

GOVERNMENT OF THE DISTRICT OF COLUMBIA

+ + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

DECEMBER 9, 2014

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 7th Street, N.W., Washington, D.C. 20009, pursuant to notice, at 9:54 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
S. KATHRYN ALLEN, Vice Chairperson
JEFFREY HINKLE, NCPC, Member
MARNIQUE Y. HEATH, Member
MARCIE COHEN, Member
ANTHONY HOOD, Commissioner

BZA STAFF PRESENT:

CLIFFORD MOY, Board Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
MATT JESSICK
STEPHEN MORDFIN
MEGAN RAPPORT

D.C. DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

RYAN WESTROM

AGENDA ITEM

BOARD ACTIONS/MOTIONS

Application No. 18999 of Ron Rogers for special exception section 223 & section 403.2 at 3509 Patterson Street, N.W.	4
<u>Special Exception Relief approved</u>	5
Application No. 18875 of Holladay Corp., at 713-715 Lamont St. NW.	5
<u>Approved</u>	10
Application No. 18823 of Peggy Joyner under section 223 at 738 Quincy Street, N.W.	11
<u>Postponed till February 3, 2015</u> <u>with documents to be submitted by</u> <u>January 26, 2015</u>	22
Application No. 18837 of Karl B. and Julie C. Moeller for variances from subsection 2507.1 and alley access to street subsection 2507.2 at 429 12th Street, S.E.	23
<u>Approved</u>	43
Application No. 18878 of Alba 12th Street, LLC for variances from floor area ratio (1706), rear yard (774) and parking requirements (2101.1) to allow construction of an office building at 1017 12th Street, N.W.	44
<u>Decision set for January 6, 2015.</u> <u>With supplemental information received</u> <u>from applicant by December 26th and</u> <u>from 1101 K Street by December 30,</u> <u>2014</u>	141
ADJOURN	143

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

(9:54 a.m.)

SECRETARY MOY: Okay. The next is Ron Rogers. This is Application No. 18899, again special exception relief under Section 223.

CHAIRMAN JORDAN: Okay. Board ready to deliberate on this matter? All right. Again, this is another matter I think the record is sufficient to grant the relief for this deck relief that they're asking for. It came in on the 5th. I looked at that this morning so they did post and they did have an affidavit of posting in the file. So I would move that we grant the relief on 18899.

MEMBER COHEN: Second.

CHAIRMAN JORDAN: Motion made and second. Any other discussion? All those in favor, aye; those opposed, nay.

(VOTE TAKEN)

The vote carries. Mr. Moy?

SECRETARY MOY: Staff would record the vote as 5-0. This on the motion of Chairman Jordan to approve the request for special exception

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

relief, second the motion, Ms. Cohen. Also in support Ms. Heath, Vice Chair Allen and Mr. Hinkle. The motion carries 5-0, sir.

CHAIRMAN JORDAN: Summary please.

SECRETARY MOY: Thank you.

CHAIRMAN JORDAN: 18875, I think that's where we're at now. Mr. Moy?

SECRETARY MOY: Yes sir. That would be Holladay Corporation. This is 18875. This is in for a multiple variance relief for special exception 411.11 for roof structures and this is the relief that's as advertised, Mr Chairman.

CHAIRMAN JORDAN: Okay. All right. Please identify yourselves.

MR. AVITABILE: David Avitabile with the law firm of Goulston & Storrs, counsel to the applicant.

MR. WEBER: Lee Weber with Holladay Corporation. I'm with the applicant.

MR. HARRIS: Joe Harris with Eric Colbert & Associates, Architects.

MR. COLBERT: Eric Colbert with

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

Eric Colbert & Associates, Architects.

MR. ANDRES: Erwin Andres with Gorove/Slade Associates.

CHAIRMAN JORDAN: Okay. Has the Board had a chance to review the documents in this file? I know I have and we generally do. Is there any issues that you have? I think the file contains enough information to grant for relief without raising any questions and I don't have any questions that we need to hear from the applicant. Anyone? Okay.

Then certainly you're aware of how we normally proceed here. It's your opportunity if you wish to present any evidence but the Board does not have any questions about what's already been submitted and it's our belief that enough has been submitted in this record that, short of something coming up, that we can grant the relief. And you also have the right for rebuttal anyway if something did come up.

MR. AVITABILE: We'll rest on the record, thank you, Chairman.

CHAIRMAN JORDAN: Then we'll turn to the Office of Planning. Good morning, how are you?

MR. MORDFIN: Good morning. Stephen Mordfin with the Office of Planning and the Office of Planning recommends approval of this case and stands on the record and is available for questions.

CHAIRMAN JORDAN: Yes. Board, any questions for planning? Applicant any questions for planning?

MR. AVITABILE: No sir.

CHAIRMAN JORDAN: Is there anyone here from DDOT in this case? Anyone from DDOT? We do have a letter of no objection from the Department of Transportation to the requested relief.

VICE CHAIR ALLEN: Actually, I do have a question for Mr. Mordfin. Mr. Mordfin, is this property subject to inclusionary zoning?

MR. MORDFIN: One of the buildings is. Not the existing 4-story building the 1-story building which will be primarily new construction to the back. That one is subject to IZ.

VICE CHAIR ALLEN: And the existing building is not?

MR. MORDFIN: The existing building is not.

VICE CHAIR ALLEN: And why is that?

MR. MORDFIN: It's a preexisting building, there's no new construction for it.

VICE CHAIR ALLEN: Thank you.

MR. MORDFIN: That's Building B. Building A is subject to it. That's a complete new building on a separate lot.

CHAIRMAN JORDAN: Yeah, yeah, okay. Did I ask the applicant did he have any questions for planning or not?

MR. AVITABILE: We do not.

CHAIRMAN JORDAN: Oh, we're already on transportation. That's where we were. Just finished that. Anyone here from ANC-1C? Excuse me, ANC-1A on this file. ANC-1A?

MR. AVITABILE: We do have a letter of support. ANC voted in support of this application.

CHAIRMAN JORDAN: Anyone here wishing to testify in support of this application? Anyone in support? Anyone in opposition? Anyone in opposition?

We turn back to the applicant but there's nothing to rebut and you really don't need to close that which you didn't open. So with that we will close the record on this file. Anyone want to make a motion? I don't want to hog all the motions here today. Okay. I would move that we grant the relief requested in this case.

VICE CHAIR ALLEN: Second.

CHAIRMAN JORDAN: You're good at the seconds. Okay. Motion made and second to grant the relief in 18875. Any discussion?

MEMBER COHEN: The only discussion is that if we approve this I want to make sure that these are the dimensions, specifically IZ requirement for building.

CHAIRMAN JORDAN: Okay. Issues?

MR. AVITABILE: Just to clarify on the IZ requirements. Building A only has eight units

so although it's subject to IZ because it's new construction, no IZ is required because it has less than 10 units. Building B is an existing building converted so no IZ is required. Building C is new construction and will produce about 18 affordable units and we'll note that in the order.

MEMBER COHEN: Thank you.

CHAIRMAN JORDAN: You'll note it or we all note it?

MR. AVITABILE: We'll note it for you to note it in the order.

CHAIRMAN JORDAN: All right. Motion made and second with the addition. All those in favor of the motion, aye; those opposed, nay? The motion carried. Mr. Moy?

SECRETARY MOY: Staff would record the vote as 5-0. This on a motion of Chairman Jordan to approve the request for the relief as noticed and advertised. Second the motion is Vice Chairperson Allen. Also in support Ms. Cohen, Ms. Heath and Mr. Hinkle. Motion carries, sir with the language as cited by the Board.

CHAIRMAN JORDAN: Okay. Thank you. Well we said it's summary but we have to make note of Ms. Cohen's--

SECRETARY MOY: Which we can still do.

CHAIRMAN JORDAN: Okay. Thank you. Just give me one second. Okay. All right. Let's call 18823, Mr. Moy.

SECRETARY MOY: Okay. Peggy Joyner, Application 18823, Mr. Chairman, as advertised and noticed for special exception relief including an accessory garage to an existing one-family semi-detached dwelling under section 223, not meeting the lot occupancy requirements.

CHAIRMAN JORDAN: Okay. Please identify yourself. Can you make sure your mic is on?

MS. FERREIRA: Catarina Ferreira from archi-TEXTUAL PLC. I am the architect representing Peggy Joyner.

CHAIRMAN JORDAN: And we do have the authorization -- do we have your authorization of the applicant because I don't remember if you had

an authorization form. Did you? You already have it? Okay.

As you know, this is a continued hearing. It was postponed before due to the posting requirement and I believe we have actually posted the property this time and we have the affidavit that's in the file. Right? Yeah, I think we have the affidavit.

SECRETARY MOY: I was going to say, Mr. Chairman, it should be your Exhibit 33.

CHAIRMAN JORDAN: Yes. Okay. Let me take this a little bit out of order because my biggest issues and questions are arising with the OP report and I think I understand what's going on by the application. I don't know if the Board has any other questions they need to add, if we can hold it until we hear from OP and then come back to it because the Office of Planning has recommended denial of the application. So now let's turn to Office of Planning first to provide us the insight of their request to--

MS. RAPPOLT: Sure. For the record

I'm Megan Rappolt with the Office of Planning. I think we're sympathetic to the applicant's request to improve their property, we're just having a hard time finding a uniqueness that causes a practical difficulty in meeting the zoning regulations.

It's a large row-house lot. It's already over 70 percent, so compared to its neighbors it has a lot of bulk compared to everyone else on the square that has a row-house. So that's really our analysis.

CHAIRMAN JORDAN: Well let me ask, this property is non-conforming, correct?

MS. RAPPOLT: Correct.

CHAIRMAN JORDAN: And also the property, it appears to me that's on grade, it's on a changing grade.

MS. RAPPOLT: Correct. It's elevated--

CHAIRMAN JORDAN: How does that compare to the other properties on the block?

MS. RAPPOLT: I'm actually not sure about that.

CHAIRMAN JORDAN: Okay. Did you go out there?

MS. RAPPOLT: Oh yes.

CHAIRMAN JORDAN: And you couldn't -- well okay. I can get it from the applicant.

MS. RAPPOLT: Okay.

CHAIRMAN JORDAN: And most of the other homes on that block exceed lot occupancy?

MS. RAPPOLT: I'm not sure.

CHAIRMAN JORDAN: Board, any other questions of planning before we go back to the applicant?

So, going to the applicant, can you tell us how this property is unique? I think from my own just visual on it that the change of grade is different than the other properties. Is that true?

MS. FERREIRA: I'm sorry. Could you repeat the question?

CHAIRMAN JORDAN: Is the change of grade different for this property than it is on the other properties on that block?

MS. FERREIRA: There is a significant drop in grade from Quincy Street heading on down 8th Street, but I believe all the other properties have a similar grading.

CHAIRMAN JORDAN: Hm-mmm, I was just trying to help you but you threw that out the window.

So the lift is that the other properties are also non-conforming on this block for the most part particularly for lot occupancy. So you need to try to convince us (1) how this property and (2) how the uniqueness leads into difficulty for the applicant.

MS. FERREIRA: This property sits on the end of the block so it is an end unit and, first and foremost, I would say that it is not unusual for end unit row-houses to have larger bulk and have a stronger presence on the block than any other property as they are the bookends of the block.

CHAIRMAN JORDAN: Say that again. You think the property what?

MS. FERREIRA: It is the bookend of

the block being the end unit row-house on that particular block of Quincy Street, and it was built already with a significant amount of bulk at 70 percent lot occupancy. So it's already--

CHAIRMAN JORDAN: Do you know if the other properties are at 70 percent or greater?

MS. FERREIRA: There are several properties on that block that are yes. We didn't actually do the calculations but I believe they are very similar in terms of occupancy.

CHAIRMAN JORDAN: Let me ask you something. Do you understand the standards that are necessary to get variance relief?

MS. FERREIRA: Yes sir.

CHAIRMAN JORDAN: Okay. All right. I'm trying to get you there but I guess it is what it is and I'm trying to get you there but the responses are not getting you there. I mean I'm not trying to go above and beyond what I would do with anybody else but understand what's there and we have to follow what the law requires to get us there.

You've seen the Office of Planning's report well before today.

MS. FERREIRA: Can I try again?

CHAIRMAN JORDAN: Yes. We're still here, yes.

MS. FERREIRA: Okay. The other unusual characteristic of this property is that it sits next to an empty lot that is owned by DDOT that is a significant size. It is the equivalent of the size of the lot of my client's property, giving therefore the perception that it is a much larger lot. And if the square footage of that lot is taken into account, the occupancy of both lots together would be about 40 percent with our proposed interventions.

So the appearance in terms of lot area and bulk is that this property occupies a much smaller portion of that space even though it is not all owned by my clients, that is the appearance.

CHAIRMAN JORDAN: How does that affect your property, its uniqueness and the practical difficulty? I'm hearing you but I'm

just not tying it together. How does the mix of this property cause this property to hinder your ability to do--

MS. FERREIRA: It doesn't hinder our ability, I would think it helps our ability to add onto my client's property.

