

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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IN THE MATTER OF:	:	
	:	
CASCO, Inc. & K Street	:	
Developers	:	Case No.
	:	05-36G
	:	
-----	:	

Thursday, June 27, 2013

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

The Public Hearing of Case No. 05-36G by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
PETER MAY, Commissioner (NPS)
ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic Preservation
STEVEN COCHRAN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

LEWIS BOOKER
ANNA CHAMBERLIN

The transcript constitutes the
minutes from the Public Hearing held on June 27,
2013.

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

(6:41:47 p.m.)

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, June 27, 2013.

My name is Anthony Hood. Joining me are Vice Chair Cohen, Commissioner Miller, Commissioner May, and Commissioner Turnbull. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, Office of Attorney General, and Mr. Ritting, Office of Planning, Ms. Steingasser and Mr. Cochran, and our District Department of Transportation, Ms. Chamberlin.

This proceeding is being recorded by a court reporter, and it's also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

The subject of this evening's hearing is Zoning Commission Case Number 05-36G. This is a request by CASC0, Inc. and K Street

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1 Developers, LLC for approval of a PUD
2 modification of properly located at Square 749.

3 Notice of today's hearing was
4 published in the DC Register on May 10th, 2013,
5 and copies of that announcement are to my left
6 on the wall near the door.

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

16 The following time constraints will
17 be maintained in this meeting; the Applicant, 60
18 minutes; organizations, 5 minutes, individuals,
19 3 minutes. The Commission intends to adhere to
20 the time limits as strictly as possible in order
21 to hear the case in a reasonable period of time.
22 The Commission reserves the right to change the

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1 time limits for presentations, if necessary and
2 no time shall be exceeded.

3 All persons appearing before the
4 Commission are to fill out two witness cards.
5 These cards are located to my left on the table
6 near the door. Upon coming forward to speak to
7 the Commission, please give both cards to the
8 reporter sitting to my right before taking a seat
9 at the table.

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

16 The decision of the Commission in
17 this case must be based exclusively on the public
18 record. To avoid any appearance to the contrary,
19 the Commission requests that persons present not
20 engage members of the Commission in conversation
21 during any recess or at any time.

22 Please turn off all beepers and cell

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1 phones at this time so not to disrupt these
2 proceedings.

3 Would all individuals wishing to
4 testify please rise to take the oath. Ms.
5 Schellin, would you please administer the oath.

6 MS. SCHELLIN: Yes, please raise your
7 right hand.

8 (Whereupon, all witnesses sworn.)

9 CHAIRMAN HOOD: Okay. At this time,
10 the Commission will consider any preliminary
11 matters. Does the staff have any preliminary
12 matters?

13 MS. SCHELLIN: Yes, sir. The
14 Commission will recall at the May 13th meeting
15 there were a couple of motions that were brought
16 forward, and the Commission stated at that time
17 that as a preliminary matter they would allow the
18 moving parties to have seven minutes each to
19 present those motions at the beginning of the
20 hearing, so we have those motions to be
21 presented. And then we have some proffered
22 expert witnesses. We do have a party status

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1 request from the Union Place Phase 1 LLC who
2 submitted that motion to dismiss.

3 CHAIRMAN HOOD: Okay. I'm going to
4 ask if the two parties come forward, the
5 Applicant, as well as Mr. Brown. You represent
6 -- I thought Mr. DePuy. Maybe I got it mixed up.
7 You can sit down and identify yourself.

8 MR. BROWN: Patrick Brown from
9 Greenstein, DeLorme and Luchs. I'm taking Mr.
10 DePuy's place this evening on behalf of the Union
11 Place Phase 1 LLC.

12 CHAIRMAN HOOD: Okay. Well, in that
13 case -- where is Mr. Brown, Mr. Glasgow. I think
14 the Commission decided upon seven minutes apiece
15 to argue the issue. And what I'd like to do is
16 start off with Mr. Brown first, and then Mr.
17 Glasgow, you'll be second.

18 Our rules -- let me write myself a
19 note. There was a request to revisit the set
20 down. Our rules do not allow for that, so I would
21 -- I don't know if I need to make a motion to deny
22 that request, but I think can we just do that on

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1 general consensus, Commissioners, or does
2 anyone feel differently? Mr. Ritting, can we
3 just --

4 MR. RITTING: I'm not so sure that
5 it's a requirement that you have a motion, but
6 it certainly might be a good idea to have one,
7 if you're inclined to --

8 CHAIRMAN HOOD: Okay. Then I would
9 like to make a motion to address that, if you
10 agree with my statement.

11 VICE-CHAIR COHEN: Mr. Chairman, I
12 will move to deny the motion to dismiss this
13 hearing.

14 CHAIRMAN HOOD: Well, if we get a vote
15 on that, we can all just get up and go on home,
16 but I don't think that's what the intention was.

17 (Off the record comments.)

18 COMMISSIONER MAY: Mr. Chairman,
19 should I make the --

20 CHAIRMAN HOOD: I really would like
21 for the Vice-Chair to do it because, you know,
22 we're all --

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1 VICE-CHAIR COHEN: Deny to dismiss
2 the set down of the -- what do you want me to say?

3 CHAIRMAN HOOD: Well, it's not what
4 I want you to say. Unless somebody wants to
5 discuss, there was a request for us to revisit
6 our set down.

7 VICE-CHAIR COHEN: Oh. And I'm
8 denying the request to revisit the set down. Is
9 that it?

10 COMMISSIONER TURNBULL: Second.

11 VICE-CHAIR COHEN: Thank you.

12 CHAIRMAN HOOD: Okay. Is that okay,
13 Mr. Ritting, the motion?

14 MR. RITTING: Yes. I believe the
15 exact language is a motion for reconsideration
16 of a set down decision, and I understand that
17 that's what Ms. Cohen meant by her motion.

18 VICE-CHAIR COHEN: That's exactly
19 what I meant.

20 CHAIRMAN HOOD: Okay. And I think
21 that was very well done. I realize we want to get
22 out of here early, but not that early. But,

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1 anyway, okay. It's been moved and properly
2 seconded. Any further discussion? All those in
3 favor, aye.

4 (Chorus of ayes.)

5 CHAIRMAN HOOD: Not hearing any
6 opposition, Ms. Schellin, would you please
7 record the vote.

8 MS. SCHELLIN: Yes. Staff records the
9 vote 5-0-0 to deny the motion for
10 reconsideration of set down. Commissioner Cohen
11 moving, Commissioner Turnbull seconding,
12 Commissioners Hood, Miller, and May in support
13 of the denial.

14 CHAIRMAN HOOD: Okay. Thank you,
15 Vice-Chair.

16 Okay, let's begin with those
17 arguments. We each have seven minutes. Ms.
18 Schellin, I'd like for you to start the clock.
19 Mr. Brown, you may begin.

20 MR. BROWN: Certainly. Mr. Chairman,
21 Members, my colleague, Mr. DePuy, laid out in
22 some length in great detail in a brief. I don't

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1 want to repeat that. I want to, I think, probably
2 take a little more commonsense practical
3 approach to looking at the question.

4 And really what's attempting to
5 occur here is to piggyback on an earlier PUD
6 involving two pieces of property, Parcel 1, who
7 I represent the current owner and the authorized
8 party for Parcel 1, and Parcel 2 by virtue of
9 adding this additional project.

10 This additional project had no part
11 of the original PUD. It was a dream of somebody's
12 but was certainly not part of the PUD. And it
13 strains commonsense and credibility to have
14 somebody -- an outsider come in and try to
15 modify, and piggyback, and rely upon, as you see
16 in various amenities on something that isn't
17 theirs, that they have no authority to do so, and
18 short circuits the PUD process, and short
19 circuits the consideration of that individual
20 project separate and apart from something they
21 have nothing to do with.

22 It's clear that my client, Parcel 1

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1 owner, has not consented, has not joined in this
2 application, and will not do so; notwithstanding
3 any other arguments to be made, it flatly hasn't
4 occurred. Yet, their PUD -- their part of the PUD
5 has been dragged into this occasioning my
6 attendance.

7 The Applicant here just this evening
8 has submitted an -- a cooperation agreement from
9 the Parcel 2 owner which seems to, having just
10 received it, give them some authority to operate
11 on behalf of the Parcel 2 owner. Well, that just
12 highlights the fact that the Parcel 1 owner has
13 not consented, will not consent, and has made it
14 clear it would be inappropriate to proceed in the
15 context of the existing PUD.

16 And numerous cases have been cited.
17 There is a PUD case handed to me this evening
18 which I just read, the fourth of four orders
19 involving it, which seems to stand for the
20 proposition that when you're adding property to
21 an existing PUD, that's acceptable.

22 Well, in that case, reading what I

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1 have, one part of it, it would appear on its face
2 that all the parties to the underlying PUD and
3 the additional property owner consented to that.
4 That's not the case here. It's very clear that
5 the Parcel 1 owner does not consent.

6 A couple of points. Again, this
7 isn't an addition or a modification of an
8 existing PUD, this is a separate, freestanding
9 PUD which hopes to rely on parking, loading, and
10 other amenities provided and paid for by others
11 without their consent, at least with respect to
12 Parcel 1.

13 I think there are numerous errors
14 and omissions that we pointed out. They're
15 important. Again, if you're going to consider
16 this project, it should properly be considering
17 standing alone as a freestanding project, not
18 gaining the benefit of a PUD, and the benefit of
19 somebody else's PUD.

20 Again, they have no authority to
21 modify this PUD, at least with respect to Parcel
22 1. They have no credibility in arguing that

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1 parking and loading, as noted by the Office of
2 Planning, will be provided by the original PUD
3 property when, in fact, they have no authority
4 to make that proffer.

5 The likelihood of that being allowed
6 by the Parcel 1 owner is probably slim to none,
7 and they certainly haven't asked in advance, so
8 to make that proffer seems highly inappropriate,
9 and highlights why this should be considered as
10 a freestanding application, not as part of
11 something that they have no control over any
12 longer.

13 And then the original PUD, which I
14 was not involved in, had two phases to it, Phase
15 1, Phase 2, no contemplation of a Phase 3, and
16 was not considered in that context. And then to,
17 again, without consent try to graft or piggyback
18 on a third part seems like a misuse of the PUD
19 process.

20 I could go on, but I shouldn't, and
21 I won't. But I welcome any questions from the
22 Commissioners.

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1 CHAIRMAN HOOD: Okay. Thank you, Mr.
2 Brown. We will go to Mr. Glasgow for his seven
3 minutes. And then we'll ask our questions on the
4 back end. You may begin.

5 MR. GLASGOW: Thank you, Mr.
6 Chairman. Good evening.

7 For the record, my name is Norman M.
8 Glasgow, Jr., of the law firm of Holland &
9 Knight. Here with me today are Mr. Ron Cohen,
10 Allan Cohen, and Eric Siegel are also here.

11 In response to the motion to
12 dismiss, we submit the following by way of
13 background. Mr. Cohen has been involved in the
14 ownership and development of this property in
15 Square 749 since 1988, a period of over 25 years,
16 and filings with this Commission concerning this
17 square going back to 1993, a period of over 20
18 years. So, to infer that Mr. Cohen is some type
19 of interloper or newcomer coming and trying to
20 latch on to other development initiated or
21 undertaken by others is just not factually
22 correct. The record shows that.

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1 Mr. Cohen assembled all of the
2 property in 749 over a period of decades,
3 obtained the entitlements and approvals for
4 development of the property, developed the
5 property and built Phase 1. And significantly,
6 because this isn't pointed out in the documents,
7 is still an owner of the LLC in Phase 1. Let me
8 repeat, Mr. Cohen is still an owner in the Phase
9 1 LLC, but there is an issue and litigation
10 between the owners as to who is the appropriate
11 managing partner for the Phase 1 PUD, and the
12 percentage interest between the owners. That's
13 the litigation, but it's indisputable that he
14 has an ownership interest in that Phase 1
15 project.

16 Mr. Cohen sold the Phase 2 parcel on
17 April 10th, 2013, and the Phase 2 purchaser as
18 a part of that sale entered into an agreement to
19 cooperate with respect to Zoning Commission Case
20 Number 05-36G. And Mr. Cohen owns Phase 3, so
21 there is an ownership interest in agreements
22 with respect to all three phases of the property.

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1 So, this is not a case or situation where a
2 neighboring stranger is trying to latch on to an
3 existing PUD where they had nothing to do with
4 any of the project or the development.

5 With that factual background, I'd
6 like to proceed with the legal argument. Under
7 the regulations, there's an issue with respect
8 to Section 2406.5, as the application provides
9 the name, address, and signature of each owner
10 and the area to be developed. Here we have
11 complied with that provision. The area to be
12 developed is the Phase 3 parcel, and the property
13 owner of Phase 3 parcel has signed the
14 application.

15 The opposition maintains there is no
16 right or ability to proceed with a PUD
17 application on the Phase 3 parcel without the
18 consent of the Phase 1 owner. This issue was
19 raised with the Zoning Commission in the case
20 involving buildings at 1300 and 1330 Connecticut
21 Avenue which were owned by different entities
22 but included in the PUD.

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1 The owner of the 1300 building filed
2 an application to modify its building. That was
3 upheld both by the Commission and by the Court
4 of Appeals.

5 The Court of Appeals in that case
6 said the Commission's interpretation of its
7 regulations to require the application for
8 modification to be signed only by the owner of
9 the property sought to be modified is not an
10 unreasonable construction. This issue was also
11 raised in the Watergate Hotel where the
12 Commission found that this applicant is not
13 required to secure the consent of all property
14 owners for modification of the PUD. The zoning
15 regulations do not require the consent of
16 owners, and in practice the Commission does not
17 require unanimous consent of the owners of
18 property within a PUD before approving a
19 modification.

20 That case also went up to the DC
21 Court of Appeals and the Court said that to the
22 extent petitioners are suggesting that the

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1 approval of all PUD owners is necessary to
2 governmental change in an established PUD, their
3 position is contrary to law.

4 The Commission recognized that an
5 applicant is not required to secure the consent
6 of all property owners for modification of the
7 PUD, so we have that here.

8 Next, the opposition attempts to
9 distinguish the decision in 1330 and Watergate
10 by saying that this case is different, and those
11 cases don't control because we have new property
12 being added to the PUD by the modification.
13 However, this Commission has dealt with that
14 issue in the application of 488 Associates
15 Limited Partnership in which that PUD was
16 modified by the air rights over the firehouse.
17 That was added into a previously approved PUD on
18 adjacent property with a separate owner. The
19 District government was the owner of that
20 firehouse air rights. And a copy of that order
21 has been submitted for the record.

22 The opposition asserts that the

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1 Applicant is attempting to latch on to this
2 existing PUD; however, as noted in the OP report,
3 October 19th, 2012, the set down report in
4 referring to the application for the Phase 1 and
5 Phase 2 sites which were approved a few years
6 before that, it's noted that at that time the
7 Commission suggested that the three lots now
8 under consideration be incorporated into the
9 PUD. We're finally get around and proceeding
10 with that.

11 We believe, and I think it's
12 recognized that a better development would occur
13 of all properties in the Square are included. We
14 have the same architect for all three phases of
15 the project retained by Mr. Cohen. He retained
16 the architects for Phase 1, Phase 2, and now
17 Phase 3.

18 And with that, we believe that the
19 Commission has the ability if you think someone
20 is an interloper and just trying to get
21 themselves into a project they've had nothing to
22 do with, the Commission can deny the set down

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1 request. The Office of Planning would be
2 involved also in making its recommendations to
3 the Commission. But we don't have that fact
4 pattern here. We have a fact pattern of
5 somebody's who been involved with this property
6 for decades and has an interest either by
7 contract or in fact in all three phases of the
8 project. So, we believe that by virtue of what
9 the Commission has done previously in the Square
10 48 case, the Court of Appeals decision that it
11 is legally appropriate for this case to be heard
12 as a modification for Phase 3 development.

13 We also note that in proceeding in
14 this fashion there's a full public hearing. All
15 evidence, witnesses, and testimony occur.
16 They're on the record, and from a process timing
17 standpoint this would be the same if we came with
18 the case.

19 There's a set down, then there's a
20 hearing, there's evidence, there's testimony,
21 all of that, and we're going through all of that
22 here today. So, we believe that the applicant is

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1 fully compliant with Section 2406.5 and that we
2 are properly before the Commission. And we would
3 request that the motion to dismiss be denied, and
4 that we be permitted to go forward with this
5 hearing this evening. Thank you.

6 CHAIRMAN HOOD: Thank you, both for
7 your arguments. Let me just say that we have
8 already dealt with the reconsideration of the
9 set down request. That's already been dealt
10 with. We did that very early in this hearing, so
11 we don't need to revisit that, even that issue.

12 Mr. Brown, could I ask you what other
13 cases -- you referred to some case law about some
14 cases that help validate your point. Do you have
15 the cite of those cases, which cases those are?

16 MR. BROWN: Yes. And, again, as I
17 started, Mr. DePuy filed an extensive brief
18 which distinguished each one of the cases that
19 in some detail that Mr. Glasgow did, with the
20 exception of the case that was just produced
21 tonight where I think on the facts that I can tell
22 from one of four PUD orders, the additional

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1 property being added to the PUD was with the
2 consent, obviously, of the RLA, the fire
3 department. They own that property, as well as
4 the underlying PUD applicant, so I think that
5 case based on what I've seen and just gotten at
6 6:10 this evening doesn't support the situation
7 in this case.

8 And in the case of 1330, Mr. DePuy
9 did, I think, a pretty good job distinguishing
10 that as well as the Watergate case where the
11 distinction is that the modification was
12 occurring involving property already within the
13 PUD, and not a case of additional property. And
14 I think that's an important distinction here
15 because the property already within the PUD has
16 clearly already been before the Board. But then
17 to try to bring somebody else into another
18 person's PUD; and that's what this is, another
19 person's PUD. Mr. Cohen may, in fact, have a
20 rather minor ownership interest in Parcel 1, but
21 he certainly doesn't have control and authority
22 to act on behalf of that property. So, he's

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1 coming in and trying to latch onto somebody
2 else's property; much like if I had an apartment
3 building and somebody came in and wanted to build
4 an addition to the side of that building. And
5 that's -- you're not going to accept that, and
6 you shouldn't here in this case.

7 CHAIRMAN HOOD: You know, I
8 appreciate that, but that wasn't exactly what I
9 was looking for, but let me ask Mr. Glasgow.
10 Isn't it a difference in the case you cited, the
11 1330 Connecticut Avenue case versus the District
12 of Columbia Zoning, isn't there a difference?
13 And can you help me understand the difference in
14 what we have here before us versus that
15 particular case?

16 MR. GLASGOW: Yes, they are
17 different, the cases are. And then I'll go into
18 a couple of things here. Both of those dealt with
19 PUDs that were of a given area and the ownership
20 interest in proceeding before the Board were
21 with those PUDs within that area. Right? And
22 the court said in both of those cases that if

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1 you're within the PUD -- that's the background
2 of both of those, that if you're within that PUD
3 you don't need the consent of all the owners
4 within the PUD in order to move forward with a
5 modification. You're free to go on with your own
6 property and modify.

7 So, this case is different than
8 either one of those, so neither one of those
9 cases control and mandate that the Commission in
10 and of itself would approve or disapprove our
11 ability to go forward because this is a situation
12 that neither one of those cases addressed
13 directly.

14 CHAIRMAN HOOD: Okay.

15 MR. GLASGOW: So, that's why the
16 Commission -- that's why we're saying the
17 Commission has the flexibility to deal with this
18 situation because it's not the precise situation
19 in either one of those cases. Here what we are
20 coming in and saying is that because of the facts
21 and circumstances of this case, that it is
22 appropriate, and the Commission has in the past

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1 agreed that a property owner who's outside
2 -- that's the Square 48 case, the order 668D, can
3 be allowed to proceed with a modification. There
4 is a different owner, and had a modification
5 request, and the Commission accepted that and
6 went forward on that basis.

