

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
: :
SOUTHEAST FEDERAL CENTER : Case No.
OVERLAY DISTRICT REVIEW AT : 08-01
SQUARE 826, SOUTHEAST FEDERAL:
CENTER :
-----:

Thursday,
April 24, 2008

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

The Public Hearing of Case No. 08-01 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- GREGORY N. JEFFRIES, Vice-Chairman
- CURTIS L. ETHERLY, JR., Commissioner
- MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)
- PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

The transcript constitutes the minutes from the Public Hearing held on April 24, 2008.

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

2 6:36 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is the public
5 hearing of the Zoning Commission of the
6 District of Columbia for Thursday, April 24,
7 2008. My name is Anthony J. Hood. Joining me
8 this evening are Vice Chairman Jeffries,
9 Commissioner Etherly and Commissioner
10 Turnbull. We are expected to be joined
11 shortly by Commissioner May. To my left we
12 are joined by staff, Ms. Sharon Schellin and
13 to my right Office of Planning, Mrs.
14 Steingasser.

15 This proceeding is being recorded
16 by a court reporter and is also webcast live.
17 Accordingly we must ask you to refrain from
18 any disruptive noises or actions in the
19 hearing room. The subject of this evening's
20 hearing is Zoning Commission Case No. 08-01.
21 This is a request by Forest City SEFC, LLC,
22 for review and approval under the Southeast

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1 Federal Center Overlay for property located in
2 Square 826. Notice of today's hearing was
3 published in the D.C. Register on December 28,
4 2007, and copies of the announcement are
5 available to my left on the roll bin near the
6 door. The hearing will be conducted in
7 accordance with the provisions of 11 DCMR 3022
8 as follows: preliminary matters, applicant's
9 case, report of the Office of Planning, report
10 of other government agencies, report of ANC
11 6D, organizations and persons in support,
12 organizations and persons in opposition,
13 rebuttal, and closing by the applicant. The
14 following time constraints will be maintained
15 in this meeting: the applicant, 25 minutes;
16 organizations, five minutes; individuals,
17 three minutes. The commission intends to
18 adhere to the time limits as strictly as
19 possible in order to hear the case in a
20 reasonable period of time. The Commission
21 reserves the right to change the time limits
22 for presentations if necessary and notes that

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1 no time shall be ceded.

2 All persons appearing before the
3 Commission are to fill out two witness cards.
4 These cards are located to my left on the
5 table near the door. On coming forward to
6 speak to the Commission please give both cards
7 to the reporter sitting to my right before
8 taking a seat at the table. When presenting
9 information to the Commission please turn on
10 and speak into the microphone, first stating
11 your name and home address. When you are
12 finished speaking, please turn your microphone
13 off so that your microphone is no longer
14 picking up sound or background noise. The
15 decision in this case must be based
16 exclusively on the public record. To avoid
17 any appearance to the contrary the Commission
18 requests that persons present not engage the
19 members of the Commission in conversation
20 during any recess or at any time. The staff
21 will be available throughout the hearing to
22 discuss procedural questions. Please turn off

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1 all beepers and cell phones at this time so as
2 not to disrupt these proceedings. Would all
3 individuals wishing to testify please rise to
4 take the oath. Ms. Schellin, would you please
5 administer the oath?

6 MS. SCHELLIN: Please raise your
7 right hand. Do you solemnly swear or affirm
8 the testimony you will give in this evening's
9 proceeding will be the truth, the whole truth
10 and nothing but the truth? Thank you.

11 (Whereupon the witnesses were
12 sworn.)

13 CHAIRMAN HOOD: At this time the
14 Commission will consider any preliminary
15 matters. Does the staff have any preliminary
16 matters?

17 MS. SCHELLIN: Just to advise that
18 we have received the affidavit of Maintenance
19 and the applicant has proffered some experts.

20 CHAIRMAN HOOD: Okay. Let the
21 record reflect we also have been joined, as
22 said earlier, by Commissioner May and also we

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1 have staff, Ms. Donna Hanousek with us.

2 Okay. We - I'm going to ask
3 applicant to come forward. We have set 25
4 minutes. I know you asked for 50 and we
5 consulted that we thought 25 should be
6 sufficient enough. This is a review, so
7 traffic, unfortunately and all that is not in
8 front of us. So anyway, we'll take it from
9 there.

10 MR. DEPUY: Thank you Mr. Chair,
11 members of the Commission. For the record I'm
12 Jacques Depuy, attorney with Greenstein,
13 DeLorme, Luchs, also as co-counsel Stephanie
14 Baldwin to my right and she'll introduce our
15 witnesses. In view of the Commission's
16 request we cut the presentation short which
17 we're fine with. We'll proceed immediately to
18 our witnesses and I'll waive any opening
19 statement. Thank you.

20 CHAIRMAN HOOD: As a preliminary,
21 let me ask you a question. You wanted 50
22 minutes. Why did you feel you needed 50

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1 minutes?

2 MR. DEPUY: We're comfortable with
3 25. We can do it in 25, Mr. Chair.

4 CHAIRMAN HOOD: Okay. Okay. Is
5 there anyone here in opposition to this
6 application or this review? Okay, thank you.

7 MR. DEPUY: Thank you. Ms.
8 Baldwin?

9 MS. BALDWIN: I am Stephanie
10 Baldwin with Greenstein, DeLorme, Luchs. I
11 will quickly introduce who we have with us
12 this evening. I have Alex Nyhan here on my
13 left, the development manager from Forest City
14 Washington. On my right is Mark Gilliland from
15 Shalom Baranes Associates, and also with him
16 is Will Pays. And then finally, Robert
17 Schiesel from Gorove Slade Associates, traffic
18 consultants. We will begin with Alex Nyhan.

19 MR. NYHAN: Good evening Chairman
20 Hood and commissioners. My name is Alex
21 Nyhan. I'm a development manager with Forest
22 City Washington. We're here before you this

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1 evening to request the Commission's approval
2 of our application for the first new
3 construction building at the Yards. And in
4 the interest of time I've submitted my full
5 testimony for the record. I'm going to go
6 ahead and summarize kind of the three key
7 points that I'd like to bring to your
8 attention before I pass this off to Mark
9 Gilliland from Shalom's office.

10 First of all, the building that
11 we're bringing to you this evening is located
12 on a site that we refer to as Parcel D within
13 the Yards in the Southeast Federal Center
14 Overlay District. The property is at the
15 Southeast corner of M and Fourth Street,
16 Northeast, across from the U.S. Department of
17 Transportation headquarters and behind the
18 historic wall that you may have seen down
19 there on M Street. The three points I would
20 like to highlight very quickly for you are
21 first of all, a quick update on where we are
22 in the Yards globally, secondly, a summary of

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1 the review process this building's been
2 through so far, and third, some specific
3 comments that we have with respect to the
4 comments we've received from the Office of
5 Planning and from DDOT.

6 First of all, in terms of an
7 update on the Yards globally, site-wide the
8 construction of new public and private
9 infrastructure is underway, streets,
10 utilities, new light poles, street trees, et
11 cetera. Secondly, an application is currently
12 pending with the surveyor's office to approve
13 the dedication of our public streets and we
14 expect that legislation to be passed by
15 council hopefully before the end of this year.
16 Thirdly, our map and text amendments package
17 was approved by this Commission this month so
18 that's - those are kind of in broad strokes
19 what's going on with the Yards lately.
20 Specifically, we have submitted our first
21 residential project to DCRA for permit and
22 adaptive reuse of the old Pattern and Joiner

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1 Shop which will be rehabilitated into 170
2 units of mixed-income housing. Secondly, with
3 respect to buildings we plan to commence
4 construction on our first retail building this
5 summer, which will be a very evocative and
6 exciting adaptive reuse of the old Boilermaker
7 Shop at the corner of - also at Fourth and
8 Tingey. And finally, wrapping up the update
9 on the Yards, our zoning application for our
10 5-acre waterfront park is currently pending
11 and we expect to be back before you in late
12 May for your review of the same.

