

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY  
DECEMBER 5, 2006

+ + + + +

The Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS Chairperson  
RUTHANNE MILLER Vice Chairperson  
CURTIS ETHERLY, JR. Board Member  
JOHN A. MANN II Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary  
BEVERLY BAILEY Sr. Zoning Specialist  
JOHN NYARKU Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER

This transcript constitutes the minutes  
from the Public Meeting held on Tuesday,  
December 5, 2006.

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1 my right is creating the official transcript.  
2 We are also being broadcast live on the Office  
3 of Zoning's Web site.

4 To that, of course, this is our  
5 public meeting. There is no opportunity to  
6 address the Board, but we will call our agenda  
7 shortly and get into the deliberation on cases  
8 that we have already hear.

9 Of course, the record is closed on  
10 all of these cases.

11 Let me say good morning to Ms.  
12 Bailey from the Office of Zoning. Also Mr.  
13 Moy is with us of the Office of Zoning.

14 With that, let's call the first  
15 case for our decision, deliberation and  
16 decision. I would like to adjust the order  
17 and call 17535 first. We'll go to 17534  
18 second, and then 17403 third, and we  
19 appreciate everyone's patience with us. I  
20 think we can make short order on this and get  
21 through our morning agenda in a timely  
22 fashion.

1                   That being said, let's move ahead.

2                   MR. MOY:        Good morning, Mr.  
3                   Chairman, members of the Board.    The first  
4                   case for decision at this point then would be  
5                   Application No. 17535 of Craig and Ann  
6                   Goodman, pursuant to 11 DCMR 3104.1, for a  
7                   special exception to allow the construction of  
8                   an addition, a covered walkway, connecting an  
9                   existing single family detached dwelling, to  
10                  an existing accessory garage under Section  
11                  223, not meeting the rear yard requirements  
12                  (Section 404 in the R3 district) at premises  
13                  3254 O Street, N.W., and that is in Square  
14                  1230, Lot 125.

15                  The staff notes for the Board that  
16                  at the public hearing the staff read into the  
17                  record the Applicant's amended application, to  
18                  include relief from the minimum width of open  
19                  court, which is 406.1, which is in your case  
20                  folders identified as Exhibit 19.

21                  Although not publicly noticed,  
22                  prior to the November 14th hearing, it was

1 noticed on the day of the hearing.

2 On November 14, 2006, then the  
3 Board completed public testimony, closed the  
4 record, and scheduled its decision on December  
5 5th. The Board did not request any additional  
6 post hearing documents.

7 The Board is to act on the merits  
8 of the special exception application under  
9 Section 226, and essentially that completes  
10 the staff's briefing, and the staff is  
11 available to answer any questions attendant to  
12 the application.

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Thank you very much, Mr. Moy. I do appreciate  
15 that.

16 We're going to have to address all  
17 of those elements and more. In one respect  
18 this is a very straightforward special  
19 exception relief of 223 in addition to a  
20 detached dwelling. We've looked it. We have  
21 some limited drawings, an understanding of  
22 what is conceptualized. This will, of course,

1 have to go through further review, historic  
2 design review, and that I know is an important  
3 aspect to this Board and certainly will be a  
4 part of its own deliberation.

5 However, what is before us is this  
6 special exception relief, and it is very clear  
7 in our regulations what elements need to be  
8 looked at regarding that.

9 I would say first let's talk about  
10 the added relief under 223 for the courts that  
11 the Office of Planning brought up. I think it  
12 is a good element to look at, and I appreciate  
13 the analysis the Office of Planning brought to  
14 us.

15 And let me step back actually a  
16 little bit because I'm confounded and a little  
17 confused even by the Zoning Administrator's  
18 referral of this application to us. I'm not  
19 sure how far we want to get into that.  
20 However, it was referred here, the 223.

21 I guess my point would be I am not  
22 making a determination or a definitive

1 determination in my individual deliberation  
2 that the Zoning Administrator was correct in  
3 referring this here.

4           However, that being said, that  
5 only talked about the rear yard. Going to the  
6 courts, I would say that, again, Office of  
7 Planning was diligent in their analysis, but  
8 I am not in agreement that a court under 404  
9 is required relief in this instance as an  
10 addition to a detached dwelling.

11           And I appreciate the Office of  
12 Attorney General's look at this and discussion  
13 with the Board on the legal elements, but it  
14 goes directly to the definition of courts and  
15 what defines courts.

16           And what defines courts, whether  
17 it be opened or closed, are exterior walls,  
18 and it's an interesting definition, an  
19 interesting utilization of a defining element  
20 in the definition. So it's exterior walls and  
21 property lines.

22           So by that, I do not believe this

1 covered walkway with no walls at this point  
2 actually would do away with the existing open  
3 area and side yards and create courts. And so  
4 I would not be in favor of adding the relief  
5 of 406.1 under this 223, but I'll take a  
6 little discussion on that if need be.

7 Disagreement?

8 COMMISSIONER MANN: No. I don't  
9 disagree. I don't know that I fully  
10 understood your position on this, but I think  
11 the explanation is very good, and it clears up  
12 something that I didn't fully understand  
13 myself. And I'm willing to accept your  
14 position on that.

15 CHAIRPERSON GRIFFIS: Good. I  
16 mean, I look at it, just in reading the  
17 definitions, "court closed," as the court  
18 surrounded on all sides by the exterior walls  
19 of a building or by exterior walls of a  
20 building and side or rear lot lines or by an  
21 alley line.

22 So your defining elements have to

1 be that exterior wall.

2 (Pause in proceedings.)

3 CHAIRPERSON GRIFFIS: While we  
4 digest that, I'll move on to my next issue.

5 Frankly, it's an interesting  
6 point, and I guess I can be direct on the  
7 record with this. Although each case is  
8 decided on its specific facts and on its  
9 specific circumstances, and certainly  
10 variances rise to that level of uniqueness  
11 that's determined in every case, special  
12 exceptions do the same, my point being  
13 although no case is precedential for us, this  
14 Board I know strives and is always consistent  
15 in its rulings.

16 And so when we look back on how we  
17 consistently look at the bigger picture, the  
18 bigger elements, I believe that it is  
19 important for us to maintain that consistency,  
20 even in circumstances that seem to distort  
21 those elements.

22 And to be direct, I think that

1 this is the beginning of a distortion of  
2 interesting magnitude. I'm not really sure,  
3 one, to begin with, the purpose of this  
4 covered walkway, and that's not ours to  
5 determine, whether it's correctly purposeful  
6 or what have you, but even in the stated  
7 purpose of the Applicant to protect against  
8 weather, it doesn't make any sense to me  
9 still.

10 I mean, something that is three  
11 feet wide, seven and a half feet tall with a  
12 cover and post will provide no cover no matter  
13 what it is. Even a light misting in the  
14 morning, this will not necessarily provide  
15 cover.

16 But, again, it's not ours to  
17 figure. However, what we're being asked and  
18 what this is looking at is is this creating  
19 some sort of connection or addition to the  
20 detached dwelling and, therefore, comes into  
21 a zoning element.

22 And so for me, I think we have and

1 will maintain a consistency in our  
2 deliberations and hopefully in our decisions,  
3 but I think the Board has discretion in  
4 looking at levels of connection, and I think  
5 those levels of connection have been -- well,  
6 I believe that the board has consistently  
7 taken this view of connections, and I think  
8 our analysis has been to, one, measure the  
9 extent, location, the function and the  
10 physicality, the physical connections that  
11 have created joining structures or single  
12 structures. And I think that we are allowed  
13 that discretion in viewing these.

14 I think that that level of  
15 connection and our interpretation and  
16 discretion should be utilized. The difficulty  
17 I have is putting it down to a level, a very  
18 simple level of an application like this.  
19 It's almost like we have too many tools to  
20 view something as simple as this one.

21 And so I guess what I'm trying to  
22 eloquently state is that I see this standing

1 on the facts and the issues on its own, but  
2 not necessarily -- I don't see the value of  
3 this transferring to anything else, no matter  
4 which direction we go on this.

5           However, I think that's enough  
6 time utilized for others to have digested the  
7 core issue with my banterings about these  
8 levels of connections.

9           Let me open up to others if they  
10 have initial elements or discussion on this.

11           VICE CHAIRPERSON MILLER: I just  
12 want to address the court issue. I understand  
13 your analysis to go to the fact that the  
14 corridor has columns and not walls, and  
15 therefore, the walls aren't there to meet the  
16 requirements for the court definition; is that  
17 correct?

18           CHAIRPERSON GRIFFIS: Right.

19           VICE CHAIRPERSON MILLER: Okay. I  
20 concur with that.

21           With respect to the merits of the  
22 special exception, I guess I see this case as

1 the structure per se is pretty simple, and I  
2 think even the neighbors and the community, I  
3 think, conceded that that in and of itself  
4 didn't raise issues of adverse impacts of  
5 light and air and things of that sort, and  
6 that if it really went to the larger issue of  
7 the ramifications of granting the special  
8 exception in this case, that being that it  
9 might change the zoning classification of the  
10 building on the property as a whole, which  
11 would then lead to their fears that they could  
12 build to greater density in that different  
13 classification, that being a row dwelling.

14 And the way I look at this case is  
15 that we have already a BZA order that  
16 precluded the building of a garage or an  
17 apartment above the garage. That was 16696,  
18 BZA application, and then there was a Court of  
19 Appeals decision that upheld the BZA decision  
20 in which the Board found that that  
21 construction of a second story addition would  
22 drastically alter the character of the zoned

1 districts.

2 So my view on this case is that  
3 the special exception could be granted with  
4 our clear direction that that does not nullify  
5 the previous order in this case, and that the  
6 Applicant could not build contrary to the  
7 previous order.

8 I raise that because I think that  
9 is what was raised in the Advisory  
10 Neighborhood Commission 2E's report as their  
11 real concern, as well as the other community  
12 members that testified.

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Thank you.

15 Others?

16 COMMISSIONER MANN: It seems to me  
17 that the facts in this case are fairly simple  
18 and the application is fairly simple, and of  
19 course, whatever happened in the past is not  
20 before us on this particular application.

21 I think it's an interesting  
22 proposition to make clear that previous orders

1 still stand. I guess one of the things I  
2 don't understand is why we need to go to that  
3 extra effort to make it clear in this case  
4 because isn't that always the case?

5 Perhaps I don't understand our  
6 rules well enough to understand why that would  
7 be necessary, but this case is distinct and  
8 different from that case. So I can understand  
9 where you're going with that because it's not  
10 like there's any contradiction there.

11 But is it really necessary to say  
12 that a ruling on a previous case has to be  
13 called out as still being valid?

14 VICE CHAIRPERSON MILLER: I only  
15 do that because we're required to give great  
16 weight to the ANC and address their concerns,  
17 and in their report they specifically say, "Be  
18 it resolved that ANC-2E opposes the request  
19 for special exception for 3254 O Street due to  
20 the change in status from detached dwelling to  
21 row house that would occur as a result of the  
22 proposal and the impact that the increase in

1 allowable density and height of building would  
2 have on an already dense, yet fragile corner  
3 of the historic village of Georgetown."

4 I think you're right in that, I  
5 mean, ultimately it's up to the Court of  
6 Appeals to decide, you know, if somebody wants  
7 to challenge it that far, but I just wanted to  
8 respond to the ANC that certainly in my view  
9 it doesn't nullify the other order.

10 In a special exception we need to  
11 address potential adverse impacts, and this  
12 case is unusual in that I think we see there  
13 are no immediate adverse impacts, I think,  
14 that I see under the special exception  
15 standard from this particular structure.

16 However, the ANC's concern was  
17 possible adverse impacts that would arise as  
18 a change, well, that would arise as a change  
19 of the classification, and all I'm saying is  
20 I really am just saying it's my understanding  
21 that it would not nullify the other order,  
22 which has now been upheld by the Court of

1 Appeals, and that addresses their concern.

2 COMMISSIONER MANN: Does that put  
3 a limitation on a prohibition on what can be  
4 done on that property in the future?

5 VICE CHAIRPERSON MILLER: Am I  
6 understanding it would limit it in accordance  
7 with the order that's in effect with respect  
8 to the plans that were proposed to build an  
9 apartment above the garage in that case?

10 COMMISSIONER MANN: Having not  
11 heard the merits of the first case, it's a  
12 little bit difficult to say, "Oh, okay. I  
13 understand," and move on because I don't  
14 necessarily understand.

15 I don't even know if that was a  
16 special exception or a variance that they were  
17 asking for on that first case.

18 VICE CHAIRPERSON MILLER: The  
19 first case was a variance, and that Board made  
20 the findings that the construction of a second  
21 story addition per the plans that were before  
22 them would drastically alter the character of

1 the zoned district.

2 COMMISSIONER MANN: But the  
3 entirety of that application was to build an  
4 additional floor in the back of the garage  
5 without a connection to the main house or with  
6 a connection to the main house?

7 As I read it, it was no  
8 connection. They were looking at plans. What  
9 the community was concerned about and what the  
10 case, I believe, involved was putting this  
11 apartment above the garage, and we're finding  
12 in this case that the corridor is not a  
13 problem.

14 But the ANC and the community were  
15 concerned that if we approved the corridor,  
16 then that means that she could then do her  
17 addition above the garage due to the change in  
18 the zoning classification.

19 COMMISSIONER MANN: And the change  
20 in the zoning classification is a foregone  
21 conclusion or is that just somebody's  
22 interpretation?

1                   VICE   CHAIRPERSON   MILLER:        I  
2   believe it's an interpretation unless --

3                   CHAIRPERSON GRIFFIS:   Absolutely.  
4   I tend to absolutely agree, and I think as the  
5   Office of Planning and actually as this was  
6   advertised and, I think, as a motion would go,  
7   it would state that this is a request for a  
8   special exception to permit a building  
9   addition to the rear of a detached dwelling at  
10  3254 O Street, N.W.

11                   I don't think we've been asked,  
12  nor do I think that this Board is prepared  
13  hearing this deliberation and discussion to  
14  determine whether a classification of this  
15  dwelling has fundamentally changed from that  
16  which the application came in.

17                   So as we look at this as an  
18  addition to the detached dwelling, I think we  
19  can proceed. I think it actually is supported  
20  in the fact that then the court is not  
21  additionally required. That kind of supports  
22  the direction, I think, that was being heard.

1           I think we would do a disservice  
2           if we tried to make this more complicated than  
3           it is in terms of tying this to a past ruling  
4           for another case. That case does stand for  
5           what it is. It can never change. It's in the  
6           history books, and anything that proceeds out  
7           of this, I think, would have to be looked at  
8           freshly.

9           But hopefully it will also be  
10          looked at correctly from what I'm hearing the  
11          deliberation of the Board in terms of the  
12          elements of which are being reviewed and,  
13          therefore, then decided.

14          Ms. Miller brings up a good point  
15          that the opposition came in and raised the  
16          potential for what could happen in the future.  
17          It's not directly with us.

18          Now, the special exception of 223,  
19          we can march through it. We know it very  
20          well. It opens up that area of which we're  
21          supposed to predict what might be an adverse  
22          condition that might arise, but it comes out

1 of that which is proposed to be constructed,  
2 not what is not at this point before us or  
3 proposed to be constructed.

4           However, let me say it directly.  
5 I believe that if this was approved, this 223  
6 special exception, and additional additions to  
7 the structure at the rear, the garage  
8 structure at the rear that was proposed, that  
9 it would require some relief, not to mention  
10 it will require obviously the historic review.  
11 So.

12           COMMISSIONER MANN: So when it's  
13 put forward fairly simply like that, I think  
14 it's much easier to accept. I think that we  
15 should not complicate it, and that we  
16 shouldn't bring in elements into this  
17 application that the Applicant isn't asking us  
18 for, and as far as the great weight to the ANC  
19 goes, I think we've given great weight to the  
20 ANC because we've addressed their concerns,  
21 and one of the answers to their concerns is  
22 we're only considering what's before us.

1 We're not considering something that's not  
2 been asked for.

3 CHAIRPERSON GRIFFIS: Right.

4 VICE CHAIRPERSON MILLER: I agree,  
5 but I don't think we also take a blind eye to  
6 potential ramifications, and that's why I  
7 think they're worth, you know, putting on the  
8 table at least and addressing.

9 COMMISSIONER MANN: I agree, and I  
10 think that we have considered those, but I  
11 just don't see in this application or in the  
12 consideration of this application that we can  
13 limit it or address things that aren't being  
14 applied for.

15 VICE CHAIRPERSON MILLER: I think  
16 basically I was at least bringing to the  
17 attention the previous Board order and the  
18 Court of Appeals order, and stating basically  
19 that as far as my view goes, those orders are  
20 in effect, and they address in part the  
21 concerns.

22 COMMISSIONER MANN: I appreciate

1 that and understand it and hopefully bringing  
2 attention to it has brought attention to it  
3 where, you know, it needs to be considered.

4 But when it comes to making a  
5 decision on this particular application, I  
6 just don't think that we should make it any  
7 more complicated than the actual application.

8 CHAIRPERSON GRIFFIS: I think we  
9 should move ahead on your motion, and we can  
10 finalize how this happens with our  
11 deliberation.

12 And I would move approval of this  
13 special exception to permit a building  
14 addition to the rear of the existing detached  
15 dwelling for 3254 O Street, N.W. This is a  
16 special exception under 223, as this structure  
17 would not be in conformance as referred by the  
18 Zoning Administrator under 404.1.

19 BOARD MEMBER MANN: Second.

20 CHAIRPERSON GRIFFIS: Thank you.

21 I think we also need to, as Ms.  
22 Miller brought up, we also need to look at the

1 Office of Planning's analysis, which was  
2 Exhibit No. 24 in our record, which was  
3 recommending approval of the application, and  
4 they had found, and I would tend to agree with  
5 their analysis, that it meets the criterion of  
6 223.

7 Really, the core of our review of  
8 this is 223.2, and the light and air would be  
9 unduly affected or privacy and use of the  
10 neighboring properties, and there's a  
11 substantial amount of testimony in the record  
12 balanced on the amount needed that shows that  
13 this will not be viewed from the adjacent  
14 properties. It has a perimeter screening, be  
15 it fence or be it vegetation. It won't rise  
16 above or substantially above those.

17 Even looking at the addition taken  
18 together with the original billing as it's  
19 viewed from the street or alley, there is some  
20 question of whether it would actually be able  
21 to be seen from any public area or alley.

22 I can say for the record that the

1 compliance with the 223 as its shown graphic  
2 representation was very weak in this case.  
3 However, we do also note that it's going for  
4 design review of which a substantial amount of  
5 detail will have to be provided, and I have  
6 great reliance on that review in terms of the  
7 substance that needs to take place and whether  
8 this goes forward or not in that realm.

9 Other than that, I don't think  
10 there's anything additionally that I need to  
11 say, except for the fact that just to  
12 reiterate where I started out, and I think in  
13 looking at cases like this we've obviously  
14 been faced with this -- let's be direct --  
15 this larger issue of communications and  
16 connections, and I strongly believe and I  
17 think our previous practice and the  
18 regulations support the fact that the level of  
19 communication or the determination of a  
20 connection is at the Board's discretion and  
21 interpretation.

22 And I think that we must measure

1 in viewing each of these the location, the  
2 dimensions, the use, the function, the  
3 adjacencies of other structures, and lastly,  
4 the actual physical connection.

5 And I think if we were -- and I  
6 know that we will be at future times -- asked  
7 to make determinations, which is not the case  
8 here, but make determinations of those  
9 elements, I know that we will take that up.  
10 We'll be consistent, and we'll be within our  
11 jurisdiction to do so.

12 That's all I have at this point.

13 VICE CHAIRPERSON MILLER: Well,  
14 first of all, I want to comment on the  
15 structure. I had some concerns whether or not  
16 it was in character with the neighborhood.  
17 However, our test under the special exception  
18 has us look at that only if it can be viewed  
19 from the street or a public alley, and that's  
20 not the case here.

21 And I understand that Old  
22 Georgetown Board would be looking at this

1 issue specifically.

2 CHAIRPERSON GRIFFIS: Excellent.  
3 Anything else?

4 COMMISSIONER MANN: The only thing  
5 that I would add is, I mean, I think that Ms.  
6 Miller's concerns were well founded and needed  
7 to be raised, but I'm just not certain that  
8 this is the form that all of these things are  
9 going to be resolved, and I think there are  
10 some larger issues that maybe need to be  
11 resolved through particular changes to the  
12 zoning regulations and not through this  
13 particular case.

14 CHAIRPERSON GRIFFIS: That's well  
15 said, and I would absolutely agree. I don't  
16 think that there was any opposition to Ms.  
17 Miller's position of concern of uphold, one,  
18 past rulings, but also not in a simple review  
19 and potential approval, but in an approval,  
20 allowing for something that is not foreseen or  
21 may well not be positively received by the  
22 Board.

1           But, again, I think we get much  
2           too complicated in trying to forecast  
3           hypotheticals, and that will run into, I  
4           think, great difficulty.

5           Yes?

6           VICE CHAIRPERSON MILLER: I just  
7           want to propose a condition to discuss and  
8           then it may be a little bit different. It may  
9           be the same, but that would be that this order  
10          does not nullify the previous order in this  
11          case, that being Application No. 16696, and  
12          the reason I suggest it is that for clarity,  
13          for the concerns of the neighbors, and were  
14          this to go on appeal that the court would know  
15          that it wasn't our intent to nullify that  
16          order in any way.

17          CHAIRPERSON GRIFFIS:        Okay.  
18          Comments?

19          COMMISSIONER MANN: It just seems  
20          to me that that's open to an awful lot of  
21          interpretation, isn't it? I mean a proposal  
22          that is completely different from this and --

1                   CHAIRPERSON GRIFFIS:  Actually, I  
2                   think, if I could interrupt you very briefly,  
3                   I think actually adding something of that will  
4                   do the reverse of what you're proposing.  I  
5                   think the fact of the matter is this doesn't  
6                   nullify a previous order.  Unless we start to  
7                   complicate things in this order, it's pretty  
8                   clear that we're approving a special exception  
9                   for an addition to a detached dwelling.

10                   I  don't  think  how  it  will  
11                   substantively change anything from the past  
12                   ruling.  I think that's actually a much  
13                   clearer way and cleaner way to deal with what  
14                   we have that's actually before us.

15                   VICE CHAIRPERSON MILLER:  Okay.  
16                   Then I would say this.  Perhaps in the body of  
17                   our order we would be addressing this issue  
18                   since this is a paramount concern of the ANC.  
19                   Okay?

20                   CHAIRPERSON GRIFFIS:  Good, and I  
21                   think in the written order we won't move away  
22                   from the positions that we've held here and

1 the discussion that we've held here. I think  
2 we'll get perhaps a little bit more  
3 substantive, but I think that in terms of what  
4 we've said in the public will not change  
5 fundamentally.

6 Okay. Anything else then? Any  
7 other comments, deliberations?

8 (No response.)

9 CHAIRPERSON GRIFFIS: If not, we  
10 do have a motion before us. It has been  
11 seconded. I would ask for all of those in  
12 favor signify by saying aye.

13 (Chorus of ayes.)

14 CHAIRPERSON GRIFFIS: And opposed?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Abstaining?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Very well.

19 Mr. Moy, if you wouldn't mind recording the  
20 vote.

21 MR. MOY: Yes, sir. Staff would  
22 record the vote as three to zero to one. This

1 is on the motion of the Chairman, Mr. Griffis,  
2 to approve the application, seconded by Mr.  
3 Mann. Also in support of the motion Ms.  
4 Miller. We have Mr. Etherly, the other Board  
5 member who is not participating on this case.

6 Also staff has in receipt an  
7 absentee ballot from Anthony Hood, and this is  
8 where staff is going to need some assistance  
9 from the Chairman, from the Board, because  
10 staff didn't catch the nuances in its  
11 deliberation regarding whether or not this  
12 action would result in this addition.

13 Well, let's put it this way. Mr.  
14 Hood's comment is -- and I'll just read it  
15 verbatim -- "only if the structure does not  
16 join to make one structure. Anything else, my  
17 vote would be to deny the application," end  
18 quote.

19 So based on that reading.

20 (Pause in proceedings.)

21 CHAIRPERSON GRIFFIS: I think Mr.  
22 Hood has framed all of the elements in two

1 sentences, which is excellent. Here is my  
2 interpretation of that.

3 First of all, I think that this is  
4 an absentee ballot for approval of the motion  
5 and approval of the special exception under  
6 223, and the reason I say that is because, as  
7 we have reported this and now deliberated on  
8 it, there has not been a determination that  
9 the structure has changed, but rather, that  
10 this is an addition to the existing semi-  
11 detached dwelling.

12 MR. MOY: Okay. Very good. Then  
13 with that interpretation, then the final vote  
14 on Application No. 17535 is four to zero to  
15 one to approve the application.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Thank you very much, Mr. Moy.

18 Anything else then regarding this  
19 Application 17535?

20 MR. MOY: No, sir. That completes  
21 this case.

22 CHAIRPERSON GRIFFIS: Very well.

1 Let's move ahead then and call the next case.

2 MR. MOY: The second case for a  
3 decision is Application No. 17534 of 1024  
4 Pennsylvania Avenue, LLC, pursuant to 11 DCMR  
5 3103.2, for a variance from the residential  
6 recreation space requirements under Section  
7 773, to allow the development of a multi-  
8 family residential building in the CHC/C-2-A  
9 district at premises 1022 Pennsylvania Avenue,  
10 S.E., and that's in Square 972, Lot 67.

11 The staff notes for the Board,  
12 however, that per the Office of Planning  
13 report, that there is possible additional  
14 variance relief needed from the rear yard in  
15 structures and open space under 2503, and this  
16 would be for the detached rear stairwell  
17 enclosure that extends down to the parking  
18 level.

19 On November 14th, 2006, the Board  
20 completed public testimony, closed the record  
21 and scheduled its decision on December 5th.  
22 The Board requested post hearing documents,

1 including a revised roof plan addressing the  
2 area designated for residential recreation  
3 space, as well as revised calculations to that  
4 effect.

5 This filing is in your case  
6 folders, identified as Exhibit 29. The Board  
7 is to act on the merits of the variance  
8 request, and that completes the staff's  
9 briefing, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Excellent.  
11 Thank you very much.

12 I do appreciate that, and I think  
13 it's a consensus of the Board -- I'll hear any  
14 opposition if I'm incorrect -- that we were  
15 amending the application to include the rear  
16 yard, 2503; that based on that, as Mr. Moy has  
17 indicated, that stair structure that was  
18 accessing down, and I think that makes some  
19 logical sense, just to be clear.

20 In terms of the announcements,  
21 this had gone through all of the public  
22 review. The agency obviously has weighed into

1       it.     We had asked in the public hearing  
2       whether the drawings that we were looking at  
3       were the ones also shown.  So that element was  
4       there.  Whether the exact relief was required  
5       or not, certainly if there was elements of  
6       issue, they would have come up with, frankly,  
7       there was relief required or not, and not  
8       having seen any, I think we can be assured  
9       that public comment on that has been  
10      satisfactory and can take it up under our  
11      analysis as required by our jurisdiction.

12                 I don't see a need to take a lot  
13      of time on this.  I think we can get right  
14      through it, and then I believe it's  
15      appropriate to move right into a motion, and  
16      that would be a motion to approve Application  
17      17534 for a requested variance from the  
18      residential recreation space and also from the  
19      rear yard requirements, and that would allow  
20      for the construction of the property at 1022  
21      Pennsylvania Avenue, S.E.

22                 I would ask for a second.

1 VICE CHAIRPERSON MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you  
3 very much.

4 Well, there it is. We've been  
5 through residential recs an awful lot. There  
6 were some elements of how much was required  
7 and rather how much relief was also being  
8 asked, the placement of it. I think this  
9 board has held pretty consistently our view of  
10 residential recreation space somewhat  
11 questioning, but not questioning fundamentally  
12 why it's there, but just the proportions and  
13 the amount that's provided.

14 And of course, it's not ours to  
15 question whether it's correct or not, but when  
16 we start seeing the practical difficulties in  
17 providing it, especially with more medium size  
18 and smaller projects, a percentage of square  
19 footage, frankly, is more burdensome on the  
20 smaller than it is on the larger projects,  
21 even though the percentage is the same.

22 I know we've been through this,

1 and it has been quite a bit. First of all,  
2 let's look at this in terms of the actual test  
3 for the variance. The uniqueness is there.  
4 It's a confluence of uniquenesses, but  
5 clearly, this is the odd shape of the lot  
6 cited by two streets and an alley and then  
7 adjacent to structures.

8 The configuration of that in order  
9 to provide all the other elements, parking and  
10 also the dimensional requirements for  
11 residential units and the layouts obviously  
12 lends itself to the practical difficulty in  
13 providing the total amount of residential  
14 recreation space provided.

