

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 10, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:00 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE HEATH, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS III, ESQ.

D.C. DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

RYAN WESTROM

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT

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STEPHEN GYOR
KAREN THOMAS
ELISE VITALE

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

2

(10:00 a.m.)

3

CHAIR JORDAN: Joining us is Peter May, a member of the Zoning Commission who will be sitting in this morning as a Member of the Board of Zoning Adjustment. Mr. May was not a participant in the earlier Hearings on those two meeting cases, and that's why he wasn't out initially when we came. But he's sitting today to hear the cases that are on today's docket for hearings. Mr. Moy, let's do 19840, please.

10

MR. MOY: All right, that would be Application number 18940 of H Street Legacy, LLC. Mr. Chairman, as advertised and publically noticed, this is requested relief, variance relief from off street parking, as well as special exception from roof structure setback, which I believe has been amended to be removed, if the Applicant will confirm that. And this is at premises 1371 through 1375 H Street Northeast.

17

CHAIR JORDAN: Okay. Okay, would you please introduce yourselves?

19

MS. MOLDENHAUER: Good morning, Chairman. My name is Meredith Moldenhauer with the Law Firm of Griffin, Murphy, Moldenhauer and Wiggins. With me today, I'll allow each of the individuals to introduce themselves going down the line.

23

MR. EICHNER: I'm Ron Eichner. I'm the principal of New Legacy Partners. We're the developer of the project.

25

MS. WHITE: Hi, good morning. My name is Nicole White,

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1 I'm principal with Symmetra Design. We are the transportation
2 consultant on the project.

3 MR. HARESIGN: Good morning, my name is David Haresign.

4 I'm the architect for the project from Bonstra-Haresign
5 Architects.

6 CHAIR JORDAN: Very good, all right. Ms. Moldenhauer,
7 I don't think we need a full presentation here. I think that
8 the application and the supporting documentation would support
9 the relief requested. However, I do have a concern about some
10 of the TDM measures.

11 So I have a concern about some of the TDM measures. I
12 don't know where the Board is on any other issues or questions
13 they have about this application and find out what those are.
14 And anything else from the Board that they might want to hear
15 about? Okay.

16 ZC MEMBER MAY: I just have one, I mean, I would like
17 the Applicant to respond to the ANC's letter and their proposed
18 conditions.

19 CHAIR JORDAN: So those are things. So let me, so let's
20 add that to what we need the response to. But I don't think
21 the TDM measures are strong enough. And as you know, we've
22 been making a practice that some of these TDM measures run with
23 the land, and I don't see that in here. Did I miss it, Ms.
24 Moldenhauer?

25 MS. MOLDENHAUER: That's the intention of the RPPs

1 would run with the land for the life of the building. It would
2 be recorded in the by-laws as well as the extra covenant against
3 the land that would then not be able to be modified.

4 And we'd had great discussion with them, and we're going
5 to be paralleling some of the TDM measures and RPP measures
6 that the ANC felt very comfortable with in other cases.

7 CHAIR JORDAN: Okay.

8 MS. MOLDENHAUER: We also were willing to, and part of
9 our TDMs were to agree with the DDOT recommendation to have
10 the Capitol Hill Bike Share and Car Share programs run for five
11 years. So any initial purchasers or purchasers that occur
12 during the first five years, so we were planning on modifying
13 those. And I believe that that then provided a very strong
14 TDM program.

15 CHAIR JORDAN: And did I hear you say that the various,
16 that the HOA documents will include these restrictions?

17 MS. MOLDENHAUER: Yes.

18 CHAIR JORDAN: Okay. What about guest parking, how is
19 guest parking to be handled?

20 MS. WHITE: Well, we conducted a parking survey, and
21 found during the peak time there were 86 unrestricted parking
22 spaces. So not RPP or not even metered parking, and there were
23 46 that were available during that peak time. So there's the
24 opportunity for on-street parking. There's also a number of
25 pay for parking spaces adjacent to the site.

1 CHAIR JORDAN: And Mr. May asked a question regarding
2 the ANC conditions?

3 MR. EICHNER: I think in the ANC letter, they focused
4 on two issues. One was just addressed, basically that the
5 parking restrictions are reflected in the Homeowner
6 Association documents, condo documents, and are recorded with
7 the land.

8 Their other concern was not so much, not really germane
9 to the parking, but concerned about trash removal. This is a
10 land-locked site, so like many other buildings in Washington,
11 all the loading has to go out the front door. In this
12 particular case, that's exacerbated by the streetcar so that
13 the trash truck can't pull up right at the curb.

14 CHAIR JORDAN: It might be able to. We don't know yet.
15 Go ahead.

16 MR. EICHNER: Events may make this all go away. What
17 DDOT has done is established loading areas at the on the side
18 streets at the corner. So trash would have to come out of the
19 building, be rolled down the street to the nearest loading
20 area.

21 In this particular case, ANC was concerned about pulling
22 the trash down along the block. They asked us to look at it.
23 We went away and we looked at how this might be handled. And
24 we've talked to private contractors who haul trash on the block
25 already.

1 We've had a scheme whereby trash would come out of our
2 building, only have to go halfway down the block where it hits
3 an alley, trash would then be rolled down the alley to where
4 waiting trucks would be loaded. And we would contract with
5 the same private haulers who are doing work on the block already
6 so there would be no additional trucks coming to the area.

7 We talked to the ANC about that at the ANC meeting, and
8 in emails and meetings afterwards. And they seemed
9 comfortable with that approach.

10 ZC MEMBER MAY: So what you've described on both the
11 counts, both the RPP and the trash is that, do we have something
12 in the record that indicates that you are essentially agreeing
13 with these conditions, or your version of these agreements?

14 MS. MOLDENHAUER: The RPP is definitely in the record,
15 and the issue in regards --

16 ZC MEMBER MAY: So where is it in the record?

17 MS. MOLDENHAUER: It's part of the pre-hearing
18 statement where we outline our TDM measures. And also part
19 of the transportation study.

20 ZC MEMBER MAY: So point me where it is in the --

21 MS. MOLDENHAUER: Well, in the transportation study,
22 it's Page 22 of 23. It's the first bullet point. And in the
23 pre-hearing statement, it's on Page 11.

24 ZC MEMBER MAY: Okay. Hold on a second. Okay.

25 MS. MOLDENHAUER: We do not have a specific reference

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1 about the agreement to clean the sidewalks.

2 ZC MEMBER MAY: Okay. I'm more concerned about the
3 RPP.

4 MS. MOLDENHAUER: The RPP, it's on Page 3 of the
5 pre-hearing statement. It's the last paragraph, second
6 sentence.

7 ZC MEMBER MAY: Okay. All right, I'm just looking
8 through these both because the ANC's report has three
9 conditions related to parking and two related to trash. And
10 so I'm trying to sort of tick these off.

11 CHAIR JORDAN: Just take your time.

12 ZC MEMBER MAY: One thing that would also give me
13 comfort, I assume that H Street there is a commercial street
14 and the building's not eligible for RPP anyway, right?
15 Somebody needs to answer that.

16 MS. WHITE: Yes.

17 ZC MEMBER MAY: Okay, thank you. I saw a nod, that's
18 why, nods don't get recorded.

19 CHAIR JORDAN: Can you get RPP on the side street?

20 ZC MEMBER MAY: Not if --

21 MS. MOLDENHAUER: The side street? What do --

22 CHAIR JORDAN: Although I have a --

23 ZC MEMBER MAY: No, where you're registered. I mean,
24 where the address is.

25 CHAIR JORDAN: So I couldn't get it on the other street,

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1 okay. I just want to look at all the options because we have
2 people who can work systems.

3 MS. MOLDENHAUER: Well, no matter what, this project --

4 MS. WHITE: There's not even an abutting side street.

5 CHAIR JORDAN: What?

6 MS. WHITE: There's not even an abutting side street.

7 CHAIR JORDAN: Somewhere, right?

8 MS. WHITE: No, it's landlocked.

9 CHAIR JORDAN: That's what I mean. Okay.

10 ZC MEMBER MAY: Do we actually have anybody here from
11 that ANC today?

12 CHAIR JORDAN: From ANC?

13 ZC MEMBER MAY: No, ANC 6A. All right. I just want to
14 make sure that it's in the record that you're agreeing to the
15 conditions that were specified by the ANC.

16 MS. MOLDENHAUER: We are. As I said, we have in the
17 record information about the RPP, we have agreed that it will
18 be recorded in the by-laws and provided in the covenant. The
19 record did not indicate that the association would remove the
20 trash on a weekly basis or spill. But we are agreeing to that
21 verbally.

22 ZC MEMBER MAY: Okay.

23 CHAIR JORDAN: And assuring that there's cleanup after
24 the trash is dropped. The trash is maintained inside the
25 building and taken out only on trash time, trash pickup.

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1 MR. EICHNER: That's the plan.

2 CHAIR JORDAN: I'm sorry?

3 MR. EICHNER: That's the plan, yes.

4 CHAIR JORDAN: Well, I'm going to make sure that's part
5 of our condition in this one. And so we can incorporate the
6 ANC's requested conditions in any order. Is there anything
7 else the Board needs to hear on this case?

8 ZC MEMBER MAY: Yes. Mr. Moy mentioned the request for
9 rooftop setback relief had been --

10 CHAIR JORDAN: Withdrawn.

11 ZC MEMBER MAY: -- reduced and you haven't addressed
12 that.

13 MS. MOLDENHAUER: It had been completely removed. It's
14 no longer part of the record.

15 CHAIR JORDAN: Withdrawn. It's been withdrawn.

16 MS. MOLDENHAUER: So we're not --

17 ZC MEMBER MAY: It's not even in the record?

18 MS. MOLDENHAUER: We're no longer requesting it. The
19 roof will be matter of right.

20 CHAIR JORDAN: Yes, it's been withdrawn. The request

21 --

22 ZC MEMBER MAY: And then you --

23 MS. MOLDENHAUER: The plans have been revised.

24 ZC MEMBER MAY: Okay, and the revised plans --

25 MS. MOLDENHAUER: No longer have the roof setback

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1 relief shown.

2 ZC MEMBER MAY: And that was part of the pre-hearing
3 submission of the revised architectural drawings?

4 MS. MOLDENHAUER: Yes.

5 ZC MEMBER MAY: Okay. So looking at the section on Page
6 A3.2. Oh, never mind. I see where the rooftop is there. I
7 saw another drawing that called it into question for me. Give
8 me a second. I see. I see what's changed. Thank you.

9 CHAIR JORDAN: Okay. Anything else we need to hear
10 from the Applicant on this this morning? Ms. Moldenhauer, as
11 you know how we proceed, I don't think the Board needs to hear
12 anything else from the Applicant at this particular time. But
13 you have the opportunity to --

14 MS. MOLDENHAUER: At this point, we rest on the record.
15 Thank you.

16 CHAIR JORDAN: Then let's turn to the Office of Planning
17 to see if there's anything in addition that the Office of
18 Planning would like to.

19 MS. THOMAS: Good morning, Mr. Chairman. Karen Thomas
20 with the Office of Planning, and we rest on the regular approval
21 of the request. Thank you.

22 CHAIR JORDAN: All right. Is there anyone here for
23 Department of Transportation on this particular case?

24 MR. WESTROM: Yes. Good morning, Board. Ryan Westrom
25 from DDOT. And we would concur with the proceedings that have

1 gone forth so far, noting that we believe that the TDM measures
2 implemented, and as we were made aware in dialogue with the
3 Applicant prior to the preparation of our report are indeed
4 robust and mitigate for this particular action. And beyond
5 that, I would rest on the record of our report. Thank you.

6 CHAIR JORDAN: Board, any questions on either Office of
7 Planning or Department of Transportation? Applicant, any
8 questions on either?

9 MS. MOLDENHAUER: No questions.

10 CHAIR JORDAN: Is anyone here from ANC 6B, I believe it
11 is? 6B? 6A? Okay, 6A. We do have a letter of support from
12 ANC 6A by a vote to seven to one with the conditions as we
13 discussed them.

14 Is anyone here wishing to speak in support of the
15 application? Anyone in support? Anyone in opposition?
16 Anyone in opposition? Okay, then we'll close the hearing
17 based upon the record that's presented before the Board. Is
18 the Board ready to deliberate in this case?

19 All right, I would move that we would grant the amended
20 relief with the conditions as defined in the TDM as well as
21 ANC 6A's three conditions being incorporated thereof. Did I
22 miss anything else with this? Anybody? Okay, then that would
23 be my motion.

24 VICE CHAIR HEATH: Second.

25 CHAIR JORDAN: Motion made and second. Further

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1 discussion? All those in favor, aye.

2 (Chorus of ayes)

3 CHAIR JORDAN: Those opposed nay. Motion carries. Mr.

4 Moy?

5 MR. MOY: Staff will record the vote as four to zero.
6 This is on the motion of Chairman Jordan to approve the
7 Application with the amended relief. Second the motion, Vice
8 Chairperson Heath. Also in support, Mr. Peter May and Mr.
9 Jeffrey Hinkle. We have a Board seat vacant. The motion
10 carries four to zero, Mr. Chairman.

11 CHAIR JORDAN: Summary.

12 MR. MOY: Yes, sir.

13 CHAIR JORDAN: Thank you. Thank you all. Mr. Moy, I
14 was remiss on 18911. There's a motion to continue the hearing.
15 We should probably call that early.

16 MR. MOY: Okay. So Application number 18911 --

17 CHAIR JORDAN: Are you on?

18 MR. MOY: Oh, I'm not. Very good, thank you.

19 CHAIR JORDAN: Of all people.

20 MR. MOY: That was a test. I was testing the system.
21 Okay, Application number 18911. This is the application of
22 Potomac Electric Power Company. Are the Applicants here to
23 the table?

24 CHAIR JORDAN: Yes, I just need the representative of
25 the Applicant and the ANC. The ANC has made a, well identify

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1 yourself please.

2 MS. SHIKER: Good morning, Chairman, Members of the
3 Board. My name is Christy Shiker with the Law Firm of Holland
4 and Knight representing the Applicant in this case.

5 CHAIR JORDAN: Okay. And there's no one here from the
6 ANC? As you know, the ANC's asked for more time to allow the
7 Public Service Commission to take a look at any health safety
8 issues arising out of this.

9 I understand this matter has been continued before, but
10 not before this Board. This is the first time any continuance
11 that's made to this Board. And that there might have been
12 previous discussions and the Applicant may have rolled it over
13 a couple of times, or made a request to roll it over on behalf
14 of the ANC. I think that's the way it spills.

15 Let me ask you, will construction start without the
16 Public Service Commission's approval?

17 MS. SHIKER: No. The utility is required to have both
18 the Board of Zoning Adjustment approval as well as the Public
19 Service Commission. However, the processes are very separate
20 and they have separate standards of review that they look at,
21 which is why Pepco is asking that the Board would move forward
22 with the hearing.

23 Pepco started their community outreach in November of
24 2013. We've attended six public meetings of the ANC. We've
25 hosted design charrettes, have worked with the Office of

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1 Planning. The record in the Public Service Commission has
2 been closed since December.

3 And we would ask that the Board move forward with its
4 review based on its standards, and let the Public Service
5 Commission continue theirs knowing that both of those
6 approvals will have to be there for us to pull permits.

7 CHAIR JORDAN: Now the part that you've missed is that
8 both Boards have an issue with the effect upon the community,
9 which would include the health and safety and et cetera. The
10 Public Service Commission has theirs and we have ours, but they
11 still kind of overlap.

12 So they're not completely separate because we have to
13 take in consideration the effect upon any relief that we give
14 to the community. So that's where my concern is rising, and
15 I just wanted to make a note of that, that they do cross at
16 one point. Not that we would hold up for them, that's not
17 necessary.

18 But my opinion, just simply my opinion and the Board has
19 to discuss this, is that it might be helpful information that
20 the Board needs. I don't think that we would, I'm not inclined
21 to offer, I'm not inclined to continue this forever and a day.

22 I'm thinking maybe 60 days and see if the Public Service
23 Commission has done anything. If not, then we would probably
24 proceed. But as you said, the Public Service Commission's
25 record has been closed, I understand for some time now.

1 MS. SHIKER: That's correct, Chairman. And --

2 CHAIR JORDAN: And that they have recommendations that
3 I think that they're going to be operating upon. What's the
4 date for Public Service Commission?

5 MS. SHIKER: I could call up one of my members, but I
6 believe that they typically issue their determination within
7 a limited amount of time. That has not happened in this case
8 at this point. I would like to point out two things though,
9 however.

10 First, the construction time frame for this substation
11 is on a critical path at this point. And so a delay of 60 days
12 will cause detriment to the Applicant in being able to move
13 forward with design.

14 CHAIR JORDAN: So you're going to build without the
15 Public Service decision?

16 MS. SHIKER: No, but when the Board of Zoning Adjustment
17 looks at the case for terms of setbacks, screening, other
18 physical impacts for the design of the substation which would
19 allow us to continue with design of the substation.

20 The Public Service Commission, however, looks at the
21 professional engineering of what has to be inside the
22 substation, how the substation works. It does look at other
23 impacts, but it does not look at the design in the same way
24 that the BZA does.

25 We have a full team of people here today to answer any

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1 questions on the health or any other adverse impacts. We have
2 the chief engineer of Pepco to talk about the purpose and need.
3 And so we would urge the Board to allow us to move forward with
4 the hearing given the impacts of delaying even 60 days to the
5 design and permitting and construction process.

6 CHAIR JORDAN: Board, any further discussion?

7 ZC MEMBER MAY: Mr. Chairman, I would think that because
8 there is a separate review undertaken by the Public Service
9 Commission that addresses safety, I would think that there's
10 no reason why we cannot move forward because if they determine
11 that it's somehow not safe or needs to be changed to address
12 safety concerns, then, you know, that's the path that it takes.

13 I think from a zoning perspective, you know, we look at
14 impacts on the neighborhood, but those impacts are probably
15 a different set of impacts that are under consideration by the
16 Public Services Commission.

17 So I'm perfectly comfortable with proceeding with this
18 and even, you know, making a decision on this knowing that it
19 will either pass muster with the Public Services Commission,
20 or it may have changes that require them to come back. But
21 that's the, you know, the Applicant's risk.

22 CHAIR JORDAN: That's the other part of it. I just
23 don't like to look at things twice.

24 ZC MEMBER MAY: But, I mean, I believe that's the
25 Applicant's risk really more. I mean, yes, it consumes time

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1 of the Board. But I think that's a lesser consideration.

2 CHAIR JORDAN: Any other input?

3 VICE CHAIR HEATH: I would agree with Mr. May. I'm fine
4 to move forward with it.

5 CHAIR JORDAN: Mr. Hinkle, do you have any thought about
6 it?

7 MEMBER HINKLE: No, I tend to agree that we could move
8 forward today.

9 CHAIR JORDAN: Okay. All right, then. All right.
10 Here's the problem I have, and the ANC is not, well the ANC
11 is not here and we don't have a letter. I'm sorry?

12 (Off microphone comment)

13 CHAIR JORDAN: Yes. Let's do that. All right, we'll
14 call this case again.

15 MS. SHIKER: Thank you.

16 CHAIR JORDAN: All right. So I think we're at the,
17 nothing's easy here, is it? Nothing, nothing, nothing. I have
18 at the top of the order, Mr. Moy?

19 MR. MOY: Thank you, sir. That would be Application
20 number 18877 of Jessica Crane.

21 CHAIR JORDAN: 18877?

22 MR. MOY: You don't want to do that one?

23 CHAIR JORDAN: No, let's do that one, that's a good one.
24 Let's do that one. Let's do that one because I think, yes,
25 thank you.

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1 MR. MOY: Thank you, sir. We're on the same page then.

2 CHAIR JORDAN: Not really, but whatever.

3 MR. MOY: Okay, I appreciate it. I appreciate it.

4 CHAIR JORDAN: I caught up with you. No, I'm just slow
5 today.

6 MR. MOY: No, you're never slow, sir.

7 CHAIR JORDAN: Yes I am. I'm slow today.

8 MR. MOY: For the record, this application has been
9 advertised. Unless the Applicant is going to make any
10 revisions, it has been advertised for a variance relief for
11 lot occupancy and non-conforming structure. This is a
12 property at 15 Brown Court Southeast, Square 870 Lot 853.

13 CHAIR JORDAN: Good morning. Please identify
14 yourself.

15 MR. ANDERSON: Good morning, ladies and gentlemen of
16 the Board. My name is Philip Anderson. I am the architect
17 for the project. Seated here to my left is Jessica Crane, the
18 owner/applicant.

19 CHAIR JORDAN: I'm sorry, your name again?

20 MR. ANDERSON: Philip Anderson.

21 CHAIR JORDAN: We missing Office of Planning? Okay
22 then. All right, well this matter is before us on modifying
23 the existing second floor addition, to expand it. Is that
24 correct?

25 MR. ANDERSON: Yes, that's correct.

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1 CHAIR JORDAN: And I know the Office of Planning has
2 offered, I think these are jumping up, Office of Planning has
3 offered an opposition to this. But --

4 MR. ANDERSON: I believe it's no support, not
5 opposition. My understanding is they were neutral. But Mr.
6 Gyor can explain that.

7 CHAIR JORDAN: No, I don't think that's necessary at
8 this point. Well, let me have that. Mr. Gyor, where's the
9 Office of Planning's position? I think it stated that you
10 didn't find any basis for exceptional condition, is that
11 correct?

12 MR. GYOR: Good morning Mr. Chairman, Members of the
13 Board. Stephen Gyor with the Office of Planning. That is
14 correct, Mr. Chairman. We didn't find that the Applicant
15 adequately explained the characteristic of the property that
16 created practical difficulty.

17 CHAIR JORDAN: And that you also opposed it no support,
18 is that correct?

19 MR. GYOR: We support the project concept, we just, we
20 had trouble with the nexus, first point.

21 CHAIR JORDAN: Well then, that helps me. I think,
22 Board, I offer on this case that we're probably collaboratively
23 have stopped from not saying this property is not unique and
24 meeting an exceptional situation and conditions or the
25 practical difficulties.

1 This Board has previously ruled in Case 13840 which was
2 on an undue hardship aspect, two parts of it. One dealt with
3 the physical nature of the property, the other was the use of
4 the property.

5 I think that we're collaboratively stopped as a decision
6 of the previous Board on almost the same characteristics of
7 the same property that existed at that time that for us to find
8 differently is problematic.

9 So I would think that issue has already been litigated
10 and decided by this Board. Any other input on that? And Mr.
11 May?

12 ZC MEMBER MAY: You know, I see where there's the gap,
13 but I'm troubled by this because when you look at this in the
14 context of what's happening around it and the relief that's
15 requested, it's actually fairly modest relief.

16 And in principal, similar to OP in principal, I'm
17 supportive of the project. But there is the nexus that's
18 missing, so it's troubling. You know, I'm not sure how it can
19 proceed. But I wish there was, you know, that the Applicant
20 can make a stronger case, perhaps to tie the unique conditions
21 of the property with the hardship that it creates.

22 CHAIR JORDAN: Let me ask a question. Mr. Anderson is
23 it?

24 MR. ANDERSON: Yes.

25 CHAIR JORDAN: Has the height of the building changed?

1 MR. ANDERSON: We are proposing approximately one foot
2 increase in the overall height.

3 CHAIR JORDAN: I mean about the present structure.

4 MR. ANDERSON: I'm sorry?

5 CHAIR JORDAN: The height, the present height, has it
6 changed from the last time you were here?

7 MR. ANDERSON: No.

8 CHAIR JORDAN: Okay. Has the alleys moved?

9 MR. ANDERSON: No.

10 CHAIR JORDAN: The alleys are still bounded by three
11 alleys on three sides?

12 MR. ANDERSON: Correct.

13 CHAIR JORDAN: Has the type of construction of the
14 building changed?

15 MR. ANDERSON: No, it is the same building that was
16 presented the previous time in 1982.

17 CHAIR JORDAN: Okay. As I said before, this Board has
18 found that the existing non-conforming building, the type of
19 construction, and it's height create an exceptional condition.
20 I just think, for the sake of this Board, that's not, I don't
21 see how we reverse that, and that we also found that the shape
22 and size created a hardship.

23 Now the second part of that is that the question for this
24 new relief is that as Mr. May said, and as OP, it's a question
25 about tying those things into the practical difficulty. So

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1 just make a statement about that.

2 MR. ANDERSON: Okay. In the amended statement that we
3 issued approximately two weeks ago, we added an additional case
4 for exceptional situation or condition. We believe there are
5 three exceptional situations/conditions on the lot.

6 CHAIR JORDAN: I understand that. We're talking about
7 the difficulty for you, those conditions being a hindrance for
8 you to do what you want to do within the zoning regulations.

9 MR. ANDERSON: Okay. So the practical difficulty that
10 we see is that due to the exceptional situations and
11 conditions, the Applicant is limited to an unnaturally low
12 allowable lot occupancy, that the Applicant is not able to
13 partially demolish the existing first floor structure in order
14 to bring the property into conformance with the zoning
15 regulations, and therefore pursue a Section 223 special
16 exception, that the Applicant wishes to expand the existing
17 second floor to accommodate a growing family.

18 That was one of the findings of fact from the previous
19 case, that in the 1982 case, the Board recognized that the
20 modification of the existing first floor building to
21 accommodate a reasonable sized living unit would be extremely
22 difficult.

23 Further, the Board stated it is impractical to rearrange
24 the existing living unit to accommodate additional bedrooms.
25 Current configuration is a single bedroom upstairs, and the

1 Applicant is currently a family of four.

2 CHAIR JORDAN: And what else consists with this family?

3 MR. ANDERSON: Two parents and two small children, one
4 15 months and the other is five years. Is that correct,
5 Jessica, yes?

6 CHAIR JORDAN: And is there another reason why, how this
7 property should be structured, what should be on the first
8 floor, bedrooms, et cetera. Is there a reason why?

9 MR. ANDERSON: So the first floor currently contains a
10 single parking space garage. The Applicant is proposing to
11 expand that to a second, as well as their standard single family
12 residential functional components on the first floor of the
13 kitchen, living room. The Applicant works from home, so
14 requires an office, as well.