7 CHAIRMAN HOOD: Okay. All right.
8 Thank you.

9 MR. BROWN: Can I put the important
10 distinction --

11 CHAIRMAN HOOD: No. I don't have a
12 question right now for you. Let me open it up and
13 see if my colleagues have a question. Anybody
14 have any additional questions? Commissioner
15 May.

16 COMMISSIONER MAY: Sorry about that.
17 Mr. Brown, so your client, as I understand it,
18 does not own the portion of the PUD to which this
19 additional piece is being added. Right?

20 MR. BROWN: That's correct.

21 COMMISSIONER MAY: Okay. And doesn't
22 own the parking that would be used or anything

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1 like that. Right?

2 MR. BROWN: Well, in fact, my client
3 does own the parking -- part of the parking
4 that's being proffered as being --

5 COMMISSIONER MAY: That's not what
6 I'm asking. The specific parking spaces that are
7 being used in this project, are they owned by
8 your client?

9 MR. BROWN: I'm having trouble
10 understanding --

11 COMMISSIONER MAY: In theory, the
12 parking need for this building is being met by
13 the portion of -- a portion of the PUD overall.
14 Right?

15 MR. BROWN: Yes, outside of the new
16 property. That's correct.

17 COMMISSIONER MAY: Outside of the new
18 property. Right.

19 MR. BROWN: And my understanding is
20 some of that parking is on my client's property.

21 COMMISSIONER MAY: Some of that
22 parking is actually on your client's property.

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1 MR. GLASGOW: We would dispute that.
2 We in our filings clarified that.

3 COMMISSIONER MAY: Okay. So --

4 MR. BROWN: I'm not aware of that. Is
5 that in your filing today?

6 COMMISSIONER MAY: Is there only a
7 single parking garage, or is it segregated in
8 some fashion?

9 MR. GLASGOW: The parking garage is
10 segregated between Phase 1 and Phase 2.

11 COMMISSIONER MAY: Right.

12 MR. GLASGOW: There is no parking
13 garage for Phase 3.

14 COMMISSIONER MAY: Right. Phase 3 is
15 going to rely on Phase 2's parking.

16 MR. GLASGOW: We have had some
17 discussions on that. That's not concluded.

18 COMMISSIONER MAY: All right. Okay.

19 MR. GLASGOW: But what we had done is
20 we noted and corrected in our pre-hearing
21 filings that we're not relying on anything for
22 Phase 1.

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1 COMMISSIONER MAY: Okay. So, what
2 property of your client is actually being taken
3 advantage of in the proffers for this
4 modification to the PUD?

5 MR. BROWN: First, it's taking
6 advantage of their property rights in the
7 underlying PUD. I mean, that is a real property
8 right. You've got an approval to do something.
9 You've made typically substantial investment
10 --

11 COMMISSIONER MAY: Okay, so what
12 --tell me specifically what it is.

13 MR. BROWN: Well, the first -- Parcel
14 1, Parcel 2 went through the PUD process, made
15 substantial investments in amenities and the
16 process, and as that property was designed as a
17 Part 1 and Part 2, not as a Part 1, 2, and 3. And
18 what the current applicant is trying to do,
19 again, is piggyback on --

20 COMMISSIONER MAY: I understand what
21 is going on in that regard. What I'm asking you
22 is what specific interest that is held by your

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1 client is being piggybacked here. Tell me the
2 specifics, don't tell me generalities that
3 they're adding onto a PUD. I know that. Tell me
4 the specifics. What amenities are being shared?
5 What facilities are being shared? What is
6 actually being piggybacked on?

7 MR. BROWN: The physical existence of
8 my client's property which he's built, the
9 landscaping, the design --

10 COMMISSIONER MAY: So, in a way that
11 it is -- that would make this, I don't know,
12 usable to residents of this new property in a way
13 that's different from the general public?

14 MR. BROWN: I believe so. Yes, again
15 --

16 COMMISSIONER MAY: How -- explain to
17 me how that would work.

18 MR. BROWN: Again, they're riding the
19 coattails of the earlier PUD process which put
20 into place not something that was a matter of
21 right, but that was something that was -- use the
22 term extraordinary, based on a whole series of

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1 things --

2 COMMISSIONER MAY: There are
3 amenities and benefits associated with the
4 original PUD, and there's a list of them.

5 MR. BROWN: Yes.

6 COMMISSIONER MAY: Okay.

7 MR. BROWN: And they -- as it relates
8 to Parcel 1 --

9 COMMISSIONER MAY: So, on that --

10 MR. BROWN: -- they've all been
11 completed.

12 COMMISSIONER MAY: Right.

13 MR. BROWN: All right? So --

14 COMMISSIONER MAY: And those are
15 meant to benefit the residents of the PUD and the
16 local community. Correct?

17 MR. BROWN: That's correct.

18 COMMISSIONER MAY: Right. So --

19 MR. BROWN: But if you read the
20 applicant in this case, it's very clear he uses
21 the term "continue" --

22 COMMISSIONER MAY: Right. But, I

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1 mean, I guess what I'm trying to get at is what
2 you're talking about are reasons why or -- why
3 we should or should not ultimately approve this
4 modification. I mean, I'm failing to see the
5 matter of principle that you're writing here
6 because there's not actual -- I mean, it would
7 be different if they were going to park in your
8 parking garage or something like that, but
9 that's not the case; or they're going to use a
10 rooftop pool that was -- that's owned by the
11 Phase 1 property owner. But I don't see anything
12 here that's specific to the property that your
13 client owns that is being used as a benefit in
14 this PUD.

15 MR. BROWN: Well, I understand your
16 point, and I think if you read the applicant's
17 application, he's not talking about a
18 freestanding building. He's riding the
19 coattails and talking about continuing and
20 consistency with the underlying PUD. But I think
21 the more fundamental question is almost
22 jurisdictional. In fact, it is jurisdictional in

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1 nature.

2 Does this applicant have the right
3 to invoke another person's PUD, another
4 -- without their consent? And I believe strongly
5 and argue --

6 COMMISSIONER MAY: They own a portion
7 of the PUD, or it's being done in coordination
8 with the owner of the portion of the PUD that's
9 going to provide the parking, for example?

10 MR. BROWN: Well I'm not willing to
11 concede on the parking issues because I don't
12 believe that's the case, but I don't have the
13 facts in front of me right now. But it's clear
14 that the applicant has not gotten the consent of
15 the Parcel 1 controlling entity.

16 If the applicant thought he had the
17 right to do it, he would have done it. He has not
18 done it. And, in fact, in his latest filing makes
19 it clear that he's doing so without the consent
20 of the Parcel 1 owner. And I think that's
21 fundamentally inappropriate in the context of a
22 PUD for which the application is not part of, and

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1 doesn't have the consent to join with the
2 underlying PUD.

3 COMMISSIONER MAY: Okay. Well, I
4 guess that's the essential question we have to
5 decide. But I was looking to see if there was some
6 tangible benefit or amenity that's being relied
7 upon here that your client is not giving
8 permission for it to be. If you're just talking
9 about the PUD in general, then I understand that
10 argument. I don't necessarily agree with it, but
11 I understand it.

12 MR. BROWN: Well, clearly, the
13 applicant thinks there's some benefit for doing
14 it this way. And there may be benefits-

15 COMMISSIONER MAY: Absolutely. I
16 mean, it was commented on, I think, in the
17 hearing that it would make sense for this
18 property to be part of the PUD, the original
19 hearing.

20 MR. BROWN: But it wasn't, and --

21 COMMISSIONER MAY: Yes, obviously,
22 it wasn't. But it would have been beneficial.

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1 MR. BROWN: And at the time the
2 underlying PUD was occurring, if they had wanted
3 to add this additional land to it, that would
4 have required the consent of the Parcel 1 and
5 Parcel 2 owners.

6 COMMISSIONER MAY: Absolutely, at
7 that time.

8 MR. BROWN: And why should it be any
9 different now? Because if you're basically
10 saying it should have been part of it --

11 COMMISSIONER MAY: Well, I mean, the
12 practical reason is that PUDs have a very long
13 life. And is it reasonable to expect that an
14 owner five years, ten years, fifty years in the
15 future of a portion of a PUD would have to go back
16 and get permission of owners of the other portion
17 of the PUD to make modifications to it? And I
18 don't believe that that's a realistic
19 expectation far into the future.

20 MR. BROWN: I think in the case of
21 adding a piece of land, that is a reasonable
22 expectation. And it seems to be the case in the

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1 488 case which Mr. Glasgow cites where, in fact,
2 the addition occurred which best I can tell from
3 the one document was with the consent of one, the
4 underlying PUD --

5 COMMISSIONER MAY: Well, I mean, it's
6 just --

7 MR. BROWN: -- operator and the
8 additional land owner.

9 COMMISSIONER MAY: But in a certain
10 way you can look at that as simply the principle
11 of adding land to a PUD. Is that a reasonable way
12 to make a modification? And I think that's the
13 point they're trying to make is that yes, that
14 falls within the realm of what a reasonable
15 modification might be.

16 The question of who owns it or who
17 gave consent really wasn't in play there. That's
18 not what they're -- I don't believe that's what
19 they're trying to prove in that circumstance,
20 because I think that's set out by other evidence
21 that they provided.

22 MR. BROWN: And we're not arguing

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1 that the addition of land to a PUD is
2 inappropriate in all circumstances. And, in
3 fact, in this case if, in fact, the consent of
4 the Parcel 1 owner had been sought and received,
5 and they had been, as the Parcel 2 owner is, in
6 fact, consenting and participating, that would
7 have been the way to proceed. But to proceed
8 knowing that he didn't have the right to do it
9 because it's clearly the subject of litigation,
10 but going ahead and doing it any how but getting
11 the Parcel 2 owner to consent highlights why I
12 don't think the Commission should go along with
13 this.

14 COMMISSIONER MAY: All right. I've
15 taken up enough time. Thank you.

16 CHAIRMAN HOOD: Vice-Chair, do you
17 have questions?

18 VICE-CHAIR COHEN: Thank you, Mr.
19 Chairman. I just have a very simple question. I
20 mean, it's like Real Estate 101. Other than
21 there's something going on between -- and it's
22 being litigated. I understand that. But what I

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1 don't understand is this particular property
2 will enhance the value -- future value of the
3 first phase of the PUD. And, in addition, if it
4 remained empty it would detract from the value.
5 So, I just don't understand what is going on
6 here. It's something mysterious for me, so can
7 you help me understand your position a little bit
8 more?

9 MR. BROWN: Well, I can't make a
10 judgment on the value of one property or the
11 other, something that may or may not happen in
12 the future. But the more fundamental issue is the
13 ownership and property rights that belong to if
14 someone owns a property. And if you're going to
15 invoke part of their property as part of
16 obtaining approval for an unrelated piece of
17 property, that owner has, I believe, a
18 fundamental right to consent to that process.

19 Now, if they wanted to -- obviously,
20 if they wanted to do a freestanding PUD which is
21 certainly possible, and I think would have been
22 appropriate; or, two, a matter of right, then

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1 this wouldn't be an issue. But they're invoking
2 the ownership of rights and interests of the
3 Parcel 1 owner without their consent. And I think
4 that's fundamentally wrong, and not something
5 that the Commission has allowed in the past.

6 CHAIRMAN HOOD: Any other
7 -- Commissioner Turnbull.

8 COMMISSIONER TURNBULL: Thank you
9 Mr. Chair.

10 Mr. Glasgow and Mr. Cohen, I think
11 Mr. Hood and I both sat on the original PUD, and
12 I'm just trying to going back, and I just can't
13 remember all the details, but I know the one
14 parcel was vacant. I think it came up in the
15 hearing about trying to acquire it. I'm not sure,
16 but I'm -- obviously, the project would have
17 changed if you had had that parcel at the time,
18 and you weren't able to get it until after the
19 PUD had been approved. But maybe you could just
20 talk about some of that history and the original
21 concept of what you're trying to do with that
22 site.

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1 MR. COHEN: Yes, sir, you have a very
2 good memory.

3 When I started acquiring the ground,
4 the Square 749 in 1989, I acquired 39 of 41 pieces
5 of individually owned land. I went to the three
6 property owners that were on the corner of 3rd
7 and L Street, and we had acquired the middle
8 piece because that was owned by Capitol Cab, and
9 they had two additional pieces within our
10 assemblage. And I acquired Capitol Cab, so we had
11 the flanking one in the corner and the one on the
12 interior abutting the one that I already had.

13 I went to both property owners who
14 I maintained a good relationship with. They were
15 very emotionally connected to the buildings
16 because they were raised -- they were born and
17 raised in those houses, and just would not leave
18 -- did not want to leave. I respected that, and
19 I backed away from it.

20 We went through many iterations with
21 your patience over the years of different plans,
22 and every time I would try to -- I would go visit

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1 them because I would see them on a regular basis,
2 they would apologize and say I'm sorry, we just
3 cannot afford to leave this house because of the
4 emotional connection, which I respected.

5 I indicated to them -- there came a
6 point when I had to make a final decision, and
7 the final decision was submitting for a PUD with
8 everything but them, and I will do the best I can
9 to respect their properties, but I have to
10 eliminate them now from my application, which we
11 did.

12 We went through several hearings, a
13 lot of community hearings and several hearings.
14 About five months into the PUD process with the
15 community, and the ANCs, and whatever, one of the
16 women -- one of the families, I might say, on the
17 interior lot came to me and said we are now ready
18 because my husband has passed away and we would
19 like to sell. I said to be quite honest with you,
20 I'm really not in the position right now to sell.
21 This is about 1992 when the banks were all coming
22 down on people, and I had my hands full with what

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1 I already owned. I respectfully indicated then
2 I will come back and I will address it in the
3 future, but I just am not in the position now
4 since I can't incorporate it, which I told them,
5 in the existing PUD application. They
6 understood.

7 About a year after the PUD was
8 approved, they came to me and indicated would I
9 buy their property now, and I said I will buy that
10 individual interior lot provided that -- I
11 forget the lady's name who owned and was raised
12 in the lot next door on the corner. So, we both,
13 she and I went over to see her, and after about
14 six or seven weeks because there were a lot of
15 descendants for that piece of property, she
16 finally agreed to sell it to me on one condition;
17 that I had to assure her that within 60 days of
18 taking title I would submit for a demolition
19 permit and tear her house down because it was too
20 emotional for her to leave that house behind and
21 think anybody else would live in it.

22 I told her I will honor that request.

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1 I, frankly, would have rather just left that up
2 because my PUD was going into the process, and
3 I would have had three townhouses I could have
4 rehabbed and I could have rented out, but I
5 honored the request.

6 So, what happened was we -- I
7 closed. We got the demolition permit. We tore her
8 house down. We had the other two houses still
9 standing there, the old radio room of Capitol
10 Cabs and the adjacent one, and because of
11 vagrants and because of a lot of problems with
12 drug addicts, whatever, the Metropolitan
13 Police, I met with them many times, they asked
14 me if I would please tear these houses down, or
15 rehab them to get them habitable. I said my
16 intention, ultimately, is to fill in Square 749
17 with these three properties so I'll be -- I would
18 prefer just tearing them down.

19 COMMISSIONER TURNBULL: And at this
20 time you were still an owner of Phase 1.

21 MR. COHEN: I was the owner -- I'm
22 still an owner of Phase 1.

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1 COMMISSIONER TURNBULL: All right.

2 MR. COHEN: I am still --

3 COMMISSIONER TURNBULL: But you were
4 the sole owner.

5 MR. COHEN: Yes, sir, I was.

6 COMMISSIONER TURNBULL: Okay.

7 MR. COHEN: So, ultimately, we tore
8 it down. We seeded it, we sodded it, we made it
9 presentable because we had a major investment in
10 Phase 1 that we were building. We were the
11 contractors as well as the developers, and so it
12 stands today. It was always the intention.

13 The better intention would have been
14 early on to be in front of this condition to have
15 the whole thing because there were three lots out
16 of only 700,000 square feet of FAR we were
17 seeking. But, you know, in honoring the request
18 of these women I wasn't going to push it, and I
19 wasn't going to start, you know, any harassing
20 so I backed away. That's the origin and why we're
21 here today.

22 COMMISSIONER TURNBULL: Okay, thank

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1 you.

2 MR. COHEN: Thank you.

3 CHAIRMAN HOOD: Any other questions?
4 Commissioner Miller.

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

7 So, Mr. Glasgow, you said you don't
8 -- you're in discussions about -- with the owner
9 of Phase 2 about the use of the parking. What did
10 you say, again --

11 MR. GLASGOW: Well, that may or may
12 or not lead to anywhere. We're prepared to
13 proceed forward without parking for that
14 building given the proximity to Metro. It's 41
15 units. It's too small a piece to have its own
16 parking garage, and we will be doing something
17 similar to -- and I've discussed with the
18 clients what we did up at Wisconsin Avenue with
19 the site that wouldn't be able to get an RPP. That
20 would be a thing in the lease that you would not
21 be able to proceed in that fashion. So, either
22 we'll work out something with that, or we're

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1 going to be marketing to people who don't have
2 or need an automobile. And if they have or need
3 to have an automobile, they can rent next door.

4 COMMISSIONER MILLER: Thank you. I
5 don't have any other questions. I will reserve
6 the rest of my comments when we go to
7 deliberations.

8 CHAIRMAN HOOD: Mr. Glasgow, didn't
9 that change? You mentioned in your discussion
10 with Commissioner Miller about the thing that
11 -- the building that we did, the no parking up
12 on Wisconsin Avenue. Didn't something change on
13 that? Was that the case where it was going to be
14 on the lease agreements that you couldn't own a
15 car?

16 MR. GLASGOW: Yes.

17 CHAIRMAN HOOD: And didn't something
18 change on that, that we were -- at least, that
19 I -- I don't know. Did something change on that
20 after you all left us?

21 MR. GLASGOW: Not that I'm aware of.
22 I mean, we were planning on putting in the lease

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1 agreements -- there's issue as to how the city
2 is going to enforce -- when you talk to DDOT you
3 get all kinds of answers about RPP and their
4 enforcement, and everything. But what we can do
5 is put in the lease that if you request or get
6 an RPP permit, that it's grounds for termination
7 of your lease. That we can do, no differ than
8 saying you can't have a dog in this apartment
9 building. I mean, that's up to the property
10 owner. And you'll be hearing later this evening,
11 assuming that we are permitted to go forward,
12 that that's part of what we're going to be doing
13 if we don't have a position where we're going to
14 have any parking.

15 We'll be able to discuss that there
16 are about 140,000 households that don't have a
17 vehicle in the District of Columbia.

18 CHAIRMAN HOOD: Okay.

19 MR. GLASGOW: We think we can find 41.

20 CHAIRMAN HOOD: This is not
21 necessarily germane to this case, but I'm going
22 to ask Ms. Steingasser if she wouldn't mind

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1 looking into that. We finished that case,
2 haven't we? Have we finished that case?

3 MR. GLASGOW: Yes, the case is
4 finished.

5 CHAIRMAN HOOD: I'm going to ask Ms.
6 Steingasser to work along with Office of Zoning
7 to see did something change on what was told to
8 this Commission. If we can do that, I would
9 appreciate it. We worked many nights down here,
10 and then to hear that things have changed and it
11 wasn't exactly turning out to be the way it was
12 presented to us, I think is a disservice to the
13 city. I'm not saying it did happen like that, Mr.
14 Glasgow, but I believe something changed, and I
15 want to make sure you did not --

16 COMMISSIONER MAY: I believe it's
17 been reported that way, so it would be helpful
18 to know for sure.

19 CHAIRMAN HOOD: Right.

20 MR. GLASGOW: And if someone can get
21 us exactly what the issue is, because I can touch
22 base with Mr. Millstein and everything, and we

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1 will -- we can get --

2 CHAIRMAN HOOD: Yes. I want to make
3 sure, because I -- and I said this the other
4 night. A lot of times when we finish cases,
5 people see us in the street because we live in
6 the city, too, and we're walking down and taking
7 a nice leisurely stroll, and we get fussed at.
8 And that's why I wanted -- and that's actually
9 how I found out, somebody was fussing at me as
10 I was walking down the street about that whole
11 issue. So, I want to make sure that nothing
12 changed, and that the applicant honored his word
13 when he came in front of us.

