

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING
OF THE BOARD OF ZONING ADJUSTMENT

9:36 a.m. to 3:58 p.m.
Tuesday, November 29, 2011

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

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MERIDITH MOLDENHAUER, Chairperson
JEFFERY HINKLE, National Capital Planning
 Designee
LLOYD JORDAN, Mayoral Appointee
ANTHONY HOOD, Zoning Commission

Office of Planning:

ARTHUR JACKSON
MATT JESSICK
PAUL GOLDSTEIN
KAREN THOMAS
STEPHEN MORDFIN
STEVE COCHRAN

Also Present:

CLIFFORD W. MOY, Secretary to the Board
SHERRY GLAZER, ESQ.,
 Office of Attorney General

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

2 CHAIRPERSON MOLDENHAUER: This hearing
3 will please come to order. Good morning, ladies
4 and gentlemen. We are located in the Jerrily R.
5 Kress Memorial Hearing Room located at 441 4th
6 Street, N.W. This is November 29th, 2011, Public
7 Hearing of the Board of Zoning Adjustment for the
8 District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me today, to my left,
11 representing the Zoning Commission is Chairman
12 Anthony Hood. To my right is Mayoral Appointee
13 Lloyd Jordan, and to my far right is Jeffery
14 Hinkle, representative of the National Capital
15 Planning Commission.

16 Copies of today's hearing agenda are
17 located to my left in the wall bin near the door.

18 Please be advised this proceeding is
19 being recorded by a court reporter and is also
20 being webcast live. Accordingly, I must ask you
21 to refrain from any disturbing noise or actions
22 in the hearing room.

1 When presenting information to the Board,
2 please turn on your microphone, first stating
3 your name and home address. When you are
4 finished speaking, please turn off your
5 microphone, so that your microphone is no longer
6 picking up any sounds or background noise.

7 All persons planning to testify either in
8 favor or in opposition are to fill out two
9 witness cards. These witness cards are located
10 to my left on the wall bin near the door and on
11 the tables in front of you. Upon coming forward
12 to speak to the Board, please give both cards to
13 the court reporter sitting to my right.

14 Also, if you wish to file any written
15 testimony or additional supplemental
16 documentation today, please submit an original
17 and 12 copies to the Secretary for distribution.

18 If you do not have the requisite number of
19 copies, you can make copies at the machine
20 located in the Office of Zoning across the hall.

21 The order of procedures for special
22 exceptions and variances are as follows: one,

1 statement of the Applicant and Applicant's
2 witnesses; two, parties and persons in support;
3 three, parties and persons in opposition; four,
4 reports of the ANC; five, government reports
5 including the Office of Planning and Department
6 of Transportation; six, rebuttal and closing
7 statements of the Applicant.

8 Pursuant to Section 3117.4 and 3117.5,
9 the following time constraints will be
10 maintained. The Applicant, Appellant, persons
11 and parties, except the ANC in support, including
12 the witnesses will be given 60 minutes
13 collectively. Appellees, persons and parties,
14 except the ANC in opposition including the
15 witnesses will be given 60 minutes exclusively.
16 Individuals will be given 3 minutes, and
17 organizations will be given 5.

18 These time restrictions do not include
19 cross-examinations or questions from the Board.
20 Cross-examination of witnesses is permitted by
21 the Applicant or parties. The ANC within which
22 the property is located is automatically a party

1 to a special exception or a variance case.
2 Nothing prohibits the Board from placing
3 reasonable restrictions on cross-examination,
4 including limitations on time and the limitations
5 on the scope of cross-examination.

6 The record will be closed at the
7 conclusion of each case, except for any material
8 specifically requested by the Board. The Board
9 and the Staff will specify at the end of each
10 case what is expected and the time and date when
11 that material must be submitted to the Office of
12 Zoning. After the record is closed, no other
13 information will be accepted by the Board.

14 The District of Columbia's Administrative
15 Procedures Act requires that a public hearing on
16 each case be held in the open before the public.

17 Pursuant to Section 405(b) and 406 of the Act,
18 the Board may, consistent with its rules and
19 procedures, enter into a closed meeting on a case
20 for purposes of seeking legal counsel on a case
21 pursuant to D.C. Code Section 2-575(b)(4) and/or
22 deliberating on a case pursuant to D.C. Code

1 Section 2-575(b)(13), but only after providing
2 the necessary proper Public Notice and in case of
3 an emergency closed meeting taking a roll call
4 vote.

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

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

13 The Board will now consider any
14 preliminary matters. Preliminary matters lead to
15 whether a case will or should be heard today such
16 as the request for postponement, continuance or
17 withdrawal, or whether proper adequate notice has
18 been given.

19 If you are not prepared to go forward
20 today or if you believe that your case should be
21 postponed, now is the time to raise such a
22 matter.

1 Mr. Secretary, do we have any preliminary
2 matters?

3 MR. MOY: Madam Chair, there are a couple
4 ANC letters that are untimely, which draft would
5 suggest that the Board address those documents
6 when I call the case. Other than that. I would
7 just like to announce for the record that on
8 November 15th of this year, the Board granted an
9 Applicant's request to move his application from
10 the morning session to the afternoon session, and
11 that is Case No. 18197 of 1211 10th Street, N.W.,
12 so that would be the last item for the afternoon
13 session.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much, Mr. Moy.

16 Then, we can proceed with our --
17 actually, before we proceed, all individuals in
18 the audience wishing to testify, if you can rise
19 and the oath will be administered.

