

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: :

:

SOUTHEAST FEDERAL CENTER : Case No.

OVERLAY DISTRICT REVIEW @ : 10-24

SQUARE 771, LOT 12-PARCEL D :

4TH AND M STREETS SE :

:

-----:

Thursday,
December 2, 2010

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 10-24 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
GREG SELFRIDGE, Commissioner
PETER MAY, Commissioner (NPS)

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
ARLOVA JACKSON

The transcript constitutes the
minutes from the Public Hearing held on
December 2, 2010.

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

2 6:36 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is a Public
5 Hearing of the Zoning Commission for the
6 District of Columbia for Thursday, December 2,
7 2010. My name is Anthony Hood.

8 Joining me are Commissioners
9 Selfridge, May and Turnbull. We are also
10 joined by the Office of Zoning staff Ms.
11 Schellin. Also, the Office of Planning staff
12 Mr. Lawson and Ms. Jackson.

13 This proceeding is being recorded
14 by a court reporter and is also Webcast live.

15 Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the
17 hearing room.

18 The subject of this evening's
19 hearing is Zoning Commission Case No. 10-24.
20 This is a request by FW -- what does FW mean?

21 That is one of the questions, what is FW. FW
22 SEFC for review and approval under the

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1 Southeast Federal Center Overlay for property
2 located in Square 771.

3 Notice of today's hearing was
4 published in the DC Register on October 15,
5 2010 and copies of that announcement are
6 available to my left on the wall near the
7 door.

8 The hearing will be conducted in
9 accordance with provisions of 11 DCMR 3022:
10 preliminary matters, Applicant's case, report
11 of the Office of Planning, report of other
12 government agencies, report of the ANC which
13 in this case is 6D, organizations and persons
14 in support, organizations and persons in
15 opposition, rebuttal, and closing by the
16 Applicant.

17 The following time constraints will
18 be maintained in this meeting: the Applicant,
19 we're going to negotiate for 45 minutes;
20 organizations, 5 minutes; individuals, 3
21 minutes.

22 The Commission intends to adhere to

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1 the time limits as strictly as possible in
2 order to hear the case in a reasonable period
3 of time. The Commission reserves the right to
4 change the time limits for presentations if
5 necessary and notes that no time shall be
6 ceded.

7 All persons appearing before the
8 Commission are to fill out two witness cards.

9 Upon coming forward to speak to the
10 Commission, please give both witness cards to
11 the reporter sitting to my right before taking
12 a seat at the table.

13 When presenting information to the
14 Commission, please turn on and speak into the
15 microphone, first stating your name and home
16 address. When you are finished speaking
17 please turn your microphone off so that your
18 microphone is no longer picking up sound or
19 background noise.

20 To avoid any appearance of the
21 contrary, the Commission requests that persons
22 present not engage the members of the

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1 Commission in conversation during any recess
2 or at any time. The staff will be available
3 throughout the hearing to discuss procedural
4 questions.

5 Please turn off all beepers and
6 cell phones at this time so as to not disrupt
7 these proceedings.

8 Would all individuals wishing to
9 testify please rise to take the oath?

10 Ms. Schellin, would you please
11 administer the oath?

12 MS. SCHELLIN: Yes. Please raise
13 your right hand?

14 (WITNESSES SWORN.)

15 MS. SCHELLIN: Thank you.

16 CHAIRMAN HOOD: Okay. At this time
17 we will take up any preliminary matters.

18 Does the staff have any preliminary
19 matters?

20 MS. SCHELLIN: Yes. We have
21 received the affidavit of maintenance. It is
22 in order.

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1 I believe Mr. Feola may have a
2 substitute expert witness.

3 CHAIRMAN HOOD: Okay. Mr. Feola,
4 let's go to the substitute experts.

5 MR. FEOLA: Thank you, Mr.
6 Chairman. For the record, Phil Feola with
7 Goulston and Storrs.

8 We have asked for expert
9 recognition from the Commission for Shalom
10 Baranes and Mark Gilliland of Shalom Baranes
11 Associates, Erwin Andres of Gorove/Slade
12 Associates, and we have just submitted the
13 resumΛ of Kenneth Park of Kenneth Park
14 Architects who is responsible for the retail
15 design of the project.

16 CHAIRMAN HOOD: Let's take up Mr.
17 Baranes and Mr. Gilliland.

18 Is he here also, Gilliland?

19 MR. FEOLA: Yes.

20 CHAIRMAN HOOD: And also Mr.
21 Andres.

22 We will accept them unless I see -

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1 - yes. They've been accepted previously so we
2 will accept them. So noted.

3 Now we're looking at Mr. Park.

4 Commissioners, look over his
5 resumΛ.

6 Mr. Feola, you proffer him as an
7 expert in retail architecture?

8 MR. FEOLA: Retail architecture.

9 CHAIRMAN HOOD: Okay. I'm looking
10 at my colleagues. I see a nod here. Okay.

11 He will be proffered as an expert
12 in retail architecture.

13 MR. FEOLA: Thank you, sir.

14 CHAIRMAN HOOD: Mr. Feola, let's
15 work on the time. What I would propose is
16 that we have a few questions that we'd want to
17 ask upfront.

18 Then your 20-minute presentation,
19 if you could maybe -- if you go 25 we'll be
20 all right. But in your presentation, I don't
21 think we need the full 45 minutes unless I see
22 my colleagues say we do.

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1 I think if we can do it in about 20
2 minutes, we have a few questions that we want
3 to ask. If the answers can be included in the
4 presentation, that will probably help us move
5 along a little more efficiently.

6 MR. FEOLA: Certainly.

7 CHAIRMAN HOOD: Okay. Who would
8 like to start off with a few questions they
9 want to ask?

10 I know I would like to just talk
11 about the circulation pattern a little bit.
12 We don't have to go into too much detail.

13 COMMISSIONER MAY: I was
14 particularly interested in understanding the
15 rationale for the variance having to do with
16 the balconies. That was the one thing that
17 stood out for me.

18 CHAIRMAN HOOD: Commissioner
19 Selfridge?

20 COMMISSIONER SELFRIDGE: I just
21 have some questions about the third story
22 parking. It seems like a lot of parking in

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1 general, and then that it's on the M Street
2 facade as well.

3 It's screened; I acknowledge it
4 will be screened. But I'd like to know your
5 thinking on that.

6 MR. FEOLA: I'm sorry. That's
7 amount plus location?

8 COMMISSIONER SELFRIDGE: Yes. Less
9 amount, more location. But I am noting it's a
10 lot of parking.

11 CHAIRMAN HOOD: Commissioner
12 Turnbull?

13 COMMISSIONER TURNBULL: Thank you,
14 Mr. Chair.

15 I'd like to hear specifically on
16 the trellis on the upper parking level to know
17 what's going on; plantings, vines, solar
18 cells, whatever. I want to just know what's
19 going on up there.

20 The other thing that I was just
21 concerned about -- well, two things. I guess
22 it's the elevation on 4th Street of the grocery

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1 store.

2 It's all glass. But is it going to
3 be open?

4 A lot of times with stores like
5 that, they get filled up and it's not
6 attractive to people walking the street.

7 So I'm just interested in how the -
8 - I couldn't really tell from the elevations
9 and perspectives what's happening along that
10 4th Street elevation as far as being people --
11 what's the view into the store or what's
12 happening.

13 The other thing that I was not
14 troubled by, but I was just curious about.
15 You have the residential lobby, then there's a
16 garage entrance, and then there's an optional
17 entrance to the grocery store. Then right
18 across the street there's a rather large
19 garage entrance to the DOT building.

20 I'm just concerned about traffic
21 and how people are crossing the street. I'm
22 just concerned about that whole interaction of

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1 garage entrances and pedestrian entrances.

2 That's some of the things I'd like
3 to hear about.

4 CHAIRMAN HOOD: Okay. Mr. Feola,
5 if we can kind of tailor to -- whatever else
6 you want to add, but if we can tailor to that
7 I think we could -- we may start doing this
8 more often.

9 MR. FEOLA: It's a good idea. If
10 we knew half an hour ago we could have made
11 sure we kept it to 20 minutes.

12 CHAIRMAN HOOD: We'll take it one
13 step at a time. We got to that point.

14 MR. FEOLA: A little indulgence.
15 We may have to go a little bit beyond the
16 questions to get to even the slides that show
17 the answers to the questions.

18 We're going to take just 3 minutes
19 to explain the background of how we got to
20 where we are.

21 For that -- by the way, this
22 property is owned by the General Services

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1 Administration of the United States of
2 America. Pat Daniels from GSA is here making
3 sure that we don't mess up.

4 Forest City Washington, which is
5 the FCW designation, has been awarded the
6 rights to develop the site by GSA after a
7 competition.

8 With that, I'd like Alex Nyhan from
9 Forest City to set the stage.

10 Mr. Nyhan?

11 MR. NYHAN: Good evening, Chair
12 Hood and members of the Commission. My name
13 is Alex Nyhan of Forest City Washington. I'll
14 be very brief in the overview.

15 We were last before you on this
16 project in April 2008. At that point it time
17 it was an office building on top of a grocery
18 store with a 110-foot tall residential tower
19 down on the southern edge on Tingey Street.

20 That project didn't work for a
21 couple of reasons. One is there wasn't any
22 office demand. Two is there was too much

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1 below-grade parking.

2 Three was in general the sort of
3 nexus of soil conditions, environmental
4 remediating, dirty dirt, and the constraints
5 of two historic structures on the northern and
6 the eastern edge basically rendered the below-
7 grade economics not viable.

8 Anyway, the choice we had was to
9 land-bank it and wait for the office market to
10 rebound or to come up with a new game plan.

11 The new game plan is apartments
12 over a grocery store. Less density down on
13 the Tingey Street side, which is kind of the
14 main retail spine of our project, The Yards.

15 Down on that Tingey Street portion
16 of the project we'll have a three-level gym
17 with a fourth level for a pool deck, as well
18 as other street retail. For example, a
19 restaurant, a bank, a dry cleaner, a hardware
20 store, stuff like that.

21 Now we feel it will be successful
22 in that there seems to be demand for these

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1 uses.

2 We've recently financed our first
3 mixed-income housing project at The Yards. We
4 now know we can get the depth that we need to
5 move forward.

6 We've also supplemented our team
7 with a retail design architect to essentially
8 amplify our focus on the retail and the street
9 presence.