14 MR. GLASGOW: Right. Well, the
15 project hasn't started yet. It hasn't started
16 construction yet.

17 CHAIRMAN HOOD: Right. I understand
18 that.

19 MR. GLASGOW: Yes.

20 CHAIRMAN HOOD: I want to make sure
21 nothing has changed.

22 COMMISSIONER TURNBULL: I think, Mr.

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1 Chair -- I was just conferring with Commissioner
2 Miller. I think the one item we had to change or
3 was added was a handicapped space because the ANC
4 requested it.

5 MR. GLASGOW: We have one space on the
6 property.

7 COMMISSIONER TURNBULL: Right, one
8 handicapped space. I think that might --

9 CHAIRMAN HOOD: No, I remember that.

10 COMMISSIONER TURNBULL: Oh, do you?
11 Okay.

12 CHAIRMAN HOOD: That was -- I
13 remember that. No, this was something else.

14 COMMISSIONER TURNBULL: Okay.

15 MR. GLASGOW: If staff can get in
16 touch with me as to exactly what it is we're
17 looking for, because it's hard when you have a
18 project like that, you know, with all the
19 hearings to remember.

20 CHAIRMAN HOOD: Just walk with us
21 down the street sometime and you'll -- maybe
22 they'll fuss at you, too.

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1 (Laughter.)

2 CHAIRMAN HOOD: Okay. Any other
3 questions? All right. Let's -- thank you, both.
4 Appreciate your testimony and comments. Okay.
5 You all can step back. We're going to go ahead
6 and open it up.

7 I think, Commissioners, we have
8 faced the issue about -- and I think they
9 presented some cases. I know that Mr. DePuy
10 through Mr. Brown presented some cases in their
11 brief, as well as the 1330 Connecticut Avenue
12 case where only the particular -- for the
13 purpose of the modification within the PUD, the
14 Commission practice has been limited to
15 definition of owner within the area to be
16 developed. So, I think we have a number of things
17 -- do we require the signature, do we not?

18 For me, the strongest case -- and
19 then I'll open it up to my colleagues, but for
20 me the strongest case was the 1330 Connecticut
21 Avenue case where the signatures of the owners
22 within the PUD -- where the signature of the

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1 affected owner within the PUD -- I think was the
2 only thing that was used, and not necessarily
3 having to get all signatures. So, you know, I
4 kind of have been leaning towards that, but I
5 would just like to hear from others whether or
6 not all signatures are required, a few
7 signatures are required, or all, or just those
8 that are affected. So, I think we have two or
9 three options in front of us, and I'll just open
10 it up to any comments, if there are any.
11 Commissioner Turnbull.

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

14 You can look at this case any number
15 of ways. I think one of -- I think what's unique
16 in this case is you have the original developer
17 of the PUD here, the original individual had the
18 concept, bought the properties, and had a plan
19 to develop this square, this urban square. And,
20 unfortunately, it couldn't be built exactly.
21 He's still an owner in Phase 1. He may not be a
22 majority owner, but he still has participation.

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1 It isn't -- I guess what I'm looking
2 at, and I don't have someone coming in totally
3 unrelated to this property simply trying to tag
4 on to an existing PUD, but someone who has a
5 vested interest in the development of the PUD as
6 what the original PUD may or may not have wanted
7 to be, but completing the square.

8 And I see an opportunity here, and
9 they've even gone so far, they're going to have
10 the same architect. He's trying to treat the same
11 character. There's a relationship, and as the
12 testimony indicated, it will have no -- it is not
13 impacting Phase 1 by any amenities or benefits,
14 as I understand from what we've heard.

15 That being the case, I'm very much,
16 you know, in agreement with 1330 Connecticut
17 Avenue. I really don't see that this -- it's
18 different but there are aspects of this that make
19 me feel that here is someone who's uniquely
20 involved with this development, and I think we
21 should proceed, that the hearing should proceed
22 on this Phase 3.

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1 CHAIRMAN HOOD: Okay. Thank you.
2 Commissioner May.

3 COMMISSIONER MAY: Yes, I would agree
4 with Commissioner Turnbull. You know, I don't
5 think it's reasonable to expect that for the
6 entire life of any given PUD that it will be
7 feasible or even possible at all to get
8 permission of every owner who has an interest in
9 an overall PUD. I mean, think about some of the
10 large PUDs that we have that consist of multiple
11 blocks. Is it reasonable that we would expect
12 that the ultimate owners of all of these
13 different parcels would need to be --would need
14 to sign off on something if it were added to the
15 PUD, or if there were some modification, even if
16 it were a simple modification of the PUD that we
17 would have that signature from everybody.

18 I don't think that's a reasonable
19 outcome. Here we're talking about a project that
20 would -- is closely associated with the Phase 2
21 project, and I believe is consistent with the
22 overall PUD. And there's no -- well, I don't

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1 think that they can substantively rely on
2 benefits and amenities that were part of the
3 original project. There has to be some
4 incremental benefit, amenity associated with
5 this. And I think that's what this, ultimately,
6 should come down to. And if the -- Mr. Brown's
7 client does not agree that the benefits and
8 amenities that are proffered here are sufficient
9 to balance any relief that's being granted as
10 part of the PUD, then they have the opportunity
11 to argue that.

12 But I think that's really what the
13 argument is. It's not about whether or not this
14 should go forward. I think it should go forward,
15 because I think we have sufficient agreement
16 from owners to do so.

17 CHAIRMAN HOOD: Okay. Any other
18 comments?

19 VICE-CHAIR COHEN: Thank you, Mr.
20 Chairman. I just would like to say that I concur
21 with my colleagues, Commissioner Turnbull and
22 Commissioner May. For me, there's just a

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1 tremendous disconnect with regard to Union Place
2 Phase 1, and their arguments I just feel are not
3 really something that -- plus the Connecticut
4 Avenue case. I just believe that we should move
5 ahead with this particular project and go
6 through the hearing process.

7 CHAIRMAN HOOD: Okay. Commissioner
8 Miller.

9 COMMISSIONER MILLER: Thank you, Mr.
10 Chairman. I would also agree with my colleagues
11 that we should move forward with this hearing and
12 this PUD application.

13 I do share Commissioner Turnbull's
14 comment that the -- I mean, if this applicant had
15 had no involvement with the previous
16 development; not only did he have involvement,
17 he was the applicant, and he was the majority
18 owner until very recently, as I understand it.
19 So, I think -- if there hadn't been any
20 involvement I would be less comfortable. If
21 there hadn't been any past or current
22 involvement, I would probably be -- I would be

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1 less comfortable with just piggybacking onto
2 another PUD.

3 I agree with Commissioner May that
4 there needs to be incremental benefits and
5 amenities beyond the amenities and benefits that
6 were in the previous -- in the Phase 1 and Phase
7 2, but I also think that when we get to that point
8 in the hearing, I think there should be -- if
9 it's all really one PUD, that there should be
10 some sharing of amenities. That may not be
11 possible with Parcel 1 given the current
12 situation, but maybe eventually it will be. But
13 I think there needs to be sharing of amenities
14 and benefits if it is being considered as one
15 PUD. So, I'm prepared to make a motion, or wait
16 for someone else to make a motion. And since I
17 have the mike --

18 CHAIRMAN HOOD: Since you have the
19 mike, you can go right ahead and make the motion.

20 COMMISSIONER MILLER: I will make a
21 motion to deny the motion to dismiss the
22 application -- I move that we deny the motion to

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1 dismiss the application for modification of PUD
2 and related map enhancement by CASC0 in Zoning
3 Commission case 05-36G, and ask for a second.

4 VICE-CHAIR COHEN: Second.

5 CHAIRMAN HOOD: It's been moved and
6 properly seconded. Any further discussion?

7 Let me just ask this. I do have
8 discussion -- Mr. Ritting, do we need to discuss
9 the issue about whether we think the only
10 signature that is required is by the affected
11 area that's being included, or should we get the
12 majority? Do we need to get into that discussion,
13 or can we just deny the --

14 MR. RITTING: Well, if you're denying
15 the motion, I don't think there's really any need
16 to discuss that further.

17 CHAIRMAN HOOD: Okay, that's what I
18 wanted to make sure. Okay, thank you. And thank
19 you, Commissioner Miller and Vice-Chair. So,
20 it's been moved and properly seconded. Any
21 further discussion? Any further discussion? All
22 those in favor?

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1 (Chorus of ayes.)

2 CHAIRMAN HOOD: Any opposition? So
3 ordered. Staff, would you record the vote.

4 MS. SCHELLIN: Yes. Staff records the
5 vote 5-0-0 to deny the motion to dismiss filed
6 by Union Place Phase 1 LLC. Commissioner Miller
7 moving, Commissioner Cohen seconding,
8 Commissioners Hood, Turnbull, and May in favor
9 of the denial.

10 CHAIRMAN HOOD: Okay. All right.
11 We're going to take five minutes so we can get
12 set up, and we can begin the hearing. Sorry that
13 took so long, but give us five minutes and we will
14 be ready to get into the hearing.

15 (Whereupon, the proceedings went
16 off the record at 7:39:09 p.m., and went back on
17 the record at 7:45:40 p.m.)

18 CHAIRMAN HOOD: We will reconvene.
19 Also, let me note that we've been joined by Mr.
20 Booker from the District Department of
21 Transportation, so I wanted to put that on the
22 record.

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1 Okay. Are we ready to go through
2 C- Mr. Hughes, are we ready to go through a
3 expert witness -- or, Ms. Schellin, what do we
4 have first? I'm sorry.

5 MS. SCHELLIN: I'm sorry. We have one
6 party status request to review first for the
7 Commission to consider. That's a party status
8 request in opposition from Union Place Phase 1
9 LLC, and I'm assuming that's going to be
10 represented by Mr. Brown.

11 CHAIRMAN HOOD: Okay. Let's do this.
12 Mr. Hughes, do you have any objection to this
13 party status application?

14 MR. HUGHES: No, sir, no objection.

15 CHAIRMAN HOOD: No objection? Okay.
16 Commissioners, do you have any objections that
17 we'd like to deliberate? Okay, so we will
18 -- based on the merits of the exhibit, of Exhibit
19 21, we will grant Union Place Phase 1 LLC party
20 status who will be represented by Mr. Brown,
21 Esquire. Correct? Okay, so we will grant them
22 party status.

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1 Let's go to the experts. Mr. Hughes,
2 could you tell us who we have tonight? I know I
3 have a list here, but let's see who you have as
4 experts.

5 MR. HUGHES: So, Mr. Chair, we have
6 as our experts George Myers of GTM Architects,
7 has been the project architect for the prior two
8 phases, and we also have Osborne George of OR
9 George & Associates as our traffic consultant.

10 Tonight we are not joined by Mr.
11 Sher, Steve Sher of Holland & Knight as our
12 planning land use expert; however, we have
13 submitted a report from Mr. Sher, and it's in the
14 record.

15 CHAIRMAN HOOD: Okay. Do you have a
16 civil engineer?

17 MR. HUGHES: We have a gentleman from
18 CAS Engineering available for questions. And
19 then we can certainly -- we have introduced the
20 resumes in our filings and we could introduce
21 them as experts.

22 CHAIRMAN HOOD: Are you filing -- are

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1 you proffering him as an expert?

2 MR. HUGHES: Certainly. Yes, sir.

3 CHAIRMAN HOOD: Okay. And his name is
4 Shriefer, Schreffler?

5 MR. HUGHES: Schreffler.

6 CHAIRMAN HOOD: Schreffler. Okay.
7 You didn't want to pronounce that.

8 MR. HUGHES: No, sir, I'm sorry. I
9 didn't want to try it.

10 CHAIRMAN HOOD: I wanted you to
11 pronounce it so I wouldn't mess it up.

12 MR. HUGHES: I apologize.

13 CHAIRMAN HOOD: Okay. So,
14 Commissioners, we have -- let's do this. We know
15 about Mr. George and we have Mr. Sher's
16 testimony, well, his submission, Mr. Schreffler
17 and Mr. Myers. Mr. Myers -- has Mr. Myers been
18 here in front of us before?

19 MR. HUGHES: Yes, sir. And before the
20 Board of Zoning Adjustment.

21 CHAIRMAN HOOD: Did we -- did the
22 Zoning Commission proffer him as an expert

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1 previously?

2 MR. HUGHES: Yes, sir.

3 CHAIRMAN HOOD: Okay. So, all those

4 -- Commissioners, any objections?

5 COMMISSIONER MAY: I don't have Mr.

6 Schreffler's --

7 CHAIRMAN HOOD: Is that not behind

8 Tab B? Okay. Let me look again.

9 COMMISSIONER MAY: You know, I must
10 have missed it somehow.

11 CHAIRMAN HOOD: No, let me look.
12 Maybe I got it wrong.

13 COMMISSIONER MAY: No, you got it.

14 CHAIRMAN HOOD: Is it behind Tab B?

15 COMMISSIONER MAY: Schreffler.

16 CHAIRMAN HOOD: Okay. All right. So,
17 are we good, everybody, Commissioner May? Okay.
18 All right.

19 COMMISSIONER TURNBULL: Well, we're
20 going to miss Mr. Sher, but he only gets 20
21 seconds now anyway.

22 CHAIRMAN HOOD: Yes. Mr. Brown, can

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1 you come to the mike? You have a question before
2 we get started?

3 MR. BROWN: With the case of Mr. Sher,
4 who I wouldn't object as an expert witness, but
5 his absence and inability to be cross-examined
6 particularly on the critical issue, I think that
7 almost every one of the Commissioners raised
8 about the amenities being provided by this PUD,
9 creates some difficulty for me. If he's not here
10 to be cross-examined, I think that makes it very
11 difficult to then accept his report into the
12 record, and certainly as an expert witness. He's
13 either got to be here or not. And, particularly,
14 given I think the Commission's focus --

15 CHAIRMAN HOOD: We can do this one of
16 two ways, and I think you bring up a good point.
17 I was hoping you wouldn't bring that point up
18 because the other night nobody did. But we can
19 do this one of two ways. You can respond to us
20 because you're right, he's not here to
21 cross-examine. You can respond to us in writing
22 or I will ask Mr. Hughes -- the first time I

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1 -- just withdraw that and we would deal with Mr.
2 Sher's testimony on the face of it, because he
3 is not here to cross-examine. But we can do it
4 either way. You all tell me how you all would like
5 to see us do it, and then we'll make the decision.

6 MR. BROWN: Well, one, I just
7 received it this evening. And to be honest, I
8 have not -- I got a whole bunch of papers --

9 CHAIRMAN HOOD: Well, we have
10 something in common.

11 MR. BROWN: So, I would like to, as
12 appropriate, respond post-hearing, if
13 necessary.

14 CHAIRMAN HOOD: Okay. Well, that
15 --and that's just it. I think -- I really think
16 that is the way to do it. You can respond in a
17 post-hearing submission if you have any
18 objections to what -- if something arises, and
19 we can respond in that fashion. Okay?

20 All right. Are we all agreed,
21 Commissioners? Are we fine with that? Okay.
22 Because, Mr. --

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1 MR. HUGHES: That's acceptable.

2 CHAIRMAN HOOD: Okay, great. Okay.

3 Anything else?

4 VICE-CHAIR COHEN: Well, I would just
5 make a comment. I mean, we just got it tonight,
6 too, so we have to review it, and also evaluate
7 and ask questions --

8 MR. BROWN: Sure.

9 VICE-CHAIR COHEN: -- if
10 necessary.

11 CHAIRMAN HOOD: Okay. So, we are
12 ready to get started.

13 (Off microphone comment.)

14 CHAIRMAN HOOD: No, we're just doing
15 Mr. Schreffler. Okay. Do we have anything else,
16 Ms. Schellin? Mr. Hughes, do we have anything
17 else?

18 MR. HUGHES: Not that I'm aware, Mr.
19 Chair.

20 CHAIRMAN HOOD: Okay. We're ready to
21 get started.

22 COMMISSIONER TURNBULL: I just have

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1 one comment, Mr. Chair.

2 CHAIRMAN HOOD: Okay, Commissioner
3 Turnbull. I'm sorry.

4 COMMISSIONER TURNBULL: I don't know
5 how much in his report Mr. Sher gets into
6 amenities. I don't know if there's much --

7 MR. HUGHES: Commissioner Turnbull,
8 we will address the amenities that are being
9 proposed as part of the package. Mr. Sher's
10 statement, presumably -- primarily addresses
11 compliance with the comprehensive plan.

12 COMMISSIONER TURNBULL: That's what
13 I thought, so I didn't understand the question
14 by counsel. But, you know, amenities by Mr. Sher,
15 it's not really addressed in his paper.

16 CHAIRMAN HOOD: They have some comp
17 plans. We'll just see what happens.

18 COMMISSIONER TURNBULL: Right.
19 That's right.

20 CHAIRMAN HOOD: Maybe this may even
21 come out of it. Okay. Anything else? Okay. Mr.
22 Hughes, you all may begin.

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1 MR. HUGHES: Thank you, Mr. Chair,
2 Members of the Commission. I'm Dennis Hughes
3 with the law firm of Holland & Knight. Joining
4 me this evening at the table beginning with my
5 immediate right is Eric Siegel of K Street
6 Developers LLC and CASC0, Inc. To his right is
7 Osborne George of OR George & Associates, our
8 transportation consultants. And then we have
9 three representatives from GTM Architects, Mr.
10 George Myers, Ms. Colline Hernandez, and Laura
11 DeHart. And in the audience, Mr. Curt Schreffler
12 and Dave Landsman of CAS Engineering.

13 We appear before you this evening
14 for review of a proposed modification to the PUD
15 first approved by the Commission in order 05-36,
16 which will provide for the completion of
17 development in Square 749, as you heard earlier.

18 As will be discussed in more detail
19 in just a moment, a seven-story 41-unit
20 apartment building is proposed for the site
21 designed by the architects of the earlier two
22 phases of the PUD in a manner that is both

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1 complimentary to the approved phases of the PUD
2 and consistent and contextual with the
3 neighborhood around it.

4 As will also be discussed, the
5 building contains a number of amenities and
6 benefits in keeping with the overall PUD. These
7 include a significant sustainability feature,
8 as GTM will address, a green roof and commitment
9 for a LEED Silver equivalent, a significant
10 amount of transit-oriented development,
11 including extensive bicycle parking within the
12 building for 30 spaces in a ground floor bicycle
13 room, as well as around the perimeter of the
14 entirety of Square 749, for a total of bicycle
15 parking of 42 spaces around the square.

16 There's also a significant
17 commitment to affordable housing. Unlike the
18 earlier phases which were pre-inclusionary
19 zoning proffer, this phase will be subject to
20 inclusionary zoning, will be a perpetual
21 commitment of 10 percent of the residential
22 ground floor, gross floor area of the building.

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1 And, also, we're continuing the
2 commitment to local employment opportunities
3 through First Source employment agreement with
4 the Department of Employment Services, and a
5 Certified Business enterprise agreement with
6 the Department of Small and Local Business
7 Development. That, too, is an enhancement over
8 the earlier phases which we can get to in a bit.

9 All of these items are in keeping
10 with the themes of the approved PUD, and
11 consistent with numerous policy objectives set
12 forth in the comprehensive plan.

13 We are pleased to note that the
14 project is supported by the Office of Planning,
15 and we appreciate that Office's constructive
16 input. We note that the Office of Planning
17 hearing report requests updated information
18 regarding a variety of aspects of the project.
19 We have addressed a number of those in our
20 pre-hearing submissions. We'll get to those, as
21 well, as part of our testimony.

22 Finally, we also note that the

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1 application is -- the Department of
2 Transportation has reviewed and does not object
3 to the application and has made certain
4 recommendations which we have addressed.

