

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING AND ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY

JUNE 24, 2003

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The Public Meeting was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Board Member
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY	Commissioner (Architect of the Capital)
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COMMISSION STAFF PRESENT:

BEVERLY BAILEY	Office of Zoning
CLIFFORD MOY	Office of Zoning
JOHN K. A. NYARKU	Office of Zoning

OTHER AGENCY STAFF PRESENT:

STEVEN COCHRAN	Office of Planning
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C-O-N-T-E-N-T-S

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<u>17017 ANC-2C</u>	3

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

9:19 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me welcome you to the 24 June, 2003, public meeting of the Board of Zoning Adjustment of the District of Columbia. I would like to call the first case for decision this morning in our meeting and then I will go through openings for our public hearing which will include, of course, introductions of the Board and staff.

MR. MOY: Good morning, Mr. Chairman, Members of the Board. The first case for decision making is Application No. 17017 of Chinatown East, LLC, pursuant to 11 DCMR 3103.2, for a variance from the lot occupancy requirements under Section 403, a variance from the rear yard requirements under Section 404, a variance from the Downtown Development (DD) District's Chinatown provisions under Section 1705, and variances from floor area ratio (FAR) requirements under Sections 402 and 1707 and Chapter 17, or in the alternative to a portion of the FAR variances sought, pursuant to 11 DCMR 3104.1, a special exception from the roof structure setback provisions under Section 411, to construct an

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1 apartment building in the DD/R-5-E District at
2 premises 809 through 813 6th Street, N.W. (Square
3 485, Lot 46).

4 After hearing testimony on the case
5 application on June 3, 2003, the Board discussed the
6 case at its decision meeting on June 17, 2003, and
7 the Board discussed at that meeting for more
8 information on specific costs.

9 The applicant submitted their supplement
10 economic argument on June 20, 2003, and that's in
11 your case folder, as Exhibit 33. That completes my
12 briefing, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Thank you very
14 much, Mr. Moy.

15 Okay. As Mr. Moy has outlined very
16 clearly, we had postponed this in order to review the
17 additional information. The additional information
18 was more supportive evidence of the financial
19 argument that was being posed.

20 I think we can step back and look at the
21 entire case now with this information and realize
22 that this variance and relief were not solely
23 weighing on the economics, but that it was brought up
24 in the case presentation it was clear that it needed
25 to be more fully addressed.

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1 What I would like to do is leave that to
2 the end and we can briefly discuss that and run
3 through, first of all, the other aspects of this lot
4 occupancy, the rear yard, the Chinatown preferred
5 floor area ratio.

6 I think it's fairly clear in terms of the
7 work that was done in coordination with this Historic
8 Preservation Board and in the height context that
9 they thought was appropriate for this building within
10 this block which was related, as you will recall in
11 the hearing, to a building that is across the alley.

12
13 It is not the tallest building in the
14 square or in the area but it is one that the historic
15 preservation felt should relate to what the scale of
16 this is. I know we had extensive discussion on this
17 Board about the vehicle for which HPRB can begin to
18 limit this. I know I had some concern.

19 If you look across the street, and that
20 would be across 6th Street, if I'm reading this
21 correctly, there is a building that I think was
22 talked about. It may be up to 110 feet. Clearly
23 that could have set the scale. However, it was the
24 Gospel Mission behind that set what HPRB felt
25 appropriate.

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1 My point being in order to obviously pull
2 a permit on this, the developer will need to
3 accommodate the conceptual design directions from
4 preservation and look for a final approval. With
5 that, they are caught in a situation by which matter-
6 of-right zoning mass density has been reduced. How
7 one can then facilitate that is, of course, what
8 brings them to us.

9 We had at the beginning of the hearing
10 clear indication that they would not be before us for
11 all these variances if it were not for the design
12 directions from HPRB with that lot occupancy and rear
13 yard are clearly impacted. As the building gets
14 smaller, the mass then pushes out the back.

