

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 7, 2014

+ + + + +

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 9:58 a.m., Lloyd J. Jordan, Chairperson, presiding.

The transcript constitutes the minutes from the Public Hearing held on January 7, 2014.

Reported by Daniel Michon

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commission Member (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
MATT JESICK
ARTHUR JACKSON

D.C. DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

LEWIS BOOKER

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

10:00 a.m.

CHAIRMAN JORDAN: Next on the docket, would you call our 18691, please?

MR. MOY: Yes, Application No. 18691. This is the Application of the Republic of Georgia, pursuant to 11 DCMR 1002. This is to permit the location of a Chancery in the D.C./R5B District at premises 1824 to 27 R Street, Northwest, Square 134 Lot 167.

CHAIRMAN JORDAN: Thank you. We're being joined by Marcel Acosta, who is replacing Mr. Hinkle, in regards to his role at the National Capital Planning. So, we're so glad to have him.

All right, please introduce yourselves.

MS. GIORDANO: Good morning, Mr. Chair, Members of the Board. My name is Cynthia Giordano from Saul Ewing Law Firm.

AMBASSADOR GEGESHIDZE: Good morning. I'm Archil Gegeshidze, Ambassador for Georgia to the United States.

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CHAIRMAN JORDAN: Welcome.

MR. SEAGROVES: Good morning.
I'm Cliff Seagroves, U.S. Department of
State's Office of Foreign Missions.

CHAIRMAN JORDAN: Thank you.
Good morning. We have before us, the
request to authorizing the Embassy for the
Republic of Georgia.

I think the file is pretty
straight forward, but there are a couple of
questions that we have.

But let me just take up
something, just a little bit out of order,
because I'm not clear, and I don't know if
the Board is clear, and I want to make sure
that prior to us having the testimony given
by the Applicant, I just need to get clear
from the Office of Planning, the issue about
the flag pole, because I didn't really see a
flag pole in the application. I saw it in
your report.

MR. JACKSON: Yes, for the
record, my name is Arthur Jackson, D.C.
Office of Planning.

Yes, the Applicant -- we met

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several times with the Applicant, and there was a reference made to a flag pole, and then I believe in the supplement, it actually listed that they wanted to put a flag pole in public space.

That would have been in front of -- I believe in front of the property on the -- on R Street.

CHAIRMAN JORDAN: It wasn't in the drawings though?

MR. JACKSON: Well, we requested that the Applicant provide a plan with that --

CHAIRMAN JORDAN: Okay.

MR. JACKSON: -- and there was a plan provided to our office, but it still didn't show a location for the flag pole.

But what we had asked them to do was, as we have in other cases, we asked the Applicant to consider instead of putting a flag pole in public space, which would be a permanent structure, which we all -- we encourage people not to do, is to attach it to the building, and we were able to communicate to the -- to our Historic

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Preservation Office. They were -- they thought that would be a good solution too, and we forwarded that application to the Applicant, and we have not heard a response from that.

But that was the whole discussion about a flag pole.

CHAIRMAN JORDAN: Okay.

MR. JACKSON: In fact, we noted in the Office of Planning report, that we did request a plan, showing the proposed location.

CHAIRMAN JORDAN: So, it was in the supplement, is where the actual -- okay, that answers the question.

MR. JACKSON: Right, there was some discussion, I think at the initial meeting, we mentioned the fact that public space requests are -- they have to -- the Applicant has the option to include public space requests in their submission for -- under Chapter 10, through the Board of Zoning Adjustment.

I think Applicant considered that option and decided to move forward with it,

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by the time they had done the submittal --
the supplemental.

CHAIRMAN JORDAN: Okay, I'm
clear. Board, are you? Okay, thank you,
Mr. Jackson.

Let me turn now back to the
Applicant and can you respond about the flag
pole issue for us, please?

MS. GIORDANO: Yes, thank you
very much. The original thought was that
they would put the flag pole in public
space, in the same place where it had
existed previously, when this property was
occupied by the Embassy of Singapore.

But we weren't able to find a
photo of exactly where that was, but the
property owner, who is actually here with us
today, had a recollection of removing it
when he purchased the property from
Singapore, and indicated that it was
immediately in front of the building and in
front of a concrete planter, which we showed
an approximate location to Office of
Planning.

But given the historic

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preservation and Office of Planning concern about the location in public space, Georgia is amenable to putting it on the building in lieu of in public space.

CHAIRMAN JORDAN: Okay, good, thank you, and that's acceptable to Planning also?

MR. JACKSON: Absolutely.

CHAIRMAN JORDAN: All right, great. I don't know if there is anything that -- in particular, that the Board needs to hear from the Applicant. If there is, I'm going to ask the Board Members to certainly -- let's put that in front of the Applicant now, if there is something in particular that you need to hear, that you want to hear. Otherwise, you can just move rather quickly with this particular hearing.

Is there anything the Board wants to drill down on? Questions that they need the Applicant to provide additional information on?

As I said, I think this is one that's pretty straight forward, especially since now, we've resolved the issue with the

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flag pole.

So, the Applicant has the opportunity, if he wished, to just proceed on and waive that -- any further evidence going forward, or you have the right to say whatever you want to say to the Board, if you think it's necessary to do so.

MS. GIORDANO: Thank you. It's not necessary, but in lieu of the -- in view of the fact that today actually is Christmas in Georgia and we've invited all of our good friends from Georgia to attend, instead of spending Christmas day with their families, I would like for just a moment, for the Ambassador to introduce himself.

CHAIRMAN JORDAN: Yes, that would be great. Thank you.

AMBASSADOR GEGESHIDZE: Thank you, dear Members of the Board.

Maybe this kind of case is very routine for you and you're considering these cases very, very frequently and very, very often.

But for us in Georgia, this is really is historic moment, because first

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ever in 20 years of diplomatic relationship between Georgia and United States, Georgia is very close to purchasing its own building.

So, so far, we've been renting out building, and the -- we are one of those very few countries around the world, who does not own their Embassies in Washington.

So, it is very historic moment for us in Georgia, and very much appreciative for your considering this case, and very hopeful for solution. Thank you.

CHAIRMAN JORDAN: Well, thank you, and welcome and Merry Christmas.

But yes, the Board, prior to holding any hearing or any discussions, we spend at least eight to 12, sometimes 14 hours individually, going through each and every file, and so, we're -- we scrubbed it pretty well.

You would have known, sitting here, if we had some issues. I think we're good at that, and so, but that's why we're -- we can move this along, but we really appreciate one, locating the Embassy here

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and that we're glad to do whatever we can to help, and I think your application supports that.

Counsel, is there anything else that you --

MS. GIORDANO: Only that if the Board is so inclined, we would appreciate a decision today, because there is a need for an expedited closing in this matter for budgetary regions in Georgia.

CHAIRMAN JORDAN: Okay, good. So, then, Board, any questions we need of the Applicant?

Then let's turn now to the Office of Planning.

MR. JACKSON: Good morning, again. Just briefly, the Office of Planning's report.

We find this application needs to stand for approval under the Chapter 10. We also appreciate the efforts and the communications provided by the Embassy, in addressing the questions that Office of Planning had and the willingness they had to address the final issue, which was the flag.

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We think this application -- this use will be suitable for the location and we note that they -- the Applicant is applying for a couple of diplomatic spaces in public space, but that's still on -- it would have to be considered by Department of Transportation.

That's a brief summary of Office of Planning's report, and again, we strongly recommend approval of this application.

CHAIRMAN JORDAN: Thank you.

MR. JACKSON: We strongly recommend that the Board not disapprove --

CHAIRMAN JORDAN: Right.

MR. JACKSON: -- this application.

CHAIRMAN JORDAN: Whoever wrote that language, it's like, okay, we have to vote not to disapprove.

Any questions, Board? Office of Planning? Applicant, any questions for Office of Planning?

Is there a representative here from the Department of Transportation? Department of Transportation?

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We do have a letter in our file from Department of Transportation, which they have no objection to the relief being requested.

Is there anyone here from ANC-2B? ANC-2B, wishing to speak?

We do have a letter, which we will give great weight to, from ANC-2B, seeking support -- supporting this request.

U.S. Department of State? Mr. Seagroves?

MR. SEAGROVES: I can forego my prepared statement. It is essentially the same as what you already have in your record. I can address any questions, if you have any.

CHAIRMAN JORDAN: And the U.S. Department of State finds this is in the best interest of the United States, to allow this Embassy to be located as requested.

Does anybody have any questions of the Board -- Board, any questions of any of the representatives of Department of State? Applicant, any questions?

Good, then we will flip back

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around. I was remiss about some -- I need to -- Counsel, supplement the file with your letter of authorization, because I don't have that. I need that from both -- for yourself, for the Republic of Georgia and from the landlord, because I don't have those things in the file. Do you, Mr. Moy? Am I correct?

MR. MOY: Well, the attorney can speak up, of course, but I was handed the letter of authorization this morning.

CHAIRMAN JORDAN: I see.

MS. GIORDANO: I apologize. It was dated a couple of months ago. I don't know why it didn't get in the record, but we thought the property owner is also present, if you need any confirmation.

CHAIRMAN JORDAN: Yes, as long as we have it in the record, then I'm okay.

So, we would -- so, that handles moving to what your rebuttal would be, you know, but that -- we turn back to you, if there is any closing statement that you wish to make.

Okay, Board, any additional

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issues or questions you would like to have addressed?

Seeing none, I would move that we not object -- not disapprove -- not disapprove -- I think this is a -- is there another Congress -- this is a Congressional Act, to use this language?

I move that we still -- disapprove the application for the Embassy. That's my motion.

MEMBER ACOSTA: Second.

CHAIRMAN JORDAN: Motion made and seconded. Any discussion?

MEMBER MAY: Yes, Mr. Chairman, I just want to clarify that -- noting that the application no longer includes the flag pole on public space.

CHAIRMAN JORDAN: Yes.

MEMBER MAY: Just so that that's clear for the record.

CHAIRMAN JORDAN: Okay, good. Any additional on this?

All those in favor of the motion, signify by saying 'aye'.

ALL: Aye.

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CHAIRMAN JORDAN: Those opposed, 'nay'. The motion carries. Mr. Moy?

MR. MOY: Yes, sir. Staff would record the vote as 4 to 0. This on the motion of Chairman Jordan to not disapprove the application, second the motion on Mr. Acosta, also in support, Mr. Peter May and Vice Chairperson Allen.

We have a Board seat vacant. The motion carries.

CHAIRMAN JORDAN: Very good. So, can we have a summary order, please?

MR. MOY: A rule making order, yes.

CHAIRMAN JORDAN: Rule making, this is rule making, right? So, we need a - - we need an expedited rule making order.

MS. GIORDANO: Thank you very much.

CHAIRMAN JORDAN: Very good. Thank you. Thank you and welcome. We're going to play musical chairs again, so, just give us a second.

I guess we should invoke a rule - - a procedure, like WWF, you've got to tag

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hands when you guys --

(OTR comments)

CHAIRMAN JORDAN: We're going to deal with -- let's deal with 1684 first -- 684.

MR. MOY: Okay, the next application before the Board is Application No. 18684.

This is the application of Howard University, pursuant to 11 DCMR 3103.2, a variance from the off-street parking requirements under Sub-Section 2101.1 for a hospital administrative space in the art/C2B District at premises 2018 Georgia Avenue, Northwest, Square 2877 Lot 1030.

CHAIRMAN JORDAN: Okay, all right. I believe the order we're going to have for today is 18684, and then we will deal with 18682, 18687, 18686 and then 18638.

Did I go too fast? Are you with me? I'll say them again.

MR. MOY: Yes, I've got the time. The attorney on this application, Mr. Chairman, is out in the hallway.

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CHAIRMAN JORDAN: Which one?

MR. MOY: She was -- just sat on this previous case.

CHAIRMAN JORDAN: On 18684?

MR. MOY: She is -- okay, she's back.

CHAIRMAN JORDAN: Okay, all right, did you call it already, Mr. Moy?

MR. MOY: Yes, I did, sir.

CHAIRMAN JORDAN: All right, okay, I was asleep. Okay, we do have the affidavit of posting in this matter. Did we get that in? We do have that, okay.

MR. MOY: Yes, we do, sir.

CHAIRMAN JORDAN: All right, please identify yourself.

MS. GIORDANO: Cynthia Giordano with Saul Ewing Law Firm, representing Howard University.

MS. TAYLOR-BENNETT: Maybelle Taylor-Bennett, Director of the Howard University Community Association.

CHAIRMAN JORDAN: All right, this is, I think, another pretty straight forward matter. It's just the relief from one

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parking space and have you -- I don't have any issues, after going through the application. I think you meet our guidelines and requirements, since we've now got the affidavit posting.

Board, any issues with this matter?

So, I'm going to -- the Applicant, as you know, has the opportunity to do a presentation or you can waive that and we can proceed on. I see your head shaking.

MS. GIORDANO: I think we're happy to waive that.

CHAIRMAN JORDAN: Right, sometimes -- I always say this, and people heard me say it before. Sometimes, people -- I think they have to say something, then they step in it.

So, they go from done to undone. So, good.

So, let's turn now to the Office of Planning and see if there is anything in addition that needs to be added to the application.

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MS. BROWN-ROBERTS: Good morning,
Mr. Chairman and Members of the Board.
Maxine Brown-Roberts from the Office of
Planning.

We are going to stand by the
recommendation of approval that was
submitted in our report. Thank you, Mr.
Chairman.

CHAIRMAN JORDAN: Board, any
questions? Office of Planning? Applicant,
any questions? You know how it is. You've
been here before today, many times, like
right here.

All right, so, then let's move to
representative of Department of
Transportation.

We do have a letter in the file
from the Department of Transportation with
no objection to the relief requested. I
don't have a letter from ANC-1B.

MS. BROWN-ROBERTS: You should.

CHAIRMAN JORDAN: ANC-1B? Do we
have -- was that subsequently filed?

We don't have it in our record.

MS. GIORDANO: I believe the

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Office of Planning has it, and we have a copy, as well.

CHAIRMAN JORDAN: Okay, but you know Office of Zoning has to have it with the application.

What was the result of the ANC meeting? If you can just tell us the bottom line.

MS. TAYLOR-BENNETT: Certainly. Again, Maybelle Bennett.

CHAIRMAN JORDAN: Do you have a letter you're just --

MS. TAYLOR-BENNETT: We have a letter.

CHAIRMAN JORDAN: Why don't we give that to the Board Secretary, so we have it?

Mr. Moy, before we make copies, would you tell us the resolution of --

MR. MOY: Okay, the resolution from ANC-1B is --

CHAIRMAN JORDAN: Drum roll.

MR. MOY: -- they asked that the BZA approve this variance and give great weight, appropriate to the support

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represented in this letter.

CHAIRMAN JORDAN: Let me see the letter, please. We can make copies later, and give it back to the Applicant, and go across the hall to do it.

I just want to see if we meet great weight standard.

MS. GIORDANO: I thought we had it. I had sent it to you.

CHAIRMAN JORDAN: Let me see this.

(OTR comments)

CHAIRMAN JORDAN: Okay, well, we will take this as -- we can't -- well, we can't accept this as a recommendation from ANC, because evidently in their meeting, they didn't have a quorum.

But we will take that -- that -- you had favorable review by the ANC-1B.

MS. GIORDANO: Correct.

CHAIRMAN JORDAN: The letter states they didn't have a quorum present, etcetera.

MS. GIORDANO: Correct, but they did have a quorum when they took the vote in

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Executive Committee.

CHAIRMAN JORDAN: All right, well, the letter doesn't indicate it.

MS. GIORDANO: Okay.

CHAIRMAN JORDAN: Well, quorum in Executive Committee is not -- that's not the quorum. So, they didn't have a quorum.

But anyway, moving right along. We accept that as their desire to be supportive, and it could have been one person, two people, or somebody could have stepped out for a minute, but whatever. We're okay.

Is there anyone in the audience wishing to speak in support of this application? Anyone wishing to speak in support of this application?

Anyone wishing to speak in opposition? In opposition?

Then we will turn back to the Applicant, to see if there is any closing -- rebuttal or closing you believe is necessary.

MS. GIORDANO: No, Mr. Chair. Thank you.

CHAIRMAN JORDAN: Very good. So, then we will close this hearing. Is the Board ready to deliberate?

I would move that we grant the relief requested in this application.

VICE CHAIRMAN ALLEN: Second.

CHAIRMAN JORDAN: Motion made and seconded. Any further discussion on readiness?

All those in favor of the motion, signify by saying 'aye'.

ALL: Aye.

CHAIRMAN JORDAN: Those opposed, 'nay'. The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4 to 0. This on the motion of Chairman Jordan to approve or grant the application with the relief requested. Second the motion, Vice Chairperson Allen. Also in support, Mr. Peter May, Mr. Jeff Hinkle. Board seat vacant. Motion carries 4 to 0.

CHAIRMAN JORDAN: Thank you, and a summary order, please.

MR. MOY: Yes, sir.

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CHAIRMAN JORDAN: Thank you very much.

MS. GIORDANO: Thank you.

MS. TAYLOR-BENNETT: Thank you.

CHAIRMAN JORDAN: With that letter, if we could, could you give it back to the Applicant, to go across the hall, make copies for us, and then we will just -- and bring those copies back to us.

Counsel, if you would -- yes, thank you.

MR. MOY: Thank you, Mr. Chairman.

CHAIRMAN JORDAN: All right, 682 I think.

MR. MOY: Application No. 18682. This is the application of the Government of the District of Columbia, pursuant to 11 DCMR 3103.2.

This Applicant is asking for relief from the variance, or rather for variance relief from the roof structure requirements under Sub-Section 411.3.

This is for a new Ballou public senior high school in the R5A District at

3401 4th Street, Southeast, Square 5978 Lot
59.

CHAIRMAN JORDAN: Good morning.
Would you please identify yourselves? Make
sure your microphone is turned on. Your
microphone has to be turned on.

MR. MIRANDA: Good morning.
Marcos Miranda.

MR. LUND: My name is Paul Lund.
I'm with Bowie Girdley Architects, Perkins &
Will, joint venture.

CHAIRMAN JORDAN: What is your
last name again?

MR. LUND: Lund, L-U-N-D.

CHAIRMAN JORDAN: Although I
don't find it to be a conflict, I didn't
know Perkins & Will is part of this. I used
to represent them, some years back. I am
not representing them now, nor have any
interest in this particular matter. So, I
am not going to recuse myself, but I didn't,
until you said that.

All right, this one, we need to
kind of work through it.

Have you had conversation with

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Office of Planning, about what the -- the thought about the additional relief that was necessary?

MR. MIRANDA: We have.

CHAIRMAN JORDAN: And do you believe it's necessary or not necessary? We can amend your application, as we sit, to do so.

But what is the status of that conversation?

MR. MIRANDA: We would like to amend the application.

CHAIRMAN JORDAN: To include Section 400.7, a set-back from the mechanical equipment for the roof enclosure and 411.5 on the height.

The other question about this application, was there a posting?

MR. MIRANDA: Yes.

MR. JESICK: Yes.

CHAIRMAN JORDAN: I don't believe we have, in our record.

MR. MIRANDA: It was emailed to the office, late on Friday, and we have the actual original copy here with us.

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CHAIRMAN JORDAN: Mr. Miranda,
what is your position?

MR. MIRANDA: I'm a consultant
for D.C. Government.

CHAIRMAN JORDAN: Consultant?
Wait a minute. You're consulting with D.C.
Government? Do we have authorization on who
is representing D.C. Government?

By consultant, you have -- you
mean what? There is --

MR. MIRANDA: We're program
managers for D.C. Government.

CHAIRMAN JORDAN: Do you have an
-- do we have an authorization letter from
D.C. Government, saying you can represent
D.C. Government?

MR. MIRANDA: We represent D.C.
Government on all public school --

CHAIRMAN JORDAN: I'm asking you
for --

MR. MIRANDA: -- projects.