15 CHAIR JORDAN: Is there a special need why all these
16 things can be consolidated on the first floor, although that
17 the parents should be on the floor with the children?

18 MR. ANDERSON: Correct. The case that we have made is
19 that the Applicants are deaf.

20 CHAIR JORDAN: I'm trying to get you to get to where I
21 was trying to get you a little while ago.

22 MR. ANDERSON: Yes, okay.

23 CHAIR JORDAN: But go ahead.

24 MR. ANDERSON: I apologize. Yes, and so therefore, in
25 order to safely monitor children and conduct normal functions

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1 of family life, they would require the bedrooms all to be on
2 the same floor.

3 CHAIR JORDAN: Board, any other questions of this
4 Applicant? Okay. I believe that there's sufficient
5 information that's in the record and what you have submitted
6 here today that we probably don't need to hear anything else
7 from you right now unless you just feel like talking.

8 But there's been times when people talk themselves into
9 a bad situation. So with your permission, we will proceed on
10 and go to see if there's anything in addition the Office of
11 Planning wants to add to the record that's not already there.

12 MR. GYOR: Morning again, Mr. Chairman. I have nothing
13 additional to add to the record this morning, thank you.

14 CHAIR JORDAN: Board, questions of Office of Planning,
15 please.

16 ZC MEMBER MAY: Yes. I assume that you've reviewed the
17 additional submission statement of the Applicant?

18 MR. GYOR: Correct.

19 ZC MEMBER MAY: And there was a stronger argument having
20 to do with the practical difficulty of developing the property.
21 Are you at all persuaded by that argument?

22 MR. GYOR: We did not find that there was a nexus with
23 that, with the unique characteristics of the property. There
24 are several unique characteristics. We still have a bit of
25 difficulty with that nexus.

1 ZC MEMBER MAY: So, I mean, the notion that if the
2 property were reduced to 70 percent lot occupancy, then this
3 could be pursued as a special exception, right? That's the
4 argument they're making.

5 MR. GYOR: Yes, that's correct.

6 ZC MEMBER MAY: And that's correct, that's a correct
7 argument, from your perspective?

8 MR. GYOR: Correct, although the first level of the
9 structure, I mean, the structure is a stark structure. In
10 theory you couldn't alter that first level to make it conform
11 to the 70 percent. That's a hypothetical situation.

12 ZC MEMBER MAY: Right. But I mean, suppose they chose
13 to go that route, which, you know, I know it's possible to do
14 demolition of a, or partial demolition of a contributing
15 structure. It's not an easy thing to do, but it's
16 theoretically possible.

17 But if it were at 70 percent lot occupancy, then they
18 could be pursuing this relief as a special exception or a 223,
19 is that correct?

20 MR. GYOR: That's correct.

21 ZC MEMBER MAY: So I mean, for me that seems like it's
22 enough and I'm a little puzzled as to why the Office of Planning
23 wouldn't because we know that it's difficult to get a
24 contributing structure modified that extensively. I mean,
25 it's a difference of four percent.

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1 We're not talking about, you know, 100 percent lot
2 occupancy or 100 percent lot occupancy addition, even either.
3 So I'm just, I'm not trying to, like, really take you on there.
4 But I'm trying to see if you can see your way to it.

5 MR. GYOR: I understand. And it is a difficult
6 situation in that sense. I mean, we're talking about a four
7 percent. I think we looked at, you know, the zoning
8 administrator's interpretation of this and that the existing
9 structure is 74 percent.

10 And yes, if the second floor would comply at 59 percent
11 or 60 percent as a special exception if it weren't 74 percent.
12 We were looking at it from that perspective, and looking at
13 it from the perspective that how difficult it is to modify a
14 contributing structure in the historic district.

15 CHAIR JORDAN: Oh, that's confusing.

16 ZC MEMBER MAY: Yes, and I don't think I need to have
17 further conversation with Mr. Gyor about it. I appreciate
18 your looking at it.

19 CHAIR JORDAN: All right, thank you. Any other
20 question, Mr. Gyor?

21 MR. GYOR: I have nothing additional to add. I just
22 wanted to clarify, we've really had two separate concerns.
23 And one was that yes, it is a historic structure, and therefore
24 it would be difficult to modify. And it is a theoretical
25 exercise in some respects.

1 CHAIR JORDAN: Okay. Whoa, that's even, all right,
2 leave that on. Okay, the Applicant, any questions you need
3 to ask Office of Planning?

4 MR. ANDERSON: No questions.

5 CHAIR JORDAN: Anyone here from DDOT on this particular
6 case? All right, not on this case. We have a letter of no
7 objection from Department of Transportation on this matter.
8 Anyone here from ANC 6B? ANC 6B?

9 We do have a letter from ANC 6B. They voted eight to
10 zero in support of this application. We have three letters
11 from neighbors who support this application. Is there anyone
12 else wishing to speak in support? Yes, please come forward.
13 Good morning. Make sure your microphone's turned on.

14 MS. MINK: Good morning.

15 CHAIR JORDAN: Good morning. And you did complete
16 witness cards, and you were here to get sworn in this morning,
17 correct? Very good. Each of you have three minutes to give
18 us your thoughts.

19 MS. MINK: My name is Patricia Mink. I've owned a
20 property in Brown Square for 15 years, or since 1973. I've
21 been living back there for 15 years. I speak on behalf of all
22 of the neighbors of Brown's Court.

23 We strongly approve and have worked with the new owners
24 and the architect on their plans. Everyone feels comfortable.
25 We just want to urge the project moving forward because as the

1 property sits there, it's deteriorating more. It's subject
2 to vandalism, and we're just anxious to see the improvement
3 in the neighborhood. Thank you.

4 CHAIR JORDAN: Thank you. Any questions of this
5 witness, Board? Anyone?

6 MR. KENEMUTH: Good morning, ladies and gentlemen of
7 the Board. First, I want to start off by saying the Cranes
8 are viewed as assets to our neighborhood, and we are extremely
9 excited for them to join our intimate community, both Jessica,
10 Andy, and their families, and their associative family.

11 We were introduced to this project at an open house
12 hosted by the Cranes and Philip where the architecture drawings
13 were shared with us. And at that point in time, we saw no
14 reason to not fully support this project.

15 There is no detrimental impacts to our community, and
16 we are extremely excited at seeing this property restored and
17 enhanced to a point where it becomes a focal point of the
18 neighborhood itself. So we are fully supporting this project
19 in its entirety.

20 I also want to elaborate that yes, there was some
21 vandalism on the fence, and we are excited to, you know, see
22 this property be brought back to life. Thank you.

23 CHAIR JORDAN: Okay. Any questions, Board?

24 MR. MOY: Mr. Chairman, sir? I don't believe our guest
25 gave his name and address.

1 MR. KENEMUTH: Sorry, my name is Brad Kenemuth. I live
2 at 126 Street Southeast. My property backs to Browns Court.

3 CHAIR JORDAN: Thank you, Mr. Moy. Thank you. Anyone
4 else wishing to speak in support? Anyone else wishing to speak
5 in support? Anyone in opposition? Anyone in opposition?
6 Then I believe we can close the record on this case, and the
7 evidence that's presented to the Board. Is the Board ready
8 to deliberate?

9 I believe there's been sufficient showing, especially
10 in context of our previous case and what's been presented here,
11 that the relief should be granted in this application.

12 VICE CHAIR HEATH: Is that a motion?

13 CHAIR JORDAN: Yes, that's my motion.

14 VICE CHAIR HEATH: Second.

15 CHAIR JORDAN: Motion made and second. Additional
16 discussion?

17 ZC MEMBER MAY: Mr. Chairman, I just wanted to add that
18 unlike the Office of Planning, I am able to get over that
19 threshold, and I can see that there's a practical difficulty
20 with the development of the property.

21 Particularly since if it were treated slightly
22 differently, if the lot occupancy were slightly less, that they
23 would be eligible for relief as a special exception and could,
24 in fact, have a project that was potentially much more
25 impactful. So I think that this is a sensible thing to grant.

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1 CHAIR JORDAN: All those in favor of the motion, signify
2 by saying aye.

3 (Chorus of ayes)

4 CHAIR JORDAN: Those opposed, nay. The motion
5 carries. Mr. Moy?

6 MR. MOY: Staff would record the vote as four to zero.
7 This is on the motion of Chairman Jordan to approve the
8 application for the relief requested. Second the motion, the
9 Vice Chairperson Heath. Also in support, Mr. Peter May and
10 Mr. Jeffrey Hinkle. No other Board Members, the motion
11 carries, sir.

12 CHAIR JORDAN: Summary, please?

13 MR. MOY: Thank you.

14 MR. ANDERSON: Thank you.

15 CHAIR JORDAN: Thank you. On 35, Mr. Moy? Oh, let's
16 take five minutes, please. Five minute break.

17 (Whereupon, the above-entitled matter went off the
18 record at 10:42 a.m. and resumed at 10:46 a.m.)

19 CHAIR JORDAN: Mr. Moy, can you, I'll do this.

20 MR. MOY: Okay.

21 CHAIR JORDAN: Can I have a representative of the
22 Applicant in 18905? Not the whole team, but just the
23 representative of the Applicant in 18905 as well as the request
24 for party in opposition which has been filed by whom? Yes,
25 please come forward, please. Okay, yes. Okay. Yes, no,

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1 just take a seat, please. All right, please identify
2 yourselves. Make sure the microphone is on.

3 MR. AIT-GHEZALA: Yes. My name is Ahmed Ait-Ghezala.

4 MS. BATTIES: Good morning. Laila Batties with the Law
5 Firm of Holland and Knight.

6 CHAIR JORDAN: The reason why I called you up, and I was
7 remiss in not calling this earlier. As you know, the Board
8 has executed a practice of having parties and, Applicants and
9 parties in opposition to meet and confer and have discussion.

10 The Board's inclined, I would be inclined to support the
11 party's status in this. And so I don't know if you've had the
12 opportunity, but we would certainly request that the two, the
13 Applicant and the party in opposition have serious dialogue
14 about trying to resolve any issues that can be resolved between
15 you.

16 We find this to be very helpful, and so I would like for
17 you to, you know, have conversation on this one before we call
18 the case for hearing.

19 MS. BATTIES: Okay.

20 MR. AIT-GHEZALA: Okay.

21 CHAIR JORDAN: Thank you. So that means you two will
22 meet and have conversation and talk about your issues and see
23 if they can be mitigated. If you've met before, you could have
24 met 1,000 times, but the meeting doesn't really happen until
25 I know it's happened.

1 And it's not, and again I keep advising people, it's not
2 walking outside this room, waiting two minutes, and walking
3 back in. It has to be meaningful discussion. It has worked.

4 MR. AIT-GHEZALA: Just to clarify, so the hearing won't
5 happen today?

6 CHAIR JORDAN: No, the hearing will happen today.

7 MR. AIT-GHEZALA: Oh, okay. I don't know the
8 procedures.

9 CHAIR JORDAN: Yes. But as we always say, it's better
10 that you work it out than to let us work it out for you because
11 somebody's not going to be happy necessarily. Okay. Enough.
12 On to, what's that 18935, right Mr. Moy?

13 MR. MOY: Yes, sir. Application number 18935, will the
14 parties come to the table? This is the application of Sonja
15 Swick? Sweek, sorry. As advertised, they requested
16 variances for lot occupancy and maximum height and number of
17 stories of accessory structures at 515 7th Street Southeast.

18 CHAIR JORDAN: Okay. Good morning, please identify
19 yourselves. Make sure your microphone is on, please.

20 MS. SWEET: My name is Sonja Sweek, I'm the property
21 owner.

22 MR. HOLL: Frederick Holl, agent designer for the
23 Applicant.

24 CHAIR JORDAN: Okay. All right, this is one where I
25 think there's a concern about your application just in general,

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1 how you meet the standards for relief.

2 So you want to begin, please? Anything specific that
3 the Board wants to hear, except for you got to show us that
4 you meet the requirements. Office of Planning, I think you've
5 seen the Office of Planning's report and they don't support
6 this.

7 MR. HOLL: They don't support it, but they're not in
8 opposition to it. And this is --

9 CHAIR JORDAN: Well, they not supporting it is
10 opposition to it.

11 MR. HOLL: Okay.

12 MS. SWEEK: And can I give a little history?

13 CHAIR JORDAN: I don't care, whichever way you would
14 like to do it, but it's for you guys to --

15 MS. SWEEK: I applied for this garage in 2003. At that
16 time, my property was zoned R5. I don't know about property
17 zoning, if R5 means you are allowed more coverage of a lot.

18 But I was not able to afford to build the garage, and
19 I didn't know that. I should have turned a spade of dirt over
20 every year to keep the permit alive. So when I went in now
21 to remove the permit, they tell me now that I'm an R4, and then
22 there was the application of the lot occupancy as an R4.

23 I have given Mr. Moy a copy of the former permit, and
24 also some materials that aren't in that original application
25 like recent letters of support. And I don't know if the vote,

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1 I think the vote of the ANC may be there. But I'm going to
2 let Rick talk about the need aspect.

3 MR. HOLL: Okay, this is a historic house built in 1851.
4 And it covers approximately 56 percent of the lot. And at the
5 time of the initial design, we took lot coverage figures by
6 taking into account that the side yard to the south was less
7 than five feet for the entire length of the building, which
8 is about 62 feet long.

9 And it's come to our attention recently in discussions
10 with neighbors and through the process of the ANCs that in fact,
11 the building encroaches upon the north side lot, which I wish
12 I had been made aware of a little bit earlier.

13 MS. SWECK: I have a few photos of that.

14 CHAIR JORDAN: What building encroaches on the north
15 side?

16 MR. HOLL: The building that's the Applicant's building
17 encroaches the lot to the north.

18 MS. SWECK: My house.

19 CHAIR JORDAN: Wait, wait, wait. The Applicant's
20 property encroaches on what?

21 MR. HOLL: Encroaches on the lot on Lot 852. Let me
22 see, I've got it here.

23 CHAIR JORDAN: Which is property owned by a neighbor?

24 MR. HOLL: Yes.

25 MS. SWECK: Yes.

1 MR. HOLL: Which altered all of our calculations.

2 CHAIR JORDAN: So when you did your initial
3 calculations and you re-did them once you know the
4 encroachment, it then brought you in some?

5 MS. SWEEK: Yes.

6 MR. HOLL: Yes, it did bring us in a lot, actually.
7 Previously, given our, that would have brought our lot
8 coverage, that additional space of five feet by 62 feet for
9 the side yard brings our proposed lot coverage with a garage
10 down to either about 62 percent or 65 percent, respectively
11 depending on how you adjust it for the encroachment going into
12 the neighbor's yard because now part of the building sits in
13 the neighbor's yard and can't be considered lot coverage of
14 that particular lot.

15 So that would have made some difference, but it's still
16 over the 60 percent that's required in R4. So we would still
17 move for a special exception under 223.2 to obtain the lot
18 coverage that we want.

19 At the time of zoning application during the building
20 permit process, the zoning technician informed me that given
21 all the facts and figures that he had in front of him and the
22 plans, that we would be entitled to a building foot kind of
23 about 100 square feet for the garage, which I didn't agree with
24 at the time but I said okay.

25 He suggested that we either, that we apply for a variance

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1 and a special exemption. At that same time, he indicated that
2 the plans that we had submitted were not in compliance with
3 respect to the mezzanine that was designed, which was less than
4 33 percent of the floor area below it.

5 And I said well, okay. I mean, I know 33 percent is how
6 the zoning code reads. So I threw that into it and said well,
7 it's a mezzanine. I would like the Board to note that if we
8 can't build a mezzanine, then we might as well ask for a second
9 story.

10 CHAIR JORDAN: All right. And going back to what the
11 Applicant said initially, the 2003 building permit did not have
12 a second story.

13 MR. HOLL: No, it did have a mezzanine.

14 MS. SWEEK: It had a mezzanine.

15 CHAIR JORDAN: Okay. Well, the permit says
16 construction of a single story parking garage, which might have
17 had --

18 ZC MEMBER MAY: Yes, it could have had a mezzanine. But
19 what was the height of that? You don't show anything in --

20 MR. HOLL: The height of that was, back then, I know in
21 the record I do have some drawings that were archived and that
22 we were able to pull out. At the alley side, not the patio
23 side, I show a height of 15 feet, 5 feet.

24 CHAIR JORDAN: Fifteen feet?

25 MR. HOLL: Fifteen feet five inches, I'm sorry.

1 CHAIR JORDAN: And now you're asking for 16, correct?

2 MR. HOLL: Well, 16 on the patio side. And there is a
3 change in elevation, so it's -- we're actually on the patio
4 side we're showing a height of 17 feet 6 inches.

5 CHAIR JORDAN: What's the exceptional condition or
6 circumstances of this property, the reason why you need to get
7 relief?

8 MR. HOLL: Well, we believe since it's a historic
9 structure and there's a historic covenant recorded on the
10 structure, we can't make any changes at all. There's no
11 cellar, there's no storage available on the property.

12 This has caused hardship because there are two families
13 in the property. They're related, they're daughter, daughter
14 in law, and grandchildren.

15 CHAIR JORDAN: How does this relate to the garage
16 request?

17 MR. HOLL: Well, the garage --

18 MS. SWEEK: Provides storage.

19 MR. HOLL: -- providing storage in the garage. It's --

20 MS. SWEEK: There's also --

21 CHAIR JORDAN: How does the historic nature of the
22 property affect the garage?

23 MR. HOLL: Well, if we were to make changes to the
24 property for storage or, you know, for vehicle storage and cut
25 down on our lot, cut down on our lot usage to come within the

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1 60 percent, we could do that and create expense, but it wouldn't
2 be necessarily allowed under the covenant, the historic
3 covenant that exists.

4 CHAIR JORDAN: But the historic nature of the property
5 does not prevent you from putting the garage there.

6 MS. SWEEK: No.

7 MR. HOLL: Well, the lot coverage does now.

8 CHAIR JORDAN: I'm not talking about it as you have it
9 designed for two stories, or 16 feet. I mean, you could
10 actually build a usable garage there within the zoning
11 regulations.

12 MR. HOLL: Under the current opinion received from the
13 zoning department at DCRA, no we cannot. We're restricted to
14 a footprint of approximately 100 square feet.

15 MS. SWEEK: And I have a minivan vehicle. And if I went
16 into a garage of 100 square feet, I wouldn't be able to open
17 the doors.

18 CHAIR JORDAN: Additional questions --

19 MS. SWEEK: And it will also not be in conformance with,
20 a little tiny box like that would not be in conformance with
21 all the garages on the alley which are joined side to side.
22 We wanted to make the front facade the same level, the back
23 the same level. And the neighbors are concerned about safety
24 if there is an opening to the alley because our garage is so
25 small.

1 CHAIR JORDAN: That raises another issue. I did not
2 notice in the pictures that the other garages were two stories.
3 Am I incorrect?

4 MR. HOLL: No. It is a residential alley. The other
5 garages are not two stories on that side of the alley. But there
6 are two story buildings on the other side of the alley.

7 MS. SWEEK: Right.

8 CHAIR JORDAN: Board, additional questions?

9 ZC MEMBER MAY: I'm confused about your whole, what you
10 had to say about the mezzanine and what you were told about
11 the mezzanine. Can you explain that to me again with the 33
12 percent and --

13 MR. HOLL: I was confused myself. We proposed a design
14 of approximately 500 square feet and designed in a mezzanine
15 that was about 32 percent of the floor area below it. At the
16 time of the plans examiner for zoning went over the plans, he
17 said well, you can't do this.

18 And I sat down with him and had a conference with him.
19 And I said well, why not. And he says well, you're at 41
20 percent. And I said well, I don't believe so. And I think
21 he may have been adding the stairs to the mezzanine into the
22 calculations.

23 But it wasn't, by this point I discovered that we were
24 well in excess of the 60 percent lot coverage. And I didn't
25 feel that it was in my place to educate him that the mezzanine

1 is defined by the building code, not the zoning code.

2 CHAIR JORDAN: No, it's defined in the zoning code, too.

3 MR. HOLL: Is it? Okay, well then there seems to be a

4 --

5 ZC MEMBER MAY: Well, either way, I mean, now I
6 understand that if you realized at that point that you had a
7 lot occupancy issue, then the mezzanine issue is, it doesn't
8 really matter because if you're going to build something that's
9 500 square feet, you would have to get a variance anyway.

10 MR. HOLL: Yes, that's true.

11 MS. SWEEK: We've had this before the ANC. The ANC is
12 pretty much strongly in support.

13 ZC MEMBER MAY: We had that in the record, and that's
14 all helpful but it doesn't help you meet the test for a
15 variance, and that's kind of where we're struggling with this.
16 I mean, you could go to 70 percent lot occupancy, did you look
17 at that?

18 MR. HOLL: Well, actually the revised calculations with
19 the five foot side yard makes it come under 70 percent. Brings
20 it up to, I think it's 62 percent or 65 percent respectively.
21 And that's --

22 ZC MEMBER MAY: So that helps you if you were to just
23 build a single, I mean, a height compliant garage --

24 MS. SWEEK: Which is 15 feet. We're asking for an
25 additional foot.

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1 ZC MEMBER MAY: Right, which puts you into variance
2 territory which means that you have to explain why --
3 (Simultaneous speaking.)

4 ZC MEMBER MAY: Let me finish. You have to explain why
5 the property is unique and why there's a practical difficulty
6 with the use of your property associated with not having that
7 extra foot.

8 MS. SWEET: Okay --

9 ZC MEMBER MAY: So, I mean, if you're just talking about
10 having a, if all you were talking about was having a mezzanine,
11 because you can only have a single story garage. But if you
12 were talking about a storage mezzanine within the garage and
13 the whole thing is only 15 feet and it's a 70 percent lot
14 occupancy, it's a different test, a different threshold and
15 easier to meet.

16 Not saying that you would meet it, I'm just saying it
17 would be an easier test. But the fact that you need some
18 storage isn't really enough to justify a variance.

19 MS. SWEET: The reason why I was hoping for 16 feet is
20 because it was a two story, and you have to take out what you
21 need for flooring and joists, that it would be more, at least
22 maybe seven foot headroom on each floor. That was the reason
23 for.

24 ZC MEMBER MAY: Yes. I mean, I understand why 16 feet
25 is better than 15 feet. But, you know, 15 feet and a single

1 story is what's allowed.

2 MS. SWEEK: Right.

3 MR. HOLL: Well, the practical considerations, given
4 that it is under 70 percent, is that in making those spans and
5 building the structure, anything that makes that span of 24
6 feet, effectively 24 feet, even with a membrane diaphragm
7 construction, it would be difficult to achieve a seven foot
8 height, even in --

9 ZC MEMBER MAY: I understand that, I understand why 16
10 feet is easier to build within than 15 feet. But 15 feet is
11 the regulation.

12 MS. SWEEK: Right, okay.

13 ZC MEMBER MAY: And if you're going to exceed the
14 regulation, you have to explain why this, you know, why you
15 really don't have any other choice, or if you're going to make
16 reasonable use of your property. And that's where I'm
17 struggling.

18 MS. SWEEK: Okay, I think as the owner that I could live
19 with 15 feet, but I do want the two stories if possible because
20 --

21 ZC MEMBER MAY: Well, again --

22 MS. SWEEK: -- I have 12 grandkids.

23 ZC MEMBER MAY: Again, two stories, again two stories
24 is not allowed in the current regulations.

25 MS. SWEEK: I know. That's what we're --

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1 ZC MEMBER MAY: And so you have to explain to us why you
2 cannot reasonably make use of your property. And it doesn't
3 have, you know, the fact that you might have a lot of people
4 living there or visiting isn't really enough to make the case.

5 MS. SWEEK: Okay. I have a large family, I have 12
6 grandchildren, and I was hoping that we could have two stories
7 so that we could have a car and a rec room.

8 CHAIR JORDAN: The case has to be made that it arises
9 out of the property that's giving you some restriction or
10 inability to meet the zoning regulations. It's not
11 necessarily your family composition.

12 MS. SWEEK: Okay.

13 CHAIR JORDAN: I mean, that's --

14 MS. SWEEK: Well looking at this, let's go to just the
15 footprint then. Looking at the footprint of the garage, if
16 now that we have a new calculations with the side alley now
17 being open air, I think it needs to be side aside so I can open
18 the doors of my car.

19 So that is, to be a garage, a functional garage, it's
20 going to have to be big enough to actually park a car in it.
21 And I don't have an answer for this wanting two stories except
22 if it fits within the footprint. It's certainly more useful
23 to me than to have a 33 percent coverage mezzanine.

24 CHAIR JORDAN: Okay. Is there anything else you want
25 to present to the Board?

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1 MS. SWECK: Can we consider those two issues
2 separately, the lot coverage and the height?

3 CHAIR JORDAN: Well, they're both before the Board now.
4 If you want to amend your request, then we could do that. But
5 you're going to have to come back to one or the other. But
6 I'm saying you're still going to have difficulties with the
7 second story.

8 MS. SWECK: Okay.

9 CHAIR JORDAN: You're still going to have the same
10 difficulties.

11 MS. SWECK: All right.

12 ZC MEMBER MAY: Can I ask a question of the Applicant?
13 You said that there's a revised calculation of the lot area?

14 MR. HOLL: Yes.

15 ZC MEMBER MAY: Do you have a document that, I mean, do
16 we have a document that --

17 MR. HOLL: Yes, I submitted it to the record. It was
18 a revised statement of need last week.

19 ZC MEMBER MAY: Okay.

20 CHAIR JORDAN: What's the exhibit number on that, do you
21 know?

22 ZC MEMBER MAY: Okay, so I mean, I was hoping for a
23 drawing. That's what I was looking for because you're, you
24 know, doing all this in words is a little difficult. One of
25 the things that we require for the record is a plan that shows

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1 kind of the dimensions of everything.

2 So, I don't know, I'll try to study this and see if I
3 can figure it out. In the meantime, I'm interested in hearing
4 whether the Office of Planning agrees with your new
5 calculation. But we'll get to them when we get to them.

6 CHAIR JORDAN: Yes. Is there anything else that you
7 want to add before we go to Office of Planning?

8 MR. HOLL: Not right now.

9 CHAIR JORDAN: Okay. Let's now turn to Office of
10 Planning and, he's still here, Mr. Gyor.

11 MR. GYOR: Good morning, again, Mr. Chairman and
12 Members of the Board. Stephen Gyor with the Office of
13 Planning. You have our report before you. We're not strongly
14 opposed to this proposed garage.