5 With that, I'll turn the testimony
6 over to Eric for his remarks. Thank you.

7 MR. SIEGEL: Good evening, Mr.
8 Chairman, and Members of the Board. My name is
9 Eric Siegel. I'm a member of the Cohen family.

10 What I'd like to focus on in my
11 remarks is a background of how we got to this
12 particular phase of development, and then talk
13 about the project amenities and community
14 benefits that we are offering with this
15 particular phase of the development. And then
16 speak for a few moments about the parking issue.

17 Prior to -- once this parcel was in
18 place and we were contemplating moving forward
19 with designing a building for this Phase 3
20 parcel, we thought very strategically and
21 carefully about how this could be a complement
22 to the existing approved -- not only the Loree

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1 Grand building but also the Phase 2 parcel, and
2 what was designed and approved by this
3 Commission in terms of architectural elements
4 and landscaping.

5 We had meetings with the Office of
6 Planning, and specifically met with Ms.
7 Steingasser, Mr. Lawson, and Mr. Cochran to
8 receive feedback and thoughts about how we could
9 make the architecture compatible with what's
10 existing, but also a different color scheme so
11 that it stands off -- it's not blending in with
12 the rest of the development; it really makes a
13 different third building, if you will, to what's
14 presented.

15 So, after a considerable amount of
16 thought and feedback from the Office of
17 Planning, we designed some setbacks, we took
18 down the scale of the building, the size from
19 it's original height which we would close down
20 so it scales down to the -- at the corner of L
21 and 3rd. And, also, to make it so it would be
22 compatible with what's across the street both in

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1 terms of the -- across 3rd Street, but also
2 caddy-corner the new development that just has
3 gone up.

4 That's in keeping with our desire
5 all along since 1988 to create a sense of place
6 for what was there to what is now a wonderful
7 development that eventually will have a
8 wonderful public park, essentially the only
9 green space in NoMa at the present time. We have
10 worked very hard over the last several -- many
11 years to be good neighbors, to provide an
12 opportunity for the Phase 2 ground both for NoMa,
13 for its summer screen series and other events,
14 but also within the community and the ANC who
15 wanted to have a number of community meetings and
16 picnics on the Phase 2 ground, and we've been
17 -- worked very hard to earn the trust of the
18 community and to provide those types of
19 amenities for the community.

20 So, with those in mind we approached
21 this 5,000 square foot parcel to build a
22 building, or design a building, if you will, that

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1 would offer community benefits, keeping in mind
2 that what we're looking for from a matter of
3 right versus to where we're proposing as an
4 additional 12,000 square feet of building
5 -- keeping in mind the economics of it, we've
6 come up with a number of amenities, project
7 amenities and community benefits.

8 Firstly, under community -- under
9 the affordable housing piece, under
10 inclusionary zoning 8 percent at 80 percent of
11 AMI would equate in a 41-unit building with three
12 units. We are proposing as part of this
13 development to have four units, an additional
14 unit associated with affordable housing as an
15 additional amenity by taking it up to 10 percent
16 rather than the inclusionary zoning of 8
17 percent.

18 In addition, we have worked to
19 enhance the landscaping and tree plan, and to
20 match the pavement so that around the block we
21 have much large planters. You'll see from the
22 designs that the architects go through to make

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1 -- to marry it up so that it's one cohesive block
2 from 3rd all the way around L Street, and has a
3 landscaping plan and street scape plan that
4 really works with the remaining part of the block
5 to really finish it off nicely.

6 Next, we have been working with the
7 Department of Transportation because noticeably
8 absent from the Phase 1 and Phase 2 proffers in
9 the development to this point in time. There are
10 no bike racks installed in the public space, so
11 one of the things we are providing is 21 bike
12 racks around the entire Square 749 block, three
13 in front of the Phase 3 parcel is proposed. I've
14 been working with Jim Sebastian and his team at
15 DDOT who oversees the bike program. They've
16 calculated there will be five bike racks that
17 would be incorporated on the public space in
18 front, or near, around the Loree Grand parcel,
19 and then remaining 13 bike racks around the Phase
20 2 parcel. And they're working with us in terms
21 of locating them to make that happen, so we're
22 not just handing money over to DDOT. We're

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1 working with their designated contractor. They
2 felt that that was the most efficacious way of
3 making that happen. And that's what the proffer
4 is, so we would be having bike racks around the
5 entire city block.

6 In addition, as Mr. Hughes
7 mentioned, we are going to be complying with CB
8 requirements that were originally a requirement
9 under the PUD. We will be complying with those
10 requirements for CB, as well as for source
11 agreements at the Department of Employment
12 Services.

13 And, lastly -- well, actually, two
14 more points. Mr. Hughes mentioned that we'll be
15 seeking to -- which will be addressed tonight,
16 achieving a LEED score equivalent, a LEED Silver
17 equivalent for this particular building through
18 our sustainability efforts both in the green
19 roof and how we design and build this building.

20 Lastly, in terms of the community
21 benefit and amenity, at the start of this process
22 I had conversations with Tony Goodman at the ANC

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1 about what type of other community benefits we
2 could bring to bear and offer in light of the fact
3 this is a small building and we wanted to do
4 something a little bit different and provide
5 more.

6 Originally, Mr. Goodman came to me
7 and said that they were contemplating and had
8 designs for a bus shelter for Gallaudet at the
9 corner of M Street on the east side of the tracks,
10 not far from the property. We had offered to
11 install pavers to basically -- to pave the
12 entire portion of that bus shelter as part of
13 that proffer.

14 Subsequently, probably within the
15 last I'd say about three weeks or so it's been
16 determined within the community that they
17 decided not to move forward with that bus shelter
18 because unlike in previous years, they felt that
19 in light of the fact that NoMa, the BID is moving
20 forward on an aggressive strategy for green
21 space and parks, that it would be much better for
22 us to work with the NoMa BID to either do an

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1 in-kind payment of \$5,000 into their park fund.
2 But more preferable from our standpoint, we'd
3 rather do in-kind work because I know that's
4 something that this Commission has really
5 -- it's their preference rather than doing
6 in-kind payment. So, in speaking to President
7 Robin-Eve Jasper over the last several days,
8 what she suggested is one of two options.

9 First, since they're working
10 through designing and planning out what public
11 spaces and pocket parts they're envisioning in
12 the future, we can have some sort of signed
13 agreement with the NoMa BID where at that time
14 we can then contribute the in-kind services
15 associated with the monetary amount of the
16 pavers we were going to be doing, or since
17 they've started this NoMa park fund which is a
18 501C3 we can contribute monetarily to that as a
19 limited grant, as a restricted grant so that the
20 money is used specifically for park-related
21 projects of which the BID would designate. And
22 that's -- either way, we're happy to do that, to

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1 contribute and work with the NoMa BID as we've
2 done for many, many years.

3 Now, I'd like to turn just briefly
4 to the issue of parking. On this particular
5 project because of the size of this parcel as
6 5,000 square feet, it really doesn't allow
7 itself for underground parking, so we have
8 designed this building with no parking in mind;
9 but we thought very, very carefully about what
10 we can do in order to ameliorate the issue.

11 Under current zoning, there would be
12 10 spaces associated with this particular
13 building if that were the case, with 41 units in
14 the building. And what we thought through, as
15 both Mr. Glasgow and Mr. Hughes has mentioned,
16 is having binding language in the leases that we
17 are having our tenants sign that provide that
18 they may not seek RPP permits to park within the
19 neighborhood as part of living in this building.
20 And that would be a violation of the lease if they
21 did so.

22 Secondly, we would be working with

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1 the Department of Transportation to insure that
2 this building is excluded from the registration
3 list for RPP parking within the neighborhood.

4 Next, we have made sure that we added
5 additional bike storage space on the first floor
6 of this building that's locked to encourage
7 biking. So, we have 30 spaces for the 41, nearly
8 a one-for-one opportunity within the building
9 itself on the first floor that allows residents
10 that opportunity.

11 Next, we have -- we thought that we
12 would be providing for the first -- for the
13 initial lease of the first -- the first time that
14 the 41 units are leased, we would provide a
15 one-year membership for either Car Share or Bike
16 Share, the choosing of the tenant as a way to
17 ameliorate that issue.

18 And from our perspective, given its
19 close proximity not only to Metro, but also bus,
20 as well as the intended One City streetcar line
21 that's going down 8th Street that will be
22 basically three blocks away, that there's a

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1 multitude of multi-modal opportunities for
2 -- in our estimation that we don't believe
3 parking is going to be a serious problem. And you
4 will also be hearing from Osborne -- Mr. George
5 about those aspects of parking from a traffic
6 analysis. But for the purposes of our strategic
7 thinking about it, we didn't believe given how
8 small this building that parking was going to be
9 a fatal flaw here, so that's kind of how -- what
10 our approach has been on how we develop the
11 parking.

12 With that said, I'm certainly happy
13 to answer any questions either now or at the end
14 of all the entire presentation, and thanks for
15 the opportunity.

16 MR. HUGHES: Thanks, Mr. Siegel. I
17 would like to have Mr. Myers and the GTM team run
18 through the design of the Phase 3 building for
19 a few minutes. Thank you.

20 MR. MYERS: Good evening. I'm George
21 Myers, President of GTM Architects. I have with
22 me Colline Hernandez and Laura DeHart, two

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1 members of the design team from the beginning who
2 have worked closely with me in the development
3 of the project.

4 I'd like to begin our presentation
5 by giving you some context regarding our firm's
6 involvement in the development of the site.

7 CHAIRMAN HOOD: Excuse me. Can I ask
8 -- let me interrupt. Do we have the PowerPoint
9 or did I miss it?

10 (Off the record comments.)

11 CHAIRMAN HOOD: Thank you, sorry.
12 Okay, thank you.

13 (Off the record comments.)

14 CHAIRMAN HOOD: It's something when
15 you've got nine people giving you instructions.

16 MR. MYERS: Isn't that nice?

17 CHAIRMAN HOOD: Got a lot of backseat
18 drivers in here.

19 (Laughter.)

20 MR. MYERS: Okay. Well, we've been
21 involved with this development from the initial
22 PUD the entire Union Place development. We're

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1 the architect of record for the Phase 1 Loree
2 Grand building, and we developed the design
3 drawings for the future Phase 2 development. We
4 see the development of these three remaining
5 parcels of land as really an opportunity to
6 appropriately complete the block.

7 Our design intent is to create a
8 building that complements the existing Loree
9 Grand property, as well as surrounding context
10 through its massing and architectural
11 detailing.

12 The Phase 3 site itself is comprised
13 of three lots located at the southwest corner of
14 the intersection of 3rd and L Street. You can see
15 from the north and east faces of the site are open
16 to the street, and the southern edge abuts the
17 Phase 1 building. Our measuring point is taken
18 along 3rd Street, and with our rear yard located
19 on the western edge of the site adjacent to the
20 existing Phase 1 service drive.

21 The current design is approximately
22 35,000 square -- gross square feet, seven

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1 stories, 64-feet tall with a main pedestrian
2 entry located along L Street.

3 The program includes 41 residential
4 units. Amenities include an extensive green
5 roof, landscaped entry court with benches and
6 planters, and a grade-level bike storage room.

7 Our residential mix is comprised of
8 one bedroom and studio apartments, and we
9 selected a pallet of materials that's consistent
10 with those used in Phase 1 and Phase 2 buildings.

11 The building features an
12 all-masonry facade with contrasting brick tones
13 and cast stone accents. Similar to Phase 1, the
14 facade is organized with a distinct base,
15 middle, and top. The building fenestration is
16 comprised of punched openings, aluminum-clad
17 bays, and Juliet balconies. The cast stone
18 architectural feature marks the entry on L
19 Street. This architectural element is designed
20 to complement the scale and detail found in many
21 of the two-story row homes traditional to this
22 DC neighborhood.

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1 Colline is going to go ahead and
2 describe the inside of the building and the floor
3 plan for you.

4 MS. HERNANDEZ-AYALA: Good evening.
5 My name is Colline Hernandez-Ayala, and I have
6 been the Project Manager for this third phase of
7 the development, as well as the subsequent Phase
8 1 and Phase 2 buildings.

9 Just to talk a little bit about the
10 inside of the project, as we mentioned, the
11 building is approximately 35,000 square feet.
12 It's seven stories tall, and the typical floor
13 plate is approximately 5,000 square feet.

14 What you're looking at on a typical
15 floor is six units, four one-bedroom units, and
16 two studios. Our typical floor-to-floor height
17 is 9'4" slab-to-slab, and one of the things we
18 tried to do was to provide large window openings
19 to provide a large amount of natural light and
20 day lighting to the residential units.

21 When we look at the grade level plan,
22 you'll see that there are four units on that

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1 level, as well. There is a central entry along
2 L Street, an administrative office that would be
3 the main -- the initial point of contact leasing
4 and management. We have a trash room where the
5 trash will come from all of the floor above. That
6 trash room opens up at the elevation of the rear
7 of the building which is approximately 3-feet
8 lower than the main lobby entrance, but we've
9 designed that space so that it is a clear grade
10 entry there so that the cans can come out easily.

11 As Eric mentioned, we also have bike
12 storage for the tenants also at the west edge of
13 the building. They can bring their bikes right
14 out of that room and then out along the rear of
15 the building.

16 Some of the other things that I want
17 to talk about are our commitment to LEED. Eric
18 mentioned that briefly and although we aren't
19 seeking formal certification, our intention is
20 to incorporate sustainable design strategies
21 that would give us an equivalent certification
22 to the level of Silver, which is 50 points. And

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1 the site is inherently -- it's an urban site and
2 the site is located where the context gives us
3 access to neighborhood conveniences and
4 amenities which will give us LEED points in that
5 area.

6 We're looking at using recycled and
7 regional materials for building components like
8 brick, and glass, and the concrete. We would
9 certainly on the interior use low emitting
10 materials, low VOC paints. And, again, we've
11 tried to design the building with large amounts
12 of day lighting.

13 I just want to talk a little bit
14 about the landscape solution. In terms of the
15 public space on the 3rd and L Street faces of the
16 building, it's really a continuation of what we
17 had done on the Phase 1 building. We have green
18 areas with benches and planting. The selection
19 of trees and shrubs is consistent with what is
20 currently located along 3rd Street with the Phase
21 1 building. So this will, again, be a nice
22 amenity for the public and the residents of the

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1 project.

2 I'm going to turn it over to Osborne
3 to go through --

4 MR. HUGHES: Colline, just before we
5 turn it over to Osborne, if I could ask you just
6 a couple of questions.

7 MR. MYERS: Sure.

8 MR. HUGHES: We are requesting
9 flexibility, and we've noted that in our filings
10 with the Commission regarding the rear yard of
11 the building. Could you just talk to that very
12 briefly, about --

13 MS. HERNANDEZ-AYALA: Sure, sure.

14 MR. HUGHES: Thank you.

15 MS. HERNANDEZ-AYALA: Let me go back
16 one. To the left is our grade level plan. As you
17 can see, the property line in the dark black
18 line, our actual building edge at the rear of our
19 building is five feet from the rear of the
20 property. This is a small tight site, and to
21 maximize the floor plate we're requesting
22 coverage of the site that would have us be in

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1 violation of the rear yard requirement.

2 We have allowed space for meeting
3 the code as it relates to egress from our second
4 stair that's located at the rear of the site.
5 That would allow for proper servicing of trash,
6 et cetera, and all that would happen along that
7 western edge at the back of the building.

8 MR. HUGHES: Thank you. And the
9 effect of -- even though it doesn't technically
10 comply with the rear yard requirement,
11 effectively what's the next -- could you
12 describe sort of the next building, or how one
13 would experience that yard?

14 MS. HERNANDEZ-AYALA: Sure. Adjacent
15 to our rear property line is the service drive
16 to the existing Phase 1 building. There is
17 currently a curb built in that location. We would
18 not remove that. It would remain in its existing
19 -- the curb is really -- I would say it's three
20 or four inches east of the rear property line in
21 its current configuration, so our building line
22 is five feet back from that. But it allows us a

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1 walkway so that we have adequate egress from all
2 of the rear access points to our building.

3 MR. HUGHES: And if you could perhaps
4 go back. I know one of the earlier slides showed
5 the entire square.

6 MS. HERNANDEZ-AYALA: Sure.

7 MR. HUGHES: And plan. And just to
8 point where the rear yard is, and then the next
9 improvement is across those two.

10 MS. HERNANDEZ-AYALA: All right. So,
11 what happens beyond the rear property line of our
12 site. Of course, first is the service access, the
13 drive to loading for the Phase 1 building. Then
14 there is a median strip and then there is access
15 to the parking for the Phase 1 building. Those
16 are the two drives that you're looking at, the
17 two curb cuts.

18 MR. HUGHES: Thank you. And now if we
19 could bring up the lights and --

20 MS. HERNANDEZ-AYALA: I think
21 Osborne -- would you like to --

22 MR. HUGHES: I'm sorry, you have some

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1 slides.

2 MS. HERNANDEZ-AYALA: Yes.

3 MR. HUGHES: So, we'll leave the
4 lights on. I apologize, and I turn it over to Mr.
5 George.

6 MR. GEORGE: Good evening, Mr.
7 Chairman, and Members of the Commission. My name
8 is Osborne George, for the record.

9 We performed a fairly detailed
10 analysis looking at the traffic generation and
11 parking associated with this development,
12 specifically to answer the question as to
13 whether the relief sought in terms of the parking
14 and some of the amenities are consistent with and
15 are capable of being accommodated by the local
16 area.

17 As context, we would note that the
18 property -- you've heard from Mr. Siegel and
19 others, but I'd like to specify that the property
20 is located within a five to six minute walk from
21 the NoMa Gallaudet Station. It's also within
22 three to four minute walk from Metro Bus routes.

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1 There's three bus routes along K Street
2 immediately to the south. There are other
3 excellent pedestrian and bicycle amenities, and
4 again tying into Mr. Siegel's remarks regarding
5 multi-modal opportunities for the area.

6 Just to check a few boxes, we went
7 through a detailed scoping with DDOT. We're in
8 agreement that the vehicle trip generation would
9 be extremely low and that there's no impact on
10 local traffic conditions.

11 The Commission has been provided
12 with extensive testimony in recent cases, one of
13 which was cited earlier, the 4600 Wisconsin
14 Avenue case talking about demographic changes
15 ongoing with urban areas like Washington, D.C.
16 throughout the country and, indeed,
17 internationally. Next slide, please.

18 In terms of the relief sought, we
19 know that, again, no parking is provided
20 compared with 10 spaces that are required. We
21 took a look at the overall Square 749 and just
22 this context we would point out that the approval

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1 to date includes 506 spaces. And that compares
2 to approximately 190 spaces that are actually
3 required. And, again, without commenting on
4 reliance of any of this parking, we'd note that
5 approximately 175 of the 190 spaces within the
6 square have already been built out. This is just
7 for context.

8 We were able to conclude that the
9 reduction in parking that is sought will not have
10 any adverse impacts, but we didn't want to do so
11 in a vacuum, so we took a detailed look at the
12 local parking situation. And in consultation
13 with DDOT, we also developed a potential loading
14 and management plan for further discussion as
15 the development proceeds. And we looked at
16 potential TDM Measures. So, the next slide.

17 Mr. Chairman, this is part of a
18 memorandum that was submitted into the record,
19 was reviewed by DDOT. And what it shows is the
20 location of the site, and the southwest section
21 of this area here. It's a seven-block area. The
22 Metro Station is just to the north, as I said,

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1 five to six minutes away, and the bus routes are
2 to the south here.

