  
6 that the Applicant is undertaking as well as  
7 what the effect of enclosing that second story  
8 arcade will be.

9 CHAIRPERSON MILLER: Can you tell  
10 us how unique this situation is, to have a  
11 two-story arcade in this area?

12 MS. RODDY: Well, there are two  
13 uniqueness features of this building. One is  
14 that it does have a two-story arcade. Many  
15 buildings in this area don't have an arcade at  
16 all, but if they do, it is generally a single  
17 story arcade.

18 The other feature of this building  
19 is that the arcade is not particularly deep.  
20 It was not constructed for walking or  
21 pedestrian activity underneath the ceiling.  
22 So that is another feature that makes this  
23 unique from other buildings within the area.

1                   CHAIRPERSON MILLER: Can I just  
2 pin you down a little bit more? When you said  
3 generally it is -- generally, if there is an  
4 arcade, it is single story, I mean, do you  
5 know? Do you know if there is one other like  
6 yours or if this is the only one?

7                   MS. RODDY: There are other  
8 buildings in downtown that have a two-story  
9 arcade. It is not common. It is not  
10 particularly common.

11                   I guess what I'm testifying to is  
12 just that, when developers pursued the  
13 arcades, it was for the retail use, and the  
14 retail use was predominantly on the ground  
15 floor, and the theory behind of the arcades  
16 when they were constructed was that this would  
17 provide a pedestrian experience and protect  
18 the pedestrians while they were making use of  
19 the ground floor retail, which is why you see  
20 so many of the arcades today, really, are  
21 serving only the ground floor.

22                   CHAIRPERSON MILLER: And how is it  
23 that this one happened to have a two-story

1 one? Do you know?

2 MS. RODDY: I personally do not  
3 know the history of the building. I believe  
4 it was constructed in the Seventies, and I  
5 don't know what the thought process was behind  
6 having the two-story arcade.

7 MS. CARTWRIGHT: I have to say, I  
8 don't know the history either. This is a  
9 stepped-back arcade. In fact, the arcade  
10 itself is a single story. The retail space  
11 comes out -- If you were to measure from the  
12 inside space of the column, you have  
13 approximately 26 inches to the storefronts.

14 Above in the office area, you have  
15 somewhat of a little platform that already  
16 creates a pigeon roost, and I suppose that is  
17 a design aesthetic of the time, but the  
18 stepback on the office level is deeper than  
19 the stepback of the retail level.

20 That doesn't really answer your  
21 question of why it is unique, except that in  
22 building out the first level, which the owner  
23 can and would do, it exacerbates the problem

1 on the second level, because now we are  
2 pulling the storefront out to the edge of the  
3 column. So that depth is even further back  
4 for an office.

5 The light penetration doesn't  
6 change, but the ability for the pigeon to  
7 roost and the drainage situation just keeps  
8 getting exponentially larger, if they go  
9 forward here.

10 It is also -- and I'm going in a  
11 little bit ahead of myself. So I can step  
12 back if you would like me to. But the spacing  
13 in the columns in the inside of the office  
14 space is rather awkward. That, i don't --  
15 Somebody gave up efficiency for whatever was  
16 perceived as aesthetic at the time, and  
17 although moving out the front of the building  
18 on the second floor only gains 1400 square  
19 feet as far as the public is concerned, it  
20 gains a great deal of efficiency for the  
21 layout of a tenant floor for this owner.

22 It changes the spacing between the  
23 next set of columns and allows them -- If you

1 were to see the inside of the building, you  
2 would see that there is room for a window at  
3 the -- an office at the window, then a small  
4 amount of open space, and then a corridor.  
5 Then there is no more space. They can't have  
6 inbound offices.

7 This move-out of five feet, plus  
8 or minus, on the second floor would allow them  
9 to bring an inward corridor and have some  
10 inbound offices. In other words, it would  
11 upgrade the quality of the space, the office  
12 space, that they could provide.

13 We have been working with this  
14 owner for almost two years now. They have  
15 renovated their lobby. They have added a new  
16 canopy in the front of the building.

17 You may or may not be familiar  
18 with the fact that on 19th Street there is  
19 quite a bit of facade renovation that is going  
20 on there. This building is fully occupied and  
21 always will be.