20 MR. MOY: Do you solemnly swear or affirm
21 that the testimony you're about to present in
22 this proceeding is the truth, the whole truth,

1 and nothing but the truth?

2 [Witnesses sworn en masse.]

3 MR. MOY: Ladies and gentlemen, you may
4 consider yourself under oath.

5 [Pause.]

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much, Mr. Moy, if we can call the first case of
8 the morning.

9 Application No. 18279

10 MR. MOY: Yes, good morning, Madam
11 Chairperson, members of the Board. The first
12 case before the Board is Application No. 18279.

13 This is the application of Kathryn Kross,
14 pursuant to 11 DCMR 3104.1, for a special
15 exception. This is to allow a front porch
16 addition to an existing one-family row dwelling
17 under Section 223, not meeting the lot occupancy
18 requirements under Section 403, and the
19 nonconforming structure requirements under
20 Subsection 2001.3 in the R-5-B District at
21 premises 1908 Belmont Road, N.W., property
22 located at Square 2539, Lot 207.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much.

3 Will the parties please step forward and
4 introduce themselves.

5 Yes, you can get an easel.

6 Sir, you can't start speaking until you
7 first introduce yourself and then you need to
8 make sure that you are always on the microphone,
9 that's on the record. Your microphone is not on
10 yet.

11 MR. CARROLL: Okay. I am Dickson
12 Carroll, 3405 Ashley Terrace, N.W. I am the
13 architect for Kathryn Kross.

14 MS. KROSS: And I am Kathryn Kross, 1908
15 Belmont Road, N.W., the Applicant.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much.

18 I have gone through the submissions that
19 we have and I think that the record is fairly
20 full in this case. I will look to see if there
21 is any other questions the Board may have. I
22 don't see any, but if you like, you can either

1 rest on the record or you can present any
2 additional information that we don't already have
3 in our record.

4 MR. CARROLL: Okay. I am not sure that
5 you have the HPRB letter.

6 CHAIRPERSON MOLDENHAUER: We did, we
7 received that this morning, yes.

8 MR. CARROLL: You have that?

9 CHAIRPERSON MOLDENHAUER: Yes.

10 MR. CARROLL: Oh, you have it.

11 CHAIRPERSON MOLDENHAUER: Yes.

12 MR. CARROLL: Okay. So, you are saying
13 that we don't need to explain our project?

14 CHAIRPERSON MOLDENHAUER: If you like. I
15 think the record is very full in your case, you
16 don't have to, though.

17 MR. CARROLL: Okay. Fine. This case was
18 heard 8 years ago and approved, and it was
19 expired, and that is why we are bringing it back.
20 We might request, if you think advisable, to
21 have a bench decision to expedite it?

22 CHAIRPERSON MOLDENHAUER: We will still

1 need to go through the rest of the procedure, but
2 we will get there maybe at the end. Okay.

3 I will just ask, in the audience, if
4 there is anybody in the audience in support or in
5 opposition to this case.

6

7 Seeing none, then, I will turn to the
8 Office of Planning for their report.

9 I don't see anybody from the Office of
10 Planning, I don't see a report. Arthur Jackson
11 was the individual on this case, but we have a
12 report in our record. Actually, Mr. Moy, I don't
13 have an exhibit number, just a reference, but
14 it's an ANC Report dated November 22nd, 2011, and
15 it indicates that the Office of Planning
16 recommends approval for this case, and they go
17 through and they provide an analysis under --
18 here, we go -- it's Exhibit 27, but I believe I
19 will turn in a second to Office of Planning for
20 their report.

21 MR. JACKSON: Good morning, Madam Chair,
22 members of the Board.

1 CHAIRPERSON MOLDENHAUER: Good morning.

2 MR. JACKSON: My name is Arthur Jackson
3 of the D.C. Office of Planning, and I am here to
4 give a brief summary of the report on this
5 application.

6 Now, you may recall that some months ago,
7 or some years ago, this application came before
8 the Board previously. It actually is a 223, in
9 which they are exceeding the maximum allowable
10 lot occupancy as a matter of right, however,
11 under 223 provisions, they are within the 70
12 percent that is allowed under 223.

13 The analysis that we provided indicates
14 that it has no impact on the air or light
15 available to neighboring properties, it doesn't
16 affect the privacy and enjoyment of neighboring
17 properties, and the addition, as proposed, or the
18 changes, as proposed, have been reviewed by the
19 Historic Preservation Review Board and as far as
20 Preservation staff, and there weren't any
21 concerns.

22 In fact, the addition of the portico

1 really addresses an issue that the Board was
2 pleased to see addressed in that it would now be
3 the design of the porch and the portico would be
4 similar to other dwellings to the east on the
5 property.

6 So, given the findings through our
7 analysis, we recommended approval of the
8 proposal, as presented, and again this is in line
9 with our previous approval that was adopted by
10 the Board some years ago.

11 That concludes our brief summary of the
12 Office of Planning's report, and we will be able
13 to answer questions.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much, Mr. Jackson, for your thorough report.

16 Does the Applicant have any questions for
17 the Office of Planning?

18 MR. CARROLL: I don't think so.

19 CHAIRPERSON MOLDENHAUER: Do any Board
20 members have any specific follow-up questions for
21 the Office of Planning?

22 MR. HINKLE: Yes, thank you, Madam Chair.

1 Good morning, Mr. Jackson. I just wanted some
2 clarification. In your report, you reference
3 2001.1. (a) and (b). Is that correct, or was the
4 intent to analyze 2001.3?