3 We looked at parking within this
4 seven-block area, and we survey in order to
5 determine what's likely to be the maximum
6 demand. We looked at the parking that's used up
7 on a typical late Friday evening, and early
8 Sunday morning. By late Friday evening we're
9 talking about between 6 and 9 in the evening. We
10 chose that period because we think if there is
11 any potential demand placed on the area by some
12 of the other retail, entertainment uses, et
13 cetera within this -- in the proximity, it would
14 be reflected in those numbers. And we also looked
15 at the situation between 4 a.m. --I'm sorry, 5
16 a.m. and 8 a.m. on a Sunday morning when most
17 human beings are likely -- I can say that, it
18 will represent the greatest parking demand.

19 So, all of this is detailed in our
20 study, and we presented a summary on the next
21 slide. This shows the breakdown of parking
22 within that seven-block area. There are a total

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1 of 517 on-street parking spaces. Of that, 463 of
2 those spaces are RPP, restricted for RPP use.
3 There are a number of unrestricted spaces and
4 there are a number of metered spaces.

5 I would stress that the unrestricted
6 and metered spaces are pretty much right next to
7 the property. And we show the use, and I'm sorry,
8 those numbers got squeezed a little bit, but it
9 shows the actual availability on a
10 block-by-block basis, or area-by-area basis,
11 and the percentage of those spaces that are used.

12 I can summarize that overall the
13 highest occupancy during those periods was
14 generally in the range of 65, to 70, 72 percent.
15 So, what it told us is that on any --even during
16 those periods of maximum demand, there's still
17 likely to be 140 to 150 parking spaces available
18 within those local areas.

19 If we can go back to the previous
20 slide, I'd just like to make a brief comment, the
21 previous slide. It's also important -- again, I
22 just wanted to emphasize that the site is here

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1 and you've got a number of metered parking, close
2 to 30 metered parking spaces here, unrestricted
3 spaces pretty much within convenient walking
4 distance on the same or next block, and those are
5 the spaces that are likely used.

6 Other uses in the area, I think this
7 is important as context, across the street is the
8 -- what's known as the Washington Center. I
9 think it's an international dormitory-type of
10 facility that accommodate international
11 students for three month internships. I had
12 discussions with those -- the management of that
13 place, and they have an abundance of underground
14 parking. And, again, the nature of the residents
15 or clientele, they're international students
16 who are here for brief periods and place limited
17 parking demands on the area. If we could go
18 forward two slides, please.

19 Both the Office of Planning and DDOT
20 in their reports ask that the client put forward
21 a proposed loading management plan in order to
22 insure that the area is not impacted. So, just

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1 to orient us, north is now looking to the right
2 going from left to right. The main entrance to
3 the building is here along L Street. And, as I
4 said, there are presently metered parking spaces
5 along here. There's a side entrance which Ms.
6 Hernandez noted to the west of the building, and
7 the trash room is here.

8 So, first dealing with the trash
9 service, the client anticipates that trash
10 service would be two to three days per week, and
11 that it could within a definitive time frame.
12 That service would be handled through from the
13 trash room to the rear side and onto this area
14 along L Street.

15 Moves-in/moves-out. I have
16 testified before you recently. In cases of
17 apartment buildings like this with efficiencies
18 and I think the maximum -- efficiencies, or
19 studios and one-bedrooms, the typical move-in is
20 by van-type vehicles and personal vehicles,
21 certainly not your 30-foot type of trucks, and
22 certainly no tractor trailers.

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1 So, preliminarily we've come up with
2 a plan where an area would be provided along L
3 Street that would provide convenient access both
4 to the main entrance of the building and to the
5 side entrance. And, again, the move-in/move-out
6 would be scheduled, management would have
7 someone on site to make sure that things go
8 according to plans. We can go to the final slide.

9 Mr. Siegel mentioned about the TDM
10 Measures, and I've listed some of those that are
11 under consideration. There would be a site
12 transportation coordinator to make sure that
13 information is disseminated and to handle things
14 like the one-time car share and bike share
15 membership which we mentioned. I would just
16 highlight 30 indoor bicycle spaces, the number
17 has gone up from 18, it's now 21 outdoor spaces.
18 The applicant has agreed to work with DDOT on RPP
19 exclusions with the leases. And, of course, DDOT
20 would hold the applicant's feet to the fire
21 through monitoring and audits to insure that the
22 trip generation estimates and the parking

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1 demands that we projected here would, indeed, be
2 what is realized.

3 This enabled us to reach the
4 conclusion which I cited earlier, Mr. Chairman.
5 And with that, I'd like to make myself available
6 for questions that you may have.

7 MR. HUGHES: Thank you. I believe we
8 can turn up the lights at this point.

9 Mr. Chair, just to conclude a couple
10 of items. We've noted that Mr. Sher is not able
11 to join us this evening. I do have a copy of his
12 report, and as Commissioner Turnbull noted, it's
13 comprehensive, as all Mr. Sher's reports are. It
14 deals with compliance with the zoning, and it
15 also deals with consistency with the
16 comprehensive plan. Those -- that material is
17 also provided in the applicant's statement when
18 it was filed in September, and you've already
19 discussed how to address a response to that
20 report.

21 You also received, I believe prior
22 to the hearing this evening, a bound set of

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1 drawings dated June 27th, tonight. And what I'd
2 like to note -- and the cover sheet is very
3 helpful to explain what drawings have changed
4 and what have not. We would ask that these
5 drawings supersede all the earlier packages that
6 you have received just to keep things as clean
7 as possible.

8 I would note a couple of things.
9 There's been a lot of work on the ground floor
10 to address trash management issues, and loading
11 management, and to make the bicycle parking
12 access as convenient and safe, as possible. So,
13 that has had sort of a domino effect in terms of
14 the exterior of the building. It's changed the
15 door opening. There also have been some other
16 improvements that we certainly could discuss
17 further if the Commission sees fit.

18 I would also point you to Exhibit 1,
19 which I believe is the last page in the booklet,
20 and that's -- this is responsive to a comment in
21 the Office of Planning hearing report, as well,
22 to identify the location and number of

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1 inclusionary zoning units, and that's what this
2 sheet provides.

3 And with that, we'll conclude our
4 direct presentation and be available for any
5 questions. Thank you very much for your time.

6 CHAIRMAN HOOD: Okay. Thank you all
7 very much for your presentation. We clearly
8 appreciate it. Let me open it up. Commissioners,
9 any questions? Vice-Chair Cohen?

10 VICE-CHAIR COHEN: Thank you, Mr.
11 Chairman. On your drawing A3-0, I notice that
12 there is a cellar. Is that just for storage for
13 the residents, or does it have any use?

14 MS. HERNANDEZ-AYALA: The cellar is
15 primarily used for building services. There will
16 be our main electric room, and our pump room down
17 there. There's no intention to have additional
18 storage there. It's primarily to support the
19 functions of the building.

20 VICE-CHAIR COHEN: Okay.

21 MR. HUGHES: Commissioner Cohen,
22 that's also identified in the uses and planning

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1 A1.0.

2 VICE-CHAIR COHEN: Thank you. Is this
3 going to have any -- the ground floor retail is
4 just in Phases 1 and 2. Is that correct?

5 MR. HUGHES: Yes.

6 VICE-CHAIR COHEN: Okay. And can you
7 describe using maybe the photo -- the page A4.2
8 that actually shows the building constructed. L
9 Street is the entrance to the building, and then
10 how do people get -- how does the trash truck get
11 down that narrow alley? Is there some way you
12 could show me so that I have an idea. I would like
13 to understand the impact of access to pick up
14 trash, how it impacts on Phases 1 and 2, as well.

15 MS. HERNANDEZ-AYALA: I think if we
16 go to sheet A4.5, that is an aerial view of the
17 site.

18 VICE-CHAIR COHEN: Good, yes. That's
19 good.

20 MS. HERNANDEZ-AYALA: Yes. I'd love
21 to hold it up with Osborne's sketch, trash
22 management sketch. But what we are looking at is

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1 the trash would come out of the -- let me see the
2 pointer. Who's got a pointer? Bear with me, I'm
3 left-handed so it's like I'm looking backwards
4 here.

5 Okay. So, to just pick up on the
6 trash management plan that Osborne presented,
7 the trash would come out the rear of the building
8 on this side, so what you're looking at here is
9 the existing service access, the curb cut for
10 loading to the Phase 1 building. Okay? And then
11 you're looking at access to parking for the Phase
12 1 building.

13 Our project -- there is a five foot
14 walkway to the east of that service road that
15 goes to the Phase 1 building. Our trash would
16 come out of a trash room that would be an on-grade
17 elevation to our walkway, and then we would walk
18 -- the trash would be walked down to the corner.
19 And Osborne can align -- can jump in here. And
20 the trash truck would most likely be located
21 here.

22 VICE-CHAIR COHEN: And how far is the

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1 walk from the trash room to the trash truck?

2 MS. HERNANDEZ-AYALA: I think it's
3 about 30 -- no more than 30 feet.

4 VICE-CHAIR COHEN: Oh, okay.

5 MS. HERNANDEZ-AYALA: Yes. The whole
6 dimension of the short end of the site is about
7 56 feet.

8 VICE-CHAIR COHEN: Okay.

9 MS. HERNANDEZ-AYALA: So, we're only
10 talking about 30 feet to get to that corner.

11 VICE-CHAIR COHEN: Okay, thank you.

12 MS. HERNANDEZ-AYALA: Yes.

13 VICE-CHAIR COHEN: A couple of
14 comments on the proffers. I understand that you
15 will be gaining points that could be certified
16 as LEED Silver. And I guess I don't understand
17 why developers don't go the next step. For me,
18 and the people that I have been talking to, you
19 know, younger people on H Street, they
20 understand all this stuff, and they talk about
21 certification, as well. I think it would be a
22 marketing opportunity for you to go for the

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1 certification. I don't think it's as expensive
2 as a lot of people state it is. And it also will
3 help the city in its competition with other
4 cities to be certified LEED Silver.

5 I have to tell you that my
6 temperature went up a few degrees when you said
7 that you're going to add an additional
8 affordable unit. And I guess for me that's just,
9 you know -- I don't know why you're really
10 feeling very self-congratulatory on that
11 because one additional unit to me is not that
12 much from 8 percent to 10 percent, it's that one
13 unit. So, if you could possibly quantify that,
14 what it -- you are brining to the table because
15 at 80 percent of median income, to me that's
16 market for this neighborhood, and I don't really
17 see a benefit. So, again, prove me wrong, but
18 that's the way I'm coming at this project, is
19 that, you know, what's the big deal about one
20 additional unit in a very small project, of
21 course. But I would like to see that quantified,
22 and maybe I would change my mind. But, you know,

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1 just my reaction was well, really, 80 percent of
2 median is right now the market in that
3 neighborhood for rents.

4 MR. SIEGEL: Vice-Chair Cohen, could
5 you help me understand more what you mean by
6 quantify? Because the reason why I asked the
7 question, is because the existing PUD has a 10
8 percent requirement in Phases 1 and 2, and we
9 were seeking to meet that because -- to try to
10 work through those pieces. And I'm just trying
11 to understand.

12 VICE-CHAIR COHEN: Again, I think
13 this doesn't appear to be -- in my estimation,
14 it appears very light in proffers. I have to be
15 honest with you. And so that's why if you state
16 what this means to the bottom line of the
17 project, what you're actually bringing to the
18 deal, and that's where you would quantify that
19 one unit that you're adding as a benefit. Can I
20 move on?

21 MR. SIEGEL: Yes, that helps. Thank
22 you.

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1 VICE-CHAIR COHEN: Okay. On the RPP,
2 I understand that you're not going to ask for RPP
3 approval. It seems that, if I understood Mr. --

4 MR. SIEGEL: George.

5 VICE-CHAIR COHEN: George. Right,
6 Osborne George. I want to use the same first
7 name, too. Mr. George's analysis, a lot of those
8 parking spaces near the building are metered. Is
9 that correct?

10 MR. GEORGE: Yes, on two faces, the
11 north space along L Street and west space along
12 --

13 VICE-CHAIR COHEN: You know, I
14 -- when I did own a car and having metered
15 parking or, you know, different cities same side
16 of the street parking, it's a pain for you to get
17 up in the early morning hours or late at night,
18 move your car. So, I'm just wondering why are you
19 proffering RPP? Is it because of the ANC's
20 feedback. Is that it?

21 MR. SIEGEL: Yes, it's in response to
22 the concerns from the ANC about concerns that

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1 there might be increased parking associated with
2 the fact that you have renters in these 41 units.
3 And, you know, our view has been that since
4 you're going to have eventually 712 units
5 associated with Phases 1 and 2, if anyone wants
6 to park, they can rent in those units. They don't
7 have to rent in our building. If it's that
8 important to them to have a parking space
9 guaranteed, and we can't work out an agreement
10 with the Phase 2 owner for availability, they can
11 rent in those other two buildings. They don't
12 have to rent in our building.

13 You know, we certainly -- that's a
14 risk that we take if we can't rent, if we can't
15 get people to rent without having the parking
16 there. We'll certainly be advertising that. But
17 as a way to meet the concerns of the ANC, and
18 after having conversations not only with them
19 but also with Councilmember Wells' office in the
20 past, and also understanding the previous case
21 from Wisconsin Avenue, we thought this -- we
22 feel comfortable saying that we're not going to

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1 allow --

2 VICE-CHAIR COHEN: Okay.

3 MR. SIEGEL: -- tenants to seek RPP
4 and park in this neighborhood, and we'll put that
5 in the lease. That was the way we would address
6 it.

7 VICE-CHAIR COHEN: Okay. And did I
8 understand that you are working with the BID, and
9 possibly willing to give a donation to their
10 park?

11 MR. SIEGEL: Yes.

12 VICE-CHAIR COHEN: Did I understand
13 that correctly?

14 MR. SIEGEL: It would either be an
15 in-kind contribution to what we proposed before,
16 or we would propose to donate the money into the
17 park 501C3 fund. We understood, at least I
18 understood that it has been to date disfavored
19 by the Commission to have an in-kind payment
20 rather than -- a payment in lieu of an in-kind
21 contribution.

22 I'm happy to do either. You know, we

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1 build on our own account so we're certainly happy
2 to do the in-kind work, and we work with the NoMa
3 BID for many, many years and would be happy to
4 do that at the appropriate time, or we could just
5 donate the money into the fund, whichever is
6 acceptable.

7 VICE-CHAIR COHEN: Okay. My final
8 question was, since you were the development
9 entity for actually the Phase 1, and I believe
10 Phase 2 you were involved, as well, can you
11 please demonstrate to us your success on the
12 First Source agreement, how successful you were
13 in Phase 1 and Phase 2. We often approve PUDs,
14 never get to see how successful they are in
15 actually meeting their goals. So, I'd appreciate
16 seeing something on that. Thank you, Mr.
17 Chairman.

18 MR. SIEGEL: Thank you.

19 MR. HUGHES: If I could just clarify
20 that. Phase 2 has yet to be constructed, so it
21 would just be -- we could provide for Phase 1.

22 VICE-CHAIR COHEN: Yes, that's fine.

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1 CHAIRMAN HOOD: Okay. Any other
2 questions of the applicant? Commissioner May.

3 COMMISSIONER MAY: Okay. I see, I
4 think, a materials board back there behind you.
5 Can you pass that up? The -- I'm glad that you're
6 dealing with the question of RPP up front. If you
7 didn't deal with it up front, I'd be asking the
8 question, and I'm glad that's being resolved.

9 I'm a little concerned, the frequent
10 mention of the Wisconsin Avenue case because we
11 don't want to have -- we don't want -- and this
12 is not so much for you in your case, but maybe
13 it's more for Mr. Glasgow and his other clients,
14 I don't want anybody in the city to have the
15 impression that all you have to do is, you know,
16 check a few boxes that are -- and do a couple of
17 things that are similar to the Wisconsin Avenue
18 case and then all of a sudden you can get off
19 without parking. I think every one of the
20 circumstances where we ever give a full
21 exception to a parking requirement has to be
22 individually considered, and there's nothing

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1 automatic about it. And I think that in this
2 circumstance, it's arguable that it makes sense
3 because there seems to be some -- I mean, there
4 -- I believe there will probably wind up being
5 ample parking available next door. And I -- now,
6 is it -- it's my understanding that one will be
7 -- that the spaces that are in the building, that
8 are in the rest of the PUD can be purchased
9 separately or rented separately. They're not
10 tied to units or anything like that. Is that
11 right?

12 MR. SIEGEL: That I don't know. For
13 example, as is represented by Mr. Brown, the
14 Phase 1 owner doesn't make those units available
15 to the public, the parking spaces.

16 COMMISSIONER MAY: Okay.

17 MR. SIEGEL: It remains to be seen
18 whether or not the Phase 2 owner --

19 COMMISSIONER MAY: Phase 2 will.

20 MR. SIEGEL: -- will have that.
21 That's why I didn't represent that. I didn't want
22 to misstate --

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1 COMMISSIONER MAY: Right.

2 MR. SIEGEL: -- what's available.
3 But my point was, is that because when it's
4 entirely built out, there's a .71 space parking
5 that is ample parking for the neighborhood that
6 if somebody wants to rent in our building and
7 decides they really need a car, they can always
8 rent in the other buildings. If we can't provide
9 it, they can -

10 COMMISSIONER MAY: Well, assuming
11 that the owners of the building are going to rent
12 them, which you can't assume.

13 MR. SIEGEL: Assuming -- well,
14 assuming they have rental units available for
15 someone to rent there, then they have the ability
16 to --

17 COMMISSIONER MAY: Oh, I see, they're
18 going to rent -- they'll rent there rather than
19 rent with you.

20 MR. SIEGEL: Correct. They rent there
21 and then they have a parking space they could
22 rent from them, as well.

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1 COMMISSIONER MAY: Got it. Okay.
2 Well, as I said, in any case, I think that it has
3 to be considered individually. And in that
4 circumstance, I think there was a lot more -- I
5 don't know if there were -- in the Wisconsin
6 Avenue case whether there was a lot more that
7 specifically related to parking, but it was a
8 matter of significant discussion. And the ANC
9 wrangled quite an agreement out of the developer
10 in that circumstance, and I don't see the same
11 kind of agreement here. I'm not sure that it's
12 necessary, but I'm just really wary of doing
13 something simply because it was done on
14 Wisconsin Avenue.

15 MR. SIEGEL: If I may --

16 COMMISSIONER MAY: I don't think we
17 were trying to set that kind of a precedent with
18 that case. In fact, we were explicitly not trying
19 to set precedent.

20 MR. SIEGEL: If I may, Commissioner
21 May, I -- this idea germinated well before we had
22 any knowledge of what happened on Wisconsin

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1 Avenue. And this happened through my discussions
2 over the last two years with Councilmember
3 Wells' office, and how they were dealing with
4 parking issues. And they weren't formal
5 meetings, I just happen to know the
6 Councilmember and we had conversations about how
7 does the city handle parking issues like this in
8 the neighborhoods. And so, it was an idea that
9 we came up with as a way to deal with it. It just
10 so happened subsequently this case came down on
11 Wisconsin Avenue, something to look to as
12 precedent, but I'm certainly not hanging my hat
13 on that. It was just an idea we came up to be
14 creative to come up with a solution to this
15 problem, and to address the ANC's concerns.

16 CHAIRMAN HOOD: Let me just
17 interrupt. Does Councilmember Wells ride a
18 bicycle?

19 MR. SIEGEL: I believe he does, yes.

20 CHAIRMAN HOOD: Can he ride? Is he
21 pretty good at riding, or --

22 MR. SIEGEL: I've never ridden with

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1 him, but I -- he strikes me as a pretty able guy
2 to ride, sure.

3 CHAIRMAN HOOD: Does he have control
4 of the bicycle? I'm just curious.

5 MR. SIEGEL: I have no idea.

6 CHAIRMAN HOOD: Okay. When I see him,
7 I'll ask him. I'm sorry.

8 MR. SIEGEL: Thank you.

9 COMMISSIONER MAY: Okay, interesting
10 detour. So, okay, enough about RPP. I mean, I do
11 think that the fact that you've submitted a
12 technical memorandum that describes the issue
13 with parking in the neighborhood is helpful, and
14 demonstrates that there is generally some street
15 parking available.

