

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 22, 2013

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:08 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN RICE, Zoning Specialist
STEPHEN VARGA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT

STEPHEN MORDFIN

MATT JESICK

ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on October 22, 2013.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Application of Daniel McKay and
Caroline DeMariz 4

Application of New Vision Properties, LLC . 12

Application of JBG/33 N Street, LLC 29

Application of Gary McNaughton 58

Hearing adjourned 108

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

2 10:08 a.m.

3 MR. MOY: Okay. I believe, Mr.
4 Chairman, on deck is Application Number 18637.
5 This is the application of Daniel McKay and
6 Caroline DeMariz pursuant to 11 DCMR 3104.1,
7 special exception to allow an addition to an
8 existing one-family row dwelling under Section
9 223, not meeting the lot occupancy requirements
10 under Section 403, court, Section 404, and a
11 special exception from the roof structure
12 provisions under Subsection 411.11 in the R-4
13 District at premises 1315 T Street, N.W., Square
14 237, Lot 8.

15 CHAIRPERSON JORDAN: Okay. Would
16 the Applicant and other persons involved in this
17 case please come forward to the witness table?

18 (Pause.)

19 CHAIRPERSON JORDAN: Please make
20 sure the microphones are turned on and please
21 identify yourself.

22 MR. TEASS: Good morning. My name is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Will Teass, an architect. Good morning. My
2 name is Will Teass. I am an architect with
3 Tektonics Architecture here on behalf of my
4 clients Daniel McKay and Caroline DeMariz here
5 today as well.

6 MR. MCKAY: Yes, good morning.
7 Daniel McKay, owner/applicant.

8 MS. DEMARIZ: Good morning. My name
9 is Caroline DeMariz and I am a co-applicant.

10 CHAIRPERSON JORDAN: Now, I
11 understand that procedurally there is an issue
12 or question that you might need additional
13 relief from 2001.3.

14 Let me turn to Office of Planning to
15 have you weigh in on why you believe they needed
16 relief from 2001.3.

17 Identify yourself, please.

18 MS. ELLIOTT: Thank you, Mr.
19 Chairman. For the record, I'm Brandice Elliott
20 with the Office of Planning.

21 We believe that the Applicant
22 requires relief from Section 2001.3 because the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 structure is nonconforming as it exists.

2 They are bringing it into greater
3 conformance with this request, but it continues
4 to be nonconforming. So, we believe that that
5 relief was necessary.

6 If I remember correctly -

7 CHAIRPERSON JORDAN: It's not an
8 enlargement or expansion of the nonconforming
9 use, right?

10 In fact, it's a reduction in
11 nonconforming use?

12 MS. ELLIOTT: Correct. The lot
13 occupancy is still being - it was being reduced
14 under this request.

15 CHAIRPERSON JORDAN: Okay. All
16 right. And still remains nonconforming.
17 Okay.

18 Does the Board have a feeling other
19 way? I believe we go ahead and add 2001.3 for
20 the relief.

21 I hope you understand the discussion
22 that we're having whether or not you need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 additional relief other than the relief in
2 addition to the -

3 MR. TEASS: Yes, sir. And we
4 actually in our supplement we indicated - we
5 sought the additional relief from 2001.3 in the
6 written documentation.

7 The other issue I wanted to clarify
8 was in regards to the roof structure setback
9 which is listed in this morning's agenda.

10 But it was later determined through
11 consultation with the zoning administrator that
12 that relief for that particular section was no
13 longer required. That was also included in our
14 supplemental statement.

15 CHAIRPERSON JORDAN: Okay.
16 Withdraw for that particular roof structure.

17 MR. TEASS: Correct.

18 CHAIRPERSON JORDAN: All right. Let
19 me find out - just a second. Is anybody here in
20 opposition to the relief being requested in
21 18637? Anyone in opposition?

22 (No response.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: Does the Board
2 have any issues particularly with this
3 application that they think they need to have
4 testimony regarding this application?

5 The way we normally proceed,
6 certainly the Applicant has the right to put on
7 any evidence and testimony in support of their
8 application, but there comes times when the
9 Board has already reviewed the record and may
10 believe that there's substantial enough
11 information already provided to grant the
12 relief.

13 And in doing so, the Board wouldn't
14 have any questions or have a real need for any
15 testimony being presented, but it's certainly
16 your right to do so.

17 If you think you really want to tread
18 those waters and say something that might get you
19 in trouble, you have the opportunity to do so,
20 or you can waive the hearing and we can move on
21 and just kind of proceed through.

22 MR. TEASS: I think at this point we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 don't have any further comments or we don't wish
2 to add anymore into the record. Thank you.

3 CHAIRPERSON JORDAN: Then with that,
4 let's turn to Office of Planning and see if
5 there's anything in addition that Office of
6 Planning wishes to -

7 MS. ELLIOTT: Thank you, Mr.
8 Chairman. Office of Planning is supportive of
9 this application and we are recommending
10 approval.

11 CHAIRPERSON JORDAN: Any questions?
12 Does the Applicant have any questions for Office
13 of Planning?

14 MR. TEASS: We don't.

15 MR. McKAY: No thank you.

16 CHAIRPERSON JORDAN: Is there anyone
17 here from the Department of Transportation for
18 this case?

19 We do have the letter - we have a
20 letter that we assume is a letter of support from
21 the Department of Transportation and they have
22 no objection to the application.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Is anyone here from ANC 1B? Anyone
2 here from ANC 1B on this particular case?

3 We do have a letter in support, which
4 the Board will grant great weight to, from ANC
5 1B that voted seven to zero in support of your
6 application.

7 Is anyone here wishing to testify in
8 support of this application? Anyone wishing to
9 testify in support?

10 Anyone in opposition? Anyone in
11 opposition? We normally turn back to the
12 Applicant for any rebuttal, but there wasn't
13 anything for you to rebut.

14 And we also then lead into closing,
15 but you're probably ready to close too, right?

16 MR. TEASS: Correct.

17 CHAIRPERSON JORDAN: So, with that,
18 then, we would close the record on this matter
19 and see if the Board is ready to deliberate.

20 With that, based upon the
21 documentation in the record which sufficiently
22 shows that relief should be granted with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 additional relief of 2001.3, I move that we grant
2 the relief requested.

3 MEMBER MAY: Second.

4 CHAIRPERSON JORDAN: Seconded. All
5 those in favor signify by saying "Aye."

6 GROUP RESPONSE: Aye.

7 CHAIRPERSON JORDAN: Those opposed,
8 "Nay."

9 (No response.)

10 CHAIRPERSON JORDAN: The motion
11 carries. Mr. Moy.

12 MR. MOY: Staff would record a vote
13 as three to zero. This was a motion of Chairman
14 Jordan to approve the application for the
15 amended relief.

16 Also, seconded by Mr. Peter May.
17 Also in support, Mr. Jeff Hinkle. We have a
18 board member absent and a board seat vacant.
19 Motion carries three to zero.

20 CHAIRPERSON JORDAN: Okay. Thank
21 you and summary order, please.

22 MR. MOY: Thank you, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. TEASS: Thank you very much.

2 (Pause.)

3 MR. MOY: The next application, I
4 believe, is Application Number 18639. This is
5 the application of New Vision Properties, LLC,
6 pursuant to 11 DCMR 3104.1, special exception to
7 allow an addition to an existing one-family row
8 dwelling under Section 223, not meeting the lot
9 area requirements under Section 401, lot
10 occupancy, Section 403, court requirements
11 under Section 406, and nonconforming structure
12 under Subsection 2001.3 in the R-4 District at
13 premises 229 12th Street, S.E., Square 990, Lot
14 817.

15 This is to relief that's been
16 advertised, unless there have been further
17 clarification.

18 CHAIRPERSON JORDAN: Okay. Would
19 you please identify yourself?

20 MR. SULLIVAN: Good morning, Mr.
21 Chairman and members of the Board. My name is
22 Martin Sullivan from the law firm of Sullivan &

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Barros, here on behalf of the Applicant.

2 MR. SPRINZEN: Justin Sprinzen,
3 owner/applicant.

4 MR. HALL: Michael Hall, Studio
5 CrowleyHall Architects for the Applicant.

6 MS. LEMLEY: And Christina Lemley
7 with Studio CrowleyHall for the Applicant.

8 CHAIRPERSON JORDAN: Your last name
9 again?

10 MS. LEMLEY: Lemley, L-E-M-L-E-Y.

11 CHAIRPERSON JORDAN: Okay. Let's
12 talk for a minute about the - so we can clarify
13 the relief necessary. Are we in agreement that
14 there is relief necessary from Section 406? Is
15 that an issue still?

16 I think Office of Planning raised
17 that as an issue. Are you familiar with that,
18 Mr. Sullivan?

19 MR. SULLIVAN: I believe so, but we
20 mentioned that in our - in the pre-hearing
21 statement that the Applicant filed, he included
22 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: I see that. I
2 see that he did add that in to require the relief
3 from the open court.

4 And you've modified this plan. The
5 original plan has been modified.

6 MR. SULLIVAN: That's correct.

7 CHAIRPERSON JORDAN: And you've had
8 the party status request withdrawn in this
9 matter, because you reached agreement to modify
10 your plans again in regards to satisfying those
11 in opposition.

12 MR. SULLIVAN: That's correct. The
13 changes may have -

14 CHAIRPERSON JORDAN: Could you tell
15 us for the record what that change was?

16 MR. SULLIVAN: Essentially it is, and
17 I can have the architect explain in more detail,
18 but the neighbor to the north asked for a
19 seven-foot setback and we provided a seven-foot
20 setback, and that's the extent of it.

21 CHAIRPERSON JORDAN: Okay. Let me
22 do this: I'm going to discuss with the Board if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 there's any other issues that they may have or
2 questions they have about this to see if we can
3 get right to those particular issues.

4 Does the Board have any particular
5 issues or questions they need to address with the
6 Applicant or want the Applicant to respond to?

7 Yes, Mr. May.

8 MEMBER MAY: I just have a slight
9 question. The court that's created by the
10 addition the way it is, is that court compliant,
11 or does it need relief?

12 MR. SULLIVAN: That one is compliant.

13 MEMBER MAY: That one is compliant.
14 It's a seven-foot minimum per court?

15 MR. SULLIVAN: I believe it's six.

16 MEMBER MAY: Six-foot minimum per
17 court.

18 CHAIRPERSON JORDAN: Six-foot
19 minimum per court.

20 MR. SULLIVAN: Yes.

21 CHAIRPERSON JORDAN: And so, this is
22 going to be a seven-foot court?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SULLIVAN: That's correct.