15 I believe it was a toothpaste analogy but I
16 think it's more appropriate as a balloon analogy, if
17 you squeeze one side it goes out the other.

18 Also, in substantiation of the case for
19 the variances there was the block itself that
20 indicated the lot occupancy of the adjacent
21 properties which goes to actually keeping in form
22 with what is happening on the square more directly
23 would not lend to based on rear yard or lot occupancy
24 impairing the intent and integrity of the zone plan
25 or context of that area.

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When we look at the Chinatown preferred use minimums, that was also of concern to me in that I think retail is to be encouraged and is to be utilized. It's not always easy. It's a difficult dynamic.

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However, when we look at the reality of this site, first of all it's depth, second of all now with the structure having to fill the lot, and with the reconfiguration of the mass of this building based on HPRB, the entrance off the alley to the parking -- we had limitedly looked at but I think it was fairly decisive to see how you could ramp down fast enough in order to accommodate the required preferred uses -- it doesn't work.

16

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What essentially is happening is that in this project one is in conflict of the other and a choice is made, do you not provide parking and retail or preferred uses, or do you provide the reverse.

20

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I think the decision was correct in pursuing, reducing, or eliminating the preferred uses based on the fact that this is in mid-block and I do not think that it would be a critical detriment to the block if retail didn't accommodate there.

25

In addition to that, you look at the

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1 design and the elevations that were changed with the
2 coordination with HPRB and I think it was a good
3 direction in terms of what the front facade is and
4 how it dealt with the scale of the adjacent
5 properties, the base and such.

6 With that, in and of itself, as you move
7 the first floor off of street level, it obviously is
8 not designed at this point to look to be retail or to
9 actually accommodate retail. You would have to be on
10 grade or close to grade to really make that draw.

11 With that, I believe I've touched on
12 most. I have others to address but I want to go to
13 essentially the economic breakdown. I think perhaps
14 two things. The Board may not have been exactly
15 clear initially on what we wanted because I think it
16 was something as simple as this.

17 I don't mean to say this is simple, but
18 rather not outrageously complex but kind of a
19 snapshot. You have matter-of-right and what are the
20 economics of matter-of-right without HPRB? What
21 happens when HPRB rules in their conceptual design?
22 What is the difference?

23 It was clearly stating that it may not be
24 economically viable to build this if it was reduced
25 in height and units. I think what we are being shown

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1 in evidence here in this essentially performa that it
2 is not economically viable.

3 That, to me, addresses the issue of which
4 the developer was trying to convince us. I think it
5 has to be specifically related to the project.
6 Otherwise, we're caught in a bind where obviously on
7 any other case an applicant can bring anybody else's
8 economic statistics. This was important to really
9 look at specific pieces.

10 Now, is this comprehensive? Is this
11 enough to win any other case or any other argument of
12 economic difficulty or hardship? I'm not convinced
13 of that. I think we will have to view that in its
14 specific application and case.

15 That's my summary. Let me have others
16 speak to the application if they are so inclined.
17 Mr. May.

18 COMMISSIONER MAY: Okay. Well, I'm glad
19 to have received this particular information and the
20 different development scenarios because it does get
21 to the sort of information that we need to show that
22 there is, in fact, an economic hardship here which is
23 what the variance case hinges on.

24 It's unfortunate that it has taken so
25 long, and I'm not blaming anyone in particular for

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1 not producing this initially, but this is the sort of
2 information that I think the Board needs as a matter
3 of course to be able to make a decision that revolves
4 around an economic hardship.

5 I think having it a little bit further in
6 advance and perhaps having a little bit more
7 information would make the process for something like
8 this a lot faster and easier. Even though this is a
9 relatively simple analysis there are a lot of
10 questions that it raises that I would like to have
11 studied a bit more.