5 MR. JACKSON: The reference to 2001 is
6 the fact that the existing building is
7 nonconforming and they are making it more
8 nonconforming by expanding the nonconforming lot
9 occupancy. However, by granting the relief, now
10 that makes the proposed 76 percent lot occupancy
11 conforming, so that eliminates both
12 inconsistencies.

13 So, it's a quirk in the regulations, but
14 we are just referring to the fact that under our
15 regulations, the nonconforming provisions, it
16 limits your ability to create new nonconformities
17 or expanding existing nonconformities, and in
18 this case, the proposed change would have done
19 both.

20 So, again, by granting the 223 relief,
21 those provisions are addressed, so it is
22 something that we have taken pains to reference

1 in our reports, just to make sure everyone knows
2 that those reasons are addressed, but it's a
3 circular loop. It is not something that was in
4 question, but it comes up just by granting, even
5 though it is an issue, it is addressed by
6 granting the 223 relief.

7 MR. HINKLE: Sure. Thank you. I
8 appreciate that discussion. I was just curious,
9 I think there is perhaps a typo or reference to
10 the wrong regulation within your report.

11 MR. JACKSON: I see what you are saying.
12 I gotcha.

13 MR. HINKLE: So, we are looking at your
14 analysis is on 2001.3, is that correct?

15 MR. JACKSON: Yes.

16 MR. HINKLE: Okay. Thank you.

17 CHAIRPERSON MOLDENHAUER: Thank you very
18 much, Mr. Hinkle, for identifying that. I think
19 that was on page 2, is that correct?

20 That being said, if there is no other
21 individuals and other questions for the Office of
22 Planning, we will turn to ANC-1C. Is anybody

1 present from ANC-1C?

2 Seeing none, I will indicate that we have
3 Exhibit 24, which is an ANC report that was dated
4 September 9, 2011, indicating that at a duly
5 noticed public meeting on September 7, with a
6 quorum present, that the Board voted to support
7 this application for a special exception. They
8 obviously provided all the required elements in
9 order to receive great weight, and this
10 recommendation in support will receive great
11 weight in support of the application.

12 That being said, I will turn back to the
13 Applicant and Lloyd Jordan, and see if you guys
14 have any follow up or any additional comments you
15 would like to make?

16 MR. CARROLL: Not unless the Board would
17 like me to explain the project more.

18 CHAIRPERSON MOLDENHAUER: No, I think
19 that is fairly straightforward, the plans were,
20 you know, very clear in the record.

21 At that point, then, I will conclude the
22 hearing, I will go directly into deliberation,

1 and I think that I can obviously incorporate
2 Office of Planning's analysis for the record in
3 regards to satisfying the 223 standard. I think
4 that it is really straightforward.

5 I do think that HPRB definitely touched
6 on the fact that it will pull together the rest
7 of this house along with the other adjacent
8 townhouses, and allow it to then appear uniform
9 in that respect, and I don't think that
10 obviously, it is going to affect any light or air
11 and privacy and enjoyment of any neighboring
12 properties.

13 That being said I would be in favor of
14 supporting this application, but I will see if
15 there is any additional discussion or
16 deliberation on this case.

17 MR. JORDAN: Madam Chair, I would move
18 the approval of the application for a special
19 exception under 11 DCMR 3104.1, for a special
20 exception to allow for a front porch addition to
21 the existing one-family row dwelling under 223,
22 not meeting the lot occupancy requirement for

1 403, a nonconforming structure requirement of
2 this Subsection 2001.3.

3 CHAIRPERSON MOLDENHAUER: Thank you. A
4 motion has been made. Is there a second?

5 MR. HOOD: Second.

6 CHAIRPERSON MOLDENHAUER: The motion has
7 been made and seconded. All those in favor say
8 "aye."

9 [Chorus of ayes.]

10 MR. MOY: The staff would record the vote
11 as 4 to 0 to 1. This is on the motion of Mr.
12 Jordan to approve the application for special
13 exception relief under Section 223, not meeting
14 lot occupancy and nonconforming structure
15 provisions. Second the motion of Mr. Hood.
16 Also, in support of the motion, Ms. Moldenhauer
17 and Mr. Hinkle, no other Board members
18 participating, so again the final vote is 4 to 0
19 to 1. The motion carries.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much, Mr. Moy, and seeing that we have no
22 opposition in the case, the Board would like to

1 waive the requirements and ask that a summary
2 order be issued.

3 MR. MOY: Very good. Thank you, Madam
4 Chair.

5 MR. CARROLL: Thank you.

6 MS. KROSS: Thank you.

7 Application No. 18277

8 MR. MOY: The next application before the
9 Board is Application No. 18277. This is the
10 application of RP MRP 900 G LLC, pursuant to 11
11 DCMR 3104.1 and 3103.2, for a special exception
12 from the roof structure requirements under
13 Sections 777,400.7, and 411.5, variances from the
14 loading requirements under Sections 2201.1 and
15 2203.2, and a variance from the open court
16 requirements under Section 776.1. This is to
17 allow a new office building with ground floor
18 retail in the DD/C-4 District at premises 624 9th
19 Street, N.W., property located at Square 376, Lot
20 68.

21 CHAIRPERSON MOLDENHAUER: Good morning.
22 If the parties would like to introduce

1 themselves.

