

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 26, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- RUTHANNE G. MILLER, Chairperson
- MARC D. LOUD, Vice Chairman
- MARY OATES WALKER, Board Member
- SHANE L. DETTMAN, Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- BEVERLY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON  
PAUL GOLDSTEIN  
STEVE COCHRAN  
JOHN MOORE

The transcript constitutes the minutes from the Public Hearing held on February 26, 2008.

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P R O C E E D I N G S

[9:59 A.M.]

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. This hearing will please come to order.

This is the February 26, 2008 morning public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the Chair of the BZA.

To my right is Mr. Marc Loud, he's the Vice Chair, and to my left is Ms. Mary Oates Walker and Shane Dettman, Board members, and next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning and Ms. Beverly Bailey from the Office of Zoning, and joining us shortly will be Sherry Glazer from the Office of the Attorney General.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this

1 proceeding is being recorded by a court  
2 reporter and is also Webcast live.

3 Accordingly, we must ask you to  
4 refrain from any disruptive noises or actions  
5 in the hearing room. When presenting  
6 information to the board, please turn on and  
7 speak into the microphone, first stating your  
8 name and home address. When you're finished  
9 speaking, please turn your microphone off, so  
10 that your microphone is no longer picking up  
11 sound or background noise.

12 All persons planning to testify  
13 either in favor or in opposition are to fill  
14 out two witness cards.

15 These cards are located to my left  
16 on the table near the door and on the witness  
17 tables. Upon coming forward to speak to the  
18 board, please give both cards to the reporter  
19 sitting to my right.

20 The order of procedure for special  
21 exceptions and variances is as follows. One,  
22 statement and witnesses of the Applicant.

1 Two, government reports, including Office of  
2 Planning, Department of Public Works, DDOT,  
3 etcetera. Three, report of the Advisory  
4 Neighborhood Commission. Four, parties or  
5 persons in support. Five, parties or persons  
6 in opposition. Six, closing remarks by the  
7 Applicant.

8 Pursuant to sections 3117.4 and  
9 3117.5 of our regulations, the following time  
10 constraints will be maintained.

11 The Applicant, persons and  
12 parties, excepting ANC, in support, including  
13 witnesses, 60 minutes, collectively. Persons  
14 and persons, excepting ANC, in opposition,  
15 including witnesses, 60 minutes, collectively.  
16 Individuals, three minutes.

17 These time restraints do not  
18 include cross examination and/or questions  
19 from the board. Cross examination of  
20 witnesses is permitted by the Applicant or  
21 parties. The ANC within which the property is  
22 located is automatically a party in a special

1 exception or variance case.

2 Nothing prohibits the board from  
3 placing reasonable restrictions on cross  
4 examination, including time limits and  
5 limitations on the scope of cross examination.

6 The record will be closed at the  
7 conclusion of each case, except for any  
8 materials specifically requested by the board.

9 The board and the staff will  
10 specify at the end of the hearing exactly what  
11 is expected, and the date when the persons  
12 must submit the evidence to the Office of  
13 Zoning.

14 After the record is closed, no  
15 other information will be accepted by the  
16 board.

17 The Sunshine Act requires that the  
18 public hearing in each case be held in the  
19 open before the public.

20 The board may, consistent with its  
21 rules of procedure, and the Sunshine Act,  
22 enter executive session during or after the

1 public hearing on a case, for purposes of  
2 reviewing the record or deliberating on the  
3 case.

4 The decision of the board in these  
5 contested cases must be based exclusively on  
6 the public record. To avoid any appearance to  
7 the contrary, the board requests that persons  
8 present not engage the members of the board in  
9 conversation.

10 Please turn off all beepers and  
11 cell phones at this time, so as not to disrupt  
12 these proceedings.

13 The board will now consider any  
14 preliminary matters. Preliminary matters are  
15 those which relate to whether a case will or  
16 should be heard today, such as requests for  
17 postponement, continuance or withdrawal, or  
18 whether proper and adequate notice of the  
19 hearing has been given.

20 If you're not prepared to go  
21 forward with a case today, or if you believe  
22 that the board should not proceed, now is the

1 time to raise such a matter.

2 Does the staff have any  
3 preliminary matters?

4 MS. BAILEY: Madam Chair, members  
5 of the board, to everyone, good morning.  
6 Staff does not.

7 CHAIRPERSON MILLER: Then let's  
8 proceed with the agenda.

9 Would all individuals wishing to  
10 testify today please rise to take the oath,  
11 and Ms. Bailey will administer it.

12 [Oath administered, en masse]

13 MS. BAILEY: Thank you.

14 CHAIRPERSON MILLER: Thank you.

15 Will you call the first case,  
16 then, Ms. Bailey.

17 MS. BAILEY: Madam Chair, the  
18 first case is Application No. 17721 of Camden  
19 Development, Inc., through NOMA Development  
20 LLC, pursuant to 11 DCMR 3104.1, for a special  
21 exception from the roof structure design  
22 provisions under subsections 400.7, 411.3,

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1 411.5, and 411.11, to allow the construction  
2 of a new 14-story apartment building in the C  
3 -- C District at premises 60 L Street, N.E.  
4 The square is 673 and it's lot 841. Thank  
5 you.

6 CHAIRPERSON MILLER: Thank you.  
7 Good morning, and whenever you're ready, would  
8 you introduce yourselves for the record,  
9 please.

10 MS. RODDY: Good morning. My name  
11 is Christine Roddy, and I'm with the law firm  
12 of Pillsbury Winthrop Shaw Pittman, and with  
13 me Topher Cushman with Camden Development as  
14 well as John Epting with Pillsbury, and Buddy  
15 Woerner with WDG Architecture.

16 Would you like us to proceed with  
17 our case?

18 CHAIRPERSON MILLER: Sure. This  
19 is all about setbacks, so --

20 MS. RODDY: Correct.

21 CHAIRPERSON MILLER: -- if you  
22 want to proceed and show us why you're seeking

1 the setback relief, that'd be great.

2 MS. RODDY: Sure. As a  
3 preliminary matter, we'd like to present Mr.  
4 Woerner as an expert in architecture, and we  
5 provided his resume as Exhibit C to the  
6 prehearing statement. He's available, should  
7 you have any questions regarding his  
8 experience.

9 CHAIRPERSON MILLER: Have you  
10 participated in a BZA proceeding before, or a  
11 Zoning Commission proceeding?

12 MR. WOERNER: No, ma'am. I've sat  
13 in the audience.

14 CHAIRPERSON MILLER: Okay. Do  
15 board members have any questions or concerns?

16 Okay. Based on your resume, we're  
17 happy to qualify you as an expert witness in  
18 architecture.

19 MR. WOERNER: Thank you.

20 CHAIRPERSON MILLER: Okay.

21 MS. RODDY: We're here this  
22 morning for the application of Camden

1 Development through NOMA Development LLC for  
2 a special exception relief for a residential  
3 building. They're seeing relief to provide  
4 more than one rooftop structure and rooftop  
5 structures of varying heights.

6 Camden is constructing a building,  
7 a residential building on L Street, between  
8 North Capitol Street and 1st Street, N.E.

9 The site is an interior lot. It  
10 is located in the C-3-C Zone District and is  
11 within the NOMA Business Improvement District.

12 The building will be constructed  
13 in two phases, and in the end, there will be  
14 a total of seven rooftop structures.

15 Our prehearing statement had  
16 indicated that there would be six rooftop  
17 structures but we have determined that an  
18 additional freight elevator is needed during  
19 the second phase of development, which would  
20 bring the total to seven structures.

21 So that would be three rooftop  
22 structures for stairways to provide access and

1 egress for residents, two rooftop structures  
2 for elevator overruns for the residents, and  
3 two rooftop structures for the freight  
4 elevators.

5 The height of the rooftop  
6 structures would range from 6 feet 9 inches to  
7 17 feet.

8 This application satisfies the  
9 standard for special exception relief set  
10 forth under sections 411 and 3104.

11 The project is in harmony with the  
12 general purpose and intent of the zoning  
13 regulations and zoning maps, and will not have  
14 a substantially adverse effect on the use and  
15 enjoyment of neighboring properties, including  
16 their light and air.

17 In fact, one of the reasons why  
18 Camden is proposing this roof plan is because  
19 they think that it is less intrusive and less  
20 cumbersome than providing an overly large  
21 rooftop structure, which would be the  
22 alternative.

1 I would like to address one issue  
2 that was raised in the Office of Planning  
3 report and that was whether we needed relief  
4 for the two stairways, the rooftop structures  
5 on the west side of the building. And we  
6 don't believe that we do. The zoning  
7 regulations provide that all rooftop  
8 structures be set back from an exterior wall  
9 at a one to one ratio, and those rooftop  
10 structures are not set back in a one to one  
11 ratio, but we do not believe that that wall is  
12 an exterior wall.

13 It is located along an interior  
14 lot line, and it's also a party wall with the  
15 adjacent property, and in the 2005 Kalorama  
16 Citizens Association appeal, the board found  
17 that, quote, "The term exterior wall has not  
18 been interpreted to apply to a side wall  
19 constructed to the lot line of abutting  
20 property."

21 Accordingly, we do not believe  
22 that the western wall is an exterior wall and

1 that is why we have not pursued the relief for  
2 those two structures.

3 Camden will have two witnesses  
4 testifying on its behalf today, Topher Cushman  
5 and Buddy Woerner, and with that, I will turn  
6 it to Topher.

7 MR. CUSHMAN: Good morning. My  
8 name is Topher Cushman. I'm here with Camden  
9 Development as a developer of the project at  
10 60 L Street, N.E. To tell you a little bit  
11 about Camden, we're a publicly-traded Real  
12 Estate Investment Trust based out of Houston,  
13 Texas. Camden has developed holds and manages  
14 approximately 62,000 apartment units  
15 nationwide. In the D.C. Metro area, Camden  
16 has 20 years of history, of development and  
17 management of apartments. Currently, we  
18 manage 5,000 units in the D.C. Metro area.

19 Here, in the District, we  
20 currently own and manage The Roosevelt at 16th  
21 and U Streets, N.W. and the Grant Park at 15th  
22 and I Streets, N.W.

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1                   We also have a project about to  
2 break ground at 1345 South Capitol Street,  
3 S.W., across from the new Nationals baseball  
4 stadium and are hoping to start construction  
5 on the development we're here to discuss today  
6 at 60 L Street, N.E., this upcoming summer.

7                   With respect to 60 L Street and  
8 the relief we're asking for this morning, over  
9 the past two months Christine and I have met  
10 with an received unanimous support from ANC  
11 6C's Planning and Zoning Committee as well as  
12 the full ANC, and most recently, we met with  
13 Arthur Jackson and Travis Parker at the Office  
14 of Planning to brief them on the details of  
15 our case. We've also received their support  
16 of our application.

17                   Thank you.

18                   MS. RODDY: And now Mr. Woerner  
19 will walk through the rooftop structures that  
20 we are providing.

21                   MR. WOERNER: Good morning. My  
22 name is Buddy Woerner, WDG Architecture, the

1 architect for the project. Just touching  
2 quickly, without being too redundant, on the  
3 site we are a two-phase residential  
4 development with Phase I fronting on L street,  
5 Phase II fronting on Pierce Street.

6 I wanted to point out as well the  
7 location of loading and garage access for the  
8 first phase building, and the main entrance to  
9 the Phase I building.

10 Similarly, for Phase II, we would  
11 have garage access and loading off of Pierce,  
12 and a main entrance in a similar location to  
13 the Phase I project.

14 Again, reviewing the fact that we  
15 have five additional rooftop structures, in  
16 addition to the two that we're permitted to  
17 have, beginning with Phase I, the passenger  
18 elevator override here is at 17 feet above the  
19 main roof. This is a structure of varying  
20 height, where we drop the balance of this  
21 enclosure down to 11 feet above the main roof.  
22 We have two stair enclosures in Phase I, which

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1 are at 11 feet above the main roof, and a  
2 single enclosure here which accommodates the  
3 override for the freight elevator.

4 In Phase II, similarly, we have a  
5 single enclosure here of varying height with  
6 a passenger elevator at 17, dropping down to  
7 11 for the balance of that enclosure, a single  
8 stair enclosure to the west, and a single  
9 override enclosure, again, for the freight  
10 elevator.

11 The locations of these -- I'll  
12 just run through what's dictating the location  
13 of these enclosures. The freight elevator in  
14 both phases is dictated by the ground floor  
15 loading and service location. The stair  
16 enclosures are dictated by two items, the  
17 occupant load of the roof as well as  
18 separation distance per the building code.

19 Similarly, with the stair located  
20 in Phase II, and to reiterate what Christine  
21 said with regard to multiple enclosures as  
22 opposed to a large mass, we've utilized the

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1 space on the roof much better, having multiple  
2 enclosures as opposed to a sort of  
3 unnecessarily massive enclosure that would  
4 result from a single uniform enclosure.

5 We're dropping the height, again,  
6 where possible, to minimize the appearance and  
7 the impact, too, on neighboring properties.  
8 We believe the relief is not causing adverse  
9 effect to neighboring properties, specifically  
10 related to light and air.

11 Thank you.

12 CHAIRPERSON MILLER: I have a  
13 question about the phasing issue. You have  
14 the roof plans showing the structures that you  
15 need developed in order for us to approve the  
16 relief you're seeking, but you don't have the  
17 building plans ready for the building; is that  
18 correct?

19 MR. WOERNER: Actually, we have  
20 taken both phases through a design development  
21 stage and the owner elected to take only Phase  
22 I through construction document phase at this

1 time. However, both phases are planned.

2 CHAIRPERSON MILLER: Okay. And  
3 can you address why you need the relief from  
4 the regulations in order to have the phasing.

5 I mean, you're asking for relief  
6 in your application. I believe normally,  
7 there's a two year period from when the plans  
8 are filed. So when do you anticipate filing  
9 the plans for Phase II?

10 Am I interpreting correctly?

11 MR. CUSHMAN: Phase II plans  
12 probably wouldn't be ready to submit until  
13 2009, beginning of 2009.

14 CHAIRPERSON MILLER: And can you  
15 just elaborate a little bit about the  
16 connection between the two buildings that's  
17 planned?

18 MR. CUSHMAN: The connection  
19 between our two phases?

20 CHAIRPERSON MILLER: No. Between  
21 the two buildings, which affects the  
22 measurement of the height.

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1                   MR. CUSHMAN: Right. We have --  
2                   there are two office buildings being built by  
3                   another developer to our east and we are on  
4                   the same lot, we share a lot, and the  
5                   connections, we'll have an above-grade  
6                   connection between the two buildings.  
7                   Depending on the timing of -- they're also in  
8                   a two phase development, so depending on the  
9                   timing and how the buildings are built, it's  
10                  up in the air, exactly when or how the  
11                  connection will be made.

12                  But right now, the plan is for  
13                  Phase II connection on Pierce Street to be the  
14                  connection between our buildings and their  
15                  buildings.

16                  MR. EPTING: I'm John Epting.  
17                  Tishman Speyer is the developer of the office  
18                  buildings and we have a single record lot  
19                  agreement with them, and they have the  
20                  responsibility to do a meaningful connection  
21                  and get it approved by the Zoning  
22                  Administrator.

1           So we understand the issue there.  
2           But that's -- we think that's really a Zoning  
3           Administrator issue, and they are meeting with  
4           the Zoning Administrator, ongoing, to come up  
5           with what the connection should be.

6           But before we pull a permit and  
7           get to see a connection, we'll have to be  
8           established with the Zoning Administrator.

9           MEMBER     DETTMAN:  You had  
10          mentioned, just now, that both the residential  
11          building that we're looking at and the office  
12          buildings that are being constructed by  
13          Tishman Speyer, which essentially is four  
14          buildings, or four structures, they're on one  
15          record lot?

16          MS. RODDY:  That is correct. and  
17          we have established an agreement, a single  
18          record lot agreement for those buildings.

19          MEMBER   DETTMAN:  Okay.  I know  
20          it's a little bit nebulous right now but any  
21          idea of what this connection might look like,  
22          feel like, perform like?

1 MR. EPTING: No. I mean, I think  
2 we all know what "the drill" is now, and Matt  
3 LeGrant clearly knows what he wants, but I  
4 don't think we can speculate. Like I said,  
5 Tishman Speyer has taken the lead on that and  
6 it will be a genuine, meaningful connection.  
7 But as far as that, until they lay the  
8 groundwork, we don't really know.

9 MEMBER DETTMAN: And you're  
10 looking to establish this connection so you  
11 can pull your height from 1st Street; is that  
12 correct?

13 MR. EPTING: That's correct.

14 MEMBER DETTMAN: And just a very  
15 quick hypothetical. If we were to pretend  
16 that North Capitol Street was not where it  
17 was, which is a very wide street, which allows  
18 a high building -- but if that was a 90 foot  
19 street, presumably the property owner to the  
20 west could build the building, connect to you  
21 residential building and pull from 1st Street.  
22 And all the way down the line. Is that right?

1 And so essentially, they're -- this is a  
2 hypothetical. If we were to build three more  
3 buildings and continue creating this  
4 connection, we're building 130-foot buildings  
5 measured from 1st Street, on a street, L  
6 Street, that only allows 110 foot building.

7 And you've established already in  
8 your testimony that your main entrance is  
9 going to be on L Street.

10 MR. EPTING: That's correct.  
11 We're on the one record lot and you can pick  
12 your front for height purposes.

13 MEMBER DETTMAN: Okay.

14 CHAIRPERSON MILLER: Are there any  
15 other questions?

16 Do you have any other presentation  
17 before we go to Office of Planning?

18 [No response]

19 CHAIRPERSON MILLER: Okay. Good  
20 morning, Mr. Jackson.

21 MR. JACKSON: Good morning, Madam  
22 Chair, and members of the board. My name is

1 Arthur Jackson. I'm a development review  
2 specialist with the District of Columbia  
3 Office of Planning. You have before you an  
4 Office of Planning report. I guess just to  
5 clarify what relief's being requested, there's  
6 a total of eight roof structures on both  
7 buildings -- four on each building.

8 MR. WOERNER: Seven total  
9 structures.

10 MR. JACKSON: Seven. Okay. So  
11 roof structures on the two buildings, and the  
12 Office of Planning acknowledges that two of  
13 the roof structures relative to the elevator  
14 cores are covered by the zoning regulations as  
15 allowable, such that the other roof structures  
16 are additional to the -- are in addition to  
17 that.

18 And Office of Planning  
19 acknowledges that the -- in our report, we  
20 acknowledge the Applicant's explanation about  
21 what happens, what is the condition of the two  
22 stair cores, structures, that are along the

1 western wall of the building, of both  
2 buildings. However, we thought it would,  
3 depending on -- so that we covered that base  
4 in case the board decided that their  
5 explanation was not sufficient, we did do the  
6 analysis to determine whether or not it'd be  
7 eligible for relief.

8 So in our report, we went through  
9 the analysis, and briefly, I'll just summarize  
10 our recommendation, was that we recommend  
11 that if the board determine that relief was  
12 required for the two stair towers along the  
13 western wall, that we think they were eligible  
14 for relief, and if the other separate roofing  
15 structures should be allowed, and that the  
16 varying heights, the explanation of the  
17 varying heights was sufficient.

18 Now that is a brief summary of the  
19 Office of Planning report, but we are still  
20 here to answer questions, and we'll open the  
21 mike for that purpose.

22 CHAIRPERSON MILLER: Do you want

1 to elaborate, at all, as to why Office of  
2 Planning thinks that relief is required for  
3 the setback along the western wall in light of  
4 the board's Kalorama decision, on which the  
5 Applicant is relying.

6 MR. JACKSON: Yes. Well, the  
7 Applicant presented that decision but even in  
8 the Applicant's application, they indicated if  
9 -- the supplemental application -- they  
10 indicated if the board decided not to go with  
11 that decision, they would still like the  
12 relief.

13 In essence, we're following  
14 through with our responsibility to give, make  
15 sure the Zoning Commission, the board was  
16 informed on whether or not it would meet the  
17 requirements, and with that background, we  
18 decided that based on the analysis, it's  
19 obvious that these elements, based on the  
20 requirements of the building code, and their  
21 location relative to the hallways that they  
22 serve, this was a necessary change in the --

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1 well, in conformity, nonconformity with the  
2 existing regulations.

3 So any way the board would go,  
4 you'd have the Office of Planning's, the  
5 benefit of the Office of Planning's analysis.

6 CHAIRPERSON MILLER: Any other  
7 questions?

8 MEMBER DETTMAN: Good morning, Mr.  
9 Jackson. Would you happen to know if the new  
10 D.C. Comprehensive Plan addresses this at all,  
11 in terms of using, or considering party walls  
12 as nonexterior walls? I thought maybe I saw  
13 something in the Comprehensive Plan that  
14 talked about party walls and actually  
15 considering those exterior walls. And I may  
16 be completely incorrect.

17 MR. JACKSON: I'm not aware of any  
18 provision that addresses that.

19 MEMBER DETTMAN: Okay. Just  
20 quickly, I think a couple weeks ago, we had a  
21 case, similar case with roof structure  
22 setbacks, and for the first time in a long

1 time, we saw DCOP analyze that case as a  
2 variance, because 411.2, in DCOP's testimony  
3 -- it was Mr. Jesick -- 411.2 didn't fall  
4 under 411.11.

5 And I was just wondering if you  
6 could maybe just explain why we've seen  
7 another change in interpretation.

8 MR. JACKSON: Let me briefly  
9 review 411.2.

10 CHAIRPERSON MILLER: What change  
11 are you referring to in this case?

12 MEMBER DETTMAN: Well, it was the  
13 Hotel Washington case.

14 CHAIRPERSON MILLER: In this case,  
15 though.

16 MEMBER DETTMAN: In this case --  
17 and this goes to the question of special  
18 exception versus variance and I just want to  
19 get clarity from DCOP, that they've decided to  
20 analyze this roof structure setback relief as  
21 a special exception.

22 However, in the testimony for the

1 Hotel Washington case, again, it was Mr.  
2 Jesick that said DCOP feels that 411.2 does  
3 not fall under 411.11, which would qualify  
4 that as a variance instead of a special  
5 exception, and i just wanted to see -- in that  
6 case I had asked the question on whether or  
7 not we had seen a new interpretation from DCOP  
8 or if we should anticipate some level of  
9 inconsistency from DCOP on this  
10 interpretation, and I just wanted to get that  
11 clarity from Mr. Jackson.

12 MR. JACKSON: Well, having not  
13 been involved with that case, and having  
14 reviewed the issues relative to this case, I  
15 think this application and the request for  
16 relief very much falls under 411.11 and that  
17 it is subject to special exception. I can't  
18 make any other reference to the other case.

19 MEMBER DETTMAN: So that would  
20 sort of mean indirectly, from what I'm  
21 hearing, is that 411.2, which specifically  
22 speaks to roof structure setbacks, what you're

1 saying now is that 411.2 is somehow  
2 incorporated into 411.11, which qualifies it  
3 as a special exception.

4 MR. JACKSON: Well, actually, I  
5 was dealing with 400.7A.

6 MEMBER DETTMAN: We're looking to  
7 grant roof structure setback relief from  
8 400.7; however, we're looking in -- this is a  
9 technicality -- but it's in a commercial  
10 zone, which I think more appropriately we  
11 should be --

12 MR. JACKSON: I see.

13 MEMBER DETTMAN: Whatever relief  
14 we're granting, it should be from 470.6.

15 MR. JACKSON: I got you. Okay.

16 MEMBER DETTMAN: And again, that's  
17 a technicality. Or 770.6, I think; yes.  
18 770.6 is the roof structure setback  
19 requirement for commercial districts.

20 MR. JACKSON: Yes.

21 MEMBER DETTMAN: Just continuing  
22 on with my question --

1 MR. JACKSON: Sure.

2 MEMBER DETTMAN: -- I think what  
3 you're saying is that 411.2, which talks about  
4 regardless of where the roof structure is  
5 located, either below, at the same roof level,  
6 or above the top floor, the one-to-one setback  
7 requirements of 770.6 in this case apply.

8 Two weeks ago, DCOP read that as  
9 being a variance but now, what I'm hearing is  
10 that 411.2, in DCOP's eyes, falls under the  
11 special exception provision of 411.11.

12 MR. JACKSON: Again, I can't  
13 really answer that question in that my  
14 analysis did not expand to that larger  
15 question, so -- now if you would like the  
16 Office of Planning to respond to that with a  
17 supplemental to this application, we can do  
18 that.

19 MEMBER DETTMAN: It's not  
20 necessary. Thank you.

21 MR. JACKSON: You're welcome.

22 CHAIRPERSON MILLER: Does the

1 Applicant want to respond to Mr. Dettman's  
2 statement, that you should be seeking relief  
3 under 770.6?

4 MS. RODDY: Well, in responding to  
5 the 411.2 question, since we don't take the  
6 position that we need relief for the setback,  
7 I think that that alleviates any need --  
8 alleviates the issue of whether it's a special  
9 exception or a variance, and that would be our  
10 response to that.

11 And I believe the section 770,  
12 that just refers us back to the residential --  
13 right -- so that's how we interpreted that as  
14 well.

15 MR. JACKSON: Madam Chair, we  
16 would agree that although the analysis we  
17 performed was based on provisions that are in  
18 the 400.7, 411.3, 411.5, we would agree that  
19 we should technically have requested relief  
20 from -- we should technically have used or  
21 specifically referred to provisions under  
22 770.6. So we'll stipulate that's correct.

1                   CHAIRPERSON MILLER: Okay. My  
2 question is, you know, we just want to  
3 consider the relief that we should be  
4 considering today, so I just want to know  
5 whether also the Applicant thinks that it --  
6 you know -- should the application be amended  
7 to include 770.6? Or it is encompassed in  
8 411?

9                   MEMBER DETTMAN: I think if it's  
10 determined that -- if the board determines  
11 that relief from the setback requirements is  
12 necessary, and the Applicant believes that  
13 they don't need it because they see this as a  
14 party wall, but OP provided us with the  
15 analysis -- but if the board determines that  
16 the setback relief is required, the  
17 appropriate relief, because this is a  
18 commercial district, would be 770.6.

19                   CHAIRPERSON MILLER: I'm sorry.  
20 Okay. I see it now. 770.6 is only talking  
21 about setbacks, and you're not seeking relief  
22 from the setback requirement. So that's why

1 you didn't ask for it. Okay. So it doesn't  
2 affect the relief you're seeking with respect  
3 to multiple enclosures and enclosures of  
4 unequal heights. Okay.

5 Anything else for the Office of  
6 Planning?

7 [No response]

8 CHAIRPERSON MILLER: Is anybody  
9 here from the ANC?

10 [No response]

11 CHAIRPERSON MILLER: We do have a  
12 letter from the ANC, which looks like it meets  
13 the great weight requirements, they had a  
14 regularly scheduled meeting with a quorum, and  
15 they voted, unanimously, nine to zero, to  
16 support the project. Okay. And that's our  
17 Exhibit No. 23.

18 And is there anybody here who  
19 wishes to testify in support of this  
20 application?

21 [No response]

22 CHAIRPERSON MILLER: Anybody here

1 wishes to testify in opposition?

2 [No response]

3 CHAIRPERSON MILLER: Okay. Other  
4 questions for the Applicant?

5 [No response]

6 CHAIRPERSON MILLER: I do want to  
7 just peruse your request -- let me just, you  
8 know, read it, so you know what I'm talking  
9 about, exactly. But your final statement in  
10 your application says that you requested an  
11 order of approval include a condition vesting  
12 the entire project upon receipt of the  
13 building permit for the first phase of  
14 construction.

15 And so my question is why are you  
16 seeking this kind of special vesting  
17 condition?

18 What regulation is it tied to? It  
19 looks like it might be tied to 3130.1, which  
20 talks about an order of the board not being  
21 valid for more than two years after -- maybe  
22 I'll read it. 3130.1.

1                    "No order of the board authorizing  
2                    the erection or alteration of a structure  
3                    shall be valid for a period longer than two  
4                    years, or one year for an electronic equipment  
5                    facility, unless within such period the plans  
6                    for the erection or alteration are filed for  
7                    the purposes of securing a building permit."

8                    So I understand you're building  
9                    this in two phases, and I started to ask you  
10                    earlier, you know, when you anticipated the  
11                    second phase.

12                    Do you anticipate going beyond  
13                    this two year period? Because when I asked  
14                    the question earlier, I heard something about  
15                    2009.

16                    So if we're going to give you  
17                    relief from this regulation, we just want to  
18                    have a better understanding of exactly what  
19                    the plans are.

20                    MS. RODDY: Okay. Well, he had  
21                    indicated 2009, but as we all know, there may  
22                    be issues that arise. We would like to have

1 it vested now, so that we can pursue these  
2 plans, knowing that the second phase are  
3 shared as well, and that we will have approval  
4 for the entire project at this point.

5 The 2009 timeline, that is not a  
6 strict timeline. There may be some issues  
7 that arise, that would push that date back,  
8 and given the closeness of it, we would just  
9 like the assurance, at this point, that it  
10 would be approved altogether at one time.

11 CHAIRPERSON MILLER: Okay.

12 MR. EPTING: And if I could add, I  
13 mean, the market conditions are changing and,  
14 you know, we're looking out over the next two  
15 years and we hope the market's going to  
16 rebound a bit from where it is. But I mean,  
17 that's the other part of this. It is market-  
18 driven, and they clearly want to build it as  
19 soon as possible.

20 But it would seem a shame to have  
21 this approval and then have to come back three  
22 years from now to sort of get the same

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1 approval again for the same project.

2 CHAIRPERSON MILLER: Right. Okay.  
3 Well, so the first phase is going to commence  
4 within two years. There's no issue about  
5 that. I think in the past, we just haven't  
6 had this kind of wide open, okay, it's vested  
7 forever, whenever you want to build it.

8 So I think what might make sense  
9 is if you can give us a number of years that  
10 you're comfortable with at least, you know,  
11 will be within -- that's what -- I'm looking  
12 back at other orders that the board has done,  
13 and they've been based on, you know,  
14 reasonable estimates of when they intend to  
15 build.

16 MR. CUSHMAN: It's hard to say  
17 with certainty, but, you know, hopefully we  
18 can say that within five years, we could be  
19 back, the market would support it and we'd be  
20 building it. The problem is that if it's  
21 subject to review again, you know, the design  
22 for the first phase would lend itself to the

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1 second phase, and that we can't really leave  
2 that open, wide open to, you know, all of a  
3 sudden now, we need a setback for a stairwell  
4 and we can't put our hallways that connect to  
5 the first phase in the same location.

6 So that's the issue and that's why  
7 we kind a -- that's why we would like to have  
8 some certainty as to where we're going to end  
9 up with on the second phase and first phase,  
10 as one package.

11 MR. WOERNER: Ultimately, the two  
12 phases will function as one building with  
13 corridors being continuous throughout the two  
14 phases.

15 CHAIRPERSON MILLER: Is it  
16 possible that you would just build Phase I and  
17 then the market conditions would just not  
18 suggest that you proceed with Phase II?

19 MR. CUSHMAN: I mean, our  
20 intention is to build both phases. The market  
21 can only support so many apartments and right  
22 now, we know we're comfortable going forward

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1 with Phase I. Hopefully, we'll be comfortable  
2 with going forward with Phase II in the near  
3 future. But I can way that, you know,  
4 eventually, yes, Phase II will be built.  
5 That's our plan.

6 MR. EPTING: And I think if you  
7 look at -- I mean, they've spent a lot of  
8 money and time on Phase I, and they've spent  
9 almost as much money already on Phase II, and  
10 they do have three other projects in D.C. So  
11 I mean, they're here to stay, so -- I think  
12 they can't predict the market, completely, but  
13 they certainly want to build this project.

14 CHAIRPERSON MILLER: Okay. I  
15 think this is something the board might want  
16 to think about. But is there, for instance,  
17 a number that would work, you know, like seven  
18 years or ten years, that's a finite number,  
19 you know, that would work? I mean, if you're  
20 going to build it, would you build it within  
21 seven years or ten years?

22 MR. CUSHMAN: We would like to

1 build it and, you know, we'd like to start in  
2 two years. I can't predict the future and I  
3 can't predict what the market will bear.

4 CHAIRPERSON MILLER: Mr. Epting,  
5 maybe you're familiar with this, but based on  
6 my, you know, quick review of precedent, we  
7 have put a limit, a number of years in it, and  
8 so I would pause, you know, to step outside of  
9 that precedent. We could, you know, wait and  
10 look at that, or we could come up with a  
11 number right now; you know.

