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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No. 15-18 [Initio LP - Consolidated PUD and
Related Map Amendment at Square 1194, Lot 811.]

6:37 p.m. to 8:00 p.m.

Thursday, July 21, 2016

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 PETER MAY, Commissioner

4 ROBERT MILLER, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7 Office of Zoning:

8 SHARON SCHELLIN, Secretary

9

10 Office of Planning:

11 JOEL LAWSON

12 ANNE FOTHERGILL

13

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

2 CHAIRPERSON HOOD: Good evening, ladies and
3 gentlemen. This is a public hearing of the Zoning
4 Commission for the District of Columbia. Today's
5 date is July 21st, 2016.

6 My name is Anthony Hood. Joining me are
7 Commissioner Miller, Commissioner May, and
8 Commissioner Turnbull. We're also joined by the
9 Office of Zoning staff, Ms. Sharon Schellin, as well
10 as the Office of Planning staff, Mr. Lawson and Ms.
11 Fothergill.

12 This proceeding is being recorded by a court
13 reporter and it's also webcast live. Accordingly, we
14 must ask you to refrain from any disruptive noises or
15 actions in the hearing room, including any display of
16 any signs or objects. Notice of today's hearing was
17 published in the D.C. Register and that announcement
18 -- those announcements are available to my left on
19 the wall near the door.

20 The hearing will be conducted in accordance
21 with provisions of 11 DCMR 3022 as follows:
22 preliminary matters, applicant's case, report of the
23 Office of Planning, report of other government
24 agencies, report of the ANC, organizations and
25 persons in support, organizations and persons in

1 opposition, rebuttal and closing by the applicant.

2 The following time constraints will be
3 maintained in this meeting. The applicant has up to
4 60 minutes but I think we can get it done in 35 or
5 less. Organizations, five minutes. Individuals,
6 three minutes.

7 All persons wishing to testify before the
8 Commission this evening, this hearing, are asked to
9 register at the witness kiosk to my left and fill out
10 two witness cards. If you have any questions about
11 the kiosk you can ask Ms. Schellin.

12 The staff will be available throughout the
13 hearing to discuss procedural questions. Please turn
14 off all electronic devices at this time so not to
15 disrupt these proceedings. Would all individuals
16 wishing to testify please rise to take the oath?

17 Ms. Schellin, would you please administer the
18 oath?

19 MS. SCHELLIN: Yes. Please raise your right
20 hand.

21 [Oath administered to the participants.]

22 CHAIRPERSON HOOD: Okay. At this time the
23 Commission will consider any preliminary matters.
24 Does the staff have any preliminary matters?

25 MS. SCHELLIN: Yes, sir. The applicant is

1 proffering two expert witnesses, Lisa Delplace and
2 Nicole White, both of whom the Commission has
3 accepted before as experts. They are no longer
4 proffering their architect as an expert.

5 CHAIRPERSON HOOD: Okay. So since we've
6 already done it we typically don't redo things that
7 we've already done and I think we can -- we don't
8 have any objection to continue that expert status.

9 Okay, do we have anything else?

10 MS. SCHELLIN: No.

11 CHAIRPERSON HOOD: Okay.

12 MS. SCHELLIN: Well, actually, we do. The
13 applicant amended their application today and less
14 than 20 days before the hearing and so they did file
15 a request for a waiver of that to accept that. So
16 we'd ask the Commission to consider that request.

17 CHAIRPERSON HOOD: And that was dealing with
18 the reason why they didn't meet one of the -- or the
19 setback. That, the old piece.

20 MS. SCHELLIN: For the penthouse. Okay.

21 CHAIRPERSON HOOD: Yeah. Okay.

22 MS. SCHELLIN: Correct.

23 CHAIRPERSON HOOD: I saw that. Okay. Any
24 objections?

25 Okay. Not seeing any, we will accept it.

1 MS. SCHELLIN: Okay.

2 CHAIRPERSON HOOD: Didn't say we was going to
3 agree with it, but we'll accept it. Okay. Anything
4 else?

5 MS. SCHELLIN: No, sir.

6 CHAIRPERSON HOOD: Okay. All right. Ms.
7 Batties, or Mr. -- okay. Ms. Batties.

8 MS. BATTIES: Good evening, Mr. Chairman,
9 Members of the Commission. Leila Batties and Norman
10 M. Glasgow, Jr. with Holland and Knight representing
11 the applicant this evening, Initio LP, an affiliate
12 of Eastbanc.

13 In support of its request for a consolidated
14 PUD and related map amendment for the subject
15 property from C-2-A and end zone to W-2. I'm sure
16 most of you are familiar with the property. That's a
17 gas station direction across from the Four Seasons
18 Hotel in Georgetown. And I think the record is
19 pretty straight forward.

20 So in the interest of time and efficiency
21 I'll limit my initial comments to addressing the
22 Office of Planning report, the DDOT report, and then
23 the National Park Service issues.

24 And, Chairman Hood, last -- I think at set
25 down you wanted us -- or you asked a question about

1 the waiver of the land area, Section 2401.2 of the
2 Zoning Regulations, which limit the reduction in the
3 land area to 50 percent. Do you want us to address
4 that this evening?

5 CHAIRPERSON HOOD: Yeah, you can address that
6 too. Thanks.

7 MS. BATTIES: Okay. Great. So, as it
8 relates, I guess kind of the threshold issue for the
9 case is that the Commission must weigh the 50 percent
10 limit set forth in Section 2401.2 of the Zoning
11 Regulations. Under that section the Commission can
12 reduce the -- could waive the minimum land area
13 requirement of 15,000 square feet by 50 percent, such
14 that a PUD could be developed on land that was no
15 less than 7,500 square feet.

16 In this case the subject property is only
17 7,413 square feet, so it's still not large enough to
18 meet the 50 percent threshold provided in Section
19 2401.2.

20 We ask the Commission to grant the waiver
21 from this section on two basis. First, this is a
22 very unique circumstance where the applicant is
23 unable to acquire any additional property to meet the
24 minimum land requirement. The property is surrounded
25 on the east and west by property owned by the

1 National Park Service, and then of course it fronts
2 on Pennsylvania Avenue on the south and M Street to
3 the north. So again, not even the 87 square feet
4 necessary to meet the 7,500 square foot threshold can
5 be achieved.

6 The second reason or basis for supporting the
7 request is the impending status of ZR-16. Section
8 301.2 of Subtitle X authorizes the Commission to
9 waive the minimum land area requirements. And there
10 is no limit in terms of the percentage of the area
11 that can be waived so long as certain conditions are
12 met. And in this case we meet the criteria set forth
13 in ZR-16 because as noted in the pleadings the
14 proposed PUD is of exceptional merit and is in the
15 best interest of the District as well as the
16 properties outside the central employment area, and
17 more than 80 percent of the floor area for the
18 project will be used for residential uses.

19 So, just to clarify, we're not seeing a
20 waiver under ZR-16. We're seeing a waiver under the
21 current regulations. But the fact that the new
22 regulations are pending and would allow for the
23 requested waiver, we believe is appropriate -- is an
24 appropriate basis for the Commission to grant the
25 requested waiver.

1 As it relates to the Office of Planning and
2 DDOT report, we have submitted into the record, a
3 list of proposed conditions. And that list includes,
4 or incorporates all of the issues raised by the
5 Office of Planning and DDOT. I'd like to note that
6 among other things the applicant has agreed to
7 achieve LEED Gold certification for the PUD. The
8 list of conditions also includes a number of traffic
9 demand measures that address or mitigate the parking
10 relief that's requested.

11 It also includes a number of parking
12 arrangements and conditions that were agreed upon
13 with the Citizen's Association of Georgetown, which
14 is here this evening, represented by Mr. Givins. And
15 the list of conditions also includes use restrictions
16 for the balconies and terraces that were also agreed
17 to by the Citizen's Association of Georgetown.

18 So we believe that the list of conditions as
19 presented adequately address the OP and DDOT reports.
20 And then the last issues is the jurisdiction of the
21 National Park Service and where the applicant is in
22 terms of reaching an agreement for the improvement
23 and maintenance of the parkland on both the east and
24 west sides of the subject property. And for that I'm
25 going to turn the presentation over to Mary

1 Mottershead with Eastbanc. Thank you.

2 MS. MOTTERSHEAD: Good evening. Okay. Good
3 evening. In terms of the Park Service lands, as was
4 just indicated, this site sits between two parcels,
5 691 on the front side, and 360 on the east side of
6 the property.

7 As you may know, Eastbanc has done a lot of
8 development in the Georgetown area and one of the
9 interesting parts of this site was in fact the hope
10 that we could work with the Park Service to improve a
11 park that's in need of some upgrading and maintenance
12 in terms of 691.

13 Eastbanc has worked with the National Park
14 Service before in terms of some of these types of
15 arrangements having been involved in the Ritz Carlton
16 properties, both in the west end, redoing Washington
17 Circle and then also in Georgetown with the
18 waterfront park, then several of our other projects
19 have been involved along the canal with 3303 Water
20 Street and 1055 High, and along Cady's Alley where we
21 have ongoing maintenance agreements and had done
22 improvements there as well.