CHAIRMAN JORDAN: -- this matter.
Do we have an authorization in our file,
giving you authorization, at this Zoning
Hearing, to represent D.C. Government?

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MR. MIRANDA: I can't say that
you do.

MR. MOY: I would confirm that,
Mr. Chairman.

CHAIRMAN JORDAN: That we do or
don't?

MR. MOY: We do not.

CHAIRMAN JORDAN: Give me a
second.

(OTR comments)

CHAIRMAN JORDAN: Well, we can't
because, you know, we have to still -- the
reason why we're here is to grant relief and
make sure the law followed, dotting the I's
and crossing the T's.

We have other D.C. Government
agencies that come before us, and they
follow the rules and processes to do so.

But we'll be glad to, upon your
request, waive the authorization letter, but
I'm going to ask that you get an
authorization letter and submit it to our
record, and we would do -- and we would need
that prior to us issuing an order, okay?

MR. MIRANDA: Not a problem. We

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can do that. Thank you.

CHAIRMAN JORDAN: All right, I do not believe there is any other issues that I have with this matter. Most of them was procedural.

MEMBER MAY: Yes, I am seeking some clarification, so, when -- well, first of all, I want to say this was a very hard application to understand.

You know, I certainly appreciate the fact that you have done detailed drawings, the describe the project, but seeing some of these things in 11 by 17 format, and not having a magnifying glass handy, it's very difficult to decipher the height of the building and where the -- you know, what exactly I'm seeing.

I'm an architect. I shouldn't have any trouble with seeing this.

So, the information -- this is just more for future reference, because you can answer my questions here.

It needs to be clear for us, you know, exactly what relief is being requested, putting aside the issue that you

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had with OPE, suggesting other relief, but a very simple diagram that shows where the roof top structures are, where the set-backs are and a diagram or a section that shows the height of the building and the measuring point and things like that.

I could not find that in this set of drawings, and it may simply be that my eyeglasses aren't strong enough, but again, it should be obvious to somebody like me.

So, that's what I would like to have clarified is, you know, point me to a drawing that shows what the building height measuring point is, and what the height of the building is, and then the height of the penthouses above that.

CHAIRMAN JORDAN: Especially since we're adding that into the relief.

MEMBER MAY: Yes. So, but those are my -- that's my major question.

CHAIRMAN JORDAN: Let me -- let's -- any other questions that we need the Board -- the Board has, that we need to get addressed?

Okay, go ahead. Please begin,

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please. Thank you.

MR. LUND: We have a presentation prepared that might shed some light on some of the questions that you're asking for clarification.

CHAIRMAN JORDAN: Okay.

MR. LUND: The measuring point and the height of the building was indicated. I apologize if the drawing was small. It's a very large building, and the side of it --

CHAIRMAN JORDAN: Right, that's a big building.

MR. LUND: -- is an issue.

CHAIRMAN JORDAN: Are you hooked for the screen already?

(OTR comments)

CHAIRMAN JORDAN: Okay, all right. Yes, we don't need the full presentation of what the project is at all. We know that.

If we can go and deal with the issue of the plans, per say, and respond to the question.

MR. LUND: Sure. This is just an

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illustration of the building. The building is triangular in shape, has four wings.

The questions that were being asked relate to where the enclosures are, the height --

CHAIRMAN JORDAN: Excuse me a second, please. Can we get the lights, please? Thank you. Do we have the pointer, just in case we need to, and we have a wireless microphone if you need to -- but you need to -- you're also moving the computer too. So, all right.

(OTR comments)

MR. LUND: So, this is the replacement for Ballou High School. The existing school sits on the athletic field you see here, which will be demolished.

This is the new building. There are three wings to the building.

There are five mechanical unit enclosures, four which were identified in our application, one here, one here and here, and one here.

A fifth was brought up on conversations with the Office of Planning.

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This one is very different than the other four. It is part of the mass of the building. It simply has the roof of the building recessed, so, when you see it from the street, it will look like the building face, rather than the others, which will have aluminum louver screens.

This is a three-dimensional view of the building. View of the front of the building.

The enclosures, you see one here. This is on the athletic wing, other on the academic wing, one over here over the band room.

This is the fifth, discussed with Office of Planning, and then there is another one here.

These are views of the building, and illustrate what will be seen or not seen in the mechanical units. There's one here.

The red indicates if we were to follow the Zoning Code directly.

This is the band room view of the building, and the unit that was discovered and discussed with Office of Planning, is

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behind here. There is a slab, ceiling height here. This is the dance room, and it's behind this wall.

That really concludes my presentation. If there are any further questions, I can certainly get into the details of the height.

MEMBER MAY: Yes, but I mean, where is the building height measuring point and what is the height of the building? I mean, that's particularly important if this newly discovered mechanical room, over the band room, or wherever you said, that's on this slide here.

MR. LUND: Over the dance room, here. The measuring point of the building is here, so the midpoint of the street, it's a significant slope, and the height --

CHAIRMAN JORDAN: From finished grade?

MR. LUND: Could I have the lights, please?

I'm afraid I don't have the height here with me. It is in the file, if I could have access to that, I could tell

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you what it is.

MEMBER MAY: So, you don't have this set of drawings? Is it on this set of drawings?

MR. LUND: Yes.

CHAIRMAN JORDAN: You need a microphone.

MEMBER MAY: Sorry. On this set of drawings.

So, I mean, if you want to take this and -- take this from me, and point it out, where it is, you can do that.

CHAIRMAN JORDAN: Yes, I've got that.

MEMBER MAY: So, you need to be on a microphone, whenever you're talking.

CHAIRMAN JORDAN: And you're talking to all of us.

MEMBER MAY: Yes, take it back with you.

MR. LUND: The measuring point is indicated by an MP on the first drawing, which is here.

MEMBER MAY: Right, and is there an elevation associated with that?

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MR. LUND: The elevation is
121.5.

MEMBER MAY: Okay.

CHAIRMAN JORDAN: What was that
again, please?

MR. LUND: One-twenty-one-point-
five. The height of the building is 171
four inches to the height of the parapet and
to the top of the screen wall, 182 eight
inches.

CHAIRMAN JORDAN: One-eighty-two-
eight inches?

MR. LUND: Yes. Now, the fifth
enclosure that was discussed with the Office
of Planning is the -- the height of that is
the height of the parapet of the building.
It is not a separate mechanical enclosure.

So, the height of that one would
be 171 eight inches --

CHAIRMAN JORDAN: Assuming we're
--

MR. LUND: -- four inches, excuse
me.

CHAIRMAN JORDAN: Four? Four
inches, right?

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MR. LUND: Four inches, yes.

CHAIRMAN JORDAN: Okay.

MEMBER MAY: Okay, so, an R-5-A zone, and I think the building height limit is 45 feet, is that right? For anything other than a house or something like that?

I'm looking at Mr. Jesick, just because he's --

CHAIRMAN JORDAN: It's R-5-A, yes.

MEMBER MAY: R-5-A, yes.

MR. JESICK: Yes, good morning, Members of the Board. My name is Matt Jesick.

The zoning regulations sated in Section 400.11 that in the R-5-A zone a public school building may be erected to a height not to exceed 90 feet.

MEMBER MAY: Ninety-feet?

MR. JESICK: Yes.

MEMBER MAY: Okay, so, I mean, that sort of changes the picture of the relief that might be needed for the -- for this extended parapet, if you will.

I mean, I was originally thinking

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that it was only 45 or 50 feet and you're already at 50 feet.

But if the building height is 90 feet, I mean, that -- there really isn't need for relief, if it's essentially -- essentially, what they're doing is extending the parapet up to a height of what looks like 50 feet. Is that right?

MR. JESICK: I believe you're correct. I would have to --

MEMBER MAY: Yes, okay.

MR. JESICK: -- examine the plans a little bit more.

MEMBER MAY: I mean, that was the concern that I had, is that I wasn't sure what relief was truly needed on this, and frankly, even with the -- with all of the -- I mean, you know --

CHAIRMAN JORDAN: Trying to find out what's going on.

MEMBER MAY: It's a little bit unclear to me, when you have a circumstance where the building is well below the height limit, whether having a roof top enclosure actually has to follow all of the rules for

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roof top enclosures.

MR. JESICK: I think we're -- we are just going strictly by the wording in 400.7, which just states, "If housing for mechanical equipment is provided on the roof, it shall be erected as follows."

MEMBER MAY: Right.

MR. JESICK: Which will be set back.

MEMBER MAY: So, it doesn't specify an excess of the -- of the building height limit, or something like that?

MR. JESICK: Correct.

MEMBER MAY: Yes.

CHAIRMAN JORDAN: This deals with set-back.

MEMBER MAY: Okay.

CHAIRMAN JORDAN: This deals with set-backs.

MEMBER MAY: All right.

MR. LUND: If I could clarify about the height issue that was brought up by the Office of Planning.

CHAIRMAN JORDAN: And it's also from the existing grade, is what the rule

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requires, not from finished grade.

MEMBER MAY: Is that what it is?

CHAIRMAN JORDAN: Yes, the rule stands from existing grade, not finished grade. I'll pull it out.

MR. LUND: I think the grade is consistent, because it's at the sidewalk.

CHAIRMAN JORDAN: Okay.

MR. LUND: Between proposed and existing.

MEMBER MAY: Yes, that has to do with --

CHAIRMAN JORDAN: Okay, all right. So, we're still over?

MEMBER MAY: Yes.

MR. LUND: Could I clarify the height?

MEMBER MAY: Yes.

MR. LUND: At least my understanding of it.

Four-eleven-point-five height of enclosures requires a uniform height across the building.

MEMBER MAY: Right, I know that one.

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MR. LUND: Okay, so, I think the relief we're looking for is that because the enclosure -- the fifth enclosure that was discussed with the Office of Planning is actually at the parapet height, rather than the enclosure height of all of the remainder.

So, there is one that's low and four that are higher.

MEMBER MAY: Right, okay, and I mean, given how -- how large the building is, the fact that you have multiple enclosures makes a lot of sense, and certainly, if there is no reason to force you to build a giant fence around all of it. That's nonsensical.

Also, given the -- given the sort of varied form of the building, and again, the size of it, and the topography and everything else, it doesn't necessarily make sense to hold you to the uniform height requirement either, because that essentially -- usually means taking the lows ones and building up higher -- building them up higher.

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This is often a problem, when you have a single building and they want to have multiple heights, and you wind up with a little skyline on top of a single building. That effect will not be perceivable here.

The question that I was trying to get at was, normally, when we grant relief on set-back, it's usually in a circumstance where it's not very visible anyway. So, it's often for the back of a building or on a courtyard or something like that.

Here, you're talking about the main face of the building, not having relief on a -- on an enclosure -- or not having the whole set-back on an enclosure, that's right up at the face of the building.

But from my perspective, if you can go 90 feet with the building, which is what Mr. Jesick quoted us, then that's not really a problem, but none of that was clear from the -- from this information that you submitted to us.

So, I think now, I have some clarity on it. So, I would like to get my drawings back, so I can look at them.

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CHAIRMAN JORDAN: So, the 171 is the elevation?

MEMBER MAY: The 171 is elevation above sea level, right?

CHAIRMAN JORDAN: Okay, got it.

MR. LUND: That's correct, yes.

CHAIRMAN JORDAN: All right, okay, got it.

MEMBER MAY: Yes, that's it.

CHAIRMAN JORDAN: And that just threw me. I thought the height was --

MR. LUND: That is the height of the building parapet, which is the firth --

CHAIRMAN JORDAN: Right.

MR. LUND: -- enclosure.

MEMBER MAY: And from that, you subtract the building measuring point 121 and a half?

MR. LUND: Correct.

CHAIRMAN JORDAN: And what does -- okay, what's the math?

MEMBER MAY: So, it works out to be 49' 10" or something like that.

CHAIRMAN JORDAN: Okay, I thought it was -- all right, yes, all right. That's

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why we don't have to have -- like to work that hard at this point, when we're sitting here, it's just, those things should be laid out, so, we're okay, okay.

MEMBER HINKLE: So, Mr. Chair, just to clarify up to that discussion. Is it the Board's opinion we don't need -- or the Applicant does not need additional relief in 400.7 and 411.5?

CHAIRMAN JORDAN: I still he does.

MEMBER MAY: You know, the thing that makes it different for me is that it's essentially an extension of the facade of the building.

MEMBER HINKLE: Correct.

MEMBER MAY: As opposed to a roof top enclosure, and I think the regulation that you cited specifically -- refers specifically to a roof top enclosure.

So, if they're extending the facade of the building to that height, so long as they're not exceeding the height limit for that zone, for that type of structure, I wouldn't see why relief would

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be needed, but that's my opinion. If the Board wants to go a different way, I'm --

CHAIRMAN JORDAN: All right, that's --

MEMBER HINKLE: No, I tend to agree with Mr. May on this one. I think because it's below the height, the building height, the allowable building height, that the relief is not needed.

CHAIRMAN JORDAN: All right.

MEMBER HINKLE: Not necessary.

CHAIRMAN JORDAN: Mr. Jesick, I'm just going to ask you to weigh in.

MR. JESICK: Yes, thank you, Mr. Chairman. I just wanted to clarify a couple of points.

Even without the fifth enclosure, and I'm looking at the detailed roof top plan labeled 'Sheet A03-43', the four mechanical enclosures are labeled with their height above the adjacent wall, and there are -- there is variation even within those four.

The two on the -- on the administration and arts wing are seven-foot-

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eight above the adjacent wall.

The one on the academic wing is nine-four, and the one on the athletic wing is 11 feet four inches above the adjacent wall.

One other point I would like to clarify, based on the Board's discussion, I don't know that this would make a difference, but on the subsequent page in the plans, it does show the parapet wall above that dance room or theater, and it's labeled as 175 four inches, which is slightly different than the main parapet wall.

MEMBER MAY: And 175-four, that makes it roughly 44 feet above, something like that, right?

CHAIRMAN JORDAN: Yes, 43-something, yes.

MEMBER MAY: Okay.

CHAIRMAN JORDAN: So, Mr. Jesick, if you -- so, now, you believe that they don't need the relief?

MR. JESICK: I guess I would respectfully disagree with Board Member May

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--

CHAIRMAN JORDAN: Okay.

MR. JESICK: -- based on the wording of 400.7, but we certainly defer to the Board's --

CHAIRMAN JORDAN: This is -- all right, better safe than sorry, because somebody else might raise this --

MEMBER MAY: Right.

CHAIRMAN JORDAN: -- on the issue. We'll leave the relief request in, because inquiring minds may all differ, and you might end up coming back here because we have someone who might want to challenge it. So, that's what we'll do.

Any other questions on this? Any other questions by the Board?

The Applicant? Anything in addition you think you might need to say to us, because we've drilled on this point. I think everything else, we're okay, but Mr. May has already said it, about the drawings and how we -- what we need here.

But Mr. Jesick, anything else you want to add?

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MR. JESICK: As long as the Board is kind of considering these issues, I guess I'll just point out, in our report, we do suggest that special exception might be the appropriate form of relief, rather than variance, and I can get into the reasoning behind that, if you'd like.

CHAIRMAN JORDAN: All right, special exception could grant the relief requested.

Board, any questions for Mr. Jesick?

Okay, does the Applicant have any questions of the Office of Planning?

MR. MIRANDA: No, sir.

CHAIRMAN JORDAN: Is anyone here from Department of Transportation on this matter? I don't think I have a letter from Transportation, do I? Do we have a letter from Transportation? I don't believe so.

MR. MOY: No, sir, not in the record.

CHAIRMAN JORDAN: A representative from ANC-8C? Did we do a presentation in front of ANC?

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MR. MIRANDA: Yes, we did.

CHAIRMAN JORDAN: Okay, and did they vote, do you know?

MR. MIRANDA: They did vote. There was a quorum. They voted to approve the motion to grant the variance.

CHAIRMAN JORDAN: Although now, we think we can get this done by special exception. So, but we'll accept that, not give it great weight, but take it as a report from you, that that's what happened at the ANC-8C.

Is there anyone here wishing to speak in support of this application? Anyone wishing to speak in support of this application? Anyone wishing to speak in opposition to the application?

Anyone wishing to speak in opposition?

Then we will turn back to the Applicant, for any rebuttal or closing that you think you need to make.

MR. LUND: We have no closing.

CHAIRMAN JORDAN: Then we will close the hearing on the -- with the record

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we've already obtained.

Is the Board ready to deliberate?

All right.

All right, so, what's the body -- what do we -- go ahead, Mr. May. Do you want to -- okay, I can -- do you want to make the motion or I can make it? Either way. Go ahead, Mr. May.

MEMBER MAY: Well, I mean, before I make a motion, I mean, I just want to state my view for the record.

First of all, I wanted -- I mean, I just double-checked and the height regulations for public schools in R-5-A, it seems to be 80 feet.

But in any case, it's ample for what you're doing here. The maximum height of the building looks to be about 66 feet, based on what I could see in the drawings, because the highest point is the major entry piece, right?

So, it falls within the height limitations, and I am -- you know, again, ordinarily, I would not be fond of a roof top enclosure without set-back relief when

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we're talking about a circumstance where you're at the height limit, and the facade is on the major side of the building or a very publically exposed side of the building.

But it seems like all this is in line. So, I'm in favor of granting this relief.

I would also make another suggestion to make things clear in the future, when you're submitting an application.

When you do an zoning self-certification, you actually do -- it is helpful for you to go through all the different requirements, so we can see what the zoning requirements are, and where you might need relief, and that would have answered a lot of my questions in advance.

So, just to put down 'not applicable' for all of the comments, because you think you only need roof top relief, it's -- this is a helpful piece of information. In this case, it was not helpful.

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CHAIRMAN JORDAN: And we're required to treat D.C. Government just like any other Applicant.

MEMBER MAY: Yes.

CHAIRMAN JORDAN: So, you know, we can't cut corners. You have to dot your I's. You've got to cross your T's. You have to come in as you would do -- as your client -- you have to treat D.C. Government as you would any of your other clients, okay? I mean, really. Mr. May?

MEMBER MAY: Okay, so, I would go ahead and move approval of special exception for roof structure requirements under 411.3, 407(b) and 411.5 for a new public -- sorry, new Ballou Public Senior High School in the R-5-A District at premises 3401 4th Street, Southeast.

CHAIRMAN JORDAN: Did you do the set-back 400.7?

MEMBER MAY: I did.

CHAIRMAN JORDAN: Okay.

MEMBER MAY: Four-hundred-point-seven-B, all right?

CHAIRMAN JORDAN: Very good.

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Second. Motion made and seconded. Any further discussion?

All those in favor of the motion, signify by saying 'aye'.

ALL: Aye.

CHAIRMAN JORDAN: Those opposed, 'nay'. The motion carries. Mr. Moy?

MR. MOY: Yes, sir, staff would record the vote as 4 to 0. This is on the motion of Mr. Peter May to approve the special exception relief as amended.

Also in support, Chairman Jordan. Also in support of the motion, Vice Chairperson Allen and Mr. Hinkle. Board seat vacant. The motion carries 4 to 0.

CHAIRMAN JORDAN: And may we have a summary order please?

MR. MOY: Yes, sir.

CHAIRMAN JORDAN: Very good. Thank you. We'll be in recess for 10 minutes, please.

(Whereupon, the above-entitled matter went off the record at approximately 10:50 a.m. and resumed at approximately 11:00 a.m.)

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CHAIRMAN JORDAN: All right, let's go back in session, please. Two-six-seven, please, Mr. Moy.

MR. MOY: Two-six-seven. The next application before the Board is Application No. 18687.

This is an application of William L. Ricks, pursuant to 11 DCMR 3103.2.

This is, Mr. Chairman, multiple variances from lot area requirements, rear yard, open court for a three-unit apartment house in R-4 District at 3007 11th Street, Northwest.