15 The pieces on the ground level, I  
16 think, hopefully will be animated well and  
17 dealt with so that they might be utilized. I  
18 think it is an important amenity to any  
19 residential building, and I think that the  
20 owners-developers will see that and utilize  
21 that space as required.

22 In terms of the rear yard relief,

1 I think that can stand on the record, and it  
2 has been proposed to us. So the Office of  
3 Planning does an excellent analysis of that.  
4 I don't think we need to spend a lot of time  
5 going into that any further unless others  
6 would like, and I will leave it at that for  
7 others to comment.

8 VICE CHAIRPERSON MILLER: I'll  
9 just add that I think this case raises some of  
10 the same themes that we see in other cases,  
11 one being that there were a small number of  
12 units having to support a large amount of  
13 residential recreation space, which would have  
14 been expensive and burdensome to the  
15 condominium owners, and also, changes that had  
16 to be made in response to historic  
17 preservation concerns.

18 CHAIRPERSON GRIFFIS: Excellent.  
19 Anything else?

20 VICE CHAIRPERSON MILLER: I would  
21 note that the ANC is in support of the  
22 application.

1                   CHAIRPERSON GRIFFIS:    Good.    We  
2                   also had other letters of support in the  
3                   record of note.

4                   VICE CHAIRPERSON MILLER:  I think  
5                   we have Capitol Hill Restoration Society in  
6                   support, as well as Office of Planning.

7                   CHAIRPERSON GRIFFIS:  Okay.  Good,  
8                   and I noted 2503 because this is a structure,  
9                   and we're looking at a structure that's in the  
10                  rear yard that is not an allowable structure  
11                  under 2503, and so that really also falls into  
12                  the element of variance, and I just make note  
13                  of it because it's in the record, and it was  
14                  presented at the public hearing.  The fact  
15                  that the provision of that stair is required  
16                  to be there.  So the uniqueness comes from,  
17                  again the shape and the location.  There's  
18                  only a limited access to the parking, and that  
19                  stair just goes down to the parking level.  
20                  The separation are in the code requirements,  
21                  of course, and then the layout of the level  
22                  below mandates where what stair will go, and

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1 obviously that has been shown to be  
2 persuasively practically difficult.

3 In terms of whether that would in  
4 any way impair the integrity of the zone plan  
5 map or the public good, I do not believe that  
6 there has been any testimony that indicates  
7 that it would, and in reverse I'd say it would  
8 not, and the elevations reviewed even that.  
9 It does not in terms of public good, the  
10 elevation or animation of that area.

11 Actually I think it makes a strong  
12 element, a positive element in carrying the  
13 building all the way down to the curb cut, the  
14 break at the public alley, with the connection  
15 -- I use that liberally -- of the gate and the  
16 opening to that stair enclosure. I think that  
17 holds a nice and consistent elevation along  
18 11th Street, S.E.

19 I don't believe I need to say  
20 anything else on that, but I'm open to any  
21 others.

22 (No response.)

1                   CHAIRPERSON GRIFFIS:   Very well.  
2                   We do have a motion before us that has been  
3                   seconded.    I would ask that all in favor  
4                   signify by saying aye.

5                   (Chorus of ayes.)

6                   CHAIRPERSON GRIFFIS:   And opposed?

7                   (No response.)

8                   MR.    MOY:           Mr.    Chairman,   two  
9                   clarifying   questions.    Who   seconded   the  
10                  motion?   And also did your motion include  
11                  relief from 2503?

12                  CHAIRPERSON GRIFFIS:   Who seconded  
13                  it?   Ms. Miller.

14                  And yes.

15                  MR. MOY:   Yes?   Oh, tremendous.

16                  Then staff would record the vote  
17                  as three to zero to one, the motion of Mr.  
18                  Chairman -- Mr. Griffis, the Chairman,  
19                  seconded by Ms. Miller. Also in support of  
20                  the motion, Mr. Mann. Mr. Etherly, the other  
21                  Board member, not participating on this case.

22                  We also have an absentee ballot

1 from Anthony Hood, who participated on this  
2 case, and his vote is to approve the  
3 application. So that will give a resulting  
4 vote of four to zero to one.

5 CHAIRPERSON GRIFFIS: Excellent.

6 MR. MOY: This is a forwarder  
7 summary order.

8 CHAIRPERSON GRIFFIS: Yes. I  
9 don't see any reason why we wouldn't waive our  
10 rules and regulations and issue a summary  
11 order on this. Good.

12 MR. MOY: Okay. Very good.

13 CHAIRPERSON GRIFFIS: Thank you  
14 very much.

15 Let's move ahead then.

16 MR. MOY: Mr. Chairman, the Zoning  
17 Commission member that's participating on the  
18 next case is on his way. Would the Board care  
19 to recess for a couple of minutes before he  
20 arrives?

21 CHAIRPERSON GRIFFIS: We'll take  
22 five minutes.

1                   (Whereupon, the foregoing matter  
2                   went off the record at 11:36 a.m.  
3                   and went back on the record at  
4                   11:51 a.m.)

5                   CHAIRPERSON GRIFFIS:   Very well.  
6                   Let's resume.

7                   Why don't we call the last case  
8                   for decision this morning?

9                   MR. MOY:   Yes, sir.   That case is  
10                  a request for a modification of approved plans  
11                  and a waiver of the six-month time  
12                  requirement, and this is to Application No.  
13                  17403 of Walnut Street, LLC, on behalf of 915  
14                  M Street LP, care of Philip Abraham, pursuant  
15                  to Section 3129 of the Zoning Regulations.

16                  The original application is 11  
17                  DCMR 3103.2 and 3104.1 for a special exception  
18                  from the roof structure enclosing wall equal  
19                  height requirement; under Subsection 411.11,  
20                  a variance from the lot occupancy requirement  
21                  under Section 772; and a variance from the  
22                  residential recreation space requirement under

1 Subsection 773.3, to allow the construction of  
2 an apartment building in the C-2-A District at  
3 premises 917 M Street, N.W., Square 368, Lot  
4 900.

5 On November 3rd, 2006, the  
6 Applicant filed a request for modification of  
7 approved plans and a waiver of the six-month  
8 time requirement. That is identified in your  
9 case folder as Exhibit 32. This document is  
10 dated November 3rd, 2006.

11 In addition, the Applicant  
12 submitted a supplemental, which is a copy of  
13 a signed and certified application to certify  
14 an historic building, dated November 6th,  
15 2006, and that is identified as Exhibit 33.

16 In response to the filing and  
17 within the ten-day requirement deadline, the  
18 ANC-2F filed a letter in support, and that is  
19 dated November 13th, 2006, and is identified  
20 in your case folders as Exhibit 34.

21 The Board is to act on the merit  
22 of the request for modification of approved

1 plans and waiver of the six-month time  
2 requirement pursuant to Section 3129.

3 And that completes the staff's  
4 briefing, and the staff is available to answer  
5 any questions from the Board.

6 CHAIRPERSON GRIFFIS: Excellent.  
7 Thank you very much, Mr. Moy.

8 And of course, we would say a very  
9 good morning to Mr. Etherly, who has joined us  
10 on this case, and also Mr. Turnbull  
11 representing the Zoning Commission on this  
12 case.

13 Let's move ahead then, and I would  
14 ask is there any opposition to waiving our  
15 time requirements to hear this modification  
16 that is noted by the Applicant, that there are  
17 a confluence of elements that went into their  
18 justification for the waiver, some being the  
19 changing of the market, the construction  
20 costs, but also working through elements and  
21 issues of the historic and also the program of  
22 the building. Is there any opposition to

1 that?

2 Not hearing any opposition, I will  
3 take it as a consensus of the Board then to  
4 waive our time requirement and move ahead then  
5 to the modification.

6 I think it is appropriate to move  
7 quickly into a motion and then take  
8 deliberation under the motion, and I would  
9 move approval of the modification to approve  
10 Applicant's Application 17403 at 917 M Street,  
11 N.W., and I ask for a second.

12 BOARD MEMBER ETHERLY: Second it.

13 CHAIRPERSON GRIFFIS: Thank you,  
14 Mr. Etherly.

15 I look at the elements, and  
16 frankly, one can say, I can say in my  
17 deliberation that this does not change  
18 substantively the relief that was sought  
19 previously. In fact, on several of the  
20 elements it reduces the relief that would be  
21 required.

22 The one element of residential

1 recreation space, it does change, but not to  
2 an inordinate magnitude and certainly doesn't  
3 change in my mind the basis of deliberation  
4 and support of the application.

5 I'll open it up to others and  
6 their comments. Are there any other comments?

7 (No response.)

8 CHAIRPERSON GRIFFIS: I'll talk a  
9 little bit then about the roof structure, and  
10 it's interesting. I have great trouble  
11 personally with 411 on its elements, and as it  
12 begins, it talks about having and maintaining  
13 the Board's control of design and the visual  
14 impact of these penthouses, and then goes  
15 about to require the most awful enclosures or  
16 I shouldn't say "awful." It's not really a  
17 very descriptive word.

18 To be descriptive, it starts to  
19 describe and mandate and regulate a commercial  
20 penthouse on all structures in the District,  
21 and I think we have found more often than not  
22 on residential structures that the

1 requirements of 411 get in their own way, and  
2 what's being proposed here is a simple  
3 example, but another example of how, in fact,  
4 if you had separate structures and not one,  
5 differing heights, not a single height and not  
6 a single enclosure, that, in fact, you'd have  
7 a better visual impact or, rather, a better  
8 animation of your roof structures.

9 But in any case, I think in this  
10 modification I think our previous action is  
11 applicable to the modification that's before  
12 us.

13 Others?

14 VICE CHAIRPERSON MILLER: I'll  
15 just comment. I think in this case we're not  
16 asking for any change in zoning relief, but  
17 the changes affect the areas for which the  
18 zoning relief was granted, for instance, in  
19 the roof structures instead of granting relief  
20 with respect to the walls. We're now allowing  
21 two units, and with respect to the lot  
22 occupancy, it actually has decreased from 88

1 percent to 87 percent.

2 And the residential rec. space is  
3 being reconfigured, and it is less, but it  
4 looks like it certainly meets the needs.

5 And I'll also comment that the ANC  
6 and the Blagden Alley Association support the  
7 modification request.

8 CHAIRPERSON GRIFFIS: good.  
9 Others? Yes, Commissioner Turnbull.

10 COMMISSIONER TURNBULL: Thanks,  
11 Mr. Chairman.

12 I guess I had one question where  
13 going back to the original drawings you could  
14 see where the existing roof, the terrace up on  
15 the upper roof of the building had been  
16 eliminated, where before it had been all the  
17 way across. I guess now in looking on their  
18 page 3, they talk about the existing  
19 building's existing roof is structurally  
20 inadequate for a roof terrace, and the amount  
21 of additional structure to make it adequate  
22 would make it both expensive and compromise

1 the historic fabric of the building.

2 But their actionometric  
3 (phonetic), which is still Exhibit D, which is  
4 still from its 2005 rendering with the upper  
5 roof gone. It still shows a roof deck. So I  
6 mean, it looks like they're still using it,  
7 and I'm just puzzled. I mean if it's  
8 structurally inadequate, but it's still shown,  
9 I mean, I understand what they're trying to do  
10 and they've got it, but it's this drawing here  
11 that still shows the garage area having a  
12 fence around it, and it looks like it's going  
13 to be a terrace.

14 And I'm just trying to make sure I  
15 understand what they were getting at when they  
16 talk about it being structurally inadequate.  
17 It looks like it's still going to be used, and  
18 I'm just curious to what extent that would be  
19 then.

20 CHAIRPERSON GRIFFIS: That's a  
21 good question.

22 COMMISSIONER TURNBULL: The

1 original one showed that. That was the  
2 original set.

3 CHAIRPERSON GRIFFIS: See, I think  
4 I took it as not the, let's say, old garage  
5 roof, but the main roof. That's where I'm  
6 seeing change from the axons.

7 COMMISSIONER TURNBULL: The  
8 existing alley's building roof.

9 CHAIRPERSON GRIFFIS: Oh, I see.

10 COMMISSIONER TURNBULL: But maybe  
11 they're talking about it's the part of the  
12 building closer to the alley then. It just  
13 seemed a little bit -- maybe it's not worded  
14 quite as tight as it could be.

15 MR. MOY: Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Yes, sri.

17 MR. MOY: If I might add so that  
18 for staff's clarification, in the filing from  
19 the Applicant, in addition to the proposed  
20 revised drawings, they're under Exhibit Tab C.  
21 Also to assist the Board, they enclosed the  
22 approved plans, which is under Tab B, which

1 would be in their filing of November 3rd.

2 I don't know if that helps or not.

3 COMMISSIONER TURNBULL: Oh, okay.

4 CHAIRPERSON GRIFFIS: That's it.

5 COMMISSIONER TURNBULL: Well, that

6 does clarify it. That does clarify it. Okay.

7 I missed that last --

8 CHAIRPERSON GRIFFIS: Think of the

9 fortune saved in that hatch --

10 COMMISSIONER TURNBULL: All right.

11 That does make a big difference then. I

12 didn't catch that last cap with that piece.

13 CHAIRPERSON GRIFFIS: That's kind

14 of interesting. Nor did I.

15 COMMISSIONER TURNBULL: Okay. All

16 right. That was the extent of my questions.

17 Thank you.

18 CHAIRPERSON GRIFFIS:

19 Unfortunately it's too bad actually. It's

20 screaming out for a deck back there, isn't it?

21 Okay. Very well. Anything else?

22 Any other comments? Clarifications?

1 Requirements?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Very well.

4 If there's nothing further we do have a motion  
5 before us. It has been seconded. I'd ask for  
6 all those in favor signify by saying aye

7 (Chorus of ayes.)

8 CHAIRPERSON GRIFFIS: Opposed?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Abstaining?

11 (No response.)

12 MR. MOY: Staff would record the  
13 vote as five to zero to zero. This is on the  
14 motion of the Chair to approve the  
15 application, seconded by Mr. Etherly. Also in  
16 support, Mr. Mann, Ms. Miller and Mr.  
17 Turnbull.

18 CHAIRPERSON GRIFFIS: Excellent.

19 Thank you very much.

20 Is there any other business for  
21 the Board this morning?

22 MR. MOY: The only final thing,

1       sir, would be whether you care for a forwarder  
2       to waive it, summary order or not?

3                   CHAIRPERSON GRIFFIS:   Oh, we can  
4       certainly waive all those regulations on this  
5       modification as it has met the criterion to  
6       come under the minor modification.

7                   Unless there's any opposition to  
8       the Board, Section 3921 has been complied  
9       with.   I would say we waive our rules and  
10      regulations to a summary order.

11                   Very well.

12                   MR. MOY:   Good.   That's your last  
13      action for the meeting.

14                   CHAIRPERSON GRIFFIS:   Excellent.  
15      If there's nothing further, then let's  
16      adjourn.

17                   (Whereupon, at 12:02 p.m., the  
18      public hearing was adjourned for lunch, to  
19      reconvene at 1:00 p.m., the same day.)



1 recorded in two fashions. The most important  
2 way we are recorded is the court reporter,  
3 sitting at the floor to my right.

4 Attendant to that, there are  
5 several very important things. First of all,  
6 you're going to need to fill out two witness  
7 cards. Witness cards are available for you at  
8 the table close to the door. They should also  
9 be on the table in front where you will  
10 provide testimony. Those two cards should be  
11 filled out by everyone who was planning to  
12 provide testimony to the Board or, rather,  
13 planning to address the Board.

14 You can give those to the court  
15 reporter when they are filled out prior to  
16 coming forward.

17 Also, when you sit and make  
18 yourself comfortable, you will need to turn on  
19 the microphone and state your name and address  
20 for the record. You will only need to do this  
21 once at the beginning of your address to the  
22 Board. After that, obviously we'll have you

1 on the record, and we'll also have it spelled  
2 correctly.

3 For those not with us today  
4 personally, you are not allowed to call in on  
5 the dias. So the phone should not be ringing,  
6 but that will be great fodder for transcripts  
7 when we read that in the future.

8 The order of procedures for today  
9 is the following. Actually, I'll read it for  
10 the variances and special exceptions, and  
11 we'll deal with the appeal as it comes  
12 forward.

13 First of all, in special  
14 exceptions and variances we hear from the  
15 Applicant and their case presentation.

16 Secondly, we go to all government  
17 reports from the agencies reporting, Office of  
18 Planning, Department of Transportation, et  
19 cetera.

20 Third, we go to the Advisory  
21 Neighborhood Commission, which is before us.

22 Fourth would be persons or parties

1 in support of an application.

2 Fifth would be persons or parties  
3 in opposition to an application.

4 Sixth, finally, we return to the  
5 Applicant for their closings and summations.

6 It should be very clear as we  
7 move -- well, I'll dispense with that to make  
8 up the time.

9 Cross examination, of course, is  
10 allowed by the parties and the Applicant in  
11 the case. You will have to be established as  
12 a party, and you will know that before  
13 proceeding in a case, and therefore, you  
14 would, if a party, be able to conduct cross  
15 examination.

16 The ANC within where the property  
17 is located is automatically a party in the  
18 case and, therefore, they will be able to  
19 conduct cross examination.

20 The Sunshine Act requires that we  
21 hold all our hearings in the open and before  
22 the public. Our rules and regulations allow

1 us to enter into executive sessions, both  
2 during a hearing and after the hearing on a  
3 case. We use our executive sessions, frankly,  
4 just to get through the facts of the case and  
5 get organized so that we can be more  
6 expeditious out here.

7 As I say, that is in accordance  
8 with our rules, regulations, and procedures.  
9 It is also in accordance with the Sunshine  
10 Act.

11 The decision of the Board in  
12 contested cases, of which all cases before  
13 this Board are contested, are to be based  
14 solely and exclusively on the record that's  
15 created before us today. So we ask several  
16 things of that.

17 The first, importantly, if you see  
18 Board members at a recess or outside and off  
19 the dias on the floor today, we ask that you  
20 not engage them in private conversation so  
21 that we don't give the appearance of receiving  
22 information outside of the public record.

1           Secondly, we do ask that anything  
2           that you believe the Board should be reviewing  
3           and deliberating on, anything that is  
4           jurisdictional to the record be put into the  
5           record in this room either orally or in  
6           written fashion.

7           We will at the conclusion of a  
8           case, if we feel that additional material is  
9           required, we will keep the record open and  
10          request that additional material, but we will  
11          be very specific if we're keeping the record  
12          open and what we are keeping the record open  
13          for.

14          We will make every effort to  
15          conclude our afternoon session by 6:00 p.m.  
16          We do have preliminary matters, but I will get  
17          to those in a moment.

18          First, let me say a very good  
19          afternoon to Ms. Bailey on my far left, with  
20          the Office of Zoning; Ms. Monroe, next to her,  
21          from the Office of the Attorney General; and  
22          Mr. Moy, closer to me on my left, also with

1 the Office of Zoning. A very good afternoon  
2 to all of you.

3 Let me ask all of those persons  
4 present today who are going to address the  
5 Board if you would please stand and give your  
6 attention to Ms. Bailey. She is going to  
7 swear you in. Anyone that's going to address  
8 the Board, unless you want to carry over your  
9 swearing over from last time, in which case  
10 we'll let you do that.

11 Anyone that hasn't been sworn in?  
12 Excellent.

13 MS. BAILEY: Would you please  
14 raise your right hand.

15 (Whereupon, the witnesses were  
16 duly sworn.)

17 MS. BAILEY: Thank you.

18 CHAIRPERSON GRIFFIS: Excellent.  
19 Thank you all very much.

20 At this point then we can move on  
21 to preliminary matters. Preliminary matter  
22 are those which relate to whether the case

1 will or should proceed today. Requests for  
2 postponements, withdrawals with the proper and  
3 accurate notice has been provided. These are  
4 elements of preliminary matter and preliminary  
5 attention for the Board.

6 I'm going to ask Ms. Bailey if  
7 she's aware of any preliminary matters for the  
8 Board's attention at this time

9 MS. BAILEY: Mr. Chairman, members  
10 of the Board, to everyone, good afternoon.

11 Yes, Mr. Chairman, and that is  
12 there was a request to reschedule the appeal  
13 herein this afternoon. The number is 17504.  
14 I believe the participants are here for that,  
15 and Mr. Katz will be addressing the Board.

16 Also, placed before the Board, Mr.  
17 Chairman, were two submissions from DCIA, and  
18 I just wanted to bring that to your attention.

19 CHAIRPERSON GRIFFIS: Today?

20 MS. BAILEY: Yes, sir. There were  
21 two documents that are placed in front of you  
22 from DCRA.

1                   CHAIRPERSON   GRIFFIS:       Oh, I  
2                   thought that was a little door prize when I  
3                   came up.

4                   Okay. Yes? Come on forward and  
5                   have a seat. You will need to state your name  
6                   and address for the record, if you wouldn't  
7                   mind.

8                   I'm sorry. Take your time, but  
9                   have a seat, and you're going to need to turn  
10                  that on. There's a button at the base. That  
11                  light will come on.

12                  Perfect. You're ready.

13                  MR. KATZ: It's on now.

14                  Good afternoon. My name is  
15                  Jonathan Katz. I'm the lawyer for JMM Fun  
16                  Fare Video.

17                  CHAIRPERSON GRIFFIS: Thank you.

18                  Mr. Green.

19                  MR. GREEN: For the record, my  
20                  name is Matthew J. Green, Jr. I'm an  
21                  Assistant Attorney General. I'm housed at the  
22                  Department of Consumer and Regulatory Affairs,

1 located at 941 North Capitol Street.

2 CHAIRPERSON GRIFFIS: Brilliant.

3 Mr. Katz.

4 MR. KATZ: Thank you.

5 CHAIRPERSON GRIFFIS: Your motion  
6 for a continuance?

7 MR. KATZ: Yes. I apologize very  
8 much that I make this motion not until today.  
9 It's because my client, whom I've been  
10 representing for five years, Jose Montiel, who  
11 is the sole owner of JMM Fun Fare, for the  
12 first time in the five years I've represented  
13 him has ever asked to reschedule anything. He  
14 reports, and I rely fully on it, that early  
15 this morning he's been experiencing and is  
16 still experiencing a very severe stomach  
17 ailment that is causing him to vomit and have  
18 diarrhea about every five minutes.

19 He is an essential witness. For  
20 various reasons, he's the only witness for  
21 today, and immediately upon learning about it,  
22 I informed Mr. Nero and Mr. Green, who

1 consents to the continuance.

2 CHAIRPERSON GRIFFIS: Understood.  
3 Comments, Mr. Green?

4 MR. GREEN: I've been involved  
5 with this case, oh, I guess maybe three, four  
6 years. I know Mr. Montiel, and he is, and I  
7 agree, he's essential, and I have no objection  
8 to his continuance.

9 CHAIRPERSON GRIFFIS: Very well.  
10 Not much we can do with this. I'd say we set  
11 a new date for this. I don't see any reason  
12 to force the issue today.

13 I will make note that we had done  
14 our preparation of having an interpreter here.  
15 Obviously, we will have to make sure that they  
16 are scheduled for the next. You know, this is  
17 an issue that was not predictable.

18 Let's do so. Let's see if there's  
19 any conflict of putting this on for -- well,  
20 as I look for a date, are there comments from  
21 other members? I know I did not call this  
22 case. I will be sitting on this case as it

1 continues through, but there was some  
2 instruction given from the Board in the prior  
3 date that this was called, some of which has  
4 been fulfilled, but I don't know if there's  
5 other additional comments that need to be  
6 made.

7 Ms. Miller?

8 VICE CHAIRPERSON MILLER: At the  
9 last hearing we talked about a briefing  
10 schedule in order to crystallize the issues  
11 and put them in the format of an appeal.

12 This case has been taking  
13 different forms before different bodies, and  
14 so that's what we had talked about. I  
15 understand that the Appellant has filed a  
16 pleading, but I don't know whether DCRA's  
17 submissions today are the response or whether  
18 DCRA is going to respond to the pleading.

19 We had set a November 17th date, I  
20 think, for DCRA's response, and then November  
21 27th for Appellant's response to DCRA, and  
22 those two dates have passed.

1           So, Mr. Green, do you want to  
2 comment on that?

3           MR. GREEN:   With regard to any  
4 submission that DCRA either intends to make,  
5 DCRA had intended primarily today to deal with  
6 presentation of witness testimony, to clarify.  
7 This record is full of information.

8           The information provided to the  
9 Board the Board already has.   It centers  
10 around two primary things:  the orders issued  
11 by the two previous Administrative Law Judges  
12 as it related to this case.  That is all that  
13 this matter relates to.

14           What we have, what has been  
15 submitted prior to by the Appellant does not  
16 relate to those two orders.  In other words,  
17 the three-prong test in any appellant  
18 circumstance is clearly erroneous, abuse of  
19 discretion, and against the manifest weight of  
20 the testimony and evidence presented.

21           That is not what was going on.  
22 That is not what has been presented.

1                   VICE CHAIRPERSON MILLER:     Mr.  
2     Green, I'm certainly not asking you to argue  
3     your case. I just really --

4                   MR. GREEN:     I didn't come to  
5     argue.

6                   VICE CHAIRPERSON MILLER:    Okay.

7                   MR. GREEN:     I only came to say  
8     that I would consent to a continuance. That's  
9     my purpose in being here.

10                  VICE CHAIRPERSON MILLER:    Okay.  
11     My question really is though we set up a  
12     briefing schedule just to crystallize the  
13     legal issues so that when you came to argue  
14     the case, that the Board would have the issues  
15     before it, and I'm wondering if you are going  
16     to file a pleading or if you're choosing not  
17     to.

18                  MR. GREEN:     I'm not certain, Madam  
19     Vice Chairman. I'm not certain. I tend to  
20     think that we will probably make a submission,  
21     but it will be no greater than what you have  
22     been given, which are the two orders of the

1 Administrative Law Judges that bring us before  
2 this proceeding.

3 CHAIRPERSON GRIFFIS: Okay. I  
4 think that's pretty clear. And that's what  
5 you submitted in today; is that correct?

6 MR. GREEN: That's all it is.

7 CHAIRPERSON GRIFFIS: Okay. There  
8 it is. I think the answer is no. There's  
9 further submissions because actually the  
10 record was kept open for you response to the  
11 submission, and that has passed.

12 So with that, let's set the next  
13 date, and I'll take any outrageously  
14 conflicting schedules that would not allow us  
15 to set this on the -- Ms. Bailey, am I  
16 correct? -- on the 20th of February, and I  
17 believe we were looking at the first in the  
18 afternoon; is that correct?

19 MS. BAILEY: That's correct, Mr.  
20 Chairman.

21 MR. KATZ: That's fine with me.

22 CHAIRPERSON GRIFFIS: Yes?

1 MR. KATZ: Yes.

2 CHAIRPERSON GRIFFIS: Excellent.  
3 Any difficulties?

4 MR. GREEN: No, not at this point  
5 in time, sir.

6 CHAIRPERSON GRIFFIS: Okay. Very  
7 well. Then let's do that. We'll set this.  
8 This will be the only formal public notice of  
9 this as a continuation. I will note with  
10 great optimism we had left that open for our  
11 snow days. So maybe we'll be talking about  
12 the weather on that time, but at this point  
13 unless your client, Mr. Green, has any  
14 conflict, we'll move it ahead then. Very  
15 well.

16 MR. KATZ: Thank you.

17 CHAIRPERSON GRIFFIS: Anything  
18 else?

19 MS. BAILEY: Not on this case,  
20 sir.

21 CHAIRPERSON GRIFFIS: Any other  
22 questions then?

1                   MR. KATZ:    No.    Thank you very  
2 much, everybody.

3                   CHAIRPERSON GRIFFIS:   Very well.  
4 Before you go though, just to give you  
5 instructions, because I think Ms. Miller in  
6 chairing this last one set up, I think, some  
7 excellent parameters, but also direction, and  
8 let me just reiterate as best I can.

9                   This is going to be an appeal, and  
10 the appeal will come. First we will hear from  
11 what the error is, and I think that's been  
12 started to be articulated in the submissions,  
13 but clearly that's what we will be looking at.  
14 We're going to get directly into that.

15                   We're going to say why it was, and  
16 then we're going to see why it wasn't. And  
17 then we're going to adjourn and we'll make our  
18 decision back at a different time. So this  
19 should go very quickly.

20                   Again, it is of great legal  
21 matter. We will look for witnesses that will  
22 be called to substantiate the legal argument,

1 the dimensional requirements, the amount of  
2 merchandise, whatever it is that's the basis  
3 of your assertion that an error was created,  
4 and then we will hear for how the Zoning  
5 Administrator actually made their fundamental  
6 decision. What was the information that was  
7 relied on? And how they went forth and made  
8 that decision.

9 This should be not that  
10 complicated. It may be deep in terms of the  
11 amount of information provided, but it should  
12 not be complicated in its presentation, nor be  
13 -- well, there it is.