2 MS. RODDY: Hi. My name is Christine
3 Roddy with Goulston & Storrs, and with me is
4 Frederick Rothmeijer with MRP, as well as Rafael
5 Scasserra with Gensler Architects.

6 To my left is Mr. Scasserra and to my
7 right is Mr. Rothmeijer.

8 Would you like us to proceed with our
9 presentation?

10 CHAIRPERSON MOLDENHAUER: Obviously, if
11 other Board members feel differently, I have
12 reviewed -- obviously, we have got a very full
13 package -- I reviewed everything, and I really
14 don't think I need, and I will see if any Board
15 members need, any issue on the rear yard relief,
16 court relief, or the rooftop structure, but I do
17 have some questions and some concerns as to how
18 the loading satisfies the standard.

19 So, if you can maybe focus your
20 presentation on that issue, I think that that is
21 the only issue that I really have questions about
22 how that would be satisfied. Unless other Board

1 members have any other relief that they have
2 additional questions on, too, please chime in.

3 MR. HOOD: I would just say we were
4 handed some additional drawings, and I was just
5 wondering if there is a change or what, what is
6 the difference between what we had or is this to
7 supplement the record, or what was this about.
8 That is my only question.

9 CHAIRPERSON MOLDENHAUER: Maybe you can
10 start off with Chairman Hood's question, and then
11 address the others.

12 MS. RODDY: Right. We had inadvertently
13 filed old plans with the prehearing statements.
14 I believe you are referring to the plans that
15 were filed the following day, and those are the
16 current proposal.

17 MR. JORDAN: I think the question is, of
18 significance, is there a change in the plans?

19 MS. RODDY: Yes, there is a significant
20 change, and that actually was with the renovation
21 of the building. I don't know, you may recall
22 that we were here several months ago for this

1 same site, and at that time we were proposing to
2 renovate the existing building, and that is what
3 those plans are showing, and so today, we are
4 actually razing the existing building and we are
5 going to build a new building, so the plans that
6 were filed the following day show that.

7 CHAIRPERSON MOLDENHAUER: Okay. If you
8 can at least I guess present the issues of the
9 loading space.

10 MS. RODDY: Great, we will do that. I
11 did want to make one clarification. The Office
12 of Planning report had suggested that this
13 application requires rear yard relief, as well as
14 a variance for the penthouse structures, and we
15 are providing a court in lieu of a rear yard, so
16 we do not believe that rear yard relief is
17 necessary for this application.

18 We also believe that the Board has
19 decided the issue of whether penthouse setbacks
20 is a variance or a special exception, and we
21 believe that that has been settled, that it is a
22 special exception. Nevertheless, we think that

1 this application meets the variance standard for
2 both of those areas of relief in the event the
3 Board would want us to present that, but we would
4 hate to establish a precedent going forward that
5 went against past decisions of this Board.

6 I will turn it to Mr. Scasserra now to
7 focus on the loading and how it meets the
8 variance standards with the uniqueness of the
9 property and the practical difficulties that that
10 poses in satisfying the loading.

11 MR. SCASSERRA: Hello, everyone. I am
12 Rafael Scasserra. My address is 2020 K Street.
13 I am with Gensler, and I am the architect for the
14 project.

15 Again, I will try to give you some
16 context first and then we will look into loading.

17 What you see up on the screen is a ground floor
18 plan, and you will see across the top of the
19 drawing is G Street and 9th Street. We have an
20 alley, which is to the south, and this is the
21 Gallup building, office building also to the
22 south.

1 Access to loading and parking is through
2 this alley, and you can see here in this
3 location, if you can see my pointer, the loading
4 dock configuration. There are a couple of
5 factors that come into play on this project. The
6 uniqueness of the site itself, this is a 13,000
7 square foot floor plate, it is very tight, a very
8 small site.

9 We are meeting the DD overlay for the
10 retail requirement, and we are providing 6,700
11 square feet of retail. Retail is a continuous
12 retail, all the way along G Street and 9th. We
13 think this will be a great addition to the
14 street, making it vibrant and alive.

15 The other component to this is the depth
16 of the site. This is only a 70-foot wide site,
17 it's a very narrow site, and those are the two
18 key components that we see as a hardship in
19 trying to meet some of the loading requirements.

20 The other component is definitely the
21 services needed to serve the office building.
22 You are still with this tight floor plate and

1 small floor plate, we still are creating an
2 office lobby on the ground floor, other egress
3 components, as well as a parking entrance along
4 this face.

5 So, we are proposing to provide loading
6 that has one berth of 12 by 30, one service 10 by
7 30, and again one platform.

8 The building's overall square footage is
9 108,000 square feet. If this were 8,000 square
10 feet smaller, it would conform with that
11 requirement that is drawn there.

12 MS. RODDY: Mr. Scasserra, could I ask
13 you, if you were to provide another loading
14 berth, would you be able to satisfy the retail
15 requirement for the downtown development overlay?

16 MR. SCASSERRA: We would not.

17 MS. RODDY: And I also would like to ask
18 you, does the existing building have a loading
19 berth?

20 MR. SCASSERRA: Yes, I should have
21 started with that. The existing building does
22 not have loading as it is, and the proposed

1 square footage is roughly similar to the existing
2 building.