CHAIRMAN JORDAN: Could you please identify yourselves?

MR. RICKS: My name is --

CHAIRMAN JORDAN: Just make sure the microphone is on.

MR. RICKS: My name is William L. Ricks.

MS. HARDY: My name is Rita Hardy, consultant to Mr. Ricks.

MR. MITCHELL: David Mitchell, and I'm an agent or consultant to Mr. Ricks.

CHAIRMAN JORDAN: Okay, let me

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tell you, I hesitate in going forward with this application, because I don't think it's ready for Board action.

It's missing most of the information that we need to have. It needs additional relief.

The statement regarding why you believe that relief should be granted is certainly -- lacks the standard that is necessary to be proven to the Board.

Now, you have a right to go forward with your application at this point, and try to prove to the Board that based upon the facts and what you've submitted, to grant -- you should get the relief, or I can grant you a continuance, so that gives you time to get this filing together, and you obtain the proper evidence, so you can present to the Board, why this matter should receive the relief requested.

So, it's up to you. But I'm giving you a heads-up now, that this file is wholly deficient, regarding information that's necessary to move forward with this application, but you certainly have the

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right to present it here, if you have it.

As you know, the Office of Planning is -- has also recommended denial, even independent of that, because they don't have the evidence that they need to support this application either, I believe.

I would strongly suggest to you, to ask for a continuance and give you a chance to get this together or like I said, you can take the opportunity -- you can take the risk of us denying it, and then you have to go back through the whole shebang later.

MR. MITCHELL: Okay, I think we'd probably like to continue and try to provide the information that you need.

But I would like to point out that since the original application, that it was determined by the Office of Planning that the rear yard requirement was not -- didn't need -- did not need relief because it's grand fathered. That's a rear yard that was there --

CHAIRMAN JORDAN: I understand all of that.

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MR. MITCHELL: -- and second issue, the open court was not necessary because the Zoning Administrator wrote off -
-

CHAIRMAN JORDAN: I understand that. That is not even tip of the iceberg with the problems that you have here.

MR. MITCHELL: Okay.

CHAIRMAN JORDAN: And so, I would give you 60 days to take a look at it and see what's necessary, and you need to really drill down and understand or get an understanding of what is required for relief under the zoning regulations.

I am not against this in any way, shape, form or fashion, but we have to dot our I's and cross our T's, to allow things to go forward, and this application is missing those things that are necessary to even take a serious look, and I don't believe that you would be able to produce for us here today.

So, Mr. Moy, what is the date for this?

MR. MOY: Mr. Chairman, Mr. Peter

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May is returning to the Board on February 25th. So, I would suggest continuing it to February 25th, with any additional information to be submitted --

CHAIRMAN JORDAN: Two weeks?

MR. MOY: Two weeks before the 25th?

CHAIRMAN JORDAN: Yes, two weeks before.

MR. MOY: Okay, that would be additional filings by February 11th.

CHAIRMAN JORDAN: Okay.

MR. MOY: Okay?

CHAIRMAN JORDAN: All right, thank you.

MS. HARDY: Thank you.

CHAIRMAN JORDAN: Then that's where we'll move this to.

MR. MITCHELL: Okay.

MS. HARDY: Thank you.

CHAIRMAN JORDAN: I hate to see you get rejected, have to wait this long period of time to reapply, and then you have to pay again.

Mr. Moy, we are at -- I don't

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believe it's -- yes, that's 686? Six-eight-six, please.

MR. MOY: Okay, the next application before the Board is Application No. 18686.

This is the application of -- I'm not sure if I'll pronounce the name correctly, but Ajaib Toor, pursuant to 11 DCMR 3104.1.

This is -- as advertised for special exception from the off-street parking requirements under Sub-Section 806.6 and 2101.1, to allow an auto repair garage on LO/C-M 1 District 2001 Lawrence Avenue, Northeast, Square 4106 Lot 144.

I believe the Applicant is going to clarify the relief being requested.

CHAIRMAN JORDAN: Eighteen-six-eighty-six? We did have a person/party status. Is he still with us?

Would you identify yourself, please? Make sure your microphone is on and identify yourself.

MR. MOBLEY: Clarence Mobley, architect with Mr. Toor.

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CHAIRMAN JORDAN: We did have a party status request from Mr. Rodgers, was it? Am I correct? Is it Rodgers?

Mr. Rodgers was here earlier. Where is he now?

MR. MOBLEY: I had a meeting with him. I don't know where he is now.

CHAIRMAN JORDAN: There they are now. All right, we've called your case.

Please identify yourselves for the record.

MR. RODGERS: George Rodgers, Junior, owner of the adjacent property.

MR. UHAR: My name is Mark Uhar. I'm Vice President of Rodgers Brothers Service, Incorporated.

CHAIRMAN JORDAN: What is your name again?

MR. UHAR: Uhar, U-H-A-R.

CHAIRMAN JORDAN: Okay, the Board doesn't have any issues. I agree -- grant the party status to Rodgers Brothers, the combined group of Rodgers Brothers and Innovative Recycling.

Let me ask you, by party status,

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are you here -- do you want to cross-examine witnesses? Do you want to -- or are you here just to make a statement?

MR. RODGERS: I'm here to cross-examine witnesses, as well.

CHAIRMAN JORDAN: Okay, and put forth evidence?

MR. RODGERS: Yes, sir.

CHAIRMAN JORDAN: Okay, so, we will grant you party status, the combined group as party status, being in opposition to this.

Mr. Mobley, are you ready to proceed with your case?

MR. MOBLEY: Yes, sir.

CHAIRMAN JORDAN: All right, I think you -- you know, you're going to have -- you've got a high hurdle here also, regarding this -- your parking relief is probably a big issue.

Let me ask you right off the bat, in your application, it indicates well, you have some parking on -- you'll provide five of the 12 required parking spaces, and you said there is some other needs where people

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come in during the day, they'll park on the street, is that correct?

MR. MOBLEY: They will not park on the street. It's one -- one-hour service. They come in for repairs and they come in for tire change or oil change. They have a waiting room inside the garage, so they can wait until their repair is finished, and then they leave.

There will be no overnight parking. There will be no parking on the street. There will be no parking -- there will be no work done in the driveways.

CHAIRMAN JORDAN: Your application says, "Any other cars will be parked on the street. The Applicant indicates that the customer parking," -- it says, "Other parking will be indicated -- parking on the street."

So, that is not correct?

MR. MOBLEY: No, there will be no parking on the street, that's correct.

CHAIRMAN JORDAN: Because it's a note -- and my concern was because it's a 'no parking' area.

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MR. MOBLEY: It's a 'no parking' area.

CHAIRMAN JORDAN: And I know that was a concern raised by the Rodgers Intervention -- party status group, and there's a big sign out there that says 'no standing or parking anytime', right?

MR. MOBLEY: That's correct.

CHAIRMAN JORDAN: All right, but there is going to be -- what kind of auto repair then? Tell us what that is going to be.

MR. MOBLEY: It's just common auto repairs.

CHAIRMAN JORDAN: One-hour service?

MR. MOBLEY: One-hour service, changing tires, changing oil, doing just common service while you wait type service.

CHAIRMAN JORDAN: So, you're not doing any engine work?

MR. MOBLEY: We're not doing any engine work.

CHAIRMAN JORDAN: You're just doing lube jobs, tire changes?

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MR. MOBLEY: Lube job, tire change, just service while you wait.

There can be no body work done. We're not banging. There is no changing of an engine because the work has to be done while the person waits to have the work done, and while he's waiting, the service is done and when he finishes, he leaves and his car leaves with him.

Just in case there is an applicant waiting, we have a parking space for that applicant who might be waiting to get inside, to get his service waited on.

But other than that, there will be no cars left over -- overnight or any cars left unattended.

CHAIRMAN JORDAN: So, is this part of a franchise operation or what is it called?

MR. MOBLEY: It's not a franchise operation. It's a private business operation.

We have been cleared by, as you know, ANC. We've been cleared by Office of Planning. We've been cleared by the

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Neighborhood Advisory Commission. We've gone through all the clearances necessary.

CHAIRMAN JORDAN: What Office of Planning do you mean you were cleared by, because I have a letter from Office of Planning that says they recommend denial.

MR. MOBLEY: Office of Planning recommended denial?

CHAIRMAN JORDAN: Am I wrong?

PARTICIPANT: You've got the wrong one.

CHAIRMAN JORDAN: The wrong one then, okay. I've got that. It's in the wrong file. Okay, I apologize then.

Okay, okay, I got you. I'm sorry. I apologize, wrong case.

MR. MOBLEY: But there is a --

CHAIRMAN JORDAN: All right, so -

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MR. MOBLEY: Mr. Chairman, I would like to --

CHAIRMAN JORDAN: Go ahead and do

--

MR. MOBLEY: I would like to hear testimony from Department of DDOT because

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DDOT has a concern, after clearing it with all the departments that we could possibly clear it with, the only objection was from DDOT and they have a concern, and they wanted us to make our presentation to their Board.

But we couldn't get it to their Board in time, but we have a representative here from the Department of DDOT, and if he'll have something to say, maybe I can agree with him or --

CHAIRMAN JORDAN: Okay, well, let's go --

MR. MOBLEY: -- and then go forward.

CHAIRMAN JORDAN: All right, all right. Board, any other questions on this application?

This is parking -- yes, please, please. Yes?

VICE CHAIRMAN ALLEN: Mr. Mobley, Mobley, correct?

MR. MOBLEY: Yes.

VICE CHAIRMAN ALLEN: Thank you. How many -- do you know the number of cars

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that are seen here on a daily basis? I don't know if that was in there and I missed it, but about how many cars come through there daily?

MR. MOBLEY: We don't know. We can only -- we have bays for four cars.

VICE CHAIRMAN ALLEN: Right, I saw that.

MR. MOBLEY: If we get two cars, we have extra bays. If we have five cars, we need one more -- you know, we don't know the flow of the traffic. We don't know just how it's going to flow.

According to our analysis, we're saying if we have one car per bay, we're -- per hour, then we would have eight cars going in, you know, every two hours.

So, we don't know exactly what the flow is going to be, because we are -- we're trying to plan for the future, but we feel that if we have five parking spaces.

Now, there will be only two mechanics there, and one owner. If each mechanic drove his car, then we would have two parking spaces.

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Now, the owner is planning to park his car at another location. Therefore, we'll have two parking spaces, or three parking spaces vacant at all times, if the bays are completely filled, which is -- you know, it's come -- commonly, that they won't be filled at all times, but we don't know exactly what the flow is going to be.

VICE CHAIRMAN ALLEN: Okay, thank you.

CHAIRMAN JORDAN: You're in operation now, right? Are they operating now?

MR. MOBLEY: No, they're not operating. We're going to -- we're going to design a four-car bay garage for them and we're trying to predict how much traffic they're going to receive, and according to our predictions, we're saying that with four car bays, and you only have two mechanics, if one mechanic put up a car to be oil changed, while his oil change is being done, he works on another car and let one mechanic work on two -- have two bays and we're hoping that they'll be busy all day, but

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chances are, they probably have a little lax time.

VICE CHAIRMAN ALLEN: I was under the impression this was an auto repair shop. It's not now?

MR. MOBLEY: Pardon me?

CHAIRMAN JORDAN: You're not in operation now?

MR. MOBLEY: No, it's not in operation.

CHAIRMAN JORDAN: But it doesn't exist?

MR. MOBLEY: It doesn't exist. It's just something that we're --

CHAIRMAN JORDAN: Nobody is doing any car repair on the property?

MR. MOBLEY: Nobody is doing any car repair. It's a vacant lot right now.

CHAIRMAN JORDAN: All right, because some of the information seems to appear that there is some --

VICE CHAIRMAN ALLEN: Are they suppose to have repairs there?

CHAIRMAN JORDAN: Right, okay, and the question -- I think the Department

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of Transportation certainly can speak for themselves.

But it's very clear in their recommendation, their concern is that one, again, the application talks about people parking on the street and there is a 'no parking' area.

But more importantly, for their standpoint, it's a -- you're saying there is going to be two curb-cuts.

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: And they've routinely have been rejecting curb-cuts.

I mean, so, it's clear --

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: -- what their issues are, but I'll leave that and then come back to that.

Other questions for the Applicant? I think the issue about -- I think your application makes it clear, and we understand the condition of the property -- the condition of the property, but whether or not you can have another -- you know, another seven parking spaces is our

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issue.

MR. MOBLEY: That's our issue.

CHAIRMAN JORDAN: And then its impact upon the community, is what we're trying to assess.

Do you have anything you want to share with us in those -- on those concerns?

MR. MOBLEY: I think I made myself pretty clear, as far as I -- as far as I can predict, and I don't anticipate any problems.

CHAIRMAN JORDAN: Okay.

MR. MOBLEY: If we schedule it, if it's -- if the -- if the repairs are scheduled and the people call in, I don't predict any parking on the street.

As a matter of fact -- as a matter of fact, there is a sign that says 'no parking' on the street.

CHAIRMAN JORDAN: Oh, yes, lot of signs around here that says that.

Does the Board have any other questions they want to drill down, or you think it's sufficient with this?

MEMBER MAY: I do have a

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question. There is nothing that shows the plan of the -- of your development in that context, and it looks like Lawrence Street through that area is not -- not an improved road, right?

MR. MOBLEY: That's true.

MEMBER MAY: So, all of your bay entrances and your parking spaces are going to be off of this unimproved road?

MR. MOBLEY: Yes, that's true.

MEMBER MAY: Okay, so, is there a plan at some point to improve the road?

I mean, I know at one point, there was a decision to close it, but that was never executed.

So, it's not a closed road. It's -- I mean, basically, what's going to happen is, people are going to drive off the end of Lawrence Street onto a dirt road, and then into your garage?

MR. MOBLEY: It's not a dirt road. It's a gravel road.

MEMBER MAY: Gravel?

MR. MOBLEY: But it's -- we were sort of seeking permission from DDOT to

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close the road and grant us the property of that space, and if they would close the road and grant us the property of that space, we would maintain that portion of the road with our forces, with our -- the ownership would maintain the property of that road and they -- there wouldn't be no need for curb-cuts.

But if they insisted upon curb-cuts, then road would have to be paved and we would have to find a way to drain the water from -- the storm water, so we could keep that from going into the public sewers at the end of the street.

There is a public sewer at the end of the road, before we enter into our property, and perhaps we could be a grate down at that -- if DDOT will permit us to own that portion, and we would have our waste water going in to the -- maybe into the grate, as we cross the property and -- so that only clean water can go into the sewer.

If we could improve that land, if we got permission from DDOT, we could do something with it, and DDOT had no

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objection, other than the fact that they wanted to take another review of it, to find out whether they're going to grant it to us or whether they're going to improve that land themselves for the road, and then they would require.

If they improve the land, they're going to require two curb-cuts.

MEMBER MAY: Right. Okay, so, we'll wait to hear from DDOT about their position on the road.

I just want to clarify that it's -- that basically, it's an unimproved road that will be your access, because right now, the photographs that you've provided us seem -- I mean, it looks like the -- from the photographs and from the areal photo that we had gotten from the Office of Planning, it looks like the current operation there, which is not the business that -- or not the operation that you are planning.

But the current operation, which is a -- it looks like a towing lot or something like that, looks like it's occupying the area up the street, as well as

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the property, right?

MR. MOBLEY: It's occupying the property, not the street, but --

MEMBER MAY: Not the street right-of-way, the unimproved right-of-way is not being occupied?

MR. MOBLEY: No.

MEMBER MAY: Okay.

CHAIRMAN JORDAN: But Peter, if I could? I think it's a question about the --

MR. MOBLEY: Where that -- rephrase that question. Maybe -- I don't want to give you the wrong answer.

MEMBER MAY: Right. So, I mean, right now, basically Lawrence Street comes in and makes a hard-right, okay, and then that becomes Edwin Street?

MR. MOBLEY: Yes.

MEMBER MAY: Okay, so, right where that hard-right occurs, if you went straight in, you would go into that right-of-way?

MR. MOBLEY: Yes.

MEMBER MAY: But it looks like that right-of-way area is fenced as part of

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the lot that -- you know --

MR. MOBLEY: Yes.

MEMBER MAY: -- you gave us a photo here.

MR. MOBLEY: Yes.

MEMBER MAY: That says 'Able Towing'. So, it looks like Able Towing is occupying the property that we're talking about --

MR. MOBLEY: Right.

MEMBER MAY: -- and the right-of-way?

MR. MOBLEY: Yes, yes, correct.

MEMBER MAY: Currently?

MR. MOBLEY: That's correct.

MEMBER MAY: But in the future, the right-of-way is simply going to be the access --

MR. MOBLEY: Right.

MEMBER MAY: -- to the garage?

MR. MOBLEY: You're correct.

MEMBER MAY: Okay.

CHAIRMAN JORDAN: Is Able Towing also -- is that the same company that's going to be -- that's going to run the

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garage?

MR. MOBLEY: No. They're going to be moved.

CHAIRMAN JORDAN: Questions, Board? Mr. Rodgers, questions of Mr. Mobley?

MR. RODGERS: Yes, Mr. Mobley, you speak about what the plans for the site are. Are you going to operate the site?

MR. MOBLEY: My client.

CHAIRMAN JORDAN: When he says 'you', we understand he means your client.

MR. MOBLEY: Yes, okay.

CHAIRMAN JORDAN: You, the Applicant.

MR. MOBLEY: Okay, yes.

MR. RODGERS: Okay, your client operates the site currently?

MR. MOBLEY: My client operates the site?

MR. RODGERS: Do they operate the site?

CHAIRMAN JORDAN: Does the Applicant operate on the site now?

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MR. MOBLEY: No.

CHAIRMAN JORDAN: Does any affiliate of the Applicant operate on the site now?

MR. MOBLEY: As far as I know, the answer is no.

MR. RODGERS: So, you're requesting relief for an operation that's not actually an operation, that will be operated by the Applicant?

CHAIRMAN JORDAN: That's not what he said.

MR. RODGERS: Okay.

CHAIRMAN JORDAN: He's saying that they're seeking approval, so they can operate.

MR. RODGERS: Okay. You say it's going to -- you described the type of operation that is intended for the property.

Do you have a way of assuring the way you described the operation to the Board, will be the type of operation that takes place there, where it will only be call scheduled work done at this repair facility?

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MR. MOBLEY: Yes.

MR. RODGERS: And is there a way to assure the Board that it would --

CHAIRMAN JORDAN: Can I help you with that? What is the -- how does -- and it's a concern that I had also.

How do we know that cars are only going to be there an hour and in and out? What assurances can you provide to the Board, that the street is not going to be used or that you're going to be processing cars within an hour?

MR. MOBLEY: We have a waiting room inside the garage. There is a waiting space, so they can have a seat, while their cars are getting repaired.

CHAIRMAN JORDAN: Okay, you have four bays.

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: Four cars that need engine overhauls. So, what happens?

MR. MOBLEY: We're not doing engine overhauls.

CHAIRMAN JORDAN: Okay, you're just doing --

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MR. MOBLEY: We're doing oil change, tire check -- tire changes, oil changes and things of that nature. No mechanical --

CHAIRMAN JORDAN: So, no mechanical repairs --

MR. MOBLEY: No major mechanical repairs.

CHAIRMAN JORDAN: Okay, go ahead. Continue, please.

MR. RODGERS: Yes. A maintenance and repair facility typically would do more than change oil and change tires. Would that not be true?

MR. MOBLEY: I don't know.

MR. RODGERS: Does the -- okay, are there other locations in this area that are conducting the same type of business that the Applicant intends for this location?

MR. MOBLEY: I don't know. That's not my concern right now.

MR. RODGERS: Does the Applicant own other property adjacent?

MR. MOBLEY: That is not my

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concern right now.

CHAIRMAN JORDAN: Well, answer the question. Does the Applicant have any other property that is operating in the same similar way near this property? Is that the question?

