

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 14, 2014

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice-Chairperson

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Commission Member

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN  
PAUL GOLDSTEIN  
STEPHEN GYOR  
STEPHEN MORDFIN  
ELISA VITALE

The transcript constitutes the minutes from the Public Hearing held on January 14, 2014.

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

1 9:51 a.m.

2 CHAIRMAN JORDAN: All right, thank you. Then  
3 let's move into the hearing cases. And let's do  
4 18693 please.

5 Let me just say for 18688, I believe  
6 that's going to be our last case called just to  
7 give you notice. Because I think everything  
8 else is going to go relatively smooth.

9 MR. MOY: Okay, the first case on  
10 the open session is Application 18693. This is  
11 the application of Joel and Malgorzata?

12 X: Malgorzata.

13 MR. MOY: All right, I apologize.  
14 Spangenberg. This presented to 11 DCMR 3104.1,  
15 special exception for a two story rear addition  
16 to an existing row dwelling. Under Section 223,  
17 special exception, not meeting lot occupancy,  
18 rear yard and court requirements.

19 CHAIRMAN JORDAN: Okay, thank you  
20 Mr. Moy. Did we get the affidavit of posting in  
21 this? Did it come late or something?

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1                   MR. MOY: In the official record Mr.  
2 Chairman, we still do not have an affidavit of  
3 posting.

4                   CHAIRMAN JORDAN: Uh-huh, that's  
5 why I didn't see one.

6                   MS. FOWLER: May I address that?

7                   CHAIRMAN JORDAN: Well, let me  
8 first have you introduce yourselves.

9                   MS. FOWLER: Hi, I'm Jennifer  
10 Fowler from Fowler Architects.

11                  MR. SPANGENBERG: And I'm Joel  
12 Spangenberg, the homeowner.

13                  CHAIRMAN JORDAN: Yes Ms. Fowler.

14                  MS. FOWLER: So the affidavit was  
15 filed January 8 and we have the receipt here.  
16 But for some reason it didn't make it into the  
17 log.

18                  CHAIRMAN JORDAN: Okay, would you  
19 like to give that to the Board Secretary please.

20                  Oh wait a minute, we forgot to  
21 announce what kind of case this was Mr. Moy. Oh  
22 no, in the sense that this is an IZIS.

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1                   MR. MOY: Oh, yes, well that's good  
2 for public relations.

3                   CHAIRMAN JORDAN: I mean that's a  
4 big row, let's talk about that.

5                   MR. MOY: That's right. This is  
6 one of the first two cases that's being tested  
7 on our IZIS program. Live -- on line filing.  
8 So the office thanks the Applicant for being part  
9 of the test.

10                  CHAIRMAN JORDAN: Yes, we thank  
11 you. We've been pushing and pushing and pushing  
12 and we're getting there. And I really  
13 appreciate everyone's involvement and support  
14 in that.

15                  I think this is another that I don't  
16 know why it's not an expedited review on this  
17 matter. But you either yes -- Planning going I  
18 don't know why it wasn't expedited either.

19                  So I don't see any issues or anything  
20 that I need to hear. Let me assess from the  
21 other Board members, are there any issues that  
22 you need to hear from this Applicant on, because

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1       this is one that probably could have been in the  
2       decision meeting calendar.

3               I don't see anyone raise any  
4       concerns. Certainly you have the right to  
5       present any evidence that you want to present,  
6       or you can simply let us go through the process  
7       and you can always come back in rebuttal, but  
8       it's whatever -- you've been here before.

9               MS. FOWLER: Okay, I think we're  
10      happy to --

11              CHAIRMAN JORDAN: Okay, go ahead.

12              MEMBER COHEN: This is in the  
13       Capitol Hill Historic District. Do we have a  
14       letter from them? I'm not sure I saw one.

15              CHAIRMAN JORDAN: I think we had one  
16       late. We got one on a late filing I believe.

17              MEMBER COHEN: Mr. Secretary, do we  
18       have one on file?

19              CHAIRMAN JORDAN: We do have a  
20       letter.

21              MR. MOY: Yes we do.

22              CHAIRMAN JORDAN: It's the last

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1 exhibit.

2 MR. MOY: 32.

3 MEMBER COHEN: Okay, I do not have  
4 it, so thank you.

5 CHAIRMAN JORDAN: It was --  
6 actually the date of the letter is -- couldn't  
7 be January 13, yes, could have came in last  
8 night, yesterday. Came in last night. That's  
9 what I thought, came in last night. It's  
10 January 13<sup>th</sup> is the date of that letter.

11 MEMBER COHEN: Okay, I have it.

12 CHAIRMAN JORDAN: Yes, yes, yes.

13 MEMBER COHEN: All right, thank  
14 you.

15 CHAIRMAN JORDAN: Okay, so then --

16 MS. FOWLER: No need to make  
17 testimony then. Thank you.

18 CHAIRMAN JORDAN: All right. Then  
19 we would turn to Office of Planning and see if  
20 there is any additional -- anything they wanted  
21 to add to the report that's already submitted,  
22 that we've already read and understand.

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1                   MR. GYOR: Good morning Mr.  
2 Chairman, members of the Board. Stephen Gyor  
3 with the Office of Planning. The Office of  
4 Planning rests on the record. Thank you.

5                   CHAIRMAN JORDAN: Okay. Does the  
6 Board have any questions of the Office of  
7 Planning?

8                   (No response)

9                   CHAIRMAN JORDAN: Does the  
10 Applicant have any questions of the Office of  
11 Planning?

12                  MS. FOWLER: No sir.

13                  CHAIRMAN JORDAN: Is there anyone  
14 here from the Department of Transportation on  
15 this case? Department of Transportation in  
16 this case?

17                  (No response)

18                  CHAIRMAN JORDAN: We have a letter  
19 from the Department of Transportation with no  
20 objection to the requested relief.

21                  Is there anyone here from ANC 6B for  
22 this case? Anyone from ANC 6B?

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1 || (No response)

2 We do have a letter to which the  
3 Board will give great weight to ANC 6B, who  
4 supports this application by a vote of seven to  
5 zero with a quorum present.

12 (No response)

13 CHAIRMAN JORDAN: Anyone wishing to  
14 speak in opposition? Anyone in opposition?

15 (No response)

16 CHAIRMAN JORDAN: Then we would  
17 normally turn back to the Applicant for any  
18 rebuttal. But there's nothing to rebut. And  
19 also closing if he has something he wants to say  
20 in closing.

With that, then we will close the record and move into deliberations. Board any

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1 discussion?

2 (No response)

3 CHAIRMAN JORDAN: Okay. Then I  
4 would move that we grant the relief requested  
5 18693.

6 MEMBER COHEN: I'll second.

7 CHAIRMAN JORDAN: Motion made and  
8 second. Any readiness? All those in favor  
9 signify by saying aye.

10 (Chorus of ayes)

11 CHAIRMAN JORDAN: All those opposed  
12 nay.

13 (No response)

14 CHAIRMAN JORDAN: The Motion  
15 carries. Mr. Moy.

16 MR. MOY: Yes sir. Staff would  
17 record the vote as three to zero. It was on a  
18 Motion of Chairman Jordan to approve the  
19 application for the relief requested. Also  
20 seconded by Ms. Cohen, also supported by Vice  
21 Chairperson Allen. And again a Board seat  
22 vacant, member not present. Motion carries

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1 three to zero.

2 CHAIRMAN JORDAN: All right.

3 Summary order please.

4 MR. MOY: Great, thank you sir.

5 CHAIRMAN JORDAN: I got lost for a  
6 minutes. I was going to say expedited order.

7 MR. MOY: That's all right, I was  
8 waiting.

9 CHAIRMAN JORDAN: At least you say  
10 expedited, what does that do to a summary order?  
11 Anyway, thank you. 689.

12 MR. MOY: The next Application  
13 before the Board is Application Number 18689.  
14 This Application of Hong Deng, pursuant to 11  
15 DCMR 3103.2. This is for a variance from the  
16 off-street parking requirements under Section  
17 2101.1, to build a new flat in R4 at 1620 A Street  
18 SE.

19 On this Application Mr. Chairman,  
20 there was a filing this morning I believe, and  
21 I believe there's a -- perhaps the Applicant can  
22 address the revised plat and there's also a

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1 letter from the --

2 CHAIRMAN JORDAN: Revised plat or  
3 revised plan? What was it? A plat?

4 MR. MOY: I think a plat.

5 CHAIRMAN JORDAN: Oh, a plat, okay.

6 MR. MOY: Which can also be a plan  
7 I supposed. But I imagine he'll speak to that.  
8 And in your case folders, also arriving today,  
9 was a letter from the Capitol Hill Restoration  
10 Society.

11 CHAIRMAN JORDAN: All right. Let  
12 me just go on the record, and we say it all the  
13 time and the Board keeps threatening about being  
14 really, really hard about it. But last minute  
15 filings doesn't help anybody. Because the  
16 Board puts in you know, eight to 12 hours, you  
17 know prior to coming here, going through these  
18 cases and the case files and what have you.

19 And although we don't have a lot of  
20 it anymore, but there have been times when we get  
21 stacks of stuff on a case file. And we walk in  
22 on the morning of a hearing and we've got stacks

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1 of new stuff and we don't have the opportunity  
2 or time to go through all that.

3 So why don't you tell us -- why don't  
4 you introduce yourselves and then tell us what  
5 your recent submission was for this morning.

6 MR. TEASS: Good morning. My name  
7 is Will Teass with Techtonics Architecture, I'm  
8 the architect.

9 CHAIRMAN JORDAN: Teass?

10 MR. TEASS: Teass.

11 CHAIRMAN JORDAN: Teass, okay.

12 MR. TEASS: T-E-A-S-S.

13 CHAIRMAN JORDAN: Okay.

14 MR. TEASS: I'm here today with the  
15 property -- potential property purchaser,  
16 Justin Thornton. Both of us are representing  
17 Hong Deng, who is the current property owner.

18 And first of all I'd like to  
19 apologize to the Board for the late filing of the  
20 plat. There was a minor issue related to a  
21 non-confirming court that was showed on the  
22 original plat. We were not seeking relief for

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1 the court and through the correspondence with  
2 the Office of Planning, they requested that we  
3 address that issue.

4                   And unfortunately I apologize for  
5 not getting that into you in a timely fashion.  
6 So the only change on the plat that was filed this  
7 morning was eliminating the non-conforming  
8 court at the rear of the property.

9                   CHAIRMAN JORDAN: You did what with  
10 the court? You eliminated it?

11                  MR. TEASS: Correct. I eliminated  
12 it.

13                  CHAIRMAN JORDAN: Oh you mean that  
14 was not --

15                  MR. TEASS: Essentially we had a  
16 deck at the rear of the property that was six  
17 inches off the property line. The Office of  
18 Planning identified it as a potential  
19 non-conforming court. We shifted it, so we're  
20 not changing the lot occupancy. We're not  
21 changing of the relief that we're seeking, we  
22 just made that minor adjustment to eliminate the

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1 court because we're not seeking relief for the  
2 court.

3 CHAIRMAN JORDAN: I'm just really  
4 confused right now.

5 MEMBER COHEN: I'm sorry, how do you  
6 do that. In changing the plat you -- I guess I'm  
7 not following what you've done.

8 MR. TEASS: There was -- we were  
9 proposing a rear deck. And the rear deck was off  
10 the property line by six inches. So we're  
11 proposing to shift the deck over six inches so  
12 that it's on the property line and eliminates the  
13 court, sorry.

14 CHAIRMAN JORDAN: They changed the  
15 drawings, okay. So they wouldn't have the need  
16 for it. I got it. Okay, now we're okay. It's  
17 a -- all right.

18 MEMBER COHEN: So are you going to  
19 resubmit your drawings to show that or?

20 MR. TEASS: We -- the proposed  
21 plans show the incorrect deck configuration, so  
22 we'll need to resubmit that.

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1 MEMBER COHEN: Okay, that's what I  
2 want to confirm.

3 CHAIRMAN JORDAN: And that's the  
4 only change that will be to the plans?

5 MR. TEASS: Correct.

6 CHAIRMAN JORDAN: Oh boy, you're  
7 making it really hard to go forward here. I mean  
8 we can still do so.

9 MEMBER COHEN: Yes.

10 CHAIRMAN JORDAN: Yes, but it's  
11 just -- okay. And the relief requested is  
12 really -- yes, we can make that -- that revised  
13 plans. And the relief requested is just kind of  
14 -- we understand clearly, it's through -- from  
15 one parking space, and it's kind of difficult for  
16 you to be able to do that with the way this  
17 property is situated, and the fact that you have  
18 no alley. And so -- all right.

19 If there was something else that you  
20 were trying to get, we might have had problems  
21 here today. But I think we're okay. Board any  
22 other issues we have with this case, or do we need

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1 to hear anything more? I think -- okay.

2 So you got on our -- you almost got  
3 on that bad side. So, there's nothing that the  
4 Board needs -- in addition that it needs to hear,  
5 except we can -- I think Office of Planning was  
6 supportive. In fact that kind of carried the  
7 weight on this Application.

8 So but you have the right to present  
9 anything you want to the Board or you can just  
10 let us proceed on and then if you need to rebut  
11 anything, do so.

12 MR. TEASS: I don't think we want to  
13 add anything at this time, thank you.

14 CHAIRMAN JORDAN: Okay. Then  
15 let's turn to the Office of Planning and see if  
16 there's anything in addition that --

17 MR. COCHRAN: No, Mr. Chair. With  
18 the addition of that last plat, everything's  
19 fine and OP continues to support the relief.

20 CHAIRMAN JORDAN: Okay. As I said,  
21 and thank you for your write up, because I think  
22 it kind of cleared up some things too in regards

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1 to this application.

2 MR. COCHRAN: Sure.

3 CHAIRMAN JORDAN: Board any  
4 questions for Mr. Cochran?

5 (No response)

6 CHAIRMAN JORDAN: Applicant any  
7 questions for Office of Planning?

8 MR. TEASS: Not at this time.

9 CHAIRMAN JORDAN: Is there anyone  
10 from Department of Transportation here today for  
11 this particular case 689?

12 (No response)

13 CHAIRMAN JORDAN: Yes I know, there  
14 is a letter of opposition, but it's -- we're not  
15 at that point.

16 Do we have a DDOT letter? I'm  
17 trying to remember. My notes are not indicating  
18 DDOT. Do we have a letter from DDOT? I don't  
19 remember?

20 MR. MOY: No sir, that's absent.

21 CHAIRMAN JORDAN: That's why my  
22 note has no DDOT.

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1                   MR. MOY: There you go.

2                   CHAIRMAN JORDAN: Okay. Anyone  
3 here from Department of Transportation?

4                   (No response)

5                   CHAIRMAN JORDAN: Anyone here from  
6 ANC 6B for this particular case?

7                   (No response)

8                   CHAIRMAN JORDAN: We do have a  
9 letter of support from ANC 6B supporting your  
10 Application and the requested relief. Anyone  
11 here wishing to speak in support of this  
12 application? Anyone wishing to speak in  
13 support of this Application?

14                   (No response)

15                   CHAIRMAN JORDAN: Anyone wishing to  
16 speak in opposition? Anyone in opposition?

17                   (No response)

18                   CHAIRMAN JORDAN: We do have a  
19 letter from Guy Hooper, Exhibit 25, who wrote in  
20 in opposition, but he's saying -- it's just a  
21 general opposition to anything involving  
22 parking in the neighborhood. And certainly we

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1 consider his letter, just saying parking on A  
2 Street is just bad and is stretched to its limits  
3 as you're aware.

4 So the Board would take that into  
5 consideration.

6 Then we return back to the Applicant  
7 for any rebuttal. Anything you think you need  
8 to say or to close?

9 MR. TEASS: Not at this time.

10 CHAIRMAN JORDAN: Okay. Any  
11 questions, additional questions? Yes.

12 VICE CHAIR ALLEN: This is a  
13 question for the Applicant, or the -- you're the  
14 new owner, correct? Okay, where are you  
15 planning to park?

16 MR. THORNTON: Are we speaking  
17 about construction parking or for the units?

18 VICE CHAIR ALLEN: Either one. Or  
19 both.

20 CHAIRMAN JORDAN: No, for the  
21 parking. For the relief you're requesting, she  
22 wants to know where parking's going to be and

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1 how's it going to be handled.

2 MR. THORNTON: So we're proposing  
3 that the residents would either be taking,  
4 probably be taking metro because it's two blocks  
5 away, and/or parking right out front. Street  
6 parking.

7 CHAIRMAN JORDAN: Yes, I mean  
8 that's just -- we usually need something  
9 stronger than that, but it's just one parking  
10 space, and based upon the issue, we have no other  
11 way of -- they have no other way of getting there.  
12 It's just no other way. I didn't mean to make  
13 your argument for you, but that's just -- yes.

14 Any other questions?

15 (No response)

16 CHAIRMAN JORDAN: You know, as you  
17 can see, we take parking seriously. Does the  
18 Applicant have anything else you need to present  
19 to the Board?

20 MR. TEASS: Not at this time.

21 CHAIRMAN JORDAN: Then we close the  
22 record and move to deliberations. As I said,

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1       this is one parking space and the configuration  
2       of this property is just you can't work parking  
3       in there. I know one space asks, and one space,  
4       and another space, and it eventually gets  
5       crowded as the -- Hooper already indicated, you  
6       know it's a crowded area.

