

## 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

**NEAL R. GROSS**

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

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  
    Special Exception Relief approved ..... 4

Application No. 18875 of Holladay  
Corp., at 713-715 Lamont St. NW. .... 5  
    Approved ..... 9

Application No. 18823 of Peggy  
Joyner under section 223 at 738  
Quincy Street, N.W. .... 9  
    Postponed till February 3, 2015  
    with documents to be submitted by  
    January 26, 2015 ..... 17

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. .... 18  
    Approved ..... 33

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. .... 33  
    Decision set for January 6, 2015.  
    With supplemental information received  
    from applicant by December 26th and  
    from 1101 K Street by December 30,  
    2014. ..... 104

**ADJOURN** ..... 104

**NEAL R. GROSS**

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

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

(9:54 a.m.)

1  
2  
3 SECRETARY MOY: Okay. The next is Ron Rogers. This  
4 is Application No. 18899, again special exception relief under  
5 Section 223.

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

13 MEMBER COHEN: Second.

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

16 (VOTE TAKEN)

17 The vote carries. Mr. Moy?

18 SECRETARY MOY: Staff would record the vote as 5-0.  
19 This on the motion of Chairman Jordan to approve the request  
20 for special exception relief, second the motion, Ms. Cohen.  
21 Also in support Ms. Heath, Vice Chair Allen and Mr. Hinkle.  
22 The motion carries 5-0, sir.

23 CHAIRMAN JORDAN: Summary please.

24 SECRETARY MOY: Thank you.

25 CHAIRMAN JORDAN: 18875, I think that's where we're at

**NEAL R. GROSS**

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

(202) 234-4433

www.nealrgross.com

1 now. Mr. Moy?

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

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

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

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

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

14 MR. COLBERT: Eric Colbert with Eric Colbert &  
15 Associates, Architects.

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

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

24 Then certainly you're aware of how we normally proceed  
25 here. It's your opportunity if you wish to present any

**NEAL R. GROSS**

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

1 evidence but the Board does not have any questions about what's  
2 already been submitted and it's our belief that enough has been  
3 submitted in this record that, short of something coming up,  
4 that we can grant the relief. And you also have the right for  
5 rebuttal anyway if something did come up.

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

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

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

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

16 MR. AVITABILE: No sir.

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

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

24 MR. MORDFIN: One of the buildings is. Not the  
25 existing 4-story building the 1-story building which will be

**NEAL R. GROSS**

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

1 primarily new construction to the back. That one is subject  
2 to IZ.

3 VICE CHAIR ALLEN: And the existing building is not?

4 MR. MORDFIN: The existing building is not.

5 VICE CHAIR ALLEN: And why is that?

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

8 VICE CHAIR ALLEN: Thank you.

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

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

13 MR. AVITABILE: We do not.

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

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

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

23 We turn back to the applicant but there's nothing to  
24 rebut and you really don't need to close that which you didn't  
25 open. So with that we will close the record on this file.

**NEAL R. GROSS**

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

1 Anyone want to make a motion? I don't want to hog all the  
2 motions here today. Okay. I would move that we grant the  
3 relief requested in this case.

4 VICE CHAIR ALLEN: Second.

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

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

11 CHAIRMAN JORDAN: Okay. Issues?

12 MR. AVITABILE: Just to clarify on the IZ  
13 requirements. Building A only has eight units so although  
14 it's subject to IZ because it's new construction, no IZ is  
15 required because it has less than 10 units. Building B is an  
16 existing building converted so no IZ is required. Building  
17 C is new construction and will produce about 18 affordable  
18 units and we'll note that in the order.

19 MEMBER COHEN: Thank you.

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

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

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

**NEAL R. GROSS**

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

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

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

9           SECRETARY MOY:     Which we can still do.

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

12          SECRETARY MOY:     Okay. Peggy Joyner, Application  
13 18823, Mr. Chairman, as advertised and noticed for special  
14 exception relief including an accessory garage to an existing  
15 one-family semi-detached dwelling under section 223, not  
16 meeting the lot occupancy requirements.

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

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

21          CHAIRMAN JORDAN:    And we do have the authorization --  
22 do we have your authorization of the applicant because I don't  
23 remember if you had an authorization form. Did you? You  
24 already have it? Okay.

25                 As you know, this is a continued hearing. It was

**NEAL R. GROSS**

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

1 postponed before due to the posting requirement and I believe  
2 we have actually posted the property this time and we have the  
3 affidavit that's in the file. Right? Yeah, I think we have  
4 the affidavit.

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

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

16 MS. RAPPOLT: Sure. For the record I'm Megan Rappolt  
17 with the Office of Planning. I think we're sympathetic to the  
18 applicant's request to improve their property, we're just  
19 having a hard time finding a uniqueness that causes a practical  
20 difficulty in meeting the zoning regulations.

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

25 CHAIRMAN JORDAN: Well let me ask, this property is

**NEAL R. GROSS**

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

1 non-conforming, correct?

2 MS. RAPPOLT: Correct.

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

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

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

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

9 CHAIRMAN JORDAN: Okay. Did you go out there?

10 MS. RAPPOLT: Oh yes.

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

13 MS. RAPPOLT: Okay.

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

16 MS. RAPPOLT: I'm not sure.

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

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

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

25 CHAIRMAN JORDAN: Is the change of grade different for

**NEAL R. GROSS**

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

1 this property than it is on the other properties on that block?

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

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

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

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

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

19 MS. FERREIRA: It is the bookend of the block being  
20 the end unit row-house on that particular block of Quincy  
21 Street, and it was built already with a significant amount of  
22 bulk at 70 percent lot occupancy. So it's already--

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

25 MS. FERREIRA: There are several properties on that

**NEAL R. GROSS**

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

1 block that are yes. We didn't actually do the calculations  
2 but I believe they are very similar in terms of occupancy.

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

6 MS. FERREIRA: Yes sir.

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

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

15 MS. FERREIRA: Can I try again?

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

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

25 So the appearance in terms of lot area and bulk is that

**NEAL R. GROSS**

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

1 this property occupies a much smaller portion of that space  
2 even though it is not all owned by my clients, that is the  
3 appearance.

4 CHAIRMAN JORDAN: How does that affect your property,  
5 its uniqueness and the practical difficulty? I'm hearing you  
6 but I'm just not tying it together. How does the mix of this  
7 property cause this property to hinder your ability to do--

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

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

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

21 CHAIRMAN JORDAN: All right. You want to try?

22 MEMBER COHEN: I'm just going to probe. You do get some  
23 letters from your neighbors, are they the adjacent neighbors  
24 or just neighbors that are nearby. Can you be more specific  
25 about their support?

**NEAL R. GROSS**

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

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

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

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

14 [PARTIES SWORN]

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

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

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

25 MS. FERREIRA: We didn't have face-to-face

**NEAL R. GROSS**

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

1 discussions. We did correspond, yes, several times.