MR. RODGERS: Yes, that was the question.

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: Okay, and where is that?

MR. MOBLEY: The Applicant has a garage that's at 2000 Lawrence Avenue. This garage would be at 2001 Lawrence Avenue.

CHAIRMAN JORDAN: Wait a minute. Hold on. Let's move.

You were just asked about -- so, it's --

MR. MOBLEY: Or maybe I'm --

CHAIRMAN JORDAN: No, that's okay. Continue your questions. Go ahead.

MR. MOBLEY: I don't --

CHAIRMAN JORDAN: I got your answer.

MR. MOBLEY: Are you trying to --

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MR. RODGERS: Is that the only operation that your -- that the Applicant has in this area, one additional location on 2000 Lawrence?

MR. MOBLEY: Why is that relevant? I mean, if you're going to get to the questions --

CHAIRMAN JORDAN: So, the Applicant is operating across the street? Is that what you're saying?

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: And what kind of operation is that?

MR. MOBLEY: That's not his operation. That's a friend of his, operation.

CHAIRMAN JORDAN: So, it's not the Applicant?

MR. MOBLEY: It's not the Applicant's operation.

CHAIRMAN JORDAN: All right, let me ask you, the address for this property is what, 2000 Lawrence Avenue? Is that the address? Two-thousand-one Lawrence Avenue?

MR. MOBLEY: Yes, that's the

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address.

CHAIRMAN JORDAN: All right, and who owns the property at 2001 Lawrence Avenue?

MR. MOBLEY: Mr. Torr, T-O-R-R.

CHAIRMAN JORDAN: T-O-R-R?

MR. MOBLEY: Yes.

CHAIRMAN JORDAN: And your Applicant is?

MR. MOBLEY: Mister --

CHAIRMAN JORDAN: Has a lease for this -- for the space or a purchase agreement for the space?

MR. MOBLEY: As far as I know --

CHAIRMAN JORDAN: Wait a minute. So, Toor does own the property? Toor owns the property?

MR. MOBLEY: Pardon me?

CHAIRMAN JORDAN: Who owns the property at 2001?

MR. MOBLEY: Mr. Toor owns the property at 2001.

CHAIRMAN JORDAN: Okay, and that is the Applicant?

MR. MOBLEY: That's the

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Applicant.

CHAIRMAN JORDAN: Okay, so, he presently has a deed to the land and he owns the property?

MR. MOBLEY: As far as I know, he has the deed to the land and he owns the property.

CHAIRMAN JORDAN: All right, who owns the property at 2000 Lawrence Avenue?

MR. MOBLEY: Mr. Gupta owns the property.

CHAIRMAN JORDAN: Gupta, who sent the letter saying that he would like to postpone this because he's not going to be - - that Toor is not going to be available, right? So, he has nothing to do with the -- are they partners?

MR. MOBLEY: I think they are partners.

CHAIRMAN JORDAN: Okay, and what activities exist at 2000 Lawrence Avenue?

MR. MOBLEY: That's a garage body shop or maintenance engine repair shop.

CHAIRMAN JORDAN: Okay, I think I understand why we were confused, reading the

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application, going from what we're doing to not doing, when we're asking these questions, because you read the application, the similar responses -- you're in operation.

Some of the statements says you're in operation, and so, it's nothing on one side of the street, but you are operating on the other side of the street?

MR. MOBLEY: That's right.

CHAIRMAN JORDAN: Partnership?

MR. MOBLEY: Right.

VICE CHAIRMAN ALLEN: And Mr. Mobley, so the cars or storage facility, Able Towing, that is on the subject property now, they lease from Mr. Toor? I just want to make sure I understand.

MR. MOBLEY: The cars on the subject property now are going to be removed all together, period.

VICE CHAIRMAN ALLEN: Okay, but the --

CHAIRMAN JORDAN: But that's because a towing company has the cars?

MR. MOBLEY: The towing company

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going to move their cars. They're going to move out.

VICE CHAIRMAN ALLEN: So, my question is, so, the towing company has a lease with Mr. Toor now? That's why they have the cars there?

I just want to understand what the relationship is --

CHAIRMAN JORDAN: Can I ask a question, just before that?

Is Able Towing owned by Mr. Toor or Mr. Gupta?

MR. MOBLEY: I don't know, but they're going to move out.

Now, when they move out --

CHAIRMAN JORDAN: You know what I'm going to do? We're getting ready to continue this hearing for 30 days.

I want the owners of the property here. I want to have on the record, under oath, who owns this property, how this property is operated, and so, within the authority of the Chairman of the Board, I'm going to move this to 30 days, Mr. Moy, because I need to get real clear answers

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about what is happening here.

I know you can only represent that which you know, but I need to get something on the record, to understand under oath, what is going on with the properties.

So, Mr. Moy, just give 30 days, and Board, if that's okay with you.

(OTR comments)

CHAIRMAN JORDAN: Okay, yes, then we'll just ask somebody else to review the record on it. So, let's do that, 30.

But I'd just -- and I appreciate, Mr. Rodgers, your questions for opening some doors that we need to find out what's going on. Yes, so, we need 30 days.

MR. MOY: Okay, Mr. Chairman, that date then --

CHAIRMAN JORDAN: Unless you accept 60 days. February 25th? Can we schedule it for February 25th? Can you be ready by then? Is that okay by you?

MR. MOBLEY: I would like to -- I would like to hear from Department of DDOT -
-

CHAIRMAN JORDAN: No, you can

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have conversation with them all day long in between that time. You can meet with them, have discussion.

MR. MOBLEY: Okay, okay, okay, well --

CHAIRMAN JORDAN: February 25th okay?

MR. MOBLEY: Just a moment.

MR. MOY: The other date, Mr. Chairman, if the 25th doesn't work, would be February 11th.

MR. MOBLEY: Sixty days.

CHAIRMAN JORDAN: Will work for you?

MR. MOBLEY: Yes, it will work.

CHAIRMAN JORDAN: Okay, February 25th. All right, thank you.

MR. MOBLEY: Okay.

CHAIRMAN JORDAN: Then we -- Mr. Rodgers and Mister, I'm sorry.

MR. UHAR: Uhar.

CHAIRMAN JORDAN: Uhar, if you'll come back for them, we will schedule this, and I want the property owners and the operator of the business to be here.

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MR. MOBLEY: Okay.

CHAIRMAN JORDAN: All right,
thank you. Okay, thanks.

All right, is it the seventh
inning yet?

Eighteen-six-three-eight?

MR. MOY: The next, I believe,
the last application will be -- before the
Board, is Application No. 18638.

This is the application of Rose-
Busch, LLC and Gregg Mr. Busch, pursuant to
11 DCMR 3104.1 and 3103.2, for special
exception relief that has been amended, and
I will leave it at that, Mr. Chairman.

Also, I just want to add --

CHAIRMAN JORDAN: Go ahead.

MR. MOY: -- in the interim, I
did receive to the Board, a letter of
authorization from the author of the
Metropole Condominium Association for the
Law Firm of Sullivan & Barros to represent.

CHAIRMAN JORDAN: Okay, and Mr.
Hinkle?

MEMBER HINKLE: Yes, thank you,
Mr. Chair. I'm recusing myself in this

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case.

CHAIRMAN JORDAN: Okay, all right, thank you. All right, please introduce yourselves.

MS. BROWN: Good morning, Mr. Chair. Carolyn Brown with the law firm of Holland & Knight on behalf of the Applicant.

With me today, to my left is Steve Sher from our office. To my right is Mr. Brook Rose and to his right is Mr. Gregg Busch.

CHAIRMAN JORDAN: Okay, so, that's how we get Rose-Busch then. Got it.

We're missing Mr. Sullivan and --

MR. SULLIVAN: Good morning, Mr. Chairman. Marty Sullivan with Sullivan & Barros on behalf of the Metropole Condo Association.

CHAIRMAN JORDAN: Okay, I know there has been an amended application. Let's make sure we're on the same page regarding relief requested, if we could.

MS. BROWN: Yes, sir, that was going to be part of my opening statement.

We have two areas of relief that

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we have eliminate. The rear yard special exception was short by one-foot seven-inches and we've gotten rid of that. We've addressed that, and we've eliminated the lot occupancy variance.

We are continuing to need a variance relief from the parking requirement, the roof structure set-back requirement, unequal heights of roof structure, and the height of the roof structure under the ARTS-overlay.

CHAIRMAN JORDAN: Okay.

MS. BROWN: And I can also clarify for the record, that the drawings have been corrected, so that the height shows 70 feet, so it's fully compliant with the 1910 Height Act.

CHAIRMAN JORDAN: Eight stories 70 feet?

MS. BROWN: Correct.

MR. MOY: Mr. Chairman, are those drawings in the record, may I ask?

MS. BROWN: They were the drawings submitted on December 2nd.

MR. MOY: Okay, very good. Thank

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you.

CHAIRMAN JORDAN: And so, you're not making -- you removed your FAR request relief? You don't believe FAR request -- is necessary? There's no request for FAR relief?

MS. BROWN: No, no.

CHAIRMAN JORDAN: Okay, all right. Mr. Sullivan, we will -- as I indicated before, grant party status to your client.

Around how much time do you think you need to do your presentation?

MS. BROWN: We propose to have only two witnesses, and I think that we can be finished within 15 minutes.

CHAIRMAN JORDAN: Okay, let's put 15 minutes on the clock please, Mr. Moy. That's 15. Thank you, sir. All right, go ahead, please.

MS. BROWN: Thank you, Mr. Chair. I'm skipping over my remarks concerning the areas of relief, so let me catch up with myself here for a moment.

We're very pleased to be here

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today to present plans for new infill development on Church Street, just off of 14th Street, the corridor that has experienced tremendous rebirth in the last ten years.

Church Street has been part of the active development and our project today represents the last part of the block to be redeveloped, and the success of Church Street -- of the Church Street projects has been due in large part, to the design guidance of the Historic Preservation Review Board, which has ensured that the historic buildings along the street are protected with adequate set-backs.

This project is no different and the zoning relief we seek today is a direct result of the design constraints imposed by HPRB and its staff, as well as the exceptional and unusual conditions of this particular property.

Today, we will have two witnesses, as I mentioned. Steve Sher will describe the project, the areas of relief and how we meet our burden of proof for the

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special exception and variance relief -- I'm sorry, for the variance relief and special exception.

Mr. Brook Rose will make a statement on behalf of the developer.

We also have, if there are questions, the architect, Mr. Peter Fillat, and we also have our traffic consultant, Mr. Erwin Andres.

We did not file a report. We do have one. So, if we need testimony from him, we're prepared to go forward with that.

CHAIRMAN JORDAN: Yes, I like to usually get those things in advance, because I did make note -- in my notes, I didn't see a traffic study in regards to this property and this gives me the opportunity to better absorb -- you know, read in advance, and I'm more prepared to ask questions about it.

In fact, do we have a copy of it now?

MS. BROWN: We had not planned to submit it to the record, and if you want it, we'll be happy to submit it.

CHAIRMAN JORDAN: All right.

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MS. BROWN: And we have copies with us today, and we'll make sure to get those --

CHAIRMAN JORDAN: Certainly, your case to handle it whichever way you think is necessary.

MS. BROWN: Okay.

CHAIRMAN JORDAN: But I think --

MS. BROWN: We'll probably be submitting it, since you seem to indicate that it would be helpful to the Board. Thank you.

We're very pleased to have the support of ANC-2F, the Office of Planning and DDOT, likewise has no objections to the project.

We note that we have initially requested relief from 17 of the 19 required parking spaces. Our application has been amended to eliminate all of the required parking from the plans.

We did that, as a result of an agreement that we reached with the neighbors to the east, the Citta 50 Condo Association. They prefer that the two parking spaces that

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we showed on our plans be used -- reserved exclusively for loading activities.

We consulted with DDOT on that and I have an email confirmation from Mr. Fleming El Amin that --

CHAIRMAN JORDAN: Say that again.

MS. BROWN: Sure.

CHAIRMAN JORDAN: You're eliminating what?

MS. BROWN: So, we have a requirement for 19 parking spaces. We were going to provide two at the rear of the building.

We now are going to provide zero, and instead of the two at the rear, it will be a loading area, and we did that at the request of the Condo Association to the east, Citta 50 and we have a settlement agreement with them, that sets that forth.

Of course, it's going to be up to the Board, to grant the relief, but for all those spaces, and as I mentioned, we did confer with DDOT on that change, and I have an email confirmation from DDOT, saying that they are supportive of that, provided that

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we have the conditions restricting the ability of tenants to get a residential parking permit and the other TDM measures that we are proffering as conditions to this application, and those are set forth in our statement.

We also have support from many of the residents and businesses in the area, including several residents of the Metropole Condominium to the west, and many of those - - those letters have been submitted to the record.

We've tried to work with the Metropole and as you know, Mr. Chairman, we were out in the hall again this morning, and we had anticipated, as -- in preparation for our hearing on December 10th when we had the snow day, we thought that we were going to have a written agreement with them.

I think we're obviously very disappointed that that did not come to fruition, because we thought we were that close.

Be that as it may, we believe we have a strong application today, to justify

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our variance relief, and there is a letter that we submitted to the record, from Citta 50 saying that they do not oppose this application.

So, for the conditions that we're agreeing to, we're eliminating -- we're restricting the hours of the roof deck. We are minimizing traffic in the alley, by using the same trash removal company that the other condos will use -- are presently using.

So, we believe we will -- we also have an indoor trash -- Mr. Brook Rose will go out -- into detail over this, and since the clock is ticking away, I think it's best if I turn it over to our first witness, to dive into the areas of relief that we are requesting. Thank you.

MR. SHER: Mr. Chairman, Members of the Board, for the record, my name is Steve E. Sher, the Director of Zoning and Land Use Services with the Law Firm of Holland & Knight.

A little bit of background. As you're aware, the site consists of three

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lots on the south side of Church Street between 14th and 15th Street. In total, 3,420 square feet with a width of 38 feet and a depth of 90 feet.

They're improved with three three-story residential type buildings that are contributing to the Dupont Circle Historic District.

The property is zoned R/C3A. When you take those two in combination, the maximum permitted height is 75 feet. The maximum permitted FAR is 5.3. You can go to the -- the roof structures can go to a maximum height of 83 feet six inches, and we are required to provide one parking space for every two units.

As noted earlier, there will be 38 units in the building, 19 parking spaces are required.

What we seek relief, as Ms. Brown indicated in discussion with the Chair, we have one variance and two special exceptions.

The variance is on the number of parking spaces. Nineteen are required and

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we propose to provide none. So, we need a variance on the whole 19.

The special exception for roof structures, we would have walls of unequal height. There is a center portion that goes to a height of 14 feet three inches and then lower portions on either side, which are only eight feet eight inches, because they don't need to go to the whole 14 foot three height.

Then we have a set-back issue at one point, where because of the Historic Preservation constraints, the wall of the buildings pulled back from the street wall and it rises up to where the roof structure sits, right above that wall.

Then with respect to the special exception for the requirements of the ARTS overlay, instead of having a height of 83 feet six inches, we will have a height of -- where is my height? The height is nine inches more than that, whatever that turns out to be.

So, we have a little bit extra height, in order to be able to get an

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elevator to the roof and be able to use the roof deck on the building.

With respect to the variance, the Board is well aware of the standards for a variance. The size of the building lot and other conditions, as Ms. Brown noted, in terms of discussions with HPRB, we are keeping the three existing row houses to a depth of about 16 feet back and then building up behind them.

So, when you combine that with the set-back and the notches in the facade, that create exterior walls where there otherwise would not be exterior walls, if you're able to build right to the front property line, we wouldn't have this wall going up 16 feet back, where the roof structure is.

The small size of the lot constrains the locations for the stairs and the elevator towers, and you can look at the first floor plan and the roof plan, and see how those go up through the building.

When you look at the width of the lot, at 38 feet, you can't put underground

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parking in this building. It's not wide enough, given the width of -- the required width for ramps, the size of the parking spaces themselves.

You might be able to get one or two spaces per level, but you basically consume the whole footprint of the building with the ramp and the access going down. So, you'd be at seven, eight, nine, ten levels below grade, in order to get the parking, and that is just not feasible or reasonable.

So, the combined location of the -- as I mentioned before, the stairs, the elevator corridor and trash room, reduce the space available at the ground level and as a consequence of that, you can get a couple of spaces at the back, but it has been suggested to us that rather than provide two out of the 19 spaces that could be provided, that we use that area as a loading area for servicing the building, rather than having to have that occur through space on the street, which is a little bit tight and appears to be a preferred scenario for use

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of that area at the rear of the building,
rather than for two parking spaces.

In terms of the substantial
detriment, the report of DDOT and the
analysis that Gorove/Slade did for us
suggests that because this is a high-
accessibility area, because it has a Walk-
Score of 97, for example, of 97, it's just
off of 14th Street corridor, which is a high-
intensity bus corridor, and the latest metro
plans.

Because the Applicant will take
steps to preclude occupants from parking on
neighborhood streets, we do not believe that
granting the parking variance in this
scenario would cause substantial detriment
to the public good.

Again, on the roof structure,
I've sort of weaved some of that stuff in
already. The location of the roof structure
obviously, is dictated by the core and the
building below.

So, the elevator core and the
stair towers that go up and down through the
building dictate where the roof structures

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are going to be here, and you can look at the -- at the ground floor plan and the roof plan, and see how that carries up through the building.

If we had to set-back on the north side of the building further than where we are now, you just wind up pushing that core back further into the building and it just disrupts the whole design of the interior of the apartment house.

In terms of impact on light and air of other buildings, we meet all the set-backs from the street frontage walls and we're within the permitted heights for roof structures.

As I said again, only the center part is at 14 feet three inches. The parts on either side are eight feet eight inches. So, we're well below the maximum 18-6 that would otherwise be allowed.

We can go into more detail on how those appear and what they look like with the front elevation, if the Board wants to get into that.

The special exception under the

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ARTS overlay would allow us to exceed the 83 feet -- 83 feet six inches. I keep wanting to say eight inches, and again, the standards for that are set forth in Section 1906.1.

The apartment house advances the goals of the ARTS overlay, which expand the housing supply along that area. Again, it enables access to a roof deck, which would be a significant amenity for the building occupants, and HPRB has granted conceptual design approval and delegated final approval to staff on how the building appears.

So, my conclusions are that the size and shape form exceptional conditions to the property, precluding underground parking and effectively eliminating the possibility of at-grade parking.

The practical difficulty was also the inability to provide parking that would preclude any development of the site with more than eight units.

There are sufficient alternatives for access to the site using modes other than automobile travel. The roof structures

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have been designed to be minimally visible. The apartment house deck, it would -- the roof deck is supportive of the goals of the ARTS overlay. Concept design has been approved by HPRB and in my opinion, the application should be granted.

MS. BROWN: Thank you. I'll move on to our next speaker.

CHAIRMAN JORDAN: Let me ask a question. So, the -- so, you're keeping the historic facade that has about -- is that about 28 -- 28 to 32 feet? Is that what that is? What's that? The depth? The depth of this?

MR. SHER: I believe that if you look at sheet -- let's see, which one shows it the best.

You can look at the roof plan, which is Sheet 11 of the plan.

CHAIRMAN JORDAN: Okay.

MR. SHER: You see the area marked 'roof of historic buildings' below, they're actually at two different -- two of the buildings are at the same and one is at a slightly different level.

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That depth goes back 16 feet two inches, before you see the shaded wall of the building rising up behind it, and then there's a piece of it that actually goes back a little further.

CHAIRMAN JORDAN: Okay, go ahead.

MS. BROWN: Thank you. Our last witness is Mr. Brook Rose, and I misjudged the amount of time he might need. So, if we could -- if he could have maybe four minutes --

CHAIRMAN JORDAN: Go ahead.

MS. BROWN: -- instead of the two.