As I stated before, the property was built was at 70 percent lot occupancy, my clients are renovating the house in its entirety and along with that would like to add a small rear deck, really it's a grilling deck, and a walkway connecting to a proposed second story addition to their carriage house.

The carriage house itself is already there so there's no increase in lot occupancy caused by that. It's really simply the small deck and open walkway. Without the relief my clients will not be able to easily access their second story addition. That is all.

CHAIRMAN JORDAN: All right. You want to try?

MEMBER COHEN: I'm just going to probe.

You do get some letters from your neighbors, are they the adjacent neighbors or just neighbors that are nearby. Can you be more specific about their support?

MS. FERREIRA: Absolutely. There's a letter of support from the neighbor that shares the property line with my clients, that's 736 Quincy Street, N.W. And there's also a letter of support from a neighbor across 8th Street. Since the row-house is on the end, there is no neighbor on the other side except for the other side of the street.

CHAIRMAN JORDAN: Any additional questions for the applicant? Anyone? Does the applicant have anything else they want to present to the Board?

I'm going to need you to do two things. I think you two came in late, right, and I need you do two things. The first of which is the stand and take the oath which will be given by Mr. Moy.

[PARTIES SWORN]

All right. This is what we're going to

do with this case and I'm going to strongly recommend that you get help with this. I'm going to continue this case for 30 days and, as I say, you need to ask somebody because I think the relief you need is minimal and I think I understand what you need but you're not making the proper legal arguments to get there. Okay? 30 days, Mr. Moy, if that's okay with the Board.

MS. FERREIRA: Can you suggest who I sit down with?

CHAIRMAN JORDAN: Certainly. Have you met with Office of Planning and had discussions with them?

MS. FERREIRA: We didn't have face-to-face discussions. We did correspond, yes, several times.

CHAIRMAN JORDAN: Well, we're going to put this on for 30 days. When it comes back you're either going to sink or swim. Okay? I don't want you to waste your money that you've already paid for this and etc., etc. I understand what you need. I understand what you're trying to do which

is minimal but you have to meet the requirements to get there. And we're just not doing it. And I've been trying to pull teeth and we still can't get there. Maybe we can't get there but we'll know in 30 days one way or the other. Mr. Moy?

SECRETARY MOY: Yes sir. I think January -- I was looking for my January calendar. It would be January 6th, Mr. Chairman, and perhaps if the applicant can-- It's like looking for the least worst case because all of January is not good. Okay? So the least of the hearings we have in January would be January 6th to slide one in. Otherwise we're looking to February. Then we're locking the door for anything coming out today, sir.

CHAIRMAN JORDAN: Well, since we're doing a benefit, what's the February date? February is okay. We'll put this on a February date.

SECRETARY MOY: Okay. Then February 3rd when Ms. Cohen will be here as a matter of fact.

CHAIRMAN JORDAN: Okay. Thank you.
Thanks everybody. February 3rd.

MS. FERREIRA: Thank you.
SECRETARY MOY: And can we ask, Mr. Chairman, if the applicants can file a week before February 3rd?

CHAIRMAN JORDAN: Yes. We need your change of documents, anything you're going to submit to supplement the record a week before that and that is--

SECRETARY MOY: January 27th, sir.
CHAIRMAN JORDAN: January 27th.
Okay. All right. Still interesting rest of the day here. Do we need an early 10:30 break? No? Okay. Guess not. We have this unofficial hard-wire 10:30 break called by nature but-- Let's do 18837, Mr. Moy.

SECRETARY MOY: Yes. Karl B and Julie C. Moeller.

CHAIRMAN JORDAN: Check your computers, I think we might be up and running.

SECRETARY MOY: Again, this is

Application No. 18837 of Karl B and Julie C. Moeller. As advertised in the record, unless there is a revision, a request for variances from 2507.1 and 2507.2.

CHAIRMAN JORDAN: This is a supplemental hearing. We've already gone through the whole process on this hearing, is that correct?

SECRETARY MOY: That's correct, Mr, Chairman.

CHAIRMAN JORDAN: And we tried to give the applicant the opportunity to provide additional information for the Board. Okay. Why don't you introduce yourselves for the record please.

MR. BROWN: Good morning, Mr. Chairman and Members of the Board. Patrick Brown from Greenstein DeLorme & Luchs on behalf of the applicant.

MR. MOELLER: My name is Karl Moeller. I'm the applicant and owner of the building.

CHAIRMAN JORDAN: All right.

MR. BROWN: Mr. Chairman, could I just

kind of point us in the right direction I think?

CHAIRMAN JORDAN: You mean you want to tell us what you want to do.

MR. BROWN: Well, I want to make sure that we're all on the same starting point so that we don't misdirect our efforts. The Board sent us back to provide additional information, which was filed in the record, a letter and some detailed financial information from Mr. Moeller was filed on the 18th of November.

Also, we took the opportunity because there was some question raised on the zoning relief and, given the additional time, we were actually able to meet with Mr. LeGrant and get him to issue a letter giving his determination on the zoning relief which focused back to where we were in the original filing which was the two variances from 2507.1 and 2507.2.

CHAIRMAN JORDAN: And I understand that and I just want to make sure we're clear on the record which relief you're requesting. OP has recommended additional relief and I know you went

to the Zoning Administrator. He's provided a letter so I just want to make sure what we're clear on on the record.

MR. BROWN: And we're proceeding based on the original filing which coincides with the Zoning Administrator's more recent determination based on re-review of the matter and I think we're comfortable with that and present that to the Board.

CHAIRMAN JORDAN: Okay. So 2507.1 and I think 2507.2 was it?

MR. BROWN: That's correct, yes.

CHAIRMAN JORDAN: Okay.

MR. BROWN: As originally advertised.

CHAIRMAN JORDAN: All right. And if I could, also I think since the last hearing it wasn't in the record and there's a letter from DDOT not objecting to the application that while dated prior to the last hearing I don't think was in the record.

There was also a letter from an adjoining--

CHAIRMAN JORDAN: Great. What about the ANC?

MR. BROWN: The ANC supports, and I think that letter is in the--

CHAIRMAN JORDAN: Do you have that because I didn't see that? Did I miss it?

SECRETARY MOY: It should be your Exhibit 37 I believe.

CHAIRMAN JORDAN: Okay.

MR. MOELLER: Yes. The Capitol Hill Restoration Society also supports it. The ANC and both committees voted in support of it, Historic and Zoning. I don't believe the Restoration Society's subcommittee on zoning met about it because there's complicated reasons for that.

The Historic Preservation Review Board, HPRB, we just met with the chairman again recently and I was told by the chairwoman that she believes it will be on their consent calendar at their next meeting.

CHAIRMAN JORDAN: All right. And you still have a lift and the Board's looked at the

supplemental documents. As you know, OP still recommends the denial. Is that correct?

MR. JESSICK: Good morning, Mr. Chairman and Members of the Board, my name is Matt Jessick. After reviewing the information submitted on the 18th the Office of Planning arrived at place where I think we can no longer oppose the variance request.

CHAIRMAN JORDAN: Okay. But I still think you've got to -- I don't think you've made the case for any undue hardship. I think your financials are short. So if you want to talk about those things, because you're basically saying that there's a financial issue with this why you need it and I really don't understand the financials to some of the conclusions that were made. So if you want to take a moment to address the Board on that.

MR. MOELLER: Sure. In the slides I've put up on the slide some of the math that I put together and I did this myself. I consulted with National Capital Bank and their loan staff and mortgage staff over there, talked to our financial

advisers at Vanguard for quite a period of time. And also went back again and met with many of the contractors we'd received initial estimates for to get more detailed estimates on the costs that we were looking at.

The building itself was neglected by the prior owner. I think that the Historic Preservation Review Board considered it a ruin of sorts, basically that it's in such bad shape. We're trying to restore and protect what's left but there isn't much left there.

But because it has some nice arched windows and walls and whatnot and can't be knocked down, we have a lot of costs to bear to fix it up.

So we in answer to your earlier critique set our last meeting and again thank you for the opportunity to redo some of these numbers and come back. I've put together four separate possible uses for the building.

The first obviously is just to continue to use it as storage and unfortunately the building as it stands right now couldn't even be used for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

that. The roof is collapsing, the walls are actually falling out into the alley. The north brick wall where there was once a loading dock has a rotten header that runs two-thirds of the length of the wall and that wooden header that's built into the brick is rotting and the entire brick wall is coming down.

The entire building needs new footings to hold a roof, especially if that's an insulated roof and there's just -- every piece of lumber that's currently there in the building is completely rotten. There's rat and squirrel infestation in the building so it basically has to be pulled back to be just the brick that we're trying to save.

So to keep it simply as a storage, and I've again talked to Lee Malieu and other contractors but he agreed that I could quote these numbers that he's also looked at and said are accurate to the costs of repairing the building. Just to repair the roof, the wooden walls, upgrade the south wall, replace storage doors, windows, put

bars up so that people feel safe and, most importantly, the building once had electric current in it, it was shut off years ago and so we'll have to restore that at fairly large expense.

And then there are no wires in the building and it'll have to have wires and electric run throughout the entire process.

So just to put storage back into the building it would cost us an estimated \$74,000 dollars.

The architectural fees that we've already put into this project and the legal fees, variance--

CHAIRMAN JORDAN: Yeah, let's go there because you use these numbers and that's part of the problem I'm having. You're kind of doing double entry here.

MR. MOELLER: How so?

CHAIRMAN JORDAN: You're taking what you've already spent for whatever you already sought and then you're coming back in to say if we do these other changes then you're double adding

legal fees in here twice. You double added city permit fees in here twice. Because you have a core \$154,000 dollars, correct?

MR. MOELLER: Yes.

CHAIRMAN JORDAN: Where you included the legal fees and architectural fees in your core. So unless they run across all the different alternatives correct--

MR. MOELLER: I'm happy to explain that.

CHAIRMAN JORDAN: Sure. Please. But you do have that as a core? Correct? That \$154,000 dollars?

MR. MOELLER: Yes.

CHAIRMAN JORDAN: And you then even though some of these things would have been a matter of light or alternative you still run those same core dollar amounts in your numbers.

MR. MOELLER: So the first dollar amount, the largest part of that, that \$117,000 is the purchase price of the building. So I mean that's part of the core, yes.

Because the process in Washington, D.C. doesn't allow me to -- I need architectural plans to come before you. I need to properly file legal documents and all the rest. These costs I've already sunk. And so there are additional costs which are added later, for example, you can see added legal fees, added second story construction -- I'm sorry, there is architectural and legal fees added later to go onto the next phase of this if they're needed. I might not need some of those.

CHAIRMAN JORDAN: But I'm saying you're doubling the cost. You're using those same things twice in your numbers.

MR. MOELLER: Those will be new and I'm not saying I would necessarily need legal fees but they are possible costs for the next phase. Everything in the fixed costs had been spent already.

CHAIRMAN JORDAN: I understand. I understand where you are.

MR. MOELLER: And if you take that \$154,000 and add onto it the \$74,000 dollars to

renovate the building back into a storage facility. That obviously isn't what I'm asking for, I'm only putting this down because you asked for, you know, why is this a hardship? Why is this difficult?

So I can skip ahead because obviously I've no interest in using this building for storage. It would be a complete loss.

CHAIRMAN JORDAN: Okay. I'm just letting you know that I hear what you're saying. I got your response and we've kind of talked about it a couple of times but I think it's deficient and I don't think your numbers are clear. Ms. Cohen, I think you had a question?

MEMBER COHEN: No, I don't have a question. I actually went back last night and I took a more careful look at it. And I have to say that I come to a different place than you do. I think the applicant has demonstrated and especially--

CHAIRMAN JORDAN: Wait. Wait. We're not deliberating. I'm sorry. Go ahead and finish but we're still not at the deliberation point. If you wanted to hold that but it's just--

MEMBER COHEN: I'll hold it. I'll hold it.

CHAIRMAN JORDAN: All right. Then the question also in your financials, are you including two units of rental income in your financials?

MR. MOELLER: The reason my wife and I bought this property was to use it for our families, for ourselves. So the downstairs of the two units would be our space. My wife and I are both independent contractors, we both have home offices, my in-laws come, my parents come. My kids all play musical instruments. There are three of them, they all get in each other's way. We don't have a basement or an attic. So we bought this property after talking for a month to city--

CHAIRMAN JORDAN: I understand. Would you answer my question. So your family's going to live there? Or your family's guest and relatives when they come to town are going to live there?

MR. MOELLER: We will still live at 426 11th Street, S.E.

CHAIRMAN JORDAN: So you're not going to inhabit--

MR. MOELLER: This space will be extra space for a home office, for guests.

CHAIRMAN JORDAN: I understand. I'm going to need you to work with me on this. I'm not real clear, I'm asking questions direct and you're taking me around the block to get there.

MR. MOELLER: I'm sorry.

CHAIRMAN JORDAN: And it's really not helping. I mean maybe I'm not being clear in my conversation with you. So my question was in your financials, because this is going to be a 2-bedroom unit, right?