22 So that they initially felt there  
23 wasn't a real call to change the aesthetics of

1 the building, and so we tried just painting  
2 the mullions of the windows of the storefronts  
3 in the retail area. That just really didn't  
4 look like anything other than painted  
5 mullions.

6 So they went forward with the  
7 project that they were allowed to entertain,  
8 the "by right" expansion of the arcade or the  
9 enclosure of the arcade, if you will, on the  
10 first floor, expanding the retail space, and  
11 we have proceeded the documentation for that.

12 It turns out that, because of the  
13 way this second floor was created, the  
14 structure of the second floor, we needed to  
15 beef up the structural expansion to cover the  
16 first floor. So they are primed to bring out  
17 the second floor to match the first floor, and  
18 there back to this curtain wall, what we will  
19 bring into the design element here is doing  
20 away with the heavier vertical and horizontal  
21 elements that you see now in the retail space  
22 and have this longer sheet of glass that would  
23 go down both the second floor and the first

1 floor with just a signage band that would  
2 identify the two levels.

3 So the situation started rolling  
4 with the "by right" expansion.

5 MS. RODDY: I believe Ms.  
6 Cartwright just spoke to the other two prongs  
7 of the variance test, that the Applicant would  
8 suffer a practical difficulty with the strict  
9 application of the zoning regulations, and  
10 that the granting of the variance will not  
11 cause substantial detriment to the public good  
12 nor will it substantially impair the intent,  
13 purpose and integrity of the zone plan.

14 CHAIRPERSON MILLER: Let me ask  
15 you a clarification with respect to the  
16 practical difficulties.

17 So they have already gone out on  
18 the first floor where they are allowed as a  
19 matter of right. So as of now, is there  
20 structural material there? Is that practical  
21 difficulty that you are saying it is either  
22 like unusable space or --

23 MS. CARTWRIGHT: It is a very deep

1 unusual space, of course, and it is exterior.  
2 I mean, I suppose we could drop the glass  
3 wall, but that -- so that the options to keep  
4 birds and rain and water off the inner  
5 platform would be simply to drop a sheet of  
6 glass and not expand the second floor, which  
7 is an expense the owner isn't willing to go  
8 ahead with.

9 In the documents that we've  
10 prepared, we have kept it as an open space.  
11 We have had to -- or we will have to design a  
12 specific kind of drainage, of course, to move  
13 the water away from that level, and now it is  
14 very deep.

15 Now it feels very deep, because  
16 you can see this five-foot platform going out,  
17 where now there is just a small window box  
18 feeling that opens into the air, if you will.  
19 I could use the word arcade, because it is  
20 covered, but people aren't walking inside  
21 there. There is not enough room to walk in  
22 there. They tend not to, of course.

23 Did that answer your question?

1 You are frowning. So perhaps not.

2 CHAIRPERSON MILLER: Somewhat. I  
3 am trying to visualize this.

4 MS. CARTWRIGHT: Do you want me to  
5 bring the board closer?

6 CHAIRPERSON MILLER: You have a  
7 picture?

8 MS. CARTWRIGHT: Yes.

9 CHAIRPERSON MILLER: Because I'm  
10 not sure I am visualizing it right, but it  
11 sounds like there is this outside platform now  
12 that you are saying birds go on.

13 MS. CARTWRIGHT: Sure.

14 MS. RODDY: I could interject as  
15 well. We have the permit to enclose the first  
16 floor, but the first floor has not been  
17 enclosed at this point.

18 CHAIRPERSON MILLER: Can you step  
19 back so everyone can see? And you need a  
20 mike.

21 MS. CARTWRIGHT: Well, I will  
22 bring it over here.

23 CHAIRPERSON MILLER: Okay.

1 MS. CARTWRIGHT: We prepared a  
2 rendering for the owner that shows -- that  
3 brings the glass all the way up, and shows a  
4 band wherein there would be signage.

5 Right now what you see, you have  
6 these -- You can see the masonry, this whiter  
7 section here, and you just look through that  
8 to both the retail stores that are a little  
9 dark, and further back to the offices that are  
10 a little darker.

11 We didn't bring a picture of what  
12 it would look like if you just did the lower  
13 levels, but it is this large dark box that is  
14 up here lighted by a fixture, of course. We  
15 can deal with that, but --

16 CHAIRPERSON MILLER: But if you  
17 just did the lower level, it sounds like you  
18 have this outside platform that is exposed to  
19 the elements, and that is a problem. Is that  
20 right?