12 MR. EPTING: I think we'd like to  
13 come up with a number, so we can reach a  
14 decision today. So if you'll just give us one  
15 second on that.

16 [Pause]

17 MR. CUSHMAN: Can we say we'll  
18 build, or be in for permanent second phase  
19 within ten years?

20 CHAIRPERSON MILLER: Okay. Any  
21 other questions from the board?

22 [No response]

1                   CHAIRPERSON MILLER: Any closing  
2 remarks?

3                   MS. RODDY: Well, we believe that  
4 our testimony here today and our prehearing  
5 statement, as well as the application, have  
6 thoroughly described and gone into detail on  
7 the relief that we're requesting, and based on  
8 the support from the Office of Planning as  
9 well as the ANC, we would request a bench  
10 decision and summary order for this  
11 application.

12                   CHAIRPERSON MILLER: Okay; thank  
13 you. Okay. I would move approval of  
14 application No. 17721 of Camden Development,  
15 Inc. through NOMA Development LLC, pursuant to  
16 11 DCMR, section 3104.1, for a special  
17 exception from the roof structure design  
18 provisions under subsections 400.7, 411.3,  
19 411.5, and 411.11, to allow the construction  
20 of a new 14-story apartment building at  
21 premises 60 L Street, N.E.

22                   In particular, the Applicant is

1 seeking relief from the requirements  
2 prohibiting multiple structures and structures  
3 of unequal heights, and I think this is very,  
4 very straightforward case. The Applicant  
5 presented visually to us today, that there are  
6 going to be seven roof structures on this  
7 building and that their location is dictated  
8 by stairs and loading places, and freight and  
9 building code, and the unequal heights  
10 actually improves the aesthetics because it  
11 allows them to make them lower and less  
12 visible, where possible, and it would be  
13 massive to have all of them enclosed, if not  
14 impossible in one enclosure.

15 So I think that that basically  
16 addresses the relief that they're seeking, and  
17 does anybody else have any other comments on  
18 the basic relief that's being sought?

19 [No response]

20 CHAIRPERSON MILLER: This is being  
21 done in two phases. They've asked that there  
22 be an extension of time, basically seeking

1 relief from 3130.1 to allow a longer time for  
2 the development of Phase II based on the  
3 market conditions.

4 So therefore Phase I would be  
5 completed within the two year requirement set  
6 forth in 3130.1, and Phase II would be  
7 extended, to be completed within ten years of  
8 the date of this order.

9 Any other comments?

10 VICE-CHAIRMAN LOUD: I just wanted  
11 to note, Madam Chair, if you did not, that the  
12 ANC did "weigh in" at our Exhibit 2, they  
13 voted to support it, and even though they're  
14 not present today, that is entitled to great  
15 weight.

16 CHAIRPERSON MILLER: That's right;  
17 yes. I did address it earlier but we didn't  
18 address it in the deliberation, and of course  
19 the Office of Planning also is in support.

20 Any other comments?

21 [No response]

22 CHAIRPERSON MILLER: Okay. Then

1 all those in favor say aye. Aye.

2 [Chorus of ayes]

3 CHAIRPERSON MILLER: all those  
4 opposed?

5 All those abstaining?

6 MEMBER DETTMAN: Abstaining.

7 CHAIRPERSON MILLER: And would you  
8 call the vote, please.

9 MS. BAILEY: Madam Chair, I didn't  
10 hear who seconded the motion.

11 CHAIRPERSON MILLER: sorry.

12 Do we have a second?

13 VICE-CHAIRMAN LOUD: I'll second  
14 the motion.

15 CHAIRPERSON MILLER: Let's revote  
16 again. Then all those in favor say aye. Aye.

17 [Chorus of ayes]

18 CHAIRPERSON MILLER: All those  
19 opposed?

20 All those abstaining?

21 Would you call the vote, please.

22 MS. BAILEY: The vote is recorded

1 as three zero two to grant the application,  
2 Mrs. Miller made the motion, Mr. Loud seconded  
3 it, Mrs. Walker supports the motion, Mr.  
4 Dettman abstaining, and there's no Zoning  
5 Commission member present at this time.

6 CHAIRPERSON MILLER: Thank you and  
7 this will be a summary order as there's no  
8 party in opposition. Thank you very much.

1B 9 Ms. Bailey, would you call the  
10 next case, please.

11 MS. BAILEY: Madam Chair, that's  
12 Application No. 17722, of New Beginnings  
13 Cooperative, pursuant to 11 DCMR 3103.2, for  
14 a variance from the lot occupancy requirements  
15 under section 403, a variance from the rear  
16 yard requirements under section 404, and a  
17 variance from the nonconforming structure  
18 provisions under subsection 2001.3, to allow  
19 a third story addition to an existing  
20 apartment building in the R-4 District. The  
21 property is located at 2922 Sherman Avenue,  
22 N.W. It is located in Square 2852 and it's on

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1 Lot 804.

2 There are two preliminary matters  
3 associated with this application the first of  
4 which there is a request for party status from  
5 the Sherman Avenue Condominium Association.  
6 They're in opposition to the application. And  
7 secondly, the Applicant did ask that the  
8 application be amended.

9 CHAIRPERSON MILLER: Thank you,  
10 and if there's anybody here who wants to  
11 testify in this case, who hasn't been sworn in  
12 yet, would you stand, and you can be sworn in  
13 by Ms. Bailey.

14 [Oath administered, en masse]

15 MS. BAILEY: Thank you.

16 CHAIRPERSON MILLER: Okay. Now  
17 would the Applicant please come forward to the  
18 table, and is someone here from the ANC? No.  
19 Okay. Yes, you can come forward if you like.  
20 You're a party for the preliminary matters.  
21 We may run out of chairs.

22 The other persons i would like to

1 call forward are those who applied for party  
2 status application and that would be someone  
3 representing the Sherman Avenue Condominium  
4 Association, cause that's our first  
5 preliminary matter. Okay. Why don't we start  
6 with the Applicant, and then the ANC, and then  
7 the party status applicant, in identifying  
8 yourselves for the record.

9 MS. LOOK: Good morning. My name  
10 is Rozanne Look and I work with MANNA, which  
11 is a nonprofit housing developer, and we are  
12 the development consultant for the New  
13 Beginnings Cooperative Association, Inc., and  
14 two of the officers are seated to my left.

15 CHAIRPERSON MILLER: Okay. Right  
16 now at the table, do you want to introduce  
17 yourself.

18 MS. WILLIAMS: Sure. I'm Karen  
19 Williams, also from MANNA, and I'm the project  
20 manager.

21 MR. BENAVENTE: Pablo Benavente  
22 with the design department of MANNA.

1 CHAIRPERSON MILLER: What's your  
2 capacity here?

3 MR. BENAVENTE: I'm the designer  
4 of the project.

5 CHAIRPERSON MILLER: Designer.  
6 Okay.

7 MR. LYNCH: I'm Bob Lynch. I'm  
8 the director of construction and design for  
9 MANNA Incorporated.

10 CHAIRPERSON MILLER: Okay.

11 MR. JOHNSON: Good morning. I am  
12 Lenwood Johnson. I am ANC Commissioner 1A10.  
13 The project lies in my single member district  
14 and I have also been appointed by the ANC to  
15 represent the ANC in this matter.

16 CHAIRPERSON MILLER: And do we  
17 have a letter from the ANC to that effect in  
18 our files?

19 MR. JOHNSON: Yes. We did pass a  
20 resolution in unanimous support of the project  
21 and I think you have that in your files.

22 MS. WILLIAMS: It was submitted

1 with the amendment, a cover letter and  
2 supporting documents, on January 22nd.  
3 There's the resolution from the ANC, a support  
4 letter, and then also from Jim Graham's  
5 office.

6 CHAIRPERSON MILLER: We got it; we  
7 got it. Thank you. Okay. Thank you.

8 MR. MORENO: [In Spanish]

9 CHAIRPERSON MILLER: Buenos dias.  
10 Ms. DeSilva.

11 INTERPRETER: Good morning. I am  
12 the president of the condominium association.  
13 My name is Isabel Moreno.

14 MR. LYNCH: I'm sorry. Could you  
15 repeat the name one more time so I could write  
16 it down.

17 INTERPRETER: Isabel Moreno.

18 MR. LOZA: Good morning. My name  
19 is Ted Loza and I am the chief of staff for  
20 council member Jim Graham, Ward 1, where this  
21 one building is located.

22 MR. EDUARDO MALDONADO: [In

1 Spanish]

2 INTERPRETER: I'm Eduardo  
3 Maldonado. I am a resident of the community  
4 at 2922 Sherman Avenue.

5 CHAIRPERSON MILLER: Okay. At  
6 this point we're not going to hear from  
7 everybody obviously, and who we're going to  
8 hear from now is basically the party status  
9 applicant, and the other parties in the case,  
10 which would be the Applicant and the ANC.

11 So anybody else who wishes to  
12 testify will be testifying later, and the only  
13 issue that I want to raise right at this time  
14 is the party status application, and it's by  
15 the Sherman Avenue Condominium Association  
16 that represents that it's next door to the  
17 building that's going to be built, and  
18 therefore would be uniquely and distinctively  
19 affected, different from the general public,  
20 by the relief that might be granted.

21 Does the Applicant or the ANC have  
22 any objection to the board's granting party

1 status to the Sherman Avenue Condominium  
2 Association? And do you have a copy of this  
3 application, by the way? It's Exhibit No. 24  
4 in our files.

5 MS. LOOK: From the condominium  
6 association you're asking about? Yes. We got  
7 a copy of that. We don't oppose that.

8 CHAIRPERSON MILLER: Does the ANC?

9 MR. JONSON: The ANC does not  
10 oppose it.

11 CHAIRPERSON MILLER: Do board  
12 members have any concern about granting party  
13 status to the condominium association?

14 [No response]

15 CHAIRPERSON MILLER: Okay. Let me  
16 just say this, what party status means, just  
17 to make sure that the association wants to  
18 participate in this way.

19 It appears that the association  
20 would be entitled to party status because it  
21 is next door and it would be affected by the  
22 building next door getting an additional

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1 story, which is what's at issue in this case.

2 But I just want to make sure that  
3 you understand the difference between party  
4 status and testifying as an individual or an  
5 association, like any member of the community.

6 In party status, you get to cross  
7 examine witnesses, and put on evidence and  
8 participate fully in the legal type  
9 proceedings. As a member of the public, you  
10 get to testify for at least three minutes. So  
11 that's basically the difference. So I just  
12 want to make sure that you want to actively  
13 participate as a party.

14 VICE-CHAIRMAN LOUD: Madam Chair,  
15 I don't oppose it, but are they present today?

16 MS. LOOK: No. No; no. They're  
17 from the cooperative association. They're the  
18 owner of the building.

19 CHAIRPERSON MILLER: There you go.  
20 Okay. I'm sorry. I misunderstood that.  
21 Okay. We do not -- the party status  
22 applicants, then, are not here today, the

1 Sherman Avenue Condominium Association. Okay.

2 Then what I suggest is that we  
3 deny the party status as they're not here to  
4 participate fully as a party, and that we  
5 treat their application as testimony and  
6 evidence in the record.

7 Okay. Thank you very much for  
8 pointing that out. All right.

9 For the other preliminary matter,  
10 the Applicant wants to amend the application  
11 in some way. Do you want to address that?

12 Okay. Let me just say this, then.  
13 The only people that should be at the table  
14 should be the parties. So I believe that's  
15 everybody through the ANC. So you all can go  
16 sit in the audience and we will call you when  
17 it's time to hear testimony from the public.

18 Yes?

19 MR. LOZA: We just want to make  
20 sure that as the chief of staff for Council  
21 Member Graham, that we are a stakeholder in  
22 this and that, you know, that our testimony's

1 entered in the record.

2 CHAIRPERSON MILLER: Absolutely.  
3 We just have a process, when we hear from  
4 different participants in the case. So first,  
5 we hear from the parties. Then we hear from  
6 the Office of Planning, you know, and then  
7 we'll hear from you all in that procedure.  
8 Absolutely. Unless you're seeking party  
9 status, though, you know, everybody can't be  
10 at the table, or needs to be at the table.  
11 Okay. Thank you.

12 MR. BENAVENTE: Pablo Benavente.  
13 The amendment was about adding an additional  
14 story to the building and about the courts on  
15 each side of the building, which at the  
16 beginning, we thought that we were dealing  
17 with side yards.

18 CHAIRPERSON MILLER: Okay. Did  
19 you ask for this in writing, just so that we  
20 can refer to the papers on this?

21 MR. BENAVENTE: Yes; we did.

22 CHAIRPERSON MILLER: You did.

1 Okay.

2 MS. WILLIAMS: I believe it was  
3 all submitted at the end of January along with  
4 the cover letter that had the attachments of  
5 the supporting, the support letters from the  
6 community, the ANC and Jim Graham's letter.

7 CHAIRPERSON MILLER: Okay. There  
8 is a supplemental information letter dated  
9 January 22nd. Okay. here it is. No; this is  
10 different. Okay. January 17. Oh. This is  
11 the letter to Mr. Nero requesting additional  
12 relief. Okay. I see it now. That's dated  
13 January 17th, 2008, Exhibit No. 23.

14 And this was also filed with the  
15 Office of Planning. Okay. Good. Okay.  
16 Unless there's any concerns, we'll consider  
17 your application amended, accordingly.

18 All right. So I think that  
19 finishes it for preliminary matters, and the  
20 Applicant can proceed with its case.

21 I don't think anybody needs to be  
22 at the table other than the Applicant at this

1 point. But I would say to the ANC, you can  
2 come back later if you have cross examination  
3 questions, that's what we'll get to later, and  
4 I'll call you back. And I'm sorry, I don't  
5 remember their names. But they should sit in  
6 the audience.

7 MS. LOOK: They're the owners.

8 CHAIRPERSON MILLER: Oh, they're  
9 the owners.

10 MS. LOOK: They're current  
11 members. They're the owners.

12 CHAIRPERSON MILLER: Sorry. Could  
13 you tell me then their names again, so that I  
14 can have that.

15 MS. LOOK: Mr. Moreno and Mr.  
16 Maldonado.

17 CHAIRPERSON MILLER: Okay. And  
18 actually, that is a preliminary question that  
19 the board has as to who are the Applicants in  
20 this case. Is it the owners? Is it MANNA?  
21 What's the relationship here?

22 MS. LOOK: Well, the co-op is the

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1 owner of the property and MANNA has a  
2 development services agreement to provide  
3 development consulting work as well as design  
4 and construction work for the cooperative.  
5 And MANNA prepared the application.

6 CHAIRPERSON MILLER: Okay. Thank  
7 you. All right. Do you want to now proceed  
8 with your application, and it is for  
9 variances, so, you know, I would encourage you  
10 to, you know, hit those tests in your  
11 presentation.

12 MS. LOOK: Yes. We will.

13 CHAIRPERSON MILLER: Okay.

14 MS. LOOK: We are here this  
15 morning requesting a variance to allow the  
16 cooperative to add an additional floor and  
17 relief from side and backyard requirements.

18 The first test for a variance is  
19 that there's a peculiar exceptional practical  
20 difficulty or undue hardship for the owner of  
21 the property because of the exceptional shape,  
22 topography or other exceptional situation

1 relating to the property, and that's the part  
2 of the test that I'm going to address.

3 The tenants at 2922 Sherman have  
4 been living there for a very long time with  
5 the prior landlord, he kept the property in  
6 such a state of disrepair, that he was  
7 actually prosecuted, criminally prosecuted for  
8 housing code violations, and even the threat  
9 of jail didn't do anything to change the  
10 conditions of the building, and the tenants  
11 only found relief when they began working with  
12 MANNA, to assist them in purchasing the  
13 property, and the tenant association created  
14 the New Beginnings Cooperative Association to  
15 purchase the property, and they did that back  
16 in August of 06.

17 And since that time, we have been  
18 working with them to get the rest of the  
19 financing, to do all of the design drawings,  
20 and then submitting this application for the  
21 variance.

22 The existing unit mix of the

1 building is 17 units and it's all efficiencies  
2 and a couple of one bedrooms.

3           There are nine families that have  
4 stuck through all of this and they are going  
5 to be owners and will be living in the  
6 property after the renovation and there are  
7 two officers here, and several more of the co-  
8 op members are in the audience, and of those  
9 nine families, they represent 18 adults and 14  
10 children, and in order to make the units  
11 usable for the existing families, we needed to  
12 change the unit mix of the building because  
13 efficiencies and one bedrooms were not useable  
14 for them.

15           And so when we tried to come up  
16 with a unit mix, given the existing confines  
17 of the building, the most we could come up  
18 with was five three bedrooms, and what we need  
19 is seven three bedrooms for all of the  
20 families to be able to come back.

21           And so this really was an issue  
22 of, well, which families don't get to come

1 back? We can only come up with five. There's  
2 just so much space there.

3 So that's when MANNA began putting  
4 together the plans to add the additional  
5 floor.

6 With the additional floor, adding  
7 the additional units, we now have seven three  
8 bedrooms, which is what we need for everyone  
9 to be able to come back.

10 So there was the hardship for the  
11 owner, was that there's not enough space for  
12 all the people to be able to come back to live  
13 there. And that's how we think we've  
14 addressed that part of the issue.

15 A second part, in addition to the  
16 hardship to the owner --

17 CHAIRPERSON MILLER: Are we still  
18 getting the Spanish translation? Are we okay?  
19 Do you want us to take a pause for a minute?  
20 Okay.

21 [Pause]

22 MS. LOOK: May I continue?

1                   CHAIRPERSON MILLER: Yes. I'm  
2                   sorry. And let me say this: Is she talking  
3                   too fast or is that okay? It's okay. Okay.  
4                   Okay. Thank you.

5                   MS. LOOK: Okay. The tenants  
6                   purchased the building and they created a  
7                   limited equity cooperative, and they got  
8                   financing from the D.C. Department of Housing  
9                   and Community Development through the tenant  
10                  first-right-to purchase provisions, and they  
11                  got acquisition funding from the city, and now  
12                  we're in the process of going through  
13                  underwriting, for the District to approve the  
14                  construction and permanent financing for the  
15                  project.

16                  In addition, we have a commitment  
17                  of operating subsidy from the D.C. Housing  
18                  authority for the project through the  
19                  District's new rent supplement program.

20                  And the reason this is important  
21                  is that if we're not able to add the  
22                  additional story, the lesser number of units

1 will make it very difficult to make the  
2 operating income, cover the costs, and the  
3 only way that we could fix that problem, then,  
4 is to increase the carrying charges. In a  
5 cooperative it's not called rent. It's called  
6 carrying charges.

7 We would have to increase the  
8 carrying charges to basically cover those  
9 costs. We have certain fixed costs, whether  
10 it's a 15 unit building or an 11 unit  
11 building. Eleven units would be without the  
12 addition, 15 units with the addition. But we  
13 have fixed costs that we need to cover, and  
14 without the additional income from the  
15 additional four units, we're going to have to  
16 increase the carrying charges for the existing  
17 residents.

18 Now that creates a problem because  
19 we have certain lending requirements as a  
20 condition of getting the financing from the  
21 Department of Housing and from the Housing  
22 Authority, and we would actually be -- we

1       couldn't be in compliance with both, and so  
2       that is the exceptional situation.

3                       We have to serve --

4                       CHAIRPERSON MILLER: I'm sorry,  
5       could you repeat that. The exceptional -- you  
6       couldn't be in compliance with both -- what?

7                       MS. LOOK: We have to serve people  
8       at a certain income range to be in compliance  
9       with the Housing Authority regulations and the  
10      Department of Housing regulations that are a  
11      condition of getting the financing.

12                      And if we have to increase the  
13      carrying charges because we cannot add the  
14      additional units, then we're going to have to  
15      serve a higher income range of people who can  
16      afford those carrying charges than what's  
17      required with the financing.

18                      So the financing requires one  
19      thing but if we don't get the variance now,  
20      we're not going to be able to have the  
21      requisite number of units. We're going to  
22      have to increase the carrying charges, and the

1 two are inconsistent. That's what I'm trying  
2 to say.

3 VICE-CHAIRMAN LOUD: Is this  
4 Department of Housing and Community  
5 Development financing that you're referencing?

6 MS. LOOK: yes.

7 VICE-CHAIRMAN LOUD: Is there a  
8 name for the program?

9 MS. LOOK: Right now, the funding  
10 that we got for the acquisition is the Housing  
11 Production Trust Fund. They have not decided  
12 the source of funding for the construction  
13 yet. It would either be Home Funding, which  
14 is a federal source of funding that gets  
15 passed through to the D.C. Department of  
16 Housing, or Trust Fund.

17 VICE-CHAIRMAN LOUD: And were you  
18 not able to get market-rate funding from a  
19 traditional lender?

20 MS. LOOK: There is no way that we  
21 can afford traditional funding, financing for  
22 this project. There's not enough income to

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1 support the private debt.

2 VICE-CHAIRMAN LOUD: Okay; thanks.

3 MS. LOOK: So I think that my  
4 presentation has addressed point one of the  
5 variance, which details the hardship and the  
6 exceptional circumstances, and now we're going  
7 to begin addressing the second point of the  
8 variance test, that the variance would not be  
9 a substantial detriment to the public good.

10 CHAIRPERSON MILLER: Okay. Wait a  
11 minute, if you could.

12 MS. LOOK: Okay.

13 CHAIRPERSON MILLER: I think I  
14 just want to explore more fully with you your  
15 first points, so that we understand them.

16 MS. LOOK: Okay.

17 CHAIRPERSON MILLER: When you  
18 received this financing from the D.C.  
19 government, was it specifically for, you know,  
20 15 units, or what were they giving it for? Or  
21 was it just general affordable housing, or --

22 MS. LOOK: No. Our application

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1 was for 15 units.

2 CHAIRPERSON MILLER: For 15 units.

3 Okay.

4 MS. LOOK: We didn't have the  
5 approval yet but we had to submit a  
6 development pro forma and an operating budget  
7 which projected the number of units.

8 CHAIRPERSON MILLER: Now if you  
9 don't get the relief you're seeking and you  
10 only have 11 units, can you go back to the  
11 D.C. agencies for supplemental funding based  
12 on that?

13 MS. LOOK: We can. The problem is  
14 more with the Housing Authority because there  
15 are limits to the absolute carrying charges  
16 that you can charge, which is like similar to  
17 fair market rents, and in order to cover the  
18 renovation and the operating costs with only  
19 11 units, we would probably go over their  
20 equivalent of FMRs or fair market rents, and  
21 they would have to be -- so that's a second  
22 kind a financial problem we would address,

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1 over and above the fact that the existing  
2 residents would be very difficult. So there  
3 are two issues there.

4 CHAIRPERSON MILLER: Yes. I'm  
5 trying to separate these. I see two issues.  
6 You know, one is the residents that all want  
7 to come back, and what kind of space they  
8 could come back to if the relief were not  
9 granted. And the other is the financing. You  
10 know, could you finance if you didn't get the  
11 relief that you're seeking.

12 So let's just do the financing  
13 first, and then go back to the families.

14 Are there other options for  
15 financing, if you don't get the relief granted  
16 because that's part of this test, or part of  
17 the, you know, assessment. I think that the  
18 city wants this to happen, and then the  
19 question is, you know, what's the proper way  
20 for this to happen? Can it happen in the  
21 variance analysis? We'll see. That's what  
22 you're doing here.

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1           But part of our analysis goes to,  
2           you know, this practical difficulty test and,  
3           you know, can it happen without the relief  
4           being granted by additional funding?

5           MS. LOOK: Well, there are two  
6           things that we would have to do. One is we  
7           would have to get some type of relief from the  
8           funding requirements of serving people at a  
9           certain income range. We cannot go over 80  
10          percent of AMI because all of the funding  
11          sources are limited to 80 percent of AMI.

12          I don't know any way around that;  
13          no. And so that's one way I don't think it  
14          would work.

15          The second reason it would not  
16          work is that we are stuck with fair market  
17          rents. We can't go higher than a fair market  
18          rent because HUD won't allow that, and to  
19          cover the same fixed costs with 11 units as  
20          opposed to 15 units, we can't do it still  
21          under the FMR cap.

22          CHAIRPERSON MILLER: Okay. And I

1 think, you know, Council Member Graham's staff  
2 was here. I think he's still --

3 VICE-CHAIRMAN LOUD: He had to  
4 leave but he left a written statement.

5 CHAIRPERSON MILLER: Oh, okay.  
6 Okay. Thank you. Because economics is, you  
7 know, one part of it. Part of our analysis is  
8 if you didn't get the relief that was sought,  
9 you know, what would happen? What practical  
10 difficulty would there be in complying? And  
11 therefore, that was one of the avenues I just  
12 wanted to explore, whether, since part of it's  
13 economic, whether you could get financial  
14 relief if you only provided 11 units, in  
15 addition to what -- cause the relief you've  
16 gotten and I understand it's based on 15  
17 units, and therefore spread out among more  
18 people, you could cover the rest of the costs;  
19 correct? Is that --

20 MS. LOOK: Right.

21 CHAIRPERSON MILLER: Okay. So  
22 what you're saying is you don't know of

1 another source that would make up the  
2 difference.

3 MS. LOOK: There are no other  
4 sources that would allow us to serve anyone  
5 over 80 percent. In addition to the DHCD  
6 funding, we also have funding from a program  
7 called the Neighborhood Investment Fund from  
8 the Affordable Housing Program of the Federal  
9 Home Loan Bank of Atlanta, from the  
10 Historically Black Colleges Program at Howard  
11 University, and Neighborworks of America.

12 We've tapped out on any additional  
13 source of funding for the project.

14 CHAIRPERSON MILLER: So from an  
15 economic point of view, if you didn't get the  
16 relief granted, this building couldn't be used  
17 for any of these families, or affordable  
18 housing at all? It would return to market  
19 rate housing?

20 MS. LOOK: Well, it's possible  
21 that a few of them might be able to stay but  
22 certainly not all nine who have "hung in

1       there" for so long.

2                   CHAIRPERSON MILLER:   So a few of  
3       them have the wherewithal to --

4                   MS. LOOK:   No; no.   What we'd  
5       probably do is we would have to create a mixed  
6       income project where the majority, or most all  
7       of the units would have to be at a much higher  
8       carrying charge, and only a few would be able  
9       to be at the lower carrying charge to be  
10      affordable.

11                  Now even that, I'm not sure how  
12      we'd even do that because there are currently  
13      covenants and restrictions recorded against  
14      the property that came with the acquisition  
15      funding.

16                  So you'd have to basically get the  
17      city to release those.   I don't know whether  
18      -- how you'd get them to do that.

19                  CHAIRPERSON MILLER:   The nine  
20      families that you referenced, they've lived in  
21      the house -- in this housing for how long?

22                  MS. LOOK:   It varies, anywhere

1 from a couple years to 20 years.

2 CHAIRPERSON MILLER: And are they  
3 there now or are they somewhere else?

4 MS. LOOK: Well, the property --  
5 as soon as the tenants purchased the property,  
6 it was not in a livable condition, we boarded  
7 it up, and they are living temporarily with  
8 family around in the neighborhood. They are  
9 temporarily out of the building, waiting for  
10 the renovation, .

11 CHAIRPERSON MILLER: And can nine  
12 families live in efficiencies?

13 MS. LOOK: They were overcrowded.

14 CHAIRPERSON MILLER: And how would  
15 they be overcrowded if they lived -- is there  
16 any other way to reconfigure a building  
17 without the relief being granted, without the  
18 additional --

19 MS. LOOK: Well, we tried very  
20 hard, going from the original renovation plan  
21 within the existing building structure, was 11  
22 units, that was the maximum we could get, and

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1 the maximum number of three bedrooms was five,  
2 and we need seven for the existing families to  
3 be able to come back.

4 CHAIRPERSON MILLER: I'm pressing  
5 you on this just because it's important to  
6 make your case. Okay. So I don't -- I hope  
7 you take it --

8 MS. LOOK: No; no.

9 CHAIRPERSON MILLER: Don't take it  
10 wrong.

11 MS. LOOK: No.

12 CHAIRPERSON MILLER: Okay. So if  
13 these families lived in five units -- no. How  
14 would it -- if they -- if you didn't -- if you  
15 had only five -- do you have to have only five  
16 units? You need seven and that's why you're  
17 asking for the story, the additional story.

18 MS. LOOK: Right.

19 CHAIRPERSON MILLER: If you didn't  
20 have the additional story, how would it be --  
21 could it possibly be configured to accommodate  
22 the families, though not as well as you would

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1       like? How crowded would it be?

2                   MS. LOOK: Well, see, we have  
3 government funding that has housing quality  
4 standards, so we have to comply with that.

5                   So if you have, you know, a  
6 husband and a wife with two boys and a girl,  
7 they have to be in three bedrooms. Otherwise,  
8 we would not comply with HUD requirements.

9                   MS. WILLIAMS: And I think the  
10 design department can address more  
11 specifically the layout and floor plans, and  
12 square footage issues. But another key thing  
13 is along with the family-size units, we're  
14 creating three accessible, wheelchair  
15 accessible units, and just by nature of square  
16 footage needs to accommodate, you know,  
17 turning radius and things like that, those  
18 units can't be, you know, tightened up in  
19 terms of square footage.

20                   So I just want to note that, that  
21 there are three accessible units.

22                   MS. LOOK: There are just a lot of

1 different requirements that we have to comply  
2 with.

3 CHAIRPERSON MILLER: Okay. You  
4 know, what sounds different about this case  
5 is, you know, is that this housing is being  
6 planned for these specific families. That  
7 usually I think housing is not planned for  
8 specific individuals.

9 MS. LOOK: And the reason that's  
10 different is that the property was purchased  
11 under the tenant purchase law, which is D.C.'s  
12 statute that protects tenant rights, and  
13 that's why it's so important that none of the  
14 existing families be displaced.

15 CHAIRPERSON MILLER: And could you  
16 just again specifically state their legal  
17 status. There's this co-op, what is it  
18 exactly?

19 MS. LOOK: They have formed the  
20 New Beginnings Cooperative Association, Inc.  
21 So they are a nonprofit corporation.

22 CHAIRPERSON MILLER: And what

1 makes them a nonprofit?

2 MS. LOOK: They file under the  
3 nonprofit statute. There's no profit involved  
4 in their corporation.

5 CHAIRPERSON MILLER: Okay. Do you  
6 have that in -- you know, the document showing  
7 they're a nonprofit?

8 MS. WILLIAMS: Yes, I can provide.  
9 I have articles of incorporation and  
10 certification of good standing. Can I make a  
11 copy of it, or --

12 CHAIRPERSON MILLER: Sure; yes.  
13 No, I think that would be important to get in  
14 the record, that nonprofits are dealt with a  
15 little bit differently than private  
16 individuals and businesses.

17 MS. LOOK: We'll give you a copy  
18 of the articles of incorporation, their bylaws  
19 and their good standing.

20 CHAIRPERSON MILLER: Okay. That  
21 should go to Office of Planning as well and  
22 the ANC. Okay. Do other board members have

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1 questions?

2 VICE-CHAIRMAN LOUD: Let me follow  
3 up on a couple of questions relative to your  
4 line of thought.

5 First just to kind a settle the  
6 dust on some of the facts, cause I'm a little  
7 uncertain on some of them.

8 There are currently nine families  
9 that want to move back in, that were  
10 displaced, that are going to move back in if  
11 the project is granted?

12 MS. LOOK: Correct.

13 VICE-CHAIRMAN LOUD: And then the  
14 other six units would be for additional  
15 affordable, families that fit the eligibility  
16 criteria? Would that be -- okay.

17 MS. LOOK: Yes.

18 VICE-CHAIRMAN LOUD: And those six  
19 families are just six families that go through  
20 a vetting process and are selected? Or are  
21 they connected to the nine families?

22 MS. LOOK: They're not connected

1 with the nine but there are certain  
2 requirements we have to meet because of our  
3 funding. We need to fill the units with --  
4 for handicapped accessible units, and a  
5 condition of the Federal Home Loan Bank  
6 funding is that one or two of the units have  
7 to be for people that are coming out of  
8 transitional housing.

9 VICE-CHAIRMAN LOUD: Okay.

10 MS. WILLIAMS: Can I just add also  
11 that all of them will have to qualify under  
12 the Housing Authority's income eligibility  
13 regulations. So they will all be certain  
14 income levels, and that's because of the  
15 operating subsidy from the Housing Authority.

16 VICE-CHAIRMAN LOUD: Okay, and you  
17 did mention -- I think you mentioned 80  
18 percent AMI as being an underwriting criteria  
19 for -- 80 percent or less.