MR. MOELLER: Yes sir.

CHAIRMAN JORDAN: When you ran the financials are you using rental income for two units?

MR. MOELLER: No.

CHAIRMAN JORDAN: I didn't think you are. See, that was real easy. Are you using both units, two units in your financials? And the

answer was not all this other stuff, it was no. And so again that gives me issues with your financials and what you're concluding as an undue hardship on a financial basis.

So you're saying that you're using just the one unit to finance the whole project? Right or wrong?

MR. MOELLER: If I could direct your attention to the summary of my findings which are this spreadsheet. The No. 3, option No. 3, a 2-flat subgroup A includes a value to the owner, so owner value gained by use per year. So I don't receive income there. No one's paying me that. I'm arguing that if I were to rent, which I could never find a space in my alley directly 30 feet from my back gate, a property that I could rent 1,000 square feet on the first floor -- which doesn't exist unless I build it -- the value to my family will be about \$28,000 dollars a year and that's based on current rental values.

The number above that, the \$31,000 dollar number, is the rental income that would come

from the upper floor, the first story, and that's based on rental prices that come from a building on E Street which is rented out to a family, and other rentals which I consulted a real estate agent about that.

CHAIRMAN JORDAN: So you put the \$28,000 back in as income?

MR. MOELLER: As value to my family.

MR. BROWN: Imputed income?

MR. MOELLER: Okay. Yes.

CHAIRMAN JORDAN: Then it gets negative in the other scenario, scenario No. 4?

MR. MOELLER: Yes, because the premise here is that the fixed costs, interest payments and the cost to renovate added together come to a total expense. Right?

The income side of it then, the scheduled income from rental which in section 4, you know, is \$49,000 dollars a year if I were to rent a single family home to someone, is then subtracted on a 15-year loan, which I'm going to have to get a 15-year loan to cover the costs of--

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

CHAIRMAN JORDAN: And why 15? Why is it a 15-year loan?

MR. MOELLER: Because if it's a 30 year loan I lose even more money on interest. I mean interest at that point eats up the value of this.

The other point I want to make, and I'll stress the word "use" in a use variance, I bought this property so that I could use it. I am not a contractor, I'm not a flipper, I'm not someone who is looking to renovate this and sell it. I want to use this. I want extra space for my family. I've been through this process before to add a third story addition to my home. It did get approved but it took almost two years to get that approved.

During that period of time this building became available and I said this third story probably won't approved, I'm going to buy this building instead. And so I used the revenues that I had taken out to do the third story before it was approved and I purchased this building.

I did the math. I did my homework. I

want to use this building as extra living space for my family. To do that I need a rental on the upper floor, otherwise it does not pay for itself. I wholeheartedly admit that I could renovate this building, turn it into a single family home and sell it and I would most likely not lose cash. But the value to me and my family is in the use of this building, of the ability to have an apartment on the first floor that we can use for our in-laws, for our family, for my sister who cannot afford to come and visit me from Massachusetts with her kids because they can't afford hotels in town, for my kids to go and do their homework because I have 6-year-old and a 12-year-old and the 6-year-old plays with the 12-year-old when he's trying to do his pre-algebra.

This is a use variance because I am hoping to have a 2-flat building so that I can use the first floor and rent the second floor.

CHAIRMAN JORDAN: Does the Board have any other questions? Anybody? No? Anything more from the applicant?

MR. BROWN: No, I think we've laid out in the earlier visit and here today the three-part test. I would recognize that a question was raised earlier about the third prong of the test, having to do with the compatibility and the neighborhood and I think if you look at this particular square you've got three alley dwelling units that have been converted over time going back to the 1980s, and you have an R-4 zone where a flat is certainly a permitted accepted use. And so the flat and the alley dwelling are very much in keeping with the zoning and the neighborhood and I think in response to that one question was raised on the three-prong test.

CHAIRMAN JORDAN: Okay. Anything else from the Board? No? Then we can conclude this hearing. Is the Board ready to deliberate on this case? Okay. Someone wants to go forward. Ms. Cohen?

MEMBER COHEN: Thank you, Mr. Chair. I took a little look ahead on this submission and I do believe that the applicant has made the case.

I am pleased to see the Office of Planning now supports this. I think the numbers do demonstrate that there is a hardship, especially when it comes to an historic structure, that I think may improve the neighborhood if it is remodeled. I think that was demonstrated by the Historic Preservation Review Board submission.

So I would move to approve this case, 18837, Karl Moeller.

CHAIRMAN JORDAN: Okay. Anyone seconding this?

MEMBER HEATH: I'll second.

CHAIRMAN JORDAN: Okay. There's a motion made and seconded on this matter. For my unreadiness I'm just not comfortable with the financials on this for me to be able to support this application. I don't think the case has been made from the financials and I tried to step through there because I think there's several things in here that have been double counted. That's just my opinion. Anybody else?

MEMBER HINKLE: Thank you, Mr.

Chairman. I tend to agree with Ms. Cohen and I won't repeat her comments but I think we have a structure that's very difficult to reuse and I'm not sure what would occur with it. I think the applicant has made the case and I think the applicant has made a case for a good project within the alley, so I certainly support it.

CHAIRMAN JORDAN: All right. Any other discussion? All those in favor of the motion, aye? Those opposed, nay? Mr. Moy the motion carries.

SECRETARY MOY: Staff would record the vote as, I believe it was 4-1 or was it 3-1?

CHAIRMAN JORDAN: 4-1.

SECRETARY MOY: Okay. Thank you. Staff would record the vote as 4-1 and this is on the motion of Ms. Cohen to approve the application for the variance, two variance relief requested. Second the motion, Ms. Heath. Also in support Mr. Hinkle. Opposed Chairman Jordan. The motion carries.

CHAIRMAN JORDAN: And a summary order

please?

SECRETARY MOY: Yes sir.

MR. BROWN: Thank you very much, Mr. Chairman.

CHAIRMAN JORDAN: We'll take a 10:35 break for 10 minutes and then we'll come back and is the only case we have remaining 18878? Then go ahead and load up for 18878.

(A BRIEF RECESS WAS TAKEN)

CHAIRMAN JORDAN: Okay. Mr. Moy?

SECRETARY MOY: Yes sir. This is application No. 18878 of Alba 12th Street, LLC as advertised and publicly noticed, requested relief for variances from the FAR, rear yard, and parking under 2101.1 at the property 1017 12th Street, N.W.

CHAIRMAN JORDAN: Okay. Please identify yourselves.

MS. MOLDENHAUER: Good morning. My name is Meredith Moldenhauer from the law firm of Griffin, Murphy, Moldenhauer & Wiggins on behalf of the applicant and then I'll turn to my left and allow the members of our party to introduce

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

themselves as well.

MR. HILL: Good morning. My name is Fred Hill. I am the applicant.

MR. JACKSON: Good morning. My name is Lyle Jackson with Resolute Funding, I'm the financial broker for the applicant.

MR. KEARNEY: I'm Tim Kearney, I'm principal of Alliance Architecture.

MR. KOUTROUVELIS: Good morning. My name is Demetri Koutrouvelis and I'm with Saville-Studley Commercial Real Estate.

CHAIRMAN JORDAN: Spell your last name for me.

MR. KOUTROUVELIS: Sure. It's K-o-u-t-r-o-u-v-e-l-i-s and it's pronounced Koutrouvelis.

CHAIRMAN JORDAN: And you're doing the financials right?

MR. KOUTROUVELIS: Brokerage.

CHAIRMAN JORDAN: Brokerage. Okay.

MS. MOLDENHAUER: Mr. Jackson, to my left, is providing the financial piece and Mr.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

Koutrouvelis is providing the commercial brokerage.

CHAIRMAN JORDAN: Okay. We dealt with the party status issue and right up front I want to discuss the request for relief for, what section is that, that conflicts with the height act?

MS. MOLDENHAUER: We've addressed that but there are some preliminary matters we'd just like the Board to be aware of. I will provide copies of the revised roof plan, Office of Planning report and we became aware of that nuance that could not request relief from the one to one setback. We've obviously modified--

CHAIRMAN JORDAN: Well you could but it still would be blocked.

MS. MOLDENHAUER: So we'd have a problem. Exactly. So we have revised the plan, there's a copy of the plans, OP has received them and we're just providing those to the Board now so we're no longer requesting the roof structure relief and that also based on revising the plans

of the roof structure it modified the relief so our now requested FAR is at 9.62. In the supplemental and the pre-hearing statement it was at 9.77 and that modification--

CHAIRMAN JORDAN: And what is it now?

MS. MOLDENHAUER: 9.62. There's also a preliminary matter. There's a letter I believe filed in support of the project from Council Member Evans' office. I'm not sure if the Board has a copy of that. I see shaking of heads. Okay, we have extra copies just in case.

CHAIRMAN JORDAN: Okay. This is one where you're going to have to have at it.

MS. MOLDENHAUER: Absolutely. We are prepared to provide a full presentation. We believe that in this case, based on the record and based on the testimony that we're about to present, that we have a unique circumstance here that creates a practical difficulty that would provide the Board with the evidence to support relief from the FAR from the rear yard and from the parking relief.

Based on that I'm going to turn it over to the applicant, Fred Hill, to introduce himself and then we'll walk through the relief process.

MR. HILL: Good morning. Thank you for the opportunity to speak with you today -- I've practiced all night. I'd like to introduce myself and my company, tell you about the existing property and why it interested me. I'll show you a little bit of the aerial map, tell you a little bit about the history of the property.

I started my company in 1998 and I think we've handed out some information about my company. I don't know if you've heard of it or not. But we're a health care communications firm that specializes in at-risk populations. The folder will give you a little bit more detail.

My father is Native American, Chickasaw from Oklahoma and my mother is from Sikkim. It was a country, now it's a state of India and it's next to Nepal and Bhutan in the Himalayan mountain range.

My own diverse background has kind of

helped me with my work.

We use subject matter experts to target different populations concerning diseases like diabetes and kidney disease and we also have a unique ability actually to target bench researchers.

I'm a lifelong resident of the area. For the past eight years now I've been at the corner of 9th and F. In fact, I'm right now where the old 930 Club was. I graduated in 1986 from high school, I used to go there and I'm actually kind of shocked that, you know, I'm living down where that was. And so I'd like to be a part of the continued change in that area.

I'm seeking to relocate the Hill Group from Maryland to the District of Columbia. I purchased the property in December of 2012 to serve as the headquarters of the Hill Group and, with your help, I intend to construct a high quality office building to accommodate the company.

On the existing property, it's been vacant for about seven years, as you'll see on the

next slide here. It's been vacant for about seven years. It's a small deteriorating building which was a hold-out when the square was assembled to develop two large office buildings.

I was attracted to the building because I saw the potential to do something beautiful and interesting with the brick and if I could fill out the square possibly bring my company into D.C. I actually saw it online at one of these little web site things and then drove by on the little Vespa that I have and just saw how beautiful it was and thought about the possibilities.

The next is we have very close proximity to public transportation in the location, within blocks of four Metro stations, 17 bus routes, the Capital Bike Share is at 12th and L. There's three zip car spaces, Car2Go. The walk score I guess is from walkscore.com. Walk score 98 which is a walker's paradise, bike score of 92 which is a biker's paradise and ride score of 100 which is a rider's paradise.

My staff is very excited about moving

into the city and being able to use public transportation to get to work.

The aerial map that kind of shows more where -- if you can see it in the diagram -- where exactly it is.

MEMBER COHEN: Actually, can you go back one slide. I just want to quickly--

MR. HILL: So again the aerial map, that we're adjacent to 1100 K Street and the Department of Justice. We're in square 316, it's a small split-zone square with just three lots. In addition to that, the two larger property lots are L-shaped lots, both of which have over 28,000 square feet of lot area. Ours in comparison only has 1,250 square feet.

The area consists of private office buildings extended across much of the surrounding area, many built in excess of 12 to 14 stories as permitted by the height act.

The thing that I just love about this, which is next, is I believe this project is a very unique opportunity to have an owner-occupant who

will invest much more in this project than a speculative developer and take value in a non-historic property.

If you saw the movie, "Lincoln," Elizabeth Keckley was the African-American woman who was Mary Todd Lincoln's confidante and was in many of the scenes with Mary Todd and the president. We found out after the purchase that Elizabeth Keckley spent some time at this location working as a seamstress who bought her own freedom.

I want to keep the facade of the building and name the building the Keckley in honor of this African-American woman who was a successful business owner.

I myself as a minority business owner, it's again this dream, but a nice ribbon cutting of the Keckley honoring an African-American female, attended by our African-American mayor and Gloria Reuben who was the woman who portrayed Elizabeth Keckley in the movie and I've actually already been in touch with Gloria Reuben or I should say she's been in touch with me.

So I work with the architects and the team to create a beautiful building what I believe to be incorporating both old and new characteristics. And what I further believe is our team will give the justification necessary to satisfy the standards so this project can move forward and be one of great pride to the community.

With that, I'd like to introduce Tim Kearney over at Alliance Architecture and he can talk a little bit more about the project in detail. Thank you.