10 That's it for my overview.

11 Why don't I turn it over, Phil, for
12 you to facilitate the answers to the
13 questions?

14 MR. FEOLA: Mr. Baranes, do you
15 want to kind of walk through the planning
16 process?

17 MR. BARANES: Good evening. I will
18 just jump through a few of these slides. I'm
19 sorry if I'm taking some of your questions out
20 of order. I'll try to use these slides to
21 address the issues you've brought up.

22 First of all, the site. Here's the

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1 site with M Street at the top, 4th Street with
2 DOT on the left, and then Tingey Street at the
3 bottom.

4 As Alex just mentioned, Tingey
5 Street is our primary retail street for the
6 whole Yards project. It's been very critical.

7 We pay a lot of attention to how the street
8 will be developed from east to west.

9 Building K, which is that grey --
10 actually, I'll point to it here. Building K,
11 which is right here, is an existing historic
12 building. It's a very large glass structure.

13 It will be all retail. It's a very
14 important part of our retail development. It
15 anchors much of the retail on Tingey Street.

16 What we are trying to do with our
17 project in Parcel D essentially is provide a
18 western -- I'm sorry -- an eastern end to this
19 retail spine through the center of The Yards.

20 The grocery store is located on the
21 north side on M Street. The only way that
22 Forest City was able to attract a grocery

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1 store to the site was by giving it visibility
2 on M Street. As I recall, they absolutely
3 insisted -- in the meetings I attended, anyway
4 -- that they be close to M Street and have an
5 entrance there.

6 That led to a whole organization of
7 the project with the residential on top, the
8 various circulation and entry points along
9 both 4th Street and also along the private
10 service drive. That Mark will shortly explain
11 in more detail.

12 What I'd like to do initially here
13 is just explain to you why the massing is the
14 way it is. Actually, there is a real logic to
15 it.

16 First of all, what we have here is
17 a project with a retail platform, a retail
18 base. That includes not only the supermarket
19 but an additional 55,000 square feet right
20 here on several levels for more retail.

21 As we went through the approvals
22 process with HPRB, the Commission of Fine

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1 Arts, and the Advisory Council, we were
2 encouraged to develop a massing for this
3 project that basically followed the basic
4 grain of the historic buildings on the site.

5 Which is to say, these simple
6 horizontal -- these simple volumes, these
7 simple rectangular blocks aligned in a north-
8 south direction. That's the way most of the
9 historic buildings, with a couple of minor
10 exceptions, are on the site. They wanted us
11 to reinforce this.

12 You can see that with Building 202.
13 It has a north-south orientation on its
14 primary axis.

15 We were also interested in creating
16 along Tingey Street as much open space as
17 possible.

18 Building K, which is a historic
19 building as I mentioned, is a low building
20 that defines the north side of Tingey Street.

21 We wanted to place an additional retail
22 building just east of it that related to it in

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1 terms of its scale.

2 We did that by placing this retail
3 block here, which will most likely be a health
4 club, a sports club.

5 Here you see an image of it with
6 the residential on top and the supermarket
7 located along here, with the residential
8 entrance located, as you'll see shortly, on
9 axis with Transportation Drive, which is
10 really just quite a wonderful pedestrian allay
11 that's already been constructed.

12 We were also interested in relating
13 to the geometries of the other buildings and
14 various other adjacencies on M Street.

15 Here you see US Department of
16 Transportation, which is already constructed,
17 as you know.

18 We developed this bar, slid it to
19 the north so that basically it aligns with
20 DOT, also aligns with the north face of 202,
21 and gives us a continuous street wall along
22 the south side of M Street.

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1 We felt it was also important to
2 reinforce this. This will be one of the
3 primary entrances into The Yards. Actually,
4 it will be the primary entrance for many
5 years. Eventually it will be one of two
6 primary entrances into The Yards.

7 We felt it was important to mark
8 the corner here, to place a volume here that
9 balanced the massing of the DOT. So there's a
10 bit of a gateway effect there. We did not
11 want to leave that open and leave that
12 unbalanced.

13 Here you see how this corner will
14 look, with this face aligning with DOT and
15 pulled away about 50 feet from the historic
16 building down below.

17 Here you see the entrance to the
18 grocery store, which we have a little more
19 work to do on.

20 Here is the elevation primarily of
21 the grocery store.

22 Our thought there -- Mr. Turnbull,

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1 I know you raised the question about that
2 facade. We want transparency to the grocery
3 store. That's usually a real struggle with
4 grocery stores.

5 However, we found, for example, in
6 working with Safeway at Waterside Mall, the
7 Waterfront Station -- we found that in the end
8 they understood the importance of street life,
9 the importance of transparency, and they
10 worked with us in developing a layout for the
11 fixtures.

12 I think there we have quite a
13 successful transparent facade into the grocery
14 store that, I think, has some liveliness to
15 it.

16 They also allowed us to develop the
17 graphics on the window rather than doing it
18 themselves. We developed this whole theme of
19 flowers and vegetables, which really, I think,
20 does a lot for the street.

21 We expect to do the same thing
22 here. We are very concerned about the

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1 liveliness of that street.

2 Looking at it from the other side,
3 again here are two residential masses. You
4 can see that we slid this one to the north so
5 that it aligns with the south face of DOT, so
6 we have continuity along here.

7 We slid this one so that -- the
8 eastern one so it aligns with Building 202 to
9 create continuity there.

10 Then our lower retail portion,
11 which is about four stories, aligns with the K
12 Building, the historic building to create a
13 continuous street wall for the pedestrian
14 there.

15 So all of the shifting of the
16 massing of the retail and the residential
17 really is anchored into the locations of the
18 historic buildings.

19 Actually, this is a slide about the
20 height which I don't think you have many
21 questions about. But I'd be glad to address
22 this further.

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1 We are asking to go to 110 feet
2 from 90 feet, which is the same height as DOT
3 and the same height as these two buildings
4 will be in the future, as a matter-of-right.

5 Almost finally, we also kept this
6 low here so that essentially you have a
7 reading of a large open space framed by these
8 taller buildings.

9 As I said, it was very important
10 for us to put the retail here on the south
11 side to reinforce Tingey Street. Because the
12 supermarket wanted to be on the north side, it
13 forced us essentially to lay out the parking
14 on the north side of the project here.

15 The parking will not be visible
16 from any public space. It will not be visible
17 from any public sidewalks or any public
18 streets.

19 We've pulled it back sufficiently.

20 We've created a parapet that's tall enough so
21 that at no time will it ever be visible to the
22 pedestrian at street level. I think that's a

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1 fairly critical point.

2 Okay. Mark, do you want to talk
3 about the balconies a little bit?

4 MR. GILLIAND: Toggle forward a
5 little bit.

6 CHAIRMAN HOOD: We'll need to make
7 sure everybody stays on the mic so we can
8 capture you.

9 MR. GILLIAND: I'm Mark Gilliland
10 with Shalom Baranes Architects.

11 Projecting balconies were proposed
12 at several locations around the residential
13 building, including the 4th Street frontage.

14 They're important to giving the
15 building a strong residential appearance.
16 It's also obviously a terrific amenity for the
17 residential dwelling units.

18 The site has a required 20-foot
19 street wall setback along the 4th Street side,
20 which is measured from the face of the curb.
21 This setback encroaches roughly 10 feet into
22 the property.

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1 The face of the retail and the
2 residential facades, those main primary faces
3 along 4th Street, are aligned with the setback.

4 But the balconies, which start at the fifth
5 floor roughly 50 plus feet up in the air, are
6 encroaching.

7 We're proposing -- we're asking for
8 a variance to push those out into the setback
9 area.

10 It's really because of the narrow
11 east-west dimension of the site that, with
12 this concept of the north-south bars that
13 Shalom talked about which was important for
14 securing some of our preservation-related
15 approvals, the space between those two
16 residential bars gets pretty tight.

17 Rather than pushing them closer
18 together so that we could have the balconies
19 not project, kind of creating some practical
20 difficulties and things just getting really
21 tight in there around those elevator lobbies,
22 we are requesting variance relief to project

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1 the balconies up to 5 feet into that setback.

2 MR. BARANES: I'd like to add one
3 thing to that. If you think about this being
4 a residential building on a public street
5 anywhere in Washington, DC, typically as a
6 matter-of-right this building here would be
7 faced on-line; it would be on the property
8 line.

9 Then as a matter-of-right --
10 without it ever becoming a zoning issue; it
11 would be a building code issue -- we would be
12 allowed to project balconies into public space
13 over the sidewalks.

14 So really that's all we're doing
15 here. This follows a typical Washington
16 pattern of projecting balconies into public
17 space.

18 MR. FEOLA: I'll come back to
19 address some of the legal points that
20 Commissioner May raised after we get done with
21 the slides.

22 I'd like to ask Mr. Park to talk a

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1 little bit about the retail layout.

2 MR. PARK: Good evening. My name
3 is Kenneth Park of Kenneth Park Architects. I
4 want to talk a little bit about the value of
5 retail within the development and what I see
6 as a retail guy.

7 Basically, retail promotes the
8 street life and in turn establishes the
9 identity of community and neighborhood.
10 Retail promotes a successful urban
11 environment, and retail activates and
12 encourages a commercial interaction. In turn
13 it creates a good neighborhood.

14 This slide just shows the closeup
15 shot of the intersection at the Tingey and 4th
16 Street in relationship to the existing K
17 Building, as well as the building to the south
18 of Tingey and the Parcel D site.

19 I'd like to talk a little bit about
20 the streetscape, the public space design
21 that's following along the perimeter of the
22 building on 4th Street and Tingey Street.

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1 This one just shows the overall
2 streetscape, which has been developed by the
3 landscape architect on the project, the
4 landscape architecture view.

5 But the primary goal, the goals of
6 this public space design, is to set a
7 framework for an active pedestrian zone,
8 enhancing the pedestrian experience along the
9 4th Street corridor, reinforcing significant
10 building entry points, resolving the grade
11 issues of the slope of the site from south-
12 north, and allowing complete access to the
13 retail storefronts.

14 Ultimately what we believe is a
15 great place-making creates a successful public
16 space.

17 This slide shows the lower half of
18 the development, so coming around the historic
19 wall. The sidewalk actually widens to 20
20 feet, which is in front of the supermarket --
21 the grocery store.

22 In the retail world we believe a

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1 20-foot sidewalk is not considered to be a
2 friendly sidewalk. We actually feel that it's
3 pretty generous and pretty wide. What we
4 wanted to do was to encourage sort of the
5 interaction and to make the sidewalk more
6 intimate.