2 CHAIRMAN JORDAN: Well, we're going to put this on for  
3 30 days. When it comes back you're either going to sink or swim.  
4 Okay? I don't want you to waste your money that you've already  
5 paid for this and etc., etc. I understand what you need. I  
6 understand what you're trying to do which is minimal but you  
7 have to meet the requirements to get there. And we're just  
8 not doing it. And I've been trying to pull teeth and we still  
9 can't get there. Maybe we can't get there but we'll know in  
10 30 days one way or the other. Mr. Moy?

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

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

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

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

**NEAL R. GROSS**

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

1 MS. FERREIRA: Thank you.

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

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

7 SECRETARY MOY: January 27th, sir.

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

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

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

16 SECRETARY MOY: Again, this is Application No. 18837  
17 of Karl B and Julie C. Moeller. As advertised in the record,  
18 unless there is a revision, a request for variances from 2507.1  
19 and 2507.2.

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

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

24

25 CHAIRMAN JORDAN: And we tried to give the applicant

**NEAL R. GROSS**

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

1 the opportunity to provide additional information for the  
2 Board. Okay. Why don't you introduce yourselves for the  
3 record please.

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

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

9 CHAIRMAN JORDAN: All right.

10 MR. BROWN: Mr. Chairman, could I just kind of point  
11 us in the right direction I think?

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

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

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

**NEAL R. GROSS**

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

1 CHAIRMAN JORDAN: And I understand that and I just want  
2 to make sure we're clear on the record which relief you're  
3 requesting. OP has recommended additional relief and I know  
4 you went to the Zoning Administrator. He's provided a letter  
5 so I just want to make sure what we're clear on on the record.

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

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

13 MR. BROWN: That's correct, yes.

14 CHAIRMAN JORDAN: Okay.

15 MR. BROWN: As originally advertised.

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

20 There was also a letter from an adjoining--

21 CHAIRMAN JORDAN: Great. What about the ANC?

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

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

**NEAL R. GROSS**

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

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

2 CHAIRMAN JORDAN: Okay.

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

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

12 CHAIRMAN JORDAN: All right. And you still have a lift  
13 and the Board's looked at the supplemental documents. As you  
14 know, OP still recommends the denial. Is that correct?

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

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

**NEAL R. GROSS**

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

1 made. So if you want to take a moment to address the Board  
2 on that.

3 MR. MOELLER: Sure. In the slides I've put up on the  
4 slide some of the math that I put together and I did this myself.  
5 I consulted with National Capital Bank and their loan staff  
6 and mortgage staff over there, talked to our financial advisers  
7 at Vanguard for quite a period of time. And also went back  
8 again and met with many of the contractors we'd received  
9 initial estimates for to get more detailed estimates on the  
10 costs that we were looking at.

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

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

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

23 The first obviously is just to continue to use it as  
24 storage and unfortunately the building as it stands right now  
25 couldn't even be used for that. The roof is collapsing, the

**NEAL R. GROSS**

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

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

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

12 So to keep it simply as a storage, and I've again talked  
13 to Lee Malieu and other contractors but he agreed that I could  
14 quote these numbers that he's also looked at and said are  
15 accurate to the costs of repairing the building. Just to  
16 repair the roof, the wooden walls, upgrade the south wall,  
17 replace storage doors, windows, put bars up so that people feel  
18 safe and, most importantly, the building once had electric  
19 current in it, it was shut off years ago and so we'll have to  
20 restore that at fairly large expense.

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

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

**NEAL R. GROSS**

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

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

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

6           MR. MOELLER:       How so?

7           CHAIRMAN JORDAN:    You're taking what you've already  
8 spent for whatever you already sought and then you're coming  
9 back in to say if we do these other changes then you're double  
10 adding legal fees in here twice.   You double added city permit  
11 fees in here twice.   Because you have a core \$154,000 dollars,  
12 correct?

13          MR. MOELLER:       Yes.

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

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

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

20          MR. MOELLER:       Yes.

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

24          MR. MOELLER:       So the first dollar amount, the largest  
25 part of that, that \$117,000 is the purchase price of the

**NEAL R. GROSS**

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

1 building. So I mean that's part of the core, yes.

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

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

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

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

19 MR. MOELLER: And if you take that \$154,000 and add  
20 onto it the \$74,000 dollars to renovate the building back into  
21 a storage facility. That obviously isn't what I'm asking  
22 for, I'm only putting this down because you asked for, you know,  
23 why is this a hardship? Why is this difficult?

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

**NEAL R. GROSS**

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

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

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

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

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

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

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

**NEAL R. GROSS**

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

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

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

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

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

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

14          MR. MOELLER:       I'm sorry.

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

19          MR. MOELLER:       Yes sir.

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

22          MR. MOELLER:       No.

23          CHAIRMAN JORDAN:    I didn't think you are. See, that  
24 was real easy. Are you using both units, two units in your  
25 financials? And the answer was not all this other stuff, it

**NEAL R. GROSS**

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

1 was no. And so again that gives me issues with your financials  
2 and what you're concluding as an undue hardship on a financial  
3 basis.

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

6 MR. MOELLER: If I could direct your attention to the  
7 summary of my findings which are this spreadsheet. The No.  
8 3, option No. 3, a 2-flat subgroup A includes a value to the  
9 owner, so owner value gained by use per year. So I don't  
10 receive income there. No one's paying me that. I'm arguing  
11 that if I were to rent, which I could never find a space in  
12 my alley directly 30 feet from my back gate, a property that  
13 I could rent 1,000 square feet on the first floor -- which  
14 doesn't exist unless I build it -- the value to my family will  
15 be about \$28,000 dollars a year and that's based on current  
16 rental values.

17 The number above that, the \$31,000 dollar number, is  
18 the rental income that would come from the upper floor, the  
19 first story, and that's based on rental prices that come from  
20 a building on E Street which is rented out to a family, and  
21 other rentals which I consulted a real estate agent about that.

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

24 MR. MOELLER: As value to my family.

25 MR. BROWN: Imputed income?

**NEAL R. GROSS**

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

1 MR. MOELLER: Okay. Yes.

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

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

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

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

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

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

25 During that period of time this building became

**NEAL R. GROSS**

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

1 available and I said this third story probably won't approved,  
2 I'm going to buy this building instead. And so I used the  
3 revenues that I had taken out to do the third story before it  
4 was approved and I purchased this building.

5 I did the math. I did my homework. I want to use this  
6 building as extra living space for my family. To do that I  
7 need a rental on the upper floor, otherwise it does not pay  
8 for itself. I wholeheartedly admit that I could renovate this  
9 building, turn it into a single family home and sell it and  
10 I would most likely not lose cash. But the value to me and  
11 my family is in the use of this building, of the ability to  
12 have an apartment on the first floor that we can use for our  
13 in-laws, for our family, for my sister who cannot afford to  
14 come and visit me from Massachusetts with her kids because they  
15 can't afford hotels in town, for my kids to go and do their  
16 homework because I have 6-year-old and a 12-year-old and the  
17 6-year-old plays with the 12-year-old when he's trying to do  
18 his pre-algebra.