23 So we were excited to approach the Park
24 Service in this case to see if we could work together
25 to improve both sides of the site, and also in

1 discussions with the Georgetown Business Improvement
2 District they were looking to sort of activate this
3 park so we approached the Park Service about it and
4 this whole project has basically been in the works
5 for about two years now, working with a lot of
6 different groups. Office of Planning a lot with DDOT
7 and then on multiple occasions with the Park Service.

8 I know one of the questions had been the
9 ownership of the parcel and it was in fact a bit
10 interesting because the Park Service didn't quite
11 realize that they had full control of the front
12 parcel of 691, and the District thought they did.
13 And when we went into it and approached everybody it
14 switched around and everybody realized it was a
15 National Park Service.

16 But in the meantime a portion of the corner
17 of the park had been taken over by DDOT and the
18 BikeShare. So, the redo of the park also involves
19 DDOT and public space. So I think everybody is on
20 board right now for the concept plan, but we have a
21 lot of work ahead of us to finalize the actual design
22 and part of our proffer is the ongoing maintenance of
23 the park, so we need to draft and enter into those
24 maintenance agreements. But we have committed to do
25 so.

1 MS. BATTIES: And if I just may add, in our
2 20-day filing we did include a letter from the U.S.
3 Department of the Interior that was supportive of the
4 process and the steps that have been taken and are
5 required to be taken going forward for the long-term
6 -- for the improvement and long-term maintenance of
7 the park.

8 The only other thing I'd like to address
9 initially is the additional flexibility that was
10 included in the application today for the penthouse
11 setback. And first of all, thank you for accepting
12 our amendment to the application. The discussion and
13 kind of the basis for why the relief is needed or the
14 flexibility is needed is set forth and detailed in
15 the letter that we filed with the Commission today.
16 So I'll just limit my initial remarks on this issue
17 to two points.

18 First, the flexibility is only needed for the
19 northern portion of the penthouse, which contains the
20 stair, elevator -- elevator and mechanical equipment.
21 Those elements are situated to provide -- to achieve
22 reasonable efficiencies in the floors below. And
23 second, the earlier iterations of the building did
24 have a larger roof such that the penthouse did meet
25 the required setback. However, that roof was scaled

1 back after significant work and feedback with the
2 Commission of Fine Arts. And as a result -- and
3 actually, you guys have been working with them for
4 well over a year on the project design. So, as a
5 result of the design process and feedback with CFA,
6 the project was kind of -- evolved, the design
7 evolved such that the roof was scaled back and in
8 order to reduce the massing of the building.

9 And as a result we have the mechanical space
10 stair tower and elevator at the edge of the roof upon
11 which they sit. However, the penthouse area which
12 contains the fitness room and the kitchen, do meet
13 the required setback. So we're prepared to address
14 that in more detail if requested by the Commission.
15 Thanks.

16 CHAIRPERSON HOOD: So, we finished?

17 MS. BATTIES: We are finished, sir.

18 CHAIRPERSON HOOD: Okay. Thank you very much
19 for hitting the highlights.

20 Colleagues, let's see if we have any
21 questions or we need any follow-ups or we need to
22 hear from anyone else.

23 I will say -- where is -- I read in here, I
24 think, did I see Anthony Lanier's name? I'm used to
25 seeing him when we do these things. He didn't feel

1 he needed to come down here in front of the
2 Commission tonight, or --

3 MS. BATTIES: He's out of the country, sir.

4 CHAIRPERSON HOOD: Oh, he's -- oh, that's a
5 good reason. Okay. I'm used to seeing him.

6 MS. BATTIES: Otherwise he would love to be
7 here to talk to you.

8 CHAIRPERSON HOOD: Not that I have any
9 problems, but I'm used to seeing him. So let's see
10 if we have any questions or comments. Commissioner
11 May.

12 MR. MAY: All right. Well, thank you for the
13 recap on the Park Service interactions. The, you
14 know, I've read over that. I knew that there was
15 some sort of conversation going on. I didn't know
16 anything about it until I read the letters and e-
17 mails and looked at the documents today. And I raise
18 the question of whether it was -- of the ownership at
19 setdown.

20 The question I have at this time is the
21 process from here, because you have an agreement in
22 principle that you're going to be making these
23 improvements, but you're showing a complete redesign
24 of the park. I know how complicated that can be in
25 terms of the Park Service process for that. I can

1 read between the lines in the letter and I understand
2 that, you know, you're talking about something that
3 could be quite lengthy.

4 Have you had specific discussions about a
5 timeline for getting through that design development
6 and all of the compliant steps that are necessary,
7 NEPA (phonetic), Section 106, all of that?

8 MS. MOTTERSHEAD: We have discussed it.
9 We're only getting into the process, and as you
10 pointed out, the Section 106 will be one of the first
11 steps to address. So we have hired tracers and
12 they have been working to put the historic report
13 together that traces everything that's happened with
14 that park. The Park Service has found original
15 drawings for the park, and we know what's happened
16 since, including the BikeShare.

17 MR. MAY: Uh-huh. Well, in the --

18 MS. MOTTERSHEAD: Touching on the integrity,
19 so --

20 MR. MAY: Yeah.

21 MS. MOTTERSHEAD: -- the next step would be
22 to get into that and also to finalize the plans for
23 the materials and the trees. This application did
24 include some changes in tree materials because the
25 Park Service wanted to see some different species.

1 So I think it will be an ongoing process to finalize
2 the plan and to file the Section 106. Then also we
3 need to draft the maintenance agreement and get that
4 signed up.

5 So, in terms of time frame we want to go
6 right at it. The agreement was, once tonight
7 happened, if it's favorable we would sit down again
8 and put the timeline together at that point.

9 MR. MAY: Uh-huh.

10 MS. MOTTERSHEAD: So we understand it can
11 easily take a year or more.

12 MR. MAY: Yeah. Right. Well, and this is --
13 I mean, a year is good.

14 MS. MOTTERSHEAD: Yeah, I know.

15 MR. MAY: Frankly. You know, the thing I'm
16 concerned about is what are you committing to at this
17 moment because we can't really know for sure what the
18 design will be at this moment, particularly with all
19 the additional reviews you have to do with OGB and
20 everything else. I don't know, I mean, as I recall
21 this is not a -- I mean, it may be old enough to be
22 historic but it is relatively recent vintage, like
23 the 50s or something. Is that right?

24 MS. MOTTERSHEAD: Correct. Yes.

25 MR. MAY: So, it's not --

1 MS. MOTTERSHEAD: So it's still --

2 MR. MAY: -- you know, it's not going to be a
3 traditional Washington Triangle Park or something
4 like that, with the rolled curb and the fence and the
5 walkways and things like that. So there may not be
6 big Section 106 complications, but it's still a
7 process that takes time and it's hard for you to
8 predict exactly when you're going to get through it
9 all and what you're going to wind up with.

10 So it's, I mean, I feel like we don't really
11 know very much about it. I mean, I forget, did you
12 actually commit to a particular expenditure amount
13 related to the improvements?

14 MS. BATTIES: What we committed to is a
15 substantial improvement and maintenance of the park
16 as reflected on certain sheets of the landscape
17 drawings. And they're listed in the conditions. And
18 we agreed that we would have a final agreement in
19 place prior to the issuance of the C of O for the
20 project.

21 MS. MOTTERSHEAD: So we have a concept plan
22 for it and the plans lay it out. The paving
23 materials and the landscape materials and even
24 addressed the lighting and the other things. There
25 were comments from CFA to look at a few of those

1 elements a little more carefully. So we would feel
2 the next step -- we have to go back to CFA and OGB
3 for design development, and that's the point where we
4 would address a couple of comments they have and move
5 forward. But I think we were very specific in the
6 level and the quality of the materials. And they
7 plant materials. And a lot of time was also spent
8 with DDOT in terms of coordinating the public space
9 aspect and the tree placements.

10 MR. MAY: Okay. So, again, I mean, I'm still
11 sort of struggling with the idea of an uncertain
12 commitment on -- you know, we don't -- I mean,
13 usually we see a fully developed plan for a space
14 like this, and we have an understanding that it's
15 going to be built out this way with certain materials
16 and so we'd have a sense of what it is that we're
17 getting as a benefit of the project.

18 Failing that there are certain circumstances
19 where we would see a concept plan, knowing that it
20 still has to go through, you know, public space
21 review or some other process. It's not usually Park
22 Service land that's involved in this sort of thing
23 but it could be other public space that's involved.

24 What we don't have is a specific dollar
25 commitment which we would often have on a public

1 space improvement project. And I'm not looking, you
2 know, I'm not asking you to put a price tag on it
3 right now, but I think if you can tell us what the
4 minimum expenditure is that you would expect. If it
5 winds up going over that, I mean, that's, you know,
6 it's up to you how you handle it. But I think that
7 the minimum expenditure amount might be something
8 that gives us some understanding of what the value is
9 of what you're doing in terms of improvements because
10 you can't predict now or before we take proposed or
11 final action on this, exactly what we're going to get
12 and I think that's what we want to know is exactly
13 what the public benefit is going to be.