21 MS. CARTWRIGHT: Yes.

22 CHAIRPERSON MILLER: What is the  
23 difference between that and what you had

1 before one level up or wherever the roof --  
2 What is the difference between that and the  
3 roof or whatever?

4 MS. CARTWRIGHT: Only a sense of  
5 more boxiness. In reality, this is just  
6 coming from being with the project for a  
7 while. Now when you look out the window and  
8 you look over, you do look down into a  
9 walkway. If you are on the office floor, you  
10 can look down into the walkway.

11 MS. RODDY: If you don't mind, I  
12 could add that with the enclosure of the first  
13 floor -- and I think that this also answers  
14 your question -- it provides a space for the  
15 pigeons to sit. It provides some water to  
16 gather, and that would be the difference also,  
17 as opposed to the current situation.

18 CHAIRPERSON MILLER: I hate to be  
19 redundant, but I am going to ask one more  
20 time. Just with respect to -- I recognize  
21 this may not be the one and only two-story  
22 arcade, and it's not really that it has to be.  
23 I'm just trying to get a feel for how uncommon

1 is this? Have you seen other buildings like  
2 this in the area where they are going to have  
3 the same problem?

4 MS. CARTWRIGHT: What you tend to  
5 see -- and this a "tend," and I don't have the  
6 exact. But from working on buildings -- the  
7 offices from buildings that our office has  
8 worked on, you do have a very tall arcade, but  
9 what has happened is that you have a retail  
10 height, and then there is a blind panel under  
11 that arcade that isn't a window. It isn't  
12 windows looking under the arcade, the windows  
13 for the office floors.

14 It might well be the structure for  
15 the second floor, but the windows are placed  
16 above or the building is pulled out so that  
17 the windows for the second floor are looking  
18 over or are flush with the edge of the arcade.

19 Across the street, there is a  
20 building that in profile looks like this  
21 building. In other words, there is a tall,  
22 two-story looking arcade. It is where the  
23 Staples is, but that second floor, if you

1 will, something over 14 feet, is blind. It  
2 doesn't have office windows.

3 That, I think, is the more typical  
4 condition where something else has happened in  
5 that 20-foot span from 15 to 20 feet that is  
6 not a set of windows. That is what is less  
7 common, but is happening in this building.

8 CHAIRPERSON MILLER: Okay, and  
9 that is the --

10 MS. CARTWRIGHT: I can't even  
11 think of another example of where it happens,  
12 actually.

13 CHAIRPERSON MILLER: And that is  
14 what is also creating more of the difficulty  
15 for the building? Okay.

16 COMMISSIONER PARSONS: Madam  
17 Chairman, as I recall, the regulation that was  
18 in place at the time really focused on one-  
19 story arcades, one of the biggest mistakes the  
20 Zoning Commission ever made, based on good  
21 urban planning advice. But anyway, when the  
22 Zoning Commission recently considered -- well,  
23 in 2003 -- to relieve this and permit this

1 kind of infill to occur as long as it was  
2 retail, it never contemplated a two-story  
3 where office is the natural thing to do. But  
4 I think it is very unusual. But I shouldn't  
5 be testifying, should I?

6 CHAIRPERSON MILLER: I think it's  
7 good to have that input, actually.

8 Any other questions or comments  
9 here? Do you have more for your presentation  
10 right now?

11 MS. RODDY: No.

12 CHAIRPERSON MILLER: Okay. Then  
13 we will go to the Office of Planning.

14 MS. THOMAS: Good afternoon, Madam  
15 Chair, members of the Board. I would stand on  
16 the record in support of the Applicant's  
17 statement as to why this is unique.

18 As Mr. Parsons rightfully pointed  
19 out, the regulation, Section 2515, did not  
20 contemplate two-story arcades.

21 To answer your question, there are  
22 a few of them out there in that particular  
23 area, 19th and L Street, to my knowledge, and

1 I have seen some of them.

2 What might be unique in this case,  
3 as the architect explained, would be that sort  
4 of structure or area above the first floor.  
5 I can't explain it as well as she did, but we  
6 did see it as a unique feature, and the  
7 regulations did not contemplate that aspect of  
8 arcades.