MR. KEARNEY: Hi, I'm Tim Kearney with Alliance Architecture.

CHAIRMAN JORDAN: Can we put the lights on or do you still need to use--

MR. KEARNEY: You can put the lights on. I can't read my notes anyway.

CHAIRMAN JORDAN: Let me know when you want the lights back off. Are you using--

MR. KEARNEY: A little bit but it's more important if you can see it, right, so I think you--

CHAIRMAN JORDAN: Well, we can turn the lights off and you can turn the lamp on.

MS. MOLDENHAUER: Let's turn the lights off then. Thank you.

MR. KEARNEY: Sure.

CHAIRMAN JORDAN: And just because we know you needed some exercise for today.

MR. KEARNEY: Yes. So thanks for having us. Fred stole a little of my thunder in this, thrown me off track but I'll be all right.

So Alliance Architecture, just quickly, was founded in 1995. We have offices in four locations. Our most recent location is D.C. and we've office in Annapolis, New Delhi, India, and Durham, North Carolina. Our most significant project that we're doing in D.C right now is Venables 250,000 square foot headquarters at 600 Mass.

We just completed our fifth expansion of Paul Weiss's office, and other recent projects include the Pew Charitable Trust and the Pew Research Center.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

I'm also joined by my partner, Marcus Cross, who is right behind me who is the project architect on the project and I'm the principal in charge of design.

So the site plan, Fred just kind of gave you the general lay of the land but to the north -- the site is facing north and the north of our building is an 11-foot-11-inch side alley facing 1101 L. The east side abuts 1101 K which is the back of our building. The south side additionally abuts 1101 K. It's a 3-story brick row home and the alley that goes from 12th Street to 11th Street is only navigable by car. The loading for 1101 K and 1101 L comes in from 11th Street and they turn around and go back out 11th Street, just for a logistical explanation of the site.

Ultimately that results, as Fred stated, in a 1250 square foot lot. So when we started the project that's really the issue, right, we have a 1250 square foot--

CHAIRMAN JORDAN: The building in the corner is that -- the top above that?

MS. MOLDENHAUER: It's 1100 L.

CHAIRMAN JORDAN: What's on the other side of that?

MR. KEARNEY: That's the school. The John Strong Thompson is it?

CHAIRMAN JORDAN: It's that street on the other side of the 1101 L.

MS. MOLDENHAUER: L Street is on the other side of this so L Street--

CHAIRMAN JORDAN: That's L Street right there.

MS. MOLDENHAUER: Yes. Well, the building goes much larger. This is a zoom-in, the building is cut off in this diagram here and 1100 L actually goes much further up the block.

CHAIRMAN JORDAN: Show me again. No, go back to that-- L Street is where?

MS. MOLDENHAUER: Right here.

CHAIRMAN JORDAN: Okay. What's the dark part right underneath the arrow?

MS. MOLDENHAUER: It's a shadow.

CHAIRMAN JORDAN: Okay. And so

nothing is there?

MS. MOLDENHAUER: Nothing is there, yes. There's only three lots on the square. You have 1100 L and you have 1101 K and then you have--

CHAIRMAN JORDAN: And between that building on L Street and the applicant's building there's an alley right where your cursor is?

MS. MOLDENHAUER: Correct. So right here, this is a public alley right here.

CHAIRMAN JORDAN: Got it. Okay. Thank you.

MR. KEARNEY: And I misspoke. Across the street to the left on that plan is the Strong John Thompson School. John Strong Thompson School. I apologize. I want to go to the next slide.

So as Fred mentioned we have a unique site with a unique client and when we first went about discussing this project we looked at in many different ways, whether we raze the building or save the building. Ultimately, Fred is very attached to a late 1900s Romanesque revival

architecture that isn't necessarily historic but we think it adds fabric to the street. It also participates in the rhythm of the adjacent architecture at 1101 K and mirrors the masonry architecture across the street of the school.

So that was really the challenge. How do we save this building without it becoming a facade-ectomy -- we like to use the word -- which we've seen throughout the city where a developer or anyone might just basically save the skin for the sake of tax credits or approvals. We really wanted to engage this building.

So in order to do that the bay window of the 3-story row house is completely intact, which extends 5-feet 4-inches forward of the existing structure, and we've also salvaged the masonry to the right of that bay window. And, most importantly, we salvaged the hip roof and the finial that sit on top of that bay window.

I should also note that as we endeavored to develop this design that we also engaged Emily Eig from Tracerries, who is behind me, because we

wanted to be very considerate of the it's not historic architecture but the period architecture and how our architects would marry with it.

So ultimately we felt like our new structure needed to engage or cradle the existing row home therefore becoming a backdrop to celebrate the existing stone. Can you go one slide forward? Is there another rendering? There we go.

I think you get a better sense from this slide, particularly the one on the left, there's a limestone pier and slab that basically sits well above the existing hip roof and the finial with the balcony that's set behind it so that limestone in addition will become a backdrop to the brownstone also becomes the cradle from which the curtain wall above is lifted.

Additionally, because we save that entire bay there's 5-feet of depth of the existing structure that you can occupy, so it's not just a matter of seeing through a facade, it's actually participating in and experiencing that architecture from the interior and the exterior.

On the bottom of the facade you can see that there's two windows which are just below two larger arched windows. Currently, those are smaller kind of basement windows, we've extended those up to create one large first story architecture and then we're going to restore the brownstone on the base of the building and we've engaged the brownstone between the limestone and the brick, moving vertically up the left side of the building.

The rendering on the right there I think gives you a good sense of your experience as you come out the 4th floor onto the balcony adjacent to the existing hip roof that we'll restore.

So ultimately what I'd like to kind of close on about the big picture design move is as Fred and I discussed how we were going to develop this building, we had many discussion and one was we were not going to be bold for the sake of being bold. We weren't going to be a slave to any type of fad. We wanted to create a timeless building that was thoughtful and for years to come that we could

drive by and be proud of it.

And I feel like we've accomplished that. I'm very excited about it.

To move into the floor plan and I don't want to take too much of your time so essentially that raises us to the 1250 square feet lot. Obviously, we need two fire stairs that need to be separated by one quarter of the diagonal, potentially one-third, in the coming months. So you can see the two stairs.

We did talk to the DCRA about the use of a sitter stair or the use of a fire escape and those conversations were non-starters. In addition to the two stairs you have an elevator and a restroom. The restrooms are basically it's one sex per floor so no sex is further away than one story from their lavatory or water closet, because the floor plate is so small there's no opportunity to kind of put two restrooms per floor.

And also there's some shaft space. Our services will have to go below grade because the site is so limited. So you have your electric

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

service, trash, fire pump, fire command center and etcetera all planned on the first level below grade. And then on the second level below grade will be storage to support Fred's tenancy and bike storage.

Then you move to the lobby which is essentially again because of the limitations of the square footage can really just serve as a lobby with no other programmatic function.

The fourth floor is unique, as I mentioned in the slide, because it has that small balcony which is in the bottom left corner. You can move out and experience the adjacent hip roof and kind of embrace 12th Street. Because of that we didn't even include a restroom on the 4th floor. If you're on the 4th floor and you're a man you go up one story and if you're a woman you go down one story to use a restroom.

So the roof structure which Meredith spoke about previously, the diagram on the right shows what we have submitted prior where we were taking our program using basically the first

three-quarters of the building, or I should say the back three-quarters of the building. We were able to modify that.

The screen wall is now 7 feet south of the alley and 7 feet east of 12th Street or our property line. But at the end of the day we need to house -- this has been thoroughly vetted -- a generator, an outside air handler, three condensers, our elevator overrun, elevator machine room and our fire stair.

So once you kind of look at that, you know, at the end of the day one of the biggest things we're here to talk about is rear yard relief and we just wanted to share the diagram that if we didn't have that 15-feet of rear yard relief, you're left with about a 300-square foot of usable space forward of the core. So essentially designing an occupy-able space in this very small floor plan, given the requirements of Code and human occupancy are challenging.

MS. MOLDENHAUER: And does the 317 include a bathroom?

MR. KEARNEY: It does not include a bathroom. And the other kind of unique part of that is it really has to be owner-occupied driven because at the end of the day this is not normal development, this is a unique opportunity.

So the other relief that we've talked about is parking so this diagram shows a car moving from 12th Street into the alley and taking the right turn. The car is shown parked right up against one our fire stair doors. It is conceivable that we could get one car in there. It's probably inconceivable to get two cars in, particularly since you have to back out and move back towards 12th Street, so we think that diagram speaks for itself.

And then, ultimately, as we design structure we would expect the core factor or loss factor to be somewhere between 12, 17-18 percent and this building is pushing 45 percent which really drives the request for relief.

The other thing we wanted to share, and again I think it's because we have a client and a

team that wants to be respectful of the site and wants to create a timeless piece of architecture. This is a very hard site for one to see from a distance but the first, second, third and floors marry with the existing architecture. That gives us I think it's a 16-foot height on the first floor and 17 feet on the fourth floor and that fourth floor architecture is to allow the fourth floor to be lifted up above the existing hip roof and finial to allow that architecture to breathe. Right?

So that skeleton lifts a curtain wall above without being oppressive to the architecture below.

And then the first floor, because the existing structure as you walk in you walk up to the first floor and down to the basement, it's kind of an odd architecture so we've incorporated the basement height and the first floor height into a double story space again to complement the exterior architecture. When you do that, you can't fit an extra floor below or you can't fit an extra floor above. At one point we were going to ask for the

10 FAR but we just thought it would push the design in a direction that we didn't want to go.

MS. MOLDENHAUER: At that point that concludes Tim's testimony from Alliance and we'll turn over to Demetri.

MR. KOUTROUVELIS: Good morning, Chairman and Members. My name again is Demetri Koutrouvelis. I have over 23 years of commercial real estate experience and have structured over 3.5 million square feet of commercial leasing transactions.

And I reviewed the project and in my professional opinion there's a real difficulty in leasing this project. I'll go through the bullet points and address those and why.

No developer really would build a commercial office building on a speculative basis on this site and it only works because the applicant is in the unique position of developing this property as an owner-occupant and that is what Tim alluded to earlier.

However, there are major challenges

if there's not an owner-occupant associated with it, to lease the building to potential tenants because of its inefficiency. And it's for that that the additional FAR that we're requesting, or the applicant is requesting, is critical to the viability of the project.

Before we move to the next slide, I'd like to point out that I've walked through and toured hundreds of buildings in Washington, D.C. over my career and I've never seen a building of this size that's this inefficient. And in commercial leasing, efficiency is the crux of making a deal happen and is the crux of any prospective tenant in the marketplace. So it's very difficult for the applicant to find tenants coming into this building if it's not an owner-occupant.

Typically, in new projects in D.C. they all have high quality finishes. I mean that's the standard, an example that's being presented for new buildings that are being developed. And in addition to the high quality standards, there's

also several amenities that a project needs to support for any new development. And although this project has high quality finishes, that you just saw with Tim's team that will be designed for the applicant's design, it also has challenges too.

There's no male or female bathrooms on each floor, with some floors having no bathroom at all. And the typical amenities that you see in the marketplace include express mail collection--

CHAIRMAN JORDAN: Which floors don't have bathrooms?

MR. KOUTROUVELIS: Right now the fourth floor, I'm sorry--

As of right now the 4th floor doesn't have bathrooms. We have opportunities to delete it from probably one more floor.

CHAIRMAN JORDAN: That's the floor you have to go up or down right?

MR. KOUTROUVELIS: Correct.

CHAIRMAN JORDAN: And then the other floor is unisex bathrooms?

MS. MOLDENHAUER: No actually, can we

-- I'd like Tim to clarify the Code issue for non-unisex.

MR. KEARNEY: They're single sex restrooms. All occupants need to be able to get to a restroom within one story of where they are so if, for example, you're on the 7th floor and you're a male, you may have a male restroom on the 7th floor but if you're a female you might have to go to 6. And so on and so on. Does that make sense?

CHAIRMAN JORDAN: And nothing's on four?

MR. KEARNEY: Correct. So if you're on the 4th floor and you're a male you could go up one and if you're a female you could go down one.

CHAIRMAN JORDAN: Okay.

MEMBER COHEN: May I--

CHAIRMAN JORDAN: Yes, please.

MEMBER COHEN: I thought you were going to -- so there's not an opportunity for them to be unisex? That's what I thought you were referring to.

MR. KEARNEY: The code doesn't look kindly on unisex restrooms.

CHAIRMAN JORDAN: Doesn't look kindly? They're prohibited, is that--

MR. KEARNEY: They're prohibited, yes.

MR. KOUTROUVELIS: So maybe on the type of amenities you would typically find in new office construction in D.C. you would have fitness centers, possibly childcare centers, certainly rooftop decks or common expensive lobbies, scenic views from the tenants' perspective on the upper floor. Elevators and also on-site management staff and maintenance staff.

And none of these can be provided because of the inefficiency of the property.