19 This is a use variance because I am hoping to have a  
20 2-flat building so that I can use the first floor and rent the  
21 second floor.

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

25 MR. BROWN: No, I think we've laid out in the earlier

**NEAL R. GROSS**

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

1 visit and here today the three-part test. I would recognize  
2 that a question was raised earlier about the third prong of  
3 the test, having to do with the compatibility and the  
4 neighborhood and I think if you look at this particular square  
5 you've got three alley dwelling units that have been converted  
6 over time going back to the 1980s, and you have an R-4 zone  
7 where a flat is certainly a permitted accepted use. And so  
8 the flat and the alley dwelling are very much in keeping with  
9 the zoning and the neighborhood and I think in response to that  
10 one question was raised on the three-prong test.

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

15 MEMBER COHEN: Thank you, Mr. Chair. I took a little  
16 look ahead on this submission and I do believe that the  
17 applicant has made the case. I am pleased to see the Office  
18 of Planning now supports this. I think the numbers do  
19 demonstrate that there is a hardship, especially when it comes  
20 to an historic structure, that I think may improve the  
21 neighborhood if it is remodeled. I think that was demonstrated  
22 by the Historic Preservation Review Board submission.

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

25 CHAIRMAN JORDAN: Okay. Anyone seconding this?

**NEAL R. GROSS**

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

1 MEMBER HEATH: I'll second.

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

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

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

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

20 CHAIRMAN JORDAN: 4-1.

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

**NEAL R. GROSS**

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

1 CHAIRMAN JORDAN: And a summary order please?

2 SECRETARY MOY: Yes sir.

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

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

7 (A BRIEF RECESS WAS TAKEN)

8 CHAIRMAN JORDAN: Okay. Mr. Moy?

9 SECRETARY MOY: Yes sir. This is application No.  
10 18878 of Alba 12th Street, LLC as advertised and publicly  
11 noticed, requested relief for variances from the FAR, rear  
12 yard, and parking under 2101.1 at the property 1017 12th  
13 Street, N.W.

14 CHAIRMAN JORDAN: Okay. Please identify yourselves.

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

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

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

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

**NEAL R. GROSS**

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

1 Alliance Architecture.

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

5 CHAIRMAN JORDAN: Spell your last name for me.

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

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

10 MR. KOUTROUVELIS: Brokerage.

11 CHAIRMAN JORDAN: Brokerage. Okay.

12 MS. MOLDENHAUER: Mr. Jackson, to my left, is  
13 providing the financial piece and Mr. Koutrouvelis is  
14 providing the commercial brokerage.

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

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

25 CHAIRMAN JORDAN: Well you could but it still would be

**NEAL R. GROSS**

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

1 blocked.

2 MS. MOLDENHAUER: So we'd have a problem. Exactly. So  
3 we have revised the plan, there's a copy of the plans, OP has  
4 received them and we're just providing those to the Board now  
5 so we're no longer requesting the roof structure relief and  
6 that also based on revising the plans of the roof structure  
7 it modified the relief so our now requested FAR is at 9.62.  
8 In the supplemental and the pre-hearing statement it was at  
9 9.77 and that modification--

10 CHAIRMAN JORDAN: And what is it now?

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

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

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

25 Based on that I'm going to turn it over to the applicant,

**NEAL R. GROSS**

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

1 Fred Hill, to introduce himself and then we'll walk through  
2 the relief process.

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

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

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

18 My own diverse background has kind of helped me with my  
19 work.

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

24 I'm a lifelong resident of the area. For the past eight  
25 years now I've been at the corner of 9th and F. In fact, I'm

**NEAL R. GROSS**

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

1 right now where the old 930 Club was. I graduated in 1986 from  
2 high school, I used to go there and I'm actually kind of shocked  
3 that, you know, I'm living down where that was. And so I'd  
4 like to be a part of the continued change in that area.

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

10 On the existing property, it's been vacant for about  
11 seven years, as you'll see on the next slide here. It's been  
12 vacant for about seven years. It's a small deteriorating  
13 building which was a hold-out when the square was assembled  
14 to develop two large office buildings.

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

22 The next is we have very close proximity to public  
23 transportation in the location, within blocks of four Metro  
24 stations, 17 bus routes, the Capital Bike Share is at 12th and  
25 L. There's three zip car spaces, Car2Go. The walk score I

**NEAL R. GROSS**

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

1 guess is from walkscore.com. Walk score 98 which is a walker's  
2 paradise, bike score of 92 which is a biker's paradise and ride  
3 score of 100 which is a rider's paradise.

4 My staff is very excited about moving into the city and  
5 being able to use public transportation to get to work.

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

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

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

16 The area consists of private office buildings extended  
17 across much of the surrounding area, many built in excess of  
18 12 to 14 stories as permitted by the height act.

19 The thing that I just love about this, which is next,  
20 is I believe this project is a very unique opportunity to have  
21 an owner-occupant who will invest much more in this project  
22 than a speculative developer and take value in a non-historic  
23 property.

24 If you saw the movie, "Lincoln," Elizabeth Keckley was  
25 the African-American woman who was Mary Todd Lincoln's

**NEAL R. GROSS**

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

1 confidante and was in many of the scenes with Mary Todd and  
2 the president. We found out after the purchase that Elizabeth  
3 Keckley spent some time at this location working as a  
4 seamstress who bought her own freedom.

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

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

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

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

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

**NEAL R. GROSS**

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

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

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

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

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

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

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

13          MR. KEARNEY:        Sure.

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

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

19                 So Alliance Architecture, just quickly, was founded in  
20 1995. We have offices in four locations. Our most recent  
21 location is D.C. and we've office in Annapolis, New Delhi,  
22 India, and Durham, North Carolina. Our most significant  
23 project that we're doing in D.C right now is Venables 250,000  
24 square foot headquarters at 600 Mass.

25                 We just completed our fifth expansion of Paul Weiss's

**NEAL R. GROSS**

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

1 office, and other recent projects include the Pew Charitable  
2 Trust and the Pew Research Center.

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

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

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

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

21 MS. MOLDENHAUER: It's 1100 L.

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

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

25 CHAIRMAN JORDAN: It's that street on the other side

**NEAL R. GROSS**

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

1 of the 1101 L.