2 CHAIRPERSON JORDAN: Any other
3 questions? I think we're pretty set and pretty
4 straightforward where we are in this case, Mr.
5 Sullivan.

6 Certainly, you know our procedure
7 and you have the right to continue on and do
8 presentation and/or proceed --

9 MR. SULLIVAN: We're happy to stand
10 on the record and answer any further questions.

11 CHAIRPERSON JORDAN: Again, I
12 compliment you for working out the opposition.
13 As you know, we really try to encourage that.

14 So, let's turn now to Office of
15 Planning.

16 MR. JACKSON: Good morning, Mr.
17 Chairman. Arthur Jackson, D.C. Office of
18 Planning. I have presented the Board with the
19 report which is before you.

20 I won't go through the details of it,
21 but essentially we support the relief required
22 from 403.2, 404.1 and 2001.3A and B too.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 We also note that the - this project
2 went before the HPRB, the Historic Preservation
3 Review Board, and I'll read from the minutes of
4 the actual meeting that the Board approve the
5 concept with the condition that the Applicant
6 work with staff on the placement of a window and
7 any fencing to maintain a sense of openness on
8 the side court as that is closed.

9 The Board also requests the
10 Applicant work with the Capitol Hill Restoration
11 Society to incorporate their suggestions in the
12 final design.

13 I mentioned today, I think, prior to
14 the meeting that it may make sense to allow for
15 some flexibility for the placement of a window
16 on the side that the Historic Preservation
17 Review Board was talking about, unless they have
18 already come to a conclusion with the Capitol
19 Hill Restoration Society about the placement.

20 Other than that, we are - we applaud
21 the Applicant for their efforts. We know they
22 worked very hard to resolve the issues with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 neighbor and we recommend - we highly recommend
2 it.

3 CHAIRPERSON JORDAN: Thank you.
4 Does the Board have any questions of Mr. Jackson?

5 Mr. Sullivan, can you respond to the
6 window issue and the status of that? You can
7 have your clients respond to it.

8 MR. SULLIVAN: I think we do need or
9 would like some flexibility not only for that
10 reason, but we're continuing to work under the
11 MOU on those windows on that side.

12 So, if there's any way to put in a
13 summary order that we can be flexible and have
14 room for -

15 CHAIRPERSON JORDAN: For dealing
16 with the window issue.

17 MR. SULLIVAN: And material changes
18 in the windows. I don't know how we would
19 describe that, but we would like that
20 flexibility.

21 CHAIRPERSON JORDAN: You can keep
22 that and be sure to catch me before we resolve

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 this matter, Mr. Moy.

2 Do you have any questions of Office
3 of Planning?

4 MR. SULLIVAN: No, I don't. Thanks.

5 CHAIRPERSON JORDAN: Is there anyone
6 here from the Department of Transportation for
7 this particular case?

8 We have a letter of no objection
9 submitted by the Department of Transportation,
10 which is their support for the application.

11 Is there anyone here from ANC 6B?
12 ANC 6B. We do have a letter of support to which
13 the Board will give great weight to. ANC 6B
14 voted 10 to zero in support of this application.

15 Is there anyone here from - wishing
16 to testify or speak in support of the
17 application?

18 Yes, please.

19 MR. CHALIFOUX: Good morning.

20 CHAIRPERSON JORDAN: And I think we
21 saw another hand in support. Are you in
22 support? Yes, please come to the table.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Just give us one second until we get
2 --

3 MR. CHALIFOUX: Certainly.

4 CHAIRPERSON JORDAN: - Mr. Smeltzer
5 situated. Okay. Go ahead. Would you
6 identify yourself for us?

7 MR. CHALIFOUX: My name is Matt
8 Chalifoux. I am a co-owner and occupant of 231
9 12th Street, S.E., which is the property just
10 south of the subject property directly adjacent.

11 Just further, for the record, I'm a
12 licensed architect and I specialize in dealing
13 with historic buildings much to Mr. Sprinzen's
14 concerns.

15 I'm supporting the application with
16 some concerns. My concerns aren't regarding
17 the kind of zoning issues that this variance or
18 that the application is requesting. It doesn't
19 have to do with light and air, but understand
20 that these two buildings are both about 140 years
21 old, they were built in the late 19th Century at
22 about the same time and have for their entire

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 lives lived three feet away from each other.
2 And that this relief is going to create a
3 modification to that situation that we don't
4 really know what the potential physical impact
5 of that is.

6 I will say Mr. Sprinzen has been very
7 communicative with me about my concerns and has
8 been willing to work with me particularly as the
9 plan has been changing, to resolve the issue on
10 the north side of the property.

11 And he has agreed to continue to work
12 with me to try and develop a design in detailing
13 that works with my building and works with his
14 building including, and not limited to, trying
15 to limit the height of his addition to be no
16 higher than the roof line of my - the back of my
17 house, as well as trying to maintain the back of
18 his addition no further - hopefully no further
19 back than the back end of my house.
20 Potentially, a little further in.

21 Both in terms of construction and
22 detailing issues, those were issues that I was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 greatly concerned with. He's been willing to
2 work with me on that.

3 So, again, I'm in support of the
4 application with that understanding.

5 CHAIRPERSON JORDAN: Okay. All
6 right. We appreciate your testimony and the
7 Board will have to act accordingly.

8 When we give approval, we certainly
9 want continued support by applicants when
10 they've made representations that they're going
11 to work with neighbors and do certain things.

12 So, I'm just kind of letting you know
13 there's still some good faith that's got to
14 happen here because -

15 MR. CHALIFOUX: I understand. And I
16 have no reason to believe that Mr. Sprinzen
17 wouldn't continue to cooperate.

18 I mean, he's been very open and
19 communicative. So, I have every reason to
20 believe that we'll continue to work well
21 together.

22 CHAIRPERSON JORDAN: Okay. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you. Thank you for your testimony.

2 Mr. Smeltzer:

3 MR. SMELTZER: John Smeltzer. I
4 live at 227 12th Street, S.E. It's the property
5 just to the north.

6 Just this morning I reached a
7 Memorandum of Understanding with the Applicant
8 to address the issues we had raised regarding the
9 roof and the windows that would face the side
10 court that he's creating at our request. And I
11 thank Justin and his team for working with me and
12 getting this done.

13 I would like to file the Memorandum
14 of Understanding with the Board and then I'll be
15 done, and ask the Board to support the
16 application.

17 CHAIRPERSON JORDAN: Thank you.
18 Does the Board have any questions of any of the
19 witnesses?

20 Does the Applicant have any
21 questions of any of the witnesses?

22 MR. SULLIVAN: No, we do not.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thanks.

2 CHAIRPERSON JORDAN: Is anyone here
3 from Capitol Hill Restoration Society? We do
4 have a Letter of Support, but kind of says
5 conditional.

6 I guess they - it removes the
7 condition because it's in support of this issue.
8 So, I guess today's memorandum would trump the
9 conditional support of the support that's
10 contingent upon that support.

11 MR. SMELTZER: That's my
12 understanding.

13 CHAIRPERSON JORDAN: So, I'm going to
14 take it as a Letter of Support, but the letter
15 will speak for itself and it's not an opposition.

16 (Laughter.)

17 CHAIRPERSON JORDAN: So, we have that
18 and we really appreciate that input from Capitol
19 Hill Restoration Society.

20 Is there anyone here wishing to
21 testify in opposition? Anyone here wishing to
22 testify in opposition?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Seeing none, we will turn back to
2 you, Mr. Sullivan, for any rebuttal or closing
3 that you'd like to make.

4 MR. SULLIVAN: We have nothing
5 further. Thank you, Mr. Chairman.

6 CHAIRPERSON JORDAN: Good. Then we
7 will close this hearing and the record. Is the
8 Board ready to deliberate in this matter?

9 Based upon the information
10 submitted in the record and produced during this
11 hearing, then I would move that we support the
12 application for relief leaving some leeway in
13 our order for the modification of the window as
14 discussed in regards to the historic aspect of
15 it.

16 That would be my motion.

17 MEMBER MAY: Second.

18 CHAIRPERSON JORDAN: Motion being
19 seconded. Any further discussion?

20 MEMBER HINKLE: No, Mr. Chair. I
21 just think Mr. Smeltzer had something to submit
22 to the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: Yes, we're
2 going to add that to the record. Yes, thank you.

3 MEMBER HINKLE: Make sure that gets
4 in.

5 CHAIRPERSON JORDAN: I'm glad you
6 did that, because actually I just closed the
7 record without your document.

8 MR. SMELTZER: Right.

9 CHAIRPERSON JORDAN: And the record
10 will be open to accept that document.

11 MR. SMELTZER: All right.

12 CHAIRPERSON JORDAN: All those in
13 favor of the motion, signify by saying "Aye."

14 GROUP RESPONSE: Aye.

15 CHAIRPERSON JORDAN: Those opposed,
16 "Nay." The motion carries.

17 Mr. Moy.

18 MR. MOY: Yes, sir. Staff would
19 record the vote as three to zero. This was a
20 motion of Chairman Jordan to approve the
21 application for the amended relief that was
22 requested. Seconded the motion, Mr. Peter May.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Also in support, Mr. Jeffrey Hinkle.

2 We have a board member absent and a
3 seat vacant. The motion carries three to zero.

4 CHAIRPERSON JORDAN: Thank you.
5 Then let's have a summary order that's modified
6 with the information as the direction that the
7 Board already gave in this matter regarding the
8 window, please.

9 MR. MOY: Yes. I do have one quick
10 administrative question, Mr. Chairman. With
11 the changes in the court, are there new, revised
12 drawings that should be in the record?

13 CHAIRPERSON JORDAN: Mr. Sullivan,
14 did you - I thought you submitted something today
15 or yesterday.

16 MR. SULLIVAN: They're all - no,
17 we're in. What we have filed - what we filed two
18 weeks ago was -

19 MR. MOY: Okay. I just want to be -
20 I might have to confirm that.

21 CHAIRPERSON JORDAN: All right.
22 Thank you. All right. Then we will be in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 recess - thank you very much.

2 We will be in recess for about eight
3 minutes, and then come back in session. Thanks.

4 (Whereupon, the proceedings went
5 off the record at 10:29 a.m. for a brief recess
6 and went back on the record at 10:37 a.m.)