14 MS. MOTTERSHEAD: Most recently, I mean,
15 obviously we had to get the concept approvals and we
16 got the concept approvals, and we just have put it
17 out to pricing at this point to contractors to get
18 feedback. And I think you may remember the line
19 items for the Park Service portion, to give them the
20 order of magnitude. Or we could pull it up probably,
21 right now, if that would be helpful.

22 MR. MAY: Yeah. I mean, well, the thing
23 about it is that I think we're going to want to have
24 something in writing that indicates what it is and
25 I'd rather not sort of do off the cuff or speculate.

1 Just, you know, give us something that says that
2 improvements of at least this dollar amount, and some
3 expectation about what the timeline for delivery
4 would be.

5 Did you say that you actually have OGB
6 concept approval for the development of the park
7 itself?

8 MS. MOTTERSHEAD: Yes, and CFA, also with
9 specific comments. And I believe that was included.

10 MR. MAY: Yeah, I mean, I saw the approval
11 letter. I wasn't sure how much went to the -- how
12 specific it was about the park, so I was a little
13 confused about the extent of review of the park
14 itself.

15 MS. BATTIES: Commissioner May, if I may
16 direct you to the plans that were dated July 1st,
17 Sheets L-5 through L-7 really call out the elements
18 that will go into the park space. And they're pretty
19 specific.

20 And the materials board behind you even
21 addresses some of the elements that will be installed
22 in the park space.

23 MR. MAY: Okay. So --

24 MS. BATTIES: And these were reviewed by CFA
25 and OGB.

1 MR. MAY: Got it. Okay.

2 MS. MOTTERSHEAD: Right.

3 MR. MAY: All right. So I was -- I just
4 missed that in the letter.

5 Now, OGB is okay with this. Did the Park
6 Service -- what did the Park Service have to say
7 about this specific site development plan?

8 MS. MOTTERSHEAD: They seemed onboard,
9 conceptually with the plan, knowing we have further
10 steps ahead of us.

11 MR. MAY: Okay.

12 MS. MOTTERSHEAD: But we did spend time, as I
13 said, with them on the materials and on the planting.

14 MR. MAY: Okay. And so can you tell me who
15 you reviewed it with at the Park Service?

16 MS. MOTTERSHEAD: We reviewed it with Nick
17 Bartalamay, Michael McMann, and they went -- it's
18 part of the Rock Creek Park --

19 MR. MAY: Yes.

20 MS. MOTTERSHEAD: -- Division, so they
21 reviewed it internally with Terra Morrison, who is
22 the head of that division, who is the one that was on
23 board with the concept plan as the starting point for
24 the process to come to written agreements.

25 MR. MAY: Okay. And then so I mean, just

1 looking at this I can see there are going to be some
2 changes that will come with this, you know, having
3 been through a few of these there are things having
4 to do with ADA compliance and in particular that will
5 -- you know, it's going to add stuff. It's going to
6 add companion seedings and seat-backs and things like
7 that. Anytime you call something out as a bench
8 you've got to have some with an armrest and things
9 like that. So there's further development that will
10 go with that. Those are minor points. But I, you
11 know, I live with this all the time. I just look at
12 something like this and immediately, you know, the
13 clock and the schedule starts to piece together and I
14 know, okay, it's going to take this many months to
15 get to this point, and this many months to get this
16 approval. And your submission deadlines and review
17 deadlines and so on.

18 You also have to go through NCPC for approval
19 separately, and so I will see you there when that
20 happens.

21 So the only question I have about the park is
22 that there is a sidewalk along the back side of the
23 building abutting to the east side. And is that
24 something that you've explicitly discussed with the
25 park and they agree that that's necessary?

1 MS. MOTTERSHEAD: Yes. In fact, we had a
2 narrower version of it.

3 MR. MAY: Yeah.

4 MS. MOTTERSHEAD: And they requested that we
5 widen it, and they were also specific about what the
6 curb detail needed to look like to delineate the
7 pedestrian way. Currently that park to the east is a
8 cut-through point from north --

9 MR. MAY: Yeah, I saw the photo. Yeah.

10 MS. MOTTERSHEAD: And so the idea was to work
11 with them on the plant materials to kind of stop that
12 informal way through and to put some plantings more
13 towards Pennsylvania Avenue bridge, and then to widen
14 that path so it would be a safer pedestrian way for
15 people to make that cut-through from the M Street
16 side to the Pennsylvania Avenue and south areas.

17 MR. MAY: Okay. So, the other question I
18 had, had to do with the setback relief, which I'm
19 really confused by because you know, your letter
20 describes it and it says it's shown on certain pages
21 and I'm looking at these pages and I'm trying to
22 figure out what you're talking about. So if you can,
23 you know -- maybe if we can bring up the plan and
24 somebody can point to it on the screen or something
25 and tell me where the --

1 MS. BATTIES: Sheet A10. We can start on
2 Sheet A10.

3 MR. MAY: A10 of the --

4 MS. BATTIES: Of the plans dated April 22nd.

5 MR. MAY: All right.

6 MS. BATTIES: Which is also on the screen.

7 MR. MAY: All right.

8 MS. BATTIES: And --

9 MR. MAY: Okay. So I looked at this diagram
10 the first time around and it looked like all the
11 setbacks were met.

12 MR. GLASGOW: Yes. All the setbacks were met
13 at a point in time, and then when we were going back
14 through one last time in our session yesterday, I
15 said I'm concerned that we need to make sure that we
16 have flexibility because of what is shown on the
17 drawing on Sheet A10, because the roof is, and the
18 penthouse level, and the uppermost floor level are a
19 little bit complicated for such a small building.

20 And it's because of the language that says it
21 has to be set back a distance equal to the height
22 upon which the roof -- upon which it sits. And if
23 you'll see in that drawing where we're at the 60-foot
24 height limit, Commissioner.

25 MR. MAY: Uh-huh.

1 MR. GLASGOW: Where it says, "Top of roof,
2 elevation 103."

3 MR. MAY: Right.

4 MR. GLASGOW: You see we've got on that one
5 side --

6 MR. MAY: Yeah. Because basically you're
7 concerned that even though it is set back -- the top
8 corner of the penthouse which you're pointing at
9 right there, is set back one-to-one from the roof
10 edge below --

11 MR. GLASGOW: Of the floor below.

12 MR. MAY: -- on the lower right of the floor
13 below, but it's not when you compare -- it's flush
14 with the wall of the --

15 MS. BATTIES: Chimney.

16 MR. MAY: Not the chimney. I'm talking about
17 -- don't confuse me by answering the chimney.

18 MR. GLASGOW: No, it's not the chimney. No.

19 MR. MAY: It's that floor below.

20 MR. GLASGOW: Correct.

21 MR. MAY: I mean, it's that level below,
22 right? Okay.

23 MR. GLASGOW: That is correct. So we found
24 that -- we thought it was very technical, area of
25 relief, and particularly the way this building lays

1 out, and we thought it was better to make sure to
2 bring it to the Commission's attention and if we
3 needed the special exception for the roof structure
4 setback under the existing regulations, under
5 411.11 --

6 MR. MAY: Right.

7 MR. GLASGOW: -- that we're just better off
8 raising that and having that discussion here, rather
9 then when we're sitting in there trying to get a
10 building permit.

11 MR. MAY: Okay. So now I understand it and
12 it's not to say I agree with it. But -- or think
13 about it one way or another. But now I understand
14 what you're asking for.

15 When I was looking over it, though, I did
16 find another area where I thought there might be a
17 relief needed, which is --

18 MR. GLASGOW: She just had it.

19 MR. MAY: I was flipping through these
20 furiously trying to figure out which ones you were
21 talking about, so it was one of the plan pages and it
22 had to do with the eastern end of that same
23 mechanical space.

24 MR. GLASGOW: Yeah, it does curve -- when we
25 talk about the northern wall, are you talking about

1 there are two little -- it's the northern wall and
2 there are two edges to the northern wall as it
3 turns --

4 MR. MAY: No.

5 MR. GLASGOW: -- a couple feet?

6 MR. MAY: No. Sorry. Bear with me a second
7 while I flip frantically.

8 All right. So S-02.

9 MR. GLASGOW: All right.

10 MR. MAY: So when I look at S -- can you
11 bring S-02 up? Mr. Turnbull, did you have your
12 pointer?

13 MR. TURNBULL: No, I forgot my pointer
14 tonight.

15 MR. MAY: Oh, bummer.

16 MR. GLASGOW: We've got pointers.

17 MR. MAY: That would be very helpful. I'm
18 already talking a lot longer than Chairman wanted me
19 to, so.

20 MR. GLASGOW: Okay.

21 MR. MAY: So I had this really excellent
22 pointer that was stolen by an architect that I know.
23 Does that mean that I get to -- sorry.

24 So right here, this wall is that same kind of
25 double-height condition, right?

1 MR. GLASGOW: Do you -- we have one with an
2 elevation. Where is the elevation on that? I think
3 we set back there.

4 MR. MAY: Well, it's --

5 MR. GLASGOW: Because I believe it's at
6 elevation 103.67 and goes up to 113.58.

7 MR. MAY: Well --

8 MR. GLASGOW: That's what I --

9 MR. MAY: Yeah, that's true along these
10 walls, right? The --

11 MR. GLASGOW: Yeah.

12 MR. MAY: The southern wall, most of the
13 eastern wall, most of the western wall. But right
14 here it's, you have, this is like 92 something, and
15 this is 113.