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

4 CHAIRMAN JORDAN: That's L Street right there.

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

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

10 MS. MOLDENHAUER: Right here.

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

13 MS. MOLDENHAUER: It's a shadow.

14 CHAIRMAN JORDAN: Okay. And so nothing is there?

15 MS. MOLDENHAUER: Nothing is there, yes. There's  
16 only three lots on the square. You have 1100 L and you have  
17 1101 K and then you have--

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

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

23 CHAIRMAN JORDAN: Got it. Okay. Thank you.

24 MR. KEARNEY: And I misspoke. Across the street to  
25 the left on that plan is the Strong John Thompson School. John

**NEAL R. GROSS**

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

1 Strong Thompson School. I apologize. I want to go to the next  
2 slide.

3 So as Fred mentioned we have a unique site with a unique  
4 client and when we first went about discussing this project  
5 we looked at in many different ways, whether we raze the  
6 building or save the building. Ultimately, Fred is very  
7 attached to a late 1900s Romanesque revival architecture that  
8 isn't necessarily historic but we think it adds fabric to the  
9 street. It also participates in the rhythm of the adjacent  
10 architecture at 1101 K and mirrors the masonry architecture  
11 across the street of the school.

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

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

24 I should also note that as we endeavored to develop this  
25 design that we also engaged Emily Eig from Traceries, who is

**NEAL R. GROSS**

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

1 behind me, because we wanted to be very considerate of the it's  
2 not historic architecture but the period architecture and how  
3 our architects would marry with it.

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

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

15 Additionally, because we save that entire bay there's  
16 5-feet of depth of the existing structure that you can occupy,  
17 so it's not just a matter of seeing through a facade, it's  
18 actually participating in and experiencing that architecture  
19 from the interior and the exterior.

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

**NEAL R. GROSS**

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

1 limestone and the brick, moving vertically up the left side  
2 of the building.

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

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

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

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

21 We did talk to the DCRA about the use of a sitter stair  
22 or the use of a fire escape and those conversations were  
23 non-starters. In addition to the two stairs you have an  
24 elevator and a restroom. The restrooms are basically it's one  
25 sex per floor so no sex is further away than one story from

**NEAL R. GROSS**

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

1 their lavatory or water closet, because the floor plate is so  
2 small there's no opportunity to kind of put two restrooms per  
3 floor.

4 And also there's some shaft space. Our services will  
5 have to go below grade because the site is so limited. So you  
6 have your electric service, trash, fire pump, fire command  
7 center and etcetera all planned on the first level below grade.  
8 And then on the second level below grade will be storage to  
9 support Fred's tenancy and bike storage.

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

13 The fourth floor is unique, as I mentioned in the slide,  
14 because it has that small balcony which is in the bottom left  
15 corner. You can move out and experience the adjacent hip roof  
16 and kind of embrace 12th Street. Because of that we didn't  
17 even include a restroom on the 4th floor. If you're on the  
18 4th floor and you're a man you go up one story and if you're  
19 a woman you go down one story to use a restroom.

20 So the roof structure which Meredith spoke about  
21 previously, the diagram on the right shows what we have  
22 submitted prior where we were taking our program using  
23 basically the first three-quarters of the building, or I should  
24 say the back three-quarters of the building. We were able to  
25 modify that.

**NEAL R. GROSS**

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

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

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

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

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

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

**NEAL R. GROSS**

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

1 speaks for itself.

2           And then, ultimately, as we design structure we would  
3 expect the core factor or loss factor to be somewhere between  
4 12, 17-18 percent and this building is pushing 45 percent which  
5 really drives the request for relief.

6           The other thing we wanted to share, and again I think  
7 it's because we have a client and a team that wants to be  
8 respectful of the site and wants to create a timeless piece  
9 of architecture. This is a very hard site for one to see from  
10 a distance but the first, second, third and floors marry with  
11 the existing architecture. That gives us I think it's a  
12 16-foot height on the first floor and 17 feet on the fourth  
13 floor and that fourth floor architecture is to allow the fourth  
14 floor to be lifted up above the existing hip roof and finial  
15 to allow that architecture to breathe. Right?

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

18           And then the first floor, because the existing structure  
19 as you walk in you walk up to the first floor and down to the  
20 basement, it's kind of an odd architecture so we've  
21 incorporated the basement height and the first floor height  
22 into a double story space again to complement the exterior  
23 architecture. When you do that, you can't fit an extra floor  
24 below or you can't fit an extra floor above. At one point  
25 we were going to ask for the 10 FAR but we just thought it would

**NEAL R. GROSS**

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

1 push the design in a direction that we didn't want to go.

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

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

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

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

17 However, there are major challenges if there's not an  
18 owner-occupant associated with it, to lease the building to  
19 potential tenants because of its inefficiency. And it's for  
20 that that the additional FAR that we're requesting, or the  
21 applicant is requesting, is critical to the viability of the  
22 project.

23 Before we move to the next slide, I'd like to point out  
24 that I've walked through and toured hundreds of buildings in  
25 Washington, D.C. over my career and I've never seen a building

**NEAL R. GROSS**

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

1 of this size that's this inefficient. And in commercial  
2 leasing, efficiency is the crux of making a deal happen and  
3 is the crux of any prospective tenant in the marketplace. So  
4 it's very difficult for the applicant to find tenants coming  
5 into this building if it's not an owner-occupant.

6 Typically, in new projects in D.C. they all have high  
7 quality finishes. I mean that's the standard, an example  
8 that's being presented for new buildings that are being  
9 developed. And in addition to the high quality standards,  
10 there's also several amenities that a project needs to support  
11 for any new development. And although this project has high  
12 quality finishes, that you just saw with Tim's team that will  
13 be designed for the applicant's design, it also has challenges  
14 too.

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

19 CHAIRMAN JORDAN: Which floors don't have bathrooms?

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

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

25 CHAIRMAN JORDAN: That's the floor you have to go up

**NEAL R. GROSS**

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

1 or down right?

2 MR. KOUTROUVELIS: Correct.

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

5 MS. MOLDENHAUER: No actually, can we -- I'd like Tim  
6 to clarify the Code issue for non-unisex.

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

13 CHAIRMAN JORDAN: And nothing's on four?

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

17 CHAIRMAN JORDAN: Okay.

18 MEMBER COHEN: May I--

19 CHAIRMAN JORDAN: Yes, please.

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

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

25 CHAIRMAN JORDAN: Doesn't look kindly? They're

**NEAL R. GROSS**

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

1 prohibited, is that--

2 MR. KEARNEY: They're prohibited, yes.

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

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

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

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

22 Let's say that 3000 square feet of usable square foot  
23 that meets a tenant's program needs is out on the market and  
24 they look at several buildings to compete for their tenancy,  
25 this being one. Typically, with a 3000 usable square foot

**NEAL R. GROSS**

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

1 that would translate into a rentable number of about 3500  
2 square feet under normal building comparisons, whereas in this  
3 building a tenant would be required to occupy 3500 square feet  
4 because of the extreme inefficiency of the building and the  
5 high core factor.