14 Okay. Anything else then?

15 MR. KATZ: No. Thank you,  
16 everybody, again.

17 CHAIRPERSON GRIFFIS: Good. Thank  
18 you all very much. Best health to your  
19 client.

20 MR. GREEN: Thank you, Mr.  
21 Chairman.

22 CHAIRPERSON GRIFFIS: And we'll

1 look forward to seeing you all on the 20th.

2 If there's nothing further with  
3 that, then let's move ahead and call the next  
4 case. Mr. Moy?

5 MR. MOY: Mr. Chairman, was that  
6 the first case in the afternoon?

7 CHAIRPERSON GRIFFIS: Yes. Do you  
8 want to call the first case in the afternoon,  
9 which we'll be calling at one o'clock then on  
10 the 20th. Very well.

11 What's next?

12 MS. BAILEY: The next case is a  
13 continuation, and it's Application No. 17521  
14 of 601 through 645 H Street Ventures, LLC,  
15 pursuant to 11 DCMR 3103.2, a variance from  
16 lot occupancy requirements under Section 772,  
17 and a variance from the residential recreation  
18 space requirements under Section 773, a  
19 special exception from the lot occupancy  
20 requirements under Subsection 1324.4, and a  
21 special exception from Subsection 1303.2, to  
22 permit a relocated curb cut on H Street and

1 special exception relief pursuant to 2514.2  
2 for a 30 foot extension of a lesser  
3 restrictive district into a more restrictive  
4 district to allow the construction of a new  
5 mixed use building on a lot that has 6,000  
6 square feet or more of land under Subsections  
7 1320.4.

8 The property is located in the H  
9 Street, N.E. commercial overlay district at  
10 premises 601 through 645 H Street, N.E. It's  
11 located in Square 859 on Lot 177, and it's  
12 zoned HSC-2-A AND HSC-2-C.

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Thank you very much.

15 We have just been delivered, so  
16 that everyone knows on the record, a letter  
17 dated 4 December from the H Street Main  
18 Street. Obviously we haven't read it, but  
19 there it is.

20 Let's move ahead. When last we  
21 left off we had called for persons that were  
22 present, of course, to give a presentation of

1 their testimony in support or in opposition.  
2 It was a little bit out of order. We had  
3 finished the case-in-chief of the Applicant,  
4 and we were going to government reports.

5 And we'll start with the Office of  
6 Planning.

7 MR. PARKER: Good afternoon, Mr.  
8 Chairman and members of the Board. I'm Travis  
9 Parker with the Office of Planning.

10 When we left this case, Mr. Sher  
11 had given a quite thorough explanation of the  
12 variances and special exceptions being  
13 requested, as well as the tests that met  
14 those. So I'll skip over that for the time  
15 being and talk briefly about where we're at  
16 today.

17 It's OP's understanding -- and,  
18 first of all, OP would like to thank all of  
19 the parties involved for their hard work in  
20 reaching agreement on this case -- it's OP's  
21 understanding that the Applicant has agreed to  
22 drop two units from the ninth story in the

1 extended zoning area, has moved the H Street  
2 curb cut to the center of the building and  
3 kept that curb cut on H Street for the  
4 parking, has evidenced compliance with each  
5 and every one of the design guidelines with  
6 the exception of two, three if you count the  
7 H Street curb cut, and then has provided  
8 justification for variance from those  
9 guidelines, the ones that are not being met in  
10 order to avoid setting a future precedent for  
11 noncompliance with the guidelines.

12 In return, the community has  
13 offered its support for the requested relief  
14 and asks only that the record be left open  
15 until late January for further design comments  
16 in regards to the details of the facade.

17 OP finds that the application  
18 meets the test for approval of the requested  
19 variance and special exceptions, and we  
20 support approval of the product in the method  
21 agreed to by the various parties.

22 I'll be happy to answer any

1 questions you've got.

2 CHAIRPERSON GRIFFIS: Excellent.  
3 Thank you very much.

4 Just noting all of the changes  
5 that you assessed, those were already in the  
6 application. That's what we reviewed last  
7 time in the --

8 MR. PARKER: The most recent  
9 changes, correct.

10 CHAIRPERSON GRIFFIS: Right,  
11 excellent. And then lastly, just for  
12 clarification, we talked a limited amount last  
13 time. Keeping the record open until January  
14 would mean we would not make a decision until  
15 after that. That would be probably February.

16 MR. PARKER: I think the public  
17 meeting in February --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. PARKER: -- was, I think, the  
20 goal of the parties.

21 CHAIRPERSON GRIFFIS: Okay, good.  
22 Excellent.

1                   MR. PARKER:       And just for  
2 clarification, I believe that was just for the  
3 special exception for development on over  
4 6,000 square feet. I believe all parties were  
5 fine with summary judgments on all the other  
6 areas of relief.

7                   CHAIRPERSON GRIFFIS:   Okay.

8                   MR. PARKER:       And I'll stand  
9 corrected if anyone says otherwise.

10                  CHAIRPERSON GRIFFIS:   Okay. You  
11 had brought up in your report, just looking  
12 back at a few comments that I don't think were  
13 addressed. In terms of assessing the  
14 community comments, the Zoning Administrator  
15 was to provide clarification of moving the  
16 residential and the commercial density.

17                  Were you aware that that was  
18 provided or is there clarification?

19                  MR. PARKER:   No. We met with the  
20 zoning administrator, and discussed the issues  
21 with him, but he never had a chance to provide  
22 a final ruling on that matter.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. PARKER: But past precedent  
3 has been for the aggregation. That's the  
4 issue.

5 CHAIRPERSON GRIFFIS: Yes.  
6 Excellent. Any other comments from the Board  
7 or questions?

8 VICE CHAIRPERSON MILLER: Will we  
9 be hearing from the Department of  
10 Transportation separately or should we ask the  
11 questions to you with respect to  
12 transportation?

13 MR. PARKER: It's my understanding  
14 that they still are reviewing the project. In  
15 fact, they have tentatively agreed to an H  
16 Street curb cut, but there are still  
17 discussions about a possible cross-walk and/or  
18 light at that location, and so they may very  
19 well have an interest in providing more  
20 information if the record is left open.

21 CHAIRPERSON GRIFFIS: Okay, and of  
22 course, we have their last submission, which

1 came in on the 21st of November.

2 MR. PARKER: Correct.

3 CHAIRPERSON GRIFFIS: Were you  
4 aware whether they were sending a  
5 representative to present that today?

6 MR. PARKER: My understanding is  
7 that they are not, but I'm not sure.

8 CHAIRPERSON GRIFFIS: Okay, okay.  
9 good enough. Other questions?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Okay. If  
12 there are no other questions of the Board, is  
13 there any cross? Does anyone have any cross?  
14 Any of the parties have any cross?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Very well.  
17 ANC? Is the ANC here?

18 PARTICIPANT: Yes.

19 CHAIRPERSON GRIFFIS: As him if he  
20 has got any cross examination of the Office of  
21 Planning while you're out there having  
22 coffee, too.

1 PARTICIPANT: Are we up now?

2 CHAIRPERSON GRIFFIS: No, we're  
3 just doing cross of the Office of Planning if  
4 there is any cross examination. I'm sorry.  
5 I didn't catch that.

6 PARTICIPANT: I said we've already  
7 made a report and we're in agreement with it.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Okay. Very well.

10 If there is not further for the  
11 Office of Planning, thank you very much, Mr.  
12 Parker. We do appreciate it. A good report,  
13 and obviously a lot of work had gone into  
14 that.

15 Let's go to Department of  
16 Transportation. I'll ask officially for the  
17 record if there's a representative of the  
18 Department of Transportation here with us  
19 today.

20 Not noting, we do have the last  
21 filing. I'm assuming that the parties have  
22 the current filing from the Department of

1 Transportation. It's dated the 20th of  
2 November. It also was submitted, stamped into  
3 the record on the 21st. It is Exhibit No. 98,  
4 and I'm assuming the Applicant also has that  
5 in there.

6 It's fairly substantial. I don't  
7 know if the Board wants to talk about that or  
8 raise questions, but I'll have it open. Go  
9 ahead.

10 VICE CHAIRPERSON MILLER: Well, I  
11 would be interested in the Applicant's  
12 response to some of DDOT's recommendations  
13 that are different from what they were  
14 planning, such as a decrease in the number of  
15 parking spaces provided.

16 CHAIRPERSON GRIFFIS: Good. Is  
17 the Applicant prepared to make a response to  
18 that question?

19 It's a fascinating element. You  
20 know, we've actually run across this probably  
21 not enough time. There's one case that I can  
22 recall that the Board actually set a maximum

1 number of parking allowed, rather than as our  
2 regulations show, which is a minimum number  
3 that must be provided.

4 Now, that was a particularly  
5 exceptional case, of course, but it's an  
6 interesting parameter to put in. But there is  
7 it.

8 MR. GLASGOW: Well, a couple of  
9 things, Mr. Chairman. First of all, we have  
10 not asked for any relief with respect to the  
11 number of parking spaces in this case. So  
12 it's not directly in front of the Board. We  
13 have agreed with the community as to the  
14 number of parking spaces that we're providing,  
15 and we've agreed with the ANC months ago that  
16 there was a request that there be more parking  
17 spaces provided than what their minimum  
18 requirements for the regulations.

19 So we are not in agreement with  
20 DDOT with respect to cutting the spaces, and  
21 we're cutting the number of parking spaces due  
22 to our agreement with the community and our

1 representations to the community and  
2 otherwise, and it's not an issue before the  
3 Board.

4 MS. BAILEY: Your name for the  
5 record, please.

6 MR. GLASGOW: My name is Norman  
7 Glasgow, Jr., the law firm of Holland and  
8 Knight.

9 CHAIRPERSON GRIFFIS: Other  
10 comments?

11 VICE CHAIRPERSON MILLER: I would  
12 just like to follow up. Well, we'll later  
13 consider whether it's an issue before the  
14 Board, but what would the ramifications be  
15 that you might be concerned about if the Board  
16 were to order fewer spaces?

17 MR. GLASGOW: I think there are a  
18 couple of things. First of all, we have, if  
19 we want to, we can proceed with Mr. Wells who  
20 is prepared to address that, but I can address  
21 it in summary. I didn't know what order you  
22 wanted us to -- whether you wanted us to cover

1 this in rebuttal or how you wanted us to  
2 proceed with the DDOT report.

3 CHAIRPERSON GRIFFIS: You're  
4 prepared to address the DDOT in rebuttal?

5 MR. GLASGOW: Oh, sure.

6 CHAIRPERSON GRIFFIS: Okay. I  
7 think that's probably appropriate to do unless  
8 there's a specific question and we get an  
9 answer, but frankly, we can do it then when  
10 you have your witnesses up.

11 I think it is interesting to  
12 explore to a limited basis just to get a firm  
13 understanding of the Board as it weighs this  
14 element, well, actually all of the elements.  
15 I mean, they're somewhat tied, except for the  
16 ingress and the egress and the one way, which  
17 I think are pretty straightforward.

18 Okay. Very well. Anything else  
19 then? I'll allow any of the parties or the  
20 ANC if they have any issues or discussion  
21 points they want to bring up regarding the  
22 DDOT report.

1 MR. RIVERA: Yes. Anthony Rivera,  
2 ANC Commissioner 6C-05.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. RIVERA: With regard to the  
5 reduction of parking spaces, I think that will  
6 be a travesty to the community. Fifty-five  
7 Mass. they had too many spaces on the  
8 commercial side. They had to take some to the  
9 residential side. All the buildings that are  
10 being built as far as the new condominiums and  
11 all of this big building boom, you need more  
12 than one for one, and I think they're  
13 providing more than that, and you need the  
14 flexibility of having parking so that it  
15 doesn't impact the community, and that's where  
16 we are standing on that issue.

17 We want the parking spaces that  
18 are agreed upon because what we're basically  
19 telling the developers before they even come  
20 to us, you need to have more than one for one  
21 because the parking spaces are needed in the  
22 community. Everybody is not -- a share car,

1       how many people can use a share car at one  
2       time if you've got 500 people in a building?  
3       So that's not going to solve the problem.

4                     The problem is people have their  
5       cars.  America is a car country, and even if  
6       they don't drive their cars, they have cars.  
7       And we need as many parking spaces in the city  
8       as possible.

9                     CHAIRPERSON GRIFFIS:  Good.  Thank  
10       you.

11                    MR. RIVERA:  Thank you.

12                    CHAIRPERSON GRIFFIS:  Before you  
13       go, one quick thing about it because I  
14       absolutely agree, and I don't think anyone is  
15       disagreeing with the opinions, but it seems to  
16       me as this is framed for this specific case,  
17       but for all the other cases if we get this is  
18       that there's a certain amount of immediate  
19       short-term how do we address what we have  
20       right now, but then there's also the long-term  
21       forecasting.  Where do we want to be?

22                    And I think it's important to

1 understand for everyone, especially as an ANC  
2 member and for us, to see what DDOT is  
3 actually pushing to have happen, and as I read  
4 their report and as I see them recommending a  
5 reduction of 97 spaces in this specific  
6 project, I see them saying, "Do you know what?  
7 We want to push and build up our public  
8 transportation, and in order to do that, we  
9 need to not change the dynamic of how we live  
10 and how we get around.

11 And so the balance, of course, is  
12 by making it more difficult to have cars in  
13 the city, maybe our public transportation will  
14 start to be increasingly used.

15 It's a hard one. I understand and  
16 there's these tensions that are pushed and  
17 pulled, but America is -- I agree with you --  
18 America is a car culture, but there are cities  
19 that exist that everyone doesn't own a car and  
20 everyone doesn't rely on it. Whether this  
21 will ever be a city like that I don't know.

22 So I make it more as a statement

1 of understanding, but also I think we all  
2 ought to appreciate especially where the  
3 agencies are coming from, to understand what  
4 they're trying to achieve and to strive for.

5 MR. RIVERA: Yes. Well, Mr.  
6 Chairman, I agree with you. Maybe last year  
7 I brought forth testimony about a person that  
8 I know personally, and this is the scenario,  
9 and we all have to think about this. This  
10 person relocated here. He got married, and he  
11 lived in a car barn in a one-bedroom  
12 apartment. His wife is a stewardess, and she  
13 flies out of all three airports. So she had  
14 to have a car. Okay?

15 He worked for Goddard Space Center  
16 at the time. He had to have a car. There's  
17 no way he can get up in the morning and take  
18 the Metro to Goddard Space Center where he  
19 worked.

20 So they had two cars. They rented  
21 a one-bedroom apartment in the car barn and  
22 rented one parking space. Where does the

1 other car go? The other car gets a Ward 6  
2 sticker and goes in the neighborhood. Okay?

3 And I gave this testimony before,  
4 and that's the kind of scenario that we have  
5 to think about. All areas where they're  
6 building up that people work at, you have to  
7 have a car to get to some of these places.

8 CHAIRPERSON GRIFFIS: Right,  
9 right.

10 MR. RIVERA: So I'll leave it  
11 there. I think you've got the idea.

12 CHAIRPERSON GRIFFIS: Yeah. No,  
13 absolutely do, absolutely.

14 VICE CHAIRPERSON MILLER: Can I  
15 just ask a follow-up question just about your  
16 particular ANC and community?

17 Did you talk at all about the  
18 tradeoff between traffic and parking spaces?

19 MR. RIVERA: Well, the issue is  
20 also -- I gave this testimony before -- not to  
21 rehash it, but the issue is that people work  
22 at different schedules. I just gave you a

1 prime example. Out of those two people, she's  
2 a stewardess. So she doesn't have a set  
3 schedule. She can get called up. So she's  
4 really never in traffic. So she's not part of  
5 the traffic problem.

6 He's not because he likes to wake  
7 up super early in the morning, and he has a  
8 flex schedule, and the government allows you  
9 to do that. So he works all this time. He  
10 gets up and gets there so early and only works  
11 four days. So one day he's not even out  
12 there.

13 So it's not as big a problem as we  
14 think because of the flex schedules, home  
15 commuting of working or whatever they call it,  
16 home -- you know what I'm saying.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. RIVERA: So, yeah, we do have  
19 a traffic problem, but it's not caused from  
20 the city. It's usually caused from people  
21 outside coming through the city.

22 CHAIRPERSON GRIFFIS: Most of our

1 problems are that.

2 MR. RIVERA: Yeah.

3 (Laughter.)

4 MR. RIVERA: So I'll leave that  
5 there. Thank you.

6 CHAIRPERSON GRIFFIS: Okay. I  
7 knew we'd touch a nerve somewhere.

8 (Laughter.)

9 MR. EDWARDS: Thank you.

10 Monte Edwards, Stanton Park  
11 Neighborhood Association.

12 I've been in contact with the  
13 Department of Transportation on their report  
14 and some of the community's concerns,  
15 particularly the cross-walk, particularly the  
16 light, particularly the reduction of parking,  
17 and one thing they made very clear is it is  
18 not a final report. It is a draft. They have  
19 agreed to meet with the community, the ANCs,  
20 the Applicant, the Applicant's transportation  
21 engineer within the next couple of weeks  
22 hopefully.

1           So before we get too concerned  
2 about the report, perhaps later in the  
3 proceeding we'll have a supplement to that  
4 report that will address some of these  
5 concerns, I hope.

6           CHAIRPERSON GRIFFIS: Good. No,  
7 we appreciate that, and actually, I should  
8 have noted. Their initial note on the report  
9 indicates that they want to keep the record  
10 open for additional comments, but they do  
11 raise some substantive issues, and they're not  
12 shocking. I mean, obviously they are issues  
13 that are being dealt with with DDOT generally,  
14 and then obviously specifically with this  
15 case, but we appreciate that. Okay.

16           MS. AXAM: Hilary Axam, 616 G  
17 Street, N.E., for the 600 H Street Neighbors.

18           I just wanted to echo the  
19 Applicant's representation that parking is a  
20 great concern to the neighbors, but it is a  
21 preliminary report, and we are in favor of the  
22 greater number of parking spaces that was in

1 the initial application, and as Mr. Edwards  
2 represented, this is an issue that's the  
3 subject of continuing discussions. We don't  
4 feel it's something the BZA needs to rule on  
5 right now, but we did want to echo what the  
6 Applicant represented about our understanding  
7 of the application including the greater  
8 number of parking spaces.

9 CHAIRPERSON GRIFFIS: Sure.  
10 Excellent. Thank you.

11 There's two points that I'm left  
12 with just from the comments today. One is 55  
13 Mass., which outside of that, a pretty good  
14 project, but the point is that with the mixed  
15 use and how we see things that may change for  
16 demand of uses in parking, and certainly  
17 retail and commercial, we know there's kind of  
18 a built in, right now, a built in requirement  
19 for those by there being a leasing to get  
20 people in there, but also in the utilization.

21 You know, the best case scenario  
22 perhaps in 20 years all of these parking

1 spaces will be empty, and then we'll convert  
2 them all into bowling alleys or something, but  
3 that may be a little bit away away.

4 All right. That's enough on this.  
5 Let's move ahead then unless there's anyone  
6 else who wants to address this at this point.  
7 We can move on to other submissions of reports  
8 of which I don't have note of any others to be  
9 presented today.

10 Unless the Applicant is aware or  
11 the parties are aware of any other government  
12 reports, let's move ahead to the ANC if the  
13 ANC is ready to present.

14 MR. RIVERA: Once again for the  
15 record, Anthony Rivera, ANC-6C-05.

16 MR. DIXON: And Mark Dixon,  
17 Chairman of ANC-6C.

18 Are you ready?

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. DIXON: Good afternoon,  
21 everyone. I just want to make sure that we  
22 are understanding the situation, what we're

1 here for, and I was trying to make sure that  
2 everything got past us. So as far as I know,  
3 we approve everything so far to this point  
4 now, and we just wondered a couple of things  
5 that needed to get done, to hurry up and just  
6 get this passed so that we can get the  
7 building for the community and for the ANC.

8 I'm really here to answer any  
9 questions, if you have any.

10 CHAIRPERSON GRIFFIS: Excellent.  
11 Thank you.

12 Did you have an opening?

13 MR. RIVERA: Yeah. I'm going to  
14 be very brief because I don't want to stay a  
15 long time, but H Street is -- we all know the  
16 history on H Street, and it's changing very  
17 quickly right before our eyes, and I'm really  
18 glad that projects like this are coming to H  
19 Street. Then the projects like before, like  
20 the two buildings that is in this building  
21 that look like two big speakers from way back  
22 in the day, as far as the design I'm talking

1 about, and I'm very glad that we have  
2 developers coming in wanting to change the  
3 neighborhood.

4 H Street has been called a lot of  
5 things. The most interesting one, it's always  
6 been called the dividing line. It's been  
7 called all different kind of things, but the  
8 most interesting one I heard from one of the  
9 residents, what they call H Street was the  
10 Mason-Dixon Line, which I don't know why they  
11 said that, but this is how some of the  
12 residents feel, and I'm glad now that our H  
13 Street and north H Street is getting the  
14 attention that it's getting from the  
15 developers, from the public, from the  
16 government.

17 Moving back to the project, I  
18 think the project is an excellent project,  
19 being a mixed use project, and actually the  
20 developer, when they first brought the project  
21 to me personally, I gave them a list of I  
22 won't say demands, but criteria. Since I've

1       been through this process a couple of times,  
2       I kind of formed, I guess, an opinion on how  
3       things should be done and what should be  
4       actually brought to the community before the  
5       project is formed, given to the architects.

6               And actually, the developer, the  
7       were very good about -- and parking was one of  
8       the issues. I said, "Don't bring me a project  
9       without the appropriate amount of parking.  
10      You're going to have to set the project back  
11      from the neighborhood." I mean, I wouldn't  
12      want a big building when I look outside my  
13      window on the back.

14              They've done many changes, and  
15      anticipate that they will do more changes to  
16      be great players within the neighborhood. To  
17      date there's about 20 or 15 changes that  
18      they've done as far as the curb cuts, as far  
19      as the designs, as far as the setbacks, as far  
20      as the losing of units to make it smaller than  
21      the original project that was brought to us.  
22      So I applaud them on that.

1           They actually did follow the  
2 process versus other developers I know in town  
3 that try to push a project down your throat or  
4 they go other means to make that project  
5 happen.

6           They actually called. We had a  
7 community meeting. There was an ANC meeting,  
8 of course. They went to the other community  
9 group, which is the Northeast Citizens Against  
10 Drugs and Crime. They went to the full ANC.  
11 They went to the Capitol Hill. They went to  
12 the A Street Main Street. They went to the  
13 Office of Planning, 6A, and 6A's full  
14 commission and I think -- I don't know. Don't  
15 let me quote. I don't have that in front of  
16 me as far as Stanton Park. I believe they did  
17 because Stanton Park is a party to this.

18           Saying that and closing very  
19 quickly, not to talk on any technical matters,  
20 I think that the developers are acting in good  
21 faith and working with the community to bring  
22 forth a project, and not just to flip, make

1 some money and leave. I think that they're  
2 going to be involved in the community and I  
3 hope that they will help us get the H Street  
4 bid off that we're tirelessly working towards.

5 But as the ANC and the single  
6 member person, we basically endorse the  
7 project in its form, but we stressed to the  
8 developer that they've done such a good job to  
9 this point in working with the community and  
10 making concessions that that doesn't change.  
11 We want them to be like they are now and  
12 working with us.

13 So I'm just putting that on the  
14 record, that I hope that they're good  
15 neighbors and help H Street because they're  
16 going to be between the Stewart Project and  
17 the museum project. This is going to be the  
18 next big project that's going to bring more  
19 development to the area, and I think that all  
20 of the developers ought to work together to  
21 get that A Street bid off the ground and move  
22 forward and be good team players within the

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1 community.

2 That's all I have to say.

3 CHAIRPERSON GRIFFIS: Excellent.

4 Any questions? Yes, Ms. Miller.

5 VICE CHAIRPERSON MILLER: I'm  
6 looking at the ANC report that was filed with  
7 the Board on September 20th, 2006, and from  
8 what I hear you say, it's that you've been  
9 working with the Applicant, and the Applicant  
10 has been very responsive to your concerns.

11 And my question is there's a,  
12 quote, Fact Sheet attached to your report that  
13 identifies concerns that the ANC wanted to  
14 have addressed by the developer.

15 MR. RIVERA: Okay.

16 VICE CHAIRPERSON MILLER: Have  
17 those all been addressed?

18 MR. GREEN: Yes, they have been.

19 MR. RIVERA: Well, let me see what  
20 you -- can I see what you have? Because I  
21 don't have that readily available.

22 VICE CHAIRPERSON MILLER: It's our

1 Exhibit No. 25, and it's ANC's letter to the  
2 BZA, dated September 20th, 2006. Do you need  
3 a copy of this, too?

4 MR. RIVERA: Yeah, if I could  
5 glance at it, I've seen it, but I don't have  
6 it in front of me right now. That's kind of  
7 embarrassing, but if I can glance at it.

8 MR. GREEN: And what is the  
9 question? Did they perform is what you're  
10 asking now?

11 VICE CHAIRPERSON MILLER: My  
12 question is -- and I can't give you my copy,  
13 but I think we can get you a copy.

14 MR. GREEN: Okay.

15 VICE CHAIRPERSON MILLER: There's  
16 a Fact Sheet that identifies ANC concerns.

17 MR. GREEN: Right.

18 VICE CHAIRPERSON MILLER: This  
19 goes back to September. It's actually dated  
20 August 30th, and from what I'm hearing it is  
21 that you all have worked out your concerns and  
22 everything, and I just want to verify that

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1 these concerns which are attached to the --

2 MR. GREEN: Can you give me the  
3 list of concerns that was on it? I'm trying  
4 to remember, too.

5 VICE CHAIRPERSON MILLER: There's  
6 a list of 12 concerns.

7 MR. GREEN: Twelve?

8 VICE CHAIRPERSON MILLER: Starting  
9 with parking, construction, vibration, alley  
10 concerns, rodent infestation, blocked  
11 sidewalks design, no family units, greenery,  
12 green roof, citizen input.

13 MR. RIVERA: Okay. I could  
14 address that. That's coming back to me now.  
15 There's a couple of mistakes on a couple of  
16 the items there because like I told you  
17 earlier, that when a developer came to me with  
18 his representative, I gave them an outline of  
19 things to do, and one of them was the  
20 construction because what I've learned after  
21 seeing a lot of construction as far as having  
22 the construction plan in place, as far as

1 going into all of the houses there in the  
2 surrounding neighborhood, taking pictures, if  
3 you're pile driving, you know, all of that,  
4 the staging areas and all of that, as far as  
5 getting the construction plan together, and I  
6 asked them to do that in the beginning, and  
7 they did.

8 When we were in the meeting, I  
9 kind of forgot about that because that was  
10 months before. So that's one of the reasons  
11 why that is on there, and that has been  
12 solved. They did file a construction plan.

13 What are we calling that?  
14 Whatever you call.

15 MR. GREEN: Design.

16 MR. RIVERA: Design? Well, plan.

17 With the design, since then there  
18 has been design changes, since that letter.  
19 Units, there's been a reduction in units since  
20 that. The parking. I think the only  
21 outstanding thing is a couple of the design  
22 final and the DDOT stuff as far as the front.

1 I think that's where we are basically as far  
2 as the final design.

3 Well, facade basically as far as  
4 the construction of the facade. I think  
5 that's where we are right now, and as far as  
6 the DDOT issues, as far as the front and the  
7 curb cut, as far as getting the traffic in and  
8 out, you know, and that kind of thing.

9 One thing I did want to bring up  
10 since we were talking about parking and the  
11 Chairman was talking about as far as the  
12 commercial end versus the residential end, as  
13 far as parking. I think that this developer  
14 needs to look at that as far as if you have  
15 visitors, how do you make all of that work.  
16 I don't know what.

17 I mean, somebody needs to take a  
18 step forward in that because I don't think it  
19 has really been done in the city to a degree  
20 that there's a plan, then just charging  
21 somebody \$20, you know.

22 But I think this developer

1 probably needs to take -- or the parking  
2 operator -- take a look at how to balance  
3 that. But I think everything else on that  
4 list, because that letter is kind of old, has  
5 been fairly addressed. I mean, there's some  
6 technical issues left out there, but I think,  
7 I mean, they've been acting in good faith to  
8 this point, and I think we can come to a good  
9 consensus working with the neighbors and the  
10 ANC. I think we can.

11 CHAIRPERSON GRIFFIS: Excellent.  
12 I think there are some good concerns and  
13 actually some good programming elements that  
14 you brought up.

15 I would just put it into context  
16 as we've heard, that we would be able to  
17 control or condition or direct elements that  
18 are under our jurisdiction for the  
19 application, meaning -- and we have done this  
20 before -- if there is a relief for the parking  
21 requirements, we can designate certain  
22 conditions that might mitigate adverse effect

1 or problems that would come up with the relief  
2 of parking.

3 So I guess I'm directly saying I'm  
4 not sure how much control we're going to have  
5 in terms of reprogramming or requiring types  
6 of programming or the utilization of the  
7 parking outside of that which is required by  
8 the regulations, and the Applicant is already  
9 meeting those requirements.