16 MR. GLASGOW: No, that -- yeah.

17 MR. MAY: So there's only set nine --

18 MR. GLASGOW: That's the little piece that I
19 was talking about. It curves there on --

20 MR. MAY: Yeah.

21 MR. GLASGOW: It goes -- yes. If you want to
22 say exactly where all the area of relief is needed,
23 it's here.

24 MR. MAY: Yeah.

25 MR. GLASGOW: Here. And here.

1 MR. MAY: Right. So, these -- you know, this
2 section here --

3 MR. GLASGOW: Yes.

4 MR. MAY: -- this small section to the east -
5 - or to the west, rather. The north wall.

6 MR. GLASGOW: Right.

7 MR. MAY: Those are all set back from the
8 floor below, right?

9 MR. GLASGOW: Yes.

10 MR. MAY: So there, the relief is much more
11 technical in nature. It has to do with the wording
12 of the language, and I think I can get to that.

13 MR. GLASGOW: All right.

14 MR. MAY: This is the one that I have a
15 problem with because this is basically a 20-foot, 20
16 plus foot structure and it's only set back 10 feet.

17 MR. GLASGOW: Oh, I see. All right.

18 MR. MAY: And it's a, you know, theoretically
19 a fairly visible location.

20 MR. GLASGOW: So it's this piece.

21 MR. LEVINAS: It's this little one here.

22 MR. GLASGOW: It's just this little piece
23 here.

24 MR. MAY: Right.

25 [Discussion off the record.]

1 MR. GLASGOW: It's nine feet by nine feet.
2 It looks like it's approximately a square.

3 MR. MAY: Right.

4 MR. GLASGOW: In shape.

5 MR. MAY: Roughly.

6 MS. MOTTERSHEAD: And it's a portion of the
7 mechanical space currently.

8 MR. LEVINAS: But to achieve them we have to
9 [Speaking off mic].

10 MR. GLASGOW: No, you don't have to -- we
11 have to cut it. This is an addition.

12 MR. LEVINAS: No, but we cannot add here.

13 MR. GLASGOW: You're saying that because
14 of --

15 MR. LEVINAS: Because architecture of that is
16 the side. If you see the side goes all the way to
17 the back on it so if you go to the --

18 MR. GLASGOW: Okay. So, all right. At least
19 we understand what it is that we're talking about.

20 MR. MAY: Right. Is there -- I mean, can we
21 see it in this condition in one of the perspective
22 views?

23 MR. GLASGOW: Right. Show it to them to
24 explain.

25 MR. MAY: It would be the northeast corner,

1 wouldn't it?

2 MR. LEVINAS: [Speaking off mic.]

3 MR. MAY: Northeast corner, right.

4 MR. GLASGOW: It's that little corner.

5 MR. MAY: Yeah.

6 MR. GLASGOW: No, right there.

7 MR. MAY: Right.

8 [Discussion off the record.]

9 MR. MAY: If you're going to talk to us, you
10 need to be on a microphone.

11 MR. LEVINAS: Oh, I'm sorry. Okay. I'm
12 sorry.

13 MR. MAY: You need to introduce yourself too.

14 MR. LEVINAS: Yeah. My name is Salo Levinas.
15 I'm from Shinberg Levinas Architects.

16 This is the little corner that you're
17 talking, right?

18 MR. MAY: Yeah.

19 MR. LEVINAS: Just this. Yes.

20 MR. MAY: Right. That portion right there.

21 MR. LEVINAS: Yes, exactly. The problem with
22 that is that we have the mechanical room right there.
23 And it is very tight and works very well with the
24 building, and it is a minimum that we can build for
25 the mechanical room so --

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1 MR. MAY: Right. And the basic principle
2 that we're dealing with here is that you have some,
3 albeit, minimal, occupied space on the penthouse
4 level. And as a matter of principle we've been
5 saying no relief from setback requirements if there's
6 any kind of habitable space. The habitable space has
7 to go first. So you cut the size of the exercise
8 room and push this away, and then you get you know,
9 the setback that you need at that corner.

10 Now, it's still going to be quite visible.
11 And so, I mean, actually you know, I don't know what
12 this does for the design, and you'd have to think
13 about that. But what you really need is a section of
14 roof here. Another way to solve that is a section of
15 roof.

16 MR. GLASGOW: Right. You're saying that this
17 is covered.

18 MR. LEVINAS: Yeah, that's what I'm saying
19 but if you see this line.

20 MR. MAY: Yeah.

21 MR. LEVINAS: Goes to all the way like this,
22 vertically.

23 MR. MAY: Right. And you're talking about
24 something that's totally architectural in nature and
25 I'm totally sympathetic, but it doesn't mean anything

1 in terms of zoning. So, you know, making that change
2 for aesthetic, or not making that change for
3 aesthetic reasons, that -- you'll still have that
4 line. I mean, you know, you can continue that white
5 line of concrete all the way out to this point.

6 MR. LEVINAS: Well, but then it will be like
7 a roof or floor.

8 MR. MAY: Yeah.

9 MR. LEVINAS: That doesn't have anything
10 below.

11 MR. MAY: Yeah.

12 MR. LEVINAS: Correct?

13 MR. GLASGOW: This is 10 feet. It's 10
14 feet --

15 MR. MAY: Yeah, a 10-foot square. It just
16 means having a roof over that little bit of --

17 MR. LEVINAS: With an empty space below, you
18 mean?

19 MR. MAY: Yeah. Well, I mean, that space is
20 part of the terrace or patio for that unit, is it
21 not?

22 MR. LEVINAS: No.

23 MR. MAY: You can't go outside there?

24 MR. LEVINAS: But then you will have a --

25 MR. GLASGOW: What's here, Salo? What's

1 here?

2 MR. LEVINAS: This is apartment but --

3 MR. MAY: There's a person standing there.

4 MR. LEVINAS: Over there. So that one, you
5 are going to cover. So this slab, it will continue.

6 MR. MAY: Yes.

7 MR. LEVINAS: But the thing architecturally,
8 you see that the line --

9 MR. MAY: I understand that, but the line is
10 still there because the brick is still there. You
11 wouldn't have to -- only the roof would have to be
12 extended.

13 MR. LEVINAS: So then the slab, you want to
14 continue the slab?

15 MR. MAY: Yeah.

16 MR. LEVINAS: Is that correct?

17 MR. GLASGOW: You could continue the slab or
18 -- you could continue the slab, or what I'm hearing
19 is you could have another design solution that may or
20 may not have some other material, just so that that
21 area is covered.

22 MR. MAY: Yeah. I mean, we're really getting
23 very technical about this and it is not so much about
24 this because I'm not greatly bothered by the
25 aesthetics of this. It is more the matter of the

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1 principle. That's the thing that concerns me more
2 than anything else. And it's really -- I mean, I'm
3 the only one who has talked so far. I may not
4 persuade everybody else on the Commission, but I
5 think that something ought to be done and it wouldn't
6 be too hard to do as an architectural fix, just to
7 extend that slab out 10 feet so it lines up with the
8 edge of that, and -- I mean, it's similar to what
9 you've done over here. Right? You know, you're just
10 cantilevering that out.

11 MR. GLASGOW: It will be a slight increase in
12 FAR. We are right at the FAR limit, but it would
13 probably be within the two percent.

14 MR. LEVINAS: The thing is that
15 architecturally this corner belongs to this corner
16 below. If we extend the corner over there --

17 MR. MAY: I --

18 MR. LEVINAS: You know?

19 MR. MAY: I understand that.

20 MR. LEVINAS: Okay. Okay.

21 MR. MAY: It's not about that. This is about
22 strict compliance with the Zoning Regulations.

23 MR. LEVINAS: Okay.

24 MR. MAY: All right. That's it. I
25 apologize, Mr. Chairman, for taking too long, but

1 that's it.

2 CHAIRPERSON HOOD: You need some more time?

3 MR. MAY: Well, I was going to talk about the
4 chimney but I think I'll let Mr. Turnbull talk first.

5 CHAIRPERSON HOOD: Oh, okay. So you want to
6 talk about the chimney, Mr. Turnbull?

7 MR. TURNBULL: Oh, I'd love to talk about the
8 chimney.

9 CHAIRPERSON HOOD: Rob, you and I don't have
10 anything to talk about. Mr. Turnbull.

11 MR. TURNBULL: I thank you, Mr. Chair.

12 I like the design of the building. I think
13 it's -- there's a nice feeling for it. There's a
14 nice flavor. I agree with commissioner May on the
15 setbacks. I know you're dealing with an awkward site
16 and everything else. But I wonder if you could go
17 to, and I don't have my pointer, but the 5th floor.

18 MR. GLASGOW: Sheet number, Commissioner?

19 MR. TURNBULL: AL-6.

20 [Pause.]

21 MR. TURNBULL: Okay. Explain to me what's
22 going on.

23 MS. BATTIES: Diogo. I'm sorry. He wants
24 you to walk through the 5th floor.

25 MR. LIMA: I'm Diogo Lima from Sorto Moura

1 office.