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

9 So with that, any reasonable profit-driven developer  
10 wouldn't pursue a project at this property and if not for the  
11 applicant being an owner-occupant of the building, needing to  
12 house multiple tenants the inefficiencies just increase  
13 dramatically.

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

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

**NEAL R. GROSS**

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

1           So the yellow area on the top left of the plan represents  
2 the usable space. And the corridor where the cursor is  
3 represents the common area, the area that's required for access  
4 from the elevator to the restrooms and that's considered what  
5 we call a common corridor.

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

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

17           MR. KOUTROUVELIS: No, well--

18           MS. MOLDENHAUER: What we're providing here is we're  
19 providing, since obviously zoning relief has to go to the  
20 property specifically and we have a unique situation here where  
21 the owner is looking at obviously an owner-occupied property  
22 we didn't want to just rely on the owner occupant mentality  
23 of the project but rather also want to show the Board what would  
24 happen if this was not just obviously for this owner but rather  
25 was for any reasonable person.

**NEAL R. GROSS**

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

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

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

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

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

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

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

21           CHAIRMAN JORDAN: Okay.

22           MR. JACKSON: Good morning. My name is Lyle Jackson  
23 representing [inaudible] Properties and also Resolute  
24 Funding. I work for a developer and we also do commercial  
25 mortgage brokerage. I have 20 years experience in the D.C.

**NEAL R. GROSS**

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

1 Metro area as a financial broker and I've arranged for a quarter  
2 of a million dollar's worth of construction refinance and  
3 acquisition loans.

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

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

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

19 If you look at both 3 and 4, due to the challenges of  
20 developing on such small site, operating cost increases per  
21 square foot and magnified if distributed over less usable  
22 square footage. And while additional floors are relatively  
23 inexpensive due to the economies of scale, we are looking for  
24 a small degree of relief, these factors have a substantial  
25 impact on the financial viability of the project.

**NEAL R. GROSS**

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

1 MS. MOLDENHAUER: If I could ask you, can you address  
2 the Chair's question about if the project was developed in an  
3 8 FAR versus the requested 9.62, how that affects the cap rate  
4 in regards to what the District typically is looking at?

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

10 CHAIRMAN JORDAN: What's the standard?

11 MS. MOLDENHAUER: If you look up on the chart here,  
12 this is the CBREs February 2013, so the most recent I guess  
13 third party analysis of cap rate surveys throughout the entire  
14 East Coast and central and west coast, if you find Washington,  
15 D.C. here on the bottom for class A which would have certain  
16 amenities and this typically over 10,000 square feet, which  
17 this building is not. For a stabilized building which would  
18 obviously have pre-stabilized tenants you're talking about a  
19 4.7 to a 5.7 cap rate for a value-add which this project would  
20 fall under a value-add, it would be about 5.5 to 6.5. Again,  
21 this is on a Class A which this building probably would not  
22 qualify for.

23 So if you then go to Class B, here you can see a  
24 stabilized building is a 6 point to 7.5 cap rate and these  
25 arrows indicate that from last year they intended that the

**NEAL R. GROSS**

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

1 trends were actually rising from that last February 2013 or  
2 value-add would be 6.5 to 7.5.

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

5 MR. JACKSON: Yes, below 4.

6 MS. MOLDENHAUER: Below 4 and that on the current  
7 proposed requesting the additional FAR, which we'll get to,  
8 in regards of what that actually translates into, in other  
9 words, actual square footage which is very minor in regard to  
10 our requested relief, is really under the industry cap rates  
11 for a value-add possible Class B. I mean it's 6.5 to 7.5 cap  
12 rate based on the CBRE February 2013 report.

13 CHAIRMAN JORDAN: And did--

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

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

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

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

25 MS. MOLDENHAUER: We can pass out that information.

**NEAL R. GROSS**

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

1 We believe that the expert testimony would be sufficient in  
2 this case because obviously really the unique aspect in the  
3 45 percent core factor we do not believe it would be necessary  
4 to get into the specific financials. I think the structuring  
5 itself and the exceptional condition in and of itself speak  
6 to the three prongs of the variance standard.

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

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

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

20 MEMBER COHEN: May I--

21 CHAIRMAN JORDAN: Yes, please ask questions.

22 MEMBER COHEN: I'm not even at the point of are you  
23 going about not arguing or discussing cap rates, my concern  
24 is and help me understand, this is a one-off building. If your  
25 company, Mr. Hill, goes under for any reason, and there could

**NEAL R. GROSS**

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

1 be many, I didn't get the impression that anyone else would  
2 rent this building and what we would have is an eyesore that  
3 maybe can't be re-rented to anybody and it just sits vacant  
4 for years.

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

7 MS. MOLDENHAUER: I mean I think obviously we can  
8 address the possible what ifs. I think that no matter what there  
9 would be a challenge in releasing it. But I think Demetri can  
10 address, you know, the challenges of releasing it but then the  
11 possibility of obviously you know finding someone. And the  
12 fact that we've looked into this and then the question  
13 obviously of hopefully Mr. Hill's group and Fred can address  
14 that as well.

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

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

23 MR. KOUTROUVELIS: I said that no developer would  
24 develop it speculatively as a profit-driven developer for this  
25 site. I didn't say that no future developer would purchase

**NEAL R. GROSS**

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

1 the building if he were to go bankrupt because the cost of  
2 building the building was already sunk and realized and could  
3 have tremendous value for someone else to purchase it. So  
4 that's how I would address your point and answer your question.

5 MEMBER COHEN: That's very helpful.

6 MS. MOLDENHAUER: At this point I could provide some  
7 legal arguments but I believe if the Board would like to ask  
8 questions of our witnesses.

9 CHAIRMAN JORDAN: Where's the supporting financials?

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

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

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

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

24 SECRETARY MOY: This would be 39.

25 CHAIRMAN JORDAN: Okay. So the last document is 39,

**NEAL R. GROSS**

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

1 the cap rate survey sheet is 38 and 37 will be the revised roof  
2 diagram. Would that be correct?

3 SECRETARY MOY: That's good.

4 CHAIRMAN JORDAN: So you want to proceed?

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

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

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

15 CHAIRMAN JORDAN: Okay.

16 MR. KOUTROUVELIS: That breaks it out and it shows the  
17 total PITI for the project under both the requested relief and  
18 at the 8 FAR. Basically, the cost to Mr. Hill with the relief  
19 it works out to almost \$98 dollars a square foot full service  
20 for the building.

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

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

**NEAL R. GROSS**

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

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

3 CHAIRMAN JORDAN: --\$28 dollars?

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

8 CHAIRMAN JORDAN: Got it.

9 MR. KOUTROUVELIS: And then without the relief he's  
10 paying \$117 dollars a square foot.

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

13 MR. KOUTROUVELIS: Exactly.

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

16 MR. KOUTROUVELIS: Based upon leasing the building at  
17 market rate would be \$50 dollars triple net which would be  
18 \$398,450 dollars with the relief and then \$293,900 without the  
19 relief so it makes \$100,000 dollars difference basically.