3 CHAIRPERSON MOLDENHAUER: Any other
4 questions?

5 MS. RODDY: No, I am sorry. That
6 completed my questions on that.

7 CHAIRPERSON MOLDENHAUER: Do any Board
8 members have any questions of this witness?

9 Seeing none, do you have any other
10 witnesses that you would like to present?

11 MR. ROTHMEIJER: Let me add to this a
12 little bit.

13 CHAIRPERSON MOLDENHAUER: Start by
14 introducing your name.

15 MR. ROTHMEIJER: Sorry. My name is
16 Frederick Rothmeijer. I am with MRP. My address
17 is 3050 K Street, N.W., Washington, D.C.

18 When we bought the asset, we had the idea
19 to renovate the building. It's a steel building.

20 It was built and used by the YWCA, and we went
21 ahead, got variances, certain things did not
22 adhere to the zoning ordinance. We got that

1 approved.

2 Once we got into sort of the detailed
3 design drawings and the pricing, it became clear
4 that the structure itself didn't lend itself to
5 the type of building that we were trying to
6 provide to the market.

7 So, we decided to raze the building. The
8 prior renovated building had a very small amount
9 of retail. We were not triggering the DD
10 overlay, so it wasn't a real issue, but it
11 basically provided mechanical part on the ground
12 floor.

13 So, at the end of the day, the building
14 renovation was sort of -- the existing structure
15 was a hindrance to what we were trying to
16 achieve, which was a trophy office building.

17 So, we decided to raze the building,
18 which lends itself to much better retail, not
19 only wouldn't we be able to get to the maximum
20 amount of retail necessary for the DD overlay, if
21 you add the loading dock in, it also provides for
22 very shallow retail that doesn't really work.

1 So, I would say that is the other point
2 on the retail that we are trying to obtain is a
3 reasonable retail depth. So, we feel that with
4 the current design, we have the necessary amount
5 of retail, but also the retail depth that we are
6 creating for a much better setup.

7 The prior design had a finished ceiling
8 height of just over 8 feet. Currently, we can
9 accommodate at least 12 foot finished ceilings in
10 the retail on the ground floor, so overall, we
11 feel that the building that we currently are
12 pursuing is a much better addition to the area.

13 We have been working with Gallup on
14 getting through the penthouse setback and also
15 with Mather, we have spent multiple meetings,
16 multiple hours working through the issues that
17 concern sort of the setback and the court
18 configuration.

19 CHAIRPERSON MOLDENHAUER: You mentioned
20 discussion I guess by Mather Studios, is that
21 what you are referring to?

22 MR. ROTHMEIJER: Correct.

1 CHAIRPERSON MOLDENHAUER: Did you have
2 any discussion with them about the parking and
3 the loading, and the use of the alley?

4 MR. ROTHMEIJER: Yes, we did.

5 CHAIRPERSON MOLDENHAUER: Can you
6 elaborate on that a little bit, because that is
7 one of my concerns, in the traffic study report
8 that we have, it obviously identifies this is a
9 dead end alley, and so the adjacent property that
10 is not shown on the diagram, that is on the board
11 right now, but right next to your loading berth
12 it obviously would be the access point for Mather
13 Studios garage.

14 So, my concern would be -- and I don't
15 see a letter of support from Mather -- I do see
16 that in the prehearing statement, there was
17 dialogue, there were some concessions it sounded
18 like, but I don't actually see anything from them
19 indicating whether they would support, I would
20 like to hear a little more about that dialogue.

21 MR. ROTHMEIJER: Basically, we spent a
22 lot of time with Mather explaining our plans, and

1 I think overall they were very happy to see this
2 building being renovated into a trophy type
3 office building.

4 So, we had discussed not only the setback
5 of our building off our property line, we also
6 discussed that the lower roof would be a green
7 roof, that the top roof would be a green roof.

8 In the prior plan, in the BZA variances
9 that we obtained for the parking -- we had
10 mechanical parking, and it was about, if I
11 remember correctly, close to 50 spaces. So, we
12 had parking in the prior plan that they
13 supported. We also had a trash room. Currently,
14 in the current building, there is no trash room,
15 so there is basically a trash bin or trash
16 facility sitting in the alley.

17 So, I think from a modest perspective,
18 the last go-around when we went through the BZA
19 process with the building being renovated, they
20 had the letter of support. The only thing that we
21 really worked through with the Mather is a crane
22 overswing agreement, an underpinning agreement,

1 and I think from the Mather's perspective, I
2 think things were put to bed with the last BZA
3 since what we did there is basically the same.

4 We have the same penthouse sort of setup,
5 if you will, the same court configuration. We
6 now have conforming parking, but the number of
7 parking spaces are about the same, and we
8 absolutely have a better trash or loading berth.

9 CHAIRPERSON MOLDENHAUER: You said you
10 have a trash facility on site. In the diagram, I
11 only see a location for recyclables. Is that
12 what you are referring to?

13 MR. ROTHMEIJER: That is part of it. It
14 is also in the back of the smaller loading berth,
15 the 10 by 20 berth.

16 CHAIRPERSON MOLDENHAUER: I just don't
17 see that I guess identified on the plan.

18 MR. SCASSERRA: It will be in this area
19 here. I am sorry, there might be a label missing
20 on the drawings. It's in that area right there.

21 CHAIRPERSON MOLDENHAUER: Those two boxes
22 would be the trash location.

1 MR. SCASSERRA: Yes.

2 CHAIRPERSON MOLDENHAUER: One of the
3 aspects that you say that is a contributing
4 factor as to why it is challenging to fit the
5 loading requirement is the retail, the DD
6 overlay, and you said that you wouldn't be able
7 to provide the necessary depth.