9 So on that basis, we felt that  
10 there was a practical difficulty in having to  
11 fill in the arcade, where they can do it by  
12 right and then just leave that gap above  
13 there. That space should be better put to use  
14 as office space. It wasn't a whole lot. It  
15 didn't seem to expand the FAR to any great  
16 extent and seems fairly minimal.

17 So in that instance, we thought  
18 that it didn't impair the intent and purpose  
19 of the regulations. Thank you.

20 CHAIRPERSON MILLER: Thank you.  
21 And you don't see any adverse impacts that  
22 would arise from granting the requested  
23 relief?

1 MS. THOMAS: That's correct.

2 CHAIRPERSON MILLER: Thank you.

3 Any questions for Office of Planning from the  
4 Board? Any questions from the Applicant for  
5 Office of Planning?

6 MS. RODDY: No.

7 CHAIRPERSON MILLER: Any questions  
8 from the Board to the Applicant? Okay. In  
9 which case, would you like to make some  
10 closing remarks?

11 MS. RODDY: Yes. I will be brief.

12 We believe our application, as  
13 well as the prehearing statement that we  
14 submitted, thoroughly describes how the  
15 Applicant satisfies the variance standard, and  
16 in light of the support this application has  
17 received from the ANC as well as the Office of  
18 Planning, we would ask that the Board grant a  
19 bench decision approving the application, and  
20 issue a summary order. Thank you.

21 CHAIRPERSON MILLER: Thank you.

22 Okay. Do we have a motion? All right. I  
23 will move to approve Application Number 17647

1 at 1899 L Street Tower LLC, pursuant to 11  
2 DCMR 3103.2 for a variance from the floor area  
3 ratio requirements under Subsection 771.5 to  
4 allow the expansion of office use by enclosing  
5 a two-story arcade at premises 1899 L Street,  
6 Northwest.

7 MEMBER MANN: Second.

8 CHAIRPERSON MILLER: I think that  
9 both the Applicant and Office of Planning  
10 addressed the variance test pretty  
11 straightforwardly in this case. You know, I  
12 was looking to see, with respect to the first  
13 prong, how unique is this.

14 It certainly -- or how exceptional  
15 a condition it is, but it is certainly the  
16 first we have seen of its kind. Doesn't sound  
17 like we are going to get a floodgate, and it  
18 appears even, as Mr. Parsons has confirmed,  
19 that this is something that the regulations  
20 didn't contemplate.

21 This particular building seems to  
22 have its own unique circumstances separate  
23 from other two-story arcades with respect to

1 the placement of windows and where that  
2 exterior platform hits. So I think that it  
3 meets the uniqueness test.

4 As to the practical difficulty, it  
5 appears that either it would be wasted space,  
6 it would be dead space, it would be a problem  
7 space with respect to maintenance and birds  
8 and other things of that sort, and there is no  
9 adverse impact at all that has been identified  
10 if the relief were granted in this case. In  
11 fact, Office of Planning sounded to be  
12 certainly consistent with -- or not contrary  
13 to the intent of the regulations.

14 So for those reasons, I would  
15 suggest that we grant the application.

16 Other comments? Okay, then we can  
17 take a vote on this. All those in favor, say  
18 Aye. Aye. All those opposed? All those  
19 abstaining? Would you call the vote, Ms.  
20 Bailey, please?

21 MS. BAILEY: Madam Chair, the vote  
22 is recorded as four-zero-one to grant the  
23 application. Ms. Miller made the motion. Mr.

1 Mann seconded. Mr. Loud and Mr. Parsons  
2 support the motion, and Mr. Etherly is not  
3 present at this time.

4 CHAIRPERSON MILLER: Thank you.  
5 If there is no party in opposition, I would  
6 suggest that we waive our rules and  
7 regulations for a full order in this case with  
8 full findings of facts and conclusions of law,  
9 and issue a summary order. I believe I have  
10 the consensus of the Board on that.

11 Okay. Thank you very much.

12 Ms. Bailey, do we have any other  
13 business for today?

14 MS. BAILEY: That is all the  
15 business the Board has today, Madam Chair.

16 CHAIRPERSON MILLER: Then thank  
17 you very much, and this hearing is adjourned.

18 (Whereupon, the Public Hearing was  
19 concluded at 4:06 p.m.)

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