7               But this is not -- I think this one  
8       is one of the ones that's clear. The only other  
9       way they could do it is have to require a curb  
10      cut, create some driveways and some other stuff  
11      and that's just not going to happen. DDOT would  
12      shoot you.

13               Any other conversation, questions  
14      on this one? Kathryn, do you want to weight in?

15               (No response)

16               CHAIRMAN JORDAN: Parking's a hard  
17      thing for us to bite sometimes. But I would move  
18      that we grant the relief requested in this  
19      Applicant. And require them to update their  
20      plans prior to any order being issue.

21               MEMBER COHEN: I'll second that.

22               CHAIRMAN JORDAN: Motion made and

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1 second. All those in favor signify by saying  
2 aye.

3 (Chorus of ayes)

4 CHAIRMAN JORDAN: Those opposed  
5 nay.

6 (No response)

7 CHAIRMAN JORDAN: The Motion  
8 carries.

9 MR. MOY: Staff would record the  
10 vote as three to zero on the Motion of Chairman  
11 Jordan to approve. Second the Motion by Ms.  
12 Cohen, also in support of Vice Chairperson  
13 Allen.

14 CHAIRMAN JORDAN: Then let's have a  
15 semi-order. As you see sometimes as I say,  
16 parking relief is like going to the dentist for  
17 some of us.

18 MR. MOY: Mr. Chairman I do have a  
19 quick question. Was Applicant going to be  
20 filing a corrected site plan?

21 CHAIRMAN JORDAN: That was part of  
22 the Motion.

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1 MR. MOY: Okay, very good. I got  
2 it.

3 CHAIRMAN JORDAN: All right, thank  
4 you. I did say a summary didn't I?

5 || MR. MOY: Yes sir.

6 CHAIRMAN JORDAN: Let's do 90.  
7 18690.

18 CHAIRMAN JORDAN: Oh, okay, all  
19 right. I've got the application. I had to  
20 catch up with myself. Sometimes when we make  
21 these notes, when I look at these cases some days  
22 in advance and I have to catch up with myself and

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1 remember what my notes said, so.

2 MEMBER COHEN: You're not the only  
3 one.

4 CHAIRMAN JORDAN: Okay, would you  
5 identify yourself, please.

6 MR. HANKINS: I'm Louie Hankins,  
7 one of the co-owners of Rito Loco. And do  
8 apologize for the late submission of that letter  
9 from the ANC. I did attend their meeting back  
10 in December, the first of December. However one  
11 of their counsel members was not there, so they  
12 made Motion to move the vote to January 8, so.

13 Currently I'm operating my business  
14 out of South Florida, so I made special exception  
15 to come back here. It's been a process. Thank  
16 you.

17 CHAIRMAN JORDAN: Is that one of the  
18 submissions we got last night, or is this the  
19 one?

20 MR. MOY: Yes sir.

21 CHAIRMAN JORDAN: Even around  
22 10:00, 11:00 at night, we get emails with new

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1       additions and the staff works hard and I  
2       appreciate it.

3               Okay, 70, all right 70. All right,  
4       there are some questions, but I think most of my  
5       questions are going to come through -- well know  
6       I'm trying to understand this.

7               I don't think we need a full  
8       presentation, but you've got some issues. And  
9       the issue is -- and it goes in light of Office  
10      of Planning's attempt to help you mitigate the  
11      effect as to -- here's the problem. Office of  
12      Planning's support for this is premised upon the  
13      fact that you own the property at 600 T Street  
14      also, is that correct or not?

15               MR. HANKINS: I'm not the landlord,  
16       but the landlord is the same for that whole  
17       block.

18               CHAIRMAN JORDAN: Do you have  
19       anything from the office, from the landlord or  
20       from the owner of the 600 T Street property, that  
21       you have an agreement worked out about any of  
22       that? The trash and the use of their premises

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1 to do anything?

2 MR. HANKINS: I don't have anything  
3 with me. I -- I mean I've spoken to the owner  
4 multiple times. He's actually going to make  
5 that a commercial place as well. The lease is  
6 supposed to end as that residential, as the end  
7 of March. We're not planning on being in there  
8 until at least May.

9 I think the issue is regarding the  
10 trash pick up, is that correct?

11 CHAIRMAN JORDAN: That's correct.

12 MR. HANKINS: Okay. You know our  
13 plan was there -- was to have the big rolling  
14 trash cans and the garbage men would have access  
15 through the alley side. There is a gate there  
16 where they could access and --

17 CHAIRMAN JORDAN: You mean through  
18 T Street, 600 T Street?

19 MR. HANKINS: Well there's an a --  
20 there's Florida and then there's an alley that  
21 goes in between to the right of 606 T.

22 MEMBER COHEN: But you do need an

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1 easement to use that alley, isn't that correct?  
2 At least that's what I'm reading from the new  
3 Office of Planning report, which I assume you did  
4 read too?

5 MR. HANKINS: No, I was never given  
6 the report.

7 MEMBER COHEN: Aahh.

8 CHAIRMAN JORDAN: It was -- you know  
9 -- yes, if this is -- it's not right, but also  
10 for -- you also need additional relief. I mean  
11 do you -- this property's abutting residential  
12 property and you haven't made a request for that  
13 either. That type of relief.

14 Let me do this. Let me turn to  
15 Planning and we'll come back to you. Because we  
16 need to understand -- from what I'm reading and  
17 what I look in the record and looked at the plat  
18 and -- I don't see how parking's going to work  
19 out unless it works out through 600 T. Can you  
20 provide us some -- introduce yourself and  
21 provide us some --

22 MR. MORDFIN: Good morning, I'm

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1 Stephen Mordfin with the Office of Planning.  
2 This property doesn't require any parking.

3 CHAIRMAN JORDAN: No, I mean -- did  
4 I say parking? I meant trash hauling.

5 MR. MORDFIN: Oh, the trash  
6 hauling. And I did discuss this also with the  
7 property owner who owns both of those  
8 properties, the subject property and the 600 T.  
9 And the rear of the building at 606 which is where  
10 the propose use is to go in. There is a door into  
11 the rear yard, there's a small rear yard.

12 CHAIRMAN JORDAN: Right.

13 MR. MORDFIN: That opens on to the  
14 rear yard of 600 T.

15 CHAIRMAN JORDAN: Right.

16 MR. MORDFIN: And so what the  
17 proposal is that when they remove the trash from  
18 the building, they would take it through that  
19 small rear yard, into the rear yard of 600 T and  
20 store it back there behind 600 T. The alley runs  
21 north/south up to Florida Avenue and it would be  
22 from there that it would be collected. The

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1 refuse would be collected.

2 CHAIRMAN JORDAN: But they need 600  
3 T because --

4 MR. MORDFIN: They need 600 T which  
5 is why we include it as a condition of approval  
6 that an easement be recorded onto that piece of  
7 property, even though both properties are under  
8 the same ownership today. This would just  
9 protect it for the future, that they would be  
10 able to collect the refuse that way.

11 CHAIRMAN JORDAN: And 600 T's not in  
12 front of us. And we have nothing on 600 T.  
13 Additionally, this request -- this property  
14 abuts a residential neighborhood.

15 MR. MORDFIN: It abuts residential  
16 to the south directly.

17 CHAIRMAN JORDAN: And there's no  
18 recourse for relief I think from 733.2 or  
19 something?

20 MR. MORDFIN: They did request --

21 CHAIRMAN JORDAN: They did request  
22 a special exception to be allowed to put a food

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1       operation -- food establishment -- right?

2       Right, yes. And they need a specific waiver of  
3       733.2 I would say.

4                    MR. MORDFIN:     From?     Correct.

5       From Section 733.2, which they did request,  
6       which says that no part of the lot in which the  
7       use is located shall be within 25 feet of a  
8       residence district unless separated by a street  
9       or an alley and it's not separated by a street  
10      or an alley, but 733.12 permits the Board to  
11      waive that condition.

12                  CHAIRMAN JORDAN:    Okay.    We're on  
13      the same page, okay.

14                  MR. HANKINS:     Mr. Chairman, there  
15      is a -- if I can speak again. There is also a  
16      -- the plan location for the trash holding is  
17      actually in an alley that is between my proposed  
18      property and 606 T.

19                  CHAIRMAN JORDAN:    That's be --  
20      there's an alley between 606 and 600?

21                  MR. HANKINS:     It's a utility alley.  
22      I mean it's five feet wide. You know, it's not

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1 for trucks to go down. But there is a gate,  
2 there is a steel gate in front. We can always,  
3 you know, bring the trash out of that gate, or  
4 the trash people can have access to that gate as  
5 well. To the right of the building, if you're  
6 looking at it from Florida Avenue.

7 (Off mic comments)

8 CHAIRMAN JORDAN: In instance, you  
9 would have to roll the trash out on the street  
10 and then around the back, is that what your  
11 talking -- is that what you're saying?

12 MR. HANKINS: I have no problem  
13 doing that if that's what --

14 CHAIRMAN JORDAN: I'm not trying to  
15 say that's what you -- I'm asking you what you're  
16 proposing?

17 MR. HANKINS: I'm saying that  
18 access can be handled from two different points.

19 (Off-mic comments)

20 MR. HANKINS: The access can be  
21 handled form Florida Avenue and it can also be  
22 handled from the alley.

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1                   CHAIRMAN JORDAN: This is what  
2 we're going to do, because I'm not going to work  
3 it out for you here. It's just not what we're  
4 going to do when we have other people waiting.  
5 And you may want to have additional discussion  
6 with planner or someone else.

7                   I'm going to roll this for 30 days  
8 and you may then do some supplemental filings  
9 with the Board. You need to work out and explain  
10 to us how you're going to handle this trash.  
11 Whether or not you come forward with an agreement  
12 from the other property owner, or whatever  
13 you're going to do, so then we can clearly decide  
14 how that's going to happen.

15                   Okay, so we're going to roll this for  
16 30 days Mr. Moy.

17                   MR. MOY: Yes sir. A date that's  
18 near that 30 days would be February 25.

19                   MR. HANKINS: Sure.

20                   CHAIRMAN JORDAN: That would be for  
21 the submission? Or that's the 30 days?

22                   MR. MOY: That would be the hearing

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1 date.

2 CHAIRMAN JORDAN: February 5<sup>th</sup>, and  
3 the submission dates -- February 25<sup>th</sup>?

4 MR. MOY: 25<sup>th</sup>.

5 CHAIRMAN JORDAN: Okay. February  
6 25<sup>th</sup> and then the submission needs to be in by  
7 the 18<sup>th</sup> or?

8 MR. MOY: By the 18<sup>th</sup>.

9 CHAIRMAN JORDAN: By the 18<sup>th</sup>.

10 MR. HANKINS: And what would the  
11 Board like to see. I mean because I did my due  
12 diligence here.

13 CHAIRMAN JORDAN: You didn't do due  
14 diligence. And we're trying to say -- now we can  
15 go ahead and move on and deny your application  
16 if that's what you want to do, we can do that.  
17 We're trying to give you the opportunity so you  
18 can supplement your file, so that you might be  
19 -- possibly getting the relief.

20 It's up to you. We'll go forward if  
21 you want to.

22 MEMBER COHEN: Let me just suggest.

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1                   What we're looking for --

2                   CHAIRMAN JORDAN:     Excuse me a  
3                   second please.    Do you understand what I'm  
4                   saying to you?

5                   MR.    HANKINS:     I    completely  
6                   understand.    I'm not trying to cause -- I'm  
7                   trying to make sure that I have proper  
8                   documentation.   If I need to have the property  
9                   owner here at the next hearing.   Whatever it is  
10                  that's going to make you guys satisfied, I want  
11                  to make sure I do and have.   I'm not trying to  
12                  make problems.

13                  CHAIRMAN JORDAN:   We need to know  
14                  the plan on how trash is going to be handled and  
15                  if there is a plan on how that's going to be  
16                  handled involving another property, then we need  
17                  something from the property owner.   A contract,  
18                  whatever kind of document that legally binds  
19                  them to allow you to do what you're doing.

20                  Ms. Cohen, I'm sorry.

21                  MEMBER COHEN:     No,    no,    no.  
22                  Actually I was going to say the same thing as

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1 that. Evidence of an easement is the best thing  
2 to assure.

3 CHAIRMAN JORDAN: Or another  
4 alternative way of how you're going to meet the  
5 requirements of the regulations.

6 MR. HANKINS: Okay. I do  
7 apologize. I thought that Planning had spoken  
8 with the property owner and that was sufficient.

9 CHAIRMAN JORDAN: That's not --  
10 that's -- no.

11 MR. HANKINS: Okay, I apologize.

12 CHAIRMAN JORDAN: Planning can -- I  
13 mean Planning has what Planning does and a  
14 resource. And they try to help applicants as  
15 much as possible, but it's for you to carry the  
16 lift. It's not for them to work that out.

17 MR. HANKINS: Okay, fair enough.

18 CHAIRMAN JORDAN: Okay.

19 MEMBER COHEN: Can I just say one  
20 other thing. I really commend you for your  
21 business plan. And I think as a small  
22 businessman, you did you know, a really terrific

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1 job. I'm not speaking as a Zoning BZA Board  
2 member, I'm speaking just in general as a city  
3 person.

4 MR. HANKINS: Fair enough. Thank  
5 you, I appreciate that.

6 CHAIRMAN JORDAN: All right.

7 VICE CHAIR ALLEN: And I just -- I  
8 want to you know, you've -- just so that you're  
9 really clear. I can't see to approve a plan that  
10 depends on a separate property where there's  
11 absolutely nothing from the separate property.  
12 There's no -- as we've indicated, there's no  
13 agreement, there's no something in writing that  
14 says that that owner, your owner, you know the  
15 landlord I guess, will be you know, understands  
16 that he's bound to this, that sort of thing.  
17 Okay?

18 MR. HANKINS: Sure, no problem.

19 VICE CHAIR ALLEN: Just so you're  
20 real clear.

21 MR. HANKINS: No problem. I will  
22 bring him and I will bring something written and

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1       it will be submitted, and hopefully everything  
2       goes smoother on the 25<sup>th</sup>.

3                   CHAIRMAN JORDAN: Okay, thank you.

4                   MR. HANKINS: All right.

5                   CHAIRMAN JORDAN: And don't forget  
6       on the 18<sup>th</sup> you need to get -- whatever you're  
7       doing needs to be submitted to the Office of  
8       Zoning in writing.

9                   MR. HANKINS: It will be submitted  
10      before I leave for Florida tomorrow.

11                  CHAIRMAN JORDAN: All right. Oh,  
12      okay. All right. Well -- all right, good.  
13      Thank you. Next. Mr. Moy let's take five  
14      minutes please. Take a five minute break and  
15      we'll come back on.

16                  MR. MOY: Very good.

17                  (Whereupon, the hearing was in  
18      recess from 10:23 a.m. until 10:29 a.m.)

19                  CHAIRMAN JORDAN: Let's go back in  
20      session please. Order or whatever. Mr. Moy  
21      can we 18633 please.

22                  MR. MOY: Okay, next Application

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1 before the Board is Application Number 18633.  
2 This is the application of the National  
3 Community Church. Pursuant to 11 DCMR 3104.1  
4 and 3103.2. There are multiple relief under  
5 special exception and variances. Mr. Chairman  
6 I'm not going to read through that.

7 CHAIRMAN JORDAN: Yes, we're good.

8 MR. MOY: And we're at property 2826  
9 Q Street SE.

10 CHAIRMAN JORDAN: 18633.

11 (Off-mic comments)

12 CHAIRMAN JORDAN: Please identify  
13 yourselves please.

14 MS. BATTIES: Good morning Mr.  
15 Chair. Leila Batties with the law firm of  
16 Holland Knight on behalf of the Applicant,  
17 National Community Church.

18 MR. SCHMIDGALL: I'm Joel  
19 Schmidgall and I'm with the project and  
20 Executive Pastor with the church.

21 MS. THOMAS: Hi, I'm Christa Thomas  
22 with Waldon Studio Architects. I'm the

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1 architect on the project.

2 MR. RICHARDS: I'm Robert Richards.

3 I'm --

4 CHAIRMAN JORDAN: Let's make sure  
5 your mic is on please.

6 MR. RICHARDS: Oh, it's a bright  
7 green light, not a dull green light.

8 CHAIRMAN JORDAN: Right.

9 MR. RICHARDS: Okay, I'm Robert  
10 Richard, I'm chair of ANC 7B.

11 CHAIRMAN JORDAN: Well welcome.  
12 Okay, let's see where we are. Let me -- is there  
13 an issue about additional relief that's  
14 necessary regarding rear yard relief? Have you  
15 had any conversation Ms. Batties with the Office  
16 of Planning on that?

17 MS. BATTIES: We have requested  
18 relief from the rear yard requirements, because  
19 the property actually is already non-compliant  
20 with the zoning regulations as it relates to FAR  
21 lot occupancy and the rear yard.

22 CHAIRMAN JORDAN: And you're not

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1 touching it, is that what you're saying?

2 MS. BATTIES: We're not changing  
3 that, no.

4 CHAIRMAN JORDAN: Okay. Is OP okay  
5 with that? I understand we're already --

6 MR. GOLDSTEIN: This is Paul  
7 Goldstein filling in for Arthur Jackson today.  
8 I think he just seemed to think that it may not  
9 be needed. And looking at the regulation I  
10 think there might be an argument for it. If the  
11 Board finds that it's needed, I believe we have  
12 no issue with that relief being granted.