8 I just see a one large retail facility
9 here. Are you looking, I mean would you not be
10 able to do small boutique retail locations and
11 have narrower depths, or is this because you are
12 trying to reach a national type of retail
13 facility rather than smaller boutique retail, and
14 that is why you are looking for the larger depth
15 in the retail layout or the wider depth than the
16 retail layout?

17 MR. ROTHMEIJER: Typically, you want to
18 have at least 30 to 40 feet in depth for retail
19 to be able to cast at least a wide net.

20 It becomes very challenging if you have
21 anything less than that, so maximizing that width
22 as much as possible, and not putting a fully

1 conforming loading berth in that squeezes that
2 space down to like 15 feet I think is very
3 important to get real vibrant retail and real
4 feasible retail in here into that sort of throw-
5 away space.

6 CHAIRPERSON MOLDENHAUER: I think that
7 maybe I saw someone from Gorove/Slade. Would you
8 step forward.

9 MS. RODDY: Yes, we have Mr. Van Pelt.
10 It sounded like you had some concerns about the
11 impact of the loading on the Mather building.

12 MR. CARROLL: And maybe in general on the
13 area.

14 MS. RODDY: Okay. It may be helpful to
15 have him provide some testimony on that.

16 MR. VAN PELT: When we were out there,
17 and we looked at that, and I guess we have looked
18 at all these issues as Fred said in his testimony
19 earlier, that we have kind of looked at all the
20 transportation issues. They have been addressed.
21 The Mather folks are aware of it.

22 When we actually did our traffic study,

1 there is only I think a dozen parking spaces in
2 the Mather Building. During the peak periods, we
3 saw one car come out of the garage in the
4 morning, and one go in, in the evening, and I
5 think there was the extra testimony at the last
6 hearing about that that is pretty typical, that
7 garage is really almost used for almost more
8 storage of cars, and there is not that much
9 traffic being generated by the Mather's garage,
10 so while it is there, there is not a lot of
11 parking activity coming in and out.

12 As far as the loading activity, the
13 existing building and the previously approved
14 building on the renovation would have continued
15 to have all the service activity happen in the
16 20-foot alley.

17 So, from a transportation perspective,
18 the substantial change here is now the provision
19 of a loading facility to allow that activity to
20 happen out of the alley, and not block traffic
21 movements in the alley both for the Mather, for
22 traffic coming to and from the building's new

1 garage, and then for the other service activities
2 that take place in that alley.

3 CHAIRPERSON MOLDENHAUER: I am trying to
4 find the rough section in your report, but I
5 think you referred to 9th Street as not a major
6 thoroughfare.

7 Where was that? I just --

8 MR. VAN PELT: It is classified as a
9 minor arterial.

10 CHAIRPERSON MOLDENHAUER: A minor
11 arterial. I thought that was kind of shocking
12 considering that 9th Street goes straight down to
13 295. This isn't a through alley, it's a one-way
14 alley, so you are going to have a lot of if one
15 person is coming in, the other one, you won't
16 have anybody being able to get out.

17 So I was just considering how did you
18 equate for that?

19 MR. VAN PELT: It is classified as a
20 minor arterial, and that is DDOT's
21 classification, so we just go along with it. You
22 know, it does carry a significant amount of

1 traffic and it plays a significant role in the
2 traffic network.

3 When we analyzed it and looked at the way
4 it operates today, there really is very little
5 traffic coming out of the alley. There is a
6 little bit more traffic coming in and out of the
7 adjacent access point to the Gallup building.
8 Their garage access is adjacent to the alley.

9 But when you look at the way it operates
10 today, that operates without really significant
11 delay. There is the site lines are there. We
12 even looked at those to see if there is any
13 issues with site lines as you come in and out of
14 the alley, and that was all done when we
15 initially started. When we did the first study
16 we actually sat down with DDOT and scoped out our
17 traffic study and looked at all the things that
18 they asked us to take a look at.

19 But from a traffic operation standpoint,
20 we don't see that there will be any issues with
21 additional about 20 or so trips, 20 or so trips
22 in the a.m. and 20 or so trips in the p.m. peak

1 hour that we will be adding with this garage.

2 CHAIRPERSON MOLDENHAUER: Obviously, 9th
3 Street will be affected to some degree by the
4 D.C. City Center project, which is just a block
5 and a half away from this.

6 Did you take into consideration any
7 potential changes in traffic flow once that
8 project has been developed?

9 MR. VAN PELT: We considered some
10 background growth, which is very typical in our
11 traffic studies, and so that would account for
12 that.

13 CHAIRPERSON MOLDENHAUER: I don't have
14 any further questions. Do any of the Board
15 members?

16 [No response.]

17 CHAIRPERSON MOLDENHAUER: Is there any
18 other information that the Applicant would like
19 to present?

20 MS. RODDY: Not unless you feel it is
21 necessary for us to go through the other variance
22 requests, otherwise, I think that the record is

1 complete.

2 CHAIRPERSON MOLDENHAUER: What other
3 variances, we talked about the special exception,
4 the court --

5 MS. RODDY: Courtyard.

6 CHAIRPERSON MOLDENHAUER: The courtyard.

7 I don't think I need that information. I
8 think that was fully addressed in the report, the
9 prehearing report.

10 Any other requests of Board members?

11 Seeing none, then, I will just look to
12 the audience to see if there is any individuals
13 in support or in opposition to this case.

