

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 9, 2014

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:44 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
MARNIQUE HEATH, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MARCIE COHEN, Vice-Chairperson
ROBERT MILLER, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
STEPHEN MORDFIN
KAREN THOMAS
ELISE VITALE
MATT JESSICK

The transcript constitutes the minutes from the Public Hearing held on September 9, 2014.

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

<u>Application No. 18810 - Christopher Schriever</u>	7
<u>Presentation by the Applicant</u>	
Toye Bello	9
<u>Office of Planning Report</u>	
Karen Thomas	9
<u>Department of Transportation Report</u>	10
<u>ANC-1B</u>	10
<u>Testimony by Individuals in Support</u>	11
<u>Testimony by Individuals in Opposition</u> ...	11
<u>Vote to Approve</u>	11
<u>Application No. 18811 - Andrea Shinbach and Matthew Sheffer</u>	12
<u>Presentation by the Applicant</u>	
Jennifer Fowler	15
<u>Office of Planning Report</u>	
Stephen Mordfin	16
<u>Department of Transportation Report</u>	16
<u>ANC-6B</u>	16
<u>Testimony by Individuals in Support</u>	17
<u>Testimony by Individuals in Opposition</u> ...	17
<u>Vote to Approve</u>	18
<u>Application No. 18813 - Jemal's Holland, LLC</u>	18

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

<u>Presentation by the Applicant</u>	
Leila Batties	24
<u>Office of Planning Report</u>	
Matt Jessick	24
<u>Department of Transportation Report</u>	25
<u>ANC-6B</u>	25
<u>Testimony by Individuals in Support</u>	25
<u>Testimony by Individuals in Opposition</u> ...	25
<u>Vote to Approve</u>	26
<u>Application No. 18780 - Alexander</u>	
<u>Memorial Baptist Church</u>	29
<u>Presentation by the Applicant</u>	
Meredith Moldenhauer	33
<u>Office of Planning Report</u>	
Stephen Gyor	33
<u>Department of Transportation Report</u>	34
<u>ANC-2E</u>	34
<u>Testimony by Individuals in Support</u>	34
<u>Testimony by Individuals in Opposition</u> ...	34
<u>Vote to Approve</u>	35
<u>Application No. 18787 - 143 Rear W</u>	
<u>Street, LLC</u>	36
<u>Cross Examination</u>	
Victoria Lenard	80

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

<u>Cross Examination</u>	
Christopher Collins	105
<u>Application No. 18770 - &pizza</u>	118
<u>Presentation by the Applicant</u>	
Allison Prince	122
Steven Salis	126
<u>ANC-6B</u>	
Ivan Fishberg	130
<u>Office of Planning Report</u>	
Stephen Mordfin	139
<u>Department of Transportation Report</u>	150
<u>Testimony by Individuals in Support</u>	
Chris Floyd	150
<u>Testimony by Parties in Support</u>	
Linda Elliott	153
<u>Testimony by Individuals in Opposition</u> ..	159
<u>Closing Statement of the Applicant</u>	
Allison Prince	159
<u>Vote to Approve</u>	173
<u>Application No. 18803 - Christopher Ornelas</u>	176
<u>Presentation by the Applicant</u>	
Jennifer Fowler	180
<u>Office of Planning Report</u>	
Elise Vitale	181
<u>Department of Transportation Report</u>	181
<u>ANC-6B</u>	182

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

Testimony by Individuals in Support 182

Testimony by Individuals in
Opposition 182

Vote to Approve 182

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

2 9:44 a.m.

3 CHAIRPERSON JORDAN: All right.
4 Let's do this. Let's take -- call the first
5 case then, Mr. Moy, please.

6 MR. MOY: Okay. The first
7 application for a hearing is Application Number
8 18810 of Christopher Schriever and as
9 advertised, this is the Applicant's request for
10 a special exception under Section 223 for an
11 addition not meeting the lot occupancy
12 requirements under Section 403.

13 Also, Mr. Chairman, I believe that
14 in this record the plans before the Board is
15 Exhibit Number 32 which are revised plans.

16 CHAIRPERSON JORDAN: Okay. Thank
17 you.

18 Okay. Would you please identify
19 yourselves?

20 MR. BELLO: Good morning, Mr.
21 Chair. Toye Bello representing the Applicant.

22 MR. JONES: Patrick Jones.

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1 CHAIRPERSON JORDAN: Just make
2 sure your microphone is on.

3 MR. SCHRIEVER: Chris Schriever,
4 owner.

5 MR. PALMIERI: Edward Palmieri,
6 owner, applicant.

7 CHAIRPERSON JORDAN: All right. I
8 don't think there's any real question with
9 this. Let me ask this. It's very simple.
10 Before we kind of decide how we're going to
11 handle this.

12 Is this presently a flat or a single
13 family?

14 MR. BELLO: It's a flat, sir. It's
15 a two-unit building.

16 CHAIRPERSON JORDAN: Okay. So,
17 it's going to remain a flat.

18 MR. BELLO: That's correct.

19 CHAIRPERSON JORDAN: Okay. That
20 was just -- we were unclear by a couple of
21 things. I guess something in between what was
22 in your application and the OP report, but I'm

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1 clear.

2 Board, is there any issues we have
3 with this application? I think it's pretty
4 straightforward.

5 Mr. Bello, so, I think we can
6 proceed unless you think you need to give a
7 presentation, but we believe that the file is
8 sufficient to grant the relief already
9 requested subject to any other testimony.

10 MR. BELLO: We're glad to stand on
11 the record, sir.

12 CHAIRPERSON JORDAN: Then, we will
13 turn to -- Board, any questions? Any? Well,
14 then we will turn to the Office of Planning.
15 See if Ms. Thomas has anything in addition that
16 she would like to add to the report.

17 MS. THOMAS: Nothing in addition.
18 Good morning, Mr. Chairman, Members of the
19 Board. Karen Thomas with the Office of
20 Planning.

21 Nothing in addition. Just to
22 clarify that we were, too, confused if it was

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1 an existing flat or single-family dwelling and
2 we are happy it's a flat. No. No issues.

3 CHAIRPERSON JORDAN: Okay. Thank
4 you.

5 MS. THOMAS: Thank you.

6 CHAIRPERSON JORDAN: Board, any
7 questions for Office of Planning? Applicant,
8 any questions for Office of Planning?

9 MR. BELLO: No, sir.

10 CHAIRPERSON JORDAN: Anyone here
11 from the Department of Transportation?
12 Department of Transportation?

13 We do have a report from the
14 Department of Transportation in support of the
15 application.

16 Is anyone here from ANC-1B? Anyone
17 from ANC-1B?

18 Do we have a letter from ANC-1B? I
19 don't think the file consists of one.

20 MR. MOY: No, sir, it's still not in
21 the record.

22 CHAIRPERSON JORDAN: Okay. Is

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1 there anyone here wishing to speak in support
2 of the application? Anyone wishing to speak in
3 support?

4 Anyone wishing to speak in
5 opposition? Anyone in opposition?

6 Then we will -- we normally turn
7 back to the Applicant for any rebuttal and
8 closing, but there's nothing to rebut.

9 So, we'll just close the hearing
10 based upon the record submitted by the
11 Applicant.

12 I would move that we grant the
13 request for relief under 18810.

14 MEMBER HINKLE: Second.

15 CHAIRPERSON JORDAN: Motion made
16 and second. Any further discussion?

17 All those in favor of the motion
18 signify by saying aye.

19 (Ayes.)

20 CHAIRPERSON JORDAN: Those opposed
21 nay. The motion carries.

22 MR. BELLO: Thank you.

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1 CHAIRPERSON JORDAN: Mr. Moy has to
2 poll the Board.

3 MR. MOY: It's for the records.
4 Staff would record the vote as 5 to 0 on the
5 motion of Chairman Jordan to approve the relief
6 as requested per Revised Plans Number 32 and
7 seconded by Mr. Hinkle. Also in support, Ms.
8 Cohen, Ms. Heath and Vice Chairperson Allen.

9 CHAIRPERSON JORDAN: Very good and
10 summary order please.

11 MR. MOY: Thank you, sir.

12 CHAIRPERSON JORDAN: Thank you.
13 Now, thank you. Thanks a lot.

14 Let's do the next one, Mr. Moy.

15 MR. MOY: The next application is
16 Application Number 1881 or rather 18811 of
17 Andrea, I think it's pronounced, Shinbach and
18 Matthew Sheffer.

19 This is a request, Mr. Chairman, for
20 special exception for a rear addition under
21 Section 223 not meeting the lot occupancy,
22 court and nonconforming structure at 234 9th

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1 Street, S.E.

2 CHAIRPERSON JORDAN: Okay.

3 MR. MOY: Revised plans again, but
4 this is Exhibit 29.

5 CHAIRPERSON JORDAN: Got it.
6 Thank you.

7 Would you please identify
8 yourselves?

9 MS. FOWLER: Good morning. I'm
10 Jennifer Fowler.

11 MS. SHINBACH: Andrea Shinbach.

12 MR. SHEFFER: Good morning.
13 Matthew Sheffer.

14 CHAIRPERSON JORDAN: Good. I
15 think this is another one that after reviewing
16 the record and the documents in this report,
17 this is one of which I don't think that we need
18 to hear any great testimony.

19 I'm going to poll the Board to see
20 if there's any issues with the Board.
21 Questions they'd ask.

22 ZC VICE CHAIR COHEN: Quick

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1 question.

2 CHAIRPERSON JORDAN: Okay.

3 ZC VICE CHAIR COHEN: Thank you,
4 Mr. Chairman. I'm just very concerned about
5 that tree that's abutting your property in the
6 back. I mean it looks like it's going to die
7 any day, but maybe it's the photo. It just
8 doesn't take a good photo.

9 CHAIRPERSON JORDAN: And so, your
10 question?

11 ZC VICE CHAIR COHEN: Is what is the
12 issue with that tree?

13 MS. SHINBACH: You mean the one in
14 the back that abuts I think it's --

15 ZC VICE CHAIR COHEN: Both sides.

16 MS. SHINBACH: Yes. Yes, we were
17 initially concerned with that when we moved in
18 and we actually had the City out to look at it.
19 The City arborist and then we also had a couple
20 professional tree companies and had it trimmed,
21 but they said it was no immediate risk of
22 falling or damaging anything.

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1 ZC VICE CHAIR COHEN: Did you ask
2 them to define immediate?

3 MS. SHINBACH: The next ten years
4 was what we were told.

5 ZC VICE CHAIR COHEN: Okay. Good
6 luck.

7 CHAIRPERSON JORDAN: Are there any
8 additional questions regarding this
9 application that the Board needs to drill down
10 on? Okay.

11 Ms. Fowler, as you know, we -- you
12 have the opportunity to do a presentation if you
13 believe one is necessary. The Board has
14 indicated to you that we believe that what you
15 have filed is sufficient for the relief
16 requested. So.

17 MS. FOWLER: Thank you. We'll
18 rest on the record. Thank you.

19 CHAIRPERSON JORDAN: Then let's
20 turn to the Office of Planning. See if there's
21 any additional information.

22 I thought this was Ms. Elliott.

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1 MR. MORDFIN: Good morning. I'm
2 Stephen Mordfin with the Office of Planning.

3 Ms. Elliott is unable to be here
4 this morning, but the Office of Planning stands
5 on the record on this case.

6 Thank you.

7 CHAIRPERSON JORDAN: Good.
8 Board, any questions for the Office of Planning
9 regarding this application?

10 The Applicant any questions?

11 MS. FOWLER: No thank you.

12 CHAIRPERSON JORDAN: Okay. Then
13 do we have a representative here from the
14 Department of Transportation?

15 We do have a letter of no objection
16 to the relief being -- the relief requested from
17 the Department of Transportation.

18 Anyone here from ANC-6B for this
19 case? Anyone here from ANC-6B?

20 We do have a letter of support from
21 ANC-6B recommending the approval which we will
22 give great weight to supporting this

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1 application.

2 Is there anyone wishing to speak
3 support of this application? Anyone wishing
4 to speak in support?

5 Anyone wishing to speak in
6 opposition? Anyone in opposition?

7 Then we will conclude this record --
8 this hearing unless you have something you need
9 to put in the record.

10 Based upon the information received
11 at this hearing and the record already obtained
12 by the Board and I would move that we grant the
13 relief requested in 18811.

14 ZC VICE CHAIR COHEN: I second.

15 CHAIRPERSON JORDAN: Motion made
16 and second.

17 Any further discussion?

18 We have a race up here going to see
19 who's doing the second. You should see how --
20 any unreadiness?

21 All those in favor of the motion
22 signify by saying aye.

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1 (Ayes.)

2 CHAIRPERSON JORDAN: Those opposed
3 nay. The motion carries. Mr. Moy.

4 MR. MOY: Thank you, sir. Staff
5 would record the vote as 5 to 0. This on a
6 motion from Chairman Jordan to approve the
7 relief requested under the revised plans under
8 Exhibit 29. Also in support -- oh, and Ms.
9 Cohen seconded the motion. Also in support,
10 Ms. Heath, Vice Chairperson Allen and Mr.
11 Hinkle.

12 CHAIRPERSON JORDAN: Very good.
13 Summary order please.

14 MR. MOY: Thank you, sir.

15 CHAIRPERSON JORDAN: Thank you.
16 Mr. Moy, 13 please.

17 MR. MOY: The next application for
18 a hearing is Application Number 18813 of
19 Jemal's Holland, LLC. This application was
20 advertised for variance relief from the FAR
21 requirements under 771.2. This is at property
22 1301 Pennsylvania Avenue, S.E.

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1 The revised plans I believe, unless
2 I'm corrected by the OP, is under Exhibit 30A
3 as in -- A as in alpha and that's my brief, Mr.
4 Chairman.

5 CHAIRPERSON JORDAN: Okay. Thank
6 you.

7 Before we begin, is there an
8 announcement by any Board Member? This is not
9 it? Okay. Wrong one. Move back.

10 Would you identify yourselves?

11 MS. BATTIES: Good morning. Leila
12 Batties with the law firm of Holland & Knight
13 on behalf of the Applicant Jemal's Holland,
14 LLC.

15 MR. REGAN: My name's Chris Regan.
16 I'm with Douglas Development.

17 MR. SHER: Steven E. Sher, Director
18 of Zoning and Land-Use Services with the law
19 firm of Holland & Knight.

20 CHAIRPERSON JORDAN: Welcome.
21 Board, do we have any particular questions or
22 issues with this application?

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1 ZC VICE CHAIR COHEN: I have a
2 question.

3 CHAIRPERSON JORDAN: Sure. Let's
4 -- okay. Please.

5 ZC VICE CHAIR COHEN: Okay.
6 You're arguing that the upper floor of this
7 building is not appropriate for housing. I
8 think the units were too small was the argument
9 and yet, in this City, there are a lot of smaller
10 units being built and I know in other projects
11 the argument about office space is now somewhat
12 -- somewhat contradicts your argument with
13 regard to why have an office on the second
14 floor. You know, well, offices are more open
15 supposedly.

16 So, I'd like you to kind of explain
17 that to me. Basically, I want to know why
18 housing is inappropriate.

19 CHAIRPERSON JORDAN: But, this is
20 the area variance. Correct?

21 ZC VICE CHAIR COHEN: This is yes.
22 Yes.

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1 CHAIRPERSON JORDAN: The area
2 variance and not a use variance.

3 ZC VICE CHAIR COHEN: Okay. But, I
4 thought the argument was made somewhere in the
5 file regarding how -- that housing as being
6 inappropriate. Yes, and I just want to kind of
7 explore that because I really didn't buy that
8 argument.

9 So, even though this is an area
10 variance, I just picked that up.

11 MS. BATTIES: Commissioner Cohen,
12 I'm going to turn it over to Mr. Sher, but I just
13 want to clarify one thing.

14 Our argument is that it's
15 practically difficult to construct residential
16 units on the site and the other thing I'd like
17 to clarify which we did clarify with OP
18 previously is that the space that we're
19 proposing is non-residential, commercial
20 generally. It's not limited to office space.
21 So.

22 ZC VICE CHAIR COHEN: I'd still

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1 like to hear the argument about the housing.

2 MR. SHER: Members of the Board,
3 the issue is not necessarily that small
4 residential units aren't possible. The issue
5 is can they fit on this site given the
6 configuration of the existing building and what
7 you would have to do in order to put residential
8 on that, for example, on that third floor.

9 C-2-A District allows 2.5 FAR of
10 which no more than 1.5 may be nonresidential,
11 retail, office, service, commercial.

12 The building could, therefore, go
13 to 1.5 FAR. We're asking for 1.77 FAR. That
14 basically fills out the third floor.

15 If you tried to put residential
16 units on the third floor, you then have issues
17 with means of egress because you've got to bring
18 stairways down through the retail, get it out
19 to exit on the street. You have additional
20 core and service functions that are required
21 for the building and what we found was we didn't
22 have enough residential left to make a critical

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1 mass that made any sense in the building.

2 So, it is the combination of
3 existing building and what happens when you
4 have that amount of residential leftover that
5 makes it practically difficult to do.

6 ZC VICE CHAIR COHEN: Thank you.
7 That is very clear, concise and understandable.

8 CHAIRPERSON JORDAN: Very good.
9 Thank you. Are there any other questions?
10 Any other additional questions from this
11 application?

12 The Applicant, as you know, has the
13 opportunity to do a presentation to the Board
14 if you believe it is necessary. I believe that
15 the record already supports the relief you
16 requested. So, it's up to you to decide if you
17 think you need to say something to the Board
18 which might get you into trouble. Then feel
19 free to do so or you understand.

20 MS. BATTIES: I thought you were
21 going to keep a straight face the whole time,
22 but --

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1 CHAIRPERSON JORDAN: I was, but
2 Steve started laughing. I couldn't do it.

3 MS. BATTIES: We're going to stand
4 on the record, Chairman Jordan. Thank you.

5 CHAIRPERSON JORDAN: Good. Then
6 let's turn to the Office of Planning.

7 MR. JESSICK: Good morning, Mr.
8 Chairman, Members of the Board. My name is
9 Matt Jessick.

10 The Office of Planning is happy to
11 stand on the record in support of the
12 application.

13 CHAIRPERSON JORDAN: Board, any
14 questions for the Office of Planning? The
15 Applicant any questions for Office of Planning?

16 MS. BATTIES: No.

17 CHAIRPERSON JORDAN: Any
18 representative here for the Department of
19 Transportation on this file -- on this case?

20 We do have a letter of no objection
21 from the Department of Transportation.

22 Is anyone here from ANC-6B? ANC-6B

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1 for this case.