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

**NEAL R. GROSS**

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

1 the document.

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

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

9 MR. KOUTROUVELIS: My apologies, sir.

10 MS. MOLDENHAUER: Are there any other questions?

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

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

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

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

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

**NEAL R. GROSS**

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

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

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

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

13          CHAIRMAN JORDAN:    That we don't have already?

14          MS. MOLDENHAUER:    That we do not have already.

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

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

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

**NEAL R. GROSS**

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

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

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

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

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

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

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

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

22 And then I have information or legal arguments that I'll  
23 hold for rebuttal following Board questions and any other  
24 comments from individuals in the community.

25 CHAIRMAN JORDAN: Okay. So we'll come back to this.

**NEAL R. GROSS**

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

1 Board, any questions? Anything else we need to hear from the  
2 applicant? Anything?

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

5 MS. MOLDENHAUER: Not at this time.

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

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

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

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

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

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

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

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

25 CHAIRMAN JORDAN: Thanks, Mr. Moy. Okay. Mr.

**NEAL R. GROSS**

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

1 Cochran?

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

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

10 But with respect to the parking relief, you may want to  
11 ask DDOT about some of the [inaudible] proposals and the TDM  
12 proposal.

13 So we're left to focus on the major relief that the  
14 applicant is requesting, which is the FAR increase of about  
15 1.25, that's based on the size of the building as of today not  
16 last week.

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

22 But even if the information today which we have not had  
23 the opportunity to evaluate yet, we don't believe that the  
24 applicant has demonstrated that there's a nexus between this  
25 exceptional condition and an inability to develop a buy right

**NEAL R. GROSS**

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

1 building at 8.0 FAR or even 8.5 FAR which the applicant could  
2 achieve with the purchase of TDRs as a matter of right.

3 Our principal concern is not so much will this have a  
4 negative impact on downtown. We're talking 1200 to 1600  
5 square feet. No question. We're not going to jam up the  
6 traffic, we're not going to you know density won't be so great  
7 on the sidewalk that nobody will be able to walk by the  
8 building.

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

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

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

25 I wish that I had time to evaluate all of the information

**NEAL R. GROSS**

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

1 the applicant has provided today; what we saw was based on the  
2 difficulty that would ensue if the applicant ever wanted to  
3 leave the building on getting that building to be leased having  
4 been built. It didn't address getting the building built.

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

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

14 CHAIRMAN JORDAN: And I read that in your report but  
15 I think you're making a philosophical argument versus what's  
16 allowed here that could come before the Board of Zoning  
17 Adjustment. I understand clearly but there's no prohibition  
18 in the zoning regulations that the Board of Zoning Adjustment  
19 cannot give this relief, but you're saying the best process  
20 probably should have been a PUD submission because it's usually  
21 something that comes from the Zoning Commission. I think  
22 that's what you're saying.

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

25 CHAIRMAN JORDAN: Well, but -- all right. Okay.

**NEAL R. GROSS**

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

1 Which still gets us back to the Commission.

2 And I also heard you say something else. I mean I'm glad  
3 you recognize this building as unique but I heard you say  
4 something else. I don't know if the applicant can provide us  
5 the information at this time but I thought you said something  
6 very impactful, and that is showing the difference in the  
7 impact of -- where's my note? Oh here it is. Neither showing  
8 the importance of a matter of right FAR from 8.0 to 8.5 if they  
9 wanted to buy TDR, and the 9.6 relief requested was that impact  
10 on the financials. I think that's one of the questions that  
11 you raise. Right? Isn't that what you're raising?

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

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

21 MR. COCHRAN: I did.

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

**NEAL R. GROSS**

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

1 it's not a financial decision going forward, then why can't  
2 you deal with then the matter of rights? Is that kind of where  
3 you--

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

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

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

20 Any other questions for planning?

21 MEMBER COHEN: No, you asked them.

22 CHAIRMAN JORDAN: Okay. Mr. Hinkle?

23 MEMBER HINKLE: No.

24 CHAIRMAN JORDAN: Does the applicant have questions  
25 for Planning?

**NEAL R. GROSS**

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

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

5 MR. COCHRAN: That's not correct.

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

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

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

15 MS. MOLDENHAUER: And I guess one of my other  
16 questions though is that in the past Office of Planning has  
17 had a limitation reviewing relief when it's based on financial  
18 hardship. Is that something where Office of Planning is now  
19 from a policy perspective reviewing cases now in that regard?

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

**NEAL R. GROSS**

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

1 BZA.

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

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

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

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

20 CHAIRMAN JORDAN: Give me the cite.

21 MS. MOLDENHAUER: I'll pull it up before the hearing  
22 is over but it's the case in regards to the old Woodward &  
23 Lothrop building where the applicant was required, obviously  
24 tried to re-lease the building and in re-leasing it the problem  
25 was trying to find a retailer and an office space and the fact

**NEAL R. GROSS**

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

1 that they were evaluating a cap rate and a cap rate of 6 percent  
2 would be reasonable. And that actually ended up being a use  
3 variance case where they were talking about the ability to use  
4 the property for a certain type of use.

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

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

17 MS. MOLDENHAUER: So Office of Planning is supportive  
18 of the parking and for the rear yard relief?

19 MR. COCHRAN: Yes.

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

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

25 CHAIRMAN JORDAN: Board, any additional questions of

**NEAL R. GROSS**

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

1 Planning? Thank you and as always a very thorough analysis  
2 and appreciate this. And as a policy there is no policy of  
3 OP that you don't look at financials. Some analysts from OP  
4 look at things differently and what have you but you just simply  
5 said you wished you had the information so you could decide  
6 what you wanted to look at.

7 MR. COCHRAN: That's correct.

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

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

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

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

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

23 MR. WESTROM: Thank you. So in regards to the case at  
24 hand, DDOT evaluated of particular importance was the variance  
25 relief sought for parking. We do support that relief and

**NEAL R. GROSS**

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

1 would defer on the other issues at hand to the Office of  
2 Planning's perspective.

3 We support the parking relief for two major reasons.  
4 One, the applicant noted the mass of available alternative  
5 transportation options surrounding the site. It's downtown so  
6 transit obviously would be a high expected use. They're  
7 moving from Bethesda, a location that is very auto oriented  
8 specifically and they're moving to a location that we would  
9 expect to see most people probably desire to make use of transit  
10 to reach the campus.

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

13 CHAIRMAN JORDAN: The ones that were passed out here?

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

20 And with this TDM program again that supports the  
21 parking relief that is sought and DDOT's position that they  
22 would support this relief.