14 Seeing none --

15 MR. HOOD: I was trying to remember. You
16 talked about the alley between the Mather Studio
17 and the building proposed. Was your question
18 ever answered? Maybe I missed the answer. You
19 were inquiring about how that is going to work
20 back in the alley, and maybe I missed your
21 question.

22 Was it ever answered?

1 CHAIRPERSON MOLDENHAUER: I thought it
2 was answered, maybe not to my satisfaction, but I
3 thought it was answered, if you want to see if
4 they can maybe restate the answer.

5 MR. HOOD: Could you all restate the
6 answer, because I didn't understand it, how is
7 all that going to work in there?

8 MR. VAN PELT: Sure. I mean there is
9 really -- there is very minimal traffic generated
10 by the Mather, so most of the activity that takes
11 place in the alley today is associated with
12 service activities, associated with this existing
13 site, and the other buildings that have their
14 service off of the alley.

15 Actually, there is so little traffic in
16 the alley that the segue to our folks use the
17 alley to help train people how to use the segues
18 because it is an open space for them to be able
19 to do it.

20 So, the traffic that we are adding to the
21 alley, it's a 20-foot wide alley. It has the
22 ability for vehicles to be able to pass each

1 other. That is what DDOT would want to see if it
2 was a brand-new alley, because it allows the two-
3 way flow to happen.

4 Currently, today, when there is service
5 activity taking place at the existing building,
6 those vehicles have to stop in the alley,
7 actually, block half of the alley, so what we are
8 doing with the new service provisions is you will
9 actually be able to have the service vehicles
10 back off of the alley, back into the loading
11 area, and that will no longer block traffic flow
12 in the alley, so it is an improvement over the
13 existing conditions from that standpoint.

14 We have looked at all the maneuvering
15 analysis. We have looked at how the trucks will
16 back into and exit the loading dock, and that all
17 works. So, I mean I think there is -- we believe
18 that there is sufficient capacity in the alley to
19 be able to accommodate this sort of activity,
20 even given that it is a dead end alley.

21 MR. HOOD: I remember now when you talked
22 about the garage being used for storage. Mr. Van

1 Pelt, you know where you and I are with the
2 traffic issues.

3 Let me just ask, so the trash is going to
4 be picked up in the alley. All of that is going
5 to happen, all of that is going to be going on,
6 but this alley right now is only used, people
7 only just store their cars back there for right
8 now, there is nothing major happening.

9 You also mentioned that DDOT has
10 classified 9th Street as a minor arterial. Did
11 that come out of the Transportation Handbook or
12 where did they get that from?

13 MR. VAN PELT: That came off of DDOT's
14 roadway classification map. That is their
15 information, that is how they have classified it.

16 MR. HOOD: So, you all as experts, you
17 would agree with that?

18 MR. VAN PELT: Oh, I think so. I mean it
19 is still an arterial, which means it has a
20 significant role in the transportation network.

21 MR. HOOD: But in the transportation
22 standard handbook, that you all always reference

1 to, I am sure there is some criteria what would
2 distinguish between a major and minor arterial,
3 am I correct?

4 MR. VAN PELT: There are.

5 MR. HOOD: So, in the handbook, does that
6 make G Street as a minor arterial -- I am sorry -
7 - 9th Street?

8 MR. VAN PELT: It is. It would fit that
9 classification of a minor arterial.

10 MR. HOOD: All right. Thank you.

11 CHAIRPERSON MOLDENHAUER: I am sorry. I
12 have a couple more questions.

13 Have you considered any type of
14 restrictions on loading times for the office
15 building, and if so, what would they be?

16 MS. RODDY: In our talks with Mather and
17 with Gallup, as well as with DDOT, that wasn't
18 really an issue and didn't come up, so we had not
19 proposed any restrictions on the loading.

20 CHAIRPERSON MOLDENHAUER: If there were
21 to be restrictions, is there a time frame that
22 you think would be reasonable?

1 MR. ROTHMEIJER: I would think that
2 during peak hours, it could be restricted, I
3 think to the extent that it can minimize
4 conflicts, that is a logical thing to do for our
5 property management group.

6 CHAIRPERSON MOLDENHAUER: Are there any
7 other questions from Board members?

8 Seeing none, I just want to see if there
9 are any individuals in support or in opposition
10 to this case in the audience.

11 Seeing no one, I will go to Office of
12 Planning for their report.

13 MR. JESSICK: Thank you, Madam Chair, and
14 members of the Board. My name is Matt Jessick.
15 The Office of Planning supports the relief
16 requested in this application. In regards to the
17 loading, we do feel that there are exceptional
18 circumstances affecting this property which lead
19 to a practical difficulty for the Applicant.

20 The Applicant in their testimony
21 mentioned most of the points that I was going to
22 mention, but I think key is the narrowness of the

1 site and how loading would impact the depth of
2 the retail.

3 Also, in the zoning regulations, we have
4 two regulations which I guess one could say on
5 this particular site conflict, and that is the
6 requirement for ground floor retail and the
7 requirement for loading spaces.

8 We very much support retail especially in
9 the downtown, and we have seen similar
10 circumstances in the past where there is a ground
11 floor retail requirement that relief for loading
12 has been sought and granted, so this is not an
13 unusual situation, and we do support the loading
14 relief.