7 It's somewhat zoned so that we
8 created from the curb line 6-foot into the
9 building as a tree line that has curbside tree
10 beds, streetlamps, bike racks, which is all
11 part of the place-making elements. Then it
12 transitions into a regular paving to the face
13 of the building.

14 At every entry point the material
15 changes from the concrete pavers to pink
16 pavers, signifying the importance of the
17 building faces.

18 MR. FEOLA: I think we'll let Mr.
19 Andres talk a little bit about the
20 circulation. I know we have to come back to
21 some questions that Mr. Turnbull asked about
22 the trellis and some other things.

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1 MR. ANDRES: Good evening, Chairman
2 Hood and members of the Commission. My name
3 is Erwin Andres with Gorove/Slade Associates.

4 What I'd like to do is address the
5 access considerations related to the site.
6 Hopefully this presentation will answer Mr.
7 Hood and Mr. Turnbull's questions.

8 With respect -- actually, the
9 previous slide, please?

10 With respect to the access to the
11 site, there are three primary access points.
12 There's the new access service drive that
13 we're introducing along M Street.

14 There's the southern access point
15 on Tingey that provides the exit for the
16 loading, as well as the entrance and the exit
17 to the residential parking garage located just
18 north of this retail block.

19 Then the primary entrance into the
20 retail is located approximately mid-block,
21 across from the existing USDOT loading docks,
22 and provides access to the retail component --

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1 excuse me -- access to retail parking that's
2 located underground on one level.

3 It's important to note that the
4 access on 4th Street is consistent with some of
5 the other basically grocery developments that
6 we've worked on in the city. It's located
7 appropriately because, yes, it does provide
8 you the opportunity to be across an existing
9 curb cut.

10 The situation on 4th Street if
11 anything is similar to an example that Mr.
12 Baranes had mentioned previously about
13 Waterside Mall, the Waterfront Station where
14 there is an existing Safeway and mid-block
15 there is a garage entrance to serve that
16 Safeway.

17 In essence this 4th Street actually
18 acts in a similar manner where there is
19 parking on both sides of the street during
20 off-peak. But during peak periods the parking
21 in the peak direction is actually removed.

22 In instances like that, when people

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1 are heading south to turn left into the garage
2 there is ample room for other vehicles
3 entering The Yards to maneuver around them.

4 That enables the circulation to not
5 only provide access into the retail garage,
6 but also provide access throughout The Yards.

7 Now, with respect to the
8 circulation related to the service, the
9 primary circulation that we've identified is a
10 circulation pattern where trucks will be
11 entering, turning right off of M Street into
12 the site, and basically positioning themselves
13 so that they can -- excuse me -- turn right
14 into the site and positioning themselves so
15 that they can back in to essentially angled
16 loading docks off of that service drive.

17 The benefit of that is obviously
18 all the movements are head-in except for the
19 backing-in movement.

20 Once all the goods and materials
21 are unloaded the exiting is also heading out,
22 so there's no real backing maneuvers except

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1 for the backing-in component that takes place
2 in the service drive.

3 Now with respect to the
4 residential, for the residential access, as I
5 mentioned before, it is a two-way section
6 within that new service drive basically from
7 the garage entrance to Tingey Street which is
8 two-way. That enables access to the
9 residential garage while providing the exit
10 for the service vehicles.

11 Hopefully that summarizes the
12 access and circulation components of the plan.

13 In addition to this primary option
14 for serving the loading needs of this
15 building, as I mentioned we're requiring a
16 break in the M Street wall.

17 What we've also submitted and
18 developed is that in the event that the
19 approvals related to that break on M Street
20 cannot be obtained, we've developed an
21 alternative plan which is Option 2.

22 Excuse me. That was Option 2.

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1 Option 2, where in essence if there
2 is no break in the wall, a new service drive
3 is created just north of the building to the
4 east of our buildings -- of our property.

5 In essence the circulation pattern
6 consists of trucks turning down 4th Street,
7 turning left on Tingey, turning left on the
8 new private driveway, and basically looping
9 around in order to access themselves in a
10 position to serve the prescribed loading
11 areas.

12 In that instance it's a situation
13 that works. Obviously it's not optimal.
14 You're introducing trucks to circulate
15 unnecessarily throughout the site. But it is
16 an option that works and, as I mentioned, it's
17 sort of a backup plan in the event that we do
18 not get the M Street break that we're
19 requesting.

20 Thank you.

21 MR. FEOLA: Mr. Gilliland, maybe you
22 can go back to the trellis issues and address

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1 that question.

2 MR. GILLIAND: The above-grade
3 residential parking deck, roughly three
4 quarters of it's covered, about half of it by
5 residential building footprint above.

6 The other half, approximately half
7 of that is covered by some trellises that will
8 support some twining, vining green plants.

9 The five-leaf Akebia, if I'm
10 pronouncing that correctly, was a species
11 recommended by our landscape architect as sort
12 of one of the closest to evergreen types of
13 twining vines that you can get. And it would
14 kind of train up well into this sort of
15 situation.

16 Those trellis areas are generally
17 covering the parking spaces that are not
18 covered by residential building. The
19 driveways in between do not have that trellis
20 covering.

21 So we can liken it to if you're
22 looking down on the city street, a tree-lined

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1 city street, you would see kind of green along
2 the sides but the roadbed would be exposed.

3 In our case the roadbed is only 22
4 feet wide, as opposed to the dimension that
5 you might have looking down onto M Street or
6 4th Street or Tingey, the surrounding streets
7 here.

8 MR. FEOLA: Mr. Andres, could you
9 address the question Commissioner Selfridge
10 asked about the amount of parking?

11 I'm sorry. I forgot that one.

12 MR. ANDRES: With respect to the
13 amount of parking, the amount of parking is an
14 issue that we've dealt with with DDOT.

15 With respect to the number of
16 spaces that we're providing, we're providing
17 -- excuse me -- 180 spaces for the retail
18 component and 167 spaces for the residential
19 component.

20 MR. FEOLA: How does that relate to
21 zoning requirements?

22 MR. NYHAN: Phil, may I jump in

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1 there briefly?

2 MR. FEOLA: How does that relate to
3 the zoning requirements?

4 MR. ANDRES: It meets zoning
5 requirements.

6 MR. NYHAN: If I could briefly just
7 add to that, that translates into -- for the
8 grocery store it's a parking ratio of 2.3
9 spaces per 1,000.

10 This particular grocery store, in
11 their urban design guidelines requires 5 per
12 1,000. So we've been able to get them to cut
13 more than half their urban parking
14 requirements.

15 For the gym it translates into 1.67
16 spaces per 1,000. Which again is a fairly
17 aggressive, ie. small, parking ratio for an
18 urban retail design.

19 Then with respect to the
20 residential, the parking is spaced about 0.73
21 spaces per unit.

22 MR. FEOLA: I think we've covered

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1 most of the questions except the legal points
2 on the variance test.

3 But while we have the lights off,
4 if you want to ask more questions about the
5 design-related things we can do that or we can
6 turn the lights on.

7 CHAIRMAN HOOD: Why don't you just
8 go ahead and finish addressing the legal
9 questions? Then if we need to turn them back
10 off and go back, we'll just do that.

11 Hold on. Let me see, does anybody
12 have anything while we have the lights off?

13 COMMISSIONER MAY: No. I'm happy
14 to turn the lights on. I have a few things to
15 say about the project but they don't require
16 images, I don't think.

17 CHAIRMAN HOOD: Okay. I guess Mr.
18 Feola, if you can go ahead -- we can turn the
19 lights back on. And Mr. Feola, if you can
20 address -- just finish up what you were going
21 to do, the legal issues?

22 MR. FEOLA: Thank you, Mr.

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1 Chairman.

2 As the Commission knows, the
3 variance test in the zoning regulations is a
4 three-point test. The first is that there's
5 an exceptional situation or condition that
6 warrants looking to the second two parts of
7 the test.

8 The courts have told us that the
9 BZA or the Commission in its stead can look at
10 a confluence of issues that come together on a
11 particular piece of property that define an
12 exceptional condition or situation.

13 I think in this case we have a
14 number of things that bring it together. As
15 you've heard, it is a wall --

16 COMMISSIONER MAY: Mr. Feola, I'm
17 more comfortable with the first prong. It's
18 the second prong that's the problem if you
19 want to go directly to my issues.

20 Maybe others want to hear this?

21 CHAIRMAN HOOD: I was liking the
22 whole story.

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1 COMMISSIONER MAY: Okay. Well, go
2 ahead. That's fine.

3 CHAIRMAN HOOD: Let's just go
4 through the whole story.

5 MR. FEOLA: Once upon a time.

6 Well, in the first instance it is a
7 long, narrow city block. It does not have an
8 alley system as most city blocks do. So the
9 project had to create a private alley, as you
10 saw, the service drive. It narrowed the site
11 even more.

12 The zoning constraint, the 10-foot
13 setback from the curb -- the 20-foot setback
14 from the curb line which cuts 10 more feet
15 into the property is unique to this particular
16 piece of property -- excuse me -- throughout
17 the city, quite frankly.

18 If you add to that the constraints
19 on the site on its southern end with the WMATA
20 Tunnel cutting, as you saw in one of the
21 images, under the southwestern part of the
22 site and the 100-year floodplain cutting into

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1 the southeastern part of the site, you start
2 putting all this together of your buildable
3 area which kind of smooshes the project
4 together.

5 As you heard Mr. Gilliland say, if
6 we pushed the two bars of residential towers
7 closer together it makes the space between
8 those towers, between the apartments less
9 comfortable from a liveable standpoint.

10 So we are asking for permission to
11 build those balconies 3-4 feet into that 10-
12 foot-wide setback at the fifth level.

13 The concept that was set forward by the
14 Zoning Commission in the Southeast Federal
15 Center Overlay was to create a pedestrian
16 path. We're not interfering with that concept
17 because we're so far up in the air.

18 The practical difficulty sort of
19 plays into what I've just said. The setbacks
20 that are required on the site both on the east
21 -- on the west -- I'm sorry -- and on the
22 north, again, push the project together.

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1 And because we don't have an alley,
2 we had to create one on the back side of it.

3 So all those things together make
4 the strict application of the zoning
5 regulations difficult and still provide a
6 residential feel that people want to live in.