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

**NEAL R. GROSS**

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

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

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

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

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

11 MR. HILL: Yes sir.

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

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

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

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

20 CHAIRMAN JORDAN: And that's just one time?

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

22 MR. WESTROM: So those two work hand in hand is the way  
23 DDOT saw it. So the provision initially is to provide a  
24 SmartCard, probably several of these employees if they don't  
25 use transit don't even have one. And there's a certain hassle

**NEAL R. GROSS**

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

1 factor. These are people we want to encourage to use transit.

2 The one that was relatively new for us is this ongoing  
3 stipend and so the idea is that they have committed to  
4 ongoing. They asked about what level we would want to see for  
5 that and a dollar figure that we tossed around was \$25 dollars  
6 per month which, just for your information, is the approximate  
7 amount that unionized D.C. employees receive as a monthly  
8 stipend for transit use.

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

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

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

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

**NEAL R. GROSS**

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

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

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

11           MR. WESTROM:     That's exactly the intent but the goal  
12 is to make somebody, perhaps it's a human resources individual,  
13 perhaps it's a concierge who might be at the building, but  
14 somebody who has a defined role that includes these and is  
15 trained in this regard and supports the entire company  
16 accordingly.

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

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

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

24           MR. HILL:     Oh in this building? There's going to be  
25 20 people moving originally and then we're going to obviously

**NEAL R. GROSS**

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

1 hope to ramp up.

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

4 MR. HILL: I think maybe the building will serve 40,  
5 45 people was kind of how we thought.

6 MR. KOUTROUVELIS: And that initial occupancy is  
7 fairly consistent with a consulting company or to a law firm  
8 but ultimately you're going to identify into something that's  
9 more consistent with a technology company. So if there's one  
10 person per 300 usable square foot day one, he could get down  
11 to one person 180 ultimately.

12 CHAIRMAN JORDAN: Which would mean how many people?

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

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

19 MS. MOLDENHAUER: No questions for DDOT.

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

**NEAL R. GROSS**

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

1 Three minutes please.

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

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

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

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

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

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

17 MR. MIRABELLI: Thank you, Mr. Chairman and the Board.  
18 My name is Mario Mirabelli. I work with the owner and represent  
19 the owner of 1101 K Street. About three years ago we purchased  
20 this property for \$200 million dollars under the expectation,  
21 under the reliability of zoning as OP has pointed out, with  
22 an expectation that we would have a building that respects the  
23 current zoning, the zoning going forward, the neighborhood and  
24 certainly our neighbors.

25 It appears today that that expectation and that

**NEAL R. GROSS**

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

1 reliability of zoning has been eviscerated to some extent.

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

6           Our building borders two entire sides of the building  
7 being proposed here, the variance relief will eliminate all  
8 of our light and air on the west facing wall in this area, and  
9 from the rear yard variance and several floors of the north  
10 facing wall windows as a result of the considerable FAR  
11 request.

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

17           CHAIRMAN JORDAN:    Mr. Sullivan?

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

**NEAL R. GROSS**

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

1 I would point out that they--

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

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

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

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

21 These are not at-risk windows. They're protected by the  
22 rear yard setback. Call them whatever you want but there's  
23 no doubt that granting relief in this case is a substantial  
24 detriment to 1101 K Street's building.

25 On the ANC letter, they did not review this under the

**NEAL R. GROSS**

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

1 variance provisions, they reviewed it under special exception  
2 requirements for C-3-C.

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

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

9 MR. SULLIVAN: Thank you.

10 CHAIRMAN JORDAN: Has the Board any questions please?

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

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

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

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

**NEAL R. GROSS**

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

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

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

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

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

16 CHAIRMAN JORDAN: Excuse me, who measured the--

17 MR. MIRABELLI: We measured the windows.

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

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

21 CHAIRMAN JORDAN: Okay. I just wondered.

22 MS. MOLDENHAUER: You can see the building has three  
23 sides so it has windows all throughout the entire project. So  
24 we've actually done a rough calculation. It's not a perfect  
25 calculation, it's a rough calculation, and that there are

**NEAL R. GROSS**

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

1 48,691 square feet of windows on this building.

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

5 MS. MOLDENHAUER: Windows.

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

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

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

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

14 MR. MIRABELLI: Okay. So what I would tell you is that  
15 based on where the windows are and the usable and rentable space  
16 that has provided light and air from those windows, I would  
17 think that your calculation would probably be a little  
18 different. To take the facade and take the windows and measure  
19 those and say you're only having an adverse effect on X amount  
20 of windows, it's the square footage, the rentable square  
21 footage, the income producing square footage within the  
22 building envelope that is affected.

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

**NEAL R. GROSS**

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

1 MS. MOLDENHAUER: So you're saying that out of your  
2 293,000 square feet of rentable space the impact potentially  
3 on six windows would be a substantial detrimental impact?

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

8 MS. MOLDENHAUER: No other questions. We'll provide  
9 some rebuttal statements. Thank you.

10 CHAIRMAN JORDAN: Okay. Any questions anyone else?

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

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

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

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

24 MEMBER COHEN: And then for the applicant, if you can  
25 quantify it you know that would be -- anything you can quantify

**NEAL R. GROSS**

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

1 is helpful.

2 CHAIRMAN JORDAN: Right. Rebuttal please?

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

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

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

12 CHAIRMAN JORDAN: Okay.

13 MR. KOUTROUVELIS: I guess I just wanted to make it  
14 clear that by right that this building could be 105 feet whether  
15 it's 6 stories or 10 stories. And with the 15-foot, sorry,  
16 I have a really hard time with that word there, rear yard  
17 setback, we've analyzed it and by right you're basically just  
18 affecting 1.5 percent of the fenestration at 1101 K Street,  
19 which is at the east side or the back of our building  
20 essentially.

21 [VICE CHAIR ALLEN LEAVES]

22 CHAIRMAN JORDAN: Okay.

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

25 CHAIRMAN JORDAN: On matter of right what is our effect

**NEAL R. GROSS**

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

1 percentage wise on windows matter of right?

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

4 CHAIRMAN JORDAN: Okay.

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

10 CHAIRMAN JORDAN: Okay.

11 MS. MOLDENHAUER: If I could I just turn to you to  
12 address the issue of the impact on the light and air and the  
13 likelihood or kind of the understanding of obviously at-risk  
14 windows in the city in regards to the size of the overall  
15 leaseability for 1101 K?