13 Now let me turn briefly to a
14 summary of the reviews that this building has
15 gone through so far. As part of our overall
16 agreement with GSA for the development of the
17 Yards there's a whole host of opportunities
18 for review and comment by a variety of
19 different entities. These plans for this
20 building that you'll see tonight have been
21 through NCPC and CFA for a review and
22 approval. Also, in accordance with our

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1 programmatic agreement with GSA and the D.C.
2 State Historic Preservation Office as well as
3 the Advisory Council on Historic Preservation
4 these plans have been subject to a design
5 review consultation process and also the 35
6 percent stage of the drawings was reviewed
7 last summer. There's a variety of other
8 consulting parties involved with that
9 programmatic agreement. I won't go through
10 all of them, but it's a, you know, robust list
11 of stakeholders. Finally, with all plans and
12 applications for development here at the
13 Yards, the plans have been approved and
14 reviewed by GSA. With respect to community
15 outreach, as part of the review process for
16 this application Forest City presented these
17 plans to ANC 6D and we had a chance for some
18 further dialogue and visiting with the
19 commissioners onsite, culminating in a
20 community benefits agreement and the ANC's
21 positive vote on April 14. So that's an
22 update on the review process that this

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1 building has gone through.

2 Now let me turn very briefly to a
3 discussion of some of the elements that the
4 Office of Planning mentioned in their report,
5 and this is something that Mark will go
6 through in greater detail. First of all, with
7 respect to sustainable design Forest City has
8 submitted the development of the entire Yards
9 neighborhood for designation as a LEED ND
10 pilot program, LEED neighborhood development
11 for the whole neighborhood. I think it's one
12 of only two in Washington D.C. that's seeking
13 that LEED ND status. In addition to the
14 neighborhood-wide sustainability, Forest City
15 is also committed to build and maintain so-
16 called low-impact development stormwater
17 technologies which we've collaborated with
18 Office of Planning on. With regard to green
19 building initiatives specifically for this
20 project on this parcel, Forest City has
21 registered both the residential tower and
22 office tower with U.S. GVC and will secure

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1 LEED certification for the office tower. As
2 part of the LEED core and shell program we'll
3 be seeking pre-certification for the office
4 and grocery store and we will also pursue LEED
5 certification for the residential tower as
6 part of the LEED new construction program. I
7 did want to highlight that we are committed to
8 constructing green roofs as presented in the
9 plans. They are not, quote unquote,
10 "potential." We are committed to constructing
11 them. I have attached to my statement our
12 LEED scorecard to further evidence our
13 sustainability commitments.

14 Parcel D, this project on Parcel D
15 really embodies transit-oriented development
16 principles. We've sought to integrate a
17 desirable mix of land uses in the most compact
18 possible urban format near public transit, but
19 with that type of approach does come the need
20 to address loading and servicing creatively.
21 We've tried to address OP's concern about the
22 vehicular entrance and we've also tried to

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1 address concern raised by DDOT dealing with
2 sidewalks and pedestrian safety which Mark
3 will describe in further detail. Finally,
4 with respect to OP's preference to approval -
5 reference to the approval by the Zoning
6 Administrator of combined lot development, we
7 understand this is an administrative
8 requirement that should be satisfied when
9 Forest City prepares and obtains approval of
10 the declaration of covenants.

11 One last request that I would like
12 to make before I turn it over to Mark is that
13 as part of this application, we are asking the
14 Zoning Commission for authorization to phase
15 the development and construction of the
16 residential tower. And the reason for that is
17 while we hope to construct the south tower at
18 approximately the same time as the north
19 tower, there are some challenges I think that
20 we're all fairly well aware of in the current
21 housing market and in the credit markets
22 today. So we are requesting approval to phase

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1 the south tower for a period of five years
2 from the date of substantial completion of the
3 north tower. In summary, we respectfully
4 request your approval and look forward to your
5 comments. Thank you very much and I'll now
6 pass it off to Mark.

7 CHAIRMAN HOOD: Let's do this.
8 Let me bak up a little. Mr. Depuy, you
9 mentioned you had an expert you were
10 proffering? Your expert witnesses? Just tell
11 me who they are.

12 MR. DEPUY: The architect, Mr.
13 Gilliland and our traffic engineer who you may
14 or may not wish to hear from.

15 CHAIRMAN HOOD: I wouldn't put it
16 exactly like that, but anyway. Okay,
17 colleagues, any objections? Okay. They're
18 proffered.

19 MR. DEPUY: Thank you.

20 MR. GILLIAND: Good evening
21 Chairman Hood and members of the Commission.
22 My name's Mark Gillian. I'm a principal with

1 the architectural firm of Shalom Baranes
2 Associates located here in Washington D.C.
3 I'm going to kind of start - I've got an order
4 to the slides that I put together. I'm going
5 to run through the front end of them, jump
6 over a bulk of them I think in the middle in
7 an effort to shorten the presentation and hit
8 the slides at the very end.

9 But I'll start by talking a little
10 bit about the site. Within the Southeast
11 Federal Center, the Yards development as it's
12 now called, it sits due east of U.S. DOT's
13 headquarters building, across M Street from
14 the Capper Carrollsburg HOPE VI project and a
15 couple of blocks to the west of the Navy Yard.
16 The surrounding street frontage as you can see
17 on the blowup on the north side of the site is
18 M Street, on the west side is Fourth Street,
19 on the south side is the proposed Tingey
20 Street and the eastern boundary of the site
21 has a shared interior lot line with another
22 parcel that's currently improved with an

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1 historic building, Building 202 as we refer to
2 it.

3 VICE CHAIRPERSON JEFFRIES: What's
4 the name of that building? What is that
5 building called, the historic building?

6 MR. GILLIAND: 202. I think that
7 was the - it was a machine shop of some sort.

8 VICE CHAIRPERSON JEFFRIES:
9 There's no special - okay.

10 MR. GILLIAND: It does have a name
11 and I apologize for not recalling it right
12 now.

13 VICE CHAIRPERSON JEFFRIES:
14 Because Mr. Nyhan had mentioned it and I was
15 just trying to identify the historic
16 structures, but.

17 MR. GILLIAND: Are you speaking of
18 the one -

19 VICE CHAIRPERSON JEFFRIES: Yes,
20 the one that's to the east.

21 MR. GILLIAND: I'm afraid I'm very
22 familiar with it. It's 202 number

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1 designation, designation the Navy gave it,
2 but.

3 VICE CHAIRPERSON JEFFRIES: Okay,
4 sure.

5 MR. GILLIAND: All right. A
6 couple of site constraints I'll just touch on
7 very briefly. One is that we have an historic
8 wall along the northern boundary of the site
9 that at the corner of Fourth and M has a
10 sentry tower element. And then that historic
11 wall wraps back around on Fourth Street
12 approximately 20 feet down. Another element
13 is that we're elevating the site up out of the
14 100-year flood plain. The old shoreline used
15 to run through the site and as part of
16 negotiations with FEMA and DOH we're elevating
17 the site, essentially getting it re-mapped out
18 of the flood plain.

19 Here's the view from M Street
20 running across here, Fourth down, you can see
21 the historic wall and the sentry tower in the
22 foreground, and beyond it is the 202 building.

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1 And actually beyond that you can see the
2 smokestacks of a power plant building that's
3 within the Navy Yard. Another view also from
4 M Street looking back to the southwest with
5 the 202 building in the foreground, of course
6 the historic wall as well, and U.S. DOT's
7 buildings beyond.