MR. ROSE: Thank you very much. Public speaking is not my strong suit. So, try to bear with me. Thank you.

Good morning, Members of the Board and the community residents. My name is Brook Rose and this is Gregg Busch, and we are the developers of the project in discussion.

We are here today to present our concept for the future of 1456, 1458 and 1460 Church Street.

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These three historic town homes, two of which are not habitable, lie in one of the most interesting urbanized streets of the District, a street which has been entirely transformed since its ARTS overlay designation in the 1990's.

The Uptown Arts-Mixed Use or ARTS overlay District was established to, and I quote from the Office of the Zoning website, "To encourage retail, entertainment and residential uses that require pedestrian activity, and to encourage a design character and identity of the area by establishing physical design standards and adaptive reuse of older buildings in combination with new buildings."

The 1400 block of Church Street is an exceptional example of the success of the ARTS overlay District.

The increased residential density from development has created a flurry of pedestrians that enjoy vibrant retail, restaurant and entertainment options of the 14th Street corridor.

Also consistent with the ARTS

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overlay's goals, Church Street has developed a wonderful, unique architectural character through its incorporation of older structures within newer residential development projects.

It's no wonder why the 1400 block of Church Street is arguably one of the favor streets of the D.C. urban dweller.

Our plan for the three properties mimics the same formula so successful throughout the block. In fact, the buildings as they stand today, in our opinion, do not fit into the urban landscape of Church Street.

Steve Callcott, Senior Preservation Planner in the Historic Preservation Office, in his staff report to the Historic Preservation Review Board dated June 27th stated, I quote, "The project follows many of the principles established by earlier redevelopment projects on the block."

"The height and mass of the addition is consistent with other such additions, which have been found compatible

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on the block, set back comfortably behind the small-scale historic buildings." That's from Exhibit-D of our pre-hearing statement.

We worked closely with Steve Callcott for several months, to come up with a building that would be deemed appropriate.

The Historic Preservation Review Board lauded those efforts and unanimously supported approval eight to zero.

Our plan for 1456, 1458 and 1460 Church Street is to create a building of small urban studio apartments. This movement has been gaining popularity around the country, notably in San Francisco and New York, as more people desire to live in city centers, but do not require or are unable to afford larger spaces in these prime locations.

These residents are willing to trade space and their cars, for location and the enjoyment of city living that comes with it.

Our building appears quite consistent, in our opinion, in our humble opinion, with the ARTS overlay District's

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goals to encourage retail, entertainment and residential uses that require pedestrian activity. It also achieves the ARTS overlay's goal of combining old and new structures.

An urban studio apartment building on Church Street is an exciting concept that will offer our city -- offer enjoyment of our city's best living to a broader demographic.

So, why are we here today asking for zoning relief?

Well, given the nature of the small, narrow lot and our desire to offer a roof-deck amenity, we have been unable to meet certain zoning requirements, and I'll go through some of them.

We are asking for relief in the number of parking spaces, as you've already heard today.

Our location has the very rare walk score of 97. It's called the Walker's Paradise.

Given the multitude of transportation options in this area and our

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close proximity to so many services, we believe the urban dweller resident in this studio unit building should not require parking.

So, we proposed excluding the development from the residential parking permit program.

The building will be marketed as a car-free building and will target the 40 percent of D.C. households that choose not to own automobiles.

Our lease agreements will prohibit tenants from obtaining RPP's. DDOT, in their report dated October 15th, supports this plan, and has determined the proposed project will have no adverse impact on the community.

A traffic study we commissioned by a notable firm, Gorove/Slade, determined no impact in their report, as well.

We will also be installing 13 interior bicycle parking spaces for building residents and offer each initial tenant a one-year Capital Bike-Share or Car-Share membership.

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A Capital Bike-Share station is about 30 feet from our project, as well as multiple car-share spaces and garages.

We are also looking for a modest height relief for our elevator penthouse, an additional nine inches, to allow roof-deck access for all.

This moderate -- modest deviation will ensure access for our handicapped residents to some important communal outdoor space, which is a wonderful amenity in our urban environment.

It should be noted at this point that both the Office of Planning and the District Department of Transportation have supported our plan as it stands.

Since our original BZA hearing, which was scheduled for October 22nd, we have worked diligently with neighbors, after becoming aware that there were specific opinions and concerns. In fact, the Board of our neighboring building, 27 Unit Citta 50, has since written a non-opposition letter on our behalf.

We hope you review our -- these

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efforts as an attempt to work collectively for the benefit of our neighborhood. I know Commissioner Jordan supports trying to have these discussions, you know, prior to meeting here, and we really -- we tried our best.

Specifically, we made the following changes in our additions to our original plans, to directly appease community neighbors.

What did we do? Well, we eliminated variances.

Since October 22nd, we have eliminated two full variance requests, a rear yard set-back and for lot occupancy.

We did this to address several Metropole resident's concerns, that's the neighboring building, that the building came back too far into the alley.

We also eliminated rear parking spaces. At the request of a Metropole Board Member, we eliminated all rear parking in our building, in order to keep a 33-foot by 13 rear space open as a loading area, a midst concerns of alley congestion.

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We eliminated windows. We removed all the windows from the southwest corner of the property facing the Metropole. We did this to again, address some of the Metropole resident's concerns that privacy was somehow being compromised.

Roof-deck hours. We have agreed to limit roof-deck hours to 10:00 p.m. Sunday through Thursday, and 12:00 a.m. Friday and Saturday evening.

We did this to address several neighboring resident's concerns of roof-deck noise.

Finally, we have a construction management agreement that we formed with our neighboring building.

We worked to provide contractual assurances to our neighbors on construction hours, security, cleanliness and a host of other issues.

Despite our best efforts, you will be hearing today from a vocal minority who are against this project. Some state the lack of parking will cause serious congestion problems. DDOT and a

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professional traffic study disagrees in their report.

Some state a lack of parking will somehow adversely affect commercial businesses.

We have support letters from the owners of VIDA Fitness and Bang Salon, two of Metropole's largest tenants, as well as Blink Optical, Logan Tavern and the Commissary, all very popular businesses in neighboring buildings, and they all believe quite to the contrary, that 38 new pedestrians are only good for business and will enhance the intent of the zoning plan.

Some state our trash will be a problem and the alley will be too congested with more trash trucks.

Well, unlike the neighboring buildings, who have trash areas located smack-dab in the alley, our building houses an interior trash room that is both temperature controlled and ventilated, keeping it out of sight and out of mind.

Also, we plan on contracting the same trash contractor as our neighboring

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buildings. So, the same truck coming down the alley, picking up the Metropole's trash for example, will pick up our's.

CHAIRMAN JORDAN: Just begin to wrap it up.

MR. ROSE: I'm just about done. No additional alley traffic will occur, as a result.

Keep in mind, our properties are currently the only ones receiving city/public trash collection. Therefore, congestion will actually be decreased, once a trash removal company is contracted.

Some say we did not communicate to the community. This is not accurate.

Last Spring, we presented our plans at four separate ANC meetings, two committee meetings, two full ANC meetings. They covered both historic and zoning preservation -- and historic preservation and zoning.

For those meetings, we submitted support letters from more than a half-dozen neighboring residents. In June, we sent plans directly to the Metropole's property

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manager and received a kind note back from him, but not follow up.

On many other occasions, we met personally with anyone who asked, and of course, we also presented the entire project to the Historic Preservation Review Board for approval on July 11th.

My last line. I thank you for your time and consideration.

CHAIRMAN JORDAN: Thank you.

MR. ROSE: I hope you concur with the ANC and the Office of Planning, DDOT and Historic Preservation, that this is a positive addition for Church Street, the ARTS overlay District and our city.

CHAIRMAN JORDAN: Thank you.
Cross-examination, Mr. Sullivan.

MR. SULLIVAN: Yes, thank you.

CHAIRMAN JORDAN: Sorry, the Board, any questions? I'm sorry, I apologize. Board?

MEMBER MAY: Yes, I do have some questions. So, you said that two of the existing buildings are not habitable. What do you mean by that? Are they just in bad

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shape?

MR. ROSE: Yes.

MEMBER MAY: Okay, so, the parking relief is easy to understand, the lot size is easy to understand. But I'm concerned about the roof top relief.

So, explain to me, are two stairs to the roof-deck absolutely necessary? Is it possible to service that with a single stair?

You need to come to the microphone if you're going to answer a question.

MS. BROWN: If you could state your name for the record.

MR. FILLAT: Peter Fillat. I'm sorry, is it on?

MEMBER MAY: Yes.

MR. FILLAT: Okay, Peter Fillat, Peter Fillat Architects.

MEMBER MAY: Okay.

MR. FILLAT: Yes.

MEMBER MAY: Two stairs are necessary?

MR. FILLAT: Yes.

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MEMBER MAY: And is that if there is a deck at all, or does it have to do with the capacity of the deck?

MR. FILLAT: Has to do with the capacity of the deck.

MEMBER MAY: So, how big is the deck right now? How many people can it hold?

MR. FILLAT: The deck is approximately 25 by, I'm going to say 30.

MEMBER MAY: Okay, so, 750 square feet and what do you figure -- you have to figure it at five or seven square feet? Seven square feet?

MR. FILLAT: I believe so, correct.

MEMBER MAY: Okay, so, if you reduce the size of the deck, you could eliminate that stair, right?

I mean, you want to get below 50 people, is that what the issue is?

MR. FILLAT: Yes.

MEMBER MAY: Okay, all right. We'll come back to that. I just want to understand what the situation is with that

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roof-deck and with the stairway.

So, did you also investigate using a low-overhead elevator?

MR. FILLAT: Yes, we investigated -- this is really the smallest -- the lowest that this elevator override can be, and it's based on the overall height of the building and the -- and the speed of the elevator.

MEMBER MAY: Okay.

MR. FILLAT: But this is absolutely the lowest we could get it.

MEMBER MAY: Okay.

MR. FILLAT: And we're nine inches off.

MEMBER MAY: Well, yes and no. So, looking at your drawings, I'm trying to find the drawing that clearly shows the setback relief that's needed, and I'm looking at this, and this is probably the closest thing that you have to it, is that right? This is 11.

CHAIRMAN JORDAN: Page 11?

MEMBER MAY: Page 11, okay. So, and Mr. Sher, maybe you can explain this to me, but I see two circumstances where there

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is set-back relief needed.

One is for the elevator section itself, which is not fully set back, right?

MR. SHER: Yes, if you took the corner --

MEMBER MAY: Yes, the corner --

MR. SHER: -- of the --

MEMBER MAY: -- of that indentation where the balcony is.

MR. SHER: The corner, about a foot and a half short.

MEMBER MAY: Correct. So, that's where -- one of the areas where you need relief, and then the other one is for the stair tower itself.

MR. SHER: Correct.

MEMBER MAY: Right?

MR. SHER: On the top of the drawing --

MEMBER MAY: Okay.

MR. SHER: Which would be the west side.

MEMBER MAY: So, the question I have for you is, how does this not violate the Height Act, because that stair tower,

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when it goes above the level of the roof, is not set back sufficiently from the adjacent roof.

The adjacent roof would have to be the adjacent roof that's all the way down, right?

MR. SHER: Okay, the Height Act requires set-back from exterior walls --

MEMBER MAY: No --

MR. SHER: -- not the --

MEMBER MAY: -- it says --

MR. SHER: -- the edge of the roof.

MEMBER MAY: No, it does not say exterior wall in the Height Act. I looked again. It does not say exterior wall.

I'm sorry. Sorry. It does not say the building face, right?

MR. SHER: It says --

MEMBER MAY: So, the exterior face --

MR. SHER: -- exterior wall, I believe.

MEMBER MAY: Right, okay. So, but it does not say the -- that does not

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mean the building face, right, at the street.

MR. SHER: Over the 100+ years of interpretation of the Act of 1910, that -- the term 'exterior wall', when used in the Act and applied, has meant the wall on the street line.

So, the wall in this case --

MEMBER MAY: Okay.

MR. SHER: -- where the three fronts of the townhouses are --

MEMBER MAY: All right.

MR. SHER: -- that's the exterior wall.

MEMBER MAY: Okay, well, maybe you can make a case to justify that. I do not believe it, because it flies in the face of the purpose of the Height Act, which is to reduce the perceived height of the building, right, to the minimum possible.

So, right now, what you have in my view is a building that is 80 feet tall, on a street that allows 70 feet, because of that stair tower.

So, from my perspective, in order

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to get my vote, you need to absolutely have to prove to me that this is consistent with the Height Act, which I do not believe and I do not believe that interpretation you gave me, or you eliminate the stair tower and reduce the size of the deck, or move the stair tower back.

You can do a shift of the top floor. I know it would cost you a unit, but I cannot support that stair tower showing that way.

Plus, I also think you need to fix the problem with the set-back from the elevator, which means putting the roof over that one balcony at the top level, and that would fix your problem.

MR. SHER: Okay, as I said, it's a foot and a half or -- on the diagonal there.

MEMBER MAY: So, you have a foot and a half. You extend the -- you know the --

MR. SHER: If it can be fixed, we'll take a look at fixing it. I am not --

MEMBER MAY: All right.

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MR. SHER: I'm not the one who can tell you whether that can be fixed or not.

MEMBER MAY: Okay.

MR. SHER: I believe that we can demonstrate and give you examples of many buildings, where the roof structure is set-back -- is on the face of a wall that is not a street wall --

MEMBER MAY: Right.

MR. SHER: -- that has not been deemed to be in violation of the Act of 1910.

MEMBER MAY: Right.

MR. SHER: So --

MEMBER MAY: And again, I don't -- that -- I think you can make that case, okay.

On principle, my understanding of the Height Act, I do not -- and I do not believe I will accept that definition.

So, I would -- you know, and it's up to the entire Board, but I'm just letting you know up front, I'm not persuaded by that.

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CHAIRMAN JORDAN: And I've been sitting here reading, going back over it, and I haven't seen either way. That's something certainly, we have to be briefed on, because --

MEMBER MAY: I mean, I understand the Height Act interpretation is not our domain. It's the Zoning Administrator's domain, right.

So, I mean, you can also go that avenue, as well. Doesn't mean that I'll vote in support of it because it's --

MR. SHER: You have to decide whether you're going to vote in support of it or not.

MEMBER MAY: Exactly.

MR. SHER: I understand that.

MEMBER MAY: Right, but and you can go that route, but I don't believe it.

I mean, this absolutely, to me, flies in the face of the principles of the Height Act, which is to reduce the perceived height from the street, and when you set it back and you go higher up, it is -- it flies in the face of the Height Act.

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So, I'll leave it at that, and you know, we can -- you can seek an interpretation from the Zoning Administrator if you'd like. You can give us past precedence and I'll see what I can do to persuade my fellow Board Members one way or the other.

MS. BROWN: Right, and just for the record, I believe this issue was briefed in the case for Belmont Road, 1819 Belmont and it's Case 17109, but we'll be happy to take it under advisement and re-brief it and --

MEMBER MAY: Yes, I don't believe I ever voted in favor of one like this, when it's been a circumstance like this, on the street face.

Certainly, when it's -- you know, when it's a courtyard condition or a rear-yard condition or something like that, it seems different to me, but this is one where it's -- I mean, it really is not -- it's contrary to the purpose of the Act, in my view.

MS. BROWN: Okay, thank you.

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CHAIRMAN JORDAN: Let me go back a second about the deck.

MS. BROWN: And I've just been advised that the -- our Applicant has agreed to try to change it to meet your desires.

CHAIRMAN JORDAN: Let me go back about the deck. The deck size is -- the deck is a certain size, because you're trying to accommodate a certain number of people on the deck, is that correct?

MR. ROSE: Yes.

CHAIRMAN JORDAN: But that's not set in stone?

MR. ROSE: No.

MR. FILLAT: No.

CHAIRMAN JORDAN: All right, I'm going to grab some of the other questions I have. I kind of lost some of those.

So, regarding -- so, when you say that you're going to reserve -- eliminate this property from the parking permit allowance, so, you're agreeing to allow this to run with the land, this restriction to run with the land, to be coming that way in the deed.

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MS. BROWN: It would run with the

--

CHAIRMAN JORDAN: With the land,
by land.

MS. BROWN: -- with the project,
yes.

CHAIRMAN JORDAN: Because you
know, sometimes we see projects where one
owner says it and then they pass the project
on -- you're going to operate this and not
turn -- there's no plan to turn it?

MR. ROSE: No, it's actually --
we're going to be managing the --

CHAIRMAN JORDAN: We will require
it to run with the land, if we were to grant
this.

The other -- you know, I haven't
seen the report and I'm going to ask
certainly, that we get the report and
probably, you know, on the traffic study
issue.

But we keep getting these same
kind of discussions about the walk -- the
walk number, the walk score, but no one has
validated that.

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The numbers in these TDM kind of measures actually have been effective, and we keep going back and back, and a lot of this is based upon some old studies and there is -- I don't know when the last recent study -- what is the most recent study to validate the measures that's been put in place? Can you provide --

MS. BROWN: Well, I'm sorry, the walk score?

CHAIRMAN JORDAN: That these kind of TDM measures that you offer and talk about, have been applicable.

MS. BROWN: Why don't we have Mr. Erwin Andres --

CHAIRMAN JORDAN: Right.

MS. BROWN: -- address that question?

MR. ANDRES: Good morning, Chairman Jordan. Erwin Andres, Gorove/Slade Associates.

Yes, this is obviously a discussion that we keep on having every time we come up, and it's my understanding that DDOT is in the process of doing a parking

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generation and a trip generation study.

It's a study that will look at different parts of the city, and look at different developments that are under construction -- or will be constructed and will be occupied, so that they'll take a look at the different characteristics of those properties, so that you -- the District in general will have concrete evidence that transportation demand management measures do work, along with limiting and incentivizing some of these developments by not providing parking.

It's been our assessment that in certain neighborhoods, and this is one of those neighborhoods, that parking isn't necessarily a necessity, but it's more or less an amenity.

You know, just like some buildings have pools. Well, some buildings don't have pools, but some buildings don't have parking, and that is how many of the residents, and especially in the 14th Street corridor, and then there's some other corridors like the 8th Street corridor, that

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have similar characteristics, and we believe that given the level of availability of transit, as well as the biking and the pedestrian amenities, we believe that not providing parking here will not have an adverse effect on the surrounding neighborhoods.

CHAIRMAN JORDAN: Okay, I'm real concerned about parking here. This is a very densely populated area.

Are you -- I haven't had a chance to look at the report. Are you again, relying on the 2005 WMATA study, developmental --

MR. ANDRES: Well, the 2005 WMATA related development study looks at transportation -- transit oriented developments, and how much people take transit on some of those developments.

In this instance, and as some of the many other instances where I've testified on, yes, that is part of it, but also, it's part of -- in this case, it's important to note that these are micro-units. These are studio units. These are

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units that are more conducive to residents in the District, looking to get rid of their car or not have a car.

When you choose to lose -- live in neighborhoods like this, there is a certain understanding as a resident --

CHAIRMAN JORDAN: All I'm asking, where has that been studied and supported? You have that in this report?

MR. ANDRES: No, there are --

CHAIRMAN JORDAN: That's kind of gut?

MR. ANDRES: Well, I would --

CHAIRMAN JORDAN: Kind of reason?

MR. ANDRES: -- say engineering judgement, but yes.

CHAIRMAN JORDAN: Based upon what?

MR. ANDRES: Based upon the fact that we've worked on a lot of projects in this area. Based on the way that the industry is moving, both the real estate industry and --

CHAIRMAN JORDAN: You've done the --

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MR. ANDRES: -- the transportation industry.

CHAIRMAN JORDAN: You've done the sampling after the fact and before the fact, that justifies this reasoning?

MR. ANDRES: Yes, we've done -- we've compiled some studies that looks at the research of relating the reduction in parking as a transportation demand management measure, in a way to reduce people from commuting, just as long as that there is an alternative mode.