12 But on the face of it if you look at the
13 different development scenarios presented, it's clear
14 that trying to abide both by the zoning regulations
15 and the restrictions imposed by HPRB that you can't
16 do both on the face of it here.

17 I think that there -- I suspect that
18 there may be development scenarios that may have
19 worked better than this. I'm not entirely convinced
20 of all of the numbers that are here but we don't
21 really have the opportunity here to go much further
22 with it than what we've gotten.

23 That having been said, there are some
24 aspects of the application that I think we need to
25 give some individual consideration to. Not so much

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1 the variances, although I think probably the
2 Chinatown preferred use minimum we need to be fairly
3 explicit about that one.

4 The special exceptions, and particularly
5 the varied height. I don't want to say there is not
6 good reason why HPRB insisted on treating the
7 penthouse in this fashion. However, it is directly
8 in conflict with what zoning regulations require and
9 I don't think that it's really an optional kind of
10 thing.

11 I think there are reasons why if there
12 are reasons other than HPRB's aesthetic sense why
13 varied height is necessary, then maybe there's a case
14 for it but I don't think in this particular case
15 simply, you know, keep everything as low as possible
16 is enough justification to say that it's okay. I
17 mean, if we say that it's not possible for them to
18 lower it, then the applicant has met their obligation
19 to HPRB. Right?

20 CHAIRPERSON GRIFFIS: Yeah, except I
21 think part of our difficulty is if we -- I can
22 understand your point but if we say there's no rash
23 outside of HPRB so we can't grant it. They go back
24 to HPRB and it is known that they always reduce
25 penthouses as much as possible. None of us want to

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1 see them. They can't get a permit which stops this
2 entire project. So where do we put this?

3 COMMISSIONER MAY: I think that the --
4 well, I don't know the particular instructions that
5 were given to the applicant from HPRB but, as I
6 understand them generally, it's make the penthouse
7 structure as low as possible in all areas.

8 CHAIRPERSON GRIFFIS: Right.

9 COMMISSIONER MAY: Okay. What is
10 possible can be determined by what is mechanically
11 possible, or architecturally possible. Or it can be
12 determined by other regulations. In this case we
13 have zoning regulations that say that it should be an
14 even height no matter what.

15 I think they have run the limit of their
16 possibility and I think if they were to go back to
17 HPRB and say, "We got all but this," I have a hard
18 time believing that HPRB is going to reject their
19 application on that grounds.

20 CHAIRPERSON GRIFFIS: I see. I would
21 have a hard time believing that. I think it would
22 clearly --

23 COMMISSIONER MAY: You think they would
24 reject it simply for not having the varied height?

25 CHAIRPERSON GRIFFIS: That's correct.

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1 COMMISSIONER MAY: Well, I'm sorry. I'm
2 not inclined to go along with that just because
3 they're going to reject it. I understand what
4 they're pushing for but I don't feel that we have to
5 grant it in this circumstance.

6 CHAIRPERSON GRIFFIS: Okay. Regarding
7 the penthouse then in the intriguing and well-
8 articulated Section 411 of which it comes in, 411 and
9 the establishment of 411 for roof structures which
10 gives us the control, of course, of location and
11 height and all, the basis of which was to exercise a
12 reasonable degree of architectural control upon
13 structures in all districts.

14 I am again moved to follow the design
15 direction from HPRB which indicates don't make this
16 18.6 if possible and vary the roof heights in order
17 to keep it at a minimal impact, visual impact, and
18 perhaps even make it a more pleasant visual impact.

19 I think 411 the whole aspect of it is
20 about making penthouses which are often the kind of
21 discarded and hopefully never seen structures and
22 critical structures of the building to make them more
23 design friendly.

24 Certainly with the reduction -- well,
25 perhaps with the reduction of this building the

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1 penthouse will actually be more visible than it would
2 if this was built matter-of-right, in which case you
3 probably wouldn't have the opportunity to see it
4 except for the new buildings that are going up that
5 will be probably be 120 to 130 feet high but that's
6 in the future.