7 CHAIRPERSON JORDAN: All right.
8 We're back. How about that?

9 MR. MOY: Thank you, Mr. Chairman.

10 CHAIRPERSON JORDAN: When we sat here
11 and said let's call the case -

12 MR. MOY: I wanted to make this
13 official.

14 CHAIRPERSON JORDAN: All right.

15 MR. MOY: You're the presiding
16 officer, sir.

17 CHAIRPERSON JORDAN: Thank you, sir.
18 Thanks for keeping me honest.

19 MR. MOY: Okay. What we have before
20 the Board now is Application Number 18636.

21 This is the application of JBG/33 N
22 Street, LLC, pursuant to 11 DCMR 3104.1 and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 3103.2 for a variance from the loading
2 requirements under Section 2201, and a special
3 exception from the roof structure requirements
4 under Sections 411 and 770.6, to permit the
5 development of a residential building with
6 ground floor retail in the C-3-C District at
7 premises 33 N Street, N.E., Square 672, Lot 254.

8 CHAIRPERSON JORDAN: Thank you.
9 Would you make sure your microphones are turned
10 on and then identify yourselves, please?

11 MS. SHIKER: Yes. Good morning,
12 Chairman, members of the Board. My name is
13 Christine Shiker with the law firm of Holland &
14 Knight.

15 MR. ANDRES: Good morning. Erwin
16 Andres for Gorove/Slade Associates.

17 MR. KATZEN: Brook Katzen with JBG/33
18 N Street, LLC.

19 MR. WOODRUFF: Greg Woodruff with
20 Hickok Cole Architects.

21 MR. PERKINS: Devon Perkins with
22 Hickok Cole Architects.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: It's Parkins?

2 MR. PERKINS: Perkins.

3 CHAIRPERSON JORDAN: Perkins, okay.

4 Thank you. We've all turned in our witness
5 cards and etcetera and etcetera, right?

6 Mr. Perkins, unless the Board has
7 some objections, we would accept you into our
8 record as an expert in architecture.

9 Does the Board have any objection to
10 that? Let me see if there's any issues that
11 really flow from this project.

12 I remember this is the one kind of
13 a - your alley needs relief from loading, because
14 there's no alley there. It's kind of a small
15 dimension project. And then the roof
16 structure, light and air, yes.

17 Does the Board have any questions or
18 issue on this case that they need to have the
19 Applicant address?

20 Mr. May.

21 MEMBER MAY: Yes. So, this is a
22 portion of a larger T-shaped lot. So, I'd like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you just to address what, you know, why it is that
2 you're developing a portion of the lot and relief
3 is needed, because you're only developing one
4 kind of leg of the T.

5 And then the other question I have
6 is what we expect the frequency to be for the
7 occasions when you have - actually have - well,
8 phasing in is what you're talking about.

9 I wouldn't mind hearing about that,
10 but the - I'm thinking about loading for 55-foot
11 trucks and what we expect the frequency to be of
12 that since there obviously will not be a good
13 facility for doing that.

14 MS. SHIKER: Of course. Thank you.
15 So, the site is the western-most portion of a
16 T-shaped single lot that spans towards the
17 eastern portion of the square.

18 The property is going to be phased
19 in its development given its size and the
20 existing improvements on the site. And the
21 first phase is the western-most phase, which is
22 going to take in what was previously known as Lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 254.

2 I can have Mr. Katzen briefly talk
3 to you about how the anticipated phases will go
4 down towards the east end of the property.

5 There is an overall plan, a master
6 plan going on with this lot, as well as the lots
7 to the north that are also owned by the JBG
8 companies or entities related to them.

9 So, Mr. May, if you'd like for us to
10 walk through that - would you like for us to talk
11 about that?

12 MEMBER MAY: I'm mostly interested in
13 the properties that are onsite. The things that
14 are across the street don't really affect it, you
15 know, because your relief relates to loading and
16 the inability to get alley access and so on.

17 And, you know, if this were a
18 completely unencumbered site or the building,
19 you know, the existing seven-story office
20 building, I'm curious about that one. Because
21 if that wasn't there, then you wouldn't have very
22 good case to get the relief you're getting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 So, that's not really as -

2 MS. SHIKER: Okay.

3 MEMBER MAY: - straightforward in the
4 application as I think it should be.

5 MS. SHIKER: Okay. So, Mr. Perkins,
6 can you please put up the concept plan that shows
7 the entire lot?

8 (Pause.)

9 MS. SHIKER: Okay. So, this is -
10 this is one of - one of the - is something going
11 on with that? I can't really see it.

12 CHAIRPERSON JORDAN: We might need to
13 hit the lights ourselves.

14 MS. SHIKER: Okay. We can turn to
15 our books. So, with respect to the development
16 of this portion of the site, you can see that it
17 is somewhat narrow for the length and the
18 existing office building does constrain how far
19 we can go.

20 But any type of residential
21 development on this portion of the square would
22 require the provision of light and air, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 leads to our special exception relief.

2 With respect to the loading relief,
3 I think that it's - there's a variety of
4 arguments and issues that go towards the overall
5 site even if we were developing the larger
6 T-shaped lot.

7 And I'm going to turn to Mr. Andres
8 and ask him to walk you through what those
9 constraints are with the 55-foot loading berth
10 and DDOT's regulations.

11 MR. ANDRES: Good morning, Chairman
12 Jordan, members of the Board. My name is Erwin
13 Andres with Gorove/Slade Associates.

14 The practical difficulties
15 associated with the loading constraints that we
16 have consist of three distinct points.

17 The first is that in keeping with
18 DDOT's driveway design manual, they would want
19 at least our portion or our project to be
20 accessed by one curb cut.

21 And in providing that one curb cut,
22 the constraints because of the size of the lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and because of the turning movements associated
2 with it, providing one curb cut would be
3 difficult to allow for all access related to
4 loading and access to the garage to be in one curb
5 cut.

6 And we have shown that - actually,
7 if you can scroll to - yes, actually this plan.

8 CHAIRPERSON JORDAN: What's the
9 number of it, please?

10 MR. ANDRES: What's the page number
11 on that, Devon?

12 MEMBER MAY: Can I interrupt for a
13 second? I'm not sure if this is helpful to the
14 other board members, but really what I'm
15 interested in is the site as a whole.

16 I understand when you describe the
17 site and limit the site the way you have in this
18 plan, why the relief is needed and that's what
19 you're talking to.

20 I want to know why you are not making
21 more use of the rest of the site or what the, you
22 know, what's happening with the rest of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 master plan.

2 Are you going to be coming back and,
3 you know, continuing to cleave off parts of this
4 site and develop them in pieces and, therefore,
5 need relief every time you do it?

6 That's what I'm trying to get at. I
7 understand this one - and I think, you know, it's
8 an easy case for this site, because I see the
9 seven-story building and I can't see exactly how
10 big the dimensions are on it and why you can't
11 connect through to the other sites, but I want
12 you to say that.

13 I want you to explain to me why
14 that's the constraint.

15 MS. SHIKER: Okay. So, in terms of
16 -

17 CHAIRPERSON JORDAN: And a part of
18 that was what's the future request for that same
19 type of relief although it's not before us, but
20 just -

21 MS. SHIKER: Okay. So, at this
22 point, there is plans for a master plan for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 entirety of the T-shaped lot.

2 In working very closely with DDOT,
3 they have limited us to as few curb cuts as
4 possible given that there's no alley access and
5 that there is an existing building on the site
6 that is - it's not a terribly old building, it's
7 from the 1980s, that's currently on the site.

8 The limitations that we face are
9 three-fold. First, with the location of the
10 metro rail station at the end of N Street, any
11 type of master planning includes the desire to
12 create a streetscape to bring pedestrians there.

13 So, DDOT has worked closely with us
14 to locate a curb cut on N Street as far from the
15 metro entrance as possible.

16 Curb cuts would not be permitted on
17 First Street. So, the other option is to put
18 curb cuts on Patterson Street.

19 Given the width of Patterson Street
20 of only 50 feet and with parking on either side,
21 the ability for a 55-foot truck to traverse
22 through that and to access into the southern

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 portion of the site is impossible.

2 It would have to go through - and we
3 have a drawing that we can show you. It would
4 have to go through the cars, mount the other side
5 of the curb - and this is not even to comply with
6 front-in/front-out requirements. This is just
7 to physically get a truck into the site.

8 So, any type of access through
9 Patterson Street for the overall development is
10 - it's practically difficult given the street of
11 - Patterson Street.

12 MEMBER MAY: So, all future phases of
13 this you're not going to be able to put a 55-foot
14 truck in there no matter what.

15 MS. SHIKER: At this point, we are not
16 seeing how that would be possible. We have not
17 come up with our use distribution for the rest
18 of the project.

19 At such point as we do if we are
20 required to have 55-foot truck access, we will
21 have to come back to the Board.

22 MEMBER MAY: And you'd have to come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 off of First Street, is what you're telling me.

2 MS. SHIKER: If we were to comply,
3 we'd have to come off First Street, which I do
4 not believe would be granted by DDOT. An
5 additional cut, exactly.

6 MEMBER MAY: Well, you're going to
7 need additional cuts for the other phases, but
8 gradually.

9 MS. SHIKER: No, but we are hoping to
10 do any additional cuts off Patterson Street,
11 because you can't access smaller trucks off
12 Patterson and cars.

13 MEMBER MAY: Okay. And what's the
14 immediate future hold for the seven-story
15 building that's to the east of this site?

16 MR. KATZEN: That building is still
17 available for lease at this point.

18 MEMBER MAY: What does the future
19 hold for that building?

20 MR. KATZEN: Eventually it will be
21 part of the redevelopment of this overall record
22 lot. But 33 N Street, the project we're talking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 about today, is the most advanced in terms of
2 design.

3 MEMBER MAY: And I understand that.
4 So, I'm going to ask again, what does the future
5 hold for that building?

6 Are you going to tear it down, or are
7 you going to reuse that structure?

8 MR. KATZEN: Eventually we will tear
9 it down and redevelop that portion of the lot.
10 But for now, we're still trying to find -

11 MEMBER MAY: And will that be in
12 conjunction with the rest of the T, or is it going
13 to be in multiple phases after that?

14 MR. KATZEN: It remains to be
15 determined. Right now we're sort of breaking
16 this block into three phases, but it could
17 potentially be developed in one phase or more
18 than three phases.

19 MEMBER MAY: Three more phases, or
20 two more phases?

21 MR. KATZEN: Two more phases.

22 MEMBER MAY: Two more phases, okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So, I mean, who knows who's going to be, you know,
2 what kind of relief you might need and who might
3 be reviewing it, but I - what I'm concerned about
4 is that, you know, when you have a T-shaped site
5 and you start sort of cleaving off pieces of it,
6 that precipitates certain levels of relief.

7 If we were looking at this entire
8 site as a PUD, for example, that was phased over
9 three phases, it would be a different case.