If you're not providing the parking, but also not providing any transit or any bicycle amenities or any pedestrian amenities, then yes, there will be parking in neighborhoods.

But given that you're locating the site --

CHAIRMAN JORDAN: I understand the --

MR. ANDRES: -- the demand has to shift some place.

CHAIRMAN JORDAN: -- the theory. I understand. I'm just looking for the

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support for the theory. That's all.

MR. ANDRES: Well, unfortunately as I mentioned in some of the other BZA hearings, you know, the data is currently being collected by DDOT.

CHAIRMAN JORDAN: You know, because we're constantly getting, as you know, beat up by this Board, and it's just a reality of parking, and we keep dealing with the theory with no back up support for the theory. It's all been gutted and sounds good.

The problem is, after these places are built, up and running in two years, you look back and find out there is major issues.

I'm just -- it goes just beyond that, but it's also about this project, because this is what's before us now. I didn't know, had you done something that provided real data in support of what we talk about in theory. That was my question.

Any other questions from the Board?

VICE CHAIRMAN ALLEN: I have a

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couple.

CHAIRMAN JORDAN: Yes?

MS. BROWN: Mr. Chairman, if I could address that issue, as well.

Number one, there are studies that show that at least 38 to 40 percent of the households in the District of Columbia are car-less. That's households, not individuals. That is who this building will be marketed to, and that is why there is going to be at lease provision restricting tenants from having a car or getting -- from having an RPP.

CHAIRMAN JORDAN: So, you're saying that --

MS. BROWN: When we bring it to the --

CHAIRMAN JORDAN: You're saying that 38 to 40 percent of the people don't use cars. I can understand that, but I'm talking about the effect upon --

MS. BROWN: And the effect is that if you market to only those people that don't have cars, and you do not provide parking, there is no net-impact, and if you

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have a lease restriction that says, "Your lease will be terminated if you do have a car and if you do get an RPP," it's not that you don't have a car. It's that you -- if you use -- you're not allowed to get an RPP --

CHAIRMAN JORDAN: So, what is the enforcement of that? How are they -- how do you know I don't have that?

MS. BROWN: So, we will -- the Applicant has agreed to check in with DDOT and the DMV annually, to see whether or not there are any violations of somebody asking for an RPP.

If there is a violation, they will -- and these are some of the conditions that I wanted to get to, that we -- we are imposing on ourselves for this application. Do you need me to read through them?

CHAIRMAN JORDAN: Because I didn't see that in the application. Well, just hold on a second.

That's not -- so, that's up to -- that's public record. So, I can go and find out if anybody has the RPP -- has an

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application?

MS. BROWN: We would ask DMV, DDOT, the appropriate agency at the time, whoever it is, the Applicant will request data on who has requested an RPP that lives in this building, by address, and it has to be by address.

I should also note that we are going to request that this building be permanently eliminated from the list of RPP eligible buildings.

Right now, it is and it's commercially zoned and only residentially zoned properties can -- are eligible for RPP. So, we're going to put in that direct request to DDOT, and this is consistent with other BZA and Zoning Commission cases, where relief has been granted from parking, to put in this stringent restriction to ensure that you don't have people moving in that have cars, that ask for RPP's that create congestion --

CHAIRMAN JORDAN: Yes.

MS. BROWN: -- on the neighborhood streets.

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CHAIRMAN JORDAN: That's something that we've -- this Board has done, because we keep getting it over and over again, and we found some people back-tracking on us, and some other property flipping.

So, that is why we certainly want these things run with the land.

Let me just go get cross, and you can come back on rebuttal with some of this. Mister -- I'm sorry, Ms. Allen?

VICE CHAIRMAN ALLEN: Thank you. I'm going to come back to the parking, just to take a break from it, but I definitely have concerns about the parking.

The building is six floors? Five floors?

MS. BROWN: Eight floors.

VICE CHAIRMAN ALLEN: Eight floors?

MS. BROWN: Seventy feet.

VICE CHAIRMAN ALLEN: That's what I thought, and have -- and did I -- I don't know if I just missed it, but the issues of light and air for the adjacent -- for

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Metropole in particular, but for the adjacent properties, have you addressed that anywhere, the impact on the light and air of the existing neighbors? Is that addressed in any of your --

MS. BROWN: By the parking variance?

VICE CHAIRMAN ALLEN: No, I said we're coming back to parking.

MS. BROWN: Okay.

VICE CHAIRMAN ALLEN: I'm asking about light and air, how it's going to affect --

MS. BROWN: For the roof structure relief?

CHAIRMAN JORDAN: The effects.

VICE CHAIRMAN ALLEN: Yes.

MS. BROWN: Right, so, we do have sufficient set-backs and the variance requiring just the nine -- and we've -- since stated that we're going to eliminate the relief to have the nine inches --

VICE CHAIRMAN ALLEN: I'm sorry?

MR. FILLAT: We're going to try to answer that.

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MS. BROWN: I'm sorry? The rear set-back.

VICE CHAIRMAN ALLEN: The reason it came to my mind was when Mr. Rose was discussing that you had eliminated windows because of the concern by some of the neighbors, that there would be lack of privacy, and so, I was just wondering if you also looked at the affect of light and air on those same neighbors, I guess is my question.

MR. FILLAT: The design has been driven by light and air from the adjacent structure.

When we worked with Mr. Callcott on the design of the building, we actually had a building that was straight across the entire width of the property, and part of the reason why the building steps back the way it does and Mr. Sher pointed out to us that we have this issue with the one stair tower, is because we set the building back further on the western most side of the building, in order to allow better light and air with the adjacent property.

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The adjacent property actually has a roof terrace that is about four stories off the ground, and so, when we found out about the roof -- the stair tower issue, we said, okay, well, we can bring the facade back forward.

Subsequently, we had meetings and conversations with the adjacent property owner and we said, "Look, we can -- if we move the building back forward, it will impact your terrace worse than it does, or we can move it back and allow it to stay the way it is," and she basically said, "Look, we prefer to keep it the way -- setting it back, and creating this problem with the stair case."

But in order to garner her support, and she still didn't give us the support.

So, that's the reason why we are where we are. We probably had not -- had we known we were not going to have her support, would have moved the facade back forward and eliminated the 80 foot eight inch issue. I'm sorry.

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MS. BROWN: If I could interject.

MR. FILLAT: Seventy-eight foot eight inches.

MS. BROWN: If you were to look at Sheet 04 of the drawings, you will see the relationship of the project. Right now, it shows the existing buildings in the project.

It will show the relationship to the Metropole. You'll notice that the Metropole has a carve-out in it.

Our building will be next to a courtyard of their's, so that they will have sufficient light and air for their own property.

VICE CHAIRMAN ALLEN: Okay, thank you, and that was -- tell me again, exactly where that is.

MS. BROWN: On Sheet 04, you will see the darkened, shaded area, which was -- is our project and to the left-hand side of that, you will see an area that has a dimension of 24 feet --

VICE CHAIRMAN ALLEN: Okay.

MS. BROWN: -- and that is their

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courtyard.

VICE CHAIRMAN ALLEN: I'll look at that in a minute. Thank you.

The second question I had, and really, this goes to the elimination of the two parking spaces that initially were going to be there.

You have 38 units, a very dense populated area, very limited parking. I understand how you've tried to mitigate the issues for the tenants. What about guests? There is not even a guest parking at this point for 38 units. Is that correct?

MS. BROWN: That's correct, and it's not required.

VICE CHAIRMAN ALLEN: I get that. I'm still thinking about the neighborhood and the impact on the parking and all of those kinds of things.

So, there is -- just because it's not required -- although the parking is required, you're saying that there is no issue --

MS. BROWN: No parking required -- there is -- won't -- there is no issue for

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a couple of reasons.

Number one, there is no zoning requirement, so there is no relief required for it. So, it's not -- there is no nexus here.

Secondly, if the visitors do come to the area, there are spaces available in the garages in the area, including the Metropole that has spaces.

VICE CHAIRMAN ALLEN: Okay.

MS. BROWN: I believe -- I've just been advised it's 16 spaces that they have available.

VICE CHAIRMAN ALLEN: Thank you.

CHAIRMAN JORDAN: Any other questions, Board? Mr. Sullivan, cross?

MR. SULLIVAN: Yes, thank you. Mr. Rose, the -- your proposed building is 38 units, is that correct?

MR. ROSE: That's correct.

MR. SULLIVAN: And the land area is 3,420 square feet?

MR. ROSE: That's correct.

MR. SULLIVAN: So, that is a ratio of one unit for every 90 square feet

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of land, is that correct?

MR. ROSE: I didn't do the math,
but I'm sure your math is good.

MR. SULLIVAN: I think it is.

MR. ROSE: Okay.

MR. SULLIVAN: You said that your
project --

CHAIRMAN JORDAN: Mr. Sullivan,
just for sake, I'm going to allow the
Applicant group to respond to your
questions, if one doesn't have the answer,
so we're not directing that way.

MR. SULLIVAN: Then does anybody
else want to respond to the question, just
to confirm that, that the ratio is one unit
for every 90 square feet?

MR. FILLAT: That's the way my
math works.

MR. SULLIVAN: Thank you. Mr.
Rose, you said your project mimics the same
formula for the rest of the block.

Are you aware of any other
project on this block that has one unit per
every 90 square feet of land area and has no
parking for those units?

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MS. BROWN: Objection. What is the relevancy of this? The number of units in a building is not controlled by zoning.

CHAIRMAN JORDAN: What is your question again, Mr. Sullivan?

MR. SULLIVAN: Mr. Rose says that his project mimics the same formula for the rest of the block, in his testimony.

I'm asking him if he knows of any other projects on the rest of the block that have such a high number of units per the land area, and this directly impacts the parking variance.

CHAIRMAN JORDAN: Okay, you can answer, please.

MR. ROSE: No.

CHAIRMAN JORDAN: No, what? I'm sorry?

MR. ROSE: I don't know.

CHAIRMAN JORDAN: Okay.

MR. SULLIVAN: Mr. Rose, do you, or do you know anybody else on your team -- have you provided any testimony or evidence that you -- you must have 38 units in this building, in order to avoid having a

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practical --

MS. BROWN: Objection.

MR. SULLIVAN: -- difficulty?

MS. BROWN: There is no direct testimony on that.

CHAIRMAN JORDAN: Yes. You want to rephrase the question?

MR. SULLIVAN: I'm sure -- there is plenty of testimony in the record, and on the fact that there is a practical difficulty, and my question goes to practical difficulty.

Their contention is that they need to have 19 parking spaces and they need relief for 19 parking spaces. The only reason they need 19 parking spaces is because they have chosen to have 38 units and --

CHAIRMAN JORDAN: So, you're saying that within -- your question is, is there another alternative that provides that they can do a construction business -- of the building, that doesn't require such relief? That's the essence of your question?

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Is there another way of doing
this with --

MR. SULLIVAN: The extent of such
relief, yes.

CHAIRMAN JORDAN: Okay.

MR. SULLIVAN: Because the
question --

CHAIRMAN JORDAN: Answer the
question, please.

MR. SULLIVAN: Because if there
is a practical difficulty -- my question is,
where is the evidence of the practical
difficulty, economically, that you must have
38 units.

CHAIRMAN JORDAN: It doesn't have
to be economically. He is saying -- the
question is, why are you doing it?
Basically the question is, and if I'm right,
why are you doing 38 units, as opposed to
another number?

MR. SULLIVAN: Let me ask it this
way. If you -- could you build 24 units and
provide four spaces in the back, which would
drastically reduce the relief requested?
Would that be a practical difficulty?

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MR. SHER: In theory, you could build a 24 unit building. You could build a 20 unit building. You could build a 16 unit building. You could build a 10 unit building.

Every one of those buildings would still require a variance.

So, the width of the lot, the shape of the lot, the factors that I talked about earlier drive the need for a variance.

The only way you could get a building that wouldn't require a variance, in theory, I think you could design -- not design. You could create a building that had eight units and conceivably get four parking spaces, but anything more than that is going to require a variance.

So, then you get to the factors of the variance test, and the exceptional situation, the practical difficulty and the no adverse impact, and I think we've been focused on the adverse impact issue, in terms of how are we going to make sure that whatever that number of units is, whether it's nine or 39, doesn't cause an adverse

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impact, and we've talked about how, because of the location of the site, because of the commitments that the Applicant has made about not letting people park on the public streets, that we don't think there is going to be an impact.

MR. SULLIVAN: Thank you. My question goes not so much to the impact. It goes to the degree of the variance requested.

So, are you saying that if you meet the variance test for uniqueness, then you -- it doesn't matter whether you're asking for relief for two parking spaces or 50 parking spaces?

CHAIRMAN JORDAN: I think what you can do, Mr. Sullivan, because you can go through 10, 20, 15, why don't we make it part of your case, and you can show that there's another alternative, or if there is an alternative somewhere.

MR. SULLIVAN: I have a question. I would like to make a comment on any information related to the expert witness for traffic and parking, that we be entitled

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an opportunity to have some time to respond,
both to his report, which I have not looked
at --

CHAIRMAN JORDAN: Certainly, yes.
Certainly, that's granted, because we
haven't had a chance to digest it ourselves,
and but I would agree.

MR. SULLIVAN: Thank you. That's
all I have.

CHAIRMAN JORDAN: Let's turn to
Office of Planning.

MR. GYOR: Good afternoon, Mr.
Chairman and Members of the Board. Steven
Gyor with the Office of Planning.

OP supports the Applicant's
request for relief and particularly, the
Applicant's proposed changes, which
eliminate two areas of relief, as well as
the Applicant's proposed conditions, and we
rest on the record. Thank you.

CHAIRMAN JORDAN: Board,
questions of Office of Planning?

Does the Applicant have any
questions of Office of Planning?

MS. BROWN: No, we do not.

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CHAIRMAN JORDAN: Mr. Sullivan,
any questions for Office of Planning?

MR. SULLIVAN: One question, and
you may stop me, because it's similar to the
line of questioning before, but I would like
to hear what he has to say.

CHAIRMAN JORDAN: Go ahead, ask
the question.

MR. SULLIVAN: Mr. Gyor, you say
that the -- under parking, the site's
dimensions create a practical difficulty for
the Applicant, in that the lot is not large
enough to accommodate the required 19
spaces.

Nineteen spaces is required only
because they have chosen to do 38 units, is
that correct?

MR. GYOR: That is correct.

MR. SULLIVAN: Did you do any
analysis of whether or not they could have
provided a smaller -- ask for less relief,
and provided some parking spaces or had less
units, and not had a practical difficulty in
that situation?

MR. GYOR: I did not, no. Not in

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this report.

MR. SULLIVAN: Thank you. No further questions.

CHAIRMAN JORDAN: I follow your questioning. I'm just trying to see -- yes, we'll leave it for your case.

Department of Transportation?
Anyone from Department of Transportation?

MS. BROWN: Mr. Chairman, my understanding is that Mr. Fleming was unavailable to attend today's meeting, and that he rests on the report submitted.

CHAIRMAN JORDAN: Okay, he has a report that was late. We'll waive the lateness of his report.

He supports the application, based upon the TDM measures, and I think we all have that in our record.

Any representative from ANC-2F?
Representative from ANC-2F?

We do have a letter of support, which we'll give great weight to. They voted 7-0-1 to support the application.

Anyone wishing to testify in support of this application? Anyone wishing

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to speak in support?

Then we'll turn to opposition.
Mr. Sullivan, you have 22 minutes, if you
need it.

Okay, before we go to opposition,
we're going to take a five minute break and
then we'll come back.

(Whereupon, the above-entitled
matter went off the record at approximately
12:35 p.m. and resumed at approximately
12:40 p.m.)

CHAIRMAN JORDAN: Let's go back
and we're now going to the second half of
the ball game, and I don't know if you
stayed up and watched the game last night,
but that was a heck of a game.

Mr. Sullivan, can we have the
Applicant's team back at the table, please?
Yes, we're going to do some -- well, let's
wait, because how many witnesses are you
calling? Do you need space?

MR. SULLIVAN: Just one. I have
a five minute statement and a witness has a
five to ten minute statement.

CHAIRMAN JORDAN: Okay, very

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good. Thank you. All right, the kick-off.
We kicked off.

MR. SULLIVAN: Thank you, Mr.
Chairman, Members of the Board. My name is
Marty Sullivan with the law firm of Sullivan
& Barros. I'm here on behalf of the
Metropole Condominium Association, which
represents the unit owners of the Metropole
Condominium at 1515 15th Street, Northwest.

The position of the Metropole
Board is that the Applicant has not met its
burden to prove the existence of a practical
difficulty, in complying with the zoning
regulations.

While the size of the lot may be
smaller than most of the properties on this
block now, all or most of which provide for
their own parking spaces, I might add, it is
certainly not uncommon for the Logan Circle
neighborhood, the size.

The question I think the Board
should ask is this.

If the Board declares that a site
deserves a 100 percent parking variance,
because it is 38 feet wide and 3,420 feet in

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total, then what about the other properties in Logan Circle, almost all of which are smaller than that?

Do they all deserve 100 percent parking variance, no matter how many units they are proposing?

It's not enough to simply recite the standard characteristics that might make a property unique. Those unique characteristics must also be the actual source of the practical difficulty, and the Metropole Board does not believe that they are in this case.

If you consider each of the characteristics cited by the Applicant, you will see that there is no connection between the unique condition and the alleged practical difficulty.

The Applicant claims that there is no way to get 19 spaces on such a narrow site, but the need for such a large number of spaces is solely their choice, and at this point, I'll explain what I was talking about in cross-examination.

The degree of a variance

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requested is a major consideration for the practical difficulty analysis. That's in the case law, and there is a reason for that, because at some point, you no longer have a practical difficulty.

The practical difficulty that --

CHAIRMAN JORDAN: Well, you may or may not, Mr. Sullivan.

MR. SULLIVAN: You may or may not, right.

CHAIRMAN JORDAN: You don't know where that -- that line draws, whether or not -- if you do anything other than two units and four units, and then can you do two units and four units, and is it financially feasible to do two units, four units, or if you do the relief of going for ten or 12, I mean, because you can slide that scale left and right.

But I understand what you're saying and --

MR. SULLIVAN: That's correct, and I don't think they have submitted any evidence what so ever, to show that 38 units is required. Not that -- not that they have

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to show that it -- that 38 is feasible, but what about 38 makes it -- what about this project and the unique characteristics of this project and this property, make providing 30 units a practical difficulty, because if they went to that degree of variance, that is essentially what they're showing.

We have -- at some point, the practical difficulty goes away. They're saying it goes away at 38 units. "Give us 38 units. We've overcome our practical difficulty."

But they haven't submitted any economic information, and it's an economic argument. It is. It has to be.

So, the Applicant is proposing 38 units on 3,420 square feet of land. As we mentioned, that is one unit for every 90 square feet, and then they come to the Board and say that such high intensity of use just makes it too darn difficult to provide all the required parking.

This is not -- they're not required to do one unit per 90 square feet,

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and it's not really customary or the norm anywhere.

They have a concept to do micro-units, but the zoning -- the parking requirements still require parking for each unit.

So, it's the Applicant's burden to show why it needs such a high degree of relief, and instead -- instead of providing any specific testimony or evidence, they've just made a general argument to the effect that the lot is narrow, therefore, "We get to put as many units as we want in here, regardless of the parking requirement," and there is two things I'll mention about the parking requirement, as it relates to the regulations adopted by the Zoning Commission.

One, I would assert that the Zoning Commission, when they developed the regulations for parking, they already consider the density of an neighborhood and the availability of public transportation and all those factors are already considered into them developing a parking requirement.

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So, you start with a parking requirement that considers whether an area is in a walk-able area or an area where cars aren't used as much and parking is not needed as much.

They're asking for 100 relief from that basic requirement, at minimum.

CHAIRMAN JORDAN: So, from 1958, they factor that all in.