7 Does that make any sense with you, Mr.
8 May?

9 COMMISSIONER MAY: I understand the
10 argument. I just don't agree. I think from an
11 aesthetic point of view we are better served by a
12 penthouse structure of uniform height. I don't think
13 you gain a lot by dropping this stucco structure by
14 three feet surrounding the elevator overrun. I don't
15 see there is any great aesthetic advantage to that.

16 CHAIRPERSON GRIFFIS: But it's actually
17 dropping substantially below three feet. As I'm
18 reading this, they're looking at almost approximately
19 a nine-foot penthouse of which 18.6 is allowable. As
20 you know probably very well, 18.6, that measurement
21 is based on --

22 COMMISSIONER MAY: But varied height
23 we're just talking about making the roof line of what
24 they actually build which actually requires the same
25 height.

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1 CHAIRPERSON GRIFFIS: I see.

2 COMMISSIONER MAY: I understand as a
3 matter of right theoretically they could go to 18.6.

4 CHAIRPERSON GRIFFIS: I see. I fall on
5 the side of the fact of 411. There are numerous
6 sections, perhaps not enough, that give this Board
7 design discretion, some over specific, some more
8 generally. In my reading and my understanding of
9 roof structures, that is exactly what is being laid
10 out for us to exercise reasonable degree of
11 architectural control.

12 I believe that looking at this we can
13 rely on HPRB's design opinion. I think in some
14 respects it does make sense to vary and make it a
15 little bit more animated. With that being said,
16 others?

17 MEMBER ZAIDAIN: I actually have a
18 question for Mr. May. There are a host of issues
19 we're dealing with in terms of the variances and
20 special exception. Is your concern or your position
21 with the application is the one element of the varied
22 height?

23 COMMISSIONER MAY: Well, I have a lot of
24 concerns about the application overall.

25 MEMBER ZAIDAIN: Right. I mean in terms

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1 of --

2 COMMISSIONER MAY: In terms of the ones
3 at this moment I'm not prepared to support. That one
4 is just above and beyond. I don't think it's
5 necessary. I don't think it does anything for the
6 building. It certainly is within the bounds of what
7 the BZA is supposed to decide and exercise reasonable
8 architectural judgment, if you will, on it. Yeah, I
9 just happen to think that the building is not served
10 by dropping or varying the height of the penthouse.

11 Mr. Cochran, would you like to comment on
12 that?

13 MR. COCHRAN: Simply factual. The
14 penthouse is proposed to be approximately 10 feet
15 with a pop-up for the elevator that would have
16 approximately a three-foot difference.

17 COMMISSIONER MAY: Well, that's about
18 what I thought. I just don't think the building is
19 better off for it. That's all I'm saying.

20 MEMBER ZAIDAIN: I think my question or
21 my issue is there are some substantial challenges to
22 the site in terms of its size and its topography that
23 I think supports -- well, you kind of bundled that
24 with the economic argument. I think the FAR variance
25 and other leaf options are support of that.

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1 I'm on the fence, however, with the
2 height issue -- I'm sorry, the penthouse issue as
3 well because it seems like that stemmed really from
4 HPRB. I was a little concerned because I didn't
5 think we got a lot of guidance on how much we can use
6 the actions of another governmental agency, so to
7 speak, in our deliberations for a variance.

8 I think we've kind of gotten two
9 different perspectives here, one from the chair and
10 one from Mr. May and it still cast a shadow of a
11 doubt on what is actually going to happen here in
12 terms of what is going to happen when they go back to
13 HPRB in the future of the project. That's a little
14 concerning to me.

15 I hate to see us base a decision on
16 essentially the actions of another board. I don't
17 think that is good for anybody, this Board or the
18 applicants, for that matter. I guess I'm kind of
19 laying back waiting to hear some more discussion from
20 the Board members on which way that's going to go
21 because I still don't think we've got a lot of
22 information on that issue.