8 A program summary. It's a mixed
9 use program as Mr. Nyhan mentioned. We've got
10 an office tower that sits on the north end of
11 the site. That office tower is approximately
12 336,000 square feet. It sits above a grocery
13 store of approximately 51,000 square feet.
14 The south end of the site is a residential
15 tower, 11 stories in height. That's about
16 211,000 square feet. We're asking for
17 flexibility in the dwelling unit range between
18 170 and 200. And that also sits atop some
19 ground floor retail. The two towers are
20 connected at the base by that grocery volume
21 as well as a very large shared loading dock
22 area, and then there are two levels of parking

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1 proposed below grade. I think this diagram is
2 also very useful in kind of understanding the
3 massing, the office tower setback from M
4 Street, fairly substantially in order to have
5 a relationship with the front facades, the
6 north facades of U.S. DOT as well as the
7 building to the east. There is a gap between
8 the two towers that has a rough correspondence
9 to the gap between U.S. DOT and the Parcel K
10 building here that sits south of it.

11 Here's a view of the office tower
12 from Fourth and M alluding to kind of
13 industrial architectural precedence. And you
14 can see U.S. DOT's corner here, the
15 residential tower beyond, 202 further behind.
16 The office tower sits atop the grocery store
17 volume which was designed to kind of feel like
18 an insertion up underneath the building, as a
19 separate and distinct architectural reading.
20 And a view from the south end of the site
21 looking back towards it, the residential tower
22 in the foreground, the office tower beyond and

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1 this is Tingey Street, the street that runs
2 along the south end of the property here.
3 Shows the stacking of uses, a section cut
4 north-south through the site, M Street at this
5 end, Tingey Street at that end, office on top
6 of the grocery store that's rendered in the
7 reddish color, residential tower on top of a
8 smaller retail, the connecting loading dock
9 facility between the two and two levels of
10 parking below that. I think maybe in the
11 interest of time what

12 I'll do is jump forward to speak
13 very briefly about the issues that OP raised
14 in their report and then touch on each of the
15 variance and special exception issues. So
16 bear with me a moment while I spin through
17 these. OP raised three issues in their April
18 14 report to the Commission that I'd like to
19 briefly discuss. These points are listed
20 under the summary recommendations section, on
21 Page 1 of that report. The first issue
22 discusses the need of the Zoning Administrator

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1 approval of the permitted combined lot,
2 allocation of residential and non-residential
3 uses. Under the provisions of the Southeast
4 Federal Center Overlay District two or more
5 lots can be combined in the Southeast Federal
6 Center CR Zoning District for the purposes of
7 allocating density. Parcel D is proposed to
8 be combined with Parcel K across Fourth Street
9 for the purposes of allocating non-residential
10 density. Basically kind of a maximum of 3
11 FAR, of non-residential is allowed in the CR
12 zone. As a standalone lot, the non-
13 residential density on Parcel D is about 3.88,
14 obviously exceeding that 3.0 limit. As a
15 combined lot development with K the total non-
16 residential density for both of those lots
17 combined is under 3.0 FAR.

18 OP's second issue is related to
19 sustainable design and Mr. Nyhan touched on
20 this briefly, requesting some additional
21 detail and assurances regarding the green
22 building initiatives in the project.

1 Sustainability has been kind of a big part of
2 this project all along, from the master
3 planning and public space improvement sides.
4 It's really kind of embedded in a lot that
5 we've done and is particularly demonstrated in
6 the overall Yards development being part of
7 the LEED neighborhood development pilot
8 program that's out there right now. Parcel D,
9 this particular building has been registered
10 with the U.S. Green Building Council and the
11 office portion of the project will be LEED-
12 certified core and shell. Forest City is
13 committed to that. Forest City is also
14 seeking LEED certification for the residential
15 portion of the building as well.

16 Some of the more interesting
17 aspects of the sustainability program include
18 the redevelopment of what is essentially a
19 brownfield site, installing a green roof to
20 reduce the urban heat island effect, and to
21 filter stormwater, and utilizing high-
22 efficiency mechanical systems to minimize

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1 energy consumption. There's also the use of
2 some very energy-efficient and low water
3 consumption plumbing fixtures, a big bicycle
4 program. There's a fair amount of green
5 building initiatives that are going to be
6 incorporated into the overall design.

7 The third issue, third and final
8 issue requested a little additional design and
9 material definition at the loading dock
10 entrance portion to the building. We worked
11 with our landscape architect and developed the
12 blowup that's on the screen right now which
13 shows Fourth Street on the south, on the
14 bottom of the image, not the south. It shows
15 the office tower would be located here, the
16 residential tower here. You've got the
17 parking entrance which there's one parking
18 ramp entrance for all of the uses in the
19 project and there's one primary loading
20 ingress and primary loading egress route out
21 onto Fourth Street as well. Those are located
22 side by side. The sidewalk treatment

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1 continues the same materials that are used
2 kind of consistently up and down Fourth Street
3 and other streets within the Yards. It's kind
4 of a lamp black concrete that pulls across.
5 The paving pattern is differentiated a little
6 bit. There's a larger grain to the jointing
7 pattern around those vehicular entrances to
8 give the pedestrian a clue that something
9 different is happening as they walk in front
10 of those entrances. There are also some
11 tactile warning strips, kind of similar to
12 what you see at Metro stations that kind of
13 will help to define that zone when you
14 encounter it as a pedestrian moving up and
15 down the street. We did have a meeting with
16 DDOT to review the project and they asked us
17 to pay careful consideration to designing an
18 area of refuge as they put it, a place kind of
19 in between those two entrances, the loading
20 entrance and the parking entrance as a place
21 for pedestrians to pause if they needed to
22 while traversing the openings.

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1 Moving back from the sidewalk
2 there is a pavement pattern that is continued
3 on the way back to the loading dock entrance.
4 Loading dock entrance continues up beyond.
5 This is a driveway that takes you there and
6 using some asphalt pavers, two different
7 patterns, one clearly marking the path of
8 trucks adjacent to it, running parallel to it,
9 although a very narrow dimension is a
10 pedestrian path that leads back to that
11 loading dock area. And we have a few
12 elevation blowups that talk about this space
13 in between the two towers. This is the south
14 side of the office tower. Here's the - or
15 Fourth Street, excuse me, is out here. The
16 loading dock entrance door is set back about
17 90 feet from the property line. The facade
18 materials that make up that edge of the
19 loading ramp enclosure are the same facade
20 materials that are used on the office building
21 on the public street side. It's a high-level
22 finish.

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1 I'll jump over to the image on the
2 far right. By the way, these are kind of
3 three images that are sort of folding out that
4 space between the two towers. So this is the
5 north side of the residential building.
6 Again, Fourth Street's here, trucks would move
7 in and enter this loading dock enclosure at
8 this location and here again, the facade
9 materials are the same facade materials that
10 are used on the public street side of the D2
11 building, the residential tower. And then
12 this little vignette of an elevation is
13 standing in Fourth Street looking back at that
14 loading entrance, that connector piece between
15 the two towers, also rendered in some brick
16 materials. And rather than having what might
17 be considered kind of a typical loading dock
18 roll-up metal door we're using a segmented
19 overhead door that would create a frame of
20 sort of small increments of glass that would -
21 we'd have translucent glass installed and be
22 a way to tie this back to some other

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1 industrial-alluding concepts that are
2 elsewhere in the building.