10 It wouldn't necessarily mean that
11 this relief is not needed, but it would be a
12 different case. And there may be other
13 alternatives that would get you the loading
14 access that you would need and less relief would
15 be needed.

16 So, I'm just - I would want to
17 discourage this as an overall strategy when, in
18 fact, the smart thing to do might be to do a PUD.

19 MS. SHIKER: I believe that for this
20 T-shaped lot with residential development on the
21 west side, this relief would be needed no matter
22 what.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And I think it's because to create
2 the light and air you need, you have the court
3 wall setbacks.

4 And with respect to the 55-foot
5 loading berth, and I'll use this trigger 55-foot
6 loading berths, but with the 55-foot loading
7 berth we are constrained.

8 It is practically difficult on this
9 lot, the entire T-shaped lot, to provide that
10 access.

11 So, these two areas of relief I
12 believe are very specific to the overall lot, as
13 well as to the smaller portion on which we are
14 developing.

15 And we typically do not bring cases
16 in phases like this to the BZA, but we are
17 prepared to move forward in 2014 to pull permits
18 and start construction on the residential site
19 given the activity in NoMa. And we felt that
20 this was a unique situation in order to do that.

21 MEMBER MAY: Well, you know, I'm
22 bringing this up not because I believe that this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 application should be turned down, but I think
2 that I would want to encourage an overall
3 strategy that addresses a site that's this large
4 holistically rather than cutting it in pieces
5 and then needing to have relief, you know, every
6 time you come in because, you know, you can't fit
7 one thing in.

8 But if you looked at it
9 holistically, you might need less relief and you
10 might wind up with a better project.

11 CHAIRPERSON JORDAN: And that's why
12 I raise initially about the issue - the question
13 about phasing and you add it and it just kind of
14 went on, because what we've been getting here are
15 these things that actually should have been PUDs
16 that we've been doing bit by bit and piece by
17 piece, and then we go back and we have to alter
18 some other things.

19 And putting that kind of vision and
20 that kind of looking forward, it might even be
21 more beneficial to applicants to do especially
22 when they control the land, to do that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 But we're thinking, you know, that
2 kind of -

3 MEMBER MAY: And I think this
4 discussion is as much for the benefit of the
5 Office of Planning as anything else.

6 I know that Office of Planning is
7 very smart about encouraging PUDs when they
8 think that's the most appropriate way to
9 approach a particular project. And I think this
10 is just a very good reminder of that.

11 Again, I'm not opposed to this
12 project for that reason, but it does kind of beg
13 the question of whether this should be a PUD or
14 whether the next step in it should be a PUD when
15 it's just an L-shaped lot.

16 But I'll leave that up, you know, our
17 institutional memory, I think, will - lies
18 largely with the Office of Planning. So, I
19 expect that they will remember this and stay on
20 top of it.

21 Of course many of us may still be
22 here next time you come back no matter what. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 -

2 CHAIRPERSON JORDAN: Well, good.
3 Does the Board have any other questions?
4 Because I think we're there in regards to this
5 particular property and the need for the relief.

6 Does the Board have any other
7 questions of the Committee?

8 MEMBER MAY: The other question was
9 the frequency of 55-foot trucks.

10 CHAIRPERSON JORDAN: Oh, yes.

11 MR. ANDRES: As part of the plan,
12 we've identified a prohibition in the leases
13 that there will be no 55-foot trucks.

14 The amount of retail is relatively
15 small. It's only about 5,000 square feet. So,
16 the single-unit trucks that we show in our
17 templates that allow for front-in and front-out
18 loading into the loading dock, will help the -
19 will address the issue of loading for the retail.

20 In addition to that, DDOT in their
21 review letter also identified that in the event
22 that there is ever a need for a 55-foot truck,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that they would allow for the "No Parking"
2 restriction on the curbside.

3 In addition to that, the residential
4 units involved are one-bedroom studios and two
5 bedrooms. And as a matter of comparison,
6 U-Haul, in their website, says that typically
7 for a two-bedroom apartment you only need a 14
8 to 17-foot truck to handle those loadings.

9 MEMBER MAY: Okay. So, I do have one
10 last question on this. The retail is all the way
11 on the other side of the building from where the
12 loading dock is.

13 So, how are the goods that are going
14 to be loaded in a loading berth, you know,
15 perhaps even daily, going to make their way
16 across the building?

17 MS. SHIKER: Well, and the zoning
18 regulations do not require loading for retail up
19 until 8,000 square feet given that the small size
20 of that retail doesn't really generate a
21 significant amount of loading.

22 We do have loading facilities within

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 our loading berth. There is also space on the
2 lot and, you know, on the street where loading
3 can take place, but there is no loading required
4 for that retail space.

5 MEMBER MAY: I'm like all my
6 questions are going this way, and all my answers
7 are coming in a different direction.

8 So, how, I mean, does that mean that
9 the retail space is then going to be loaded off
10 the curb? Because that's what you're
11 essentially telling me.

12 It's not required, so, therefore -
13 MS. SHIKER: There is space within
14 the loading facility inside the building.

15 MEMBER MAY: Yes.

16 MS. SHIKER: And that will be a
17 managed loading facility. So, to the extent
18 that there is loading needed for the retail,
19 there will be space available for the retail.

20 MEMBER MAY: Right.

21 MS. SHIKER: There is also additional
22 space on the lot at this point that could be used

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 if we found that there was a need for loading that
2 couldn't be -

3 MEMBER MAY: On the lot adjacent to
4 the building?

5 MS. SHIKER: On the overall
6 thru-lot, there is loading space that's
7 available
8 if we found that our loading dock did not
9 accommodate the loading needs for the 5,000
10 square feet.

11 MEMBER MAY: Okay. That sounds
12 questionable to me, but -

13 CHAIRPERSON JORDAN: Yes, I was going
14 to say it kind of faded back on the question.

15 MEMBER MAY: Yes, I mean, your
16 challenge is why relief might be needed if
17 there's some access to other loading -
18 potentially access to other loading.

19 MS. SHIKER: There is - the relief we
20 need is for a 55-foot loading berth. We are
21 providing a 30-foot in place of a 55 loading
22 berth, because we cannot provide access for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 55-foot trucks from Patterson Street, is what
2 we've talked about as the practical difficulty,
3 and from N Street.

4 We're not asking to eliminate any
5 loading. It is just to change the size.

6 MEMBER MAY: Okay. So, I'm just
7 going to backup and go back to my original
8 question.

9 If somebody loads in at the loading
10 dock, how are their goods going to get to the
11 retail space?

12 That's all I want to know.

13 CHAIRPERSON JORDAN: Simple,
14 straightforward, kind of right to the direct -
15 we don't need to hear a whole bunch of other kind
16 of stuff.

17 MEMBER MAY: Is somebody going to be
18 rolling a cart across the lobby? Is that what
19 I'm going to see?

20 MR. PERKINS: They could.

21 MEMBER MAY: Okay. I mean, there
22 have been circumstances where I've asked that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 question and the owner says, gee, I don't know.
2 I think we need to fix that. And they look at
3 the architect kind of funny. So, that's why I
4 ask the question.

5 Clearly, you thought about it and
6 you understand what the risks are and we're not
7 talking about a lot of retail. So I think it's
8 okay, but I've seen buildings redesigned when I
9 ask that question.

10 CHAIRPERSON JORDAN: Any other
11 questions?

12 Mr. Hinkle.

13 MEMBER HINKLE: Yes, thank you.
14 Just a quick question. What's the frequency in
15 terms of people moving in and out?

16 Looks like there's 342 units being
17 proposed. And I'm assuming there's a
18 relationship to the size of units with this.
19 But typically in a building like this, how many
20 people move in and out all the time?

21 Do you have that number?

22 MR. ANDRES: Well, in an initial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 move-in, you know, obviously it, you know, once
2 the market stabilizes, I'm not quite sure what
3 the turnover is for a residential property for
4 this size and this space.

5 MR. KATZEN: During the initial lease
6 of the initial, call it, 18 months, we would hope
7 to have about 15 units moving in per month.

8 And once the building is stabilized,
9 hopefully we can retain our tenants and that can
10 come down to five per month.

11 MEMBER HINKLE: Okay. So, that's
12 essentially five people moving in, plus five
13 people moving out.

14 So, you can expect deliveries about
15 ten times a month in terms of residential moving
16 in and out.

17 MR. KATZEN: That sounds about right.

18 MEMBER HINKLE: Okay. Thank you.

19 CHAIRPERSON JORDAN: All right. I
20 think the Board is good in their questions in
21 what they would need the Applicant to do by the
22 presentation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Certainly you have the right to
2 offer anything else, but I think we are, you
3 know, the answers to the questions we needed to
4 hear, unless you just wanted to talk.

5 So, it's up to you, or we can go to
6 Office of Planning.

7 MS. SHIKER: We have no further
8 presentation. Thank you.

9 CHAIRPERSON JORDAN: Let's turn to
10 Office of Planning.

11 Mr. Jesick.

12 MR. JESICK: Thank you, Mr. Chairman
13 and members of the Board. My name is Matt
14 Jesick.

15 The Office of Planning supports the
16 application. We feel that the Applicant has
17 demonstrated that they meet the three-part
18 variance test for the loading variance, as well
19 as the special exception criteria for a rooftop
20 structure setback.

21 Therefore, we are recommending
22 approval of the application and I'd be happy to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 take any questions.

2 CHAIRPERSON JORDAN: Any questions
3 for Office of Planning other than - yes, go
4 ahead.

5 MEMBER MAY: Just one question.
6 Have you talked about the overall development
7 and discussed whether a PUD would be appropriate
8 for any portion of this?

9 MR. JESICK: No, we have not
10 discussed the possibility of a PUD. Certainly
11 it would be ideal if the whole site could be
12 planned at once.

13 MEMBER MAY: Yes.

14 MR. JESICK: Because it's a TDR
15 receiving zone, I think we might have a hard time
16 convincing them to go through the PUD process
17 given that they already have 130 feet in height
18 and they can max out their FAR.

19 Not to speak for them, but the
20 benefit of going through the PUD process might
21 not match the time and effort spent.

22 MEMBER MAY: Yes. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JESICK: But we can certainly
2 discuss it with them.

3 MEMBER MAY: Thank you.

4 CHAIRPERSON JORDAN: Any additional
5 questions of Office of Planning? Does the
6 Applicant have any questions of Office of
7 Planning?

8 MS. SHIKER: We do not. Thank you.

9 CHAIRPERSON JORDAN: Is there anyone
10 here from the Department of Transportation for
11 this particular case?

12 We do have a letter in our file of
13 no objection filed by the Department of
14 Transportation.

15 Is there anyone here from ANC 6C?
16 Anyone from ANC 6C? We have a letter in our file
17 from ANC 6C who voted five to zero to zero in
18 support of the application, which we will give
19 great weight as a board.