23 CHAIRPERSON GRIFFIS: I think we need to
24 weigh the controls that happen on development in this
25 city. I think we do need to look to how HPRB would

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1 weigh into this and then look at the case that would
2 be presented based on that. I think this is a fairly
3 strong case in that respect.

4 I think the difficulty comes that we may
5 disagree with HPRB's direction or design or decisions
6 but that's where we obviously can't -- I feel at this
7 point with this application we can't cross that. It
8 is what we have to assume is a given. It is a fact
9 in the case.

10 Now, the other piece that you brought up
11 in terms of the unspecific idea of what will actually
12 happen, it is not beyond the Board and it has been
13 our previous experience to grant variance and special
14 exceptions with some flexibility noting that they
15 will have to go again to HPRB for final design
16 approval.

17 Rather than having that happen and having
18 them come back and kind of being an endless loop, it
19 seems to be appropriate. I think it seems to be
20 appropriate in special exception for a roof structure
21 to allow that flexibility.

22 In special exceptions we are to look at
23 whether the granting of that relief under special
24 exception would somehow be detrimental to somebody
25 somewhere. I can't see where allowing varying

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1 heights and a below matter-of-right height.

2 If we have a penthouse that is allowed by
3 our regulations to be in a volume and a mass set back
4 18.6 and 18 high and down we're looking at something
5 that is wanting to be 10 feet with a variation of a
6 few feet, I don't see how that begins to be
7 detrimental.

8 Even with the relief from the setback, I
9 think it actually works together. As you reduce the
10 height, it allows for less of an impact which is what
11 the setbacks from the exterior are to be.

12 If you look at the setback, what it is
13 supposed to ensure or protect? It would protect
14 obviously the light and air, the shadows, the impact
15 of the mass on this building, but we have already cut
16 off numerous feet.

17 Now with matter-of-right penthouse at
18 18.6 you might as well not call it a mechanical
19 penthouse. Just call it a story and they wouldn't
20 have to be here because you would be allowed to put
21 that in because it's under our own regulation height
22 and mass allowable.

23 COMMISSIONER MAY: I'm not sure that can
24 actually fly legally because I did look at that
25 question.

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1 CHAIRPERSON GRIFFIS: What, calling it a
2 story?

3 COMMISSIONER MAY: Yeah.

4 CHAIRPERSON GRIFFIS: Oh, no. It
5 absolutely can't. I say that to make a point but not
6 to give direction.

7 COMMISSIONER MAY: Thank you. We don't
8 want to suggest that as a course here.

9 I understand all the arguments that the
10 Chairman is making. However, there is a fundamental
11 assumption when it comes to the base regulations
12 themselves that we should be -- that they are
13 designed with the public good in mind.

14 The mere fact that we have a varied
15 height regulation assumes that there is -- that if we
16 allowed everyone to build very high penthouses that
17 there would be some detriment to the public. So I
18 don't think that we need to go very far to have to
19 try to prove that somehow the regulatory baseline is
20 somehow not a reasonable basis for kind of sticking
21 to it. The real question in my mind is why is this
22 necessary to begin with.

23 CHAIRPERSON GRIFFIS: Why. But that's
24 not a question of the applicant, is it? I mean, the
25 applicant hasn't come forward and said, "You know,

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1 this is where I want to spend my money to do varying
2 heights in penthouses." It's a question that we
3 can't have answered here.

4 COMMISSIONER MAY: No, I'm not asking to
5 answer. I'm prepared to decide based on what we have
6 here.

7 CHAIRPERSON GRIFFIS: Good.

8 COMMISSIONER MAY: I do want to mention
9 one other thing, though, in response to Mr. Zaidain's
10 remarks which is the reaction to other Government
11 agencies and this sort of convergence or conflict, if
12 you could term it that way, between the zoning
13 regulations and HPRB's actions.