16 For Phase 1 and Phase 2, the folks
17 who rent there, are they going to be eligible for
18 RPP?

19 MR. SIEGEL: The Phase 1 building
20 C- just to be clear, the Phase 2 building has not
21 been built yet. There's still --

22 COMMISSIONER MAY: I understand.

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1 MR. SIEGEL: But yes, there's no
2 restriction for them.

3 COMMISSIONER MAY: There's no
4 restriction for them.

5 MR. SIEGEL: That has nothing to do
6 with us.

7 COMMISSIONER MAY: Yes, I know, but
8 it could have an impact on what street parking
9 comes available.

10 MR. SIEGEL: Conceivably, yes.

11 COMMISSIONER MAY: Okay. I want to
12 talk a little bit about the architecture of the
13 building. I'm looking at A2.1 and I guess this
14 is the -- it's called the courtyard elevation,
15 but it's really the elevation on the alley.
16 Right? Is that right, this is the elevation on
17 the alley?

18 MR. SIEGEL: Yes.

19 COMMISSIONER MAY: Okay. So, what's
20 -- why such an odd window arrangement there? Why
21 aren't -- the forward units, why don't they have
22 windows on two sides?

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1 MS. HERNANDEZ-AYALA: We're dealing
2 with a building code issue, because we're five
3 feet from the property line, so we're limited by
4 a percentage of openings to meet the code. I
5 think at that point we're 10 or 15 percent, so
6 we oriented the corner unit so that the bedroom,
7 living room have frontage on L Street.

8 COMMISSIONER MAY: Right.

9 MS. HERNANDEZ-AYALA: So, the
10 support spaces would be in that solid wall area,
11 and those windows really serve that rear unit on
12 those floors.

13 COMMISSIONER MAY: Okay. But -- so,
14 what you're telling me here is that what you have
15 here is a total of 10 percent window opening,
16 you've maxxed it out?

17 MS. HERNANDEZ-AYALA: I think we're
18 pretty close to it, pretty close to it. You know,
19 we can confirm the exact percentage, but just in
20 our analysis of that facade there wasn't enough
21 left over to create significant openings on the
22 other units if that's the direction you're going

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1 in.

2 COMMISSIONER MAY: Yes, okay. So, you
3 -- the fact that you're not just close to the
4 alley, but across the alley there's also -- I
5 don't know, is there a required rear yard there?
6 I mean, there is some separation because there's
7 a driveway that leads to the parking garage.
8 Right?

9 MS. HERNANDEZ-AYALA: Yes.

10 COMMISSIONER MAY: I mean, doesn't
11 that -- can that work in your favor at all? I
12 mean, it just seems like such a shame having
13 -- not being able to put windows on that side.

14 MS. HERNANDEZ-AYALA: Yes, the
15 -- we've been referring to that as an alley but
16 it's enclosed. It's simply a property line
17 between the Phase 2 and the Phase 3 at this point,
18 so we're dealing with the building code as it
19 relates to adjacent --

20 COMMISSIONER MAY: Being five feet
21 away from the property line.

22 MS. HERNANDEZ-AYALA: From the

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1 property -- adjacent property line.

2 COMMISSIONER MAY: So, the fact that
3 the -- that on that -- that nothing can be built
4 on that property line because it's part of a PUD
5 doesn't give you any relief from -- you can't use
6 that to leverage the building code?

7 MR. GLASGOW: I think, Mr. May,
8 that's a -- Commissioner, that's a good
9 question. I think what we ought to do is check,
10 because right now with the building code it's
11 different from the zoning regs a lot of times
12 when they're granting waivers and whatever, and
13 I think that's --

14 MR. SIEGEL: We'll look between the
15 existing code and the proposed code which is
16 supposed to be coming out in the fall and see if
17 that will allow us an opportunity to potentially
18 get a waiver to put some additional fenestration
19 in there.

20 COMMISSIONER MAY: So, would the
21 floor plans of those units permit it -- you're
22 not lining up shower stalls up against it or

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1 anything like that. Right? You've got room?

2 MS. HERNANDEZ-AYALA: Yes, the
3 bigger opening would be at the corner, so there's
4 living room space at that corner.

5 COMMISSIONER MAY: Yes.

6 MS. HERNANDEZ-AYALA: So, you would
7 -- that's where it would go.

8 COMMISSIONER MAY: Yes.

9 MS. HERNANDEZ-AYALA: In previous
10 schemes we had more windows in that facade.

11 COMMISSIONER MAY: Right.

12 MS. HERNANDEZ-AYALA: But as we moved
13 toward the code relationship and the distance
14 --

15 COMMISSIONER MAY: Right.

16 MS. HERNANDEZ-AYALA: -- we had to
17 come up with a solution that would comply.

18 MR. GLASGOW: We'd like to have the
19 record left open to see if we can get a report
20 back, and at least have flexibility that if we
21 can get a code waiver --

22 COMMISSIONER MAY: Right. I mean, I

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1 would even be willing to entertain that there be
2 some flexibility to add fenestration there. If
3 not, I think you need --

4 MS. HERNANDEZ-AYALA: That's a good
5 idea.

6 COMMISSIONER MAY: -- to do
7 something to -- something more to that facade.
8 Maybe you want to articulate the facade in such
9 a way that you have a place to put the windows.

10 MS. HERNANDEZ-AYALA: Right. Yes,
11 no, I certainly --

12 COMMISSIONER MAY: Because, I mean,
13 it really looks kind of bland, and it's going to
14 be wide open because you've got two driveways
15 right next to each other. All right, enough on
16 that one.

17 The -- this is just an observation
18 but the cornice seems to be a little bit wimpy.
19 I'm sorry, wimpy, I can't come up with a better
20 word. It's just -- it doesn't have much to it,
21 so I'm -- whether you -- I don't really care
22 whether you -- I can't insist on you having a

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1 beefier cornice, but you might want to just take
2 another look at that.

3 Another issue which is just one that
4 makes me a little bit crazy, but the lintels, the
5 edge of the window lintels line up with the
6 outside of the window frames, not -- they don't
7 span into the brick. Is that a mistake?

8 MS. HERNANDEZ-AYALA: They will.
9 This is a two-dimensional image from a sketch-up
10 model, so those type of details --

11 COMMISSIONER MAY: Okay. Well, in the
12 future --

13 MS. HERNANDEZ-AYALA: So, they would
14 certainly extend past the masonry opening, yes.

15 COMMISSIONER MAY: Okay. So, wait a
16 minute. Now, I'm seeing two different versions
17 of this.

18 MS. HERNANDEZ-AYALA: So, you see at
19 the top row windows they do show an extension
20 there at the sill.

21 COMMISSIONER MAY: Yes.

22 MS. HERNANDEZ-AYALA: Yes.

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1 COMMISSIONER MAY: I mean, the sill
2 does extend a little bit beyond, but that's less
3 important. The important one sort of visually
4 for the structure is to have the head of the
5 window appear to work structurally. Right?

6 MS. HERNANDEZ-AYALA: Yes, it would
7 do that and it's constructed --

8 COMMISSIONER MAY: Okay. So, can you
9 revise the drawing so that it shows something
10 that spans properly?

11 MS. HERNANDEZ-AYALA: Yes, we can do
12 that.

13 COMMISSIONER MAY: Satisfy the fussy
14 architect.

15 MS. HERNANDEZ-AYALA: We can do that.

16 COMMISSIONER MAY: Okay. Oh, and I've
17 seen some of the permutations of the lobby. In
18 the most recent version, I'm not sure you've hit
19 on the right solution there. You know, this is
20 not of critical importance in the PUD case. I
21 just think it's a commonsense thing. I don't
22 think you want to -- you have an opportunity to

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1 create a fairly wide open lobby, and putting a
2 -- carving out kind of an office in the middle
3 of it so that the elevator is back behind it. I'm
4 not sure that that gives you the feeling of
5 comfort and safety that you'd want to have if you
6 live there --

7 MS. HERNANDEZ-AYALA: Okay.

8 COMMISSIONER MAY: -- because
9 somebody could be hiding around -- there are too
10 many corners to hide around, so I think being
11 able to walk in and have a relatively open lobby
12 would be better. So, move that admin space to one
13 side or the other, again just -- these are my own
14 fussings.

15 MS. HERNANDEZ-AYALA: No, all good
16 opinion questions.

17 COMMISSIONER MAY: Okay.

18 MS. HERNANDEZ-AYALA: We can do that,
19 yes. Thank you.

20 CHAIRMAN HOOD: Okay, any other
21 questions up here? Commissioner Turnbull.

22 COMMISSIONER TURNBULL: Yes, Mr.

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1 Chair. Thank you.

2 If you could go to A4.5, maybe show
3 it on the screen. This gets back to -- I think
4 Commissioner May's got a point, so that on the
5 proposed Phase 2 you can see you've got the
6 windows -- the whole point of fenestration opens
7 up a lot more. And if you can do it -- if it can
8 happen on Phase 2, why can't it happen on Phase
9 3? I think it's something to look at.

10 I had a question architecturally on
11 the headers, 3, 4, 5, and 6 floors. I'm assuming
12 -- in the illustration they're showing it just
13 over the windows, but I'm assuming the brick
14 headers are running the whole floor line.

15 MS. HERNANDEZ-AYALA: Yes.

16 COMMISSIONER TURNBULL: Yes, I
17 thought so.

18 And my next question, and maybe
19 Office of Planning can chime in on this, because
20 this is something that irritates the hell out of
21 me. Where's the front of the -- isn't this the
22 front of the building?

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1 MS. HERNANDEZ-AYALA: Yes.

2 COMMISSIONER TURNBULL: And over
3 here is the rear of the building. When I go into
4 a building and I turn around and I go 180 degrees,
5 that's the rear of the building. And Office of
6 Planning knows, we had a BZA hearing where we
7 established that the rear of the building is
8 directly behind.

9 Now, I would rather grant a variance
10 for a rear yard instead of redefining logic and
11 having a rear yard as a side yard. We've been
12 through this. I don't understand.

13 MS. STEINGASSER: I think we're at a
14 bit of loss. I'm not sure what BZA case you're
15 referring to where --

16 COMMISSIONER TURNBULL: It was a
17 certain library in Ward 1.

18 MS. STEINGASSER: Yes, Mt. Pleasant
19 Library?

20 COMMISSIONER TURNBULL: Yes. And if
21 you recall, that library -- the ZA had defined
22 this rear yard at the side of the building

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1 -- it's a little bit different shape. It's not
2 quite the same rectangular --

3 MS. STEINGASSER: Yes, that case -

4 COMMISSIONER TURNBULL: -- grid.

5 MS. STEINGASSER: -- worked off
6 because it had a bit of a trapezoidal shape lot.

7 COMMISSIONER TURNBULL: Right, and
8 the BZA -- the ZA had said well, you can go into
9 the building, and you can veer off at a weird
10 angle and develop a side yard off to the side,
11 and the BZA decided no, you can't. Logic decides
12 that you come into the front, and the rear is
13 directly at the back. It just follows through
14 that the rear is at the back of the building.

15 MR. COCHRAN: If I might, the Zoning
16 Commission in my knowledge over the 10, 13 years
17 I've been at OP, has always acted on side and rear
18 yards the way that -- and the choices the way
19 that they are permitted in the Height Act, where
20 you can choose a side of the building to be the
21 front.

22 COMMISSIONER TURNBULL: I don't

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1 think it says that in the zoning regs. It doesn't
2 say that in the zoning regs, you can pick a side
3 for your rear yard.

4 MS. STEINGASSER: We're happy to take
5 a look at that, and we can also reflect that in
6 the new zoning regs to make that a clear --

7 COMMISSIONER TURNBULL: We have to.
8 This is getting to be, I'm sorry, stupid. We need
9 to be precise so that these people can go in and
10 we can know, and we all know what's the front,
11 what's the rear, and how you determine what's a
12 rear yard. To me, there is a logical way that
13 human beings on this planet can go into something
14 and say this is the front, that's the rear,
15 that's the side. You can't make it complicated
16 and say well, now, if we're going to have -- go
17 90 degrees -- this is the rear yard. This
18 irritates the hell out of me.

19 I mean, it's a fine point but it
20 -- from a real estate point and land
21 development, people have to know what they can
22 do. I would rather grant a variance for a rear

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1 yard going to the side of a building. It just
2 doesn't make sense.

3 We've done -- I mean, this has been
4 going on now for a while, and I think it needs
5 to be clarified. I mean, I'm not opposed to
6 granting relief for a rear yard in a situation
7 like this based upon the site plan and the
8 logistics of the adjacent buildings, but I think
9 from the standpoint of definition on the zoning
10 regs, we have to be more precise of what people
11 know as a side yard and a rear yard. Anyway,
12 that's my -- otherwise, I have no problems with
13 this project, just the standpoint of the
14 definition of how we're looking at things.

15 MR. GLASGOW: Commissioner Turnbull,
16 we have asked for flexibility with respect to
17 rear yard, so I think we've got it covered in a
18 sense.

19 COMMISSIONER TURNBULL: Yes, and I
20 would be willing to grant flexibility. I just
21 -- to me, I just hate -- it's a sore point for
22 me after sitting through that BZA case on the

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1 appeal, and working through how someone can
2 suddenly go in and say well, no, you can have it
3 here, but it's not over -- it just irritates me.
4 It's just from the standpoint we have to be
5 precise, we have to be able to narrow it down so
6 that you folks know we know exactly what it is.
7 And if -- I know properties are different,
8 you've got different sites, but we ought to have
9 it set up so that everybody knows, at least has
10 a baseline on how to establish this. That's my
11 only point. End of my little speech.

12 CHAIRMAN HOOD: Okay. Anything left?
13 I mean, Commissioner Miller.

14 COMMISSIONER MILLER: Thank you, Mr.
15 Chairman.

16 I think it's a very attractive
17 building, generally, from my layman
18 architectural perspective. Can you just
19 describe, are the -- now I'm really going to show
20 how layman -- do these bay windows on 3rd Street,
21 these three floors of protruding -- are those
22 bay windows? What exactly is going on there?

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1 MR. GLASGOW: They are bay windows
2 there.

3 COMMISSIONER MILLER: And did you
4 consider having more -- you only have two
5 balconies on that 3rd Street facade, and I guess
6 you have most of them on the -- most of the
7 balconies that you have are on the L Street
8 facade. Did you consider having more balconies?
9 It seems like the 3rd Street facade could use some
10 more, particularly in relationship to the
11 building next door. And I would think the people
12 on the top floor on both sides of the building
13 would be paying more and would want to get
14 balconies, but that's just my own personal
15 preference. But did you consider more? Is there
16 a reason why you didn't -- just you wanted to
17 have a different window treatment, and try to
18 have -

19 MS. HERNANDEZ-AYALA: Yes, I can
20 address that. Yes, we wanted to treat the 3rd
21 Street elevation in a different way than the L
22 Street elevation. And the idea was to create a

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1 big bay that would be more consistent with the
2 living and dining space, and a smaller punched
3 opening that would be consistent with a bedroom
4 area. So, we just made the decision to treat
5 those larger bays differently. These units have
6 projecting bays, a little more square footage,
7 floor-to-ceiling glass, as opposed to the Juliet
8 balcony scheme.

9 COMMISSIONER MILLER: Okay. And it's
10 seven -- the building is seven stories tall, and
11 you tried to scale it, have it scaled to be
12 compatible with what's across the street and
13 caddy-corner. What's the -- how many stories are
14 the existing -- there are existing buildings
15 across the street and caddy-corner. What's the
16 --

17 MS. HERNANDEZ-AYALA: Yes, I believe
18 they're six-story buildings.

19 COMMISSIONER MILLER: Okay. The
20 LEEDS -- just following up on the Vice-Chair's
21 comments about the LEED Silver rating, or going
22 for equivalent of LEED Silver, not the

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1 certification. But when I looked at the chart,
2 it looked like you had 41 certain points in your
3 checklist, and 20 question mark points, so I
4 guess you're going to make sure that 10 of those
5 question marks points are actually going to the
6 certain category.

7 MS. DeHART: Yes. Hi, I'm Laura
8 DeHart. Yes, those are possible points. We've
9 -- you know, they're definitely 41 that we've
10 decided those are what we're going for, but there
11 are a lot of maybes, you know. As we move further
12 into the design that we'll really solidify just
13 exactly what points are really eligible for
14 them, what makes the most sense to the owner.

15 MR. HUGHES: But -- and to your
16 point, the commitment is the Silver equivalent
17 which would be 50 or more points. And that has
18 been enhanced subsequent to the filing that I
19 believe you're referencing.

20 COMMISSIONER MILLER: Right. Okay.
21 Just two more questions, Mr. Chairman.

22 The proffer to provide \$5,000 or an

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1 in-kind equivalent contribution to Friends of
2 NoMa Park for the purpose of street scape, or I
3 guess park improvements within the boundaries of
4 the NoMa Business District, I assume that the
5 applicant is a member of the NoMA BID, and that
6 would be on top of whatever the applicant would
7 be making to the park -- can you just confirm
8 that that would be above and beyond whatever the
9 applicant as a member of the NoMa BID will be
10 contributing to the whole park plan, which the
11 District is contributing, I think, tens of
12 millions of dollars to.

13 MR. SIEGEL: If you're referring to
14 BID taxes, or proportion of BID taxes going to
15 that, yes, it's over and above what's required
16 of us.

17 COMMISSIONER MILLER: Okay. And then
18 the service driveway -- so, this parcel -- a
19 Phase -- this parcel 3 applicant owns half of
20 that, or who owns -- what is the ownership of the
21 service driveway, and what's the arrangement? Is
22 there an easement that's been provided for the

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1 use of the adjacent property owners?

2 MR. SIEGEL: If you're referring to
3 the driveway that goes down into the parking
4 garage, that's completely owned by the Phase 1
5 owner. If you're referring to the loading
6 section that's right next to that driveway, it's
7 completely owned by the Phase 1 owners. We're not
8 using any of those at all independent from what
9 -- in this building.

10 COMMISSIONER MILLER: So, you own the
11 --

12 MR. SIEGEL: The only thing we're
13 using, as was articulated by the other
14 Commissioners is the side entrance there, or the
15 side part of the building that we've been talking
16 about that we've been defining as the rear.

17 COMMISSIONER MILLER: Which you own.

18 MR. SIEGEL: Right. We own that
19 portion.

20 COMMISSIONER MILLER: Right.

21 MR. SIEGEL: As well as -- so, the
22 five foot walkway would be -- we'll be utilizing

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1 for trash removal, for move-ins and for access
2 to the bike room.

3 COMMISSIONER MILLER: Okay. All
4 right. Well, thank you very much, Mr. Chairman.

5 MR. SIEGEL: Thank you.

6 CHAIRMAN HOOD: Any other questions?
7 Let me just ask, you mentioned that you were
8 working with the ANC. Did they provide a letter,
9 or did I miss it? I may have missed it.

10 MR. HUGHES: Commissioner Hood, no,
11 they have not provided a letter. They have held
12 -- we met with their Planning, Zoning, and
13 Environment Committee -- sub PZE Committee in
14 --

15 CHAIRMAN HOOD: Okay.

16 MR. HUGHES: -- early June and
17 obtained unanimous approval referral to the full
18 ANC. That was then June 12th, and they had
19 questions regarding -- this is prior to Mr.
20 George's study on parking capacity and concerns
21 about the parking question, and the residential
22 parking removal from the registry, and

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1 determined to table our request until their July
2 meeting. So, we're returning to them in July.

3 MR. SIEGEL: I think it's July 10th I'm
4 presenting to them.

5 CHAIRMAN HOOD: Okay. And you have
6 all the answers?

7 MR. HUGHES: We believe so.

8 MR. SIEGEL: We've been working with
9 Ms. Chamberlin as recently as today.

10 CHAIRMAN HOOD: Looking forward to
11 seeing that letter.

12 MR. SIEGEL: Thank you.

13 CHAIRMAN HOOD: Also, DDOT had a few
14 things in their letter, it might have been two
15 or three things, of how -- the bike sharing and
16 some other issues they had. Where are you all?
17 You may have mentioned this, too, but where are
18 you on that?