20 MS. LOOK: That is the maximum  
21 allowed --

22 VICE-CHAIRMAN LOUD: The maximum.

1 MS. LOOK: -- under any of the  
2 federal programs. The co-op members  
3 themselves are all under 50 percent of AMI,  
4 and I believe that a good portion of them are  
5 under 30 percent of AMI for the existing  
6 families.

7 VICE-CHAIRMAN LOUD: Okay. And  
8 just off the top of your head, do you have the  
9 numbers for, let's say, under 30 percent of  
10 AMI, and then the numbers for under 50  
11 percent?

12 MS. WILLIAMS: Of the families or  
13 of what we've agreed to in our agreement in  
14 terms of the income, of what the units will  
15 be? So I'll just -- twelve of the units,  
16 households, have to be between the 41 to 50  
17 percent area medium income, or not more than  
18 that.

19 VICE-CHAIRMAN LOUD: And what is  
20 that? What is 41 percent of AMI?

21 MS. WILLIAMS: I'd have to do the  
22 math. I think right now, AMI is \$94,000.

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1 VICE-CHAIRMAN LOUD: So half of  
2 that.

3 MS. LOOK: You're talking about  
4 30- to \$35,000 max.

5 VICE-CHAIRMAN LOUD: Okay.

6 MS. WILLIAMS: And then three of  
7 them are reserved for people in the 61- to 80  
8 percent AMI.

9 VICE-CHAIRMAN LOUD: And the way  
10 this is structured is that they would become  
11 owners of --

12 MS. LOOK: Yes. The co-op  
13 corporation owns the property and each of the  
14 co-op members has a share that entitles them  
15 to a membership share, and they are all like  
16 they're owning shares in IBM -- they own  
17 shares in this co-op corporation and they sign  
18 what's called an occupancy agreement which  
19 gives them the right to occupy their unit and  
20 be a member of the cooperative.

21 VICE-CHAIRMAN LOUD: Okay. And  
22 you did mention something and I just missed

1 it, about if -- there's a certain number of  
2 the nine families that would not be able to  
3 return, if you weren't able to go to fifteen  
4 units.

5 MS. LOOK: Well, what's critical  
6 is that we need seven 3-bedroom units and we  
7 need the extra floor in order to be able to  
8 create, get the space enough to create the  
9 seven 3-bedroom units. And of the existing  
10 nine families, seven of them need three  
11 bedrooms.

12 VICE-CHAIRMAN LOUD: Okay; all  
13 right. Now I'm going to ask you a list of  
14 questions, which were questions I had before  
15 I heard your testimony. Some of it I think  
16 you've addressed but just so I'm really,  
17 really clear on some of your answers.

18 MS. LOOK: Okay.

19 VICE-CHAIRMAN LOUD: Is there a  
20 specific legal requirement to develop the site  
21 as affordable housing, either in the tenant  
22 acquisition process that you went through or

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1 in the financial underwriting that you're  
2 going through? If you could just list those  
3 out for me.

4 MS. LOOK: The current acquisition  
5 financing that was provided by the Department  
6 of Housing requires that -- they funded it as  
7 a limited equity cooperative. It has to stay  
8 a limited equity cooperative for 40 years, and  
9 we have to serve the incomes that we just  
10 described a moment ago.

11 VICE-CHAIRMAN LOUD: Okay. So  
12 that's the current acquisition funding.

13 MS. LOOK: Right.

14 VICE-CHAIRMAN LOUD: Is there any  
15 other legal requirement that the property be  
16 or remain affordable housing? Any of the  
17 other layers of funding?

18 MS. LOOK: Well, the construction  
19 financing will just be a repeat of the  
20 acquisition financing.

21 VICE-CHAIRMAN LOUD: Okay. And  
22 can you just tell me a little bit of the

1 acquisition history, and what -- you know, in  
2 particular, things that you think make that  
3 exceptional, sort of the process leading up to  
4 your acquiring this location.

5 MS. LOOK: Well, the property --

6 VICE-CHAIRMAN LOUD: Because it  
7 sounds like it was very unique and --

8 MS. LOOK: -- was in horrendous  
9 conditions. There was no heat, no hot water,  
10 the plumbing often didn't work, the broken  
11 windows, rats, roaches, all of those things.  
12 The landlord just didn't repair or do anything  
13 to maintain the property, and in fact he was  
14 criminally prosecuted by the Office of the  
15 Attorney General for the grievous housing code  
16 violations that he allowed to continue.

17 And that the tenants basically  
18 "hung in there" through all of that. We began  
19 working -- MANNA began working with the  
20 tenants about five years ago. We attempted a  
21 lot of different ways to try and assist them,  
22 and the landlord actually filed for

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1 bankruptcy. We worked with the bankruptcy  
2 trustee to try and purchase it from the  
3 bankruptcy trustee.

4           Only the landlord figured out some  
5 way to get it back out of the bankruptcy, and  
6 then signed a sales contract with someone  
7 else, and the tenants, under the first right-  
8 to-purchase statute, had a right to match that  
9 contract, and that's when we were able to  
10 acquire it through using the District's first  
11 right purchase fund.

12           VICE-CHAIRMAN       LOUD:  So  
13 essentially, you were able to acquire it  
14 because the owner made the mistake of trying  
15 to sell it to someone else, and you exercised  
16 your first right?

17           MS. LOOK:  Yes.

18           VICE-CHAIRMAN LOUD:  Okay.

19           What are the selling prices that  
20 the units are going to be offered for?  And if  
21 "selling price" is not the correct term  
22 because a co-op, just the equivalent of

1 selling price.

2 MS. LOOK: It's actually called a  
3 subscription agreement and it's going to range  
4 from 800 to a \$1000 for each -- for a unit.  
5 That's all that they paid. In a limited  
6 equity co-op, the co-op owns it, the members  
7 control it, they make decisions about the  
8 property, they hire and fire the management  
9 company, so in that sense, it is truly  
10 ownership.

11 However, it is a little bit more  
12 like rental in the sense that there's not a  
13 sale price with a mortgage. They don't pay  
14 rent, they pay a carrying charge, but a lot of  
15 people might think of the carrying charge as  
16 somewhat similar to rent.

17 We are able to use a rent  
18 supplement program with the Housing Authority  
19 to provide additional funding to cover the  
20 operating costs. You can use that with either  
21 a rental property or a limited equity  
22 cooperative property. If they pay a

1 subscription fee of a thousand dollars, when  
2 they move they get that thousand dollars back  
3 with increases usually capped to the cost-of-  
4 living increases, CPI. So if the CPI  
5 increased by 3 percent, they would get their  
6 thousand dollars plus 3 percent on the  
7 thousand dollars if they moved.

8 VICE-CHAIRMAN LOUD: And that  
9 would remain valid for forty years?

10 MS. LOOK: Forty years under the  
11 loan documents.

12 VICE-CHAIRMAN LOUD: And after  
13 that, they could sell for whatever the market  
14 would bear?

15 MS. LOOK: Yes. Conceivably.

16 MS. WILLIAMS: Just their shares.

17 MS. LOOK: Let me see if I had any  
18 other questions. I think that's it. Thank  
19 you.

20 MEMBER DETTMAN: I just have a  
21 couple questions, and first, can you remind  
22 me, the program that requires you to target

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1 specific income ranges, just so I can use it  
2 in my questions.

3 MS. LOOK: It's the Housing  
4 Production Trust Fund.

5 MEMBER DETTMAN: Housing  
6 Production?

7 MS. LOOK: Trust Fund. That's the  
8 financing we receive for the acquisition.

9 MEMBER DETTMAN: Okay. So  
10 currently we have a need for seven 3-bedroom  
11 apartments and I think you've already  
12 established that the existing structure can't  
13 accommodate seven 3-bedroom apartments. It  
14 can only accommodate five.

15 MS. LOOK: Right.

16 MEMBER DETTMAN: Okay. But if  
17 you're not able to put on this addition, it  
18 sounds to me that you can only provide five,  
19 and it's going to lead to displacement of some  
20 of the nine existing families, which I think  
21 you said may make you violate the tenant  
22 purchase law.

1 MS. LOOK: Correct, because --

2 MEMBER DETTMAN: The tenant  
3 purchase says zero displacement?

4 MS. LOOK: Well, I mean, the  
5 spirit and letter of the tenant purchase is to  
6 provide housing for everyone in the building.  
7 Legally, whether anyone could not move back,  
8 I don't know, but our intent has always been  
9 to have no displacement.

10 MEMBER DETTMAN: Absolutely. If  
11 we were only -- this would lead to some  
12 displacement, because we only have five 3-  
13 bedroom apartments. However, without the top  
14 addition, I guess one could make the  
15 assumption that your construction charges,  
16 your construction costs will go down, and  
17 maybe even your maintenance costs, which you  
18 had said that it's built into those carrying  
19 charges.

20 MS. LOOK: Yes.

21 MEMBER DETTMAN: But is it right  
22 to assume that it's not proportional, meaning

1 the drop in construction and the drop in  
2 maintenance doesn't allow you to drop your  
3 carrying charges, and help you continue to  
4 target that specific group of income ranges?

5 MS. LOOK: That is correct.

6 MEMBER DETTMAN: Okay. So  
7 irrespective of the people who are interested  
8 in going in this building now, you couldn't  
9 even target new residents --

10 MS. LOOK: That's correct.

11 MEMBER DETTMAN: That specific  
12 income ranges.

13 MS. LOOK: Yes.

14 MEMBER DETTMAN: Okay. Thank you.

15 CHAIRPERSON MILLER: Can you  
16 articulate, there's some compelling reasons  
17 that it's important for these families to stay  
18 in this neighborhood. For instance, this goes  
19 to -- you know -- someone might say, well, you  
20 could sell this building and find a building  
21 that could accommodate the number of families.

22 MS. WILLIAMS: Yes.

1                   CHAIRPERSON   MILLER:   Can you  
2 address that question?

3                   MS. WILLIAMS:   Yes, I wanted to  
4 address it, especially in reference to the  
5 third variance test.  You know, could this  
6 relief be granted for the additional story  
7 without being a detriment to the community and  
8 is it in compliance with the intent of the  
9 zoning regs?

10                   And the D.C. Consolidated Plan,  
11 the Neighborhood Investment Act, the  
12 Comprehensive Plan, they all highlight  
13 affordable housing and revitalization as the  
14 focus, especially in the mid city area here  
15 where the building is located.

16                   And so two specific priority areas  
17 that I want to address relate to the  
18 Comprehensive Plan, and to answer your  
19 question, and I'll paraphrase a bit, but this  
20 is language from the policy goals, is one  
21 priority is to preserve the distinct and  
22 eclectic character that defines mid city

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1 neighborhoods, and the loss of neighborhood  
2 diversity was the greatest concern expressed  
3 at almost every Comp Plan meeting in the mid  
4 city area. And to address this policy, MC  
5 1.2.1 was adopted, and the policy is to  
6 maintain the cultural diversity of the mid  
7 city by encouraging housing and business  
8 opportunities for all residents, sustain a  
9 strong network of social services for  
10 immigrant groups and retain affordable housing  
11 within the planning area.

12 So it's important to note,  
13 obviously, that many of the families in the  
14 New Beginning Cooperative, while they've lived  
15 in the neighborhood for a long time, are  
16 immigrants, and in the historical and  
17 contextual description of mid city area Comp  
18 Plans, immigrants and economic diversity are  
19 part of the priorities for what they strive to  
20 maintain with the Comp Plan policy goals.

21 The second prior is more  
22 specifically addressing the housing issues.

1 It calls for housing opportunities for people  
2 of all income levels, so that they can stay in  
3 the mid city area and maintain that diverse  
4 neighborhood. As everyone knows, the prices  
5 going up in the area have really impacted the  
6 Columbia Heights neighborhood, and as costs  
7 have soared, many local residents have been  
8 displaced because they can't afford it.

9 So working families, lower-income  
10 residents are being priced out.

11 So in order to address this issue,  
12 policy MC 1.1.7 was adopted and this is the  
13 protection of affordable housing, and so this  
14 strives to retain the character of the mid  
15 city as a mixed income community by protecting  
16 the area's existing stock of affordable  
17 housing units, and promoting the construction  
18 of new affordable units.

19 I think this project perfectly  
20 addresses that policy goal, and, you know,  
21 with these long-term affordability goals,  
22 there isn't going to be an issue of flipping,

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1 and I think one of the particular issues  
2 that's raised in the mid city area planning is  
3 this need to preserve sort of the  
4 architectural aesthetic of rowhouses. But  
5 this isn't a rowhouse. This was built as a  
6 multifamily building, and if the issue should  
7 be raised, you know, is there going to be a  
8 precedent set by allowing this addition on  
9 this building, will there -- you know -- will  
10 this impact the rest of the community?

11 But I'll go back to sort of the  
12 unique status of this project in terms of the  
13 plans to make it a limited equity cooperative,  
14 the deep financing from other District  
15 agencies, including the Office of Planning --  
16 I mean the Mayor's Deputy Office of Economic  
17 Development, and just the tenant ownership.  
18 That it's a pretty remarkable case and I don't  
19 imagine that this is going to be presented to  
20 the BZA as, you know, a ongoing thing.

21 And so there are sort of two  
22 layers of how -- I think yes, it's important

1 that there is a reason why we want these  
2 families to be able to stay here, and we've  
3 managed to make it happen with all these  
4 layers coming into play, and it supports, in  
5 a lot of ways, the intent of the zoning  
6 regulations through the Comp Plan for that  
7 area.

8 CHAIRPERSON MILLER: So this is a  
9 unique or uncommon thing for MANNA to be  
10 involved with? It's not like MANNA's getting  
11 involved with all these tenant purchases and  
12 changing, wants to change the buildings, all  
13 over the city?

14 MS. LOOK: This is about as  
15 complicated a project as we've ever done. I  
16 mean, we've got all of these funding sources.  
17 We can't possibly do these very often.

18 VICE-CHAIRMAN LOUD: I don't want  
19 to put words in your mouth, but it seems to me  
20 that one of the things that makes the  
21 situation exceptional ties directly to the  
22 property itself, in that it had suffered from

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1 such severe disinvestment over the years, that  
2 you were -- and I'm making an assumption --  
3 but you were able to acquire it at a very  
4 competitive rate?

5 MS. LOOK: Well, we had to match a  
6 third party contract.

7 VICE-CHAIRMAN LOUD: Okay. So  
8 that would not bear fruit. Okay.

9 MS. LOOK: No.

10 VICE-CHAIRMAN LOUD: I'm trying to  
11 figure out a way to help you here. Even  
12 though you acquired it at whatever level you  
13 acquired it at, how are you able to -- you're  
14 only able to offer subsidized housing because  
15 of the different layers of public funding?

16 MS. LOOK: yes.

17 VICE-CHAIRMAN LOUD: Okay.

18 CHAIRPERSON MILLER: It may be  
19 just the way things -- you know -- rolled out,  
20 but I mean, is there a reason that this  
21 building was purchased at whatever, matching  
22 that price, you know, went to this building as

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1       opposed to going to another building where you  
2       could have had the number of units as a matter  
3       of right?

4                   MS. LOOK:  It's a fair question  
5       and I can't answer it any other way except to  
6       say this was their home.  This is their home.

7                   CHAIRPERSON MILLER:  Okay.  Thank  
8       you.

9                   MS. LOOK:  There are -- I guess we  
10      could move on to the design portion if you --

11                   CHAIRPERSON MILLER:  Yes.  That  
12      would be great.

13                   MR. LYNCH:  Good afternoon.  Not  
14      quite afternoon yet.  My name's Bob Lynch.  
15      I'm the director of construction and design  
16      for MANNA, Incorporated, and with me is our  
17      architect for this project, and behind me is  
18      Mr. Huff who is our zoning and regulatory  
19      expert with our organization.

20                               We can't sit here and try to  
21      argue points with you about this project,  
22      that, well, the zoning isn't right because of

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1 this or this isn't right because of this. We  
2 are in definite need of relief because of the  
3 situation at the property.

4 The test that asks the questions,  
5 Can relief be granted without substantial  
6 detriment to the public good? This is like a  
7 two-part question, so I'm going to break it  
8 into two parts and answer those, and then you  
9 all can ask questions and hopefully one of us  
10 will have good answers for you.

11 But we don't think that this is  
12 going to create substantial detriment to the  
13 public good. We're not asking to do anything  
14 that's extraordinary in the neighborhood.

15 If you can see from our rendering  
16 over here, the yellow brick building with the  
17 siding at the top is our building. The  
18 building next door to it is already a four-  
19 story building. We're looking at both  
20 buildings having entrances from the sidewalk  
21 level and also from an upper level.

22 We're building to the height

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1 restrictions allow in the R-4 Zone. So we're  
2 not asking for anything extraordinary here.  
3 We're just asking to be able to match what's  
4 next door. Now you had mentioned something  
5 about a matter of right a little bit ago,  
6 Madam Chairman, and I'd like to say that one  
7 of the reasons that we're sitting here  
8 discussing this particular issue is the ground  
9 level of this building is under grade.

10 If it were one foot deeper under  
11 grade, this would qualify as a three-story and  
12 basement building rather than a four-story  
13 building.

14 So what we're doing is we're  
15 asking relief for this one foot of dirt around  
16 the edge of the building, to be able to make  
17 this project workable.

18 We also I think would be assisting  
19 the public good here in reducing the number of  
20 units and increasing the size of the units for  
21 the owners of the building, to allow their  
22 families to have less cramped living quarters.

1 I was one of the people that went  
2 in this building when we first were contacted  
3 by them, and I will say that it was amazing to  
4 see three children families living in an  
5 efficiency. It just wasn't right. MANNA's  
6 goal is to help groups like this, and, you  
7 know, we feel like we need to be able to give  
8 them the space that they need to be able to  
9 live in to have good quality of life.

10 I guess one of the other questions  
11 is will our structure, the additional  
12 structure be blocking any daylight from  
13 anyone, or will it be interfering with the  
14 airflow. We contend that it will not. This  
15 is our structure.

16 The sun goes east to west. This  
17 is more or less north to south. So nothing on  
18 this structure will block the sunlight as it  
19 passes overhead.

20 This is a drawing of the  
21 neighborhood. There's an alley to the side  
22 here and a walkway in the back. Increasing

1 the height of this building by approximately  
2 eight feet is not going to interfere with the  
3 airflow through there.

4 So we don't think that this is  
5 going to be a detriment to the public good.  
6 We're actually going to be below the height of  
7 the adjoining building. We're not even asking  
8 to build above them, and if you'll notice, we  
9 have the same kind of window layout as the  
10 next group. So I don't think we're creating  
11 a precedent in building something that's  
12 already not there.

13 The second part of it is even  
14 shorter, and that is can we do this without  
15 substantially impairing the intent and purpose  
16 and integrity of the zoning regulations and  
17 map?

18 Like I said before, we're talking  
19 about basically one foot of dirt difference in  
20 being able to do this as a matter of right,  
21 and having to go through this extraordinary  
22 hearing.

1           There are other issues that we  
2 would have to address also, but I don't think  
3 too many people have real problems with the  
4 side yards and the back yard. The Office of  
5 Planning's report said that they're willing,  
6 I believe, to support that, if the variance is  
7 granted for the additional floor.

8           It speak of -- the regulation  
9 states the intent is to preserve the rowhouse  
10 dwellings and flat characteristic. Well, this  
11 building is an existing multi-unit building.  
12 We're not proposing removing any townhouses or  
13 altering any townhouses to make this happen.  
14 If we were to build townhouses, we would lose  
15 units, a significant amount of units, and at  
16 great expense, just through the demo of the  
17 building.

18           And our goal is to keep this  
19 project as affordable as possible. Can we do  
20 extraordinary things to make this a little bit  
21 more in accord? Possibly. But everything  
22 that we've done that's not already -- and

1 we've been working on this deal for five  
2 years.

3 We have looked at every possible  
4 way of keeping the property affordable and  
5 this is about the only -- we could cheapen it.  
6 We could go to aluminum siding. We could go  
7 to cheaper roofs. We're putting a lot of  
8 green technology into this building. It's not  
9 required but we're doing it because it gives  
10 a long-term benefit to the purchasers.

11 We've looked at any way that we  
12 possibly can to make this cheaper and -- not  
13 to make it cheaper because MANNA does not  
14 build cheap units. We build good solid units  
15 at an affordable price. So our goal is to try  
16 to keep this as affordable as possible, and if  
17 you all have any questions, I'll try to answer  
18 them or my staff can do so. Thank you.

19 CHAIRPERSON MILLER: Thank you. I  
20 was wondering if you could just show us or  
21 tell us where the other relief is coming from,  
22 where the court is, or where the problem was

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1 with the rear yard.

2 MR. LYNCH: I'll ask Pablo to  
3 discuss that.

4 CHAIRPERSON MILLER: Just real  
5 briefly, so we have the full picture.

6 MR. BENAVENTE: So this is our  
7 building here. This is the footprint. So we  
8 have courts on each side and we have the rear  
9 yard. As it is right now, we have eight feet  
10 from the property line to the building on each  
11 side for the courts, and nine foot, eleven,  
12 for the back, for the rear yard, which should  
13 be 20 feet according to the regulations.

14 Does that answer your question?

15 CHAIRPERSON MILLER: Thank you.  
16 Any other questions? Okay.

17 MEMBER DETTMAN: Actually, Madam  
18 Chair, just a couple questions.

19 CHAIRPERSON MILLER: Yes.

20 MEMBER DETTMAN: I saw in one of  
21 your filings, that you had actually explored  
22 different options. I think it says that you

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1 had actually looked at lowering the basement  
2 unit to come under that, so you could do this  
3 as a matter of right and -- I'm not looking  
4 for exact numbers, but I'm just wondering,  
5 could you give a general idea of what that  
6 would have cost versus the option that you  
7 actually did decide on.

8 MR. LYNCH: I can only give you a  
9 kind a "shoot from the hip" number at this  
10 point, but we're talking approximately 4000  
11 square feet of floor space, and you're talking  
12 about demo-ing out 4000 square feet of  
13 concrete floors at about \$3 a square foot.  
14 That's -- you're adding \$12,000 there.

15 Now there's also structural  
16 columns that run through here, so we'd have to  
17 do an extraordinary amount of remedial  
18 structuring, or remedial support, while we  
19 took the floor out, and we'd have to put in,  
20 what is it? 23 -- we have 23 columns, we're  
21 already adding columns down here. But we'd  
22 have to replace all 23 columns with longer

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1 columns at about a thousand dollars apiece,  
2 plus the footing at about -- you know, column  
3 footing for each unit would be --

4 MEMBER DETTMAN: I guess sort of  
5 where you're getting is that it's --

6 MR. LYNCH: We're talking --

7 MEMBER DETTMAN: -- actually  
8 prohibitively costly to do that.

9 MR. LYNCH: We're talking probably  
10 40- to \$50,000, conservatively, to lower that,  
11 just to lower the floor level and spread that  
12 over 15 units, and you're talking --

13 MEMBER DETTMAN: And as proposed,  
14 you are, despite the number of stories, you  
15 are underneath the maximum allowable height in  
16 an R-4 District; is that correct?

17 MR. LYNCH: We're right at that, I  
18 believe.

19 MEMBER DETTMAN: You're right at  
20 that?

21 MR. LYNCH: Right.

22 MEMBER DETTMAN: Okay. I did see

1 in, actually, the application for party  
2 status, there was a comment about light and  
3 air, and there was also a comment about the  
4 Hardi-Board and not using brick on the upper  
5 story. Can you tell me why you decided to use  
6 siding instead of brick?

7 MR. LYNCH: Well, when you say  
8 "siding," siding has kind of a negative  
9 connotation in the world of building. But the  
10 siding that we're proposing to use is called  
11 Hardi-Plank plan. Hardi-Plank is a cementuous  
12 siding, it's a 50 year product, it's a low  
13 maintenance, lightweight product. One of the  
14 reasons that we decided to go with that is  
15 because we wouldn't require a lot of  
16 structural remedial work in order to put brick  
17 around the building.

18 Brick is more expensive, probably  
19 by two to three dollars a square foot, and  
20 that doesn't include the remedial work that  
21 would have to be done for the existing  
22 structure to support that.

1           The structure will support a  
2           Hardi-Panel siding. This is a high-end  
3           product. This isn't a low-end product. They  
4           use this in, you know, million dollar  
5           McMansions out in Potomac, and stuff like  
6           that.

7           MEMBER DETTMAN: So, again, using  
8           brick on the upper story could potentially be  
9           prohibitively costly as well because the brick  
10          that exists needs to be able to take the  
11          weight of the brick that's going to be put  
12          above?

13          MR. LYNCH: That's correct, and  
14          also we would have a problem matching the  
15          existing brick, so that the look would be  
16          consistent. We would still have a variegated  
17          color up there.

18          MEMBER DETTMAN: And finally, the  
19          only impact to light I could see is on the  
20          neighboring rowhouses to the north.

21          Did you at least sort of talk to  
22          them? I noticed that you actually had one

1 signature on a petition from one of those  
2 rowhouse owners but I was just wondering if  
3 you've briefed them on this project and what  
4 they had to say.

5 MS. WILLIAMS: Yes. Our community  
6 relations person, Mario Cristaldo, went door  
7 to door in the whole circumference of that  
8 block, to both, you know, talk to people and  
9 tell them what was happening, as well as some  
10 people signed the petition but some people, it  
11 was just information-sharing.

12 And in addition to that, we had  
13 several public meetings, either hosted by the  
14 ANC or the Pleasant Plains Civic Community  
15 Association.

16 So we had lots of conversations  
17 and opportunities to share the design and to  
18 get feedback from not only the broader  
19 community but, in particular, the neighbors to  
20 the south. They participated in several of  
21 those and we had lots of conversations with  
22 them. That was the party that filed for

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1 application in opposition.

2 CHAIRPERSON MILLER: I have a  
3 question about the design and the one foot  
4 that we're talking about in the basement.

5 The one foot lower would have  
6 brought the building into compliance, matter  
7 of right; right?

8 MR. LYNCH: Correct.

9 CHAIRPERSON MILLER: Okay. So  
10 looking at the picture of the building now as  
11 you've presented it, how would it look  
12 different if one foot was --

13 MR. LYNCH: Well, actually,  
14 another obstacle to that would be that this  
15 level is where the affordable -- I mean, where  
16 the accessible units will be comprised.

17 By dropping a foot, we would have  
18 to do some ramping, and things like that, to  
19 be able to get the people that require the  
20 accessibility into the building.

21 That would limit, to some extent,  
22 the space and the interior for the community

1 room that we're putting down there, and for  
2 the laundry facilities and the trash  
3 facilities. It's not a great deal of space  
4 but it is a detriment.

5 Also, it would just be a step down  
6 into there. It would cause -- do we have a  
7 elevation here? Side elevation.

8 This would alter the floor-to-  
9 window sill relationship that runs throughout  
10 this side of the building. One of the reasons  
11 we opted not to think about infilling with  
12 dirt is we would have to put window wells  
13 around there, which would cut down on the  
14 light for these folks that will be living  
15 there. Lowering the floor will, like I say,  
16 it will lower, especially to somebody that's  
17 wheelchair bound, will lower them in  
18 relationship to the window sill.

19 Of course we could always tear the  
20 windows out and replace them. But then,  
21 again, you're starting to talk about a lot  
22 more money.

1                   CHAIRPERSON MILLER: I'm just  
2 wondering, appearance-wise, or whatever, with  
3 respect to the question of number of stories,  
4 just looking at this building, would it look  
5 different, even though it would be different  
6 as far as in compliance with the regulations?  
7 You know what I'm saying?

8                   MR. LYNCH: You mean with the  
9 floor lowered?

10                  CHAIRPERSON MILLER: Yes. One  
11 foot. Like if you put your diagram up, would  
12 it be -- as far as, you know, going to the  
13 character of the neighborhood or the -- you  
14 know, we already said that this is within the  
15 height limits anyway.

16                  MR. LYNCH: Right. I don't see it  
17 looking a lot different if we'd done that.  
18 It's just a lot of functional parts of the  
19 interior design that would have to be changed,  
20 kind of radically.

21                  CHAIRPERSON MILLER: It would  
22 create a lot of problems and expenses to

1 comply. Yes.

2 MR. LYNCH: Absolutely.

3 CHAIRPERSON MILLER: Okay.

4 VICE-CHAIRMAN LOUD: You've  
5 answered this a thousand times but let me ask  
6 one final time. If you don't get the relief,  
7 what will be the impact to your nine families?

8 MR. LYNCH: I think maybe Ms. Look  
9 might be more able to answer that, but  
10 obviously we're going to lose some of them.

11 MS. LOOK: It's displacement. All  
12 the people wouldn't be able to come back.

13 VICE-CHAIRMAN LOUD: But you would  
14 build to what zoning allowed and bring back as  
15 many as you could?

16 MS. LOOK: Well, we'd have to redo  
17 the financing structure and we might need to  
18 get additional subsidy, either from private  
19 sources, or going back to the Department of  
20 Housing, would probably add a significant  
21 amount of time and the property would sit  
22 vacant that much longer.

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1                   VICE-CHAIRMAN LOUD: This would  
2 also increase design costs, staff time. I  
3 would think that it would stand a fairly -- if  
4 this wasn't granted, I think it would stand a  
5 fairly good chance of making the project  
6 unworkable. Did you want to elaborate on that  
7 at all, in terms of it being unworkable? Or  
8 sort of leave it there?

9                   MR. LYNCH: Well, the only thing  
10 that I could really talk about more is, number  
11 one, the delay in having, in keeping this, and  
12 keeping the tenant group together, which has  
13 been very tight for a long period of time out  
14 of their homes. The additional costs  
15 involved. The staff time to renegotiate  
16 whatever, if even possible, the loans.

17                   The increased costs, the increased  
18 carrying costs on a -- you know, you have  
19 fixed and variable costs, and it's kind a  
20 counterintuitive, that if a variable cost is  
21 one that each person pays about the same  
22 amount, and a fixed cost is one that gets

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1 divided amongst all the people, and fixed  
2 costs would also hurt as Ms. Look spoke about  
3 earlier. That's basically most of what I've  
4 got to say.

5 VICE-CHAIRMAN LOUD: Thank you.

6 CHAIRPERSON MILLER: Do you have  
7 more witnesses?

8 MS. LOOK: If the owners would  
9 like to say something.

10 INTERPRETER: He says he has a  
11 question.

12 MR. MORENO: [In Spanish]

13 INTERPRETER: Good morning to  
14 everyone. I have a question to ask.

15 MR. MORENO: [In Spanish]

16 INTERPRETER: Given the fact that  
17 the people who lived at 2922 Sherman Avenue,  
18 N.W., have been, have had a dream, for years,  
19 to become the owners of this building, and the  
20 fact that this opportunity has been granted  
21 them, and the previous administration has  
22 helped them to do so, my question would be do

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1 you think it's fair to displace these families  
2 to another place instead of allowing their  
3 dream to be fulfilled and giving them the  
4 opportunity to live there?

5 MR. MORENO: [In Spanish]

6 INTERPRETER: I think that as  
7 people, these families have the right to have  
8 access to something that's more promising,  
9 both for them and for future generations, and  
10 I think that you, as authorities, and as  
11 neighbors, can play an important role in that  
12 through our valuable collaboration, all of you  
13 together, in supporting the building of, or  
14 the renovation of this building and the  
15 building of a new addition.

16 And I would just like to point out  
17 to you the urgency of collaborating with us,  
18 not only with us, but with the city, with  
19 development and in order to support future  
20 generations. Thank you and God bless.

21 CHAIRPERSON MILLER: Thank you.

22 Do you want to turn the mike off, if he's

1 finished. Oh, he wants to say something else.

2 MR. MALDONADO: [In Spanish]

3 INTERPRETER: Good morning to  
4 everyone. First of all, I would like to ask  
5 for a favor of you, because we are really in  
6 need. We know that we have received a lot of  
7 help, the city has collaborated with us, MANNA  
8 has collaborated with us in developing this  
9 project. We need to live there and we think  
10 that this is an opportunity that should not be  
11 missed, and we're asking you to help us to do  
12 whatever is possible to obtain the permit to  
13 expand this building and add a floor, to help  
14 us in whatever way is possible to continue  
15 with this construction project.

16 We have been struggling for this  
17 for five years and it's not possible, and  
18 really, that's a long time for us -- it's not  
19 possible for this project to fail now, to  
20 vanish. This is a project that is so  
21 desirable for us and it would be of benefit to  
22 the whole community.