Regarding the elevators, as you saw in those slides there's only one elevator per floor, not two. This is unique to this building and really delivers an inefficiency because most commonly you see two elevators serving the vertical riser of circulation of the building.

The next slide has to do with the inefficiency of the structure itself. So as I explained earlier, because of the inefficient structure, potential tenants will look elsewhere to meet their needs. And what I mean by that is and I'll provide an example for you briefly.

Let's say that 3000 square feet of usable square foot that meets a tenant's program needs is out on the market and they look at several buildings to compete for their tenancy, this being one. Typically, with a 3000 usable square foot that would translate into a rentable number of about 3500 square feet under normal building comparisons, whereas in this building a tenant would be required to occupy 3500 square feet because of the extreme inefficiency of the building and the high core factor.

So essentially the inefficiency of a building drives up the tenant's occupancy costs and those are critical and crucial and the crux to structuring a deal on the leasing side.

So with that, any reasonable

profit-driven developer wouldn't pursue a project at this property and if not for the applicant being an owner-occupant of the building, needing to house multiple tenants the inefficiencies just increase dramatically.

And in the final slide I'll just touch on a little bit more -- oh so it's not color coded. That's fine. It's color coded on the computer but not on the big screen. I just wanted to expand on what Tim had said earlier.

From my perspective on commercial leasing this is an illustrative slide that shows what would be required to lease out to multiple tenants. The older slide showed a single, just an owner-occupant tenant. Owner-occupant being the applicant and not showing anything else that needed to be created for multiple tenants. So if rented to multiple tenants, the core factor would increase to 49 to 60 percent to allow for common access to the restrooms.

So the yellow area on the top left of the plan represents the usable space. And the

corridor where the cursor is represents the common area, the area that's required for access from the elevator to the restrooms and that's considered what we call a common corridor.

So in the cross-hatched area to the right of the plan is all representing the parts of the core of the building, the vertical circulation throughout the building. So the buildings being built and designed are designed to be more efficient and this building, from a practical perspective, is difficult for the owner. And that's why the application for the additional FAR request is critical. And I'll turn it over to Lyle now.

CHAIRMAN JORDAN: Before you go, you said in your report if I'm not mistaken that even with zoning relief this is not a viable project?

MR. KOUTROUVELIS: No, well--

MS. MOLDENHAUER: What we're providing here is we're providing, since obviously zoning relief has to go to the property specifically and we have a unique situation here

where the owner is looking at obviously an owner-occupied property we didn't want to just rely on the owner occupant mentality of the project but rather also want to show the Board what would happen if this was not just obviously for this owner but rather was for any reasonable person.

And let's say in the future there was a need to potentially lease it out to multiple subtenants, we wanted to articulate the challenges that would occur then.

But obviously what I believe has been testified to and is in the record is that no speculative developer would most likely design this is build this. This obviously being built, this vacant building is being developed because it has a unique current owner that would be owner-occupant.

CHAIRMAN JORDAN: I'm just reading from the report which is in general that way. So what are you using as a cap rate?

MS. MOLDENHAUER: I believe Lyle would have to reply to the cap rate and--

CHAIRMAN JORDAN: There's nothing in the record regarding cap rate. It's a discussion under his report about the cap rate so that's where--

MS. MOLDENHAUER: And Lyle's going to provide a little bit more detail and we have a little more information that we can provide right now to the Board. We prepared this additional information.

CHAIRMAN JORDAN: Okay.

MR. JACKSON: Good morning. My name is Lyle Jackson representing [inaudible] Properties and also Resolute Funding. I work for a developer and we also do commercial mortgage brokerage. I have 20 years experience in the D.C. Metro area as a financial broker and I've arranged for a quarter of a million dollar's worth of construction refinance and acquisition loans.

My capacity in this transaction is as a financial adviser to Mr. Hill and also in procuring construction and hopefully financing for the project.

I've discussed this project based upon the requested relief with multiple lenders, including BB&T, Citi First and Wells Fargo. There are concerns about reducing the size of an already [inaudible] structure.

As Tim has stated, due to the small footprint of the property the core factor as proposed is much higher than the industry sees in their commercial properties. And in addition, as Demetri has stated, no speculative developer would take on this project. In lieu of Mr. Hill's desire to occupy it, that is the only way conceivably -- excuse me. In addition, for Mr. Hill to obtain industry standard financing for the project, every usable square foot is critical.

If you look at both 3 and 4, due to the challenges of developing on such small site, operating cost increases per square foot and magnified if distributed over less usable square footage. And while additional floors are relatively inexpensive due to the economies of scale, we are looking for a small degree of relief,

these factors have a substantial impact on the financial viability of the project.

MS. MOLDENHAUER: If I could ask you, can you address the Chair's question about if the project was developed in an 8 FAR versus the requested 9.62, how that affects the cap rate in regards to what the District typically is looking at?

MR. JACKSON: Yes. The requested FAR variance, the cap rate on this building based on [inaudible] of rent for a project like this comes in around 4.2 and without the variance it comes in at around 3.2, both of which are well below the industry standard for a project like this.

CHAIRMAN JORDAN: What's the standard?

MS. MOLDENHAUER: If you look up on the chart here, this is the CBREs February 2013, so the most recent I guess third party analysis of cap rate surveys throughout the entire East Coast and central and west coast, if you find Washington, D.C. here on the bottom for class A which would have

certain amenities and this typically over 10,000 square feet, which this building is not. For a stabilized building which would obviously have pre-stabilized tenants you're talking about a 4.7 to a 5.7 cap rate for a value-add which this project would fall under a value-add, it would be about 5.5 to 6.5. Again, this is on a Class A which this building probably would not qualify for.

So if you then go to Class B, here you can see a stabilized building is a 6 point to 7.5 cap rate and these arrows indicate that from last year they intended that the trends were actually rising from that last February 2013 or value-add would be 6.5 to 7.5.

So I believe you just heard Lyle testify that in an 8 FAR project it would be below 4, around 4, is that--

MR. JACKSON: Yes, below 4.

MS. MOLDENHAUER: Below 4 and that on the current proposed requesting the additional FAR, which we'll get to, in regards of what that actually translates into, in other words, actual

square footage which is very minor in regard to our requested relief, is really under the industry cap rates for a value-add possible Class B. I mean it's 6.5 to 7.5 cap rate based on the CBRE February 2013 report.

CHAIRMAN JORDAN: And did--

MS. MOLDENHAUER: I did not. I can provide copies. I have these in case Board members have questions we have these available and we are submitting it to the record at the moment.

CHAIRMAN JORDAN: Well, more fundamentally what I did not see in the record was how you derived your cap rate, the factors that were used for cap rate.

MS. MOLDENHAUER: We can pass that out right now as well.

CHAIRMAN JORDAN: Because we're getting some type of opinion about it but we have no underlying support for the opinions regarded.

MS. MOLDENHAUER: We can pass out that information. We believe that the expert testimony would be sufficient in this case because obviously

really the unique aspect in the 45 percent core factor we do not believe it would be necessary to get into the specific financials. I think the structuring itself and the exceptional condition in and of itself speak to the three prongs of the variance standard.

CHAIRMAN JORDAN: For an expert to give his expert opinion he needs to provide the foundation on which that opinion is based.

MS. MOLDENHAUER: Erik will be handing it to Mr. Moy and if you want to have the lights on we can then walk through that right now.

CHAIRMAN JORDAN: Don't cut me off but let me explain why I say that counsel. Experts can make their opinions but we need to have the evidence on which that opinion is based. We can't just grab it out of the air. So please let's have that because we have to have a proper record and this record may be challenged. We don't have a party status but it could have been potentially but we don't have the documents here.

MEMBER COHEN: May I--

CHAIRMAN JORDAN: Yes, please ask questions.

MEMBER COHEN: I'm not even at the point of are you going about not arguing or discussing cap rates, my concern is and help me understand, this is a one-off building. If your company, Mr. Hill, goes under for any reason, and there could be many, I didn't get the impression that anyone else would rent this building and what we would have is an eyesore that maybe can't be re-rented to anybody and it just sits vacant for years.

So if somebody can get me through that it would be very helpful.

MS. MOLDENHAUER: I mean I think obviously we can address the possible what ifs. I think that no matter what there would be a challenge in releasing it. But I think Demetri can address, you know, the challenges of releasing it but then the possibility of obviously you know finding someone. And the fact that we've looked into this and then the question obviously of hopefully Mr.

Hill's group and Fred can address that as well.

MEMBER COHEN: What I got is that he made such a strong argument for the uniqueness of it all and I got the impression no one.

MR. HILL: I think that if we went bankrupt then, you know, the building would get turned over to whoever it gets turned over to and then they would be able to rent it in a way that it could be rented, meaning they could charge the rent that would be able to be afforded because I'm bankrupt.

MR. KOUTROUVELIS: I said that no developer would develop it speculatively as a profit-driven developer for this site. I didn't say that no future developer would purchase the building if he were to go bankrupt because the cost of building the building was already sunk and realized and could have tremendous value for someone else to purchase it. So that's how I would address your point and answer your question.

MEMBER COHEN: That's very helpful.

MS. MOLDENHAUER: At this point I

could provide some legal arguments but I believe if the Board would like to ask questions of our witnesses.

CHAIRMAN JORDAN: Where's the supporting financials?

MS. MOLDENHAUER: That's what I was going to say, if you want to go there we can obviously walk through that. We can pass that out. Thank you.

MR. KOUTROUVELIS: So the two financials that have been placed in front of you are based upon the cost of the building--

CHAIRMAN JORDAN: Before you do that, we need to have this marked as an Exhibit please. What's our Exhibit number there? It's not really for the survey I don't think is necessary. Well, let's also do the survey and the last document passed out.

MS. MOLDENHAUER: Mr. Moy, the plans also that were supplemented because I took off the rear yard relief for the setback.

SECRETARY MOY: This would be 39.

CHAIRMAN JORDAN: Okay. So the last document is 39, the cap rate survey sheet is 38 and 37 will be the revised roof diagram. Would that be correct?

SECRETARY MOY: That's good.

CHAIRMAN JORDAN: So you want to proceed?

MR. KOUTROUVELIS: Yes, and I'm sorry, this was another version of what I -- it doesn't have the cap rate specifically broken out on it but I can walk you through how they're derived.

CHAIRMAN JORDAN: We can accept it in evidence unless the Board has it but we need to know what's the finance costs in some of these. I don't think it's here.

MR. KOUTROUVELIS: The finance costs are here based upon currently it's for an SBA loan for the project. It shows a first mortgage based on -- you see it?

CHAIRMAN JORDAN: Okay.

MR. KOUTROUVELIS: That breaks it out

and it shows the total PITI for the project under both the requested relief and at the 8 FAR. Basically, the cost to Mr. Hill with the relief it works out to almost \$98 dollars a square foot full service for the building.

We believe that market rents for a class A property which this is not, would be \$75 dollars full service and \$50 dollars triple net after \$25 dollars for expenses.

CHAIRMAN JORDAN: And is that including your interest rate, your mortgage payment?

MR. KOUTROUVELIS: Yes, that includes -- if we base it that way it's--

CHAIRMAN JORDAN: --\$28 dollars?

MR. KOUTROUVELIS: No, \$93 dollars, if you just base it upon how much his financing costs would be for the project, he's paying \$93 dollars a foot based upon the financing for the rentable square feet.

CHAIRMAN JORDAN: Got it.

MR. KOUTROUVELIS: And then without

the relief he's paying \$117 dollars a square foot.

CHAIRMAN JORDAN: So without the relief it's \$117 dollars a square foot?

MR. KOUTROUVELIS: Exactly.

CHAIRMAN JORDAN: And the projected income, revenue per square foot?

MR. KOUTROUVELIS: Based upon leasing the building at market rate would be \$50 dollars triple net which would be \$398,450 dollars with the relief and then \$293,900 without the relief so it makes \$100,000 dollars difference basically.

CHAIRMAN JORDAN: Okay. Yes, this is a lot better than the documents submitted because we need this back-up and have this kind of discussion because I also thought that the report was kind of misleading. We talked about what the expenses were but we didn't have the built in other finance costs to that because it was running \$28 and \$25 dollars in the document.

MR. KOUTROUVELIS: right. And that was just for taxes, insurance, and common area maintenance.

CHAIRMAN JORDAN: We re-read these things, as counsel knows, ahead of time and most of us to the 1 + 1 = 2. But when we're missing the other part of it, you know, it raises questions and we have to go through this in a hearing when we might have been able to skip past it.

MR. KOUTROUVELIS: My apologies, sir.

MS. MOLDENHAUER: Are there any other questions?

CHAIRMAN JORDAN: I'm good on the financials. Any questions Board please? All my notes and my pre-read of this was answered because of all the things we discovered here. But that's why I say it's important that we do that. Anything else you want to present to the Board?

MS. MOLDENHAUER: I'll just quickly walk through the--

CHAIRMAN JORDAN: I want to talk about, I guess we could wait till DDOT comes up because you--

MS. MOLDENHAUER: We have a couple of issues on the detriment to public good and DDOT.