10 So don't lose those ideas because  
11 I think they're productive ones, but also  
12 don't anticipate that we'll be able to solve  
13 all of those.

14 MR. RIVERA: Yeah, I understand  
15 that, but I was making part of the record.

16 CHAIRPERSON GRIFFIS: Sure, sure.

17 MR. RIVERA: You know, so that  
18 everybody here can, you know, understand where  
19 we're coming from.

20 CHAIRPERSON GRIFFIS: Absolutely.  
21 It's good --

22 MR. RIVERA: And act in good faith

1 basically. I mean, we need people like that.

2 CHAIRPERSON GRIFFIS: Great. So  
3 to pick up where Ms. Miller was going, on our  
4 record we have Exhibit No. 25. We also have  
5 Exhibit No. 69 and also Exhibit 85. All three  
6 are submissions from the ANC-6C. Each one  
7 addresses a little bit more, but the last one  
8 we have still addresses some concerns. Is  
9 that where we are?

10 MR. RIVERA: Well, I'm going to  
11 tell you, and this is probably very  
12 embarrassing for me. I haven't seen that last  
13 letter.

14 CHAIRPERSON GRIFFIS: Well, that's  
15 actually the earliest. That's Exhibit 25 that  
16 she was looking at because 25 is superseded by  
17 69, which is superseded by 85, but they're  
18 cumulative. As far as I read them all, one is  
19 not overriding the others.

20 But the last position of the ANC  
21 indicates that you still have many issue with  
22 the case, although a lot of them have been

1 solved.

2 And you talk about time needed for  
3 the design issues to be reviewed.

4 MR. GREEN: Yes, I remember that  
5 one, too.

6 MR. RIVERA: Well, there was a  
7 meeting after our ANC meeting between the  
8 community and the community organizations with  
9 the developer and the development team --

10 MR. GREEN: They solved it.

11 MR. RIVERA: -- and we solved a  
12 lot of the different issues. That's where we  
13 are.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. RIVERA: I know you're looking  
16 at what is written, and I'm giving verbal  
17 testimony.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. RIVERA: But I'm also speaking  
20 as the single member district.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. RIVERA: So this is ANC -- so

1 you beat him up about the letters, but we had  
2 a meeting after our scheduled meeting, which  
3 that letter was written, and like I said, with  
4 the community members, and a lot of those  
5 problems were solved.

6 We got down basically to the DDOT  
7 issues basically as far as the front of the  
8 building, if I remember correctly.

9 CHAIRPERSON GRIFFIS: Okay. Yeah,  
10 I'm not so concerned about whether you're  
11 sticking right to it or whether we have all of  
12 the right letters in the right order. I  
13 really am looking for the substantive elements  
14 that are of concern from the single member  
15 district and the ANC as a whole. I mean, you  
16 guys are full participants in this. So what's  
17 left for us? What should we be looking at?

18 MR. RIVERA: Basically, Chairman,  
19 we're talking about the facade design. We're  
20 talking about the difference -- there was talk  
21 about -- I can't think of the technical name  
22 of it -- as far as -- excuse me.

1 CHAIRPERSON GRIFFIS: That's all  
2 right.

3 MR. RIVERA: As far as coming and  
4 allowing --

5 CHAIRPERSON GRIFFIS: The ingress  
6 and egress?

7 MR. RIVERA: Well, the things  
8 where you have patio, balconies, the little --  
9 I can't think of the --

10 CHAIRPERSON GRIFFIS: On the  
11 residential?

12 MR. RIVERA: Arcades.

13 CHAIRPERSON GRIFFIS: Oh, the  
14 arcade, right, right, right.

15 MR. RIVERA: I'm sorry. You know.

16 CHAIRPERSON GRIFFIS: Yeah, good.

17 MR. RIVERA: So there was talk  
18 about that. I mean, it's basically down to  
19 basically --

20 CHAIRPERSON GRIFFIS: What is the  
21 condition of your SMD on the arcade?

22 MR. RIVERA: Well, right now I

1 don't really have a position on them. I have  
2 an opinion.

3 CHAIRPERSON GRIFFIS: Okay. Well,  
4 we'll have an opinion then. What is your  
5 opinion of the arcade?

6 MR. RIVERA: Well, I think that at  
7 some point on the front of that building one  
8 should be there. I don't think all throughout  
9 or certain areas --

10 CHAIRPERSON GRIFFIS: Why should  
11 it be there?

12 MR. RIVERA: Well, just to provide  
13 if an operator wants to come in with a sit-  
14 down restaurant.

15 Okay. Well, they're saying  
16 they're willing -- like I said, I don't have  
17 a -- I was giving an opinion. I don't have a  
18 --

19 (Laughter.)

20 MR. RIVERA: See. I cleaned it  
21 up. I was giving an opinion.

22 Our position -- well, let me

1 answer your question -- our position is, my  
2 position by being the single member district  
3 is what the community that is directly  
4 affected wants. That means the people on  
5 Sixth, G, and Seventh Street.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. RIVERA: If they want  
8 something like that, that's fine.

9 CHAIRPERSON GRIFFIS: What's your  
10 understanding of what they want?

11 MR. RIVERA: To my knowledge, the  
12 issue is the facade of the design.

13 CHAIRPERSON GRIFFIS: Let's just  
14 talk about the arcade though. What do you  
15 think that they want? When you say they want  
16 an arcade or they do not want an arcade?

17 MR. RIVERA: Well, if they open up  
18 -- if they let the genie out of --

19 CHAIRPERSON GRIFFIS: No, because  
20 it's an important aspect, and let's not talk  
21 about necessarily just the arcade, not an  
22 architectural element or anything like that,

1 but what's your sense of your constituency of  
2 what they want on the front of that building?  
3 How does this work? When they think about  
4 what's being proposed, what's the best thing,  
5 what's the worst? What's your sense when you  
6 talk to the folks?

7 MR. RIVERA: Well, I would think  
8 that it's probably a 30-60 split. I mean 30-  
9 70 split for or against. I don't really know.  
10 Now, I gave you -- if you'll give me one  
11 minute, all I need is a thumbs up or down.

12 Okay. Well, they're taking a  
13 middle of the ground approach. They're  
14 prepared to address the issues. That's what  
15 I was told.

16 CHAIRPERSON GRIFFIS: That's okay.  
17 Good. What's your personal opinion as a  
18 resident in the area about having that  
19 animated with retail?

20 MR. RIVERA: My personal opinion  
21 is it's great. I mean, we just had a big  
22 issue with the Blimpie's which left, and then

1 we finally got a replacement, which is an AAA  
2 client, which is Sprint. I went in the store  
3 myself.

4 I walk H Street at least two or  
5 three times a day, and I take care of a lot of  
6 my business there because I want to invest my  
7 dollars there. Everything that's there I  
8 don't particularly like, but I see a lot of  
9 changes since I first moved in the area.

10 CHAIRPERSON GRIFFIS: Good.

11 MR. RIVERA: So I think that it  
12 will be a great issue to have, a great thing  
13 to have sit-down restaurants and a variety of  
14 retail besides hair salons and nail shops.

15 CHAIRPERSON GRIFFIS: Perfect.  
16 I'm sorry I pushed that to a level that seemed  
17 complicated, but that's --

18 MR. RIVERA: Well, no, I  
19 understand.

20 CHAIRPERSON GRIFFIS: -- all I was  
21 looking for, is your feedback on that level.

22 Okay. What else? Any other

1 questions for the ANC members?

2 BOARD MEMBER ETHERLY: Just a very  
3 quick question.

4 CHAIRPERSON GRIFFIS: Yes.

5 BOARD MEMBER ETHERLY: First of  
6 all, thank you, Chairman Dixon and  
7 Commissioner Rivera, for all of your work on  
8 this project.

9 I just wanted to be sure I was  
10 clear with respect to where the ANC is. Is  
11 there any plans on the ANC's part to take any  
12 further vote or additional action on this in  
13 terms of another meeting, or at this point the  
14 ANC is just going to continue the process of  
15 dialogue with the Applicant?

16 MR. GREEN: We're going to  
17 continue to dialogue with the Applicant and  
18 listen to the neighbors. We've got a meeting  
19 coming up tomorrow that this issue is going to  
20 come up right now. So that's why I'm really  
21 here today, so we can fill the whole ANC out  
22 about what happened today.

1 BOARD MEMBER ETHERLY: Okay.

2 MR. GREEN: And we're hoping that  
3 we don't have to bring this before the ANC no  
4 more. It has been there so long, and we've  
5 been back and forth and back and forth. It's  
6 getting to get tiresome now. It's taking up  
7 the whole meeting.

8 So, you know, we'd like for them  
9 to hurry up and make up their minds what  
10 they're going to do, and you know, we want  
11 everybody to be happy, you know.

12 BOARD MEMBER ETHERLY: And one --  
13 I'm sorry. Commissioner Rivera.

14 MR. RIVERA: I would like to add  
15 one more thing to the record, and I think I  
16 did talk to the Applicant about this, but I  
17 was putting it on the record here, is that I  
18 believe a steering team through the  
19 development process should be set up with  
20 community members, ANC member, and one of the  
21 commercial groups like A Street Main Street,  
22 to sit on a steering team to see this project

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1 through because this is going to be one of the  
2 bigger project in this area that wasn't  
3 underneath the old school where they just went  
4 and built something because you knew somebody  
5 and they did it because that's how a lot of  
6 stuff got done over there, the larger things.

7 So that's what I'm --

8 CHAIRPERSON GRIFFIS: A small  
9 group during the construction period?

10 CHAIRPERSON GRIFFIS: Well, to  
11 seeing the -- yeah, from the beginning of the  
12 construction period, and if they will address  
13 that in their rebuttal, I would like that to  
14 be part of the record.

15 BOARD MEMBER ETHERLY: And then  
16 just one final question. We will, of course,  
17 hear some additional testimony about the  
18 arcade. So I don't want to kind of dig too  
19 deeply into that, but as you indicated,  
20 Commissioner Rivera, you have the opportunity  
21 to walk H Street on a fairly frequent basis.  
22 Do you have any perspective -- and of course,

1 this would also be open to you, Chairperson  
2 Dixon -- do you have any perspective on the  
3 size of retail space that is available and  
4 accessible within the arcade? Is there a  
5 preference or was there any discussion at the  
6 ANC level about the size of that type of space  
7 or are you seeing a need for bigger and bigger  
8 retail space?

9 MR. RIVERA: Well, from my  
10 professional opinion by being in that field,  
11 in the real estate field, I think A Street is  
12 so fluid right now that it's kind of hard to  
13 really put a number or graphs or any type of  
14 idea around that.

15 BOARD MEMBER ETHERLY: Okay.

16 MR. RIVERA: Because you don't  
17 know what kind of tenants that are coming  
18 right now.

19 BOARD MEMBER ETHERLY: So it's not  
20 going to be one size fits all.

21 MR. RIVERA: Yeah, I don't think.

22 BOARD MEMBER ETHERLY: It will be

1 on a case-by-case basis.

2 MR. RIVERA: I think it will be a  
3 case-by-case. I think once the developer --  
4 they may have ideas in their mind about what  
5 they're going to do, but at the end of the  
6 day, it's going to be servicing the needs of  
7 that particular tenant that's going to come in  
8 there.

9 BOARD MEMBER ETHERLY: Okay.

10 MR. RIVERA: As far as on the  
11 commercial side.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. RIVERA: It's just one of  
14 those things that's going to be up in the air.

15 BOARD MEMBER ETHERLY: Okay.

16 MR. GREEN: My particular idea  
17 would be a nice sit-down restaurant. I would  
18 look at that more favorably than anything  
19 else. We don't have many of those in that  
20 community, and I'm tired of the run in and get  
21 a hamburger and run out.

22 So, you know, I'd like to get a

1 nice little place in there if it's possible.  
2 I've been looking at them to get a nice  
3 restaurant than an arcade really, you know,  
4 someplace where we can go down and sit down  
5 and have a nice dinner or something, you know.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. GREEN: So that's what I was  
8 looking at myself.

9 CHAIRPERSON GRIFFIS: Okay.  
10 Excellent.

11 BOARD MEMBER ETHERLY: Thank you.  
12 Thank you, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Mr.  
14 Turnbull.

15 COMMISSIONER TURNBULL: Thank you,  
16 Mr. Chairman.

17 I just wanted to follow up on what  
18 Mr. Etherly was just talking with Commissioner  
19 Rivera about. I'm just wondering if he had  
20 seen the most recent letter from A Street Main  
21 Street, December 4th to the Board.

22 Have you had a chance to look at

1 their more recent comments?

2 MR. RIVERA: I didn't get a chance  
3 to look at it. It was given to me in my hand  
4 just a few minutes ago, and I didn't get a  
5 chance to really do -- is there a particular  
6 comment that stuck out which you want to --

7 COMMISSIONER TURNBULL: Well,  
8 again, there was two comments that they had  
9 mentioned, and you had mentioned their name at  
10 one point as being involved in the future, and  
11 one of them was they were talking about the  
12 depth of the retail in the development.

13 And the second comment was  
14 requiring the Applicant to enter into a  
15 community partnership with HMS, which was  
16 getting on to your lines about continued  
17 involvement with the community and everything.

18 MR. RIVERA: Yeah, and I think  
19 that's what is needed for this project, and I  
20 encourage them to be the first one to do it,  
21 to enter into a partnership and help establish  
22 the H Street bid and hopefully all of the

1 other developments that are coming along, like  
2 the store project and the -- excuse me -- the  
3 museum project, and Dreyfus if that gets off  
4 the ground; that they all come into the fold  
5 and help support H Street and turn it around  
6 for everybody, not exclusion.

7 I mean, we need a very  
8 inclusionary process to include all of the  
9 people that are in that area because there's  
10 a lot of long-term residents and a lot of  
11 history there.

12 And so, yeah, I hope that they  
13 will, and as far as addressing the retail  
14 space, that was brought up to me. I don't  
15 really have a view, but I believe A Street  
16 Main Street's view is a good one as far as  
17 addressing that because it does make a lot of  
18 sense.

19 But you know, I can't weigh in on  
20 that because I really haven't spent that much  
21 time on it. My main thing was the project  
22 itself. So I can't really address --

1                   COMMISSIONER TURNBULL:    Well, I  
2                   know that the Applicant has already gone  
3                   through it and explained its design rationale  
4                   as far as 30 foot size, and I see, you know,  
5                   HSMS is asking for 60, and I was wondering if  
6                   you had any comments on that.

7                   MR. RIVERA:    Well, like I said,  
8                   they're going to be able to testify. I just  
9                   haven't had -- I won't make a determination on  
10                  it.

11                  COMMISSIONER TURNBULL:    Okay.

12                  MR.        RIVERA:            I        mean,  
13                  professionally I think --

14                  COMMISSIONER    TURNBULL:        Fair  
15                  enough.

16                  MR. RIVERA:    -- the deeper the  
17                  better, you know, because you attract a  
18                  different type of tenant.

19                  COMMISSIONER TURNBULL:    Right.

20                  MR. RIVERA:    But like I said, I  
21                  think at the end of the day it's going to be  
22                  what that tenant wants, and the more space you

1 have, storage, you attract a different tenant.

2 COMMISSIONER TURNBULL: Right.

3 MR. RIVERA: But if the developer  
4 doesn't want that and he makes something  
5 smaller, I mean, I'm not -- I'm in the middle  
6 on this one. So I'll just stay --

7 COMMISSIONER TURNBULL: Okay.  
8 Fair enough.

9 MR. RIVERA: -- right there, but -  
10 -

11 COMMISSIONER TURNBULL: Thank you.

12 MR. RIVERA: You understand what  
13 I'm saying. Thank you.

14 CHAIRPERSON GRIFFIS: Anything  
15 else? Any other questions, follow-up?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Excellent.  
18 Any cross? Mr. Glasgow, any cross? Do the  
19 parties have any cross?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Thank you  
22 both very much. Appreciate it.

1           Let's move ahead then. Let's go  
2 to the parties for a presentation of their  
3 case. If you're ready, you can all come up.  
4 We're going to take the order of Stanton Park,  
5 the Sixth and H Street, ANC-6A, and then H  
6 Street Main Street.

7           And you can start whenever you're  
8 ready.

9           MR. EDWARDS: Thank you.

10           My name is Monte Edwards. I co-  
11 chair the Land Use Committee of Stanton Park  
12 Neighborhood Association.

13           My testimony today is in support  
14 of the settlement that was described at the  
15 November 21 hearing in this proceeding.  
16 Today's hearing, together with allowing the  
17 record in the proceeding to remain open until  
18 February for community review and comment  
19 concerning design details, are important  
20 elements of that settlement.

21           I would also add to that now we  
22 have the DDOT report, is also a part of the

1 discussions that will happen before we come  
2 back to you prior to the February meeting.

3 Stanton Park is encouraged by the  
4 progress that's been made. Since November 21,  
5 considerable progress has been made in  
6 implementing the provisions of the settlement,  
7 and Stanton Park is optimistic that the  
8 expected continued progress will be achieved  
9 in further improving the design of this  
10 project.

11 A significant aspect of this  
12 project is because it's the first case to  
13 apply the H Street design guidelines, and it  
14 will provide a template for further  
15 development of the H Street corridor.

16 An important part of the  
17 Applicant's presentation is the analysis of  
18 the 58 design guidelines in terms of  
19 applicability and the manner in which  
20 compliance was achieved with 55. Fifty-five  
21 of the 58 guidelines were complied with, and  
22 deviation from three of those guidelines was

1 justified. The uniqueness of the property and  
2 its relation to its neighbors determined the  
3 need to deviate from those three design  
4 guidelines, and Stanton Park would urge the  
5 BZA to clearly state that any deviation from  
6 those guidelines in a future case cannot rely  
7 on this case for the proposition that  
8 compliance with all the guidelines is not  
9 required.

10 Rather, this case should stand for  
11 the proposition that any deviation in future  
12 cases must satisfy a substantial evidentiary  
13 burden to establish uniqueness and an  
14 overriding public interest in allowing such  
15 deviation.

16 The three guidelines from which  
17 deviation is justified in this case involve  
18 the H Street curb cut and the garage entrance.  
19 While Section 1303.2 of the zoning regulations  
20 is not a part of the design guidelines, it  
21 does prohibit curb cuts, and then the H Street  
22 design guidelines state that garage security

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1 and service doors shall not face the street.

2 So the guidelines are implicated  
3 to that extent, but more importantly, it's a  
4 special exception from 1303.2.

5 Now, the neighbors were concerned  
6 about using Sixth and Seventh Street as access  
7 points for the garage because of the traffic  
8 that was developed in their neighborhoods, and  
9 the Applicant explained to our satisfaction  
10 the need for an H Street garage entrance in  
11 addition to the existing entrance on Seventh  
12 Street.

13 So Stanton Park support for this  
14 deviation is subject to that entrance being  
15 located near the center of the block, which  
16 the Applicant has now done, which will break  
17 up this, the longest block on the H Street  
18 corridor.

19 The inclusion of a traffic signal  
20 to control access, which will hopefully  
21 prevent queuing of cars waiting to enter, it  
22 will avoid traffic congestion and interference

1 with the proposed H Street trolley, and  
2 include a mid-block pedestrian cross-walk to  
3 make the area more pedestrian friendly and  
4 provide an element of traffic calming.

5 Stanton Park has agreed to work  
6 with the community groups and the Applicant  
7 and the ANCs in meeting with DDOT to implement  
8 the cross-walk and signal, as necessary, to  
9 make the H Street curb cut work and maintain  
10 a pedestrian friendly, trolley friendly H  
11 Street. From the viewpoint of Stanton Park,  
12 it's time to look at the pedestrians. It's  
13 time to look at the trolleys and not just look  
14 at the cars when you look at a traffic  
15 analysis.

16 The second guideline from which  
17 deviation is required is the four to eight-  
18 story design guideline. The nine-story height  
19 of the portion of the building facing H Street  
20 is a deviation from this four to eight-story  
21 design guideline.

22 Now, Exhibit 90, a memorandum

1 prepared by Steve Sher on behalf of the  
2 Applicant just provides the justification in  
3 explaining why that this property is unique  
4 and why that ninth story is required.

5 Stanton Park would also note that  
6 this guideline is related to the Applicant's  
7 request for a special exception pursuant to  
8 2514.2. This permits a 35 foot incursion of  
9 over five stories into the C-2-A property.  
10 This is a special exception provision that  
11 says you can move development rights from a  
12 less intense to a more intense area.

13 Now, in the view of Stanton Park,  
14 that request is appropriately limited to eight  
15 stories rather than the nine stories that's  
16 being proposed for the C-2-C portion and was  
17 originally proposed for this portion. Stanton  
18 Park supports this incursion to the extent  
19 that it respects the four to eight-story  
20 guidelines, and while there is arguable  
21 conflict with this guideline and the 90-foot  
22 height allowed in the C-2-C case, which is

1 part of the reason that Stanton Park agreed to  
2 the nine stories along H Street, that's not  
3 the case in the C-2-A area, and the guidelines  
4 should control in applying the special  
5 exception under 2514.2, which permits this  
6 incursion if it's approved as a special  
7 exception.

8 Further, this eight-story height  
9 will improve sight lines from the backyard to  
10 the townhouses that surround this project on  
11 Sixth, Seventh, and G Streets because the  
12 project will step down now from nine to eight  
13 to five to four stories on the alley.

14 The last deviation from the  
15 guidelines involves the side setbacks. The  
16 plan now provides for ten foot site setbacks  
17 rather than the design guideline of zero to  
18 recognize the unique configuration of this  
19 property where you have the sides of a project  
20 abutting the backyards of residential  
21 townhouses.

22 The design guidelines didn't

1 anticipate this lot configuration, and it's  
2 appropriate to apply that ten-foot setback to  
3 the sides of the C-2-A portion where the  
4 project abuts the rear of neighboring  
5 townhouses that face Sixth and Seventh  
6 Streets. It will be more compatible with the  
7 surrounding neighborhood, and in addition to  
8 the side setbacks, the Applicants also  
9 designed significant stepdowns from five,  
10 which is allowed in the C-2-A zone, to four  
11 stories in the portion of the project that  
12 faces the rear of the townhouses on Sixth,  
13 Seventh and G Streets.

14 The Applicant lost floor area in  
15 doing so, which is partially offset by the  
16 floor area gained in the ninth story of the  
17 portion of the building facing C Street  
18 described in Item 2. Some people describe a  
19 project like this as sort of an amoeba. You  
20 squeeze it one place and it grows in another,  
21 and that's essentially what we did with the  
22 side setbacks and the stepdowns in the rear.

1           In conclusion, the November 21  
2 settlement and the currently ongoing effort  
3 pursuant to that settlement will result in an  
4 improved design of the building that's more  
5 attractive and beneficial to the h Street  
6 corridor. Design elements that satisfy the  
7 interest of the neighbors and preservation of  
8 the integrity of the H Street design guideline  
9 for use in future development along the H  
10 Street corridor.

11           And if I could add one comment on  
12 the arcade, the arcade was created at the  
13 request of the parties who wanted a  
14 substantial sit-down, white tablecloth  
15 restaurant with sidewalk seating. Because of  
16 the narrowness of H Street, this is the manner  
17 of doing it.

18           We recognize there are problems  
19 and the restaurant may have to be relocated.  
20 The question is we think that to encourage  
21 this pedestrian friendliness, we need some  
22 means of providing sidewalk seating not only

1 on Sixth Street, if that's where it's moved  
2 to, but also some on H Street, and if a  
3 setback is required, this is one of the issues  
4 that will be discussed in the ongoing design  
5 discussions with the architect.

6 Thank you very much.

7 CHAIRPERSON GRIFFIS: Excellent.  
8 Thank you very much. We appreciate it,  
9 substantial testimony.

10 Maybe you should ask DDOT to  
11 remove a lane from H Street and you could  
12 expand out there and have some seating.

13 (Laughter.)

14 CHAIRPERSON GRIFFIS: The issue --  
15 let me just run down a couple of things as  
16 it's fresh in your case presentation, Mr.  
17 Edwards, and I appreciate it. When you  
18 started off saying you were concerned to make  
19 sure that this was not precedential in terms  
20 of the review and possibly waiver from or  
21 relief from the design guidelines, and you set  
22 up essentially requiring that things be unique

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1 and circumstantial in order to be approved for  
2 that relief, that's fairly in compliance with  
3 1304.1(b) of the regulations now, is it not?

4 MR. EDWARDS: It goes perhaps a  
5 step further because our test, and as  
6 satisfied by the Applicant, also requires a  
7 public interest showing in addition to the  
8 uniqueness of the property

9 CHAIRPERSON GRIFFIS: I see.

10 MR. EDWARDS: And we're suggesting  
11 that this is not in the regulations right now,  
12 but for the purpose of these guidelines, the  
13 work that went into them, their significance  
14 in helping to achieve where we got in this  
15 case --

16 CHAIRPERSON GRIFFIS: Right,  
17 right.

18 MR. EDWARDS: -- should be  
19 maintained for the purpose of future cases for  
20 development along the H Street corridor, and  
21 by imposing this kind of a test, you're  
22 requiring the applicant to come in with the

1 kind of showing of the two memoranda that the  
2 Applicant produced here to show that kind of  
3 justification to the satisfaction not only of  
4 the community, but more importantly, to you.

5 CHAIRPERSON GRIFFIS: Right, good.  
6 I appreciate that. That's a good  
7 clarification of the statement of your  
8 position.

9 Let me ask you quickly. The  
10 center block entrance which you've talked  
11 about being actually a good break in a very  
12 long block. You're supportive of that at this  
13 point.

14 What's your understanding of  
15 DDOT's support of a mid-block crossing or  
16 signal?

17 MR. EDWARDS: Generally they do  
18 not like mid-block signals or cross-walks, but  
19 if you'll come down from the Union Station  
20 garage, you'll find halfway down the bridge  
21 there's a signal at mid-block to get into the  
22 Securities and Exchange Building.

1           You come further down H Street,  
2           and you come to the H Street connection that  
3           is between Eighth Street and Tenth Street, and  
4           Ninth Street tees into H Street. There's a  
5           signal. There's a cross-walk. It works very  
6           well, and that 800 block and 900 block is not  
7           substantially longer than this 600 block.

8           And if you'll look at that as a  
9           pattern, what you have here is a garage  
10          entrance teeing into H Street just like Ninth  
11          Street tees in at the H Street connection.

12          CHAIRPERSON GRIFFIS: And so you  
13          would anticipate that that signal would  
14          somehow be programmed, whether it be a sensor  
15          for cars coming in and out of the garage, but  
16          also being a button pushed by a pedestrian who  
17          wanted to cross the street.

18          MR. EDWARDS: I do, a demand  
19          actuated signal rather than one synchronized  
20          with the rest. So it's mostly green most of  
21          the time.

22          CHAIRPERSON GRIFFIS: Excellent,

1 excellent. Okay, and I thought it was an  
2 excellent comment that you made in your  
3 written submission also, but regarding our  
4 understanding, let's say, city-wide as we look  
5 at all of these things of when we require  
6 traffic studies, that we ought to understand  
7 that pedestrians are a big piece of what  
8 should be incorporated in traffic studies. I  
9 think that was well said.

10 I don't have anything else. Any  
11 other Board members have questions,  
12 clarifications?

13 Yes, Ms. Miller.

14 VICE CHAIRPERSON MILLER: I'd just  
15 be interested in whether you have an opinion  
16 on DDOT's recommendation re the reduction in  
17 parking.

18 MR. EDWARDS: I have discussed it  
19 preliminarily with two people at DDOT. I've  
20 suggested that if we keep the same number of  
21 cars and look at their transportation demand  
22 management plan, which says, "Let's have flex

1 cars. Let's have ride sharing. Let's have  
2 bicycles."

3 And I've talked to some people who  
4 said, "If you're going to have bicycles, why  
5 not reserve a place for showers and lockers  
6 for the bicycles as well so that the bicycles  
7 can ride to work, take a shower and work  
8 there?"

9 I think that the space that the  
10 applicant has designed should remain as it is.  
11 We can talk about what it's used for in our  
12 discussions with DDOT and the Applicant.

13 CHAIRPERSON GRIFFIS: Anything  
14 else?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Good. We'll  
17 do our questions after, and then we'll do  
18 cross of the whole panel if we have cross, but  
19 let's move ahead.

20 MS. AXAM: Thank you, Mr.  
21 Chairman.

22 I'm Hilary Axam, 616 G Street,

1 N.E., for the Sixth and H Street Neighborhood  
2 Association, and I'm also here in support of  
3 the settlement that was described to the Board  
4 on November 21st.

5 But there are a few aspects of  
6 that settlement that I think bear emphasis,  
7 and I just wanted to lay those out for the  
8 Board.

9 CHAIRPERSON GRIFFIS: Good.  
10 Actually, let me just stop you there. Do we  
11 have a copy of this settlement, the 21st  
12 November? Should we?