1 Thank you so much for your help.

2 CHAIRPERSON MILLER: Thank you.

3 I Just want to respond, really,  
4 just briefly. You know, we're still in the  
5 middle of this case. But I'm sure I speak for  
6 the whole board, that the board is very  
7 sympathetic to the predicament, and we know  
8 we're not dealing just with buildings, that  
9 we're dealing with families and people's  
10 lives, and we can hear all this. What I want  
11 to say to you is our decision wouldn't be  
12 upheld, if we decided it just on fairness or  
13 on what we thought would be good policy.

14 That we have to address the tests  
15 that are required for a variance and that's  
16 why we are asking all these questions, so that  
17 we can get as much information as possible to  
18 use in our analysis, to see if it meets the  
19 test.

20 And that's why we're asking all  
21 these questions, because we do want to try,  
22 the best we can, to make sure that we have all

1 that information, so that we can make the best  
2 decision. But, you know, we hear you.

3 CHAIRPERSON MILLER: Anything else?

4 MR. MORENO: [In Spanish]

5 INTERPRETER: Yes. I have a  
6 question as regards the time that we might  
7 have to wait to know your decision. It's just  
8 that we have been working on this since 1999  
9 and trying everything we could to make this a  
10 reality, and as I said before, we've received  
11 collaboration from people in the past and  
12 we're still receiving collaboration now, and  
13 I just would please want to know if you could  
14 tell us the amount of time that will go by  
15 before we know your decision.

16 I'd also like to thank you in  
17 advance, not only in our name, but in the name  
18 of the cooperative, in general, not even just  
19 the cooperative but also in the name of our  
20 children. The fact that you're helping us  
21 will help them.

22 And I think if you were in our

1 situation, you would do the same. We're  
2 asking, really, for an act of conscience and  
3 some reflection on your part on these matters.  
4 I believe that your desire to help us will  
5 result in the whole community being helped.  
6 Thank you.

7 CHAIRPERSON MILLER: Okay. We'll  
8 be able to answer the question about time when  
9 we finish this case today. At the end of the  
10 case today, we'll be able to give you an idea  
11 of when we'll make our decision.

12 MR. MORENO: Thank you.

13 CHAIRPERSON MILLER: Okay. Do you  
14 have any other witnesses?

15 MS. WILLIAMS: No; we don't.

16 CHAIRPERSON MILLER: Okay. Mr.  
17 Johnson, I guess you can come to the table for  
18 a minute. I just want to raise one thing with  
19 you. Were there any other questions from the  
20 board? No.

21 You're in support of this  
22 application in any event; correct?

1 MR. JOHNSON: Yes.

2 CHAIRPERSON MILLER: Okay. We do  
3 have the letters from the ANC. Normally, you  
4 know, when we have a letter from the ANC that  
5 authorizes someone to participate in the  
6 proceedings, they can cross examine, and I  
7 don't know that you want to do that anyway,  
8 but I don't see it in the ANC letter, that  
9 says you can represent the ANC and participate  
10 and cross examine in these proceedings.

11 MR. JOHNSON: Well, I'm not sure  
12 if our chairman, Dottie Wade, who is out of  
13 town, and who would have been here -- I'm not  
14 sure if she submitted such a letter, but I  
15 don't want to do any cross examination,  
16 examining anyway, and really, the only thing  
17 that I have to add to the whole case is an  
18 additional letter of support from a fellow  
19 commissioner, and this letter reflects, pretty  
20 much, the opinion of the entire community  
21 which pretty much parallels the resolution  
22 that ANC passed in support of this project.

1                   And if I could -- I have a copy of  
2                   it, of that letter, it's a one-page letter,  
3                   and if I could read that into the record.

4                   CHAIRPERSON MILLER: You can  
5                   submit it.

6                   MR. JOHNSON: Okay.

7                   CHAIRPERSON MILLER: And then  
8                   serve it on the Applicant and the Office of  
9                   Planning.

10                  MR. JOHNSON: Okay. Yes. I have  
11                  several copies. I think there are about 20  
12                  copies of it, so -- so could I do that?

13                  CHAIRPERSON MILLER: Sure.

14                  MR. JOHNSON: Okay. It's a short  
15                  letter. It's to the Chair of the Board of  
16                  Zoning Adjustment, and it reads:

17                  "Dear Chair Miller and members of  
18                  the BZA: I write this letter with  
19                  enthusiastic support for the upcoming project  
20                  located at 2922 Sherman Avenue ,N.W. The  
21                  tenants of this building have worked  
22                  tirelessly to create a future home for

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1 themselves that will truly be an asset to  
2 their surrounding community.

3 "As an ANC Commissioner and  
4 resident in the northern part of Ward 1, I  
5 have seen the displacement of low- and  
6 moderate-income residents that has come as a  
7 result of the escalating prices in the current  
8 home market.

9 "Again and again, my constituents  
10 and neighbors decry this displacement and the  
11 necessity that their neighbors and friends  
12 must leave our community because they can no  
13 longer afford to live in their homes.

14 "Landlords and real estate  
15 speculators have taken advantage of this  
16 market at the cost of affordability.  
17 Additionally, little if any of the new housing  
18 that is being created can accommodate large  
19 families. That is why this project is so  
20 exciting. The building will continue to house  
21 families who have been a part of this  
22 neighborhood. All of the units will have room

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1 for families with children. The project will  
2 offer an opportunity for these families to  
3 build equity and stability in their own lives,  
4 thereby creating it for the broader community.

5 "With the assistance of MANNA,  
6 Incorporated, the tenants have worked to  
7 address some concerns raised by neighbors and  
8 the ANC 1A. As the request before you today  
9 is to grandfather the current building  
10 footprint but not ask for any other zoning  
11 adjustment, there should be little impact on  
12 neighbors beyond what would normally occur  
13 with the remodeling of a building.

14 "I thank you for your time in  
15 reviewing this case and in considering my  
16 letter. I hope that you will support this  
17 effort and allow these hard-working residents  
18 the opportunity to stay in their neighborhood.  
19 Sincerely, Ann K. Tyson, Commissioner ANC  
20 1A05."

21 CHAIRPERSON MILLER: Thank you.  
22 Any questions?

1                   That was from a single ANC  
2 Commissioner?

3                   MR. JOHNSON: Yes, and again, it  
4 pretty -- the language in there pretty much  
5 parallels the language in the resolution that  
6 we passed, so --

7                   CHAIRPERSON MILLER: That's a  
8 November 14, 2007 resolution? Do you know?

9                   MR. JOHNSON: Yes.

10                  CHAIRPERSON MILLER: Okay. Cause  
11 that's in our files.

12                  MR. JOHNSON: Okay.

13                  CHAIRPERSON MILLER: Okay; thank  
14 you.

15                  MR. JOHNSON: All right. What  
16 shall I do with this.

17                  CHAIRPERSON MILLER: You could  
18 give it to Ms. Bailey.

19                  MR. JOHNSON: Okay.

20                  CHAIRPERSON MILLER: Thank you  
21 very much.

22                  MR. JOHNSON: All right.

1 CHAIRPERSON MILLER: Okay. So now  
2 I think we should go to the Office of  
3 Planning.

4 MR. GOLDSTEIN: Good afternoon,  
5 Madam Chair, members of the board. My name is  
6 Paul Goldstein and I'm a development review  
7 specialist with the Office of Planning. As  
8 you've heard testified to today, the Applicant  
9 proposes to construct an additional floor on  
10 top of an existing three-story multi-family  
11 building at 2922 Sherman Avenue, N.W. The  
12 property is zoned R-4.

13 As more explicitly provided in our  
14 report, OP from a planning perspective,  
15 believes that the proposal does not satisfy  
16 the requirements of the three-part variance  
17 test for the requested relief, most notably as  
18 it relates to the addition of a fourth floor.

19 The thrust of our opposition to  
20 that was difficulty with the uniqueness aspect  
21 of the property. Additionally, OP has  
22 consistently recommended denial of

1 applications for physical expansion of  
2 nonconforming apartment buildings in the R-4  
3 District.

4 OP believes that the addition is  
5 contrary to the intent of the zoning  
6 regulations, namely, the R-4 District's stated  
7 aim to preserve the row dwellings and flats  
8 character. I will, however, acknowledge that  
9 we've heard quite a bit of rather compelling  
10 testimony today.

11 Relief for courts, lot occupancy  
12 and rear yard is also requested by the  
13 Applicant. As stated, the Office of Planning  
14 does have difficulty with the floor relief and  
15 does not feel that relief is warranted.

16 Nevertheless, should the board  
17 determine that a fourth floor addition is  
18 justified on this site, OP then believes that  
19 the property satisfies the variance test for  
20 courts, lot occupancy and rear yard in order  
21 to accommodate a fourth floor addition.

22 Finally, the Office of Planning is

1 supportive of the rehabilitation of underused  
2 properties and the creation of affordable  
3 housing in the District, although we caution  
4 that it should reflect the development  
5 limitations of the zoning designations.

6 Based on our review under the  
7 three part variance test, we're unable to  
8 support the application and thank you very  
9 much. I'm now available for any questions.

10 CHAIRPERSON MILLER: Thank you.  
11 Yes. I have a few questions based on a lot of  
12 what we've heard today.

13 First of all, why is the  
14 uniqueness test any different with respect to  
15 the fourth story than it is with respect to  
16 rear yard or court?

17 MR. GOLDSTEIN: Sure. My  
18 understanding is that if a fourth floor is  
19 supported by the board, it would not -- these  
20 other relief that are needed would be an  
21 impediment to the creation of that fourth  
22 floor. Without rear yard relief, without lot

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1 occupancy relief, without court relief, you  
2 wouldn't be able to have a fourth floor on  
3 that building in any kind of useable or  
4 practicable form.

5 CHAIRPERSON MILLER: But would you  
6 support a variance for a court in this case?

7 MR. GOLDSTEIN: Sure. Yes; yes.

8 CHAIRPERSON MILLER: What would  
9 the uniqueness be?

10 MR. GOLDSTEIN: Well the  
11 uniqueness would be that there's -- if you do  
12 support a fourth floor, there is an existing  
13 building that does not conform to court, it  
14 doesn't conform to rear yard, the lot  
15 occupancy is overdeveloped, and therefore,  
16 there is a practical difficulty if you build  
17 a fourth floor.

18 The analysis does change if you  
19 don't have a fourth floor being proposed.  
20 There would be no -- it would just be  
21 basically renovating an existing building.  
22 There wouldn't be any change in lot occupancy.

1 There wouldn't be any change in court and  
2 there wouldn't be any change in rear yard.

3 CHAIRPERSON MILLER: I don't know  
4 if we're understanding each other.

5 MR. GOLDSTEIN: Sure.

6 CHAIRPERSON MILLER: Basically, it  
7 seems to me that uniqueness would go to any of  
8 the variances, so I'm just saying would you  
9 support any of the variances based on  
10 uniqueness? Or you're just saying, well,  
11 you're dealing with the fourth story first?

12 MR. GOLDSTEIN: We do our analysis  
13 based on each individual relief. We don't  
14 just say that it's unique for all types of  
15 variance being asked for.

16 We have more difficulty with the  
17 uniqueness test as it relates to floors.  
18 There's a building that occupies 69 percent of  
19 the lot in a place that only permits 40  
20 percent of the lot to be occupied. It's built  
21 to three stories. It's already existing.

22 We have trouble finding uniqueness

1 under those circumstances. If they're going  
2 to add an additional floor, I think that there  
3 are uniquenesses related to the other forms of  
4 relief.

5 You can't construct a fourth floor  
6 without some relief from these other  
7 regulations.

8 CHAIRPERSON MILLER: Why isn't one  
9 foot a di minimis amount of measurement in  
10 this case, in the context of variance relief?

11 MR. GOLDSTEIN: My reading of the  
12 plans is that it isn't actually one foot.

13 CHAIRPERSON MILLER: What do you  
14 think it is?

15 MR. GOLDSTEIN: I would say it's  
16 more towards three or four feet. If you look,  
17 it's an entire first floor that is above the  
18 ground on the front. You're permitted a base  
19 -- I'm sorry. A cellar would be under four  
20 feet above grade. I don't believe that it's  
21 only five feet above grade.

22 CHAIRPERSON MILLER: Why is this

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1 contrary -- or do you think it's contrary to  
2 the zone plan? I think it was Mr. Lynch who  
3 said that we already have a multi-family  
4 dwelling here, that's continuing to be a  
5 multi-family dwelling. It's not like it was  
6 a vacant piece of property where we should put  
7 up a rowhouse instead of a multi-family home.

8 So how is this contrary if it's  
9 within the height limitations, and also the  
10 density actually sounds like it's being  
11 decreased because they're creating larger  
12 units for the families who would be returning  
13 to it.

14 MR. GOLDSTEIN: A density as far  
15 as number of tenants is what you're saying,  
16 cause the floor area ratio density is going up  
17 quite a bit.

18 CHAIRPERSON MILLER: Right.

19 MR. GOLDSTEIN: Sure. The R-4  
20 District discourages apartment buildings in  
21 that zone. We do have an existing multi-  
22 family building. We don't oppose it being

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1 used as an apartment building at this point.  
2 What we have a problem with is the expansion  
3 of apartment buildings.

4 One floor may seem di minimis.  
5 It's up to the board to consider how extreme  
6 that is. It is within the height limitations  
7 for the zone. If someone came in with a four  
8 floor addition, it'd be a very different  
9 story.

10 We, as an office, have a position  
11 that we just will not support it in an R-4  
12 Zone. That there is a certain level of  
13 protection of rowhouses in this area, that's  
14 been stated as the intent of the R-4.

15 CHAIRPERSON MILLER: And how does  
16 this go against, you know, promoting  
17 rowhouses? Would it be that otherwise it  
18 might be torn down? You know, I mean --

19 MR. GOLDSTEIN: Yes. I don't  
20 necessarily see that being the result but if  
21 it's -- if there is a "creep" of apartment  
22 expansion in an area, I think it certainly

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1 affects the character of a neighborhood that's  
2 mostly rowhouses.

3 Now in this particular case, I  
4 would be hard-pressed to suggest that it's  
5 contrary to the public good to not permit one  
6 additional floor. It's hard to think on that  
7 isolated case, that there could be a problem.

8 But as a policy, we tend to not  
9 want this "creep" to crowd out additional  
10 rowhouses in a neighborhood.

11 CHAIRPERSON MILLER: I can  
12 understand why Office of Planning would have  
13 that policy, but is that then an "iron clad"  
14 policy, so that any exceptions wouldn't really  
15 be considered by Office of Planning, that it's  
16 just up to the board to consider?

17 MR. GOLDSTEIN: Well, I can't say  
18 that there can't be exceptions. There  
19 probably are cases that maybe we would find  
20 one too. It's a very strong opinion, on our  
21 part, that we can't support it.

22 I think there's been quite a lot

1 of testimony here that maybe there are  
2 somewhat unique or I shouldn't use that type  
3 of language, necessarily, but certain  
4 extenuating circumstances in this case. It's  
5 been enlightening for me as well to hear the  
6 testimony today, but nonetheless, our policy  
7 is firmly against supporting expansions like  
8 this.

9 CHAIRPERSON MILLER: I think this  
10 is my last question. I mean, I know,  
11 certainly with respect to the Comprehensive  
12 Plan that was recently adopted, that it  
13 certainly is a strong policy, I think of the  
14 city and the Office of Planning also to  
15 promote affordable housing, and is that  
16 factored in in this analysis with the Office  
17 of Planning's analysis in this case?

18 MR. GOLDSTEIN: We certainly  
19 support affordable housing. We agree that  
20 it's a District policy and the Office of  
21 Planning's policy, that affordable housing be  
22 encouraged. We would be happy to see this

1 used as affordable housing. The question then  
2 becomes how, what type of relief for  
3 additional stories, or additional relief from  
4 the zoning code to accommodate a certain plan  
5 for affordable housing?

6 It is taken into consideration but  
7 it's difficult for us to necessarily also pair  
8 between different types of affordable housing  
9 plans, which are worthy, which are not, which  
10 nonprofit organizations are worthy, which are  
11 not.

12 From a planning perspective, we  
13 have difficulty, from a physical point of  
14 view, supporting this type of proposal.

15 MEMBER DETTMAN: Mr. Goldstein, in  
16 this situation we have an existing building  
17 that upon construction was built with a  
18 basement that was above the four foot  
19 limitation. So it has to be called a  
20 basement, not a cellar.

21 For the other types of relief,  
22 rear yard, courts, your analysis goes to the

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1 existing improvements on the property.

2 Why couldn't we find uniqueness in  
3 the fact that the basement, built prior to  
4 1958, was constructed above four feet, and  
5 then allow the Applicant to build to the  
6 maximum allowable height in the zone?

7 MR. GOLDSTEIN: I can't  
8 necessarily think through all the implications  
9 of supporting that position.

10 MEMBER DETTMAN: It seems to me  
11 that the R-4 is structured to protect density,  
12 and that if, by chance, when this building was  
13 constructed, it was built as a cellar instead  
14 of a basement, it seems to me OP would support  
15 that, but in a sense, the density would be the  
16 exact same, because the regs allow for people  
17 living in cellars and basements.

18 MR. GOLDSTEIN: I understand that  
19 the use is a very compelling driver of this  
20 proposal. That would be a position that I  
21 think we'd probably feel uncomfortable with  
22 making many exceptions to. I think it's

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1 certainly something that can be factored into  
2 it. The fact that you're underneath the 40  
3 foot height limit, I think that's an  
4 interesting fact. The fact that there's a  
5 nonconforming structure that's four floors  
6 next to it, I think is an interesting fact.

7 But I think when you start asking  
8 us to take some liberties with how we  
9 interpret that regulation, I'm not quite sure  
10 what all the implications of that would be.

11 MEMBER DETTMAN: And finally, it's  
12 not really a question but just sort of a  
13 suggestion. That I know that DCOP's in the  
14 middle of a larger rewrite of the zoning  
15 regulations and if protecting R-4 Districts  
16 against apartment houses is a main priority,  
17 it would be good to get rid of 350.5, about  
18 the conversion of a building that predates  
19 something because, you know, we're looking to  
20 protect rowhouse neighborhoods but if a  
21 rowhouse exists prior to 1958 it could be  
22 converted to an apartment house. So just a

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1 suggestion.

2 MR. GOLDSTEIN: Sure; sure. I  
3 would say that this isn't just a conversion  
4 and this is also an expansion. But thank you,  
5 I think that's a good suggestion and certainly  
6 one issue that we'll probably take a look at  
7 as part of our zoning review.

8 CHAIRPERSON MILLER: In your  
9 conclusion, you said that OP would not object  
10 to a proposal to renovate the existing  
11 structure without the addition of the new  
12 fourth floor. But when you said that, though,  
13 did you have an appreciation that that  
14 wouldn't be able to accommodate the families,  
15 or --

16 MR. GOLDSTEIN: Well, I think  
17 there's certainly been quite a bit of  
18 testimony today on that topic.

19 CHAIRPERSON MILLER: Right. I  
20 mean, I agree, I think we heard a lot more  
21 detail today than what was in our papers,  
22 which is why we ask all these questions, so we

1 can gather that. Okay.

2 Any other questions?

3 [No response]

4 CHAIRPERSON MILLER: Does the  
5 Applicant have a copy of the Office of  
6 Planning's report?

7 MR. MORENO: Yes; we do.

8 CHAIRPERSON MILLER: And do you  
9 have any questions for the Office of Planning?  
10 Okay. We already heard from the ANC -- what?  
11 Oh, you have a question for the Office of  
12 Planning. Okay. Okay.

13 MR. MORENO: [In Spanish]

14 INTERPRETER: Yes. I don't  
15 understand why it's being said that better  
16 results could not be obtained this way. If  
17 there are buildings next door that have four  
18 floors, I don't understand why the gentleman  
19 is objecting in this regard when such  
20 buildings do exist around. Why shouldn't we  
21 also be allowed to have the maximum number of  
22 floors?

1           MR. GOLDSTEIN: Thank you for your  
2 question. The building right next door, as I  
3 understand, is a nonconforming building. It  
4 was also built likely prior to our zoning  
5 regulations which is why it rises up higher.  
6 Just because a neighboring property may exceed  
7 the existing zoning requirements doesn't mean  
8 that we can then support new properties from  
9 exceeding the zoning requirements as well.

10           MR. MORENO: [In Spanish]

11           INTERPRETER: We are getting the  
12 idea that despite what may be your very good  
13 intentions, it seems as though you might  
14 really be putting us in a bad situation and  
15 doing us some damage, because you're impeding  
16 what could be a better development of the  
17 neighborhood, not only for us but for future  
18 generations. So we are asking you, urging  
19 you, please, to change your decision.  
20 Otherwise, many families will be hurt by this  
21 instead of being helped, and history will  
22 judge us. Thank you.

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1 MS. LOOK: May I make a closing  
2 statement now?

3 CHAIRPERSON MILLER: Wait minute.  
4 I need to see if there's anybody here who  
5 wants to testify in support of the  
6 application.

7 [No response]

8 CHAIRPERSON MILLER: Okay.  
9 Anybody here who wants to testify in  
10 opposition to the application?

11 [No response]

12 CHAIRPERSON MILLER: Okay. Then  
13 we are ready for a closing statement.

14 MS. LOOK: We've had a lot of  
15 testimony so I won't belabor this. But we  
16 feel that we have met the burden of the three  
17 points of the variance test with the strongest  
18 point being that there is a hardship and this  
19 is a very extraordinary situation.

20 And while I'm mindful of the  
21 Office of Planning, their position, we  
22 appreciate their point of view; however, I

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1 think the bulk of why they took that position  
2 is that they were very concerned about setting  
3 a precedent. We're mindful of that precedent  
4 but we feel like this situation is so unique,  
5 that we rise above the -- it'd be very  
6 difficult to use this project to set a  
7 precedent, and so therefore we feel like we've  
8 met the tests, so that we should be given the  
9 variance for the project.

10 MR. BENAVENTE: Just two quick  
11 comments. One of them is that even though we  
12 are increasing the FAR, if we add the  
13 additional story, on R-4 there's no limit for  
14 FAR. And the other thing is that if the  
15 intent of the R-4, it's about -- let's say  
16 again it's apartment buildings, because they  
17 don't want to increase density and all that,  
18 we are reducing the amount of apartments in  
19 this case. Thank you very much.

20 CHAIRPERSON MILLER: Thank you.  
21 Any other final questions from board members?

22 [No response]

1                   CHAIRPERSON MILLER: Okay. I just  
2 want to take a moment and confer with my board  
3 members about how we want to proceed and I'll  
4 get right back to you.

5                   [The board members confer from  
6 12:37 p.m. to 12:40 p.m.]

7                   CHAIRPERSON MILLER: Okay. Thank  
8 you for waiting. As I said earlier, that we  
9 would decide at the end of this hearing when  
10 we would let you know about our decision. So  
11 that's what we were talking about, how much  
12 time we wanted to take on this case.

13                   And so what we decided was we'd  
14 like to set this for decision on March 11th as  
15 a special meeting. That would be in two  
16 weeks.

17                   And we only want to leave the  
18 record open for the parties in this case,  
19 which would be the Applicant and the ANC, if  
20 you want to submit any other supplemental  
21 information on the economic questions we were  
22 talking about, if you want to be any more

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1 specific. We're not requiring this.

2 But you touched upon certain  
3 issues that buttressed greatly, in our view,  
4 the variance test, which some of it was like  
5 the costs of the cellar, if you were to have  
6 dropped that one foot. We didn't really have  
7 too much information on that in the papers  
8 before and we got a good feel that it would be  
9 prohibitive.

10 However, if you choose to submit  
11 any other documentation to strengthen that,  
12 we're going to leave the record open to that  
13 and not require it.

14 Also, the question about the  
15 cellar, are we talking about one foot? are we  
16 talking about more? and, you know, that goes  
17 to the di minimis issue that I raised.

18 And then the only other issue, if  
19 you want to supplement, we heard a lot of  
20 compelling testimony, you're not required to  
21 supplement, but one of the areas that we will  
22 be considering will be the costs of, the

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1 emotional costs or whatever of the  
2 displacement of the families, and as going to  
3 uniqueness in this case.

4 so if you want to submit anything  
5 else on that, we will leave the record open  
6 for that. And I think that's it unless other  
7 board members have something.

8 MS. LOOK: Could I ask a question,  
9 just to clarify, on the third one?

10 You said the emotional costs.

11 CHAIRPERSON MILLER: Well, the  
12 human costs. I think that that's what we were  
13 talking about, or you were talking about here.  
14 You know, we're not just talking about bricks  
15 and concrete. We're talking about a unique  
16 situation involving specific families and ties  
17 to their community or their home or whatever,  
18 and that is one of the issues that we will be  
19 considering with respect to the uniqueness  
20 test.

21 So what we plan to do in this, why  
22 we decided to take two weeks, was so that we

1 could look at the transcript again for the  
2 facts that you all addressed. But if there's  
3 more that you think you could say about that,  
4 we would leave the record open for that.

5 MS. LOOK: Thank you.

6 CHAIRPERSON MILLER: Okay. So I  
7 think that our decision meeting will be March  
8 11th and you can be here for that but you  
9 don't need to be here for that. That's in the  
10 morning. We don't take testimony there unless  
11 we specifically ask for it, and I doubt that  
12 we would ask for it in this case.

13 So Ms. Bailey, should we have any  
14 other submissions that might come in be due  
15 March 4th or 5th?

16 MS. BAILEY: March 5th seems to be  
17 a better day.

18 CHAIRPERSON MILLER: Okay. So you  
19 would submit them to the Office of Zoning like  
20 the other papers and serve the Office of  
21 Planning and the ANC. Oh. Also -- yes, sir,  
22 one minute. Also, I want to remind you, if

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1 you want to listen to our deliberation but  
2 it's hard to come here, we are all on the  
3 Internet. So you can go to the Office of  
4 Zoning Web site and they have live, when we're  
5 deliberating.

6 Yes?

7 MR. MORENO: [In Spanish]

8 CHAIRPERSON MILLER: Gracias.

9 Anything else?

10 INTERPRETER: I will interpret  
11 that.

12 CHAIRPERSON MILLER: Good.

13 INTERPRETER: I'd like to ask you  
14 all a favor. Please consider that we are here  
15 from the building 2922, we're humble people,  
16 but all we want is the best for our children  
17 and we will continue to hope for a good  
18 resolution to this. Thank you.

19 CHAIRPERSON MILLER: Okay. Any  
20 other questions?

21 [No response]

22 CHAIRPERSON MILLER: All right.

1 Thank you very much.

2 The board's just going to take a  
3 quick five minute break and we'll be right  
4 back.

5 [Off the record from 12:46 p.m. to  
6 12:59 p.m.]

7 CHAIRPERSON MILLER: Okay. We're  
8 back on the record. Hello. Do you want to  
9 introduce yourselves.

10 MS. DWYER: Certainly. Maureen  
11 Dwyer with Pillsbury Winthrop Shaw Pittman,  
12 and also with me is my associate, Jeff Utz.  
13 To my right is Jeff Kaufman, the  
14 representative of Buzzuto, the developer. To  
15 his right is Andie Adams, an architectural  
16 historian with Pillsbury Winthrop Shaw  
17 Pittman, and to her right is Sean Stadler with  
18 WDG Architects, the architect for the project.

19 We submitted the resumes for both  
20 Andy and Sean to be qualified as experts.  
21 Andy has previously appeared before you. Sean  
22 has been qualified before the Zoning

1 Commission but not before you. So we would  
2 like him accepted as an expert here.

3 CHAIRPERSON MILLER: Do board  
4 members have any questions?

5 [No response]

6 CHAIRPERSON MILLER: We have no  
7 problem qualifying both of them.

8 MS. DWYER: Great. Thank you very  
9 much.

10 CHAIRPERSON MILLER: Okay.

11 MS. DWYER: Good afternoon. We're  
12 happy to be here and we're here to request  
13 variance relief from the lot occupancy, the  
14 loading and the parking requirements in order  
15 to construct a residential building in the  
16 DD/C-2-C District. We are also here to  
17 request special exception relief from the  
18 setback requirements for the penthouse.

19 We are pleased to be here with the  
20 support of the Office of Planning, the  
21 Department of Transportation, the Mount Vernon  
22 Square Neighborhood Association as well as ANC

1 6C. In fact, we are unaware of any opposition  
2 to this project.

3 In our prehearing submission, we  
4 included a proposal loading plan that we  
5 labeled an alternate loading plan. It's on  
6 page A1.1, and that plan proposed using a  
7 portion of the public space, sidewalk area of  
8 the building's location along L Street as a  
9 service delivery space.

10 Subsequent to our filing, we met  
11 with the Department of Transportation and we  
12 learned from them that they would not approve  
13 the use of that public space area, and  
14 instead, they fully support the loading  
15 variance, and their letter was filed in the  
16 record, I believe, on Friday.

17 In light of DDOT's position, we  
18 are withdrawing the alternate loading plan and  
19 just going for the full loading variance, and  
20 as DDOT indicates in its report, we are going  
21 to work with them to manage a loading space on  
22 the street area.

1           Additionally, in our prehearing  
2           submission, and at the request of the Office  
3           of Planning, we included an alternate roof  
4           structure plan, and that's A1.1A, and that  
5           shows the roof structure setback from all  
6           sides, in conformance with the regulations.  
7           The witnesses will address this issue but it  
8           is our belief that connecting the penthouse to  
9           the architectural embellishment results in an  
10          improved design for the building.

11                 So we're going to present both  
12          alternatives and leave it up to you, after  
13          you've heard from the Office of Planning, as  
14          to which of those two you would prefer.

15                 As the witnesses will discuss, we  
16          are here because we have an unusual situation.  
17          There is preservation interest in retaining  
18          the existing building, which creates some of  
19          the practical difficulties in meeting the  
20          zoning requirements. But additionally, we  
21          have a very small, unusually-shaped corner lot  
22          which adds to the practical difficulties.

1                   And without further ado, I'm going  
2 to turn to the witnesses and let them walk  
3 through the areas of relief.

4                   CHAIRPERSON MILLER: Okay.

5                   MR. KAUFMAN: Good afternoon. My  
6 name is Jeff Kaufman. I'm with the Buzzuto  
7 Development Company. For those of you who are  
8 not familiar with Buzzuto, we have been around  
9 since the early '80s and are a local  
10 residential developer, builder, manager and  
11 owner.

12                   Some of the other projects we have  
13 recently been involved in in the District  
14 includes the Newseum on 6th and Pennsylvania,  
15 the Ellington on 13th and U, the Lexington on  
16 8th and D, and the Fedora on 14th and Belmont.

17                   We are the contract purchaser for  
18 460 New York Avenue, which is between 4th and  
19 5th Streets, immediately north of the City  
20 Vista project. I want to point out that we  
21 are also the contract purchaser for the  
22 building across the street on the north side

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1 of New York Avenue next to Yale Laundry, where  
2 we are planning an additional residential  
3 project of similar size.

4 We are proposing what we think is  
5 a thoughtful development solution for an  
6 extremely small and difficult site that is  
7 further complicated with an existing building,  
8 that while not historic, there exists great  
9 interest to preserve.

10 Currently, our plan is to renovate  
11 the existing three story warehouse building  
12 into a residential building and add additional  
13 floors, both below and above the existing  
14 structure, for a residential project of  
15 roughly 80 apartments and 55 to 70 underground  
16 parking spaces.

17 HPO staff asks that we retain the  
18 building, though the building is not a  
19 historic landmark and is not in a historic  
20 district.

21 Our proposal keeps the building  
22 and works it into our design, retaining the

1 building at significant cost. We feel,  
2 however, that the resulting project, with its  
3 details and reuse of existing infrastructure  
4 organizes what would otherwise be an oddball  
5 undevelopable site.

6 Since we are developing a sister  
7 building directly opposite the site, also with  
8 a historic component, this further emphasizes  
9 the rehabilitation goals of the DD District,  
10 particularly here along New York Avenue, by  
11 creating a gateway, as the design team will  
12 point out.

13 Prior to appearing in front of  
14 you, we met with the Mount Vernon Square  
15 Neighborhood Association, the ANC 6C. I'm  
16 just going to sort of shorten this cause  
17 you've heard this already.

18 The variance test, as outlined in  
19 the package, we are here seeking relief in  
20 four areas -- lot coverage, parking, loading  
21 and roof structure, roof structure setback.  
22 We believe we meet the variance test as we

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1 have an extremely small and unusual site that  
2 creates practical difficulties in meeting the  
3 zoning regulations, and can demonstrate that  
4 the project will have no adverse impact on the  
5 zone plan.