15 We did have, as proposed, some trouble with the
16 Applicant's proposal that a nexus has not been established with
17 the unique circumstance on the property and the practical
18 difficulty.

19 As a special exception, we would support the 62 and a
20 half percent lot occupancy. To answer Commissioner May's
21 question, I have not seen a revised drawing that would clearly,
22 you know, indicate how the 62 and a half percent was arrived
23 at.

24 But in theory, we would support a special exception for
25 that lot occupancy. We still would have trouble with the

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1 variance for the height and story relief because the Applicant
2 has not met the test on that issue.

3 CHAIR JORDAN: Any questions on Office of Planning,
4 Board? I'm really thinking about continuing this hearing,
5 giving the Applicant an opportunity to go back, amend their
6 plans, do proper drawings to submit to this Board that meets
7 the revised measurement.

8 But more importantly, excuse me, in addition to
9 providing us the drawings in support of what your garage would
10 look like in meeting as a matter of right.

11 MR. HOLL: Okay.

12 CHAIR JORDAN: I don't know if that's helpful for the
13 Board.

14 ZC MEMBER MAY: I'm sorry?

15 CHAIR JORDAN: Not a matter of right, but as a special
16 exception.

17 ZC MEMBER MAY: A special exception within the 70
18 percent, yes. Yes, I mean, I would be interested in seeing
19 that, as well, because I think there's an easier path to that
20 relief. It's the second floor that's the, second floor and
21 the extra height that, you know, we haven't, it's hard to
22 imagine how we can get to that level of relief.

23 CHAIR JORDAN: Before I do that, is there anyone here
24 wishing to speak in support or opposition of this application?
25 Then this is what I'm going to do for you, we're going to

1 continue this for 30 days.

2 MR. HOLL: Okay.

3 CHAIR JORDAN: And I think you understand what we're
4 asking you for?

5 MR. HOLL: Yes, I do.

6 CHAIR JORDAN: And submit that in the record by, Mr.
7 Moy, put this in a May date, the first part of May. Not Peter
8 May --

9 ZC MEMBER MAY: I thought you meant a date when I'm here.

10 CHAIR JORDAN: Oh yes, that's correct too. Can Moy do
11 May for May?

12 MR. MOY: Well, let me talk a little bit before I give
13 you a date. We do have Mr. May sitting with the Board on April
14 the 28th, which is almost May.

15 MR. HOLL: That's fine.

16 CHAIR JORDAN: Can you have it done by then?

17 MR. HOLL: Yes.

18 CHAIR JORDAN: What's the docket like?

19 MR. MOY: The docket is consistent with the docket the
20 Board has been having.

21 CHAIR JORDAN: Oh my goodness.

22 MR. MOY: Well it's not bad. We've got, okay let me do
23 a count.

24 CHAIR JORDAN: No, no, that's all right. That's all
25 right.

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1 MR. MOY: Okay.

2 CHAIR JORDAN: We might have to move something else in
3 there, but --

4 MR. MOY: It's not bad. I'm not going to put any more
5 on it.

6 CHAIR JORDAN: Thank you. Lock it in, make a note.

7 MS. SWEEK: What's the date?

8 CHAIR JORDAN: So that will be April 28th. So the Board
9 needs to have your submission by April, what, 21st Mr. Moy?

10 MR. MOY: Yes, April 21st is a Tuesday.

11 MR. HOLL: Okay.

12 CHAIR JORDAN: But I also suggest that you continue to
13 meet with Office of Planning on a regular basis to submit
14 whatever you need, have discussion.

15 MR. HOLL: Be happy to.

16 CHAIR JORDAN: Okay? Then that would be the order in
17 this case, we'll continue it to April 28th.

18 MS. SWEEK: Do we keep our signs up until then?

19 CHAIR JORDAN: Tell me?

20 MR. MOY: Yes.

21 CHAIR JORDAN: They do? Okay, yes.

22 MR. HOLL: Okay.

23 ZC MEMBER MAY: Do we have an issue with the posting in
24 the alley, too? Is that with this case where, did you post
25 signs in the alley?

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1 MR. HOLL: Yes, we did post in the alley.

2 MS. SWEEK: Yes, we have pictures in the packet.

3 CHAIR JORDAN: Oh okay, yes, yes, yes.

4 ZC MEMBER MAY: Okay. It might have been a different
5 case then.

6 MS. SWEEK: We have a packet there that we --

7 MR. MOY: Yes, the Board has it.

8 MS. SWEEK: Okay.

9 CHAIR JORDAN: All right, thank you.

10 MR. HOLL: Thank you.

11 CHAIR JORDAN: 18944 next? Next case, Mr. Moy?

12 MR. MOY: Yes, sir. I believe that would be
13 Application number 18944 of Michael Reitz. This was
14 advertized, publicly noticed for special exception 223 relief,
15 not meeting non-conforming structure requirements, 2001.3 at
16 property 1505 Harvard Street Northwest, Square 2577 Lot 42.

17 MR. REITZ: Good morning, ladies and gentlemen of the
18 Board.

19 CHAIR JORDAN: Wait, wait. Time out.

20 MR. REITZ: I'm sorry.

21 CHAIR JORDAN: Just give us a second, okay?

22 MR. REITZ: Sure.

23 CHAIR JORDAN: Appreciate it. All right, now please
24 identify yourself?

25 MR. REITZ: Hello, yes. My name is Michael Reitz. I'm

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1 the Applicant and the owner/occupant of 1505 Harvard Street.
2 I've been living there for about 18 years, a little over. Yes,
3 and I have with me my architect.

4 MR. CRUICKSHANK: My name is Neil Cruickshank. Excuse
5 me. My name is Neil Cruickshank. I'm the architect for the
6 project.

7 CHAIR JORDAN: Okay. Are you aware you have some
8 opposition from your neighbors in regards to this? I haven't
9 seen any letters of support from any neighbors, did I?

10 MR. REITZ: No, I didn't, actually with the success
11 we've had that the ANC and the Office of Planning, there was
12 other neighbors that, friends that I could have asked to give
13 letters of support, but I didn't think it would be necessary.
14 And actually, I wasn't really expecting much opposition.

15 CHAIR JORDAN: Okay, you have seen the letters in
16 opposition submitted from two different neighbors?

17 MR. REITZ: That's correct.

18 CHAIR JORDAN: All right. So what's your statement on
19 that.

20 MR. REITZ: Yes, actually I did submit a response, and
21 I actually have color copies of that in case you hadn't had
22 a chance to review those responses. And there's some photos
23 in there that are quite helpful, you know, photos. So I would
24 be happy to provide those to you.

25 CHAIR JORDAN: Let me have it so I don't have to dig back

1 through my record. I did review it when you first submitted
2 it. Didn't we upload it?

3 MR. REITZ: Yes, we uploaded it.

4 CHAIR JORDAN: Yes, I realize that. But I thought you
5 said you have them with you. But that's okay, we can pull them
6 up. We got it. That's okay, we can pull them up. What did
7 I do with it? I know I looked at it, where is it? Thirty-three?
8 I have 34 here, okay.

9 Okay. Meanwhile, Board, if there's questions, please
10 feel free.

11 VICE CHAIR HEATH: One question about the neighbors who
12 are in opposition. Have you actually met with those neighbors
13 to present what you're doing, what the project and your ideas
14 about how you're helping them overcome their opposition?

15 MR. REITZ: No, I haven't engaged the neighbors. I would
16 like to say that the occupants of the fourth floor building,
17 my wife goes out to walk the dog, and she's actually recovering
18 from a stroke. And she's not here today because her sciatic
19 nerve is acting up.

20 But in either case, the neighbors were quite hostile to
21 her, and it was, she was very diplomatic. She's a psychiatrist
22 and understands how to handle people with issues, let's say.
23 In either case, no I didn't feel compelled to engage them.

24 And I understand these things can get personal with
25 regards to, you know, their sensitivities. But I brought up

1 very good points with regards to how their, particularly the
2 fourth floor condo building on the east side, would be
3 addressed and how that they do with the balcony and the position
4 of the balcony forward facing partially in front of the front
5 of my face of the face of our building and the other two
6 adjoining houses does give them a very much predominant view
7 of what they already have.

8 ZC MEMBER MAY: I do have a question on the renderings
9 that you provided and the drawings. It's a little hard to tell
10 how high that side wall is between your property and their
11 property where you're adding a wall there, right? Or a fence
12 or something?

13 MR. REITZ: It's a privacy wall, it's meant to provide
14 privacy for both the people that are on the porch when occupied,
15 and like I said not fully occupied throughout the course of
16 the year. But in either case, the idea was that would be about
17 four and a half feet high was what I anticipated.

18 CHAIR JORDAN: Okay, so --

19 MR. CRUICKSHANK: That wall was designed, like, about
20 four feet, four feet six high off of the existing parapet wall
21 right now.

22 ZC MEMBER MAY: Above the existing parapet wall?

23 MR. CRUICKSHANK: Correct.

24 ZC MEMBER MAY: Okay. And will the deck be flush with
25 the existing parapet wall?

1 MR. CRUICKSHANK: No, it will be set above the existing
2 roof by maybe, like, about a foot or so. So what we're going
3 to do is design the deck in such a way where it sits above the
4 existing roof, and the existing roof will not have any of the
5 deck, the new deck sitting on it. It will be sitting on the
6 walls on either side of the parapet.

7 ZC MEMBER MAY: Okay. So, I mean, the key point here
8 is to understand whether the privacy wall really is high enough
9 to be a privacy wall. So knowing that it's four and a half
10 feet above the, you know, the side wall isn't really helpful.
11 How high is it above the deck?

12 MR. CRUICKSHANK: Above the deck, it's going to be about
13 five feet plus or minus above the deck.

14 ZC MEMBER MAY: Okay.

15 MR. CRUICKSHANK: So when you're sitting, you would be
16 two or three feet below the privacy wall.

17 ZC MEMBER MAY: Right.

18 CHAIR JORDAN: How far below the privacy wall?

19 MR. CRUICKSHANK: The deck would be about approximately
20 five feet.

21 CHAIR JORDAN: Okay. All right, do you have a copy of
22 your rebuttal letter?

23 MR. REITZ: Yes, I do.

24 CHAIR JORDAN: I know I've seen it, but let's -- give
25 those to Mr. Moy, please.

1 MR. REITZ: And I actually think the last page, last
2 photo is probably the best view of the balcony, how it's in
3 front of, I think it's better with regards to the front of my
4 building versus the additional seven feet forward that the
5 condo building sits in front of the face of my building. And
6 actually, this view was taken by the neighbors, and I utilized
7 their photo.

8 CHAIR JORDAN: So the neighbors are in the apartment
9 building. The letters we've received, those are the people
10 from the apartment building?

11 MR. REITZ: Yes, they're the fourth floor occupant on
12 the east side of the building.

13 ZC MEMBER MAY: That's one of the letters we've
14 received. We received a letter also from somebody across the
15 back, right?

16 MR. REITZ: That's correct.

17 CHAIR JORDAN: Is that your bottom set of pictures
18 regarding that?

19 MR. REITZ: With regards --

20 CHAIR JORDAN: Where it has the orange looking roof or
21 something, or red looking?

22 MR. REITZ: Let's see, yes. Actually the --

23 CHAIR JORDAN: Are you looking across from your
24 property over to the --

25 MR. REITZ: Yes. They're actually not directly behind

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1 me. They're behind me and to the left.

2 CHAIR JORDAN: No, I'm talking about the one with the
3 wooden deck on top of their garage, or their wooden deck on
4 top of --

5 MR. REITZ: Actually, that orange, that red deck is not
6 the neighbor in question.

7 CHAIR JORDAN: It's the other one to the left.

8 MR. REITZ: It's the one to the left that has the deck
9 on their property.

10 CHAIR JORDAN: Okay.

11 MR. REITZ: And so to the east of that property, excuse
12 me, the west, they are obstructed by the wall, the six floors,
13 the six story condo building. And to the south, as well. So
14 they have kind of a portion of their deck that they built in
15 that area. And so essentially, their deck and my deck will
16 be at the same height.

17 CHAIR JORDAN: So what is your purpose of the second,
18 the next picture, where the residence is seven feet from the
19 Copperfield building. What was your point of that?

20 MR. REITZ: That one was, actually I didn't mean to draw
21 that blue line to the red roof. I meant to draw it further
22 to the left. And they had said that they were ten feet away,
23 and it's more like twenty feet away. And they're making this
24 --

25 CHAIR JORDAN: They're across the alley from you,

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1 right?

2 MR. REITZ: There's no really --

3 MR. CRUICKSHANK: There's no alley at the back there.

4 MR. REITZ: -- alley, per se.

5 CHAIR JORDAN: Oh, well yes. I mean, they're behind
6 you.

7 MR. REITZ: Yes, they kind of converge into the triangle
8 or the corner there. Yes, they're behind me. So they were
9 making the statement about my ugly brick wall being ten feet
10 from them.

11 And I pointed out that they also have a very nice view
12 of the very nice addition that I built with quality
13 construction with simulated grain pattern, very well done by
14 both my brother being a master tradesman carpenter just like
15 my father, as well. So he takes care in his work and I hope
16 to find a general contractor that can perform to that standard.

17 CHAIR JORDAN: Does the Board need to hear anything else
18 from the Applicant on this, at this point? Well, let's move
19 to Office of Planning and see what Ms. Elliott has for us. And
20 if there's anything that we need to come back to, we can do
21 that through the rebuttal statement from the applicant. Good
22 morning.

23 MS. ELLIOTT: Good morning. Thank you, Mr. Chairman.
24 The Office of Planning will rest on the record. We are
25 recommending approval of the special exception request. I

1 would be happy to answer any questions you have.

2 CHAIR JORDAN: Board questions of Planning? The
3 Applicant, any questions of Planning?

4 MR. REITZ: No, thank you.

5 CHAIR JORDAN: Anyone here from Department of
6 Transportation for this case? We do have a letter of no
7 objection from the Department of Transportation. Is anyone
8 here from ANC 1A? ANC 1A? We do have a letter of support from
9 ANC 1A for your application.

10 Okay. Do you have questions? No. Anyone here wish to
11 speak in support of this application? Anyone in support?
12 Anyone in opposition? Anyone in opposition? Let's turn back
13 to the Applicant and see if the Board has any additional
14 questions they would like to ask the applicant.

15 No? Then I will close the record on the evidence before
16 the Board at this point. I would move that we -- well are we
17 ready to deliberate? Any issues, discussion?

18 ZC MEMBER MAY: I think this is pretty straightforward.
19 You know, I think it's, I'm a little concerned about the, based
20 on the drawings that we received about what it's going to look
21 like given how sometimes rooftop additions don't look very
22 good.

23 But it's sort of a limitation of the tool that was used
24 to give us those renderings and I'm hoping that the Applicant
25 and their architect will do a really good job making sure that

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1 it blends in. It's certainly modest in height and overall.

2 So I think that it's, that's the only concern I have and
3 that's not really relative to the case anyway. So I think that
4 the case has been made for the relief and I'm comfortable moving
5 forward.

6 CHAIR JORDAN: Do you want to make that a motion?

7 ZC MEMBER MAY: Yes, I would move that we approve BZA
8 Case number 18944, Application of Michael Reitz. And I have
9 to --

10 CHAIR JORDAN: Wait a minute, let me second. I get to
11 say this. Second. All right, any additional discussion?
12 All those in favor of the motion, signify by saying aye.

13 (Chorus of ayes)

14 CHAIR JORDAN: Those opposed, nay? The motion
15 carries. Mr. Moy?

16 MR. MOY: Yes, sir. Staff would record the vote as four
17 to zero. This is on the motion of Mr. Peter May. Second the
18 motion, Chairman Jordan. Also in support, Vice Chairperson
19 Heath and Mr. Hinkle. No other Board members. The motion
20 carries four to zero, Mr. Chairman.

21 CHAIR JORDAN: Summary?

22 MR. MOY: Thank you.

23 CHAIR JORDAN: Thank you very much.

24 MR. REITZ: Thank you.

25 MR. CRUICKSHANK: Thank you.

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1 CHAIR JORDAN: We just did 44, right? I think, no, no,
2 no. Pepco, all right, 911?

3 MR. MOY: All right, to the table, parties to
4 Application number 18911. This is the application of Potomac
5 Electric Power Company.

6 CHAIR JORDAN: Oh, okay. Five minute break, please.
7 Come to the table.

8 (Whereupon, the above-entitled matter went off the
9 record at 11:27 p.m. and resumed at 11:29 a.m.)

10 CHAIR JORDAN: Please identify yourselves.

11 MS. SHIKER: Good morning, Chairman, Members of the
12 Board. I'm Christy Shiker with the Law Firm of Holland and
13 Knight. I have Bob Andrukaitis to my left. He is with Pepco.
14 He's the manager of special projects. We have Chris Taylor
15 who is the public affairs manager for Pepco.

16 We have Mr. Basil Allison who is the chief engineer for
17 Pepco, Dale Stewart and Harry Ross with Core, the architects.
18 We also have several other members of the Pepco staff behind
19 us. We have Chaitali Parikh who is a civil engineer with
20 Pepco.

21 We also have Dr. William Bailey from Exponent Health and
22 Environmental. He is a health scientist in the area of
23 bioelectromagnetics, and he is here to answer any questions
24 that might deal with that issue. Thank you.

25 CHAIR JORDAN: All right. I know I want to hear about

1 the parking and how this facility will operate and why you
2 believe you don't need to do 151 parking spaces. I know I read
3 in the record that you're going to have five spaces, and you
4 only have two employees come every other month. Is that
5 something?

6 MS. SHIKER: The statement provides information
7 regarding that this is an unmanned substation. There's
8 typically maintenance done twice a month at the substation.
9 And so the parking for five spaces would be more than adequate
10 to fulfill the need of, you know, two spaces twice a month,
11 one space each time. I have, Mr. Andrukaitis could talk more
12 about that operation and the types of vehicles that come to
13 the site, if you would like for him to.

14 CHAIR JORDAN: What type of vehicles come to the site?

15 MR. ANDRUKAITIS: Yes, these types of vehicles are
16 usually your standard light duty or medium duty pickup trucks,
17 passenger vehicles, smaller vehicles that would be
18 transporting any employees and also to be able to pick up any
19 trash or maintain the site, you know, externally.

20 CHAIR JORDAN: How close is this to the residents, the
21 closest residents?

22 MS. SHIKER: There are residents to the northeast of the
23 site across Q Street to the north and across First Street. So
24 across the street on either side. But primarily, it is an
25 industrial area.

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1 CHAIR JORDAN: The question was how far?

2 MS. SHIKER: Well, the right of way for First Street is
3 110 feet, so --

4 CHAIR JORDAN: It's right across the street?

5 MS. SHIKER: Right across the street, correct.
6 Correct. At the corner of First and Q Street, that would be
7 the closest one.

8 ZC MEMBER MAY: What about that one property at the
9 northwest corner?

10 MS. SHIKER: That property is currently unoccupied.
11 It is a historic landmark that's, it's known as the James Dent
12 House. It would not go back into a residential use, but there
13 are ideas for leasing or using it in some fashion for a
14 non-profit office type use.

15 ZC MEMBER MAY: Who owns it?

16 MS. SHIKER: Pepco.

17 ZC MEMBER MAY: Okay.

18 CHAIR JORDAN: So is the open space presented toward the
19 residential side of the property?

20 MS. SHIKER: That's correct. I could have the
21 architects walk you through where it is and show you where those
22 residential uses are.

23 CHAIR JORDAN: All right.

24 MS. SHIKER: Thank you.

25 MR. ROSS: So there are three public spaces, the first

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1 on First and R to the south, the second along First Street,
2 and the third to the west of the site behind the Dent House
3 on Second.

4 MS. SHIKER: Mr. Ross, can you please show where the
5 public space is closest to the residence, if you could
6 highlight that one again? Yes.

7 CHAIR JORDAN: So what's presently there?

8 MS. SHIKER: There are a variety of warehouse and
9 industrial buildings. There was a towing facility on the lot
10 that is now vacant. There is a bakery that is now vacant, as
11 well. And it was a bakery that actually baked things, not a
12 bakery that sold things. It was a, you know, an industrial
13 bakery that had trucks coming and picking things up to take
14 them to places that sold it.

15 CHAIR JORDAN: Where is your picture of your final
16 construction?

17 MS. SHIKER: Mr. Ross, can you please put up the
18 renderings?

19 CHAIR JORDAN: And what is that, what exhibit is that?
20 I mean, where is that in your --

21 MS. SHIKER: These would be in the plans that were
22 submitted with the pre-hearing submission. You might have
23 noticed that there was a significant change in the design from
24 the time the application was filed. It was a much more
25 contemporary design.

1 Pepco went through a design charrette process with
2 stakeholders in the community, the bid, the Office of Planning
3 had a variety of meetings during December and January to go
4 through what the stakeholders thought would be the appropriate
5 design.

6 This redesign is based on that input. And you can see
7 those renderings in the last five pages of the plan packet which
8 are in the exhibit. And we would be happy to walk you through
9 them if you would like for us to.

10 CHAIR JORDAN: Okay. Now let's talk about, what's the
11 health and safety issues that might be posed, proposed by this
12 or impacts that it might have on the community.

13 MS. SHIKER: I would let Mr. Andrukaitis or Mr. Taylor
14 take that up and then we can ask Dr. Bailey to come up if there
15 are specific questions. Dr. Bailey, would you like to come
16 up?

17 And we could submit Dr. Bailey's resume for the record
18 because it was not in the pre-hearing submission if you would
19 like for us to. Why don't you go ahead, Mr. Taylor?

20 MR. TAYLOR: Good morning. The ANC, our first initial
21 meeting with the ANC was November 2013. At that time, they
22 voiced concern about EMF, electromagnetic fields. At that
23 meeting, I shared information about EMF and what to expect with
24 a substation.

25 However, they did ask for an expert voice as to what EMF

1 is and what to expect as neighbors. At that time, we did ask
2 Exponent to join us in an ANC meeting in December of 2013. And
3 Dr. Bailey since then has joined the ANC on a substation tour
4 and has also attended the open houses in which we sent letters
5 to, inviting neighbors to the open house project. But Dr.
6 Bailey?

7 MS. SHIKER: If you could say a few things, please.

8 DR. BAILEY: Members of the Commission, as you just
9 heard, I have had multiple discussions with members of the
10 community about the substation and explained to them the nature
11 of the fields associated with the substation.

12 The thing to remember is that electromagnetic fields are
13 everywhere in our environment where we use electricity. So
14 this neighborhood is no different. The substation itself will
15 not be a significant source of magnetic field exposure.

16 The equipment within the substation, in order to work
17 effectively, is designed to constrain the electromagnetic
18 fields. This is recognized by an IEEE standard 1127 dated 1990
19 entitled Guide for the Design, Construction of Safe and
20 Reliable Substations for Environmental Acceptance.

21 And in that standard, they point out that the fields from
22 the equipment within the substation decline rapidly with
23 distance, and so are at background levels at the boundaries
24 of the site.

25 In this particular case, there are several facts which

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1 lead to low levels of magnetic fields. First of all, the
2 substation has been designed to be compact, and parts of it
3 are insulated. And so the field levels internally are quite
4 weak.

5 There is a setback from the boundaries of the site.
6 Since the fields diminish with distance, that leads to lower
7 levels. And so there is no expectations that the substation
8 would add to the existing background levels and the range of
9 background levels in the neighborhood.

10 We have done and been involved in research over many
11 decades on electric and magnetic fields. Questions had to be
12 raised in the 1960's about these fields. Congress in the
13 1990's instituted a research program to address questions from
14 the public about EMFs and health. The National Institute of
15 Environmental Health Sciences did not find that there were
16 health hazards associated with exposure to electromagnetic
17 fields.

18 The World Health Organization has done its own
19 investigations, and their recent conclusion on their website
20 states that based upon a recent in-depth review of the
21 scientific literature, the WHL concluded that current evidence
22 does not confirm the existence of any health consequences from
23 exposure to low level electromagnetic fields.

24 So that is the current status of research on the area.
25 And based upon the design and sighting of the substation,

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1 there's not an expectation that the substation would cause
2 levels of magnetic fields to be outside the range that exists
3 there today.

4 CHAIR JORDAN: Okay.

5 MS. SHIKER: Thank you.

6 CHAIR JORDAN: Any other questions, Board, for the
7 Applicant? Okay, let's turn now to the Office of Planning.

8 MS. VITALE: Good morning, Mr. Chair and Members of the
9 Board. Elisa Vitale with the Office of Planning. The Office
10 of Planning will rest on the record in support of the requested
11 variance and special exception relief for a new substation at
12 Buzzard Point. And I am available to answer any questions that
13 you might have. Thank you.

14 CHAIR JORDAN: Okay. Have you been in communication
15 with ANC 6D?

16 MS. VITALE: Not directly. I've seen their letters
17 that have been submitted into the record in relation to this
18 case.

19 CHAIR JORDAN: Any other questions, Board? Applicant,
20 any questions of Office of Planning?

21 MS. SHIKER: We do not, thank you.

22 CHAIR JORDAN: Department of Transportation, please.

23 MR. WESTROM: Good morning, again. Ryan Westrom with
24 DDOT. And we would also rest on the record. DDOT does not
25 have an objection to the variance sought. Thank you.

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1 CHAIR JORDAN: ANC 6D? Is anyone here from ANC 6D?
2 Kind of troubles me. I know they asked to postpone this. All
3 right. Is anyone here wishing to speak in support of this
4 application? Anyone in support? Anyone in opposition? All
5 right.

6 Let's close the record on -- well I was kind of thinking
7 maybe keep the record open for two weeks and let the ANC submit
8 a letter.

9 (Off microphone comment)

10 CHAIR JORDAN: Yes, but I need this for our file. They
11 might just so they can have them weigh in. But no, that means
12 we might have to consider it. No, they should have been here
13 I guess. All right, I guess we'll close the record based upon
14 what we already have before us. Is the Board ready to
15 deliberate in this case?