13 MS. AXAM: It was the Applicant's  
14 presentation. It was what was described  
15 throughout those proceedings.

16 CHAIRPERSON GRIFFIS: I see.  
17 Okay, okay. Good.

18 MS. AXAM: Technical aspects of  
19 the terms of the settlement address the  
20 specific forms of zoning relief sought.

21 CHAIRPERSON GRIFFIS: Perfect.  
22 Yeah, I just wanted to make sure we weren't

1 missing another document here.

2 MS. AXAM: Correct. There is no  
3 document that clarifies all of those  
4 separately from the Applicant's presentation  
5 on the 21st. I'm referring to that  
6 presentation on the 21st when I refer to the  
7 settlement.

8 That's a settlement that removes  
9 the community's opposition to various forms of  
10 zoning relief that were sought. The essence  
11 of this deal is that we've kind of cleared the  
12 way for them by agreeing to this bifurcated  
13 process. We've agreed to remove our  
14 opposition to the specific forms of zoning  
15 relief that, frankly, result in a building  
16 that is larger than the community otherwise  
17 would think is appropriate for this spot.

18 We've done so in recognition of  
19 the fact that there is the C-2-C zoning there,  
20 and that is what it is, and you know, that is  
21 something we've had to live with moving  
22 forward.

1           But in return for our clearing the  
2 way for them getting approval on these forms  
3 of zoning relief, they've essentially agreed  
4 to make this a better building, one that  
5 complies with the design guidelines and one  
6 that will better integrate into the community  
7 and mitigate some of the adverse impacts that  
8 might otherwise be associated with the  
9 building of this scale.

10           We particularly appreciate their  
11 willingness to step the building down as it  
12 approaches the residential areas, and also  
13 their setbacks are not only rear setbacks,  
14 which are called for by the guidelines, but  
15 also side setbacks which are part of the  
16 negotiated settlement, very critical there.

17           This is a bifurcated process. The  
18 design deliberations continue, and that is a  
19 critical part of this settlement. It is a  
20 package deal. Our agreement to withdraw our  
21 opposition because we did have some seriously  
22 contested issues on the zoning relief; our

1 agreement is contingent on the successful  
2 negotiation of the outstanding design issues.

3 And I do want to applaud the  
4 Applicant here. We have every reason to  
5 believe that our continuing negotiations will  
6 be as successful as our past negotiations up  
7 to this point. They have made substantial  
8 improvements to this and have really taken the  
9 community's concerns to heart, and we have  
10 every reason to believe that will continue.

11 We just do want to make clear that  
12 the fact that the record remains open and the  
13 fact that there's a possibility of needing to  
14 return to this Board for resolution of any  
15 issues is very important to us, and you know,  
16 we don't anticipate any further contesting  
17 hearings, but in the event that we are unable  
18 to come to a complete resolution of all the  
19 design issues, we would be back here on the  
20 issue of the 1320.4 special exception and  
21 there's also, as the Board is well aware, the  
22 1325.3 provision that the Board can impose

1 requirements to mitigate adverse effects.

2 And those are thing that we think  
3 are very important to kind of keep this deal  
4 on track and keep both parties negotiating in  
5 good faith. We think we've established a very  
6 strong record as a community, as a coalition  
7 of different community groups of making very  
8 reasonable and achievable design suggestions  
9 and requests, and we have every commitment to  
10 continuing with that, you know, with a view  
11 toward an efficient resolution of these issues  
12 to move this project forward.

13 And, you know, on the other hand  
14 we've seen the Applicant make the same kind of  
15 good faith progress and we have every reason  
16 to think that will continue, and we just want  
17 to thank the Board for its very careful  
18 attention to this matter, and that is an  
19 integral part of why we've had such success at  
20 the bargaining table with the Applicant and  
21 the community.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you very much. We appreciate that and  
2 appreciate the position of the support of the  
3 stepping down of the massing as it goes toward  
4 the existing fabric that also changes the  
5 dimension from that which is available on the  
6 H Street side.

7 You bring up 1325.3, which of  
8 course the Board loves seeing provisions like  
9 that that give us unchecked power to design,  
10 build, and do, frankly, anything we want.

11 But the Board has cautioned itself  
12 and kept ourselves restrained. In all  
13 seriousness and directness, what we would do  
14 as we could condition a special exception or  
15 as we go in to require different elements, it  
16 is a direct address to elements that have come  
17 up in a case presentation of which we are  
18 either trying to change or trying to mitigate  
19 an adverse impact.

20 And I say this only because we  
21 would need to be provided very specific  
22 problems of which then we could maybe take it

1 upon ourselves to solve or, more likely in our  
2 past procedure, we would ask for  
3 recommendations of how that would be.

4 So if there are elements, you  
5 brought up just a listing. I know there's  
6 other things in the record that have been  
7 submitted, but if there are design issues in  
8 this as you describe it, this bifurcated  
9 process, that we should be more specifically  
10 aware of, it would probably be appropriate  
11 right now to address those or at some point at  
12 least articulate those.

13 And I understand that it may be  
14 still an evolving situation, but before we  
15 leave today, the Board is going to need a much  
16 better understanding of what we're keeping the  
17 record open for and what our next steps are  
18 because this is -- how do I? -- ours is --  
19 ours should be -- I was going to say ours is  
20 a very understandable process, and it's a  
21 beginning and an ending process. So we don't  
22 want to -- anyway, we're going to need a

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1 little bit more clarification of that.

2 So I'll let you address that if  
3 there's anything that needs to be.

4 MS. AXAM: Sure. My counterpart  
5 from ANC-6A will address some of the specific  
6 issues --

7 CHAIRPERSON GRIFFIS: Good.

8 MS. AXAM: -- that are the subject  
9 of dialogue right now between the Applicant  
10 and the community. We do have an enumerated  
11 list that we have sent to the Applicant.  
12 Those are issues that are under discussion.  
13 We've identified a few more specific issues.  
14 We have a meeting set up to continue the  
15 dialogue on that.

16 So we are, you know, in a finite  
17 universe of design issues that we're  
18 discussing, and those will be elaborated for  
19 the Board a little bit today.

20 On the other hand, part of this  
21 deal was to give the community more time  
22 because it is a bit of a cumbersome process to

1 take, you know, the community consensus out of  
2 a lot of different voices and bring it down to  
3 such finite issues.

4 CHAIRPERSON GRIFFIS: Sure, sure.

5 MS. AXAM: But we can give you a  
6 flavor for the limited number of issues that  
7 are on the table with that.

8 CHAIRPERSON GRIFFIS: Right, and  
9 believe me. We don't need to get into it  
10 unless and until it's appropriate for us to  
11 understand it.

12 The other quick question though is  
13 in your understanding, and I don't know if you  
14 can answer this, but are the design elements  
15 of issue, are they out of the H Street overlay  
16 requirements? Are they coming out of the  
17 design requirements?

18 MS. AXAM: That's the driving  
19 force behind a lot of this.

20 CHAIRPERSON GRIFFIS: Okay. Good.

21 MS. AXAM: I did just want to  
22 address a question that the Board addressed to

1       ANC-6C, and apologies for leaving ANC-6C a  
2       little bit hanging on that.  It's a moving  
3       target here, and at the 11th hour we did  
4       discuss the arcade, and that was something  
5       that the community is actively considering  
6       working with the Applicant to move --  
7       eliminate the arcade and possibly move the  
8       sidewalk seating to the Sixth Street side.  We  
9       feel that our interests and the Applicant's  
10      interests are very aligned in creating a  
11      successful sidewalk seating arrangement that  
12      will be attractive to an attendant there, and  
13      we're confident we can work that out and don't  
14      need resolution from the Board particularly on  
15      that, but that is an evolving discussion.

16                   CHAIRPERSON GRIFFIS:  Good.

17                   MS. AXAM:  We just wanted to place  
18      that on the record, and there was also a  
19      question about the 12 concerns and whether  
20      they had been fully addressed.  Part of this  
21      agreement is that community concerns will be  
22      addressed as part of the ongoing negotiation.

1 So things like some of the details of the  
2 construction management agreement, some of the  
3 issues about the use of the building, the  
4 parking, and how those might be allocated, or  
5 the terms and conditions on the parking  
6 spaces, those are issues that are still under  
7 negotiation. So the answer to the question  
8 about those 12 concerns is they have not been  
9 completely addressed, but there is an  
10 agreement on both sides that this is part of  
11 our continuing negotiation.

12 And like I said, we have every  
13 reason to trust the good faith of the  
14 Applicant at this point, and I believe that  
15 based on the representations they've made to  
16 this Board and to the Office of Planning that  
17 their good faith listening to the community's  
18 concerns will continue and we'll be able to  
19 work those out.

20 So not resolved yet, but actively  
21 working toward it.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you very much.

2 Questions, comments?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well.

5 MR. RONNEBERG: Good afternoon.

6 My name is Drew Ronneberg. I'm the Chair of  
7 the ANC-6A Economic Development and Zoning  
8 Committee.

9 ANC is very interested in this  
10 case because it's the first time design  
11 guidelines have been applied with the H Street  
12 overlay, and what happens in ANC-6A will  
13 directly affect us, and that's our interest in  
14 this case.

15 So today I'll spend most of my  
16 time addressing the follow-on part of this,  
17 the design discussions we've been having with  
18 the architect on how we'd like to see things  
19 go. I fully concur with all of the comments  
20 of the previous parties today.

21 Before I get into that, I would  
22 like to address a bit about the letters, about

1 aggregation and things. We don't feel that --  
2 it's our position that there is a lot line or  
3 -- excuse me -- a zone line which crosses this  
4 boundary. It's a split zone lot, and I've  
5 noted that in prior testimony in front of the  
6 BZA, the BZA has considered this by analogy of  
7 moving the lot line, so to speak, because you  
8 have a 2514.2 special exception which allows  
9 you to transfer the height and bulk from the  
10 C-2-A zone to the C-2 -- from the C-2-C zone  
11 to the C-2-A zone.

12 This has been talked about as  
13 moving the lot line 35 feet in prior  
14 testimony.

15 Aggregation is like erasing a lot  
16 line, and we don't believe that this is an  
17 accurate reflection of what's in the zoning  
18 regulations. This is not before us today.  
19 The Zoning Administrator has not rule, and I  
20 just wanted to let the Board know that if the  
21 Zoning Administrator does rule, that we  
22 believe that the zones are separate and the

1 and they need to be treated separately.

2 That's all I will address for now  
3 unless there's questions.

4 In echoing Hilary's comments, this  
5 is a C-2-C zoned lot. We think that's  
6 probably too large. It's somewhat out of  
7 character with the height of the rest of the  
8 street, but the fact is in 1982 this was up  
9 zoned to C-2-C. We recognize that, and we  
10 tried to take a very practical approach for  
11 getting the most we can get for the community,  
12 respecting the law and respecting the matter  
13 of right development on H Street.

14 So the settlement is basically a  
15 quid pro quo. What do we get; what do they  
16 get? What the developer gets is there was  
17 some question whether this could go to nine  
18 stories or eight stories. There's also the  
19 flow of air that comes about from the increase  
20 in the lot occupancy.

21 We do not oppose these requests  
22 from the Applicant, and we support the

1 settlement in its entirety. So that's what  
2 the Applicant gets.

3 What we get is basically two  
4 things. One is a point by point statement of  
5 compliance with the design guidelines and  
6 justification of uniqueness for wider  
7 exceptions. We believe that the Applicant has  
8 complied with that, and we're very happy that  
9 this will set precedence for future cases in  
10 ANC-6A.

11 We have also agreed to have two  
12 months of negotiations about the design of the  
13 facade, and what has happened so far with that  
14 is we have -- representatives from each of  
15 these groups have a listserve where we have  
16 discussed ideas. We've already forwarded  
17 eight ideas or eight recommendations to the  
18 developer, and I'll give you a flavor of what  
19 these were.

20 One is we recommended that the  
21 arcade be eliminated. We were concerned that  
22 this would set back the retail and make its

1 visibility more difficult and make its  
2 viability more difficult on a corridor.

3 The second thing that we  
4 recommended is that the restaurant be  
5 relocated to Sixth and H, where the sidewalks  
6 on Sixth Street are much wider than the  
7 sidewalks on H Street, and this could provide  
8 additional sidewalk seating.

9 We also recommended that the  
10 retail space of the restaurant have a 60 foot  
11 depth rather than 30 foot depth. People in  
12 the restaurant business say this is very  
13 important for the viability of the  
14 restaurants.

15 We also asked if I can -- do you  
16 have the design, the elevations and the design  
17 in front of you, the most recent one?

18 CHAIRPERSON GRIFFIS: Yes.

19 MR. RONNEBERG: Okay. If you look  
20 between the Seventh Street current office  
21 tower and the current building, there was a  
22 gap of four to five feet in the original one.

1 It has since been eliminated. We asked that  
2 this be eliminated because we were concerned  
3 that this would be a place that maybe people  
4 would urinate or provide shelter for homeless  
5 people or things like that.

6 So we were concerned basically  
7 about that as a public safety issue, that gap  
8 that has been eliminated in the current  
9 drawings, and we're happy to see that.

10 We asked that the -- there was a  
11 pyramidal point on the left-most portion of  
12 the building. We asked that be eliminated.  
13 There was concerns that although this did  
14 evoke traditional architecture on Capitol  
15 Hill, the size was just so large that it was  
16 inappropriate, and the Applicant has very  
17 kindly eliminated that from the building.

18 We did have a concern about the  
19 rhythm of the building. For example, if you  
20 look at the brick columns, they come in all  
21 different widths. We had asked that there be  
22 more regular structure to this. Currently

1 some of the openings, the windows and the  
2 interior balconies do not fit in the middle of  
3 these brick columns. We asked that things be  
4 centered and have a regular rhythm of the  
5 street.

6 And we asked that a number of the  
7 elements on the facade be reduced and  
8 simplified.

9 So with those recommendations, we  
10 also have in preparation a second set of  
11 formal recommendations which we expect to make  
12 available shortly.

13 In addition, Mr. Carter, who is  
14 the architect of the building, has graciously  
15 agreed to meet with our members. That meeting  
16 will take place on Sunday at 12:30 on H  
17 Street. We're going to walk up and down H  
18 Street and some of the neighboring buildings  
19 and kind of look at some design elements to  
20 use as inspiration for this particular  
21 building.

22 So there are things still on the

1 table. I think we do have some examples of  
2 some ideas we'd like to see for balconies, bay  
3 windows, roof treatment, the fenestration of  
4 sills and lintels, making the rear facade more  
5 closely match that of the rest of the building  
6 and treatment of the roof line.

7 We believe that we've introduced  
8 into a good faith effort to improve the  
9 design. We believe the Applicant has also had  
10 a good faith effort in this, and we believe  
11 that we can have a good chance of reaching an  
12 amicable settlement about the design.

13 However, in the event that we do  
14 not reach that amicable settlement, we will  
15 oppose this special exception to 1320.5(f),  
16 and we will ask that the Board invoke 1325.3  
17 on imposing requirements about the design of  
18 the facade.

19 And that concludes my testimony.

20 CHAIRPERSON GRIFFIS: Excellent.

21 Thank you very much.

22 Let me just ask a clarification.

1 You're going to walk H Street for design, what  
2 was it, inspiration for the retail on this  
3 building?

4 MR. RONNEBERG: Yes.

5 CHAIRPERSON GRIFFIS: Are you  
6 going to go off H Street a little bit at all  
7 and look for other inspirations or just --

8 MR. RONNEBERG: Well, I think  
9 there's actually a lot you can see on H  
10 Street. There's --

11 CHAIRPERSON GRIFFIS: No, there  
12 is. I'm not saying that.

13 MR. RONNEBERG: -- the store  
14 front.

15 CHAIRPERSON GRIFFIS: It seems  
16 like you will get an opportunity to do  
17 something totally new, which will actually be  
18 -- you know, all of the testimony has been how  
19 big this is or a long block and all of that.  
20 I don't know. There may just be other  
21 interesting places to look.

22 MR. RONNEBERG: Well, H Street, I

1 mean, we do have examples on H Street of the  
2 new Children's Center or old Children's Museum  
3 site that's now 11 stores.

4 CHAIRPERSON GRIFFIS: Sure, sure.

5 MR. RONNEBERG: And we have plans  
6 from the Steward Development on Second and H.  
7 There's a rather large buildings. You know,  
8 but for the things of details, like the bay  
9 windows, the balconies, there's examples on H  
10 Street and over the hill that we would like to  
11 point out.

12 CHAIRPERSON GRIFFIS: Good, good.  
13 Yes, no question. There's a lot on H Street  
14 that's a lot of excitement. A lot of great  
15 things are happening, but also in other  
16 neighborhoods in the city.

17 MR. RONNEBERG: Oh, I see your  
18 point.

19 CHAIRPERSON GRIFFIS: And maybe  
20 even other cities..

21 MR. RONNEBERG: Absolutely. We  
22 have -- okay. I understand your point.

1 (Laughter.)

2 MR. RONNEBERG: We have -- several  
3 of us have gone all over the city looking for  
4 examples --

5 CHAIRPERSON GRIFFIS: Good.

6 MR. RONNEBERG: -- of things that  
7 we think work and would work on H Street. I'm  
8 sorry. I didn't understand your question.

9 CHAIRPERSON GRIFFIS: Okay.  
10 Excellent. Very good.

11 Question, clarifications?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Thank you very much.

15 MR. SALEEM: Good afternoon. My  
16 name is Anwar Saleem. I'm the Chairperson of  
17 H Street Main Street.

18 H Street Main Street hereby  
19 reiterates its full support of zoning relief  
20 requested by the Applicant as stated in the  
21 Office of Planning, OPI, memorandum dated  
22 November 20th, 2006.

1           In consideration for H Street Main  
2 Street support of zoning relief, Applicant  
3 agreed during an OP meeting held Thursday,  
4 November 16th, 2006, to provide retail in the  
5 proposed development.

6           The proposed development currently  
7 limits the retail space to 30 feet in depth.  
8 However, viable retail space requires a  
9 minimum by depth of 60 feet. H Street Main  
10 Street requests that the Board include a  
11 minimum 60 foot depth, retail requirement from  
12 the Applicant prior to zoning relief approval.

13           We had a chance to talk with quite  
14 a few retailers, and the retailers and retail  
15 management companies, and they were telling us  
16 that if you want a viable restaurant there,  
17 you're going to have to have around a 60 foot  
18 depth in order to make this work. A 30 foot  
19 depth, you would have more of the eyeglass  
20 shop, a small beauty shop, coffee shops,  
21 something like that. You just walk 30 feet  
22 off and you will see how small it is.

1           So there wouldn't be enough to  
2 even cover a kitchen almost. So you're  
3 basically going to need that to make it work.

4           Also, the additional 30 foot depth  
5 would also invite, which I mentioned the  
6 attraction of restaurants to oppose  
7 development, and the community hoped that the  
8 presence of a restaurant, I guess, we on  
9 opposition here, we would like to see it on  
10 Seventh Street, Seventh and H Street corner,  
11 and that would help eliminate the longstanding  
12 illicit activity that has been historically  
13 played at this location.

14           We know, and we are seeing it  
15 around the city, that if you want to change  
16 the location, you want to change historic  
17 decay on corridors, lighting and development  
18 will address that more so than anything else.

19           And we thought that the Seventh  
20 and H Street corridor needs it more than any  
21 other corridor on the corridor at this point.

22           In an effort to eliminate some of

1 the elicit activities throughout the corridor,  
2 H Street Main Street request that the Board  
3 requires the Applicant to enter into a  
4 community partnership with H Street Main  
5 Street. Such partnership would include the  
6 sponsorship of H Street Main Street Clean a  
7 Safe Program and future H Street corridor  
8 marketing campaigns promoting as retailers and  
9 urban living of a cleaner, safe environment:  
10 diverse retail district, affordable housing,  
11 and entertainment destination.

12 It is very important, again, that  
13 we're going to end up with quite a few  
14 residents in this facility, quite a lot more  
15 activity that's taking place right now in this  
16 development, and it's really a good thing we  
17 think, but at the same time, we're going to  
18 end up with more traffic in that basic  
19 location, and we're going to need -- I think  
20 it's very important that we work together to  
21 maintain a cleaner, safe element or safety  
22 element or clean element in that long

1 corridor.

2 At the same time, to help us and  
3 help us to help them, it's important that we  
4 work together to market H Street as a  
5 destination. You know, we have the Stewart  
6 Project, which is on line. You have the  
7 Senate Squares on line, and the Atlas Theater  
8 and a few other places that has taken place on  
9 H Street, and it would be inviting if we could  
10 work together basically to market H Street as  
11 a whole.

12 Also, I want to take this time to  
13 address the parking. I think that it's  
14 appropriate to support this development and  
15 the parking that's mentioned. If you only can  
16 remember a few years ago when we dealt with  
17 the development plan, I think about 800 units  
18 were basically planned for this area.

19 But I mentioned in previous  
20 testimony that once it is all said and done,  
21 that we're going to end up with about 5,000  
22 units of housing in this area, which I think

1 is on track now if we take a look at the  
2 proposed development that has been presented  
3 before this body.

4 And with that, during the daylight  
5 hours, you're going to need more parking and  
6 with meetings that we have had with the Office  
7 of Economic Development, that we are looking  
8 into providing a TIF on the H Street corridor,  
9 and the number one concern for the residents  
10 and the merchants has been to increase a level  
11 of parking for the retailers along the  
12 corridor.

13 If we want retail to work, you  
14 have to have parking. You're not going to get  
15 all of it from transportation in this day and  
16 time from a trolley, from a bus, from just the  
17 neighbors. You're going to have to have some  
18 type of parking to help grow the retail along  
19 this corridor so that the neighborhood can  
20 develop.

21 Thank you.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Well said.

2 Questions, comments?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Just a quick  
5 clarification. In your statement here and  
6 also in your written statement and submission,  
7 you talked about this 30 foot depth. That's  
8 from your discussion with the proposed plans  
9 and the developer, that there's only 30 foot  
10 allowable for the --

11 MR. SALEEM: It's my understanding  
12 from the plan it's 30 foot allowable.

13 CHAIRPERSON GRIFFIS: Okay. As I  
14 look at it -- maybe we'll ask that as a  
15 rebuttal as they come forward because I'm  
16 seeing dimensions of up over 70 feet depth  
17 that it could possibly be. I don't know how  
18 it is programmed, but the structure seems to  
19 be there and you get rid of that arcade. I  
20 shouldn't say that.

21 (Laughter.)

22 MR. SALEEM: Well, you know --

1 CHAIRPERSON GRIFFIS: I'm kidding  
2 when I say that, just for the record.

3 MR. SALEEM: I guess I don't want  
4 us to look down the road and we approve  
5 something that really in a few years from now  
6 would be inadequate and wouldn't be workable  
7 --

8 CHAIRPERSON GRIFFIS: Right.

9 MR. SALEEM: -- along the  
10 corridor.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. SALEEM: And as long as I'm  
13 the chair and as long as I'm involved in it,  
14 I wouldn't want my name attached as not  
15 supporting something that would be able to  
16 grow with the --

17 CHAIRPERSON GRIFFIS: Sure, yeah.  
18 I mean, just from the point that was provided  
19 to us, the existing commercial building, which  
20 is on the Seventh Street side is over 119 feet  
21 deep.

22 MR. SALEEM: I realize that.

1                   CHAIRPERSON GRIFFIS: I mean, so  
2                   you've got that depth, and then there's  
3                   another dimension on the other side, on the  
4                   Sixth Street, which is showing over 74 feet  
5                   deep, and if we just follow that just  
6                   graphically to mention that it goes right  
7                   across, it looks to maintain that kind of  
8                   depth.

9                   Now, obviously some of that is  
10                  going to the back of the house or service or  
11                  something of that nature, but in any case, I  
12                  think it's an excellent point to bring up, is,  
13                  look, you might as well plan to have it a  
14                  viable space and footprint if you're really  
15                  talking these big picture items of who these  
16                  retailers are going to be. Okay.

17                  MR. RONNEBERG: Chairman Griffis.

18                  CHAIRPERSON GRIFFIS: Yes.

19                  MR. RONNEBERG: Although the  
20                  physical dimensions are that way, they intend  
21                  to have the front part be retail and the back  
22                  part be office space. So that's why even

1       though there's physically that much depth,  
2       programmatically its split between office and  
3       retain.

4                   CHAIRPERSON GRIFFIS: Right, and a  
5       good point. I mean, it's actually color  
6       coordinated that way, and some of it seems to  
7       be, you know, flexible, but anyway, I mean,  
8       just for your discussions of all of those, it  
9       seems like physically it's able to be done,  
10      but okay.

11                   Of course, the other dimension --  
12      maybe I'm talking too much -- but if you look  
13      at this stuff, you could conceivably have a 30  
14      foot depth, but have a 120 foot run. Now,  
15      that's the killer. I mean, of course, if you  
16      lose your street frontage and your window  
17      lines, but isn't it about where you fit your  
18      space, not necessarily -- I mean I know a  
19      little bit about retail. Sure, you want to  
20      have that, but you could conceivably do that  
21      in a long run. Is that your understanding?

22                   MR. SALEEM: I think you need a

1 mixture of both.

2 CHAIRPERSON GRIFFIS: Sure, sure.

3 MR. SALEEM: Because if you look  
4 at it having a long run, and I've also been  
5 thinking that you're going to have more  
6 retail, and we have our central retailer  
7 district, but I think we're going to have more  
8 retail between Seventh Street and Third  
9 Street.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. SALEEM: Especially with a  
12 grocery store and the Third and Main Street on  
13 the south side, I think you're going to hear  
14 eventually someone come up and say they want  
15 more retail on the ground levels.

16 You're going to have the same  
17 thing with the public storage area very soon  
18 across the street, I think. Eventually when  
19 that's developed you're going to have more  
20 retail, and I think we have quite a bit of low  
21 end retail along the corridor, and with the  
22 newer residents moving in, we want something

1 that's a little more up scale.

2 and I think it would be wise to  
3 look at retail now that would take a nice size  
4 clothing store or a nice size restaurant or  
5 something like that, to support that type of  
6 market.

7 CHAIRPERSON GRIFFIS: Right. No,  
8 absolutely, I don't disagree at all. I think  
9 those are excellent points. Retail is a  
10 fickle business, as I understand it.

11 Okay. Questions? Other  
12 questions, clarifications? Yes.

13 VICE CHAIRPERSON MILLER: I have a  
14 question, and I'm sorry if you've addressed  
15 this in your remarks today, but I see in your  
16 letter that you've asked that the Board  
17 require the Applicant to enter into a  
18 community partnership with HSMS.

19 Why would that be necessary for  
20 the Board to require it?

21 MR. SALEEM: Well, I think it  
22 would be good and show good faith. The city

1 has looked at this project and looked at other  
2 projects along the corridor, and they as of  
3 yesterday committed to spend close to \$140,000  
4 in a Clean Estate's effort and also marketing  
5 the area, but we have to, in order to make  
6 this work, in order for us to receive those  
7 funds, we have to match it with other  
8 developers. They want other developers to  
9 come on board to help us help them make this  
10 whole project work.

11 And you know, we look at this  
12 thing, the same thing with Center Square right  
13 now, where they want to market the area, and  
14 they're doing a pretty good job marketing, but  
15 they want more now to come from the Main  
16 Street corridor as far as banners, as far as  
17 marketing H Street as a destination and all  
18 the rest.

19 But at the same time, we don't  
20 have money to do that, you know, and we need  
21 these developers to come on board and help us  
22 help them. You help the community; you help

1 us; and we also help you. I mean, it's a win-  
2 win situation for all of us.

3 I mean, we're in it to make the  
4 corridor look better, to grow the corridor.

5 CHAIRPERSON GRIFFIS: Sure.

6 VICE CHAIRPERSON MILLER: Is that  
7 something that's in your ongoing negotiations  
8 now?

9 MR. SALEEM: I think it would be,  
10 yes.

11 VICE CHAIRPERSON MILLER: Okay.

12 CHAIRPERSON GRIFFIS: Excellent.  
13 Anything else?

14 MR. GLASGOW: Excuse me one  
15 second. I mean, we were here for a BZA, you  
16 know, application with certain relief, and on  
17 a couple of things we're suddenly way over, in  
18 my view, in PUD land.

19 I've had some discussions with Mr.  
20 Saleem, and we have some understandings, and  
21 we have some things we don't understand. I've  
22 told him that what they have requested of us

1 is multiples of what we would have if we had  
2 a bid, and he's nodding his head  
3 affirmatively. And I've said that doesn't  
4 work for us, that this has to be some type of  
5 reasonable type of discussion as to what it is  
6 that could be an expectation.

7 And when they talk about \$140,000  
8 matching thing, I don't want to have a  
9 situation where somebody is saying, "Oh, well,  
10 here. You all come and match this." That  
11 isn't going to happen.