2 ANC-6B has recommended approval of
3 the requested relief which we would give great
4 weight.

5 Is anyone here wishing to speak in
6 support of the application? Anyone in
7 support?

8 Anyone in opposition? Anyone in
9 opposition?

10 Then we will close the record on
11 this matter and I would move that we grant the
12 relief in 18813.

13 BZA VICE CHAIR ALLEN: Second.

14 CHAIRPERSON JORDAN: Oh. You have
15 to see this because it kind of -- I'm going to
16 say something crazy and then they're going to
17 try to second it and there's going to be -- it
18 wasn't his -- all right. He already had one.

19 Any discussion on the motion?

20 All those in favor of the approval
21 of the motion signify by saying aye.

22 (Ayes.)

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1 CHAIRPERSON JORDAN: Those opposed
2 nay. The motion carries. Mr. Moy.

3 MR. MOY: Yes, sir. Staff would
4 record the vote as 5 to 0. This is on the motion
5 of Chairman Jordan to approve the application
6 for the relief requested and the revised plans
7 under Exhibit 30A. Also in support or rather
8 seconding the motion Vice Chairperson Allen.
9 Supporting Ms. Cohen, Ms. Heath and Mr. Hinkle.

10 CHAIRPERSON JORDAN: Thank you.
11 Let's go 803 please.

12 MR. MOY: Is this a full order, sir?

13 CHAIRPERSON JORDAN: Yes, summary.

14 MR. MOY: All right. Thank you,
15 sir.

16 CHAIRPERSON JORDAN: Thanks,
17 Cliff. Keep me on my toes.

18 MR. MOY: Thank you. Eight zero
19 three?

20 CHAIRPERSON JORDAN: Eighteen
21 eight zero three. That's -- you're good for
22 803.

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1 MR. MOY: Okay. This would be
2 Application Number 18803 of Christopher
3 Ornelas I believe. As captioned, a request for
4 a special exception under Section 223 not
5 meeting lot occupancy requirements, 403.

6 Again, revised plans, Mr. Chairman.
7 That's Exhibit 34.

8 CHAIRPERSON JORDAN: Give me one
9 second.

10 MR. MOY: Okay.

11 CHAIRPERSON JORDAN: I might have
12 gotten out of order here. Because this --
13 there's a letter of opposition here on this
14 matter. Right?

15 MR. MOY: Yes.

16 CHAIRPERSON JORDAN: And there's
17 some other preliminary matters. I'm sorry,
18 Ms. Fowler. I'm going to have you -- have to
19 take a step back.

20 I'm trying to take care of those
21 matters which don't have any controversy for
22 the application so we don't hold everybody all

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1 day. As you understand.

2 Let me ask Ms. Glazer. I'm sorry.
3 Thank you.

4 Okay. Okay. Just trying to make
5 sure we get all the ones. Yes, that's what
6 we're going to do. We're going to find out --
7 that's what we're getting ready to ask. To
8 find out the status of that. Okay.

9 So, call 18780 and I tell you what.
10 Let me have a representative from 18780 come
11 forward. Eighteen seven eight zero.

12 And I just need to ask a question,
13 Ms. Moldenhauer. Do we have -- I understand
14 this is a matter where we feel there's a lot of
15 opposition. The ANC. Then there were some
16 meetings and so, everybody seemed to be on
17 board. Is there still opposition? Do you
18 know? Are you aware --

19 MS. MOLDENHAUER: There is no
20 opposition unless there's anybody in the
21 audience, but this is my client Sas Gharai on
22 behalf of the Applicant. We have letters.

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1 Unanimous support from the ANC.

2 CHAIRPERSON JORDAN: That's -- so,
3 that's what I need to know. Okay.

4 Then let's call this one, Mr. Moy,
5 18780.

6 MR. MOY: Very good, Mr. Chairman.
7 So, for this record, this would be Application
8 Number 18780 of Alexander Memorial Baptist
9 Church. The request as advertised for
10 variance relief from the use provisions under
11 Section 320 to convert a church into a
12 three-unit dwelling. This is at 2709 N Street,
13 N.W.

14 CHAIRPERSON JORDAN: Okay. Thank
15 you. Please identify yourself.

16 MS. MOLDENHAUER: Good morning,
17 Members of the Board. My name is Meredith
18 Moldenhauer from the law firm of Griffin,
19 Murphy, Moldenhauer & Wiggins.

20 With me today is Sas Gharai on
21 behalf of the Applicant and we also have
22 Reverend Jesse Plater on behalf of the

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1 Alexander Baptist Church.

2 CHAIRPERSON JORDAN: Thank you.
3 This is one which we certainly commend the
4 Applicant and your hard work, Ms. Moldenhauer,
5 to get all the parties and those who are in
6 opposition and a big fight by working together
7 with the neighborhood and community to see if
8 we can at least reach common ground. This is
9 one which has been successful and I really
10 appreciate that. Doing it. Doing that.

11 Board, is there any issues you have
12 with this? Because after this long process and
13 this work, I think we have a workable
14 application that meets the requirements for the
15 relief in my estimation. Anyone have any
16 issues with this one? Okay.

17 It's on you --

18 ZC VICE CHAIR COHEN: I have a
19 question.

20 CHAIRPERSON JORDAN: Oh, yes,
21 please. Um-hum.

22 ZC VICE CHAIR COHEN: Reverend,

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1 this is the church that your congregation owns.
2 Correct? Are you going to moving?

3 REV. PLATER: Yes, we are. Good
4 morning. Yes, we do plan to relocate.

5 ZC VICE CHAIR COHEN: To within the
6 District or outside?

7 REV. PLATER: We think we will be
8 relocating probably into Maryland. A majority
9 of the congregants are Marylanders now.

10 ZC VICE CHAIR COHEN: Your
11 congregation lives there?

12 REV. PLATER: Yes.

13 ZC VICE CHAIR COHEN: Okay. How
14 many years has it -- I'm asking because a lot
15 of this is going on in the City.

16 REV. PLATER: Okay.

17 ZC VICE CHAIR COHEN: And the
18 Zoning Commission's facing it as well.

19 How many years has your -- has it
20 been since your congregation has declined?
21 I'm just --

22 REV. PLATER: The church actually

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1 has been in Georgetown for 106 years and I would
2 say over probably the last 30 years or so it's
3 slowly been declining.

4 And one of the -- well, some of the
5 issues that we have, of course, is traffic,
6 parking and with the age of the facilities,
7 again 106 years old, it's getting pretty
8 expensive to continue to maintain it. So,
9 those are some of the reasons why we decided
10 that it was probably necessary for us to
11 relocate.

12 ZC VICE CHAIR COHEN: I appreciate
13 your explanations. Thank you.

14 CHAIRPERSON JORDAN: But, see you
15 almost made this a denied application.

16 REV. PLATER: I knew I was skating
17 on a fine line.

18 CHAIRPERSON JORDAN: Right. When
19 you get to it.

20 ZC VICE CHAIR COHEN: Reality
21 sometime, it often hurts.

22 CHAIRPERSON JORDAN: Board, any

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1 additional questions?

2 Turning back to the Applicant, do
3 you believe there's --

4 MS. MOLDENHAUER: The Applicant
5 will rest on the record.

6 CHAIRPERSON JORDAN: I'm turning
7 now to the Office of Planning to see if there's
8 any additional desire to -- anything else you
9 would like to add.

10 MR. GYOR: Good morning, Mr.
11 Chairman, Members of the Board. Stephen Gyor
12 with the Office of Planning.

13 We support the application and rest
14 on the record. Thank you.

15 CHAIRPERSON JORDAN: A
16 representative from the Department of
17 Transportation for this case. Anyone from the
18 Department of Transportation for this case?

19 We have a letter of no objection
20 from the Department of Transportation.

21 Anyone from ANC-2E on this matter?
22 ANC-2E.

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1 We have a letter of support from
2 ANC-2E in the file.

3 Anyone wishing to speak in support
4 of this application? Anyone wishing to speak
5 in support?

6 Anyone wishing to speak in
7 opposition? Anyone in opposition?

8 Then we would close the record on
9 this case and I would move that we grant the
10 relief requested as amended in 18780.

11 Oh, no one's moving.

12 MEMBER HEATH: I'll second.

13 CHAIRPERSON JORDAN: Okay. It was
14 your turn. All right. Thank you.

15 Motion made and second. Any
16 further discussion?

17 All those in favor of the motion
18 signify by saying aye.

19 (Ayes.)

20 CHAIRPERSON JORDAN: Those opposed
21 nay. The motion carries. Mr. Moy.

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

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1 Staff would record the vote as 5 to 0. This is
2 on the motion of Chairman Jordan approving the
3 application per the relief requested. These
4 are revised plans under Exhibit 28. Second the
5 motion Ms. Heath. Also in support Ms. Cohen,
6 Vice Chairperson Allen and Mr. Hinkle.

7 CHAIRPERSON JORDAN: Okay.
8 Summary order please.

9 MR. MOY: Thank you, sir.

10 CHAIRPERSON JORDAN: Okay. We're
11 going to take a five-minute break please.

12 (Whereupon, the above-entitled
13 matter went off the record at 10:09 a.m. and
14 resumed at 10:16 a.m.)

15 MR. MOY: Should I call a case, Mr.
16 Chairman?

17 CHAIRPERSON JORDAN: Yes, let's
18 call 787 please.

19 MR. MOY: All right. Application
20 Number 18787 of 143 Rear W Street, LLC. This
21 application was previously heard on July 29th,
22 2014. The Board requested additional

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1 information. That's in your case folders, Mr.
2 Chairman.

3 CHAIRPERSON JORDAN: Okay.

4 MR. MOY: And the application has
5 been amended with revised plans under Exhibit
6 47C and is now for five single-family row
7 dwellings.

8 CHAIRPERSON JORDAN: All right.
9 Okay.

10 MR. MOY: And without -- they can
11 remind me. I believe now it's for single-use
12 variance relief under Subsection 2507.2.

13 CHAIRPERSON JORDAN: Yes. We're
14 now joined by Commissioner Robert Miller from
15 the Zoning Commission for this case who's
16 already heard part of this. We've already had
17 -- we've had testimony in this case. So, and
18 I think we actually completed it. We had some
19 additional questions and we left this record
20 open simply to allow the Board to ask questions
21 or supplemental documentation. So, we've
22 already done the rounds regarding this

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1 application.

2 So please, Mr. Collins, do you want
3 to do introductions please? Do you want to
4 introduce yourself?

5 MR. COLLINS: Good morning, Mr.
6 Chair, Members of the Board. Christopher
7 Collins with Holland & Knight.

8 Should we introduce the team again?

9 CHAIRPERSON JORDAN: Give me one
10 second. Okay. Go ahead.

11 MR. COLLINS: Should we introduce
12 the team again?

13 CHAIRPERSON JORDAN: Yes, please.
14 Um-hum. So, we make sure who's here.

15 MR. COLLINS: All right. Starting
16 to my right, your left.

17 MR. SMART: Eric Smart. Eric
18 Smart with Bolan Smart Associates. Thank you.

19 MR. CUNNINGHAM: Ralph Cunningham,
20 Cunningham & Quill Architects.

21 MR. BARKER: Alex Barker,
22 Cunningham & Quill Architects.

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1 MR. MILLER: Robert Miller, 143
2 Rear W Street, the Applicant.

3 MR. KARCHEM: Daniel Karchem,
4 Karchem Properties, LLC.

5 MR. COLLINS: Mr. Chair --

6 CHAIRPERSON JORDAN: I'm sorry.

7 MS. LENARD: And I'm Victoria
8 Lenard substituting for Alicia Hunt who's
9 having a baby and who had --

10 CHAIRPERSON JORDAN: Victoria
11 Letters?

12 MS. LENARD: Pardon?

13 CHAIRPERSON JORDAN: Victoria
14 Letters?

15 MS. LENARD: Lenard.

16 CHAIRPERSON JORDAN: Lenard.
17 Um-hum.

18 MS. LENARD: Along with Pia Brown
19 and Jon Carron. Substituting party status for
20 our neighbor Alicia Hunt who's having a baby.

21 CHAIRPERSON JORDAN: Yes, let's
22 talk about that for a second.

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1 I went back and looked at the tape
2 also and I kind of bastardized that process of
3 who had party status, but I think the way it's
4 resolved is that we accepted the group for party
5 status and that Ms. -- what was her name?

6 MS. LENARD: Ms. Hunt.

7 CHAIRPERSON JORDAN: Ms. Hunt
8 actually was representing a party. Because
9 initially, everyone wasn't here for party
10 status, but we understand it was a joint
11 application being made.

12 So, to make a long story short, then
13 yes, you can sit in and be the substitute for
14 her, but the party status was joint. Unless
15 the Board has any issue with that. Okay.
16 Okay. All right.

17 All right. I think, Mr. Collins,
18 were you saying something or did I cut you off?

19 MR. COLLINS: We were just
20 introducing the parties and I was going to just
21 begin the presentation.

22 CHAIRPERSON JORDAN: This is --

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1 we've already had presentations.

2 MR. COLLINS: Right.

3 CHAIRPERSON JORDAN: If the Board
4 wants to drill in on any questions, is the way
5 we're going to handle it.

6 MR. COLLINS: All right. That's
7 fine.

8 CHAIRPERSON JORDAN: This is a
9 continuation dealing with the supplement.

10 Board, are you okay with that? I
11 mean we've already -- okay.

12 So, I guess one of the questions I
13 saw in your supplement, Mr. Collins, you stated
14 that a single-family residence was permitted
15 under R-4 alley. What were saying? What do we
16 mean by that? In your documentation.

17 MR. COLLINS: That in this zone the
18 only type of residential use permitted in an
19 alley is a single-family dwelling and that's
20 what we're proposing. That's what we have --

21 CHAIRPERSON JORDAN: I didn't know
22 if you were trying to say matter of right. You

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1 weren't saying matter of right?

2 MR. COLLINS: The building -- no,
3 the use is not matter of right. No. No.

4 The buildings are within the
5 matter-of-right envelope. As a matter of
6 fact, the buildings are 10 feet lower than the
7 matter-of-right height.

8 CHAIRPERSON JORDAN: Okay. That
9 kind of threw me. I didn't know what you were
10 trying to say and I said well, what are we here
11 for and then I went back and took a look. Okay.

12 Board, certainly if there's any
13 questions. Let me ask though. I'm concerned
14 about the financials and the Bolan report.

15 You know, we asked -- the first
16 time, we asked for this come around there was
17 some -- just some assumptions and it was here
18 without factual basis.

19 The document that was submitted --
20 again, as an expert, an expert as we all know
21 has to -- can opine on the facts, can spread
22 beyond the facts, but there has to be some

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1 foundation which the expert gives some opinion
2 within a realm for reliability based upon the
3 foundation that should have been laid here.

4 I read that report that has all
5 kinds of assumptions and I don't see the
6 preliminary foundation that we required, in
7 fact, in other cases. Especially, when we look
8 at continuation for relief.

9 That we know that we've gone out.
10 Try to get this thing financed and the financial
11 terms of this will not work. The financial
12 terms they won't lend us money, for example,
13 under 15 percent. Then the expert opines on
14 that and says yes, there's no way we can work
15 it within that.

16 I don't see any preliminary
17 foundation work with the factual basis to which
18 the expert renders his opinion. I see
19 throughout -- and this is just me.

20 So, I'm just -- I'm going to get to
21 some more specific questions, but this -- I'm
22 just letting you know the concern because I've

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1 gone on this about 50,000 times. You know, we
2 review these things and this is one that took
3 up all my weekend going through and trying to
4 do numbers.

5 My Board knows I don't have a social
6 life. So, I do this.

7 And it's all based upon assumptions
8 that are -- there's nothing that supports the
9 assumption.

10 We did a review of 12 different
11 lending institutions and they told us X, Y, Z
12 was going to happen. I don't see that. So,
13 I'm going to ask you to talk about that.

14 And the other thing I need to know
15 I saw here where you had -- maybe I misread.
16 You stated the interest rates in the range
17 assumes a lower to medium risk commercial real
18 estate venture. I have to secure a
19 month-to-month occupancy and a long-term
20 credit readiness of tenants.

21 I thought these are for-sale units.
22 Am I wrong or right? Wrong?

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1 MR. COLLINS: They are for-sale
2 units. Yes.

3 CHAIRPERSON JORDAN: Okay. So,
4 why are we using the basis of that? That based
5 upon these interest percentage rates where you
6 get the discussion on the rental.

7 Whoever, Mr. Collins, you want to is
8 fine.

9 MR. COLLINS: Well, Mr. Miller
10 could respond to some of the financials and then
11 the analysis of the facts would be Mr. Smart.

12 MR. MILLER: Yes, Commissioner.
13 Thank you for seeing us back again today.

14 What we did following your last --
15 the last Commission hearing, we thought that
16 what the Commission had said it made sense us
17 going back to the table. It gave us another
18 opportunity to -- well, pulling the empirical
19 data. It also gave us another opportunity to
20 vet and root out exactly the financial
21 statements on each one of these pieces.

22 And this is just -- I'm stepping

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1 back just a hair and I won't go far on this, but
2 what we did is we actually went back and
3 constructed each one of the alternate uses with
4 full architecture and otherwise.

5 Because the first major step there
6 is you have to understand what the actual use
7 can be and not -- you know and so, we actually
8 did full architectural which I think you saw
9 in the package on each of one of these as if we
10 were going to develop it. We weren't trying to
11 make a case.

12 We weren't -- just as we've done
13 with the community group all the way through
14 this thing, we were really looking at it as if
15 we were trying to develop it and as we go through
16 from a use-to-use standpoint, I mean we started
17 on the residential scenario in itself, the five
18 unit scenario and we pressed ourselves and said
19 hey, what -- you know, the community proposed
20 this smaller four-unit scenario and we pressed
21 that one and we're just modeling these things
22 based on the way they're actually done and

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1 trying to end up with the scenario that
2 ultimately becomes financeable.

3 And the scenario that runs --
4 they're using standard practices from a -- from
5 a lender approach, from an equity approach.
6 They're not close and that is or should be
7 represented in the numbers and I think we can
8 drill that and show how it is represented in any
9 of these numbers.

10 The construction costs, I mean that
11 was other things we did. Because, you know,
12 there's all these big variables that you can
13 begin to challenge in these reports. The cost
14 of construction is a major one and the revenue
15 on the back side, your sales price on delivery,
16 is a major one.

17 And the cost of construction, we
18 know that -- and we've worked with -- and we know
19 that Vicki and Pia and Jon and Alicia have put
20 forth numbers on the construction side, you
21 know, ranging from 85 to --

22 CHAIRPERSON JORDAN: I'd really

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1 like to get to the answer to the question. I
2 understand what you've done.

3 MR. MILLER: Okay.

4 CHAIRPERSON JORDAN: I understand
5 where you've been.

6 MR. MILLER: Understood.

7 CHAIRPERSON JORDAN: But, for
8 instance, you talk about construction. We saw
9 no construction estimates given to you by a
10 contractor.