7 CHAIRMAN HOOD: Thank you.

8 COMMISSIONER MAY: Okay. Are all
9 of the units going to have balconies in the
10 entire -- okay.

11 How many are going to have
12 balconies?

13 MR. GILLIAND: I don't know the
14 precise number.

15 COMMISSIONER MAY: How many have
16 you drawn that are going to have balconies?

17 MR. GILLIAND: Individual dwelling
18 units?

19 COMMISSIONER MAY: How many
20 projecting balconies will there be; is it
21 three rows of five or something like that, 15?

22 MR. GILLIAND: Yes. There are

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1 three -- I think that's exactly right. There
2 are three rows on the 4th Street side.

3 COMMISSIONER MAY: Okay. What's
4 the total number of units just in that
5 building?

6 MR. GILLIAND: We're asking for 225
7 total. That's the larger of the two. I would
8 venture a guess that it's probably 120-130.

9 COMMISSIONER MAY: Then out of 120-
10 130, there might be 30-40-50 that don't have
11 balconies?

12 MR. GILLIAND: That's right. Yes.

13 COMMISSIONER MAY: Okay. That's
14 the real problem that I have, is that it's
15 possible to have units without balconies. I'm
16 not saying that they're not better with
17 balconies; I absolutely believe that they are.

18 You also have a solution for that
19 issue at the ends of the building where you've
20 actually recessed the balconies, which I don't
21 know is necessarily better or worse as a
22 design solution. But it's another way to do

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1 it and it doesn't deal with -- it doesn't get
2 you into variance territory.

3 That's just the real difficulty I
4 have with it. This is something where it's
5 not really absolutely necessary that you have
6 this feature on the building. Therefore, it's
7 hard to me to test for a variance.

8 I think it's, you know -- the
9 building looks fine and I think the balconies
10 are great. But it's the variance test, and
11 that's the real hurdle that I think that you
12 have.

13 We're not in deliberation yet. We
14 can get there eventually. I have questions
15 for the Office of Planning about this issue,
16 too.

17 CHAIRMAN HOOD: Any other
18 questions?

19 Commissioner Turnbull?

20 COMMISSIONER TURNBULL: I just had
21 a question. The health club retail area,
22 there's still -- some of the perspectives are

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1 showing that there are retail stores on that
2 first floor, that the health club is really
3 either behind or above.

4 Is that correct; am I correct in
5 understanding that?

6 MR. NYHAN: Excuse me. The health
7 club would have an entrance on the ground
8 floor --

9 COMMISSIONER TURNBULL: Right.

10 MR. NYHAN: -- that would be
11 between 2,000 and 5,000 square feet.

12 The balance of the first floor
13 retail would be non-health club tenants, so
14 probably 10-12,000 square feet of other street
15 retail tenants.

16 The balance of the health club
17 would be on the second and third level --

18 COMMISSIONER TURNBULL: Okay.

19 MR. NYHAN: -- with the pool deck.

20 COMMISSIONER TURNBULL: I'm
21 assuming that in looking at -- I guess I'm
22 looking at A-14, the shot -- it's the

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1 perspective. I'm looking at Building K and
2 then towards your project.

3 Do you see any -- and you're
4 getting retail through just crossing the
5 street. You're continuing on the flow of the
6 retail.

7 And I know for perspective reasons
8 you've eliminated the trees in the
9 perspectives to be able to show the building.

10 Do you see outdoor seating or are
11 you going to enliven the streetscape in some
12 way?

13 MR. NYHAN: Absolutely. The
14 streetscape, I believe -- I believe you're
15 referring to the perspective rendering when
16 you're looking east on Tingey?

17 COMMISSIONER TURNBULL: East on
18 Tingey. Right.

19 MR. NYHAN: That would be on the
20 left and then look down towards the retail.

21 There's a couple of areas we're
22 enlivening the street life. One is on the K

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1 Building, which I know wasn't the subject of
2 tonight.

3 There is a roughly 49-foot area
4 between building face and curb, which is
5 roughly 29 feet of private property that will
6 have outdoor seating on it for restaurants.
7 And then a 20-foot public right-of-way.
8 That's the K Building portion.

9 Then when you get over to our
10 particular parcel here, the D Parcel, we'll be
11 mirroring that outdoor seating across the
12 street on the eastern side of 4th Street.
13 That's, for example, arguably the best
14 restaurant location on the D Parcel right at
15 that southeast corner of 4th and Tingey.

16 Additionally, although it's a
17 little bit more north up 4th Street, we have
18 discussed the prospect of outdoor seating with
19 the grocery store if that's allowed by zoning.

20 I don't know if it is. But if it is, we've
21 discussed that with the grocery store.

22 COMMISSIONER TURNBULL: Yes. I'm

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1 just wondering, is there any plans to -- when
2 you're crossing the street, is there any --
3 does the crosswalk get a different treatment,
4 is it just striped asphalt, or is it some
5 other way to sort of enliven that whole
6 feeling as you're going across?

7 MR. NYHAN: The crosswalk there is
8 not -- Mr. Gilliland can help me with the
9 technical term for the special paint. But
10 it's not the piano striped sidewalk.

11 It's other materials, either
12 granite or a combination of concrete pavers
13 and granite, like we have on our sidewalks --
14 on our crosswalks on Water Street down by the
15 park.

16 COMMISSIONER TURNBULL: All right.
17 So there is going to be a different
18 treatment?

19 MR. NYHAN: Correct.

20 COMMISSIONER TURNBULL: Then I
21 guess going up from there to the entrance to
22 the residential lobby --

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1 MR. NYHAN: Yes.

2 COMMISSIONER TURNBULL: -- there's
3 no crosswalk mid-street, I'm assuming?

4 MR. ANDRES: No, there's not.
5 Based on our coordination with DDOT and their
6 initiatives, the frontage along -- basically
7 in front of the garage, as well as in front of
8 both the grocery store use and the residential
9 entrance will seem continuous.

10 Consistent with some of the -- if
11 you're familiar with the P Street Whole Foods,
12 again, it's one of those things where they're
13 emphasizing the pedestrian circulation such
14 that the vehicles is turning into and out of
15 the garage would have to yield, given the
16 emphasis on pedestrian circulation onto 4th
17 Street.

18 COMMISSIONER TURNBULL: Okay.

19 MR. NYHAN: Commissioner Turnbull,
20 may I briefly add to that?

21 The residential lobby is aiming to
22 orient more towards the south towards Tingey

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1 Street than towards the west across 4th Street.

2 COMMISSIONER TURNBULL: I see it's
3 angled.

4 MR. NYHAN: Right.

5 COMMISSIONER TURNBULL: It's got a
6 bit of an angle to it.

7 MR. NYHAN: Because the DOT loading
8 docks a little bit to the north aren't the
9 most welcoming portion of 4th Street.

10 COMMISSIONER TURNBULL: Right.

11 MR. NYHAN: And we're trying to
12 really enliven that corner of 4th and Tingey.

13 COMMISSIONER TURNBULL: On A-26 you
14 have a shot looking at the entrance. Which, I
15 know you're still working on things, but it
16 looks fairly nondescript right now.

17 It's hard to tell that it's an
18 entrance. I'm not sure if you're -- it's all
19 glass. It sort of just shoots right in the
20 middle of the building there with the
21 perspective.

22 MR. NYHAN: Yes, that's it.

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1 MR. GILLIAND: If we can back up
2 one?

3 I think that describes the
4 orientation of that residential entrance. Of
5 course, we decided sort of very purposely here
6 to give the two best corners to retail.

7 The idea was to give some
8 prominence to the residential entrance by
9 having it be a focal point at the end of the
10 transportation walk, that landscaped area to
11 the south of USDOT. Although as you noted,
12 there's no crosswalk at that location. But it
13 is very much kind of a focal point there.

14 I believe this must be the drawing
15 that you were referencing?

16 COMMISSIONER TURNBULL: Yes.

17 MR. GILLIAND: The entrance is a
18 glass and metal vestibule that projects out
19 from the face of the building. And does
20 inflect so it is oriented more down towards
21 our retail ground zero, if you will, at 4th and
22 Tingey as well as being that focal point. As

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1 a backdrop is a metal panel system.

2 This was in the overall massing of
3 the building probably evident in some of the
4 rendered views that are pulled a little
5 further back.

6 This is thought of as a piece that
7 kind of mediates between the grocery to the
8 north with the residential sitting on top of
9 it and the separate, kind of more distinctive
10 massing of the sports club and ground floor
11 retail to the south.

12 As an alternative one of the things
13 that we were looking at was this other idea
14 that was in our application about exploring
15 the idea of a vegetative wall.

16 It's got us all very excited but
17 there's some due diligence that we're having
18 to kind of go through. It's a fairly new
19 technology here in the States and looking to
20 kind of explore the
21 constructability/maintenance issues with it.

22 I'm excited that something might

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1 work out here. That's one of the things we're
2 hoping to get some flexibility if this works
3 out, that this --

4 COMMISSIONER TURNBULL: Would that
5 be on the exterior or you're looking at the --

6 MR. GILLIAND: On the exterior.
7 Yes.

8 COMMISSIONER TURNBULL: Yes. You
9 don't show it, but I'm assuming you're going
10 to have some kind of graphic?

11 MR. FEOLA: Mr. Turnbull, I believe
12 you're looking at our original application.
13 In our prehearing submission which is dated
14 December 2 --

15 COMMISSIONER TURNBULL: Okay. I
16 can see it. Yes.

17 MR. FEOLA: -- this graphic is
18 entered.

19 COMMISSIONER TURNBULL: Okay. Just
20 then going up along toward M Street where
21 you've got the grocery store, I know, Shalom,
22 you had talked about the possibility of trying

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1 to either do something with that window, the
2 glass. And you had mentioned the other
3 project where you actually got to design it.

4 Is that in the works?

5 Basically, that part of the grocery
6 store no matter how you design is either going
7 to be -- it's the cashier end. You've either
8 got some service out there in front, but
9 everybody is dropping off their grocery carts
10 or whatever, and leaving or whatever. It can
11 be either.

12 It's a grocery store. That's what
13 it is.

14 MR. BARANES: I don't know if
15 you've had a chance to visit the Safeway on 4th
16 Street at Waterfront Station. But what's
17 interesting about it is that more and more
18 they're starting to look like Whole Foods.
19 They have a --

20 COMMISSIONER TURNBULL: We're not
21 going to tell anybody.

22 MR. BARANES: Just between us.

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1 They have a caf , they have a restaurant, they
2 have a deli. All of which starts to feel more
3 like a restaurant environment rather than a
4 grocery store environment.