12 Okay. So we have an issue with  
13 that. We're working with H Street Main  
14 Street, but it's within the confines. It's  
15 not just open ended discussion.

16 Thank you.

17 CHAIRPERSON GRIFFIS: Excellent.  
18 Thank you very much.

19 I'm not sure we stepped too far  
20 over into the PUD yet.

21 (Laughter.)

22 CHAIRPERSON GRIFFIS: However,

1 when presented testimony, of course, we'll  
2 investigate a little bit to get some deeper  
3 understanding of what's being presented to us,  
4 and hopefully we'll rein ourselves back in.

5           However, let's move ahead. Mr.  
6 Etherly was going to have an additional  
7 question.

8           BOARD MEMBER ETHERLY: Thank you  
9 very much.

10           This is just very brief, Mr.  
11 Chair, but I think it's important to note for  
12 all of our witnesses a word of thanks for the  
13 work that you've done to get this project to  
14 where it is, the level of engagement.

15           At the outset clearly there were a  
16 lot of issues that all of the engaged parties  
17 identified and, you know, just speaking as one  
18 Board member, there was perhaps a concern that  
19 the gulf was not going to be bridged, but to  
20 be where we are, I think, is a testament to  
21 the solid work across the board.

22           Without perhaps verging into the

1 conversation too broadly because, one, this is  
2 very broad question that I'm about to ask, but  
3 I think it's perhaps important to note, as was  
4 indicated by Mr. Edwards in his testimony that  
5 this is, indeed, one of the cases of first  
6 impression as it relates to the H Street  
7 guidelines and it's perhaps useful to maybe  
8 just sniff around this question for a little  
9 bit.

10 And I just wanted to not so much  
11 in the context of this application, because I  
12 think we're ready to continue to move forward  
13 with today and the overall project, but with  
14 regard to just the issue of as we begin to  
15 look down the line because this is hopefully  
16 going to be the first of many projects of this  
17 type and other types along H Street,  
18 especially as we deal with the tension around  
19 coming off of the commercial corridor on H  
20 Street itself as the residential properties  
21 that abut H Street.

22 Specifically to Mr. Edwards, but

1 I'd be open to any comments from our other  
2 panel members, as we talk about the stepping  
3 down, especially looking at the relationship  
4 between the residential, again, this is a  
5 broad question. So I don't want to get into  
6 it too quickly, and I don't want to cause the  
7 Chair to roll his eyes when I verge this  
8 question because I want us to move forward.

9 But as we talk about stepping  
10 back, are there instructive things in this  
11 application that you see that may be of use as  
12 we move forward with dealing with others?

13 MR. EDWARDS: Let me try to  
14 address your question in two parts. In terms  
15 of applying what comes out of this case to  
16 future cases, I would suggest that  
17 consideration be given to requiring the  
18 Applicant to address each of the guidelines as  
19 the Applicant has done here in terms of we  
20 comply with these. There are not applicable.

21 And then if you'll look at Exhibit  
22 92 in the record is an example of that with

1 respect to the first 43 guidelines. An  
2 exhibit filed today addresses guidelines 44  
3 through 58.

4 Now, where there was a difference,  
5 a deviation, if you'll look at Exhibit No. 90,  
6 you have a Holland & Knight memorandum  
7 describing what the uniqueness is and what the  
8 public policy considerations are for that  
9 deviation.

10 If you'll look at an exhibit filed  
11 today from Holland & Knight, you'll have them  
12 discussing setbacks. You'll have them  
13 discussing the H Street curb cut, what's  
14 unique, what the public policy considerations  
15 for that deviation.

16 I think if perhaps the next time  
17 you have someone come in under the H Street  
18 guidelines, if you would at the outset, say,  
19 have your staff tell them that we expect you  
20 to come in with a presentation like this, I  
21 think it will make your job and the other  
22 participants' job easier.

1                   BOARD MEMBER ETHERLY: So you feel  
2                   that there has definitely been a fairly high  
3                   bar set in terms of the level of proof that  
4                   you hope to see replicated as cases come  
5                   forward?

6                   MR. EDWARDS: Yes. Yes, I do.

7                   BOARD MEMBER ETHERLY: Okay.

8                   MR. EDWARDS: Now, on the second  
9                   part of your question, in terms of stepdowns  
10                  and setbacks, in this area I'm afraid that  
11                  zoning and BZA and the regulations are fairly  
12                  deficient in this area. It's something that  
13                  Stanton Park has worked with in the NOMA Plan  
14                  and with the Dreyfus Project, with the simple  
15                  proposition that you can build matter-of-right  
16                  height, but you have to transition down to the  
17                  surrounding buildings on your site.

18                  In other words, if Dreyfus wants  
19                  to build an 11 story building in the 200 block  
20                  of H Street, and in that same block there are  
21                  townhouses, he's got to step down to 35 or 40  
22                  feet, or he abuts those townhouses.

1           And we have had that adopted in  
2           the NOMA Plan as a concept of what is the  
3           relationship between existing townhouses and  
4           a new development that abuts those townhouses,  
5           and there are different requirements under the  
6           NOMA plan as to whether you're talking about  
7           backyards across an alley or you're talking  
8           about facing a residential community across  
9           the street.

10           These are typical, I would say,  
11           Planning Commission kinds of things that we  
12           are starting to get the attention of NOMA in  
13           in terms of at least the NOMA Plan and the  
14           Office of Planning.

15           BOARD MEMBER ETHERLY: Okay, and I  
16           appreciate that. As you are aware, of course,  
17           it has been the subject of quite a bit of  
18           conversation, and as you said, it has a much  
19           broader import than just this particular case,  
20           but I appreciate the response and your use of  
21           Planning Commission, as the term is perhaps  
22           timely, considering some of the discussion

1 that has taken place in other parts of the  
2 city today, but I appreciate that feedback.

3 MR. EDWARDS: thank you very much.

4 BOARD MEMBER ETHERLY: Thank you,  
5 everyone, for the hard work that you've taken  
6 on.

7 MR. EDWARDS: And the Commission  
8 of 100 has some excellent legislation on that,  
9 Mr. Etherly.

10 BOARD MEMBER ETHERLY: Thank you,  
11 sir.

12 Thank you, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Any other  
14 questions?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Good. That  
17 is broad reaching elements, which we don't  
18 have additional time to bring up here.

19 Good. if there are no other  
20 questions, let's go to cross. Does the  
21 Applicant have any cross examination of the  
22 presentation of the case they've heard today?

1 No cross?

2 Any of you parties want to cross  
3 any of the other ones? Does the ANC have any  
4 cross of these?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Fabulous.  
7 Quite a civil group, I must say.

8 Thank you very much. A lot, a lot  
9 has come up not only just in the case  
10 presentations today, but obviously in the  
11 input of the written submissions, and I think  
12 it's very important to do.

13 With that then, let me ask. We  
14 had given the opportunity to the other persons  
15 here present today to provide testimony that  
16 were not able to in the previous hearing. Any  
17 persons?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Not noting  
20 any persons here to provide testimony in  
21 support or in opposition, I think we can move  
22 ahead with rebuttal and then closing if you're

1 ready, Mr. Glasgow.

2 MR. GLASGOW: Yes, we're ready.

3 With respect to rebuttal, I think  
4 I'll just bring up Mr. Wells briefly on that  
5 and then go to closing.

6 Mr. Wells, would you please  
7 identify yourself for the record? And I'd  
8 like for you to give a brief response to the  
9 question of the number of parking spaces with  
10 respect to the DDOT report.

11 MR. WELLS: For the record, I'm  
12 Marty Wells, president of Wells & Associates,  
13 traffic and parking consultant to the  
14 Applicant.

15 As I listened to the discussion  
16 here today and talked to DDOT, I think of  
17 Goldilocks, and the reason I think of  
18 Goldilocks is the parking solution we're  
19 looking for is just the right solution. We  
20 don't want too many parking spaces because  
21 that's going to generate more traffic than we  
22 really want. We don't want too few spaces

1 because that would cause overflow parking into  
2 the residential neighborhood. We want just  
3 the right number of spaces.

4 That, of course, is established on  
5 a case-by-case basis. There is no one right  
6 ratio. What's right for one project might not  
7 be right for another.

8 I think we're at about the right  
9 spot for this project, and let me illustrate  
10 that with the numbers.

11 As far as the non-residential uses  
12 go, there are about 225 spaces or about  
13 197,000 square feet of office and retail  
14 space. That ratio is about 1.14 spaces per  
15 1,000 square feet.

16 Now, at that ratio, I would  
17 estimate a little more than a third of all of  
18 the office workers and visitors, retail  
19 employees and customers could actually drive.  
20 That means about two-thirds would have to do  
21 something else. You'd have to be a passenger  
22 in a car or be on a bus, take Metro, walk,

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1 bicycle, and so forth.

2 I think that's an appropriate  
3 urban goal for this particular location. This  
4 particular location is not in the middle of  
5 the downtown area. It is within walking  
6 distance of a Metro station, but it's a half  
7 mile to Union Station.

8 CHAIRPERSON GRIFFIS: Union  
9 Station.

10 MR. WELLS: Yes, that's correct.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. WELLS: Generally, we consider  
13 anything within a quarter mile to be very  
14 convenient walking. Union Station is a bit  
15 beyond that. So it's not like we're near  
16 Ferragut Square or Metro Center. We're a  
17 little bit off the beaten path.

18 And it's also appropriate, I  
19 think, when you take into account what parking  
20 alternatives are, what are the parking  
21 alternatives?

22 There are no other substantial

1 public parking facilities that would be an  
2 alternative to this particular garage for  
3 these particular employees. The alternative,  
4 the obvious alternative, is to park on public  
5 streets, and you've heard from the community.  
6 I won't say anything more about that.

7 In terms of residential uses,  
8 there 262 spaces allocated for some 248 units.  
9 That's a ratio of about 1.06 spaces per unit,  
10 which is in the range of what we're seeing in  
11 the market here. The market generally ranges  
12 from about .8 to about 1.1 spaces per unit.

13 So at 1.06, that provides on  
14 average basically one space per unit and a few  
15 spaces left over for visitors, and again,  
16 taking into account this location, the  
17 particulars at this site, and the lack of  
18 alternative parking locations other than in  
19 front of other people's homes on public  
20 streets, I think that's an appropriate ratio.

21 And that concludes my remarks.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you.

2 Are you aware of what's proposed  
3 as the programming for those other spaces?  
4 Are they all for sale for the units?

5 And the retail, how is that going  
6 to be done? Is there going to be, you know,  
7 a validated ticket or is that even able to be  
8 assessed at this point?

9 MR. WELLS: I think it's a little  
10 early for that. I don't think that has been  
11 programmed in detail at this point. I suspect  
12 if this case is typical of others the  
13 residential will be nested within this garage.  
14 so if you're a visitor or customer, you can  
15 get only so far within the garage and not  
16 beyond the control point, which leads to the  
17 residential parking.

18 But I don't even know that for  
19 sure because that has not yet been determined,  
20 and whether the spaces are bundled with the  
21 units or not, I don't know that that has been  
22 determined yet either.

1 CHAIRPERSON GRIFFIS: Okay. Thank  
2 you.

3 Others?

4 VICE CHAIRPERSON MILLER: Did you  
5 say that you have talked with DDOT about this  
6 issue?

7 MR. WELLS: I have not directly.  
8 Chris Kabatt, who has been working with me on  
9 this, has had numerous meetings with Chris  
10 Delfs and others. I've been apprised of the  
11 outcomes, and I have spoken with Chris also.

12 We've spoken to them about  
13 parking. We're usually in agreement with  
14 DDOT. In this case we have a difference of  
15 opinion about the parking. We are in general  
16 agreement with the TDM, travel demand  
17 management, proposals as it affects the  
18 residential uses.

19 I understand the public policy  
20 issue here. More parking begets more traffic,  
21 but I think taking into account the  
22 particulars of this case, the reasons I

1 outlined, I think we're in the right place.

2 VICE CHAIRPERSON MILLER: I'm  
3 sorry. I mean, I should be asking the  
4 question to them, but they're not here right  
5 now. So I'm just reading the part where they  
6 come up with a number. They think your number  
7 is greater than the project demand or need,  
8 and I'm wondering whether you had an  
9 opportunity to discuss with them before or  
10 after this report the demand and the need.

11 Were they dealing with the right  
12 numbers? Were they -- you know.

13 MR. WELLS: We have not discussed  
14 that with them in detail, although it appears  
15 we have time to do that and would be pleased  
16 and would commit to doing that.

17 VICE CHAIRPERSON MILLER: Okay.

18 MR. WELLS: We will speak with  
19 them.

20 VICE CHAIRPERSON MILLER: Good.

21 MR. WELLS: We think we're right.

22 VICE CHAIRPERSON MILLER: Okay.

1 Thank you.

2 CHAIRPERSON GRIFFIS: Anything  
3 else?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Cross from  
6 the parties on that testimony? Questions?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Thank you very much.

10 VICE CHAIRPERSON MILLER: I have  
11 one more question. I'm sorry.

12 We didn't talk about other  
13 recommendations in that report, and I just --

14 MR. GLASGOW: I'm going to cover  
15 that.

16 VICE CHAIRPERSON MILLER: Oh,  
17 okay. good.

18 CHAIRPERSON GRIFFIS: Okay. All  
19 right. Because that's part of that, and Mr.  
20 Elam can jump in when and if he needs to.

21 These other recommendations,  
22 basically it's going to be part of the

1 testimony that was given by Mr. Wells. He  
2 said we're in agreement insofar as they affect  
3 the residential component.

4 There are a number of things that  
5 affect the office component. One, the office  
6 component is there, and it's the District  
7 government and it is intended to be the  
8 District government.

9 So you know, it's almost whatever  
10 the District government wants to do on those  
11 is up to them, but we would prefer that those  
12 not be requirements on the Applicant so that  
13 with respect to where it says "provide bicycle  
14 parking, storage facilities and shower  
15 facilities," it's up to the District  
16 government. It's the Department of Human  
17 Services which has anticipated that this will  
18 be their headquarters after DOES moves out  
19 because they share the space. They're two  
20 government agencies that are the tenants in  
21 this building, DOES and DHS.

22 CHAIRPERSON GRIFFIS: So you're

1 saying that as the tenants in their tenant  
2 fit-out, they may accommodate bicycle storage  
3 --

4 MR. GLASGOW: Right.

5 CHAIRPERSON GRIFFIS: -- and  
6 showers and all of that?

7 MR. GLASGOW: We're in effect  
8 going to state to DDOT, "Please tell your  
9 sister agency this is what you'd like," and if  
10 that's what they want in their program fit-out  
11 as we discuss their lease extension, that's  
12 fine.

13 We don't want to have to do  
14 something -- we don't want to be in a position  
15 where we have something that is adverse or an  
16 issue with respect to the occupier of this  
17 space.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GLASGOW: Because we have been  
20 told that DHS wants approximately 180,000  
21 square feet of this space, which leaves about  
22 13 to 15,000 square feet, which will get into

1 something else when somebody says, "We will  
2 mandate that you have 60 foot depth retail."

3 We have areas where we can go to  
4 60 foot depth retail, but we do not  
5 programmatically have enough space when we're  
6 not asking for any relief from that area, and  
7 we're providing more retail than what's  
8 required.

9 We are hopeful that the Board is  
10 not going to suddenly say, "Well, now that  
11 you've gone through this process you suddenly  
12 have a retail requirement that you didn't have  
13 before," and DHS is saying, "Well, you can't  
14 meet our program requirements."

15 All right? So we don't have  
16 unlimited amount of space to devote to retail,  
17 but what we have done, what the architects  
18 have done listening to the community and  
19 others, we have put some flex space on either  
20 corner of the building, which is either office  
21 or retail, which has depths ranging from 75  
22 feet to 60 feet, 60 feet to 75 feet, if all of

1 that space is taken, and it's right at those  
2 corners which has been suggested which may be  
3 the better place to put a restaurant rather  
4 than in the middle of the building where we  
5 put the arcade, which has been questioned by  
6 some of the Board members.

7 And we're in our further  
8 discussions with the community. We're  
9 discussing the wisdom of the arcade at this  
10 point in time ourselves, and we don't know  
11 that right now on H Street that that's  
12 necessarily a good idea. It may be much  
13 better to see if we can't get a restaurant  
14 either on Sixth or Seven Street, and there's  
15 rationales for both streets.

16 One, H Street Main Street says  
17 Seventh Street has had a troubled history, and  
18 maybe if you could put a nice, great  
19 restaurant there, that deals better with that.

20 Sixth Street has a lot of appeal  
21 because it's the western exposure of the  
22 building so that in the spring and the summer

1 and everything, you're going to get the  
2 afternoon sun on the sidewalk cafe.

3 So we don't want to be -- we want  
4 to keep the flexibility to go either way, and  
5 we've got the depth to do it, and we've  
6 allocated the depth to do it, but we haven't  
7 allocated that kind of depth to have somebody  
8 just say, "You're 60 feet across the board on  
9 retail depth." That could be problematic for  
10 us.

11 But to have flexibility there, to  
12 be able to work it out within the 13,000-some  
13 odd square feet of retail that we proposed, I  
14 think, is a workable situation.

15 Getting back to the TDMS where it  
16 says "provide preferred carpool and van pool  
17 parking," we can do that.

18 "Provide designated car share  
19 parking spaces." We can do that within the  
20 office retail component, but not within the  
21 residential component because in the  
22 residential component you compromise your

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1 security. You have to know who's going in and  
2 out of your residential garage.

3 "Provide a one time membership fee  
4 and car sharing plan of \$35 per residential  
5 unit." We're fine with that.

6 "Provide Website hot links to  
7 commuter connections." That's fine.

8 "Provide an on-site business  
9 center to residents with access." That's  
10 fine. We can do that.

11 Seven, "provide complementary  
12 smart trip cards with \$20 Metro fare person to  
13 residential lessees upon move-in." That's  
14 fine.

15 "Complementary \$60 Metro fare to  
16 tenants, employees at initial occupancy."  
17 That's the District government. If they want  
18 to pay that cost, that's up to them. They  
19 should -- we assume they have some type of  
20 program. That should not be put on this  
21 Applicant.

22 Essentially what we're doing is

1 we're building a residential building. The  
2 office building is there. It would be  
3 reconfigured.

4 "A designated member of building  
5 management as a point of contact for  
6 coordinating and implementing TDM obligations  
7 for the residential building," fine. We can  
8 do that.

9 "Distribute TDM information and  
10 brochures via lobby kiosk and welcome  
11 packets." We'll do that for the residential.

12 So I think we've gone through  
13 their transportation demand management, what  
14 it is that we think that we can reasonably be  
15 called upon to do in this situation.

16 Then if I could move on to closing  
17 statement --

18 CHAIRPERSON GRIFFIS: Actually,  
19 let me step back a little bit because as we're  
20 keeping the record open and we're talking  
21 about January-February dates, let's take this  
22 time to kind of focus on what our next steps

1 are or our next process would be because  
2 conceivably if we're not having another  
3 hearing, which I'm assuming we're not, then we  
4 should go to closings.

5 But let's understand what we may  
6 need or what we're getting, and I'll ask you  
7 what is it that you're anticipating of  
8 providing into the record or what is the  
9 record staying open for?

10 MR. GLASGOW: We anticipate  
11 keeping the record open for the further  
12 refinements to the design elements of the  
13 building, as Mr. Ronneberg outlined. I mean,  
14 we think that that's where our discussions  
15 are.

16 The setbacks that we've agreed to  
17 and the stepbacks that we've agreed to,  
18 they're sacrosanct. I mean, we're not about  
19 to deviate from those.

20 CHAIRPERSON GRIFFIS: So the  
21 height and massing at the rear are set. Those  
22 aren't in fluctuation.

1 MR. GLASGOW: Yeah. They're not -

2 -

3 CHAIRPERSON GRIFFIS: But they're  
4 mostly about the primary elevation on Eighth  
5 Street?

6 MR. GLASGOW: Well, they also  
7 indicate they had some question about they  
8 wanted us to look further at the south facade,  
9 which --

10 MR. RONNEBERG: Yes, design issues  
11 on the massing and the setbacks (speaking from  
12 an unmiked location.)

13 MR. GLASGOW: Right. The setbacks  
14 and the height and the bulk and the mass of  
15 the building are agreed to, as Mr. Ronneberg  
16 just stated from the audience.

17 We are looking at the design  
18 features and elements of the building, as Mr.  
19 Ronneberg listed a number of them, that they  
20 have -- where they've gotten this information  
21 and some additional ones that they're looking  
22 at and we'll be meeting with Mr. Carter on

1 Sunday on.

2 So I think the record is being  
3 held open to get that information in, get our  
4 response to those requests, how we want to  
5 deal with the balconies, the roof treatment,  
6 the rear facade, you know, those type of  
7 things.

8 COMMISSIONER TURNBULL: But the  
9 programmatic issues, as you mentioned earlier,  
10 from the standpoint of space, retail versus  
11 office, stay the same other than for the  
12 arcade piece.

13 MR. GLASGOW: Yes, that's correct,  
14 and we're amenable to -- in fact, we think  
15 that probably the removal of the arcade is  
16 probably a better thing at this point, and  
17 that we ought to try to get that retail  
18 element there at one of those corners.

19 COMMISSIONER TURNBULL: Sure.  
20 Okay.

21 CHAIRPERSON GRIFFIS: Okay. So  
22 you're going to meet on Sunday.

1 MR. GLASGOW: Right.

2 CHAIRPERSON GRIFFIS: So baked  
3 goods, cheese and coffee. Get through the  
4 design elements and issues. Then you're going  
5 to respond to those and put that in the  
6 record.

7 MR. GLASGOW: That's correct, and  
8 we can have a joint response with the  
9 community or they can see our response and  
10 file afterwards.

11 CHAIRPERSON GRIFFIS: Sure, sure.  
12 And how do we fold DDOT into all of this?

13 MR. GLASGOW: We will continue to  
14 discuss with DDOT. You can hold the record  
15 open for a certain period of time for them to  
16 respond so that they either have to respond or  
17 not.

18 CHAIRPERSON GRIFFIS: Well, we're  
19 anticipating additional information from DDOT.  
20 So, I mean, it's already open for that.

21 Here's where I'm going. Maybe we  
22 need a 20 minute hearing because it's all well

1 and good if it all comes in, but for goodness  
2 sakes, what happens if you guys drink Bloody  
3 Marys on Sunday and get this design stuff that  
4 we don't like or have questions of?

5 MR. GLASGOW: Right.

6 CHAIRPERSON GRIFFIS: We're not  
7 going to have an opportunity to have that  
8 addressed for use. I don't necessarily  
9 anticipate it, but there may be questions.

10 So here's what I propose right  
11 now. Although we do have tons of time, but --

12 MR. GLASGOW: Well, Mr. Chairman,  
13 I wanted to get to one point, if I can.

14 CHAIRPERSON GRIFFIS: Sure, sure.

15 MR. GLASGOW: Our lease expires  
16 with DHS in 13 months. So what that does is  
17 that puts some pressure on us to know or I'll  
18 put it to take the risk as to the next step  
19 because there are certain issues that are  
20 being held open with respect to the approval  
21 by this Board of the design of the building  
22 under 1320.4 that we've agreed to. We've

1       agreed to hold the record open for that period  
2       of time.

3                   There are things that in order to  
4       be in a position where we can be responsive to  
5       DHS and have a position where this site can be  
6       repositioned, that I'm going to request if we  
7       can to have the decision on whatever that the  
8       special exception under 1320.5(f) be held open  
9       until February.     Whatever conditions get  
10      applied under 1325.3, that that be dealt with  
11      the same day, but that if we can have a  
12      decision by the Board, and I know we won't  
13      have an order or whatever, on the other  
14      elements of the case so that we can turn the  
15      architects loose and get them drawing this  
16      building.

17                   And that's at our risk.     We  
18      understand if it doesn't work out, then that's  
19      our problem, but we do have a time element if  
20      we are going to all be able to come up with  
21      the project that it looks like everybody is  
22      working toward that will get the retail all

1 along H Street, will get the residential  
2 component in accordance with the H Street  
3 overlay because this is one of the major --  
4 this is within the area where residential is  
5 supposed to be concentrated under the overlay,  
6 and we need to have people either get drawing  
7 or not at this point in time.

8 We thought when we filed the  
9 application in May that we would have plenty  
10 of time to deal with this part. That was our  
11 situation in not being where we needed to be  
12 with the community in October. So we had to  
13 get a postponement of this.

14 And we're happy to keep the record  
15 open and go at our risk, but at some point in  
16 time we've got to either turn the architects  
17 loose or not because if the lease gets  
18 extended and we don't have an approval in  
19 hand, that's going to make it very awkward for  
20 this site to get repositioned rather than just  
21 the lease is extended and there it is, with  
22 the two office buildings that are there and

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1 the space being leased, because you're going  
2 to be asking -- we're going to be in a  
3 position where we're going to be asking DHS.  
4 Everybody is going to be shuffling things  
5 around to get a building built and get them  
6 back in and out, and this is the opportunity  
7 to do it because DOES will be leaving the  
8 building, and there will be people from DHS  
9 coming back in.

10 CHAIRPERSON GRIFFIS: Right. I  
11 just don't see a clean way to have approval of  
12 variances and special exceptions, but hold off  
13 a special exception on, as you say, 1325.3.

14 MR. GLASGOW: Let me make a  
15 suggestion. It's no different than -- I've  
16 had cases regrettably sometimes from our  
17 standpoint where we've asked for three or four  
18 areas of relief and the Board has granted two  
19 or three of them and they haven't granted  
20 another, and it's up to the Applicant to  
21 either move forward or not.

22 CHAIRPERSON GRIFFIS: So for

1 clarity on what you're proposing, it's that we  
2 would take up the lot occupancy, the  
3 residential recreation space, the relocation  
4 of the curb cut or no? That would be under  
5 1303.

6 MR. GLASGOW: Right. We would  
7 prefer that the relocation of the curb cut be  
8 taken up today and that that allows everyone  
9 to put the pressure on DDOT that --

10 CHAIRPERSON GRIFFIS: And then  
11 what about special exception under the 2514  
12 for the moving of the zone boundary line?

13 MR. GLASGOW: Well, what that ties  
14 into is we lost 11 units in the back by not  
15 being at 50 feet in height and cutting down to  
16 40 feet in height.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. GLASGOW: We put eight of  
19 those units back in the extension of the  
20 zoning line. The community and Stanton Park  
21 came back and said, "We don't want you to be  
22 nine stories in the C-2-A portion. Take off

1 another two units," which was one floor, which  
2 we agreed to do.

3 So our trade in that area now has  
4 been 11 units and getting six back in the  
5 extension to the zoning line. So, yes, we  
6 would like to have that approval. That's part  
7 of the stepdown of the building.

8 CHAIRPERSON GRIFFIS: Okay, and at  
9 this point now, the four parties are -- how  
10 would we classify that? Not in opposition,  
11 but in strong negotiation position; is that  
12 right?

13 I ask that only for clarification.  
14 Of course, it would make a difference of doing  
15 a full order or a summary order on some of  
16 these things, which just for clarification of  
17 all of this.

18 All right. You had a question?

19 VICE CHAIRPERSON MILLER: Well,  
20 yeah, I have a couple. I mean, one is are you  
21 saying that if we decided the whole case in  
22 our February decision making that's too late?

1           MR. GLASGOW: Well, we could lose  
2 another two and a half months. We've been  
3 working with everybody and the community has  
4 been helpful with us, you know, being  
5 accommodating for, you know, when we didn't  
6 finish up in November, that it was fine with  
7 them that we hurry up and come back in  
8 December.

9           There's just a point in time, and  
10 I don't know exactly what day it is where you  
11 just are out of time. You just don't have  
12 time to get things done. Thirteen months to  
13 figure out how all the pieces come together  
14 and go back and forth and get in in this  
15 project, draw the plans, get a building  
16 permit, and get moving on it is not a lot of  
17 time.

18           VICE CHAIRPERSON MILLER: And if  
19 we were to bifurcate our decision making and  
20 we did this at our January meeting, would that  
21 be too late?

22           MR. GLASGOW: I don't know. We

1       agreed with them that they could have until  
2       February. I don't want to --

3                   VICE CHAIRPERSON MILLER: No, I  
4       understand that. I just think you're saying  
5       that some things are ripe for today. Is that  
6       what you said?

7                   MR. GLASGOW: Yes.

8                   VICE CHAIRPERSON MILLER: And I'm  
9       saying what about January. Is that too late?  
10      I just want to get on the table what --

11                   MR. GLASGOW: I don't know whether  
12      January is too late or not. When we filed in  
13      May, we assumed, for whatever reasons, we  
14      assumed that we would be finished by now, you  
15      know, before now, and so we would like to get  
16      enough done that we can get the architects  
17      going, and it's our problem if it doesn't work  
18      out right at the end of the day.