6 In fact, we believe strongly, this  
7 project will have a positive impact on the  
8 zone plan and Comp Plan with historic  
9 redevelopment and New York Avenue restoration.

10 I'd like to turn it over, now, to  
11 Andie Adams of Pillsbury Winthrop Shaw  
12 Pittman, who will discuss the historic nature  
13 of the building, the interests in preserving  
14 the structure and briefly discuss the  
15 sensitivity of the proposed design.

16 MS. ADAMS: Good afternoon. I'm  
17 Andie Adams with Pillsbury. I'd like to talk  
18 about the building for just a minute.

19 The structure that we're talking  
20 about is a three story concrete frame brick  
21 building. It was designed in 1925 by a  
22 nationally-known New York firm of Milburn and

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1 Heister who did some quite remarkable  
2 buildings around the country, and some in  
3 D.C., most of which have been demolished.

4 The owner at that time was a  
5 fellow named Samuel Benziger. The early years  
6 of this building, it was occupied by a series  
7 of automobile dealerships and service  
8 facilities. They sold Dodges and DeSoto's,  
9 and Benjamin Ourisman, the grandfather of the  
10 current Ourisman empire, sold Chevrolets from  
11 this building. I think it was his second  
12 dealership location.

13 By 1947 -- or 1945, actually, it  
14 would have been turned into a storage  
15 warehouse and it was occupied in 1947 by Lion  
16 Transfer & Storage Company.

17 This building was on a list of, I  
18 believe, 88 buildings, that was compiled by  
19 the D.C. Preservation League of potential  
20 landmarks in the Mount Vernon Triangle Area.

21 After consultation with the  
22 Historic Preservation Office, the first round

1 of these buildings has been designated as  
2 individual landmarks or included in what is  
3 now the Mount Vernon Triangle Historic  
4 District. Our building is the next building  
5 on the list.

6 And knowing that, it seemed both  
7 appropriate and very prudent to determine to  
8 retain this building. If we hadn't, I am  
9 absolutely convinced that a landmark  
10 application would have been filed very shortly  
11 after any indication that we wanted to raze  
12 the building.

13 And in this instance, actually, it  
14 works out fine. The building is  
15 architecturally appropriate as a base of a  
16 building. It's of a design and sort of  
17 general massing, that it can support new  
18 construction above it without disruption of  
19 its integrity or diminishment of its  
20 integrity.

21 So by retaining the building, we  
22 keep some of the historic fabric, the scale

1 and the character of what was left in the  
2 Mount Vernon Triangle neighborhood while still  
3 allowing for redevelopment on this unusual  
4 site.

5 The building also reinforces and  
6 complements the nearby historic district. As  
7 we developed the project and the design, we  
8 met with both HOP staff, Historic Preservation  
9 Office staff and the D.C. Preservation League,  
10 to share with them the design as it was being  
11 developed.

12 The proposed building is  
13 consistent with the approach that the Historic  
14 Preservation Office staff is taking to  
15 redevelopment of buildings in the Mount Vernon  
16 Triangle, or the warehouse buildings, where  
17 you basically retain the buildings, have some  
18 separation of space right above the top  
19 cornice and then go straight up, which is the  
20 kind of approach that we've taken.

21 So it's consistent with the way  
22 they see looking at these projects, and

1 indeed, there is a project that's already been  
2 approved on a designated landmark with exactly  
3 that approach.

4 And it allows them to retain the  
5 historic but still get the kind of high  
6 density redevelopment that's designed in that  
7 neighborhood.

8 The project rehabilitates the  
9 facades of the buildings, bringing them back  
10 to their historic appearance and making the  
11 building's architectural character somewhat  
12 more apparent than it is at the moment, which  
13 we think is a positive thing. It accomplishes  
14 preservation, even though we're not required  
15 to do so. But we think that's both good and  
16 appropriate and that the preservation and the  
17 design are good and appropriate, and we hope  
18 you'll grant the relief that we need to build  
19 this project.

20 Thank you.

21 MR. STADLER: My name is Sean  
22 Stadler with WDG Architecture and I'm very

1 happy to be here with you this morning.

2 I'm going to walk you through the  
3 project and explain the areas of relief, and  
4 hopefully explain how we satisfy your  
5 requirements.

6 Our project is located between L  
7 Street and New York Avenue. There is an open  
8 green space just to the west of our site. We  
9 have proximity to the Metro and to the greater  
10 downtown business core.

11 We are in the DD/C-2-C Zone  
12 District, which is a high density residential  
13 and commercial zone. The Yale Laundry project  
14 just to our north and the City Vista project  
15 are currently under construction and are  
16 adhering to the zoning requirements and our  
17 project will continue to build into that  
18 fabric of this area.

19 And fortunately, our project is in  
20 an extremely interesting site in the fact that  
21 it's a very small awkward site. We are  
22 approximately 6,450 square feet and the lot is

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1 somewhat triangular with a cut-off tip. So it  
2 makes it very difficult to plan for a  
3 residential project.

4 As Andie had explained to you,  
5 there has been some interest in the existing  
6 building that is on the site, and you can see  
7 to my right here. The three story, somewhat  
8 historic warehouse style building, that really  
9 does fit into what is going on in the  
10 neighborhood in terms of the future  
11 development with the Yale Laundry project  
12 being kind of a warehouse style, and I think  
13 in terms of the desire of the D.C. residents  
14 looking for warehouse type living.

15 So our idea is to go ahead and  
16 take cues from the HPO, and try to find a way  
17 for adaptive reuse of this structure, and use  
18 it as the base of what will be a 130 foot  
19 residential building that'll have ten stories  
20 on top of this.

21 Approximately 81 units, and three  
22 to four levels of parking, with either 54 to

1 72 spaces below grade.

2 And you can see on the first  
3 floor, this is New York Avenue, L Street, and  
4 then the park.

5 Our first floor, we're really  
6 trying to provide some type of environment at  
7 the street level, so we are providing some  
8 amenity spaces, both on New York Avenue and L  
9 Street, as well as our main entrance, kind of  
10 off of the tip of our project. You can see  
11 the entrance into our garage is off of L  
12 Street.

13 And I think that the overall  
14 design concept here really is speaking about  
15 what will become kind of a gateway to the New  
16 York Avenue street.

17 And so that with the existing base  
18 here, and the mass and the height of the Yale  
19 Laundry project, the appropriateness and the  
20 allowable height that we can achieve, we're  
21 really putting our building on top of our  
22 base. We're slightly recessing the fourth

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1 level to kind of lighten the interaction  
2 between the base and the top here.

3 So the areas of relief that we are  
4 asking for are with regard to lot occupancy,  
5 parking, and loading. Our existing building  
6 already is 100 percent lot occupancy and so  
7 therefore, we do not want to demolish any of  
8 this building, and the requirement for 80  
9 percent lot occupancy has to do with our use,  
10 being a residential building.

11 Also because of the kind of  
12 awkward site, any reduction in the occupancy  
13 really further complicates our planning  
14 efforts in terms of making viable units above.

15 The parking, you can see here, is  
16 really very difficult for us to achieve with  
17 underground parking. The majority of our lot  
18 is taken up by the ramp to get down, and so  
19 what we end up with is really four spaces that  
20 conform, and we're using vaulting spaces to  
21 provide additional parking.

22 So whether we are able to do three

1 or four levels of parking, we can conform with  
2 either 16 or -- I'm sorry -- 12 to 16 spaces,  
3 and with 81 units, we are required 20 spaces.

4 But with the vault parking, we are  
5 going to provide somewhere between 54 and 72  
6 spaces. You can see on Exhibit 1.2B, we've  
7 had some issues trying to provide for the  
8 loading, and because we're above 50 units, we  
9 are required one loading berth of at least 30  
10 feet deep, one loading platform, at least 200  
11 feet, and one loading space of at least 20  
12 feet deep.

13 With the side of our site,  
14 actually 200 feet deep would take us to about  
15 this point, if we were to load into here. I  
16 don't know if you can see that right there,  
17 down on the floor. Sorry. I could point up  
18 here too, but it would be at least into here,  
19 which is almost a 100 percent of our site at  
20 that point.

21 So we really are unable to provide  
22 for loading in this project. The

1 nonconforming delivery service, we are  
2 providing for a delivery service space within  
3 our garage, and we're trying to minimize curb  
4 cuts here as well and DDOT has objected to us  
5 making any more curb cuts with regard to  
6 providing additional loading, and Buzzuto has  
7 agreed to manage a loading space on the  
8 street, on L Street, alongside here with DDOT,  
9 to provide for any loading requirements that  
10 we need.

11 And so we are also asking for  
12 special exception relief from the penthouse  
13 setback, and what we've provided here is two  
14 roof versions here, one that actually complies  
15 and one that doesn't, and the reason that we  
16 are asking for this is because we believe that  
17 the unified roof structure provides a better  
18 architectural statement.

19 Because this project really is  
20 very visible from looking up New York Avenue  
21 and really does begin to be a gateway, we  
22 think that combining the roof structure will

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1 clarify the design intent.

2 So what we are proposing is to  
3 combine our architectural embellishment with  
4 the penthouse but to adhere to the strict  
5 reading of the zoning, we could separate our  
6 roof embellishment and our penthouse to  
7 conform.

8 We've got two perspective views  
9 which I really think demonstrate why we think  
10 this is significant. The first, on 3.1, shows  
11 what the unified penthouse structure and  
12 embellishment look like, and 3.1A show what  
13 they look like separately, and philosophically  
14 speaking, the unified structure really starts  
15 to make a very vertical emphasis, which is  
16 what we were trying to do, but as a mass of  
17 the building and not as a tower.

18 And the reason why we believe this  
19 is better as a piece of the mass coming out of  
20 the building is that it's floating here,  
21 again, to kind of separate from the base and  
22 the top of the building and really give a

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1 little bit more identity to the entrance, we  
2 keep this as kind of a mass, whereas if we  
3 separate the roof embellishment as a tower  
4 feature, it's kind of this tower that floats,  
5 attached to the building here.

6 And again, I think that you will  
7 see this all along New York Avenue.

8 CHAIRPERSON MILLER: What will we  
9 see all along New York Avenue?

10 MR. STADLER: You'll be able to  
11 see kind of the connection between the roof  
12 and the roof embellishment pretty visibly.

13 The factors that are requiring us,  
14 or allow us for relief from the variances are  
15 exceptional and extraordinary situations to  
16 the condition. The odd lot configuration that  
17 we have, the small size of the lot being 6,451  
18 square feet, our existing structure, and the  
19 historic nature of the building, as well as  
20 that we're on a corner lot, and that the  
21 adjacent green space to us really provides the  
22 light and air and the intent of setbacks.

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1           If we were to strictly adhere to  
2           the zoning regulations, it would result in  
3           practical difficulties to the Applicant. In  
4           terms of loading, DDOT does not approve any  
5           further curb cuts. Our historic facade would  
6           need to be further demolished to really allow  
7           for loading.

8           We have low floor to floor heights  
9           in the existing building, that really keep us  
10          from being able to get a truck in there for  
11          loading, and if we were to ramp down and  
12          provide for loading within our space, the  
13          earlier diagram shows that we have a difficult  
14          time getting a truck in and because of the  
15          structure, we really can't navigate in there  
16          as well. We'd have to back out, which just  
17          doesn't work.

18          Again, our parking is affected  
19          because the majority of our site is taken up  
20          by the ramp, and so that the use of the vault  
21          space is how we're getting our parking, and to  
22          achieve the 20 spaces, we'd have to go down

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1 additional floors, which potentially could be  
2 cost-prohibitive, and that's why we're asking  
3 for flexibility in the number of levels and  
4 the number of spaces, because we're not  
5 positive what the soil bearing is at this  
6 point, as well as the vaults that we need to  
7 place in here and how we can place them.

8 We might need to put them into  
9 areas that are conforming spaces rather than  
10 into the vault spaces.

11 CHAIRPERSON MILLER: I'm sorry.  
12 What do you mean by that? Parking spaces that  
13 you wouldn't put in the vault space but they  
14 would be in nonconforming space. Is that what  
15 you said?

16 MR. STADLER: We're going to need  
17 to place our vault here, and obviously this is  
18 the ramp, and so if we can't put our vault  
19 outside of our property line, we're going to  
20 have to put the vault in where our parking  
21 that confirms is, which will reduce --

22 MS. DWYER: You're talking about

1 the vault for mechanical and electrical  
2 equipment.

3 MR. STADLER: Yes.

4 MS. DWYER: Yes. When we met with  
5 the Department of Transportation, they said  
6 that one of our spaces might need to be used  
7 for the vault space for mechanical and  
8 electrical equipment, and so they wanted us to  
9 have a range of parking spaces as we continued  
10 to meet with them.

11 So for that reason we're proposing  
12 a range of parking spaces because all of this  
13 has to go through the public space approval  
14 process with DDOT, and they don't want any  
15 electrical or mechanical vaults outside of our  
16 building lines.

17 CHAIRPERSON MILLER: But did you  
18 identify your range of parking spaces in the  
19 pleadings?

20 MS. DWYER: We did not. We're  
21 doing that today. The range is 54 to 72  
22 spaces, it's either three or four levels down,

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1 and this is one, we want to work with DDOT,  
2 and two, if you'll notice in DDOT's report,  
3 they question why we needed as much parking as  
4 we were proposing. Because we're a downtown  
5 transit location and we want to be responsive  
6 to DDOT, so we're going to work with them  
7 within that range.

8 CHAIRPERSON MILLER: While we're  
9 on this topic, though, how soon will you be  
10 working with them? Is it the near term or is  
11 this long term?

12 MS. DWYER: No. This will be  
13 through the building permit process.

14 CHAIRPERSON MILLER: Okay. I'm  
15 just asking this in the context that we, you  
16 know, approved plans that we have in the file,  
17 and so now I'm not clear as to, you know, what  
18 we would be approving.

19 MS. DWYER: Well, that's why I was  
20 going to state again on the record today, that  
21 we would like to have the flexibility to have  
22 a range of parking spaces between 54 and 72,

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1 three or four levels, so that we can work with  
2 DDOT, and I think the other area of  
3 flexibility we would like is we are proposing  
4 essentially a maximum of 81 units, but if  
5 market conditions indicate that people want  
6 larger units, we'd like the flexibility to  
7 reduce the number of units. It'd be the same  
8 square footage but we'd like that flexibility  
9 for the interior layouts of the units.

10 And we will also file in the  
11 record, so you have it, the parking and lot  
12 occupancy diagram that has a notation, the  
13 flexibility for between 54 and 72 spaces based  
14 on DDOT. So that would be in the record as  
15 well.

16 CHAIRPERSON MILLER: So that  
17 diagram that you're showing, is that showing  
18 one level, and you would, we would conclude  
19 that it could be two or three levels? Or what  
20 would that --

21 MS. DWYER: This is the parking  
22 and lot occupancy diagram that we prepared for

1 today's hearing, to show the difficulty in  
2 accommodating the parking and loading within  
3 our property lines. And it simply has a  
4 notation, it shows a typical parking level,  
5 and it says four levels, in parentheses, with  
6 a footnote, flexibility to only do three  
7 levels if the site conditions and DDOT  
8 dictate. And that we file in the record. In  
9 fact we should do that right now.

10 CHAIRPERSON MILLER: Okay. I  
11 think it will be helpful to look at it. The  
12 curb cuts you were talking about, where are  
13 there curb cuts?

14 MR. STADLER: We'd got the other  
15 site plan.

16 CHAIRPERSON MILLER: And are they  
17 at all related to the zoning relief that  
18 you're seeking?

19 MS. DWYER: I could just say,  
20 there is an existing curb cut on L Street that  
21 we're using for the parking entrance, and  
22 there were in fact curb cuts along New York

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1 Avenue which we are closing because DDOT does  
2 not want any curb cuts on New York Avenue.

3 CHAIRPERSON MILLER: I thought I  
4 heard reference to curb cuts and trucks. What  
5 was that?

6 MR. STADLER: The reference was to  
7 providing additional loading would require us  
8 to have more curb cuts.

9 CHAIRPERSON MILLER: Right. So  
10 you're not doing that.

11 MR. STADLER: No.

12 CHAIRPERSON MILLER: okay.

13 MR. STADLER: And do you have  
14 further questions, because I had the last kind  
15 a piece of our --

16 CHAIRPERSON MILLER: No. Go right  
17 ahead.

18 MR. STADLER: All right. So the  
19 last adherence would be in terms of lot  
20 occupancy and, obviously, the existing  
21 building that we want to maintain, occupy, is  
22 20 percent of the building and for it to be --

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1 I mean a 100 percent of the building, and for  
2 it to be residential, it would have to be  
3 reduced 20 percent, which would kind of be  
4 negative to the project.

5 And the third factor, which this  
6 does not cause substantial detriment to the  
7 public good, or impair the intent or purpose,  
8 or the integrity of the zoning plan. This  
9 does not affect diversity of the use of the  
10 neighboring property in accordance with the  
11 zoning regulations. The project advances the  
12 goals and the policies of the zoning  
13 regulations in the Comp Plan for the DD  
14 District.

15 It's a sensitive and compatible  
16 new development. It's revitalizing a  
17 potentially historic landmark. It adds to the  
18 downtown housing stock, and it has no other  
19 option other than to be an efficient use of  
20 the building and site, and it enhances the  
21 neighborhood through the building design and  
22 streetscape improvements.

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1           Our lot occupancy is a corner lot,  
2           and again, if we were to reduce to 80 percent  
3           lot occupancy, it would just add to the  
4           adjacent green space, and so we believe that  
5           it doesn't affect the light and air by having  
6           the 100 percent occupancy.

7           And the parking variance. We are  
8           providing more than three times the required  
9           amount of parking spaces by the use of vault  
10          parking.

11          And with regard to the loading  
12          variance, with the relatively small number of  
13          units here, the loading will be accessed a  
14          lot. We're projecting 75 percent retention  
15          range, so 20 units a year will churn, and so  
16          it'll be a very low use of loading.

17          And the day to day deliveries will  
18          primarily be the users of the building and the  
19          owner is working with DDOT to manage a 24/7  
20          loading on the street.

21          And with that, I'll turn it back  
22          over to Maureen.

1 MS. DWYER: Okay. That concludes  
2 our direct testimony.

3 CHAIRPERSON MILLER: Well, when  
4 you're talking about, you know, providing  
5 three times as much parking, or whatever, what  
6 parking number are we supposed to be looking  
7 at?

8 MS. DWYER: The parking number is  
9 the 54 to 72. We're required to have 20  
10 parking spaces under zoning, so if we go with  
11 the four levels and 72 spaces, we're more than  
12 three times the parking requirement. If we go  
13 with the 54, we're two and a half times the  
14 parking requirement.

15 MEMBER DETTMAN: And can you just  
16 clarify what you mean. I think you said the  
17 reason why you're going for 54 to 72 spaces is  
18 because you're a downtown transit location.  
19 Could you just clarify what that means.

20 MS. DWYER: Well, DDOT referenced  
21 that in their report, and they feel that given  
22 the proximity of this to Metro, given the

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1 proximity to the major buses going up and down  
2 New York Avenue, and given the relatively  
3 small size of these units, it's going to be,  
4 you know, an urban dweller who's going to take  
5 advantage of mass transit, and therefore, they  
6 don't want to encourage too much parking on  
7 this site.

8 MEMBER DETTMAN: But you're  
9 providing three times the amount you actually  
10 need.

11 MS. DWYER: Well, that's why we've  
12 dropped that back to a range of 54 to 72, and  
13 if, when we go through the permit process,  
14 DDOT says we really would prefer that you not  
15 use all of the vault area for parking but  
16 reduce your number of parking spaces, we want  
17 the flexibility to do that.

18 MEMBER DETTMAN: Based on your  
19 parking plan, though, it looks like you can  
20 fit 18 spaces per level, some conforming, some  
21 in vault space. You could satisfy your  
22 requirement just by building two levels, and

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1 that puts you at 36 spaces.

2 MS. DWYER: Right.

3 MEMBER DETTMAN: So is there a  
4 desire to sort of rent out or sell off some of  
5 these spaces?

6 MR. KAUFMAN: Yes. Let me try,  
7 and it's a good question. I think there are  
8 some market considerations in terms of, you  
9 know, marketability and rentals. Some people  
10 who want to rent apartments will want to rent  
11 a parking space. So there's a certain sort of  
12 minimum amount that we need to provide, and  
13 it's a balance that we need to work out with  
14 DDOT.

15 MR. STADLER: I think this diagram  
16 -- really, we can only get four conforming  
17 spaces per floor. And so even with four  
18 levels, we have 16 spaces, which would be four  
19 short in terms of conforming spaces.

20 MEMBER DETTMAN: But that's  
21 assuming it -- that's not counting the  
22 nonconforming ones that are on via levels.

1                   MR. STADLER: Right. Yes. I  
2 think if we could count our nonconforming as  
3 conforming, then we wouldn't really have to  
4 ask for the relief.

5                   MS. DWYER: I guess I would ask  
6 the board, since we have two alternate plans  
7 for the roof structure, if you have any  
8 questions about that area of relief, and  
9 whether you would like us to discuss that any  
10 further.

11                   CHAIRPERSON MILLER: Yes. I mean,  
12 I do. First of all, I mean, my question is  
13 the difference between the two plans, separate  
14 from one's in compliance and one might not be,  
15 is it just a question of aesthetics, how one  
16 reads the penthouse up there, whether it  
17 should be separate or together?

18                   MR. STADLER: Yes. This is really  
19 an aesthetic consideration, and the fact that  
20 we really are trying to make this -- and  
21 again, I think that the plan shows the  
22 technicalities of the combined roof

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1 embellishment in the penthouse.

2 But the perspective really shows,  
3 and hopefully will help you understand how it  
4 can transform the building in terms of  
5 visually being a mass rather than a tower and  
6 then a separate penthouse structure, that  
7 really is not part of the architecture, it's  
8 just a necessity, so we think that it really  
9 enhances the architecture of the penthouse  
10 structure itself, by combining it.

11 CHAIRPERSON MILLER: I guess, Ms.  
12 Dwyer, my question for you is: Do you read the  
13 regulation 411 as providing for relief from  
14 the setback based on aesthetics? Is it the  
15 language, something like other conditions  
16 relating to the building?

17 MS. DWYER: Right. I think it  
18 talks about practical difficulty and other  
19 conditions, and what we've tried to do here is  
20 come up with a design with HPO staff, that is  
21 respectful of the building and that also has  
22 it as a gateway building, and after working

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1 with HPO staff, this is what we came up with,  
2 this connection between the penthouse and the  
3 architectural embellishment as the best  
4 solution for the site.

5 So I think that does provide the  
6 practical difficulty that would go along with  
7 the special exception relief.

8 CHAIRPERSON MILLER: I guess,  
9 where do you see it in the language? Do you  
10 see this as in the other conditions part of  
11 411, other conditions relating to the building  
12 that makes full compliance unduly restrictive?

13 MS. DWYER: Yes; yes. I do.

14 CHAIRPERSON MILLER: Or  
15 unreasonable?

16 MS. DWYER: I think when you look  
17 at the special exception provisions for the  
18 penthouse, you look at all of 411, and that  
19 language is in 411.11, where it talks about  
20 where impracticable, and that's the language  
21 that we're relying on.

22 CHAIRPERSON MILLER: Okay. That's

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1 what I'm looking at and so my question is what  
2 do you see as conditions that are  
3 unreasonable?

4 MS. DWYER: Or other conditions  
5 relating to the building or surrounding area.  
6 It's an existing building where there's  
7 interest in preserving it as a historic  
8 structure, and we're trying to come up with a  
9 design that the Historic Preservation Office  
10 staff believes is sensitive to the building  
11 and its location, and that design is the one  
12 that we have indicated is our preferred  
13 design, that connects the architectural  
14 embellishment at the corner with the  
15 penthouse.

16 As I said, at the request of the  
17 Office of Planning, we wanted to have in the  
18 record a conforming penthouse, but we believe  
19 that this solution, which is supported by HPO  
20 staff, is the preferred one.

21 CHAIRPERSON MILLER: Okay. So  
22 we're talking about this design here as being

1 -- you say it's a condition that it needs to  
2 be sensitive to the location because it's  
3 across from the Yale Laundry building, or it's  
4 at the gateway? Or, you know, what about this  
5 location that calls out for that design versus  
6 separated?

7 MS. DWYER: I think it's a  
8 combination of all of those factors. Their  
9 interest is relating this warehouse to the  
10 rest of the Mount Vernon Square Historic  
11 District. We do have an unusual site. This  
12 building virtually comes to a point right at  
13 the park across from our location. So you  
14 don't have a very wide expanse of the front of  
15 the building and there was an interest in  
16 denoting this as a landmark building by having  
17 this architectural embellishment.

18 And then there was a concern, that  
19 as you went up New York Avenue, because we're  
20 a corner site and the building widens a  
21 little, you're going to see more of the  
22 separation between the corner element and the

1 penthouse, and it's going to make the  
2 penthouse stand out as something distinct.

3 So the feeling was to connect it  
4 all, so it was a visually appealing approach  
5 as you came up New York Avenue, and it was in  
6 keeping with the character of the District and  
7 surrounding development.

8 CHAIRPERSON MILLER: Thank you.

9 MEMBER DETTMAN: The  
10 noncompliance, really, here, is the one-to-one  
11 setback. And so what about the building?  
12 What about the property? What about your  
13 operating needs? Makes you have to create  
14 this nonconformity. We talk about operating  
15 difficulties, size of the building line, other  
16 conditions relating to the building or  
17 surrounding areas. So what about those things  
18 make you have to be in noncompliance with the  
19 one-to-one setback?

20 MS. DWYER: That's why I think  
21 we're relying on the phrase in that section  
22 that talks about "or other things," because

1 it's not a building operating difficulty.  
2 It's very much a design issue. It's an  
3 historic landmark issue, and it's the fact  
4 that we have a building that comes to a point,  
5 and we need to do something to recognize that  
6 and to relate it to the rest of the avenue.

7 So we can't do it on the basis of  
8 operating difficulties, but we think we have  
9 a strong case on design.

10 MR. STADLER: And this is really  
11 because we have such a small site. By  
12 combining this, it's simplifying, you know,  
13 the real massing of the building and had we  
14 had a larger site, the architectural  
15 embellishment that really signifies the  
16 entrance and is noticed from along New York  
17 Avenue, it could stand on its own much easier.

18 But because the penthouse -- and  
19 we're limited to the size -- the penthouse is  
20 so close to the embellishment that it really  
21 becomes in a Gestalt theory, you visually want  
22 to connect them anyway, and so that's --

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1                   MEMBER DETTMAN: In terms of the  
2 distance between the embellishment and the  
3 penthouse, there seems to be just a slight  
4 discrepancy between the alternate roof plan  
5 that we have in the record here, and the one  
6 that we just received. In the one that we  
7 received, dated February 12th, the distance  
8 between the penthouse and the actual front  
9 door of the building, that side of the  
10 building, is 40 feet. On your board here, it  
11 shows 20 some feet.

12                   And so with the 40 foot  
13 difference, it may prevent your eye to want to  
14 connect those two features. And then to  
15 follow up on that, your renderings show, make  
16 it very clear that you might be able to see  
17 this penthouse.

18                   However, the point of view of  
19 these perspectives is probably from like a 25  
20 to 30 foot person. So do you have any sort of  
21 street level perspectives?

22 3B                   MS. DWYER: We haven't done the

1 street level perspective and I guess I would  
2 ask Sean whether this elevation shows the same  
3 setback between the two as was filed in the  
4 record, or is it a reduced setback between the  
5 penthouse and the corner?

6 MR. STADLER: I think what we do  
7 is we somewhat reconfigured this to really  
8 adhere to having the penthouse maintain the  
9 one-to-one setback, and the embellishment  
10 wasn't, so that the 40 feet is still here  
11 where our penthouse is. I think since we  
12 submitted that, we somewhat reconfigured this  
13 a little bit but it's --

14 MEMBER DETTMAN: Right. But if  
15 you could just put up the alternate plan.

16 Okay. So now the distance from  
17 the west building line to that line right  
18 there, that you just pointed to, is 26 feet,  
19 10 inches, is it?

20 MR. STADLER: Yes.

21 MEMBER DETTMAN: 26, 10. And this  
22 other drawing that we have here, the distance

1 is 40 feet, and it looks like you sort of --  
2 you've added a little area called open.

3 MR. STADLER: Right.

4 MEMBER DETTMAN: So I'm just  
5 wondering what it would look like with a 40  
6 foot distance between the tower and the  
7 penthouse.

8 MR. STADLER: Right. I understand  
9 what you're saying.

10 MEMBER DETTMAN: Do you need that  
11 space, that additional space?

12 MR. STADLER: You know, we don't  
13 need that physically. Again, it's really  
14 trying to treat this aesthetically, because we  
15 put this you all as here's two options, why  
16 don't you pick one, and with what you think is  
17 the best solution. And so --

18 MS. DWYER: Sean, can you go up to  
19 the rendering and can you sort of outline  
20 where the roof structure would end under the  
21 original alternate plan that we filed on the  
22 record.

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1 MR. STADLER: It really is right  
2 where this line is here, and that line is  
3 there. And so I think visually, it's still,  
4 you know, it doesn't change, I think, the idea  
5 of what's happening.

6 MEMBER DETTMAN: Just one more  
7 question. Thank you. I'm just wondering, in  
8 the plan that you're showing us, the alternate  
9 roof plan today, are those two spaces, do they  
10 serve some sort of purpose? They're labeled  
11 with "open" and that's just why I'm wondering.

12 MR. STADLER: We intend to use  
13 those, kind a screen any kind a mechanical  
14 units that we might have up on there, but I  
15 mean that would be it. The majority of the  
16 front piece is really just the architectural  
17 embellishment and what we think is necessary  
18 to provide for that.

19 MEMBER DETTMAN: But there's a  
20 possibility that you might be screening  
21 mechanical equipment in both of those areas?

22 MR. STADLER: We would try. I

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1 mean, I would suspect that we're going to have  
2 more mechanical equipment than we have space.

3 CHAIRPERSON MILLER: I just want  
4 to follow up on this penthouse question a  
5 little more. You know, we were asking about  
6 the design and why you think it's preferable  
7 the way it is, as one. I think you said, and  
8 I think Ms. Dwyer said that it's related to  
9 the historic landmark status. And how is  
10 that? I understand what you're saying about  
11 the point and the views from the avenues.

12 How is, you know, it being one  
13 instead of separate, you know, or set back and  
14 not set back, related to historic landmark?

15 MR. STADLER: I think that because  
16 it's a -- you know, the building could  
17 potentially be a historic landmark, it really  
18 brings more attention to this building, and so  
19 we feel that the architecture should really be  
20 stronger and reinforced.

21 I think that because of the  
22 street, and the Yale Laundry project, the City

1 Visit, they'll all have real good views of  
2 what this, the top of the building is, and  
3 that's why we really feel it's kind of an  
4 important building in an important location.

5 CHAIRPERSON MILLER: Thank you.

6 Any other questions? And do you  
7 have any other witnesses?

8 MS. DWYER: No other witnesses.  
9 Thank you.

10 CHAIRPERSON MILLER: Okay. Is  
11 anybody here from the ANC?

12 Okay. Why don't we go to the  
13 Office of Planning. Good afternoon, Mr.  
14 Cochran.

15 MR. COCHRAN: Good afternoon,  
16 Madam Chair. Since you've already heard from  
17 the Applicant, and you've had a chance to read  
18 our report, I'd like to concentrate on just  
19 what might be different in our recommendations  
20 today from what we had in the report.

21 We had recommended that you  
22 approve all of the variances other than

1 loading, and we had recommended that you not  
2 approve the special exception for the setback,  
3 for the roof structure.

4 Since then, as the Applicant's  
5 indicated, we've had additional discussion,  
6 not only with the Applicant, but with DDOT  
7 about the loading concerns. We all wound up  
8 agreeing that the damage to the public space  
9 would be greater if you actually loaded within  
10 the building, even if it were physically  
11 possible, which we kind of concurred it  
12 wasn't.

13 So DDOT's happy to have the on-  
14 street parking and they'll be working out  
15 specific -- excuse me -- loading. They'll be  
16 working out specific ways of managing that in  
17 the future.

18 So we withdraw our objection to  
19 the loading variance.

20 With respect to the special  
21 exception, OP agrees that visually, it looks  
22 better with all of it being one horizontal

1 structure. But we felt that we couldn't  
2 really support the request, because you can't  
3 find justification for it in the zoning  
4 regulations.