14 I mean, it's my understanding, and I
15 haven't heard anything to the contrary from
16 Corporation Counsel, that it is reasonable for us to
17 react to the judgment of HPRB as a condition on this
18 property.

19 If it were not reasonable to consider
20 that to start with, then we wouldn't -- there would
21 be no reason for a variance. There would be no
22 grounds for a variance because they would otherwise
23 be doing this simply because they want to and then
24 they have a completely different variance case to
25 make.

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1 But that has to do with actions taken. I
2 think it's not fruitful for us to speculate on how
3 will HPRB react. In other words, I wouldn't want to
4 make the decision on the varied height of the
5 penthouse based on whether we think HPRB is going to
6 pass or fail the application. I think that we have
7 to base our decision simply on the regulations that
8 we have and the rules that we use for making
9 decisions about those special exceptions.

10 MEMBER ZAIDAIN: Okay. And I concur with
11 that. I guess my question was I was trying to get a
12 hold on what the reality of this endless loop analogy
13 that the Chair used in describing this because I
14 don't think aside from the deliberation on this, the
15 special exceptions and the variances, I think this is
16 something that we need to keep in mind although it's
17 not a basis for an approval so I just wanted to kind
18 of flush out that issue.

19 COMMISSIONER MAY: I'm going to ask one
20 last question. Does anyone know whether in fact
21 there is still a final Board presentation necessary
22 or whether this matter has been approved and
23 delegated to staff for final decision making?

24 MEMBER ZAIDAIN: I thought it was
25 delegated to staff.

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1 CHAIRPERSON GRIFFIS: It's in the record.

2 COMMISSIONER MAY: I just don't recall
3 off the top of my head.

4 MEMBER ZAIDAIN: I believe it's a staff
5 decision at this point.

6 COMMISSIONER MAY: Okay.

7 MEMBER ETHERLY: Mr. Chair, I am more
8 than happy to proceed based on your coverage of the
9 case at the outset. To piggyback on Mr. Zaidain's
10 comment, I think we're getting close to endless loop
11 status on our dialogue. I would be more than happy
12 to move forward.

13 MEMBER ZAIDAIN: I wasn't applying our
14 analogy toward dialogue.

15 COMMISSIONER MAY: I was.

16 CHAIRPERSON GRIFFIS: Exactly. Okay, let
17 me do this because I know other Board members do want
18 to speak. Let's deliberate under a motion then.

19 I would move for approval of Application
20 17017 for the outlined variances, that being for lot
21 occupancy under Section 403, rear yard requirements
22 under 404, the variance from the downtown development
23 district which is under 1705, and the four area
24 requirements 402, and going for the special exception
25 for setback from exterior walls and varied height.

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1 Now, there was alternatives given in this
2 and that was to whether 1701.6, I believe it was,
3 would override the requirement for the downtown
4 district. Of course, our attorneys may not like it
5 but we didn't delve into that argument and I think we
6 pursued this on face for all the variances that would
7 be required.

8 I think I can definitively say that a
9 decision on that was not made but rather we looked at
10 it as what was originally presented. That being
11 said, I think it's fairly clear --

12 MEMBER ETHERLY: I would second your
13 motion, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much. Let me just make one note and then I want
16 to allow Ms. Miller to speak.

17 There was another argument about the
18 retail which I absolutely wanted to address that was
19 talking about the practical difficulties. I was
20 convinced by all the arguments. I think the parking
21 in the site and the access and the amount of
22 available square footage appropriate for retail or
23 even available for the preferred uses was not there
24 so I think the case is very strong.

25 What I did not, in fact, agree or rely my

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1 deliberation on is the fact of retail space
2 management and how the type of residential building,
3 whether it be apartment or condominium, will not
4 allow itself to manage retail. That may be a
5 reality. I don't find that as a basis to support the
6 variance. As I said, I support it wholly with the
7 other arguments that were presented.