20 Is there anyone here wishing to
21 testify in support of the application? Anyone
22 wishing to speak in support of the application?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Anyone wishing to speak in
2 opposition to the application? Anyone in
3 opposition?

4 Then we would normally turn back for
5 rebuttal and closing to the Applicant, but I
6 think that you probably - there's nothing more
7 you really want to say.

8 MS. SHIKER: That is correct. Thank
9 you.

10 CHAIRPERSON JORDAN: Then we will
11 close the record in this matter and move to
12 deliberation.

13 Does the Board have anything they
14 want to say about this, or are you ready leave
15 that discussion?

16 Then based upon the evidence
17 received in this matter, then I would move that
18 we grant the relief requested by the Applicant.

19 MEMBER HINKLE: Second.

20 CHAIRPERSON JORDAN: Motion may be
21 seconded. Any discussion? All those in favor,
22 signify by saying "Aye."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 GROUP RESPONSE: Aye.

2 CHAIRPERSON JORDAN: Those opposed,
3 "Nay." The motion carries.

4 Mr. Moy.

5 MR. MOY: Staff would record the vote
6 is three to zero. This is on the motion of
7 Chairman Jordan to approve the application for
8 the relief requested.

9 Seconded the motion, Mr. Jeffrey
10 Hinkle. Also in support, Mr. Peter May. We
11 have a board member absent and a seat vacant.
12 Motion carries three to zero.

13 CHAIRPERSON JORDAN: Thank you, Mr.
14 Moy. I believe we're safe for summary on this
15 one.

16 MR. MOY: Yes, we are.

17 CHAIRPERSON JORDAN: Well, thank you
18 very much.

19 MS. SHIKER: Thank you very much.

20 (Pause.)

21 MR. MOY: That brings us, Mr. Chair,
22 back to Application Number 18635. This is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 application of Gary McNaughton pursuant to 11
2 DCMR 3103.2, variance from the floor area ratio
3 requirements under Section 771, to establish a
4 restaurant, café and fitness center in the C-1
5 District at premises 4415 Bowen Road, S.E. and
6 4414 Southern Avenue, S.E., Square 5365, Lots
7 176 and 177.

8 Possibly, Mr. Chairman, in your case
9 folder is there - well, it's a submission today
10 this morning from the Applicant, which is their
11 Letter of Authorization.

12 CHAIRPERSON JORDAN: Got it. And so
13 with the Letter of Authorization, we can
14 determine whether or not we want to accept it or
15 not or have them not be represented because it's
16 late.

17 MR. MOY: That's correct.

18 CHAIRPERSON JORDAN: All right.
19 We'll accept that in the record. All right.
20 Parties and persons for - and applicant, excuse
21 me, for 18635 please come forward. Anyone here
22 for that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Pause.)

2 CHAIRPERSON JORDAN: Would you
3 please make sure your microphones are turned on
4 and sit closely?

5 You did turn over your witness cards
6 to - did you get the witness cards? See, I was
7 going to ask and I saw you light up.

8 Have you turned over the witness
9 cards to the court reporter, please?

10 MR. VICTOR McNAUGHTON: We
11 apologize.

12 CHAIRPERSON JORDAN: You haven't
13 completed them?

14 MR. VICTOR McNAUGHTON: No, sir.

15 CHAIRPERSON JORDAN: All right. I
16 want you just to - now, I want you to identify
17 yourselves slowly who you are. And then I'm
18 going to ask you before you leave here, you
19 complete those cards and give them to the court
20 reporter.

21 So, if you would, give us your name.

22 MR. VICTOR McNAUGHTON: My name is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Victor -

2 CHAIRPERSON JORDAN: Is your
3 microphone on?

4 MR. VICTOR McNAUGHTON: My name is
5 Victor McNaughton. I am the architect of
6 record, representing my client.

7 CHAIRPERSON JORDAN: Okay. Spell
8 your last name so the court reporter can have
9 that since she doesn't have the benefit of -

10 MR. VICTOR McNAUGHTON:
11 MCC-N-A-U-G-H-T-O-N.

12 CHAIRPERSON JORDAN: Okay. Next.

13 MS. SEAWARD: Hi. My name is
14 Willette Seaward and I'm the public relations
15 consultant for the Applicant. And that's
16 S-E-A-W-A-R-D.

17 CHAIRPERSON JORDAN: Seaward, okay.

18 MR. GARY McNAUGHTON: Good morning.
19 I am Gary McNaughton. I am the owner/applicant.

20 CHAIRPERSON JORDAN: We already have
21 that spelling. Okay. Again, I know that you
22 were here. I know I saw you raise and get sworn,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 but you missed the part about filling out the
2 witness cards and giving them to the court
3 reporter before you testify.

4 So, a couple of housekeeping kind of
5 things - well, we do have the authorization
6 letter.

7 Did you present to the ANC? Do we
8 have ANC 7E's letter?

9 MEMBER MAY: It's not in the record.

10 MS. SEAWARD: Mr. Chair, I have one.
11 Exhibit 23.

12 CHAIRPERSON JORDAN: ANC 7E?

13 MS. SEAWARD: Yes. We signed it
14 September 10th.

15 CHAIRPERSON JORDAN: Okay. Maybe
16 I missed that. Let me take a second and --

17 MR. MOY: Are you sure that's not a
18 single-member district letter?

19 CHAIRPERSON JORDAN: From the ANC,
20 not just a single-member. I think it's
21 single-member, right?

22 Do you want to correct me? Did you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have a -

2 MS. SEAWARD: We did a presentation
3 before the 7E ANC on September 10th. And the
4 letter is dated by the vice chair and signed by
5 all members.

6 CHAIRPERSON JORDAN: We don't have
7 that.

8 MEMBER HINKLE: It's a little
9 unusual, because we usually get a report of a
10 meeting that states that there was a quorum.

11 It's very unusual to get something
12 - it's coming in on the single-member district's
13 letterhead and it does have signatures from the
14 other members of the Commission.

15 CHAIRPERSON JORDAN: Oh, does it?

16 MEMBER MAY: But it's got five other
17 signatures on it along with Linda Green, who is
18 the vice chair in the single-member district
19 7E02.

20 So, I mean, it's just unusual. I'm
21 not sure that it meets the standard for great
22 weight.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: Yes, let's take
2 a look at this a second. Thank you.

3 Well, at least they're aware of it
4 and that's the big thing. And we don't have any
5 real - I don't think we can accept it for great
6 weight, but we will take it in the record and
7 certainly use it in regards to some expression
8 of where the ANC is regarding this application.

9 It doesn't meet the requirements, as
10 Mr. May said, for great weight, but I think I -

11 MS. SEAWARD: If I may speak, we did
12 present before the ANC on their public date,
13 which was September 10th.

14 I see that - and I didn't know that
15 before that they mistyped - should not have -
16 just had the single-member district -

17 CHAIRPERSON JORDAN: It's more than
18 that. It's not just the mistyping or
19 single-member district. It's what the letter
20 has to contain -

21 MS. SEAWARD: Correct.

22 CHAIRPERSON JORDAN: - for us to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 give great weight to the letter.

2 MS. SEAWARD: Okay.

3 MR. GARY McNAUGHTON: Is that
4 something that can be resolved?

5 CHAIRPERSON JORDAN: We can proceed
6 on where we are and I think we - we can proceed
7 on where we are.

8 I don't necessarily think that we
9 have to supplement it. You can if you want, but
10 maybe it's too late for that.

11 MEMBER MAY: There's a form that they
12 can use, fill out and check the boxes and fill
13 in numbers so that it's - we're trying to make
14 it very easy for ANCs to make sure that they get
15 great weight.

16 MS. SEAWARD: Okay. Thank you.

17 CHAIRPERSON JORDAN: Okay. Then the
18 other issue - okay. I think the caption in this
19 matter, I think the caption - this building is
20 going to be a lot of different things. Is that
21 what I understand you are proposing?

22 There is going to be a restaurant,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a yoga studio and -

2 MR. VICTOR McNAUGHTON: Internet
3 café.

4 CHAIRPERSON JORDAN: Internet café.
5 Is it going to be more - when you say "internet
6 café," do you want to describe that to us so we
7 can understand what -

8 MR. VICTOR McNAUGHTON: Kind of a
9 similar Starbucks operation where you can have
10 tea, coffee -

11 CHAIRPERSON JORDAN: So, what's the
12 primary use of the building? It's going to be
13 primary for the serving of coffee and - what do
14 you call it?

15 MR. VICTOR McNAUGHTON: Coffee and
16 tea.

17 CHAIRPERSON JORDAN: And little
18 foods.

19 MR. VICTOR McNAUGHTON: Little
20 foods, yes.

21 MS. SEAWARD: Coffee shop.

22 CHAIRPERSON JORDAN: Coffee shop and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 people can use their internets while they're
2 there.

3 MR. VICTOR McNAUGHTON: Exactly.

4 CHAIRPERSON JORDAN: So, is that your
5 understanding, too?

6 MR. MORDFIN: Yes.

7 CHAIRPERSON JORDAN: All right. So,
8 what's our use? What's our criteria for -
9 what's our use classifications for this?

10 I'll defer to Planning, because - is
11 this going to be prepared foods? The people are
12 going to eat there? Are there going to be -

13 MR. VICTOR McNAUGHTON: It's just the
14 same where you would use a café where you prepare
15 sandwiches, you eat there, you know, and you
16 drink your coffee.

17 And then you go to your laptop, you
18 know, hook up a business meeting, so on and so
19 on.

20 CHAIRPERSON JORDAN: I understand,
21 but we're required to have a classified use, a
22 zoning classified use and we don't, to my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 knowledge, unless I missed the boat, didn't have
2 internet café as a use. And I don't have yoga
3 as a use.

4 So, let's do this: Let me turn it
5 over to Planning and then come back, unless, Mr.
6 May, did you want to say something?

7 (Discussion off the record.)

8 MR. MORDFIN: Good morning. Stephen
9 Mordfin from the Office of Planning. Yoga isn't
10 specifically listed. It falls under a
11 different category.

12 There was a text amendment recently.
13 Group instructional studio, it falls under that.
14 And that's a use that's permitted as a matter of
15 right. So, they would be able to do that as a
16 matter of right.

17 The other uses - my understanding
18 was that all the uses will be permitted as a
19 matter of right.

20 The other uses in the building
21 include -

22 (Discussion off the record.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MAY: There's a sit-down
2 restaurant and then a coffee shop, essentially.