CHAIRMAN JORDAN: Ms. Moldenhauer, you and I both can't talk at the same time other than the day you have this chair. And this is not sitting here today. And so just kind of let me do some of this. Okay? I appreciate your support and your help.

So my issue was, some issues and concerns about the DDOT report which you know they've made some recommendations of conditions that either we can cover with -- I guess let's wait till the DDOT and come back to that after we have the DDOT report because we have some questions and I want to see the applicant's concern, how they're going to handle it.

And did I miss it? I didn't see any TDM plan other than DDOT's.

MS. MOLDENHAUER: That's what I was trying to -- I interrupted you before indicating that we hadn't finished our full testimony, that we did have some TDM measures that we wanted to present to the Board.

CHAIRMAN JORDAN: That we don't have

already?

MS. MOLDENHAUER: That we do not have already.

CHAIRMAN JORDAN: Can we have them as we go through them?

MS. MOLDENHAUER: Yes, we do have extra copies of this for the Board members. We have a memo that was based on discussions and we can just quickly walk through that if you like.

CHAIRMAN JORDAN: Some of these things, as you know, should be here already because we go through this and go through and like where is the TDM? And then like this team doesn't even had a TDM and asking for this level of relief. So, yes, please give it to us so we have it.

MS. MOLDENHAUER: I believe some of it was in our pre-hearing statement but it wasn't identified on a single page.

CHAIRMAN JORDAN: All right. So let's make sure we have these but let's hold the discussion until we after we talk to DDOT and then go through these during that time. Okay? If

that's okay with you.

Okay. So what else do you have for us today?

MS. MOLDENHAUER: We'll just quickly address the community support. We've gone to the Zoning Committee and have received numerous unanimous vote in support. The ANC-2F also unanimously voted in support.

CHAIRMAN JORDAN: The Zoning Committee or the ANC I understand is meeting in January. Oh they did meet?

MS. MOLDENHAUER: Yes. So we had both the Zoning Committee and we had ANC-2F and I believe that's part of your record. We have a letter from ANC-2F in Exhibit 26 which indicated that they unanimously supported the project.

And obviously prior we did not -- this presentation was put forward before we knew that we had the filings from Friday. And we also have Council Member Evans' support in the record.

And then I have information or legal arguments that I'll hold for rebuttal following

Board questions and any other comments from individuals in the community.

CHAIRMAN JORDAN: Okay. So we'll come back to this. Board, any questions? Anything else we need to hear from the applicant? Anything?

Applicant, anything more that you want to present to the Board short of coming to discussion of the TDM stuff?

MS. MOLDENHAUER: Not at this time.

CHAIRMAN JORDAN: All right. Then we will turn to the Office of Planning please.

VICE CHAIR ALLEN: I know we're going to discuss the TDMs later but can we get a copy of it just so we have it to see.

CHAIRMAN JORDAN: I thought he just did. He just passed it out, it's right in front of you. The memorandum.

VICE CHAIR ALLEN: Oh, this is what she's going to go through. Got you.

CHAIRMAN JORDAN: Yes. And let's get an Exhibit number please. I think we're on 40.

SECRETARY MOY: Yes, we can make that 40. But it comes out to 39. I had this other exhibit--

CHAIRMAN JORDAN: Just let me know, I mean I'm with you.

SECRETARY MOY: Well that's good, I can switch it. That's good. We'll make this 40 just like you say summary order and I can say that's because-- All right. This officially is No. 40.

CHAIRMAN JORDAN: Thanks, Mr. Moy. Okay. Mr. Cochran?

MR. COCHRAN: Thank you, Mr. Chair. OP has worked with the applicant for at least a year on the project and our report might be a bit different if we'd gotten some of this information before today.

Okay. There's obviously no need for the parking relief. OP supports the request for relief from the rear yard and -- did I say parking relief? I meant roof structure, excuse me.

But with respect to the parking relief, you may want to ask DDOT about some of the

[inaudible] proposals and the TDM proposal.

So we're left to focus on the major relief that the applicant is requesting, which is the FAR increase of about 1.25, that's based on the size of the building as of today not last week.

OP does not believe that the applicant has demonstrated that there is an exceptional condition -- excuse me, there is an exceptional condition. And the applicant has demonstrated it. It's a small building, there's a high core factor ratio, no question about that.

But even if the information today which we have not had the opportunity to evaluate yet, we don't believe that the applicant has demonstrated that there's a nexus between this exceptional condition and an inability to develop a buy right building at 8.0 FAR or even 8.5 FAR which the applicant could achieve with the purchase of TDRs as a matter of right.

Our principal concern is not so much will this have a negative impact on downtown. We're talking 1200 to 1600 square feet. No

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

question. We're not going to jam up the traffic, we're not going to you know density won't be so great on the sidewalk that nobody will be able to walk by the building.

But what we're looking at is an FAR increase through the Board of Zoning Adjustment that would amount to about 16 percent in a required jump of two zones to get the kind of FAR that the applicant is asking for in this.

To us, this has the potential for a substantial negative impact on the zoning regulations. There are methods for achieving the kind of FAR that the applicant is requesting. We note that there are buildings that are next door that have as a matter of right 9.5 FAR. But this building is not in that zone. So they're asking a back-door route to get into that zone.

Our concern is also -- that's the direct impact. The indirect impact is on the public good. And the public relies on the predictability of zoning. To go for a two zone jump in FAR without asking for a zone change begins to undercut the

stability of zoning.

I wish that I had time to evaluate all of the information the applicant has provided today; what we saw was based on the difficulty that would ensue if the applicant ever wanted to leave the building on getting that building to be leased having been built. It didn't address getting the building built.

Now maybe some of the information provided today begins to address that. But presumably if we're looking at the applicant vacating the building 20 years from now, the market would determine the appropriate value for what the lease would be.

So all in all, we simply don't think that the applicant has demonstrated the nexus and it does open up the possibility of a substantial negative impact on both the zoning regulations and indirectly on the public good,

CHAIRMAN JORDAN: And I read that in your report but I think you're making a philosophical argument versus what's allowed here

that could come before the Board of Zoning Adjustment. I understand clearly but there's no prohibition in the zoning regulations that the Board of Zoning Adjustment cannot give this relief, but you're saying the best process probably should have been a PUD submission because it's usually something that comes from the Zoning Commission. I think that's what you're saying.

MR. COCHRAN: It's too small to be a PUD. It would have been a zone change request.

CHAIRMAN JORDAN: Well, but -- all right. Okay. Which still gets us back to the Commission.

And I also heard you say something else. I mean I'm glad you recognize this building as unique but I heard you say something else. I don't know if the applicant can provide us the information at this time but I thought you said something very impactful, and that is showing the difference in the impact of -- where's my note? Oh here it is. Neither showing the importance of a matter of right FAR from 8.0 to 8.5 if they wanted

to buy TDR, and the 9.6 relief requested was that impact on the financials. I think that's one of the questions that you raise. Right? Isn't that what you're raising?

MR. COCHRAN: That's correct. And the applicant has already said the building is going to be inefficient whether it's an 8.0 or at 9.62 or whatever the FAR is as of today.

CHAIRMAN JORDAN: And so the follow up conversation, whether or not we can get that supplement from the applicant as well as we we need to get supplement from the applicant, the details that make up your land costs and construction budget we'd like to see that because right now we've just got these big groupings. Did you get a sheet?

MR. COCHRAN: I did.

CHAIRMAN JORDAN: Okay. The other part about it is going to what you just said, Mr. Cochran, and the evidence that's been presented, that this building doesn't work based upon any financial, so then why do you need the 9.6 FAR. If it's not a financial decision going forward, then

why can't you deal with then the matter of rights?
Is that kind of where you--

MR. COCHRAN: I'd say that you said
what I wanted to say even better than I could have.

CHAIRMAN JORDAN: And I appreciate
that because when you said that I was going yeah
that's true. So anyway I don't know if we're
going to be able to do that because we really need
to take a look at those analyses and not look at
them quickly here.

And again I re-emphasize what Planning
has said and we have said throughout this hearing
as much information as we can get up front where
we can really put our arms around it because we do
go through these things before we sit here. It's
impossible generally for us to kind of capture some
of these things and be able to just shoot off the
top. And these decisions are very, very important
to not only your application but to everybody else
in the district or around the property, etc.

Any other questions for planning?

MEMBER COHEN: No, you asked them.

CHAIRMAN JORDAN: Okay. Mr. Hinkle?

MEMBER HINKLE: No.

CHAIRMAN JORDAN: Does the applicant have questions for Planning?

MS. MOLDENHAUER: Yes, just a few. It's my understanding that, no matter what documentation, that Office of Planning from a policy perspective would not support the requested FAR relief? Is that correct?

MR. COCHRAN: That's not correct.

MS. MOLDENHAUER: So you would support FAR relief based on showing in regards to the difference between the 8.5 FAR and the requested FAR?

MR. COCHRAN: Well, you're asking me for a hypothetical.

CHAIRMAN JORDAN: His testimony was that he really wished he had more information from which he can do another evaluation and look at it. So he hasn't said he would or would not. He just wanted to have more information.

MS. MOLDENHAUER: And I guess one of

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

my other questions though is that in the past Office of Planning has had a limitation reviewing relief when it's based on financial hardship. Is that something where Office of Planning is now from a policy perspective reviewing cases now in that regard?

MR. COCHRAN: I think the OP, there are certain core things in the zoning regulations but OP also has to respond to the context that the BZA sets for us. And clearly the BZA has been looking at economic impact. So just as people who are supposed to analyze things to help the BZA make its decisions, we would be happy to analyze that kind of information for this BZA.

MS. MOLDENHAUER: Then based on the testimony that you heard, if building this building would obtain a lower than industry standard cap rate, does that not prove the nexus between the size and the need for the additional square footage in order to obtain a more reasonable, not maximizing the profitability of this building as the Court of Appeals has found, but rather a more reasonable cap

rate for the viability of this project?

MR. COCHRAN: I'm not familiar with what would be a reasonable cap rate on this building without doing research, and I would have to go back through other BZA cases to see whether cap rate has been a determining factor in the way that OP analyzed a case or that the Board has decided a case.

CHAIRMAN JORDAN: And what's the case that the Court of Appeals had dealt with cap rates?

MS. MOLDENHAUER: Exactly. It was the Woodward & Lothrop building downtown and the case name is escaping me at the moment.

CHAIRMAN JORDAN: Give me the cite.

MS. MOLDENHAUER: I'll pull it up before the hearing is over but it's the case in regards to the old Woodward & Lothrop building where the applicant was required, obviously tried to re-lease the building and in re-leasing it the problem was trying to find a retailer and an office space and the fact that they were evaluating a cap rate and a cap rate of 6 percent would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

reasonable. And that actually ended up being a use variance case where they were talking about the ability to use the property for a certain type of use.

And so here, obviously, we're not even in a use variance standard for undue hardship; we're here at practical difficulty for an area variance in which we believe that, and we've shown the third party standard for the CBRE standard cap rates and shown that this obviously would be reasonable and that actually would be more than reasonable.

CHAIRMAN JORDAN: But there's many other standards that the Board can consider in regards to whether or not relief -- and that's just one phase of it. So I don't want us to bog down particularly in regards to cap rate but overall. And maybe that particular case dealt with it, but that's neither determinative on this particular issue.

MS. MOLDENHAUER: So Office of Planning is supportive of the parking and for the

rear yard relief?

MR. COCHRAN: Yes.

CHAIRMAN JORDAN: What if he's changed his mind and said no because we already have it in our records he said yes. No, that's an old lawyer trick.

MS. MOLDENHAUER: No other questions for Office of Planning.

CHAIRMAN JORDAN: Board, any additional questions of Planning? Thank you and as always a very thorough analysis and appreciate this. And as a policy there is no policy of OP that you don't look at financials. Some analysts from OP look at things differently and what have you but you just simply said you wished you had the information so you could decide what you wanted to look at.

MR. COCHRAN: That's correct.

CHAIRMAN JORDAN: Okay. Thank you. All right. So let's turn to the Department of Transportation. You know we're glad to see you, like our long-lost cousins. But you've been here

like two weeks in a row.

MR. WESTROM: My cohort Jonathan Rogers was here last--

CHAIRMAN JORDAN: I mean but I'm just saying Transportation's been here like two weeks in -- you don't understand, it's like the lost son that comes home. And it means a lot because we do like public transport and sometimes we have a lot of questions.

MR. WESTROM: I definitely understand. We certainly desire to be here when it's important to be here -- absolutely.

CHAIRMAN JORDAN: Okay. So I guess some other cases we can just dismiss them if they're not here. Go ahead.

MR. WESTROM: Thank you. So in regards to the case at hand, DDOT evaluated of particular importance was the variance relief sought for parking. We do support that relief and would defer on the other issues at hand to the Office of Planning's perspective.

We support the parking relief for two

major reasons. One, the applicant noted the mass of available alternative transportation options surrounding the site. It's downtown so transit obviously would be a high expected use. They're moving from Bethesda, a location that is very auto oriented specifically and they're moving to a location that we would expect to see most people probably desire to make use of transit to reach the campus.