8 Ms. Miller.

9 MEMBER MILLER: I basically want to
10 address the question of the roof structure and, in
11 general, our seeing a convergence of HPRB decisions
12 and impacting on our zoning decisions.

13 With respect to the roofing structure, it
14 seems to me this is an issue that deals with
15 aesthetics. Mr. May, when you were talking about our
16 role in this and that we come at it from what is the
17 public detriment, I don't see a public detriment in
18 this case related to a varied roof structure. My
19 inclination would be to go along with and defer to
20 HPRB's judgment on the aesthetics in this case. That
21 was the main point I wanted to make.

22 CHAIRPERSON GRIFFIS: Good. Thank you,
23 Ms. Miller.

24 The other piece of it is, and I think
25 we've seen in a lot of other applications, and it's

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1 not specifically related to this but in residential
2 construction how difficult it is to have a single
3 penthouse, and in the areas where it is applicable to
4 have recreation space which is often on the roof
5 because it's open to have the separation of stairs.

6 I know full well that the zoning
7 commission will be picking up Section 411 in order to
8 look at making it more accommodating for certain
9 things. Now, that doesn't go wholly to this
10 application but I think it does speak to the limits
11 of 411 and perhaps its inability to anticipate
12 contemporary situations.

13 I do agree wholly with Ms. Miller, which
14 I believe I also addressed a little bit in terms of
15 the degree of architectural control and that's what
16 411 is.

17 Others?

18 COMMISSIONER MAY: I would like to offer
19 an amendment to this to take the varied height
20 exclusion out so that we could vote separately on
21 that special exception since that is the only one
22 where I think there may be some disagreement among
23 the Board.

24 I would hate to be in a position of
25 voting -- well, let me put it this way. In my own

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1 circumstance I have mixed feelings about this range.

2 In this particular case if we separate that out it
3 makes it easier for me to vote.

4 MEMBER ZAIDAIN: I would concur with
5 that.

6 CHAIRPERSON GRIFFIS: Okay. There is a
7 motion and seconded. Do I take it as a consensus to
8 the Board to break this out?

9 MEMBER ETHERLY: Opposed.

10 CHAIRPERSON GRIFFIS: I would also be
11 opposed to that.

12 Ms. Miller. Doing a roll call here.

13 MEMBER MILLER: I would concur with
14 separating it out.

15 CHAIRPERSON GRIFFIS: Okay. Then let's
16 take that up. I'll expedite this so that we don't
17 argue that motion. We know where we are on that.
18 Let me speak to the first motion then without.

19 First of all, I strongly feel in all the
20 cases that has been presented it should be approved
21 for the first motion. Taking out the special
22 exception I think makes no logical sense. This
23 project is contingent on having a penthouse and it's
24 contingent on being approved by us and another board,
25 HPRB.

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1 If we decide that we can't approve it
2 because HPRB is giving direction in one form, then we
3 have stopped a project that I think makes the cases
4 for its own variances. Let me call for, unless
5 there's other questions on the first motion, any
6 other comments.

7 MEMBER MILLER: I have a procedural
8 question. It seemed to me you just addressed a
9 reason why it would make sense to vote all together
10 on this. After having heard that, then I having
11 voted with the majority move to reconsider.

12 CHAIRPERSON GRIFFIS: Let's not. Let's
13 just take them up. It will go faster and I think
14 what they need to do is stand on their own and I
15 believe that they will.

16 MEMBER ZAIDAIN: So you're talking about
17 taking each relief separately or just separating
18 them?

19 CHAIRPERSON GRIFFIS: We have two
20 motions. we have two motions on the table at this
21 point. I'm going to bring up the first which is for
22 approval of the variances for lot occupancy rear yard
23 FAR and the preferred use. Our second motion will
24 take up special exceptions for the roof structures
25 under 411 setback from the exterior walls and the

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1 varied height. Is everyone clear on that?