5 COMMISSIONER TURNBULL: Right.

6 MR. BARANES: I probably shouldn't
7 reveal whom Forest City is talking to right
8 here and who the likely tenant will be. But
9 it's a tenant that I think will much more
10 easily accept and move in that direction --

11 COMMISSIONER TURNBULL: Okay.

12 MR. BARANES: -- than Safeway did.

13 COMMISSIONER TURNBULL: Again,
14 we're looking for a more vibrant streetscape.
15 We're looking for something that's a lot more
16 interactive than just your standard grocery
17 store.

18 MR. NYHAN: Yes, sir. We've had
19 this exact discussion with the prospective
20 tenant looking at 4th Street, talking
21 specifically about merchandising, how they can
22 merchandise within that wall in a way that is

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1 more fruits, produce, vibrant, human, you're
2 not seeing the backs of storage cabinets,
3 etcetera. But we still have work to do with
4 them.

5 COMMISSIONER TURNBULL: Yes.

6 MR. NYHAN: We don't have a final
7 fixture as planned from the prospective
8 grocer.

9 COMMISSIONER TURNBULL: Okay.
10 Getting back to the trellis issue, are you
11 concerned -- I mean, for that trellis, if it's
12 an evergreen obviously those things are coming
13 down and you're having some kind of a base
14 that they're planted in and watering in them.

15 I just am worried that it might be
16 a maintenance issue. Is this something that
17 you've got ideas or your landscape architect
18 has developed something to -- I'm just worried
19 about there being -- we've just started this
20 whole new era of getting into going green.
21 It's a new technology.

22 I'm just wondering, given your

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1 thoughts on how that's really going to work
2 here?

3 MR. GILLIAND: You're absolutely
4 right. There are going to be some maintenance
5 issues that are -- there's going to be kind of
6 a continuous need to upkeep.

7 COMMISSIONER TURNBULL: Yes.

8 MR. GILLIAND: They'll need to be
9 trimmed and pruned, and the irrigation system
10 will be necessary in order to kind of keep
11 those plants thriving.

12 It's an issue that we've talked
13 about and I think it's an issue that Forest
14 City is kind of ready and willing to take on
15 in the maintenance of the building.

16 COMMISSIONER TURNBULL: But that's
17 sort of worked into your operation issues;
18 you're working on that with the owner?

19 MR. BARANES: Mr. Turnbull, I think
20 it's also useful to note we've done this once
21 before in the District and it's been pretty
22 successful.

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1 I don't know if you're familiar
2 with the condominium we designed at 22 West.
3 It's in the West End on M Street.

4 COMMISSIONER TURNBULL: Okay.

5 MR. BARANES: Just east of the
6 Ritz-Carlton over the Exxon station there.

7 COMMISSIONER TURNBULL: Okay.

8 MR. BARANES: Anyway, we planted -
9 - did a whole series of plantings on the face
10 of the building with recessed balconies, as
11 well as over the gas station.

12 We put in an irrigation system.
13 It's all automated. None of the tenants have
14 access to it; it's all done by the building
15 maintenance crew.

16 It's been up there now for probably
17 close to, I don't know, two years I would say.
18 And it's doing very well.

19 COMMISSIONER TURNBULL: Okay.
20 Thank you.

21 CHAIRMAN HOOD: Let's talk a little
22 bit about the loading dock, the one-way

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1 entrance for the loading dock for the grocery
2 store.

3 That turn, I'm just curious. Is
4 that enough angle?

5 It looks like you have, what, about
6 three? How many docks is it; is it three or
7 is it two? Okay. It looks like two.

8 I'm looking actually at A-30.

9 MR. ANDRES: The loading that we're
10 providing are three 55-foot berths, two 30-
11 foot berths, and three 10 by 20 spaces.

12 CHAIRMAN HOOD: I guess my issue
13 is, is that enough turn in there? How is that
14 going to be controlled when you have a truck
15 getting ready to pull out; how is that going
16 to be controlled?

17 MR. ANDRES: Actually, I reside at
18 City Vista at 5th and K.

19 CHAIRMAN HOOD: How is that
20 controlled? I don't know. I reside on
21 Channing Street so I don't know.

22 MR. ANDRES: Actually, I was going

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1 to get into that. I can speak from experience
2 that the building manager and the grocer
3 themselves have inventory control people at
4 the docks because they have to be able to
5 account for all of the materials in and out.

6 So that same person or that person
7 and somebody else would be there to help
8 manage some of the larger deliveries, and then
9 some of your smaller deliveries like your
10 dairy, your bread deliveries, and some of your
11 produce as well.

12 CHAIRMAN HOOD: So it works where
13 you are now and this is the same kind of plan?

14 MR. ANDRES: It's a similar
15 condition. Absolutely.

16 MR. FEOLA: Mr. Chairman, also, in
17 the documents that you had before you in
18 exhibits, pages A-33 through A-36 are the
19 turning radius documentation for -- that
20 Gorove/Slade did to show how it does work.

21 CHAIRMAN HOOD: Again, still my
22 same question. I didn't see this. Is it

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1 enough angle?

2 Even with that, I still have the
3 same question in looking at it. Is it enough
4 angle for that to be workable?

5 MR. ANDRES: Yes.

6 CHAIRMAN HOOD: How is the retail
7 parking going to be dealt with? Is it going
8 to be a time limit or can I park there -- I
9 shouldn't say this, but can I park there and
10 go to work at Department of Transportation?
11 How is that going to work?

12 I'm a federal worker so I shouldn't
13 say that. Because I may park there and go
14 over there.

15 But anyway, how is that going to
16 work?

17 MR. NYHAN: If you did that -- you
18 could do that. You'd just pay a lot more
19 money.

20 The way it's going to work is the
21 grocery store will have 2-hour validation.
22 The health club will have a 90-minute

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1 validation period.

2 When you enter the retail parking
3 you'll be able to go left into the grocery
4 store only portion or right into the health
5 club only portion.

6 Then if you go in there and don't
7 get validated, you'll pay a market price which
8 will be much higher than the price that you
9 would have paid if you had validated.

10 So if you -- say you are a DOT
11 worker. You could go and I guess get away
12 with, if you will, parking in the below-grade
13 parking but you'll pay a much, much higher
14 price than you would pay right next door in a
15 non-retail parking facility.

16 CHAIRMAN HOOD: Okay. Mr. Andres,
17 do we have any traffic -- I'm looking at
18 Option 2. I think we're being asked -- when
19 we do deliberate and approve, we're being
20 asked to accept either one of the options
21 depending upon what you're trying to do on the
22 front end, I think, on M Street.

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1 Am I correct?

2 MR. ANDRES: Yes. That's correct.

3 CHAIRMAN HOOD: When I look at the
4 Option 2, and I'm just using this for an
5 example -- what is that; 5th Street which is a
6 private street now.

7 If I'm going southbound and I see -
8 - you see the arrow where you have going
9 southbound, and then you have one that's going
10 up and making left?

11 MR. ANDRES: Yes. That's correct.

12 CHAIRMAN HOOD: Is there a traffic
13 -- when I see that, even though I probably
14 drive around all the time and that was
15 actually what I'm doing, but when you see it
16 on paper it looks a little different. And
17 you're the expert.

18 What traffic mitigation is going to
19 stop someone from making -- me making a left
20 and running into a person that's coming south?

21 What is it?

22 I don't see a traffic light or

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1 anything. What's going to stop that?

2 MR. ANDRES: There's a median
3 there. Because if you notice the circulation
4 diagrams, on M Street there's no left turns
5 coming in and out.

6 So in essence you have the good
7 sightlines to be able to turn left into that
8 slot, and see people turning right into the
9 garage and onto that private roadway.

10 CHAIRMAN HOOD: When I make that
11 right, I believe off of M Street, I'm going to
12 have enough time to see the person that's
13 coming north and going to make that left?

14 MR. ANDRES: Yes. That's correct.

15 CHAIRMAN HOOD: Plenty of time to
16 see the person?

17 MR. ANDRES: Yes. The sightlines,
18 as I mentioned, in order to create that break
19 at that location you will have the necessary
20 sightlines to be able to turn left for both
21 the truck and also the person turning.

22 CHAIRMAN HOOD: Good. All right.

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1 That's all I have.

2 Anybody else?

3 Commissioner May?

4 COMMISSIONER MAY: Yes. I just had
5 a couple of minor questions.

6 We don't have a really good view of
7 the elevator tower. We just know that it's
8 part of that sort of connective tissue between
9 the two bars of building.

10 There is a little rendering there
11 that just shows it as a fairly ordinary kind
12 of stack, if you will, almost like a chimney;
13 very large, of course.

14 I'm wondering if you looked at
15 doing anything really interesting and special
16 there?

17 Not that I'm really advocating
18 doing interesting, special things to tops of
19 elevator overruns, but that's sort of an
20 object on its own. And sometimes when we have
21 objects like that, when they're really close
22 to a facade it becomes an architectural

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1 embellishment.

2 It's almost like this really should
3 be an architectural embellishment.

4 MR. BARANES: We've made a real
5 effort here to contrast the north side of that
6 connective tissue from the south side. We
7 wanted it to be a very sculptural element.

8 On the south side where the views
9 are and of course where the light is, we made
10 it very, very transparent.

11 Then we kind of contrasted that of
12 course to the north side where it really just
13 becomes a solid object connecting the two
14 residential masses.

15 I like that simplicity. I think it
16 will read quite strongly as a very nice
17 architectural object because everything else
18 around it is so perforated with the windows,
19 the balconies, the openings into the
20 residential.

21 So I think by virtue of its
22 contrast it will be quite a strong element.

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1 COMMISSIONER MAY: What's the
2 cladding?

3 MR. BARANES: Metal.

4 COMMISSIONER MAY: It's metal?

5 MR. BARANES: Yes.

6 COMMISSIONER MAY: Okay. Have you
7 gotten to color yet? It's just going to be
8 grey like it shows up in our rendering?