13 CHAIRMAN JORDAN: No, you guys just  
14 raised it, so we wanted to get it out early. And  
15 if there's additional relief needed for  
16 anything, as you know, it's for the Applicant to  
17 make sure they request all the relief they need,  
18 or be subject to the ZA stopping it, so. Okay.

19 Just want to -- I think the issue  
20 about the exceptional conditions and et cetera,  
21 and your qualification for special exception I  
22 think to me is clear, but that's me. I'm going

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1 to ask the other Board members. My only concern  
2 kind of drives in -- I guess most of my questions  
3 are going to go to OP regarding some of these  
4 conditions.

5 I'm clear about how the building's  
6 going to be reused. I think there are some  
7 design issues that the Board wants to talk about.  
8 But test issues I think I'm okay. I'm okay, any  
9 other issues the Board needs to drill in on? I  
10 know we want to talk about -- you want to raise  
11 issue about -- discuss design. Some  
12 alternatives if there are --

13 MEMBER COHEN: No, I just want to  
14 state that the roof and trellis design makes this  
15 building look higher than you're really need to  
16 make it look. It just doesn't seem to fit in  
17 with the neighborhood. And you know it's just  
18 a comment. You don't need to do anything about  
19 it, but I just think it needs to be just looked  
20 at one more time.

21 MS. BATTIES: Commissioner Cohen,  
22 if I may. Chairman Jordan. I believe you're

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1 looking at an earlier version of the plans. We  
2 submitted a revised set of drawings on December  
3 4 and the revised set of drawings actually  
4 reflects a revised design based on what the  
5 Applicant and the ANC had come to agreement on.

6 CHAIRMAN JORDAN: Oh, that's  
7 different.

8 MEMBER COHEN: Oh, that is  
9 different then what.

10 MS. BATTIES: Yes.

11 CHAIRMAN JORDAN: You have  
12 additional, you have copies?

13 MS. BATTIES: It was in our  
14 pre-hearing statement. And you can also pull up  
15 the Board's.

16 CHAIRMAN JORDAN: I do remember --  
17 I do remember your revised plan. Your  
18 supplemental -- your supplemental --

19 MS. BATTIES: Right.

20 CHAIRMAN JORDAN: But.

21 MR. MOY: Mr. Chairman we believe  
22 that is in the record under Exhibit 33.

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1 CHAIRMAN JORDAN: Is it 33 or I  
2 thought I had it under 28. Is it 33?

3 MR. MOY: It should be 33 sir.

4 CHAIRMAN JORDAN: Yes, 33, correct.

5 MEMBER COHEN: Oh, I'm sorry.

6 MR. MOY: The same drawings.

7 CHAIRMAN JORDAN: It's 33.

8 MEMBER COHEN: I don't have the  
9 drawings though.

10 CHAIRMAN JORDAN: There it is.  
11 Under 33. I think you didn't get the drawings.

12 MEMBER COHEN: May I just see it  
13 then.

14 CHAIRMAN JORDAN: It's a big, yes,  
15 it's a nice.

16 MEMBER COHEN: I think she just gave  
17 it to you. I just want to see the design.

18 CHAIRMAN JORDAN: Did you submit  
19 that? Did you?

20 MS. THOMAS: Oh, he said he had it,  
21 but I can give him my copy.

22 CHAIRMAN JORDAN: Let me just have

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1 what -- okay.

2 MEMBER COHEN: Yes, I don't have it.

3 Sorry guys.

4 CHAIRMAN JORDAN: No, take your  
5 time.

6 MS. BATTIES: And Chairman Jordan  
7 if I may, while Commissioner Cohen is looking at  
8 that. You know this application has been  
9 postponed I think twice before. And it was  
10 really to give the Applicant and the ANC the  
11 opportunity to work on the building design. And  
12 so what you see now is what -- all the parties  
13 have come to a meeting of the minds on.

14 CHAIRMAN JORDAN: That's  
15 acceptable.

16 MEMBER COHEN: Who is the original  
17 Zoning Commissioner sitting on this, do you  
18 recall?

19 MS. BATTIES: We have -- this is our  
20 first time.

21 CHAIRMAN JORDAN: No we've never  
22 --

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1 MEMBER COHEN: We've never, oh,  
2 okay. Is the Office of Planning okay with the  
3 new design?

4 MR. GOLDSTEIN: Yes, I believe --

5 MEMBER COHEN: And it's within the  
6 appearance of what we need in height?

7 MR. GOLDSTEIN: I think we didn't  
8 have any objection to the latest design.

9 MEMBER COHEN: Okay, thank you.

10 CHAIRMAN JORDAN: Okay, let's --  
11 okay, as I said I think we're okay. But let's  
12 discuss -- I mean from the filings and all the  
13 other supporting documentation, I think we're  
14 clear regarding the need for relief and why the  
15 relief is necessary.

16 My particular concerns are going  
17 towards some conditions that have been offered  
18 by Planning and also the ANC made their  
19 recommendation conditional. So Ms. Batties  
20 tell me did -- and the ANC, Mr. Richards, just  
21 so you understand our conversation and we'll  
22 come back to you.

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1                   The provisions by the ANC for  
2 conditions of their approval, which I believe  
3 you worked it out with the Applicant, have you  
4 entered into an agreement with these? Because  
5 these are not something I would be willing to put  
6 into an order, because they're not zoning  
7 related.

8                   MS. BATTIES: Right. We have not  
9 entered into an agreement with the ANC. We --  
10 but we would present it to the Board and proffer  
11 them as conditions of the approval. But we have  
12 not entered into a separate agreement.

13                  CHAIRMAN JORDAN: I really don't  
14 see how these arise out of the zoning relief.

15                  MS. BATTIES: The first condition  
16 of --

17                  CHAIRMAN JORDAN: Establishing an  
18 advisory committee and who's going to be  
19 appointed and where they're going to be  
20 appointed and all that stuff. I would offer  
21 that as probably best if you -- that the ANC and  
22 the Applicant enter into an agreement.

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1 MS. BATTIES: Okay.

2 CHAIRMAN JORDAN: That would be  
3 certainly enforceable for the ANC regarding this  
4 particular property and this -- their concerns.  
5 For instance, the Applicant would not enter into  
6 any agreements with the single member district  
7 without the ANC reviewing the agreement. You  
8 know that's something that you need to have.  
9 I've just got -- let me check.

10 I was just checking with counsel,  
11 and we're all on the same -- we're on the same  
12 page. I mean gut is next -- where we need to be  
13 on it. Okay. I would suggest that.

14 Then the -- my other questions  
15 actually come back for OP, because I need to know  
16 the basis of why those conditions -- have you  
17 discussed the conditions that were being imposed  
18 that OP has recommended?

19 MS. BATTIES: Yes, the -- and we  
20 have no objection to either of those conditions.

21 CHAIRMAN JORDAN: Okay. I didn't  
22 have conditions for DDOT. Okay. Board is

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1                   there anything else you need to hear from this  
2                   Applicant on this? I just have some questions  
3                   for you Mr. Goldstein and I can tell you but --  
4                   sitting in for Mr. Jackson.

5                   So Ms. Batties, You know how we  
6                   operate, you have the right to do any  
7                   presentation you want to, or you can let us  
8                   proceed on and just waive and save you're -- any  
9                   rebuttal for rebuttal if you want.

10                  MS. BATTIES: Mr. Chair, we're  
11                  willing to forego our presentation in the  
12                  interest of time and --

13                  CHAIRMAN JORDAN: Not the interest  
14                  of time. If you think you need to say something.

15                  MS. BATTIES: Well I should say I  
16                  will rest on the record. We're happy to rest on  
17                  the record. And of course answer any questions  
18                  that you may have.

19                  CHAIRMAN JORDAN: Yes, because I'm  
20                  comfortable with the relief that's requested.

21                  Let's center on the Office of  
22                  Planning. Mr. Goldstein is sitting in for Mr.

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1 Jackson, so I'm not going to jump on you too much,  
2 but -- okay.

3 MR. GOLDSTEIN: Thank you Mr. Chair  
4 and members of the Board. The Office of  
5 Planning supports approval of the application.  
6 There are quite a numbers of area of relief. I  
7 don't know if we need to go through each one, but  
8 you have a copy of our report.

9 CHAIRMAN JORDAN: Yes.

10 MR. GOLDSTEIN: There were two  
11 conditions that we put forward. The first was  
12 that restricting on-site activities that was  
13 directly related to service center programs.

14 I believe in a conversation that I  
15 had with Mr. Jackson, and the Applicant can also  
16 testify to this, there were concerns about the  
17 idea of maybe weddings being held. Of  
18 basketball tournaments, of things that were  
19 going to be parking intensive, that are not  
20 really related to the mission that Mr. Jackson  
21 was concerned about. And so there was an  
22 attempt through a condition to maybe restrict it

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1 just to activities of the -- consistent with the  
2 mission of the Applicant.

3                   The second is that the parking pad  
4 be re-paved and striped in accordance with the  
5 provisions. I assume that the Applicant has to  
6 do that. That they have to meet the parking  
7 standards. But the Applicant can testify that  
8 they plan to meet the parking standards and maybe  
9 that should be sufficient on that if the Board  
10 doesn't want to make it its own separate  
11 condition.

12                   CHAIRMAN JORDAN: Yes. I was  
13 wondering. Because the requirements for  
14 parking are the requirements for parking, but  
15 okay. But so the other -- there's been -- there  
16 was an initial discussion about holding other  
17 things at this property?

18                   MR. GOLDSTEIN: I don't know that  
19 the Applicant has actually stated that they plan  
20 to do such events, and maybe they can testify to  
21 that. I think it was more just to put a  
22 limitation on it just in case that issue arose.

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1                   CHAIRMAN JORDAN: Okay, Ms. Batties  
2 would you --

3                   MS. BATTIES: Yes. Mr. Jackson was  
4 concerned that the space would be rented out for  
5 events. Again that would bring in excessive  
6 noise and traffic into the neighborhood. And so  
7 we had -- I mean just verbally agreed in our  
8 discussions with Mr. Jackson that we would not  
9 have wedding receptions or parties that aren't  
10 related to the church and the mission, like  
11 Paul stated, the mission of the organization so.  
12 Renting it to outside entities and parties.

13                  CHAIRMAN JORDAN: Okay. Okay.  
14 And that's based upon this detriment to the  
15 neighborhood, being detrimental effect on the  
16 neighborhood by your use.

17                  MS. BATTIES: Right. And really  
18 that's not the intent of the community service  
19 center. The Applicant owns and operates a  
20 Southeast White House right around the corner on  
21 Pennsylvania Avenue. And they do a lot of work,  
22 ministry work and service for families and

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1 children.

2                   And so really the community service  
3 center is to serve as an extension of the  
4 Southeast White House and allow them to expand  
5 their ministry in the neighborhood.

6                   VICE CHAIR ALLEN: Ms. Batties, I  
7 just want to be clear. So you said that if --  
8 I guess let me just ask the question directly.  
9 So if for instance a member of the community, a  
10 member of your church wanted to have a wedding  
11 you would do that, but just not to outside  
12 people? I guess I wasn't clear on the  
13 distinction you were making there.

14                   MS. BATTIES: They would not rent  
15 the community service center space for a wedding  
16 reception. That was the idea --

17                   CHAIRMAN JORDAN: Well I think what  
18 the -- the condition -- I'm glad we're talking  
19 about that says, whether it's rent or whatever,  
20 you're not going to hold those type of events.

21                   MS. BATTIES: Well it's not -- I'll  
22 let you speak.

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1                   MR. SCHMIDGALL: No, we do have a --  
2 we have a more church location on Barracks Row  
3 which is about five minutes away that we have  
4 weddings at, so there's no intention for us to  
5 use that as a wedding site. I think this came  
6 up because of well, what if we rented it out to  
7 somebody else.

8                   So I think that's what we were saying  
9 no to. But yes, we don't have any -- that's not  
10 the goal of the community center, to be a place  
11 where we have weddings. We have a separate  
12 location that we would use for that, so.

13                  CHAIRMAN JORDAN: So the use of the  
14 service center would be related to the -- onsite  
15 activities would be related to the service  
16 center programs.

17                  MR. SCHMIDGALL: Um-hum.

18                  CHAIRMAN JORDAN: That's where we're  
19 at.

20                  MR. SCHMIDGALL: Correct.

21                  CHAIRMAN JORDAN: All right. Any  
22 other questions Office of Planning? Board?

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1 || (No response)

2 CHAIRMAN JORDAN: Does the  
3 Applicant have any questions of the Office of  
4 Planning?

5 MS. BATTIES: No.

6 CHAIRMAN JORDAN: Then let's -- the  
7 Department of Transportation? Anyone here from  
8 the Department of Transportation on this case?

9 (No response)

10 CHAIRMAN JORDAN: We do have a  
11 letter of no objection from the Department of  
12 Transportation. With the -- letter of no  
13 objection. And we turn to Mr. Richards from the  
14 ANC 7B. And welcome Mr. Richards. Is there  
15 something that you want to say to the Board? We  
16 do have your letter, and please.

17 MR. RICHARDS: Okay, a couple of  
18 things. The first issue raised was the building  
19 of the height of the building. The ANC did take  
20 a look at that and looked at the final  
21 submission, which is the one that came in like  
22 the 29<sup>th</sup> or something.

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1                   That backside is as high as a five  
2 story building. But the building looks like a  
3 four story building. But the building is a  
4 three story building. And so the ANC, you know  
5 actually considered that. And so the height and  
6 appearance issue and the way it looks in the plan  
7 that was actually submitted to us, which is the  
8 one that you just saw a few minutes ago, it does  
9 create that look of being higher than what the  
10 plan says, a three story building.

11                  But that second -- the fourth set of  
12 windows are like windows at the top of the  
13 basketball court. So we had actually  
14 considered that and did not have a problem with  
15 the height issue.

16                  Now with regard to the conditions in  
17 our letter of the 27<sup>th</sup>, we have no problem with  
18 entering into agreement with those conditions  
19 rather than putting them in the letter as long  
20 as the Applicant has no problem.

21                  CHAIRMAN JORDAN: Okay.

22                  MR. RICHARDS: So we'll sign that

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1 and --

2 CHAIRMAN JORDAN: I didn't hear  
3 your response.

4 MS. BATTIES: We don't have any  
5 objection intent.

6 CHAIRMAN JORDAN: So you're  
7 agreeing that you're going to put this --

8 MS. BATTIES: Enter into a separate  
9 agreement.

10 CHAIRMAN JORDAN: This agreement  
11 based upon these conditions -- with these  
12 conditions in them.

13 MS. BATTIES: Correct. Correct.

14 CHAIRMAN JORDAN: Okay, I just  
15 wanted to put that on the record for you.

16 MR. RICHARDS: And I'll even make it  
17 easy, I'll let you draft it, okay.

18 MS. BATTIES: My client appreciates  
19 that.

20 MR. RICHARDS: Well, okay well.  
21 But I'm sure we'd be better if you did it then  
22 if I did it. Now the other -- the Office of

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1 Planning's issue on the wedding use, the  
2 community actually lacks a wedding facility, and  
3 so it would be nice if somebody would come down  
4 here and actually design one and use it. But I  
5 could see that this one would not be the best  
6 place for it because of that parking plat.

7                   This building, let's face it, was  
8 put in at a time when, let's say zoning was maybe  
9 less rigid then it is today. How's that for a  
10 way of describing it. And so you've got a  
11 building that has a whole bunch of violations of  
12 the law as it is. And there's no way you're  
13 going to get more parking on that site for this  
14 use.

15                   MS. BATTIES: Actually it was  
16 constructed prior to the zoning regulations  
17 taking effect, so.

18                   MR. RICHARDS: So there's not much  
19 that can be done about that, and we looked at  
20 that. So we'd love to see it from somebody, but  
21 it doesn't look like it's going to happen here  
22 and we have no problems with your agreement on

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1 that.

2                   And those are my only comments on  
3 this. We initially opposed this, but after  
4 working with the developers and the community  
5 group and the folks at the White House where  
6 they're partners, we found that the general  
7 attitude in the community is that they were going  
8 to be a real positive influence in our community.  
9 And so we are in favor of it.

10                  CHAIRMAN JORDAN: Very good. And  
11 we --

12                  MR. RICHARDS: With the agreement  
13 of course.

14                  CHAIRMAN JORDAN: Yes, with the  
15 agreement. But we thank you for coming down and  
16 taking the time and interest. And also working  
17 together to resolve issues. As I say a thousand  
18 times, it's better that you resolve it as opposed  
19 to us resolving it. Because someone generally  
20 ends up not happy. But I really appreciate it  
21 and thank you Mr. Richards.

22                  Is anyone here wishing to testify

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1 and -- well excuse me. Board any questions of  
2 Mr. Richards?

3 (No response)

4 CHAIRMAN JORDAN: The Applicant any  
5 questions?

6 (No response)

7 CHAIRMAN JORDAN: Anyone here  
8 wishing to speak in support of this Application?  
9 Anyone wishing to speak in support?

10 (No response)

11 CHAIRMAN JORDAN: Anyone in  
12 opposition? Anyone in opposition?

13 (No response)

14 CHAIRMAN JORDAN: Then we will turn  
15 back to the Applicant for what would usually be  
16 rebuttal, but there isn't a rebuttal, and just  
17 ask if there is any closing that you think is  
18 necessary.