3 Jump to building height. Because
4 the site has frontage on M Street east of
5 Fourth Street, a height of greater than 90
6 feet and no more than 110 feet, it's permitted
7 with Commission review and approval. So
8 here's Parcel D. So it's these sites that run
9 along M Street here from Fourth over to the
10 Navy Yard which are subject to this review for
11 height up to 110 feet. We're seeking 110
12 feet. There are a couple of points I'd like
13 to make here. Extra density doesn't come with
14 110 feet. In fact, 110 feet is needed to even
15 come close to the allowable density, the 60
16 FAR density that's allowed in the CR zone.
17 And the reason why we're not able to achieve
18 that density in a lower height is because
19 there are some significant setbacks around the
20 edges of the project. There's a zoning-
21 required setback off of M Street. We're
22 actually exceeding that to make some gestures,

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1 some contextual gestures back to the buildings
2 to the east and west. There's a zoning-
3 required setback off of Fourth Street which
4 we're adhering to, and then we also have a
5 setback off of the south side of the street,
6 or off the south side of the site, off of
7 Tingey Street in order to create a larger
8 public space on that side as well. So you
9 know, those setbacks combined with the fact
10 that we have a very large grocery store volume
11 that sits at the base of this office tower.
12 It's a grocery store that's got a single
13 ground floor and a mezzanine, takes up a lot
14 of volume. In that same volume you could fit
15 in three office floors. So that's another one
16 of our justifications for needing the 110-foot
17 height.

18 The second major point I think is
19 that the 110-foot height we feel is
20 appropriate for this site. The overlay says
21 that the Commission shall consider the
22 relationship of a new building to the Navy

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1 Yard to the east when approving a height of
2 greater than 90 feet. This site is the
3 furthest location from the Navy Yard on which
4 110-foot height can be permitted. Here's the
5 view with M Street in the foreground, Fourth
6 Street, of course the Anacostia River beyond,
7 and I'd also like to point out the heights of
8 some of the adjacent buildings, U.S. DOT's
9 building here. Their east building is
10 approximately 110 feet. I think it's actually
11 109. And these sites off to the south, one
12 directly across Tingey Street, those sites are
13 permitted 110 foot height and don't have kind
14 of a similar Zoning Commission review and
15 approval for those. So there's going to be
16 some compatible height directly around us.

17 CHAIRMAN HOOD: Let me just say
18 this. I know we said 25 minutes, but I don't
19 want you to think we're going to cut the
20 lights off and close the door if you're not
21 finished in the next minute or so. So just
22 take your time and go ahead and finish this

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1 part. I think this is very important.

2 MR. GILLIAND: Okay. I believe
3 I've got maybe four or five slides left that
4 really speak to the variance and special
5 exception issues. I'll try to run through
6 them quickly. The rear yard variance - this
7 is the first of the variance issues - is
8 necessary to address what's really kind of a
9 temporary or an interim condition that we're
10 confronted with. A rear yard is not required
11 for a lot with frontage on three streets
12 within this CR zoning district. Parcel D has
13 frontage on M, it has frontage on Fourth and
14 it also has frontage on Tingey to the south,
15 but our problem is that Tingey is not yet
16 dedicated. It's in the works. It's currently
17 undergoing review by D.C. and federal
18 agencies, public and private utilities and as
19 Mr. Nyhan mentioned expecting it to be in
20 front of City Council by the end of the year.
21 So once - if that street were open and once
22 it's open there's no longer a non-compliance

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1 issue. But in the meantime what we've
2 basically got is a non-complying rear yard
3 along that south side. We've set the building
4 back about 12 and a half feet from the
5 property line. Typically to have a zoning-
6 complying rear yard back there you'd need
7 about a little in excess of 28 feet so there's
8 this kind of temporary interim non-compliance.

9 We're also asking for a variance
10 from some of the preferred use requirements,
11 and this is really kind of also to address a
12 temporary condition in a sense because this
13 relief is necessary, but only until the
14 requirement is amended as part of the Zoning
15 Commission's Case 07-11 which was the map and
16 text amendments that we went through with you
17 recently. I understand the final action was
18 taken on the 14th of this month. So preferred
19 uses here, obviously the development includes
20 grocery stores, some other retail and even
21 though it's not required because of the nature
22 of a grocery store, we're not complying with

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1 all of the issues of kind of having a lot of
2 clear glass. They don't want that. We've
3 created a design that has sort of a mosaic
4 pattern of different types of translucent
5 glass to animate the streetscape. But -

6 VICE CHAIRPERSON JEFFRIES: Excuse
7 me, when you say "they"?

8 MR. GILLIAND: The grocer.

9 VICE CHAIRPERSON JEFFRIES: Oh,
10 it's been identified? Okay.

11 MR. GILLIAND: I'll let him field
12 that question.

13 MR. NYHAN: Excuse me. Yes.

14 MR. GILLIAND: And there's - we
15 also are not meeting the ceiling height
16 requirement in a couple of areas, one being
17 underneath the mezzanine of the grocery. And
18 again, once the text amendments are in place
19 these requirements will no longer pertain to
20 the site.

21 We're also asking for a variance
22 to provide one fewer loading berth than is

1 required by zoning. The four separate uses
2 that are within the project all generate
3 separate loading requirements. There's
4 office, residential, grocery and other retail.
5 And in order to minimize access to points of
6 the building we've kind of located all of
7 those things together in one larger, central
8 loading dock area and there's some
9 efficiencies that come along with doing that.
10 And we feel like we can service the building
11 more than adequately by reducing the number of
12 berths by one from what's required by zoning.
13 Ten is required, the combination of berths and
14 service delivery spaces. The proposal is to
15 do it with nine with the idea that some of
16 those berths and service delivery spaces can
17 be shared by more than one use.

18 And I believe this is the final
19 slide. The last area of relief is a special
20 exception related to roof structures,
21 specifically related to the requirement that
22 the enclosing walls of a roof structure be of

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1 equal height. Relief isn't requested here due
2 to a hardship or a practical difficulty, it's
3 really for aesthetic reasons. We'd like to
4 have a more articulated roof line that we
5 believe is more appropriate for a building
6 within the Yards development and alludes to
7 kind of the industrial heritage of the site
8 and relates to many of the existing industrial
9 historic buildings that are around the site.
10 So the intent is that in the office building,
11 instead of having a uniform 18 and a half foot
12 roof structure that we would typically do, an
13 area around some of the cooling tower yards
14 and other exterior equipment, we want to drop
15 that to animate that roof line a little bit,
16 even thinking about doing some things about
17 some kind of light screening where you could -
18 it has a certain level of kind of transparency
19 and have an understanding that equipment
20 resides on top of the building, mechanical
21 equipment. Similarly on the residential tower
22 there's an 18 and a half foot structure in a

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1 limited area over - just over the areas that
2 really need it, and then there's a lower
3 screen wall that drops down to 15 and a half
4 feet enclosing some other elements. So that's
5 it. If you have any questions?

6 MR. DEPUY: Mr. Chair, members of
7 the Commission, as we - as Ms. Baldwin
8 indicated, Robert Schiesel is here from Gorove
9 Slade. He's prepared to respond to questions
10 or give a brief statement. As you indicated,
11 Mr. Hood, there isn't specific relief dealing
12 with traffic issues except with respect
13 perhaps to the loading dock, but I think Mr.
14 Gilliland has addressed the loading dock. So
15 we'd leave it up to the Commission as to
16 whether you'd like me to call this witness or
17 simply have him available for questions.

18 CHAIRMAN HOOD: Can we just have
19 him available for questions? That'll be
20 great.

21 MR. DEPUY: Thank you.

22 CHAIRMAN HOOD: All right. We're

1 going to open it up for a few questions. Mr.
2 Turnbull?

3 COMMISSIONER TURNBULL: Yes, thank
4 you Mr. Chair. I just had - I'm just curious,
5 and a lot of this goes away with the text
6 amendments, but how did the south side of the
7 lot get to be determined as the rear yard?

8 MR. GILLIAND: We're using M
9 Street as the front of the building and -

10 COMMISSIONER TURNBULL: Is that
11 defined anywhere?

12 MR. GILLIAND: It's -

13 COMMISSIONER TURNBULL: I'm just
14 curious because you can't get in on M Street
15 really.

16 MR. GILLIAND: Right.

17 COMMISSIONER TURNBULL: So it's
18 hard to call it the front.

19 MR. GILLIAND: Right. We had, you
20 know, I guess the option for using Fourth
21 Street as a front and putting that rear yard
22 along the east side of the property.