16 Okay. Anyone want to discuss it or make a motion on
17 this? You?

18 ZC MEMBER MAY: I would be happy to go. Mr. Chairman,
19 I think this is a fairly straightforward case. You know, I
20 appreciate the concerns of the ANC, and I think frankly it's
21 a marginal case to me whether if their concern is EMF, whether
22 that's really a zoning consideration at all.

23 So I think that, you know, the case has been made here.
24 I'm very, very happy that the design has been changed from what
25 was originally proposed because I think it's much more suitable

1 for the neighborhood and it's more appropriate for the nature
2 of the buildings in the surrounding. Not that I'm opposed to
3 doing something more modern and interesting, it just didn't
4 seem like it was a good fit.

5 So I think that we can proceed and I would support
6 approving this application. And if you would like, I'll go
7 ahead and make the motion.

8 CHAIR JORDAN: Well just before you do that, I'm going
9 to abstain. Just so you know, I'm going to abstain the voting.
10 I don't think I'm comfortable enough without having further
11 information from Health and Safety. I don't think I'm
12 qualified even based upon what I've heard.

13 But I also think that the ANC should have had the
14 opportunity to weigh in here, and I know it's at their peril
15 for not showing. But I just want to do that, not to stop
16 anything. I'm just going to just put that on the record. So
17 you'll make your motion, please?

18 ZC MEMBER MAY: Yes, I would move that we approve BZA
19 Case number 18911, request for relief pursuant to DCMR 11
20 Section 3103.2 and 3104.1 for area variance for the public
21 space at ground level requirement, and an area variance for
22 off street parking requirements and the special exception for
23 utility use in the Sierra District.

24 VICE CHAIR HEATH: Second.

25 CHAIR JORDAN: Motion made and second. Any further

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1 discussion? All those in favor of the motion, aye.

2 (Chorus of ayes)

3 CHAIR JORDAN: Those opposed, nay. Those abstaining?

4 Aye. The motion carries. Mr. Moy?

5 MR. MOY: Yes, I was looking at Mr. Hinkle. I didn't
6 hear his lips move. But anyways, staff would record the vote
7 as three to zero --

8 CHAIR JORDAN: Three, zero, one.

9 MR. MOY: Yes, three, zero, one. This is on the motion
10 of Mr. Peter May, seconded by Vice Chair Heath, also in support,
11 Mr. Hinkle. We have Chairman Jordan abstaining, and of
12 course, a Board seat vacant. The motion carries, sir.

13 CHAIR JORDAN: I guess that's a summary. Yes. Yes,
14 summary, okay.

15 MS. SHIKER: Thank you.

16 MR. MOY: Summary order.

17 CHAIR JORDAN: Well, you know what, hold on, before you
18 go. No, no, no. It's challengeable that we didn't postpone
19 it. Excuse me a second.

20 (Off microphone comment)

21 CHAIR JORDAN: No, this is a summary order. I think we
22 need to describe why we denied the ANC who's a standing party
23 to all proceedings, why we denied their motion to continue and
24 postpone this. I think there was sufficient information in
25 the record why we did so, but I just don't know their reaction

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1 to this, and I know they're hot and heavy on this case.

2 So I just feel more comfortable that we at least have
3 a record just in case somebody wants to hold this thing up and
4 file an appeal. But in that regard, I'm going to ask the
5 Applicant to provide an order that entails all what I just said,
6 and then submit that so then that doesn't hold anything up.
7 Okay?

8 MS. SHIKER: We will do that. Thank you very much.

9 CHAIR JORDAN: Five minutes.

10 (Whereupon, the above-entitled matter went off the
11 record at 11:48 a.m. and resumed at 11:54 a.m.)

12 CHAIR JORDAN: Mr. Moy, for the record -- oh, he's busy. I
13 want a trooper award. He's right. Mr. Moy, I want a, Mr. Moy --

14 MR. MOY: Yes, sir?

15 CHAIR JORDAN: I want it known on the record I should get
16 two Office of Zoning pins for making it in here today and almost
17 finishing these hearings.

18 MR. MOY: Oh, yes. Absolutely.

19 (Off microphone discussion)

20 CHAIR JORDAN: No, no, no. It's a sinus infection. Yes,
21 it's just crazy. All right. Last but not least, you want to call
22 the last case?

23 MR. MOY: Yes, sir. Thank you. This would be 18905 of
24 Jemal's 9th Street Gang of 3, LLC. As advertised, variance relief
25 from the FAR and off-street parking requirements, Mr. Chairman.

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1 CHAIR JORDAN: Okay. Where is Mr. -- our party in
2 opposition?

3 (Pause)

4 MR. AIT-GHEZALA: Sorry, just for the record, Barbara here
5 is not part of the party but --

6 CHAIR JORDAN: Just stay with me one second, okay? Why am
7 I not writing? Okay, what the heck? Okay. Identify yourselves
8 again for the record.

9 MR. AIT-GHEZALA: Ahmed Ait-Ghezala.

10 CHAIR JORDAN: Spell your last name for me.

11 MR. AIT-GHEZALA: A-I-T - G-H-E-Z-A-L-A. And I live within
12 the 200 foot radius.

13 CHAIR JORDAN: And you are?

14 MS. SCHAUER: My name is Barbara Schauer. My last name is
15 spelled S-C-H-A-U-E-R. And my address is 937 M Street, NW.

16 CHAIR JORDAN: And you're here for what purpose?

17 MS. SCHAUER: I am here to represent the rest of the party.
18 They asked me to speak for them.

19 CHAIR JORDAN: Rest of the party, I thought I had one letter.
20 Oh, you consolidated, didn't you? Yes. Okay. Continue.

21 MS. BATTIES: Good morning, Leila Batties with the law firm
22 of Holland and Knight on behalf of the Applicant, Jemal's 9th Street
23 Gang of 3, LLC. Mr. Chair, we have one preliminary matter.

24 CHAIR JORDAN: No. Wait, wait, wait. I'm going through
25 introductions right now.

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1 MS. BATTIES: Oh, I'm sorry.

2 CHAIR JORDAN: Okay.

3 MR. MILLSTEIN: Good morning, Paul Millstein, Douglas
4 Development Corporation.

5 MR. SPERRY: Kevin Sperry, principal with Antunovich
6 Associates.

7 CHAIR JORDAN: Do you want to try that again? The name
8 please.

9 MR. SPERRY: Kevin Sperry, S-P-E-R-R-Y, with Antunovich
10 Associates.

11 MR. ANDRES: Good morning, Chairman Jordan, Erwin Andres,
12 principal for Gorove/Slade Associates.

13 CHAIR JORDAN: Ms. Schauer, were you here when I asked for
14 parties in opposition to come forward earlier when Mr. Ghezala --
15 (Off microphone discussion)

16 CHAIR JORDAN: Yes, but I think there were two. You've
17 already consolidated. I think you have. Okay, that's good.
18 Because it was going to be consolidated. Let me ask you, is it your
19 intent to -- the consolidated party status, is it your intent to
20 present evidence here today, call witnesses? What's your intent?
21 Or do you just want to comment, voice opposition to this, or do you
22 want to cross examine witnesses?

23 MS. SCHAUER: We have written a report that addresses --

24 CHAIR JORDAN: Your issues. But I'm asking you,
25 procedurally, why you're here. Party status, there is a couple of

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1 ways that we can proceed for granting your party status, collective
2 or consolidated party status.

3 That means there is only spokesperson who is going to talk
4 for the group, okay? So you can do a -- I'm just trying to get a
5 bearing. Do you think you're going to want to cross examine
6 witnesses, or do you really want to take more time and go through
7 your statement to the Board?

8 And I'm seeing your heads nod that, yes, you want to take
9 more time. It's not your intent to cross examine witnesses. But
10 you want to have more time to explain to the Board your opposition.

11 MS. SCHAUER: Yes.

12 CHAIR JORDAN: Okay. Then that's the way we'll proceed in
13 this matter. And I take it that we're still here and we still have
14 opposition, that nothing worked out.

15 MS. SCHAUER: Correct.

16 CHAIR JORDAN: Okay.

17 MS. SCHAUER: I do have a copy of the report for each of the
18 Board members.

19 CHAIR JORDAN: I think we have it in our files, unless it
20 changed, other than what you've already filed we have it.

21 MS. SCHAUER: We have not filed anything.

22 CHAIR JORDAN: We don't have it? I thought we did. Oh, we
23 have your party status.

24 MR. AIT-GHEZALA: Yes, we didn't have a party status.

25 CHAIR JORDAN: All right. Why don't you give sufficient --

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1 MS. SCHAUER: And I also have a copy on stick that we can
2 upload if that's helpful.

3 CHAIR JORDAN: Too late for that. Let's give Mr. Moy
4 sufficient copies. He'll pass that out before you begin. It's
5 always helpful to get things in to us. And I know everybody doesn't
6 know how we proceed. But certainly it's always important to give
7 the Board, as soon as possible, any written statements and
8 documentation so the Board can review them with detail prior to
9 coming to the hearings.

10 At the hearings, things move so very fast, and it's hard to
11 sometimes digest. And, you know, this is probably what five, six,
12 eight pages. Sometimes people come in last minute with 15, 20
13 pages. And it's just hard to follow. But you can talk us through
14 your document. Ms. Batties, you had a preliminary matter?

15 MS. BATTIES: Yes, just one. The application originally
16 requested a variance from the off-street parking requirements. In
17 our pre-hearing statement, we have changed that request to a special
18 exception under Section 2020.6 of the Zoning Regulations which is
19 a parking requirement that allows for a special exception waiver
20 for maintaining the historic integrity of the structure.

21 CHAIR JORDAN: So tell me what relief -- so you've just
22 changed that to a special exception, but you're still requiring a
23 variance for the other things.

24 MS. BATTIES: Correct. It's a FAR variance and then special
25 exception for relief of the parking requirements.

1 CHAIR JORDAN: And have you submitted an amendment in the
2 record?

3 MS. BATTIES: Yes, in our pre-hearing statement or through
4 our pre-hearing statement.

5 CHAIR JORDAN: You need to formally do so in changing your
6 request to relief, so we can have that separate for the file.
7 Because the staff doesn't necessarily go through all those
8 pre-hearing statements. And they need to have a proper amendment
9 to the application for relief. It's just standard process, all
10 right?

11 MS. BATTIES: Okay.

12 CHAIR JORDAN: And I don't think there will be -- but I don't
13 know, Mr. Moy, you know, the financial aspects of amending the
14 application for relief. But that's something you're going to have
15 to deal with when you file your amended application. But that's
16 the process.

17 All right. Have you had conversation with the Office of
18 Planning since? Because the Office of Planning indicated that they
19 didn't have enough information to opine on this matter. And I don't
20 know if there's been some subsequent conversations with Ms. Elliott.
21 Have you gotten the information you need?

22 MS. ELLIOTT: Yes, we have been corresponding quite a bit
23 to fill in some of the gaps that we had for our analysis. I don't
24 know how detailed you want me to get now.

25 CHAIR JORDAN: I tell you what, I would prefer -- well, is

1 there any other preliminary matter that you said you had?

2 MS. BATTIES: No.

3 CHAIR JORDAN: I'd prefer then -- you amended your report
4 to us?

5 MS. ELLIOTT: We did not amend our report. We were still
6 working out some issues.

7 CHAIR JORDAN: I'd just like to hear your report. If that's
8 okay with you, Board, we will take that out of order so that we can
9 get an updated appraisal from Office of Planning.

10 MS. ELLIOTT: Sure. Thank you, Mr. Chairman and members of
11 the Board. So we have, as I mentioned, continued to work with the
12 Applicant to resolve some of the outstanding issues and get some
13 of the information that we would need to complete our analysis.

14 We opted to not make a recommendation, because we felt that
15 there was an argument to be made for the variance. And so we were
16 just asking for that information. We do agree that there are unique
17 qualities attributed to this property, particularly as a
18 contributing historic building.

19 The Applicant has indicated that there are varying finished
20 floors in the building that make it difficult to provide circulation
21 and access. And there are some energy efficiency issues because
22 of the openness of the building.

23 I think where we kind of differ is the degree of relief that's
24 being requested. So some of the numbers that were provided to us
25 kind of, they outline, like, what the regulations would currently

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1 allow.

2 So if the property was vacant, the project could have about
3 11,600 square feet of floor area. And minus circulation, which is
4 estimated to take 15 percent of the floor area, they would then have
5 a usable area of 9,800 square feet, roughly. In this case, they've
6 demonstrated that they would be getting 10,800 square feet of usable
7 area minus the circulation and access.

8 CHAIR JORDAN: Would you go back to the last part you said,
9 what about the 8,000?

10 MS. ELLIOTT: So part of the argument for this request is
11 that the building is inefficient. And a typical building has an
12 efficiency of 85 percent. And this one has 68 percent. So even
13 though they would be increasing the floor area by 4,000 square feet,
14 give or take, they would still have about 10,800 square feet of
15 usable floor area for this building.

16 CHAIR JORDAN: Nine thousand, eight hundred.

17 MS. ELLIOTT: Nine thousand, eight hundred if it was a brand
18 new project --

19 CHAIR JORDAN: Project, okay.

20 MS. ELLIOTT: -- built by code and conformed in every aspect.
21 In this case, they're actually gaining a little bit of floor area.
22 And so we're a little uncomfortable with that additional floor area.

23 ZC MEMBER MAY: Your calculation of the 11,600, I mean,
24 that's assuming a 2.5 FAR or a 1.5 FAR for other uses?

25 MS. ELLIOTT: That is a 2.5.

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1 ZC MEMBER MAY: That's a 2.5?

2 MS. ELLIOTT: Uh-huh, I believe. 1.5, oh, I apologize, 1.5.

3 ZC MEMBER MAY: 1.5, right. Because otherwise the math
4 didn't make sense to me. All right.

5 CHAIR JORDAN: Okay. So your concern is that you believe
6 that it's asking for too much relief in regards to -- what was I
7 going to say? Must be old age.

8 MS. ELLIOTT: Just that the --

9 CHAIR JORDAN: In regards to the FAR, you think they can get
10 along with a more reduced FAR?

11 MS. ELLIOTT: My understanding is they prepared some
12 additional information today that they're going to go over to
13 demonstrate the need for that floor area. But as it stands, we're
14 uncomfortable with the additional 1,000 square feet.

15 CHAIR JORDAN: Okay. All right. Board, additional
16 questions of Planning?

17 (No response)

18 CHAIR JORDAN: All right. So for the Applicant, we need to
19 hear from you. Well, we just need to hear from you, okay. Yes.

20 MS. BATTIES: You ready?

21 CHAIR JORDAN: Yes.

22 MS. BATTIES: Good morning. I just want to start my opening
23 remarks by indicating that we've submitted to the record a list of
24 the Applicant's community outreach efforts, a list of some proposed
25 conditions. We've submitted additional architectural drawings

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1 that will be used to support the testimony by our project team. And
2 then we've also submitted copies of a letter in support of the
3 application by Shaw Main Streets dated March 6th.

4 FEMALE PARTICIPANT: Okay, what's happening? You can't
5 really see the slide.

6

7 MS. BATTIES: That's okay. All right. So again, we're
8 here this morning seeking the Board's support of a variance to allow
9 an FAR 2.04 for commercial use of the property where the zoning
10 regulations permit --

11 CHAIR JORDAN: Wait a minute, what's going on with the
12 lights?

13 MS. BATTIES: I just --

14 CHAIR JORDAN: Oh, okay. All right.

15 MS. BATTIES: Where the zoning regulations permit an FAR of
16 1.5. And we're also seeking a special exception approval to allow
17 the reuse of the subject property without any parking spaces. The
18 subject property is located on the west side of 9th Street, NW,
19 between M and N Streets on Blagden Alley directly --

20 CHAIR JORDAN: Are we using these maps now or whatever?

21 MS. BATTIES: Just for this piece, just to show where the
22 property is to give the context. It's directly across the street
23 from the Convention Center. Do you need the lights on, Mr.
24 Chairman?

25 CHAIR JORDAN: No. I'm just trying to follow you, because

1 I know we think you're looking here and you're talking. And I don't
2 see anything going in regards to that.

3 MS. BATTIES: Yes. And you really can't see where the
4 subject property is on that map. So that's okay, we can turn on
5 the lights.

6 CHAIR JORDAN: That's okay. We can --

7 MS. BATTIES: We can raise the lights.

8 CHAIR JORDAN: We have a pointer, do we have a pointer?

9 MS. BATTIES: So it's on the west side of 9th Street between
10 M and N directly across the street from the Convention Center.
11 Again, Blagden Alley is to the rear.

12 The purpose of the application request is to allow the reuse
13 of the subject property with the mix of commercial uses, a small
14 fitness studio, a restaurant, a specialty bar and office uses.
15 Kevin Sperry, our architect, will walk through the building floor
16 plan and a location of each use during his testimony.

17 I would like to just use my opening remarks to address the
18 comments in the Office of Planning report related to the requested
19 relief. And then the project team, as we go through our testimony,
20 will discuss these elements in more detail.

21 First, as it relates to the FAR variance, the Office of
22 Planning requested that the Applicant provide further --

23 CHAIR JORDAN: We're not going to need both. If your
24 witnesses are going to talk about it, then they can do that.

25 MS. BATTIES: Okay. They're going to talk about it

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1 differently than I'm going to in my --

2 CHAIR JORDAN: Okay. All right, all right.

3 MS. BATTIES: -- my remarks. Yes. So first, as it relates
4 to the explanation on the practical difficulty generating the need
5 for the FAR variance, again, this project includes the renovation
6 and reuse of three historic structures. They're contributing
7 structures to the Shaw and Blagden Alley Naylor Court Historic
8 Districts.

9 And because of the historic character of the building, the
10 building itself, it's inherently difficult to achieve the building
11 efficiency typical for a commercial building. In fact, it's probably
12 impossible to achieve the typical building efficiency within the
13 envelope, the four walls of the building as they are.

14 So for example, if the property were vacant, and there was
15 a new commercial building developed with a matter of right FAR of
16 1.5, the building could achieve an efficiency of 85 percent.
17 However, the current plans approved for the property have only 7,258
18 square feet of usable floor area. And that is only a building
19 efficiency of 62 percent.

20 CHAIR JORDAN: Yes, but could the plans be altered in such
21 a way that they would meet within the 1.5 FAR in --

22 MS. BATTIES: Not and achieve a suitable building efficiency
23 for the commercial use of the property. So right now, we have plans
24 that approve 7,258 square feet of usable floor area generating a
25 building efficiency of 62 percent. The application before you --

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1 and let me just say that floor area, as it is now, is insufficient
2 to support the commercial uses proposed for the site.

3 CHAIR JORDAN: I understand you're claiming the
4 insufficiency. Insufficiency is the fact that you need two
5 elevators. Is that my understanding?

6 MS. BATTIES: No.

7 CHAIR JORDAN: No. Okay.

8 MS. BATTIES: The inefficient --

9 CHAIR JORDAN: Yes, got it.

10 MS. BATTIES: Inefficiency.

11 CHAIR JORDAN: Yes, got you.

12 MS. BATTIES: Not insufficiency, inefficiency.

13 CHAIR JORDAN: The problem.

14 MS. BATTIES: So by adding a ceiling to the second floor of
15 the building, the Applicant has basically proposed to increase the
16 usable floor area of the building from 7,258 square feet to 10,835
17 square feet which is sufficient to support the commercial use of
18 the building.

19 But still, even at 10,835 square feet of usable floor area,
20 the building still only generates a building efficiency of 68
21 percent. So this is substantially less than the 85 percent building
22 efficiency that can be achieved through a 1.5 FAR for a new matter
23 of right project that is typical for a commercial building. In its
24 report, the Office of Planning --

25 CHAIR JORDAN: Excuse me. Maybe I'm wrong, maybe I missed

1 it, but on the inefficiency question, why would it be inefficient?
2 What makes it inefficient?

3 MS. BATTIES: Because they're restricted by the historic
4 elements of the building. And they have to save certain elements
5 of the building, the floors are at different levels, because we're
6 combining three structures. So the floors are at different levels.
7 There are restrictions in terms of where you can place certain core
8 elements of the building.

9 And the architects can go through that in more detail. But
10 essentially, even increasing the usable floor area to 10,800 and
11 something square feet, you cannot achieve beyond a 68 percent
12 building efficiency.

13 CHAIR JORDAN: Okay.

14 MS. BATTIES: And that's inherent because of the historic
15 structures that we're renovating, or the historic nature of the
16 properties.

17 In its report, the Office of Planning also suggested that
18 the Applicant provide additional information in support of the third
19 prong of the variance test. And that is that there's no substantial
20 detriment to the public good nor the impairment of the integrity
21 of the zone plan.

22 And in his testimony, Paul will discuss how the project
23 advances the zone plan and this particular section of Blagden Alley
24 which has been reactivated with a number of commercial uses.

25 But I also direct the Board to the letter from Shaw Main

1 Streets which thoughtfully describes how the project advances the
2 goals of the neighborhood by bringing commercial uses that are
3 complimentary to the area while maintaining the historic aesthetic
4 of the subject property. The letter from Shaw Main Street also
5 notes that the proposed uses are consistent with the findings of
6 the Shaw Main Street survey of desired uses by residents and
7 businesses in the area.

8 In addition to the relief for the FAR, the Applicant seeks
9 special exception approval for relief from the parking
10 requirements. In accordance with Section 2020.6 of the Zoning
11 Regulations, the testimony by the architect and the traffic engineer
12 will demonstrate that providing off-street parking for the project
13 will result in significant difficulty in maintaining the historic
14 integrity and appearance of the historic structures on the property.

15 In its report, the Office of Planning asked that the
16 Applicant provide additional information about the occupancy or
17 capacity that is expected for each use in accordance with the
18 standard set forth in Section 2020.6. And that section relates to
19 the maximum number of persons that would be on the property at any
20 one time.

21 And in this case, the Applicant is proposing four tenants.
22 The restaurant use will have a maximum seating capacity of 141 seats.
23 The fitness studio will have a maximum of 56 occupants. The
24 specialty bar proposed has not determined its seating capacity, but
25 it will be a small operation with 10 to 20 employees. And finally,

1 the office tenant, one office tenant projects 26 employees. And
2 the other office tenant projects 14 to 20 employees.

3 CHAIR JORDAN: Let's go back over that again.

4 MS. BATTIES: Yes.

5 CHAIR JORDAN: Let's start from the top.

6 MS. BATTIES: Okay.

7 CHAIR JORDAN: So, give me one second. All right. So let's
8 talk about the number of occupants. So start from the top again.

9 MS. BATTIES: The restaurant use will have a maximum
10 capacity of 141 seats. The fitness studio will have --

11 CHAIR JORDAN: How many employees? I think it was --

12 MS. BATTIES: Twenty to 25.

13 CHAIR JORDAN: Okay.

14 MS. BATTIES: Fitness studio will have a maximum of 56
15 occupants.

16 CHAIR JORDAN: Okay.

17 MS. BATTIES: The specialty bar, they haven't determined
18 their seating capacity, but it will have approximately 10 to 20
19 employees.

20 CHAIR JORDAN: Okay.

21 MS. BATTIES: And then the two office tenants together will
22 have a total of approximately 46 employees.

23 CHAIR JORDAN: Okay.

24 MS. BATTIES: And then in terms of the timing for each use,
25 obviously the restaurant and specialty bar will operate in the

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1 evening. The fitness studio will be opened throughout the day, and
2 then the office tenants are a daytime use. So not all of these uses
3 will be operating at the same time. And the maximum occupancy for
4 each use won't occur at the same time.

5 CHAIR JORDAN: But it could.

6 MS. BATTIES: Well, the restaurant and specialty bar will
7 not be open during the daytime hours.

8 CHAIR JORDAN: Okay. But what about the evening?

9 MS. BATTIES: They'll be open during the evening when the

10

11 CHAIR JORDAN: The fitness center is going to be open?

12 MS. BATTIES: The fitness center will probably be open in
13 the early evening hours.

14 CHAIR JORDAN: Is the office limited, and they can't work
15 in the evening?

16 MS. BATTES: Is it not limited?

17 MALE PARTICIPANT: It's not limited

18 MS. BATTIES: It's not limited

19 CHAIR JORDAN: Okay. I'm just saying theoretically. I
20 just want to make sure we're all talking from the same hymn book.
21 Okay.

22 MS. BATTIES: As it relates to the community outreach, I did
23 provide the Board with a handout that outlines all of the Applicant's
24 community outreach efforts.

25 Chairman Jordan, we're well aware of your desire to have the

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1 Applicants and community stakeholders come to a meeting, reach a
2 meeting of the minds. And the Applicant takes that charge very
3 seriously. Once we learned about the petition in opposition to this
4 application, we immediately reached out to all of the persons listed
5 on that petition.

6 And this was, I will say, after obtaining unanimous support
7 by the ANC. But we reached out to every person on the petition,
8 both by certified mail as well as hand-deliveries to advise them
9 that we wanted to host a community meeting. And that dialogue
10 started in early January, January 11th, and it continued.

11 Before today, I mean, as recently as yesterday morning, Paul
12 and Andrea from Douglas Development were meeting with Ms. Schauer.
13 So we know that's very important to this process. And we took it
14 very seriously.

15 I just want to touch on a few highlights. We hosted a
16 community meeting in Blagden Alley on February 11th. And after that
17 meeting, we really did receive a lot feedback from the persons in
18 attendance, including the two people here. So we attended a meeting
19 the following week, hosted by the single-member district
20 representative for ANC-2F06. And at that meeting, we presented --
21 and that meeting was focused on Blagden Alley. And at that meeting,
22 we re-presented the project. And we --

23 CHAIR JORDAN: Excuse me, Ms. Batties, can you give me a
24 minute? I appreciate the mood, but maybe we can turn the lights
25 on.

1 MS. BATTIES: Okay. That's fine. We presented the project
2 again and specifically invited questions and comments about the
3 potential impacts of the project on the Alley. We continued to
4 reach out to the parties in opposition through the Office of
5 Planning. We forwarded them copies of our pre-hearing statement
6 which did promote further dialogue by email, both directly with me
7 as well as the developer.

8 From the discussions with the neighborhood and hearing their
9 concerns, we generated a list of proposed conditions which I have
10 submitted into the record to you today. And the conditions are as
11 follows and really, again, address the concerns that we've heard
12 from the neighbors.