11 MR. MILLER: So, on that question,
12 what we did is we first went out to our internal
13 models. We vetted where we had the -- we then
14 went out to Daniel Karchem with Karchem
15 Properties. Actually, who I -- we brought here
16 today if you'll allow him to speak to the
17 Commission.

18 I didn't know two weeks ago. We
19 were actually trying to do exactly what you're
20 talking about here. Which is bring in outside
21 guys who can vet our numbers and proof numbers.
22 Daniel's a very respected guy in the

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1 construction industry. He's a developer who's
2 developed many properties in the D.C. area.

3 We asked Daniel for his own expert
4 opinion and we also asked Daniel if he'd go out
5 to --

6 CHAIRPERSON JORDAN: I don't need
7 -- I want to make sure we're all on the same page
8 --

9 MR. MILLER: Understood.

10 CHAIRPERSON JORDAN: -- so that you
11 don't go down a line that may not be helpful.

12 Experts can't just grab things out
13 of the sky and they can't just talk about
14 generally industry-wide. We're going to talk
15 about the reliability as he talks about this
16 particular case.

17 MR. MILLER: Understood.

18 CHAIRPERSON JORDAN: So, the basis
19 of the expert opinion, we'd be glad to -- have
20 we included him as an expert already, Mr.
21 Collins?

22 MR. COLLINS: We included --

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1 CHAIRPERSON JORDAN: No, I mean Mr.

2 --

3 MR. COLLINS: Karchem, no, but we'd
4 be happy to vet him and --

5 CHAIRPERSON JORDAN: Right. So,
6 even before we get to that, that's another
7 fundamental --

8 MR. COLLINS: Understood. Yes.

9 CHAIRPERSON JORDAN: But, he can
10 opine on the construction company's numbers,
11 but I don't think we have construction
12 company's numbers in our record. Am I right or
13 wrong, Mr. Collins?

14 MR. COLLINS: Can I continue to
15 respond?

16 CHAIRPERSON JORDAN: Yes.

17 MR. COLLINS: So, what -- and I was
18 finishing there maybe to long windedly. You
19 know, what we went to Daniel for was his opinion
20 and asked him also to vet that in the
21 marketplace.

22 So, Daniel Karchem went out and is

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1 able to speak to them or I can speak to them
2 based on his written materials today. Went out
3 to McCullough Construction, went out to Monarch
4 Construction, got price estimating from them in
5 respect to this project, projects of this type.

6 We can't get a get a full
7 construction bid sheet on this project because
8 the architecturals are not developed far enough
9 along to do that.

10 So, what you do and what we would do
11 right now even for lenders, for equity
12 partners, we would go out to construction
13 companies and get aggregate estimates of where
14 they think this should stand in ranges and those
15 ranges per Daniel, which he can speak to, range
16 from \$150 to \$185 per foot. We're at on our
17 numbers 150 plus a 10 percent contingency, \$165
18 per foot.

19 CHAIRPERSON JORDAN: Okay. All
20 right. I guess I'm kind of repeating myself.
21 But, you can put on -- we have not accepted Mr.
22 -- say it one more time.

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1 MR. KARCHEM: Karchem. Daniel
2 Karchem.

3 CHAIRPERSON JORDAN: Karchem.
4 Okay. What's what I missed.

5 We haven't accepted him as an expert
6 and he's not a fact witness. Correct?

7 MR. COLLINS: He is here to -- as
8 Mr. Miller mentioned, he is here to respond to
9 the questions having vetted our numbers in the
10 construction industry as a developer himself.
11 He's here to verify the numbers that we have
12 used in our analyses.

13 CHAIRPERSON JORDAN: So, that
14 sounds like that's an expert not a fact witness.
15 Correct? Yes.

16 Do we have a résumé, vitae, stuff
17 that the Board can review?

18 MR. COLLINS: We did not bring a
19 résumé, but Mr. Karchem, I can just go through
20 several questions. Ask Mr. Karchem to --

21 CHAIRPERSON JORDAN: Do you want to
22 qualify him?

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1 MR. COLLINS: Yes. Mr. Karchem,
2 could you please state your current position?

3 MR. KARCHEM: I'm the President of
4 Karchem Properties. Excuse me. I'm
5 President of Karchem Properties, LLC.

6 MR. COLLINS: What is Karchem
7 Properties?

8 MR. KARCHEM: A real estate
9 development and consulting firm.

10 MR. COLLINS: And how long have you
11 been in the real estate development and
12 consulting business?

13 MR. KARCHEM: I'd say 35 years.

14 MR. COLLINS: And have you
15 personally as a developer developed any
16 projects in the District of Columbia?

17 MR. KARCHEM: Numerous. Many.

18 MR. COLLINS: And approximately
19 how many?

20 MR. KARCHEM: Six come to mind.
21 Relatively close.

22 MR. COLLINS: Can you name some of

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1 those?

2 MR. KARCHEM: The Swedish Embassy.
3 I was the owner's representative for the
4 Swedish Government National Property Board.

5 Nine Zero One F Street, 1717 Rhode
6 Island Avenue, HSC Foundation. Let's see.
7 There's a number of smaller projects where I
8 consulted for owners. There is a couple of
9 properties on F Street right next to 901 F
10 Street and GW Club. So.

11 MR. COLLINS: So, in the course of
12 that work that you've done over your many years
13 of work in the District, do you have occasion
14 to review construction numbers, construction
15 budgets, cost estimating and make
16 determinations as to feasibility of projects?

17 MR. KARCHEM: Yes. It's my
18 primary responsibility since it represents the
19 majority of the cost.

20 MR. COLLINS: It's your primary
21 responsibility?

22 MR. KARCHEM: Yes.

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1 MR. COLLINS: Okay. I thought I
2 would ask that he be -- Mr. Karchem be qualified
3 as an expert witness.

4 CHAIRPERSON JORDAN: Board, any
5 objections? Any objections from opposition?

6 MS. LENARD: No.

7 CHAIRPERSON JORDAN: Okay. We can
8 accept him as an expert, but I'm telling you I'm
9 having foundation problems in regards to what
10 he can testify to as an expert, but go ahead.

11 MR. COLLINS: All right. Mr.
12 Karchem, can you just have -- you've gone
13 through the Applicant's feasibility analysis
14 for the project?

15 MR. KARCHEM: Yes.

16 MR. COLLINS: And you've seen the
17 numbers that they projected hard construction
18 costs of \$165?

19 MR. KARCHEM: Yes.

20 MR. COLLINS: And in your
21 experience in the market today, is that good
22 number for cost per square foot for

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1 construction?

2 MR. KARCHEM: It's lower than what
3 I would use, but yes.

4 MR. COLLINS: Can you expand on
5 that?

6 MR. KARCHEM: Yes, I think this is
7 a complicated small project in an in-fill site
8 with limited access and utilities are not
9 directly available. You have to go through to
10 one of the streets and I'm sorry.

11 CHAIRPERSON JORDAN: A fundamental
12 problem I'm having.

13 MR. KARCHEM: Okay.

14 CHAIRPERSON JORDAN: We just -- we
15 don't have the underlying basis of that.
16 You've gone -- you've looked at the -- let me
17 -- may I can try to help.

18 So, you talked to construction
19 companies specifically about this project?

20 MR. KARCHEM: Yes.

21 CHAIRPERSON JORDAN: And you got
22 back some documentation from them that gave

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1 what they thought would be the estimated cost
2 of doing this construction.

3 MR. KARCHEM: Given the time frame,
4 I did not -- I was not able to get written
5 confirmation.

6 MR. COLLINS: But, you did speak to
7 them?

8 MR. KARCHEM: I spoke to the
9 President of Monarch Construction. Excuse me.
10 Of McCullough Construction Tom McCullough and
11 I spoke to the Chief Estimator for -- Vice
12 President of Estimating and Pre-construction
13 from Monarch Construction.

14 CHAIRPERSON JORDAN: So, you spoke
15 to McCullough Construction and who else? I'm
16 sorry.

17 MR. KARCHEM: Monarch
18 Construction.

19 CHAIRPERSON JORDAN: Monarch
20 Construction. Okay. And McCullough
21 Construction gave you an estimate of cost of
22 what?

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1 MR. KARCHEM: They gave me a range
2 of costs.

3 CHAIRPERSON JORDAN: Okay.

4 MR. KARCHEM: Given that the plans
5 are not fully complete and so, I don't misstate
6 anything let me see my notes.

7 McCullough was in the range of 160.

8 CHAIRPERSON JORDAN: One sixty
9 what?

10 MR. KARCHEM: One six -- \$160 per
11 square foot and Monarch was closer to 175.

12 CHAIRPERSON JORDAN: Excuse me one
13 second. Okay. Continue, Mr. Collins. We'll
14 take it for what it's worth just to move on in
15 this hearing.

16 MR. COLLINS: Can I comment on that
17 just briefly? On the challenge that we --
18 because --

19 CHAIRPERSON JORDAN: Yes.

20 MR. COLLINS: I understand -- I
21 think I understand exactly what you're -- where
22 you're going on this or what you're trying to

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1 get to on it. But, the construction numbers
2 are a good example in the sense that there's not
3 that much variability to what this is going to
4 cost to build and maybe being on that side of
5 the table we sort of take that for granted.
6 That it's sort of straightforward that it's
7 going to be that.

8 So, beyond a variation from
9 McCullough Construction and Monarch
10 Construction who are in this market and we had
11 it obtained by a separate individual, an
12 expert, because we realize we have a vested
13 interest in this. Because plans aren't fully
14 developed, there's only so much we can do and
15 as I'm thinking it through, there's only so much
16 we can do to justify to the Board what these
17 costs are and again, maybe we're taking it for
18 granted because it is so standard in the
19 industry today.

20 This is what we do on a daily basis
21 and it's sort of a standard cost scenario. So,
22 I realize we're not giving you just what you're

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1 looking for here, but I'm trying to figure out
2 what we can give you that would --

3 CHAIRPERSON JORDAN: Let me give
4 you an example. We routinely make decisions
5 regarding whether or not a project is
6 financially viable. It's one of our
7 requirements.

8 And so, what we look at is the
9 underlying -- the true costs. Not in the
10 stratosphere. Because people come in with
11 estimates, construction company estimates,
12 financials that we can relate back to. Because
13 we have to have a record that substantiates or
14 supports that which we give, an expert can
15 testify regarding industry, et cetera as it
16 relates to the factual basis that's been
17 presented in a case. That way, you know, it's
18 just what's required. The preliminary
19 foundation.

20 There's certain things that we can
21 assume. Certainly, you know, whether 165 is
22 reasonable or not.

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1 I'm just saying we usually have the
2 back-up documentation and the expert opines on
3 that documentation that he would have received
4 from the construction companies. Oh, here's
5 something and now, he can tell us what he really
6 felt about it. What he thinks about it. Is
7 this in line with the norm? Is this outside the
8 norm? They can't get based upon looking at
9 three estimates anything under \$165 or anything
10 under \$200 a square foot.

11 But, that's just my basis. It
12 might be support. I don't know where the Board
13 is on it, but we -- I'm just letting you know
14 where the concerns are for me in the
15 presentation being given.

16 Mr. Collins, you were about to say
17 something?

18 MR. COLLINS: Well, I think we have
19 that. We have Mr. Miller who in the last
20 hearing testified as to his experience and
21 expertise in the industry. This is something
22 he does everyday.

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1 And these numbers were not just
2 something we made up just to populate a balance
3 sheet. These are numbers that are well thought
4 out, well reasoned, well researched and so,
5 what we've done is at your instruction we've
6 stepped back to take another look at those
7 numbers and so, that's where we asked Mr.
8 Karchem to be an independent voice, an
9 independent person. Take a look, independent
10 look at this with his experience and expertise
11 in the industry and he's done that and he's
12 given his opinion that \$165 is right. Is the
13 right number.

14 And then he went out and he spoke to
15 Monarch Construction and McCullough
16 Construction and their numbers verified what he
17 thinks as an independent expert, what Mr.
18 Miller has come up with based on his years of
19 experience.

20 So, I think we have what you're
21 looking for. We may not have packaged it the
22 same way, but that's -- I think we have it.

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1 CHAIRPERSON JORDAN: I'm just
2 looking at the evidentiary foundation
3 required. But, go ahead. Proceed on. Is
4 there anything else that -- I understand where
5 you are with the construction numbers, where
6 you got it and we take it for what it's worth.

7 I asked some specific questions
8 with regards to financials. One, the
9 assumptions made by Mr. Smart indicated in
10 there that he used consideration and estimation
11 of rental and the -- I just lost the word I was
12 trying to get. The risk associated with this
13 being a rental and that kind of threw me. What
14 we were talking about rentals and these are for
15 sales. Right?

16 MR. KARCHEM: I'm not sure where we
17 were talking about rentals.

18 MR. COLLINS: Is that on an
19 alternate use other than the --

20 CHAIRPERSON JORDAN: I need
21 somebody to -- I just asked the question. I
22 just need it explained straightforward, not

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1 around the block, but to the point.

2 MR. MILLER: May I respond?

3 CHAIRPERSON JORDAN: Yes, please.

4 MR. MILLER: On the rental
5 question, you asked us to look at various
6 development possibilities by right. So,
7 there's, I believe, five primary scenarios and
8 multiple alternate scenarios. Some of those
9 are rental. Some of those are for sale. Even
10 some of them are both for rent and for sale in
11 the case of the garage scenario.

12 So, we attempted to be -- we spent
13 a great deal of time trying to construct models
14 that would provide some comparability between
15 the respective development.

16 CHAIRPERSON JORDAN: I understand
17 all of that.

18 MR. MILLER: That is why some --

19 CHAIRPERSON JORDAN: But, you
20 derived your -- I'm not trying to argue. I'm
21 just trying to get an understanding. I'm
22 trying to understand what you wrote and you

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1 wrote about the minimum return was 12 percent
2 and that was in your paragraph where you
3 discussed -- I'll read it to you if you make --
4 and it says that no experienced investor would
5 commit to an alternative -- commit to any of the
6 one alternative developments which failed to
7 generate a minimum of 12 percent interest
8 return either on project costs or one time sales
9 venture or more typically 18 to 20 as the annual
10 rate of return. Okay?

11 MR. MILLER: Yes.

12 CHAIRPERSON JORDAN: You talk
13 about the risk. Correct?

14 MR. KARCHEM: Correct.

15 CHAIRPERSON JORDAN: But, then you
16 use that same number in your financials on the
17 sale.

18 MR. MILLER: That's correct.

19 MR. COLLINS: I'll respond and
20 perhaps Mr. Miller would like to, but the reason
21 I digressed in terms of the background trying
22 to establish the model and the comparability is

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1 so that there was a basis that you could compare
2 and the 12 percent discussion does reflect what
3 marketplace requirements would be for either
4 the rental or the for sale, but they're computed
5 in a different manner as you know. Because in
6 the context of the for sale, all the return is
7 occurring at the first point of delivery and the
8 rental is spread out over an investment period.
9 But, those are -- I'm sorry.

10 CHAIRPERSON JORDAN: No, I'm
11 sorry. Please.

12 MR. COLLINS: So, the prospective
13 investor or someone who's putting money into
14 the project is taking on a different income
15 stream, but they are still looking at it as a
16 comparable. Do I make the same amount of
17 money? Does it cover my investment needs
18 whether it's for sale or whether it's for rent?
19 And for simplicity's sake, we try to establish
20 as many standards as the 12 percent discussion
21 represents.

22 If we did break down into what the

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1 actual performer would be for each of these
2 different uses, they would vary and so, it's a
3 very important point you bring. But, we were
4 trying to aid the analysis by making it one
5 number and if I could then, we can go into some
6 details where they vary, but that's the
7 background to the 12 percent.

8 You were asking a question of where
9 are the facts associated with supporting the
10 rate if I could attempt to respond to that. I
11 believe in the supplemental there was an
12 additional letter, third-party letter, from
13 Johns-Langloselle and if you wish, we could try
14 and dissect any of the assumptions and
15 appreciate the question. The complications in
16 this is that there are many, many variables and
17 I could back up my experience with each one if
18 you chose to investigate that.

19 CHAIRPERSON JORDAN: Okay. Isn't
20 the acceptable rate of return subjective?

21 MR. COLLINS: The rate of return --
22 maybe I should ask you to explain your question.

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1 CHAIRPERSON JORDAN: The rate of
2 return. What do I find as an acceptable rate
3 of return? Isn't that subjective?

4 MR. COLLINS: It's -- well, when
5 you say subjective. Let me try and interpret
6 that.

7 CHAIRPERSON JORDAN: I mean, for
8 instance, we've seen projects where people of
9 similar size have accepted 8 percent return as
10 acceptable, reasonable return in regards to the
11 venture. So --

12 MR. COLLINS: Sorry. Within a
13 range, it's just subjective. Is it 8 percent?
14 Is it 12 percent? Is it 10 percent?

15 CHAIRPERSON JORDAN: Right.

16 MR. COLLINS: But, that
17 subjectivity is based on, of course, a number
18 of other considerations. So --

19 CHAIRPERSON JORDAN: Is it worth
20 the effort? Is it enough money that I'm going
21 to make in regards to profit sufficient enough
22 to go through the level of risk and effort to

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1 do it? Isn't that the formula?

2 MR. COLLINS: Yes, but, the reason
3 I pause in terms of the definition as subjective
4 is that it's not as if Mr. Miller necessarily
5 has his own money to make a subjective analysis.
6 He needs to go to the market and that's where
7 my pause. I don't meant to challenge --

8 CHAIRPERSON JORDAN: He's got to
9 cover the debt. Right.

10 MR. COLLINS: But, well, he also
11 has to attract equity and there are norms with
12 respect to what equity. So, it's subjective at
13 a level, but it's within a band. I would say
14 it's not subjective because there are industry
15 norms. Pick a product type and circumstance,
16 you know, risk level and that's what we're
17 describing. It could be 12 percent. It could
18 be 20 percent with respect to all the variables
19 that add up to a very challenged project like
20 the one under consideration.

21 MR. KARCHEM: If I could just add to
22 that. Again, in going out to the market, I mean

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1 in Johns-Langloselle and that and going out to
2 experienced folks within the market, we ask
3 them for a range on projects of the type we were
4 looking at. In their letter, they state 12 to
5 20 percent.

6 Again, not spoon fed. Eric's
7 pulling those off this report, but the reality
8 is we've constructed our analysis based on the
9 bottom of that range and when you look at this
10 project specifically on the equity requirement
11 side, 12 percent to cover costs, to cover the
12 risks, all the things you outlined, I actually
13 feel it's probably very tight and perhaps not
14 realistic, but we've kept it in the lower end
15 of the realm there.