9 MR. BARANES: We do have some
10 material samples here.

11 COMMISSIONER MAY: I can't believe
12 you brought materials and you didn't hand them
13 in already.

14 MR. FEOLA: We were only supposed
15 the answer the questions and nobody said,
16 "Where are the materials?"

17 COMMISSIONER MAY: Yes. But you
18 know how much I like to touch the materials.

19 MR. BARANES: Commissioner May, I
20 don't know if you're familiar with the --

21 MR. FEOLA: That's why we brought
22 them.

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1 MR. BARANES: A couple of years ago
2 we brought you the project in Tenley Town at
3 the old Hechinger's building with the
4 residential addition on top of the
5 Hechinger's.

6 COMMISSIONER MAY: Yes.

7 MR. BARANES: That's a metal
8 Sentría system.

9 COMMISSIONER MAY: Okay.

10 MR. BARANES: That's the same kind
11 of system we'll be using here.

12 COMMISSIONER MAY: Okay. Yes. I
13 don't think I was here for that project.

14 MR. BARANES: Oh, Okay.

15 COMMISSIONER MAY: If I was, I've
16 already forgotten it.

17 I'll take a look at this. Thank
18 you. I appreciate the explanation of what
19 your design thinking was there, because it
20 really is an unusual kind of circumstance
21 where you essentially have a standalone
22 elevator tower.

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1 Otherwise I think that the massing,
2 the way you've put together the blocks of
3 building, and even the treatment of the
4 facades, the base, and everything else, I
5 think it's all working very well. So I really
6 don't have any other comments or questions on
7 it.

8 There are lots of things that I
9 would probably get into if this were a PUD,
10 but there's no need to in this circumstance.

11 I appreciate getting the materials.
12 I'll look at that.

13 CHAIRMAN HOOD: Okay. Commissioner
14 Selfridge?

15 COMMISSIONER SELFRIDGE: I noticed
16 that the intent is to put four stories of
17 retail but perhaps convert two of those
18 stories to office or residential.

19 Could you just speak to that a
20 little bit?

21 MR. NYHAN: Sure. It's basically a
22 hedge so that if we can't get our gym deal

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1 done then we'll have something we can do on
2 the third floor. Because we think we can
3 lease the second floor of retail, but to get a
4 non-gym user to lease that third floor would
5 just be basically impossible.

6 However, that being said, I'm very
7 optimistic that we will end up doing a gym
8 deal there. But just for sort of the sake of
9 having the flexibility, we wanted to ask for
10 the right to transform it.

11 I believe the other area you may be
12 referring to with retail versus residential is
13 on the pool deck level there's a portion on
14 the southeastern side of that pool deck where
15 we had asked for the right for it to be either
16 retail or residential.

17 The reason for that is the
18 prospective gym tenant was wondering about how
19 much space they would want for a
20 restaurant/bar to service the pool club, but
21 weren't sure if they really needed it up
22 there.

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1 So if they don't end up needing it,
2 we'd like to have the flexibility to turn that
3 into residential.

4 It's the red area there on the
5 southernmost bar.

6 I suspect, if I was guessing, that
7 we're going to end up wanting to do that as
8 residential and the gym tenant is not going to
9 want to have that extra space up there.

10 COMMISSIONER SELFRIDGE: So you
11 think floors one and two are retail fairly
12 easily, it's the third floor that primarily
13 concerns you it sounds like; is that correct?

14 MR. NYHAN: That's correct.
15 Although, I'm about 95 percent sure all three
16 floors will be retail because I think we're
17 going to do the gym deal.

18 COMMISSIONER SELFRIDGE: I just had
19 one other question. I think it's great that
20 20 percent of the units are affordable at 50
21 percent of the AMI.

22 But why?

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1 MR. NYHAN: There's sort of two
2 reasons for that. One is basically that's
3 just how Forest City sort of does things.

4 In these urban locations we
5 typically do 80-20 deals, in part because we
6 believe that a diversity of housing is
7 important to build these types of
8 neighborhoods that we've done in other cities
9 like Boston and Denver.

10 Also, in part because it has to do
11 with our capital strategy of tax-exempt debt.

12 In this particular project the
13 second reason is, as part of the negotiation
14 with the District over paying for the parks
15 and the infrastructure, we made the commitment
16 that 20 percent of the rental product would be
17 affordable to 50 percent of AMI.

18 COMMISSIONER SELFRIDGE: Thanks.
19 We see a lot of projects, and obviously this
20 isn't a PUD, where people just meet the
21 minimum requirements of the IZ and call it an
22 amenity or a benefit to the community.

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1 For whatever reason, it's nice to
2 see a larger chunk being committed to
3 affordable housing. I don't think we see
4 enough of it in some of the projects that come
5 forward.

6 CHAIRMAN HOOD: Okay. I guess
7 there are no more questions.

8 Any other questions?

9 Let's go to the ANC.

10 Let me first ask, is there anyone
11 here from ANC 6D? ANC 6D, anyone present?

12 Also, before I go to the Office of
13 Planning, is there anyone here who would like
14 to testify, if you could just raise your hand?

15 All right. Let's go to the Office
16 of Planning.

17 We can kind of streamline that. A
18 great report and we can streamline as much as
19 you see fit.

20 MS. JACKSON: Absolutely.

21 For the record, my name is Arlova
22 Jackson with Office of Planning. In keeping

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1 with the spirit of efficiency, perhaps I will
2 just state that the Office of Planning
3 recommends approval of the project and the
4 requested relief, and open it up for
5 questions.

6 CHAIRMAN HOOD: Thank you, Ms.
7 Jackson.

8 Commissioner May? I think you said
9 you had a few questions for the Office of
10 Planning.

11 COMMISSIONER MAY: Thank you very
12 much.

13 I'm interested in the Office of
14 Planning's take on the variance issue and
15 whether there's some way that you really do
16 see clear to calling this a variance since it
17 seems to be self-created.

18 Then I have some follow-up
19 questions. So if you can try to answer that
20 to start with?

21 MS. JACKSON: Well, you've already
22 said that you've accepted that the project

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1 meets the first prong of the test so I won't
2 bother with that.

3 With regard to the second prong,
4 it's basically the culmination of factors and
5 the limitations placed on the project due to
6 its location in a historic district, and the
7 design that is required as a result of that.

8 The size of the site pushes things
9 in. We felt that in order to create a
10 residential project that met those
11 requirements and was marketable, to keep that
12 a flat facade along 4th Street would be
13 practically difficult for the Applicant.

14 So we accepted the argument about
15 the design, the desire to provide light in
16 between the two residential towers, the fact
17 that the project is narrowed by the setback,
18 by the east side not having alley access, and
19 that it would allow for additional
20 articulation along a pretty long residential
21 structure.

22 I don't know if Joel wanted to add

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1 something about the actual intent of the
2 regulation when it was created with the
3 overlay.

4 MR. LAWSON: Sure, I can.

5 Joel Lawson with the Office of
6 Planning.

7 There is the third part to the
8 test, which is the integrity of the zone regs
9 and the impact on the community at large. We
10 think that the variance also clearly meets
11 those tests.

12 Ms. Daniels can come up and kick me
13 if I get some of this wrong. We were around
14 when this was drafted.

15 The intent of this 20-foot setback
16 -- a setback can have all kinds of intents.
17 In this case, the intent really was to improve
18 the pedestrian experience, the experience at
19 the ground floor.

20 That was partly because of what was
21 going on on the other side of the street with
22 USDOT and the presence of the large loading

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1 docks making it a less friendly pedestrian
2 environment than might otherwise be the case.

3 But also, the existing Building K
4 on that side of the street which comes much
5 closer to the street than most buildings,
6 which really kind of squeezed the sidewalk on
7 that side.

8 So we wanted to make sure of two
9 things. We wanted to make sure that there was
10 an adequate and kind of generous sidewalk
11 space on this side of the street because it
12 wasn't going to be provided on the other side.

13 But we also wanted to provide for
14 at least for the opportunity to address what
15 Mr. Nyhan was addressing before, the
16 opportunity for some of that interior retail
17 space to have some space to spill out onto the
18 street to activate 4th Street a bit.

19 There is that, I think they were
20 saying is, around 10 feet strip of public
21 space that's dedicated to sidewalk, now
22 essentially the sidewalk that we're hoping

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1 they will be able to activate through tables,
2 chairs, benches, and whatever else they can
3 kind of think of.

4 But in this case, the setback --
5 because the balconies are up above that, we
6 felt that the balcony variance that they were
7 requesting would not impair the intent of the
8 regulation itself because that public way is
9 still being provided fully at the ground floor
10 level.

11 COMMISSIONER MAY: Okay. When that
12 setback was first established, was there any
13 discussion of, I don't know, the potential for
14 balconies, projecting bays, or anything like
15 that above the street level?

16 MR. LAWSON: Honestly, not that I
17 remember. I can't say that there was or there
18 wasn't but I can't remember.

19 COMMISSIONER MAY: I think I was
20 here when that was done and I don't remember
21 anything in particular.

22 I do remember wanting that we

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1 included specific criteria for special
2 exceptions. It seems to me that this is
3 something that probably should have been a
4 special exception at that time.

5 MR. LAWSON: I don't disagree with
6 that.

7 COMMISSIONER MAY: Yes.
8 Nonetheless, the second prong is still very
9 difficult to get over because the balconies
10 themselves are not necessary to make the
11 apartment units.

12 You can still have apartments
13 without balconies or you could still take some
14 space out of the units to create the
15 balconies.

16 So that's really where -- I'm not
17 saying that this is not a well-designed
18 building or that it's actually better with the
19 balconies. I mean, I think it is better with
20 the balconies. I just don't see how we can
21 get there given the regulations the way
22 they're written.

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1 MR. LAWSON: Sure. I totally
2 understand that. This is certainly something
3 that the Office of Planning, applicants, and
4 the BZA struggle with, I think, on a fairly
5 regular basis.

6 I think that in general we take a
7 slightly, I guess, softer approach to what
8 that regulation is intended to do. We see
9 many variances --

10 COMMISSIONER MAY: In this
11 particular --

12 MR. LAWSON: No, no. The second
13 part of the test in general.

14 COMMISSIONER MAY: The practical
15 difficulty?

16 MR. LAWSON: Yes. The practical
17 difficulty test. In that we look at the three
18 -- certainly we look at the three parts of the
19 test separately, but we look at the cumulative
20 impact of the three as well.

21 There are many variance requests
22 that create a better solution than a

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1 conforming solution would do. Sometimes
2 that's for space that you might argue is not
3 strictly necessary.