13 CHAIR JORDAN: Is it the five conditions?

14 MS. BATTIES: Four.

15 CHAIR JORDAN: Four? I have transit screen, marketing
16 program -- oh, that's for TDM. You've got some other conditions.

17 MS. BATTIES: Yes.

18 CHAIR JORDAN: Oh, okay. I didn't see it. All right, is
19 this something new? Is this in the record?

20 MS. BATTIES: Yes. I just submitted that today.

21 CHAIR JORDAN: Okay. Ah, okay.

22 (Off microphone discussion)

23 MS. BATTIES: Well, 1A, B and C, so we count them as one.

24 (Off microphone discussion)

25 MS. BATTIES: Oh, I'm sorry. Well, there you go. Sorry

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1 about that typo.

2 CHAIR JORDAN: Okay.

3 MS. BATTIES: Thank you, Mr. May.

4 CHAIR JORDAN: Oh, Mr. May, I say I find it first.

5 MS. BATTIES: Yes, but you were looking at something else.

6 That doesn't count.

7 CHAIR JORDAN: No, that's right. That's true.

8 MS. BATTIES: So the first condition relates to loading on
9 the property and restrictions on the loading hours, the size of the
10 trucks and then the access for loading vehicles or loading into the
11 alley.

12 Second, the Applicant has agreed to work with ANC-2F to
13 establish a process for regularly monitoring the circulation of
14 loading operations in Blagden Alley and, to the extent necessary,
15 establish a comprehensive circulation and loading management plan
16 for the alley.

17 I should just point out that when we met with them in the
18 second meeting in February, I mean, the focus of that meeting was
19 kind of the operations of Blagden Alley and vehicular circulation
20 there. Douglas Development owns a number of properties in Blagden
21 Alley, so they're obviously a vested stakeholder in the function
22 and the efficient function of the alley.

23 The third condition is that valet parking will be available
24 for the restaurant, will be provided for the restaurant. And all
25 of the valet parking operations will take place on 9th Street instead

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1 of on the alley where there will be an entrance to the restaurant.
2 The fourth condition is that employees of the project will be
3 prohibited from parking their vehicles in Blagden Alley.

4 And finally, as requested by DDOT, the Applicant agrees to
5 provide at least six long-term covered and secure bicycle parking
6 spaces as well as ten short-term bicycle parking spaces for the
7 proposed office use on the project, on the property. So that is
8 really the conclusion of my opening.

9 CHAIR JORDAN: No, no. What about the other TDM measures?

10 MS. BATTIES: We are, yes, we're agreeable to --

11 CHAIR JORDAN: So it's in addition to the TDM, which one of
12 them is the same as these conditions. So that's four TDMs. Okay.
13 All right. So it's in addition to the TDM.

14 MS. BATTIES: Correct.

15 CHAIR JORDAN: All right. Of the 288 maximum type of
16 persons who can be on this property at one time, how many are going
17 to drive?

18 MS. BATTIES: I'll let our parking --

19 CHAIR JORDAN: I knew you were going to do that.

20 MR. ANDRES: I believe that's my question, Mr. Jordan.

21 CHAIR JORDAN: Yes. I knew it was.

22 MR. ANDRES: Well, with respect to the restaurants and the
23 fitness center, you know, let's go through the nature of those uses.
24 The restaurant is a full-service restaurant. The fitness center
25 is actually a yoga studio.

1 CHAIR JORDAN: The restaurant's lunch/dinner or dinner,
2 just dinner?

3 MR. ANDRES: Just dinner.

4 CHAIR JORDAN: Yes.

5 MR. ANDRES: The fitness center is actually not a gym but
6 just a yoga studio. So there's going to be classes with people
7 coming to and from. The specialty bar is more like a speak easy,
8 similar to the existing bar that was on 9th Street called Columbia
9 Room which closed but now is reopening itself at this location.

10 And then the office employees are employees that will come
11 from the neighborhood and take on certain work characteristics.
12 What we did is we looked at census data for journey to work
13 information for this neighborhood. And of the residents in this
14 neighborhood that commute to work, 73 percent do not drive to work
15 which is, relative to other neighborhoods that we've worked in, is
16 on the high side.

17 And what's interesting is, of the 73 percent who aren't
18 driving, 39 percent of the residents in the neighborhood actually
19 walk to work which is one of the highest walking percentages --

20 CHAIR JORDAN: Say that one more time, 73 percent do not
21 drive.

22 MR. ANDRES: Do not drive.

23 CHAIR JORDAN: And what's the second thing I missed? I'm
24 sorry.

25 MR. ANDRES: Of that 73 percent, 39 percent actually walk

1 to work. So what's telling is that a lot of the residents in this
2 neighborhood are actually choosing to move into this neighborhood
3 because they have the ability to walk to work. And based on, as
4 you know, we've worked on a lot of studies, 39 percent walking is
5 a significantly high number in the District.

6 So if we were to apply those percentages of the 46 employees,
7 if you were to apply those percentages without any TDM, you would
8 be in a range of about a quarter of those 46 employees, which is
9 ten employees, might have the opportunity to drive. However, those
10 ten employees who might have the opportunity to drive will be
11 addressed with the TDM that we're committing to.

12 In addition to that, there are also some other
13 characteristics that Mr. Millstein can talk about, the proposed
14 office tenants for the space.

15 CHAIR JORDAN: So I have about ten employees potentially can
16 drive.

17 MR. ANDRES: Yes, that's right.

18 CHAIR JORDAN: Actually 11 if we round it, right?

19 MR. ANDRES: Yes. And depending on what those shifts are,
20 you know, and again, that's with applying the existing
21 characteristics of the neighborhood, not taking into account
22 additional TDM that we're committed to employing.

23 CHAIR JORDAN: And I have six employees at the restaurant
24 driving, approximately.

25 MR. ANDRES: Approximately, but depending on what the

1 situation of those employees, typically a lot of food service
2 employees tend --

3 CHAIR JORDAN: We're dealing with statistics as best we can.
4 I mean, everybody's going to have some individual -- it might be
5 higher, might be lower, right?

6 MR. ANDRES: Absolutely.

7 CHAIR JORDAN: I mean, because this is, well, I was going
8 to say is this a science? It is, to some extent, a science. But
9 there are so many other factors and variables in it that the numbers
10 you've given us is your best guesstimate of what can happen.

11 MR. ANDRES: Oh, absolutely. And, Chairman Jordan, you
12 know, it's just been our experience that for food service compared
13 to general office, employees for food service establishments tend
14 not to drive as much as office employees.

15 And then for the fitness employees, the yoga studio is geared
16 to address the demand for this type of service in the neighborhood.
17 So the intent of that fitness studio, the reason why it's in that
18 neighborhood is because people will be walking with their yoga mats
19 to the fitness studio.

20 CHAIR JORDAN: Otherwise, we won't let them in. Let me
21 catch up with myself. I'm sorry, one second here.

22 (Pause)

23 CHAIR JORDAN: Okay. So right now I have 22 people,
24 excluding fitness, just took fitness right out, about 22 percent
25 of the people potentially that we have to look at mitigating any

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1 impact on the neighborhood.

2 MR. ANDRES: Yes. Which, I guess, if you do the math, it
3 correlates to the 21 space parking relief that we're seeking.

4 CHAIR JORDAN: Got you. Well, 11, yes, 11, 6, 16, 22.

5 Okay.

6 MR. ANDRES: So the intent of the transportation demand
7 management plan is, again, to take advantage of the existing
8 community characteristics in the neighborhood and to promote what's
9 been highly successful in this neighborhood for commuting and
10 alternative means. And in doing so, we believe that those who will
11 choose to drive will have the ability to be able to park in off-site
12 locations if they want to.

13 The fact that there is residential permanent parking in the
14 neighborhood and that there is RPP-only parking, which is consistent
15 with a lot of neighborhoods where there's a lot of competing parking
16 needs on-street, we've identified in our memo that there are some
17 off-street parking facilities available if people do decide to park.

18 And in addition to that, we've also secured a letter from
19 U Street Parking, which Ms. Bloomfield from Holland and Knight will
20 be passing out, which identifies that they actually do, for the
21 evening events at the restaurants, they do currently apply valet
22 parking in the 9th Street corridor. So for them, incorporating this
23 development would be part of what they normally do.

24 CHAIR JORDAN: Say that again.

25 MR. ANDRES: U Street Parking currently performs valet

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1 parking for Long View Gallery which is on 9th Street. They also
2 provide parking for Corduroy which is also on 9th Street. And so
3 those activities, they can actually take advantage of the resources
4 that they have.

5 And the two parking facilities that they've identified are
6 only two to three blocks away, so CityCenter Center to the south
7 which has a significant number of parking spaces, and O Street Market
8 to the north.

9 CHAIR JORDAN: Within a four block radius, what is the
10 available parking lot?

11 MR. ANDRES: Well, within CityCenter, and actually I know
12 this because we use the --

13 CHAIR JORDAN: You know, I think we kind of visited this,
14 like, yesterday, right?

15 MR. ANDRES: Yes, absolutely.

16 CHAIR JORDAN: That's one of the issues I have overall,
17 especially with Blagden Alley and the community there. I
18 understand part of their, I understand their issue, you know. These
19 things looked at singularly is okay. But when you put them
20 collectively, it's a lot of impact and a lot of -- upon a particular
21 area, as you know.

22 MR. ANDRES: Absolutely. And, Chairman Jordan, the way
23 we're looking to mitigate that impact is, given that there's a bar
24 and restaurant associated with this development, we've heard the
25 community. So that's why we're not putting the valet stations

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1 inside the alley. We're telling them, you know, keep the alley as
2 pedestrian oriented as possible.

3 And we've identified an opportunity for valet parking on 9th
4 Street so that, when you're on 9th Street, there's no need for you
5 to go park. You want to take advantage of the parking resources
6 that are there for U Street Parking. So yes, you're right, there
7 are cumulative effects. But what we're doing is we're trying to
8 manage those effects as much as we can.

9 CHAIR JORDAN: So within a four block radius, parking
10 garages, public parking garages?

11 MR. ANDRES: Yes. We can move to our -- there is
12 neighborhoods to the east and west are fairly densely residential.
13 There's the 9th Street corridor and 7th Street corridor which is
14 more commercial. Go to the -- so if you notice the site is located
15 there. There's off-street parking located to the north about two
16 blocks. And then there's --

17 CHAIR JORDAN: Off-street parking is --

18 MR. ANDRES: It's a garage.

19 CHAIR JORDAN: Okay.

20 MR. ANDRES: It's a garage. Currently the U Street Parking
21 actually uses the Cambria Suites Hotel which is --

22 CHAIR JORDAN: That's what that is?

23 MR. ANDRES: Well, it's the Market at O, there's a Giant,
24 it's a large, mixed use development.

25 CHAIR JORDAN: So that's the Giant lot, the Giant

1 underground lot?

2 MR. ANDRES: Yes. But there's one that's just designated
3 for the Cambria Suites Hotel that U Street manages. So that's where
4 we got the commitment from for the hotel parking lot that --

5 CHAIR JORDAN: I understand that you're talking about the
6 valet. I'm talking about other --

7 MR. ANDRES: Oh, yes.

8 CHAIR JORDAN: -- possible parking. Your valet is not going
9 to catch everybody.

10 MR. ANDRES: Absolutely.

11 CHAIR JORDAN: Some people are going to drive. They're
12 going to try to put their car somewhere. But if you can point them
13 to our off-street parking, et cetera, et cetera, that's what I'm
14 asking the question for.

15 MR. ANDRES: Yes. So, yes, there is -- that's the Giant
16 parking garage to the north. That also addresses some of the ground
17 floor retail that they have. And then to the south, there's a
18 significant number of parking facilities.

19 CHAIR JORDAN: How far away is that, one, two three blocks?

20 MR. ANDRES: Two to three blocks.

21 CHAIR JORDAN: All those dark spaces there are all public
22 garages.

23 MR. ANDRES: Yes. They are the blue, are all public
24 garages.

25 CHAIR JORDAN: Blue? Oh.

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1 MR. ANDRES: I'm sorry, blue on my screen.

2 CHAIR JORDAN: Okay.

3 MR. ANDRES: So the off-street parking is relatively within
4 walking, close proximity to the site with respect to walking. You
5 know, if people choose to circulate, chances are if they were to
6 find a space it would probably be that it would take them that far
7 to find one if they decided to circulate.

8 The benefit of the RPP in this neighborhood though is that
9 there is RPP only on one side of the street for many of the blocks.
10 So unlike regular RPP, which has the two hour window, the RPP-only,
11 you're not allowed to park there at any time unless you are a zone
12 resident.

13 CHAIR JORDAN: Yes. Board, any other questions in regards
14 to transportation while we're on it? You can proceed with --

15 MS. BATTIES: I've concluded my opening remarks. Next,
16 Paul Millstein will give his testimony.

17 MR. MILLSTEIN: Good morning, Paul Millstein, Douglas
18 Development Corporation. So first of all, I'm going to apologize,
19 because we try very hard to come with everybody on the same page
20 without any opposition. And we've achieved that up until today over
21 the last 25 years. So I'm disappointed we couldn't get there. But
22 we gave it our best effort. And we'll work through that.

23 Additionally to that, we really like to rest on the record
24 when we can and make these as expeditious as possible.
25 Unfortunately, this is a complicated little project. We do a lot

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1 of projects in this city and have done a lot of projects quite
2 successfully. And we do a lot of historic preservation components
3 within our developments.

4 This particular building, give or say 15,000 feet of building
5 area, is more challenging than any of ours on a pound per pound basis.
6 We've done the Hecht Company warehouse, is a half a million square
7 feet, simple compared to this, the Wonder Bread facility.

8 I think the challenge here is for us to articulate clearly
9 the uniqueness of this development and its challenges. And then
10 I think you'll understand where we're coming from. I hope we can
11 achieve that. Because I can tell you, two years into this building,
12 I still am confused when I go out there, as recently as yesterday.

13 We restored not just three historic buildings but also a
14 fourth building in the rear which was a garage structure. And we
15 didn't just keep the facades. We didn't just keep the first ten
16 feet or 15 or 20 feet, as we've done many other times. We kept the
17 entire buildings intact.

18 So on 9th Street, you know, you've got three buildings with
19 different floor elevations and different facades. You have a
20 different elevation off the alley. And when we started this
21 process, we didn't know if it would lease from the front back. We
22 didn't know if it would lease from the back to front.

23 Moreover, we don't know what the front is or the back is.
24 Because we have a lot of property on Blagden Alley that we like very
25 much. And we're attracted to that alley. And that's why we bought

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1 so much real estate in the alley. Yet 9th Street is a fantastic
2 street as well.

3 So this was a very complicated building. There are a lot
4 of challenges associated with it down to where we could put the
5 elevator. It had to be placed in the middle of the development off
6 the historic buildings at the request of the Preservation Board.
7 And that dictates flow of the building.

8 There are many things to consider here. So what I would say
9 is we try to stay within the context of the community and go with
10 the flow. This building is below the allowable height. We didn't
11 try to get every foot, every inch of this building. That's never
12 our objective. We go for quality versus quantity.

13 But we wanted something that works. We think we have a
14 little gem of a building here. This building is been somewhat of
15 an evolution, because it is so complicated. And we've gotten a lot
16 of input as we've progressed.

17 But we're trying to go with the flow of the neighborhood in
18 the right context. Our neighbors to either side are commercial.
19 Well, to one side is commercial, to one will be residential.
20 There's commercial uses all up and down 9th Street as are
21 residential. We own both, commercial and residential.

22 Again, we don't try to force anything. We try to work with
23 the ANC, which we have here, and the Blagden Alley Neighborhood
24 Association and several others to try to come up with what makes
25 sense so it'll be successful. With that, I'm going to send it to

1 the architect and take you through the intricacies of this. And
2 I appreciate your patience. I know it's very challenging to
3 understand this. Thank you.

4 MR. SPERRY: Thank you, Paul. I have to apologize in
5 advance. I kind of feel the same as Mr. Jordan. I woke up with
6 a hoarse throat this morning.

7 CHAIR JORDAN: I understand.

8 MR. SPERRY: Please bear with me. But this project, as Paul
9 mentioned, is a very unique one. Let's just go back to the approved
10 plans as they are, fronting both 9th Street and Blagden Alley. As
11 Paul mentioned, in the approved plans a majority of the space on
12 the upper floors --

13 CHAIR JORDAN: Excuse me a second. Can we have those
14 lights, please? Thank you.

15 MR. SPERRY: That's a very good idea. The majority of the
16 space on the upper levels of the project are either in circulation,
17 required for circulation or required per the HPRB's request to have
18 active uses up against the exterior facade of the existing
19 buildings.

20 So those were two things that we were up against from the
21 very beginning, like Paul mentioned. All of the floor levels of
22 the four existing structures are at different levels. In addition,
23 we wanted to make sure that each of the windows that are currently
24 there were active and there were uses behind them.

25 What that led us to is a placement of stairs that we might

1 not have otherwise selected. They are in -- that's what creates
2 some of the inefficiency that Leila was speaking to earlier.

3 So as I could quickly take you through the plans to kind of
4 introduce where we are today, I'll go to the colored plans to
5 simplify it a little bit. This is a plan, this is a series of tenant
6 plans which currently show the different uses that are proposed on
7 the project site.

8 I'll start -- in the lower left hand corner is the first floor
9 plan, this plan right here. The green is the fitness studio. It
10 takes the bulk, actually, of the existing historic structures on
11 the first level and about two-thirds of the cellar level. So when
12 you walk in along 9th Street, you can either continue in on the first
13 floor and then also go down to the cellar. That's for the fitness
14 studio.

15 The Dabney, which is the restaurant use, is colored in
16 orange. Well, it looks orange on my screen. That can be accessed
17 from either side of the building. The main entrance, as they see
18 it, it is actually on Blagden Alley side to the west. They enter
19 on the first floor along Blagden Alley. And at the first floor,
20 they don't go all the way through the building. They actually go
21 down then to the one-third of the cellar space which can also be
22 accessed along 9th Street. That's that area right there.

23 The yellow area is Columbia Room. This is the specialty bar.
24 So this tenant also enters along Blagden Alley. It goes up a
25 staircase, internal staircase, into their second floor area. So

1 the majority of their space is on the second floor facing the back
2 towards Blagden Alley. They do have one small stair here which
3 actually comes out to 9th Street. It's kind of a secondary entrance
4 for them.

5 So those three tenants all have access to 9th Street,
6 therefore, easy access for the valet parking that Erwin was
7 mentioning before. So that brings us through all the retail
8 tenants.

9 The pink commercial tenants, the remainder of the dark, I
10 guess it looks dark, purple, is the additional, what we call the
11 office use right now. So as you can see, that's pressed up against
12 the historic windows on the second floor and the third floor of the
13 one three-story historic structure along 9th Street which was a
14 requirement to us, which we support, from HPRB that all of those
15 windows remain usable and there's activity behind them instead of
16 just an open volume or nothing would happen behind them.

17 I apologize. So if we could get into the efficiency
18 discussion. Does anybody have any questions in terms of how the
19 building lays out?

20 (No audible response)

21 MR. SPERRY: Okay, thank you. Here's a quick section just
22 to explain it a little bit further. Along 9th Street on your left
23 -- I'll use the pointer actually -- this is 9th Street here on your
24 left. As you can see, there's a great difference between the
25 entrance on 9th Street and the entrance of Blagden Alley. That's

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1 one level change right in here where that white area is. There's
2 currently a ramp and a stair proposed to makeup the difference there.

3 Upstairs, there are a series of level changes that you
4 actually can't see in this historic volume of the front along 9th
5 Street. And then there's another one in the back right here
6 connecting the historic building and the new structure in the back
7 which would allow you to use the roof of the historic garage in the
8 back along Blagden Alley. So there are a total of five or six
9 required level changes that will require both stairs and ramps to
10 circulate through effectively throughout the building.

11 Next we have two efficiency studies that we did. This one
12 that I'm showing now is for the approved plans. These plans show
13 a 62 percent efficiency. So all of the areas that are hatched are
14 areas which really cannot be used for commercial use. It's what
15 we call gross area versus usable area.

16 So anything that's not hatched is a usable area. You take
17 things out like circulation, corridor space, bathrooms, things such
18 as that. And that's very typical with any commercial use in any
19 building in the country.

20 As Leila mentioned, I do a number of these projects
21 throughout the country. And we always shoot for around 85 percent
22 efficiency. And this one, based on the, as I mentioned before, the
23 location of some of the stairs to achieve the required distances
24 for vertical circulation and shared corridors for the varying
25 tenants due to the narrowness of the site, actually. And then as

1 well, with the different levels of floor heights, it just really
2 requires a lot of space that, you know, you couldn't put a desk on.
3 It couldn't really be used for a commercial purpose. It's really
4 used more for circulation.

5 So this is the approved set of plans at 62 percent. Now,
6 we have proposed set of plans which does improve to only 68 percent
7 as opposed to the 85 percent that we typically see in an office
8 building of this type, or a commercial building.

9 So you can still see here that along with the existing
10 historic buildings up along 9th Street, there's a great deal of
11 ramping and stairs that will be required to hit every single floor
12 level. And then the remainder of the space to the west is really
13 required to achieve access to all of our different vertical
14 circulation elements, be it the stair or the elevator which is placed
15 centrally.

16 I'll just speak quickly about something that Paul mentioned
17 before which was kind of the evolution of the project. At the
18 beginning of the project, as Paul mentioned, we did not have any
19 tenants onboard. It was designed as a multi-tenant building with
20 flexibility being one of the most important aspects to keep in mind
21 when we design the building. This was why we put the elevator in
22 the middle of the building where we did. We anticipated one use
23 coming --

24 CHAIR JORDAN: Let me ask, I thought the elevator was
25 required by HPRB to be in the middle, no?

1 MR. SPERRY: Well, that's actually another reason. Yes,
2 you're right. The elevator, because it would require an overhead,
3 kind of a pop-through, it would actually be visible from the street
4 if we had put it in one of the existing buildings. So we pushed
5 it back.

6 That also did make sense to us, because we were hoping to
7 use it along both sides of the building, one fronting from the alley
8 and one fronting from 9th Street. So the elevator kind of landed
9 in a spot that was, you know, really the best use for the building
10 and for the historic quality of the building.

11 The stairs then in the approved plan, as you can see, this
12 front stair went up to the third floor of this existing townhome.
13 That is the only existing townhome that goes three stories up. The
14 reason we had it there was because right next to it is a platform
15 which I mentioned before was required by HPRB to have some uses
16 behind it.

17 It's only probably a 500 square foot or less platform. And
18 that stair was there specifically so that tenants could access that
19 platform and have some sort of a use on that third floor of the
20 townhome.

21 MEMBER HINKLE: Why can't you use the rest of the third
22 floor? It looks like there's a section just south of the staircase
23 that --

24 MR. SPERRY: Yes. This area here, here where there's an X,
25 is actually open floor area. So this area here, once you got up

1 to the third floor, we just ran out of FAR. This is the approved
2 FAR plan at roughly 1.47 FAR.

3 MEMBER HINKLE: So it's just an FAR issue?

4 MR. SPERRY: That's correct, yes.

5 MEMBER HINKLE: Okay. What are the, I guess, the grid
6 sections, it looks like on the second and third floor --

7 MR. SPERRY: Right here?

8 MEMBER HINKLE: -- to the north? Yes.

9 MR. SPERRY: Those are the steel columns that are coming
10 through and supporting the building. We needed interim support for
11 the new walls. They're CMU walls that are going in the back. So
12 it's kind of a grid. And it's something that at the beginning, as
13 Paul mentioned, we thought that the future tenants would really like
14 the large open quality of the void space. And we --

15 MEMBER HINKLE: Three-story space?

16 MR. SPERRY: The three-story space, that's correct. And --

17 CHAIR JORDAN: So that's what it is?

18 MEMBER HINKLE: Apparently, yes.

19 MR. SPERRY: That's right. The structural steel was
20 required to build the building, hold the walls up, have the elevators
21 and stair access, of course, for every floor. And then we expressed
22 it architecturally, because we thought it was a feature that some
23 of the tenants that we were interested in might like.

24 As it turns out, as the tenants came through, they're more
25 interested, justifiably so, with maintaining a level of efficiency

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1 per their heating and cooling of the space. So what they actually
2 preferred instead is to cover up their space, whether it be with
3 a floor or a ceiling. They don't want to essentially have to heat
4 a large volume of space when they're not going to be using that large
5 volume of space. But back to the --

6 MEMBER HINKLE: Just to clarify it, if you could go back to
7 the previous plans. So you basically have two staircases and an
8 elevator to go to 500 square feet on the third floor?

9 MR. SPERRY: That's right. Yes, there's 500 square feet,
10 and then there's this walkway here which connects the elevator and
11 the stair together to a roof out here on the south side of the project
12 which is one of the existing townhome roofs.

13 MEMBER HINKLE: Okay. Thank you.

14 MR. SPERRY: I'm sorry, I'll flip back. This is, again, the
15 approved plan. As you can see the stair in the front is located
16 where it is to meet that platform. It was then later relocated when
17 we had the assumption to add more floor space.

18 So it was able to clear up more space on the upper levels
19 and really use those existing historic townhomes to a better
20 function and create a much more usable space which would actually
21 end up being more active to the exterior, which we thoroughly
22 support.

23 So I think, as long as everyone understands kind of the
24 complexity of the building, the uniqueness of the building, I think
25 I'll leave it here. I think this probably best describes the tenant

1 mix and the floor plans as we continue.

2 ZC MEMBER MAY: Before we leave your discussion altogether,
3 the Office of Planning had suggested that you could achieve the extra
4 FAR if you went residential for 1.0 FAR or up to 1.0. And there
5 were reasons that it couldn't be done that were explained but not
6 perhaps, well, certainly not to their satisfaction.

7 So I'm wondering if you could touch on that and particularly
8 the issues like, you know, having to have a second elevator and,
9 you know, having to enter off 9th Street and therefore accessibility
10 issues and so on. So can you talk to some of those issues?

11 MR. SPERRY: Sure. Unfortunately, I don't have an exhibit
12 showing the residential use. But I could certainly talk through
13 it. Residential use will require additional services that
14 commercial use might have, but because of the different uses,
15 primarily going back to security, they will want to have sole access
16 to and control over.