16 CHAIRPERSON JORDAN: Board, any
17 other questions of the Applicant? Anyone
18 else? Mr. Miller?

19 ZONING COMMISSIONER MILLER: Thank
20 you, Mr. Chairman. As I stated previously at
21 the previous hearing although my name is the
22 same as the Applicant, I don't -- I am not the

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1 Applicant. I don't know the Applicant. I've
2 never met the Applicant except at the last
3 hearing from the dais.

4 So, I'm trying to understand the
5 economic hardship argument and particularly
6 with -- because I think that's a key point that
7 you're trying to make in terms of the variance
8 and I have numbers in front of me from the
9 Applicant and I have numbers from the Party in
10 Opposition and what I'm focusing on is
11 particularly comparing the scenarios. The
12 five units as proposed by the Applicant and the
13 four units.

14 Which -- you have a comparison of
15 four units at the same size and then four units
16 of a smaller size as suggested by the opposition
17 and in the Applicant's -- in the Applicant's
18 table you have the cost at \$165 per square foot.
19 Whereas the opposition used \$140 per square
20 foot figure for costs. For hard construction
21 costs.

22 And in the potential revenue, you

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1 have \$300 per square foot. Whereas the Party
2 in -- no, you have that. I'm sorry. Yes, you
3 had \$300 per square foot. Whereas the Party in
4 Opposition has \$487 per square foot.

5 And I think those are the major --
6 I think those are the major differences. You
7 explained the cost per square foot. Why you
8 think -- Mr. Karchem explained why you thought
9 165 was a reasonable number. In fact, you
10 thought it was low even though the Party in
11 Opposition says that they thought that it was
12 high.

13 But, I wonder if you could explain
14 the difference between what you are suggesting,
15 the potential revenue only being \$300 per
16 square? I mean being only \$300 square foot
17 versus the Party in Opposition saying it's \$487
18 per square foot. If you can address that.

19 Because the bottom line is that in
20 your scenario with your assumptions, you come
21 to a positive -- a profit -- a net profit of only
22 -- it seems only 1,634 which I don't understand.

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1 Maybe you can expound upon that. Whereas all
2 the other scenarios are net losses. One
3 hundred and eighty three thousand dollar loss
4 for the four units, same size, but -- and the
5 Party in Opposition, they have these -- all of
6 these scenarios come out as net profits.

7 So, I'm just trying to understand.
8 If the Applicant could provide information
9 which would make me understand why your
10 assumptions and these numbers -- why your --
11 what you're proposing is the only -- is the only
12 scenario which results in a net profit and why
13 it's different than what the Party in
14 Opposition is saying.

15 And then why you're only -- why it
16 makes sense as a scenario since it has such a
17 net -- since it has such a small net profit using
18 your own numbers.

19 MR. KARCHEM: Yes, I'm going to
20 speak to that and then Eric can pull all the data
21 behind it because we have all the data behind
22 it.

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1 But, your question is right on the
2 mark and it is somewhat confusing and we rest
3 a little bit with presentation here. So, your
4 first question on the 1634 profit, which I know
5 the opposition references also, it speaks back
6 to what Chairperson Jordan was referencing a
7 moment ago.

8 The model includes the -- if you go
9 up to the funding requirements, you pick up
10 mortgage debt and then you pick up that 12
11 percent yield.

12 ZONING COMMISSIONER MILLER:
13 Right.

14 MR. KARCHEM: The yield is
15 effectively the cost of the equity. Right?
16 So, for somebody investing in the project,
17 they're going to require a yield which is the
18 same as a lender at 5 percent requires a yield.
19 So, it's the cost of our debt at say 5 percent
20 and the cost of the equity as say 12 percent.
21 Those are going to be required for us to finance
22 this project.

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1 So, yes, called yield or cost of
2 debt, cost of equity.

3 For us, they're just financing
4 costs. So, we know we've got to be able to
5 provide an equity investor 12 percent and so,
6 that is listed under funding requirements and
7 the yield requirement of 12 percent is the
8 required return to equity to make this project
9 work and so, the return to equity is the 12
10 percent, 379,842 and then after that, is the
11 1634 and that's same as applied to the four
12 units on both.

13 Does that -- you understand? Does
14 that make sense?

15 So, obviously, if the position on
16 this was 1634, yes, there is no project there
17 as you said it. But, at 1634 after covering the
18 cost of equity and on the other two scenarios
19 because we genuinely looked. We made up the
20 middle scenario to say hey, maybe there's a
21 compromise here. Maybe we can pull back.

22 If you recall, we started with the

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1 neighborhood with the Smart Group at eight
2 units and then worked very closely with the rest
3 of the neighborhood group to come down to the
4 five which had overwhelming support in fact and
5 has 15 letters in support and so on and so forth,
6 but that's a different -- so, in that respect,
7 that's the answer to that first question.

8 In respect to the rate reduced at
9 \$300, we have to use numbers which are
10 supportable in the marketplace and which are
11 financeable. I mean that's sort of our
12 standard.

13 The \$300, the examples stated by the
14 opposition were in smaller condominium unit
15 buildings. Granted they were rowhouse, but
16 they were rowhouse which had been divided into
17 condominium units.

18 It's the same as when we look at the
19 McGill Row Project which was directly in front
20 of it and the opposition pulled a -- there was
21 a unit that sold at \$487 per square foot. Which
22 is accurate. There was one at \$487 per square

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1 foot, but the overall range on that project was
2 352 to 504. With two at 504 and a range at 352
3 to 87. Those are units which are 560 to 880
4 square feet.

5 The aggregate price points
6 delivered there was 197,000 to 389,000.
7 That's on one bedroom, two bedroom and studio
8 product immediately adjacent to this with
9 street frontage.

10 Where we get in trouble is in the
11 aggregate and not on a per square foot basis and
12 that's what happens when you go to larger
13 rowhouse product. Because at \$300 a foot, the
14 units we're talking about here are \$750,000.

15 There's very little comparable
16 support in the marketplace and Eric has all that
17 data with all the recent sales of rowhouses with
18 condominium, everything else, sitting right
19 there in front of him.

20 All that data's there. There's
21 very little to support aggregate price points
22 with substantial footing above a \$750,000

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1 aggregate for an alley product of the type we're
2 talking about designing here.

3 So, these are our real numbers based
4 on what's financeable/supportable in the
5 marketplace.

6 Could they go for more? Sure.
7 Could they go for less? Certainly. So, our
8 job is to find the number that's supportable and
9 it's aggregate. It's not per square foot.
10 Because per square foot is inaccurate when you
11 start getting into rowhouse comparables when
12 you're comparing them to condominium.

13 MR. COLLINS: Could you just name
14 some of the factors that differentiate a condo
15 per square sales price from a fee-simple
16 rowhouse square --

17 MR. KARCHEM: Well, in a
18 condominium scenario, you have common areas.
19 You have a whole range of scenarios where you've
20 got to make up the cost for the common areas.
21 Whereas in a rowhouse scenario, you've got --
22 the full envelope belongs to the individual.

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1 The defining factor without
2 dropping into specifics is an aggregate price
3 point factor. It's really just an aggregate
4 price.

5 One says yes, they're performing
6 these at \$750,000. This is -- or at \$300 per
7 foot. Seven hundred and fifty thousand
8 dollars, when we pulled the comparables and
9 again, Eric has them sitting right in front of
10 him listed, there ain't a world of comps above
11 \$750,000 in this neighborhood for blocks
12 around. There's a few, very nice rowhouse,
13 street-front product, but there ain't a lot and
14 that's what we're challenge -- which is the
15 aggregate side.

16 It's just -- I mean does anyone
17 think we're selling million dollar highly bound
18 rowhouses here? I mean maybe somebody does,
19 but we don't. We think we're selling \$650,000
20 to \$800,000 condos and we have concerns that
21 they're going to be 600 to 650 not 750 and we've
22 been straightforward with this and with the

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1 community. We've been open book on our numbers
2 from the beginning.

3 ZONING COMMISSIONER MILLER: Thank
4 you very much.

5 CHAIRPERSON JORDAN: Board, any
6 other questions of the supplemental report
7 submitted by the Applicant?

8 Does the -- Ms. Lenard, do you have
9 any questions you would like to ask regarding
10 the supplemental report and the testimony that
11 was just given here today?

12 MS. LENARD: I think we have a few.

13 CHAIRPERSON JORDAN: Just make
14 sure your microphone is on please.

15 MS. LENARD: I think we have a few.

16 CHAIRPERSON JORDAN: There's only
17 one person who's going to speak in regards to
18 asking questions and do presentations with
19 regards to the opposition party.

20 MS. LENARD: Understood.

21 So, going to Table 1 in the
22 supplemental submission, you discussed that

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1 you have a 12 percent yield. So, in line 41,
2 where you have numbers in parens, who would
3 really get that money? If you're saying that
4 it's profit that someone would get, it would be
5 an equity investor, who would the equity
6 investor be?

7 MR. KARCHEM: Well, likely on this
8 project, the equity -- we'll have a portion of
9 the equity and we'll have outside partners on
10 a portion of the equity. Whether that's 20/80,
11 50/50, I don't know where that will stand, but
12 yes, we would --

13 MS. LENARD: So, it's listed here
14 as a loss because it's in parens, but what
15 you're saying now is that it's really a profit
16 and that you would get some of that profit?

17 MR. KARCHEM: It's not listed as a
18 loss on the bottom line. I mean the bottom line
19 lists a positive of 1634, but yes, if you're
20 asking would we potentially participate in the
21 12 percent yield, a portion thereof, yes, is the
22 answer.

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1 MS. LENARD: Which is in line 41.
2 Which is --

3 CHAIRPERSON JORDAN: So, what
4 she's saying -- she's saying aren't you really
5 getting back a return to yourself above the
6 line, but you include it as an expense. But,
7 it's actually a return to your -- it's profit.
8 Allegedly, you're saying profit to yourself.
9 Is that what you're saying?

10 MS. LENARD: Right and then if you
11 carry that through to the other lines, then
12 you're kind of creating more loss because
13 you're subtracting the 321 in the second column
14 to create a greater loss at the bottom. So,
15 that you're really getting some profit that
16 you're not -- you're not showing here as you
17 just mentioned.

18 MR. KARCHEM: Yes, and that is not
19 meant to be -- it's not meant to be hard to
20 understand. If it is, I apologize. It was
21 just meant whether it's -- the equity comes from
22 us or elsewhere the same risk applies and that

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1 same 12 percent return scenario is there. So,
2 this is not meant to indicate anything other
3 than that.

4 So, I think yes is the answer to your
5 question. Yes, we would -- in scenario two, we
6 would have some participation in that yield of
7 the 321 which is the minimum return
8 requirement. I think yes, that's likely.

9 MS. LENARD: So, going back to the
10 page before that, the last page with a grid of
11 the chart, then what we're saying is that some
12 of the summaries here that show that for four
13 units you would have \$150,000 loss and with the
14 four smaller units a \$300,000 loss that is
15 inaccurate because you haven't really factored
16 in what you just mentioned of the profit that
17 you would get from line 41 from the different --
18 from the different scenarios. So, this
19 chart's inaccurate.

20 MR. KARCHEM: No, I don't think
21 it's inaccurate. I think it's -- even our --
22 look and again, I don't know whether we're 10

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1 percent on this or whatever we are on this deal,
2 10 or 20 whatever, but we have costs of our
3 equity as well. I mean the same risk applies
4 for us as it applies for anything else.

5 So, for us, say we're 100 percent of
6 it, say we're all of that, the reality is for
7 us to come into this project with the risk and,
8 you know, all the things we've talked about and
9 achieve this project for -- say we're going to
10 make 6 percent and we're going to -- that's
11 going to be what we achieve on the project.
12 That effectively -- when you look at risk
13 parameters and where dollars should be expended
14 that is -- there's no sensibility to it. It
15 does not work.

16 In other words, why would we or
17 anybody else put money there when you can put
18 it into much safer investments and earn the same
19 6 percent.

20 So, we believe that 12 percent is a
21 -- it's a requirement for the deal to get
22 financed. Again, not intended to show

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1 anything other than that.

2 MS. LENARD: Are you aware that V on
3 Veranda, the new project at 2nd and V that
4 that's eight units and that those are now going
5 for between \$750,000 and \$850,000?

6 MR. KARCHEM: Yes, and those are
7 street front units and yes, and we have -- we
8 got a -- there's a lot of comparable data where
9 you have product in that price point. I mean
10 --

11 MS. LENARD: Are you --

12 MR. KARCHEM: -- we obviously are
13 constrained somewhat by the --

14 MS. LENARD: Are you aware that
15 they're selling the parking spaces separately
16 for \$40,000 each?

17 MR. KARCHEM: Which in a way if you
18 think of it indicates that there's not demand
19 for the residents in the project. Which is the
20 same reason on ours we're not looking at keeping
21 this as a parking lot because we're getting
22 ready to deliver the -- you know, the Clermont

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1 Apartment rehab in front of it and look if there
2 was demand for parking, we would be keeping this
3 lawn and saying hey, we have 38 units in McGill
4 Row Development in the past few years. We have
5 16 units getting ready to come online at
6 Clermont Apartments currently with no parking
7 and we've seen the demand for parking. It's
8 not --

9 MS. LENARD: Did you do a bona fide
10 parking analysis that takes into account the
11 changing demographics?

12 MR. KARCHEM: I was --

13 MS. LENARD: And increase in the
14 number of households in the Bloomingdale area?

15 MR. KARCHEM: Well, I think that --
16 I think that our obligation there is to assess
17 the parking requirements as they are today.
18 You stated a series of restaurants and
19 otherwise in your report. Most of which are
20 already open and active.

21 There's not an opportunity for
22 major changes in density in the area today and

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1 yes, for our own purposes, did we want to really
2 be sure that we were right on the parking thing?
3 Yes. Did we document -- which we can put on the
4 screen here which I think is worthwhile, right
5 behind -- this lot currently is master leased
6 by D.C. Water and provided as free parking to
7 all of the surrounding residents.

8 And if you can see these
9 photographs, this parking lot is -- I was there
10 or we did a whole range of studies. I was there
11 myself as recent as September 3rd because I
12 wanted to be sure this was post Labor Day at 6:30
13 a.m., at 7:00 p.m. The lot which has 24 free
14 spaces available for the neighborhood had ten
15 spaces occupied, 14 available. More than --

16 MS. LENARD: Is it true that D.C.
17 Water has restricted those parking space and
18 assigned them?

19 CHAIRPERSON JORDAN: You know,
20 we're going to have just a little bit of comfort
21 and slowing down. You're going to let him
22 finish his statement.

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1 MS. LENARD: Okay.

2 CHAIRPERSON JORDAN: Then he's
3 going to take a breath and then you're going to
4 ask a question and then he's going to respond.
5 Okay.

6 MR. KARCHEM: And at the same time
7 in doing that and I was doing on this particular
8 last run also looking at -- and if we go to --
9 this is the actual parking lot on September 3rd
10 and we have days and days of this. This is just
11 -- and they're all the same. There's no
12 difference.

13 September 3rd, if you go to the
14 surrounding streets which you're on right now,
15 I'm there myself, you can see the photographs
16 represented. Second street, four spaces
17 available and this is just on the -- this is just
18 on the block. This is not two blocks up, three
19 blocks up. W Street four spaces available.
20 Adams Street three spaces available. Flagler
21 Street three spaces available.

22 These are the streets at which --

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1 and I'm not trying to be passionate about this.
2 I'm really not. I'm trying to be dispassionate
3 in a way that we're just assessing what's there.
4 I'm not trying to shove this down anybody -- you
5 know, I'm just saying we've been there and
6 looked at the parking. It's a free lot now
7 which is empty and it's empty because there's
8 parking on the surrounding streets and all of
9 that is while half of Flagler and half of Adams
10 are closed right now.

11 So, we're actually -- we're trying
12 to make some of these other scenarios. We're
13 looking at them in that way, but they're -- we
14 had offered these up previously. It didn't
15 work and now, we're looking at a free lot and
16 it's available to the neighborhood and the lot
17 is empty and the streets are available.

18 So, I don't -- I've seen -- none of
19 the other members of the small area group, again
20 15 letters of support and I keep saying that
21 because we went through such a process with the
22 community to find something which we ultimately

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1 would end with overwhelming support aside from
2 these four opposition parties and we went over
3 and we did not hear of parking. We didn't hear
4 of artist studio. We didn't hear of these
5 other pieces because we worked on a project and
6 developed a project together with them that
7 worked.

8 So, on the parking scenario, we
9 thought it didn't work, but after our last
10 meeting here, it was like hey, let's be sure.
11 It's pretty straightforward. It's pretty
12 straightforward.

13 MS. LENARD: Are you aware the D.C.
14 Water has assigned the parking in 143 W Rear?
15 That not everybody who has an APA tag is allowed
16 to park there. It's assigned to specific cars.
17 It's assigned to households with specific needs
18 such as young babies, if you're blind. Are you
19 aware that not everybody can park back there?

20 MR. KARCHEM: Well, Cliff
21 Forrester over at D.C. Water also mentioned to
22 me that there is parking available now there.

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1 There now and that there are -- while there may
2 be assigned spaces, there's additional
3 availability for additional assigned spaces
4 which have not been acted on. I mean the lot is
5 empty.

6 MS. LENARD: For example, I'm not
7 allowed to park there and I abut the property.

8 CHAIRPERSON JORDAN: I think that
9 point's for me.

10 MS. LENARD: Okay.

11 CHAIRPERSON JORDAN: What's your
12 next question please?

13 MS. LENARD: When you did your
14 photos of the parking, what time of day was
15 that?

16 MR. KARCHEM: It says on them. I
17 mean it wasn't 4:00 a.m. It was 6:30 to 6:50
18 a.m. That was the last run. You can see
19 there's a series of them, but the last run was
20 6:30 to 6:50. I took them myself. There was
21 some taken by some other members. I realize
22 5:00 a.m. maybe there would have been a couple

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1 more. People leave early, come back late.
2 But, this is post Labor Day. This is -- it was
3 just what was there.

4 MS. LENARD: Are you aware that EC
5 12 is going to have a seating for over 300 people
6 and it hasn't opened yet? It's a restaurant
7 coming.

8 MR. KARCHEM: Where is EC 12 going
9 to be?

10 MS. LENARD: North Capitol.

11 MR. KARCHEM: And Rhode Island?

12 MS. LENARD: And Quincy.

13 MR. KARCHEM: And Quincy. I mean
14 there's not been a -- there's not been a demand
15 for parking in the restaurants and we -- by the
16 way, we also went out to parking contractors to
17 see if we could generate their interest. We're
18 not parking contractors ourselves. So, in
19 addition to demand, we went out to Colonial
20 Parking. We went out to -- and we had -- and
21 MarcPark and we have that data as well to see
22 if as third parties with the restaurant demand

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1 generated, with Howard University would they
2 have an interest in running this as a parking
3 lot and they flat out do not and there's reasons
4 why which I'm happy to read. I don't know if
5 you want to.