19                   MR. EDWARDS: Monte Edwards.

20                   We think that Ms. Miller has an  
21      excellent idea and putting off the decision on  
22      zoning, massing, lot occupancy until January.

1       What we negotiated was that we would come back  
2       in February.     We would have the design  
3       completed, the design details, but to do that,  
4       we gave up on these other issues.  It's still  
5       a package, and let me point out something not  
6       as a threat, but as a reality.

7                 We put a fair amount of effort on  
8       some    very    technical    issues,    on    FAR  
9       aggregation,    FAR    transfer,    whether    by  
10      demolishing a building you can bank that far  
11      and reactivate it.  Those letters are before  
12      the Zoning Administrator right now.

13                Because    of    the    prospect    of  
14      settlement, he is not going to proceed with  
15      them, and that's fine because if he did, it  
16      would complicate our settlement.

17                If things do fall through though,  
18      those letters are still there, and it may be  
19      necessary to get a decision on some of those.  
20      In all honesty, in all expectation, I expect  
21      we're going to settle this case, but we are  
22      willing to move up, as Ms. Miller suggests,

1 the decision on lot occupancy, zoning,  
2 massing, height, stepdowns, and side setbacks  
3 to the January hearing instead of waiting  
4 until February. At that point we will have a  
5 very good idea of where we are in design. We  
6 will probably be able to make a report to you,  
7 but we want to keep open things like the curb  
8 cut.

9 We know we've got to talk to DDOT.  
10 We've got time for DDOT to come in with their  
11 supplemental report.

12 MR. GLASGOW: Excuse us for one  
13 second.

14 (Pause in proceedings.)

15 MR. GLASGOW: As you can tell,  
16 we're having a little bit of consternation as  
17 to our timing is really, really tight. You  
18 know, that's the issue that we have because we  
19 have to shuffle around 200,000 square feet of  
20 tenants, and we can't turn people loose to do  
21 anything on that yet.

22 We appreciate Monte coming up and

1 saying, you know, that they would sacrifice a  
2 month. We had thought for whatever reason,  
3 consistent with the Office of Planning report,  
4 that when we had the agreement on November  
5 21st, that we would be in a position that we  
6 would have the approvals or be in a position  
7 to have the Board discuss and possibly vote on  
8 the approvals for everything other than the  
9 design guidelines' special exception. That  
10 was what we thought had been accomplished  
11 walking out of that meeting.

12 And that's why we're willing to  
13 give up the last two units and some other  
14 things. So everybody has been working in good  
15 faith. I guess from the standpoint of  
16 protection, if the Board doesn't approve the  
17 special exception that's held out there, we  
18 don't have a project. If the Board does  
19 approve it, then we done what we -- in some  
20 ways that certainly doesn't relieve the  
21 pressure on us, if that's what the concern is,  
22 but we need to know that the Board is in

1 agreement. That's what we're really trying to  
2 assess right now. Is the Board in enough  
3 agreement with the other areas of relief that  
4 we have that we can turn a set of architects  
5 loose?

6 From that standpoint, I would say  
7 it doesn't have that much -- obviously  
8 everything that we've had to do with working  
9 with the community, you can see how much time,  
10 energy and effort is put into that, and that's  
11 extremely important to us.

12 But we've taken that as far as we  
13 can right now. Really, if the Board doesn't  
14 like the massing of the building, from our  
15 standpoint we need to know that now, not  
16 February. And if the Board is okay with the  
17 setbacks and the stepdowns and everything that  
18 has been negotiated with the community and the  
19 ANC and everything else, we're asking that if  
20 the Board sees fit, that you let us know that  
21 now. We take the risk on the plans going  
22 forward if the rest of the negotiations don't

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1 shake out.

2 We think in the context of this  
3 that's not an unreasonable request, and we  
4 think we haven't from our standpoint lessened  
5 our desire to work things out with the  
6 community because we can always end up with a  
7 situation where the Board doesn't approve the  
8 design of the building and we don't have a  
9 project.

10 (Pause in proceedings.)

11 CHAIRPERSON GRIFFIS: This is what  
12 I'd like to do. Let's proceed with your  
13 closing statement if you're ready to go. Then  
14 we'll take a short recess. Let me know how  
15 long you need for that, and at that point  
16 we'll assess whether we can actually proceed  
17 today when we reconvene.

18 There's no sense to take time now  
19 to decide whether we can decide because we  
20 need to hear closings also as it frames all of  
21 the issues.

22 Did the parties want to address

1 this at this point?

2 MR. RONNEBERG: Drew Ronneberg,  
3 ANC-6A.

4 We don't have an issue with the  
5 Board dealing with the lot occupancy issue  
6 right now. That's directly tied to the  
7 massing, the lot occupancy, the 2514.2 special  
8 exception, and the special exception from the  
9 H Street overlay. Those are all tied to the  
10 massing.

11 If we can keep -- I mean,  
12 basically the deal is, you know, we trade the  
13 massing for the design, and the design  
14 elements are really -- the two we really need  
15 to work on more are the special exception to  
16 the 6,000 square feet which triggers the  
17 design guidelines and the design issues, and  
18 the curb cut issues, which we need to talk to  
19 DDOT about more.

20 So if those two can be held open  
21 for the record, and the variances and the  
22 zoning relief dealing with massing issues can

1 be decided today, the neighborhood groups are  
2 not opposed.

3 CHAIRPERSON GRIFFIS: Okay. Just  
4 to clarify the issue because I think I know  
5 these folks well enough, one of the big issues  
6 is going to be how could we proceed with a  
7 decision on relief when the underlying special  
8 exception that allows us to go forward in a  
9 lot more than 6,000 square feet isn't decided  
10 yet, and so as I understand this -- I'll maybe  
11 make this rhetorical to make up some time --  
12 the Applicant is saying, "Well, it's our risk.  
13 We'd like to take that risk," and potentially  
14 in two months we've wasted, these architects  
15 that you've let them out of their cage and  
16 they're running around somehow. They're  
17 loose.

18 But seriously and directly, it's  
19 worth taking out take in order to anticipate  
20 that you can resolve the design elements and  
21 issues to the community's satisfaction, but  
22 also to the Board's satisfaction. The risk of

1 success is weighed in your favor to risk that  
2 time.

3 MR. GLASGOW: That is correct. WE  
4 have had an outstanding working relationship  
5 with this group, and we feel very comfortable  
6 with those negotiations and the reasonableness  
7 of the request and their reasonableness in our  
8 responses when they make a request.

9 And so, yes, we feel very  
10 comfortable going forward on that basis.

11 CHAIRPERSON GRIFFIS: Okay. Any  
12 other questions on that?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Okay. At  
15 this point then I think it's best then -- let  
16 me ask you here now and we'll hear from the  
17 other parties. If we were to proceed with  
18 this, would you have any reservations with  
19 allowing the Board to waive its rules and  
20 regulations and issue summary orders on  
21 anything that was proceeded today, whether it  
22 was approval or denial?

1                   And if you don't understand the  
2 substance and the weight of that question --

3                   MR. RONNEBERG: I understand. As  
4 long as it's limited to the request for relief  
5 for this lot occupancy --

6                   CHAIRPERSON GRIFFIS: Correct.

7                   MR. RONNEBERG: -- the special  
8 exception.

9                   CHAIRPERSON GRIFFIS: Yeah, we  
10 wouldn't issue an order on anything we didn't  
11 decide. So it's obviously just the elements  
12 of decision.

13                  MR. RONNEBERG: ANC-6A is not  
14 opposed to that or supports that. I don't  
15 know what I have to --

16                  CHAIRPERSON GRIFFIS: Okay, but I  
17 will just note the other parties were also in  
18 agreement with that position. They can bring  
19 that up later if they need to.

20                  All right. Let's utilize some of  
21 the time that we have today. Let's go to Mr.  
22 Glasgow for closing.

1                   MR. GLASGOW: I think that with  
2                   respect to a closing argument, I think the  
3                   main issues on all of the points in this case  
4                   have been covered. I don't know that a  
5                   summary is necessary unless the Board views it  
6                   as being something that would be helpful right  
7                   at this point in time, and we've had the  
8                   experts, and we've had everybody else get up  
9                   there and say it.

10                   And I think I've talked enough  
11                   this afternoon unless there's something that  
12                   the Board wants me to drill down on.

13                   CHAIRPERSON GRIFFIS: We'll leave  
14                   it to your discretion.

15                   MR. GLASGOW: Yes, we will be  
16                   discrete and allow the Board, hopefully, to  
17                   proceed as Mr. Ronneberg graciously offered.

18                   VICE CHAIRPERSON MILLER: Mr.  
19                   Glasgow, since you're asking us to decide some  
20                   areas of relief today, could you just  
21                   highlight those areas and why relief should be  
22                   granted for them?

1                   MR. GLASGOW: Sure. Just briefly,  
2 with respect to the lot occupancy, we have  
3 about 91 percent lot occupancy in the C-2-C  
4 district, and that's well above the  
5 requirement of the 70 percent. We have kept  
6 our lot occupancy in our discussions and  
7 negotiations with the community way below  
8 what's permitted, and the lot occupancy in the  
9 C-2-A portion, as I recall, is 57 percent.

10                   I'm looking to the architects to  
11 confirm.

12                   It's either 57 or 58 percent, but  
13 it's way below the requirement.

14                   And so we believe that that -- and  
15 that is mainly caused in the C-2-C portion of  
16 the site because of the two existing office  
17 buildings that are there and that we're doing  
18 an infill structure, so of existing building.

19                   We have the desire to maximize the  
20 retail along H Street, and we have the retail  
21 depth -- I mean the depth of the residential  
22 building, and by the time you add that all in

1 together with the existing office buildings,  
2 you end up with 90 percent lot occupancy in  
3 the C-2-C portion and the C-2-A portion, we're  
4 below.

5 Then with respect to -- help me  
6 out with the rest of these -- residential  
7 recreation space, we know the Zoning  
8 Commission has just voted to delete the  
9 residential recreation space requirements from  
10 the regulations.

11 We provide the amount of  
12 residential recreation space that we believe  
13 is needed for this building. We have some  
14 significant open court areas, and we have  
15 areas around the perimeter of the site in the  
16 C-2-A portion, and we believe that that burden  
17 of proof has been met for the residential rec  
18 space requirement.

19 And the special exception to  
20 extend the zoned boundary line was part of the  
21 massing of the building, and I think I just  
22 described that briefly as to what we did

1 there, unless the Board needs something  
2 further.

3 CHAIRPERSON GRIFFIS: And then we  
4 would still have a special exception for lot  
5 occupancy under the overlay.

6 MR. GLASGOW: That's correct. The  
7 same rationale.

8 CHAIRPERSON GRIFFIS: Right.  
9 Okay. So essentially today it's three  
10 elements of relief, as you're stating now.

11 MR. GLASGOW: Right. The  
12 driveway, we'll wait.

13 (Pause in proceedings.)

14 CHAIRPERSON GRIFFIS: Very well.  
15 Let me ask: is there anything else, Mr.  
16 Glasgow? We don't have any other additional  
17 questions in terms of closing. Anything else?

18 MR. GLASGOW: I'm just confirming  
19 with Mr. Edwards. I think that's the areas of  
20 relief for today.

21 CHAIRPERSON GRIFFIS: Okay.  
22 Essentially --

1 MR. GLASGOW: We're looking at the  
2 site back -- I'm sorry. He asked about the  
3 setbacks. The setbacks, we're viewing that  
4 the setbacks we have offered with respect to  
5 the design guidelines, to the extent that the  
6 Board feels that there is relief required for  
7 those setbacks, those setbacks are integral to  
8 our discussion with --

9 CHAIRPERSON GRIFFIS: The setbacks  
10 come under 1300, correct? Part of the overlay  
11 design guidelines.

12 MR. GLASGOW: Okay.

13 CHAIRPERSON GRIFFIS: Am I right?

14 MR. EDWARDS: That's correct, and  
15 therefore, they are still open until February.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. GLASGOW: All right. Well, we  
18 are committing to those setbacks. The  
19 Applicant is committed to those setbacks.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. GLASGOW: The ten foot setback  
22 and the setback along the rear of the

1 property. So from that standpoint, the  
2 Applicant does not consider that to be an open  
3 issue. Those setbacks we've agreed to. We're  
4 providing those.

5 MR. EDWARDS: Nor does the  
6 community, nor does the community. Even  
7 though they are under the guidelines, we've  
8 resolved those.

9 MR. GLASGOW: Right.

10 MR. EDWARDS: Likewise with the  
11 height, the four to six story height, four to  
12 eight story height, that's under the  
13 guidelines, but we consider that as resolved  
14 for the purpose of today.

15 However, the final decision is  
16 conditioned on the guidelines.

17 MR. GLASGOW: On the special  
18 exception.

19 MR. EDWARDS: On the special  
20 exception under the guidelines, yes.

21 CHAIRPERSON GRIFFIS: Okay. I  
22 mean, as I'm looking at this for today's

1 purposes, what we had was relief from Chapter  
2 7. Basically anything inside the overlay,  
3 Chapter 13, is not being deliberated today.  
4 So we're having 2514, which is the changes of  
5 the zoned boundary line, and then the lot  
6 occupancy and the residential RAC.

7 And then we had special exceptions  
8 in the lot occupancy under Chapter 13, and we  
9 also have the other design elements and the  
10 curb cut.

11 MR. EDWARDS: And the curb cut  
12 stays open also, yes, sir.

13 CHAIRPERSON GRIFFIS: Right. And  
14 1304.1; is that right?

15 MR. EDWARDS: Yes, sir.

16 CHAIRPERSON GRIFFIS: Okay. Any  
17 other clarifications we need though and then  
18 on detail of those elements as presented? Do  
19 we have all of the drawings current?

20 Let me ask you. Okay. I think  
21 we're good. Anything else we need right now?

22 (No response.)

1 CHAIRPERSON GRIFFIS: Excellent.

2 MR. EDWARDS: Mr. Griffis.

3 CHAIRPERSON GRIFFIS: Yes.

4 MR. EDWARDS: You suggested a  
5 further short hearing because as a result of  
6 these design discussions there will be some  
7 revisions to the facade drawings and some of  
8 the others. So do you want to make a  
9 provision for that date at this time, to come  
10 back or is that in February?

11 CHAIRPERSON GRIFFIS: No. I think  
12 what we're going to do is, just to be honest,  
13 we've been looking at the schedule all to much  
14 recently to try and fit things in, and so this  
15 is what we will do.

16 As changes come with those  
17 elements that are left open, we're going to  
18 make sure that anything that is submitted goes  
19 directly to those elements and discussions of  
20 what was, what it wasn't, what was addressed  
21 and what will be addressed. Whatever it is,  
22 it should all be done in writing.

1           Our record will be full at that  
2 point, and we'll have enough to understand and  
3 to figure out from those submissions to make  
4 a decision on it.

5           You know, in looking at it, I'm  
6 not sure what else. One of the most important  
7 aspects of a public hearing is to allow  
8 parties and persons to come together and hear  
9 and question and have a little bit of back and  
10 forth, all for the Board's benefit. I think  
11 we've gotten deep enough into all of these  
12 elements that we will fully understand  
13 everyone's positions and the elements that are  
14 provided.

15           MR. EDWARDS: There might be one  
16 element, and that is the DDOT supplemental  
17 report.

18           CHAIRPERSON GRIFFIS: Right, which  
19 we have, and the only issue with that is what  
20 we'll have, we'll set a date for that. Before  
21 we leave today, we'll set a date for that at  
22 which we would like that to be in. Then we

1 will from that date on have the record left  
2 open for responses from all participants that  
3 will address that.

4 Again, that can be done in  
5 writing, I believe, and actually it may be  
6 more poignant in writing unless it -- well,  
7 there it is. I mean, I think that's the  
8 availability we're going to have.

9 MR. EDWARDS: Can I suggest some  
10 time in January to allow time for meetings  
11 with the community, the ANCs and DDOT to take  
12 place with the holidays coming up?

13 CHAIRPERSON GRIFFIS: Yes. Well,  
14 what I'm counting back on is actually I think  
15 it is probably pretty much set. Maybe I've  
16 just assumed it, but our next decision date,  
17 if we get to a deliberation and decision  
18 today, then our next decision would be set for  
19 February, and that's February 6th.

20 So we will count back from the 6th  
21 of February for any other additional  
22 information and requirement. Does that make

1 sense?

2 MR. EDWARDS: What does that mean  
3 for a deadline for the DDOT report?

4 CHAIRPERSON GRIFFIS: Well, I  
5 guess we can do all of this now. DDOT's,  
6 theirs is due at three o'clock on December  
7 24th, in the office, hand delivered.

8 Kidding.

9 MR. EDWARDS: Thank you, Chairman.

10 (Laughter.)

11 CHAIRPERSON GRIFFIS: Give them a  
12 hard time for not showing up today.

13 Okay. If we set that, first of  
14 all, I think it's a fairly important aspect to  
15 have. I can't imagine that they're not  
16 working on it. Do you have any idea the  
17 schedule or anything of that nature?

18 MR. PARKER: As far as DDOT, no.

19 CHAIRPERSON GRIFFIS: Yeah, okay.  
20 We're at the 5th?

21 MR. EDWARDS: DDOT suggested two  
22 weeks for --

1 CHAIRPERSON GRIFFIS: From today?

2 MR. EDWARDS: As of Friday, they  
3 suggested with about two weeks to line  
4 everyone up for the meeting.

5 CHAIRPERSON GRIFFIS: For a  
6 meeting?

7 MR. EDWARDS: For a meeting with  
8 the community, and there would be time after  
9 that to prepare the report and get it in.  
10 That's what I'm trying to express.

11 CHAIRPERSON GRIFFIS: Yeah, that's  
12 good.

13 I'm going to request that DDOT  
14 have their report in after a meeting with the  
15 community in the week of January 9th. So it  
16 will be set for that Friday, three o'clock.

17 That gives two weeks to respond to  
18 that, which would be we're going to put the  
19 response on a Tuesday. So the responses to  
20 the DDOT will come in on the 23rd at three  
21 o'clock.

22 Now, the other track that we're

1 following here is the design elements in the  
2 overlay. Let me have an idea of when that's  
3 going to be accomplished.

4 MR. CARTER: Mr. Chairman, Doug  
5 Carter, David Scott and Scott Architects.

6 You heard listed a series of seven  
7 elements. Those seven elements are already on  
8 the drawings. There was a list of four that  
9 I actually heard: an issue about balconies,  
10 bay windows, roof line, and I think an effort  
11 to make the south elevation look more like the  
12 rest of the building. I think that's what I  
13 understood.

14 My objective in all of this is to  
15 make it into a win-win-win situation. I think  
16 we've answered the first seven. I am sure we  
17 can answer the next four, and that we can do  
18 in the -- we'll say if we meet on Sunday that  
19 by the end of next week we should be able to  
20 get a response back to the community and have  
21 some positive dialogue on the results.

22 That's what I would propose. The

1 community has its own internal mechanisms that  
2 they're obviously going to have to get word  
3 through. I don't know how long that would  
4 take.

5 MR. EDWARDS: There's also time to  
6 take these designs to the ANCs and to the  
7 community groups and get their comments. So  
8 I would suggest that perhaps with the holidays  
9 --

10 CHAIRPERSON GRIFFIS: When does  
11 the ANC meet?

12 MR. RONNEBERG: The ANC-6A meets  
13 on the second Thursday of January, the full  
14 ANC. the Economic Development and Zoning  
15 Commission, which vets a lot of this, will be  
16 meeting on December 28th.

17 CHAIRPERSON GRIFFIS: What else do  
18 we have coming in the record for the decision  
19 on February? Anything else?

20 Ms. Bailey, do you have a list of  
21 anything else?

22 MS. BAILEY: No, Mr. Chairman,

1 just the submission of the design elements in  
2 DDOT's report. Those are the two things that  
3 I have.

4 CHAIRPERSON GRIFFIS: Okay.  
5 Excellent. I don't see any reason why we  
6 couldn't have a complete report or record by  
7 January 30th. Any difficulty with that?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Okay. Then  
10 that's a Tuesday. Three o'clock it comes in,  
11 or wait. Yes, I don't see any difficulty with  
12 that. That's the Tuesday before -- Mr. Moy,  
13 do you see any difficulty with that date? --  
14 okay, and that sets us up for the 6th of  
15 February.

16 What I'm calculating into this, so  
17 that you all fully understand it, that comes  
18 in, it has to be packaged, and it has to be  
19 sent out. So we're going to need it in at  
20 that time.

21 Frankly, if it isn't in at that  
22 time, it misses a shipment to us because we

1 don't work here. We go do other things. So  
2 in order to get it into the package, in order  
3 for us to start deliberating on it for that  
4 Tuesday, unless you think we could get it all  
5 in on the 23rd, which would insure that we get  
6 it all out, I'd rather have another week for  
7 whatever it is that needs to be produced to  
8 get it in and get it all finished.

9 Okay. If there's no difficulty  
10 with that, we'll hold it on the 30th.  
11 Problem? Excellent.

12 (Pause in proceedings.)

13 CHAIRPERSON GRIFFIS: It's a good  
14 comment by my Board member. Oftentimes we  
15 have submissions and responses. This is a  
16 different ball game here. I'm assuming you  
17 guys are all going out and you know exactly  
18 what you need to talk about and you know  
19 exactly what you want to address, and then the  
20 finals come in.

21 And so frankly, if it doesn't all  
22 work out and the architects want blue and you

1 guys want red, well, he's going to show us a  
2 blue drawing, and you're going to give us a  
3 narrative of "gosh, darn it, we really wanted  
4 red." All of that is coming in on the 30th.  
5 We'll figure it all out from there. We'll  
6 have our own Sunday meeting.

7 Okay. Anything else then on that?  
8 This is just the procedure, schedule.

9 MR. EDWARDS: We decided to  
10 compromise.

11 CHAIRPERSON GRIFFIS: That's  
12 right. The combination, the blended building.  
13 We've got too many examples of those in town.

14 All right.

15 MS. BAILEY: Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Yes.

17 MS. BAILEY: On a slightly  
18 different matter, the record does not indicate  
19 that we have a copy of the transportation  
20 plan. Unless someone has it, I stand to be  
21 corrected, but we don't have a copy in our  
22 file. Maybe DDOT has it, but --

1 CHAIRPERSON GRIFFIS: Mr. Wells'  
2 plan?

3 MS. BAILEY: I haven't seen it.

4 CHAIRPERSON GRIFFIS: We never  
5 offered a transportation management plan.  
6 There were elements of a transportation  
7 management plan in the DDOT report which we  
8 responded to.

9 MS. BAILEY: Oh, I'm sorry. I  
10 thought one was specifically prepared for this  
11 project.

12 MR. GLASGOW: Not that I'm aware  
13 of.

14 MS. BAILEY: Okay.

15 CHAIRPERSON GRIFFIS: Let me just  
16 investigate that. You're looking at the  
17 transportation plan that was noted in the DDOT  
18 report that came in?

19 MS. BAILEY: Yes.

20 CHAIRPERSON GRIFFIS: Yes, okay.  
21 All right. Good, good clarification.

22 Okay. What else? What else do

1 you see? That's it? Anyone else? Anything  
2 else you have?

3 MR. GLASGOW: No, sir.

4 CHAIRPERSON GRIFFIS: Okay. We're  
5 going to take 20 minutes. We'll be back.

6 (Whereupon, the foregoing matter  
7 went off the record at 4:29 p.m.  
8 and went back on the record at  
9 5:32 p.m.)

10 CHAIRPERSON GRIFFIS: Do Board  
11 members have any other questions or  
12 clarifications that are needed to be addressed  
13 by the Applicant?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Very well.  
16 If there is nothing further, I believe prior  
17 to adjourning that we were prepared to come  
18 back out and begin deliberation on a portion  
19 of the application and the relief sought.

20 Before we go into full  
21 deliberation, let me just clarify some of the  
22 procedural elements, not that we discussed,

1 but bring some clarification to additional  
2 items.

3 It would be my understanding that  
4 it would be appropriate for us to look at the  
5 relief from the law on the zone boundary  
6 today, the lot occupancy, that is, under 772;  
7 that we will render a bench decision today,  
8 but not issue an order.

9 The issuance of an order would  
10 come after the full deliberation in February,  
11 and I think just for clarification, the paper  
12 which an order today would be written on would  
13 not facilitate a permit or anything else  
14 because the rest of it would need to be said.  
15 Procedurally it will create some difficulty  
16 for us in terms of issuing two separate  
17 orders.

18 So having not needing to get into  
19 that, let's move right in unless there's any  
20 other clarifications needed.

21 (No response.)

22 CHAIRPERSON GRIFFIS: Very well.

1 We have before us then three areas of relief,  
2 and I think it's appropriate to deliberate  
3 under a motion of these, and I will do so for  
4 discussion purposes.

5 And I would move approval of the  
6 portion of Application 17521 and that portion  
7 being the lot occupancy under 772, the  
8 residential recreation under 773, and also the  
9 zoned boundary line relief under 2514.2.

10 BOARD MEMBER ETHERLY: Seconded,  
11 Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Thank you  
13 very much.

14 Let me begin first with the zoned  
15 boundary line criterion under 2514.2. It is  
16 a special exception, and it lists three items  
17 of which we will look at for a criterion under  
18 special exception to be met under the general  
19 parameters of the special exception, and the  
20 first being the extent to which it would not  
21 exceed the 35 feet. That has been fully  
22 documented, and it has obviously been met.

1           The other element is the extension  
2 would have no adverse effect on the present  
3 character or the future development of the  
4 neighborhood.

5           We've processed several zone  
6 boundary line adjustments in my tenure on the  
7 Board, and that provision is always a little  
8 strange to get right into, especially under a  
9 special exception, because its so open ended,  
10 and what are the parameters of measurement?

11           I think the Board has refined some  
12 of those. I won't go into articulation of all  
13 of that. Suffice it to say the record and the  
14 presentation of the elements, I think, have  
15 been met in terms of having no adverse effect  
16 of the character or future development.

17           We've talked extensively about how  
18 the density on the larger project is being  
19 adjusted and pushed around. One analogy, of  
20 course, was an amoeba. The other analogies in  
21 other cases have been a balloon of sorts.

22           That's not so critical, I think,

1 in this analysis, but rather, looking at if  
2 that extension into the rear portion would  
3 somehow impact what could happen in the  
4 surrounding area, and frankly, in the record  
5 that is submitted, I don't see anything that  
6 lends itself to saying that the extension  
7 would have the adverse effect on the character  
8 or future development potential.

9 It isn't in any way impacting the  
10 surrounding area of what could be developed or  
11 what could not be developed. The height is,  
12 I think, appropriate in terms of where it is  
13 situated and the distance from the surrounding  
14 area.

15 Other than that I don't even  
16 really understand where or what elements in  
17 this particular case we would start to assess  
18 in terms of measurement of impact.

19 And that, of course, would lead us  
20 to see whether we'd need to impose any  
21 conditions, and that's terribly open ended.  
22 I haven't seen rise to any elements that would

1 lend us to acquiring of conditions on that.

2 Now, I'll step out of that a  
3 little bit just to indicate that I also have  
4 some great reliance on how the rear portion of  
5 this property is going to be dealt with, and  
6 that really comes under, first of all, what's  
7 being proposed, but more importantly, under  
8 the A Street overlay design guidelines and how  
9 they are being addressed.

10 So really I see this special  
11 exception and the moving of the zone boundary  
12 line in this particular application as just  
13 the first and fairly simple step, the detail  
14 of which will come later.

15 The lot occupancy and the  
16 residential space, both are variance. I'm  
17 going to talk a little bit about the basic  
18 variance criterion of which the Applicant has  
19 put forth to meet that test.

20 Yes.

21 MR. GLASGOW: Sir, also with  
22 respect to lot occupancy, there was going to

1 be a special exception under 1324.4. We  
2 technically had both areas of relief dealing  
3 with lot occupancy.

4 CHAIRPERSON GRIFFIS: Right.  
5 Stepping out of this a little bit, what my  
6 assumption was, that we were going to address  
7 that in February under all the design  
8 criteria.

9 MR. GLASGOW: I don't think that's  
10 what Mr. Ronneberg and I thought, that the lot  
11 occupancy would be dealt with today because it  
12 dealt with, you know, the mass of the  
13 building; that that lot occupancy special  
14 exception would be dealt with today also.

15 CHAIRPERSON GRIFFIS: Okay.

16 BOARD MEMBER ETHERLY: So anything  
17 that was not design related would be disposed  
18 of today. That would be the desire.

19 MR. GLASGOW: That's correct.

20 BOARD MEMBER ETHERLY: Okay.

21 CHAIRPERSON GRIFFIS: The problem  
22 is that the special exception for lot

1 occupancy comes under the design guidelines,  
2 but --

3 MR. GLASGOW: I think we had it  
4 under -- it came under the overlay.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. GLASGOW: Under 1324.4.