19 MS. BATTIES: I do want to thank  
20 Commissioner Richards for working with us. The  
21 Applicant went before the ANC three times, and  
22 there was a lot of work that went in to coming

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1 to -- getting to this place. I want to thank him  
2 personally for his efforts. And that's --  
3 nothing further from the Applicant.

4 CHAIRMAN JORDAN: Good. Then we  
5 will close the record on this matter and move  
6 into deliberations. I'll just -- let me start  
7 making a Motion that the Board grants the relief  
8 requested with including the conditions offered  
9 by the Office of Planning. Is there a second?

10 VICE CHAIR ALLEN: Second.

11 CHAIRMAN JORDAN: Now is there any  
12 discussion about this application?

13 (No response)

14 CHAIRMAN JORDAN: No? Then no  
15 discussions, then all those in favor of the  
16 Motion signify by saying aye.

17 (Chorus of ayes)

18 CHAIRMAN JORDAN: Those opposed  
19 nay.

20 (No response)

21 CHAIRMAN JORDAN: The Motion  
22 carries. Mr. Moy.

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1 MR. MOY: Staff would record the  
2 vote as three to zero. It's on the Motion of  
3 Chairman Jordan to approve the application for  
4 the relief as advertised, including the two  
5 conditions as cited in the Office of Planning  
6 report. Seconded is Vice Chairperson Allen,  
7 also support Ms. Cohen. We have a Board seat  
8 vacant and a member not present. Motion carries  
9 three to zero.

10 CHAIRMAN JORDAN: Okay, we can have  
11 a summary order, but knowing that they Applicant  
12 and the ANC are going to get together and get  
13 their agreement done right before these really  
14 kind of issues, right?

15 MR. MOY: Yes sir.

16 || CHAIRMAN JORDAN: Okay, thank you.

17 MS. THOMAS: Thank you.

18 || CHAIRMAN JORDAN: 663 please.

19 MR. MOY: The next application  
20 before the Board is Application Number 18663 of  
21 Lab School, presented to 11 DCMR 3104.1 and  
22 3103.2. This is a request for a variance in the

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1 off street parking requirements and a special  
2 exception to allow an addition to an existing  
3 private school under Section 206 at 4759  
4 Reservoir Road NW.

5 (Off mic comments)

6 CHAIRMAN JORDAN: Would you  
7 identify yourselves for us please.

8 MS. PRINCE: Allison Prince from  
9 Goulston and Storres here on behalf of the Lab  
10 School.

11 MS. SCHANTZ: Katherine Schantz,  
12 head of the Lab School of Washington.

13 MR. BEARMAN: Camilo Bearman, SHW  
14 Group, architects.

15 MR. WORKOSKY: I'm Mike Workosky,  
16 I'm with Wells and Associates, traffic  
17 engineers.

18 MS. PAGANO: I'm Penny Pagano,  
19 representing ANC 3D.

20 MR. HEMPHILL: My name is Tucker  
21 Hemphill and I'm here to testify.

22 MS. SCHANTZ: A student at Lab

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1 School.

2 MR. HEMPHILL: A student at Lab  
3 School, I'm sorry.

4 CHAIRMAN JORDAN: Yes. We were  
5 hesitant just a minute ago, one of the Board  
6 members did not have a copy of the DDOT report  
7 that came in late yesterday. But I've reviewed  
8 it.

9 MEMBER COHEN: I did too.

10 CHAIRMAN JORDAN: Yes. Well the  
11 only question I have about this, I mean I clearly  
12 understand what you're doing, and I clearly  
13 understand why the relief. This is something  
14 we've -- we've been working this piece of land  
15 for a while. Bit by bit, step by step. And we  
16 understand the issues of parking.

17 But the OP report made reference  
18 that there were some other conditions that were  
19 going to be imposed, that you're working with OP  
20 maybe, just?

21 MS. PRINCE: We have a consolidated  
22 set of conditions. They're all in the record,

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1 but we simplified it for the Board's  
2 convenience, and we're happy to provide you with  
3 the consolidated.

4 CHAIRMAN JORDAN: Yes, let me have  
5 that because I -- because there was the -- does  
6 that include the TDMs and the kind of --

7 MS. PRINCE: Yes, what we did was we  
8 had a consolidated set of conditions and then  
9 just so you have it right in front of you and  
10 don't have to pull it out of anything else, we  
11 have the TMP language. And if you want it, but  
12 you don't have to have it if you don't want it,  
13 we have a fully negotiated construction  
14 management plan with the ANC as a result of the  
15 last meeting in January.

16 CHAIRMAN JORDAN: Okay. You want  
17 to -- I don't -- support for the relief I think,  
18 I'm clear on. I mean it's -- well you know, as  
19 I said, we've been living with this. And  
20 certainly the need for the high school use.

21 Board is there anything we need to  
22 hear before we get to -- go start to step into

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1 these conditions? No? Yes?

2 MEMBER COHEN: I have two things.

3 One is that the architecture, do we have to?

4 CHAIRMAN JORDAN: I don't think  
5 we're going to get to that.

6 MEMBER COHEN: Okay. And I would  
7 eventually like to hear the actual height, the  
8 student from the Lab Schools testimony. I think  
9 that would be very enlightening.

10 CHAIRMAN JORDAN: Yes, we'll get to  
11 that, okay. So then, let's step through the  
12 conditions.

13 MS. PRINCE: Excellent.

14 CHAIRMAN JORDAN: Do you have a  
15 copy? Oh, let's -- can we make sure Mr.  
16 Goldstein. You're sitting in again. This is  
17 not your case.

18 MR. GOLDSTEIN: No, this one  
19 actually is.

20 CHAIRMAN JORDAN: This is your  
21 case, okay.

22 MR. GOLDSTEIN: I had to be here.

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1                   CHAIRMAN JORDAN: Okay, let's step  
2 through these. Does this include the TDMs?

3                   MS. PRINCE: It refers to the TMP  
4 and the TMP is a separate document that was also  
5 handed up to you.

6                   CHAIRMAN JORDAN: I just have one  
7 sheet of whatever. Is there two sheets I should  
8 have? I have one sheet.

9                   (Off mic comments)

10                  CHAIRMAN JORDAN: Oh, so on this one  
11 sheet is everything. Is that what you're  
12 saying?

13                  MS. PRINCE: The one sheet is all of  
14 the conditions. The conditions --

15                  CHAIRMAN JORDAN: Oh, the traffic  
16 management plan is in a separate document.

17                  MS. PRINCE: Exactly.

18                  CHAIRMAN JORDAN: All right, we  
19 only got -- do we other copies of this?

20                  (Off mic comments)

21                  CHAIRMAN JORDAN: So there's no  
22 change to the TMP?

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1 MS. PRINCE: No change to the TMP.

2 CHAIRMAN JORDAN: From the last,  
3 the last one that was put in place.

4 MS. PRINCE: We've agreed to all of  
5 the --

6 CHAIRMAN JORDAN: So those are just  
7 going to roll over with -- from the previous  
8 relief.

9 MS. PRINCE: We actually have, as  
10 you can see on the second page of the TMP  
11 document, we have additional recommended  
12 measures that we've also agreed to. So these --

13 CHAIRMAN JORDAN: The August 30,  
14 2013?

15 MS. PRINCE: We have the August 30,  
16 2013, and then the page after that says  
17 additional recommended TMP.

18 CHAIRMAN JORDAN: Oh, I see, I see.  
19 Oh, I see it.

20 MS. PRINCE: So we're agreeing to  
21 everything.

22 CHAIRMAN JORDAN: All right, so

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1                   this -- just give a minute to go through this.

2                   MS. PRINCE: Sure.

3                   (Off mic comments)

4                   CHAIRMAN JORDAN: Let's just go --  
5                   why don't you step through and then we can follow  
6                   you.

7                   MS. PRINCE: Sure.

8                   CHAIRMAN JORDAN: Let's start with  
9                   the proposed conditions of approval.

10                  MS. PRINCE: All right, I think I  
11                  can make this relatively simple. The maximum  
12                  enrollment will remain the same at 330, same with  
13                  the faculty and staff, no change. And then  
14                  within 30 days of each academic year, the school  
15                  has and will continue to provide the ANC with the  
16                  enrollment information, so they'll know exactly  
17                  where we are on staff and enrollment at the  
18                  school.

19                  These are existing conditions that  
20                  we've always complied with.

21                  CHAIRMAN JORDAN: Right, that's --

22                  MS. PRINCE: We've got a TMP. The

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1       TMP as you know, is sort of a kit of tools that  
2       can be used to keep our traffic situation under  
3       control. It's been used extremely effectively  
4       for the past several years.

5                   We have a traffic monitoring  
6       procedure in place where within 45 days of the  
7       start of the school year, we have to monitor the  
8       trips coming to the school. Again, that's been  
9       very, very effective. Because we know who comes  
10      and where they park. And that's been an  
11      absolutely essential part of making sure that  
12      what we're proposing now will not have adverse  
13      impacts. So we'll continue that.

14                  We also host meetings every four  
15      months. Again that's been working out very  
16      well. High level of communication with the very  
17      active Palisades community, which has a number  
18      of organizations as You know.

19                  Now the new conditions start with  
20      seven. We have an overall concept with respect  
21      to the parking space removal, that in essence  
22      says to you and the community and DDOT, we want

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1 to make sure that when we remove, have a net  
2 reduction in parking spaces, we're not simply  
3 shifting parking out into the streets.

4 And we have a very specific way of  
5 doing that that we worked out with DDOT.

6 CHAIRMAN JORDAN: With CVS?

7 MS. PRINCE: With CVS. Which is an  
8 existing lot, not adding any new parking supply  
9 to the neighborhood. It's an existing, under  
10 utilized lot and that basically is our safety  
11 valve. And we've committed to lease spaces  
12 there such that we're never having any kind of  
13 serious spill over impact on the neighborhood.

14 CHAIRMAN JORDAN: But you're  
15 already using some that you already have the  
16 agreement with them.

17 MS. PRINCE: We are already using  
18 some of them.

19 CHAIRMAN JORDAN: And you now have  
20 an additional agreement with them to use them.

21 MS. PRINCE: Exactly. And we have  
22 like a valve mechanism where, based on how we do

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1       in our reporting on parking demand, we can adjust  
2       the number of spaces that we're leasing at CVS.  
3       And that was really the lynchpin that got the ANC  
4       comfortable with the concept of a parking  
5       reduction. And I think it was really a win/win,  
6       because the spaces are already there, and this  
7       enables us to add a significant amount of new  
8       green space to the campus and enhance the safety  
9       of the campus significantly.

10                   And then the final condition is  
11       simply a construction management plan which  
12       we've agreed to with the ANC, does not need to  
13       be in the record, but we have it if you'd like  
14       it. So that was our overall approach and that's  
15       how it's addressed in the conditions.

16                   CHAIRMAN JORDAN: Any questions on  
17       the conditions?

18                   (No response)

19                   CHAIRMAN JORDAN: The TMP was --  
20       just the new TMP, so that's rolled into the  
21       conditions? Okay.

22                   MS. PRINCE: That would be rolled

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1 into condition four.

2 CHAIRMAN JORDAN: Um-hum, that's  
3 condition four.

4 MS. PRINCE: We -- everything that  
5 was in the earlier TMP would carry over, but then  
6 we have new TMP mechanisms that would kick in as  
7 well. And Lab I have to say, has been using  
8 virtually every TMP measure I've ever seen any  
9 school use. They have one of the most  
10 aggressive shuttling programs in the city.  
11 They have guaranteed ride home, metro check,  
12 they're a very good user of the TMP tools.

13 CHAIRMAN JORDAN: With the new and  
14 the old, you've probably got about 40  
15 requirements.

16 MS. PRINCE: We have -- and we --  
17 well some are requirements, some are  
18 suggestions. It's whatever it takes to not have  
19 adverse impacts.

20 CHAIRMAN JORDAN: That's an  
21 extensive. Board any questions in the issues?

22 (No response)

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1 CHAIRMAN JORDAN: Good, we can then  
2 go to Office of Planning.

3 MR. GOLDSTEIN: Good afternoon  
4 again. Paul Goldstein with the Office of  
5 Planning. OP is supportive of the application.  
6 I really want to commend the Applicant for  
7 creating such a robust TMP and working so hard  
8 to create a good plan along with the  
9 neighborhood.

10 We did recommend some conditions of  
11 approval. The Applicant has submitted a  
12 consolidated list. We thought this would  
13 actually be easier in creating a -- instead of  
14 piecing things together, creating a full and  
15 complete list. So we're supportive of what was  
16 submitted today as being the full set of  
17 conditions. And with that I'm happy to take any  
18 questions that the Board may have.

19 CHAIRMAN JORDAN: Board, any  
20 questions of Office of Planning?

21 (No response)

22 || CHAIRMAN JORDAN: Does the

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1           Applicant have any questions of the Office of  
2           Planning?

3                   MS. PRINCE: No questions.

4                   CHAIRMAN JORDAN: Okay. Anyone  
5                   here for the Department of Transportation?

6                           (No response)

7                   CHAIRMAN JORDAN: We do have their  
8                   letter of no objection, which also rolled into  
9                   support of the measures we've just gone through.  
10                  ANC 3D please. Ms. Pagano.

11                  MS. PAGANO: Thank you, good  
12                  morning.

13                  CHAIRMAN JORDAN: Good morning, how  
14                  are you?

15                  MS. PAGANO: I'm Penny Pagano, SMD  
16                  3D 06 and formerly chair of ANC 3D until last  
17                  week, so this was before me while I was chair.  
18                  This issue has been before ANC 3D for several  
19                  months. And during that time, the Applicant  
20                  actually sought an additional, or a delayed  
21                  appearance before the BZA to work with the  
22                  community.

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1                   We actually -- our issues were  
2 mainly traffic, parking and construction. It  
3 is a fairly dense area right there in the  
4 community. And I live about two blocks away.

5                   We voted on this twice actually. We  
6 gave in January -- we gave preliminary agreement  
7 10 to nothing, unanimously supporting the  
8 agreement. But we asked them to come back. We  
9 had a discussion at that meeting about parking  
10 and what their plans were going to be as well as  
11 asking for a construction management plan.

12                  So they came back in January to our  
13 last meeting with that information written.  
14 And we also asked them at that meeting, based on  
15 an experience one of the commissioners had had  
16 I think with Wesley Seminary, that we set up a  
17 construction management committee that would be  
18 comprised of ANC members, neighbors who were  
19 interested, and all our local -- any citizens  
20 association that was effected.

21                  To meet on a regular basis, probably  
22 monthly, to go through the construction, any

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1 issues which might arise. And I think that's  
2 really a good suggestion. And I think it will  
3 be very helpful as we move forward in this  
4 process.

5 I will say that at both of the  
6 hearings that we had, no one, there was no one  
7 present who spoke in opposition to the  
8 application. So that would be my report.  
9 Thank you.

10 CHAIRMAN JORDAN: Thank you. And  
11 we certainly appreciate the hard work by the ANC,  
12 and all in working this out. As I've said, it's  
13 been a step by step progress here, and we  
14 appreciate that.

15 Then let's have your witnesses in  
16 support and Ms. -- yes, state your name again and  
17 --

18 MR. HEMPHILL: My name is Tucker  
19 Hemphill and I'm currently a 10<sup>th</sup> grader at the  
20 Lab School of Washington. I've been with the  
21 Lab School since 5<sup>th</sup> grade.

22 And before that I went to a public

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1 school and it was particularly difficult for me  
2 to learn, because the way I learned was different  
3 than other kids. And they'd always have to take  
4 me to a different room. And at Lab I don't have  
5 to be taken to a different room. At Lab  
6 everything's creative. And I would not have  
7 succeeded as much as I have now if I hadn't gone  
8 to the Lab School.

9 Right now we are on one floor of the  
10 Lab School. Right above us is Junior High.  
11 Right below is intermediate. And I feel like to  
12 get that real High School feel, you have to have  
13 a building separated from the younger kids.

14 As much as we love hearing the  
15 younger kids scream and play outside while we're  
16 in math class, we would like our own building.  
17 And it would be something that we'd utilize  
18 everyday and be very thankful for.

19 CHAIRMAN JORDAN: Very good.  
20 Thank you, thank you. I appreciate you coming  
21 down and talking in support of this application.  
22 It was really important to us to hear that.

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1                   MR. HEMPHILL: Thanks.

2                   CHAIRMAN JORDAN: Any other, anyone  
3 else speaking in support of this application?

4                   (No response)

5                   CHAIRMAN JORDAN: Anyone speaking  
6 in opposition? Opposition?

7                   (No response)

8                   CHAIRMAN JORDAN: They're not going  
9 to come behind you. Then we would then turn back  
10 to the Applicant for any closing you would like  
11 to give.

12                  MS. PRINCE: Briefly in closing, we  
13 really appreciate your time this morning. I  
14 know you've had several cases before us. The  
15 relief that we're seeking are the parking,  
16 loading variance, the special exception for the  
17 school expansion. I think we laid out all the  
18 grounds for the relief in detail in our  
19 pre-hearing statement.

20                  I would like to emphasize today that  
21 we are anxious to start this project. If you saw  
22 the crowded conditions at the high school, you

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1 would understand. Which is why we work so very  
2 hard, particularly with the ANC to make sure that  
3 we addressed concerns. So we'd appreciate your  
4 action as soon as possible, and we thank you for  
5 your time.