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1 COMMISSIONER TURNBULL: That would
2 have been my first assumption on looking at
3 the site.

4 MR. GILLIAND: There's a lesser
5 impact obviously using M Street as the
6 frontage and providing a rear yard on the
7 south side.

8 COMMISSIONER TURNBULL: It just
9 seemed like a little bit of a stretch to call
10 that yard the rear yard, but okay. The other
11 thing, getting back - I just had a question on
12 the rooftop issue. You talked about
13 transparency. Do you see these lit up?

14 MR. GILLIAND: We've been talking
15 about having them be maybe like a series of
16 slats. I didn't mean like transparent in
17 terms of glass or - but maybe just not a
18 completely solid covering. And we have
19 discussed some ideas about having some
20 lighting up there that would really just be
21 for kind of safety purposes that would provide
22 kind of a general level of safety illumination

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1 so that you would actually see some of this.

2 COMMISSIONER TURNBULL: So I'm
3 just concerned, we've had some instances where
4 penthouses and things have been lit up and
5 it's come back to haunt because of neighbors
6 complaining about this nuisance up on the roof
7 of a building. So I was just curious how much
8 of an attraction this might be.

9 MR. GILLIAND: I think we view it
10 and the way we've discussed it with our client
11 is something that's relatively subtle. You
12 know, you have an understanding of what's
13 going on on tops of these buildings, just like
14 the two historic buildings that flank this
15 site. They have different kinds of roof
16 appurtenances, mechanical appurtenances
17 sitting on top of them.

18 COMMISSIONER TURNBULL: Mr. Chair,
19 that'll be it for now. I might come back
20 later with a couple.

21 CHAIRMAN HOOD: Thank you, Mr.
22 Turnbull. Next? Commissioner May.

1 COMMISSIONER MAY: Thank you very
2 much, Mr. Chairman. I would just say I share
3 Commissioner Turnbull's concern about lighting
4 and about the, you know, what that roof
5 structure could be or turn into, but I'll
6 leave that alone for the moment. The grocery
7 store has actually been identified. Can that
8 be stated publicly what it is?

9 MR. NYHAN: Harris Teeter.

10 COMMISSIONER MAY: Okay. The
11 reason I even ask the question is that it's
12 being mentioned as a benefit to the entire
13 neighborhood and I was trying to get a sense
14 of, you know, is it a full service grocery, is
15 it, you know, what market is it targeted for.
16 Not that it really makes that much difference
17 either way, I just wanted to get a sense of
18 things. What's happening between the front -
19 or the M Street side of the grocery store and
20 the brick wall, and how big is that space?

21 MR. GILLIAND: The space is
22 approximately 12 feet. The wall does a little

1 meandering in and out, and part of what we're
2 going to be doing as part of the overall Yards
3 development is supporting that and reinforcing
4 that wall. But the intent is to have that
5 space be basically inaccessible, closed off by
6 a couple of walls that are below the coping
7 height of the historic wall and extend back to
8 the grocery store volume. Didn't feel like we
9 needed to kind of encourage a flow into that
10 kind of interstitial space between the
11 building and the wall. It was best to keep
12 pedestrians out on Fourth Street.

13 COMMISSIONER MAY: Yes. It's sort
14 of an odd circumstance because I imagine
15 you're being pressed to preserve the wall on
16 both sides by the SHPO and others and so you
17 can't really engage it with your building, and
18 there are setback requirements and things like
19 that that are pushing you off of it, but then
20 you wind up with this space that you can't
21 really do anything with unless you pull your
22 whole building way back and try to do

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1 something, but I'm not sure what you'd want to
2 do there, you know. Even so, it's an odd
3 circumstance.

4 Just to clarify, the green roofs
5 are definite, they're not potential green
6 roofs, did I hear that correctly? Okay.

7 MR. NYHAN: Yes, sir.

8 COMMISSIONER MAY: And there was
9 discussion of meetings with DDOT, but we don't
10 actually have a report from DDOT, right? Is
11 there and did we - was one requested? Are
12 they required to do that on something like
13 this? Or is not really an issue for us except
14 to the extent that we have variances?

15 CHAIRMAN HOOD: I think there are
16 certain stipulations, and I'm not really
17 clear, but I don't think we get into a full
18 review like we do a PUD.

19 COMMISSIONER MAY: Right. Well,
20 and I wouldn't expect that, but this is like
21 a BZA case in terms of the other relief that's
22 being requested, and DDOT's been known to

1 report on BZA cases.

2 CHAIRMAN HOOD: Right. At the
3 time that we review it we still have the
4 authority to grant waivers on the variances.
5 But I mean if you have an issue we can always
6 make a request, but we have Mr. Schiesel here
7 and his report.

8 COMMISSIONER MAY: I mean, I guess
9 I'd like to get the sense of it. I just, you
10 know, want to register again the concern that
11 I have about operating a little bit in the
12 dark about what DDOT is thinking about some of
13 these things when we don't know. But I mean,
14 are there lingering concerns with DDOT from
15 your perspective, or has it all been resolved?
16 Are they on board with the relief that's
17 requested?

18 MR. SCHIESEL: Based on the
19 conversations we had at the meetings we had
20 with DDOT I think we have addressed most of
21 their concerns. Yes.

22 COMMISSIONER MAY: All right.

1 That's good enough. One other question on the
2 loading thing. It was hard to tell from the
3 drawings and I might have figured it out if I
4 studied a little bit closer, but it looks like
5 there is some sort of a doorway onto the alley
6 behind?

7 MR. GILLIAND: There is a doorway,
8 a pedestrian doorway, more pedestrian-scaled
9 regular door next to the loading dock door on
10 that end wall, kind of at the terminus of that
11 - I'll call it an alley condition.

12 COMMISSIONER MAY: No, I mean the
13 alley behind, that parallels Fourth Street.

14 MR. GILLIAND: Oh yes. It's
15 actually on the adjacent property. There's an
16 easement that's been negotiated to be used for
17 - primarily for loading egress of some of the
18 larger trucks. If the loading dock becomes
19 kind of fully occupied with berths. Some of
20 the 55-foot you know or larger trucks that the
21 grocer requires needed kind of another way out
22 without having to do a lot of kind of

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1 convoluted turning movements and so there's
2 been an easement agreed to with the adjacent
3 property owner that allows for the egress of
4 those vehicles across that adjacent private
5 property back out to Tingey Street.

6 COMMISSIONER MAY: Did DDOT notice
7 that? Because I would expect that they would,
8 like, try to make you do everything off of
9 that then.

10 MR. SCHIESEL: We reviewed the
11 loading dock with DDOT at our meetings.

12 COMMISSIONER MAY: They didn't try
13 to force everything into the alley like they
14 usually do?

15 MR. GILLIAND: Well, it's not
16 technically an alley. I think that was the
17 point that we made, that it was an adjacent
18 piece of property and there's residential plan
19 in that adjacent piece of property which has
20 at-grade residential units along that side.

21 COMMISSIONER MAY: Really, along
22 that - I saw it referred to as a mews and I'm

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1 wondering, people actually - their homes are
2 fronting right on that.

3 MR. GILLIAND: Yes. I think at
4 some point probably in the near future you may
5 be seeing some development plans for that
6 building and they are - my understanding is
7 that they have at-grade residential units
8 along that facade.

9 COMMISSIONER MAY: Okay. Thanks.

10 CHAIRMAN HOOD: Vice Chairman
11 Jeffries.

12 VICE CHAIRPERSON JEFFRIES: Just a
13 quick question. Commissioner Turnbull and I
14 were discussing this and I just had a
15 question. I see in the supplemental filing
16 that the window treatment on the residential
17 building changed. What was the driver?

18 MR. GILLIAND: Cost.

19 VICE CHAIRPERSON JEFFRIES: Cost?
20 Just way too expensive?

21 MR. GILLIAND: Yes. It - prices
22 of those sorts of things we're finding on all

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1 of our projects are just going a little bit
2 crazy right now.