6 CHAIRPERSON JORDAN: We're good.
7 Next question please.

8 MS. LENARD: I guess before I
9 conclude do you want to go over why you think
10 the cost to run the parking lot is so excessive
11 compared to the industry norms that I was able
12 to find?

13 CHAIRPERSON JORDAN: Let's ask a --
14 what's the question? I want to be sure I'm --

15 MS. LENARD: I'm sorry.

16 CHAIRPERSON JORDAN: In that, I'm
17 not asking for just open narrative. Questions
18 that's going to generate open two-day long
19 narratives. If there's something
20 specifically that you want to have him respond
21 to, please do so.

22 MS. LENARD: Okay. Could you

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1 explain why the hard construction costs in
2 Table 2 for constructing the parking lot is --
3 how you came up with \$20 per gross square foot?

4 MR. MILLER: Sure. I think you
5 missed a lot of items on a parking lot. I'm
6 sorry. When I went through, there's certain
7 costs like a fence, a gate, lighting. It's not
8 just asphalt.

9 When speaking with Andrew Blair, he
10 said you probably will spend \$50,000.

11 MR. COLLINS: Who is Andrew Blair?

12 MR. MILLER: Andrew Blair is the
13 President of Colonial Parking. He indicated
14 that we'll spend about \$50,000 for stormwater
15 collection tanks that are required under D.C.
16 WASA or D.C. Water. Excuse me. Dating
17 myself.

18 And that there was a number of costs
19 that if you were going to sell these lots or
20 rents these lots that people would expect a much
21 higher standard of care and so, I mean Tom
22 McCullough said, you know, a typical open

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1 stadium-type temporary parking is about
2 \$10,000 per space and that's given on a larger
3 scale, but he would estimate that it would be
4 closer to 15,000 given the access to the site
5 and the limited ability of getting large
6 vehicles to dump concrete or gravel or other
7 products there.

8 CHAIRPERSON JORDAN:
9 Fundamentally, this is some of the problems
10 that I'm having. We're getting hearsay upon
11 hearsay upon hearsay and somebody else said
12 without having before us actually a document
13 which we can use for reliability purposes.
14 But, continue. I just --

15 MR. MILLER: For sure. Just using
16 RSMMeans which is the associated company that
17 you referred to, they have a demolition of an
18 existing parking lot that's close to \$5 a square
19 foot. So, this is -- you quote a number of \$2
20 a square foot for paving and it's just not
21 happening. I mean it can't be done for \$2 a
22 square foot.

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1 CHAIRPERSON JORDAN: All right. I
2 think you've answered -- you've responded. We
3 don't need the narrative.

4 MR. MILLER: Sorry.

5 CHAIRPERSON JORDAN: Next please.

6 MS. LENARD: Just one final
7 question. Is there an existing mortgage on the
8 parking lot or is it all paid in full? Is there
9 an existing mortgage?

10 MR. KARCHEM: No, there's no
11 financing on the property.

12 MS. LENARD: Okay. So, you
13 included the -- it as a fixed cost, but it's
14 actually already paid for? In all these
15 spreadsheets, it's --

16 CHAIRPERSON JORDAN: You mean the
17 land purchase. Is that what you're saying?

18 MS. LENARD: Yes, the land is
19 already purchased and paid for. So, it's not
20 really a fixed cost anymore.

21 MR. KARCHEM: There is no financing
22 on the project. I'm not --

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1 MS. LENARD: Okay. But, it's
2 included -- but, you have it included here.

3 CHAIRPERSON JORDAN: She's saying
4 you're having as an expense of this project
5 purchasing the property. That's what you're
6 asking. In these financials, you're saying
7 the purchase -- that you would need to purchase
8 the property and you're using it as a cost of
9 the land. That's what you're saying.

10 MS. LENARD: Yes.

11 MR. KARCHEM: Oh, I think the
12 reason is --

13 CHAIRPERSON JORDAN: So, that was
14 her question.

15 MR. KARCHEM: Okay. I understand
16 that. I think the reason -- and Eric, you can
17 comment as to why it shows there, but I think
18 the reason it's derived there is because when
19 we go out to do any of these projects and we go
20 out to finance these projects, that will be a
21 line item on those projects. On that scenario
22 there. So, that we can include the cost of

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1 financing -- include the cost of the
2 acquisition of that land as well and I think
3 Eric can probably speak to that.

4 MR. SMART: Yes, the -- it's very
5 typical that the cost of the land is included
6 in the budget, in the financing. It's put at
7 risk on the part of Miller Development if this
8 project does not succeed and that the -- I have
9 not -- I've never seen this. Actually, a
10 performer that didn't consider the cost of the
11 land and I just -- the reason I paused there is
12 I don't know what the definition of
13 reasonableness is, but I suggest or my
14 interpretation is that it's reasonable that the
15 -- that the Applicant in the test would recover
16 the cost of the land that they had.

17 And I felt it was very conservative
18 to leave it at the acquisition cost from 2005.
19 There's no carry. There's no expenses that
20 have been associated.

21 So, in the vernacular of
22 development performance, it's part of the

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1 capital asset that's being contributed to this
2 parcel development. Treated very
3 conventionally in the manner that is depicted.

4 MR. KARCHEM: In other words, what
5 would we not do? Would we just not include it
6 and consider that's just a --

7 CHAIRPERSON JORDAN: No. It's not
8 for you to ask that question.

9 MR. KARCHEM: Okay. Understood.

10 CHAIRPERSON JORDAN: He's
11 responded. Do you have --

12 MS. LENARD: I think we'll rest. I
13 think we've made our point that there's a lot
14 of assumptions that have gone into these
15 estimates and, you know, we are -- our feeling
16 is that they --

17 CHAIRPERSON JORDAN: I'm not
18 asking. No. No. No. No.

19 MS. LENARD: All right. Thank
20 you. I'm done.

21 CHAIRPERSON JORDAN: This is cross
22 examination.

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1 MS. LENARD: Okay.

2 CHAIRPERSON JORDAN: Not any kind
3 -- we've already had closings and --

4 MS. LEONARD: Yes. Thank you. I
5 apologize.

6 CHAIRPERSON JORDAN: Okay. Not a
7 problem. Not a problem.

8 Board, any other questions? Let me
9 ask a question of the opposition in regards to
10 their response. I got some concerns in regards
11 to what was in your response and after going
12 through it and actually checking the
13 references, for instance, you said that the
14 cost per square foot to build these units should
15 be no more than \$125. You cite a reference to
16 that and a website and et cetera.

17 But, the numbers -- correct me if
18 I'm wrong because the numbers that the website
19 pointed was a national norm.

20 MS. LENARD: Correct. That was a
21 national norm and then I found another one that
22 we used because we ran a couple of scenarios.

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1 We found the 140 from Construction Journal and
2 that's the one that we -- so, we found the low
3 of 125 which was the national norm and then we
4 found the 140 for D.C. and we plugged in three
5 stories, unfinished basement, brick veneer,
6 luxury. You could do basic, custom, luxury and
7 they all came up with different square footage
8 assumptions.

9 So, we picked what we thought was
10 most similar to what was in the design
11 documents. The --

12 CHAIRPERSON JORDAN: For instance,
13 on your page 4, you talked about the concrete
14 brick wall you used from \$8.01 to \$8.96. This
15 is in your narrative that you used.

16 However, your website that -- the
17 tab actually talks about this is the estimated
18 cost again nationally and -- but, you use in
19 your analysis as locally.

20 MS. LENARD: I believe at the
21 bottom it had a -- that the numbers for an
22 increased --

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1 CHAIRPERSON JORDAN: You should
2 read that. Go back.

3 MS. LENARD: Okay.

4 CHAIRPERSON JORDAN: I looked to
5 that to see if that was the case, but the numbers
6 that they gave you, you need to take a hard look
7 at that.

8 MS. LENARD: Okay.

9 CHAIRPERSON JORDAN: Because it
10 jumbles it. It says you can plug these things
11 back in, but their bottom line were still
12 national numbers. So.

13 MS. LENARD: Okay.

14 CHAIRPERSON JORDAN: Yes. That
15 was a question I had about that.

16 Board, any other questions of the
17 opposition? Any other issues? All right.

18 I don't know if there is anything
19 that OP wants to weigh in other than -- on the
20 supplemental documents.

21 MR. COLLINS: Mr. Chairman.

22 CHAIRPERSON JORDAN: Yes.

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1 MR. COLLINS: Did the opposition
2 finish their presentation?

3 CHAIRPERSON JORDAN: There's no
4 presentation. We're asking questions
5 regarding the supplemental documentation.

6 MR. COLLINS: I see.

7 CHAIRPERSON JORDAN: We've had
8 presentations already. This is questions.
9 We were discussing the supplemental
10 information.

11 MR. COLLINS: Okay.

12 CHAIRPERSON JORDAN: Remember we
13 went through this last time. We had everybody
14 do a presentation and everybody did some cross
15 examination. This is -- we kept this record
16 open for the submittal of the supplemental
17 document and the Board addressing questions
18 regarding the supplemental.

19 MR. COLLINS: Will we have an
20 opportunity to cross examination the
21 opposition based upon their submission?

22 CHAIRPERSON JORDAN: I would --

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1 yes, let's go ahead especially since I opened
2 the door and asked some questions about it. To
3 be fair, yes, I think you have the right to do
4 that.

5 MR. COLLINS: Yes. Thank you.

6 Could you -- just referring to page
7 4 of your financial analysis, I'm sorry, your
8 submission on your -- in the bulletpoints, you
9 point out you rely upon a website called
10 fixer.com in the second bullet point to support
11 conclusions about industry norms in the range
12 of \$85 to \$125 a square foot for residential
13 construction and then you rely upon another
14 website called buildingjournal.com to support
15 the conclusion that the townhouses that are
16 proposed could be built \$140 a square foot and
17 then you use those numbers to populate your
18 charts, your economic data.

19 CHAIRPERSON JORDAN: Mr. Collins,
20 that's what I was just asking her about. So.

21 MR. COLLINS: My question is for --
22 let's just turn to fixer.com. Why prepared

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1 those numbers?

2 MS. LENARD: It was a -- it's a --
3 like a calculator. Like an on-line
4 calculator.

5 MR. COLLINS: Okay. And but, who
6 prepared the calculator so that those numbers
7 would come up? The information that was based
8 -- that was used in the calculator.

9 MS. LENARD: Well, for the \$140, I
10 put the numbers in and there's an attachment
11 that shows what the assumptions were. It's my
12 Tab A.

13 MR. COLLINS: So, the 85 to 125 --

14 MS. LENARD: That was just an
15 article and it listed those as --

16 MR. COLLINS: Industry norm.

17 MS. LENARD: -- industry norms.

18 MR. COLLINS: Okay. Who prepared
19 those industry norms? Who was the author of
20 that article?

21 MS. LENARD: I don't remember who
22 the author was.

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1 MR. COLLINS: Do you know their
2 expertise in the D.C. market?

3 MS. LENARD: No, I don't.

4 MR. COLLINS: Do you know their
5 expertise in the industry?

6 MS. LENARD: No, I don't.

7 MR. COLLINS: Do you have any
8 information at all about who prepared those
9 numbers?

10 MS. LENARD: No, I don't.

11 MR. COLLINS: Did you read the
12 terms and conditions of the use on that website?

13 MS. LENARD: No, I didn't.

14 MR. COLLINS: Okay. Let's turn to
15 buildingjournal.com. Same questions.
16 That's the one that you plugged in the location
17 and then the document populated itself to
18 determine or to show that it's \$140 a square
19 foot.

20 MS. LENARD: Correct.

21 MR. COLLINS: Who prepared those
22 numbers?

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1 MS. LENARD: Well, I plugged in the
2 assumptions.

3 MR. COLLINS: Yes, but who at
4 buildingjournal.com put in those numbers based
5 upon your input?

6 MS. LENARD: I don't know.

7 MR. COLLINS: You don't know
8 anybody's expertise in --

9 CHAIRPERSON JORDAN: Mr. Collins,
10 I understand your whole line of questioning. I
11 thought we had already -- but, we know that she
12 plugged it in. She has no knowledge of who
13 populated the back side, put the formula in the
14 computer. All that stuff. Where they got
15 their research to plug their numbers in on the
16 algorithm that generated what she -- I think
17 that's what you're saying. I think she's clear
18 about that and I think we're clear.

19 MR. COLLINS: Okay. One last
20 question on that. Did you take a look at the
21 terms and conditions of use of that website?

22 MS. LENARD: No.

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1 MR. COLLINS: On page 4, in terms of
2 your document, in terms of revenue, you used
3 condo unit sale prices between the 487 and
4 higher to reach your conclusion that these
5 revenue projections for these townhouses would
6 be similar and then you assigned -- used those
7 numbers to justify in your financial analysis.
8 So -- and used those in your spreadsheets in D,
9 E and F.

10 Is it your position that condo sales
11 per square foot equate in terms of price per
12 square foot to fee-simple townhouses?

13 MS. LENARD: I think that they
14 indicate that there is a trend in the
15 Bloomingdale neighborhood that the price per
16 square foot for properties is considerably
17 higher than \$300 a square foot. It's a very
18 trendy neighborhood and I would think that by
19 the time these units would come on board they
20 would be worth well more than \$300.

21 MR. COLLINS: But, that's not my
22 question. My question is is it your position

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1 that it's a fair comparison, an
2 apples-to-apples comparison, to compare a
3 sales price per square foot of a condo unit with
4 a sales price per square foot of a fee-simple
5 townhouse?

6 MS. LENARD: To me as a non-expert,
7 to me, it's a fair comparison because I'm
8 showing that there's a greater demand and value
9 on real estate than \$300 a square foot in
10 Bloomingdale.

11 MR. COLLINS: Okay. With regard
12 to the parking lot analysis that you did
13 searching the websites to get input about
14 driveway construction and then you used that to
15 estimate the cost of construction of a parking
16 lot, who prepared those numbers?

17 MS. LENARD: I plugged in the
18 location and the -- I put in the size based on
19 what's in the design diagrams.

20 MR. COLLINS: And that was for a
21 driveway. Correct?

22 MS. LENARD: I believe it was for

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1 asphalt and I put the square footage of the size
2 of the lot.

3 MR. COLLINS: Let's just take a
4 look at our Tab B which across the top under your
5 handwritten Tab B is online construction
6 asphalt driveway calculator.

7 So, you don't know who prepared
8 these numbers? Is it your position that the
9 construction -- the means and methods of
10 constructing a driveway are identical to the
11 means and methods of construction a parking
12 lot?

13 MS. LENARD: I'm not a construction
14 expert, but it was an example of how much it
15 might cost.

16 MR. COLLINS: To build a parking
17 lot?

18 MS. LENARD: To put asphalt down.

19 MR. COLLINS: To put asphalt down.
20 But, to build a parking lot?

21 MS. LENARD: As a non-construction
22 person, it seemed --

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1 MR. COLLINS: No, but you used
2 these numbers to rebut the Applicant's figure.
3 So, I'm just wondering what the basis of your
4 understanding is here. I just -- I'm not
5 getting an answer. So, I don't want to assume
6 anything.

7 But, is it yes or no that your
8 position is that constructing a driveway the
9 same needs and methods are used to construct a
10 parking lot?

11 MS. LENARD: I'm not an expert, but
12 I think it demonstrates how much something
13 would cost to do -- to pour asphalt.

14 MR. COLLINS: To pour asphalt.
15 Okay.

16 MS. LENARD: Um-hum.

17 MR. COLLINS: You estimated a
18 vacancy loss of 15 percent. Which means that
19 -- on the parking lot. Meaning that 15 percent
20 of the spaces would be vacant at any time. So,
21 on the 24-space plan, that -- and we did submit
22 two alternate plans. One is 24. One is 21.

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1 We don't believe the 24-space plan would be able
2 to be achieve because you can only do a parking
3 lot -- and I'm sorry for the aside, but I just
4 wanted to let you understand, Mr. Chair.

5 CHAIRPERSON JORDAN: I'm going to
6 counsel you as I counseled the opposition.
7 This is --

8 MR. COLLINS: All right. Then I
9 will continue with my cross examination.

10 On the 24-space plan, your numbers
11 would mean how many spaces would have to be on
12 average occupied at all times per month at \$150
13 a square foot -- \$150 per month per space?

14 MS. LENARD: I'd have to pull my
15 calculator.

16 MR. COLLINS: Would you?

17 MS. LENARD: Sure.

18 CHAIRPERSON JORDAN: No, if she
19 knows, you can answer what you know. We're not
20 asking you to do any calculations. Mr.
21 Collins.

22 MR. COLLINS: But, it's your

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1 position 85 percent of the spaces would be --
2 in your scenario, 85 percent of the spaces would
3 be occupied at \$150 a month?

4 MS. LENARD: That's my position
5 because I thought 30 percent which is what you
6 all had seemed awfully high. Especially if
7 you're really do a good job of marketing the
8 spaces and working on the concept of valet
9 parking and I think that there's considerably
10 more demand than is included in your scenario.

11 MR. COLLINS: Even based upon the
12 fact that the parking is currently free and is
13 only occupied maybe 50 percent max at this time?

14 MS. LENARD: That's because the
15 spaces are assigned. Not everybody is allowed
16 to park there. D.C. Water has assigned spaces.

17 Like, for example, I'm not allowed
18 to park there even though my house abuts the
19 property. I don't have a disability or a
20 special need. So, I'm not allowed to park
21 there.

22 MR. COLLINS: The revenue

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1 projections for parking in your study were
2 based upon information of Austin Regional
3 Planning Agency?

4 MS. LENARD: Correct.

5 MR. COLLINS: Did you talk to any
6 parking lot operators to complete your analysis
7 that you presented to the Board?

8 MS. LENARD: No.

9 MR. COLLINS: Thank you. That
10 answers my questions.

11 CHAIRPERSON JORDAN: Okay. Okay.
12 Thanks. Board, any additional questions?
13 Anybody need?

14 All right. Then we'll conclude
15 this hearing and the record based upon what's
16 submitted except I'm going to ask for both
17 parties to submit a finding of facts and --

18 MR. COLLINS: Conclusions of --

19 CHAIRPERSON JORDAN: Yes.

20 MR. COLLINS: Do I get an
21 opportunity for rebuttal and closing?

22 CHAIRPERSON JORDAN: We've already

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1 had the hearing. This is for the questions
2 we've asked --

3 MR. COLLINS: Right.

4 CHAIRPERSON JORDAN: -- regarding
5 -- she didn't present anything new. You had a
6 chance to cross examine. So, you had an
7 opportunity to go over her numbers with her.
8 She presented nothing new that's -- other than
9 what the document is. So, there's nothing new
10 to rebut. You had that opportunity during
11 cross examine. She didn't put forth any new
12 evidence which you have not seen. So, the
13 answer is no.