2 COMMISSIONER MAY: No, no, no. I'm not
3 clear. I'm sorry. We have one motion that's to
4 approve all.

5 CHAIRPERSON GRIFFIS: No. Two separate
6 motions.

7 COMMISSIONER MAY: So you've accepted my
8 amendment so that it's separated.

9 CHAIRPERSON GRIFFIS: It was a three to
10 two vote. I'm sorry if I skipped quickly through
11 that. As I noted the Board's opinions, I thought it
12 would be faster. Is everyone clear? I will call the
13 vote on the four variances. The second call will be
14 for the special exceptions.

15 COMMISSIONER MAY: Mr. Chairman, that's
16 not really what I asked for. What I asked for was
17 just a separate vote on the second special exception.

18 CHAIRPERSON GRIFFIS: The second which is
19 varied height.

20 COMMISSIONER MAY: Varied height. Right.

21 CHAIRPERSON GRIFFIS: Okay. Is everyone
22 clear on that? As we crush parliamentary procedures
23 we'll just make sure everyone is clear on exactly
24 what they're voting.

25 If that is clear, I will ask for all

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1 those in favor of the motion to approve variances
2 from lot occupancy rear year FAR preferred uses and
3 the setback, special exception setback from exterior
4 walls for the penthouse under 400.7(b).

5 All those in favor signify by saying aye.

6 ALL: Aye.

7 CHAIRPERSON GRIFFIS: Opposed?

8 COMMISSIONER MAY: Was there actually a
9 second there?

10 CHAIRPERSON GRIFFIS: A second?

11 COMMISSIONER MAY: We had a motion and no
12 second.

13 CHAIRPERSON GRIFFIS: No, no. The motion
14 was there. It was seconded. It was amended to break
15 out for a second motion.

16 COMMISSIONER MAY: Got it. All right.

17 CHAIRPERSON GRIFFIS: Why don't we record
18 the vote and Board Members can clarify the vote if it
19 is not recorded correctly.

20 MR. MOY: The staff would record the
21 first motion as 5, 0, 0, motion of the Chair,
22 seconded by Mr. Etherly for four variances, the lot
23 rear FAR preferred uses and setback.

24 CHAIRPERSON GRIFFIS: Very well. Thank
25 you, Mr. Moy. Then I would ask for all those in

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1 favor of the motion to approve the special exception
2 for the varied height under 411.5 signify by saying
3 aye.

4 BOARD MEMBERS: Aye.

5 CHAIRPERSON GRIFFIS: And opposed?

6 COMMISSIONER MAY: Opposed.

7 MEMBER ZAIDAIN: Opposed.

8 CHAIRPERSON GRIFFIS: Very well. We can
9 record that vote also.

10 MR. MOY: Staff would record that motion
11 as 3, 2, 1. Opposed, I believe, was Mr. May and Mr.
12 Zaidain.

13 CHAIRPERSON GRIFFIS: Thank you very
14 much, Mr. Moy. Anything else for us in our brief and
15 expeditious morning meeting? If not, then let me
16 call to order our public hearing.

17 Good morning.

18 MR. WILLIAMS: Good morning, Mr.
19 Chairman. Thank you. My name is Lindsley Williams
20 for the record. Would you be directing a summary
21 order in this case, sir?

22 CHAIRPERSON GRIFFIS: That's an
23 interesting point. Is there any objection from any
24 Board Members of doing a summary order in this case?
25 I don't see any difficulty in terms of there is no

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1 opposition. We will obviously show the votes of the
2 Board and break out the issue and I think that will
3 substantiate what and where the Board stood.

4 I think this does, and I think some
5 hesitation obviously is that this brings up larger
6 pictures of process of which I'm not sure will be
7 adequately addressed in a full order anyway so I
8 would, unless anyone wants to argue in great
9 objection, issue a summary order on this. Not seeing
10 anyone, why don't we do that then.

11 (Whereupon, at 10:00 a.m. the special
12 meeting was adjourned.)

13

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