3 MR. MORDFIN: Right. There's not a
4 fast-food restaurant in there, which would
5 require a special exception, but the sit-down
6 restaurant could go in there.

7 MEMBER MAY: Right.

8 MR. MORDFIN: And the coffee shop, I
9 think, would fit under the same thing. It
10 doesn't have this same expanded menu of, you
11 know, your typical sit-down restaurant. But if
12 they're serving coffee and -

13 MEMBER MAY: But, I mean, a coffee
14 shop like a Starbucks or something like that is
15 not considered a carry-out.

16 MR. MORDFIN: No, I do not believe so.
17 I can double-check that to make sure.

18 (Pause.)

19 MEMBER MAY: Ms. Glazer, do you have
20 a - did you want to weigh in on that?

21 MS. GLAZER: MR. Chair, I believe
22 everybody is clear that there is a restaurant use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and that there is, as OP says, a group
2 instruction center or studio use which would
3 bring in the yoga use.

4 But the question is - I'm looking to
5 see now. I believe there is a designated coffee
6 shop use.

7 MR. MORDFIN: There is.

8 MS. GLAZER: I'm not sure of that, and
9 that's what I was checking to see.

10 CHAIRPERSON JORDAN: Okay. Let's do
11 this -

12 MS. GLAZER: But I believe there is.

13 CHAIRPERSON JORDAN: Let's continue
14 where we are. And then while you take a look at
15 that so we can get our arms around that,
16 additionally - let me ask a couple questions
17 here.

18 It's my understanding that - I'm
19 kind of going back and forth with my
20 understanding.

21 This was one lot, and then it was
22 subdivided into two lots.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. VICTOR McNAUGHTON: Correct.

2 CHAIRPERSON JORDAN: But the whole
3 time there's been one building that was - there
4 was one building on the lot, correct?

5 MR. VICTOR McNAUGHTON: One
6 building.

7 MS. SEAWARD: One structure.

8 CHAIRPERSON JORDAN: One structure,
9 okay. One structure. When it was one lot,
10 there was one structure there.

11 That one structure remained when the
12 lot got subdivided; is that correct?

13 MR. VICTOR McNAUGHTON: Yes.

14 CHAIRPERSON JORDAN: Okay. So,
15 there's not two buildings.

16 MR. VICTOR McNAUGHTON: No.

17 CHAIRPERSON JORDAN: And so, what
18 you're proposing to do is to put a firewall
19 between this one structure to create two
20 structures? Is that what -

21 MR. VICTOR McNAUGHTON: We are
22 required by code to separate it, because the lots

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 are - there are no two lots.

2 So, that firewall will be a
3 structure wall, basically, because it was right
4 up on a basement wall of Lot 176.

5 CHAIRPERSON JORDAN: Okay. All
6 right.

7 MR. GARY McNAUGHTON: If I may add to
8 - the subdivision of the lot was done by the
9 former owner. It was their intent to sell the
10 two lots separately, but I was able to acquire
11 both.

12 So, when I acquired, there was no
13 physical partition between - legal partition.
14 So, now, moving ahead we'd like to make sure
15 there is a legal partition between the two lots,
16 and the plan allows that.

17 CHAIRPERSON JORDAN: And you're
18 saying it's required under the code?

19 MR. GARY McNAUGHTON: It's a code.
20 You have to separate people.

21 MEMBER MAY: You could theoretically
22 re-subdivide the lot and make it one again,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 right?

2 MR. GARY McNAUGHTON: At a cost, yes.

3 MEMBER MAY: At a cost. So, legal
4 fees and all that sort of thing.

5 MR. VICTOR McNAUGHTON: Well,
6 potential investment. If you want to do that,
7 maybe you want to, you know, keep it separate and
8 manage it separately.

9 MEMBER MAY: Right.

10 MR. GARY McNAUGHTON: My personal
11 long-term goal is to manage the two separate
12 entities.

13 MEMBER MAY: Okay. All right.

14 CHAIRPERSON JORDAN: Okay. Then I
15 understand where we are. I don't know if
16 there's any real hard questions that the Board
17 has for you.

18 Does the Board have any other
19 questions? I think that was something we really
20 had to get our arms around to understand what
21 you're really doing.

22 And we know the building has some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 particular issues, but have we seen Office of
2 Planning's response?

3 MR. VICTOR McNAUGHTON: I've seen it.

4 CHAIRPERSON JORDAN: Then you need to
5 present to us whether - where you disagree with
6 what their report said.

7 MR. VICTOR McNAUGHTON: Yes, I have
8 a document. Will you allow me to -

9 (Discussion off the record.)

10 CHAIRPERSON JORDAN: Okay. Did we
11 get it?

12 MR. VICTOR McNAUGHTON: Yes. I'm
13 asking the Board to allow this as part of the
14 record. It wasn't submitted earlier, but it's
15 become necessary to explain the practical
16 difficulty leading to the application.

17 (Discussion off the record.)

18 CHAIRPERSON JORDAN: You don't have
19 copies of it, do you?

20 MR. VICTOR McNAUGHTON: Not with me
21 now.

22 CHAIRPERSON JORDAN: All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Let's try to do the best we can and see what the
2 heck it is.

3 Why don't you describe it? Could
4 you identify what it is for us, please?

5 MR. VICTOR McNAUGHTON: It's a -

6 MEMBER MAY: You need to - you have
7 a microphone.

8 CHAIRPERSON JORDAN: You need the
9 wireless microphone. Is it up there? There's
10 a wireless microphone.

11 (Discussion off the record.)

12 MR. VICTOR McNAUGHTON: It's a site
13 - conceptual site that show you the existing
14 single story building and a proposal second
15 level at top.

16 Most significantly on this side
17 there is - this shows the split of the part where
18 the record is and how it bears down on the
19 basement level in Lot 276.

20 And at this point, it become a
21 structure concern to build a structure wall
22 without knowing the potential development of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proposed site.

2 It's basically a technical issue to
3 determine the proposed development height
4 before we can know whether at foundation level
5 the engineering necessary to build that wall.

6 We're required to build this wall to
7 separate property, but we have to know at the low
8 level the extent of engineering and our
9 potential investment to do that.

10 Because after we build this wall and
11 to come back again if the potential development
12 in here change, it would be a significant
13 hardship.

14 So, we are asking the Board, could
15 you grant a 0.6 FAR increase to allow this
16 development so we can submit and structure this
17 wall to get there?

18 CHAIRPERSON JORDAN: It's presently
19 0.8; is that right?

20 MR. VICTOR McNAUGHTON: FAR
21 currently is one -

22 CHAIRPERSON JORDAN: No, right now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the building is 0.8.

2 MS. SEAWARD: Correct.

3 MR. VICTOR McNAUGHTON: Yes.

4 CHAIRPERSON JORDAN: All right. And
5 where is the other - we need to be looking for
6 one set. Run that by me again.

7 MR. VICTOR McNAUGHTON: This is two
8 lots. Lots 177, 176.

9 CHAIRPERSON JORDAN: Yes.

10 MR. VICTOR McNAUGHTON: It has to be
11 physically divided. There's a basement
12 retaining wall at the lower level of Lot 176.
13 And that party wall line rests directly over it.

14 So, analysis of the structure we
15 build requires structure firewall. We have to
16 know and be concerned about the engineering of
17 this wall at this point.

18 And while you're thinking about
19 that, you have to think about the potential
20 height of that wall, because it affects the
21 structure and potential investment.

22 That's why we are here to ask the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Board of Zoning to approve a 0.6 to allow this
2 development. Then we know we can structure it
3 and build this wall and support it.

4 CHAIRPERSON JORDAN: Are you saying
5 you can't build that wall without getting
6 relief?

7 Building that wall automatically
8 triggers your FAR to go above one.

9 MR. VICTOR McNAUGHTON: It's how much
10 investment we put at this level. The area
11 predate, the zoning requirements predate it.
12 It's on the jurisdictional line between Prince
13 George's and D.C.

14 We think there are potential
15 investment here in the city. And in a few years
16 they might change the zoning rules to allow FAR
17 too in this area.

18 If that happen while we sit with a
19 first level building then, you know, we just got
20 stuck right there at this level.

21 So, we're looking at the potential
22 development of the site and saying will the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 give us the adjustment to allow two levels at
2 this time so we can adequately structure and
3 build it at this point.

4 MEMBER MAY: So, when do you plan to
5 build it?

6 MR. VICTOR McNAUGHTON: Once we go
7 through the approval process and permitting --
8 in 18 months, 20 months.

9 MEMBER MAY: Including the second
10 floor.

11 MR. VICTOR McNAUGHTON: Yes,
12 altogether.

13 MEMBER MAY: Okay. So, I mean, now
14 there's - well, I don't understand the argument
15 that you want to allow for something in the
16 future.

17 I mean, this is, you know, we do
18 adjustments for things that need to be - that are
19 going to be built within a specific time frame.
20 It's not a wide open thing.

21 I mean, 18 months or 24 months is
22 within the limit, I think. I don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 What's the normal time frame? Two years to get
2 a building permit?

3 CHAIRPERSON JORDAN: Yes, they have
4 it for two years.

5 MEMBER MAY: Yes, so your exception
6 is - or your variance would be good for two years.
7 So, you'd have to get a building permit within
8 two years, or else you'd lose the relief.

9 Did you talk to the Office of
10 Planning in advance about this project and work
11 with them about how to actually seek relief?

12 MR. VICTOR McNAUGHTON: I did. And
13 I got a response and I knew about the practical
14 difficulty here, but we were following the
15 process and time was moving and -

16 MEMBER MAY: Okay.

17 MR. VICTOR McNAUGHTON: - we had to
18 present it.

19 MEMBER MAY: I mean, I don't really
20 have other questions about the case. I think,
21 I mean, I understand the case right now, but I
22 -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: My question,
2 though, you can't subdivide this property - my
3 question, because I think it just got lost, you
4 can subdivide - you can subdivide this property
5 without needing an increase in FAR.

6 Yes or no. You could. You can
7 subdivide this property without doing the second
8 floor.

9 MR. VICTOR McNAUGHTON: Well, you're
10 looking at a potential -

11 CHAIRPERSON JORDAN: I understand
12 that.

13 MR. VICTOR McNAUGHTON: -
14 investment also.

15 CHAIRPERSON JORDAN: I understand
16 that. The answer to the question is either yes
17 or no.

18 MR. VICTOR McNAUGHTON: If we -

19 CHAIRPERSON JORDAN: I know what you
20 want to do. I know what your desires are.

21 I'm asking, can you subdivide this
22 property - can you subdivide this property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 without doing the second floor?