5 The Applicant has met one-to-one  
6 setback for the penthouse part of that  
7 construction on the roof that they would  
8 prefer to build. The rest of it is unoccupied  
9 space that would be more like a tower, a  
10 spire, a dome, minaret, etcetera. That part  
11 would not require a setback.

12 So we suggested to the Applicant  
13 that we could support this only if they  
14 separated the penthouse and the tower element  
15 because the penthouse would require the one-  
16 to-one setback, the tower element wouldn't.  
17 It's as simple as that.

18 We aesthetically agree that  
19 there's a better balance between the top and  
20 the base, if you do connect them, but you  
21 can't justify it on zoning terms.

22 I would also point out that if the

1 Applicant does wind up including any  
2 mechanical equipment inside of that  
3 westernmost tower, then it becomes a  
4 mechanical penthouse, in which case they again  
5 have to seek a variance for that mechanical  
6 penthouse not being set back.

7 So we'd strongly suggest that you  
8 don't put any additional equipment in that.  
9 As long as it's vacant, it's a tower.

10 And that really concluded our  
11 report.

12 CHAIRPERSON MILLER: Thank you.

13 Do you want to comment on the  
14 language in 411 that references other  
15 conditions relating to the building or  
16 surrounding area, that would tend to make full  
17 compliance unduly restrictive, prohibitively  
18 costly, or unreasonable, and I believe the  
19 Applicants are going for the unreasonable with  
20 respect to limiting the design.

21 That it's other conditions  
22 relating --

1                   MR. COCHRAN: The Applicant has  
2 already said that it comes down to a matter of  
3 aesthetics. Most people seem to differ on  
4 aesthetics. To say that it's unreasonable, to  
5 choose one aesthetic over another, seems to be  
6 a bit of a stretch. The other thing is what  
7 is the possible justification? What is  
8 allowed by the height act for connecting those  
9 structures? I don't believe that the height  
10 act permits it. To our regret, actually.

11                   MEMBER DETTMAN: Mr. Cochran, I  
12 might get myself in a little bit of trouble  
13 here, but I agree with you that aesthetically,  
14 the attachment to the penthouse is preferable.  
15 When you were working with the Applicant,  
16 talking about separating them because you  
17 can't justify it in zoning and it's not  
18 allowable by the height act, did you specify,  
19 you know, a distance of separation?

20                   MR. COCHRAN: No, we did not. But  
21 I think I know where you might be going. We  
22 had actually suggested -- they had come

1 through with a 40-foot separation. We had  
2 suggested that they make the separation as  
3 narrow as possible, so that you might be able  
4 to read it more like as one.

5 I think what you've suggested is  
6 that you make the distances as wide as is  
7 feasible, so that you view them as two  
8 structures. If they're going to be viewed as  
9 two structures, then perhaps they would want  
10 to make a difference in height between the  
11 penthouse and the tower, which even under the  
12 height act and the zoning regulations, could  
13 actually go taller than they're going. That  
14 might make it appear to be a more distinct  
15 element.

16 MEMBER DETTMAN: I wouldn't  
17 necessarily go so far as to say I'm  
18 recommending a maximum separation. I just  
19 wanted to indicate that there was this little  
20 discrepancy.

21 Actually, if you wanted to  
22 advocate for a separation, I'm saying is a one

1 foot separation enough to qualify for this?  
2 That in no means is saying that I approve of  
3 a connection, because I share Mr. Cochran's  
4 comments in terms of potentially housing  
5 mechanical equipment and the need for relief,  
6 in that respect. Just exploring what, in  
7 DCOP's mind, is an adequate enough separation.

8 MR. COCHRAN: An adequate enough  
9 separation is one that still achieves the one-  
10 to-one setback on the western side. So it  
11 seems to me that the penthouse structure could  
12 go as far west as 18 feet, 6 inches, from the  
13 western wall.

14 But you couldn't make the tower  
15 significantly wider going eastward, because  
16 then we just get into an area where there has  
17 not been consensus on whether it constitutes  
18 a spire tower dome. Or not.

19 MEMBER DETTMAN: What would you  
20 say in terms of the argument, that if you  
21 separate them, they're going to be perceived  
22 as two separate things and it might look a

1 little awkward? We don't have a street level  
2 perspective but do you have an opinion on  
3 that? From the street level, are you actually  
4 going to be perceiving these two things as two  
5 separate entities, and would it look a little  
6 bit awkward?

7 MR. COCHRAN: I don't know from  
8 the street level. I do suspect that as you're  
9 coming down the New York Avenue viaduct, as  
10 you start seeing Washington on that entry,  
11 that you would probably see this building  
12 separately, or rather, the roof structure  
13 separately. It just doesn't make as strong an  
14 impression as connecting it would, but again,  
15 we don't see the justification for that.

16 CHAIRPERSON MILLER: Mr. Cochran,  
17 I mean, I heard you, if I understood you  
18 correctly, to say that you don't interpret  
19 411.11 as allowing for special exception  
20 relief based on aesthetics. Is that correct?

21 MR. COCHRAN: That's correct.

22 CHAIRPERSON MILLER: Okay. What

1 were you saying about the height act, though,  
2 that somehow there would be a violation of the  
3 height act? Because I don't remember seeing  
4 that in your report.

5 MR. COCHRAN: I didn't mention it.

6 CHAIRPERSON MILLER: Okay.

7 MR. COCHRAN: We would prefer, of  
8 course, to rely on -- if we could make our  
9 case on District regulations, we do. I'm also  
10 working on the various interpretations of  
11 height, how it gets measured, what does the  
12 height act say as part of our review of the  
13 zoning regulations. So I've gotten a little  
14 bit more familiar with both over the last  
15 couple of months.

16 And I certainly am not aware of  
17 any cases where you have been able to make a  
18 decision about a roof structure that  
19 potentially does not comport with the height  
20 act, being based on an architectural  
21 preference. There are interpretations about  
22 whether it constitutes a tower, a spire,

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1 etcetera, whether it constitutes an  
2 architectural embellishment.

3 But again, I haven't seen those be  
4 incorporated directly into the penthouse  
5 structure.

6 CHAIRPERSON MILLER: I see what  
7 you're saying. Okay. So what you're  
8 commenting on is a little bit difference ,  
9 it's the attachment issue of the tower to the  
10 penthouse.

11 MR. COCHRAN: I didn't realize  
12 that you perceived that as different. Yes,  
13 that's what I've been commenting all along.

14 CHAIRPERSON MILLER: Okay. No, I  
15 do because --

16 MR. COCHRAN: If they had to be  
17 separate structures.

18 CHAIRPERSON MILLER: Well, we  
19 don't have authority to grant any waivers  
20 under the height act, so I just want to  
21 understand what you were commenting on. I  
22 mean, what I was looking at was the setback

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1 under our regulations.

2 MR. COCHRAN: I feel that it could  
3 be a separation of inches, if that would  
4 enable us to see one as a tower or an  
5 architectural -- excuse me -- a tower, a  
6 spire, dome, minaret, acting as an  
7 architectural embellishment and the other one  
8 acting as a roof structure.

9 This is something where you just  
10 have to do enough to not violate the  
11 regulations. It's not that we want to change  
12 the look of it. We simply don't want the  
13 Applicant to be violating regulations.

14 MR. STADLER: And if I could, I  
15 guess --

16 CHAIRPERSON MILLER: I'm sorry.  
17 What? Oh. I thought the issue was meeting  
18 the one-to-one setback, not -- if it were  
19 inches away, we'd still have the issue of the  
20 one-to-one setback not being met; correct?

21 MR. COCHRAN: Not if those inches  
22 occurred at 18 feet, 6 inches back from the

1 western wall. Then you'd have a penthouse  
2 that is appropriately set back on all sides.

3 CHAIRPERSON MILLER: Okay. We  
4 don't have any more questions of Office of  
5 Planning. Does the Applicant want to comment  
6 on the recent discussion?

7 MS. DWYER: I guess I would just  
8 like the architect, Sean, just to show what  
9 the smaller separation would be to which Mr.  
10 Cochran was referring. Could you show that on  
11 the roof plan, the inches.

12 MR. STADLER: I think this is a  
13 spirited discussion within our office and our  
14 approach to how we presented it as well, is we  
15 didn't understand how close you could go to  
16 them, and so I think we're a little unclear on  
17 that.

18 But this line, right here, really  
19 is the 16 foot 6 inches, and we're being  
20 somewhat conservative in terms of what we  
21 think the height of the penthouse has to be.  
22 We hope maybe we can keep it 15 feet, but, you

1 know, obviously, we're not positive.

2 So when we talk about the one to  
3 one, this line here that's parallel is really  
4 within the 16, six, and so that would be right  
5 about there, that this would -- but because of  
6 the geometry, this would continue to be  
7 straight here.

8 So geometrically speaking, to try  
9 to kind a bring those closer, it becomes  
10 challenging to keep the penthouse at a one-to-  
11 one setback and the embellishment is obviously  
12 separate from that. Does that make sense?  
13 Between here, right? If I extend this to  
14 here, that's fine; right?

15 MS. DWYER: Sean, I think the  
16 question was how -- can you show in there, you  
17 just do a minimal setback between the  
18 architectural embellishment and the roof  
19 structure that satisfies the separation, yet  
20 still is so narrow, that it gives you the  
21 visual appearance of being connected.

22 MR. STADLER: I guess, you know, I

1 mean, I don't know how close you can get but  
2 we'd put it as close as you'd allow us to put.  
3 The penthouse itself is within the setback.  
4 So I mean, whether it's six inches, a foot, I  
5 don't know. The other question is whether or  
6 not this structure could actually overlap past  
7 the penthouse. There was a question of  
8 whether or not that would be acceptable or  
9 not.

10 So that the wall of the  
11 embellishment kind of was outside of the wall  
12 of the penthouse. They wouldn't physically be  
13 touching but they would visually overlap.

14 MEMBER DETTMAN: I guess to sort  
15 of pull back from this discussion about how  
16 close can we get them, I mean, we have an  
17 alternative roof plan here that's showing some  
18 separation. I think I heard Ms. Dwyer say  
19 that HPO has looked at both of them and they  
20 seem to be fine with both of them.

21 MS. DWYER: HPO has looked at the  
22 plan that shows them unified. I think if you

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1       decide that you would like a separation  
2       between the penthouse and the architectural  
3       embellishment, what we'd like is just the  
4       flexibility to go back to HPO staff and see if  
5       there are any other changes they want to make  
6       to that corner architectural embellishment to  
7       sort of distinguish it, because it was  
8       designed as one uniform piece, and if we  
9       separate it, we don't want to be choppy and  
10      just separate it and not have it be visually  
11      appealing.

12                    So we'd like to be able to go back  
13      and meet with them and say we came up with a  
14      conforming roof structure and now we need to  
15      just look at the architectural embellishment  
16      and make sure it's the right one for that  
17      corner.

18                    MEMBER DETTMAN: You know, looking  
19      at that alternative roof plan right there, the  
20      penthouse and the thing that's attached to it  
21      that says "open," personally, I would consider  
22      that whole thing as the penthouse. It's all

1 part of one enclosure. That's the penthouse,  
2 and as drawn up, you meet the one-to-one  
3 setback.

4 MS. DWYER: Right

5 MEMBER DETTMAN: So then we have  
6 this other piece on the west, that is going to  
7 act as an architectural embellishment, it's  
8 being described as a tower. It looks like in  
9 the renderings it's going to look exactly like  
10 what the penthouse is going to look like with  
11 the finishing and stuff, and I don't know,  
12 personally, I think you might be selling  
13 yourself short a little bit.

14 I mean, here's an opportunity, you  
15 have your separation, you've taken care of  
16 your one-to-one setbacks, and now you're  
17 talking about this gateway and a view from the  
18 viaduct. You could do something  
19 architecturally significant, amazing with this  
20 tower, not just this little box that looks  
21 like the penthouse and the spire going up in  
22 the air.

1           If you want to do something  
2           amazing on a gateway, here's your opportunity.

3           MS. DWYER: I agree with you and  
4           that's why we'd want to be able to go back and  
5           meet with HPO staff and say we now have the  
6           separation, we have the separate architectural  
7           embellishment and what can we do to really  
8           distinguish it. Because we don't need to tie  
9           it into the penthouse, we don't need to make  
10          it a unifying element. It can be something  
11          very distinctive and different.

12          MEMBER DETTMAN: So I guess you  
13          don't even need relief in this case from the  
14          one-to-one setback.

15          MS. DWYER: We do not need relief  
16          in the special exception. I mean special  
17          exception relief for the penthouse. This plan  
18          shows a conforming setback and that's why we  
19          filed it as an alternate plan, and if the  
20          board feels that they prefer the separation  
21          and a complying roof structure, then we are  
22          willing to do that, and we just need the

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1 flexibility as I said, to work at the  
2 architectural embellishment, to distinguish it  
3 more than as originally proposed.

4 CHAIRPERSON MILLER: I think part  
5 of the reason this is getting a little  
6 confusing is, you know, we don't usually, we  
7 don't really deal with alternatives. We deal  
8 with, you know, one or the other, and usually  
9 if one is denied, then, you know, you could go  
10 forward with the other, and you're kind of  
11 asking the board to make this decision and I  
12 don't know if you should be. Anyway.

13 I do want to raise the question,  
14 though, and I was just looking at this under  
15 411, and I can see the Applicant's argument  
16 that aesthetics could fall within 411.11. But  
17 I don't know, you know, if others feel that  
18 way or not. And I gather this might be a case  
19 of first impression because we don't have any  
20 precedent being offered to us.

21 I just want to make sure that the  
22 other issues that relate to the height act,

1 that Mr. Cochran was referring to, which is  
2 not the board's concern, really, has been  
3 considered by the Applicant at all, or is of  
4 concern to the Applicant, now that they heard  
5 Mr. Cochran raise as possible, you know,  
6 obstacle down the road.

7 MS. DWYER: We've looked at the  
8 1910 height act, and we don't see any 1910  
9 height acts with what we're proposing.

10 CHAIRPERSON MILLER: Okay. Are  
11 there other questions? The ANC's not here in  
12 this case, from what I gather.

13 Is there anybody here who wishes  
14 to testify in support of the application?

15 Yes. Please come forward.

16 MR. GLORING: Hello. My name is  
17 Lydia Gloring and I'm a long-time resident of  
18 Mount Vernon Square, over 30 years. I look  
19 right out on the New York Avenue. I've talked  
20 to many of my residents. I'm a very active  
21 member of Mount Vernon Square Neighborhood  
22 Association. We support the Buzzuto project

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1 that is on the north side of the street, and  
2 we also support this one. In fact, we're  
3 looking forward to it, because as you know,  
4 there's so many buildings that have been  
5 vacant for 50, 60 years. Now this building  
6 had been occupied before by the FBI but not in  
7 a residential facility, and we are looking for  
8 it to be developed. It was brought forth, we  
9 like the architecture of it. We had not  
10 gotten to the height part. We had got to the  
11 normal height part and that was supported, you  
12 know, 130 feet on New York Avenue.

13 So many of my neighbors have  
14 supported this and we're hoping that this will  
15 come forth and not be blighted by ten or  
16 twenty years more.

17  
18 CHAIRPERSON MILLER: Thank you  
19 very much. Any questions, board members?

20 [No response]

21 CHAIRPERSON MILLER: Thank you.

22 Is there anybody here who wishes

1 to testify in opposition to this case?

2 [No response]

3 CHAIRPERSON MILLER: Okay. Then  
4 it's time for closing argument.

5 MS. DWYER: Yes, and what I want  
6 to do is I want to start by saying that we, as  
7 a team, are withdrawing the special exception  
8 request for the penthouse. We're going to go  
9 with the conforming penthouse plan, with the  
10 understanding that we have the flexibility, as  
11 I said, to revisit the architectural  
12 embellishment with HPO staff.

13 In terms of the variance relief, I  
14 think that the record is clear that we have a  
15 very unique site here, it's very small, it's  
16 a corner lot, it's unusually shaped, and it's  
17 improved with an existing building which has  
18 preservation interest.

19 We have practical difficulty  
20 because of that, in meeting the parking and  
21 loading requirements, and also the lot  
22 occupancy requirements, and we come here with

1 the support of the Office of Planning and  
2 their expert opinion on that as well as the  
3 Department of Transportation.

4 We also have the support of the  
5 ANC and the neighborhood. There is no  
6 opposition and we would very much like to  
7 request a decision today and a summary order.  
8 Thank you.

9 CHAIRPERSON MILLER: Thank you.

10 I just have to say that -- I just  
11 want to be clear about this parking thing. I  
12 haven't seen before me what it was you're  
13 referring to, so I want to take a look at that  
14 before we decide. You know, the flexibility,  
15 you're clear on the flexibility you're seeking  
16 there and --

17 MS. DWYER: There are three areas  
18 of flexibility. It's the number of units. We  
19 have a maximum of 81 units with the  
20 flexibility to make some larger, if market  
21 needs indicate.

22 On the parking plan, we have the

1 flexibility to do a range of between 54 and 72  
2 spaces, some of which are legal, some of which  
3 are vault spaces, and this would be worked out  
4 with the Department of Transportation during  
5 the building permit process.

6 And then the third area of  
7 flexibility is to work with HPO staff, to be  
8 able to modify the architectural embellishment  
9 now that it will be separate from the roof  
10 structure.

11 CHAIRPERSON MILLER: Will you be  
12 having a minimum/maximum number of units?

13 MS. DWYER: The maximum number of  
14 units would be the 81, and we have not come up  
15 with a minimum.

16 CHAIRPERSON MILLER: One more  
17 thing. Could you just address -- the  
18 embellishment I certainly totally understand.  
19 The other two, the units and the parking  
20 spaces. Can you just say, address how it  
21 wouldn't affect the zoning relief that would  
22 be granted in this case.

1 MS. DWYER: It would not because  
2 the zoning relief is in no way related to the  
3 number of units, except for the parking, and  
4 by capping the maximum number of units and  
5 showing what the maximum number of parking is,  
6 we've addressed that. If anything, we're  
7 going to be improving the situation by doing  
8 fewer units.

9 CHAIRPERSON MILLER: And let me  
10 ask you this also. Since you're not seeing  
11 special exception relief anymore with respect  
12 to roof structures, why would we even need to  
13 address the embellishment?

14 MS. DWYER: Just to, since a lot  
15 of times the plans are in the record, and when  
16 the Zoning Administrator looks at the plans in  
17 the record and what we're proposing at the  
18 building permit phase, I don't want him to say  
19 gee, this tower, it looks a lot different.

20 So we just want it clear on the  
21 record that we have the flexibility.

22 CHAIRPERSON MILLER: Ms. Dwyer, in

1 your request for flexibility, I just want to  
2 confirm before we start out deliberation, that  
3 the minimum -- is it the minimum number of  
4 parking spaces you will be providing will be  
5 fifty-four?

6 MS. DWYER: That is correct.

7 CHAIRPERSON MILLER: Okay. Okay.  
8 We are going to deliberate now and I suggest  
9 that we do it under motion. So I'm going to  
10 move to approve Application No. 17723 of  
11 Buzzuto Development Company pursuant to 11  
12 DCMR Section 3103.2 and 3104.1 for a variance  
13 from the parking requirements under subsection  
14 2101.2, a variance from the loading  
15 requirements under subsection 2201.1,  
16 variances from the lot occupancy and  
17 nonconforming structure requirements under  
18 subsection 772 and 2001.3, to allow the  
19 construction of a residential building at  
20 premises 460 New York Avenue, N.W.

21 And do I have a second?

22 MEMBER DETTMAN: Second.

1                   CHAIRPERSON MILLER: I think that  
2 this case clearly meets the variance test.  
3 With respect to the first test of uniqueness  
4 or exceptional condition, there is a  
5 confluence of factors I think in this case.

6                   We have a historic warehouse, even  
7 though it's not been landmarked, there is an  
8 interest in preserving it, and it is still  
9 historic and they are working to preserve this  
10 building in accordance with the Comprehensive  
11 Plan's favorable look on the readapting  
12 buildings for modern use.

13                   Also, though, this property is  
14 unusual in its shape, it's triangular in its  
15 lot shape, and it comes to a narrow point, and  
16 it's small, and that shape and size creates  
17 its own difficulties in development.

18                   In this case, the variances are  
19 sought for parking and loading, to begin with,  
20 because it's constructed to the lot lines, and  
21 so therefore there isn't any room to provide  
22 the loading on site without demolishing part

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1 of the building or making curb cuts that DDOT  
2 has opposed.

3 And because it's such a small  
4 space, in order to provide sufficient amount  
5 of parking they would have to go down many  
6 levels, which is often, and in this case also,  
7 very expensive.

8 So they are using vault space as  
9 part of their provision of parking spaces.  
10 And we can get into later the flexibility that  
11 we'd like to allow for that.

12 They need a variance from lot  
13 occupancy because in this district there's 80  
14 percent lot occupancy is what is allowed for  
15 residential, and they're putting residential  
16 above this warehouse.

17 But to do that would be I think  
18 more complicated. They need the space for the  
19 development and it doesn't really make any  
20 sense to make that 80 percent.

21 We heard testimony with respect to  
22 there's clearly no substantial detriment,

1 there's no opposition in this case, it's an  
2 adaptive reuse of an historic site, it's  
3 residential development in the DD District,  
4 loading does not seem to be much of a problem  
5 according to DDOT, the Applicant's going to  
6 continue working with DDOT on this but they  
7 said that the project could be serviced from  
8 Mill Street.

9 There's no adverse impacts on, of  
10 light and air on neighboring properties.

11 I think that that basically covers  
12 my thoughts on it, and then we can get into  
13 the flexibility that's been requested.

14 Does anybody else have anything  
15 with respect to the variance test before we go  
16 into the issues of flexibility or conditions?

17 [No response]

18 CHAIRPERSON MILLER: Okay. The  
19 first flexibility that's being sought -- I  
20 think the easiest one goes to the  
21 embellishment, that that can change. The  
22 Applicant has to go back to HPO because their

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1 original plans showed the penthouse attached  
2 to the tower, and now they needed special  
3 exception relief and they withdrew that, so  
4 they have to go back with a new design.

5 And I think as Mr. Dettman said,  
6 they have an opportunity here to make more of  
7 the embellishment effect, and allowing them  
8 that flexibility doesn't affect the zoning  
9 relief in any way.

10 So that's that one, and then  
11 parking we talked about. Again, I think that  
12 DDOT has also taken the position that, you  
13 know, it's not necessarily a good thing to  
14 provide more and more parking and they are  
15 working with DDOT as to about how much parking  
16 is appropriate for this district, and the  
17 Applicant has represented that the range of  
18 parking spaces that they would like to have,  
19 they'd like to have flexibility for between 54  
20 and 72 spaces. With a minimum of 54 spaces,  
21 that doesn't affect the change in our variance  
22 analysis. In my point of view, that that's

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1 more than enough spaces that they would need  
2 anyway.

3 And they also have requested  
4 flexibility for the number of units, and that  
5 doesn't affect our analysis, I don't believe,  
6 with respect to zoning, except as it relates  
7 to the parking and they have agreed to that  
8 minimum number of parking spaces.

9 So I don't have an issue with any  
10 of those request for flexibility.

11 Are there other comments?

12 [No response]

13 CHAIRPERSON MILLER: The ANC is in  
14 support of this application as is the Mount  
15 Vernon Square Neighborhood Association, and we  
16 also had testimony from a neighbor here today  
17 in support of the application.

18 Okay. Anything else anyone wants  
19 to add?

20 [No response]

21 CHAIRPERSON MILLER: Okay. All  
22 those in favor say aye. Aye.

1 [Chorus of ayes]

2 CHAIRPERSON MILLER: All those  
3 opposed?

4 All those abstaining.

5 And would you call the vote,  
6 please.

7 MS. BAILEY: Madam Chair, the vote  
8 is recorded as four, zero, one to grant the  
9 application, as amended. Mrs. Miller made the  
10 motion, Mr. Dettman seconded, Mr. Loud, Ms.  
11 Walker support the motion. A Zoning  
12 Commission member is not present at this time  
13 and the flexibility granted by the board --  
14 and should that be stated in the order?

15 CHAIRPERSON MILLER: Absolutely.  
16 I'm sure that Ms. Glazer will help craft that  
17 language.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 MS. DWYER: Thank you.

21 CHAIRPERSON MILLER: Then this  
22 will be a summary order.

1 MS. DWYER: Thank you.

2 CHAIRPERSON MILLER: Thank you  
3 very much.

4 Ms. Bailey, I believe we have some  
5 people here for our afternoon session, even  
6 though we're just finishing our morning, and  
7 I think the board would be happy to entertain,  
8 I believe it's the first case which is asking  
9 for a postponement; is that correct?

10 MS. BAILEY: Alley Cat Mews,  
11 Application 17656.

12 CHAIRPERSON MILLER: Whenever  
13 you're ready, you can introduce yourself for  
14 the record, please.

15 MS. DUMAS: Hi. For the record,  
16 Kinley Dumas with the law firm of Arent Fox on  
17 behalf of GreenPeace Park LLC, the party  
18 opponent in this case. We respectfully  
19 request a continuance of the hearing that was  
20 presently scheduled for today.

21 Unfortunately, lead counsel,  
22 Richard Nettler sustained an injury and is

1 hospitalized, and is not going to be able to  
2 argue the case today. So we have requested a  
3 continuance and have spoken with opposing  
4 counsel and the other party opponent about  
5 rescheduling to the earliest date possible to  
6 allow Mr. Nettler to come back and argue the  
7 case.

8 CHAIRPERSON MILLER: Okay. Does  
9 anybody else want to introduce themselves for  
10 the record, so we know you were here, at  
11 least.

12 MS. STANLEY: I'm Nancy Stanley.  
13 I'm here at one of the people representing  
14 GreenPeace as a party entity.

15 CHAIRPERSON MILLER: Thank you.

16 MR. EADS: I'm George Eads. I'm  
17 the other opponent.

18 CHAIRPERSON MILLER: Okay.

19 MR. HUGHES: Good afternoon, Madam  
20 Chair. I'm Dennis Hughes with Holland &  
21 Knight on behalf of the Applicant.

22 CHAIRPERSON MILLER: Okay. And I

1 understand there was a consent motion, so  
2 nobody is opposing this. Okay.

3 When is Mr. Nettler going to be  
4 well enough to come back and see us?

5 MS. DUMAS: Unfortunately, I don't  
6 have a definite date but I do understand,  
7 talking with staff, that there may be space on  
8 the calendar for early April, the first week  
9 in April, and I think that would be enough  
10 time for either he to return or us to  
11 substitute counsel if that is necessary. But  
12 our intent is for him to argue the case when  
13 he returns.

14 CHAIRPERSON MILLER: Is that  
15 agreed to by everyone, if we have time on the  
16 calendar. Do you mean April 1st, or what date  
17 were you thinking of? I'm not sure who you  
18 spoke with, so --

19 MR. HUGHES: I believe we were  
20 looking at April 8th.

21 MR. EADS: A brief in the  
22 afternoon, Madam Chair.

1 MS. DUMAS: Right.

2 CHAIRPERSON MILLER: Okay. That  
3 looks good to me.

4 MS. DUMAS: One thing I would  
5 request is given the fact that this case --  
6 obviously we have an unavoidable delay at this  
7 point. But given the fact that the case was  
8 delayed back in December, we would appreciate  
9 it if we could appear first on the calendar on  
10 the 8th, and if not, if the board would  
11 oblige, we would appreciate the opportunity to  
12 get on the calendar for a continuation date,  
13 so that we're not looking at another six weeks  
14 or another several months.

15 MR. HUGHES: Madam Chair, if I  
16 could interject. Back when we were last  
17 before the board in December, I don't have the  
18 date in front of me, we were at the end of the  
19 afternoon agenda, and at I think around 4:30  
20 or 5:00, it was requested that we continue the  
21 case until today, and so not to put words in  
22 opposing counsel's mouth but if it's at all

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1 possible -- I don't know what the calendar  
2 looks like on April 8th, if we could be the  
3 first in the afternoon, we'd appreciate it,  
4 and if not, if we could make kind of alternate  
5 arrangements to prepare for a carryover, so  
6 that we could hear some of the case, although  
7 the Applicant hopes to keep our case  
8 relatively short. Thank you.

9 CHAIRPERSON MILLER: You don't  
10 have any idea how long this case is going to  
11 take, do you? Whether you have a lot of  
12 witnesses or --

13 MR. HUGHES: The Applicant has  
14 three witnesses.

15 MS. DUMAS: And I think at this  
16 point, the opposition, along with Mr. Eads,  
17 who's presenting his own case, our case, we  
18 anticipate no more than three witnesses and I  
19 understand that Mr. Nettler is preparing a  
20 fairly brief but exhaustive legal argument.

21 So we don't anticipate there's  
22 going to be a lot of fact discussed in this,

1 as you're well aware.

2 MR. HUGHES: We do think that the  
3 hearing room will be a little bit more crowded  
4 that day, though, so there might be a bit of  
5 community comment.

6 CHAIRPERSON MILLER: Okay. I just  
7 want to confer for a minute and see what this  
8 other case is about, and see if we can  
9 accommodate your question.

10 [Board members confer]

11 CHAIRPERSON MILLER: Okay. We do  
12 remember that day very well, believe me.  
13 That's what we'll do. We will put you on  
14 first, in the afternoon on April 8th.

15 MR. HUGHES : Thank you.

16 MS. DUMAS: Great. Thank you.

17 CHAIRPERSON MILLER: I mean, we  
18 could look for another date to save, but I  
19 don't really see why we wouldn't finish that  
20 afternoon, unless you think that that's a  
21 possibility. Right?

22 MR. HUGHES: I believe if we're

1 first in the afternoon, we'll certainly  
2 finish.

3 CHAIRPERSON MILLER: Okay.

4 MS. DUMAS: I would agree.

5 CHAIRPERSON MILLER: Okay. So  
6 we'll leave it at that.

7 MS. DUMAS: Thank you very much.  
8 I appreciate it.

9 CHAIRPERSON MILLER: Okay, and  
10 give our best to Mr. Nettler.

11 MS. DUMAS: Will do.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you.

14 Ms. Bailey, I think where we are  
15 is that we have one more case set for the  
16 afternoon. I think the board would take a  
17 quick break unless the parties are seeking  
18 postponement. I know there was a request for  
19 postponement from -- I didn't think so. Okay.

20 We haven't had a break, you know,  
21 yet, and we want to be a little bit more fresh  
22 for your case. So why don't we take -- okay.

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1 We're just going to take a short break, like  
2 20 minutes, and get a little reenergized.  
3 Okay. Thank you.

4 [A recess wa taken from 2:28 p.m.  
5 to 3:05 p.m.]

6 CHAIRPERSON MILLER: Good  
7 afternoon. I'm going to read some  
8 introductory remarks because you weren't here  
9 in the morning, and it's just the two of you  
10 that I see, so I'll see if I can get through  
11 these fairly quickly.

12 This is the February 26, 2008  
13 public hearing of the Board of Zoning  
14 Adjustment of the District of Columbia. My  
15 name is Ruthanne Miller. I'm the Chair. And  
16 to my right is Mr. Marc Loud. He's the vice-  
17 chair. To my left is Mary Oates Walker and  
18 Shane Dettman, board members, and to Mr.  
19 Dettman's left is Ms. Sherry Glazer from the  
20 Office of the Attorney General, and then next  
21 to her is Ms. Beverly Bailey from the Office  
22 of Zoning, and I expect that Mr. Clifford Moy

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1 will be joining us shortly. He's with the  
2 Office of Zoning.

3 Copies of today's hearing agenda  
4 are available to you and are located to my  
5 left in the wall bin near the door. Please be  
6 aware that this proceeding is being recorded  
7 by a court reporter and is also Webcast live.  
8 Accordingly, we must ask you to refrain from  
9 any disruptive noises or actions in the  
10 hearing room.

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

18 All persons planning to testify,  
19 either in favor or in opposition are to fill  
20 out two witness cards.

21 These cards are located to my left  
22 on the wall bin near the door, and on the

1 witness tables.

2           Upon coming forward to speak to  
3 the board, please give both cards to the  
4 reporter sitting to my right.

5           The order of procedure for special  
6 exceptions is as follows. Statement and  
7 witnesses of the Applicant, government  
8 reports, including Office of Planning,  
9 Department of Public Works, DDOT, etcetera.  
10 Three, report of the Advisory Neighborhood  
11 Commission. Four, parties or persons in  
12 support. Give, parties or persons in  
13 opposition. Six, closing arguments by the  
14 Applicant.