2 MR. TURNBULL: Welcome.

3 MR. LIMA: Thank you. About we -- can I
4 cross for the next one?

5 MR. TURNBULL: Well, let me make it easier on
6 you.

7 MR. LIMA: I only want to --

8 [Discussion off the record.]

9 MR. LIMA: So, only start with this.

10 MR. TURNBULL: No.

11 MR. LIMA: Only to introduce one thing is
12 when we begin the project we like something more like
13 this. And with a lot of discussions and meetings
14 with the Commission we -- they want -- we put
15 something more like the M Street and the difference
16 between M Street and Pennsylvania.

17 So we talk and we find this -- the church in
18 the same plot, in the same plot. And you like these
19 kind of things, you know? And there is -- and the
20 difference between the tower is the tower of the --
21 now it's the tower of the Four Seasons. And the
22 chimney, and the terrace.

23 So, when we do this fifth floor, we
24 introduced these kind of things, and we introduce the
25 terrace. We lost a little bit of area and --

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1 MR. TURNBULL: Well, let me just ask you
2 something. How do you get out here? How do you get
3 out on to that terrace, because on the plan --

4 MR. LIMA: Yeah.

5 MR. TURNBULL: -- I don't see any openings on
6 the plan. So, I'm --

7 MR. LIMA: Okay. It's a sliding door. So we
8 have --

9 MR. TURNBULL: Oh, here and here?

10 MR. LIMA: Yes. Here.

11 MR. TURNBULL: So it's just for this unit?

12 MR. LIMA: Yes.

13 MR. TURNBULL: Oh, isn't that nice? And you
14 have -- what is this, the Donald Trump Suite? And
15 you have a chimney, a monumental chimney for this
16 floor. Something that goes beyond height. This
17 really is -- you want to make a statement for this --
18 so this -- not for anybody in the building but it's
19 for this suite to have this monumental chimney. I
20 don't care for that. If this was for the whole
21 building or something, that might be interesting to
22 have. But to make a statement for just this
23 building, to put this monumental -- what do you want
24 to call it, an architectural embellishment then? Is
25 this what this is, this little tower, for the -- this

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1 is -- I just find -- it's a nice looking building but
2 I just think -- my feeling is, and I don't know how
3 the rest of them feel, to have this -- I mean, you
4 don't need a full height chimney to vent this thing.
5 I mean, you don't need this for code or anything to
6 do this. We've had chimneys, we've had barbeques,
7 we've had fires up on penthouses before without a
8 monumental chimney of this. You don't need to do
9 that.

10 I think that if you're trying to make a
11 statement saying, oh, we're matching something across
12 the street, we're trying to get the -- I think that's
13 a stretch. I think architecturally if -- if the Old
14 Georgetown Board likes that, that's a problem for me
15 from a zoning standpoint, to be able to do this. I
16 think that's a stretch. I really don't care for it.

17 I think that to have one unit to have this
18 monumental -- it's not integral to the design of the
19 building in the sense that, I like the overall feel
20 of the building as it sits, and then I saw this huge
21 brick chimney and I'm like -- and I know Commissioner
22 May originally thought, I don't have a problem with
23 it. But I just feel that for this one floor to have
24 this monumental chimney is egregious. I just think
25 it's very egregious to be able to do this. I don't -

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1 - my feeling is, it's not integral to the design of
2 the building. It's simply something for this unit.

3 And unless they're paying for half the
4 building, I mean, do you have a tenant already --
5 someone is going to own -- I am just, again, it's the
6 Donald Trump Suite, and I just have a problem with
7 this. I just think it's very egregious.

8 And I guess on the penthouse, Commissioner
9 May, and I agree with him about the setbacks on the
10 penthouse, can you go to the penthouse floor?

11 You have a kitchen on the penthouse floor.
12 You have an exercise room, a bathroom, and a kitchen.
13 What am I, am I going to go in there after on the
14 bike for a while have my snacks after, you know, so I
15 can -- sugar? I just, I think you've got some work
16 to do up here. I think this -- to me, this building,
17 I think you're doing -- I mean, I know it's a very
18 awkward site and you're trying to squeeze a lot in
19 here. But there's just some things that sort of push
20 this thing to the edge of zoning on a lot of things
21 and I'm just, I'm troubled by this chimney. To me
22 it's totally extraneous. It's not needed for what
23 you're trying to do on the -- if you wanted to have a
24 fireplace down there, you don't need to have this
25 huge monumental chimney to be able to have that. And

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1 I just think this is stretching some of the issues
2 that we normally deal with.

3 At first I, you know, when I first looked at
4 the plans of the fifth floor I didn't see any doors.
5 And then I thought, no, they wouldn't have it just
6 for one unit. But that's what you're doing. And I'm
7 just -- it gets down to principles of design,
8 principles of zoning, and what you're trying to
9 achieve. And I think there is some incongruous
10 aspects to this that you really need to go back and,
11 I think you need to deal with lighting upon that
12 fifth floor. I want to know what the lighting is
13 going to look like.

14 And again, I guess you've talked about -- and
15 maybe there is some regulations that you're going to
16 be following as to if lights go -- at 10:00 it should
17 be all down lighting. There shouldn't be anything in
18 the neighborhood that it would be glaring, that it's
19 not attracting itself.

20 Anyways, Mr. Chair, those are my questions.

21 CHAIRPERSON HOOD: Okay. Thank you.

22 Commissioner Miller, you have anything?

23 MR. MILLER: Thank you, Mr. Chairman. No, I
24 don't have a lot of questions. Just a couple
25 comments.

1 This is certainly a much better use of this
2 site than the gas station that's been there as the
3 gateway to Georgetown for many years, although I've
4 been happy to use that gas station many times. Or
5 walk through it when I used to live in Georgetown.

6 But and I think it's very attractively
7 designed. I guess I hadn't -- I have no problem with
8 this -- I really didn't have a problem with the
9 setbacks or the chimney but I don't think the -- I
10 think the solution suggested by Commissioner May
11 would not detract from the design and may even add
12 something there, or another solution that the
13 applicant may come up with in order to technically
14 meet the setback there.

15 The chimney height, what is the height of the
16 chimney above the roof? I hope that -- if it's the
17 Donald Trump Suite I hope he's living there, or at
18 the Donald Trump Hotel as opposed to a few blocks
19 away from the hotel.

20 MS. BATTIES: The top of the -- above the --
21 is four-foot, 10; extends four feet -- 10 feet over
22 the elevator penthouse. Four feet, 10 inches over
23 the elevator penthouse. Override.

24 MR. MILLER: And I can see how that -- and
25 that's directly across the street from the clock

1 tower of the Four Seasons. I can see how there is a
2 relationship there, and I think it -- I was trying to
3 envision the building without the height of that four
4 feet, 10 above -- and I think it might make the
5 mechanical penthouse stand out more if --

6 MS. BATTIES: There it is without the
7 chimney.

8 MR. MILLER: Right. I mean, I could -- I
9 don't have a problem with it, but I know my
10 architectural colleagues have strong principles which
11 I will generally defer to because I occasionally have
12 strong principles that I want them to defer to. So,
13 I think it looks -- I think it does relate to the
14 surrounding context and so I don't particularly have
15 a problem with that.

16 And the restaurant use is great, and the
17 public benefit of the 359,000 contribution to the
18 Housing Production Trust Fund is certainly important
19 and I appreciate that. And the LEED Gold that you've
20 -- you are committing to LEED Gold as opposed to the
21 original application.

22 MS. BATTIES: Yes.

23 MR. MILLER: After working with DOEE.

24 MS. BATTIES: Correct.

25 MR. MILLER: So I think that's great. I had

1 one question about the -- and DDOT is not here so
2 I'll ask the applicant. In your supplemental
3 prehearing statement, you said the applicant
4 incorporated DDOT's recommended changes to the
5 loading management plan, including restricting truck
6 deliveries for the restaurant between the hours of
7 7:00 a.m. to 4:00 p.m. And I just was wondering why
8 they were restricting truck deliveries. Why weren't
9 they just limiting the restriction on truck
10 deliveries to rush hour as opposed to the evening rush
11 hour is going to be affected by -- they're allowing
12 truck deliveries during the evening rush hour. Why
13 aren't they allowing day-time non-rush hour truck
14 deliveries for the restaurant? That seems to be a
15 logical time in that -- where there isn't as much
16 congestion on the street to allow the truck
17 deliveries. It's very congested, the rush hour on M
18 Street and Pennsylvania Avenue, both in the morning
19 and the evening.

20 Do you know what the rationale was?

21 MS. WHITE: Well, good evening. Nicole
22 White, principle with Semetra Design. DDOT is not
23 here and I'll try to relay as best I can their
24 thoughts on the matter.

25 So loading would occur off-site, so it's not

1 so much an issue of what happens on M Street and
2 Pennsylvania Avenue, but it's making sure that
3 operations on the driveway do not impact M Street and
4 Pennsylvania Avenue.

5 So since the restaurant peak happens later in
6 the afternoon there was more concern about cars
7 coming to drop people off for the restaurant
8 conflicting with loading during that time. So in the
9 morning we wouldn't have that same level of
10 restaurant operation, potentially.