2 Maybe that's more direct.

3 MR. VICTOR McNAUGHTON: Yes.

4 CHAIRPERSON JORDAN: And subdividing
5 this property without the second floor would not
6 require increase in FAR; is that correct?

7 MS. SEAWARD: Yes, that's correct.

8 CHAIRPERSON JORDAN: That's what
9 I've been asking. Okay. Thank you.

10 Anything else you want to present to
11 the Board on your basis of support of your
12 application?

13 And certainly in light of the
14 recommendation of denial by the Office of
15 Planning, what do you want to present to us -

16 MR. VICTOR McNAUGHTON: I would say

17 -

18 CHAIRPERSON JORDAN: - so that we
19 don't listen to Planning?

20 MR. VICTOR McNAUGHTON: I would say
21 this is a people - an amenity for people in that
22 region.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And a sit-down family restaurant and
2 internet café for business meeting and you have
3 a fitness center, there is no such use near that
4 vicinity.

5 And I think it's a good thing. And
6 maybe if you want to go with it and we are asking
7 the Board to rule in favor of it.

8 CHAIRPERSON JORDAN: Does the Board
9 have any other questions of the Applicant?
10 Anything else you want to present at this time?
11 You certainly have a right to come back for
12 rebuttal, if necessary.

13 Okay. Then let's turn to the Office
14 of Planning.

15 MR. MORDFIN: The Office of Planning
16 recommends denial of this application, the
17 Applicant's request to increase the FAR from 1.0
18 to 1.6.

19 And the first leg of the test is to
20 demonstrate uniqueness of the property. The
21 subject property is developed with a one-story
22 building, one-story commercial building similar

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to the other ones that are within that square.

2 It currently conforms with the
3 zoning regulations for FAR and for lot
4 occupancy.

5 The changes that are requested by
6 the Applicant have to rest on whether or not
7 there's something unique about this property.

8 The Office of Planning doesn't see
9 anything unique. It's similar to the other
10 properties.

11 We're not against building a second
12 floor. If you're in conformance with the FAR,
13 a second floor is permitted.

14 The uses are permitted. And as for
15 the internet café, it depends, I think, how
16 they're going to operate it whether or not it
17 would fall under the classification of a
18 fast-food restaurant.

19 And I don't have the details of that.
20 It would depend on whether they're using -

21 CHAIRPERSON JORDAN: Or prepared
22 food shop.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MORDFIN: Right. If they're
2 serving things in disposable containers or - I
3 would need more information to determine whether
4 or not this actually was - it potentially could
5 be permitted by right. So, more information
6 would be necessary in order to determine that.

7 But we do recommend denial of this,
8 because we don't find any uniqueness to this
9 property compared to the ones that are
10 surrounding it within the C-1 District.

11 CHAIRPERSON JORDAN: You don't find
12 having one structure on two record lots an
13 exception?

14 MR. MORDFIN: That might make it
15 different from the other properties. I don't
16 see where that uniqueness then leads to a
17 practical difficulty in rehabbing these
18 existing one-story commercial structures.

19 CHAIRPERSON JORDAN: So, it's your
20 belief that they can - well, one, your report
21 said that it wasn't unique, but we're assuming
22 that's because you don't have any other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 properties that you reported that was a single
2 structure on two recorded lots. So, that would
3 make it unique in that regard.

4 But the practical difficulty side
5 you still maintain, because you say that they -
6 even if they did the firewall, create the
7 buildings, they could still operate it in that
8 regard.

9 Is that what you're saying?

10 MR. MORDFIN: Yes.

11 CHAIRPERSON JORDAN: Maybe I put that
12 in your mouth. I don't know.

13 Mr. May.

14 MEMBER MAY: Yes. The rest of the
15 buildings on that block, are they all one-story
16 buildings?

17 MR. MORDFIN: They're all one-story
18 buildings.

19 MEMBER MAY: Okay. So, typically in
20 C-1, can you characterize what we would see in
21 a C-1 commercial district?

22 Is it - I know there's a 1.0 FAR, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it's also there's, you know, you can have a
2 two-story building.

3 So, does that mean that they
4 typically in C-1, the buildings are only 50
5 percent of the lot, or are they typically single
6 story?

7 What's, you know, this is an unusual
8 circumstance, it seems to me. I'm trying to
9 figure out what typical C-1 is.

10 MR. MORDFIN: The other - I'm trying
11 to picture other C-1 districts and what I'm
12 picturing in my head is other one-story
13 commercial buildings. They're just lower level
14 commercial buildings.

15 MEMBER MAY: Right.

16 MR. MORDFIN: You could, I mean, if
17 you built the second floor, then you could
18 provide your parking behind or something like
19 that.

20 MEMBER MAY: Right.

21 MR. MORDFIN: It would allow for
22 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MAY: Right. So, the reason
2 I'm asking these questions is it does seem to me
3 that there are some unusual, significantly
4 unusual, I won't say "unique" yet, but
5 significantly unusual aspects to the property
6 given that it's two separate properties back to
7 back. One is quite shallow.

8 There are, you know, the existing
9 building has some constraints on it. It's not
10 clear to me whether the whole thing is going to
11 be demolished and rebuilt or whether you're
12 going to, you know, reuse some of the existing
13 structure to start with, but the point that I
14 would make is that it's, you know, the advantage
15 of building, you know, like a two-story building
16 so that you can have some open space for parking
17 or for some other use doesn't seem to exist here,
18 because it's almost like a thru-lot kind of
19 thing.

20 And if we were looking at these
21 really just as one single property, I'm not sure
22 what - why we wouldn't want to consider them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I mean, think about them both as
2 individual properties, especially the small
3 one. Wouldn't that in itself be kind of unique,
4 because it's landlocked and it's shallow and,
5 you know, it can handle two stories?

6 MR. MORDFIN: It could handle - I
7 don't know that either of them are landlocked.
8 They have frontages on two streets. They don't
9 have alley access. Although, I don't
10 understand exactly how -

11 MEMBER MAY: Well, I mean, they're
12 landlocked if they were in different ownership.

13 The only reason that they're not
14 landlocked is because they're owned by a single
15 person, right? I mean, don't they have
16 properties on either side and behind them?

17 MR. MORDFIN: There are properties on
18 one side. On the other side there is some kind
19 of drive-thru that -

20 MEMBER MAY: But that's not their
21 property, right?

22 MR. MORDFIN: To my understanding,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it's not theirs.

2 MEMBER MAY: Is it in an alley?

3 MR. MORDFIN: It's not a public
4 alley.

5 MR. VICTOR McNAUGHTON: It's a
6 private alley.

7 MS. SEAWARD: No, it's called a
8 thruway. It's not considered an alley, but it
9 looks like an alley.

10 MEMBER MAY: I've never heard the
11 term "thruway." What is it in terms of zoning?

12 MS. SEAWARD: That means you can go
13 from Bowen Road to -

14 MEMBER MAY: Right. So, who owns it?

15 MS. SEAWARD: It's actually -

16 MR. GARY McNAUGHTON: Five feet into
17 the - it's owned by the - five feet into that
18 thruway is allegedly mine. And five feet from
19 the other property is -

20 MEMBER MAY: Oh, okay. So -

21 MR. GARY McNAUGHTON: It's private,
22 but it's -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MAY: So, there might be an
2 easement through there?

3 MS. SEAWARD: Correct. Yes.

4 MR. GARY McNAUGHTON: Could be.

5 MEMBER MAY: So, I mean, I - maybe I
6 need more information on that. I think that a
7 case can be made for this.

8 The case has not been made by the
9 Applicant, you know. Obviously the Office of
10 Planning is not supporting it, but it seems to
11 me that a case could be made to grant this relief
12 particularly when you dig into what has to be
13 done to protect this easement or whatever.

14 So, I mean, I'm - well, we're not at
15 the decision point, but I'm just making a few
16 comments.

17 CHAIRPERSON JORDAN: Yes, but I'm
18 playing with you, Mr. May, and -

19 MR. VICTOR McNAUGHTON: If I may add
20 something.

21 CHAIRPERSON JORDAN: No, no, no.
22 Any other questions of Office of Planning?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Let me ask, Mr. Mordfin, did you
2 actually go out to the property?

3 MR. MORDFIN: I did not go out to this
4 property.

5 CHAIRPERSON JORDAN: You guys don't
6 go out to properties anymore. I mean, the
7 reality is -

8 MS. SEAWARD: Yes, I mean, how can you
9 make a decision?

10 CHAIRPERSON JORDAN: Excuse me.

11 MS. SEAWARD: I'm sorry.

12 CHAIRPERSON JORDAN: Part of the
13 reality is so we can get the real gist of it of
14 where we are. Because, you know, what I got from
15 your report, and you do great work and I really
16 appreciate what you do, but when I first read
17 your report, I thought it was two buildings
18 already separated.

19 And then I kind of read the
20 Applicant's and I said, well, what's going on
21 here? That's why I asked the question.

22 And so, I guess in following up, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 May, with what you're saying, I also would like
2 to see something that shows me what - how this
3 building would be situated in relation to the
4 other buildings, if that makes any sense, you
5 know.

6 Is it something that's going to
7 really dwarf this area? Is it something that's
8 - and I don't know if you can give me that
9 information. That might be something that we
10 have to supplement it for, but that was just one
11 of my concerns.

12 Any other questions of Office
13 Planning from the Board?

14 Then let's - where am I? Anyone
15 from the Department of Transportation? We do
16 have a letter from the Department of
17 Transportation with no objection to this change
18 - this request.

19 Anyone here form ANC 7E? I should
20 have asked that earlier. We do have a letter in
21 our file from several single-member
22 representatives of 7E, but not the formal letter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 from 7E, and I guess that's the best way to
2 characterize it, who signed on in support of the
3 application.

4 Does anyone here wish to testify in
5 opposition - excuse me - in support of this
6 application? Yes, please come forward and
7 state your name.

8 MR. STEWART: Good morning.

9 CHAIRPERSON JORDAN: Make sure your
10 microphone is on and did you complete a witness
11 card for us?

12 MR. STEWART: Yes, I did.

13 CHAIRPERSON JORDAN: Okay. And your
14 name, please?

15 MR. STEWART: Good morning. My name
16 is Gregory Stewart. I am an ANC commissioner,
17 ANC 7C02. Also, chairman of ANC 7C, but I'm
18 testifying as a regular patron, you know, of the
19 restaurant.

20 Here, basically, I testify in
21 support of Mr. Gary McNaughton. At the present
22 time, he owns the Pimento Grill which is a couple

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 doors down, 4405 Bowen Road.