3 VICE CHAIRPERSON JEFFRIES: Okay.
4 So much more attractive with the glazing, but
5 I got you, particularly with the housing
6 industry and so forth. So okay. Thank you.

7 CHAIRMAN HOOD: Any other
8 questions? Okay. As I was -

9 COMMISSIONER TURNBULL: Mr. Chair,
10 I just want to make one thing. On your plans,
11 this goes back to the NCPC letter. They were
12 concerned about setbacks. It looks like all
13 of the penthouses are 18" 6' back from the
14 exteriors.

15 MR. GILLIAND: That's correct.
16 That's where they are now. We were at one
17 time exploring or trying to reduce some of
18 those setbacks, but we've been able to
19 configure the rooftop mechanical equipment so
20 that we can adhere to the one to one setback
21 requirement.

22 COMMISSIONER TURNBULL: Okay,

1 thank you.

2 CHAIRMAN HOOD: Mr. Nyhan, I think
3 - did I pronounce your name correctly?

4 MR. NYHAN: Very, very close, sir.

5 CHAIRMAN HOOD: Close? Okay.

6 MR. NYHAN: Nyhan.

7 CHAIRMAN HOOD: Nyhan. Okay. You
8 have a letter here - well, there's a letter in
9 the record from the ANC and obviously you have
10 a MOU with the neighborhood. Okay. I did
11 have one question. Now, let me ask this,
12 Commissioner May. Did you want us to pursue
13 before we - I just want to know where you are
14 before we take any action. Did you want us to
15 maybe get a comment from DDOT about the
16 loading dock?

17 COMMISSIONER MAY: No. No, I mean
18 if they didn't see fit to raise the issue to
19 us and it doesn't seem like there's a glaring
20 problem then I would say no.

21 CHAIRMAN HOOD: Okay. All right.

22 All right, that's all I had. Any other

1 questions? Okay. Okay, next we'll go to the
2 - I think you all can hold your seats. Let's
3 go to the Office of Planning. Ms.
4 Steingasser.

5 MS. STEINGASSER: Good evening,
6 commissioners. I'm happy to be very short.
7 The Office of Planning does support the
8 development of the site. We're very happy
9 with the overall design and that includes both
10 our historic preservation division as well as
11 our development review division. They both
12 coordinate in their review of this project.
13 We support the variances and note that they
14 really are temporary, two of the three, and
15 the special exception we also support. The
16 text amendments should become - you've taken
17 final action so it's just timing on when the
18 final order is issued before those variances
19 are not necessary. So we do support those.

20 We also believe Mr. Gilliland has
21 addressed all of our concerns as we raised in
22 our report about the LEED standards and an

1 explanation of the detail of the green
2 element. So we do support the project. We
3 have also, not to speak for DDOT, but we have
4 reached out to them three different times to
5 get their comments on this report and did not
6 get any response whatsoever, so I take that
7 for what it's worth.

8 COMMISSIONER MAY: Actually, I
9 have a question for staff on this. I have
10 recently discussed with some DDOT officials
11 the fact that the Zoning Commission wasn't
12 getting reports that one might have expected,
13 without talking about any of the particulars
14 of those cases, and they said something about
15 reports having been sent, but not necessarily
16 received by the Zoning Commission or
17 distributed to the Commission members. And
18 I'm wondering if there is some sort of
19 communication issue between DDOT and the
20 Zoning Commission in terms of these reports?
21 They have not - can you answer?

22 MS. SCHELLIN: We actually provide

1 DDOT with a copy of everything that goes out,
2 but typically OP has helped in trying to get
3 the reports from DDOT.

4 COMMISSIONER MAY: Right.

5 MS. SCHELLIN: And we don't have
6 any issues working with them, it's just a
7 matter of sometimes they just don't provide a
8 report.

9 COMMISSIONER MAY: Right, but they
10 haven't talked to you about any sort of
11 problems -

12 MS. SCHELLIN: Issues? No.

13 COMMISSIONER MAY: - in getting,
14 you know, receiving them, or they haven't
15 raised?

16 MS. SCHELLIN: No. No, I know
17 they get everything.

18 COMMISSIONER MAY: Said why didn't
19 you get this report?

20 MS. SCHELLIN: No.

21 COMMISSIONER MAY: Nothing?

22 MS. SCHELLIN: Nothing.

1 COMMISSIONER MAY: Okay.

2 CHAIRMAN HOOD: Well, in defense
3 of DDOT, every time I turn on Channel 16 they
4 have cap stats, so maybe that's taking a lot
5 of their time.

6 VICE CHAIRPERSON JEFFRIES: I
7 think you know the Zoning staff here is very
8 good at, you know, disseminating information
9 and being in close contact, so I would support
10 the staff in terms of their understanding
11 about, you know, what the particular problems
12 might be. I agree completely.

13 CHAIRMAN HOOD: Okay, Ms.
14 Steingasser, are you complete? Great. Any
15 questions for Ms. Steingasser? Straight and
16 to the point. Thank you, Ms. Steingasser.
17 Okay. Report of other government agencies.
18 Not necessarily agencies, but the Honorable
19 Council member Tommy Wells strongly supports
20 us approving this review. Also, I can't make
21 this out. I'll have to read that in a minute.
22 National Capitol Planning Commission actually

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1 says, it talks about the penthouses as Mr.
2 Turnbull had already mentioned. It also says
3 it does not have any adverse impact on any
4 other federal interests. And this goes on to
5 say only if all rooftop penthouses are set
6 back from all exterior walls in distance equal
7 to their heights above the adjacent roofs. I
8 think that has been addressed.

9 And do we have anyone here from
10 ANC 6D? Anyone here from ANC 6D? Okay, that
11 was next on the agenda. Okay, seeing no one
12 from ANC 6D I will - they have a letter of
13 support and I alluded to the - and this
14 support contingent on the memorandum of
15 understanding. Okay.

16 All right. Do we have any
17 organizations or persons that would like to
18 testify in support? Organizations or persons
19 that would like to testify in opposition? And
20 let me back up and ask the applicant, did you
21 have any cross examination of the Office of
22 Planning? Okay. All right. We'll go to

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1 rebuttal and closing by the applicant.

2 MR. DEPUY: Mr. Chairman and
3 members of the Commission, we believe that the
4 record is very clear that both the testimony
5 and the exhibits presented tonight and in the
6 record demonstrate adequate support for the
7 special exception relief which is the 110-foot
8 height and the variable heights on the
9 penthouse. In fact, the penthouse height
10 reduces the allowable height on portions of
11 the penthouse and therefore arguably
12 diminishes any visual impact of the penthouse.
13 You've heard testimony from Mr. Gilliland with
14 respect to the compatibility of the 110-foot
15 height with other nearby heights as well as
16 the justification for - the reasons for the
17 height with respect to this project.

18 As Ms. Steingasser said and as Mr.
19 Gilliland said, two of the variances are
20 temporary. One will no longer be needed once
21 the text amendment becomes final which is
22 imminent and the other, the rear yard will not

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1 be necessary when Tingey Street is dedicated.
2 But in the meantime, there is ample evidence
3 we submit for both of those variances. The
4 loading variance is very modest because of the
5 various uses. The loading requirements are
6 very extensive. We're only seeking one
7 variance from one of the berth requirements
8 and therefore we think we've demonstrated
9 support for the application and we would
10 respectfully request your approval.

11 CHAIRMAN HOOD: Okay. Any
12 questions for Mr. Depuy? Thank you. All
13 right. Colleagues, we - Ms. Schellin, when
14 will we take this up for a decision?

15 MS. SCHELLIN: Tonight? No. This
16 is one vote, so if you - the next meeting
17 would be May 12.

18 CHAIRMAN HOOD: May 12. Okay, so
19 May 12. Let's see how far we can get tonight.
20 Commissioner May, you want to start us off?