6 CHAIRMAN JORDAN: Well good.  
7 Thank you then. We will close the record on this  
8 matter. Now if you look at the pictures, it's  
9 just how tight everything is fitting in. As I  
10 said, we've been living with this project for a  
11 while.

12 I would move that we grant the relief  
13 requested, including the conditions and the TMP  
14 as part of the order. That would be my Motion.

15 MEMBER COHEN: I'll second your  
16 Motion, Chairman.

17 CHAIRMAN JORDAN: Any discussion in  
18 readiness? All those in favor signify by saying  
19 aye?

20 (Chorus of ayes)

21 CHAIRMAN JORDAN: Those opposed  
22 nay.

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1 (No response)

2 CHAIRMAN JORDAN: The ayes have it,  
3 it carries. Mr. Moy.

4 MR. MOY: Staff would record the  
5 vote as three to zero. That's on the Motion of  
6 Chairman Jordan to approve the application for  
7 the relief being requested, which includes the  
8 2201.1 loading requirements. Also seconded  
9 Vice Chairperson Cohen, also in support, or  
10 rather Ms. Marcie Cohen, also in support of the  
11 Motion, Vice Chairperson Allen. And we have a  
12 Board seat vacant and a member absent. Motion  
13 carries three to zero.

14 CHAIRMAN JORDAN: Very good and we  
15 can have a summary order on this please.

16 MR. MOY: Thank you sir.

17 MS. PRINCE: Thank you.

18 CHAIRMAN JORDAN: Thank you, thank  
19 you. Now, waiting, last but not least, coming  
20 from the rear of the room, is case 18688.

21 MR. MOY: Thank you. Thank you Mr.  
22 Chairman for that rousing --

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1 MEMBER COHEN: That wake up call.  
2  
3 CHAIRMAN JORDAN: I just thought  
4 we'd give you a little extra drum roll because  
5 You stayed with us all this time. But you know,  
6 as you know, this is one that I think we are going  
7 to have to do some drilling and taking some looks  
at so.

8 (Off mic comments)

9 MR. MOY: This is the second IZIS  
10 online, IZIS Mr. Chairman.

11 CHAIRMAN JORDAN: Very good. And  
12 IZIS for the record is?

13 MR. MOY: Interactive Zoning  
14 Information Systems, I believe. Or something  
15 to that effect.

16 CHAIRMAN JORDAN: And we haven't  
17 had any bumps have we?

18 MR. MOY: Well --

19 CHAIRMAN JORDAN: Well we had some  
20 bumps, I'll leave it alone. I'll leave it  
21 alone. I guess I was getting too excited.  
22 Okay.

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1                   Please introduce yourselves.

2                   MR. CONWAY: I'm Patrick Conway,  
3 I'm a principal of Lock 7 Development.

4                   CHAIRMAN JORDAN: You said Conway?

5                   MR. CONWAY: Conway.

6                   MS. MOLDENHAUER: Good morning  
7 Chairman Jordan and members of the Board. My  
8 name is Meridith Moldenhauer on behalf of Lock  
9 7. And then we'll all start I guess, Patrick  
10 Conway is one of the principals and we also have  
11 a David Gorman as well and he'll introduce  
12 everybody else at the table.

13                  MR. SCHNECK: Hi my name is Ron  
14 Schneck and I'm with Square 134 Architects.

15                  MR. ANDRES: God morning Chairman  
16 Jordan, Erwin Andres with Gorove/Slade  
17 Associates.

18                  CHAIRMAN JORDAN: Okay. We have a  
19 lot going on here. As you're aware, the Office  
20 of Planning doesn't support some of your relief  
21 requested, so we certainly want to hear -- well,  
22 why don't I let you just go ahead and do your

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1 presentation for this case if you would. And  
2 you can proceed.

3 MR. GORMAN: Good morning. Once  
4 again, I'm David Gorman. I'm one of the two  
5 principals at Lock 7 Development. Patrick and  
6 I are both native Washingtonians. We both still  
7 live here, we both were raised in D.C. We've  
8 built residential condos and houses together for  
9 the last eight years.

10           Although we've built over 50  
11 projects together over those eight years,  
12 everything has been matter of right. This is  
13 our first trip in front of the Board. We are  
14 excited to be building in the community. I  
15 personally live about ten blocks from the site.  
16 And we really think our building is going to be  
17 a great addition. And clean up a block that's  
18 mostly vacant and dark and not particularly  
19 safe.

20           Just to give you an idea of the  
21 building, it's mixed use. On the ground level  
22 is retail and then there will be 49 residential

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1       units on the four floors above. We plan to seek  
2       LEED certification.

3                 This slide here will show you the  
4       location. It's on Florida Avenue. It's very  
5       close to the starburst intersection where H,  
6       Bladensburg and Florida Avenue intersect.  
7       We're just one block north of H Street. And  
8       we're very close to bus lanes, bike share, car  
9       sharing and the street car.

10               This map here will give you an idea  
11       of the zoning. Currently the site is C-2-A.  
12       And while it's not in the H Street overlay now,  
13       it's exceedingly close to it, less than a block  
14       away.

15               Give you a little history of our  
16       involvement with the site, so when we first  
17       started looking at it, we approached the ANC and  
18       we talked to Tina Laskaris, who's the SMD. She  
19       told us that this site was in fact in the H Street  
20       Arts overlay. She directed us to speak with Ms.  
21       Deborah Crain, who is at the Office of Planning,  
22       and this is her, Ward Five. She's a

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1 neighborhood coordinator.

2                   When I asked her if this was in the  
3 overlay, she sent me language about the  
4 extension of the H Street Arts overlay. And so  
5 we use this information to then negotiate the  
6 contracts, start incurring costs on the site.  
7 We went hard on the site with the understanding  
8 that this was in fact in the H Street Arts  
9 overlay.

10                  We relied on that information, and  
11 as it turns out --

12                  CHAIRMAN JORDAN: Who gave you the  
13 information?

14                  MR. GORMAN: So it was -- I spoke to  
15 two different people. I was first -- the first  
16 person I met with was the SMD. Obviously the --

17                  CHAIRMAN JORDAN: Single member  
18 district, okay.

19                  MR. GORMAN: Yes, which was Tina  
20 Laskaris.

21                  CHAIRMAN JORDAN: Okay.

22                  MR. GORMAN: And then I didn't want

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1 to rely solely on the ANC commissioner, so I  
2 asked her if there was someone at the Office of  
3 Planning that I could speak to. She directed me  
4 towards Deborah Crain, who is the neighborhood  
5 coordinator for this Ward.

6                   When I asked the question to Deborah  
7 Crain, she responded to my email by sending me  
8 the language for the extension of the H Street  
9 Arts overlay. So it was our understanding, we  
10 interpreted this, that this property was in fact  
11 now in the Arts overlay.

12                   CHAIRMAN JORDAN: She didn't tell  
13 you it was, she just gave you the information.

14                   MS. MOLDENHAUER: We have a copy of  
15 the email and it was confusing because David's  
16 question was very precise. It said, the Zoning  
17 map doesn't show it being in the overlay. You  
18 said that it was in the overlay. Can you clarify  
19 and just help me understand.

20                   And then we have actually a copy of  
21 the email exchange. And then she provided a  
22 copy of the comprehensive plan. But it was

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1 obviously confusing and was misleading  
2 obviously for my client to understand that it was  
3 supposed to be part of the current zoning law.

4                   Obviously now he understands that  
5 it's a part of a comprehensive plan that is the  
6 future plan to extend. We have a copy of the  
7 email exchange if the Board would like copies.

8                   CHAIRMAN JORDAN: Yes, I think we  
9 need that.

10                  MR. GORMAN: So the beginning of the  
11 process was confusing and the building had  
12 already been designed, which is one of the  
13 reasons why we're here today. We wanted to go  
14 through some of the exceptional circumstances  
15 that are effecting the site.

16                  The first one as you can see here on  
17 the west side of the lot, facing Orin, is a  
18 building restriction line. So we are paying for  
19 this portion of the property. We're paying tax  
20 on it. But we cannot put any parking or any  
21 structure on it. It impacts the site. We're  
22 under it. So we can't build above grade, we also

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1 can't build parking below grade in this portion  
2 of the building restriction line.

3 The second unique circumstance here  
4 that makes it exceptional, is that we're right  
5 next to this fire station. This fire station is  
6 called the House of Pain. It's actually the  
7 busiest fire station in the country. So there's  
8 noise, there's lights, there's trucks entering  
9 and exiting, pretty much at all times.

10 And it created some really unique  
11 challenges for us when we're trying to design our  
12 building. Specifically because we have to use  
13 materials that have more sound attenuating  
14 properties, especially the windows, which are  
15 more expensive. I also spoke with the fire  
16 chief in our process of neighborhood outreach  
17 and he supported the project.

18 This picture here shows another one  
19 of the exceptional circumstances, which is the  
20 prior use, and current use of the property.  
21 It's used to store construction equipment.  
22 It's owned by a plumber, who uses this rear yard

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1 as a transfer station. So if you look now  
2 closely in this picture, you can see oil tanks  
3 that are stored on this site, as well as standing  
4 water.

5                   And then going back several decades,  
6 the property was a dry cleaner, which also  
7 polluted the land. Here's a close up of the  
8 water, it's got oil. These are the barrels in  
9 the rear of the property. So we have some  
10 serious expenses to remediate the property.

11                  Just to tell you a little more about  
12 why we want to build this building. We think  
13 that the neighborhood really needs it. We think  
14 that the additional residential and retail will  
15 be well received, which it has been. We also  
16 will get rid of the environmental contamination,  
17 which has been on the site for a long time.

18                  In the future, and the time line is  
19 uncertain, this will in fact be in the Arts  
20 overlay. And this will be compliant with that.  
21 Also, we did a ton of neighborhood outreach and  
22 both the ANC 5D unanimously supported it, as well

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1 as the Trinidad Neighborhood Association. And  
2 you'll see in our application, we have 11 letters  
3 of support from neighbors who also support the  
4 project.

5 MS. MOLDENHAUER: Just for the  
6 Board's reference, right now, we filed  
7 everything through IZIS, we have not seen a  
8 letter from the ANC yet, but we do -- we were --  
9 we received unanimous support from the ANC. We  
10 don't know why there was a delay.

11 CHAIRMAN JORDAN: Has it been  
12 filed?

13 MS. MOLDENHAUER: We have not seen  
14 a letter.

15 CHAIRMAN JORDAN: Meaning that the  
16 ANC has not generated, to your knowledge.

17 MS. MOLDENHAUER: Yes.

18 CHAIRMAN JORDAN: Okay, because you  
19 were talking about IZIS, whether or not it showed  
20 up, or -- okay. I just wanted to because --

21 MS. MOLDENHAUER: I wasn't sure if  
22 maybe they've brought it in, but I don't -- I'm

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1 seeing no's from everybody, so.

2 CHAIRMAN JORDAN: No.

3 MR. GORMAN: I'm going to turn the  
4 floor over now to Ron Schneck, who is our  
5 architect.

6 MR. SCHNECK: Good morning. Again  
7 my name is Ron Schneck, I'm the architect for the  
8 project. I'm principal and owner with Square  
9 134 Architects. I'm happy to be working with  
10 Lock 7 on this project. I've worked with Dave  
11 and Patrick on many projects in the District over  
12 the last three or four years.

13 I've been a practicing architect in

14 --

15 CHAIRMAN JORDAN: So this is not the  
16 first time that this group has actually done  
17 development in the District?

18 MR. SCHNECK: No, it is not.

19 CHAIRMAN JORDAN: So you're  
20 familiar with our processes.

21 MR. SCHNECK: Yes.

22 CHAIRMAN JORDAN: I know, go ahead.

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1                   MR. SCHNECK: I've been working in  
2 D.C. over the last 18 years. I've worked on many  
3 similar projects, including one in the Atlas  
4 District, 1115 H Street, which is a similar type  
5 of project, mixed use, retail below and  
6 multi-family above.

7                   I'll try to do an abbreviated  
8 presentation. Please stop me at any point if  
9 you have any questions. Sort of a quick  
10 overview. Florida Avenue is a five story, 49  
11 unit residential building with corner retail on  
12 the first floor. Our concept for the project is  
13 a contextual one, meaning that we are focused on  
14 tying the project into the context where  
15 possible.

16                   Stylistically, we are referencing  
17 the H Street corridor by borrowing some elements  
18 from the art deco style. Structurally we are  
19 using the first floor -- we are keeping the first  
20 floor facades, the existing building. This  
21 does a couple of things. It preserves the  
22 existing character of the structure in the

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1 neighborhood and allows for the adaptive reuse  
2 of the existing building materials. And  
3 functionally we are tying this into the  
4 community by providing the community oriented  
5 retail at the corner.

6 The important thing about the retail  
7 as the project is currently designed, is that it  
8 has a 14 foot floor to ceiling height. This is  
9 sort of standard for marketable retail space.  
10 And we believe that it's necessary to entice  
11 retail to this site. It's sort of the first  
12 retail, sort of destination a little bit off of  
13 H Street.

14 In addition, the community has  
15 suggested and is very supportive of the retail  
16 space that we are providing. The retail space  
17 is important in the 14 foot floor to ceiling  
18 height is important here, because we feel that  
19 it drives the height relief.

20 Without that five feet of extra  
21 relief, one of two things happens, the top floor  
22 would need to be completely removed, which

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1 greatly impacts the number of units and overall  
2 feasibility of the project. Or we would need to  
3 remove the retail space. And first floor units  
4 on -- units on the first floor, specifically at  
5 the corner, are really not that marketable. And  
6 we also feel that it would diminish the sort of  
7 pedestrian experience that we were hoping to  
8 provide with the retail space. The project will  
9 be LEED certified. We're not too sure which  
10 level yet.

11 The next slide shows basically the  
12 roof design. And we have several green  
13 amenities. We have a green roof, we have a dog  
14 run and we have an outdoor common space, which  
15 is a place to sort of congregate. And all of  
16 these elements contribute to help us satisfy the  
17 green area ratio.

18 The other thing that this slide  
19 shows is you know, acknowledging that we are  
20 asking for you know, additional height. We have  
21 set the top floor back five feet to minimize the  
22 perceived height and hopefully reduce some of

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1 the potential impacts of the increased height  
2 and FAR.

3 And the next slide. The first floor  
4 plan is on the left and the typical floor plan  
5 is on the right. We do have an update to the  
6 plans that we will be submitting. It's a minor  
7 change. The changes that we are -- previously  
8 we were showing a parking space into the BRL.

9 The current plans show that slide  
10 over to the east. We still are providing the  
11 eight parking spaces. And this revised plan  
12 also shows the bicycle storage a little bit more  
13 clearly.

14 Sort of real quick on the first floor  
15 plan, as you can see, the corner retail, the  
16 lobby with bike storage. We also have outdoor  
17 green space adjacent to the main lobby. In  
18 terms of the uses of the first floor, we  
19 obviously have the retail and then five  
20 residential units. Four two-bedrooms and  
21 one-bedroom.

22 Quick note on sort of the first floor

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1 plan is, you know our maximum lot occupancy is  
2 75 percent. But as a result of the BRL, and the  
3 parking and some other factors, we are actually  
4 at 70 percent lot occupancy and that has sort of  
5 an impact on why we were asking for the  
6 additional FAR.

13                   If we were to not have this  
14 additional FAR in the top floor, if we were to  
15 take away that .5 FAR, we'd have approximately  
16 2200 square feet on that top floor which would  
17 be impractical in terms of building it out due  
18 to the efficiency of stairs, elevator corridor,  
19 and the like.

20 CHAIRMAN JORDAN: So you're saying  
21 you couldn't get any use without the -- there is  
22 no use within a zoning regulations that you can

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1 do without the .5 additional FAR?

2 MR. SCHNECK: Currently as designed  
3 with the retail, we would -- and with the retail  
4 and without the additional FAR, we're unable to  
5 do a full fifth floor. And that had an impact  
6 on the unit.

7 CHAIRMAN JORDAN: But that's not  
8 what I'm asking.

9 MR. SCHNECK: Okay, go ahead.

10 CHAIRMAN JORDAN: Without the  
11 additional .5 FAR --

12 MR. SCHNECK: Yes.

13 CHAIRMAN JORDAN: You cannot use  
14 this site for any allowable use, allowable  
15 design building within the zoning regulations.  
16 Is that what I'm hearing you say?

17 MR. SCHNECK: No, no, no. That's  
18 not correct.

19 CHAIRMAN JORDAN: Okay.

20 MR. SCHNECK: What we would need to  
21 do in this case is remove the retail floor  
22 essentially. And we would have -- we would have

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1 a five story building, but we wouldn't have the  
2 retail floor, and we would have a sort of  
3 non-efficient floor in terms of the lot  
4 occupancy that we currently have.

5 CHAIRMAN JORDAN: A non-efficient  
6 floor, what do you mean by that?

7 MR. SCHNECK: Meaning you know from  
8 an efficiency standpoint. Obviously once you  
9 have two stairs and an elevator, you want to max  
10 out the floor as much as you can. And this --  
11 the floor plan that you're currently seeing is  
12 very efficient.

13 CHAIRMAN JORDAN: But the zoning  
14 regulations doesn't require you to max out  
15 anything.

16 MR. SCHNECK: Correct.

17 MS. MOLDENHAUER: I think the work  
18 max out is probably, is more of a question -- is  
19 it a question of practical difficulty that it  
20 would be practically difficult for and  
21 inefficient for an owner to build a fifth floor,  
22 so thus they wouldn't build a fifth floor at all.