17 So for instance, an elevator, the residential use would
18 probably be up on the third floor. We would not want to share a
19 level between a commercial use and a residential use for both
20 security and then sound transmission issues, things like that.

21 ZC MEMBER MAY: So, I'm sorry, that never happens?

22 MR. SPERRY: It rarely happens.

23 ZC MEMBER MAY: Rarely?

24 MR. SPERRY: It does occasionally. Rarely, yes.

25 ZC MEMBER MAY: I mean, I thought it was actually, I mean,

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1 I wouldn't call it common, but it does happen. And you can control
2 the security on the elevators through the controls on the elevator
3 itself.

4 MR. SPERRY: That's true, you can.

5 ZC MEMBER MAY: Mr. Millstein maybe wants to chime in there.

6 MR. MILLSTEIN: Yes. So here's what I would say. And I'll
7 speak to some specifics. Could we build residential here? Yes.
8 I'm not going to stand here and say we just -- I believe we can just
9 about do anything that we put our minds to. You've got a question
10 of what makes sense.

11 So you have a couple of issues here. One is the quality of
12 the residential. And again, we want to build quality versus
13 quantity. And when you have residential that would be sharing an
14 elevator with not just office uses but bar patrons, so you'll find
15 that people are coming into their units, and unfortunately we have
16 this in many of our mixed unit developments, where there are people
17 that are in the elevator going to the bar late at night. And
18 somebody's trying to go to their unit, and they're maybe not of the
19 same mindset. And it can be very uncomfortable.

20 Can it work? Can you make it work? It can function. But
21 is it good? Is it an amenity to the neighborhood? Not only that,
22 but we have trash and deliveries that we have to get to the second
23 floor. So there's only one elevator in this building. It's a small
24 floor building. And so now you could have potentially deliveries
25 and trash going up in the elevator and somebody going up to their

1 unit. Somebody's got a bicycle, somebody's got deliveries of food,
2 or a keg or something along those lines.

3 So on these very small boutique-y projects, it becomes very
4 challenging. It absolutely could happen, but we think it would be
5 very poor quality. And I'm not so sure of the viability of the
6 residential.

7 And we posed that question openly at the ANC. Because,
8 again, I'm not going to be one to say we can't do something when
9 there is ability to do it. And the ANC unanimously said another
10 three or four residential units on top of a bar or other commercial
11 uses is not what the neighborhood really needs.

12 They had a strong preference for office users, daytime
13 business supporting the other users. And again, it became we could
14 do some great quality office use as opposed to some very poor quality
15 apartments. And that's why we're here today.

16 MS. BATTIES: And Commissioner May, may I just add one thing
17 to kind of stick to the standard of review and the practical
18 difficulty argument for one minute? Again, as Paul mentioned,
19 we're not necessarily here to seek the maximum FAR with the building
20 by providing residential on the third floor.

21 What we've tried to demonstrate, I think Kevin did a great
22 job of demonstrating, is that the additional FAR that's proposed
23 is needed to support the commercial uses that are permitted on the
24 property. And without the additional FAR, it's practically
25 difficult to achieve a commercial use on the property.

1 ZC MEMBER MAY: Yes. I got that already. I wanted the
2 residential question answered. Thank you.

3 CHAIR JORDAN: Anything else that we need hear from?
4 Go ahead, Mr. May.

5 ZC MEMBER MAY: I'm done with my questions.

6 CHAIR JORDAN: Anybody else have questions on --

7 MR. AIT-GHEZALA: I have a question. Sorry.

8 CHAIR JORDAN: No, wait one second. Can we have the lights
9 back on please? Now, I asked earlier did you guys want the
10 opportunity to cross examine. And you said no.

11 MR. AIT-GHEZALA: Well, I didn't think it was -- I thought
12 it was like pick one thing. So, I mean, we --

13 CHAIR JORDAN: Go ahead, go ahead --

14 MS. SCHAUER: It's all new information. We've never heard
15 most of this.

16 CHAIR JORDAN: Okay. Well, just one second. Board, any
17 other questions of the Applicant?

18 (No response)

19 CHAIR JORDAN: Okay. Go ahead, please. And both, excuse
20 me, both are not going to speak. Remember now, we're going to have
21 one spokesperson for the joint group. So you need to pass notes
22 or information.

23 MS. SCHAUER: Well, we'd like to both speak.

24 CHAIR JORDAN: I understand that.

25 MS. SCHAUER: It would be more efficient.

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1 CHAIR JORDAN: Ms. Schauer, that's not how we operate. I'll
2 give you some leeway, but I'm not going to have -- I'll give you
3 some leeway, and we'll see how it goes.

4 MS. SCHAUER: Okay, thank you.

5 MR. AIT-GHEZALA: Yes, thank you.

6 MS. SCHAUER: I'm going to start by just commenting that the
7 five conditions --

8 CHAIR JORDAN: No. No comments. Questions, please. Only
9 questions at this point.

10 MS. SCHAUER: Okay. Can you discuss the operation of the
11 back of the building where there will be two open decks that will
12 service both the bar and the restaurant? And can you point them
13 out?

14 MR. MILLSTEIN: I'm sorry. I'm trying to understand the
15 question.

16 CHAIR JORDAN: Repeat the question please?

17 MS. SCHAUER: Can you point to the Board the two open decks
18 on the back of the building facing Blagden Alley and how they will
19 be used? One would be used as open deck, dining for the restaurant.
20 And one will be open deck dining?

21 CHAIR JORDAN: You're asking a question?

22 MS. SCHAUER: Yes.

23 CHAIR JORDAN: What's the question?

24 MS. SCHAUER: The question is I'd like them to point to the
25 open deck dining on the back of the building.

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1 CHAIR JORDAN: Okay, point to the open deck on the back of
2 the building, please.

3 MR. MILLSTEIN: Yes, which one's the pointer button?

4 (Off microphone discussion)

5 MR. MILLSTEIN: Okay, sorry. So that deck will belong to the
6 Columbia Room. And as another point of clarification, the Columbia
7 Room is, I'm sorry, is formerly the Passenger on 7th Street owned
8 by Derek Brown. So in any event, the people in the neighborhood
9 know him well and his desire to stay. So that would be his deck.
10 And the deck to the right would be available for any second floor
11 commercial office use. Right, that's it. So those two decks there
12 will be the Columbia Room's. Right.

13 CHAIR JORDAN: So they come off the office?

14 MR. MILLSTEIN: No, I apologize. The two decks to the rear,
15 I'm just responding to the question, the two decks to the rear would
16 come off the Columbia room and access off the -- the Columbia Room's
17 on the second floor.

18 CHAIR JORDAN: What's the Columbia Room?

19 MR. MILLSTEIN: The Columbia is formerly the Passenger on
20 7th Street. It's a bar.

21 CHAIR JORDAN: Oh, you mean the bar.

22 MR. MILLSTEIN: The specialty bar.

23 CHAIR JORDAN: Okay.

24 MR. MILLSTEIN: Specialty bar. That's right.

25 CHAIR JORDAN: So they both come off the bar?

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1 MR. MILLSTEIN: That's right. Yes, sir.

2 CHAIR JORDAN: So they can have outside activities and
3 entertainment?

4 MR. MILLSTEIN: Absolutely.

5 CHAIR JORDAN: All right. Next question?

6 MS. SCHAUER: Yes. If the Columbia Room requires 20 to 25,
7 10 to 25 employees, how many customers does that typically equate
8 to? If the restaurant has 20 to 25 employees and 141 patrons, that
9 means the bar would have 70, 80?

10 MS. BATTIES: I'm sorry, we misspoke. The restaurant will
11 have 25 to 40 employees. The specialty bar would have ten to 20
12 employees.

13 CHAIR JORDAN: Wait a minute, wait, wait, wait, wait.

14 MS. BATTIES: That changes the number.

15 CHAIR JORDAN: That changes the number.

16 MS. BATTIES: It does. Sorry about that.

17 CHAIR JORDAN: Well, and I went over this with Mr. Andres
18 as I was doing these numbers and calculating here. That throws our
19 numbers -- so the bar had 20 to 40.

20 MS. BATTIES: The restaurant, the restaurant.

21 CHAIR JORDAN: The restaurant, okay. The bar is still good,
22 10 to 20. So the restaurant has 20 to 40, right?

23 MS. BATTIES: Right. I gave the capacity of the restaurant
24 based on the seating capacity which is 141, not the seats.

25 CHAIR JORDAN: So we're talking about the employees.

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1 MS. BATTIES: We're looking that information up, sorry.

2 CHAIR JORDAN: So that gives me 9.2 drivers instead of six
3 for the restaurant.

4 MS. BATTIES: Twenty-five to 40 employees for the
5 restaurant.

6 CHAIR JORDAN: Yes. That gives me 9.2 drivers.

7 MS. BATTIES: Uh-huh.

8 CHAIR JORDAN: Okay. Next question?

9 MS. SCHAUER: If the restaurant of 141 occupancy has between
10 25 and 40 employees, what would the occupancy of the bar be if it
11 has between 10 and 20 employees?

12 MS. BATTIES: They haven't determined that yet. There's
13 2,000 square feet, I believe, for the specialty bar use. But they
14 haven't --

15 (Off microphone discussion)

16 MS. BATTIES: -- 2,373 square feet.

17 MS. SCHAUER: But maybe we can assume that as a proportion.
18 It could be 75 customers.

19 MS. BATTIES: I don't know what their current operations
20 are.

21 (Off microphone discussion)

22 MS. BATTIES: Twenty seats and --

23 CHAIR JORDAN: Oh, no, no, no, no. We're not going to do
24 this.

25 MS. BATTIES: But we don't know.

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1 CHAIR JORDAN: If someone's going to testify, they're going
2 to sit here and testify so they can be on the record. Otherwise
3 you're going to have to whisper into somebody else's ear, and they're
4 going to have to put it on this record. I cannot --

5 MS. BATTIES: Okay. I'm sorry. The answer to the question
6 is we don't know. We don't know what their maximum seating capacity
7 is going to be. They haven't done a layout for that space.

8 CHAIR JORDAN: Okay, next question.

9 MS. SCHAUER: So if you have approximately 300 guests coming
10 to this building, and the main entrance is on Blagden Alley, how
11 do you expect them to get from the main streets to the main entrance
12 of the restaurant?

13 CHAIR JORDAN: Say that question one more time. If they --

14 MS. SCHAUER: The main entrance to the bar and the restaurant
15 is facing Blagden Alley, and yet they say the valet stand will be
16 on 9th Street, how will --

17 CHAIR JORDAN: I thought they were on 9th Street, the main
18 entrances to those locations were on 9th Street. Am I correct or
19 incorrect?

20 MR. MILLSTEIN: I'd say you're actually incorrect, with all
21 due respect. The main entrance to the restaurant and to the
22 specialty bar would be off Blagden Alley. It is anticipated to be
23 a pedestrian access. Right now, the existing, as the Passenger bar
24 service, we'd had no parking. Everybody walked to it. And they're
25 comfortable in the neighborhood. So they expect to use the alley,

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1 and people would walk in there.

2 We have provided valet access to 9th Street, and we have an
3 opening on 9th Street where everybody who uses the valet can actually
4 come through 9th Street and not into the alley if they choose. So
5 you have the opportunity for both.

6 CHAIR JORDAN: So there's an entrance to --

7 MR. MILLSTEIN: If they choose not to use the main entrances
8 of both the restaurant -- there is a rear entrance accessible via
9 9th Street for our valet parkers. So we anticipated that for each
10 tenant.

11 Yes, so that would be first floor, right here. So this is
12 a common entrance here. So you'd park on 9th Street in the valet.
13 And you'd come up this stair. And you could come -- we're going
14 to extend the corridor here into the Dabney Restaurant which is
15 Jeremiah Langhorne. Or you can continue up the steps to the
16 Columbia Room, or you can go downstairs to the Dabney or you can
17 go down to the exercise facility.

18 So this serves as a through-point from 9th Street into the
19 other operations. But the primary entrances are Blagden Alley for
20 the restaurant and specialty bar.

21 CHAIR JORDAN: All right. And I appreciate that. And it's
22 coming out in cross examination. But I missed it in your direct
23 examination or it wasn't said. And I think on these presentations
24 that those things are important. Next question, please?

25 MS. SCHAUER: So you're expecting that the customers to your

1 restaurant will come in on foot and walk in through the public alleys
2 on foot to get to the main entrance?

3 MR. MILLSTEIN: So as a point of clarity, there're not our
4 restaurants, obviously, they're our tenants'. And the answer is
5 yes. We have existing tenants in the alley, Rogue 24 Restaurant,
6 La Colombe Coffee. They're all operating very successfully, and
7 they all are dependent on pedestrian traffic. Yes?

8 MS. SCHAUER: Are you concerned that hundreds of people
9 walking through the alley during the nighttime into the late hours
10 was going to be a problem?

11 MR. MILLSTEIN: No.

12 CHAIR JORDAN: Next question.

13 MR. AIT-GHEZALA: I'll ask a few questions that I listed in
14 order, I think, as people spoke. So the first one is related to
15 the Shaw Main Street. What is that, exactly?

16 MS. BATTIES: It was a letter of support from Shaw Main
17 Streets.

18 MR. AIT-GHEZALA: Okay. Is anybody or any of you have been
19 ever related with Shaw Main Streets?

20 MR. MILLSTEIN: Yes. I served on the board of Shaw Main
21 Streets, probably five or six years ago.

22 MR. AIT-GHEZALA: Okay.

23 MR. MILLSTEIN: And Ms. Gourdine did as well for Douglas
24 Development.

25 MR. AIT-GHEZALA: Okay. The second question was to the

1 person who spoke to -- I forgot your name, I'm sorry -- about the
2 number of people in the office space. And I think I'm quoting. You
3 said, "The employees will come from the neighborhood", I think is
4 exactly what you said. Is that a fact? Are you picking the
5 employees?

6 MR. MILLSTEIN: I will answer that question. I can speak
7 factually. First of all, if we actually have office tenants, which
8 we're not there yet, but if we do we have leases that are pending.
9 One of the tenants is called Development Seed. They're a small
10 dot-com company, tech startup. They have about 10 to 12 employees.
11 And they've said that all their employees will walk or take a
12 bicycle. They live close or nearby the neighborhood or they'll
13 walk. And they have no parking needs. But I realize things can
14 change in the future.

15 The second tenant that would fulfill the balance of the
16 office space is a company called Street Sense, an architectural
17 firm. And they are very boutique-y, and they do high-end
18 restaurants and neat stuff. And they too have no parking demands.
19 And most of their employees will come from the neighborhood but not
20 all.

21 I will also note for the record that Jeremiah Langhorne, who
22 is a signed lease that will go forward regardless, lives in the
23 neighborhood in O Street, City Market at O, and intends to walk to
24 work, one of the reasons he sought this space out.

25 MR. AIT-GHEZALA: The question, oh, sorry. Okay the third

1 question I have was is it true, just so I understand, the currently
2 approved plans have 62 percent efficiency. Is that correct?

3 MR. SPERRY: Yes, that's correct.

4 MR. AIT-GHEZALA: And is it true that you never, ever raised
5 that as a problem before the request for this variance?

6 MR. SPERRY: That's correct, yes.

7 MR. AIT-GHEZALA: Okay.

8 CHAIR JORDAN: Okay. All right, so now let's hear from the
9 Office of Planning. I think we did, but we can hear again, if --
10 anything in addition in light of what we've already talked about?

11 MS. ELLIOTT: I'm not sure that I have too much to add. I
12 mean, I think in general we are supportive of this project. We're
13 supportive of, you know, rehabilitating historic or contributing
14 structures, in this case, in historic districts. And we think that
15 this overall is an exciting project.

16 I think the Applicant has addressed most of the issues that
17 were brought up in our report. And I think where we are just a little
18 bit concerned is with the degree of FAR relief. But I'll leave it
19 at that and be happy to answer any questions.

20 CHAIR JORDAN: Any questions for Planning?

21 MR. AIT-GHEZALA: Yes. Oh --

22 CHAIR JORDAN: I'm sorry. Board, any questions for
23 Planning?

24 ZC MEMBER MAY: Yes. I have a question. So, you know, I
25 appreciate where you have some anxiety. We heard some testimony

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1 today with regard to the issues that have been raised in your report
2 and an explanation of why they think the extra FAR is necessary.

3 And I'm wondering if that has swayed your opinion at all?

4 MS. ELLIOTT: Well, I do understand that there is a need for
5 additional FAR. And we are supportive of that to a degree. I think
6 the issue that we have is what's on the table is actually more usable,
7 that yields more usable space than what a by right project would.

8 ZC MEMBER MAY: Right. So I guess one of the arguments that
9 I heard was that, in essence, you need to have more actual yield
10 of space in order to deal with a building of less efficiency. So
11 when you're getting down to 60 or 70 percent efficiency it's more
12 costly, in essence, to build and to operate. But, you know, the
13 extra ten, sorry, the extra 1,000 square feet is still just a little
14 bit too much or it's arguable?

15 MS. ELLIOTT: I suppose that that's arguable. You know, we
16 try to evaluate this construction based on what would be permitted
17 by right. And I think that we're just a little hesitant to let this
18 go beyond what's permitted by right. And I do understand the
19 arguments regarding circulation. I think that that's why we're
20 supportive of the FAR variance in general. But we're just not sure
21 that it's enough to make up for the 1,000 additional square feet.

22 ZC MEMBER MAY: Okay, thank you.

23 CHAIR JORDAN: So let me ask you. So what's the
24 alternative? What would be their alternative?

25 MS. ELLIOTT: Well, they have expressed the desire to close

1 in the -- to create the ceiling above the second floor and close
2 in the space, right. And that would create a more energy efficient
3 building. Perhaps there's a way to not utilize all of the third
4 floor space or, you know, allocate it to residential which would
5 be permitted. So there are a couple of alternatives, albeit --

6 CHAIR JORDAN: Excuse me just a second. The difficulties,
7 as I think we just went through about why we can't do residential
8 or why residential is not a good alternative.

9 MS. ELLIOTT: Sure. I think the Applicant has made some
10 good points regarding the residential use and how it's difficult
11 to accommodate in this structure.

12 CHAIR JORDAN: Any other questions.

13 (Off microphone discussion)

14 CHAIR JORDAN: And let me ask you, Ms. Elliott, let me ask
15 you what's the, what do you call it, the scale, where does that scale
16 come from between I'm okay, but I'm not okay with 1,000. I'm okay,
17 what's that scale? What is that?

18 MS. ELLIOTT: I know. It seems small.

19 CHAIR JORDAN: But I want to know where the, you know, if
20 I'm on this side, it's too much. If I'm right here, I'm okay. I
21 didn't know.

22 MS. ELLIOTT: It's based on the calculations of what a by
23 right project would achieve.

24 CHAIR JORDAN: Okay, a 980?

25 MS. ELLIOTT: Well, anything --

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1 CHAIR JORDAN: You understand what I mean.

2 MS. ELLIOTT: I understand what you mean. I mean, because
3 1,000 square feet, it's not a lot, maybe we're splitting hairs. But
4 it's, you know, still an issue that we thought worthy of bringing
5 up.

6 CHAIR JORDAN: All right. And, Board, any other questions?

7 (No response)

8 CHAIR JORDAN: Okay. Applicant, any questions for Office
9 of Planning?

10 MS. BATTIES: Do you agree that the fact that even though
11 we are 1,000 square feet above a matter of right project, we are
12 still more than -- we're 13 percent below the typical building
13 efficiency for a non-residential project.

14 MS. ELLIOTT: I do agree with that.

15 MS. BATTIES: Okay, thank you. No further questions.

16 CHAIR JORDAN: Opposition?

17 MR. AIT-GHEZALA: So you said that you do understand the need
18 for more FAR? Is that correct?

19 MS. ELLIOTT: Yes.

20 MR. AIT-GHEZALA: Now, my understanding is that this 62
21 percent was known at the previous -- when the original plans were
22 approved. Is that correct?

23 MS. ELLIOTT: The Applicant has testified that that was
24 correct.

25 MR. AIT-GHEZALA: Okay. So why was this never, ever raised

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1 as an issue?

2 CHAIR JORDAN: I don't think Office of Planning can answer
3 that question. That's a question that the Applicant was supposed
4 to raise. It's not an Office of Planning question. They didn't
5 propose the plans. The Office of Planning didn't propose the plans.
6 The Applicant proposes the plan.

7 MR. AIT-GHEZALA: Okay. Oh, I'm sorry.

8 CHAIR JORDAN: Unless the Office of Planning proposed plans
9 I didn't know about and they can respond to that question. Do you
10 want to --

11 MR. AIT-GHEZALA: Let me ask --

12 CHAIR JORDAN: No, let me finish, yes.

13 MS. ELLIOTT: We did not propose these plans.

14 CHAIR JORDAN: And you wouldn't have that answer to that
15 question?

16 MS. ELLIOTT: No. This project was not -- it was reviewed
17 by Historic Preservation for the exterior modifications but not for
18 any relief that would have been required. So we didn't actually
19 see anything until it had been formally submitted to the Office of
20 Zoning.

21 CHAIR JORDAN: All right. Do you have another question?

22 MS. SCHAUER: I have a question.

23 CHAIR JORDAN: Go ahead. I'm telling you, this going back
24 and forth with you it's not the way we normally proceed. So it kind
25 of throws us off. Go ahead and ask your question.

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1 MS. SCHAUER: I have a question in terms of the increase in
2 the FAR. Does it seem, from the perspective of the Office of
3 Planning, does an increase of 41 percent over the approved FAR and
4 38 percent above the allowable in the C-2-A zone, does that seem
5 reasonable from the Office of Planning perspective?

6 MS. ELLIOTT: Well, the first thing that I'm not too sure
7 of are your calculations. Because in our report, I think we noted
8 that the proposed FAR would constitute 26 percent of the total. So
9 the total increase of 4,000 what-have-you square feet, that's about
10 26 percent of the total floor area, if I remember correctly from
11 my report. So I'm not sure about the numbers that you've --

12 MS. SCHAUER: The numbers I used were the numbers that were
13 allowable by FAR. I didn't use the totals.

14 MS. ELLIOTT: Okay.

15 MS. SCHAUER: A smaller number that was allowable in the FAR
16 calculation, so I used those.

17 MS. ELLIOTT: Okay. And, I'm sorry, would you mind
18 repeating the actual?

19 MS. SCHAUER: My calculation showed a 41 percent increase
20 over the approved FAR, which is 1.47, and a 38 percent increase above
21 the allowable, which is 1.5 in the C-2-A zone.

22 MS. ELLIOTT: And you want to know --

23 MS. SCHAUER: If that seems like a reasonable number to the
24 Office of Planning.

25 MS. ELLIOTT: I think that we have clearly noted the issues

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1 that we do have with the proposed FAR. What is proposed is still
2 within the limits of the C-2-A district, granted there is a different
3 mix of residential and non-residential in the allowable 2.5.

4 But what's being proposed isn't going beyond that 2.5. And
5 from what we have reviewed, what is being added is intended to
6 provide egress in circulation for the building. So we do believe
7 that, for the most part, it is a necessary addition.

8 CHAIR JORDAN: So you believe that it's within reason, is
9 what's your response?

10 MS. ELLIOTT: Yes.

11 CHAIR JORDAN: Okay.

12 MS. SCHAUER: Can you clarify the difference between the
13 allowable FAR in the C-2-A zone, the C-3-A zone, in terms of the
14 commercial complainant?

15 MS. ELLIOTT: I don't have the zoning regulations memorized.
16 I apologize.

17 CHAIR JORDAN: What was the question again?

18 MS. SCHAUER: Well, Ms. Elliott said that, in the C-2-A zone,
19 the 2.07 FAR was within the regulation. But from my reading, the
20 C-3-A zone has a commercial maximum of 2.5, and the C-2-C zone has
21 a maximum of 2.0. And the C-3-A has a maximum of 1.5 for commercial.

22 CHAIR JORDAN: And your question was?

23 MS. SCHAUER: Ms. Elliott said that the 2.07 is within the
24 allowable FAR for that zone. But is that true?

25 MS. ELLIOTT: So the C-2-A district allows for a maximum

1 FAR of 2.5. But 1.5 is for residential. I'm sorry, 1.5 is for
2 non-residential and then one is for residential uses.

3 MS. SCHAUER: Yes. And the commercial uses increase for
4 C-B-A and C-3-A.

5 MS. ELLIOTT: In general, yes. I don't know --

6 MS. SCHAUER: And 2.5 --

7 CHAIR JORDAN: The relevance of that question is what?
8 I understand the clarification of what the present zoning is.

9 MS. SCHAUER: What we see is that the density would be 2.07
10 in terms of the FAR which is in line with a -- which is above a C-2-C
11 zone.

12 CHAIR JORDAN: Yes, but they're here. What's before us is
13 the relief to go beyond the FAR that's allowed in the present zone.
14 Any other questions from the Opponents?

15 (No response)

16 CHAIR JORDAN: Okay. Now, I'm lost. Where am I? Oh,
17 Department of Transportation?

18 MR. WESTROM: Good afternoon now. Ryan Westrom with DDOT.
19 And there's obviously a lot of issues that have been raised here.
20 And I'm not sure what the most appropriate way to walk through them
21 is. I think that cutting to the chase is perhaps helpful.

22 Overall, DDOT does not object to the variance being sought.
23 Obviously the one that's more closely pertinent to transportation
24 operations is the parking variance. And for several of the reasons
25 that have already been discussed, we don't object, with the

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1 conditions that we stated within our report and the conditions that
2 were added. And within the added proposed conditions there are a
3 couple elements that I would like to discuss at the appropriate time.
4 And we can do that now or later on.

5 CHAIR JORDAN: It's always appropriate when it's DDOT. We
6 may not have any other time.

7 MR. WESTROM: Sounds great. So I have a question about
8 1(c). You talk about restricting loading so that entrance is to
9 Blagden Alley only from N Street. I'm curious as to why that is
10 the case and why that is being proposed.

11 MR. ANDRES: We had, as part of our analysis of the truck
12 sizes for this development, we identified that N Street provides
13 better turning radiiuses for the SU-30, which are your 30 foot trucks,
14 to and from the alley. So that's why we identified N Street as an
15 opportunity to do that.