11 Does that answer your question?

12 MR. MILLER: Yes, and no. I just don't
13 understand why truck deliveries shouldn't be allowed
14 during the day when there's the least conflict with
15 everything.

16 MS. BATTIES: The deliveries are being made
17 between 7:00 and 4:00 p.m., not restricted.

18 MR. GLASGOW: It's between those times.

19 MS. WHITE: Restricting after 4:00 p.m.

20 MR. MILLER: All right. Then I misread.

21 MS. WHITE: Oh, okay.

22 MR. GLASGOW: Okay. We're good.

23 MR. MILLER: Okay. Thank you, that explains.

24 MS. BATTIES: Sorry, I didn't --

25 MR. MILLER: Sorry. That was my -- no, that

1 was my misunderstanding.

2 So, I really don't have any other further
3 questions, Mr. Chairman. Thank you for your
4 presentation and I look forward to seeing this
5 project come to fruition.

6 CHAIRPERSON HOOD: Okay. I may have a -- I'm
7 not sure where this question goes, but one thing I do
8 want to give DDOT, I appreciate what they put in
9 their report about the RPP. I think they finally got
10 it, about the RPP. And then I'm going to read this.

11 "These TDM measures, if implemented as
12 planned, will encourage the use of all modes of
13 transportation. However, DDOT observes the applicant
14 is proposing the residential permit parking
15 restriction."

16 You're still doing that, right?

17 MS. BATTIES: Yes.

18 CHAIRPERSON HOOD: "Which is not a strictly
19 enforceable condition by the District and therefore
20 the restriction may not realize its intended
21 outcome."

22 It's only been two to three years since we've
23 been saying this about -- this is the first time I've
24 read it in writing. I know that we've been saying
25 it. Commissioner May is telling me I must have

1 missed that. But I better memorialize and say this
2 report up here because this is exactly what the issue
3 is.

4 So when I look at that, here's my question.
5 When I look at what they're saying here about RPP and
6 what you all proposed about the leases and whatever,
7 in the building, and then I look at Ms. Sawatzki --
8 did you see Ms. Sawatzki's e-mail?

9 MS. BATTIES: The gentleman? Yes.

10 CHAIRPERSON HOOD: Oh, Mr. Sawatzki. Okay.
11 Okay. Is Mr. Sawatzki here? Okay.

12 MS. BATTIES: We think he's in China.

13 CHAIRPERSON HOOD: Oh, okay.

14 MS. BATTIES: If you read his blog. Sorry,
15 that was an inside joke. Sorry.

16 CHAIRPERSON HOOD: I didn't read all that. I
17 just read what was in the record. I try to stay in
18 the record.

19 Okay. But his issue is exactly what -- he
20 thinks that if we allow this without parking, or
21 without the required parking, that we're creating a
22 problem.

23 Help me realize how we would not be doing
24 what his letter, and also what DDOT is saying about
25 this RPP and not being realized, what you're trying

1 to achieve. Help me understand how -- why this can
2 go forward the way it's being proposed. Other than
3 the bus line runs up and down in the area, because M
4 Street I know, is terrible. I've been there. I have
5 to get off the circular and walk so I can get to
6 where I need to be faster.

7 So anyway, Ms. White if you could help me
8 understand that?

9 MS. WHITE: Outside of restricting RPP I'm
10 not clear on what your question is. How can it be
11 better enforced or --

12 CHAIRPERSON HOOD: No, no, my question is, if
13 RPP is being proposed as one of the mitigations and
14 for the way I read it, DDOT is taking that off the
15 table, and I actually took it off the table before
16 DDOT. Help me understand why should we allow this to
17 move forward as proposed without other mitigation
18 factors. Or help me realize why this can move
19 forward as proposed.

20 MS. WHITE: Okay.

21 CHAIRPERSON HOOD: Taking the RPP off the
22 table and --

23 MS. WHITE: Yeah. One, I don't know -- oh,
24 go ahead. I'm sorry.

25 MS. BATTIES: I will say that the applicant

1 has reached an agreement with the Citizen's
2 Association of Georgetown to -- and has committed to
3 provide off-site parking for residents that requested
4 or require it to stay in the building. Chairman
5 Hood, there is only three parking spaces required by
6 code, so this is not -- the variance or the
7 flexibility is nominal.

8 CHAIRPERSON HOOD: So how many are you
9 require -- how many do you have? Three required by
10 code, how many do we have?

11 MS. BATTIES: We cannot accommodate any
12 parking on site.

13 CHAIRPERSON HOOD: Right. So those three
14 would be more -- three is better than none, right?

15 MS. BATTIES: If you could accommodate them
16 on site, but we're not able to.

17 CHAIRPERSON HOOD: But three is better than
18 none. And according to Mr. Sawatzki, you can do the
19 elevator.

20 MS. BATTIES: We cannot --

21 CHAIRPERSON HOOD: I read his letter clearly.

22 MS. BATTIES: -- accommodate an elevator on
23 site, but we are committed to provide up to seven of
24 10 parking off-site parking spaces within close
25 proximity to the --

1 CHAIRPERSON HOOD: Can you direct me, Ms.
2 Batties --

3 MS. MOTTERSHEAD: I would like to --

4 CHAIRPERSON HOOD: Hold on for a second. Let
5 me finish my --

6 MS. MOTTERSHEAD: -- answer. Oh, sorry.

7 CHAIRPERSON HOOD: Let me finish my line of
8 questioning.

9 Ms. Batties, if you can direct me to where
10 that is?

11 MS. BATTIES: Sure. If you look at the list
12 of proposed conditions.

13 CHAIRPERSON HOOD: Came in today?

14 MS. BATTIES: And they were also contained in
15 the memo attached to the Citizen's Association of
16 Georgetown letter of support.

17 CHAIRPERSON HOOD: Okay. I saw that. And I
18 didn't see it.

19 MS. BATTIES: On page 2 of the list of
20 proposed conditions, starting at the bottom, the last
21 bullet. And then it continues on page 3.

22 CHAIRPERSON HOOD: And how many parking
23 garages are nearby?

24 MS. WHITE: There were three within a quarter
25 mile radius.

1 CHAIRPERSON HOOD: Three within a quarter
2 mile. Okay. You need a microphone.

3 MS. WHITE: Three within a quarter mile
4 radius and additional parking outside of that quarter
5 mile radius.

6 CHAIRPERSON HOOD: And they've already been
7 contacted.

8 MS. WHITE: We did some surveying to
9 determine availability of parking, yes.

10 CHAIRPERSON HOOD: But I mean, have we --
11 I've had a case like this before. Have we made
12 contact with one or two of them to know that this may
13 be a proposal that we may come forward with, and are
14 you amenable to doing it. Has that been done?

15 MS. MOTTERSHEAD: We have talked to
16 operators. We also operate several garages and own
17 them that are just outside the quarter of a mile, so
18 which we do control. And it was requested by CAG
19 that we move the half mile radius, which included all
20 the buildings that we own, to the quarter mile. So
21 we did not, at that point, go back through the
22 process of contacting them. But --

23 CHAIRPERSON HOOD: So the ones that you own,
24 you know you can do it there?

25 MS. MOTTERSHEAD: Oh, yes.

1 CHAIRPERSON HOOD: Okay.

2 MS. MOTTERSHEAD: We know we can do that
3 there.

4 CHAIRPERSON HOOD: That's all I needed to
5 know. That's all I needed to know.

6 MS. MOTTERSHEAD: And that's just past
7 Wisconsin on M, to the west side of Georgetown.

8 CHAIRPERSON HOOD: Okay. Okay. That's what
9 I want to make sure because we've had some other
10 cases similar, and it was proposed to us but there
11 was no contact with those surrounding areas of really
12 meaningful being done to say, look, this may be
13 coming down the pike. This is what we may do.

14 I would also agree, I think all of us from
15 what I've heard so far, would agree with Commissioner
16 May's suggestion about how to cure some of that and
17 get closer than where we are. And I don't need to
18 reiterate that.

19 The only other thing is, Ms. Batties, at the
20 beginning you mentioned a number of items. And the
21 way I read the DDOT report, the DDOT report was that
22 -- DDOT and Office of Planning. Some of those
23 things, if we were to approve this under proposed
24 action, some of those things would continually be
25 worked out. That's the way I read it. Everything I

1 got from OP, and they can speak for themselves, and
2 what I got from DDOT.

3 MS. BATTIES: And what we attempted to do in
4 the list of proposed conditions is take those
5 recommendations and put them in a condition that OAG
6 would deem appropriate and enforceable. For example,
7 where it says we would continue to work with the
8 National Park Service, we revised that recommendation
9 to say that prior to the issuance of a C of O, the
10 applicant would have reached an -- would reach an
11 agreement or finalize an agreement with National Park
12 Service.

13 The same thing with the LEED certification.
14 CFA approval, Office of Planning recommended that we
15 continue ongoing work with CFA and we revised that
16 language to say, "Prior to the issuance of the
17 building permit the applicant will have obtained
18 final approval from CFA."

19 So we tried to take all those recommendations
20 and put them into a condition that would be
21 acceptable to the Office of the Attorney General.