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1           Is that what you're saying?

2           MR. SCHNECK: That is correct.

3           MS. MOLDENHAUER: If you didn't  
4 have the additional FAR.

5           MR. SCHNECK: That is correct.

6           MS. MOLDENHAUER: So --

7           CHAIRMAN JORDAN: Okay, you  
8 wouldn't have the fifth floor.

9           MR. SCHNECK: Yes.

10           CHAIRMAN JORDAN: Okay. All  
11 right, because -- I understand. Because I was  
12 getting confused. I thought you were saying  
13 that the additional FAR was the only way that you  
14 can do any building on this site within the  
15 zoning regulations. That's not what you're  
16 saying.

17           MR. SCHNECK: No, that's not what  
18 I'm saying.

19           CHAIRMAN JORDAN: Right. Because  
20 you can.

21           MR. SCHNECK: Sure. Absolutely,  
22 yes.

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1                   MS. MOLDENHAUER: And then that's  
2 obviously not the standard. It's not a question  
3 of a use variance, can we do anything. It's a  
4 question of what we're doing, is there a  
5 practical difficulty related to the --

6                   CHAIRMAN JORDAN: Whether or not  
7 there's an alternative to do within the zoning  
8 regulations. So I'm clear what the standard is  
9 counselor.

10                  MS. MOLDENHAUER: I was just going  
11 to ask is all.

12                  CHAIRMAN JORDAN: But I just wanted  
13 to ask the question though for me.

14                  MS. MOLDENHAUER: But so let me just  
15 follow up with a question to make sure we're --  
16 if the Applicant did not obtain the additional  
17 FAR relief here, would the fifth floor -- would  
18 you build the fifth floor, would it be  
19 practically difficult to build a fifth floor  
20 based on core factors?

21                  MR. SCHNECK: It would.

22                  That completes my portion. If you

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1 have questions now, or if you --

2 CHAIRMAN JORDAN: We'll let you --

3 we can ask questions a little later.

4 MR. SCHNECK: Okay, thank you.

5 MR. ANDRES: Good morning Chairman  
6 Jordan. Erwin Andres with Gorove/Slade  
7 Associates. How are you? What I'm here to talk  
8 about is obviously related to the parking  
9 variance that's requested as part of this  
10 project.

11 Just to summarize what the parking  
12 variance is, there are 49 apartment units and  
13 1200 square, approximately 1200 square feet of  
14 retail on the ground floor. What's required are  
15 25 parking spaces. And what we're providing are  
16 eight. So the variance that we're looking for  
17 and seeking as part of this project are 17  
18 spaces.

19 Consistent with as you've mentioned  
20 before, you know parking is an issue in the  
21 District that we've talked about at length. And  
22 you know I just wanted to tell you that the

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1 condition at this location is actually different  
2 than some of our previous cases.

3 CHAIRMAN JORDAN: You thought I was

4 --

5 MR. ANDRES: And I'll go through  
6 some of those differences, because I've taken  
7 what you said before, and you know, we've  
8 prepared for it. It's important to note that  
9 similar to some of those other cases though, this  
10 development is in a transit rich area. There's  
11 significant number of bus lines. There are  
12 actually nine bus lines.

13 CHAIRMAN JORDAN: This happens to  
14 be one of the ones I believe about the area having  
15 enough support regarding some alternative  
16 methods.

17 MR. ANDRES: Okay, great. Well  
18 fantastic. Given that, you know there are nine  
19 bus lines. The H Street street car is currently  
20 under construction, and hopefully will be  
21 operable this year, which will provide a  
22 significant benefit in this corridor.

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1                   And in addition to that, there are  
2 several bike facilities in the area. This  
3 portion of the city is well served by not only  
4 people that use the bike, but actual bike  
5 facilities that include bike lanes up and down  
6 H Street. Capitol bike share stations, there's  
7 actually two of them within a block and a half  
8 of the site.

9                   And in addition to that, there's  
10 also car share stations. There are about seven  
11 car share spaces that are -- car share vehicles  
12 that are available within three blocks of here.  
13 And in addition to that, there is a service  
14 called Car2Go, which is your small little white  
15 smart cars that are parked randomly in  
16 neighborhoods throughout the District, that  
17 help support car sharing.

18                   So it's these conditions that are  
19 existing and that will be improved once the  
20 street car line is operable to help support some  
21 of the parking demand generated by the project.  
22 And you know it's important that like other

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1 projects like this, people will be attracted to  
2 this development, because it is in this  
3 neighborhood, because it is close to transit.  
4 Because it is close to many of the amenities,  
5 both up and down H Street and a lot of the  
6 amenities east of the starburst intersection.

7                   We did a walk score calculation and  
8 there's a walk score of 82, which is very good  
9 in the whole scheme of things. You know it's  
10 slightly lower than some of your more denser  
11 downtown residential developments, but it's  
12 still relatively good given all of the amenities  
13 that are approachable and available via bike.

14                   One of the important factors of this  
15 site that some of the other developments that I  
16 had appeared before you don't have, is actually  
17 a significant amount of on street parking. This  
18 neighborhood, actually this part of the H Street  
19 corridor has off street parking that is actually  
20 under utilized.

21                   And I'm going to go through that with  
22 you right now. If you look at the graphic on the

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1 screen, the slightly shaded red box in the middle  
2 is the sight, as pointed to. All of the red  
3 lines on that page represent on street parking  
4 that's restricted. There's no parking allowed  
5 on Florida Avenue.

6 All of the green lines on that site  
7 are actually spaces that have no designation.  
8 They're actually unrestricted. Anybody can  
9 park there. Maryland commuters can park there,  
10 residents can park there. And then the blue  
11 lines are actually RPP, residential permit  
12 parking.

13 So there are portions around our  
14 block that actually are a mix of different uses.  
15 So there is a mix of RPP, there's a mix of  
16 non-restricted and there's a mix of places where  
17 you actually can park.

18 What's also important in this  
19 graphic that is highlighted, is if you look at  
20 the alley, both in the alleys just north of our  
21 site and are being highlighted, many of those  
22 buildings actually have parking garages and car

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1 ports in the alley. Which is important, because  
2 it lends sort of our observations, which will be  
3 on the next slide. Can you go to the next slide  
4 please.

5 So the next slide basically shows  
6 how are the spaces currently being used today.  
7 The red spaces or the red areas are basically  
8 spaces that are approximately greater than 75  
9 percent full. So at most times, three-quarters  
10 of the block is full. All of the other areas,  
11 which are, the colors ranging from orange to  
12 green, to dark green, are either half empty, or  
13 very empty, or completely empty.

14 So you know, that graphic alone --  
15 actually can you go back real quick. That  
16 graphic alone shows you that in a three block  
17 radius of our site, there's only portions of it,  
18 you know there's only a certain number of roads  
19 where parking is three-quarter full. But for  
20 the most part, most of it is actually fairly  
21 empty. And part of that is because of the fact  
22 there are carports for a lot of these homes that

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1 are in the alley. So there are available  
2 parking spaces.

3 Now if you go to the next few slides,  
4 these are representative shots in the afternoons  
5 of what happens in the evenings, because of the  
6 fact that there are parking in the garages in the  
7 alleys, there is significant number of parking  
8 spaces that are open and available for uses in  
9 this area. Both -- not only RPP, but also  
10 unrestricted.

11 So there are spaces that have no  
12 parking restrictions at all because of the fact  
13 that the parking demand in this area is so low.  
14 And typically when you have neighborhoods that  
15 are sensing traffic problems and parking  
16 problems, it's primarily because people are  
17 parking on the street, which usually gets ANCs  
18 and gets community members together to say, you  
19 know what, let's petition DDOT for RPP.

20 Well in this case, there isn't that  
21 need to petition some of these streets for RPP,  
22 because there's not the demand there. And

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1                   that's what we've proven with our analysis.

2                   So you know, I guess in summary, what  
3                   I'd like to say is that we believe that the  
4                   parking variance is justified. Next slide  
5                   please. Is because of several reasons.

6                   One, we are implementing a  
7                   transportation demand management plan, which is  
8                   consistent with some of the other plans that we  
9                   talked about, which are transit incentives, RPP  
10                  restrictions for 17 spaces of the variance that  
11                  we're requesting, bike parking spaces and  
12                  transit screen. Obviously these are TDM  
13                  measures that you're probably familiar with,  
14                  because you've seen them before. Next slide.

15                  But the actual justification is  
16                  basically summarized on this slide. First is  
17                  it's close to transit. I think I've emphasized  
18                  that and I'm confident that you know that this  
19                  is a transit rich area.

20                  The second slide is you know, we're  
21                  implementing TDM. We've vetted this with DDOT  
22                  and we've identified that we want to identify RPP

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1       restrictions for 17 of our units, which is  
2       equivalent to our variance that we're asking  
3       for. And then the third point, which is the  
4       point that is almost unique to this project, is  
5       that there's actually a significant amount of on  
6       street parking that's available.

7                   So you know, the first two are  
8       basically elements of the existing project in  
9       the neighborhood, that we're taking advantage  
10      of. People will move here because it's a  
11      vibrant neighborhood, it's a growing  
12      neighborhood. The street car is there. And  
13      for those that might want to park, well guess  
14      what, they can actually park on the street,  
15      because there's available parking along there.

16                  In addition to that, we've looked at  
17      the local commuting demographics. The site is  
18      located on the border of two census tracts. And  
19      within those two census tracts, we've identified  
20      that only 39 percent of the people don't own a  
21      car. So of all the households in that census  
22      tract --

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1                   CHAIRMAN JORDAN: Say that again.

2                   MR. ANDRES: 39 percent of the  
3 people don't own a car. 39 percent of the  
4 households that were surveyed, do not own a car.

5                   CHAIRMAN JORDAN: Okay.

6                   MR. ANDRES: So close to four out of  
7 ten residents in that area -- four out of ten  
8 households in that area do not own a car. In  
9 addition to that, we've also looked at the census  
10 and identified that for people going to and from  
11 work, 50 percent do not drive. Many of them  
12 either take transit, walk, bike. So half of the  
13 residents in that census tract in that area do  
14 not drive to work.

15                  CHAIRMAN JORDAN: When was that  
16 census tract information taken?

17                  MR. ANDRES: The census tract, the  
18 latest census, I am going to have to get you the  
19 details on that. But it is a, it's the latest  
20 census, which I guess is 2010?

21                  CHAIRMAN JORDAN: 10, it would have  
22 been 10.

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1 || (Off mic comments)

2 CHAIRMAN JORDAN: I just need to  
3 know where his data is coming from.

4 MR. ANDRES: Yes, absolutely.

5 CHAIRMAN JORDAN: I just need to  
6 know where the data is coming from.

7 MR. ANDRES: Yes. And so in those  
8 instances, and if anything, with the emerging H  
9 Street neighborhood, I wouldn't be surprised if  
10 some of those you know, in the next census in  
11 about 2020, you know, some of those demographics  
12 will probably change for more transit.

13                   If you have any questions, I'm  
14 available for questions. Oh, actually I'm  
15 sorry, two other items, I'm sorry, I didn't mean  
16 to cut this short.

So we believe that DDOT in

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1 supporting the Office of Planning and the Office  
2 of Zoning in preparing the draft rewrite,  
3 recognized that the parking requirements for  
4 this part of H Street are outdated. So they're  
5 looking to address that in the new rewrite. And  
6 we believe that because of that we believe that  
7 we have justification for this variance. Thank  
8 you.

9 VICE CHAIR ALLEN: Thank you Mr.  
10 Chairman. Mr. Andres, thank you. I don't  
11 quite understand RPP restrictions for 17 spaces.  
12 I know that you're planning to do eight, correct?  
13 Of the 25?

14 MR. ANDRES: Yes. The requirement  
15 is 25 spaces.

16 VICE CHAIR ALLEN: Right.

17 MR. ANDRES: So we're providing  
18 eight, so we're short 17. So what we're saying  
19 is that we're implementing RPP restrictions for  
20 17 of the units, so that they don't get -- so that  
21 they're not in RPP mix.

22 CHAIRMAN JORDAN: How is that

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1 enforceable? How is that managed?

2 MR. ANDRES: Well, it would have to  
3 be managed internally. Just like many of the  
4 other RPP restrictions, where the property owner  
5 would keep track of those 17 that don't get them.

6 MEMBER COHEN: They have to  
7 register also their building, don't they?

8 MR. ANDRES: Well no, because we  
9 have -- because DMV and DDOT aren't necessarily  
10 integrated, many of these RPP restrictions as  
11 Chairman Jordan knows, they can't be -- they  
12 can't be taken off of the DMV rolls for RPP. So  
13 what typically happens is there are lease  
14 restrictions, or certain restrictions that have  
15 to be monitored.

16 CHAIRMAN JORDAN: And that's why  
17 I'm talking about the management of it.

18 MR. ANDRES: Yes.

19 CHAIRMAN JORDAN: Because you know,  
20 we hear this a lot also.

21 MR. ANDRES: Yes, absolutely.

22 CHAIRMAN JORDAN: And now -- and

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1       it's probably even easier to do a whole building  
2       as opposed to the hearing you say we're going to  
3       let some go and some not go because it requires  
4       the government then to try to -- as we've talked  
5       in some other cases, the government to try to  
6       monitor and be in support and you requesting  
7       information. And so it's the management, I'm  
8       just trying to get to that.

9                    MR. ANDRES: And we completely  
10      understand. And actually we thought of this.  
11      So you know, based on your previous comments in  
12      other hearings, we've actually FOIA'd some of  
13      the other buildings --

14                    MS. MOLDENHAUER: And we've got a  
15      copy --

16                    CHAIRMAN JORDAN: They will give it  
17      to you by FOIA?

18                    MS. MOLDENHAUER: Back in November  
19      I think -- I've had other cases before you. We  
20      thought that you may have some questions. And  
21      so we actually -- our firm provided FOIA requests  
22      to DDOT and DMV, and we are providing copies of

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1 this.

2 CHAIRMAN JORDAN: And they were  
3 responsive, FOIA, in regards to who has?

4 MS. MOLDENHAUER: They responded  
5 within -- yes. It would be provided  
6 information. And we asked just general  
7 information obviously at this time. But you can  
8 see one, the FOIA request goes to two issues.  
9 One it goes to confirming the census bureau,  
10 because we FOIA'd for four properties.

11 And out of those four properties,  
12 some of them had actually zero registered cars  
13 to those addresses. And those are actually  
14 large apartment buildings. One's the Delta  
15 Sigma building which is on the corner of Florida  
16 and Bladensburg, which is about a five story  
17 building.

18 So it shows that one, there are not  
19 as many owned cars or registered cars in the  
20 area. Two, it goes to the point that an owner,  
21 whether it's managed, leased and property  
22 managed can request a FOIA request on a regulated

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1 basis, which is regulated by a covenant and an  
2 order given by potentially this Board.

3                   And they can ask for FOIA  
4 information for their building and say how many  
5 units and what units are currently registered  
6 for RPP. And then they would be able to go and  
7 manage that on a month to month, or a yearly  
8 basis, and potentially indicate that either a  
9 tenant is in violation of a lease, or if it is  
10 a condominium, it would be part of their bylaws.

11                  And part of the fiduciary duties of  
12 the board of directors to maintain this type of  
13 internal management to then request that  
14 information on a regulated period of time. And  
15 then to implement that either via fines or via  
16 indicating that a unit owner is in violation of  
17 the covenant and potentially even for the board  
18 to address their concerns about enforcement.

19                  This would be a covenant that would  
20 be recorded on the records. So obviously if you  
21 had a mortgage and you had a condominium unit  
22 here, this would then be potentially informed to

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1 the mortgage company, and the mortgage company  
2 would then contact the unit owner indicating  
3 that they're in violation of rules and covenants  
4 that their mortgage agreement is required.

5 So we have kind of thought about this  
6 in regards to enforcement. And we do think that  
7 unfortunately, DDOT's and DMV's enforceability  
8 and kind of their looking forward into this being  
9 I think a great TDM process in the future, is  
10 limited right now.

11 And so instead of limiting it by  
12 block, we feel that you know, owners can, and  
13 we're suggesting I think, a great way to be able  
14 to enforce this and provide opportunities for a  
15 project to move forward and have a restriction  
16 for RPP. And have it enforceable in a way that  
17 the Board should feel confident in its process.

18 CHAIRMAN JORDAN: Yes, I hear all  
19 that. One, you said something about that the  
20 Board would issue an order?

21 MS. MOLDENHAUER: If the Board  
22 issues an order, and part of their conditions are

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1 to put a covenant on the building, that would be  
2 one of the mechanisms for being able to restrict  
3 RPP on the building. And obviously that  
4 covenant --

5 CHAIRMAN JORDAN: Oh, yes, yes,  
6 okay. I thought you said that -- I thought you  
7 were using a term for us issuing an order that  
8 would require DMV to be response to it. Okay,  
9 that's what I --

10 MS. MOLDENHAUER: Absolutely not.  
11 We have found, and we have proven by doing our  
12 own FOIA request back in November, that we can  
13 get this information. And owner can request  
14 this information and we would be able to have the  
15 authority to put in a FOIA request.