14 We will conclude the record based
15 upon where we are and we will ask that you submit
16 finding of facts and conclusions of law for this
17 matter and to put this on decision day for
18 October 7th.

19 Am I correct, Mr. Moy?

20 MR. MOY: Yes, sir, that would be a
21 good date for the Board.

22 CHAIRPERSON JORDAN: So, can we

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1 back into the finding of facts and conclusions?

2 MR. MOY: Yes, if the Board allows
3 the Applicant and the parties to file draft
4 orders, I would suggest -- today's September
5 9th. Perhaps by Tuesday, September 23rd or if
6 they need more time, then the latest would be
7 September 30th.

8 MR. COLLINS: Could we have the --
9 would the 30th inconvenience the Board?

10 CHAIRPERSON JORDAN: No, I think
11 we're okay. That's okay with all. Yes.

12 Okay. So, that would be our order
13 today and we thank you all for --

14 MS. LENARD: Thank you.

15 CHAIRPERSON JORDAN: -- taking
16 through this process. I know we have a lot of
17 questions, but this is so important that we
18 really need to drill down and make sure we make
19 the best decision that we can. It affects an
20 awful lot. Thank you.

21 MR. COLLINS: Thank you.

22 CHAIRPERSON JORDAN: We're going

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1 to take -- we're going to take a quick
2 five-minute break. Thank you again. Thank
3 you. Appreciate it.

4 (Whereupon, the above-entitled
5 matter went off the record at 11:26 a.m. and
6 resumed at 11:35 a.m.)

7 CHAIRPERSON JORDAN: We had an
8 application for party status in 18770. Are
9 those persons here?

10 MS. ELLIOTT: Mr. Chairman, we are.
11 It's Linda Elliott.

12 CHAIRPERSON JORDAN: Um-hum.

13 MS. ELLIOTT: Ms. Prince told me
14 just to press the light here.

15 CHAIRPERSON JORDAN: Yes.
16 Um-hum.

17 MS. ELLIOTT: It's Linda Elliott
18 and John West.

19 CHAIRPERSON JORDAN: Okay.

20 MS. ELLIOTT: Am I pressing it?

21 CHAIRPERSON JORDAN: Okay. So,
22 you're here for the party status request.

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1 MS. ELLIOTT: We are here for party
2 status, Mr. Chairman. However, we have -- we
3 are withdrawing our opposition and actually
4 supporting the application because after
5 expensive and ultimately very cooperative
6 negotiations, we are all on the same page with
7 the Applicant.

8 CHAIRPERSON JORDAN: Okay.
9 That's what we need to hear or need to know
10 because either way, we're glad to hear that.

11 All right. Then let's rock and
12 roll. Don't go too far because we're going to
13 call 18770. Right? Is that what we had?
14 Okay. So, that helped bump it up.

15 MR. MOY: Okay. That's pretty
16 good. Thank you, Mr. Chairman.

17 While people are being seated, this
18 was captioned for a request for a special
19 exception for fast food under Section 733 and
20 variance from the rear yard under Section 774.
21 Plans before the Board for review is under
22 Exhibit Number 7. The floor plans.

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1 CHAIRPERSON JORDAN: Oh, my
2 goodness. They didn't keep my edits. Darn
3 it. They didn't keep my edits. I've worked
4 these things. Just didn't keep my edits. Let
5 me try -- I got to do a work around real quick.
6 Let me try to do this work around. Give me a
7 second. I'm trying to get to my edits on this
8 thing.

9 While I'm -- oh, okay. Good. I'm
10 there. Very good. Hey, you don't know how
11 happy I am for this. Okay. I'm trying to find
12 a document just quickly here. One second.
13 Trying to tap into my home computer remotely so
14 I can pull up this document that didn't get
15 transferred. There. Save document. I'm
16 trying to work this out.

17 No, I just -- no, I do -- I just
18 logged into my home computer and now, I'm trying
19 to get back to this document that I took time
20 and effort to go through and all right. I think
21 I have another way of getting back over to this.
22 Okay.

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1 ZC VICE CHAIR COHEN: Just so the
2 audience is clued in, I'm highly tech
3 challenged and that's why --

4 CHAIRPERSON JORDAN: Oh, no, not
5 you, Marcie. Not you. One second.

6 Well, why don't we go ahead with the
7 introductions. I can at least do two things.
8 Chew gum and talk at the same time and try to
9 get this document up.

10 All right. Please. Um-hum.

11 MS. PRINCE: Good morning.
12 Allison Prince with Goulston & Storrs. I'm
13 here on behalf of the owner.

14 At the outset, I'd like to note that
15 Steve Salis who is here for &pizza was not sworn
16 in. So, he needs to be sworn in.

17 CHAIRPERSON JORDAN: Let's --
18 okay. Let's go that and then we can go back to
19 --

20 MR. MOY: Will you stand please?
21 Do you solemnly swear that the testimony you're
22 about to present in these proceedings is the

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1 truth, the whole truth and nothing but the
2 truth?

3 Thank you.

4 MS. PRINCE: I have a brief opening
5 statement and --

6 CHAIRPERSON JORDAN: Let's
7 introduce everyone who's at the table.

8 MS. PRINCE: Sure. Steve Salis is
9 the President of &pizza, a very successful
10 pizza company in the District of Columbia and
11 to his right is Chris Lloyd who is here to
12 testify in support. He just has a place a
13 table.

14 MR. FLOYD: Floyd.

15 MS. PRINCE: Floyd. I'm sorry.

16 CHAIRPERSON JORDAN: Okay. And
17 you're?

18 MR. FISHBERG: Ivan Fishberg
19 with --

20 CHAIRPERSON JORDAN: Let's make
21 sure your microphone is on.

22 MR. FISHBERG: Ivan Fishberg with

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1 ANC-6B.

2 CHAIRPERSON JORDAN: Fishberg did
3 you say? Berg?

4 MR. FISHBERG: B-E-R-G.

5 CHAIRPERSON JORDAN: Berg. Okay.
6 Thank you. All right.

7 All right. Just so we know where we
8 are here, if I knew what I was doing, it would
9 be better. Huh.

10 Okay. This is one which -- since we
11 now have -- there was a party in opposition
12 request that has withdrawal the party in
13 opposition request and now, sits in support of
14 this application. Again, we appreciate any
15 time the Applicant and those in the community
16 and people in opposition get together and try
17 to work these things out. It just makes the
18 whole process better. Especially when people
19 are going to live together or around each other
20 as neighbors and interact and et cetera. So,
21 we strongly encourage that.

22 There is no additional change to

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1 this application, Ms. Prince?

2 MS. PRINCE: There are no
3 additional changes.

4 CHAIRPERSON JORDAN: All right.
5 And we have support now for the application and,
6 Ms. Prince, I don't think there is necessarily
7 anything that we need to have from you except
8 for us going through the proposed conditions I
9 think. Unless the Board has any questions about
10 this application. Ms. Cohen.

11 ZC VICE CHAIR COHEN: I don't have
12 a question. I just want to commend the
13 Applicant and the community and the ANC for
14 coming up with a very thorough plan for managing
15 the trash and I encourage OP to use this as like
16 a best practice. I was very impressed.

17 We get a lot of concerns about trash
18 obviously and I just thought everything was so
19 well organized and you did a great job. Thank
20 you.

21 MS. PRINCE: Thank you.

22 CHAIRPERSON JORDAN: All right.

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1 There is a slight question here and I think the
2 Board needs to have some reflection on by the
3 Applicant and also the other parties.

4 I understand that we now have an
5 agreement as to ten years. Is that what you
6 guys are offering collectively?

7 MS. PRINCE: No, there's a
8 disagreement over seven versus ten years.

9 CHAIRPERSON JORDAN: Okay. Got
10 it. So, that's the issue. Okay. All right.
11 So, there is a problem still existing with this
12 application.

13 MS. PRINCE: Mr. Salis can explain
14 the reason for his need for ten years.

15 CHAIRPERSON JORDAN: All right.
16 Let's hear that.

17 MR. SALIS: Sure. First, thanks
18 for your time, guys.

19 So, really, I think the biggest
20 challenge for me as an operator is I actually
21 use SBA financing through a bank in order for
22 me to fund my business operations and I've found

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1 that in my dealings with them it's very much a
2 challenge for them to -- for me to have these
3 types of conditions with respect to the amount
4 of years and term because of the fact that
5 obviously they want to protect their interest.

6 Generally speaking, I only sign
7 ten-year leases with options and the reason
8 they like those kinds of opportunities is
9 because it gives me the highest propensity to
10 mitigate the bank risk obviously that comes
11 with that. So, it's really more of an ability
12 for me to amortize my sizable capital
13 investment in this project and that's where I
14 stand as an operator with respect to that today.

15 CHAIRPERSON JORDAN: Did your
16 commitment letter from the bank indicate that
17 you need ten years?

18 MR. SALIS: It doesn't indicate
19 that I need -- it doesn't indicate that I need
20 ten years, but they are much less willing to
21 lend me money if I'm not able to sign a ten-year
22 deal.

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1 CHAIRPERSON JORDAN: Um-hum.

2 You've talked to them about seven years?

3 MR. SALIS: Yes, I have.

4 CHAIRPERSON JORDAN: And they said
5 they wouldn't do it?

6 MR. SALIS: They said they wouldn't
7 do it.

8 CHAIRPERSON JORDAN: They said
9 they would do it for ten?

10 MR. SALIS: They would do it for ten
11 because ten years --

12 CHAIRPERSON JORDAN: Do you have a
13 letter from them that indicates that?

14 MR. SALIS: I'm sorry.

15 CHAIRPERSON JORDAN: Do you have a
16 letter from them --

17 MR. SALIS: No, but I can get one.

18 CHAIRPERSON JORDAN: Yes, well,
19 this is the time for your hearing.

20 MR. SALIS: I'm sorry.

21 CHAIRPERSON JORDAN: So, it's like
22 the burden is on you to present. Ms. Cohen.

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1 ZC VICE CHAIR COHEN: Yes, as a
2 former lender, not of SBA loans, but I'm
3 familiar with SBA requirements and ten is
4 reasonable. It's related to also depreciation
5 isn't it?

6 MR. SALIS: Yes.

7 ZC VICE CHAIR COHEN: So, I would
8 --

9 CHAIRPERSON JORDAN: We're not at a
10 deliberation point.

11 ZC VICE CHAIR COHEN: Oh, I'm
12 sorry. I'm always --

13 CHAIRPERSON JORDAN: Okay. All
14 right. Anything else in regards to ten years
15 you want to put forth to us?

16 MS. PRINCE: I would just add that
17 one of the critical components of the
18 application is the creation of an addition off
19 the back of the building to have a more
20 rodent-proof environment for the trash.
21 That's costly.

22 The green roof on top of it's costly

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1 and the types of equipment that are going into
2 this building which are specified in the
3 conditions and I know that's unusual for you to
4 see, but it was absolutely essential to
5 community support that we talk about the kinds
6 of equipment. It's very, very costly.

7 So, if Mr. Salis were renting just
8 any fast food establishment that was not
9 regulated in this way, there might be more
10 flexibility, but to make this establishment
11 work in this location, we're convinced that we
12 need these conditions and we're happy to abide
13 by all the conditions.

14 CHAIRPERSON JORDAN: Right now --
15 right now, we're dealing with issue of the
16 length of term. Then we'll go back and talk
17 about the conditions.

18 MS. PRINCE: Okay.

19 CHAIRPERSON JORDAN: Board, any
20 other questions about length of time?
21 Concerns we need to address? Yes. Yes, I was
22 going to ask that, but let's kind of take this

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1 out of -- a little bit out of whack.

2 The persons who wish to speak
3 regarding the -- yes, the term, please come to
4 the microphone. If there's anyone who wants to
5 talk about something opposite of the -- what's
6 been presented for ten years or I understand
7 there's an issue about seven or ten years,
8 anyone here wish to speak on that?

9 Yes, please, Mr. Fishberg.

10 MR. FISHBERG: So, again, my name's
11 Ivan Fishberg. I'm the Vice Chair for ANC-6B.

12 And I had prepared broader
13 testimony about this case and as it pertains to
14 the seven-year/ten-year issue, I want to point
15 out which I believe is in our letter that we had
16 a vote in the full Commission on a ten year --
17 on the proposal with a ten-year limit and that
18 was rejected and it was only when the chair
19 brought forward seven years that it gained the
20 6 to 4 narrow margin to pass.

21 I will give you a little bit of
22 background because this was discussed both in

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1 several committee hearings and here, too.
2 Which is as detailed as the operation side of
3 this is and as you started to acknowledge, we
4 sort of bundled the variance for -- at the back
5 so that we can accommodate trash storage
6 inside. That's something that we're trying to
7 do in the area.

8 We've learned our lessons at some
9 places like the Chipotle special exception
10 which I don't think has worked out as well.
11 We're trying to do that in another case on the
12 next block up.

13 But, the fundamental issue is that
14 so much of this comes down to how these things
15 are operated and you can put all sorts of things
16 into an agreement. You can put all sorts of
17 things into a plan, but the reality
18 particularly along this block is you have huge
19 operational challenges. A lot of which are
20 external to what the -- to any business coming
21 in and I can spend more time on that. But, you
22 have huge challenges just in the context of this

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1 community for that block.

2 You also have one of the most
3 expensive blocks there in the neighborhood
4 ironically even though it's one of the
5 trashiest.

6 But, what it means is that you have
7 a situation where the Applicant is really
8 squeezed and one of the places that that
9 expresses itself is in staff. You know, you
10 have -- we have a situation as with Chipotle
11 down the street where trying to implement
12 anything that was in the agreements was almost
13 impossible because of the turnover of staff
14 that was going on in that operation. Even
15 where we had a sort of line into -- and the
16 neighbors had a line into headquarters.

17 And so, really one of the -- how to
18 manage all of that stuff especially with a
19 growing business like Steve's where I think
20 there's sort of rapid expansion in the area and
21 ambitions maybe beyond. But, how to manage
22 that and make sure that all of these things work

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1 as we've sort of created them in the ideal here.
2 The biggest leverage we have is the term of the
3 special exception.

4 And I think a lot of people started
5 this conversation saying five years. If
6 you're as good as your word to us, we understand
7 there's a -- you're kind of -- his promise to
8 the bank, but there's also word to the
9 community. Which is what's at stake for us and
10 the accountability over that is the fundamental
11 issue and so, the seven-year piece came out I
12 think as a mid-point between what Steve is
13 asking for at ten and what the, you know, others
14 had asked for at five and it was the maybe not
15 so sweet spot that got us to a six-to-four vote
16 and I'll say I was in -- on the six side of that.

17 But, I'm principally here to try and
18 insure that every piece of this agreement and
19 the terms under which it was considered by the
20 ANC. It took a lot of time. There was several
21 points of opposition in committee at the full
22 Commission before we got to the point of this

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1 agreement and so, I sort of bring a huge concern
2 about starting to walk pieces of those back.

3 CHAIRPERSON JORDAN: Gotcha.
4 Board, any questions of Mr. Fishberg?

5 ZC VICE CHAIR COHEN: I have.

6 CHAIRPERSON JORDAN: Yes, go
7 ahead.

8 ZC VICE CHAIR COHEN: Okay. I
9 presume that your ANC is aware of the bank
10 requirement and so, is there anyway you can see
11 yourselves to continue to monitor and, you
12 know, I mean it is -- seven years is a long time
13 as well in my, you know, estimation. But, I
14 think that, you know, if he can't get his
15 financing. I mean, you know, all that you've
16 done to date may not go through.

17 So, is there anyway you can come up
18 with a possible way of enforcing? You know,
19 even with your experiences with Chipotle, I
20 think what you have to do is just, you know --
21 I shouldn't say this. You just need to
22 continue to pressure the owner and the --

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1 because it's a franchise I presume. As this is
2 a smaller ownership of -- how many do you have?

3 MR. SALIS: I have five units.

4 ZC VICE CHAIR COHEN: Five?

5 MR. SALIS: Yes.

6 MR. FISHBERG: Just Chipotle's not
7 franchised. It's centrally owned and
8 operated, but --

9 ZC VICE CHAIR COHEN: Oh, okay.
10 And so, you have their number and they're not
11 responding to you presumably.

12 MR. FISHBERG: I mean this is the --
13 not of the issue. Which is it takes so much
14 energy and so much work and not only for -- do
15 we get the kind of desired outcome in the kind
16 of micro-sense in that block that it -- that
17 it's not sustainable. I mean from the
18 neighborhood perspective there can't be -- it
19 can't require that much energy from neighbors
20 and commissioners to try to go through this.
21 Which is what it's taken with the Chipotle
22 experience.

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1 And there is, you know, sort of --
2 their command and control in that the
3 headquarters in Colorado, Denver is pretty
4 accessible, but it still takes a tremendous
5 amount of work and, you know, we have -- we
6 receive petitions from almost a hundred people
7 in the community absolutely opposed to this I
8 mean and furious, too. To the point of calling
9 for liquor license moratoriums in the area and
10 going well beyond what I think the ANC, you
11 know, sort of considers reasonable or even good
12 for the neighborhood. So, there's already
13 been a tremendous amount of accommodation.

14 I do think we're in this situation
15 where if the City at large were actually better
16 at enforcing any one of their codes, if the
17 codes reflected what's available today and what
18 standards should be today not what they were ten
19 or 20 years ago when they were written, we would
20 be in a better situation.

21 But, right now, you have residents
22 having to do a lot of this sort of enforcement

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1 and follow-up and fighting to get just sort of
2 basic levels of service from the City side of
3 it as well.

4 ZC VICE CHAIR COHEN: Well, the
5 Applicant seems to be between a rock and a hard
6 place. So, if he can't get his --

7 MR. FISHBERG: We had a -- go ahead,
8 Steve.

9 MR. SALIS: I was just going to say
10 I think --

11 CHAIRPERSON JORDAN: Wait a
12 minute. This is not a free for all.

13 MR. SALIS: I apologize.

14 CHAIRPERSON JORDAN: Trust me.
15 This is not a free for all.

16 MR. SALIS: Absolutely.

17 CHAIRPERSON JORDAN: Okay.

18 MR. SALIS: Sure.

19 CHAIRPERSON JORDAN: Ms. Cohen, do
20 you have a question that you need to ask again
21 of anybody?

22 ZC VICE CHAIR COHEN: Yes, I'll ask

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1 the ANC. How would you advise the Applicant in
2 dealing with the lending?

3 MR. FISHBERG: The question that
4 was raised by the chair was a good one. I think
5 -- and this -- it reflects a conversation that
6 we had at the Commission about what Steve needed
7 in terms of financing. So, we weren't -- and
8 it was a question that I asked and so, it is not
9 insensitive to. I think it would be helpful to
10 be able to see documentation from the lender and
11 requirements around that stuff.