4 For example, people who want to add
5 onto their house. A house doesn't need to be
6 added onto. That extra space, there's no law
7 that says that somebody has to have that extra
8 space, but it makes for a better unit. It
9 makes for a better building. It makes for a
10 better residence, quite frankly. Therefore
11 it's better, I think, for both the residents
12 and the city.

13 I think that this falls into that
14 category.

15 The balconies do meet the first
16 test clearly. They clearly meet, again in our
17 opinion, the third test.

18 The second test, it meets -- we
19 felt that it does meet that issue of, is there
20 a practical difficulty. If one accepts that
21 in a building of this size a balcony is either
22 an expected or at least desirable feature in

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1 terms of marketing the building, there would
2 be a practical difficulty to address all of
3 the other constraints that are associated with
4 the site, some of which are physical.

5 And some of which are kind of
6 design-related constraints, such as the desire
7 of the Historic Preservation Office to ensure
8 that the buildings had a very strong north-
9 south linear kind of form to them.

10 We accepted that there actually was
11 a practical difficulty to providing this
12 normal and desirable feature for a building
13 for this kind of a size.

14 COMMISSIONER MAY: I'm still not
15 there.

16 One of the concerns I have is the
17 interpretation of practical difficulty
18 generally speaking, even with the BZA.
19 Because I've frankly been on a number of cases
20 where the Office of Planning has managed to
21 get to a place that I couldn't when it comes
22 to accepting the notion of the practical

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1 difficulty.

2 With regard to the first prong, I
3 don't think that it's clear. I think I can
4 get there but I don't think that it's, you
5 know -- it's not an absolute.

6 This is still a fairly wide site
7 and there are lots of ways that it can be
8 designed to deal with it. But I can go far
9 enough to understand how enough of these
10 constraints add up to something that makes it
11 a unique circumstance.

12 It's just the balconies really
13 don't have to be there and it's not a make-or-
14 break for this particular project.

15 Sometimes I think for a residential
16 addition or something like that it can be
17 make-or-break, or it can be the difference
18 between a really reasonably functioning unit
19 and something that's very difficult to live
20 in. I've certainly seen circumstances like
21 that.

22 But it's just too hard to get there

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1 from here. And I frankly wish we had special
2 exception language in the regulations.

3 Are we going to run into this in
4 any other lots that are going to be subject to
5 this same constraint?

6 MR. LAWSON: I'm trying to think.
7 If you're talking about this exact constraint
8 of a setback required from the street with the
9 possibility of buildings encroaching into it,
10 to be honest I'd have to look through the
11 regulations to see if there is one. I can't
12 think of one off the top of my head.

13 COMMISSIONER MAY: If there was
14 another circumstance where we're likely to
15 encounter this, I would certainly be open to
16 amending the regulations so that we have
17 flexibility to deal with that. Because it is
18 a desirable feature. It's just it's hard to
19 get to a variance to do it.

20 Thanks.

21 CHAIRMAN HOOD: Thank you.

22 Any other questions, Commissioners,

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1 comments?

2 Commissioner Turnbull?

3 COMMISSIONER TURNBULL: Yes, Mr.
4 Chair. I just had one question.

5 Do you foresee a problem with the -
6 - it looks like there's Pepco vaults on 4th
7 Street by the grocery store.

8 Is that going to be an issue to
9 your -- I'm looking at the civil drawing on A-
10 18, which I really can't tell much what it is.

11 It looks like you have some -- it looks like
12 some grills. I'm assuming they're Pepco
13 vaults or something that's there.

14 How does that work with your
15 wonderful plan to lay out either a caf  or
16 something outside?

17 MR. GILLIAND: You're right. Those
18 are Pepco vaults. Being a building of some
19 size, there are a number of them that do kind
20 of stretch out along --

21 COMMISSIONER TURNBULL: Yes.

22 MR. GILLIAND: -- the sidewalk.

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1 Also, the way Pepco has us design
2 them these days, they're going to be roughly,
3 I'll say, 50 percent kind of covered with that
4 open grill that we're used to seeing
5 elsewhere. There used to be a time where
6 they'd let you cover them and air condition
7 them and you could get rid of that, but that's
8 no longer the case.

9 So it is an area that we'll have to
10 kind of work around with tables and chair
11 seating.

12 COMMISSIONER TURNBULL: Okay. It
13 looks like unfortunately it's a good chunk of
14 the sidewalk there.

15 MR. GILLIAND: Yes. We pushed them
16 away from the main grocery entrance --

17 COMMISSIONER TURNBULL: I see that.
18 Yes.

19 MR. GILLIAND: -- and away from the
20 corner of the retail down on the Tingley Street
21 side. It seemed like it was the best location
22 --

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1 COMMISSIONER TURNBULL: Yes.

2 MR. GILLIAND: -- for us along the
3 street frontage.

4 MR. NYHAN: If I could just briefly
5 add, we're addressing a similar challenge down
6 in the park. They have to go somewhere.
7 They're right next to our historic lumber shed
8 building there.

9 Our strategy there has really just
10 been to enhance the public space design around
11 them, both in the park and then the
12 streetscape on Water Street.

13 COMMISSIONER TURNBULL: Yes.

14 MR. NYHAN: I think so far it's
15 been perceived to be pretty successful.

16 COMMISSIONER TURNBULL: Okay.
17 Thank you.

18 MR. LAWSON: Commissioner Turnbull,
19 if I could, I would just note for kind of full
20 disclosure that if those Pepco vaults do
21 extend out over the property line, they would
22 require public space approval. They'd have to

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1 go before DDOT's Space Committee.

2 I believe that's not the case. I
3 believe they've tried to keep them off of the
4 public space so that the public space portion
5 of the sidewalk would remain unencumbered by
6 the vaults. But if they do encroach out into
7 public space they would require a separate
8 District approval process.

9 COMMISSIONER TURNBULL: Thank you.

10 CHAIRMAN HOOD: Any other
11 questions?

12 Okay. Again, I'm going to call for
13 ANC 6D. Do we have anyone from ANC 6D?

14 Let me do this. Does the Applicant
15 have any cross-examination questions?

16 MR. FEOLA: No, sir.

17 CHAIRMAN HOOD: Okay. Again, we
18 don't have anyone from ANC 6D.

19 Report of other government
20 agencies. We have a letter from District
21 Department of Transportation.

22 On page 2 they say, "The District

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1 Department of Transportation recommends
2 support of the Applicant's request for design
3 approval of the Southeast Federal Center
4 Overlay. DDOT has reviewed the Applicant's
5 design proposal and believes that it will
6 avoid adverse impacts."

7 Then it goes on on page 3 to say,
8 "The Applicant has been receptive to meeting
9 with DDOT. DDOT has made the various DDOT
10 pedestrian safety and traffic circulation
11 concerns paramount in its design proposal."

12 So I guess for at least the design
13 proposal part of it, you have their
14 concurrence and their approval -- support.

15 Am I correct? Okay.

16 They also mention -- and I think
17 this goes to Commissioner Selfridge's
18 question. I saw somewhere about the parking.

19 They wanted you to reduce the parking?

20 MR. FEOLA: Correct.

21 CHAIRMAN HOOD: Are you still in
22 negotiations with them; they want you to

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1 reduce it from what you have it now or what do
2 they want?

3 MR. FEOLA: I believe that's the
4 case.

5 MR. NYHAN: In our meetings with
6 them they always have a preference for less
7 parking if possible. I believe in their
8 report they've suggested eliminating the full
9 level of retail parking.

10 Which, you know, we need to
11 obviously attract a grocery store to this
12 neighborhood. I'm pretty sure that we're
13 about at the minimum parking ratios we'll be
14 able to -- I know we're at the minimum parking
15 ratios that the grocery store will accept.

16 CHAIRMAN HOOD: All right. Thank
17 you.

18 Any questions on that?

19 Commissioner Selfridge?

20 COMMISSIONER SELFRIDGE: I'm just
21 curious if Office of Planning had a position
22 on that?

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1 MS. JACKSON: Well, we're generally
2 supportive of projects with less than required
3 parking in certain urban environments.

4 We're okay with what's being
5 proposed here, given the uses that are desired
6 and their needs.

7 CHAIRMAN HOOD: Okay. Ms. Schellin
8 also brought my attention to the NCPC report,
9 which says that this would not be inconsistent
10 with the Comprehensive Plan for the National
11 Capital, nor would it adversely affect any
12 other federal interests.

13 I will now go to the ANC 6D's
14 report.

15 The first two sentences say, "At a
16 regularly called and properly noticed meeting
17 on October 12, 2010 with a quorum of four
18 members being present, ANC 6D voted
19 unanimously 7-0 to support the above
20 Applicant's request for variances for a curb
21 cut on M Street, 4th Street Southeast, and for
22 balconies on the building structure on 4th

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1 Street Southeast, and for special exception
2 for height of 110 and roof structures as
3 presented."

4 This is Exhibit 9. Obviously, Mr.
5 Feola, you have the ANC's approval and
6 support. Okay.

7 Thank you, Ms. Schellin.

8 Okay. Let's go to organizations
9 and persons in support, organizations and
10 persons in opposition.

11 I don't know if we have any
12 rebuttal but we can have your closing remarks,
13 Mr. Feola.

14 You have a little bit? Will that
15 be the rebuttal or closing remarks?

16 MR. FEOLA: Closing remarks.

17 CHAIRMAN HOOD: Okay.

18 MR. FEOLA: I would like to point
19 out, and I'm not going to convince him but I
20 would like to point out, to Commissioner May
21 that that second level of test in the variance
22 is practical difficulty.

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1 It's not that it can't be done
2 another way. It's not that it's absolutely
3 necessary for the project. It's that the
4 regulations create a practical difficulty.
5 It's in the eye of the beholder.

6 I don't expect I've convinced him.
7 But that's the test.

8 We thank you for your indulgence.
9 I kind of like the new process for hearings.

10 CHAIRMAN HOOD: Everything around
11 here only works once.

12 MR. FEOLA: Works well once,
13 anyway.

14 We believe obviously that this is
15 an exciting and beneficial project which will
16 enhance the redevelopment of The Yards as a
17 real transit-oriented, mixed-use neighborhood.

18 We believe it completely supports
19 the intent of the zoning regulations,
20 consistent with good urban planning and with
21 the comprehensive plan.

22 We ask your approval for this

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1 project.

2 With it there is a flexibility that
3 you've heard about for the options for the M
4 Street loading activity, the permission to
5 change the third and fourth floors to uses if
6 we can't establish retail in them, and finally
7 for the two designs of the residential
8 entrances that Mr. Gilliland spoke to.