16 MR. WESTROM: Does M Street not work?

17 MR. ANDRES: It's tighter.

18 MR. WESTROM: Agreed, but it works, correct?

19 MR. ANDRES: Yes, it works. But we wanted to be able to
20 allow for the trucks to have the flexibility to turn in and out of
21 N Street.

22 MR. WESTROM: Agreed. I guess we would perhaps suggest
23 striking that particular condition. I think that it would perhaps
24 be of greater use for the trucks to have the flexibility to come
25 in wherever they see best fit and where it can work and give them

1 that flexibility. I just wanted to make sure there wasn't anything

2 --

3 CHAIR JORDAN: What do you mean by that?

4 MR. WESTROM: Because if they can only come in from N Street,
5 all loading operations have to be via Blagden and N. It perhaps
6 would be more useful to disperse those operations across the other
7 alley ingress and egress points.

8 MR. ANDRES: Well, the intent is for this project to be
9 limited to Blagden and N. For all of the other uses, you know, this
10 loading management plan doesn't control those uses.

11 MR. WESTROM: I understand. I mean, I guess I'm not
12 inherently opposed --

13 MR. ANDRES: But we're happy --

14 MR. WESTROM: -- but I didn't see the need to differentiate
15 this project from all of the others.

16 MR. ANDRES: Oh.

17 MR. WESTROM: So that's that. And then on Item Number 4,
18 in terms of the bicycle parking, the greatest hesitation that we
19 did have with this particular proposal was the lack of bike
20 accommodations that came forward from the Applicant. I think that
21 we are very pleased to see that they're, I think, in essence,
22 agreeing.

23 I just wanted to clarify. So the key with long-term is that
24 they have to be both secure and covered. The ones that we initially
25 saw submitted were in the courtyard and, as best I could tell, were

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1 uncovered and thus would not count as long-term spots. So we're
2 looking to see six long-term. They can be outside the building if
3 they're secure and covered. Or they can be inside the building.
4 That's fantastic.

5

6 For the short-term spaces, we are looking for those to be
7 publicly accessible. So these would be such that, especially when
8 we see a use such as a yoga studio or a gym type of thing, people
9 do tend to bike to those things. And we have experience with other
10 projects where there are gym-type uses. And there's just not enough
11 space for bikes, since we want to make sure those are publicly
12 accessible.

13 So I would amend that to note that it's not just for the
14 proposed office uses, it's for any uses, and to make sure that it
15 notes that it's publicly accessible short-term bike spaces.

16 CHAIR JORDAN: That's Number 5?

17 MR. WESTROM: This is number, yes, Number 5.

18 CHAIR JORDAN: Where does it say office?

19 MR. WESTROM: Right after short-term. It says for the
20 proposed office uses.

21 CHAIR JORDAN: Oh, I got you. Yes.

22 MR. WESTROM: I would strike that clause.

23 CHAIR JORDAN: For use of the property.

24 MR. WESTROM: Exactly. And that the short-term spaces
25 would be publicly accessible.

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1 CHAIR JORDAN: Now, you also had in your report that you
2 didn't believe that valet parking was a TDM measure. What did you
3 mean --

4 MR. WESTROM: I can clarify, absolutely. So the purpose of
5 a TDM measure is to limit automobile travel. I think an argument
6 could be made that by allowing valet parking you're actually
7 encouraging auto use.

8 However, albeit it is not a TDM measure, in terms of the
9 purpose of reducing parking on streets it could be effective.
10 That's not a TDM measure, but in terms of mitigation for parking,
11 which is the variance sought here, it could be an effective
12 mitigation.

13 CHAIR JORDAN: Got you.

14 MR. WESTROM: I would also note that the valet parking has
15 not been approved. That would be part of the public space
16 permitting process. The Public Space Committee would need to
17 approve any valet service that is proposed at this site. And until
18 such time as that is, of course, we can't consider it done.

19 CHAIR JORDAN: Yes. Board questions of Transportation?

20 (No response)

21 CHAIR JORDAN: So you think that the proposed TDM plus would
22 be adequate to handle -- where am I now -- 25 people driving?

23 MR. WESTROM: Obviously, the variance that's sought, over
24 20 parking spaces --

25 CHAIR JORDAN: Wait, potential of 25 people driving.

1 MR. WESTROM: Exactly. And it's substantial. And that's
2 what we looked at. And the initial TDM measures perhaps were
3 slightly lacking. And that's why we really came back with bikes.

4 So providing bike parking at this level would be past what
5 would be required, even in the new zoning code. But I think that
6 that is important, to mitigate the effects of this level of variance
7 being sought.

8 I think that with the agreement to that condition, and with
9 the TDM measures already proposed and with the added conditions,
10 that they do provide an appropriate level of mitigation to support
11 this variance. And that's exactly where we landed.

12 CHAIR JORDAN: And what about a consideration for any smart
13 cards for the employees at your offices or something? Have you
14 thought about that? Does that enhance, or what do you think?

15 MR. WESTROM: Yes. I mean, we talked through that.
16 Typically smart cards, you know, do they actually increase the use
17 of metro or not? That's something that we even debate internally
18 within the office. And we want to provide the most effective TDM
19 measures that make sense.

20 In this case, there's really not a lot of office tenants.
21 And I think that the Applicant's already made the point that we
22 thought of as that a lot of these perhaps are walking, certainly
23 if there's going to be some transit trips. But we wanted to direct
24 things at what we felt was most appropriate.

25 There is a transit screen proposed in the lobby, the

1 placement of which I'm not exactly sure. But that would work
2 towards that measure. And so we felt it was appropriate. And we
3 thought about asking for various other things. And we chose to land
4 where we did.

5 CHAIR JORDAN: Any other questions for Transportation,
6 Board? Applicant questions, Transportation? Opponents?

7 MS. SCHAUER: I have a question.

8 CHAIR JORDAN: Sure.

9 MS. SCHAUER: Did DDOT review the use of the alley for the
10 predominant access to the restaurants? There will be hundreds of
11 people entering and exiting the alley. There are no sidewalks, no
12 lights, no signs, truck traffic, car traffic. Can you imagine
13 trucks coming and going, people on foot, this is happening at night?

14 CHAIR JORDAN: Wait, wait, wait, wait, wait. We're
15 compounding a question. Your first question was -- what is your
16 question?

17 MS. SCHAUER: Question is did DDOT anticipate the use of
18 these public roadways as --

19 CHAIR JORDAN: That includes the --

20 MS. SCHAUER: -- combination sidewalks for access to the
21 restaurant by hundreds of people.

22 MR. WESTROM: Yes. We certainly considered that as part of
23 our considerations. So we had dialogue with both the Applicant and
24 as well, I would note, that we had dialogue with the Opposition here
25 in order to kind of work through several of the elements in the

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1 comprehensive transportation review.

2 And I think that one of the main considerations is the
3 agreement here to the loading hours in the conditions that are noted
4 here. So 1-A talks about loading hours from 7:30 a.m. to 4:00 p.m.
5 I suspect that the restaurant opening time is after that. So we
6 don't have competing uses. We have complimentary uses.

7 And so again, it's worth noting that a lot of the people who
8 are going to these particular establishments will be making their
9 trips and traveling not during the rush hours. And so one of the
10 key things when you're looking at transportation analysis is where
11 is the peak load on the transportation network.

12 Here, we have uses that tend to not be coinciding with the
13 peak. And it's a similar situation when you're dealing with
14 potentially conflicting uses if they're happening at the same time.
15 But they've agreed to a condition where they're precluding loading
16 occurring at the same time as restaurant-goers are there.

17 MS. SCHAUER: Well, according to the ABRA application, --

18 CHAIR JORDAN: Are you asking a question?

19 MS. SCHAUER: Yes.

20 CHAIR JORDAN: Okay.

21 MS. SCHAUER: According to the ABRA application that's been
22 posted, the restaurant will open in the morning.

23 CHAIR JORDAN: And your question is?

24 MS. SCHAUER: So there will be activity during the day.

25 CHAIR JORDAN: No, you're not asking a question. You just

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1 made a statement.

2 MS. SCHAUER: Yes. There'll be activity all day. It's not
3 just beginning at 4 o'clock.

4 CHAIR JORDAN: Do you have another question?

5 MS. SCHAUER: No.

6 MR. AIT-GHEZALA: I suppose a question there would be does
7 that affect the complimentary nature that you discussed earlier
8 between traffic of, you know, loading and unloading trucks and
9 people traveling there for the use of the restaurant.

10 MR. WESTROM: Exactly. So that's very fair. We would
11 expect any commercial, retail, residential operation where loading
12 and unloading is going to occur to have loading management plan such
13 that they would be able to present to us a plan for managing the
14 loading that will happen. And that should address, of course, any
15 conflicts.

16 I was not aware that the restaurant was going to be open for
17 lunch. I believe that the testimony that was stated earlier today
18 was that it was dinner only. For the Applicant, I will leave that
19 for them to clarify. But if there were competing uses in the same
20 hours, a loading management plan should address that.

21 And there are ways to address that. There are loading
22 management plans that have been done for restaurants that are open
23 throughout the day. Obviously, these are unique situations. Any
24 loading management plan is tailored to the situation. And we would
25 expect them to come forward.

1 And this will be part of the public space permitting process
2 as well, consideration for the loading processes that occur on the
3 site. With the information that we have at hand, I can simply say
4 that we are satisfied with the plan that they have proposed.

5 CHAIR JORDAN: Let me ask a question. And here's the
6 concern that I have. It's not necessarily about this project, but
7 it's about this project and the project we approved last week. And
8 there was probably one two weeks before that. And then what's going
9 to come up next?

10 Does the Department of Transportation take all these
11 projects, lump them on and say, okay, this mitigates this, but what's
12 the effect upon the other relief that we gave? And then what's
13 happening next in the neighborhood and how much capacity can this
14 neighborhood take, even with the world's best mitigation plan?

15 MR. WESTROM: Yes. And you've raised that before. And I
16 agree, that's a very fair consideration. We don't have a specific
17 methodology where we would aggregate together all recent
18 developments. Obviously, any new development that comes online we
19 expect them to, for instance, complete a parking utilization study
20 to understand what the current parking utilization is.

21 In this situation, there are an ample number of parking
22 garages. I mean, I think that we're all aware of the extent to which
23 the CityCenter development is parked. And as such, we would not
24 anticipate great difficulties with the restaurant operations,
25 especially with, you know, the operation as has been cited.

1 But throughout the city, of course, there are places where
2 parking is more constricted and less constricted. But I think we
3 can only react to developments as they come in the context in which
4 they come.

5 CHAIR JORDAN: Have we ever restricted employees, in any
6 project, restricted employees -- I can't say not driving, I don't
7 know how you'd manage it or supervise it, but just thinking out loud?

8 MR. WESTROM: No, I understand. No, I don't recall any sort
9 of restriction like that. I suppose anything is within the realm
10 of possibility. But I think that would be a difficult one to
11 enforce. And, you know, as we note in some other conditions that
12 come up, TDM measures that are outside of the realm of enforceability
13 of the District are sometimes not appropriate.

14 CHAIR JORDAN: You know, for instance, in my neighborhood
15 there are some office buildings and things three or four streets
16 away. And everybody parks and they hike their way, you know, past
17 the RPPs and the other stuff. And they hike all the way over and
18 they cross back through.

19 And you know what they're doing. And they do it every day.
20 And everyone in the neighborhood goes, oh my God, here we go again,
21 you know. So I'm just trying to deal with that. And I'm concerned
22 about this particular location, not necessarily because of this
23 project but overall, the impact in which we've been hitting this
24 the past two or three or weeks. It's a hot area. Seems like
25 everybody wants to be there. So, okay, maybe that's for a whole

1 other conversation.

2 (Off microphone discussion)

3 MR. AIT-GHEZALA: Oh, just to follow-up.

4 CHAIR JORDAN: Do you have a question?

5 MR. AIT-GHEZALA: I do, I do. You mentioned the --

6 CHAIR JORDAN: Last one, please, because --

7 MR. AIT-GHEZALA: You mentioned the CityCenter parking,
8 right? Is this the one that's south of the site where the, so like
9 where they have expensive shops?

10 MR. WESTROM: Yes.

11 MR. AIT-GHEZALA: Where is the entrance to that parking?
12 Because it's a huge area. It's like a four block area, right?

13 MR. WESTROM: Off the top of my head, I'll defer to Mr.
14 Andres. I'm picturing the street corner in my mind. I don't know
15 the numbers.

16 CHAIR JORDAN: So what was the question?

17 MR. AIT-GHEZALA: The CityCenter parking which was referred
18 to as a possible parking spot.

19 CHAIR JORDAN: Yes. What is your question?

20 MR. AIT-GHEZALA: My question was where the entrance to that
21 parking lot was. Because that's basically --

22 CHAIR JORDAN: Where's the entrance, do you know?

23 MR. ANDRES: The entrance is on 9th, there's two entrances,
24 one on 9th on the east side and 11th on the west.

25 CHAIR JORDAN: Okay. All right. Where was I? We asked

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1 Transportation, Applicant asked questions, cross examined, where
2 are we now? We're at the ANC. Okay. I'm a little slow today.
3 What ANC is it? ANC-2F. Anyone here from ANC-2F?

4 (No response)

5 CHAIR JORDAN: We have a letter from ANC-2F that generally
6 supports the relief, right? No. They support the relief. They
7 support the relief. All right. Does anyone here wish to testify
8 in support, anyone in support?

9 (No response)

10 CHAIR JORDAN: All right. Now let's turn to the Opposition.

11 MS. SCHAUER: One thing that we'd like to note about the ANC
12 approval is that the ANC approved 14 parking spaces, a variance.
13 And then later on, the Applicant came back and mentioned that there
14 was a mistake. It was 21. So the ANC actually voted on a variance
15 for 14 spaces.

16 CHAIR JORDAN: Got it.

17 MS. SCHAUER: Not 21 spaces.

18 CHAIR JORDAN: Okay.

19 MR. AIT-GHEZALA: I can start?

20 CHAIR JORDAN: Yes.

21 MR. AIT-GHEZALA: So hello, everybody, again. So I'd like
22 to say that --

23 CHAIR JORDAN: Excuse me, one second. Put 15 minutes on the
24 clock please.

25 MR. AIT-GHEZALA: I only have 15 minutes?

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1 CHAIR JORDAN: We're going to start with 15. Go ahead.

2 MR. AIT-GHEZALA: Okay.

3 CHAIR JORDAN: Are you going to take 15 minutes yourself?

4 MR. AIT-GHEZALA: I'll take longer than 15 minutes. I
5 wanted to, as you said, walk through this document.

6 CHAIR JORDAN: Let's see where you're going. As long as we
7 stay relevant, then we're okay.

8 MR. AIT-GHEZALA: Yes, okay. So just to summarize at the
9 beginning, I'd like to say that, you know, we met with the Applicant.
10 We've emailed him our questions, we've spoken to DDOT. We visited
11 the site. We read the relevant case law and have read all the
12 documents that have been submitted by the Applicant in great detail.

13 And overall, we just find that the request for variance isn't
14 supported by the regulation. So they're requesting a 38 percent
15 increase above the allowable C-2-A zoning. The Applicant's current
16 project was reviewed and approved as a matter of right development
17 and confirms the regulation of C-2-A zoning with FAR 1.47.

18 In meeting with us on February 19th, the Applicant stated
19 that the currently approved and nearly complete project would lease
20 to, as they described, one restaurant, one bar and a gym. And what
21 happened was the tenants who are coming in didn't want the high
22 ceilings.

23 Now, the Applicant had actually mentioned before that the
24 way Douglas does development is that they don't necessarily find
25 the tenants. They do the beforehand. So they'll do the

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1 development, and then they'll find tenants.

2 And so in this case, they found tenants late last year,
3 according to the news reports that I read. But there were three
4 options available to the Applicant. The first one is keep the
5 current master building, create a false ceiling in the interior
6 second level at the height desired by the incoming tenants, so
7 basically create a false ceiling to the height that was desired by
8 them.

9 The second one is change the design of the in-progress
10 project, lower the second floor ceiling, build a second third floor
11 addition, which would create more space, and use it for residential
12 use. And this would be matter of right, so they can do this without
13 any variance request.

14 And the third option, the first one has been approved, the
15 second one is matter of right, and the third option --

16 CHAIR JORDAN: So it's okay with you to have increased
17 residents and a higher FAR regarding a residential use? Would that
18 be okay by you?

19 MR. AIT-GHEZALA: Sorry?

20 CHAIR JORDAN: You wouldn't have a problem if it was
21 residential use as opposed to office and retail?

22 MR. AIT-GHEZALA: I don't have a problem with the Applicant
23 doing what they have a right to do. I just don't think that they
24 should go beyond their right.

25 CHAIR JORDAN: So even though we would go, I believe it's

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1 2.0 in the FAR in residential, you don't have a concern about that?

2 MR. AIT-GHEZALA: It's their right. I have no concern with
3 their right, really. I'm being completely honest. It's their
4 right, I mean, there's nothing we can do. So if somebody has --

5 CHAIR JORDAN: That's not -- there's nothing you can do.
6 The question was would you have a problem, would you have a concern,
7 would you have an issue with it?

8 MR. AIT-GHEZALA: Well, my concern is linked to the fact that
9 parking would also be given to them. But that's --

10 CHAIR JORDAN: So parking would be an issue in the area even
11 if it was resident --

12 MR. AIT-GHEZALA: Yes. I'm sorry, go ahead.

13 CHAIR JORDAN: You and I both can't talk at the same time.
14 And I'm Chair, so you're going to have to wait for me. Honestly,
15 we've kind of gone across to speaking out of turn. I know this is
16 new. And I really appreciate that.

17 So if it was residential, and we had a 2. -- I think FAR is
18 2.0 for C-2 there in residential. So you had a 2.0 FAR, and then
19 we had a residential building as opposed to office/retail. And so
20 we may be able to see even whatever people are going to be there,
21 it's going to be a parking issue, right? Isn't that going to be
22 a parking issue?

23 MR. AIT-GHEZALA: Yes.

24 CHAIR JORDAN: Okay. But that would not give you a concern,
25 is what I'm hearing you say. Am I correct?

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1 MR. AIT-GHEZALA: Parking issue is lower, according to the
2 parking requirements --

3 CHAIR JORDAN: Okay. But the fact that people may have
4 parking, they may park, right?

5 MR. AIT-GHEZALA: Yes.

6 CHAIR JORDAN: Okay.

7 MR. AIT-GHEZALA: I didn't understand the question.

8 CHAIR JORDAN: Would you have a concern about it being
9 residential? And there is certainly going to be some parking that
10 people may have.

11 MR. AIT-GHEZALA: Yes. In both situations, parking is
12 required. Yes, exactly. So less for office space. I mean, so
13 more for office space.

14 CHAIR JORDAN: Okay. But you don't have any problem about
15 residential, people with residence having parking, driving cars or
16 having cars in the area?

17 MR. AIT-GHEZALA: No. I live there. I have a car.

18 CHAIR JORDAN: Okay. All right, go ahead.

19 MR. AIT-GHEZALA: Yes, that would be critical.

20 MS. SCHAUER: It's our position that whatever they can do
21 by right is -- we don't have any objection to them doing by right
22 development.

23 MR. AIT-GHEZALA: And so the third option is, you know,
24 change the -- sorry, not you know, you don't know -- change the
25 current design in-progress project by lowering the second floor.

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1 And this would require the variance.

2 And so at the meeting, the Applicant indicated that all three
3 options were viable, which is why I raised the point earlier about
4 62 percent. Because it's never been raised by anybody, ever.

5 So before I go into the deeper discussion of the points that
6 they raised and our arguments against them, I just want to cite
7 Palmer and the D.C. Court of Appeals, where the D.C. Court of Appeals
8 wrote that, "The nature and extent of the burden which will warrant
9 an area variance is best left to the facts and circumstances of each
10 particular case." But it's certain that a variance cannot be
11 granted where property conforming to the regulations will produce
12 a reasonable income.

13 And so we believe that granting a variance in this case would
14 be, in essence, allowing a conforming property producing a
15 reasonable income to be put to another use in order yield a greater
16 return.

17 And it would also set very bad precedent for other
18 developments, because what would happen is that it would encourage
19 them to obtain approval for compliant construction, then mid-way
20 of the construction change the plans and claim there's a burden of
21 practical difficulty created by the already completed construction.
22 So this practice is essentially a great way to nullify the zoning
23 panel rules.

24 Variance relief, the Applicant has to demonstrate three
25 things, the first one to get the variance. The first one is that

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1 the property is unique and because of some physical aspect or
2 actually an exceptional situation to the property. The second one
3 is application of the zoning rules create themselves a practical
4 difficulty. Third one is that granting the variance will do no harm
5 to the public good. So all three must be proved.

6 Part 1 of the argument, exceptional situation or condition,
7 the Applicant cites two cases. The first one is Clerics. And they
8 use Clerics to say that an exceptional situation applies to the
9 property as well as the land which is completely fair.

10 And then the second citation they have is to Gilmartin. And
11 there they use it to say that it's not just one factor that can lead
12 to the problem, an extraordinary exceptional situation, but it can
13 be a confluence of factors.

14 The Clerics one is not taken out of context, but the facts
15 of that case are interesting. In that case the Board actually
16 rejected the variance request, because they said that the Clerics
17 building had self-imposed difficulty or practical difficulty.

18 And the Court said, no, it didn't have a self-imposed. It
19 wasn't self-imposed, because these people had been renting the
20 building for a while. And then after a while, because the demand
21 for a seminary had fallen, they now had to change the use, otherwise
22 they couldn't do anything with it. So they'd actually run the
23 building, they tried to run the building, they ran it successfully
24 and so on.

25 So exceptional situation or condition, there were four

1 points that the Applicant raises to support practical difficulty.
2 And the first one is that the property -- we're on Page 3 -- the
3 property is improved with three row structures that are contributing
4 structures within the Shaw and Blagden Alley/Naylor Court Historic
5 District.

6 Our response to this is that many of the buildings in the
7 Shaw and Blagden Allen/Naylor Court District are contributing
8 structures. So there is absolutely nothing unique in the context
9 of the location in the Historic District.

10 And now, if we go back to the Gilmartin case, it's important
11 to note that the critical point is that the extraordinary
12 exceptional condition must affect a single property. So you can't
13 be unique if everybody around you has the same difficulty or has
14 the same lack of uniqueness. So in this case, everybody in that
15 neighborhood has the same uniqueness, so it's not unique.

16 The second point, the individual lots have been subdivided
17 into a single record lot. By the way, these points are put together
18 in one paragraph. And there's no explanation of why it's unique,
19 because they just list these points. So individual lots have been
20 subdivided into a single record lot.

21 So merging lots into a single record lot is very common. In
22 fact, just south of the Applicant's lot, SB-Urban just did it. And
23 they actually did it across the alley as well. And so, firstly,
24 it's not unique. It's also not necessarily a bad thing. And it
25 would be completely logical if a positive characteristic or

1 uniqueness is to be counted towards the confluence of factors.

2 The third point that they make is, "A new addition and other
3 renovations that connect the buildings internally has been approved
4 and are currently under construction." So their addition is,
5 again, not unique. Even if it hypothetically were, it's a positive
6 factor for the requested variance, because it's precisely because
7 of this addition that the Applicant could build more floor above
8 it.

9 Also, again, connecting the buildings internally may be
10 unique, not proven, but it's actually not a negative factor. If
11 anything, it's a positive factor, right? So they've kept the shell
12 outside, you can destroy and connect them inside and make more
13 efficient use of the property. So it's a positive thing.

14 And then finally, both of these things, so the connection,
15 the building at the back is just self-imposed. So this is
16 construction they've already done. And now they're claiming that
17 it's some sort of exception or practical difficulty.

18 The fourth point, while additional density could be achieved
19 through residential use, the property or properties on that section
20 of 9th Street -- I won't read the entire paragraph. What they claim
21 here is that they're unique because the middle section of the 9th
22 Street block on that side between M and N is only retail. That's
23 their exception.

24 So the Applicant, first he doesn't state what is unique here,
25 right. But they appear to argue this is their exception. This is

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1 their uniqueness. But the reality is that there's plenty of
2 residential development in the area. So again, just immediately
3 next door to the Applicant's lot is SB-Urban's apartment complex
4 which, by the way, also has retail in the ground floor.

5 So moving on to Page 5, so to summarize, the Applicant states
6 there's confluence of factors yet doesn't clearly state exactly what
7 those factors are. So we're kind of picking out from what we read.
8 And then they definitely don't explain why any of them are unique.
9 So you can state something, but if you don't tell me why it's unique,
10 it's sort of a weak argument.

11 And many of the factors, like I just described, are actually
12 positive things. They're not negative things. And so, you know,
13 you can claim something is unique. I can claim to be, you have
14 something unique, and that's great. But that doesn't cause
15 practical difficulty.

16 Part 2 of the test is the strict application of the zoning
17 regulations will cause undue hardship or practical difficulty for
18 the Applicant. So here, we'd like to cite a case, Gilmartin. And
19 there we're told that in order to prove an Applicant suffers from
20 practical difficulties, which is what the Applicant has to do here
21 in an FAR variance, two elements must be proven.

22 The first one is that the compliance of the area restriction
23 would be burdensome and then, two, the practical difficulties are,
24 again, unique to the particular property. So these are two things
25 that they have to prove for every single point that they claim is

1 practically difficult.

2 So by the first requirement alone, we think that they fail.
3 So compliance with the area restriction was not necessary
4 burdensome. So they had property that was being developed, that
5 had been approved, that was working, that they found tenants for.
6 The tenants didn't say we want, you know, retail/residential more
7 above it. So it was working, and they could make it work.

8 Let me see, the second point they make, okay, so the first
9 one, I'm sorry, they make is the bulk of the second floor -- so the
10 first two arguments they have is for why there is practical
11 difficulty for the retail expansion.

12 So the first one is the bulk of the second floor would be
13 divided by the building stair and the remaining portion is a narrow
14 corridor, occupied primarily by elements of the building core which
15 they showed earlier in the diagram.