15           Pursuant to sections 3117.4 and  
16 3117.5, there are certain time constraints  
17 that will be maintained. The Applicant,  
18 persons and parties, excepting ANC, in  
19 support, including witnesses, 60 minutes  
20 collectively. Persons and parties, excepting  
21 ANC, in opposition, including witnesses, 60  
22 minutes collectively. Individuals three

1 minutes. The time restraints don't include  
2 cross examination and/or questions from the  
3 board. Cross examination of witnesses is  
4 permitted by the Applicant or the parties.  
5 The ANC within which the property is located  
6 is automatically a party in a special  
7 exception case.

8 Nothing prohibits the board from  
9 placing reasonable restrictions on cross  
10 examination, including time limits,  
11 limitations on the scope of cross examination.

12 The record will be closed at the  
13 conclusion of each case except for any  
14 materials specifically requested by the board.

15 The board and the staff will  
16 specify at the end of the hearing exactly  
17 what's expected and the date when the persons  
18 must submit the evidence to the Office of  
19 Zoning.

20 After the record is closed, no  
21 other information will be accepted by the  
22 board.

1           The Sunshine Act requires that the  
2 public hearing on each case be held in the  
3 open before the public. The board may,  
4 consistent with its rules of practice and  
5 procedure, and the Sunshine Act, enter  
6 executive session during or after the public  
7 hearing on a case for purposes of reviewing  
8 the record or deliberating on the case.

9           The decision of the board in these  
10 contested cases must be based exclusively on  
11 the public record. To avoid any appearance to  
12 the contrary, the board requests that persons  
13 present not engage the members of the board in  
14 conversation. Please turn off all beepers and  
15 cell phones at this time so as not to disrupt  
16 these proceedings.

17           At this time the board will  
18 consider any preliminary matters. Preliminary  
19 matters are those that relate to whether a  
20 case will or should be heard today, such as  
21 requests for postponement, continuance or  
22 withdrawal, or whether proper and adequate

1 notice of the hearing has been given.

2 If you're not prepared to go  
3 forward with a case today, or if you believe  
4 that the board should not proceed, now is the  
5 time to raise such a matter.

6 Does the staff have any  
7 preliminary matters?

8 MS. BAILEY: Madam Chair, to  
9 everyone, good afternoon. There was a request  
10 from ANC 7C for the hearing to be postponed  
11 this afternoon, Madam Chair, but as you  
12 indicated, only the Applicants are present in  
13 the room at this time. So did you want to  
14 take that up now or after the case has been  
15 called.

16 CHAIRPERSON MILLER: After the  
17 case has been called.

18 So then we don't have any other  
19 preliminary matters, do we?

20 MS. BAILEY: That's it. This is  
21 the only case for the afternoon.

22 CHAIRPERSON MILLER: Okay. Then

1 why don't you administer the oath to any  
2 individuals here who are wishing to testify  
3 today.

4 MS. BAILEY: Would you please  
5 raise your right hand.

6 [Oath administered, en masse]

7 MS. BAILEY: Thank you.

8 CHAIRPERSON MILLER: Okay. Good  
9 afternoon.

10 MR. CONNORS: Good afternoon,  
11 Chairperson Miller and board.

12 CHAIRPERSON MILLER: And why don't  
13 we start with introductions.

14 MR. CONNORS: My name is Dennis  
15 Connors. I live at 708 5th Street, S.E. I'm  
16 a D.C. resident and I'm the architect  
17 representing Glen Thomas and his partner,  
18 Francis Fabrizio. Glen Thomas speaks for  
19 both. Francis is more a silent partner in  
20 this development process.

21 MR. THOMAS: Good afternoon. My  
22 name is Glen Thomas. I am a co-owner in the

1 project and I live at 201 Sheridan Street,  
2 Washington, D.C. in zip code 20011.

3 CHAIRPERSON MILLER: Okay. Are  
4 you aware of the request for postponement by  
5 the ANC?

6 MR. CONNORS: We are aware of it  
7 as of today.

8 CHAIRPERSON MILLER: So you have a  
9 copy of it?

10 MR. CONNORS: We do.

11 CHAIRPERSON MILLER: Have you  
12 spoken with the ANC about this?

13 MR. CONNORS: We have. The  
14 question I have is should we present the, go  
15 through the case and then talk about that  
16 afterwards, or should we talk about it now?

17 CHAIRPERSON MILLER: talk about it  
18 now. It's really like a preliminary matter an  
19 then we'd like to focus on the case if we're  
20 going forward, because if we talk about it  
21 afterwards it's moot.

22 MR. CONNORS: Okay. Sure. Our

1 involvement with the ANC has been a little  
2 unusual. We tried contacting them several  
3 times in January and I have proof of those  
4 contacts and responses, but I didn't feel the  
5 need to get to that level of "he said, she  
6 said" type of discussion with you. But I'd be  
7 more than happy to show you that.

8 We knew the case was scheduled for  
9 February 26 as per the notice that we were  
10 given, as per the postings, everything else.  
11 I requested to present to the ANC. They asked  
12 us to present February 14th. They said that  
13 we would have ten minutes to present.

14 It was not until after the  
15 presentation at that February 14th meeting,  
16 that we were told that the ANC has had a vote  
17 on the case prior to our presentation, and  
18 they were not in favor of granting a special  
19 exception in this case. We were not told what  
20 the vote count was, who was there, how it was  
21 presented or what have you.

22 The frustrating part of it, too,

1 was that they really could have saved both of  
2 us some personal time on February 14th. We'd  
3 rather be home with our families. They did  
4 not tell us prior to the presentation that  
5 they already had voted. So I went blind, I  
6 gave the presentation, and in fact they cut it  
7 short and said you have eight minutes to  
8 present your case.

9 As far as I was aware too, none of  
10 the commissioners had received any of the  
11 literature other than Commissioner Woods. And  
12 the letters that we have seen subsequently to  
13 those meetings have just been from  
14 Commissioner Woods. They do not speak of any  
15 other commissioners.

16 But at this point I'd like Glen to  
17 explain his feelings of this matter.

18 MR. THOMAS: Thank you. It's been  
19 a little frustrating, because when I purchased  
20 the lots, my intention was to put in a multi-  
21 family unit on the lots, and after consulting  
22 with my architect and reviewing the

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1 Comprehensive Plan, it just felt that that's  
2 not what the community wanted.

3 So Dennis and myself, over and  
4 over, have tried to meet with the Advisory  
5 Neighborhood Committee before we met with the  
6 Planning Office, so that we would have, you  
7 know, basically a direction in terms of what  
8 it is that we were able to do, and it wasn't  
9 successful.

10 So that when we did finally get an  
11 opportunity to speak before them, it was kind  
12 of surreal, that they were referring to a vote  
13 that had taken place, that we didn't even get  
14 the chance to say what we wanted to do.

15 And Commissioner Woods said that  
16 she actually said that she didn't -- that was  
17 going to bring the wrong element to the  
18 community, and I said, well, my daughter is  
19 considering, you know, buying one of these  
20 places, so I don't understand it. And then  
21 she said that, well, the places will be too  
22 small, and, you know, if we had had the time

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1 to make a presentation, I have gone, since  
2 have gone into the public record and have  
3 determined that our project, the size of our  
4 homes will be significantly larger than 90  
5 percent of the homes on the block.

6 And so we didn't get the  
7 opportunity to actually, you know, tell the  
8 Advisory Neighborhood Committee. You know.  
9 So I kind a got the feeling that, you know,  
10 that for whatever reason, they were saying  
11 that they just didn't want it.

12 but what made things a little  
13 unusual, ladies and gentlemen, is that  
14 afterwards, Ms. Woods came out and her tone  
15 became, you know, quite a bit better, and when  
16 she basically said, well, you know, we're  
17 against that but there's some other things we  
18 might consider.

19 And I brought up an idea that I  
20 had had before, which was basically, hey,  
21 well, I'll build a senior apartment building,  
22 and she said, oh, that would be great, that'd

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1 be wonderful.

2 So I'm like okay, now, I'm  
3 "between a rock and a hard place" here  
4 because, you know, of course a senior  
5 apartment building would be a lot more  
6 profitable than eight single family homes,  
7 because I think that we'd be able to get 24  
8 units or so in the senior apartment building.

9 So then that night, I barely slept  
10 and conferred with Dennis, "bugged him" a lot,  
11 and the next morning, I called Mr. Moore and  
12 Mr. Moore just basically reminded me, he said  
13 that's something that we would not be in  
14 support of, you know, it's against the  
15 Comprehensive Plan, you know, the area's going  
16 to be going to R-3. You know, we would not be  
17 in support of that.

18 So then I had this -- I'm  
19 basically "between a rock and a hard place."  
20 So that's why, you know, we basically decided  
21 to just put our plan together and to come here  
22 and make a presentation, and hopefully we can

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1 get an approval for it as it is presented.

2 The only thing that we did decide  
3 to tweak is that in the original plan, that  
4 the Planning Office basically recommended, is  
5 that we had certain lot sizes. We have  
6 tweaked the lot sizes slightly, to basically  
7 give us a larger lot size per lot, so that we  
8 can have a larger home on each lot. So  
9 hopefully, that would be sufficient for, you  
10 know, Ms. Woods.

11 MR. CONNORS: To clarify what Glen  
12 is saying, that last point, is that part of  
13 our presentation in February, he has to have  
14 the opportunity to ask, well, why was, is this  
15 opposed. It wasn't clear. The only  
16 substantive thing that the commissioner said  
17 was that they were too small, and we asked,  
18 well, what's too small, and they said that the  
19 house sizes are too small.

20 So as a result of that meeting,  
21 the next day I did discuss with various, you  
22 know, elements of zoning, and with Office of

1 Planning, well, you know, could we look into  
2 other alternate types of houses here, housing,  
3 you know, etcetera, and it was well-known that  
4 according to the Comprehensive Plan this is an  
5 ideal situation. It provides a unique  
6 opportunity for home ownership, and so on and  
7 so forth.

8 So I did try to make a effort to  
9 quickly make a minor variation, which I sent  
10 in mid February to the board, and it shows  
11 lots, the proposed lots A, G, and H having a  
12 slightly narrower size, 16 feet, which would  
13 still allow them to be substantially larger  
14 than the other lots, but it would allow, with  
15 the same configuration for each lot, to have  
16 a much bigger size, therefore a larger house  
17 footprint.

18 Also with that facts, Glen looked  
19 up at the tax office the various house sizes  
20 on that lot. We found 13 houses on that lot.  
21 The average house size recorded with the city  
22 is about 1350 square feet. That's

1 significantly under what we had been proposing  
2 in this original plan.

3 So I failed to see the point that  
4 the commissioner was making about this being  
5 too small.

6 CHAIRPERSON MILLER: Okay. And  
7 did you serve the ANC with the latest revised  
8 plans?

9 MR. CONNORS: No; we did not. The  
10 problem we have right now about the,  
11 particularly about the ANC, as you can tell,  
12 the ANC waited till the last second to send in  
13 their letter, and it said that -- some of the  
14 writing in that letter said that Mr. Thomas  
15 was aware of certain things, which is not  
16 true.

17 This has only happened to me once  
18 before with an ANC, but they've been stating  
19 things that are not true, which I don't know  
20 how to respond to that. I would really like  
21 to respond to the ANC as a collective, with  
22 all the commissioners, and not just have a

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1 back and forth discussion with one  
2 commissioner. It doesn't seem like the right  
3 process.

4 CHAIRPERSON MILLER: Okay. So you  
5 sent them the original plans and they said too  
6 small, and you've changed it so that they're  
7 bigger, basically.

8 MR. CONNORS: Made a minor  
9 modification. I don't know if I can start the  
10 quick overview of our --

11 CHAIRPERSON MILLER: Okay. Let's  
12 just get beyond the motion and we'll just --  
13 excuse me. Hi. Are you here on Case 17724?

14 MS. CHERISE FIELDS: Yes. I am.

15 CHAIRPERSON MILLER: And are you  
16 with the ANC by any chance?

17 MR. CHERISE FIELDS: [Off-mike]

18 CHAIRPERSON MILLER: Do you want  
19 to come forward for a minute, just so you're  
20 on the microphone.

21 MR. CHERISE FIELDS: My name is  
22 Cyd Cherise --

1                   CHAIRPERSON     MILLER:   Wait.  
2                   There's a microphone there, so that you'll be  
3                   picked up.  See this microphone right here.  
4                   If you talk into it, then the court reporter  
5                   can get you on record.

6                   MS. CHERISE FIELDS:  Hi.  My name  
7                   is Cyd Cherise Fields, and I live right next  
8                   door to the property in question, so I am  
9                   concerned.  You know, I'm a proponent of the  
10                  building but I just want to make sure that  
11                  things are taken care of with my property  
12                  right next door, cause I'm a stand-alone  
13                  house.

14                  CHAIRPERSON MILLER:  Okay.  What's  
15                  going to happen is we're going to call upon  
16                  you later, then, if you want to present any  
17                  testimony.

18                  MS. CHERISE FIELDS:  Sure.

19                  CHAIRPERSON MILLER:  Okay.

20                  MS. CHERISE FIELDS:  Thank you.

21                  CHAIRPERSON MILLER:  Thank you.

22                  Okay.  So the ANC is not here to

1 argue their motion. So I would propose that  
2 we deny the motion as the Applicant is ready  
3 to go forward on the case.

4 And I don't see any compelling  
5 reasons in their motion. Does any board  
6 member feel otherwise?

7 [No response]

8 CHAIRPERSON MILLER: Okay. It's  
9 the consensus of the board, then, from what I  
10 gather, that we will deny the motion for a  
11 continuance, or postponement, and okay, we can  
12 now proceed with the merits of the  
13 application.

14 MR. CONNORS: I'll briefly talk  
15 for Glen. We are here to seek special  
16 exception 353, R-5-A Zone, which states that  
17 the board shall determine the appropriate lot  
18 size for this development. The combined site  
19 is roughly about 16,500 square feet, about a  
20 third of an acre. Right now, there are five  
21 lots of various sizes, and the lot is located  
22 in Deanwood, very close to both the Capital

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1 Heights Metro and the Benning Road Metro.

2 And I'll just point out on this  
3 map where the lot is located. It's at the  
4 northwest corner of 50th Street, N.E. and  
5 Fitch Place. You can see that's Deanwood.  
6 I'll just turn this over and you can see it at  
7 page four. That is the existing lot  
8 configuration.

9 As Glen mentioned, he finds this a  
10 unique opportunity to provide a very rational  
11 size house, affordable for families in the  
12 D.C. area. His goal is to build houses that  
13 would provide, most likely, at least three  
14 bedrooms, two baths, two parking spaces, with  
15 most likely a family room type area in the  
16 basement or great room.

17 And this would be a great  
18 opportunity for families. This meets the  
19 tests of the special exception. One, it does  
20 follow the intent of zoning. According to the  
21 Comprehensive Plan and the upcoming  
22 Comprehensive Plan, this is actually a low

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1 density, single-family houses. However, it's  
2 in potentially a mixed density type of  
3 situation shortly.

4 I also mentioned the average house  
5 size on the block is about 1350 square feet,  
6 well under what we are presenting. We have a  
7 letter from the Department of Transportation  
8 saying that it does meet the test for traffic  
9 concerns. Or at least they don't foresee any  
10 problems with this proposed development.

11 In fact, what this will do is  
12 provide a substantial amount of off-street  
13 parking in the area, and actually, I have been  
14 to the site, sort of mid day, when school gets  
15 out, and I do notice that a lot of young kids  
16 walk up 50th -- I'm sorry -- Fitch Street, and  
17 the fact that we're proposing a single curb  
18 cut on Fitch would increase that pedestrian  
19 friendly ability for those small kids.

20 It would just be a continuous  
21 sidewalk along Fitch Place from the houses,  
22 and to address the neighbors' concern too,

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1 that the proposed curb cut for this traffic is  
2 located two houses within the development, far  
3 away from the neighbors' property. That was  
4 done on purpose.

5 The third test is whether this  
6 will affect the light and air of the  
7 neighboring properties, or the fabric of the  
8 community. We feel strongly it will not.  
9 That the property to the west is actually  
10 vacant, and unfortunately, some of those  
11 properties have abandoned cars and things like  
12 that on the property.

13 The property to the north is a  
14 single family detached house, and so there  
15 would be no construction against that person's  
16 building. Obviously building on a property  
17 line, the developer would have to give letters  
18 of intent, building on a property line. You  
19 know, that would be discussed in the future.

20 And as far as -- well, if I jump  
21 ahead a little bit, the proposed drawing of  
22 page six shows what we've done is taken two

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1 elements of neighboring houses, shown up here,  
2 west of the site on Fitch Street -- Fitch  
3 Place.

4 Some of the houses are two story  
5 with mansard roofs and porches, and some of  
6 the houses are one-story bungalows with gabled  
7 roofs, and we've merged that style together  
8 and carried it down the street.

9 In addition to this, there is a  
10 letter from one of the neighbors, Mr. Sean  
11 Branch, who I've never met, but he supports  
12 this project for, you know, a very common  
13 sense approach, that the homes would increase  
14 the value of the surrounding area.

15 Finally, although we really don't  
16 need to discuss too much the practical  
17 difficulty of this site, but there is  
18 difficulty because the topography for this  
19 combined site is quite great. It drops almost  
20 15 feet from 50th down Fitch.

21 So putting any other type of  
22 structure on this site would create great

1 difficulty by providing parking to the houses.  
2 Can you imagine, if these were all single  
3 family houses, each house would have to have  
4 a curb cut along 50th and Fitch, and at Fitch  
5 they'd be at different levels, and they'd have  
6 to traverse through, up and down contours of  
7 the site. And other types of buildings, say  
8 mixed use buildings or apartment buildings,  
9 would require a much higher amount of parking  
10 for the site.

11 As it is right now, I believe -- I  
12 don't know off the top of my head, but I think  
13 R-5-A for a single family house, you have to  
14 provide one per every dwelling unit and we're  
15 providing two.

16 To go back finally to the one  
17 point we made earlier, we would like the  
18 flexibility to address some of the concerns of  
19 the neighbors. That we could more evenly  
20 distribute the land to the eight properties by  
21 decreasing the width only of lots A, G and H  
22 to 16 feet.

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1           That would create eight lots that  
2           are all closer to 2000 square feet each, which  
3           would be even more in tune with the intent of  
4           zoning for an R-5-A area.

5           So other than that, I'd like to  
6           have Glen comment, if he has anything to add.

7           CHAIRPERSON MILLER: Can I ask you  
8           a question first.

9           MR. CONNORS: Sure.

10          CHAIRPERSON MILLER: So when you  
11          say you want flexibility, I mean are you  
12          actually saying you just would like to revise  
13          the plans to do that? You know, change the  
14          lots A, G and H?

15          MR. CONNORS: Well, I've never  
16          been here for the board with an R-5-A Zone,  
17          other than once, when we were putting a single  
18          building on. I don't know quite well what the  
19          process is of determining the exact  
20          configuration of a proposed lot. What we had  
21          initially proposed and put in the package was  
22          just the first "gut reaction," divide the lots

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1 evenly.

2 That may not have been the best  
3 approach. The flexibility we're asking for  
4 may be at this point in time, if this is how  
5 the board works, to determine the size of the  
6 lot, is to allow us to make those three lots  
7 16 feet wide at least. But you, as the board,  
8 may determine something else. Is that what I  
9 understand?

10 CHAIRPERSON MILLER: No. What I'm  
11 saying is, you know, this flexibility thing,  
12 it's like we, you know, in all our cases,  
13 approve plans that are put before us, so if  
14 there's a change in the plans, you know, they  
15 would go to the Zoning Administrator. So if  
16 you want to change the plans and, you know,  
17 there's a good reason that you're explaining  
18 to us now, I think the board could say, you  
19 know, sure, that's fine, that's what you want  
20 to do, it still meets the requirements of 353,  
21 no problem.

22 So we would want the plans in

1 front of us. I mean, we want them to get in  
2 the record.

3 MR. CONNORS: Yes. To make it  
4 clear, we would like to have the permission to  
5 go forward with the revised plan that we  
6 submitted. I know it was quite recent,  
7 February 19th, but that was direct response to  
8 some of the neighbors' concerns.

9 And you have that in front of you.  
10 It's not very different from what's proposed.  
11 It still meets all the tests that we've gone  
12 over. It's the second page of -- okay.

13 CHAIRPERSON MILLER: Okay. So it  
14 is before the board, it is in the record, and  
15 --

16 MR. CONNORS: Yes.

17 CHAIRPERSON MILLER: Okay; that's  
18 fine.

19 MR. CONNORS: We're responding to  
20 our February 14th meeting, and this was as  
21 quick as I could respond, because before  
22 responding this way, I wanted to make sure to

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1 talk to the Office of Planning, talk to  
2 someone from the zoning office. In fact Mr.  
3 Thomas met with a -- well, a third party  
4 review company that advised him, you know, on  
5 this issue.

6 CHAIRPERSON MILLER: Okay, and I  
7 also just want a clarification on the side  
8 that's on the building lot line, and what's on  
9 the other side of that?

10 MR. CONNORS: Oh. Yes. This is  
11 the neighbor's house, who is here, present,  
12 and I'm sure she'll concur. But it's a  
13 detached, bungalow style house, and it has a  
14 surrounding fence on the property. It's not  
15 show on our plan there. It's set back from  
16 all sides of the property, from what I can  
17 see, and we've recently had a survey of the  
18 whole area, and that did determine that the  
19 house is not on the property line.

20 To the west, Lot 44 and 45 are  
21 these vacant properties here. You can see  
22 some of these cars. That's what's there, just

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1 empty, piled with debris, and then immediately  
2 left of that, or west of that, there's a  
3 public alley, for further visual aid, I  
4 suppose. Immediately opposite the street, on  
5 Fitch, there are some single family houses  
6 that are raised up. Immediately east of the  
7 property across Fitch, there is some sort of  
8 gated community, multi-family community, I  
9 believe, and then, southeast of the site,  
10 there's a multi-unit apartment building.

11 CHAIRPERSON MILLER: Thank you.

12 Okay. Anything else? Any other  
13 questions by board members?

14 [No response]

15 CHAIRPERSON MILLER: Okay. Let's  
16 turn to Mr. Moore with the Office of Planning  
17 then. Good afternoon, Mr. Moore.

18 MR. MOORE: Good afternoon, Madam  
19 Chair, and members of the board. I'm John  
20 Moore with the Office of Planning. The Office  
21 of Planning is in support of the application  
22 because it meets the requirements under 353.

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1 As you all know, we're in the process of  
2 trying to get many of the areas east of the  
3 river in more conformance with the  
4 Comprehensive Plan by, in essence, downzoning  
5 much of the R-5-A to lower densities.

6 This developer came here with  
7 their lower density project from square one.  
8 We didn't have to twist his arm, in other  
9 words, to do so.

10 We believe that the project, as  
11 designed right now, currently -- and I would  
12 like to caution the Applicant on this -- meets  
13 the requirement. It's the board's  
14 prerogative, of course, to determine the size  
15 of it.

16 At 18 -- I believe 16 feet,  
17 average, for each of the lots, it is much  
18 closer to what the area is going to be zoned,  
19 if the Zoning Commission approves our  
20 application. That will be going forth in  
21 April. Then it'll be R-3. So at 18 anything,  
22 it's closer to what the standard would be in

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1 R-3 than sixteen.

2 So I don't think they need to  
3 consider modifying the application any  
4 further. Under the site plan review component  
5 of the 353, the Office of Planning looked at  
6 this application. The orientation of the  
7 buildings are such that they won't deter light  
8 and air from any neighboring property,  
9 including that of the lady who is here now to  
10 testify about hers. By the way, her house is  
11 the one circled at the top of -- you see that  
12 mark? Copy of the picture in the report.

13 And again this is one a the few  
14 occasions where an Applicant came in and  
15 exceeded the parking requirements without the  
16 curb cuts on public space that we wouldn't  
17 approve -- that DDOT wouldn't approve, no way,  
18 because as you know the parking spaces -- the  
19 curb cuts actually take away the parking  
20 spaces from the public.

21 I think that the design of the  
22 project -- you can see the product as shown

1       there -- would be one that I think would be  
2       extremely marketable, and would be an  
3       enhancement to that community. As opposed to  
4       if you, if the Applicant came in with a multi-  
5       family building, that would increase the  
6       density tenfold on the part of the area that  
7       is really low density in character.

8                 For those reasons, the Office of  
9       Planning stands in support of the application.  
10       I believe there's a DDOT report also  
11       supporting the application. I don't know if  
12       DHCD responded or not. And I'll entertain any  
13       questions you may have.

14                 CHAIRPERSON MILLER: Thank you,  
15       Mr. Moore. It's an excellent report. I have  
16       to comment, that in all the 353 applications  
17       that I've seen come before the board, this is  
18       absolutely far and beyond, the most beautiful,  
19       attractive development, and it seems to  
20       respond to at least what we've heard, you  
21       know, from other neighborhoods, what they  
22       would like. So this looks excellent to me.

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1                   But with respect to the specific  
2 criteria, were you saying that you didn't  
3 think they should change their application and  
4 were you referring to the one prior to the  
5 last revision? They've revised it somewhat.  
6 They just brought to our attention, I guess,  
7 in Exhibit 27, I think it was dated February  
8 19, 2008, in which I guess they changed the  
9 lot sizes.

10                   MR. MOORE: In response to the  
11 meeting with the community.

12                   CHAIRPERSON MILLER: Right. In  
13 response to the ANC.

14                   MR. MOORE: Which was after the  
15 Office of Planning report had already been  
16 filed.

17                   CHAIRPERSON MILLER: Right. Do  
18 you have a concern about the revision?

19                   MR. MOORE: Yes. My concern would  
20 be that if we look with vision to the future,  
21 in terms of what that area is likely to be  
22 zoned, is that the Commission approve the

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1 application, the minimum lot size in R-3 is  
2 going to be 20 feet. This application, as  
3 standing right now, is 18 plus, which is  
4 closer to twenty than sixteen that they'd be  
5 proposing. So I would think that, would  
6 caution, think about reducing that, because  
7 again, where we're saying that it will be  
8 closer to the common character of the area, if  
9 it's smaller -- again, it's your prerogative,  
10 you're the board -- it's difficult for us to  
11 say it meets the pattern of development in the  
12 area in the future. It's not twenty but it's  
13 close.

14 CHAIRPERSON MILLER: Okay. I'm  
15 not sure I totally follow. They changed it  
16 from what to what?

17 MR. MOORE: It's my understanding  
18 that the Applicant is going to change the  
19 product to where each of the units or the lots  
20 will be 16 feet in width. Currently, each of  
21 the lots average about 18 or 16 feet in width.  
22 With the coming zoning being R-3, which is 20,

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1 as proposed in the original application, it's  
2 closer to that product, to that standard,  
3 rather, than if they reduced it to sixteen.

4 I'm sure we've gotten many  
5 rowhouses in the city, especially on Capitol  
6 Hill, that's 16 feet wide. But is that  
7 desirable? I wouldn't think so.

8 CHAIRPERSON MILLER: So they  
9 increased it to eighteen.

10 MR. MOORE: No; no. In the  
11 original application, it is eighteen. The one  
12 that you have -- the first one, I guess that  
13 you're looking at now.

14 MEMBER DETTMAN: In the revised  
15 plan, in order to widen up some of the  
16 rowhouses, you had to shrink down a few of  
17 them. So you're not reducing every unit to 16  
18 feet, just three of them.

19 MR. CONNORS: We're reducing three  
20 and only the three that were substantially  
21 larger. The three original lots, A, G and H,  
22 were -- one was 3,132 square feet, one was

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1 2,847 square feet, one was 1700. That was  
2 smaller. The revised plan increases all the  
3 other lots, B through F, it increases all  
4 these sizes, increases their width from 18.16  
5 to 18.5, and then lots A, G and H would each  
6 be still over 200 square feet. It's very hard  
7 to divide up this area evenly because of the  
8 strange configuration behind the existing  
9 lots, 55 and 803.

10 So that's why our original plan,  
11 rather than trying to push the limit and  
12 divide the property up into, say, nine or ten  
13 even lots, we just said, you know, let's do  
14 eight, it's more even, it make sense, some  
15 lots are going to be slightly bigger, some are  
16 going to be smaller, but it makes more  
17 buildable sense.

18 MEMBER DETTMAN: Going from 18.16  
19 to 18.5, how much square footage do you  
20 actually gain in the house?

21 MR. CONNORS: Quite a bit. For  
22 instance, in the previous application, I think

1 we were at around -- I'm sorry, I don't know  
2 off the top of my head but we were around 690  
3 square feet per floor, or maybe close to 700.  
4 Now with all the lots, B through F, we're at  
5 least up to 740 per floor. Lot's A, G and H  
6 were up to at least, you know, 800, some of  
7 them can go up to 870 per floor, which means  
8 that all houses, not even exceeding the FAR,  
9 because the FAR is .9, and this would only be  
10 a .8 FAR for each house.

11 Each house would end up being over  
12 2200 square feet, which has the potential of  
13 being a four bedroom house, quite honestly,  
14 which, you know, may be good for families too.

15 MEMBER DETTMAN: Just one last  
16 question, cause it sounds like this works.  
17 But 16 feet, would you say -- is that an  
18 adequately wide house?

19 MR. CONNORS: Well, for instance,  
20 I live in a house on Capital Hill that's 16  
21 feet wide. It has no strange configurations  
22 in the back. I think when you have a strange

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1 configuration, a dog leg or something like  
2 that, it becomes quite restrictive. But my  
3 own house is 16 feet wide by about 50 feet  
4 long, Glen has been there, and it's two and a  
5 half levels, and we have three bedrooms, two  
6 and a half baths, plus a den which acts as a  
7 fourth room, and an open -- the whole first  
8 floor plan is very open. It's quite large.

9           So it's not that it's just 16 feet  
10 wide. It's that the house can be 16 by 50  
11 feet long. So it's pretty reasonable. It  
12 gets you enough length in a house, such that  
13 you can move the stair back into the center of  
14 the house, and when you walk into the living  
15 room, you don't walk into the stair. You walk  
16 into a 15 foot wide room and then the stair is  
17 back towards the middle.

18           Sixteen by 30 is small. I  
19 wouldn't recommend something like that.

20           CHAIRPERSON MILLER: So Mr. Moore,  
21 you like the first plan better, but is the  
22 revised plan a good one, or at least in

1 harmony with the character of the neighborhood  
2 and the tests under 353?

3 MR. MOORE: Yes; would be. By the  
4 way, if your house had been built today, you  
5 wouldn't want it 60 feet wide. All of Capitol  
6 Hill would change.

7 CHAIRPERSON MILLER: Just to  
8 understand, though, the new plan. What was  
9 the rationale for changing? It's not like you  
10 were providing all bigger houses in response  
11 to ANC says they're small, cause you're making  
12 some of them smaller. Some bigger; some  
13 smaller.

14 MR. CONNORS: Right, but what it  
15 does is it actually increases the average size  
16 of all the houses, because in the previous  
17 scenario -- I'll show on this plan here. It's  
18 hard to see but Fitch and 50th are not at a  
19 right angle, and what that means is when you  
20 divide up these properties, the depth of A is  
21 deeper than B, deeper than C, and so on and so  
22 on.

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1           So in the first scenario, you can  
2 see how well lot A, 1735, lot B, 1725 -- it  
3 goes down to E, which has a lot size of 1690.  
4 Now in my note somewhere, I can't find it, but  
5 I have the 40 percent of 1690, and that's  
6 substantially lower than the revised plan.

7           The revised plan steals some of  
8 this unused space back here, and evenly  
9 redistributes it a bit better for these houses  
10 that suffer otherwise.

11           Forty percent of lot E is 676. So  
12 that would be a house that roughly meets the  
13 average size of the neighborhood, 1350, but it  
14 doesn't, you know, provide room for a growing  
15 family. I think 1350 would be a two bedroom,  
16 one bath house, maybe two bedroom, a den, and  
17 one bath and a powder room or something, if  
18 you squeeze it.

19           MEMBER WALKER: What about the  
20 space to lots G and H, or to the west, behind  
21 the vehicular easement? How will that space  
22 be used.

1                   MR. CONNORS: In both scenarios,  
2                   it would be yard space. The plan in five, the  
3                   original plan, and we submitted a very rough  
4                   landscape plan with the package, that area  
5                   could be virtually undeveloped. In the plan  
6                   we submitted on the 19th of February, that  
7                   plan could either be, again, virtually  
8                   undeveloped, or it could be used as an extra  
9                   parking space for each one of the three lots  
10                  that had been reduced, 16 feet wide.