22 CHAIRPERSON HOOD: Okay. All right. Thank
23 you. That's really all I have. Any follow-up
24 questions up here?

25 MR. TURNBULL: Mr. Chair, if I might? Let me

1 just throw out an option for your chimney. If you go
2 back to that fifth floor. If this chimney were moved
3 to the east, and if you made it even the full width
4 of the elevator core, okay, so you move this, you
5 move this chimney over here in this area right here,
6 and you make it the full width of the elevator, you
7 take that all the way up and you fill it in, then you
8 would have the elevator core and the chimney. You
9 fill in between, you have this big solid block of
10 brick up there. So it reads as one monumental mass
11 up at the top. I mean, that's to me, that's one --
12 Mr. May is shaking his head.

13 MR. MAY: I'm just thinking, no, because what
14 that does is it just makes the elevator core bigger
15 and more obvious and it wrecks the setback that it
16 has from the level of the penthouse below.

17 MR. TURNBULL: Are you sure?

18 MR. MAY: Yeah. Because I mean, that space
19 there that is above where we see the elevator right
20 now is the -- that's the setback that -- the extra
21 setback that is needed for the elevator. So you're
22 making it bigger.

23 I mean, I do want to talk about the chimney.
24 I mean, I appreciate the concern about the additional
25 height, but I actually think that it helps the design

1 of the rooftop to have that chimney there, and
2 chimneys, domes, spires are things that are allowed
3 under the Height Act, so as much as a sticker as I am
4 about issues of height, I'm not really troubled by it
5 and I actually kind of find it appealing.

6 MR. TURNBULL: Well, I --

7 MR. MAY: I appreciate your support of my
8 concerns about the other setback issue. But I'm
9 sorry I can't go along with you on this one.

10 MR. TURNBULL: Okay. Well, I'll be voting
11 against it.

12 MR. MAY: Okay.

13 CHAIRPERSON HOOD: Okay. Now that you are
14 all clear on the architectural part of it I just
15 would remind you that you do have Commissioner Miller
16 and Commissioner Hood up here also. So I just want
17 to remind you of that.

18 Anyway, and you wanted to add something,
19 young lady, when I was trying to go down on my line
20 of questioning with Ms. Batties who wanted to come
21 back at me, but you wanted to add something.

22 MS. MOTTERSHEAD: No, it's just to your point
23 about accommodating on-site parking. The site is
24 very constrained, not only by the size, but also by
25 the access. And we spent a lot of time working with

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1 DDOT, even in terms of whether we could make an
2 elevator even work or get in and out of the site.
3 And the issue on the site really is that neither M
4 Street nor Pennsylvania Avenue have any loading or
5 parking zones or abilities for people to stop and
6 off-load. And so the feeling was that the access
7 through the site was extremely important to be able
8 to bring trash trucks, delivery trucks, drop-offs to
9 the building. And that really -- therefore, if you
10 came in there, we tried other ways of what you could
11 get into the building to get down and to make turns
12 and things, and there really was no other option to
13 go that route.

14 CHAIRPERSON HOOD: I think what you -- your
15 agreement that you have with CAG -- they used to call
16 them CAG. They still call them CAG? Okay. Years
17 ago with I think Ms. Zogman (phonetic) and others.
18 But anyway, with the Citizens of Georgetown. I think
19 what your agreement with them, and also with the ones
20 that you own, my issue is, I think, resolved. So I
21 appreciate that.

22 Any other questions up here? Okay. Let's go
23 to ANC. Is anyone representing ANC 2E? I don't see
24 Chairman Lewis. Any cross from them?

25 Okay. Let's go to the Office of Planning.

1 Ms. Fothergill.

2 MS. FOTHERGILL: Good evening. For the
3 record, I'm Anne Fothergill with the Office of
4 Planning. The applicant has generally addressed the
5 issues raised in the OP report as well as the
6 concerns of DDOT and DOEE, and with the achieving
7 LEED Gold DOEE supports that. And OP rests on the
8 record in support of the application and is available
9 for any questions.

10 CHAIRPERSON HOOD: Thank you very much, Ms.
11 Fothergill. Any questions of Office of Planning,
12 DDOE, or DDOT? It looks like Ms. Fothergill was
13 filling in for all three. Any questions of any one
14 of those agencies?

15 [No audible response.]

16 CHAIRPERSON HOOD: Okay. Thank you very
17 much. Does the applicant have any cross?

18 MS. BATTIES: No, we don't. And not seeing
19 anyone, again, here from ANC 2E for any cross.

20 Okay. Let's go to reports of other
21 government agencies. I think Ms. Fothergill already
22 alluded to them. Do we have any organizations and
23 persons who are here in support? I'm going to ask
24 Mr. Givins, I believe, if you can come forward. And
25 again, oh, let me just go over the ANC letter.

1 Basically the ANC in support by a vote of six to
2 zero. And that is our exhibit 30 in the record.

3 Okay. Do we have any other organizations or
4 persons who are here who would like to testify in
5 support?

6 Okay, Mr. Givins, you will be it.

7 MR. GIVINS: Joseph H. Givins for Citizen's
8 Association of Georgetown. Thank you very much.
9 Happy to support this project. We appreciate the
10 draft proposed conditions that were just given to me
11 and they're working with the developer so they've met
12 with us and the community and we're very supportive
13 of their project now. Thank you.

14 CHAIRPERSON HOOD: Okay. Great. We
15 appreciate you getting right to the point. Any
16 questions, colleagues? Is there any cross, Ms.
17 Batties?

18 MS. BATTIES: No.

19 CHAIRPERSON HOOD: Okay. Thank you very
20 much. We appreciate you coming down.

21 Okay. Do we have any organizations or
22 persons who are here in opposition? Mr. Hargrove?
23 And I have discussed the letter of Mr. Sawatzki.

24 MR. HARGROVE: Chairman Hood, Members of the
25 Commission. I'm Larry Hargrove, testifying for the

1 Committee of 100 on the Federal City.

2 As you've heard, the applicant of this case
3 is invoking Section X-3012, which allows the
4 Commission to grant a 100 percent waiver of area
5 requirements for planned unit developments in any
6 other zone than 11 -- or any MU zones in the case of
7 primarily residential projects that meet a certain
8 stated special merit criterion.

9 This provision is new at the 2016 regulations
10 and our purpose today is solely to call the
11 Commission's attention to the fact that it appears
12 not to have been validly enacted in accordance with
13 the Administrative Procedure Act.

14 We brought this concern to OP's attention in
15 a couple of memos beginning in May, which was also
16 shared as a courtesy with counsel for the applicant,
17 in which we examined in detail the relevant aspects
18 of the record on ZRR from the date of the
19 Commission's final notice of proposed rulemaking back
20 in May 2015 to the Commission's action on the final
21 rulemaking, January 2016.

22 In summary our examination revealed the
23 following; the provision allowing 100 percent waiver
24 in, quote, "any other zone," unquote, was not
25 included in the MPRM text or included by OP in the

1 November 6th, 2015 memorandum in which it presented
2 various recommendations for changes in that text to
3 the Commission, or recommended by any public comment,
4 or mentioned or addressed by the Commission at the
5 November 16, 2015 meeting at which the Commission
6 considered OP's recommendations, or consequently
7 included in the preliminary final rulemaking text
8 adopted by the Commission at that meeting, or
9 contemplated in the instructions that the Commission
10 gave as to the preparation of the final text.

11 The provision appeared for the first time
12 only in the final rulemaking text that was acted on
13 by the Commission on January 14, 2016. So, the
14 resulting problem is two-fold. First, while the MPRM
15 text did contain a provision which was later
16 modified, making a 100 percent waiver available in
17 certain zones, it gave no notice to property owners
18 in the newer zones not covered by that provision or
19 to the public of any proposal to make a 100 percent
20 waiver available in those zones. A notice that even
21 accurately informs the public about what a proposed
22 rule says, but not about to whom or to what it will
23 apply is clearly not adequate notice. Consequently,
24 the provision was not adopted in compliance with the
25 APA.

1 In this connection OP, in response to our
2 initial memo, noted that in 2013 the position of the
3 Zoning Commission was at a 100 percent waiver of the
4 PUD minimum area requirement should be made available
5 under one of three stated conditions in all zone
6 districts other than those that were denominated at
7 that point in [garbled speech] and 11 other zoned
8 districts.

9 The critical fact remains, however, that that
10 2013 position of the Commission was not incorporated
11 into the 2015 notice of proposed rulemaking, and thus
12 that MPRM provided no opportunity to the public for
13 comment on such a provision. The lack of notice is
14 not cured by the fact that it may have occurred as a
15 result of error or inadvertence, or the fact that the
16 Commission had taken this position at some time
17 earlier in the protracted deliberations of ZRR.

18 Secondly, leaving aside the question of
19 compliance with the APA, there was no evidence in the
20 record from the date of the publication of the MPRM,
21 up to and including the Commission's actions on
22 January 14, 2016, that the Commission ever addressed
23 or was otherwise aware of any proposal to allow the
24 100 percent waiver in quote, "any other zone," let
25 alone that it had an intention to enact it.

1 Consequently, the preparers of that final rulemaking
2 text lacked authorization to include this provision
3 in the text and it should therefore be stricken as
4 having been included in error.