16 Firstly, if it's practical difficulty, it's not unique. The
17 location of the building stair and the location of the building core
18 that create inefficiency are both self-created problems. So they
19 had this design from the beginning. They put the staircase there.
20 They put the corridor there. They didn't have to put it there. If
21 they knew beforehand they would put retail or residential on top,
22 they would have moved them somewhere else.

23 So the other thing is, the second point is that inefficiency
24 itself is not a factor that can be considered when evaluating a
25 request for variance. So there's nothing in the relevant statute

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1 that mentions inefficiency.

2 Second point is that the existing layout, they say that the
3 existing layout for the third floor is most problematic because the
4 third floor is utilized almost completely by elements of the
5 building core making the space nearly unusable.

6 Yes. So most of the increase in FAR requested by the
7 Applicant actually comes from the third floor. So even if the
8 elements of the building core were removed completely, so actually
9 if we remove the core completely, if we remove the stairs, if we
10 remove the elevator, the space would just be small. So they've
11 bought a building which has a very small third floor. So just
12 because it's small, and every other part of the building is, you
13 know, bigger and they've expanded doesn't mean there's a practical
14 difficulty. It's just that the space is small.

15 And it could be argued the elements of the building core are
16 making the space unusable. This is because, again, it was designed
17 that way. So they didn't design it for any other use. They
18 designed it for the use they have now which works, which functions,
19 and which they can operate.

20 In Section B, they talk about access in here. Their argument
21 is for office versus retail when the reality is that those aren't
22 the options that are available to them. So the options are
23 residential versus office versus status quo.

24 When they talk about access, the first point on Page 7, if
25 the residential units were constructed on the property, a second

1 elevator would need to be provided off of 9th Street. So firstly,
2 and they go on to say, "Installing two elevators in this project
3 would be grossly inefficient, because of the relatively small and
4 elongated building footprint."

5 So the first thing is that the relatively small, elongated
6 footprint of the subdivided lot is not unique in the area, right?
7 So SB-Urban plot beneath it, immediately to the south of it, has
8 almost exactly the same width and exactly the same length. It has
9 retail on the top, in basement, in the first floor, residential above
10 it, and it has an elevator.

11 The need for the handicap lift to provide accessibility is
12 also not unique. And even if it were, the Applicants don't explain
13 where the practical difficulty comes from. They just said it's a
14 practical difficulty provided.

15 Having two elevators actually is, itself, not inefficient.
16 So firstly, it may be required by code. The inefficiency arises,
17 maybe, in the fact that they have to put it in two different
18 locations. Because again, this wasn't thought out from the
19 beginning. This is changing the project in the middle of the
20 project.

21 If they had done this in the beginning, they could have put
22 one single shaft for two elevators, if two elevators are needed,
23 in one area away from the middle of the property. They used the
24 middle of the property to give access to all the retail space which
25 completely makes sense. But again, it's just a change in the

1 construction. That's why it's inefficient. It's a self-created
2 problem.

3 The third point they make is existing stairwell will be
4 utilized by the office and commercial tenants of the project but
5 is still not suitable for including residents of the project and
6 their guests. And I think one of you raised it before, the stairwell
7 used by both retail and residential tenants is not unique. There's
8 nothing unique about that. And how suitable it is to use the
9 staircase for two different types of tenants also doesn't equate
10 to practical difficulty. There's nothing practically difficult
11 about that.

12 Section B, they talk about the building code, the core factor
13 and the plumbing. The first point they make is a residential layer
14 on the third floor of the building would be grossly inefficient,
15 because it requires two elevators in a relatively small, elongated
16 footprint.

17 So again, this is a discussion about the elevators. Again,
18 inefficiency shouldn't be a factor. Again, if they had planned for
19 residential in the beginning, they would have one shaft with as many
20 air vents as they needed, according to code.

21 But the second point they make is typically a core factor
22 of 85 to 90 percent can be achieved with an efficient design.
23 However, retrofitting the residential units into this
24 retail-oriented footprint results in inefficiency to 70 percent
25 core.

1 So again, the need to retrofit is completely self-created.
2 It's not reasonable to believe an experienced developer, who by
3 their own admission has done I don't know how many projects in D.C.,
4 can't efficiently put two elevators in this building had it been
5 planned from the beginning. It's just impossible to believe. It's
6 very hard to believe.

7 The Applicant, and they haven't explained it, they haven't
8 complained could they have done it. The Applicant should explain
9 -- so this was a question before, but they've clarified it. So
10 before, they had a 62 percent. And nobody ever raised an issue.
11 They never claimed, it was 62 percent with the design that they came
12 up with, could they not operate efficiently on the lot. They had
13 a design for 62 percent. They never complained and said, well, it
14 was their design, right? So there's nobody to complain to unless
15 you complain to yourself.

16 Section B, leasing amenities and parking. They say, "Given
17 the limited space available for residential use, the building design
18 incorporates residential use that would forego amenities", et
19 cetera, commonly available. So limited space is not quantified
20 and, again, is not unique. Having no space for amenities is not
21 a unique thing.

22 Amenities commonly available, it's not explained. Is there
23 a gym, is there no gym? Many buildings don't have a gym. So this
24 is not practical difficulty for them. If anything, it's a practical
25 difficulty for the tenants who live there.

1 Trash chute, they say that additionally trash would have to
2 be walked down to the ground floor of the building because the common
3 trash room is not designed to accommodate a residential trash chute.
4 Again, this is a practical difficulty personally for the tenants,
5 not the Applicants. And then the inability to include this trash
6 chute is not unique. And again, the problem is self-created. They
7 building currently is not designed for this. If they had designed
8 it from the beginning this way, they would be able to do it. And
9 they can't claim otherwise.

10 The third prong, so firstly just on the first two prongs,
11 the first prong, honestly, we think that the variance shouldn't be
12 accepted. Because there's nothing unique. On the second prong,
13 they haven't shown practical difficulty in any way whatsoever.
14 They've just listed a bunch of things. They haven't explained where
15 the practical difficulty comes from.

16 And the key point of that they seem to bring up now over the
17 62 percent was never, ever raised. It was never a practical
18 difficulty. And it just came up. And it was their design that was
19 approved and they were building.

20 The third prong is about the detriment to the public good,
21 impairment, intent, purpose, integrity of zone plan. So regarding
22 the zone plan, the Applicant states the requested variance relief
23 can be granted without impairing the intent of the zone plan. And
24 we totally disagree.

25 The zone of Blagden Alley is outlined in Zoning Commission

1 Order 782 of 1994. The area was to be zoned C-2-A from R-4 to
2 encourage development while protecting the residential and historic
3 nature of the alley and the rest of the square.

4 Now, at that time it's important to note that even the
5 proponents of the rezoning wanted to put in a covenant to restrict
6 the allowable matter of right use. So they would essentially make
7 this kind of like a light C-2-A through covenants. And they say,
8 "Property owners would sign a covenant proposing the restriction
9 of matter of right uses to those compatible with the residential
10 surroundings," not retail. So allowing this variance would take
11 the FAR from 1.47 to 2.07 and would basically allow a C-3-A high
12 density commercial development in a low, medium density C-2-A.

13 It's also important to the rezoning to note that the rezoning
14 was actually done pretty recently in 1997. And so considering the
15 recent nature of that change, extensive community feedback that the
16 Zoning Board went through, it's best to assume this level of zoning
17 is best for the square.

18 The second point was the ANC approval which Barbara
19 mentioned earlier. The Applicant misrepresented the application
20 to the ANC with 14 spaces. This was probably a mistake, but whatever
21 they have referred to the ANC shouldn't be counted until the ANC
22 refuses change in the public meeting.

23 So those are the three prongs. And we don't believe that
24 they meet the standard of the three prongs to get this variance.
25 And if they don't then, you know, the whole parking thing becomes

1 moot. So we don't really discuss it here.

2 The last point we'd like to bring up is the loading berth
3 exemption. And this is really -- I'll go through our reasoning
4 about it before. But I just wanted to ask the Board about how we
5 officially have to deal with this sort of objection to the
6 interpretation of the rules. Do we have to, you know --

7 CHAIR JORDAN: I don't know what you mean.

8 MR. AIT-GHEZALA: So according to the Applicant -- so we're
9 on Page 10 now of the document that we presented to you. So
10 according to the Applicant's parking and loading statement, loading
11 zone regulations do not require any loading berth be provided for
12 this site. But 2,200 --

13 CHAIR JORDAN: They're not seeking loading relief from us.

14 MR. AIT-GHEZALA: Yes. No, no. Yes.

15 CHAIR JORDAN: That's not before us during this hearing.

16 MR. AIT-GHEZALA: Okay. So there's nothing we can, there's
17 no procedural thing we can or --

18 CHAIR JORDAN: I --

19 MR. AIT-GHEZALA: Okay. I just --

20 CHAIR JORDAN: I can't advise you what you need to do
21 procedurally. But it's not before us as we sit here today.

22 MR. AIT-GHEZALA: It's not before -- okay, all right.

23 CHAIR JORDAN: If they have a problem, and they don't meet
24 loading requirements, and they go to get the final permits, et
25 cetera, and they get tagged, it's on the Applicant, any risk that

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1 they take.

2 MR. AIT-GHEZALA: Yes, yes. I'd just like to summarize what
3 I've said. So, you know, in addition to the kind of -- just a minute.

4 CHAIR JORDAN: Summary of what you just told us?

5 MR. AIT-GHEZALA: Well, I mean, no. It's almost like to --
6 actually, no, I'll stop there.

7 CHAIR JORDAN: I don't need you to go back and give us --
8 we've listened and we've read everything you said as you went along.

9 MR. AIT-GHEZALA: That's fine. Yes.

10 CHAIR JORDAN: Is there anything else you want to present
11 to the Board?

12 MR. AIT-GHEZALA: That's it, thanks.

13 CHAIR JORDAN: Okay. Board, any questions of the
14 Opponents?

15 (No response)

16 CHAIR JORDAN: Has the Applicant any questions?

17 (No response)

18 CHAIR JORDAN: Okay. Anybody else wishing to speak in
19 opposition, anyone else wishing to speak in opposition?

20 (No response)

21 CHAIR JORDAN: I'm going to go back to the Applicant, if
22 there's any rebuttal you believe you need to make?

23 MS. BATTIES: I think we should make some rebuttal for the
24 record.

25 CHAIR JORDAN: Yes. Go ahead, you've got five minutes to

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1 do a rebuttal.

2 MS. BATTIES: First of all, the Opposition argues that the
3 project does not meet the three prong test for a variance. The Board
4 has regularly accepted, as a unique condition, a property that is
5 improved with contributing structures in the Historic District.

6 It is incorrect that all of the properties in the immediate
7 vicinity to the subject property are the same. He mentioned
8 SB-Urban which is a vacant piece of property that is not improved
9 with contributing structures. There's another property at the end
10 of the block that is improved with a residential project that is
11 not contributing structure. So while the property is in the
12 Historic District and there are other historic properties within
13 the Historic District, they are not all the same.

14 And as mentioned, this project and the building envelope has
15 been reviewed, and approved and is subject to review and approval
16 by the HPRB. As it relates to the practical difficulty, again, the
17 building is inefficient. It's substantially lower building
18 efficiency because of the unique nature of the project. It's
19 inherently difficult to achieve a viable commercial use on the
20 project.

21 While the Applicant has acknowledged that it is probably
22 possible to put some residential above, the reality is the site is
23 not conducive to that. It does present a practical difficulty.
24 And while there are other residential uses on 9th Street between
25 L and M, there are no residential in any historic or existing

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1 structures on this section of 9th Street.

2 They also argue that the project, if approved, would
3 effectively increase the density of the property from C-2-A
4 allowable density to C-3-A. There are just a couple of things I'd
5 like to note. First of all, that's not true. C-3-A residential
6 allows up to four FAR on the property. Non-residential uses are
7 allowed to a density of 2.5 FAR of non-residential use. We are far
8 below that.

9 Even if we were to do matter of right in C-2-A, C-2-A allows
10 a FAR of 2.5, again, which we're below. And if we were to look at
11 doing an all-residential project at 2.5 with a 20 percent bump for
12 IZ, we're probably at 3.0 FAR or close to 3.0 FAR.

13 So the project is nowhere near the densities that can be
14 achieved either under the existing C-2-A zoning or the C-3-A zoning
15 as represented by the Opposition. Again, even with the additional
16 FAR that we're seeking, we're only at 10,000 square feet, 10,835
17 square feet of usable floor area.

18 As it relates to the ANC approval, in their written statement
19 they claim that we misrepresented what the parking calculations or
20 the parking requirement is. There was a miscalculation in our
21 initial statement. We corrected that in the pre-hearing statement.

22 I also just want to note, excuse me, note that the letter
23 of support from the ANC does not specifically identify the number
24 of parking spaces required in terms of the project. But practically
25 speaking, the project can achieve any parking on the site. So the

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1 request for parking relief is the same whether it's 14, or 1 or 21,
2 in this case.

3 We're seeking relief under the special exception standard,
4 and under that standard the primary test is whether or not the
5 required parking would compromise the historic integrity of the
6 structure which, in this case, it clearly would.

7 Finally, as it relates to loading, well, they didn't address
8 it since it's not before the Board. So I'm not going to make any
9 comments with regard to loading other than to say that, based on
10 our discussions with them and other people in the neighborhood,
11 there was certainly a concern to mitigate or reduce any kind of
12 additional operations, loading and vehicular passenger vehicles in
13 the alley.

14 So we stand firm on our position that the application as
15 presented, both in the pleadings and the testimony, complies with
16 the standard of review for both the variance for FAR as well as the
17 special exception for parking relief. Thank you.

18 CHAIR JORDAN: Thank you. Board, any other questions?

19 ZC MEMBER MAY: Yes.

20 CHAIR JORDAN: Please, Mr. May.

21 ZC MEMBER MAY: So what would you say to the argument that
22 you had a previously approved plan that was a viable project at some
23 point or considered to be a viable project and now you are in a
24 situation where you have to modify it in order to seek relief and
25 necessarily have to seek relief?

1 MR. MILLSTEIN: So as my parents taught me many years, the
2 truth shall set you free. The truth is we made a mistake. When
3 we looked at this project, we didn't know how it would evolve. And
4 it's an evolution. It's a challenging evolution, given the size
5 of it, of all the complexities you've heard today.

6 We spent about a year in the market with plans, site tours,
7 perspective tenants, and we have wealth of tenants that we work with
8 throughout this city and other jurisdictions. We brought them all
9 to this site. We couldn't get there. It wasn't until these
10 particular tenants came with their architects and said we love the
11 location, we love what you do, your building doesn't work. Let us
12 work with your architects and tell you how to fix it, right. And
13 then if you can fix it, we'll come forward.

14 And there's no pride at this table. We all just want to get
15 it right. And we don't get it right all the time. The fact that
16 we didn't ask for it earlier was simply a mistake. We didn't think
17 it through.

18 We had no idea how it would lease from 9th Street all the
19 way back one user, from Blagden Alley all the way forward, one person
20 take the whole building, one person take half the building. We took
21 a shot the best we could. We tried to build a good envelope, we
22 stayed within the envelope, and now we've got input to make it work.

23 ZC MEMBER MAY: Thank you. I appreciate that. Then I have
24 a question about the ANC approval. I assume that by now they've
25 been informed that it was 21, not 14. And have you gotten a reaction

1 of any sort?

2 MS. BATTIES: Yes. We have not gotten a reaction from ANC,
3 but we have been working very closely with them throughout this
4 process and copying them on all of our planning.

5 MR. MILLSTEIN: I would add to that that when we had the
6 community presentation at La Colombe, the single member district
7 commissioner attended the meeting and the presentation where we
8 articulated 21 spaces. And we also had John --

9 MS. BATTIES: Twenty-one or 24?

10 MR. MILLSTEIN: Twenty-one or 24, we weren't even sure that
11 night. This math gets complicated. But in any event, he was there
12 as well as the chair, John Fanning, Commissioner Fanning was there.
13 We've had subsequent conversations. They're very supportive. The
14 ANC as whole has been very supportive. And that, to them, was really
15 more of a detail, because it was clear that we couldn't provide any
16 parking whatsoever. That being said, if we need to go back, we'd
17 always be glad to go back. We're back all the time. It wasn't an
18 issue at the time.

19 ZC MEMBER MAY: Okay, thank you.

20 CHAIR JORDAN: Board, any additional questions?

21 (No response)

22 CHAIR JORDAN: Okay. Then we will close this -- I don't,
23 Board, do you need any additional information for it?

24 (No response)

25 CHAIR JORDAN: Then we can close the record.

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1 MS. BATTIES: Mr. Chair, before you close the record --

2 (Off microphone discussion)

3 CHAIR JORDAN: Yes?

4 MS. BATTIES: There was one person here that was waiting to
5 speak in support of the project.

6 CHAIR JORDAN: I thought I asked that?

7 MS. BATTIES: No. They had to leave. But they did give a
8 letter, so if we can just --

9 CHAIR JORDAN: Put it in the record. Also, I mean, the
10 record's also open for the Applicant to amend their application in
11 accordance with what's been provided here earlier today. Was there
12 something that -- what was that?

13 MR. AIT-GHEZALA: Yes. Are we able to put in writing any
14 responses we have to some of the things that were said today?

15 CHAIR JORDAN: No.

16 MR. AIT-GHEZALA: To the new material?

17 CHAIR JORDAN: No. There is no new material. You would
18 have had to do what you were going to do during this hearing. There
19 is no additional information that the Board would take outside the
20 hearing on any case. It's not the way we operate.

21 (Off microphone discussion)

22 CHAIR JORDAN: In cross examination. You have the cross
23 examination ability to -- two things, you have the ability to cross
24 examine, to challenge anything that they had raised.

25 MR. AIT-GHEZALA: Yes.

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1 CHAIR JORDAN: Additionally, you have the opportunity to
2 present your side of it here at the hearing. I know this is new
3 to you. Because, you know, unless you do this stuff all the time,
4 and even some lawyers and architects don't get it right. It's just
5 not how we process. So it's nothing, just new to you. This is the
6 way we operate. So just like they cannot now submit anything
7 different to offset it. They just cannot do that. We won't allow
8 that to occur.

9 MEMBER HINKLE: Mr. Chair, I don't think we have some of the
10 graphics that were presented today in terms of the --

11 CHAIR JORDAN: Do you want to supplement the record?

12 MEMBER HINKLE: Yes. Or just get a copy of the presentation
13 that we had and ensure that's put into the --

14 (Off microphone discussion)

15 MR. AIT-GHEZALA: Yes. Why are they allowed to do that?

16 CHAIR JORDAN: You're absolutely right. Thank you. I was
17 corrected. Do you have any cross examination to her rebuttal?
18 You're right.

19 MR. AIT-GHEZALA: Oh, so we can ask questions now?

20 CHAIR JORDAN: On the rebuttal only, what she just testified
21 to.

22 MR. AIT-GHEZALA: Okay. Well, I mean, I lost my focus
23 because I thought we weren't allowed to. If you just give me a
24 moment, please, just one second.

25 (Off microphone discussion)

1 MR. AIT-GHEZALA: So this is us having to ask them any
2 questions?

3 CHAIR JORDAN: Yes. You can ask.

4 MR. AIT-GHEZALA: We can't make any statements?

5 CHAIR JORDAN: No, just questions on rebuttal of what she
6 testified on rebuttal. And a question regarding rebuttal was the
7 issue with the ANC, the amount of parking relief that was requested
8 and an error in the application.

9 (Simultaneous speaking)

10 CHAIR JORDAN: Wasn't that the essential of it. Was it?

11 ZC MEMBER MAY: I mean, I think that the rebuttal was more,
12 I mean, the rebuttal included a number of points. It was more than
13 just that issue. That was just one of my questions.

14 CHAIR JORDAN: Yes. But no, that --

15 ZC MEMBER MAY: Yes. Whatever her --

16 CHAIR JORDAN: Yes, you're right. Go ahead. Anything that
17 she just asked.

18 MS. SCHAUER: We can question?

19 CHAIR JORDAN: Yes.

20 MR. AIT-GHEZALA: And so we can only ask questions, you can't

21 --

22 CHAIR JORDAN: Only ask questions.

23 MS. SCHAUER: My question is are you planning to make a
24 formal notification to the ANC that their approval of 14 is actually
25 21?

1 MS. BATTIES: We have no objection to doing that.

2 MS. SCHAUER: Okay, good.

3 MR. AIDED-GHEZALA: I have another question. My question
4 is you said you made a mistake when it came to, I guess, the design
5 of the -- I'm not sure what the mistake actually was referring to
6 when you said you made a mistake. But how does that mistake affect
7 you? Is it like a financial problem? Is it, yes, that's my first
8 question.

9 And the second question is is it, as you said in the meeting
10 in La Colombe that we had, financially viable for you to keep exactly
11 the current plan and have the current tenants stay in the project?

12 MR. MILLSTEIN: No.

13 MR. AIT-GHEZALA: It's not? Okay, is it possible to write
14 documentation to that?

15 MR. MILLSTEIN: So I don't know exactly what documentation
16 you'd want.

17 CHAIR JORDAN: What was the question again?

18 MR. AIT-GHEZALA: So when we met with the Applicant in La
19 Colombe, we were told all the three options which I stated at the
20 beginning were viable. So the only difference was how much money
21 you make with adding residential.

22 CHAIR JORDAN: So what's the question? What's the
23 question?

24 MR. AIT-GHEZALA: So, I --

25 CHAIR JORDAN: You're talking to me. What's the question?

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1 MR. AIT-GHEZALA: So maybe I'm misrepresenting to myself and
2 I don't mean to be -- if you think I'm being dishonest I really --
3 this is what I remember asking.

4 CHAIR JORDAN: Whoa, whoa, whoa, whoa, whoa.

5 MR. AIT-GHEZALA: Oh, I'm sorry. I was --

6 CHAIR JORDAN: Slow down. Just take your time, slow down.
7 It's new. Relax. We don't beat people up or anything. And it know
8 it makes you nervous just being in this room and the fact that you're
9 on television.

10 (Laughter)

11 CHAIR JORDAN: No, but you're doing a wonderful job,
12 honestly. What was the question?

13 MR. AIT-GHEZALA: There was two questions. The first one
14 was --

15 CHAIR JORDAN: Only one at a time. What's the first
16 question?

17 MR. AIT-GHEZALA: He answered it. The first question was
18 --

19 CHAIR JORDAN: I mean, the one that's pending.

20 MR. AIT-GHEZALA: It is financially viable for you to have
21 the current tenants and run the project as it is?

22 MR. MILLSTEIN: I would, first of all, say what does
23 financially viable mean? I don't know the definition of
24 financially viable. I would say it's incredibly impractical.
25 It's unrealistic, it doesn't make sense to me. As far as financial

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1 viability, I don't even know how to define financial viability. And
2 that's not part of the standard.

3 CHAIR JORDAN: Well, there are standards for that in regards
4 to zoning and zoning relief. But --

5 MR. AIT-GHEZALA: So the answer is --

6 (Off microphone discussion)

7 MR. MILLSTEIN: What I may determine is financially viable
8 you may not, what you may, I may not. It's practically difficult.
9 It's a challenge. That's what I'm just trying to say.

10 (Simultaneous speaking)

11 MR. MILLSTEIN: Yes? Okay.

12 CHAIR JORDAN: -- said is inefficient, et cetera, and it's
13 not the best use of the property.

14 ZC MEMBER MAY: So maybe I can ask a question that would help
15 clarify the issue. You said you brought through a number of
16 potential tenants to review the project and potentially to lease
17 that. And you had no takers other than the ones that you've now
18 signed up and you're pursuing this variance to accommodate.

19 MR. MILLSTEIN: That's a fact.

20 ZC MEMBER MAY: Okay. So if you did not have this variance,
21 would you be able to accommodate those tenants?

22 MR. MILLSTEIN: No.

23 ZC MEMBER MAY: And you worked for how long to try to get
24 somebody to lease the property?

25 MR. MILLSTEIN: A solid year. It felt longer.

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1 ZC MEMBER MAY: Okay.

2 MR. AIT-GHEZALA: So just to be clear, you're saying that
3 if you don't get this variance, you can't just lower the ceiling
4 and provide a full ceiling and make these tenants happy?

5 MR. MILLSTEIN: Correct, that's correct.

6 CHAIR JORDAN: Okay. All right, good. So now we will close
7 the hearing. There were two things that we know we needed from the
8 Applicant in the record. We needed the amended application. Let
9 me make sure if there's any payments that's required, that that's
10 taken care of. And the second thing is that we needed what set of
11 plans, excuse me?

12 MEMBER HINKLE: Yes. There were some illustrations that we
13 saw today that I don't think are in the record yet. So if we could
14 get those in terms of you had some efficiency illustrations and some
15 others.

16 (Off microphone discussion)

17 MEMBER HINKLE: Okay. I'm not quite sure I even --

18 CHAIR JORDAN: Is there anything else that the Board would
19 like to see? Does the Board want to deliberate, or do we want to
20 move this to the April 28th date?

21 (Off microphone discussion)

22 CHAIR JORDAN: Okay. Well, let's -- do we vote right now
23 too?

24 MR. AIT-GHEZALA: Mr. Chairman, I'm really sorry. I don't
25 know whether I can say something very quickly.

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1 CHAIR JORDAN: No. It's already done. Court, what do you
2 need to hear?

3 MR. AIT-GHEZALA: When we had the exchange, I was
4 interrupted because I had asked whether they could provide financial
5 --

6 CHAIR JORDAN: No, no, no. We're not -- if the Board should
7 have any questions. Board, can you deliberate now or you want to
8 wait?

9 (Off microphone discussion)

10 CHAIR JORDAN: Okay. You don't? Well, you want to wait?
11 We'll wait. Let's put this on for April 28th for a decision.

12 I want both parties -- let me put this for the record, I want
13 both parties to submit me a proposed finding of facts and
14 conclusions. Did you hear me, over here? I said I want both
15 parties to submit proposed -- Jesus -- proposed finding of facts
16 and conclusions of law by April 21st. And this is on for a decision
17 for April 28th. Okay. Appreciate it. Thank you, all.

18 Is there any other business coming before the Board? All
19 right. Then we're adjourned. Thank you.

20 (Whereupon, the above-entitled matter went off the record
21 at 2:16 p.m.)

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