And then the TDM measures that they propose we did coordinate these with the applicant.

CHAIRMAN JORDAN: The ones that were passed out here?

MR. WESTROM: Correct. And in discussion with them in fact one of them did arise from the applicant, I would note the provision of a monthly stipend was not something that DDOT requested as a condition, this was something that the applicant came forward with in the original report and we of course inquired about it.

And with this TDM program again that supports the parking relief that is sought and

DDOT's position that they would support this relief.

CHAIRMAN JORDAN: All right. My question is going to kind of the applicant and DDOT so whoever wants to answer it. One, what's the dollar amount for the stipend?

MS. MOLDENHAUER: I believe it's \$50 dollars.

CHAIRMAN JORDAN: A month? And when we use the term employees here, what employees are we talking about because not only is the applicant going to be an occupant of the building but there's going to be some other tenants proposed. Correct? No? Yes? You're using the building in total?

MR. HILL: Yes. I'm sorry, I'm only smiling because it's not a big building.

CHAIRMAN JORDAN: So you're the sole tenant? Sole user?

MR. HILL: Yes sir.

CHAIRMAN JORDAN: Okay. And then on the SmartCard, what's the cost of a SmartCard like just to get the card?

MR. HILL: I think it's \$5 dollars or \$10 dollars.

CHAIRMAN JORDAN: Okay. So we're doing \$55 dollars is going to be -- I guess it's going to be \$50 on top of the pre-loaded--

MR. HILL: Yes, whatever the SmartCard costs we'll cover the SmartCard and then add \$50 dollars to that.

CHAIRMAN JORDAN: And that's just one time?

MR. HILL: Probably do it once a month I would imagine.

MR. WESTROM: So those two work hand in hand is the way DDOT saw it. So the provision initially is to provide a SmartCard, probably several of these employees if they don't use transit don't even have one. And there's a certain hassle factor. These are people we want to encourage to use transit.

The one that was relatively new for us is this ongoing stipend and so the idea is that they have committed to ongoing. They asked about

what level we would want to see for that and a dollar figure that we tossed around was \$25 dollars per month which, just for your information, is the approximate amount that unionized D.C. employees receive as a monthly stipend for transit use.

But I think that it is important to understand that this is an ongoing benefit and we did question the applicant in this regard because all the other TDM program measures are kind of initial actions and this would certainly be one that goes on into perpetuity. If it's part of the order.

CHAIRMAN JORDAN: Okay. Another question. So why do we need a TDM leader? What does a TDM leader do?

MR. WESTROM: So the idea here again is and it's probably not described as well as it could be. A lot of times in this situation there's parking garages surrounding. If there are people who choose to drive, which I'm sure there still would be some, where are they going to park?

And the applicant identified three

parking garages within close proximity of the site, all with available spaces. But if you're an employee who is not familiar with the city, perhaps you might have difficulty in understanding where you need to go.

Furthermore, if you're an employee who's not familiar with the Capital Bike Share or some of the other alternative means, you might not be able to know where to turn. We'd like to see somebody identified who can handle those situations and be a liaison, it helps the entire company be more efficient in terms of their handling of making sure that these TDM measures go on as beyond the initial life of the occupancy.

MEMBER COHEN: May I just add a comment. I think that could be somebody who's already employed and that duty as assigned so it's not an extra personnel.

MR. WESTROM: That's exactly the intent but the goal is to make somebody, perhaps it's a human resources individual, perhaps it's a concierge who might be at the building, but

somebody who has a defined role that includes these and is trained in this regard and supports the entire company accordingly.

CHAIRMAN JORDAN: And let me ask. How many employees do you--

MR. HILL: We have 20 in Bethesda, we have another 25 in Albuquerque and we have about 40 ad hoc people around the country that we use.

CHAIRMAN JORDAN: How many is going to be in this building?

MR. HILL: Oh in this building? There's going to be 20 people moving originally and then we're going to obviously hope to ramp up.

CHAIRMAN JORDAN: All right. Now I need the ramp up. Ramp up to where?

MR. HILL: I think maybe the building will serve 40, 45 people was kind of how we thought.

MR. KOUTROUVELIS: And that initial occupancy is fairly consistent with a consulting company or to a law firm but ultimately you're going to identify into something that's more consistent

with a technology company. So if there's one person per 300 usable square foot day one, he could get down to one person 180 ultimately.

CHAIRMAN JORDAN: Which would mean how many people?

MR. KOUTROUVELIS: So we're about 6000 square feet usable I think so that would be -- let me do the math -- 6000 divided by 180 that's 33.

CHAIRMAN JORDAN: All right. Any other questions of Transportation? Board, anyone? Applicant, any questions of Transportation?

MS. MOLDENHAUER: No questions for DDOT.

CHAIRMAN JORDAN: Okay. Thank you. Do we have any representative here from ANC-2F? We do have Exhibit 26 which is a letter of support by ANC-2F. Is there anyone here wishing to speak in support of the application? Anyone wishes to speak in support? Anyone wishing to speak in opposition? Opposition? Going once. Oh here

comes Mr. Sullivan, okay. Three minutes please.

MR. SULLIVAN: Mr. Chairman, I have a representative of a neighboring owner and he'd like to talk a little bit about the impact on them and I'd like to talk a little bit in response to some of the things we've heard today.

CHAIRMAN JORDAN: Whatever you do in three minutes is good.

MR. SULLIVAN: If we can do three minutes each that would be--

CHAIRMAN JORDAN: No, you're a representative of one party, you're not getting it both ways.

MR. SULLIVAN: Okay. In response there's a whole bunch of new information that wasn't given to us. I think that's unfair. So the abutting property owner, the only--

CHAIRMAN JORDAN: Thank you, Mr. Sullivan. You've got three minutes. Please go ahead.

MR. MIRABELLI: Thank you, Mr. Chairman and the Board. My name is Mario Mirabelli.

I work with the owner and represent the owner of 1101 K Street. About three years ago we purchased this property for \$200 million dollars under the expectation, under the reliability of zoning as OP has pointed out, with an expectation that we would have a building that respects the current zoning, the zoning going forward, the neighborhood and certainly our neighbors.

It appears tody that that expectation and that reliability of zoning has been eviscerated to some extent.

There are setback and density requirements that afford our property light and air that we expected and, based on what we're hearing today and the variance request, they're going to go away.

Our building borders two entire sides of the building being proposed here, the variance relief will eliminate all of our light and air on the west facing wall in this area, and from the rear yard variance and several floors of the north facing wall windows as a result of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

considerable FAR request.

I might also add that the applicant's team talked a great deal about respect and it appears to me coming here today that the respect hasn't been shown to the zoning, the existing zoning and the neighbors within the neighborhood. So thank you.

CHAIRMAN JORDAN: Mr. Sullivan?

MR. SULLIVAN: Thank you, Mr. Chairman. First of all I would like to note an objection for the record that we have not received any of the information being presented today. We think that's patently unfair. I think a large percentage of their case seems to be presented for the first time today and I did not hear a request for a waiver of the two-week filing requirement nor the granting of that. So I would just register that objection.

I would point out that they--

CHAIRMAN JORDAN: And your objection can be made for it but you're not a party to this, Mr. Sullivan, so let's proceed on please.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

MR. SULLIVAN: I understand. I would point out this is a hold-out lot, they've admitted that. That's inherent in the value of the property. But they're arguing practical difficulty which is the cap rate and the value of this is inherent in the lot and the fact that the then property owner held out because they thought they could get a better deal apparently from this Board or from the matter of reg zoning. And that's not working out.

So they either paid too much for the property or they just want more value. And that acquisition number is in that cap rate calculation.

Substantial detriment. There's no dispute. We're losing six floors of windows on one side and a couple of windows on the other side as well as a result of the rear yard -- and it hasn't been addressed, that substantial detriment to this neighbor.

These are not at-risk windows. They're protected by the rear yard setback. Call them whatever you want but there's no doubt that

granting relief in this case is a substantial detriment to 1101 K Street's building.

On the ANC letter, they did not review this under the variance provisions, they reviewed it under special exception requirements for C-3-C.

In summary, they haven't met prong two or prong three. Thank you.

CHAIRMAN JORDAN: Okay. And also I want to note for the record we have both your information and letters already submitted in opposition in the record. So that's the other reason why you're just on a 3-minute aspect of it.

MR. SULLIVAN: Thank you.

CHAIRMAN JORDAN: Has the Board any questions please?

MEMBER COHEN: I was wondering what [inaudible] is to your [inaudible] space as well. Can you elaborate on that?

MR. SULLIVAN: Those are 15-foot rear yard setbacks so there's six stories of windows going across the whole west facing wall of 1101 K Street that will be eliminated as a result

of granting this relief.

There's been a lot of focus on the FAR argument here, no discussion at all on the rear yard and that's where most of the impact comes from. The additional density of the FAR also impacts another floor or two of windows on both sides as well.

CHAIRMAN JORDAN: All right. Any other questions? The applicant, any rebuttal that you think is necessary? I'm sorry, let me ask you, is there anybody else in opposition? I didn't call it twice. Anyone? Okay.

MS. MOLDENHAUER: My question would be if matter of right would permit to go all the way up the height act? Do you understand that to be correct?

CHAIRMAN JORDAN: I think essentially it's the same question that Ms. Cohen just asked, that if they did a matter of right building, what was the effect? And the response would be that the rear yard still would be reserved, still would be maintained.

MS. MOLDENHAUER: And is it your opinion that six windows on a building that has 48,000 square feet of windows, would be substantial?

MR. MIRABELLI: Yes, we believe it would have a detrimental effect, and I'm not sure what that 48,000 is referring to but I would ask that you would probably measure the windows that are affected and the back side as opposed to--

CHAIRMAN JORDAN: Excuse me, who measured the--

MR. MIRABELLI: We measured the windows.

CHAIRMAN JORDAN: It comes out to 48,000 square feet of windows? Is that what you're saying?

MS. MOLDENHAUER: Yes. I can have an--

CHAIRMAN JORDAN: Okay. I just wondered.

MS. MOLDENHAUER: You can see the building has three sides so it has windows all

throughout the entire project. So we've actually done a rough calculation. It's not a perfect calculation, it's a rough calculation, and that there are 48,691 square feet of windows on this building.

CHAIRMAN JORDAN: Okay. I didn't know if you were talking about the floor space but you're talking about window space.

MS. MOLDENHAUER: Windows.

CHAIRMAN JORDAN: That's fine. Go ahead and ask--

MS. MOLDENHAUER: If you're talking about a building affecting potentially less than 2 percent would actually have a substantial adverse impact.

MR. MIRABELLI: Well, I would disagree with the substantial adverse impact.

MS. MOLDENHAUER: That's the standard. That's the standard.

MR. MIRABELLI: Okay. So what I would tell you is that based on where the windows are and the usable and rentable space that has provided

light and air from those windows, I would think that your calculation would probably be a little different. To take the facade and take the windows and measure those and say you're only having an adverse effect on X amount of windows, it's the square footage, the rentable square footage, the income producing square footage within the building envelope that is affected.

And I'm sure our broker here could talk all about the difference between the rent on space that has light and air and space that doesn't have light and air.

MS. MOLDENHAUER: So you're saying that out of your 293,000 square feet of rentable space the impact potentially on six windows would be a substantial detrimental impact?

MR. MIRABELLI: I would say that probably 20 percent of our space could be affected by the light and air. Now that's not a scientific calculation, that's just a rough estimate similar to your calculation.

MS. MOLDENHAUER: No other questions.

We'll provide some rebuttal statements. Thank you.

CHAIRMAN JORDAN: Okay. Any questions anyone else?

MEMBER COHEN: I have a question. Can you substantiate that for the record, not now but I'd like to have more information on the impact?

MR. MIRABELLI: Right. We can probably get some idea of how much square footage. It also has to do with whether it's a full floor tenant or a multi floor tenant and what the tenant is using that space for. So it's a very gray calculation but I can safely say that there's probably close to 20 percent of the space would be affected.

MEMBER COHEN: Again, we need to find-- it is very helpful.

MR. MIRABELLI: We will gladly take a hard look at that. Thank you, ma'am.

MEMBER COHEN: And then for the applicant, if you can quantify it you know that

would be -- anything you can quantify is helpful.

CHAIRMAN JORDAN: Right. Rebuttal please?

MS. MOLDENHAUER: Yes. At this point I'd like to just ask our architect from Alliance to address the matter of right height issue and that at-risk windows that would be affected.

CHAIRMAN JORDAN: We're going to lose one Board member but however you review the record for the final portion of this please. Right, go ahead. Well wait a minute, what's your rebuttal here?

MS. MOLDENHAUER: Right now I want to address the issue of the at-risk windows.

CHAIRMAN JORDAN: Okay.

MR. KOUTROUVELIS: I guess I just wanted to make it clear that by right that this building could be 105 feet whether it's 6 stories of 10 stories. And with the 15-foot, sorry, I have a really hard time with that word there, rear yard setback, we've analyzed it and by right you're basically just affecting 1.5 percent of the

fenestration at 1101 K Street, which is at the east side or the back of our building essentially.