9 We thank you again for your time.

10 CHAIRMAN HOOD: Thank you,
11 everyone, for your participation.

12 Commissioners, is everyone ready to
13 move forward tonight or would we like to have
14 a little more time?

15 Commissioner May?

16 COMMISSIONER MAY: I'm happy to
17 move forward with almost everything. But I
18 don't think that I can be convinced that
19 between now and a later meeting date that the
20 variance test has been met with regard to the
21 balconies.

22 If you want to move everything but

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1 the balconies and take a separate vote on the
2 balconies, we can see where the Commission
3 falls out, or we can debate it right here. If
4 others have the same difficulty that I do, we
5 could approve it without the balconies.

6 CHAIRMAN HOOD: Okay. Does anyone
7 else have a concern?

8 I think, Commissioner May, your
9 point is that the -- and I'm not sure. I've
10 heard so many different ways that it's been
11 reported back, at least while I've been on the
12 Commission in 13 years, of self-inflicted
13 variances not meeting the test. I think
14 that's kind of along the lines of where you're
15 going.

16 One thing about being here is
17 everything is very creative. I've heard it
18 all kinds of different ways.

19 So I hear your point but I don't
20 know if it gets me to the point where you are.
21 That's my standpoint.

22 But what I'll do is open it up to

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1 my colleagues and see if they're there. If
2 they are -- I mean, either way we can do a
3 separate vote.

4 I think that out of consideration
5 and respect for you, we can definitely do
6 that.

7 But let me just open it up and see
8 if I hear anything else.

9 Anyone else kind of feel --
10 Commissioner Turnbull?

11 COMMISSIONER TURNBULL: I'm usually
12 right-on with Commissioner May on a lot of
13 things.

14 I am struggling with the balconies
15 a little bit in that I sort of like the look
16 of the recessed balconies. But that would be
17 a very big economic bite, I think, on the
18 plans to have to reset all those balconies.

19 I don't think they can push the
20 building over more. Plus that would screw up
21 the whole balance of the facade from the
22 bottom and the other part. And I don't think

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1 they're going to be able to maneuver 2½ feet
2 in, 2½ feet out, so it's a space problem.

3 Again, as we said, it's in the eye
4 of the beholder how we look at have they --
5 has the site -- I think the site constricted
6 them. Could, from a design standpoint, have
7 they manipulated it a little bit differently?
8 Probably.

9 I think having them take the
10 balconies off could prove to be an economic
11 burden at some point trying to sell the units.

12 Which is not necessarily a part of the
13 pronged test for the variance but I think it
14 does create some issues for them.

15 I think they've made a case from
16 the standpoint of the height where they are.
17 I think Mr. Lawson, when talking about the
18 original -- what the thought was for the
19 setback and the impact.

20 I agree with Mr. May that we
21 probably need to do something with the
22 regulations in rewriting it. But I don't know

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1 if I'm willing to at this point say no, you
2 can't have the balconies.

3 Again, I'm talking out loud here.
4 Feel free to join in.

5 I don't know what we would say.
6 That you have to move the -- I can't see
7 making them going through a lot of gymnastics.

8 And taking it off, I think, would take away
9 something from the building that I think
10 they're going to need.

11 Anyway, as I say, I'm struggling
12 with it. I see my colleague's point and
13 usually he's right-on, and I think he is
14 right-on from a certain perspective.

15 But I think there are some unique
16 aspects to this site. I think having to put
17 the roadway in constricts it. I think the 20-
18 foot setback is another thing. And in their
19 explanation on how they're trying to line up
20 and trying to create a nexus with the rest of
21 the buildings in the surrounding area, and
22 trying to align facades and create a balance.

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1 I'm willing to say that they've
2 made their case. That's where I stand.

3 CHAIRMAN HOOD: Commissioner
4 Selfridge?

5 COMMISSIONER SELFRIDGE: Thank you,
6 Mr. Chairman.

7 I'm probably closer to Mr. Turnbull
8 in this case. I think Mr. May obviously
9 raises very good points and certainly it could
10 be viewed that way.

11 I think there's significant setback
12 on that street and I think the balconies
13 really are a nice part of the project.

14 I would certainly be comfortable
15 taking two votes tonight. But I would have a
16 hard time, I think, at this point saying no to
17 the balconies.

18 CHAIRMAN HOOD: Okay. Commissioner
19 May?

20 COMMISSIONER MAY: I don't feel a
21 particular need to try to persuade my
22 colleagues that I'm taking the right position

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1 here. Just for me, I don't think that this
2 has met the second prong of the test and I'm
3 not ready to vote for it.

4 But if you would like to proceed,
5 and it looks like the majority of the
6 Commission is willing to vote in favor of the
7 variance, I have no problem proceeding knowing
8 full well that's the result.

9 CHAIRMAN HOOD: Okay. Commissioner
10 May, where I'm looked at what's being asked --

11 Mr. Feola, if you can come back up?
12 Because I want to make sure I get all -- when
13 the motion is made I want to make sure that we
14 capture everything that's requested.

15 We're going to do this motion in
16 two segments.

17 Mr. May, do you have an issue to
18 allow the driveway access from M Street?

19 COMMISSIONER MAY: I have no issues
20 with any other aspect of the case.

21 CHAIRMAN HOOD: Just the balconies?
22 Okay.

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1 COMMISSIONER MAY: In fact, I'd be
2 happy to just make a motion that says that
3 except excluding the variance request; move
4 approval of everything excluding the variance
5 request, if that would --

6 CHAIRMAN HOOD: From what I heard
7 we could actually -- I'm not going to say
8 waste time. We can go that way but I don't
9 think you're going to get the votes.

10 COMMISSIONER MAY: No. I'm not
11 saying that we were voting against it. I'm
12 simply saying that we exclude that part of the
13 motion.

14 CHAIRMAN HOOD: That's what I was
15 going to do.

16 COMMISSIONER MAY: Yes. Right.

17 CHAIRMAN HOOD: I was going to vote
18 on the balconies by itself and I was going to
19 vote on everything else by itself.

20 COMMISSIONER MAY: Right.

21 CHAIRMAN HOOD: The only thing I
22 was going to leave out was the balconies.

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1 COMMISSIONER MAY: I was just going
2 to make the motion for you.

3 CHAIRMAN HOOD: Oh, okay. Well, go
4 ahead. Since you're going to be somewhere
5 else with the next motion, go right ahead.
6 Thank you.

7 COMMISSIONER MAY: I was going to
8 move approval of Zoning Commission Case No.
9 10-24. It's all of the special exception
10 relief, the variance --

11 MS. SCHELLIN: Southeast Federal
12 Center Overlay Review.

13 COMMISSIONER MAY: Thank you --
14 Southeast Federal Center Overlay Review --
15 that's the right way to phrase it -- but
16 excluding the issue of the balcony variances
17 which will be voted upon separately, and all
18 of the special exceptions that have been
19 requested, and ask for a second.

20 CHAIRMAN HOOD: And also the --
21 okay. It's been moved and I'm going to second
22 it.

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1 Any further discussion?

2 I think in that motion you had to
3 allow the driveway access from M Street?

4 COMMISSIONER MAY: Yes.

5 CHAIRMAN HOOD: Okay. It's been
6 moved and properly seconded.

7 Any further discussion?

8 COMMISSIONER TURNBULL: No. I'm
9 okay with that.

10 CHAIRMAN HOOD: Any further
11 discussion?

12 All those in --

13 COMMISSIONER TURNBULL: I -- yes.
14 Okay. Sorry.

15 CHAIRMAN HOOD: All those in favor?

16 PARTICIPANTS: Aye.

17 CHAIRMAN HOOD: Not hearing any
18 opposition, Ms. Schellin, would you please
19 record the vote?

20 MS. SCHELLIN: The staff will
21 record the vote 4-0-1 to approve the Southeast
22 Federal Center Overlay Review and the special

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1 exceptions requested in Zoning Commission Case
2 No. 10-24, Commissioner May moving,
3 Commissioner Hood seconding, Commissioners
4 Selfridge and Turnbull in support,
5 Commissioner Schlater not present/not voting.

6 CHAIRMAN HOOD: With that, I would
7 move approval of the variance relief for
8 1803.10 to allow balconies within a required
9 street wall setback along 4th Street Southeast,
10 and ask for a second.

11 COMMISSIONER SELFRIDGE: Second.

12 CHAIRMAN HOOD: It's been moved and
13 properly seconded.

14 Any further discussion?

15 I think we have discussed this
16 fully, especially in responding to
17 Commissioner May, to where we stand with this
18 not necessarily being fully -- while we
19 understand his point and we take it into
20 consideration, I think there are some other
21 issues.

22 Frankly speaking, from a marketing

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1 standpoint, and this probably has nothing to
2 do with it -- from a marketing standpoint, I
3 think that the Applicant is exactly right. If
4 you don't have a balcony, I can tell you what,
5 Anthony Hood wouldn't purchase one. But
6 that's a side note.

7 Okay. Any further discussion?

8 All those in favor?

9 PARTICIPANTS: Aye.

10 CHAIRMAN HOOD: Any opposition?

11 COMMISSIONER MAY: No.

12 CHAIRMAN HOOD: Commissioner May is
13 voting no.

14 Ms. Schellin, could you please
15 record the vote?

16 MS. SCHELLIN: Yes. Staff will
17 record the vote 3-1-1 to approve the variance
18 requested in Zoning Commission Case No. 10-24,
19 Commissioner Hood moving, Commissioner
20 Selfridge seconding, Commissioner Turnbull in
21 support, Commissioner May opposed,
22 Commissioner Schlater not present/not voting.

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1 CHAIRMAN HOOD: Thank you, Ms.
2 Schellin.

3 I would hope that the order would
4 be at length of how we deliberated on that
5 variance relief on the balconies so no one
6 will come down and say that stuff self-
7 inflicted passes the test, because it doesn't.

8 There were some other issues and
9 factors that were deliberated, and that were
10 deliberated already on the record the way I
11 see us moving forward.

12 Okay. Anything else, Ms. Schellin?

13 MS. SCHELLIN: No, sir.

14 CHAIRMAN HOOD: All right. I want
15 to thank everyone for their participation
16 tonight.

17 This hearing is adjourned.

18 (Whereupon, at 8:08 p.m. the
19 hearing was adjourned.)
20
21
22

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