16 CHAIRMAN JORDAN: I see by the  
17 letter there is a limitation. They are given it  
18 by the building.

19 MS. MOLDENHAUER: It was also part  
20 of -- I mean we did this kind of in -- with, in  
21 foresight so nothing's perfect. They actually  
22 responded back saying that they need actually

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1 for us to request documentation. That they  
2 provided that information to us in writing,  
3 answering questions. But rather FOIA requests  
4 for DMV is actually more based on documentation.

5 So we would be able to ask a FOIA  
6 request and say, provide us documentation on RPP  
7 registration at this location. And then they  
8 would be able to provide us physical documents.  
9 And that's how the FOIA requests, as we  
10 understand it with DMV, work.

11 And so obviously, the information is  
12 available, and it would be provided. This  
13 actually was provided within I believe, like  
14 less than ten days. So it's a process that can  
15 be done.

16 CHAIRMAN JORDAN: I see -- I don't  
17 see that in your letter. And I'm not -- I'm glad  
18 we're doing something. I'm glad we're trying to  
19 get our arms around this finally. But I don't  
20 see that in your letter. In fact their letter  
21 is saying that they don't -- they're doing this  
22 as a courtesy. They don't normally answer

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1                   questions.

2                   And then I'm wondering how much  
3                   information they would give You. Would you know  
4                   that John Smith in Unit 1254 actually has a  
5                   parking? I guess that's another level, but I'm  
6                   just -- that's just a question.

7                   MS. MOLDENHAUER: They did say they  
8                   don't answer questions, but they would provide  
9                   documents. So my response to -- I think if you  
10                  read further on. They say they will not answer  
11                  question, but they will provide documentation.

12                  CHAIRMAN JORDAN: Not in this  
13                  letter. Am I missing it? Not in the one that  
14                  you gave us. Maybe I'm missing it so. Maybe  
15                  there's another letter.

16                  It says it's only required to  
17                  release records under FOIA, is that what you  
18                  mean? Okay. But what the records say --

19                  MS. MOLDENHAUER: So if they had  
20                  records of each individual unit owner  
21                  registering, and that's a record, registering  
22                  for RPP --

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1                   CHAIRMAN JORDAN: You've talked  
2 them -- you've talked to them, that's what they  
3 said, they would give you --

4                   MS. MOLDENHAUER: If the record,  
5 yes. That they are required by FOIA to release  
6 the records. They are not required to answer  
7 the questions. So adding up the two different  
8 records to say two cars are registered at 1400  
9 Florida was them having to kind of do the work  
10 for us. By adding those two different records  
11 and saying it's two in answering the question.

12                  They won't answer questions, but  
13 they would provide us with a stack of records for  
14 your building and saying here's your records.  
15 You find out who -- which units registered and  
16 which unit's not. But obviously that's -- that  
17 would be on the onus on the owner. And that's  
18 what we're saying.

19                  CHAIRMAN JORDAN: Okay. But this  
20 is a step in the right direction, certainly for  
21 us to understanding getting that information.  
22 I'm not there 100 percent with what you're

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1 saying, because I just haven't seen it. But at  
2 least it's a great step going there. This is  
3 more than what we've had. And people doing this  
4 pie in the sky kind of stuff. But that's --  
5 anyway.

6 MEMBER COHEN: Thank you Mr.  
7 Chairman. I am less concerned about the parking  
8 in this particular neighborhood than I am about  
9 the FAR and the building height. A question on  
10 the FAR. With IZ, You're getting an FAR of  
11 three. But I haven't seen evidence in my  
12 record, I'm not saying that it's not in theirs,  
13 of which units will be IZ units that you're  
14 designating.

15 And I obviously assume that you know  
16 it's required that they be similar to, and spread  
17 throughout the building. And so I would ask  
18 that you submit the identification of those  
19 units.

20 CHAIRMAN JORDAN: Were you asking a  
21 question, or are you just want to make a --

22 MEMBER COHEN: Well I'm asking them

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1 to you know, identify the units. So it's really  
2 a comments.

3 MS. MOLDENHAUER: That's fine. I  
4 mean typically we identify units during the  
5 construction phase in part of the construction  
6 drawings. But if the Board is asking for those  
7 to be submitted now, we can definitely provide  
8 that.

9 MEMBER COHEN: I'm using my zoning  
10 commission experience I presume. So we get it  
11 during you know, --

12 CHAIRMAN JORDAN: It's if -- it's  
13 what this Board's asking for is -- it's not  
14 anything that's set in stone. She's asking for  
15 it please, that's not the -- okay.

16 MEMBER COHEN: Okay.

17 MS. MOLDENHAUER: It will be  
18 provided.

19 MEMBER COHEN: Thank you. On the  
20 height issue. You're really asking for 55 feet,  
21 but when you have the trellis on any building,  
22 the appearance is even higher than what you're

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1 requesting. And I did notice on one of the  
2 drawings that you are setting back the -- where  
3 the people are standing on the roof. That is a  
4 set back. It looks closer to the edge of the  
5 building, and then there's the overhang.

6 And I would suggest that you go back  
7 to the drawing board on that, because it makes  
8 the building look higher. I may not have a  
9 problem with giving you extra height, but I do  
10 based on this drawing, because it really exceeds  
11 in appearance, 55 feet. And I under --

12 CHAIRMAN JORDAN: No, I'm just --

13 MEMBER COHEN: Okay. And you know  
14 I do understand some of the economic issues that  
15 you're bringing up with regard to marketability  
16 of the retail space and the fifth floor need.  
17 But again, I really feel -- and I know there are  
18 some trellis on H Street. And I know that's your  
19 sort of compatibility. But I'm not comfortable  
20 at all with the sight lines appearing higher.

21 MR. SCHNECK: I would agree to take  
22 it off just to sort of explain to you my, sort

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1 of stylistic thing that we're going for here is  
2 sort of an art deco style. And art deco, a lot  
3 of art deco buildings are sort of emphasized by  
4 horizontality. And so that was sort of the  
5 intention of that.

6                   However, I do understand. It is an  
7 element that helps signify height. So we can  
8 definitely take it off. But just to give you an  
9 idea, that was the intention of why we had it on  
10 there.

11                  MEMBER COHEN: Or you can do  
12 something to it to just make it --

13                  MR. SCHNECK: Do other things to  
14 emphasize the horizontality.

15                  MEMBER COHEN: Yes. Exactly.

16                  CHAIRMAN JORDAN: And I'm not  
17 understanding how you're saying that the fire  
18 station is creating a condition that you cannot  
19 meet the zoning regulations. I'm not  
20 understanding that argument.

21                  MS. MOLDENHAUER: We believe it's a  
22 confluence of factors here. It's not one --

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1                   CHAIRMAN JORDAN: I understand, but  
2 I'm asking why are you inserting that and how  
3 that effects. I can understand the set back and  
4 et cetera, the building line set back.

5                   MEMBER COHEN: I'll kind of walk  
6 through it. One, a fire station is not  
7 unfortunately, as we've learned from this  
8 project. A fire station is not a fire station.  
9 This is the single most utilized fire station in  
10 the United States.

11                  So that does have a differential  
12 factor. It's not just you know, the fire  
13 station in one area versus another area. It's  
14 actually one of the most utilized fire stations  
15 and that creates obviously noise and a higher  
16 degree of noise and a higher degree of --

17                  CHAIRMAN JORDAN: But aren't the  
18 other buildings around that effected in the same  
19 way?

20                  MS. MOLDENHAUER: There are  
21 actually there's no residential buildings other  
22 than single family homes, they're further away

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1 on Orin, that are similar. And the properties  
2 on Florida Avenue are actually -- there's a berm  
3 that goes on the other side of Florida Avenue,  
4 so they're actually higher up and they're pulled  
5 away more.

6 So what we're talking about is we're  
7 talking about the practical difficulty for the  
8 owner to build a beautiful new building and with  
9 a corner retail on this location. And in order  
10 to do that, there is a challenge obviously for  
11 the owner for marketability, and for those  
12 units. And the cost associated with taking  
13 certain steps to insure that they can reduce the  
14 noise and lights that are going to be generated  
15 from the fire station.

16 Obviously it's not going to be 100  
17 percent solved, but it's a reduction in that that  
18 are going to go into additional costs for  
19 windows. Additional costs for those aspects,  
20 and probably reduce marketability for those  
21 units that are facing Orin. Which then  
22 obviously goes towards the factor of being able

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1 to locate more units on the top and further away.

2                   And so that's where by providing the  
3 additional height, and if we have a 14 floor to  
4 ceiling on the first floor, our residential  
5 units on the second floor are, while not  
6 significantly, are slightly removed further  
7 from the ground floor noise. And then by  
8 providing the additional height, one of the  
9 multiple factors is the additional height  
10 providing it further away.

11                  And as our architect already  
12 testified, if we do not obtain the additional  
13 FAR, we wouldn't be able to do an entire fifth  
14 floor because of the fact that you would not have  
15 an efficient layout. And the cost to build --

16                  CHAIRMAN JORDAN: But you could do  
17 four floors?

18                  MS. MOLDENHAUER: You could do four  
19 floors. But obviously again, You're not the --  
20 you are permitted the height -- 50 feet typically  
21 permits you five floors. And so if you're  
22 saying here that with the 50 feet requirement,

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1 you're not able to get the five floors that are  
2 typically permitted, it creates a practical  
3 difficulty for the owner in order to try to get  
4 that additional fifth floor.

5                   And so they need just that  
6 additional five feet in order to ask for that  
7 relief. In order to provide the balance of  
8 marketability for units that are further away  
9 from both the noise of the fire station and the  
10 noise of the busy street from Florida. There's  
11 a lot of traffic that comes down Bladensburg, up  
12 H from you know, from Maryland and over the  
13 bridge, that comes down that street.

14                   And so it's -- these are factors  
15 obviously I think all together, that create the  
16 practical difficulty, one, alone I don't  
17 believe, obviously is enough to satisfy the  
18 standard, even though this is a request for de  
19 minimus relief. And we just go quickly, I'm  
20 just going to jump here down to Gilbert, which  
21 indicates that you know, in a case for de minimus  
22 relief, we're talking about you know, five feet

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1 in height.

2                   And we're talking about being .5 FAR  
3 where the corresponding lesser degree of burden  
4 would potentially be applied to an applicant  
5 when requesting de minimus relief. And so we  
6 would encourage the board to look at this under  
7 the Gilbert standard. And to look at that also,  
8 the Court of Appeals indicated that the weight  
9 of the burden for strict application, the  
10 severity of the variance here, which we believe  
11 is low. And then the request the proposed  
12 variance would have an overall on the overall  
13 zone plan.

14                   This case, I think uniquely, talks  
15 about the overall zone plan. They don't talk  
16 about the zoning regulations in this case. They  
17 say the zone plan. And I think here, we have  
18 another very unique situation where the  
19 comprehensive plan would allow this, once and if  
20 it's put into effect. And we understand that  
21 that's something that would be in the future.

22                   And we also have a zoning rewrite

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1 which is going on, which as Erwin testified, if  
2 that is in place, as it currently exists. I know  
3 that there's going to be a lot of edits and  
4 changing to that. But if it were put into place  
5 right now, the eight units, parking spaces that  
6 we're providing, would also be as a matter of  
7 right.

8 So we have a very I think unique  
9 aspect when you're looking especially at the  
10 Gilmartin case and the three standards that they  
11 kind of outline for this type of --

12 CHAIRMAN JORDAN: What about Badbar  
13 and Taylor and the other cases that talk about  
14 alternatives, even on the area variances and  
15 possible other uses that may not require that  
16 amount of relief?

17 MS. MOLDENHAUER: We don't  
18 Obviously You know, there are -- we talked about  
19 other potential --

20 CHAIRMAN JORDAN: And each one  
21 stand on their own merit as you know. So using  
22 those cases as I've just given you some others,

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1 which might stand opposite, is every case stands  
2 on their own bottom. Right?

3 MS. MOLDENHAUER: Oh, absolutely.  
4 But obviously, what we're doing is we're trying  
5 to present a case that we think you know, will  
6 help the Board see how this applicant has  
7 satisfied the standard and satisfied the degree  
8 of relief.

9 Let me just -- does any Board have  
10 any other questions, that they kind of walk  
11 through, or we can at least go to other Board  
12 questions and then I can --

13 CHAIRMAN JORDAN: Sure, please.

14 VICE CHAIR ALLEN: Thank you Mr.  
15 Chairman. I have two questions. Commissioner  
16 Cohen had asked about the IZ designations. I  
17 just wanted to know how many? I mean are you --  
18 I mean how many are like ADU units, or do you  
19 plan? Or have you planned for that?

20 MR. GORMAN: Sure, so it's ten  
21 percent of the GFA, which is the gross floor  
22 area. This building is 41,000 square feet, give

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1 or take. So about 4000 square feet will be  
2 dedicated towards the inclusionary zoning  
3 units.

4 And then it's just -- it's how it  
5 works out with the unit mix. But we anticipate  
6 it being between four and five units.

7 CHAIRMAN JORDAN: And what percent  
8 mean?

9 MR. GORMAN: My understanding it's  
10 split evenly between the 50 and the 80 AMI.

11 CHAIRMAN JORDAN: So You're doing  
12 50 and 80?

13 MR. GORMAN: That's correct.

14 VICE CHAIR ALLEN: Okay, thank You.  
15 And then Ms. Moldenhauer, I was a little confused  
16 about -- I'm still confused about this whole 17  
17 percent, or these 17 units and RPP. And I don't  
18 want to belabor it, but You had mentioned sort  
19 of a scenario where it would be a covenant and  
20 then the mortgage companies would look at it.

21 But actually it's more of a title,  
22 which obviously I know a lot about. It's more

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1 of a title issue, and I can't understand how,  
2 speaking certainly as a title person, how the  
3 title company would be able to determine with  
4 where, or anything else, which units actually  
5 are using the parking spaces. So then I just  
6 question that whole scenario of why you would put  
7 it on as a covenant, or why you would suggest that  
8 I guess.

9 MS. MOLDENHAUER: Okay. Well  
10 unfortunately right now the way that DDOT and DMV  
11 regulations are written, the government  
12 agencies that we work under only have the ability  
13 to block, or restrict RPP by a block. And if you  
14 have a residential unit already on the block,  
15 which exists here, then they cannot do that.

16 So when we're in a situation where  
17 they would not be able to block RPP here. So the  
18 question is, is there a methodology or an option  
19 for an owner to put a restriction on themselves.  
20 And so our offer, or proposal here would be to  
21 record a covenant against the property, against  
22 the land records, that would restrict and let any

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1 further owner know that certain units, we'd  
2 actually identify the individual unit, so it  
3 would be unit, you know 203, unit 303,  
4 identifying 17 units, that would be restricted  
5 from RPP.

6 VICE CHAIR ALLEN: Okay, you didn't  
7 -- You actually didn't make that point clear  
8 before.

9 CHAIRMAN JORDAN: But we've done  
10 that several times. This Board has done this  
11 several times. Even when you've been sitting,  
12 so yes.

13 VICE CHAIR ALLEN: Okay, I'm fine.  
14 You had just -- I thought you were just doing a  
15 general covenant.

16 CHAIRMAN JORDAN: In fact we've  
17 required it. Anytime we've actually required  
18 it to happen, if we bought into the RPP  
19 restrictions, we've --

20 VICE CHAIR ALLEN: But by unit makes  
21 sense though.

22 CHAIRMAN JORDAN: Yes and I think

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1 that becomes a --

2 VICE CHAIR ALLEN: Okay.

3 CHAIRMAN JORDAN: Management issue  
4 if you try to do it per unit unless they're  
5 condos.

6 MS. MOLDENHAUER: If they're  
7 condos, then obviously as I was saying, the  
8 obligation to provide checks and balances would  
9 be a fiduciary obligation that would be a part  
10 of the board of director's obligation, which  
11 would be recorded in the bylaws and the  
12 declaration for the condominium.

13 If it was an apartment building,  
14 then obviously the owner would have the covenant  
15 restriction on the property as well. And it  
16 would be their duty to comply with the covenant  
17 as it's deemed and whether there is a year to year  
18 check as we've said, requiring FOIA checks for  
19 that.

20 Again, we're trying to provide  
21 responses to questions the Board has had and how  
22 can this be enforced. And I think that we've

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1       been trying to get our arms around this. To say  
2       that you know while there are certain  
3       restrictions administratively from the  
4       agencies, we think that there are ways that can  
5       hopefully satisfy the Board in individual  
6       process.

7                   VICE CHAIR ALLEN: Thank you.

8                   CHAIRMAN JORDAN: and this is  
9       nothing new. We talk about this stuff all the  
10       time as you know. We've gone probably every  
11       docket we have, we have at least probably three  
12       cases, we're having the same discussion about.  
13       And I just don't know who can come up with the  
14       best mousetrap. I'm still not sold on a lot of  
15       it. It's certainly encouraging what you gave  
16       today. I mean because we didn't even know if a  
17       building owner could get that information.

18                   But then you know like last week as  
19       we had in an opposed matter, counsel raised a  
20       very good question, well what about the friends  
21       and guests who are going to come visit and all  
22       that kind of stuff. So it's just a crazy -- I

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1       don't know you -- whoever can come up with the  
2       solution for an urban area, a dense urban area,  
3       they can do quite well.

4                   But understand, we understand where  
5       you are. Any other questions we have for this  
6       Applicant?

7                   (No response)

8                   CHAIRMAN JORDAN: My computer just  
9       decided to reboot itself, so got me at a loss  
10      there.