[VICE CHAIR ALLEN LEAVES]

CHAIRMAN JORDAN: Okay.

MS. MOLDENHAUER: And Demetri, if you can address the question of--

CHAIRMAN JORDAN: On matter of right what is our effect percentage wise on windows matter of right?

MR. KOUTROUVELIS: Matter of right it's one-and-a-half percent.

CHAIRMAN JORDAN: Okay.

MR. KOUTROUVELIS: Additionally, matter of right, one of the impacts there is if we're 15-foot away from 1101 K at the rear setback, their fenestration that are close to us would require to be closed because they wouldn't be fire-rated. So it kind of has a two-pronged effect.

CHAIRMAN JORDAN: Okay.

MS. MOLDENHAUER: If I could I just turn to you to address the issue of the impact on

the light and air and the likelihood or kind of the understanding of obviously at-risk windows in the city in regards to the size of the overall leaseability for 1101 K?

MR. KEARNEY: Well, a little bit difficult question to answer. But the building is close to 300,000 square feet and a 12-story building. Correct? I guess you could -- 10 stories-- So it's approximately 30,000 foot floor plates. You're going to have certainly rental you know there will be rental rates that will be window line rental units with street views and rental units that would be for alley views certainly. I mean that's standard in D.C. real estate leasing.

So how that would impact the value and the rental rate is to be determined because --

CHAIRMAN JORDAN: Potentially it can affect rental rates. Period. That's it.

MR. KEARNEY: Yes.

CHAIRMAN JORDAN: That's it. You just don't know how much one way or the other?

MR. KEARNEY: Correct.

CHAIRMAN JORDAN: Okay. Next question.

MS. MOLDENHAUER: And the spaces that would most likely be affected are these all alley? Already alley? Most of them are fronting on the alley already?

MR. KEARNEY: Yes.

MS. MOLDENHAUER: So it already had the majority of the negative impact on the alley because there's already alley spaces versus the front spaces that are fronting on K Street?

MR. KEARNEY: Correct. Yes.

MS. MOLDENHAUER: Thank you. That being said I just want to walk through some of the exceptional conditions on the property and why we believe that obviously this Board has indicated, well OP indicates some concerns about FAR relief, there's nothing in the zoning regulations that makes a distinction between any other area of relief and FAR relief.

CHAIRMAN JORDAN: You don't have to

take time to do that. We understand it.

MS. MOLDENHAUER: All right. And so we believe that you know this Board in other cases has supported types of FAR relief when unique circumstances exist. This property is exceptionally small, is exceptionally narrow as I'll show you in a picture. This was actually originally a full-through lot. I'm going to show you, it's right here. It was originally a full-through lot which then during the assemblage of the property was then separated out. We don't know exactly what period of time this is--

CHAIRMAN JORDAN: This is a closing and rebuttal because no one has disagreed with what you've said right now about it being exceptionally small and narrow. I think OP agreed to that.

MS. MOLDENHAUER: Yes.

CHAIRMAN JORDAN: Is this closing?

MS. MOLDENHAUER: I'm providing additional testimony and those are legal arguments.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

CHAIRMAN JORDAN: Is this your closing?

MS. MOLDENHAUER: This is my closing, yes.

CHAIRMAN JORDAN: Got you. Okay.

MS. MOLDENHAUER: Unless the Board has any questions before I started closing. So obviously this used to be a full-through lot and now obviously it's uniquely affected by the fact that it was subdivided at some point and is now much narrower than is typical in other possible lots throughout the downtown area.

The property has been vacant now for over seven years. The Comp Plan and the zoning regulations actually favor not allowing properties to lie idle and that's obviously what's exactly been happening with this property. The property's been lying idle. We can have testimony that the property had pigeons, it's not a property obviously that is contributing to the current character of the area.

The goal here is via the Hill Group and

the applicant to bring this property back to life and not only to bring it back to life but also to recognize some of the additional unique properties of this lot.

This lot has a unique history that was not apparent or was not disclosed to the current owner at the time of acquisition. The fact that the property did have some historical relevance in regards to the fact that Ms. Keckley had utilized this location for her business and the fact that the applicant had been contacted by the D.C. Cultural Society and had worked very closely with Tracerries to understand the degree of that, is a unique aspect that obviously does not affect any other properties in the district obviously except for this property, giving it an exceptional unique aspect which then leads to the practical difficulty obviously in trying to develop the project as proposed.

We also believe that while OP has indicated some concerns with the zone plan, we don't believe obviously there's no -- PUDs would

not be appropriate on the site, it's too small. A map amendment in our opinion would be a spot zoning, and so really the only other place for this site is a variance and the variance standard does allow for relief when circumstances are appropriate or to satisfy the three-prong test.

And here in regards to the third prong we don't believe that it has an adverse impact on the zone plan because if you looked at the specific references in the central Washington area elements of the Comp Plan it specifically talks about being able to update and preserve buildings that are not modernized in the downtown. And we believe that's exactly what's being proposed here.

Another point is obviously that the property is surrounded by higher density sites to the south. It's a C-3-C zone which is obviously, it's a split zone square and so 1101 K Street actually benefits from the K Street address and the higher density in regards to the C-3-C. Our property is on the northern portion of that square which is a C-2-C so again based on the split zone

aspect of this square we don't believe that that's going to have an adverse impact to the public or to the zone plan.

Just kind of walking through the issue of FARs. It's sometimes a little confusing and I want to literally just walk through the FAR relief that we're asking for.

The 6.2 FAR is for the roof structure. Typically in a 411 you're allowed for an additional 3.7 FAR. Again the nexus is I think very clear. The size of the lot is so small that if you're typically able to locate all of your mechanical equipment on your roof, you're typically going to only take up about 37 percent.

Mechanical equipment requires air to circulate through as Tim from Alliance Architects testified to. So that additional 2.5 directly relates to the practical difficulty of the size of the footprint and also of obviously the challenge of complying with the height act requirement and the setback requirement.

Then if you go to the floors, the nine

floors that are being proposed, as you heard testimony there is a specific requirement or need rather here and practical difficulty, it's not a question of undue hardship, it's a practical difficulty for the owner in regards to the difference between an 8 or an 8.5 FAR and a 9.

It has to go to the cap rate, to the ability to finance the project and the ability to address the construction cost of having a 45 percent core factor in a building.

If you were then to do a matter of right at 8, if you were to be able to purchase the TDRs which Office of Planning has suggested that we do, that would then get you down to only a 0.5 FAR. We've contacted multiple companies in trying to obtain TDRs. What we have heard is that bankers of TDRs prefer to sell them at 10,000 TDRs or more.

The 0.5 TDRs which in typical developments would obviously be a bonus, here equates a 625,000 square feet. So you're talking about 625 TDRs. The transactional costs associated with going through the office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

attorney general, filing that, providing the contractual issues, are making it challenging for us to even be able to reasonably -- creating a practical difficulty again -- be able to acquire them.

If it's possible obviously our client would, and then that would reduce the relief that's requested even if it's granted. But right now we have not received any individuals that would be willing to sell--

So that leaves us now at a .5 FAR that's being requested in regards to the envelope of the building.

The practical difficulty here is very closely tied to the nexus of the size of the lot. If you look at the bottom line, if you were to build .5 FAR, you're talking about 625 square feet. Due to the core factor you're resulting in only 225 square feet of usable space to 401 square feet of core. So I think that it's very clear that you know in regards to OP's comments about the ability to possibly build either an 8 or an 8.5 FAR, if you

have a larger lot that would possibly make sense. But here because the lot is so small, it would not be reasonable and would create a practical difficulty to build a half FAR on this floor plan based on the size.

Is there a question?

MEMBER COHEN: Are you finished?

MS. MOLDENHAUER: I'm not finished yet. I go on long. I apologize. I'll wrap up.

As I said, there's no substantial measurement to those zone plans, this is a one of a kind project that does not establish a precedent. The Comp Plan as I already identified, the extension and the area and the traditional type -- most of the buildings are already built out which is a unique situation here. And we believe that based on the above, we've satisfied our three-prong test. And to add another little -- I know obviously you've already lost one Board member and the Board's asked for time, but we would respectfully request that if it's at all possible for the Board to deliver it today. The applicant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

has not been paying interest, it was a buy-back loan and that loan expires on December 14th. We've got copies for the Board if they'd like to see a copy of what was recorded.

We believe that we've satisfied the record and we would ask that the Board grant the relief.

MEMBER COHEN: For me, your summation now has been very helpful. It would have been more helpful to have had it because I couldn't find it in my original reading which was a few days ago. But in any event I would have liked to have seen this documentation with regards to the TDRs. That would have been very helpful.

My concern though is the impact which I would like to see the documentation on the neighboring property. I just think that that is something I don't want to just dismiss. I think there's some legitimacy, I don't know to what extent. I mean I heard a very small number as far as with regards to the impact but, you know, then I heard 20 percent.

So I don't know how my colleagues feel but I would like to see more analysis with regard to the impact on the property owner and then, as you said, the TDRs and it's much more comprehensive than I think what the record states. That's just my feeling.

CHAIRMAN JORDAN: Okay. All right. Then we will bring this to a close. We're not going to be able to make a decision today. Particularly Board Member Allen wanted to hold off and the other Board members are not able to -- there's some additional information that's necessary.

So we will close this hearing and I'm going to ask the applicant to provide the detail that backs up the financials that have been submitted to the Board as Exhibit 39. We're going to need the support for impact analysis on the adjacent property's windows, including with that a more thorough discussion instead of off the fly because he's just not able to give that, on any impact upon rental values. If we had something to support the aspect although I don't think it's

really determinative but I think the Board might want something in the record regarding -- you closed about evidence that was not presented on the ability to try to seek getting TDRs and it was not available. So something that supports that.

What else is there? Did I get everything? And I thought planning asked for -- did you ask for something else too?

MR. COCHRAN: I don't think so.

CHAIRMAN JORDAN: Okay. But it will be included with the other more detailed financials.

MR. COCHRAN: Yes.

CHAIRMAN JORDAN: Okay. So if we can get that and if we can then put this on an -- uh-oh my January 6th date huh? Well, how many cases do we have on January 6th?

SECRETARY MOY: All right. If you really want to know, Mr. Chairman--

CHAIRMAN JORDAN: Yes. These things tend to sneak up on us. Next thing we get a docket with 16 cases.

SECRETARY MOY: We have 7 plus 2. Two being decision cases.

CHAIRMAN JORDAN: Okay. Let's put this on for a decision.

SECRETARY MOY: Okay.

CHAIRMAN JORDAN: I don't think we need an additional hearing do you? Okay. Put it on for decision January 6th.

MS. MOLDENHAUER: And the record is closed for everybody but the applicant? Since there's no party status.

CHAIRMAN JORDAN: I thought of that myself but I know that -- we'll do a special provision, allow 1101 to submit--

MS. MOLDENHAUER: The applicant -- you're going to give us time to respond.

CHAIRMAN JORDAN: Okay. So let's move it to February.

MEMBER COHEN: I actually won't be here January 6th.

CHAIRMAN JORDAN: And we can still render a decision.

MS. MOLDENHAUER: We'd rather keep the January date.

CHAIRMAN JORDAN: Okay. All right. So I'll tell you what we're going to do. To submit documents for January 6th, the date would be what, Mr. Moy? The first date?

SECRETARY MOY: For filing the supplementals? Typically, the Board usually asks for a week ahead of time which I may want to extend because that would be--

CHAIRMAN JORDAN: Give me the date a week ahead of time please.

SECRETARY MOY: That would be December 30th which is a Tuesday.

CHAIRMAN JORDAN: Okay. And you need a little bit more time you were saying?

SECRETARY MOY: Well not me, it's for the Board to review. But if you feel that's sufficient.

CHAIRMAN JORDAN: Yes, we're good. However, I'm going to ask that the 1101 property folks get those in by December 27th.

SECRETARY MOY: That's Saturday.

CHAIRMAN JORDAN: Well before that, I don't care what December 26th and that gives you the opportunity to do what you're going to do on your filing December 30th to get whatever you're going to say. Okay?

MS. MOLDENHAUER: December 26th is a Friday.

SECRETARY MOY: It's Friday.

CHAIRMAN JORDAN: D.C. government is opening on the 26th.

MS. MOLDENHAUER: I thought the president gave it--

CHAIRMAN JORDAN: For federal. This is D.C. You know, the mayor may very well do it. I just have not heard of it yet then we just normally slide like we slide. Okay?

SECRETARY MOY: Well, if you slide and you want the applicant to have a little bit more time to review.

CHAIRMAN JORDAN: No, we're doing December 26h and December 30th and January 6th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

And this hearing is over. Thank you very much. All right. Thanks so much to everybody for participating and being here and hearing us out. Thanks a lot. Then we are adjourned Board.

(Whereupon, the above entitled Board Hearing/Meeting of the BZA having been concluded, went off the record at 12:22 p.m.)

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com