2 What he did was he purchased this
3 building because when he first purchased the
4 building, it's a small, kind of carry-out
5 restaurant that exists. He's been there
6 several years.

7 What's happened is business has been
8 going so great and so wonderful that he needed
9 to expand.

10 So, instead of relocating, he
11 purchased a building that was much larger
12 allowing the facility - allowing him the ability
13 to expand to a full sit-down restaurant and
14 maintain the clientele in the same place about
15 50 feet down. That's kind of the purpose of
16 this.

17 When you look at the building, it
18 faces - he's on Bowen Road. It's kind of a
19 triangular shape, the roads. It has Southern
20 Avenue on the rear.

21 The two buildings when they would be
22 subdivided, the restaurant would be - the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 frontage for the restaurant would be on Bowen
2 Road.

3 The internet café, the yoga studio,
4 the entrance or access would be on Southern
5 Avenue. That's kind of going to be the dividing
6 line.

7 So, if they were able to separate the
8 two, there would actually almost be two separate
9 buildings - or we have two separate buildings
10 with two separate access points.

11 We supported - the community
12 supports the second level. The second level.
13 We wanted something to stand out a little bit.

14 Having spoken to Mr. McNaughton, we
15 were discussing something kind of like the
16 Lauriol Plaza which has the wonderful rooftop
17 deck which enables people to come out in the
18 summertime, sit down either inside or go out on
19 the outside.

20 Bowen Road is very high up in ANC 7E.
21 So, on that rooftop deck, you would have one of
22 the best views of the city skyline. You'd

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 actually be able to see the entire city skyline,
2 which was the desire of the community.

3 That's the main reason for wanting
4 the second level, because it has a sense of
5 ambience particularly in Ward 7 east of the
6 river. So, we're looking for a sit-down
7 restaurant that has ambience that's something
8 very northwest-ish, you know, kind of like
9 northwest style based on kind of like Lauriol
10 Plaza, you know, model.

11 So, that's pretty much what we were
12 looking for.

13 CHAIRPERSON JORDAN: Have there been
14 a lot of community meetings about this and
15 discussions?

16 MR. STEWART: Yes, they've had, what,
17 several community meetings. They've had
18 meetings at the restaurant. They walked
19 around, they've gone door to door, spoke to the
20 community, spoke to the neighbors across the
21 street. Spoke to the other business owners.

22 So, they've been, you know, very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 good communication. They're spoken out to many
2 of the community members that patronize the
3 restaurant on a regular basis.

4 So, everyone is fully in support.
5 Everyone is looking for a restaurant where you
6 can go and sit down and host, you know, host a
7 function in Ward 7.

8 CHAIRPERSON JORDAN: That's been one
9 of the biggest issues in a lot of areas like that.
10 You can't have that. You got to go outside the
11 neighborhood and community to do that.

12 So, if this second level, in your
13 opinion, how does a second-level facility there
14 appear in regards to - will it appear in regards
15 to the surrounding other buildings?

16 Is it something that's really out of
17 line? I guess we haven't gotten any renderings
18 of what it would look like.

19 MR. STEWART: Well, I guess -

20 MR. VICTOR McNAUGHTON: The layout -

21 CHAIRPERSON JORDAN: Let me finish
22 with -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. STEWART: I guess the layout
2 would be - if you notice if you can see from that
3 one rendering, that the second level is closer
4 to the Southern Avenue side. Southern Avenue
5 across the border or Maryland actually has
6 structures that have two levels.

7 CHAIRPERSON JORDAN: So, this would
8 not be out of place.

9 MR. STEWART: It would not be out of
10 place. On the Bowen Road side -

11 CHAIRPERSON JORDAN: When you say
12 across from Southern Avenue, how high, I mean,
13 that's outside the District, but how high are -

14 MR. STEWART: They have about - they
15 have about four buildings that are two levels
16 directly across the street. So, it would be the
17 same height as Southern Avenue - on the Southern
18 Avenue side.

19 CHAIRPERSON JORDAN: Directly across
20 the street.

21 MR. STEWART: Yes, directly across
22 the street. On the Bowen Road side since the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 building - since the second level would be set
2 back, it would still appear to be a single-level
3 building inside D.C.

4 MEMBER MAY: That's helpful to me.

5 CHAIRPERSON JORDAN: Any other
6 questions? Any questions of this witness?

7 Anyone wishing to testify in
8 opposition? Then let's turn back to the
9 Applicant for any rebuttal or you wanted to make
10 some statement about the -

11 MR. VICTOR McNAUGHTON: Yes. I want
12 to say in the existing zoning it recommend a
13 forty feet height three story. And we are
14 taking it two story.

15 I also want to say that an increase
16 in height provide public business as well in
17 terms of residential employment. People who
18 live in the area could be employed.

19 And especially at the
20 jurisdictional line of Prince George's and the
21 District of Columba, it's like a gate in and out
22 of the city.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And I am hoping that the Board will
2 move to approve this to give some ambience to
3 that neighborhood center right there. So, I'm
4 asking you to move in that direction.

5 CHAIRPERSON JORDAN: Gotcha. All
6 right. So, does the Board have any other
7 questions of the Applicant?

8 Then let's conclude this hearing.
9 I did ask for opposition. Let's conclude this
10 hearing.

11 Does the Board have a feel one way
12 or the other? Ready to deliberate? Any
13 additional information that you may need?

14 Mr. May.

15 MEMBER MAY: Mr. Chairman, I think
16 that some further work is needed on this case.
17 Certainly we don't have enough, in my view, we
18 don't have enough information in the record to
19 approve the Applicant's case, but I don't
20 believe - I believe it's possible to make a case
21 for the relief that's requested. And I would
22 suggest that the Applicant could go back and do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a little more work on trying to demonstrate
2 exactly how the property is unique, you know.

3 The structural wall just isn't
4 enough. It's, I think, the overall
5 circumstance of the property that may have
6 something to do with this, quote, thruway that
7 has been referred to.

8 I also think that you can get some
9 assistance from the Office of Planning, because
10 I think that the Office of Planning, I mean, if
11 you look at these things as just separate
12 properties and the circumstance that those
13 individual properties and how they sit within
14 that block, you know, I think that the Office of
15 Planning might be able to see their way clear to
16 recommend an approval or maybe have suggestions
17 about how it might be modified so that you can
18 get the approval.

19 So, I mean, I think a little more
20 work on your part and, you know, further reports
21 from the Office of Planning would be very
22 helpful.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON JORDAN: Yes, I'm going
2 to suggest that I keep the record open and not
3 move this decision, because I think you're right
4 there, but you've just got to do a little bit more
5 something to get over.

6 I'd like to see a rendering, shots
7 and pictures of the area, so that we can see that
8 this is something that won't be unusual in the
9 area and that was very helpful by you.

10 You want to be sure to look at the
11 discussion about how you landlock. Let us know
12 also if there is an easement there on that
13 thruway, did you call it?

14 MR. VICTOR McNAUGHTON:
15 Pass-through.

16 CHAIRPERSON JORDAN: Pass-through.
17 And, I mean, I'm not - I think the single building
18 that is required to be made into two gives you
19 some, certainly, uniqueness there, but let's
20 just kind of tighten that up.

21 Anything you want to say, Mr. May?

22 MEMBER MAY: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON JORDAN: So, I'm going to
2 keep our record open for that. I think we can
3 go ahead and put this for a decision.

4 I'm going to ask you to meet with
5 Office of Planning to have a more thorough
6 discussion. I think Office of Planning
7 certainly will go out and take a look at it, sit
8 down with you and try to work with you on this.

9 Let's just move this. I don't think
10 we need to take any more testimony, but we will
11 keep the record open for supplemental
12 documentation submitted by you for this.

13 And let's then put this for a
14 decision, Mr. Moy.

15 MR. MOY: The staff is suggesting
16 December something.

17 CHAIRPERSON JORDAN: Or January
18 something.

19 MR. MOY: I was thinking November
20 19th. You want it longer?

21 CHAIRPERSON JORDAN: Well, we need to
22 give them some time. You don't have any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 immediate use that you're trying to do with this
2 anyway, because that's the question Mr. May
3 asked you.

4 Let's give them some time so they can
5 work it, make sure everything is here. There's
6 no need to really work - you may go back to the
7 ANC and ask for a formal letter from the ANC the
8 way it should be to be given great weight.

9 Come in with some community support
10 letters as you know how to work it, Mr. Stewart,
11 to get this.

12 So, either December 17th or the
13 first part of January will give you time to work
14 it.

15 I don't know if you've got financing
16 lined up and ready to go or if that's an issue.
17 We can move the date up.

18 Where are you on financing?

19 MR. GARY McNAUGHTON: We'll be
20 satisfied with a December/January date.

21 CHAIRPERSON JORDAN: Okay, good.
22 And that gives you time to work it and so that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you don't lose money.

2 If we force the Board to make a
3 decision here today, you might not make it over
4 the hump.

5 And you have to have three - all
6 three of us to agree on it as we sit here today.

7 So, Mr. Moy.

8 MR. MOY: Okay. Let's go January
9 7th, 2014.

10 CHAIRPERSON JORDAN: You're in the
11 cycle. It's in your control now just to get it
12 there.

13 MR. MOY: Submissions, Mr. Chairman,
14 would be - would be, let's say, Tuesday, December
15 31st.

16 CHAIRPERSON JORDAN: Okay. Sounds
17 good.

18 MR. MOY: Okay.

19 CHAIRPERSON JORDAN: Yes. With
20 that, then we will conclude this hearing and put
21 this on the decision calendar with those
22 meetings to supplement the record as described.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Also, I'm going to remind you to give
2 the witness cards to the court reporter, please.
3 So, we'll conclude this hearing.

4 Does the Board have any other
5 matters or anything that the Board needs to
6 address as we sit here today?

7 MR. MOY: No, sir. Just
8 administrative. They have plenty of
9 applicants. I notice that this southern
10 cross-section or north-south cross-section is
11 not in the record since it was displayed on the
12 panel.

13 CHAIRPERSON JORDAN: You want to
14 supplement that into the record.

15 MR. VICTOR McNAUGHTON: Sir.

16 CHAIRPERSON JORDAN: You want to
17 supplement -

18 MR. VICTOR McNAUGHTON: Okay.

19 CHAIRPERSON JORDAN: Put that in the
20 record or a rendering or a reduction of it.

21 All right. Anything else then?

22 So, we are adjourned this morning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

MR. MOY: We're adjourned.

CHAIRPERSON JORDAN: Thanks. We are
adjourned.

(Whereupon, at 11:42 o'clock a.m.
the hearing was adjourned.)