MR. SULLIVAN: Well, they amend the regulations whenever --

CHAIRMAN JORDAN: Correct.

MR. SULLIVAN: Whenever they see the need.

CHAIRMAN JORDAN: Okay.

MR. SULLIVAN: The other thing I would mention is that there is nothing else that regulates the number of units in a building after the R-4 Zone, other than the parking requirement.

CHAIRMAN JORDAN: Well, then the restriction on the -- the principle of that shouldn't be an apartment house district, etcetera.

MR. SULLIVAN: That's correct.

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So, it appears that there could be other reasonable options.

The Applicant could, perhaps provide 10 parking spaces on one level underground or on just one side of the property, and it would have about 20 feet left over on the other side, for getting in and out of those spaces.

It's important to note that by the way, the parking space size and access restrictions are relaxed on historic properties. So, they might be able to do that.

Another option, they could just provide four spaces at the back, have a smaller building and have fewer units and drastically reduce the degree of variance relief that they're requesting, but we don't know. We don't know when that practical difficulty goes away, because they haven't presented any evidence, any economic evidence that they need 38 units and 19 parking spaces.

So, in the end, the Applicant's requesting a degree of variance relief which

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is not justified by any particular specific evidence.

I would look at a couple of the claimed unique characteristics and whether or not they actually lead to practical difficulty.

There is historic buildings on the site. It shouldn't be enough just to say they have historic buildings. This is currently not a unique situation in Logan Circle and the various historic districts throughout D.C.

The Applicant says that the existence of the historic buildings "constrains the floor plate of the building", and yet, the managed to max-out the FAR and squeeze out 38 units.

One wonders how many units in FAR they could have gotten if the floor plate wasn't so constrained.

The Applicant says that the historic building's characteristics place substantial restrictions on potential building and parking configurations, but it never really explains this broad statement

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and it hasn't submitted any direct evidence in support of that statement.

They note that the existing houses are modest in size, a fact which you would think would be beneficial to the Applicant in leaving space for parking or excavating for parking, but the Applicant doesn't explain how smaller structures make it harder, not easier to provide parking.

So, there is little or no connection between any unique characteristics of the property and the extreme practical difficulty requiring relief for 19 spaces.

If there is a connection, the Applicant hasn't presented any probative evidence thereof. It's just made general statements, the land can't be excavated, no parking spaces are possible and no turning radius.

Regarding the substantial detriment to the public good, despite the Applicant's claims that the building will just automatically attract people without cars, adding 38 units to an already crowded

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parking and traffic situation is likely to have a significant negative impact on the block anyway.

Assuming the RPP restrictions are even realistically enforceable, there are still likely impacts.

Residents may take up available leased parking spaces in the neighborhood, if there are any. They will still have visitors coming in cars to try to park in the neighborhood and I would submit that the more units you have, the more visitors you have, and that's how it would impact the -- the parking variance would make that situation worse.

So, for these reasons, the Metropole Condominium Association strongly opposes this application in its current form, and urges the Board to deny the application and encourage the Applicant to explore other options for a more reasonable approach.

With me here is Celia Davis. She was a member of the real estate committee for the Condo Board, and she has testimony

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that we'd like to submit and then she would like to give her testimony too, about five minutes or so.

CHAIRMAN JORDAN: Okay, sure.
Yes, if you could just bring it up.

(OTR comments)

MS. DAVIS: Should I start?

CHAIRMAN JORDAN: Yes, please.

MS. DAVIS: My name is Celia Davis. I live at 1515 15th Street, Northwest, Unit 408. My husband Mike and I own Unit 408 at the Metropole. Our condominium and terrace abut the development site addressed in this case, and as I was here at the last hearing, where we got postponed, I know abut comes into question. We'll be able to touch the building.

I've distributed a photograph of our condominium and the development site, to help you explain the impact. We sent a letter to the BZA Board, opposing the request, as well.

When we learned of the project early in the Summer, we emailed the developers because we had not heard anything

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from them. We hosted them at our Metropole home on July 5th.

We discussed the project. No mention was made of variance and special exception requests. We were led to believe the design was still in process.

The truth is that they had already presented to the ANC, and I heard today from Brook, that they had gotten approval on June 27th from the Historical Preservation Society, or whatever it's called.

The first time I saw detailed plans was just prior to the original scheduled BZA hearing in October. The developer's lack of communication to neighbors during the Spring and Summer, created the need for my opposition at this hearing.

I've read tutorials on the BZA website and learned the ANC report carries great weight. I emailed Walt Cain, our ANC Commissioner in October, and he told me the case had been presented, approved and their report submitted in the Summer.

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I am concerned that the Metropole owners had no voice in this process.

I hosted a meeting in November with the developers. Since the October hearing postponement, they made design changes that were beneficial to their case, as Brook pointed out, and they addressed some concerns of Metropole owners.

However, the changes raised new issues regarding the height and depth of the west wall.

Regarding the parking relief requested, they said that a transportation study had been done, as we discussed today. I had not seen it and I wasn't sure it had been filed with the BZA.

I just want to clarify, Brook said the building was brought in 19 inches from the back, which relieved a variance, but what happened is, it was moved forward six feet. So, where it never overlapped my terrace to begin with, it now overlaps four feet, and Peter, the architect, said that -- well, I'll continue with my thing, but if you have any questions about some of that

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testimony, feel free to ask me.

In November, the developer --
wait a minute.

Okay, in November, the developer proposed a settlement agreement to the Metropole. Construction issues are very important to my husband and me, given our proximity to the site.

As part of that negotiation, the Metropole asked that the original design be used, the one that didn't overlap my terrace at all.

The developer contacted me with a change to their November design, as they did not want to revert to the original.

After review, the Metropole Board decided that the agreement and this change did little more than recite what is already required under the Building Code, and at this point, I agree.

This past week, and this was actually three weeks ago, the developer had called me three times to request that I write a statement for this hearing on their efforts to address concerns. I decline.

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On Monday of that week, I received a message, text message, saying that I owed them this letter, that they were very upset about the negotiations and the expenses they incurred for attorney and architect fees. I attached that text message.

It is messages like this and the lack of communication prior to our opposition, that lead the Metropole Board and me, to question the experience and judgement of the developers.

I am at this hearing to protect my home from what I see as an over-reach by the developer.

I'd like the Board to know that despite my opposition, I have always dealt respectfully and encouraged communication with them.

The developer presents themselves as concerned and compromising, but that has not been my experience.

Mike and I do have confidence that with a compromise, a building design we agree with can be developed. I ask the

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Board to postpone their decision or deny the requests until the developers prove that this site is unique enough to support their need for BZA relief, show that it will not adversely affect nearby residences and include a construction management plan.

I also request that the ANC report not be given great weight, as the developers and the ANC made no effort to inform neighboring residences of this project. Thank you for your consideration.

CHAIRMAN JORDAN: Does the Board have any questions of the party in opposition?

Mr. Sullivan, have you done any numbers yourself? Has your client done any numbers, to look at any alternatives that would not require zoning relief or lesser?

MR. SULLIVAN: No, we have not.

CHAIRMAN JORDAN: Now, going back to your -- the pictures that you submitted, the picture. Where is your unit regarding the pictures? Is it on here?

MS. DAVIS: Do you have -- see a little key at the top?

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CHAIRMAN JORDAN: Key?

MS. DAVIS: Number one?

CHAIRMAN JORDAN: Yes, I do,
that's what I'm trying to follow.

MS. DAVIS: There is the number
two and it points to the windows. Those are
mine.

CHAIRMAN JORDAN: Those are
your's?

MS. DAVIS: All of those things
are my unit. All those numbers refer to my
unit.

CHAIRMAN JORDAN: Four and five,
too?

MS. DAVIS: Correct, four and
five.

CHAIRMAN JORDAN: That kind of
swings around?

MS. DAVIS: Yes, we're kind of on
the --

CHAIRMAN JORDAN: Okay, that's
what was throwing me. Okay, because I was -
- I thought that was another unit or
something.

MS. DAVIS: Yes, it is unclear.

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CHAIRMAN JORDAN: Same floor, got it.

MS. DAVIS: It's on the -- our unit is on the fourth and fifth floor.

CHAIRMAN JORDAN: Got it. Okay, that's what was throwing me, okay. So, your unit is right -- comes right up next door to the development, yes, like that, okay. Now, I get it.

MS. DAVIS: Correct.

CHAIRMAN JORDAN: I thought that was -- so, this looks like this is more than one unit here, but I got it. All right.

MS. DAVIS: And if I can just explain that change that Peter Fillat, the architect said, is where I have the number five, that's actually a terrace. It's an open-air terrace, and --

CHAIRMAN JORDAN: It is? Yes.

MS. DAVIS: -- it never -- the original design that was submitted for the first hearing, it didn't overlay our terrace at all. It started about four feet back from it.

But when they moved -- when the

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eliminated the variance with the 19 inches, because of the -- I'm not an architect, but because of the housing, they moved that west wall, so it overlaps the terrace by four feet about, and then the change that Peter referred to is that they dropped the front -- the roof -- the front portion that abuts our terrace, so now, the roof of that section is going to be to the top rail of our terrace.

That was better than, in the quick time that I had to make a decision, which was a phone call, that was better than a full wall, I thought. But now, I'm also concerned about if there is a roof that has no access from the building at all, right next to my terrace, I don't know, is this a safety issue or something? Like, you could really crawl right onto that roof from my terrace.

Anyway, it's not -- it's a concern.

CHAIRMAN JORDAN: Mr. Sullivan, any studies you've done in regards to light and air, or you're not making that a

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contention?

MR. SULLIVAN: We're not. I understand that is part of the matter -- portion of that.

However, as it relates to the parking variance, if they were restricted by the parking requirement, they might be building a smaller building.

But we have not. The answer is no, we haven't done any light and air studies.

CHAIRMAN JORDAN: Okay, Board, any additional questions? Ms. Brown, any cross-examination?

MS. BROWN: Yes, just one or two quick questions for Ms. Davis.

Ms. Davis, you mentioned that the overlap affects you and that you preferred the original design that was presented, is that correct?

MS. DAVIS: The original design was never presented here, but it was submitted --

MS. BROWN: Submitted to the BZA record.

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MS. DAVIS: Correct, and for the October hearing.

MS. BROWN: And could you describe the areas of relief that need to be eliminated, in order for your -- for it to address your concerns?

MR. SULLIVAN: Objection. I don't think she testified to any areas of relief and she is not a zoning expert.

CHAIRMAN JORDAN: But your question goes general to the opposition, so, Mr. Sullivan can respond, is that what you're asking?

MS. BROWN: My question is, what areas of relief are impacting her -- the construction of this building next to her unit?

CHAIRMAN JORDAN: Okay, that's a fair question, because you testified you're being harmed in some way, and she is saying what are the relief that they're requesting, it causing you problems?

So, she's saying be specific, not just that the building is going up, but regards to the --

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MS. DAVIS: Right, I guess the biggest thing for me was the height of the west wall stairway, which is -- I think is a variance, because it's increasing that wall.

But I was testimony -- I am testifying not as an expert, and I was just asked to join the party status.

CHAIRMAN JORDAN: I understand what your response is. I understand what her question was attempting to do, and I understand where you are, in regards to your response.

Okay, yes, next question?

MS. BROWN: What adverse impacts will you directly experience because of the parking variance? That is a question, and there is only one witness here, and I don't believe I'm allowed to cross-examine the lawyer.

CHAIRMAN JORDAN: Well, you know, I have gotten to the position where if lawyers put themselves in a position of making testimony, then they should be subject to cross-examination, otherwise they need to bring witnesses in here, to support

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it.

Because we can't have free-for-all with lawyers making representations in regards to factual statements, and I believe we did cross some of that, Mr. Sullivan.

There were what were perceived as facts and not just argument.

So, I would say that you can ask the question and get a response, if he knows.

You want to ask the question?

MS. BROWN: Well, I'm still trying to my head around the lawyer being a fact witness, as well.

CHAIRMAN JORDAN: It happens, not just -- it happens a lot sitting here, and I've toyed with it several times.

Lawyers giving facts, making fact statements --

MS. BROWN: Yes, we already --

CHAIRMAN JORDAN: -- as opposed to argument or doing an examination of witnesses, and I think we, as a Board, have been very lax in dealing with that issue, and just raised that -- you raised that

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issue.

MS. BROWN: Right.

CHAIRMAN JORDAN: Because it becomes, you know --

MS. BROWN: In my general, it's that if it's legal argument, and there is no factual basis for it, there is no reason to rely on it.

CHAIRMAN JORDAN: Right.

MS. BROWN: Okay.

CHAIRMAN JORDAN: So, do you want to ask the question or -- Mr. Sullivan, you're going to say what you said was all argument? Is that what you're supporting?

MS. BROWN: And I think we've already heard Mr. Sullivan's position on it. I was curious what Ms. Davis' position was on it, and if you're saying that Ms. Davis doesn't need to answer, then I don't need to hear an answer from Mr. Sullivan.

CHAIRMAN JORDAN: I lost the question. What was the question again?

MS. BROWN: The question was, what was the direct impact to Ms. Davis on the parking variance?

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CHAIRMAN JORDAN: And your response was? If you know, you know. If you don't, then --

MS. DAVIS: Other than the number of units, that Mr. Sullivan brought up --

CHAIRMAN JORDAN: That's her answer.

MS. DAVIS: -- I don't have any other answer.

CHAIRMAN JORDAN: She has nothing specific to say.

MS. BROWN: I have no other questions.

CHAIRMAN JORDAN: She's just saying overall in general, the development -- and that one thing kind of blends off the other.

Okay, Mr. Sullivan, any additional testimony?

MR. SULLIVAN: No.

CHAIRMAN JORDAN: Any other witnesses?

MR. SULLIVAN: No other witnesses and you know --

CHAIRMAN JORDAN: Then let's turn

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to --

MR. SULLIVAN: -- no other testimony. Thank you.

CHAIRMAN JORDAN: -- back to the Applicant, for any rebuttal evidence, please.

I'm sorry, any other person -- thank you. Any other person in opposition, to testify in opposition?

Any other person in opposition? Going once. Going twice. That's done. We're moving to rebuttal.

MS. BROWN: Thank you, Mr. Chairman. We'll have two rebuttal witnesses to answer some of the issues -- address some of the issues that have been raised today.

But first, I'd like to start by distinctly iterating our conditions that we would propose for this order.

CHAIRMAN JORDAN: Thank you.

MS. BROWN: First, the Applicant will include in every lease for this building, and it's intended to be a rental building, the lease -- there will be a lease restriction prohibiting tenants from

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applying or obtaining a residential parking permit or using an RPP guest pass within one mile of the building, under penalty of lease termination.

Second, the Applicant will request the Department of Motor Vehicles and/or DDOT to provide the names of any residents of the property who have requested an RPP, as evidence of lease compliance. If non-compliance is detected, checks will be increased to every six months.

So, we would start out on an annual basis and then increase it to six months if non-compliance was discovered.

Three, we will provide a minimum of 13 bike long-term spaces in the building.

Four, we will provide a one-time membership fee with a bike share or car share program for each initial resident of the building.

CHAIRMAN JORDAN: Say that again.
One time?

MS. BROWN: Yes, one-time membership fee will be paid by the Applicant for a bike share membership or a car share

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membership.

CHAIRMAN JORDAN: That lasts how long?

MS. BROWN: They're usually annual memberships.

CHAIRMAN JORDAN: So, they're paying for one year?

MS. BROWN: Yes.

CHAIRMAN JORDAN: What happens in year two, three, four?

MS. BROWN: It's up to the Applicant -- the tenant to continue with the -- it's to introduce them.

CHAIRMAN JORDAN: I understand that, but that's another issue that -- let me go back.

Was that number four or number three?

MS. BROWN: That was number four.

CHAIRMAN JORDAN: What is number three?

MS. BROWN: Number three is that we will provide a minimum of 13 onsite bike spaces within the building, long-term bike spaces.

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Four is the membership in the car share/bike share. Five, we will restrict the hours of the roof-deck, so they do not extend past 10:00 p.m. on Sunday through Thursday, or past midnight on Friday and Saturday.

Finally, we would ask the condition that provides us flexibility for final HPRB review to make any adjustments to the plans, in order to get it through the permit stage.

With that, I'd like to turn it over to Mr. Sher, to address some of the issues that were raised by Mr. Sullivan.

MR. SHER: I think I want to make -- to address a couple of points that -- as to what the regulations do and do not require.

In the first place, there is no limit on the number of units that can be placed within a building in a C-3-A district.

We have a limit on height. We have a limit on gross floor area. No limit on the number of units.

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So, at the discretion of the Applicant, it could be one 18,000 square foot unit. It could be 18 1,000 square foot units or 36 500 square foot units.

The regulations do not specify what the size of the units may be.

Once you have determined what the number of units are, and I think it's not a -- it's not a secret that in development in the District and maybe in most places, people try and max-out what they can get on a piece of property.

In this case, we took the maximum FAR of 5.3 times the land area and came up with about 18,125 square feet, more or less.

The number of parking spaces follows the number of units, not the other way around.

So, if we had 38 units, we need 19 parking spaces. Once we get to looking at the requirements for the variance test, again, the Board is familiar with the three-part test. If we have a development that includes 38 units and has a requirement for 19 parking spaces, we either can meet it or

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we can't, and if we can't, we need to come in here and seek relief, and in order to get that relief, we have to demonstrate that we meet the three-part test.

As to this particular property, it's 38 feet wide by 90 feet deep. The front part of the site, not as it relates to the floor plate for units, but as it relates to what you can do with parking, is constrained by the fact that you've got to keep those -- the front 16 feet and then some of the existing building.

So, you can't go under them, to put parking in there, because you can't do that. But you couldn't do it anyhow, because the width of the lot isn't big enough to get your ramps, parking spaces and so forth, and be able to have more than a very small number of spaces per floor, which would mean to get to the number of spaces that you'd need, you'd be going down, down, down, down, down, and the further down you went, you'd just be eating that up with ramps and maneuvering space to get to those spaces.

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So, not as it relates to the layout of units, but as it relates to parking, the site is constrained by its size, its width and the presence of the historic buildings that are -- contributing buildings. I'll loosely call them historic buildings, not -- they're not individually designated landmarks, but they're buildings that have been deemed to contribute to the historic district.

In terms of -- we've spent a lot of time talking about the -- how we're going to mitigate any potential adverse impact and Ms. Brown just went through some of the conditions again, that we would suggest be imposed on the grant of the application.

This is a project that is designed to attract households that don't have cars. Before you rent in this building, you'll know that there is no parking. Before you invite your guests to come here, they're going to -- your guests are going to know that there is no parking in the building.

Now, I've been to places where --

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where my invitees have said, "We don't have any parking for you. You'll have to park -- you'll have to get here and park wherever you can, whether you park on the street, whether you park in a public parking garage that's nearby. Our building doesn't have parking," at least for guests, anyhow.

I can choose to go or not go, and it depends on the time of the day and the -- whether it's zero degrees outside or whether I'm going to walk a couple of blocks to get there or not. I'll either choose to go or not.

CHAIRMAN JORDAN: Aren't you making that argument? But anyway, go ahead.

MR. SHER: No, I think I'm making an argument that says, we have determined that we think this building can be built without adverse impact on the surrounding neighborhood, because of the way we've designed the building and because of the restrictions that we're going to impose on the people who would live here.

We believe that that will happen. We believe that if this building is approved

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and built, that there will not be an adverse impact on the street, on the neighborhood or on the people who live in the surrounding buildings.

CHAIRMAN JORDAN: Okay.

MR. SHER: Now, I just want to add one other thing, because I think we left it hanging a little bit.

We will address Commissioner -- Board Member Mays concerns about the set-back, but we don't have a drawing that does that, but we'll submit something for the record, that addresses the relief on the roof structure set-back.

I think we will still wind up with roof height -- roofs of unequal height, because of the elevator in the middle and the stair on one side and the other. But we will address the set-back issues.