12 I think it -- you know, but a lot of
13 it has to do with also then understanding what
14 the City's response is to this as well.
15 Everything from the Office of Planning and how
16 we deal with these issues to then other
17 regulatory parts of the City.

18 ZC VICE CHAIR COHEN: Thank you.

19 CHAIRPERSON JORDAN: I'm going to
20 ask if you have any questions you wanted to of
21 Mr. Fishberg?

22 MS. PRINCE: No questions.

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1 CHAIRPERSON JORDAN: Okay. Does
2 the Office of Planning have anything to weigh
3 in on this issue, Mr. Mordfin?

4 MR. MORDFIN: On the issue of the
5 ten year? Well, the Office of Planning
6 recommended the ten years because the Applicant
7 did request that and indicated that this was
8 necessary in order for them to establish the
9 business.

10 CHAIRPERSON JORDAN: And any
11 questions of OP?

12 Let me ask this question of the
13 Applicant. You have received your letter of
14 intent or letter of commitment from the bank?

15 MR. SALIS: Yes, I have a term
16 facility.

17 CHAIRPERSON JORDAN: I'm sorry.

18 MR. SALIS: I have a term loan
19 facility with them. It's backed by the SBA
20 through Eagle Bank.

21 CHAIRPERSON JORDAN: All right.
22 And in it, it requires you to -- in the letter

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1 of commitment, the terms of that commitment
2 says you need to be up and running for ten years?
3 You should have a ten-year lease?

4 MR. SALIS: They highly recommend
5 it because it --

6 CHAIRPERSON JORDAN: No, that's
7 not what I asked you.

8 MR. SALIS: Is it in a -- is it in
9 a documentation?

10 CHAIRPERSON JORDAN: That's what
11 I'm asking you very directly.

12 MR. SALIS: No.

13 CHAIRPERSON JORDAN: That's --
14 okay. All right. All right. Any other
15 questions on this?

16 Let me before we kind of -- because
17 I think otherwise we're -- the only issue that
18 we have remaining for this Board will be a term
19 if I understand correctly and I think it also
20 goes to the basis of whether the ANC supported
21 this because their letter was contingent upon
22 their support upon certain conditions, but let

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1 me talk about these conditions.

2 And, Board, I'm going to offer this.
3 I went through these conditions. I made some
4 modifications. Not that I took anything away,
5 but I wanted to make sure that they were
6 enforceable and written in a way that made some
7 sense.

8 So, let's skip the first one because
9 that contains the issue of whether or not it's
10 the term. You know, whether or not that's
11 seven or ten.

12 MEMBER HINKLE: Mr. Chair, can I
13 ask you which copy you're referring to?

14 CHAIRPERSON JORDAN: Whatever --

15 MEMBER HINKLE: We've had
16 multiple.

17 CHAIRPERSON JORDAN: Oh, whatever
18 was in -- I think we took what was in -- well,
19 I think OP had a consolidated or we got
20 something else new that came in overnight?

21 MS. PRINCE: Today, I --

22 CHAIRPERSON JORDAN: Today?

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1 MS. PRINCE: Today, I simply copied
2 the conditions again, but to make it easier for
3 everyone, I attached to the conditions the
4 exhibits. So, that you wouldn't have to dig
5 through the prehearing statement to find them.

6 So, these are the conditions that
7 we've always put forward with --

8 CHAIRPERSON JORDAN: But, how do
9 they change from what was in OP's report
10 and --

11 MS. PRINCE: I believe the only
12 difference between our conditions and OP's
13 conditions were that OP took the trash protocol
14 and instead of referring to it as an exhibit as
15 I have, they put the body of the trash protocol.

16 CHAIRPERSON JORDAN: Going to deal
17 with it in the body. Okay. Let's go --

18 MS. PRINCE: Whatever is your
19 pleasure.

20 CHAIRPERSON JORDAN: Okay. Let's
21 go through it unless they're the same
22 conditions. Let me -- yes, the OP report.

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1 Okay. All right. I'm going to give everybody
2 an opportunity to catch up. So, we're on the
3 same page. All right. So, number 2.

4 Yes. Absolutely. I'm extremely
5 aware of the supplemental report. Okay. Got
6 it. Yes, I got it. That's the one we're
7 working with. The OP supplemental report.
8 All right.

9 So, number one, we're leave that
10 hanging because that's the issue of dealing
11 with the limit of term.

12 Number two, hours of operation
13 shall not exceed -- shall not exceed Sunday
14 through Wednesdays, 10:00 a.m. to 11:00 p.m.
15 Thursdays, 10:00 a.m. to midnight. Friday and
16 Saturdays, 10:00 a.m. to 2:00. So, those are
17 the parameters under which they operate.

18 Number three, garbage shall be
19 collected a minimum of six days per week and
20 recycling a minimum of five days per week and
21 adhere to the following conditions.
22 Collection shall not occur before 7:00 a.m.

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1 The Applicant shall provide the garbage and
2 recycling companies with keys to the trash
3 enclosure. All receptacles shall be kept
4 within the trash enclosure only unless being
5 hauled to and from sanitation trucks. All
6 receptacles shall be secured with lids
7 including while within the trash enclosure and
8 while being hauled to and from the sanitation
9 trucks. Exterior doors to the trash enclosure
10 shall remain closed unless refuse is being hauled
11 to the sanitation trucks.

12 (e) Garbage and recycling shall be
13 placed within receptacles within the trash
14 enclosures only.

15 (f) Garbage and recycling spills
16 shall be cleaned as they occurred. Daily,
17 prior to opening, the Applicant shall insure
18 that no debris was left within the breezeway and
19 that trash enclosure doors are properly shut
20 and secure.

21 (h) The trash enclosure shall be
22 power washed weekly or more often to prevent

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1 food or grease film on the floor of the
2 enclosure, breezeway and receptacles. Okay.

3 (i) The Applicant shall -- you got
4 a lot of conditions here. The Applicant shall
5 allow DPW, DCRA and Zoning Administrator
6 inspectors to access the trash enclosure and
7 breezeway. I didn't know that they could stop
8 them, but it's in there.

9 Four, the Applicant shall use
10 ventless oven systems and install a ventless
11 hood system over each oven. Exhaust through
12 the front of the building shall be maintained
13 to a minimum.

14 Five, no events shall be permitted
15 on the roof or at the rear of the property.

16 Six, no outdoor seating shall be
17 permitted including the rear yard, the roof.
18 Employees shall not be permitted to take breaks
19 within the rear yard or breezeway.

20 Added -- because that became number
21 6. I just broke one of those up because they
22 were kind of running and it didn't really

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1 relate.

2 Seven, the HVAC unit at the rear of
3 the property shall be replaced with a new HVAC
4 unit and be relocated to the roof with sound
5 proofing to meet the standards employed by
6 Arts, USA at 413 8th Street, S.E. The
7 condenser/AC unit to be installed atop of the
8 trash enclosures shall meet the same soundproof
9 standards. No additional mechanical
10 equipment shall be installed on the roof or at
11 the rear of the property.

12 Eight, the trash enclosure shall
13 include a trash compactor, cardboard baler, an
14 odor control unit to be constructed as
15 proposed. The trash enclosure shall comply
16 with the recommendations contained in the
17 rodentologist's report dated May 22nd, 2014
18 except for numbers 12, 15 and 16 which are not
19 applicable to this site.

20 Next, be number 9, delivery shall be
21 made through the front only. No delivery shall
22 be made through the breezeway.

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1 And in 10, the Applicant shall
2 frequently remove trash and debris from the
3 sidewalks to the front of the property and power
4 wash this area regularly.

5 Okay. So, they're all included.
6 Just kind of made it more palatable and to clean
7 up the language. That's what I do for fun.
8 No.

9 So, is that okay with the ANC and the
10 Applicant and OP?

11 MS. PRINCE: Yes.

12 MR. FISHBERG: Yes.

13 CHAIRPERSON JORDAN: So. All
14 right. Ms. Prince, is there anything else you
15 want to present to the Board? I think the only
16 issue was on the term. I think you already
17 presented your testimony regarding that. Is
18 there anything else you think is necessary to
19 present to the Board?

20 MS. PRINCE: No.

21 CHAIRPERSON JORDAN: Okay.
22 Board, any questions we need to ask of the

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1 Applicant?

2 ZC VICE CHAIR COHEN: Go back to the
3 lender wanting that ten years. They want it
4 from you. I don't think they care about, you
5 know, your private agreement with the ANC and
6 the neighbors. So, I don't see why the seven
7 years is going to hold you up.

8 You're going to sign an agreement
9 for ten. Is that correct?

10 MR. SALIS: Correct.

11 CHAIRPERSON JORDAN: Your
12 financing is for ten years?

13 MR. SALIS: Yes, I have an 11 year
14 amortization schedule on that loan.

15 CHAIRPERSON JORDAN: How long's
16 the term of the loan?

17 MR. SALIS: Eleven years.

18 CHAIRPERSON JORDAN: Eleven year
19 amortization. Okay. Because they can be
20 different. All right. I just want to make
21 sure we're clear. All right.

22 Any other questions, Board?

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1 Then we will turn to OP to see if
2 there's anything in addition that you need to
3 add other than what we've already covered.

4 MR. MORDFIN: OP has nothing
5 additional to add. Thank you.

6 CHAIRPERSON JORDAN: All right.
7 Thank you.

8 Oh, there is DDOT. Anyone here
9 from the Department of Transportation?

10 We do have a letter of no objection
11 from the Department of Transportation.

12 ANC-6B, we have Mr. Fishberg.
13 Anything additional you need to add in regards
14 -- we had the letter and we know -- we've had
15 the discussion about the term.

16 Anyone here wishing to speak in
17 support of the application? Anyone wishing to
18 speak in support? Okay.

19 MR. FLOYD: Hi. I'm Chris Floyd.
20 I'm a resident at 604 South Carolina which is
21 --

22 CHAIRPERSON JORDAN: Is it Lloyd?

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1 MR. FLOYD: Floyd.

2 CHAIRPERSON JORDAN: Floyd.

3 Okay. My hearing today is --

4 MR. FLOYD: Like you, but with an F.

5 I live at 604 South Carolina Avenue
6 which is about a block and a half from the
7 location. I moved there in 2005.

8 I'm a very loyal Capitol Hill
9 resident. I love our neighborhood. I've
10 supported Brent Elementary. Done a lot of
11 fundraising for the school.

12 And I've seen the transformation of
13 the Barracks Row from when I move there and it's
14 been a dramatic and wonderful change that I
15 think has benefitted the neighborhood and the
16 community as a whole.

17 I am from the restaurant industry.
18 I was a former chef and so, I do understand all
19 levels of restaurant operations and I know the
20 &pizza operation quite well.

21 I think it, in short, benefits our
22 community. I think it's a great asset to the

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1 community and from a design standpoint, from a
2 food offering, is very contemporary and I think
3 it's something that's going to benefit our
4 neighborhood and I wouldn't say that, you know,
5 of all operations.

6 I think there's a big difference
7 between what &pizza brings to the table in total
8 than something like a McDonald's would. I know
9 these guys to be reputable business people who
10 follow up on their word. So, I think that they
11 will -- they will follow up on their obligations
12 and agreements they've made with the community
13 and I hope that they get in there and I think
14 it'll benefit us all. That's what I would say.

15 CHAIRPERSON JORDAN: Okay.
16 Board, any questions? Asking questions.
17 You're the Vice Chair. Vice fit for a chair.
18 Gee.

19 Any questions we would like to ask,
20 Mr. Floyd? Any questions you would like to
21 ask, Mr. Floyd? No questions.

22 Okay. Applicant, any questions?

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1 ANC, any questions?

2 Now, we will go -- please identify
3 yourselves again.

4 MS. ELLIOTT: Mr. Chairman, Linda
5 Elliott. I live at 414 7th Street. Almost
6 directly behind where &pizza will operate.

7 And, in addition, the other party
8 who filed for party status in opposition was my
9 husband, John West, who's here. We also have
10 several additional neighbors who are present.

11 I just want to provide a little bit
12 of context. Because as I understand it, Mr.
13 Chairman just recited the conditions that the
14 Board is interested in imposing in the order.
15 So, just a little bit of context so you have
16 that. A little bit more about those
17 conditions.

18 Those conditions -- first of all,
19 Commissioner Fishberg mentioned that almost a
20 hundred neighbors signed a petition opposing
21 anymore fast food in the 400 block of 8th
22 Street. That petition arose at a time when the

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1 Applicants did not fully understand the
2 problems that we face on this block, both on the
3 front and what the residential neighbors deal
4 with.

5 There were -- following that
6 petition, there were extensive negotiations
7 and meetings because negotiations makes it
8 sound perhaps to adversarial. We ended up all
9 on the same page. The Applicants and us and
10 Office of Planning. There were extensive
11 meetings.

12 There was extensive consultation
13 with the Department of Health, Office of
14 Hygiene, with the Office of Vector Control who
15 the neighbors have a working relationship with
16 -- with Bobby Corrigan who is the rat expert
17 that's been hired by the City. He's a Ph.D. in
18 -- a rodentologist. Ph.D. Who is writing the
19 City's new rat plan or rodent control plan which
20 should come out in the next six months.

21 And I'm the resident advisor to that
22 group. So, that's how Dr. Corrigan and I know

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1 each other.

2 The neighbors also consulted with
3 experts in noise mitigation for mechanical
4 noise and odor mitigation. Some of whom are
5 local. One of whom's a University of Maryland
6 professor. One of whom came down from New
7 York.

8 And all of that information was
9 shared with Mr. Salis and Ms. Prince and the
10 landlord and Mr. Salis did his own research into
11 trash issues, containment procedures.

12 The results were the conditions
13 that we have jointly proposed, that Ms. Prince
14 proposed and the Office of Planning proposed
15 and with those conditions, we think the
16 concerns of the community should be allied.

17 Because that same petition that
18 opposed fast food was very explicit in saying
19 these are the conditions that are necessary for
20 food establishments coming onto the block.
21 They didn't outline them in the detail they've
22 been outlined for submission here, but it was

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1 indoor trash storage, odor control and noise
2 mitigation and so, those conditions were -- I
3 would also mention that they -- it's been
4 incredibly helpful to have Ms. Prince involved
5 in that she helped us craft these in a way that
6 seemed she believed would be enforceable.

7 So, it is with that background that
8 we are coming to explain that we support and we
9 believe the -- at meetings we had with
10 neighbors, often there were 15 present.
11 Fifteen came to the ANC to testify. Sometimes
12 it was half a dozen. Sometimes additional
13 meetings right around that number, but we
14 believe that these are conditions that will
15 satisfy all of what we think are very serious
16 public health and quality of life concerns.

17 CHAIRPERSON JORDAN: Thank you.
18 Board, questions of Ms. Elliott? Applicant,
19 any question of Ms. Elliott?

20 MS. PRINCE: No questions.

21 CHAIRPERSON JORDAN: ANC, any
22 questions of Ms. Elliott?

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1 MR. FISHBERG: No, but can I make a
2 further comment about conditions on this block
3 or is that not --

4 CHAIRPERSON JORDAN: Give me one
5 second. We already called for the ANC. Go
6 ahead. Go ahead.

7 MR. FISHBERG: Just to reinforce
8 the extraordinary level of engagement between
9 the neighbors and the Applicant in this process
10 and it's been truly unique from our experience
11 in dealing with a lot of these.

12 As Chris knows further down the
13 block, you know, there's -- you know, new
14 restaurants that have come in and, you know,
15 it's been a much simpler process, but also,
16 there's been a lot of work to take care of
17 alleys. The City just repaved an alley to deal
18 with some of these issues. We've got new
19 landscaping at the Metro Plaza to deal with some
20 of the rat issues.

21 But, this block really represents a
22 unique circumstance. We've had a very

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1 unfortunate robbery turned murder at the other
2 end of the block in the 7-11. You have
3 regularly people sleeping in store fronts
4 there.

5 The 7-11 which occupies the corner
6 space has removed their patio furniture. They
7 have a public space permit to operate there and
8 they've pulled back from that. I mean who in
9 the City abdicates space. Right? And such a
10 prominent corner.

11 But, it speaks to a lot of the issues
12 that we have that are really focused in on that
13 block and that's what has triggered the extra
14 attention both from the neighbors and sort of
15 -- and a corollary response from the Applicant
16 and it is certainly what has made the ANC so
17 sensitive to what happens in particular on this
18 block.

19 While I sort of endorse the comments
20 about sort of the renaissance on Barracks Row
21 and what that has done for the neighborhood,
22 this block maintains -- is still -- is still

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1 having a particular problem in having overall
2 -- presenting some real obstacles to continued
3 growth in the neighborhood.

4 CHAIRPERSON JORDAN: Thank you.
5 Board, any questions of the ANC?

6 Then does anyone here wish to speak
7 in opposition? Anyone wishing to speak in
8 opposition?

9 Then we will turn back to the
10 Applicant for any rebuttal that you think is
11 necessary or a close.

12 MS. PRINCE: Just briefly in
13 closing, this really has been a good process.
14 I don't do a lot of fast food cases for a reason,
15 but I learned a lot on this one and I think that
16 -- I'm really hoping that these conditions can
17 be a model for you because this community put
18 so much thought into these conditions along
19 with the Applicant.

20 On the term issue, the cost of the
21 enclosure, the cost of the equipment, what it
22 will take to have this building function well

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1 for the proposed establishment, we need to know
2 we can finance them. It's as simple as that and
3 that's where the ten years is coming from.

4 We understand the Board's concerns.
5 In my experience, the biggest problems arise in
6 enforcement where there aren't good conditions
7 and I think Matt LeGrant will agree with that.

8 But, when there are very clear
9 conditions where, frankly, an owner can get
10 caught easier if they're violating them, we
11 have fewer issues and that's why you never see
12 us dispute conditions, helpful conditions.
13 They work for our clients and they work for
14 neighbors.

15 The complete absence of conditions
16 on some fast food establishments is really a
17 fiasco. It leaves the Zoning Administrator
18 with little in the way of an enforcement
19 mechanism.

20 So, I would ask that you seriously
21 consider ten years. I understand your
22 dilemma, but it is important to the operator and

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1 we hope that it will be a totally moot point once
2 we're up and operating and showing that we can
3 abide by these conditions.

4 Thank you.

5 CHAIRPERSON JORDAN: Thank you.
6 Then we'll conclude this hearing based upon the
7 testimony and the record before us.

8 ZC VICE CHAIR COHEN: Can I ask
9 another question?

10 CHAIRPERSON JORDAN: Yes. Go
11 ahead please.

12 ZC VICE CHAIR COHEN: Thank you.
13 You know, there's a lot passion that went into
14 this from all sides and it appears to me that
15 the community feels it did compromise from five
16 to seven.

17 Is it -- again, I think this could
18 be worked out. That this is a document that
19 won't be made available to the lender. I don't
20 believe this is common.