5 If the Commission wishes to adopt such a
6 provision, in our view it must advertise a proposal
7 to that affect with full opportunity for comment.
8 Aside from the fact that otherwise this provision
9 will remain under a legal cloud, leaving matters such
10 as this, this and any other matters that fall under
11 the same category, unaddressed, would signal to the
12 people of the District that the Commission is of the
13 view that it can adopt zoning regulations without
14 having informed the public in advance as to where or
15 to whom they will apply. And such a legally
16 unsupportable view would, in our view, be doubly
17 unfortunate at this particular time when the
18 Commission is seeking to launch -- and presumably is
19 expecting public confidence in its comprehensive
20 revision of the regulations.

21 Thank you for your attention.

22 CHAIRPERSON HOOD: Okay. Thank you, Mr.
23 Hargrove. I think this was -- was this brought to
24 our attention once before?

25 MR. HARGROVE: I beg your pardon?

1 CHAIRPERSON HOOD: Was this issue brought to
2 our attention once before?

3 MR. HARGROVE: Not to my knowledge. It was
4 brought to OP's attention, but what OP has done with
5 that information I can't say.

6 CHAIRPERSON HOOD: Okay. Any questions,
7 Commissioners?

8 Does the applicant have any cross?

9 MS. BATTIES: No, we don't.

10 CHAIRPERSON HOOD: Okay. Thank you very
11 much, Mr. Hargrove. Appreciate it.

12 Okay. Anyone else in opposition,
13 organization or person? Not seeing them. Ms.
14 Batties, you have any rebuttal or closing?

15 MS. BATTIES: Just a few things I'd like to
16 note. We appreciate Mr. Hargrove's comments, but we
17 do want to note that we are seeking -- or reiterate
18 that we're seeking relief for the minimum land area
19 requirements under the current 1958 Zoning
20 Regulations, and not under ZR-16. But we do note
21 that we comply with the criteria set forth in ZR-16,
22 and so that is something the Commission can consider
23 in granting our waiver request.

24 In terms of closing, the application
25 obviously has the support of OP, DDOT, ANC 2E, and

1 the Citizen's Association of Georgetown. The design
2 is compatible with the surrounding area, and the
3 project will continue to go through extensive review
4 by the Commission of Fine Arts.

5 We hear the Commission's concerns as it
6 relates to the penthouse setback, as well as the
7 chimney, and we are prepared to submit into the
8 record, response, additional drawings responding to
9 those comments and concerns.

10 In response to the e-mail about the parking,
11 we believe, as DDOT has addressed in its report, that
12 the traffic demand measures proffered by the
13 applicant adequately addressed or mitigate the
14 parking flexibility required.

15 And in light of those things we respectfully
16 request that the Zoning Commission take favorable
17 action in support of the project this evening. Thank
18 you.

19 CHAIRPERSON HOOD: Okay. Commissioners,
20 thank you very much. We appreciate your testimony
21 and your presentation to us this evening.
22 Commissioners, do we have a few things that we would
23 like to ask for? Or do we?

24 MR. MAY: Well, my concern was addressed
25 verbally. I mean, we're going to have to -- all have

1 to see the drawings in response to the setback issue.
2 You know, so I'm flexible about how we proceed at
3 this stage, but I think maybe Mr. Turnbull should be
4 addressing this.

5 CHAIRPERSON HOOD: But let me just say this,
6 and I know what Mr. Turnbull's issue is. I have a
7 concern with -- and I understand that Ms. Batties
8 said they're going up under our old regulations. I
9 have a concern about what Mr. Hargrove said, even
10 though he's talking about our ZR-16. But I do want
11 to consult with our counsel on both of those issues
12 because I think it was presented -- the way I
13 understood it, when we first set this down, that we
14 were going to deal with it through ZR-16.

15 But I still want to talk to our counsel. I
16 don't necessarily have a major showstopper, but I do
17 want to talk to our legal counsel on this whole issue
18 about the waiver, whether it's under our current
19 regulations or under ZR-16, which I understand it now
20 we're using our current regulations. And to me, I
21 think we flipped -- I think one time we were going to
22 do 16, I remember at set down, and now we're back
23 saying we're going to do our regular -- I mean, our
24 current regulations.

25 But I do have some questions that I will

1 forward to our counsel. So, I kind of have some
2 unreadiness. Not that it's a showstopper, I just
3 want to get some clarification from our counsel.

4 Any other issues? Mr. Turnbull, and then
5 I'll come to you, Commissioner Miller.

6 MR. TURNBULL: Oh, I can -- I didn't realize
7 Commissioner Miller.

8 I just -- it sounds like my colleagues are in
9 support of the chimney.

10 CHAIRPERSON HOOD: Let me ask, do you want
11 them to take a -- I know you and Commissioner May
12 went back and forth on that, but do you want them to
13 take another look at it? I think --

14 MR. TURNBULL: Well, yeah. It depends on how
15 I vote. I mean, if there's three votes voting for
16 the chimney as it is, I'm voting against this. My
17 concern on this is that the chimney, the chimney is
18 not integral to the operation of the building. And
19 i.e., it does not serve a boiler room or a heating
20 plant or is essential to smoke or -- fume or smoke
21 removal from the building. Okay? It's not essential
22 to the operation of the building.

23 This chimney is for the personal and
24 extravagant use of one dwelling unit, and to me does
25 not substantially meet the intention of what a

1 chimney was intended for in the zoning regs. This is
2 an extravagant use to do this, and I'm just concerned
3 that we are stretching the zoning regs too far by
4 allowing one dwelling unit on the top of a building
5 to have a chimney.

6 To me, again, if this was equivocal to the
7 operation of this building and because of
8 ventilation, I would have no problem. But, it's not.
9 So that's my standpoint and I'd like to -- you know,
10 there's probably three votes here to go for proposed.
11 But I'm -- my feeling is that this is carrying the
12 zoning regs too far.

13 CHAIRPERSON HOOD: Okay. I would tell you
14 this, Mr. -- I'm not actually ready to vote for this
15 tonight. So, you may want to ask them to relook at
16 this. And, you know, we do it all the time. I don't
17 know where Commissioner Miller is, but I have some
18 unreadiness on this last issue and I do want to talk
19 to our counsel. I actually wrote a note and I'm
20 going to ask Ms. Schellin to follow up for me. Okay?

21 Commissioner Miller.

22 MR. MILLER: Thank you, Mr. Chairman. The
23 applicant's counsel had stated that, in her closing
24 comments that they would provide a response on the
25 chimney and the setback issue, and I think you

1 appropriately said that we need to consult with our
2 counsel about the waiver issue because I did get
3 confused by the last statement that it's under the
4 1958 regulations. Although when this was first
5 presented as a waiver, I think Commissioner May might
6 have agreed with me and I thought that if we write
7 our rules that we can waive our rules for good cause
8 shown, we just have to make the case. So I never
9 thought that it was such a big issue, and it's 87
10 feet short of what's in our rules right now, anyway,
11 so it's de minimis.

12 Anyway, I think all those things could be
13 resolved between a proposed action tonight and more
14 submissions could come in in response to Commissioner
15 Turnbull's concern, could come in and maybe an
16 alternative between proposed and final.

17 But if you have unreadiness and if it's not
18 three of us who are ready to go forward; but I would
19 be ready to go forward if -- and wait for this stuff
20 to come in, and consult with our counsel between
21 proposed and final. But I'll defer to you, Mr.
22 Chairman.

23 CHAIRPERSON HOOD: Any other questions or
24 comments? Yeah, I do have some unreadiness and I
25 don't think it's going to be a major showstopper, but

1 I do want to consult with our counsel on this other
2 issues. And in that time that will give Mr. Turnbull
3 the chance, or give the applicant a chance, if they
4 want to reconsider and look at the chimney, take that
5 into consideration also. I mean, you don't have to.
6 You can bring it back and see what happens. But I
7 would advise you to at least look at it.

8 Okay. Anything else? Ms. Schellin, you have
9 any dates?

10 MS. SCHELLIN: Oh, yes. So we would put this
11 on for the first meeting in September, which is
12 September 12th. There are only a few things that
13 were asked for, so two weeks, Ms. Batties? Can you
14 do it?

15 MS. BATTIES: Yes, that works.

16 MS. SCHELLIN: Okay. So that would be August
17 4th. And I'm assuming the ANC is not going to meet
18 in August, but just if they choose to respond they
19 would have until August 11th to provide a response.
20 And if we could have draft findings of facts,
21 conclusions of law by August 11th also, then we'll
22 put this on for the September 12th meeting.

23 Is OP wanting to respond to the additional
24 documents that come in?

25 MR. LAWSON: Only if the Commission wishes us

1 to.

2 MS. SCHELLIN: Are you looking for OP to
3 respond? Is anyone looking for OP to respond? No?

4 CHAIRPERSON HOOD: No.

5 MS. SCHELLIN: Okay.

6 CHAIRPERSON HOOD: Okay.

7 MS. SCHELLIN: That's it.

8 CHAIRPERSON HOOD: Anything else? Okay. I
9 want to thank everyone for their participation
10 tonight and this hearing is adjourned.

11 MS. BATTIES: Thank you very much.

12 [Hearing adjourned at 8:00 p.m.]

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