11                  So, for instance, lot A would have  
12                  one parking space immediately, right behind  
13                  their house, and they may have another parking  
14                  space in that area. But surely one parking  
15                  space, which is only 200 square feet, doesn't  
16                  take up the whole 1000 square feet of that.  
17                  It would be at the owner's expense to try to  
18                  develop that land, and it doesn't make sense  
19                  to try to develop land for no resale value.  
20                  Just most likely, they would leave it alone  
21                  with the natural trees that are on the site.

22                  MEMBER WALKER: So it's not

1 attached to any particular lot; is that what  
2 you're saying?

3 MR. CONNORS: It would have to be,  
4 I believe, attached to the lots that it is  
5 assigned to. So there are three lots that  
6 would own that area, conjunctively. Lot A,  
7 Lot G, and Lot H, would own some of that area.  
8 In the original plan, only two lots, Lots G  
9 and H, would own that land, so --

10 CHAIRPERSON MILLER: Mr. Moore, we  
11 did get a report from DDOT that supports the  
12 application. I don't see if we got reports  
13 from any of the other agencies, that this was  
14 referred to.

15 MR. MOORE: I didn't get anything  
16 from the schools or DHCD.

17 CHAIRPERSON MILLER: Okay. Do you  
18 have any concern that we need to hear from  
19 them? I mean, you could tell about the  
20 schools' correct?

21 MR. MOORE: I don't -- we put some  
22 briefing information on our report, always,

1 about -- since we're the state data center --  
2 that talks about the capacity of schools to  
3 handle -- and this would be a small project --  
4 relative to housing, DHCD's position generally  
5 is being in support of new housing, especially  
6 low-density houses east of the Anacostia  
7 River, and I believe if they were to send in  
8 a report -- they normally do -- it would  
9 probably be in support of the project.

10 CHAIRPERSON MILLER: Okay. Any  
11 other questions?

12 VICE-CHAIRMAN LOUD: I just want  
13 to ask Mr. Moore a couple questions about the  
14 ANC and whether or not he'd had a chance to  
15 speak with them regarding the project.

16 MR. MOORE: I put in three calls  
17 to the agency. I've not had one return yet.

18 VICE-CHAIRMAN LOUD: Were you  
19 aware of any concerns, apart from what the  
20 Applicant mentioned earlier on, regarding the  
21 size and the potential preference for senior  
22 housing?

1 MR. MOORE: No.

2 VICE-CHAIRMAN LOUD: Thank you.

3 MEMBER WALKER: Mr. Moore, I have  
4 a question. Going back to this area behind  
5 Lots G and H, is there any issue with the  
6 parcel that is to the south being owned by Lot  
7 A since they're not connected in any way? Is  
8 that typical? Have you seen that before?

9 MR. MOORE: Yes. I've seen it  
10 before. It is not typical. As a matter of  
11 fact, a concern would be how that property be  
12 used by the owner of Lot A, and we want to  
13 provide adequate parking off the public space  
14 of course when we can, we don't want to create  
15 parking lots in residential areas, and that  
16 opportunity would be two tract as far as I'm  
17 concerned. So I would think if it would be  
18 attached to that lot, there should be some  
19 definition in terms of how it's to be used, or  
20 restrictions, how it can't be used.

21 MEMBER WALKER: Right. I could  
22 see a situation here where the space, if it

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1 were not designated for any particular  
2 purpose, might be neglected, which we wouldn't  
3 want either.

4 MR. CONNORS: Can I comment on  
5 that point.

6 CHAIRPERSON MILLER: Yes, please.

7 MR. CONNORS: Also hopefully, you  
8 did locate the landscape plan that was  
9 submitted with the package. It shows that.  
10 But each -- Lot A, in the latest scenario, Lot  
11 A, G and H would all be connected to those  
12 pieces of land back there. Although I said  
13 they would be most likely undeveloped, they  
14 would be fenced in, and that fencing would be  
15 designated to the assigned lot, and one idea,  
16 actually, now that -- the vehicular easement  
17 goes through the properties, but one idea,  
18 which would very easily solve the situation is  
19 we could stop the vehicular easement a bit  
20 short.

21 It could go halfway into Lot A and  
22 it could go a little bit into Lot G, and thus

1 allow continuous walkways to the properties.  
2 The fencing could continue into those areas  
3 without interruption.

4 CHAIRPERSON MILLER: Can we see  
5 that somewhat more visually by looking at this  
6 landscaping plan you are referring to? I'm  
7 not sure I have that.

8 MR. CONNORS: Sure. I can draw it  
9 on here, actually. You could see how the  
10 vehicular easement does come and bend this  
11 way, but we could stop this easement short  
12 here. As long as you have nine feet, this car  
13 could turn into its own property, and this  
14 fencing, the privacy fencing could jog and  
15 continue and go around and capture that area  
16 with a gate which would allow that resident to  
17 maintain that portion of the property, and we  
18 could also configure this area that if -- it  
19 still would potentially work if, say, just Lot  
20 A and H only had that area.

21 It would still work as far as  
22 dividing the square footage evenly. I don't

1 see that as being a problem. This whole  
2 easement will basically move over.

3 Now I know I'm drawing on the old  
4 plan, but I don't have the new plan blown up.  
5 It's very similar still. Can you all see the  
6 writing from there? Should I bring it up?

7 CHAIRPERSON MILLER: Yes. I can  
8 see it. I'm also trying to put it on this,  
9 read it on this plan; right. Okay.

10 MR. CONNORS: The same concept.  
11 The green area of Lot A would extend in an L-  
12 shaped fashion into its dream lot of  
13 unlandscaped land, and a green area of Lot H,  
14 as shown on this landscape plan, could be  
15 flipped, such that the green area, which may  
16 actually be a better buffer for the neighbor  
17 too, that green area would continue along the  
18 north property line, continuously.

19 There's no need for all the paving  
20 to extend back there, quite honestly. It was  
21 done just as a sort of rational -- you know,  
22 this is how wide a parking space is, this is

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1       how wide a vehicular road is.  It could be  
2       moved back.

3                   CHAIRPERSON MILLER:  What would  
4       happen to A's two parking spaces, if you added  
5       green space there?  Isn't that what you're  
6       saying with this --

7                   MR. CONNORS:  One would be towards  
8       the house and then one would be partially in  
9       that back area.  But you can see the size  
10      proportional to a parking space, relative to  
11      that area.  It's only about a sixth of that  
12      area right now.  So, you know, there'd be no  
13      need to use all of it.

14                  CHAIRPERSON MILLER:  And do you  
15      think that's the letter design at this point  
16      or not?

17                  MR. CONNORS:  I do.  I do think  
18      so.  It's a little more difficult as far as  
19      design goes, because we're going to end up  
20      having two housing prototypes instead of one.  
21      But at the same time, by doing that, benefits  
22      all houses and all future developments, I

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1 think. So, I mean, not that there will be  
2 future developments immediately. I don't  
3 know, you know, what happens after -- once a  
4 lot gets, you know, configured.

5 But I think down the road, it does  
6 make sense to allow those middle lots, B  
7 through E, to be as large as possible now,  
8 rather than in the future, some day, having to  
9 try to reconfigure, you know, because I could  
10 foresee, I guess, in the future, maybe, you  
11 know, one of the owners of these corner lots  
12 saying, you know, I have an extra thousand  
13 square feet of land that I don't use. Would  
14 you like to buy it?

15 I could see that. It's happened  
16 before. So this may prevent that.

17 CHAIRPERSON MILLER: Okay. Any  
18 other questions for Office of Planning? Okay.  
19 Someone had come in the room but left,  
20 apparently. And did you all see the Office of  
21 Planning report?

22 MR. CONNORS: Yes.

1 CHAIRPERSON MILLER: And do you  
2 have any questions for Office of Planning?

3 MR. CONNORS: No.

4 CHAIRPERSON MILLER: Okay. Then -  
5 - I'm sorry. I'm not sure. What's your name  
6 again?

7 MS. CHARISE FIELDS: My name is  
8 Cyd Charise Fields.

9 CHAIRPERSON MILLER: Ms. Fields.  
10 Okay. Would you like to testify in this case?

11 MS. CHARISE FIELDS: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MS. CHARISE FIELDS: As I said  
14 before, I am the neighbor to the property  
15 that's going to be under development, and I  
16 just had a couple questions because I've seen  
17 none of this paperwork at all. I've heard of  
18 no meetings in the area, or anything. The  
19 only thing I received was this in the mail and  
20 seeing a poster on a tree.

21 CHAIRPERSON MILLER: When you say  
22 "this," can you say what that is for the

1 record.

2 MS. CHARISE FIELDS: This is the  
3 application, well, basically, just a notice  
4 given by the Board of Zoning, saying that  
5 they'll be holding a public hearing on this.  
6 So what I did was responded because I figured  
7 I'm right next door to the property, and I had  
8 a couple a concerns. I am a proponent. I  
9 want to get that out, from the beginning. I  
10 am not here to block what you're doing,  
11 because this area is a very nice area. It's  
12 a very quiet area. I've been there for a year  
13 now. I bought my house in December of 06, and  
14 I've enjoyed the time over there. It's very  
15 nice.

16 But I have a few concerns from  
17 what I'm seeing here on your plans, because I  
18 wanted to make sure I did see a landscaping  
19 plan, because there are a few mature trees up  
20 there, and I was wondering how you all were  
21 going to preserve some of that, not just come  
22 in and knock everything down and replant.

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1 Because there are some nice trees and whatever  
2 up there. I wanted to know also what type of  
3 housing this was, because up the street on  
4 50th at Fitch, that is public housing, and I'd  
5 like to know what type of housing this is.

6 Is this affordable housing? Is  
7 this rental units? Or is this for sale? You  
8 know, I just want to know what -- I have to  
9 say -- what type of neighbors I'm going to  
10 get. Okay.

11 I come in late at night. I need  
12 to see what's surrounding me. I also have  
13 some concerns, when you start the building, I  
14 am a single-family home. I am a stand-alone  
15 house. My house was built in 1920. My house  
16 is pretty strong but I don't how strong it is  
17 up against construction. So I am very  
18 interested in seeing what type of inspection  
19 process I am going to be going through.

20 I would think that there would be  
21 some sort of inspection before and during this  
22 construction, because I don't want to come

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1 home and I just have two empty lots of land.  
2 Right now, I do sit on two lots. I have one  
3 where the house is, and all the way to the  
4 back, which borders what you guys are doing.

5 And at some point I do want to  
6 develop that. You know. So I'd like to see  
7 what it is that you guys are doing. Maybe I  
8 can mirror something back there to, you know,  
9 accent what we're doing on that block.

10 MR. CONNORS: Can I ask Ms.  
11 Fields, what are the two lots? I thought you  
12 only have one.

13 MS. CHARISE FIELDS: No. I  
14 actually have two lots. If you go out back --

15 MR. CONNORS: Fifty-four, and  
16 which is the other one?

17 MS. CHARISE FIELDS: I believe  
18 it's eighty-one. I don't have the numbers  
19 here with me. But if you go back out, you can  
20 actually walk up steps and go further back to  
21 the gate. I own all the way back to the gate.

22 MR. CONNORS: Okay. I'm sure it's

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1 on the survey. I just didn't know.

2 MS. CHARISE FIELDS: Yes. It  
3 should be. It should be. And if you need it,  
4 I have my own survey I can give you. So, you  
5 know, I want to -- whatever comes in the  
6 neighborhood, I want it of course to bring  
7 value to the neighborhood. Right now, I'm the  
8 only house on the block. Okay? Right next to  
9 me is condos, and so it's like, you know, I'm  
10 going to be -- these big houses, little teeny  
11 me, and then the condos next to me.

12 So I just want to make sure I'm  
13 not interrupted, in any way here.

14 MR. CONNORS: You're the only  
15 house east of the alley.

16 MS. CHARISE FIELDS: Yes; exactly.

17 MR. CONNORS: Not the whole block.

18 MS. CHARISE FIELDS: Well, right.

19 MR. CONNORS: East of the alley.

20 MS. CHARISE FIELDS: I'm looking  
21 in front of my house.

22 MR. CONNORS: Right.

1 MS. CHARISE FIELDS: Okay. And  
2 the next block down, you have more single-  
3 family houses.

4 MR. CONNORS: You mean on Fitch.

5 MS. CHARISE FIELDS: On 50th.

6 MR. CONNORS: Yes. 50th.

7 MS. CHARISE FIELDS: I'm right on  
8 50th. So let's see. My question, another  
9 question I had was -- I mean, I see the plans  
10 here and I understand change happens, but is  
11 there -- I'm not sure -- how is this land  
12 zoned? Is it zoned for more than eight  
13 houses? Can all of a sudden they come up and  
14 say I want to do ten houses? I want to do  
15 twelve houses. You know, I mean --

16 CHAIRPERSON MILLER: Let me just  
17 answer that one right. Whatever we approve  
18 will be what they can do.

19 MS. CHARISE FIELDS: Okay.

20 CHAIRPERSON MILLER: Okay. So it  
21 won't change after this meeting.

22 MS. CHARISE FIELDS: Okay. Let's

1 see. And what erosion plans are in place. I  
2 mean, you're coming down off that steep hill  
3 and I'm right there. So I just want to know,  
4 you know, what protections do I have here? So  
5 if you can address that, that would be great,  
6 so i can understand, you know, how I'm  
7 protected here. I mean, I have homeowner's  
8 insurance; but I've never been through this  
9 situation before.

10 MR. CONNORS: Is that it, Ms.  
11 Fields?

12 MS. CHARISE FIELDS: Well, for  
13 now.

14 MR. CONNORS: Okay. I can  
15 respond. part of our proposal, because the  
16 site is so steep, we looked at different  
17 scenarios. We looked at one scenario of  
18 having all the houses along Fitch, up the  
19 hill. We figured that we would have to end up  
20 doing massive retaining walls to achieve that.  
21 Felt it was a bad idea.

22 This scenario, where most of the

1 houses are all on Fitch -- I'm sorry. I  
2 confused what I just said. I meant 50th.  
3 Most of the houses, when they're all on Fitch,  
4 the front portion of the house will most  
5 likely act as the retaining wall.

6 So the two proposed houses, Lots G  
7 and H, will be much more at grade. So the  
8 idea is to, as much as possible, not remove  
9 any trees that otherwise could just stay in  
10 the yards. Hopefully Glen agrees with me.  
11 But there's nothing worse, going to see a  
12 site, they come in, they strip out all the  
13 trees and just build houses. There's no  
14 point.

15 Second. The type of housing.  
16 They'd be fee-simple home ownership, single-  
17 family home ownership, each house, eight, and  
18 what we're asking for today Chairperson Miller  
19 described. That's what we're here for today,  
20 to determine the lot size and number of lots.

21 We're not asking for any more.  
22 The inspection process is -- quite honestly,

1 it's a little less than -- say, for instance,  
2 if your house were on the property line, and  
3 it came in to a party wall condition. There's  
4 a greater purview from the city. But as it is  
5 right now, any time a developer or home owner,  
6 or anyone, builds on a property line, they  
7 have to send a letter of notice to the owner  
8 and during the process you'll most likely be  
9 able to request more information, or even  
10 reject the notice, if you want to. But it's  
11 going to be his responsibility, as part of the  
12 permit process, to not only do the  
13 notification, but once the first courses of  
14 block go in for foundation, the city requires  
15 something which is a wall check.

16 Immediately, that wall check  
17 determines if the new construction is within  
18 the property lines that it's designated. If  
19 it's not, they make them tear it down and you  
20 have to do it all over. If they don't -- and  
21 I've seen that before. I've seen some naive  
22 developers and naive contractors go through a

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1 process of not doing a wall check, and it's  
2 not pretty, because you can build an addition,  
3 it doesn't matter, the city will come out and  
4 make you tear the whole thing down and start  
5 over.

6 So you can definitely have that  
7 "assurety" from the city. And part of these  
8 rowhouses is that a part a the development --  
9 I'm pretty sure, I'm not quite sure to the  
10 level of degree -- but every house is going to  
11 have to have its own storm water retention  
12 system. It's just part of the process of D.C.  
13 You have to go through what is now called the  
14 Department of Environment, and for new  
15 townhouses, in any new subdivision, every  
16 house has to take care of their own water,  
17 which means that they have to tie in all their  
18 gutters and downspouts into a chamber, which  
19 has a sand filter, and that filter will sort  
20 through the debris and then send the water out  
21 into a new storm sewer.

22 So on our drawings, where we've

1 written a proposed vehicular and utility  
2 easement, that easement will also act as the  
3 proposed water sewer, which will gather all  
4 the houses.

5 So, for instance, the house, Lot  
6 H, the water from that property will have to  
7 be caught and directed towards the easement,  
8 not towards your house, and will have to go  
9 first to a chamber before it going down to the  
10 street. Then it will most likely go out to  
11 the street on 50th. When the utility  
12 connections get put in, D.C. WASA requires  
13 very, very expected digging. When you put in  
14 a new utility, you get no more than three days  
15 to put in that utility, and then you're gone.  
16 So that's his responsibility.

17 If you see other type developments  
18 in the area, where streets are being ripped  
19 up, and they're going on and on and on, for  
20 months at a time, typically, that's WASA  
21 upgrading their own system, or the Department  
22 of Transportation upgrading the system. It's

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1 not a private developer.

2 Private developers only have a  
3 short window to put in those new utilities.  
4 So that covered the erosion, I think, idea.

5 MS. CHARISE FIELDS: Okay. Well,  
6 what about the inspection portion of this as  
7 far as my property is concerned?

8 MR. CONNORS: That you should  
9 discuss with --

10 MS. CHARISE FIELDS: As, you know,  
11 my ability as far as -- I mean, my head is  
12 just going everywhere. I've never done this  
13 before. I can just kind of see, you know,  
14 some sort of accident happening. You know  
15 what I'm saying? I mean, you know, I'm a  
16 little --

17 MR. CONNORS: That's anybody's  
18 concern that --

19 MS. CHARISE FIELDS: How does  
20 that, you know --

21 MR. CONNORS: Unfortunately, that  
22 is not part of a zoning process. It's part of

1 the construction document and permitting  
2 process. So like I said once that starts, the  
3 first thing that happens is that Glen has to  
4 contact you and give you a letter, and at that  
5 point in time you'll be able to discuss things  
6 further.

7 Also, since the permit office is  
8 run by the DCRA, Consumer and Regulatory  
9 Affairs, you know, to be quite honest, you  
10 have the right, at any moment during  
11 construction, to call directly to DCRA and  
12 talk to an inspector. And you have the right  
13 to do that.

14 MS. CHARISE FIELDS: Okay.

15 MR. CONNORS: It's happened on  
16 some of my projects.

17 MS. CHARISE FIELDS: Okay. Do you  
18 know how soon we're talking about this  
19 building starting?

20 MR. CONNORS: No; not at the  
21 moment.

22 MS. CHARISE FIELDS: Okay. Am I

1 going to get any further notification as far  
2 as this process is going?

3 MR. CONNORS: Yes, because as soon  
4 as they start someone in their permanent  
5 drawings, they have to give you that letter of  
6 notification. They won't get a building  
7 permit without issuing that letter of  
8 notification.

9 MS. CHARISE FIELDS: Okay.

10 MR. CONNORS: At that point in  
11 time, you'll also be provided with a tracking  
12 number and you can probably follow the permit  
13 process and see where we're at.

14 MS. CHARISE FIELDS: Okay. And  
15 just one more question. Around what range of  
16 pricing are we talking for these houses?

17 MR. CONNORS: I'll let Glen answer  
18 that.

19 MR. THOMAS: Well, Ms. Fields, I  
20 guess right now, we're in kind of a depressed  
21 market, so, you know, my intent is to build  
22 them and price them at a point that the market

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1 will accommodate. I mean, from what I'm  
2 looking at right now, it looks like in order  
3 for me to move them within a timely manner,  
4 that they're going to have to be under  
5 \$300,000, you know, which is kind a tricky in  
6 terms of the construction cost.

7 Because a year and a half ago, I  
8 was looking at getting four and a quarter for  
9 the same properties. So right now, I would  
10 like to be able to be approximately in the  
11 same price point at Capital Gateway, which is  
12 about 360-, \$379,000. We're going to build  
13 them to that quality, and hope that at that  
14 time that we can command that.

15 If we can't, I've got to, you  
16 know, take what I can and move on.

17 MS. CHARISE FIELDS: And the  
18 reason I'm asking that question is because the  
19 condos that are next to me have been there,  
20 and it's like 28 units, and there's maybe two  
21 or three people in there for like the whole  
22 year. They can't seem to attract people to

1       come to this area. I say this is "a diamond  
2       in the rough." This is an area, I came into  
3       this area for a specific reason, because I saw  
4       the potential that it has, and I was very  
5       excited when I saw the empty lot next to me,  
6       because I wanted to see what was going to  
7       come, and how it would bring value to my  
8       house. Cause I mean, we're all trying to make  
9       some money.

10                   MR. MOORE: Sure.

11                   MS. CHARISE FIELDS: And not just  
12       that. I mean, it's nice to bring some beauty  
13       into the area as well, because it is sort of  
14       depressed. But, you know, I was just  
15       wondering, you know, how you think you're  
16       going to attract people to come to this area.

17                   CHAIRPERSON MILLER: Ms. Fields, I  
18       think I might --

19                   MS. CHARISE FIELDS: That's a  
20       whole different conversation.

21                   CHAIRPERSON MILLER: Yes.

22                   MS. CHARISE FIELDS: Okay.

1 CHAIRPERSON MILLER: I think we've  
2 given you like a lot of leeway and I think you  
3 should continue the conversation outside of  
4 this hearing, cause they're, you know, real  
5 concerns that you have, living there.

6 MS. CHARISE FIELDS: Sure.

7 CHAIRPERSON MILLER: But at this  
8 point I think we just need to focus on the  
9 issues that this board has to decide on.

10 MS. CHARISE FIELDS: Then I'm  
11 fine.

12 CHAIRPERSON MILLER: Okay.

13 MS. CHARISE FIELDS: Thank you so  
14 much.

15 CHAIRPERSON MILLER: Thank you  
16 very much. Okay. I guess there's nobody else  
17 here in the room to testify.

18 So do you have any other final  
19 remarks? And then we could talk a little more  
20 informally, after you're finished.

21 MR. CONNORS: I don't think so.  
22 Glen?

1                   MR. THOMAS: I would like to say  
2 one last thing. My concern was when, after  
3 the ANC meeting, my concern was to try to  
4 divide the little piece in the back up some  
5 type of way, and, you know, I had drawn up a  
6 number of different type of configurations  
7 that were quite weird, that some of which may  
8 have maintained the width, but the lot in the  
9 back would be kind of odd, and I submitted a  
10 number of different proposals to Dennis, and  
11 he basically said listen, you know, within  
12 reason, this is the smartest and the best  
13 thing to do, because if you do it any kind of  
14 other odd way, you know, you could create a  
15 scenario for people down the road, that would  
16 be more problematic. So that that's how we  
17 kind a came to that conclusion. Thank you.

18                   CHAIRPERSON MILLER: Okay. I  
19 don't think it's in our record, maybe you're  
20 alluding to certain conversations you would  
21 have had with the ANC, that you're responding  
22 to, cause I'm not sure what that was.

1 I know Mr. Moore said he thought  
2 it was great, before you changed it. But it's  
3 fine, at least under 353, if I understand Mr.  
4 Moore, he prefers the first one, but the  
5 second one is fine if you're trying to, you  
6 know, achieve some other goal. But I think as  
7 far as the board's concerned, whatever plan  
8 you give us, we're going to look at it under  
9 the standards of 353.

10 So you're talking about two  
11 different ones. I know the revised one is  
12 before us right now, and, you know, we've  
13 heard Office of Planning's testify on it. No  
14 one else has testified on it except Ms.  
15 Fields, not specifically, you know, with  
16 respect to 353.

17 So I think at this point, it  
18 sounds like that you are still going to make  
19 some change to the lot with respect to the  
20 green and the fencing, and the -- no?

21 MR. CONNORS: The revised plan  
22 that's before you is our preferred plan, and

1 we would not change the lots as far as  
2 property lines go. We would change,  
3 potentially, the easement, and that's it. We  
4 wouldn't see the need to change the property  
5 lines again, because I've looked at this with  
6 Glen, many times, we've had many scenarios,  
7 and, you know, he went, he paid to go meet a  
8 third party company to have a preliminary  
9 review, because we were recommended to contact  
10 the Zoning Administrator, which we did, but  
11 unfortunately, there wasn't enough time to  
12 meet them.

13 So we went out and paid for that  
14 service on our own, and they recommended  
15 sticking to the last revised plan, which is  
16 much more rational. You do one little thing  
17 to make the first plan better and that's it.

18 CHAIRPERSON MILLER: Well, with  
19 respect to the easement, I mean, in your  
20 understanding of 353, is that something that  
21 you think the board needs to concern itself  
22 with, where the easement is?

1                   MR. CONNORS: I hope not. I think  
2 the way it's shown is a very straightforward  
3 L shape, good solid properties, and what I'm  
4 proposing to make the revised plan even  
5 better, according to Commissioner Walker's  
6 concerns, which I think are very valid  
7 concerns, is to just slide that easement a  
8 little bit forward towards 50th, and at least  
9 give a five foot buffer from the furthest west  
10 property. If proposed A is 16 feet wide and  
11 you take out nine feet, I am saying move that  
12 proposed easement five feet east, that's it,  
13 and that would make the easement better.

14                   CHAIRPERSON MILLER: Okay. I  
15 guess my question is, though, is sounds as if  
16 we probably won't rule on this today but leave  
17 the record open for you to submit one more  
18 revised plan which would show that; correct?

19                   MR. CONNORS: Sure.

20                   CHAIRPERSON MILLER: Okay. and,  
21 you know, I'm looking at the requirements  
22 under 353, and where is the landscaping shown

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1 in our record?

2 MR. CONNORS: It was just the  
3 first plan issued.

4 CHAIRPERSON MILLER: Okay.

5 MR. CONNORS: Right. That's it.

6 CHAIRPERSON MILLER: Yes. Okay.

7 MR. CONNORS: Yes. And I could  
8 revise that accordingly, and at this point in  
9 time probably put more detail on to it,  
10 because you might want to see lighting, and  
11 things of that nature. But I guess, you know,  
12 it's hard at this point, without hiring a  
13 civil consultant, the only ability we had at  
14 this point in time was to hire a civil  
15 consultant to do the survey, just to make sure  
16 of the contours.

17 But at some point in time when  
18 we're doing the construction documents, of  
19 course a much more detailed landscape plan has  
20 to be part of the package, and that will go  
21 into a lot of the "nuts and bolts." But I  
22 don't know what the requirement, the board

1 makes, how detailed it needs to be, you know,  
2 without having designed the house yet.

3 So it's kind a hard to imagine.  
4 You know, if there's extra money, I assume  
5 that Glen would probably want the parking  
6 spaces to be a paver stone, and then the  
7 easement to be asphalt, make it nicer. We  
8 have to get the proposed sidewalk approved by  
9 the Department of Transportation, go according  
10 to their requirements, so --

11 CHAIRPERSON MILLER: I mean, the  
12 regulations, you know, are pretty general, so  
13 --

14 MR. CONNORS: They're vague. I  
15 think they're vague; yes.

16 CHAIRPERSON MILLER: You know,  
17 enough so that the board has an understanding  
18 of basically what it's going to look like,  
19 and, you know, a comfort level. For instance,  
20 like you were referring to trees that are  
21 already there, that you're not going to take  
22 down, I don't know whether that shows up on

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1 this or not. I can't really tell. So, you  
2 know, just enough information so that we can  
3 tell, like these are existing trees, and new  
4 trees that are going to be planted, and if you  
5 don't know the type yet, that's okay.

6 MR. CONNORS: I do know, because  
7 when we submitted the project back in, I don't  
8 know, six, seven months ago, you know, this  
9 had to be done as part of the submission. At  
10 that point in time, I didn't have any  
11 information on the properties. Now we  
12 actually have a survey, we have a survey as of  
13 January, so we have more accurate information  
14 I could put that in.

15 CHAIRPERSON MILLER: Okay. That  
16 would be good.

17 MR. CONNORS: With existing trees  
18 and things.

19 CHAIRPERSON MILLER: Right. I  
20 mean, I see, you know, a reference to myrtle  
21 trees, or something. Is that what you're  
22 going to be planting? It's on this plan.

1 MR. CONNORS: Yes. I don't know.  
2 I think they're one of the nicer trees in the  
3 area in front of, you know, houses.

4 CHAIRPERSON MILLER: Okay. So  
5 basically what you do know, you could --

6 MR. CONNORS: Right.

7 CHAIRPERSON MILLER: Okay. And  
8 then the regulations do make reference to  
9 typical floor plans. Do you have any typical  
10 floor plans?

11 MR. CONNORS: No. And I'm sorry I  
12 wasn't aware of that regulation. But we could  
13 definitely put something in that's conceptual.

14 CHAIRPERSON MILLER: Okay 353.5  
15 says the developer shall submit to the board,  
16 with the application, four site plans and two  
17 sets of typical floor plans and elevations,  
18 grading plans, landscaping plans, and plans  
19 for all new rights of way and easements.

20 MR. CONNORS: Okay.

21 MEMBER WALKER: Okay. Going back  
22 to my issue about these little pieces of,

1 these plots behind G and H, I'm just  
2 particularly concerned because we have these  
3 other very small parcels designated as 802 and  
4 804, and in the proposed plan, your proposed  
5 plan, there are, you know, three other, like  
6 very small parcels.

7 I would just encourage you -- I  
8 mean, I know you said you were going to move  
9 the easement to the east. I would encourage  
10 you to give some careful consideration to what  
11 really is going to be the best use of that  
12 space, and to indeed engage Mr. Moore as you  
13 work through that issue, to try to come up  
14 with the very best use of the space.

15 CHAIRPERSON MILLER: Anything else  
16 from board members?

17 [No response]

18 CHAIRPERSON MILLER: Okay. I mean  
19 basically, you know, it appears to be a very  
20 beautiful development and so, you know, this  
21 is just fine-tuning and getting the final  
22 pieces before the board, and we won't need to

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1 have another hearing on it. These will  
2 respond to, you know, the questions that we've  
3 raised today.

4 So what we're going to do is set a  
5 date for when you will submit them, and then  
6 we'll set a date for the board's decision on  
7 the application.

8 So do you have an idea as to how  
9 much time you would like to prepare those  
10 documents?

11 MR. CONNORS: Two weeks.

12 CHAIRPERSON MILLER: Okay. Let me  
13 just suggestion this, then. We have regularly  
14 scheduled decision meetings the first Tuesday  
15 of every month, so, you know, you're not going  
16 to make March 4th, which is next week. We  
17 could put you on the calendar for our decision  
18 meeting of April 1st, in which case -- if  
19 that's okay with you -- and then if you want  
20 a little more time, we need the documents  
21 about a week ahead of time.

22 MR. CONNORS: That's good, because

1 that would provide even just a little extra  
2 time. I mean, two weeks is rushed, so --

3 CHAIRPERSON MILLER: We don't want  
4 to rush, there's no reason for us to rush you,  
5 we're not in a hurry, so take whatever time  
6 you want. If that April date works for you,  
7 fine. If you want more time to develop this,  
8 we can put it later. It's really up to you.

9 MR. CONNORS: You said April 1st  
10 is fine. So then a week before that.

11 CHAIRPERSON MILLER: Probably the  
12 Wednesday before that, would we say? March  
13 26th? Is that good? Okay. Is that doable?

14 MR. CONNORS: That's very good.

15 CHAIRPERSON MILLER: Okay.

16 MR. CONNORS: April Fool's.

17 CHAIRPERSON MILLER: Right. We'll  
18 have a fun day that day. Okay. Then do you  
19 want to reiterate it, Ms. Bailey?

20 MS. BAILEY: The dates that were  
21 given, Madam Chair, your decision is April 1st  
22 and the submissions are due March 26th.

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1 CHAIRPERSON MILLER: Yes; right.  
2 And if you have any questions, I know you will  
3 be working with Mr. Moore, you can ask Mr.  
4 Moore as well.

5 Okay. Anything else?

6 MR. CONNORS: Thank you very much.

7 CHAIRPERSON MILLER: Okay. Thank  
8 you very much.

9 And Ms. Bailey, do we have  
10 anything else on the agenda for this  
11 afternoon?

12 MS. BAILEY: That's it, Madam  
13 Chair.

14 CHAIRPERSON MILLER: Okay. Then  
15 this hearing is adjourned.

16 [Whereupon, at 4:29 p.m., the  
17 hearing was adjourned]

18

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22