19 MR. HUGHES: Certainly. With respect
20 to the loading management plan, I'm -- Mr.
21 George, I believe, covered that in the
22 testimony, but maybe you could speak to it with

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1 a little bit more specificity. And we submitted
2 it for the record. I gave my copy away but it's
3 a diagram, a hand-annotated diagram that shows
4 the proposal, and you should hopefully have a
5 copy.

6 CHAIRMAN HOOD: Is this what we got
7 tonight?

8 MR. HUGHES: Yes, sir.

9 CHAIRMAN HOOD: Okay.

10 MR. HUGHES: And with respect to the
11 complementary annual one-time membership in
12 bike or car share program, I believe Eric
13 mentioned -- Mr. Siegel mentioned that in his
14 remarks that the applicant concurs with that for
15 initial -- the initial lease-up of the building.
16 But with respect to the perpetual component, we
17 find that difficult, but for the first 41 units,
18 that would certainly be satisfied by the
19 applicant.

20 CHAIRMAN HOOD: So, you didn't agree
21 to it in perpetuity. You all didn't agree to
22 that.

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1 MR. HUGHES: Not the perpetual aspect
2 of it, but for the first -- for the full lease-up
3 of the building, we do.

4 CHAIRMAN HOOD: Okay. Mr. George, if
5 you could -- if we can go -- did you go through
6 this already? Let's do it again.

7 (Laughter.)

8 (Off the record comments.)

9 CHAIRMAN HOOD: I don't think it will
10 be necessary to dim the lights. Just show me how
11 that whole thing is going to work.

12 MR. GEORGE: Commissioner Hood, this
13 is L Street.

14 CHAIRMAN HOOD: You need to be on the
15 mike.

16 MR. GEORGE: I'm sorry.

17 (Off the record comments.)

18 MR. GEORGE: There are currently
19 meters along here. The side of the building
20 there's a side door at this point. I think Ms.
21 Hernandez said it's about 30 feet from the edge
22 of the building, front edge. And the trash room

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1 is back here at grade, access is to that 5-foot
2 strip that takes you out to the curb along here.
3 We think that typically based on the arrangement
4 that's going to be worked out with DDOT, you'd
5 have this area as where trucks would park for
6 either move-in or move-out, or for -- to receive
7 trash, to collect trash.

8 The loading to Phase 1 is here, and
9 this is -- the reason we thought of this area for
10 the loading is that it would be completely clear
11 of the Phase 1 loading access. So, trucks we
12 anticipate would come along here heading
13 eastbound, would park along the curb here, and
14 would receive trash.

15 I think the situation may even get
16 better, Commissioner Hood, because, you know,
17 DDOT is always innovating around the standard.
18 They're moving toward a metered-type of
19 arrangement for loading facilities, so I think
20 that's still evolving, but they're aware of it.
21 And, again, Mr. Booker and I had a lengthy
22 telephone and email conversation, so that's the

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1 proffer as of now. And it's going to be refined,
2 it's going to get better as we go forward.

3 CHAIRMAN HOOD: Okay, thank you. You
4 know, Mr. George, every time I see you, I think
5 about -- there was another case we had and I'm
6 going to go back to New York Avenue. And I
7 mentioned to you about the traffic on New York
8 Avenue. You said it wasn't -- the very next day
9 I was on New York Avenue, and there was no
10 traffic, so I'm not going to argue with you on
11 this either.

12 (Laughter.)

13 CHAIRMAN HOOD: And I actually
14 mentioned at another hearing, but you weren't
15 here, and I just -- because I don't know how you
16 do it. I really don't, because I normally don't
17 agree with traffic consultants, and you told me
18 there was no traffic on New York Avenue. The next
19 day I went out there, there was no traffic on New
20 York Avenue. And I'm going to leave it alone. You
21 don't have to respond. I just want you to know
22 that publicly.

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1 MR. GEORGE: I prepared a slide,
2 Commissioner Hood, for every hearing since then
3 to address that question, and the turn-in and
4 turn-out, and one day I will.

5 CHAIRMAN HOOD: Okay. Okay. All
6 right. Any other questions? Thank you. Any other
7 questions?

8 Okay. Let's go to cross-examination
9 of -- who is the ANC in this case? They probably
10 don't -- is anybody here from ANC? Okay, because
11 they're going to have another briefing in July.

12 Okay, Mr. Brown, do you have any
13 cross-examination?

14 MR. HUGHES: Just a couple.

15 CHAIRMAN HOOD: Okay.

16 MR. HUGHES: I believe, Mr. Siegel,
17 you testified -- is it correct that you're
18 expecting under the current plan to produce
19 12,000 square feet of extra density, that you
20 would not otherwise have, not going the PUD
21 route?

22 MR. SIEGEL: That's my understanding

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1 of the estimation, yes.

2 MR. HUGHES: How many dwelling -- I
3 mean, apartment units using your studio and one
4 bedroom models does that equate to, additional
5 units?

6 MR. SIEGEL: I'm going to estimate
7 it's about 24, 500 square feet on average. Is
8 that right?

9 (Off-mic comment.)

10 MR. SIEGEL: Yes, so it's about 24
11 additional units. So, we have -- subtract 24
12 from 41, you're talking --

13 (Off-mic comment.)

14 MS. HERNANDEZ-AYALA: Yes, I think
15 15.

16 MR. SIEGEL: Did I get that wrong?

17 MS. HERNANDEZ-AYALA: 15 to 20.

18 MR. BROWN: Yes.

19 MR. SIEGEL: I could submit it.

20 MR. BROWN: I don't want to hold your
21 feet to the fire.

22 MR. SIEGEL: I apologize. I wasn't

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1 -- I guess I wasn't dealing with core, but --

2 (Off-mic comment.)

3 MS. HERNANDEZ-AYALA: 15.

4 MR. SIEGEL: I apologize.

5 MR. BROWN: And then you also
6 referenced as part of your amenities the public
7 park, which is in Phase 2?

8 MR. SIEGEL: No, I didn't say that was
9 part of our amenities. I'm saying that as part
10 of the PUD itself, the Phase 1 and Phase 2 PUD,
11 they -- a public park open to the public is an
12 amenity. I'm not saying we're proffering it as
13 amenity. It's already there. We're not taking
14 any credit for that; although, we did take credit
15 for that as the owner of Phase 1, and Phase 2
16 before we sold it.

17 MR. BROWN: And Mr. -- I'll just jump
18 around if that's acceptable. Mr. George, you
19 indicated that for the entire Square 749, 506
20 parking spaces were approved.

21 MR. GEORGE: Yes.

22 MR. BROWN: 190 are required, and

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1 only 175 plus or minus have been built to date.

2 MR. GEORGE: Yes.

3 MR. BROWN: And where are those 175
4 parking spaces?

5 MR. GEORGE: The spaces built to date
6 are on in Phase 1.

7 MR. BROWN: Okay. And referring to
8 your drawing up here, and the trash for Phase 3
9 comes out the rear door and along that 5-foot
10 area toward L Street. That's correct?

11 MR. GEORGE: Correct.

12 MR. BROWN: And the only thing
13 separating the -- that trash pathway from the
14 Phase 1 loading area is a curb?

15 MR. GEORGE: I'll defer to --

16 MS. HERNANDEZ-AYALA: Yes.

17 MR. BROWN: And it's the standard
18 curb?

19 MS. HERNANDEZ-AYALA: A 5-foot
20 walkway and then the curb edge.

21 MR. BROWN: Yes. And it's just a curb
22 of standard dimensions? It's not type of

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1 barrier?

2 MS. HERNANDEZ-AYALA: No.

3 MR. BROWN: And what would prevent
4 somebody from, either for trash purposes or
5 move-in, or heavy groceries from running down
6 from L Street, stopping their car on the Phase
7 1 side of the curb to unload and go into the rear,
8 the bike area, the back of the lobby, or the
9 trash?

10 MR. SIEGEL: I can answer that. You
11 can't drive a car down there. It's only 5-feet
12 wide. It's only for walking. If you pull your car
13 from the street in front of the building and you
14 walk down the 5-foot access into the side of the
15 building. Is that your question? Maybe I didn't
16 hear --

17 MR. BROWN: Well, but it's separated
18 from the Phase 1 area just by a curb.

19 MR. SIEGEL: Are you saying what
20 would prevent anyone from driving onto the
21 loading area?

22 MR. BROWN: Yes.

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1 MR. SIEGEL: I mean, anyone can drive
2 onto the loading area now. It's part of the --

3 MR. BROWN: But, currently, there's
4 no destination that anybody would want to go to.
5 Correct?

6 MR. SIEGEL: Well, there is
7 destination. They can go to the -- they can park
8 there if they want to go to the Phase 1 building
9 to visit a friend. It's conceivable.

10 MR. BROWN: Okay. Could a drawing
11 C- and I forget, I don't have it in front of me,
12 the one that shows the roof plan and the
13 relationship of Phase 3 to Phase 1.

14 MR. SIEGEL: It's A-1-3?

15 MS. HERNANDEZ-AYALA: A-1-3, I
16 think.

17 MR. HUGHES: I think that was it.

18 MS. HERNANDEZ-AYALA: Okay. This
19 one?

20 MR. BROWN: You can see it from here,
21 but there was a plan --

22 MR. SIEGEL: My --

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1 MR. BROWN: Yes.

2 MR. SIEGEL: It's A-1-3.

3 MS. HERNANDEZ-AYALA: A-1?

4 MR. SIEGEL: A-1-3.

5 MS. HERNANDEZ-AYALA: The plan?

6 MR. BROWN: Yes. My question is that
7 the mechanical penthouse has been pushed all the
8 way as far as it can from L Street to the property
9 line of Phase 1, so that it's over -- it's now,
10 based on the elevations, it's now overlooking
11 Phase 1. Why couldn't that mechanical penthouse
12 be more centralized on the Phase 3 roof so as not
13 to be a burden on the Phase 1 project?

14 MR. SIEGEL: I can't answer from an
15 architectural standpoint, but I can state that
16 what we're trying to create on the roof in
17 addition to green space is living space for the
18 residents of this building, because how small it
19 is, there's only a certain amount of amenities
20 we can provide, and this is one, having the
21 opportunity for them to have space on the roof
22 to have -- to meet guests and for residents to

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1 enjoy the rooftop.

2 We don't see it as a burden of the
3 -- on the Phase 1 building because we're not over
4 pinning or cantilevering over that -- any part
5 of the Phase 1 building. And the -- if my memory
6 serves me, the -- what they call the Zen roof in
7 the Phase 1 building is two stories above that
8 set back in a considerable distance.

9 MR. BROWN: It doesn't appear to be
10 from the drawings, but I'd ask you to consider
11 that because, again, Phase's 3 benefit arguably
12 is Phase 1's detriment. And it -- the mechanical
13 penthouse doesn't have to be located right at the
14 boundary.

15 MR. HUGHES: Commissioners, if I
16 might take the opportunity. There's an item we
17 didn't address here. It's somewhat tangentially
18 related to this, is that the penthouse in the
19 earlier iterations we filed was 18-1/2 feet
20 tall. This penthouse that we're showing is
21 10-feet tall, so it's dramatically reduced from
22 what was proposed, just for your reference.

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1 MR. SIEGEL: If I may, this is also
2 -- this feedback that was -- this is as a result
3 of feedback from the ANC Zoning Committee, and
4 further consideration.

5 MS. HERNANDEZ-AYALA: And if I might
6 add, also, it's a very small floor plate with a
7 very efficient core layout. And the stair access
8 that is the egress to the building comes up to
9 the roof in that location, so there's not too
10 many other options with a tight floor plate of
11 that nature.

12 MR. BROWN: I'm done, Mr. Chairman.
13 Thank you.

14 CHAIRMAN HOOD: Okay. Thank you very
15 much. Let's move right along. Let's go to the
16 Office of Planning, and DDOT. We'll go to Mr.
17 Cochran, then we'll go to Ms. Chamberlin, and Mr.
18 Booker.

19 MR. COCHRAN: Thanks, Mr. Chair. For
20 the record, Steve Cochran, Office of Planning.

21 For the most part we'd like to stand
22 on the record, and most part means like 99 point

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1 something or other percent. We just have two or
2 three points of clarification.

3 When talking about IZ, it's based on
4 square footage, not number of units. Since the
5 applicant is asking for parking relief, as we
6 noted in our report, they should provide some
7 information that -- on how the Condition 2 in
8 Order 05-36E would be modified. It's very minor
9 but it may affect that 0.71 ratio of parking for
10 the overall project. Again, very minor.

11 And I just wanted, for the Zoning
12 Commission's benefit, to mention that the
13 applicant is not asking for zoning relief
14 because of loading -- excuse me, loading relief
15 because loading isn't required for this phase.
16 There was a lot of discussion about loading, but
17 they're not asking for relief.

18 And for everything else, I'd be
19 --anything else on parking and loading, I'd
20 defer to DDOT. And that completes my testimony.

21 CHAIRMAN HOOD: Okay. All right.
22 Thank you. Let's go to DDOT, Mr. Booker.

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1 MR. BOOKER: Hi, Lewis Booker from
2 DDOT. I have one comment regarding loading. Mr.
3 George and I have had ongoing conversations
4 regarding the proposed loading management plan.
5 And DDOT is in the process of changing our
6 curbside loading regulations. We're actually
7 going to start metering loading spaces. And I
8 don't know -- I'm not sure we're going to support
9 a curbside loading space in this situation
10 because looking at the block makeup, and the
11 commercial activity, there's just not a need for
12 a commercial loading zone. But what we will
13 continue to do is work with the applicant to come
14 up with a loading management plan that will work.
15 And we prefer to have residential loading take
16 place off street and not cross the sidewalk.

17 Residential loading takes a long
18 time. It's a very -- often a lot of trips. I
19 actually moved somebody last night using a
20 30-foot truck, and I know it's very -- it could
21 be an impediment to the public space if you have
22 to cross public space. So, I just want to put that

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1 on the record.

2 And a second issue is the proposed
3 service lane for Phase 1 that is being mentioned.
4 According to the documents we have it's a public
5 alley, it's a 10-foot wide public alley.

6 (Off microphone comment.)

7 MR. BOOKER: Okay. Well, I guess I'll
8 just leave that as it is, but as far as the
9 information we have on file, it's a public alley.
10 In fact, the plat that we have received with this
11 application still has the plat -- I mean, has the
12 area designated as a public alley.

13 (Off microphone comment.)

14 MR. HUGHES: We can certainly provide
15 a copy of the alley closing plat. It was a 10-foot
16 wide alley that was split in half, and two new
17 tax lots were created, 829 and 830. One reverted
18 to Phase 1 ownership, and one to the applicant.
19 I'll be glad to provide that for the record.

20 CHAIRMAN HOOD: That will be fine.
21 Okay, Mr. Booker, anything else?

22 MR. BOOKER: No. The only other thing

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1 is we stand by the record that we submitted.

2 CHAIRMAN HOOD: Okay. All right. And
3 you heard the discussion about -- Mr. Booker,
4 you heard the discussion about the last two items
5 in your report?

6 MR. BOOKER: Yes.

7 CHAIRMAN HOOD: Are you okay with the
8 response?

9 MR. BOOKER: Yes, up until initial
10 tenant leasing, yes. That's fine for the first
11 41 units.

12 CHAIRMAN HOOD: Okay, good.

13 All right. Let's open it up to either
14 Office of Planning or DDOT. Anybody? Vice-Chair.

15 VICE-CHAIR COHEN: Okay. Now, in a
16 lot of parts of the city I know that especially
17 where there are townhouses, everybody loads from
18 the front, so why is this different in that where
19 else would they, you know, load from in this
20 particular case? It just seems impractical if
21 they don't use L Street. How can you make this
22 work?

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1 MR. BOOKER: I think I was working
2 under the assumption that that 10-foot wide
3 aisle was a public alley.

4 VICE-CHAIR COHEN: Existed. Okay.

5 MR. BOOKER: Yes.

6 VICE-CHAIR COHEN: So, now you're
7 going to go back to the drawing board?

8 MR. BOOKER: Well, no.

9 MS. CHAMBERLIN: No, I think we
10 still prefer at this point -- again, this is a
11 Public Space Committee item that will need to be
12 worked out to designate a loading area. And we
13 would defer to that process where there'll be
14 more coordination. But at this moment our
15 loading group, our freight management group
16 doesn't feel the need to recommend a designated
17 loading area in particular. What residents can
18 do is what they do all over the city, is you go
19 and you apply for permit for emergency no parking
20 so you can do -- you would schedule your move in.
21 So, at this time, we're not recommending
22 designating taking metered spots away 24/7 to

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1 allow for a loading area at this building. But,
2 again, this will be determined, you know, during
3 our permitting phase in the Public Space
4 Committee process.

5 VICE-CHAIR COHEN: Okay, thank you.
6 Mr. Cochran, again, you're correct in assuming
7 -- you know, in saying that it's a percentage
8 inclusionary zoning based on square footage;
9 however, I didn't make the analysis of one extra
10 unit. I mean, it is part of the testimony, so my
11 question to you is, are -- would you be satisfied
12 with the additional unit? Maybe this is not a
13 fair question, but I just -- you know, you
14 brought it up.

15 MR. COCHRAN: The applicant is
16 providing 2 percent additional space for
17 affordable housing. The way that they're
18 configuring units is their choice. That choice
19 is providing an additional unit They would be
20 required, based on the layouts of the rest of the
21 place, they'd be -- logically, they would give
22 three units. So, in essence, they're giving an

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1 additional unit.

2 VICE-CHAIR COHEN: Okay. I just --

3 MR. COCHRAN: That one unit would
4 C- the 2 percent is the proffer, which then
5 becomes a public benefit, let's say, of the
6 additional unit.

7 VICE-CHAIR COHEN: All right.
8 Obviously, I have higher standards than you do,
9 so --

10 MR. COCHRAN: I've known that for
11 years, Madam Commissioner.

12 (Laughter.)

13 CHAIRMAN HOOD: Any other questions?
14 Commissioner Turnbull?

15 COMMISSIONER TURNBULL: No, I just
16 wanted to say, Mr. Cochran, excellent report.
17 And I'm looking forward to your -- OP's
18 follow-up on rear yard, side yard per ZRR.

19 CHAIRMAN HOOD: Okay, any other
20 questions? DDOT or Office of Planning? Does the
21 applicant have any cross?

22 MR. HUGHES: We don't. Thank you,

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1 sir.

2 CHAIRMAN HOOD: Okay. Mr. Brown, do
3 you have any cross? Mr. Brown? Okay. And, again,
4 no one is here from ANC 6C.

5 MR. BROWN: I'm sorry. In your report
6 dated June 17th, it says -- and you've got the
7 chart in page 4 and 5, and you say for loading
8 for the Phase 3, none required. And then will use
9 either Phase 1 and Phase 2 facilities or public
10 space.

11 MR. COCHRAN: Yes, that's what I
12 wrote.

13 MR. BROWN: And is there still a plan
14 to use Phase 1 loading facilities? Because I
15 haven't heard that in previous testimony.

16 MR. COCHRAN: This is based on the
17 overall case and, as I said, they'll use either
18 one of the other two phases, or the street. I
19 would interpret the testimony tonight as
20 indicating that they probably wouldn't be using
21 Phase 1.

22 MR. BROWN: Okay. And it's unclear,

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1 and a similar question in the vehicle parking.
2 OP is not considering any reliance on Phase 1 or
3 Phase 2 for parking?

4 MR. COCHRAN: No, that's why we
5 emphasized, there's been some ambiguity in
6 whether the applicant is actually asking for
7 that parking relief. They had initially, then it
8 seemed to drop out. That's why we emphasized that
9 they need to be asking for and receive relief
10 from parking.