21 COMMISSIONER MAY: Yes. You know,
22 I think generally speaking you know the relief

1 that's being requested is fairly modest and
2 some of it, some of the relief, the need for
3 the relief goes away with pending changes in
4 the zoning regs and the dedication of the
5 street. So I think, you know, I'm generally
6 favorably inclined on all counts. The one
7 thing that I do have a concern about is the
8 height of the penthouse and - or at least
9 having multiple heights on the penthouse. And
10 the reason that it concerns me is that there
11 isn't really a grounds to do it. You know,
12 the - and I'm also concerned by the notion
13 that changing those heights would somehow
14 animate the penthouse which I think is
15 contrary to the idea of the penthouses. I
16 mean, I think the idea and the way the rules
17 were set up is to make those penthouses - make
18 it so that we pretend that they're not even
19 there, that it's just an, you know, it's a
20 necessary thing, it's on the top, but it's not
21 part of the composition of the building. It's
22 not, you know, unless it were a, you know,

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1 integrated into some other ornamental feature
2 like a tower or something like that, I mean it
3 doesn't really - it doesn't really become part
4 of that composition. And the notion that we
5 would reduce it without having a clear avenue
6 for granting that relief I do find troubling.
7 And I know that, I mean it doesn't make sense
8 because I would, I really would like it to be
9 lower if it could be, I just don't see how
10 within the current rules you know we can do
11 that, other than simply saying yes, it looks
12 better. Well, yes it looks better isn't one
13 of the categories that allow us to grant
14 relief. So I'm just concerned about that and
15 I'd like to hear what the other commissioners
16 have to say.

17 CHAIRMAN HOOD: It looks better
18 sometimes carries weight. But anyway, let me
19 just ask you this. Are you - can I get an
20 idea of a perspective. Is A-15, will that
21 take me and show me exactly what you're
22 talking about? It's on the -

1 VICE CHAIRPERSON JEFFRIES: It's a
2 volumetric. The volumetrics. Where they're
3 calling it aerial perspectives.

4 CHAIRMAN HOOD: A-15.

5 COMMISSIONER MAY: Sorry. You can
6 see it on View Number 2, View Number 1. Yes,
7 you can see it on View Number 3. All those.
8 You can see the lower fence if you will around
9 it that's in the darker gray. And it's not
10 filled with the stuff that's probably going to
11 be in there. There's, you know, it's not just
12 going to be a fence around a small box, right?
13 There's going to be actual stuff in there.

14 MR. GILLIAND: I'm trying to
15 identify the drawing that you're looking at at
16 the moment.

17 COMMISSIONER MAY: I'm sorry.
18 It's A-13 in the current set. And it's the
19 three aerial perspectives.

20 CHAIRMAN HOOD: Is there anything
21 changed in here that we needed in our
22 discussion that would help us?

1 MR. GILLIAND: No. I think there
2 were some elaborations on some of the variance
3 and special exception issues.

4 CHAIRMAN HOOD: Let us try to get
5 through this discussion.

6 MR. GILLIAND: All right. On top
7 of the residential tower, I believe that's the
8 roof structure that you're speaking to, Mr.
9 May.

10 COMMISSIONER MAY: Yes. It's the
11 residential tower, yes.

12 MR. GILLIAND: Right. And there
13 are two fenced in areas, one that's associated
14 with the 18 and a half foot portion of the
15 roof structure, and another one that's
16 associated with the lower 15 and a half foot
17 structure. And to be quite honest with you,
18 the bigger - the one that's with the 18 and a
19 half foot is really going to be filled with a
20 lot of mechanical equipment and the lower of
21 the two is connected back because as you know,
22 there's also a zoning requirement to have a

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1 single roof structure for an elevator core.
2 We have a stair coming up over there and you
3 know, one of the ideas that we had explored
4 early on was just trying to do - maybe just do
5 two separate roof structures up there and
6 there was some resistance on the part of I
7 think NCPC on that issue as well as the
8 setback issue. So we consolidated them into -
9 since from a plan standpoint into a single
10 roof structure on top of that tower.

11 COMMISSIONER MAY: So it's - that
12 additional lengthy structure is just to
13 connect in the exit stair?

14 MR. GILLIAND: It's an exit stair
15 and there's also a piece of mechanical
16 equipment at that end that has to do with
17 bringing fresh air to the corridors of the
18 residential unit below.

19 COMMISSIONER MAY: But otherwise
20 you would have separated it into two separate
21 penthouses?

22 MR. GILLIAND: That was one of the

1 ideas that was explored earlier, yes.

2 COMMISSIONER MAY: And NCPC is the
3 one?

4 MR. GILLIAND: I think that there
5 were - it was - it was one of the areas that
6 was commented on by NCPC of the setbacks, the
7 varying heights and then the two separate
8 structures. And we ended up moving back in
9 the direction of the single roof structure
10 like the original application drawings.

11 COMMISSIONER MAY: Okay.

12 VICE CHAIRPERSON JEFFRIES:
13 Commissioner May, I just want to be clear
14 about your concern. Is it really just, you
15 know, precedent-setting that you're concerned
16 about, or I mean, just the whole notion of
17 just think it will look better? I'm just
18 trying to get a sense of what's nagging you.

19 COMMISSIONER MAY: Well, you know
20 what set my alarm bells off was the notion of
21 animating the rooftop and that this now
22 becomes part of the composition of the

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1 building in a way that it really shouldn't.
2 It should be a background piece and it should
3 be as, you know, I mean it should be nice
4 materials and it can be design and all that
5 sort of stuff, but it should not be something
6 that animates the rooftop.

7 VICE CHAIRPERSON JEFFRIES: I
8 don't - I never, you know, I mean I agree with
9 you. I mean, it's not really animating. It's
10 just -

11 COMMISSIONER MAY: I didn't invent
12 the word. I mean, it's what I heard, so
13 that's.

14 VICE CHAIRPERSON JEFFRIES: Yes,
15 absolutely. I mean, from where I sit I just
16 don't see - I mean, even though they're saying
17 it's animation and so forth, I just - it's
18 just really de minimis to me. I mean, I don't
19 - it doesn't seem to impact the design at all.
20 I don't - I just don't have a problem with
21 what's been put forward, unless of course
22 there is a height issue and from what I see

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1 from NCPC that's not the case.

2 COMMISSIONER MAY: You know, I
3 think my concern is that between the idea of
4 this becoming part of the sculptural
5 composition and the lighting discussion that
6 occurred with Commissioner Turnbull, you know,
7 I'm getting a little bit nervous about what
8 the potential future is of the penthouse. And
9 I know that, you know, whether it's, you know,
10 whether city-wide we're going to wind up
11 seeing more effort thrown into the penthouses
12 and I'm just - we're already having issues
13 with the Height Act and I don't want to be -
14 I'm less concerned about the current issue
15 with setbacks and things like that, but I'm
16 concerned about the Height Act and its
17 integrity in general. And I don't want to
18 start seeing penthouses become thought of as
19 you know, really part of the building.
20 They're just - they're a necessary attachment
21 and they should be a background piece.

22 VICE CHAIRPERSON JEFFRIES: Well,

1 I just -

2 COMMISSIONER TURNBULL: I'm sorry,
3 Commissioner Jeffries. I was wondering if I
4 could ask the applicant one question. Your
5 building is 110 feet high. These things are
6 set back. You're really not going to see
7 these things that much as a feature. How much
8 of a design feature is this really worth, or
9 do you think this is significant? Because it
10 sounds like this Commission will do a bench
11 decision based upon those being equal height.
12 I mean, I don't understand - I guess how much
13 of a feature of your well-articulated building
14 do you really think - it means? And I think
15 Commissioner May has made a couple of good
16 points.