7 CHAIRPERSON GRIFFIS: Right. I  
8 shouldn't be so general. Okay.

9 VICE CHAIRPERSON MILLER: When we  
10 looked at this, it looked like 1325.1 provided  
11 for special exception relief for this type of  
12 instance, for exceptions to the overlay,  
13 including the 70 percent lot occupancy, and  
14 then it sets forth six criteria which  
15 reference the design requirements.

16 Do you think that that's not the  
17 correct provision that applies?

18 MR. GLASGOW: No, I think the lot  
19 occupancy standard was 1324.4, and then the --  
20 because that gives the 70 percent -- and then  
21 1325.1 talks about how you meet the lot  
22 occupancy special exception criteria, and then

1 when you go through the special exception  
2 criteria, it does talk about the design  
3 guidelines in A, but that's a separate  
4 discussion than what the Board will have under  
5 Section 1320, you know, .4 for the building  
6 that's on a lot that's more than 6,000 square  
7 feet.

8 We think that both lot occupancy  
9 areas of relief should be dealt with today,  
10 and I think the support that we have for the  
11 project within the community agrees with that.

12 CHAIRPERSON GRIFFIS: I don't  
13 disagree. I don't think we're clear on how it  
14 gets to be a special exception then if it  
15 doesn't get back into the design guidelines  
16 or --

17 MR. GLASGOW: Just for that  
18 element, just for that one element, and I  
19 think we and Monte Edwards have a lot of  
20 testimony as to how the design guidelines were  
21 met with respect to that discrete element.

22 CHAIRPERSON GRIFFIS: Let me just

1 follow your comments in terms of 1324.4  
2 indicates that the C-2 district -- that with  
3 the overlay district, a 70 percent residential  
4 lot occupancy will be permitted.

5 MR. GLASGOW: Correct.

6 CHAIRPERSON GRIFFIS: However,  
7 1325.1 lays out the special exception  
8 requirements, as long as the following  
9 criteria are met.

10 MR. GLASGOW: Yeah, the project is  
11 consistent. And so what you do is the way  
12 that we understood that, any time that you  
13 have a relief under that section, you have to  
14 go and look at the design guidelines with  
15 respect to how they apply to that area of  
16 relief. And we believe that we have met the  
17 burden of proof between our testimony and the  
18 testimony of Mr. Edwards that that burden of  
19 proof has been met.

20 MR. EDWARDS: Perhaps I can help  
21 here. The 1324 and 1325, these are part of  
22 the design requirements of the H Street

1 overlay. The design guidelines are a separate  
2 document and not a part of the zoning  
3 regulations, and they are triggered by any  
4 development of over 6,000 square feet by a  
5 single provision of the design requirements in  
6 the zoning regs., which is the 1320 that we've  
7 been talking about.

8 And it's anything that's triggered  
9 by that 1320 of the design guidelines that  
10 we're reserving and not addressing today. We  
11 have no objection to addressing elements of  
12 the design requirements that are included in  
13 the zoning regulations, specifically 1324 and  
14 1325.

15 CHAIRPERSON GRIFFIS: Comments?

16 BOARD MEMBER ETHERLY: I have no  
17 objection with that interpretation, Mr. Chair,  
18 if the difficulty is just trying to sort out  
19 how we address it from a decision standpoint,  
20 but I have no objection to moving forward.

21 Perhaps our esteemed Office of the  
22 Attorney General might have some guidance.

1 MS. MONROE: I'm just trying to  
2 understand. I know what you're saying, what  
3 Mr. Glasgow is saying, that 1325.1(a), design  
4 guidelines, that you would be looking at this  
5 particular area of relief that would be only  
6 those design guidelines going to that area of  
7 relief, and he says those are met.

8 And it all depends on how you as a  
9 Board want to interpret that. You can either  
10 interpret it the way he's recommending that  
11 those design guidelines are only for that  
12 discrete area of relief or you can interpret  
13 it the other way, that those design guidelines  
14 would have to be met for the entire project in  
15 order to grant that area of relief, and then  
16 you couldn't do it until February or whenever  
17 the final, one way or the other.

18 I think. I mean, I think that  
19 sets it out. I mean, that's the --

20 MR. GLASGOW: That's the issue.

21 MS. MONROE: Right. I mean, one  
22 way or the other it has to be read one way or

1 the other. And there's no guidance. It's the  
2 first time it's been interpreted, and either  
3 one probably makes sense depending on --

4 MR. RONNEBERG: Chairman Griffis,  
5 I think a reading of the -- anything which  
6 triggers the special exception or triggers the  
7 guideline because there's criteria to satisfy  
8 for a special exception, I think that's the  
9 correct interpretation.

10 So it would trigger the design  
11 guidelines. As far as we can tell, the  
12 Applicant satisfies the design guidelines  
13 requirements, and we would like that when --  
14 because it deals with massing, we would like  
15 that special exception.

16 That's fine for us to go in  
17 summary --

18 MS. MONROE: Are you saying as far  
19 as you can tell, the Applicant meets the  
20 design guidelines as to lot occupancy or as to  
21 everything? Just the lot occupancy, right?  
22 Because that's what we're dealing with here.

1 That's what you're after. Right? Because --

2 MR. RONNEBERG: No, they do  
3 satisfy the design guidelines. That was the  
4 testimony today

5 MS. MONROE: Entirely?

6 MR. RONNEBERG: Yes.

7 MS. MONROE: Except the two things  
8 which have been --

9 PARTICIPANT: Except the three  
10 things.

11 MS. MONROE: So then what are we  
12 doing in February?

13 MR. RONNEBERG: There's also  
14 another provision which deals with --

15 MS. MONROE: The 6,000 square  
16 feet?

17 MR. GLASGOW: The 6,000 square  
18 feet. That's why we're holding off until  
19 February on that.

20 MR. RONNEBERG: And the Board has  
21 power to effect decisions about the design,  
22 and so we wanted more time to negotiate with

1 the Applicant for the design, and that's the  
2 one relief we wanted, the one portion of  
3 relief we wanted to hold back so that we can  
4 negotiate the design.

5 PARTICIPANT: We're in agreement.

6 VICE CHAIRPERSON MILLER: I have a  
7 basic question. What's the residential lot  
8 occupancy of the property?

9 MR. GLASGOW: The residential lot  
10 occupancy, I'm going to give it in two  
11 different ways because one of them is very,  
12 very important to the community, and that is  
13 the C-2-A portion of the lot occupancy is  
14 either 57 or 58 percent. I can't remember  
15 which one, but it's one of those two.

16 The C-2-C portion of the lot  
17 occupancy is a little bit over 90 percent.  
18 The lot occupancy for the entire lot is like  
19 77 percent.

20 VICE CHAIRPERSON MILLER: I just  
21 wanted to see if there was any distinction  
22 between the lot occupancy and the residential

1 lot occupancy, and there isn't. Okay. I know  
2 those numbers.

3 MR. GLASGOW: Okay.

4 MR. RONNEBERG: It's my  
5 understanding that any time there's  
6 residential use, it triggers residential. You  
7 have to go by the residential lot occupancy.

8 VICE CHAIRPERSON MILLER: Yes.

9 (Pause in proceedings.)

10 CHAIRPERSON GRIFFIS: So let's  
11 hear comments from the Board regarding taking  
12 in this special exception for the lot  
13 occupancy, from the 1324.4 and 1325.1. Is  
14 there any concern with that?

15 That would leave us off the  
16 special exception for the building on a lot  
17 larger than 6,000 square feet, which is the  
18 1320. I don't have that in front of me.

19 MR. GLASGOW: That's 1320.4(f),  
20 and we also would have the H Street curb cut  
21 for February.

22 CHAIRPERSON GRIFFIS: Right.

1 Okay. Any difficulty with that?

2 It actually makes some sense to do  
3 it now anyway, in that the information, the  
4 material information isn't changing. We're  
5 looking at a variance testing that's straight  
6 zoning regulations which in one respect as we  
7 look at it is more burdensome proof in a  
8 special exception, but what's fascinating  
9 actually as we look at 1300, we actually have  
10 to require -- rather, we require that  
11 1304.1(b), exceptional circumstances exist  
12 pertaining to the property itself or to the  
13 economic and physical conditions of the  
14 immediate area that justify the exception or  
15 waiver.

16 That's a special exception  
17 criterion under 1304. So, frankly, we're  
18 looking at a uniqueness that needs to be  
19 assessed on the special exception, as well as  
20 the variance, and the practical difficulty, of  
21 course, is for the variance.

22 Okay. Confusion?

1                   VICE CHAIRPERSON MILLER: I just -  
2                   - yeah, well. I just thought the one we're  
3                   looking at, if I understand it correctly,  
4                   we're going to have to make findings under  
5                   1325.1 and (d) goes to parking and traffic  
6                   conditions. Now, if we grant the special  
7                   exception in this case, are we going to be  
8                   making a finding on traffic, which I thought  
9                   we were holding off on until February?

10                   Are we just saying it's not  
11                   affected by the massing?

12                   MR. GLASGOW: It's not affected --  
13                   lot occupancy doesn't affect that, and we  
14                   haven't asked for any relief on parking and  
15                   loading.

16                   CHAIRPERSON GRIFFIS: Which  
17                   portion are you looking at?

18                   VICE CHAIRPERSON MILLER: I'm  
19                   looking at the criteria, 1325.1 for granting  
20                   a special exception from requirements of the  
21                   H Street overlay.

22                   CHAIRPERSON GRIFFIS: Oh, I see.

1                   MR. GLASGOW:    And lot occupancy  
2                   isn't affected one way or the other by however  
3                   many spaces we have in our parking garage.

4                   CHAIRPERSON GRIFFIS:   But I think  
5                   what Ms. Miller is asking is the special  
6                   exception requirements in 1325, do all (a)  
7                   through (f) have to be met in order to grant  
8                   the specific relief in the special exception?

9                   MR. GLASGOW:    I guess if the Board  
10                  were so willing to find that the lot occupancy  
11                  special exception that is requested here in  
12                  and of itself does not from parking and  
13                  traffic conditions adversely affect adjacent  
14                  or nearby residences.

15                  MS. MONROE:    I think -- excuse me,  
16                  if I may interject -- the same problem that  
17                  you have in 1325.1(a) goes for all of them  
18                  basically.  Either they all apply to just the  
19                  relief that's requested, just the lot  
20                  occupancy, or they all apply to the whole  
21                  project.  I mean because lot occupancy has  
22                  nothing to do with vehicular ingress and

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1 egress and parking and traffic, and yet it's  
2 in there as a criteria for the special  
3 exception. So you have it one way or the  
4 other.

5 MR. RONNEBERG: And by keeping the  
6 6,000 square foot, the special exception  
7 requirements for that, that all of this have  
8 to be required for the February decision  
9 anyway.

10 CHAIRPERSON GRIFFIS: right.

11 MR. RONNEBERG: You're in that  
12 strange position that you're having trouble  
13 going from the 70 percent to the 80 percent,  
14 which is allowed by special exception, but  
15 seeming to have less trouble to go from the 80  
16 to 91 percent by a variance standard.

17 CHAIRPERSON GRIFFIS: Somewhat.

18 VICE CHAIRPERSON MILLER: I mean,  
19 these criteria speak to the project as a  
20 whole. So it doesn't make sense to -- that's  
21 why we weren't even addressing that special  
22 exception yet. It doesn't make sense to

1 address it to each individual, I don't think,  
2 variance or special exception for the project  
3 as a whole.

4 CHAIRPERSON GRIFFIS: Right. But  
5 as we look at the special exception or a  
6 variance for that matter, we would look at --

7 (Laughter.)

8 CHAIRPERSON GRIFFIS: Whether the  
9 impact -- whether the relief suggested or  
10 whether the relief requested would change in  
11 any material way any of these elements.

12 VICE CHAIRPERSON MILLER: I hear  
13 exactly what you're saying. I mean, and it's  
14 talking about -- like D, just as one example,  
15 talks about the operation of a proposed use.  
16 You know, it's talking about the whole use of  
17 the project.

18 CHAIRPERSON GRIFFIS: Yeah.

19 VICE CHAIRPERSON MILLER: So we  
20 could decide it's not applicable right now or  
21 we could -- I don't know.

22 We were prepared to discuss the

1 variance case. So bear with us for a minute.

2 BOARD MEMBER ETHERLY: I mean I  
3 understand definitely the concern that Ms.  
4 Miller is raising. I don't perhaps think it's  
5 not possible to still have the dialogue about  
6 each individual relief that's sought within  
7 the context of the larger framework.

8 I mean, to an extent it sounds  
9 like you might be bouncing kind of both close  
10 in and then back out, but I think if there  
11 were just one relief that were being sought in  
12 this case, if it was just lot occupancy, we'd  
13 still be stuck with the same challenge of  
14 trying to figure out, well, how do you put D  
15 into the context of lot occupancy.

16 So I think we can still move  
17 forward and have the individual conversation,  
18 and it probably is the case that at least from  
19 my stand point lot occupancy won't necessarily  
20 invoke. You can still discuss D, but it  
21 doesn't raise a D issue. So for me that  
22 criterion would be satisfied.

1 MS. MONROE: I want to weigh in on  
2 that because 1325.1 says you can get a special  
3 except from any of the requirements in the  
4 overlay, and as Mr. Etherly just said, if this  
5 were just lot occupancy or just FAR or  
6 whatever, not all of these criteria really fit  
7 there.

8 And so in that sense even though  
9 this may not be the most well drafted thing in  
10 the world, in order to make it make sense, I  
11 mean, to read it so that it has some meaning,  
12 you can read it that way so that it applies  
13 only to the relief being requested.

14 Because you're going to run into  
15 it every time.

16 BOARD MEMBER ETHERLY: Correct,  
17 but I think the spirit of the overlay, of  
18 course, is intended to evoke the conversation  
19 at least, and I think the spirit would still  
20 be adhered to by having that dialogue and that  
21 discourse.

22 But as counsel said, I find that

1 it just isn't I don't want to say not  
2 applicable because I'm not saying discount it,  
3 but it just doesn't apply to this particular  
4 relief that's being sought.

5 VICE CHAIRPERSON MILLER: I can  
6 understand that. I think that as long as we  
7 consider each of the elements and find that  
8 they're not a problem or something, then we  
9 should be okay.

10 MR. EDWARDS: Would it be helpful  
11 to discuss this in the context of a motion for  
12 approval subject to satisfaction of 1320.4 at  
13 the February hearing?

14 COMMISSIONER TURNBULL: I think  
15 that would be too conditional then, I think,  
16 that interpretation. I think we've got to  
17 resolve our interpretation and maybe not be so  
18 narrow as to how, as we said earlier, that you  
19 don't specifically have to meet each specific  
20 one at this point. Otherwise we're delaying  
21 it and will never resolve it tonight.

22 (Pause in proceedings.)

1                   CHAIRPERSON GRIFFIS: I think I'm  
2 clear. We're looking at a single family  
3 dwelling and it's --

4                   (Laughter.)

5                   CHAIRPERSON GRIFFIS: All right.  
6 I think we have some consensus. I think it's  
7 worth taking our time, even though we look  
8 befuddled up here, but obviously we're looking  
9 at this for the first time going through, and  
10 it's an interesting way of how we will address  
11 this, and we may do it right; we may do it  
12 wrong. We'll learn as we go.

13                   However, fundamentally I think the  
14 decision will hold up. I think at this point  
15 it doesn't make -- and, frankly, we spent a  
16 lot of time off the record figuring out how we  
17 could separate this lot occupancy issue,  
18 variance and special exception, just  
19 fundamentally how do we process it.

20                   Obviously, we're faced with that  
21 again. I think it makes a heck of a lot of  
22 sense to process these together, and looking

1 at the special exception because materially  
2 and factually there is no difference.

3 And when we look at the special  
4 exception under 1324.4 and also 1325.1, we  
5 would look at how at the special exception  
6 relief required, we would look at how it  
7 generally meets the design guidelines.  
8 Forgive me. I keep saying that, but I mean it  
9 this time, and then the design requirements,  
10 and then the specifics of the 1325 provisions  
11 (a) through (f).

12 And I think we definitely have  
13 enough in the record to address all of those  
14 as it relates to the relief being sought under  
15 that specific special exception. That would  
16 hold off the special exception to February for  
17 a building on a lot larger than 6,000 square  
18 feet, which would tend to be redundant on some  
19 of these issues and not so on others.

20 How is the Board's feeling on  
21 that.

22 (Pause in proceedings.)

1 CHAIRPERSON GRIFFIS: Okay. Then  
2 let's step back into it. We were under a  
3 motion, and I think regulatorily we're not  
4 supposed to have discussion when we're in a  
5 motion, but that being said, it's after four,  
6 an we're not being -- well, we are being  
7 broadcast.

8 But anyway, let's get back, in all  
9 seriousness, into the motion that we have  
10 before us, and that is for now, as amended,  
11 the special exception also for the lot  
12 occupancies, as I have indicated.

13 I was talking about the zone  
14 boundary movement relief that was required  
15 under the special exception. I think I may  
16 dispense with that.

17 The residential rec. leads me into  
18 the variance discussion, which will lead into  
19 the lot occupancy, and then we'll finish up  
20 with the special exception and the lot  
21 occupancy element.

22 But I think it is a confluence of

1 elements that's being proposed in this and in  
2 establishing the uniqueness. First of all, it  
3 wasn't directly articulated, but it isn't  
4 always in my mind with something of this  
5 magnitude, but something of mixed use, and  
6 especially this, which is a triple mixed use.  
7 It's kind of the epitome of what good urban  
8 building is and topology is, but it also is  
9 one of the most difficult to do, and we've seen  
10 it numerous ways, but we see it specifically  
11 in this case.

12 So we have the unique factors of  
13 the mixed use. We have the size of a lot, but  
14 also the shape of the lot, which is of  
15 uniqueness and part of the confluence of the  
16 elements of uniqueness.

17 What else do we have?

18 VICE CHAIRPERSON MILLER: We have  
19 the two existing office buildings that they  
20 have to work around.

21 CHAIRPERSON GRIFFIS: Oh, yes,  
22 indeed. We have the existence of the existing

1 structure and their footprint requirements,  
2 and I think there's others to note. I will  
3 get to them as I recall them.

4           Anyway, as I was going to the  
5 confluence of elements for making it  
6 practically difficult to meet those  
7 requirements, we ought to set out first of all  
8 -- how do I want to make this? -- well, I  
9 think we could take in the zone boundary  
10 crossing. Let's talk about some of the shape  
11 and how that would become difficult in  
12 complying fully with the lot occupancy.

13           And also, I'll wrap some of the  
14 residential recreation in. Some of the  
15 practical difficulties expressed in the  
16 residential recreation is the shape and how it  
17 would then relate to the outside area and the  
18 roof area, the difficulties of the mechanical  
19 and the equipments that are there, the access  
20 to it, the differing levels of the roof based  
21 on a lot of the differing massing as you move  
22 back into it.

1                   But as we look at the lot  
2 occupancy, too, and again, there's two  
3 different calculations of what's allowed and  
4 what's met in terms of the variance under 772.  
5 We're looking at the higher density area that  
6 has the 91 percent, which is as opposed to the  
7 C-2-A in the rear portion which has the 58  
8 percent.

9                   Boy, it really comes into some  
10 sort of difficulty in articulating two  
11 different arguments for relief that's required  
12 and give two different situations.

13                   Well, there it is. Let's just lay  
14 it all out there, and we'll decipher this as  
15 we need, but getting it all on the table, I  
16 think in terms of the residential rec., I'm  
17 going to rest with that in terms of not being  
18 able to provide the provision of the roof and  
19 the space, one, with the utilization also on  
20 the first level in terms of the retail and how  
21 much is used in terms of the ratio which is  
22 able to be provided to make viable projects.

1 As you're accommodating differing uses, can  
2 you take away others, meaning can the  
3 residential fall away for the more provision  
4 of retail in the residential rec.?

5 But also then looking at the areas  
6 of which it could be provided are limited, as  
7 has been purported.

8 As we get into the special  
9 exception and the lot occupancy, let's look at  
10 that and the provisions of what would be  
11 required. As we've had testimony this  
12 afternoon, but also in the record, the  
13 provisions for this element have met the  
14 intent of the guidelines in terms of the  
15 design requirements as laid out in 1325,  
16 special exception.

17 Whether the project would be  
18 consistent with the design intent and the  
19 design requirements of 1324, I think that has  
20 also been met.

21 We can look to some of the  
22 elements of the 1324, but it goes to a lot of

1 what has been provided, and that is I think  
2 one of the strongest pieces to this, but also  
3 the one that is directly met, is the extent of  
4 the glazing, but the extent of the retail  
5 animation that is provided on H Street, some  
6 of the elements at 1324 don't necessarily fall  
7 directly into this, but certainly the intent  
8 is met.

9 As we flip back to 1325 and march  
10 down the rest of them in terms of the  
11 architectural design of the project enhancing  
12 the urban design features, the immediate  
13 vicinity, with respect to this specific  
14 special exception as we're taking it, I think  
15 the record is fairly full.

16 Obviously, we have another special  
17 exception and that is dealing with the last  
18 details of the design elements, but if we look  
19 at it on its face for this special exception,  
20 I think all of the elements in terms of the  
21 animation and how it fits in, how it fits into  
22 the intent, but also the direction of the H

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1 Street in terms of the mixed use, I think it  
2 meets that, the requirements of the overlay.

3 The traffic and parking  
4 conditions, there is detail that needs to be  
5 worked out in terms of this, but I don't see  
6 that that either has been evidenced as having  
7 an adverse effect. In fact, there's been  
8 quite a bit of discussion and testimony in the  
9 record of how to easily facilitate such a  
10 large building coming in and out.

11 Whether the curb cut on H Street  
12 moves or not, the elements of the access in  
13 the rear, and then the programming of that and  
14 the loading I think are fundamentally and  
15 materially there.

16 There was not, as I recall, much,  
17 if any, discussion of the noise impact  
18 associated with the operation or how any  
19 adverse effect would be set in, although there  
20 was some discussion of that.

21 Implicit in the setbacks in the  
22 rear of the property, I think that's also

1 addressed in the other areas.

2 Let me just state in terms of the  
3 uniqueness, I think one of the things that  
4 should be satisfactorily put on the record in  
5 our deliberations, certainly in mine, you  
6 know, we can always say in terms of the  
7 uniqueness, well, it's the shape and the size  
8 of the lot.

9 This one, and all the others that  
10 meet those requirements also, but this one is  
11 of particular interest or uniqueness, I should  
12 say, in terms of how much is interior portions  
13 that are surrounded by the alley.

14 And what's fascinating, or maybe  
15 not fascinating, but certainly another element  
16 of the uniqueness is that that's where the  
17 zoning changes when you step back into that  
18 more rear portion.

19 And I think that lends a lot. I'm  
20 stepping essentially out of the special  
21 exception maybe, but certainly in the  
22 practical difficulties of the variance, but I

1 think it affects the special exception  
2 criterion of how we look at the requirements  
3 and the intent of the H Street.

4 I mean, I think the overlay was  
5 intended to facilitate good mixed use projects  
6 and part of actually the criteria of its  
7 uniqueness for the special exception. This  
8 goes directly to. It's hard to animate. It's  
9 hard to utilize those areas in the back  
10 portion, and I think that it's an important  
11 criterion to understand in fleshing this all  
12 out, but I don't see that there is anything in  
13 the record that goes to not support any of the  
14 relief that's required base don those  
15 elements.

16 I'm going to gather my thoughts  
17 more and open it up to others for their  
18 comments on this. Yes, Mr. Etherly.

19 BOARD MEMBER ETHERLY: Thank you  
20 very much, Mr. Chair.

21 I think your initial set of  
22 comments have hit it right on the head as it

1 relates to the relief that we're discussing at  
2 this particular juncture. I think clearly  
3 when you talk about both, of course,  
4 explicitly the variance analysis, but then  
5 also to an extent talking about the special  
6 exception, perhaps some of the grappling that  
7 you did with your language I think is  
8 representative of the challenges that this  
9 project faces in terms of trying to  
10 incorporate existing properties and the close  
11 proximity of a residential district.

12 I think, clearly this project for  
13 me demonstrates some unique circumstances and  
14 some practical difficulties, and I think as  
15 you walk through both of those analyses, I  
16 just really wanted to highlight that for the  
17 record.

18 And then as you kind of close with  
19 a little bit of the discussion about the  
20 interior portion of this property, I think all  
21 of the things that have been done by the  
22 Applicant to date and the testimony that we've

1 received both from the ANC and from the other  
2 parties at issue here clearly speak to, I  
3 think, an adherence to the spirit of the  
4 regulations.

5 As you indicated, as we get back  
6 into the larger discussion under 1320.4 at a  
7 later date, I think that is where we're going  
8 to really begin to see kind of the sum total  
9 of this project in its entirety kind of come  
10 to fruition and come to a closure point.

11 But I think that at this juncture  
12 as we talk about the relief that's being  
13 discussed at this moment, I think the tests  
14 have been adequately met and laid out, and I  
15 think the record has been made full with some  
16 clear indications of plans and efforts to  
17 address the spirit, at minimum, of the test.

18 I'll leave it at that, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Excellent.

20 Thank you.

21 Others?

22 VICE CHAIRPERSON MILLER: I'm just

1 going to be brief because I think you two  
2 basically covered it, but I do think that this  
3 is an instance where the Applicant comes to  
4 a property that already does have existing  
5 buildings and constraints that do constraint  
6 what the Applicant can do, and in fact, the  
7 lot occupancy is dictated somewhat by their  
8 responding to the H Street guidelines, to the  
9 mixed use, to the setting in which it finds  
10 itself, and they responded in a positive way.  
11 And there's been no finding at all of any  
12 substantial detriments at all.

13 With respect to the lot occupancy  
14 variance and with respect to the residential  
15 rec. variance, I know that there are  
16 constraints with respect to varying heights of  
17 the roofs and they are, in fact, providing  
18 meaningful recreation, including a swimming  
19 pool on the roof.

20 With respect to the guidelines, I  
21 think it is difficult to look at this one in  
22 isolation, but certainly looking at the lot

1 occupancy here, I don't believe that it has an  
2 adverse impact on any of these things, such as  
3 parking and traffic or noise or location of  
4 signs, et cetera, that they don't seem to  
5 really affect our consideration too much of  
6 the lot occupancy special exception and that  
7 they will be dealt with in February when we  
8 look at the project as a whole.

9 CHAIRPERSON GRIFFIS: Excellent.

10 Others?

11 COMMISSIONER TURNBULL: Mr.  
12 Chairman, I would just add that I think that  
13 the Applicant -- I think that the piece of  
14 property that we're talking about has a  
15 uniqueness to it. I think the Applicant has  
16 worked extremely well with the neighborhood  
17 organizations, and I think we ought to move  
18 forward with the relief requested.

19 CHAIRPERSON GRIFFIS: Excellent.

20 Thank you.

21 Others?

22 (No response.)

1                   CHAIRPERSON GRIFFIS:  If there's  
2                   nothing further, then I believe we have  
3                   addressed the standards for the special  
4                   exception, the H Street overlay, which is  
5                   under 1325, but also those with the compliance  
6                   to the standards of the special exception,  
7                   1325 and 1324.

8                   We haven't gone through all of the  
9                   elements of the design guidelines, but have  
10                  indicated the intent has been met with the  
11                  design guidelines in terms of the building  
12                  envelope, the architectural design, the  
13                  vehicle access.

14                  It's kind of interesting as you  
15                  look at this more and more.  What's in the  
16                  regulations really does reiterate those  
17                  elements that are in the design guidelines.

18                  Very well.  If there's nothing  
19                  further then, I believe we can move forward.  
20                  We do have a motion.  It has been seconded.  
21                  If there's no further deliberation or comments  
22                  on that, I'd ask for all those in favor of the

1 motion signify by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: And opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Abstaining?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well.

8 Let's record the vote.

9 MS. BAILEY: Mr. Chairman, the  
10 vote is recorded as five, zero, zero, motion  
11 made by Mr. Griffis, seconded by Mr. Etherly.  
12 Mr. Mann, Ms. Miller, and Mr. Turnbull support  
13 the four areas for relief that were discussed  
14 by the Board.

15 CHAIRPERSON GRIFFIS: Excellent.

16 Thank you very much.

17 Very well. Is there anything else  
18 for the Board's business today?

19 MS. BAILEY: No, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Okay. I  
21 think we've muddled through that quite  
22 completely. Well, there it is. Obviously, we

1 have a decision on four of the elements.  
2 We'll look to February for a continuation of  
3 the deliberation, and we will be a little bit  
4 redundant.

5 Of course, we set out the -- I  
6 don't need to set up or discuss the  
7 submissions. Everyone is clear on that; is  
8 that correct? If we have additional  
9 submissions coming in? Okay.

10 Any other questions or procedural  
11 questions I can answer?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Very well,  
14 if there's nothing, if there's no other  
15 business, why don't we adjourn?

16 Thank you all very much.

17 (Whereupon, at 6:17 p.m., the  
18 public hearing was concluded.)