21 So, my question is why not seven?
22 Knowing the confidence in your relationship

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1 with the community and the community had to
2 negotiate and felt like they did compromise.
3 So, is seven really something that is
4 impossible for you to accept?

5 MR. SALIS: I think it's going to be
6 a big challenge for me. I believe that we've
7 put forth, and again this is simply to my
8 understanding, probably the most unprecedented
9 amount of conditions around a situation such as
10 this and I think that goes without saying that
11 we're really committed to that neighborhood.

12 We understand the challenge on the
13 400 block. We're not foreign to dealing with
14 areas in which we've been an epicenter or part
15 of the transformation process. We have a
16 location on H Street, N.E. which is also going
17 through a resurgence. U Street, N.W.
18 Brookland.

19 And so, I guess the point I'm making
20 is that, you know, I think based on all the
21 conditions we put forth and I know how much
22 capital's going to be needed to invest in this

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1 project, I'm asking for the ten years because
2 a bank aside, whether we do a side agreement or
3 not, you know, my ability to recapture those
4 obligations are very crucial to me and
5 obviously, as a small business owner as well.
6 So.

7 ZC VICE CHAIR COHEN: Well, what's
8 preventing you from the capture? I mean you're
9 in a lease for ten years and presuming
10 everything is going to go smoothly based upon
11 these conditions, what is --

12 MR. SALIS: Outside factors mostly
13 that are really out of my control. You know,
14 I'm not sure who will be on the ANC Board at that
15 point. What's going to happen in that
16 community or not going to happen in that
17 community.

18 I'm really putting my fate in a lot
19 of situations or circumstances that may have
20 nothing to do with me and, you know, all I can
21 go off of is controlling the things I can
22 control.

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1 We try to operate our restaurants to
2 the best of our ability. We operate under good
3 practice. We make mistakes, of course, like
4 any other operator. But, you know, what? We
5 work really hard at what we do.

6 And so, I think it's really the
7 unknown. It's really the things away from my
8 abilities that I'm very concerned about and I
9 think collectively that's probably what
10 they're concerned about as well and I think at
11 some point with all the conditions we've put
12 forth, there is an element of trust that has to
13 come into play and so, I'm requesting the ten
14 years.

15 ZC VICE CHAIR COHEN: Thank you.

16 MR. SALIS: Thank you.

17 CHAIRPERSON JORDAN: I got it.
18 We're just doing the wrap up. We were already
19 closing and Ms. Cohen asked just to ask another
20 question.

21 So, is there something that --

22 MR. FISHBERG: As it relates to the

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1 ten-year issue, I just am very sensitive to the
2 point Steve is making although we've not been
3 able, you know, to document that stuff.

4 I just want to point out that
5 there's another party who's not at the table
6 that can play a role here. Which is the
7 landlord and that is part of the equation here.

8 We know in other -- like with
9 Chipotle, that that was a building that was
10 purchased recently with financing and that
11 there's obligations there and rent per square
12 foot north of \$80 and I believe there the
13 conditions exceed the special exception.

14 Here, I don't think the property
15 comes with the same level of cost. I don't
16 think it would be unreasonable for some of the
17 expenses that Steve is having to endure into the
18 building to be absorbed by the landlord here.
19 Which is a long-time landlord that owns
20 multiple properties there.

21 So, I don't think -- I understand
22 that Steve is between a rock and a hard place,

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1 but I think there are also -- and some of that
2 is you're asking the or he's asking the
3 Commission or the neighborhood to sort of bear
4 some of the risk there and on the other side,
5 the lender may be having to bear some of the
6 risk. I can't determine what's reasonable or
7 not in that.

8 But, I also know that the other
9 party here, the other security is the landlord
10 that has a long-term interest in this with very
11 stable income and the ability -- we have a lot
12 of landlords in the area that contribute
13 heavily or are flexible around particularly to
14 try to bring in retail and so, I feel like that's
15 part of the equation that we do not feel has been
16 adequately explored and sort of creates another
17 outlet between this rock and a hard place.

18 CHAIRPERSON JORDAN: I got you.
19 Really let you go on when we really don't
20 generally allow it.

21 Ms. Allen.

22 BZA VICE CHAIR ALLEN: Thanks.

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1 Mr. Salis, I just want to clarify a point that
2 you made earlier. Which is that your
3 relationship with Eagle is several credit
4 facilities over different -- you said you had
5 other &pizzas in the City.

6 MR. SALIS: Correct.

7 BZA VICE CHAIR ALLEN: And that it
8 is not just this one loan. Correct? It's
9 several of them.

10 MR. SALIS: No, so it's -- you have
11 a term-loan facility and then what you do is you
12 borrow subnotes against it. So, every --

13 BZA VICE CHAIR ALLEN: Right.

14 MR. SALIS: -- store that we open
15 up, we borrow, you know, X amount from the
16 facility to --

17 BZA VICE CHAIR ALLEN: That's what
18 I thought.

19 MR. SALIS: -- open up subnote and
20 then we finance a project based on that.

21 BZA VICE CHAIR ALLEN: That's what
22 I thought. Thank you.

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1 CHAIRPERSON JORDAN: That's what
2 we all thought. All right.

3 So, now, we've closed the record.
4 Is the Board ready to deliberate?

5 All right. All right. I think
6 that the -- especially again, I comment
7 everyone for working together on such a hard
8 situation and trying to reach an agreement
9 which you did beautifully except for this one
10 issue.

11 And I think that's it not
12 unreasonable -- well, I think, one, we've
13 clearly had testimony that the ANC support for
14 this is contingent upon seven years and
15 testimony from others that these things hinge
16 on the balance of what's been discussed and the
17 term is really important. That the area has
18 been hit with tons of restaurants and other
19 issues and I don't find it unreasonable to have
20 this -- I don't believe there's a case that's
21 been made that it's required for financing. If
22 that would have been the case, then we would

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1 have a commitment document that indicated that.
2 I think the seven years is reasonable.

3 We done even less than that. We've
4 done five years. We've done three years as
5 this Board is aware that we put brakes in.
6 Especially see how good neighbors -- how good
7 an operation is going to be for neighborhoods
8 and I think the neighborhood has been very
9 lenient to say seven years.

10 We know like we've had some at three
11 years. Even banking institutions being
12 limited to three years for operations that they
13 were trying to conduct. So, I would -- I
14 believe that seven years makes sense and that's
15 just my thought before any motion on this.

16 Anybody else want to weigh in?

17 ZC VICE CHAIR COHEN: I think that
18 I would go with the ten years only because I
19 think that the negotiations and the conditions
20 are pretty strong. I think the community is a
21 very active community.

22 I think if problems occur, it's

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1 certainly going to be before seven or ten years
2 and I think this particular applicant is more
3 than willing to remain in the community and be
4 a good neighbor. So, I personally am more
5 comfortable.

6 Based on what I know about lenders
7 and risk, I would go with the ten.

8 CHAIRPERSON JORDAN: Okay. Ms.
9 Allen.

10 BZA VICE CHAIR ALLEN: Hi. Thank
11 you, Mr. Chairman.

12 I just want to really second or not
13 second, but suggest similarly to the Chairman's
14 comments that -- first of all, that I think this
15 has been a great process and it's wonderful to
16 see the community and the ANC engaged with a,
17 you know, potential business person, small
18 business people. We thrive on that sort of
19 support.

20 So, I do want to say thank you to all
21 of you for that.

22 When I read through this record, I

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1 was frankly concerned about the ten years even
2 before I knew that there had been issues here
3 and had raised that in my own notes to question
4 that.

5 I, too, am a banker. Am a former
6 banker and know a great deal about the --

7 CHAIRPERSON JORDAN: Aren't you a
8 former commissioner of banking.

9 BZA VICE CHAIR ALLEN: Former
10 commissioner of banking for the District.
11 Correct. Thank you for that, Mr. Chair. You
12 want to revive me.

13 So, which is one of the reasons I
14 asked about the facility that you currently
15 have with the lender and I do feel through my
16 own personal knowledge that this point is not
17 one that would have you lose that facility.

18 So, I would very much support the
19 seven years and I think that it was a good
20 compromise on behalf of the community. Is my
21 thoughts.

22 CHAIRPERSON JORDAN: Do you have

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1 thoughts?

2 MEMBER HINKLE: Yes, I'll just
3 weigh in quickly and we need to go back to think
4 about the intent of the regulation and its
5 special exception for fast food specifically to
6 insure that there's no negative impacts to the
7 neighborhood with these things and the term
8 limit allows a point in time where there's an
9 evaluation as there are impacts or there are not
10 and I'm certainly more comfortable with a
11 shorter term limit than a longer one.

12 And I think seven years. As you
13 mentioned, Mr. Chair, we've done three years.
14 We've done five years, but I think seven years
15 is reasonable in this case.

16 There are a lot of conditions here
17 and hopefully the Applicant holds up to them,
18 but I'm a little uncomfortable going with ten
19 years at this point.

20 CHAIRPERSON JORDAN: Well, then I
21 would move that we grant the relief requested
22 in this application with a term of seven with

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1 all the other conditions as I had set forth.

2 MEMBER HEATH: Second.

3 CHAIRPERSON JORDAN: Oh, you went
4 out of turn. Motion made and second.

5 Any further discussion? All those
6 in favor of the motion signify by saying aye.

7 (Ayes.)

8 CHAIRPERSON JORDAN: Those opposed
9 nay.

10 (Nay.)

11 CHAIRPERSON JORDAN: The motion
12 carries. Mr. Moy.

13 MR. MOY: Staff would record the
14 vote as 4 to 1. This on the motion of Chairman
15 Jordan to approve the application which is now
16 ten conditions. The first condition being a
17 term period for seven years. Second the motion
18 Ms. Heath. Also in support Vice Chairperson
19 Allen and Mr. Hinkle. Opposed to the motion
20 Ms. Cohen.

21 CHAIRPERSON JORDAN: Okay. And I
22 guess we can have a summary order. No? Well,

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1 the term isn't out of question. So, let's have
2 a summary order that includes the specific
3 discussion regarding the term limit.

4 MR. MOY: Okay.

5 CHAIRPERSON JORDAN: So, it's a
6 modified summary order which includes a
7 discussion on the issue of time.

8 MR. MOY: All right.

9 CHAIRPERSON JORDAN: So, that
10 would be the order. Mr. Moy, I've already sent
11 you the conditions. So, you have them. So,
12 you don't have to ask me.

13 MR. MOY: Terrific.

14 CHAIRPERSON JORDAN: So, we have
15 that. So, thank you all.

16 BZA VICE CHAIR ALLEN: And, Mr.
17 Salis, we would have loved a slice of pizza.
18 Just saying. I'm only kidding.

19 CHAIRPERSON JORDAN: No. No.
20 No. No. We could not. No. She's just
21 joking.

22 MR. SALIS: I won't respond.

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1 CHAIRPERSON JORDAN: All right.
2 Thank you very much.

3 MR. FISHBERG: Thank you.

4 MR. SALIS: Thank you.

5 MS. PRINCE: Thank you.

6 MR. SALIS: You're welcome to come
7 to any of our restaurants, Ms. Allen, if you
8 like.

9 BZA VICE CHAIR ALLEN: I will.

10 CHAIRPERSON JORDAN: No. No, we
11 can't have those kind of discussions here. Not
12 this body. No.

13 So, we are down to Case Number --
14 which one? Eighteen zero three.

15 Do we have opposition in 1803? Oh,
16 okay. Then let's go ahead and do this. I was
17 going to give you the option for lunch, but
18 we're right -- all right.

19 So, I just got -- let's do it from
20 the person who beats me up for food all the time.
21 Eight zero three please, Mr. Moy.

22 MR. MOY: Yes, sir, thank you, Mr.

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1 Chairman.

2 Again, that would be Application
3 Number 18803 of Christopher Ornelas. I'm
4 sorry. As advertised, request for a special
5 exception under Section 223 not meeting the lot
6 occupancy requirements under Section 403.
7 That's the relief being requested and I believe
8 there are new revised plans which is under
9 Exhibit 34.

10 Mr. Chairman, just to remind you, we
11 do have two filings that were submitted on
12 Saturday, September the 7th, yes, from the same
13 person, a Mr. Striebach. One's a filing for a
14 letter in opposition with attachment and the
15 other is request for party status with
16 attachment.

17 CHAIRPERSON JORDAN: Okay. Is Mr.
18 Striebach here? Sorry. Is it Striebach or
19 Striebirsch? Is it Striebirsch?

20 MR. MOY: S-T-R-I-E-B-A-C-H.

21 CHAIRPERSON JORDAN: Is he here?

22 MR. MOY: He is not, Mr. Chairman.

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1 CHAIRPERSON JORDAN: Okay. Well,
2 a couple of things. One, the party status
3 request is out of time and two, he's not here.
4 So, there's a double denial or it's denied for
5 two reasons.

6 And he's previously participated in
7 this by a letter of opposition the first time
8 we had this up for a hearing and he has
9 subsequently submitted another letter which,
10 you know, it goes in -- we keep in the record
11 on that.

12 Oh, this is the property where the
13 pictures in the backyard and the front yard says
14 help me if I remember correctly.

15 So, please identify yourselves.

16 MS. FOWLER: Good afternoon.
17 Jennifer Fowler.

18 MS. ORTIZ: Good afternoon. Maria
19 Ortiz.

20 CHAIRPERSON JORDAN: And you are,
21 Ms. Ortiz, the Applicant?

22 MS. ORTIZ: Yes, I am. Wife to

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1 Christopher Ornelas.

2 CHAIRPERSON JORDAN: All right.
3 Just a quick question about this. I saw your
4 sun study on this and it does indicate that the
5 property does have -- will have additional
6 shade on it for about 3.5 hours almost every day
7 except for one period. Right?

8 MS. FOWLER: Correct. Would you
9 like me to run through the sun study or --

10 CHAIRPERSON JORDAN: No, I think
11 we've looked at the sun study.

12 MS. FOWLER: Okay. Okay.

13 CHAIRPERSON JORDAN: But, most of
14 the time the issue of the shading of the
15 property comes from the property -- the way it's
16 situated already. Then there's this huge tree
17 if I'm not mistaken that's back there that
18 generates this other shade on the property
19 anyway. So, it's a next zero.

20 MS. FOWLER: Correct. There are a
21 number of evergreen trees in the rear of the
22 properties as well as the alley.

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1 CHAIRPERSON JORDAN: Yes. So,
2 even with constructed -- because your study
3 doesn't take that in that the tree was back
4 there -- was out there. But, it's falling the
5 same way.

6 MS. FOWLER: Correct.

7 CHAIRPERSON JORDAN: That same
8 shade that's going to be there because of the
9 tree will be the same shade -- the additional
10 shade that's going to be there with this
11 addition for the 3.5 hours. But, the tree
12 keeps it longer.

13 MS. FOWLER: Right. Correct.

14 CHAIRPERSON JORDAN: Okay.
15 That's what I thought.

16 MS. FOWLER: Right. And there is
17 some shadow that's, you know, through the
18 morning currently. It's because their house
19 does extend past.

20 CHAIRPERSON JORDAN: That's the --
21 yes, the present. Yes.

22 MS. FOWLER: Right.

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1 CHAIRPERSON JORDAN: I said in
2 addition to what's already there. All right.

3 Board, any other questions on this,
4 anyone?

5 Then you have the right as -- you've
6 been here. You did this earlier today. To
7 present testimony or to let us proceed on -- I
8 think there's enough and I think the Board from
9 what I'm hearing has found enough in the record
10 to approve the requested relief.

11 MS. FOWLER: Yes, I was prepared to
12 give testimony, but if you are comfortable with
13 it, we will move forward.

14 CHAIRPERSON JORDAN: Take a
15 chance.

16 MS. FOWLER: Thank you.

17 CHAIRPERSON JORDAN: Make my day.
18 No. I think it's -- no, but seriously, thank
19 you for your time.

20 Then let's turn to Office of
21 Planning and see if Ms. Vitale has anything she
22 needs to add.

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1 MS. VITALE: Good afternoon, Mr.
2 Chair, Members of the Board. Elise Vitale with
3 the Office of Planning.

4 And OP will rest on the record in
5 support of this application and I can answer any
6 questions that you might have.

7 CHAIRPERSON JORDAN: Board, any
8 questions of Planning? The Applicant any
9 questions of Planning?

10 MS. FOWLER: No thank you.

11 CHAIRPERSON JORDAN: All right.
12 Is there anyone from, excuse me, from DDOT?
13 Anyone from DDOT here?

14 We do have a letter of no objection
15 from the Department of Transportation.

16 Anyone here from ANC-6B? What a
17 busy ANC today. I think almost every case
18 except for one was ANC-6B. Right? Yes.

19 We do have a letter of support from
20 ANC-6B to which we'll give great weight.

21 Is anyone here wishing to testify in
22 support of the application? Anyone in support

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1 of the application?

2 Anyone in opposition? Anyone in
3 opposition?

4 Then we would close the record
5 that's before us and I would move that we grant
6 the relief of 18803.

7 BZA VICE CHAIR ALLEN: Second.

8 CHAIRPERSON JORDAN: Got that.
9 Huh? I'm sorry. Yes, he did one today. He
10 got his. All right.

11 Any unreadiness? All those in
12 favor aye.

13 (Ayes.)

14 CHAIRPERSON JORDAN: Those opposed
15 nay. The motion carried. Mr. Moy.

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

17 Staff would record the vote as
18 unanimous 5 to 0. This on the motion of
19 Chairman Jordan to approve the request for
20 special exception relief under Section 223 not
21 meeting lot occupancy requirement. This is
22 for the revised plans under Exhibit 34. Second

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1 the motion Vice Chairperson Allen. Also in
2 support Ms. Cohen, Ms. Heath and Mr. Hinkle.

3 CHAIRPERSON JORDAN: Summary order
4 please.

5 MR. MOY: Thank you, sir.

6 CHAIRPERSON JORDAN: Well, thank
7 you so very much. It's a long day for you. We
8 could have done this earlier had we known that.

9 All right. Thank you. Thank you.

10 Is there any other business coming
11 before the Board today?

12 MR. MOY: Not from the staff, Mr.
13 Chairman.

14 CHAIRPERSON JORDAN: You sure?

15 MR. MOY: Definitely.

16 CHAIRPERSON JORDAN: All right.
17 Just want to make sure.

18 MR. MOY: I'm thinking about that
19 pizza.

20 CHAIRPERSON JORDAN: No. No.
21 No. We can't have that kind of discussion.

22 Well, seeing there's no more

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1 business before the Board, then we'll be
2 adjourned. Thank you. Thank you, everybody.
3 Thanks, everybody. Thanks, staff. Thanks,
4 Board.

5 (Whereupon, the above-entitled
6 matter went off the record at 12:35 p.m.)

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