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

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

**NEAL R. GROSS**

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

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

3 MR. KEARNEY: Yes.

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

6 MR. KEARNEY: Correct.

7 CHAIRMAN JORDAN: Okay. Next question.

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

11 MR. KEARNEY: Yes.

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

15 MR. KEARNEY: Correct. Yes.

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

22 CHAIRMAN JORDAN: You don't have to take time to do  
23 that. We understand it.

24 MS. MOLDENHAUER: All right. And so we believe that  
25 you know this Board in other cases has supported types of FAR

**NEAL R. GROSS**

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

1 relief when unique circumstances exist. This property is  
2 exceptionally small, is exceptionally narrow as I'll show you  
3 in a picture. This was actually originally a full-through  
4 lot. I'm going to show you, it's right here. It was  
5 originally a full-through lot which then during the assemblage  
6 of the property was then separated out. We don't know exactly  
7 what period of time this is--

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

12 MS. MOLDENHAUER: Yes.

13 CHAIRMAN JORDAN: Is this closing?

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

16 CHAIRMAN JORDAN: Is this your closing?

17 MS. MOLDENHAUER: This is my closing, yes.

18 CHAIRMAN JORDAN: Got you. Okay.

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

25 The property has been vacant now for over seven years.

**NEAL R. GROSS**

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

1 The Comp Plan and the zoning regulations actually favor not  
2 allowing properties to lie idle and that's obviously what's  
3 exactly been happening with this property. The property's  
4 been lying idle. We can have testimony that the property had  
5 pigeons, it's not a property obviously that is contributing  
6 to the current character of the area.

7 The goal here is via the Hill Group and the applicant  
8 to bring this property back to life and not only to bring it  
9 back to life but also to recognize some of the additional unique  
10 properties of this lot.

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

23 We also believe that while OP has indicated some  
24 concerns with the zone plan, we don't believe obviously there's  
25 no -- PUDs would not be appropriate on the site, it's too small.

**NEAL R. GROSS**

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

1 A map amendment in our opinion would be a spot zoning, and so  
2 really the only other place for this site is a variance and  
3 the variance standard does allow for relief when circumstances  
4 are appropriate or to satisfy the three-prong test.

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

12 Another point is obviously that the property is  
13 surrounded by higher density sites to the south. It's a C-3-C  
14 zone which is obviously, it's a split zone square and so 1101  
15 K Street actually benefits from the K Street address and the  
16 higher density in regards to the C-3-C. Our property is on  
17 the northern portion of that square which is a C-2-C so again  
18 based on the split zone aspect of this square we don't believe  
19 that that's going to have an adverse impact to the public or  
20 to the zone plan.

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

24 The 6.2 FAR is for the roof structure. Typically in a  
25 411 you're allowed for an additional 3.7 FAR. Again the nexus

**NEAL R. GROSS**

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

1 is I think very clear. The size of the lot is so small that  
2 if you're typically able to locate all of your mechanical  
3 equipment on your roof, you're typically going to only take  
4 up about 37 percent.

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

11 Then if you go to the floors, the nine floors that are  
12 being proposed, as you heard testimony there is a specific  
13 requirement or need rather here and practical difficulty, it's  
14 not a question of undue hardship, it's a practical difficulty  
15 for the owner in regards to the difference between an 8 or an  
16 8.5 FAR and a 9.

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

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

**NEAL R. GROSS**

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

1           The 0.5 TDRs which in typical developments would  
2 obviously be a bonus, here equates a 625,000 square feet. So  
3 you're talking about 625 TDRs. The transactional costs  
4 associated with going through the office of attorney general,  
5 filing that, providing the contractual issues, are making it  
6 challenging for us to even be able to reasonably -- creating  
7 a practical difficulty again -- be able to acquire them.

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

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

14           The practical difficulty here is very closely tied to  
15 the nexus of the size of the lot. If you look at the bottom  
16 line, if you were to build .5 FAR, you're talking about 625  
17 square feet. Due to the core factor you're resulting in only  
18 225 square feet of usable space to 401 square feet of core.  
19 So I think that it's very clear that you know in regards to  
20 OP's comments about the ability to possibly build either an  
21 8 or an 8.5 FAR, if you have a larger lot that would possibly  
22 make sense. But here because the lot is so small, it would  
23 not be reasonable and would create a practical difficulty to  
24 build a half FAR on this floor plan based on the size.

25           Is there a question?

**NEAL R. GROSS**

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

1 MEMBER COHEN: Are you finished?

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

4 As I said, there's no substantial measurement to those  
5 zone plans, this is a one of a kind project that does not  
6 establish a precedent. The Comp Plan as I already identified,  
7 the extension and the area and the traditional type -- most  
8 of the buildings are already built out which is a unique  
9 situation here. And we believe that based on the above, we've  
10 satisfied our three-prong test. And to add another little --  
11 I know obviously you've already lost one Board member and the  
12 Board's asked for time, but we would respectfully request that  
13 if it's at all possible for the Board to deliver it today. The  
14 applicant has not been paying interest, it was a buy-back loan  
15 and that loan expires on December 14th. We've got copies for  
16 the Board if they'd like to see a copy of what was recorded.

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

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

25 My concern though is the impact which I would like to

**NEAL R. GROSS**

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

1 see the documentation on the neighboring property. I just  
2 think that that is something I don't want to just dismiss. I  
3 think there's some legitimacy, I don't know to what extent.  
4 I mean I heard a very small number as far as with regards to  
5 the impact but, you know, then I heard 20 percent.

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

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

16 So we will close this hearing and I'm going to ask the  
17 applicant to provide the detail that backs up the financials  
18 that have been submitted to the Board as Exhibit 39. We're  
19 going to need the support for impact analysis on the adjacent  
20 property's windows, including with that a more thorough  
21 discussion instead of off the fly because he's just not able  
22 to give that, on any impact upon rental values. If we had  
23 something to support the aspect although I don't think it's  
24 really determinative but I think the Board might want something  
25 in the record regarding -- you closed about evidence that was

**NEAL R. GROSS**

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

1 not presented on the ability to try to seek getting TDRs and  
2 it was not available. So something that supports that.

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

6 MR. COCHRAN: I don't think so.

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

9 MR. COCHRAN: Yes.

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

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

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

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

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

20 SECRETARY MOY: Okay.

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

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

25 CHAIRMAN JORDAN: I thought of that myself but I know

**NEAL R. GROSS**

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

1 that -- we'll do a special provision, allow 1101 to submit--

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

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

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

6 CHAIRMAN JORDAN: And we can still render a decision.

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

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

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

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

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

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

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

22 CHAIRMAN JORDAN: Yes, we're good. However, I'm going  
23 to ask that the 1101 property folks get those in by December  
24 27th.

25 SECRETARY MOY: That's Saturday.

**NEAL R. GROSS**

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

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

5           MS. MOLDENHAUER:    December 26th is a Friday.

6           SECRETARY MOY:     It's Friday.

7           CHAIRMAN JORDAN:   D.C. government is opening on the  
8           26th.

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

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

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

15          CHAIRMAN JORDAN:   No, we're doing   December 26h and  
16          December 30th and January 6th.   And this hearing is over.  
17          Thank you very much. All right. Thanks so much to everybody  
18          for participating and being here and hearing us out. Thanks  
19          a lot.   Then we are adjourned Board.

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

**NEAL R. GROSS**

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