MEMBER MAY: Yes, I mean, I think that is an easier case to make, the unequal heights.

MR. SHER: Yes.

MEMBER MAY: But the set-back issue --

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MR. SHER: I think we can --

MEMBER MAY: -- was very
troubling to me.

MR. SHER: I think we can -- I've
been told we can do that and that will -- we
will something in the record, that shows
that.

MEMBER MAY: Perfect.

CHAIRMAN JORDAN: Cross-
examination?

MS. BROWN: I'm not sure that
cross-examination --

CHAIRMAN JORDAN: I'm sure it is.
It's a rebuttal --

MS. BROWN: Right.

CHAIRMAN JORDAN: -- testimony.

MS. BROWN: Okay, yes, you're
right.

CHAIRMAN JORDAN: He has an
opportunity to cross-examine.

MS. BROWN: And?

MR. SULLIVAN: No questions
anyway.

CHAIRMAN JORDAN: Okay.

MS. BROWN: And then we also have

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Mr. Gregg Busch, that's going to address the parking issue, as well.

MR. BUSCH: Hi. How are you, Commissioner Jordan?

Unfortunately, we had some people that weren't able to make it today, in support of the project, due to the fact that there were several postponements.

But I thought one actually resonates with a type of tenant that we're actually looking for, and I'm going to just read this quickly.

"To Whom it May Concern. I have lived at my current residence at 1499 Massachusetts Avenue in Logan Circle neighborhood of Washington, D.C. for four years. I have never owned a car."

"This is a deliberate decision and it was made with no regrets."

"As the years progress and the area around 14th Street developed, it provided to be the right decision for me."

"My weekday life is routine. I start the day at 7:30 a.m. with a 50 minute walk to my office at 23rd Street. Many

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times, I pass cars idling in traffic. I am routinely passed by cyclists commuting to work, using their own bikes or the Capitol bike share."

"They cruise in the designated city bike lanes. On days I am running late or the weather is inclement, I can opt for a taxi or car-sharing service like Uber or Lift. It is easy as opening an app on your Smart Phone."

"In the evenings, I walk home. I find it easy and convenient to run errands and patronize D.C. shops. I would otherwise bypass these stores in a car to avoid the headaches of parking."

"Once home, I can grab my gym bag. I walk three blocks to the nearest Starbuck's for coffee, for my caffeine jolt, before walking one more block to the gym located in the Metropole at 15th and P Street."

"Once my workout is complete, I can either walk across the street to the Whole Foods grocery store or meet a friend of the plentiful and growing restaurants

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scenes at the 14th corridor."

"After dinner, I can walk home in minutes. On days that I have to travel more distance areas of D.C., I find the metro comfortable and easy."

"Combined with a city and circulator bus service, one can reach any part of the city. I can walk to the Red Line at Dupont Circle or Blue Line on McPherson Square."

"On days I need to travel to Virginia or Maryland for work or fun, I opt for the Zip-Car share service. They have automobiles all over the neighborhood that can easily be reserved from my computer at home."

"If I need to haul furniture or large objects, I will opt for a zip-car SUV. If I want to go out for a long drive in the city or countryside, I will opt for a zip-car convertible mini-cooper."

"Washington, D.C. in general and Logan Circle 14th Street more specifically, owning a car is becoming less of an asset and more of a handicap. Residents without

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cars are more likely to spend time in their own neighborhoods and patronize local shops."

"Without the financial burden of owning a car, they will have one -- they will have more money to spend. New residents without cars will also not compete for limited street parking and will reduce potential noise pollution from car engines and horns."

"Lastly, for the growing demographics of young professionals with disposable income, who are healthy, conscious green and seeking the urban lifestyle in Logan Circle, imagine with less what you drive than where you live. Sincerely, Max Oshalim, M.D."

Then one other person that wasn't able to come had just mentioned, and I am not going to read his letter, he actually lives on Church Street, and he wrote here, "I, myself have a parking spot with my unit, but I no longer have a car because living in this community is so conveniently precisely because of the development, which has been

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permitted to take place."

"Everything I need is just a few steps away from home," and he actually lives about two doors away from our project.

PARTICIPANT: Those were both submitted to the record.

MR. BUSCH: Those were both submitted to the record.

CHAIRMAN JORDAN: All right. Thank you.

MS. BROWN: If I could just re-direct with a question.

Did you take a survey of parking spaces?

CHAIRMAN JORDAN: You're directing. It's not re-direct, because he hasn't crossed yet, but you're directing. Go ahead.

MS. BROWN: All right, is there - - did you do a survey of available parking spaces within the vicinity?

MR. BUSCH: Yes, we did.

MS. BROWN: And what did you find?

MR. BUSCH: We found that for

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people that want to do monthly parking, there is four different lots within a two-block radius of the area that we're building our project.

One being the closest right behind our building in the Metropole, and at the time I called, which was back towards the end of November, there were 16 monthly spots rent-able in that project, or a little in excess of about \$200 a month.

MS. BROWN: And do you know if daily parking is available in that lot?

MR. BUSCH: Daily parking is not available there. There is daily parking available from the Whole Foods -- there is no daily parking there.

CHAIRMAN JORDAN: Daily parking at Whole Foods?

MR. BUSCH: There is no daily parking in the colonial behind the Metropole. I thought there was parking, daily parking across the street. I'll have to check that out, and we'll get back to you on that.

MS. BROWN: I guess I have no

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more questions of my witnesses, but I do have further comments and I can either do it as --

CHAIRMAN JORDAN: Don't you want to wait for your closing?

MS. BROWN: I can save it for closing.

CHAIRMAN JORDAN: Because I need to give Mr. Sullivan the opportunity to cross this witness.

MR. SULLIVAN: You mentioned some statistics, Mr. Busch. Do you have a report or any authority or citing or is that just some informal analysis?

MR. BUSCH: Formal analysis. We actually called colonial parking and spoke to the managers on each site.

MR. SULLIVAN: Okay, but you don't have anything in writing that I could verify?

MR. BUSCH: I could submit that. We can put that together for you.

MR. SULLIVAN: Thanks.

MR. BUSCH: And actually, I can actually update it to more current

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information. I'll make the calls today, if you prefer.

MR. SULLIVAN: Regarding the resident of 1499 Massachusetts Avenue, was that a support letter? I wasn't sure what - - or just a story or --

MR. BUSCH: That's a support letter.

MR. SULLIVAN: Okay, and the -- didn't actually hear that in there, but so, if every resident was like that, then we wouldn't need parking spaces anymore, right?

MR. BUSCH: Those are actually the 38 percent of the residents that we're looking to put into our building, the 38 percent of the people living in that area.

MR. SULLIVAN: Okay, but if we -- so, if every resident was like --

CHAIRMAN JORDAN: Your next question, Mr. Sullivan, because I think he can't --

MR. SULLIVAN: Okay.

CHAIRMAN JORDAN: I think he understands your question --

MR. SULLIVAN: I got you.

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Thanks.

CHAIRMAN JORDAN: -- and I don't think it's really proper.

MR. SULLIVAN: I don't have any other questions.

CHAIRMAN JORDAN: All right, closing? Before we go to closing.

I heard the proposed offered conditions, Ms. Brown, about the lease. I didn't hear anything about anything running with the land.

MS. BROWN: We will make sure that it runs with the land. I'm not sure that it runs with the land, but with the project, for the life of that project, because once the project is gone --

CHAIRMAN JORDAN: Right.

MS. BROWN: -- 50 years from now, if it's demolished, we don't want that --

CHAIRMAN JORDAN: Right, right, right, right, yes. We have to work that out, okay.

MS. BROWN: Yes.

CHAIRMAN JORDAN: Yes, okay.

MEMBER MAY: Mr. Chairman, if I

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may, I have a question about one of the conditions, as well.

CHAIRMAN JORDAN: Yes, go ahead.

MEMBER MAY: So, you said that the bike share or car share membership would be offered to -- for one year, for initial tenants. So, those are the first people who move into the building?

MS. BROWN: That's correct.

MEMBER MAY: I mean, I understand we have the question about --

MS. BROWN: It would be the first 38 people that rent units in the building.

MEMBER MAY: Okay, did you give consideration to making it available to all tenants when they first move in, like into the future, because I think the whole idea of having that, sort of teeing it up, in that manner, is to get people hooked on car share and bike share and get them to believe that they don't need a car.

MS. BROWN: Why don't we take that under advisement because I think there is a cost consideration to that, and I just don't know the implications of it --

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MEMBER MAY: Okay.

MS. BROWN: -- and perhaps it's for a certain number of years.

MEMBER MAY: Sure, well, I mean, since there are going to be other things that you'll be submitting, I would appreciate it if the Applicant could give consideration to that, and consider changing that condition.

CHAIRMAN JORDAN: Yes, if you want to go ahead and close, please.

MS. BROWN: Thank you. I just want to make a couple points in closing.

Number -- and I guess it's partly rebuttal too, but Mr. Sullivan made the point about the historic district and this not being exceptional and usual condition for this property, and I think that what he has relied on in his previous cases and what we typically rely on, and this Board has found is, it's not necessarily that it's in the historic district. It's the specific constraints that the Historic Preservation Review Board has placed on this building, how much of the historic building you need

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to retain, to what depth, the set-backs and all of those then tell you how much is left on the site that you can develop, and those are the constraints that we're talking about that create the exceptional and unusual condition for this property. So, it's point number one.

Point number two is, you know, we hear a lot of -- from Mr. Sullivan, talking about 38 units and it's because you're being greedy and it's economic greed and all a matter of economics, about what is driving the extent of the parking relief.

Well, you know, even if we are to reduce the number of units, it doesn't necessarily hypothetically reduce the number of people living in the building.

So, if you reduce it to 19 units, they could have two bedrooms. You could have multiple people living in these units, and with the micro-units, they're small enough that they really are single occupancy units.

So, just by reducing the number of units, the zoning requirement for a

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parking space might be reduced, but the number of cars isn't necessarily reduced because of the number of people, and that is in theory, and I think that that's important to note that as Mr. Sher was testifying, density of the project is not controlled by the parking requirement.

We have an FAR number that -- we have a density number that tells us how we can do this and how many units that we can put on the site.

So, it's a fallacy in his argument, that just by reducing the number of units and the intensity of the relief requested, that it's going to --

CHAIRMAN JORDAN: I think his argument is going toward whether or not you've shown there is alternative ways of doing your project, by reducing units. That is what he's placing forward.

MS. BROWN: Right, and I think as a practical matter, it's not going to reduce the number of cars in theory that would be available -- that would come to that site, by the tenants of the building.

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But we fixed that through our conditions. We say, "You may not get an RPP and park on the street and you are not suppose to have a car," and if you do, it can't -- it has to be parked somewhere else. It cannot be on the street.

CHAIRMAN JORDAN: I just want to make sure we've got this. I think he's saying it goes towards whether or not it goes not to the -- well, it goes to whether or not there is a practical difficulty.

Did you present evidence to show that there is alternatives for -- either would not be -- would not be a practical difficulty for you to achieve within the zoning regulations? I think that is --

MS. BROWN: And I think the testimony that we've heard from Mr. Sher is quite distinct and clear on that point about the constraints on the site, setting aside the historic elements of the property, that it's just too narrow to get the number of -- the ramps and the parking spaces and to get -- to continually dig down, it's just not practical. That is the difficulty that we

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have here.

CHAIRMAN JORDAN: Okay.

MS. BROWN: We would like to submit for the record, a couple of additional items.

One is to supply the drawings, showing the set-back.

Number two, we would like to provide information on the number of available parking spaces in the area, and we would also generally like to address the issues, Mr. Jordan, that you were raising about the TDM's and the effectiveness and what the Board -- what this Board and what the Zoning Commission has done in the past.

In particular, I think some strong precedent for us is the Zoning Commission case in 10-23, which is the 4600 Wisconsin Avenue Babe's Billiards, and that was a 60 unit -- roughly 60 unit apartment building, and it was going to be rental, where they asked for 100 percent relief.

They provided one parking space and it was a handicapped space, and we took the conditions that were adopted by the

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Zoning Commission in that case, and put them in this BZA application.

So, we are mirroring what the Zoning Commission adopted there.

MEMBER MAY: All right, I have a question about that, because I don't believe you are mirroring them exactly.

The question I have is, as I recall, on that case, there was a requirement that if anyone who lived in the building tried to get a -- to lease a space at a neighboring parking garage that had spaces for lease, that that would be grounds for terminating the lease.

I haven't heard you proffer that today.

MS. BROWN: No.

MEMBER MAY: Okay, so, it's not exactly the same.

MS. BROWN: You're correct, it's not, but it is the --

MEMBER MAY: Okay.

MS. BROWN: -- the lease restriction and the others that you heard is -- you're correct.

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MEMBER MAY: Okay, and I would also caution reliance on that case very strictly. I mean, there are reasons why that case was decided the way it was, and a lot of it went to the extraordinary memorandum of agreement that was negotiated with the ANC in that circumstance.

So, when you look carefully at that, there is a lot that went into that.

MS. BROWN: Absolutely, I agree, that was a very detailed agreement and we -- and that's why we have in this -- that's one of the reasons why this ANC-2F supported our parking relief, because we did include these conditions.

MEMBER MAY: And did they -- I mean, they were familiar with the Babe's case and did they review the MOA that had been done with the ANC?

MS. BROWN: Not to my knowledge.

MEMBER MAY: Okay, I just would caution people about making that comparison because you know, while there are some similarities, there are probably also some differences.

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MS. BROWN: And I'm just being reminded that the Applicant has agreed to include a lease termination, if they are -- it's not just --

MEMBER MAY: For the RPP violation?

MS. BROWN: Yes.

MEMBER MAY: But not for going and trying to rent a space, which is what was in the Babe's case, as I recall.

MS. BROWN: Right, and I think they were more concerned -- they were concerned about traffic and --

MEMBER MAY: Exactly.

MS. BROWN: -- competition for, you know, other spaces on the street, but you know, I --

MEMBER MAY: Right, no, I mean, there are reasons why it's different and reasons why what you're proposing here may be perfectly sensible and what was proposed there was perfectly sensible.

It's just that it's not an exact match and that's why --

MS. BROWN: I apologize for the -

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MEMBER MAY: Words like mirroring
make me --

MS. BROWN: Yes, you're right, I
mis-spoke using that word. I apologize.

CHAIRMAN JORDAN: Okay, is that
your closing?

MS. BROWN: Yes, so, we would
request the ability to make those post-
hearing submissions for the record.

CHAIRMAN JORDAN: Yes, I've got a
nice little list here going.

MS. BROWN: Thank you.

CHAIRMAN JORDAN: Closing, Mr.
Sullivan?

MR. SULLIVAN: I would just like
to express some concern about the RPP
restrictions, and we really don't know
whether or not that is realistically
enforceable and it seems to become a bit of
a white-wash of any possible adverse impact,
and we don't know if DDOT is onboard and
capable of doing all the things that we wish
they could do, to keep track of that.

Also, just one little thing I

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must take issue with, is that I never used the word 'greed'. I'm a very -- I'm a proponent of healthy greed. I'm just saying they're missing some evidence to their argument. That's all. Thank you.

CHAIRMAN JORDAN: Okay, we will close the -- we will close this particular meeting, not closing the record.

There are several things I want to get from the parties, one of which is the -- a briefing on the Height Act, how this project meets the Height Act, and in light of the discussion we've had here. So, I want that issue briefed.

I want to propose finding of facts and conclusions of law by both parties.

MS. BROWN: I'm sorry, I'm stuck on number one because I think that we resolved that issue by agreeing to have this set-back. So, that we probably don't need the brief --

CHAIRMAN JORDAN: You did? Okay.

MEMBER MAY: Yes, I think they're going to fix it, so it --

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CHAIRMAN JORDAN: So, it doesn't have that problem, okay. Okay, we'll take that off.

Okay, findings of facts and conclusions of law from both parties.

I want to see the proposed lease restrictions, the proposed project covenant that would be the -- the proposed project covenant that would be recorded.

I want to be briefed on whether or not DDOT can and will share information regarding the RPP applications. I don't know if they are able to do that, and if they will do that. So, we need something from them.

I want to -- feasibility of providing bike share and car share for all new tenants.

MR. GLASGOW: Mr. Chairman, can I ask one question of clarification, because DDOT has on the RPP issue, had a lot of different positions and a lot of different cases, as I think you all are aware of. They're not necessarily consistent.

As the owner of the property, I

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believe that they would have to respond to a FOIA request from the owner of the property, as to RPP.

CHAIRMAN JORDAN: Well, just -- we want to know if they will, in the issues -- so, not saying that you're wrong or right. Just, we need to find out.

MS. BROWN: And I guess --

CHAIRMAN JORDAN: And if they -- what they -- will they respond? Is it within FOIA, for them to give that information? That's simple enough.

MS. BROWN: And this is something that you want the Applicant to provide or DDOT to provide?

CHAIRMAN JORDAN: I want the Applicant to provide. It's part of your condition, it's just part of the things you said you're going to be doing. I want to know if it's practical, right?

Then the feasibility of providing bike share/car share for all new tenants, membership for all new tenants.

The drawings showing the set-back, and the parking availability study.

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Did I miss anything?

I believe, Mr. Sullivan, you have the opportunity to present a response to the present parking and land study that's been presented, as well as the new parking availability study.

So, you guys can get this done by next week? We're looking at February 25th, Mr. Moy, I'm thinking, because since we have the benefit of Mr. May. Is that too quick for you, February 25th?

MS. BROWN: February 25th is fine with the Applicant.

CHAIRMAN JORDAN: Yes, we just have to work our way backwards.

MR. MOY: Okay, a question of the Board. Is the Board looking for any responses from the party --

CHAIRMAN JORDAN: Yes.

MR. MOY: -- opposition? You are?

CHAIRMAN JORDAN: Yes.

MR. MOY: Okay, working backwards then, from a decision on February 25th, let's say responses, I'm going to go backwards

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here.

Responses by February 18th, and for the Applicant to provide post-hearing documents by February 4th. Is that good?

CHAIRMAN JORDAN: Would that also include Mr. Sullivan's findings of facts and conclusions of law?

MR. MOY: Yes.

CHAIRMAN JORDAN: Because he needs to --

MR. MOY: Yes.

CHAIRMAN JORDAN: -- exchange that --

MR. MOY: Yes.

CHAIRMAN JORDAN: Okay.

MR. MOY: So, Mr. Sullivan's findings of facts and conclusions of law will be --

CHAIRMAN JORDAN: Let's wait on that because we need to see the study. So, it's not that there is any rebuttal to it.

So, we can go ahead and make that February 18th also, the finding of facts from both parties can be February 18th.

MR. MOY: Okay, good. So, it's

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the 25th, the 18th and the 4th. Those are the key dates.

CHAIRMAN JORDAN: That's enough time to get it to us, the study?

MR. MOY: Yes. I'm sorry?

CHAIRMAN JORDAN: The 18th is a Tuesday?

MR. MOY: Yes.

CHAIRMAN JORDAN: So, then it gets to us on Thursday.

MR. MOY: That's right.

CHAIRMAN JORDAN: Thursday night.

MR. MOY: That's right.

CHAIRMAN JORDAN: All right.

MR. MOY: Good? So, again, February 25th, February 18th, February 4th.

MS. BROWN: Thank you very much.

CHAIRMAN JORDAN: Good, thank you, everybody. Thank you, all for being with us. Interesting case. Interesting. Thanks so much.

So, any announcements that need to be made, Mr. Moy?

MR. MOY: Not today, sir.

CHAIRMAN JORDAN: We're okay?

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MR. MOY: We're okay. We're ready for lunch.

CHAIRMAN JORDAN: Do I have all my closed meetings? All right, we're adjourned. Thank you.

(Whereupon, the above-entitled matter concluded at approximately 1:35 p.m.)