11 MR. BROWN: Thank you.

12 CHAIRMAN HOOD: Okay, thank you.

13 MR. HUGHES: Commissioner -- Chair,
14 could I clarify the last statement from Mr.
15 Cochran?

16 CHAIRMAN HOOD: Sure.

17 MR. HUGHES: We do not need to be
18 seeking relief from parking. Is that correct? We
19 need to be adjusting the language of -- the
20 condition of the PUD, as I understood your
21 testimony earlier.

22 MR. COCHRAN: No. I am suggesting

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1 that you do need to be asking for parking relief.

2 MR. HUGHES: Thank you.

3 CHAIRMAN HOOD: Okay. Report of other
4 government agencies? Did I miss anything? Can
5 somebody help me?

6 MS. SCHELLIN: No, you didn't.

7 CHAIRMAN HOOD: Okay. All right.
8 Report of ANC, we're expecting to see that after,
9 Mr. Siegel, I believe you go out and meet with
10 them next month.

11 MR. SIEGEL: Yes.

12 CHAIRMAN HOOD: Okay. Organizations
13 and persons in support. Do I have any persons or
14 organizations in support? Do I have any
15 organizations or persons who are in opposition?
16 I do have someone on the witness list, Shirley
17 Bbouert -- are you from John Hopkins from the
18 class, the students? Weren't you all from Johns
19 Hopkins. How come you all -- you're all with the
20 same class that came the other night? Oh, okay.
21 Do you know what your instructor's name is,
22 because they didn't know the other night. Tell

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1 him I put him on blast tonight. Im really just
2 messing with you. We're glad to have you, but
3 tell your other schoolmates, classmates that I
4 put them on blast because they didn't know who
5 the instructor was. But we're always welcome to
6 have you, glad you could join us tonight.

7 I do have a letter here from Mozella
8 Boyd Johnson, property owner at 229 K Street. And
9 she has her issues as being opposed, and she
10 cites a number of different checkmarks. I don't
11 know if you all have it. It's Exhibit 22. If you
12 don't have it, I would encourage you to review
13 that, also.

14 Okay. Do we have any rebuttal? Oh,
15 you know what? I'm moving too fast. Mr. Brown,
16 I'm sorry. I didn't want to -- let me go to you,
17 Mr. Brown. You are a party in opposition. He was
18 about to let me just go right on out and skip over
19 you and close the hearing.

20 MR. BROWN: I wouldn't have let that
21 happen.

22 CHAIRMAN HOOD: Okay, good.

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1 MR. BROWN: But at this point, I don't
2 plan to present any direct testimony or
3 application. As we've mentioned before, I'd like
4 to respond -- I've gotten a whole bunch of things
5 tonight, we all have, and particularly Mr.
6 Sher's report, and anything else I received
7 tonight. And then, I mean, I think the record is
8 going to be left open for several things so that,
9 as necessary, respond to that.

10 I would also point out that there's
11 a fair amount of material in the motion to
12 dismiss, and motion to discontinue the set down,
13 which is factual in nature, and I would ask that
14 that be incorporated in the record for
15 evidentiary purposes, as well as why we
16 submitted originally.

17 CHAIRMAN HOOD: That's already part
18 of the record. We already dealt with that, and
19 the record speaks for itself. But I am concerned
20 about just carte blanche responding to
21 everything. I will allow a response of Mr. Sher,
22 anything else, but I think to rehash the case is

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1 not appropriate in front of this Commission, so
2 I want to make sure we fine tune what you're
3 responding to.

4 MR. BROWN: Sure. Well, as I
5 mentioned, Mr. Sher's report which, again, it
6 falls into the category of having been received
7 tonight. Anything that came in in the record
8 tonight, I believe would be fair game for me to
9 respond to.

10 CHAIRMAN HOOD: And I would agree
11 with that. I would agree with that.

12 MR. BROWN: But I don't plan to
13 revisit the record previously, and then anything
14 that comes out of ANC, anything going forward
15 from tonight.

16 CHAIRMAN HOOD: Okay. I have no
17 qualms or problems with that. So, you don't have
18 any direct opposition testimony. Okay. So, let
19 me still ask, do we have any questions of Mr.
20 Brown even from what he just said? Vice-Chair.

21 VICE-CHAIR COHEN: Thank you, Mr.
22 Chairman.

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1 Mr. Brown, the -- you have stated
2 two things, I believe, throughout the evening
3 that are perceived as negative impacts on Phase
4 1, and I'd like to just confirm my understanding.

5 One appears to be the impact of the
6 mechanicals on the roof, and how that impacts on
7 your roof, and the use of your roof, meaning
8 Phase 1's roof. And, two, the possibility that
9 someone will utilize the 5-feet of driveway that
10 is on your side for their car for drop-off, for
11 other reasons that they may have to enter the
12 entrance that's on the side. Is that correct?

13 MR. BROWN: That's correct. And our
14 -- on Phase 1 it's much more than five feet. It's
15 only five feet on the Phase 3 side divided by the
16 curb, and then a much wider loading and service
17 area, and then also access beyond that to the
18 parking. It's an attractive nuisance. If I want
19 to go in that back door of Phase 3, and it's
20 actually a side door, but if I want to go in
21 there, or I want to take something out, I'm a
22 Scoff Law but I'm typical. I'm going to pull my

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1 car, truck, bus out there and just for a second
2 run in and run out. And I'm not going to be
3 deterred by a typical curb or any signage,
4 particularly loading area which is, you know, it
5 may not be the busiest place in the world at all
6 times. I think it's going to be an irresistible
7 force there, and that's an imposition on Phase
8 1.

9 I think also -- and we've danced
10 around it here tonight, but I tried to make the
11 point that this building is being built, and it's
12 going to have no parking, only 10 spaces are
13 required, but no one wants to admit it, but
14 people have in different ways gotten at the point
15 that there's this treasure trove of parking
16 that's available in Phase 1, which everybody
17 seems to -- and including the applicant and
18 others seem to be thinking that that's a great
19 reservoir of parking for the benefit of Phase 3.
20 And that's an assumption that I don't think we
21 should make, or the idea that well, we'll just
22 -- the people want parking, they'll rent their

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1 apartments in Phase 1. They're different types
2 of apartments, that may not be an option. So,
3 again, this big brother notion that Phase 1 is
4 going to take care of parking, I think is
5 misguided, and puts people at ease on the parking
6 where it shouldn't be.

7 VICE-CHAIR COHEN: Honestly, I did
8 not hear that tonight. I think everybody did
9 state, and it's my understanding -- I would
10 assume my colleagues' understanding that Phase
11 1 parking is out. That's impossible, so I think
12 if you review the record, you'll hear that other
13 people have stated that.

14 But my concern is, do you have a
15 C- will you have I presume staff on site so
16 somebody can be a "enforcer," to not having idle
17 -- people idling there. And I know you don't want
18 to do it but, you know, a lot of things in life
19 we don't want to do, like sit here tonight --

20 MR. BROWN: I don't have the answer
21 to that, but why should Phase 3 burden Phase 1
22 with that expense? I mean, you know, we all have

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1 to protect ourselves, but if we allow a situation
2 to exist that creates an attractive nuisance,
3 that shouldn't be at the expense of Phase 1, or
4 Phase 2 for that matter. And to say that well,
5 you may have to protect yourself is not a
6 particularly satisfactory answer.

7 VICE-CHAIR COHEN: It's a dog eat dog
8 world out there, but thank you for your
9 responses.

10 MR. BROWN: Well, I mean, the
11 alternative might be unpleasant to Phase 3. I
12 mean, conceivably, I don't think there would be
13 any restriction from putting up a very tall fence
14 or wall there. Nobody wants to do that. That
15 doesn't help Phase 3, it imposes an additional
16 expense of Phase 1, and it looks lousy. But
17 that's -- you know, one thing leads to another.

18 CHAIRMAN HOOD: Any other questions?
19 Commissioner Turnbull.

20 COMMISSIONER TURNBULL: Thank you,
21 Mr. Chair.

22 Mr. Brown, you mentioned about the

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1 penthouse on the Phase 3 building, which you
2 heard that the applicant has reduced down to 10
3 foot. You know that since it's on the south side
4 of the building that all shadows generated by
5 that structure fall on the applicant's own
6 building. And I'm just wondering, you were
7 talking about impact, the penthouse on your own
8 building is quite large that all the shadows on
9 whatever open space you have are going to be in
10 shadow by your own penthouse structure. And
11 that's falling on the applicant's structure. I
12 don't know if you actually had a chance to look
13 at a roof plan or a section and notice the
14 apparent structures and how they affect each
15 other.

16 MR. BROWN: I did not make that
17 comparison, but looking at the elevation I saw.
18 And, again, it changed so it got what, almost
19 8-feet shorter since I last saw it. So, again,
20 I want to be careful about what they're currently
21 proposing. But what I saw previously, in my view,
22 was an imposition on Phase 1, and unnecessarily

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1 so. I mean, it's more than just shadows. I think
2 you'd understand, it was visibility.

3 COMMISSIONER TURNBULL: Okay, thank
4 you.

5 CHAIRMAN HOOD: Commissioner Miller.

6 COMMISSIONER MILLER: Mr. Chairman,
7 you referenced that we had a letter in our record
8 from a person in opposition, Mozella Boyd
9 Johnson, property owner at 229 K Street, N.E.,
10 who submitted the letter dated June 7th, so it
11 was received by the Office of Zoning June 13th.
12 And one of the bases of her opposition is that
13 there hasn't been retail development at the
14 Phase 1 property.

15 So, I would just like if for the
16 party in opposition as the owner of the Phase 1
17 property, and as part of their post-hearing
18 submission to address that retail -- the status
19 of filling the retail space in that property.

20 MR. BROWN: Yes.

21 CHAIRMAN HOOD: Okay. I think that's
22 good. All right. Any other questions? Okay. Does

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1 the applicant have any questions of Mr. Brown?
2 Any cross?

3 MR. HUGHES: No, Mr. Chair, I don't.

4 CHAIRMAN HOOD: Okay. And the ANC is
5 not here. Okay. Let's do rebuttal, if you have
6 any rebuttal, and then closing.

7 MR. HUGHES: Mr. Chair, I think just
8 based upon your dialogue with Mr. Brown
9 regarding the nature of the post-hearing
10 submissions, we believe that we have provided a
11 complete and compelling record, and we look
12 forward to hopefully a positive response and
13 support for our application. Thank you.

14 CHAIRMAN HOOD: Okay, thank you.
15 Okay, Ms. Schellin, let's go down the list of
16 things that are due.

17 MS. SCHELLIN: Okay.

18 CHAIRMAN HOOD: And we don't have
19 anything?

20 MS. SCHELLIN: No, we do.

21 CHAIRMAN HOOD: Oh, we do?

22 MS. SCHELLIN: Commissioner May

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1 never allows that to happen. He knows I always
2 like to tease him.

3 First of all, Mr. Brown will be
4 allowed to provide comments on exhibits -- I
5 looked up what it was provided this evening.
6 Those are Exhibits 26-32A-3, so he'll be able to
7 provide comments on those by the date that we're
8 giving. And Commissioner Cohen thought that
9 -- or she'd like for the applicant to quantify
10 the one unit of affordable housing. She'd also
11 like information provided on the First Source
12 agreement for the Phase 1 of the PUD.

13 Commissioner May would like for them
14 to look at the existing and proposed building
15 code regarding the window fenestration on the
16 alley side, or they're going -- they suggested
17 that they would do that. He had no problem
18 providing relief, but they suggested they would
19 do that. He'd also like with regard to the
20 cornice, to take a look at that again. I'm not
21 sure what he wanted them to do to it, but maybe
22 look at it and do something to it. Revise

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1 drawings to show the lintels corrected, also
2 take a look at the -- I'm not sure I captured this
3 correctly, but moving the admin space to one side
4 or the other to provide a safer area. They're
5 going to provide a plat showing the alley closing
6 that was approved.

7 I included a date for the ANC report
8 since they advised that they were going to go
9 before the ANC again, I thought July 10th. Okay,
10 so I thought July 15th would be enough time for
11 them to provide the report, so if you want to
12 advise them, Mr. Hughes, of that. I'm sure you'll
13 encourage them.

14 All of the items listed for the
15 applicant and Mr. Brown to provide responses
16 would be July 12th. I lost my paper. And then the
17 applicant, since they're not given an
18 opportunity to provide rebuttal to anything that
19 Mr. Brown does tonight, I think would be allowed
20 to provide a response to what Mr. Brown provides.
21 They would be able to respond to what he provides
22 in writing, and then Mr. Brown would be able to

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1 provide his response to what the applicant
2 provides by July 19th, 3:00 p.m. Mr. Hughes,
3 you're looking at me C-

4 MR. HUGHES: Mr. Brown's responses
5 are due July 12th.

6 MS. SCHELLIN: Along with your
7 responses.

8 MR. HUGHES: And then we have until
9 the 19th to respond?

10 MS. SCHELLIN: No, you have until
11 C- and then you can provide a response to what
12 he provides July 19th.

13 MR. HUGHES: And then he has an
14 opportunity to respond to our response?

15 MS. SCHELLIN: You're going to
16 provide all of those other things. He gets to
17 respond to those things because he's a party
18 you're crossing.

19 MR. HUGHES: Got it. Got it.

20 MS. SCHELLIN: Okay. But the ANC has
21 until July 15th to provide their report since
22 they're not going to meet until the 10th. I don't

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1 think that giving them two days is enough time.
2 I think they need a little more time, because I
3 think that you need an opportunity to respond to
4 their report the 19th, so you need time to do
5 that. And Mr. Brown would have an opportunity to
6 do that, too.

7 Commissioners going to kill me, July
8 29th agenda.

9 (Off microphone comment.)

10 MS. SCHELLIN: It's not that bad.
11 It's four and four now, four cases, and four
12 cases.

13 CHAIRMAN HOOD: I was going to ask
14 everyone to leave out early because the BZA has
15 to meet tomorrow so Ms. Schellin can get the
16 room, but since she had another case on July 29th,
17 take your time, enjoy yourself. You can stay here
18 all night if you would like. No, I'm just
19 playing.

20 But, seriously, if we could exit the
21 room as soon as possible, because Ms. Schellin
22 has to get the room ready for tomorrow's BZA in

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1 the morning, so we appreciate it.

2 Do we have anything else, Ms.
3 Schellin?

4 MS. SCHELLIN: Draft Findings of
5 Facts, Conclusions of Law would also be due by
6 3:00 p.m., July 29th, and that is it.

7 MR. HUGHES: Commissioner, may I ask
8 a clarification. Again, pursuant to dialogue
9 with Mr. Brown in terms of the context of his
10 responses, what we filed I believe that fall
11 under Exhibits 26-32 include this updated set of
12 drawings. And I just don't want that to sort -- I
13 think we understand the spirit and the nature of
14 the --

15 CHAIRMAN HOOD: You filed that
16 tonight?

17 MR. HUGHES: Pardon?

18 CHAIRMAN HOOD: You filed that
19 tonight?

20 MR. HUGHES: Yes, sir.

21 CHAIRMAN HOOD: 27th?

22 MR. HUGHES: Pardon?

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1 CHAIRMAN HOOD: You filed that on the
2 27th. Is that one of the things you included?

3 MS. SCHELLIN: If you filed it today,
4 yes.

5 MR. HUGHES: Fair enough.

6 CHAIRMAN HOOD: Right.

7 MR. HUGHES: Okay, I stand on notice.
8 Thank you.

9 CHAIRMAN HOOD: Okay, so went through
10 a lot. I don't much how you're going to add, but
11 whatever you filed tonight is the agreement that
12 he can respond to. And be mindful, Mr. Brown,
13 that we have on the record, so you want to make
14 sure you hit the points that's going to convince
15 us in your way. Okay?

16 MR. BROWN: Understood.

17 CHAIRMAN HOOD: All right.

18 COMMISSIONER MAY: I have one other
19 question.

20 CHAIRMAN HOOD: Hold on,
21 Commissioner Turnbull has some --

22 COMMISSIONER MAY: Oh, I'm sorry.

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1 COMMISSIONER TURNBULL: Mr. Chair, I
2 have very little to add to this project. I think
3 it's an excellent project. My main sticking
4 point is still the rear yard. If the rear yard
5 is going to be classified as the alley, I can't
6 vote for this.

7 I think it's inconsistent with the
8 zoning regulations. I think there's precedent
9 on what we look at. I'm not opposed to granting
10 a variance for what would be the logical rear
11 yard position. That's fine. I guess considering
12 the location, the site, the surroundings and how
13 this building lays out within the urban context
14 of where it is, we could grant relief. I have no
15 variance really for that. But going 90 degrees
16 from the front of a building and calling that
17 the rear yard, when nothing in the zoning
18 regulations say that, just bothers me. To me,
19 it's illogical and doesn't make sense.

20 CHAIRMAN HOOD: Okay.

21 COMMISSIONER TURNBULL: I have no
22 problem with approving this project and granting

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1 the variances needed, but calling it a side yard,
2 a rear yard just doesn't make sense. Thank you.

3 CHAIRMAN HOOD: Okay. I think the
4 applicant has heard you, and I would caution him
5 to take heed to what you said.

6 Okay, Commissioner May. I'm sorry.

7 COMMISSIONER MAY: I just wanted to
8 clarify. We didn't actually receive the
9 PowerPoint that was shown tonight. We had a new
10 set of drawings, but there was information on the
11 PowerPoint that we didn't have in our hands.

12 MS. SCHELLIN: I thought that you
13 took -- that the wirebound was your PowerPoint.
14 Was that not your PowerPoint that was
15 architectural?

16 MS. HERNANDEZ-AYALA: The PowerPoint
17 was composed of images from the spiral bound that
18 we submitted this evening.

19 COMMISSIONER MAY: Wasn't there
20 information from the traffic consultant that
21 were not in there?

22 MR. BROWN: I think it was submitted

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1 separately.

2 COMMISSIONER MAY: I don't recall
3 seeing it. I mean, there was a technical
4 memorandum or two, and a drawing.

5 MS. SCHELLIN: Did that get uploaded
6 into ISIS?

7 COMMISSIONER MAY: Oh, there we go.

8 CHAIRMAN HOOD: Okay. While we're
9 doing that, Commissioner Miller?

10 COMMISSIONER MILLER: Yes, Mr.
11 Chairman. Thank you. I -- there's one thing I
12 neglected to say when I spoke originally. I
13 wanted to associate myself with Commissioner
14 May's remarks about the parking, and just say
15 that I would be more comfortable if some kind of
16 an agreement with the Phase 2 property that said
17 that it would be making available, if --making
18 available up to 10 spaces for the --for purchase
19 by the occupants of 10 -- up to 10 spaces for the
20 occupants of the parcel on the Phase 3 building.
21 Just that comment.

22 CHAIRMAN HOOD: Okay. Thank you,

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1 Commissioner Miller. Anything else? Mr.
2 Glasgow.

3 MR. GLASGOW: With respect to the
4 technical item that Commissioner Turnbull
5 raised, we very well may need flexibility with
6 respect to both rear yard and side yard. Haven't
7 done the side yard computation with a 5-foot side
8 yard.

9 COMMISSIONER TURNBULL: I'm
10 guessing, but I think reading Mr. Sher's,
11 there's no requirement for the side yard.

12 MR. GLASGOW: Yes, but if one is
13 provided, then it needs to be a minimum
14 dimension.

15 COMMISSIONER TURNBULL: Okay.

16 MR. GLASGOW: That's what I'm -- I
17 know this is very technical, but I want to make
18 sure that we have that -- that we have the proper
19 relief, so it probably may very well be rear yard
20 and side yard.

21 COMMISSIONER TURNBULL: I could be
22 flexible.

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1 CHAIRMAN HOOD: Okay. Any other
2 points that we need to get in? Anybody else?

3 Okay, so I want to thank everyone for
4 your participation tonight, and this hearing is
5 adjourned.

6 (Whereupon, the proceedings went
7 off the record at 9:49 p.m.)

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