17 VICE CHAIRPERSON JEFFRIES: Well,
18 but let me - I don't have that. I'm not with
19 you on that. I mean, I don't -

20 CHAIRMAN HOOD: - further and
21 further away.

22 VICE CHAIRPERSON JEFFRIES: No, I

1 don't really have a problem, I mean, with them
2 having - I mean, I see that they made the
3 statement that it animates. I don't
4 particularly you know agree with that you
5 know, but I certainly don't have a problem,
6 and particularly given the fact that this is
7 an application. They're asking for very
8 little relief. I mean, it's quite modest.
9 This is not a PUD or a map amendment. It's a,
10 you know, architectural review. I just, I'm
11 just not as - I mean, I agree with you, I
12 think they could make it - wouldn't make a
13 difference. I'm just - it doesn't matter to
14 me whether it's all one level or multiple. I
15 guess we can just survey the group up here,
16 but given that the totality of what's being
17 requested here, and I don't think that we
18 should burden this particular application with
19 something that's precedent-setting around, you
20 know, what does this mean for penthouse design
21 across the District, particularly not this
22 project I mean because I don't think they're

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1 here requesting very much.

2 COMMISSIONER MAY: Can I ask a
3 question of the other commissioners? This is
4 just to refresh my memory, but I seem to
5 recall that in the past when I was on BZA
6 cases that the remote stairwell issue came up
7 regularly and relief was often requested to
8 have two penthouse structures so that you
9 could, you know, rather than having a big wall
10 to wrap around everything. Is that just, I
11 mean, is that your recollection as well? Is
12 that something where we regularly grant relief
13 to separate the penthouse into two structures,
14 or am I just imagining that?

15 CHAIRMAN HOOD: I have - from my
16 standpoint, maybe I just haven't experienced
17 that, but I guess Commissioner Etherly, not to
18 put him on the spot. He's probably the best
19 one out of all of us.

20 COMMISSIONER ETHERLY: I mean, I
21 don't want to - we've seen instances. I'd be
22 hesitant to kind of characterize it as

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1 frequent or not, but definitely from the
2 standpoint of issues and considerations as
3 they relate to core functions of the building
4 and for circulation-type purposes there
5 definitely have been accommodations made such
6 that I don't think it's unusual. And I would
7 most certainly tend to agree with my colleague
8 Mr. Jeffries in terms of his characterization
9 of this as de minimis, if you will. That's
10 not a clear answer to your BZA question, but.

11 COMMISSIONER MAY: That's okay. I
12 mean, I had that recollection and it - if you
13 don't all recall exactly that, that's okay.

14 CHAIRMAN HOOD: Let's go back.

15 COMMISSIONER TURNBULL: No, you're
16 right. There have been several cases on BZA
17 that I sat on that because of the nature of
18 the apartment complex that the core units were
19 separated. Because otherwise the travel
20 distance from a building code exiting got to
21 be too far so you had to have them at the
22 ends.

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1 VICE CHAIRPERSON JEFFRIES: I
2 think this is really sort of an academic
3 discussion here for me, and I'm just
4 wondering, I mean if we can ask the applicant
5 you know, in terms of what's their - I mean,
6 their response to you know our discussion here
7 around this.

8 CHAIRMAN HOOD: Well you know, I
9 think Mr. Turnbull had asked the applicant a
10 question and I don't know if you had a chance
11 to respond to it. And I think that was - I
12 was going to feed off of that and see if we
13 can get a consensus because if you've noticed,
14 the three professional designers were the ones
15 who made the discussions. I think Mr. Etherly
16 and myself kind of kept quiet. So at this
17 point let's see what we can do.

18 MR. NYHAN: Well, Chairman, if I
19 could answer quickly, I'm not a professional
20 designer so I may get this wrong, but from our
21 perspective you know we've tried to navigate
22 our way through this thicket of NCPC - I

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1 shouldn't say "thicket" - this opportunity for
2 discussions with NCPC, with the State Historic
3 Preservation Officer, you know, and a variety
4 of other entities that have a variety of
5 different perspectives on penthouses and
6 what's the optimal decision choice, et cetera,
7 et cetera. And I think from our standpoint
8 the word "animate," I'm not sure that
9 completely accurately describes our approach
10 to the penthouse structures. We're not trying
11 to light them and do light shows at night, or
12 really play up these penthouse structures. I
13 mean, we certainly see them as really just
14 more of a utilitarian appendage to the
15 building. But that said, part of our
16 discussions with the State Historic
17 Preservation Officer has been our attempt to
18 be faithful to the design guidelines that came
19 out of the whole Section 106 process and those
20 design guidelines, my understanding is they do
21 encourage a little bit of varying of height of
22 these penthouse structures. So in terms of

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1 your fairly straightforward question, you
2 know, we want to build our building, bring
3 some mixed-income housing and a grocery store
4 and an office to this neighborhood. That's
5 paramount, but that said, if it's possible to
6 have a little bit of flexibility in varying
7 these penthouse structures I think that would
8 be welcome.

9 COMMISSIONER MAY: Could I ask a
10 question, one more follow-up which is just,
11 given all of - since we don't have the benefit
12 of that entire discussion between NCPC and the
13 SHPO and so on, I mean do you feel that what
14 you have right now is the optimal design
15 solution? Or the best you could get, I guess.

16 MR. NYHAN: Again, as a non-design
17 professional I think it's the best we could
18 get.

19 COMMISSIONER TURNBULL: I would
20 just say, and I agree with Commissioner May on
21 the clear looking at the regs, but I think as
22 Mr. Nyhan had mentioned, there is these design

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1 guidelines for this area which do call for -
2 which you have to weigh in this case. So I'm
3 okay.

4 CHAIRMAN HOOD: Commissioner May,
5 are you ready to proceed?

6 COMMISSIONER MAY: Yes, I'm ready
7 to proceed and I'd like to make a motion, but
8 I'm trying to find the right words.

9 CHAIRMAN HOOD: Oh, we'll wait on
10 that. Go right ahead. I was going to do it,
11 but since you can do it, that's great.

12 COMMISSIONER MAY: Okay. I'd like
13 to make a motion that we approve Zoning Case
14 08-01 Southeast Federal Center, Parcel D, M
15 Street Southeast and Fourth Street Southeast
16 under Section 1803.2, development with
17 frontage along M Street. Let's see. Under
18 1803.6 Zoning Commission review of the
19 building east of Fourth Street that is greater
20 than 90 feet, relief from rear yards
21 requirements under 636, preferred uses under
22 1803.3, and loading requirements under 2201.1,

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1 and special exception relief from the rooftop
2 structure regulations of 411 as stated in the
3 applicant's case.

4 COMMISSIONER TURNBULL: Second.

5 CHAIRMAN HOOD: It's been moved
6 and properly seconded. I think we have
7 everything in the motion. Also included in
8 that motion will be, which the applicant has
9 already agreed to, Commissioner May, about the
10 filing instrument with the Zoning
11 Administrator to combine Parcel K and Parcel
12 D, and I think that we can just include it if
13 you'll accept that into that motion.

14 COMMISSIONER MAY: Absolutely.

15 CHAIRMAN HOOD: Okay. It's been
16 moved and properly seconded. Any further
17 discussion? Any further discussion? All
18 those in favor?

19 (Chorus of ayes)

20 CHAIRMAN HOOD: Ms. Schellin, if
21 you can record that.

22 MS. SCHELLIN: Sure.

1 CHAIRMAN HOOD: Thanks.

2 MS. SCHELLIN: Staff records the
3 vote 5-0-0 to approve final action in Zoning
4 Commission Case No. 08-01, Commissioner May
5 moving, Commissioner Turnbull seconding,
6 Commissioners Hood, Jeffries and Etherly in
7 support.

8 CHAIRMAN HOOD: All right. Good.
9 Thank you all, everyone for their
10 participation and this hearing is adjourned.

11 *(Whereupon, the foregoing matter*
12 *went off the record at 7:48 p.m.)*

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