11                  MS. MOLDENHAUER: I have not had a  
12       chance -- I would like to kind of walk through  
13       some of this, but I think what we can do is I can  
14       hold off walking through some of the additional  
15       legal, kind of piece milling everything together  
16       for a final conclusions rather. And allow us to  
17       go to OP and walk through the rest. And then I  
18       think that might be a more appropriate time to  
19       provide a conclusion, if the Chair is okay with  
20       that.

21                  CHAIRMAN JORDAN: Yes, because that  
22       in fact is what I would prefer to do. Because

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1 then as you know, OP has not been supportive of  
2 some of your relief and we need to -- and it gives  
3 you the opportunity in rebuttal to deal with it.  
4 And if we could. So let's turn to OP please.

5 MS. VITALE: Good afternoon Mr.  
6 Chair, members of the Board. Elisa Vitale with  
7 the Office of Planning.

8 While OP actually does support the  
9 requested parking relief, we cannot request  
10 support the request for height and FAR. The  
11 property is located in the C-2-A zone. And 50  
12 feet of height and 3.0 FAR with IZ is  
13 permissible, so we feel like this property could  
14 be developed as a matter of right.

15 With respect to the H Street Arts  
16 overlay, while there was, I guess some  
17 misunderstanding as to whether or not the  
18 property was in the overlay, it is in fact not  
19 located in the overlay. The comp plans speaks  
20 to a potential to develop an Arts District along  
21 the eastern end of Florida Avenue. That you  
22 know, has not yet happened. And is not yet

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1 underway.

2                   So we didn't believe that was you  
3 know, a valid case on you know for the  
4 Applicant's argument here. I do understand  
5 that there was some rezoning done at the eastern  
6 end of Florida Avenue where it comes in near the  
7 starburst intersection.

8                   There were some C-3-A lots that were  
9 rezoned. And those were rezoned because they  
10 abutted the overlay and other commercial  
11 properties. The properties on Florida, like  
12 the subject property that are C-2-A and abutting  
13 residential, You know weren't contemplated as  
14 part of that rezoning that was done earlier.

15                   Otherwise I think the staff report  
16 lays out OP's position. I'm happy to answer any  
17 questions.

18                   CHAIRMAN JORDAN: Sure, please.

19                   MEMBER COHEN: Thank you Mr.  
20 Chairman. How far exactly is this particular  
21 site from the overlay itself? A block? 200  
22 yards? A mile?

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1                   MS. VITALE: I think actually if you  
2 look at the Applicant's submittal on tab nine,  
3 this would be the Applicant's original  
4 submittal, they have provided an extract of the  
5 zoning map. So you can see, it's approximately  
6 a block I would say. And that includes across  
7 you know, Florida Avenue.

8                   MS. MOLDENHAUER: I just pulled up  
9 the image on here. It's actually just -- it's  
10 catty-corner. So this is the Arts overlay, and  
11 this is the block right here.

12                  MEMBER COHEN: I would presume that  
13 again, if this building goes as of right, some  
14 of the developments will not number one, make the  
15 project marketable, such as the retail. Does  
16 that give the Office of Planning any concern?

17                  MS. VITALE: I'm not sure I  
18 understand your question.

19                  MEMBER COHEN: In order words, we  
20 often encourage projects to have 14 foot height  
21 ceiling. This would not be able to be  
22 accomplished in this project if it went as of

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1 right.

2 MS. VITALE: I don't know that we've  
3 heard that. I think You could still do a 14 foot  
4 ceiling, you just might lose a floor of  
5 residential. You might lose it off the top  
6 versus losing that 14 foot retail ceiling.

7 MEMBER COHEN: But -- okay. I  
8 guess you know I look at these, and I know that  
9 it's probably above and beyond the call of duty,  
10 but there are some very strong market based  
11 arguments. And I think that that goes to the  
12 difficulty in actually designing this building,  
13 and the de minimus, have we ever really looked  
14 at the modifications as being very minor, and  
15 therefore not having a great impact on you know,  
16 the plan itself, the comprehensive plan or  
17 anything to that nature?

18 MS. VITALE: Well --

19 MEMBER COHEN: Or did you take that  
20 into consideration?

21 MS. VITALE: In drafting the  
22 reports, OP evaluates the applications against

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1 the review criteria. And so that is how our  
2 analysis is conducted.

3 MEMBER COHEN: Thank you.

4 CHAIRMAN JORDAN: Any other  
5 questions?

6 (No response)

7 CHAIRMAN JORDAN: So you believe  
8 alternatively there are some of the alternatives  
9 within the zoning regulations that will allow  
10 this to be -- this building could be done?

11 MS. VITALE: Correct.

12 CHAIRMAN JORDAN: Okay. Well I --  
13 well that's -- anyway, okay. Does the Applicant  
14 have questions of OP?

15 MS. MOLDENHAUER: Just one or two  
16 kind of following on Marcie Cohen's question.  
17 Are aware that the ANC was encouraging and  
18 requested community based retail for the site?

19 MS. VITALE: I have not seen an ANC  
20 letter, and just heard from them via an email  
21 that they supported the project. So no, I was  
22 not aware of a neighborhood desire specifically

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1 for commercial.

2 MS. MOLDENHAUER: And does OP value  
3 adaptive reuse of facades versus demolishing a  
4 facade that could potentially be used and  
5 re-utilized on the site?

6 MS. VITALE: Certainly we would  
7 encourage You know, adaptive reuse. I  
8 understand that one of the proposals here was to  
9 preserve the existing facade. I think a  
10 statement was made in the application that that  
11 was You know again, based on sort of provisions  
12 that were in the H Street Art overlay.

13 Again, because this property isn't  
14 in that overlay, we didn't believe that  
15 preservation of that facade was a factor that  
16 contributed to a particular you know,  
17 difficulty, or you know, made a case for the  
18 relief requested in this application.

19 MS. MOLDENHAUER: But as a policy,  
20 OP's actually supported a comprehensive plan to  
21 extend it to that area. So as a policy that you  
22 would see in the future, a benefit to that.

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1                   MS. VITALE: Well as I mentioned, I  
2 think the comprehensive plan language isn't  
3 specifically extension of the H Street Arts  
4 provision specifically, but it's looking at  
5 developing an Arts District in this area. So I  
6 can't speak to what that potential future  
7 overlay might include.

8                   MS. MOLDENHAUER: And you had  
9 indicated just for the record that you are in  
10 support of the parking relief?

11                  MS. VITALE: That's correct.

12                  MS. MOLDENHAUER: And then it's not  
13 that OP is in denial of the other two reliefs,  
14 rather they just cannot support.

15                  MS. VITALE: That's correct. Our  
16 report states that we cannot support the FAR and  
17 height requests.

18                  CHAIRMAN JORDAN: I --

19                  (Off mic comments)

20                  CHAIRMAN JORDAN: Any other  
21 questions of OP?

22                  MS. MOLDENHAUER: No, not at this

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1 time, thank you.

2 CHAIRMAN JORDAN: Okay. I lost my  
3 -- do we have a Department of Transportation  
4 report? I think it was in support of the  
5 application if I remember correctly. And I'm  
6 still having a computer problem here. It just  
7 decided it was going to go to sleep on it's own.  
8 Not sleep, sleep, I mean really will not reboot.

9 Yes, they had no objection. And we  
10 don't have a letter from ANC, ANC correct?  
11 We're still ANC out?

12 MR. MOY: That's correct sir.

13 CHAIRMAN JORDAN: Okay. Is there  
14 anyone here wishing to testify in support of this  
15 application?

16 (No response)

17 CHAIRMAN JORDAN: Anyone wishing to  
18 speak in opposition?

19 (No response)

20 CHAIRMAN JORDAN: Then let's turn  
21 back to the Applicant. One of the things that  
22 -- the only financials that I see in here

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1       regarding what's necessary to take care of the  
2       contamination, et cetera, et cetera, but I don't  
3       see any other arguments that are made  
4       financially that this project can go or can't go.  
5       I didn't see any comparables in this file.

6                   Did I miss it, because I didn't see  
7       it?

8                   MS. MOLDENHAUER: You definitely  
9       did not miss it, it's not there. We felt that  
10       the challenge in marketability was an overall  
11       issue and that was one of multiple factors. If  
12       we are given time to supplement the record, we  
13       can supplement the record in that regard.

14                  CHAIRMAN JORDAN: Because I didn't  
15       see that part. And I'm just thinking before  
16       this Board's going to be able to go forward, we  
17       need to see the marketing information, the  
18       financial information, because it's just that --  
19       because that is probably where your argument is.  
20       It's my understanding where this Board is.

21                  And without it, I don't know how  
22       successful you would be, and that's based upon

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1 the alternatives as you know how to present  
2 these. The alternatives as what else can happen  
3 within the regulation and be -- I mean, not be  
4 the opponent of OP, but OP certainly has their  
5 thoughts, and they talk about the alternatives,  
6 and it certainly within the realm of what we  
7 should be talking about, what can be done within  
8 the regulations.

9                   And I don't know if the burden  
10 doesn't really shift to OP, but OP is also kind  
11 of like a party in all these things. But having  
12 a real financial data just for us to take a look  
13 at the alternatives to see is there a feasibility  
14 even in some of the alternatives that might be  
15 able to happen within the zoning regulations.

16                   MEMBER COHEN: Yes, I just want to  
17 you know, add about a -- you know this is a  
18 bankable project as well. As of right versus  
19 asking for additional FAR and height.

20                   CHAIRMAN JORDAN: I'm sorry, did  
21 you ask a question, or are you making a -- are  
22 you saying is it a bankable project? Or --

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1 MEMBER COHEN: Yes, I was just --

2 CHAIRMAN JORDAN: Oh, she's ask --

3 oh, okay.

4 MR. GORMAN: I mean I can speak to  
5 that a little bit. Our feeling as the  
6 developers, we've built several similar  
7 buildings. This is what we do professionally.  
8 It is our opinion that we need this relief to make  
9 this a marketable successful project.

10 And without it, we don't think this  
11 is a financially feasible or successful project.  
12 We can definitely provide that information to  
13 the Board.

14 CHAIRMAN JORDAN: Okay. And see,  
15 that was something I meant to raise, I'm glad you  
16 did. You know the other issue, using the  
17 argument that you talked to the single member  
18 district and got an email back from someone from  
19 Planning, and you've done projects in the  
20 District before, so you know where to find the  
21 records, and where those things are. I'm just  
22 saying, and I heard that argument. But this is

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1 not your first project in the District.

2 MR. GORMAN: No I understand. And  
3 there was definitely uncertainty. And so I was  
4 just trying to do --

5 CHAIRMAN JORDAN: And you know  
6 really the place to get that from is DCRA and the  
7 zoning administrator, and everybody else.  
8 Isn't that right?

9 MR. GORMAN: That's right. We have  
10 met with Matt LeGrant on this project and asked  
11 him questions.

12 CHAIRMAN JORDAN: And he told you  
13 that this was in the overlay?

14 MR. GORMAN: So, we met with Matt  
15 LeGrant several months after we had already gone  
16 hard and negotiated the contract on the  
17 building.

18 CHAIRMAN JORDAN: You met with Matt  
19 LeGrant before on other projects?

20 MR. GORMAN: Yes.

21 MS. MOLDENHAUER: And I think that  
22 it goes, obviously it's one of the factors in

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1 regards to obtaining information and relying on  
2 that and obviously --

3 CHAIRMAN JORDAN: Counsel I'm very  
4 -- I understand the law, and I understand what  
5 your argument is. I understand you got a lot of  
6 different things. My questions are the  
7 questions I'm asking about what I want to ask.  
8 I understand completely what the law requires.  
9 I understand the confluence of factors.

10 So every question I ask, you really  
11 don't have to come back and say it's a confluence  
12 of factors. I understand that. I truly do.  
13 If I want to ask a question and have an answer  
14 to a question, then fine, I don't need you  
15 necessarily to defend it. You can do it -- I'm  
16 just saying I understand. And you know I  
17 understand that.

18 MR. GORMAN: Sorry.

19 CHAIRMAN JORDAN: Any other, does  
20 the Board have any other questions?

21 MEMBER COHEN: No.

22 CHAIRMAN JORDAN: Okay. Does

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1       counsel have anything else you want to present  
2       to the Board?

3                    MS. MOLDENHAUER: What I'd like to  
4       do then is since we -- it sounds like we're going  
5       to have a supplemental information. The  
6       question is would the Board like to defer this  
7       to another hearing, and then the Board could ask  
8       questions of similar information, or would you  
9       rather have a supplemental information with a  
10      written conclusion? And I can provide all of  
11      our conclusion remarks in writing?

12                  CHAIRMAN JORDAN: We can -- let's do  
13      this in a hybrid situation. We can make this --  
14      I don't know what dates we're looking at. One,  
15      because we definitely need to get the financials  
16      and the marketability and the feasibility issues  
17      with this project. There was something else  
18      -- well that would include the alternatives.

19                  I'm at a loss. The one thing about  
20      --

21                  MS. MOLDENHAUER: Not to interrupt  
22      your chain of thought, if we wanted to provide

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1 an expert on marketability and have someone in  
2 that profession come forward and testify --

3 CHAIRMAN JORDAN: Let's go ahead a  
4 do this, it's on the safer side, it's on the safer  
5 side. We'll continue this for a continuance  
6 hearing. It's on the safer side.

7 (Off mic comments)

8 CHAIRMAN JORDAN: But certainly,  
9 the materials beforehand please.

10 MS. MOLDENHAUER: Absolutely.

11 (Off mic comments)

12 CHAIRMAN JORDAN: What happened, I  
13 was actually pulled down our presenta -- their  
14 presentation from the online system, and  
15 something happened, and it just kicked off with  
16 a really negative -- my screen just lit up.  
17 Because it was going, it was trying to change  
18 from when you were changing from here. Because  
19 I was watching the line, because you can see it  
20 closer, see it closer, yes.

21 No actually I just went to the  
22 website, just like everybody else. And that's

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1       when it just started doing something really  
2       crazy. And then it kicked itself out and then

3       --

4                   So what dates are we looking for Mr.  
5       Moy?

6                   MR. MOY: If the Applicant can  
7       submit his supplementals in two weeks, which  
8       would be by January 28, the Board can actually  
9       continue this on February 4.

10                  CHAIRMAN JORDAN: If that's enough  
11       time for you?

12                  MS. MOLDENHAUER: That would be  
13       plenty of time, yes. So in two weeks, we'll file  
14       Our supplementals, and then we'll have a  
15       continuation on the eighth? The fourth?

16                  CHAIRMAN JORDAN: The fourth. The  
17       fourth of February.

18                  MS. MOLDENHAUER: And right now  
19       we'll be providing identification of the IZ  
20       units, discussing and obviously most likely  
21       removal, or modification of the trellis and the  
22       facade at that top floor. And then additional

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1 financial information, marketability aspects,  
2 and things of that fact.

3 CHAIRMAN JORDAN: Yes, feasibility  
4 of alternatives, yes.

5 MS. MOLDENHAUER: Thank you very  
6 much.

7 CHAIRMAN JORDAN: Good. Then that  
8 will conclude this particular hearing as it's  
9 continued to the February 4 is it?

10 MR. MOY: That's correct.

11 CHAIRMAN JORDAN: February 4, why  
12 is that sticking in my mind? February 4?

13 MS. MOLDENHAUER: Chairman Jordan  
14 can I ask one other question? Just for  
15 efficiency. Would you request that Mr. Erwin  
16 Andres be attending that hearing, or is that not  
17 necessary? Have we exhausted those questions?

18 CHAIRMAN JORDAN: I think I'm okay  
19 where we are on parking. And I don't know if the  
20 Board. I think we're okay, I mean on the data  
21 that you're going to provide and the other  
22 information okay. So we're good, yes.

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1                   MS. MOLDENHAUER: Thank you for  
2 that clarification.

3                   CHAIRMAN JORDAN: In fact we need to  
4 start just getting you a chair up in the -- Very  
5 good. So then we will -- this hearing's  
6 continued until that time. Thank you.

7                   You know one thing that we haven't  
8 also discussed as a Board -- Marcie -- Cliff,  
9 Marcie -- Cliff, Marcie listen.

10                  MEMBER COHEN: Oh, I'm sorry.

11                  CHAIRMAN JORDAN: One thing we also  
12 haven't discussed when we talk about these RPPs  
13 is that you can also get an associated visitors  
14 parking permit within those districts too.

15                  MEMBER COHEN: Yes, they're no  
16 longer automatic, except for people who are  
17 already registered. You have to actually get a  
18 renewal.

19                  CHAIRMAN JORDAN: No if you --  
20 they're backed up, but you still have to -- you  
21 can request them, so when we start having those  
22 kind of discussions.

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1                   Is there any other announcements we  
2                   need today?

3 MR. MOY: Not today sir.

4 CHAIRMAN JORDAN: Okay, then we  
5 will adjourn. Thank you. Thank you all.  
6 Appre -- oh, Wednesday, don't for -- our next  
7 hearing is scheduled, is that February 4  
8 Wednesday?

9 MEMBER COHEN: No.

10 CHAIRMAN JORDAN: Our next meeting  
11 is on a Wednesday though.

12 MR. MOY: Wednesday, January 29,  
13 Wednesday.

14 CHAIRMAN JORDAN: Okay, thank.  
15 All right. Our January 29 meeting is on a  
16 Wednesday, okay, thanks.

17 (Whereupon, the above-entitled  
18 proceeding was concluded at 12:20 p.m.)

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