15 Certainly, it would be an improvement
16 over existing conditions. Right now there is no
17 loading or trash facilities within the building,
18 and the existing building at around 90,000 square
19 feet is not that much different from the proposed
20 structure of around 108,000 square feet, so when
21 you add in the new loading and trash facilities,
22 we feel that there is going to be a marked

1 improvement to the functioning of the alley.

2 Also, the Board mentioned restricting
3 loading during certain times of the day. The
4 Office of Planning would support that proposal if
5 the Board found it necessary. Also, the traffic
6 study mentioned the possibility of a loading
7 coordinator for the building management. That
8 would be another option that the Office of
9 Planning would support.

10 For the rest of my testimony, I will rest
11 on the record, but I would be happy to take any
12 questions.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much for your report.

15 Do the Board members have any questions
16 for the Office of Planning?

17 Seeing none, does the Applicant have any
18 questions for the Office of Planning?

19 MS. RODDY: No, thank you.

20 CHAIRPERSON MOLDENHAUER: At this point
21 in time, we will turn to the ANC report. Is
22 there anybody present from ANC-2C?

1 I see no one. There is a preliminary
2 matter in regards to this letter. This was filed
3 late, and thus the Board would have to provide a
4 waiver of its rules in order to admit this late
5 filing from the ANC.

6 Seeing that it's our preference to try to
7 give all individuals, all ANCs great weight, I
8 will waive this, however, especially considering
9 that it was done on October 12th, and obviously,
10 it took them so long to get it to us, again, this
11 is just a reminder to all ANCs that while we try
12 to give them some latitude, they still have to
13 follow the rules and try to get these documents
14 in to us in advance, so we can review them.

15 That being said, the letter indicates
16 that on October 5th, 2011, ANC-2C conducted a
17 regularly scheduled meeting, which was duly
18 noticed, and with a quorum present, they voted 4
19 to 0 to support the application in this case.

20 They did identify that the proposal and
21 the elements had been negotiated by the adjacent
22 property owners in the prior case, and that they

1 had reviewed this application. Here, they
2 indicate the different relief that is being
3 sought, and they satisfy the requirements and
4 receive great weight in support of this
5 application.

6 That being said, at this point in time, I
7 will turn back to the Applicant for any closing
8 remarks.

9 MS. RODDY: Thank you. We would ask the
10 Board that they approve this application in light
11 of the support that it has from the neighboring
12 properties, Gallup, Mather, both support this
13 project. You may recall that that wasn't the
14 case in the initial application for the
15 renovation of the building. There were several
16 requests for party status from both of those
17 properties.

18 I would also just like to recognize that
19 the Office of Planning, as well as the ANC,
20 supports this. I understand that the Board has
21 some hesitation with respect to the loading, but
22 we believe that the proposed loading really is a

1 vast improvement upon the existing building where
2 there is no loading.

3 It is a 20-foot alley, so there is two-
4 way traffic. A car can go in while another car
5 is exiting, and at the rear of that alley, it
6 widens, so there is even additional room for cars
7 to turn around with ease really.

8 So, given the traffic study that we have
9 undertaken, that shows that there really will be
10 no conflict, as well as the support that the
11 neighboring properties have, we would ask that
12 the Board support the variance and special
13 exception requests today.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much.

16 At this point in time, I will conclude
17 the hearing.

18 [Pause.]

19 CHAIRPERSON MOLDENHAUER: At this point
20 in time I will turn to deliberation on this case.

21 In regards to the court relief, I think that the
22 court relief satisfies the standard. There is a

1 very unique situation here where the Applicant
2 has provided a specific concession to neighboring
3 properties, the setback, and thus creating the
4 need for the specific relief in regards to court
5 relief.

6 That being said, I have no issues in
7 regards to that aspect of relief, satisfies the
8 standard, and supporting the approval for that.

9 The rooftop structure in regards to the
10 setback requirement and the multiple height
11 proposal, I think that also the relief there was
12 specific relief that was in conjunction with the
13 need to try to address both the neighboring
14 properties, both Gallup and Mather Studios, and
15 trying to satisfy the standards while, at the
16 same time, providing certain concessions.

17 And I also would just incorporate Office
18 of Planning's analysis in that, and I feel that
19 they satisfy the standards for the setback of
20 rooftop structures and also the issue in regards
21 to the different level, different height
22 structures.

1 Next, is the relief for loading, and this
2 is obviously, where I think most of our
3 presentation was focusing on, and I do hear the
4 Applicant's arguments in regard to that they have
5 -- rather they are indicating that they have
6 support, but I think as a matter of fact, more
7 that they don't have any specific opposition in
8 this case.

9 We don't have any letters from Mather's
10 Studio, we don't have any letters indicating
11 that, hey, we have seen this, we really don't
12 have any concerns, it is just more a matter of,
13 you know, silence in that regard, and that being
14 said, I think it is our obligation to analyze the
15 project, with, you know, scrutiny especially in
16 regards to variance standard.

17 And my question is, does this project
18 satisfy the first prong, are the factors that
19 Office of Planning and the Applicant are
20 articulating sufficient to satisfy uniqueness,
21 maybe in regards to a confluence of factors.

22 In regard to the site size, I don't find

1 especially in the downtown area the site to be
2 that unusually narrow. I do think that
3 obviously, they are able to provide for the
4 required parking, they are able to provide for
5 the required retail.

6 The only issue they are trying to obtain
7 is the reduction in the loading, and my concern
8 there is that right now this project has never
9 had any retail on the site.

10 All of a sudden now they are going to be
11 putting in potentially some -- a large retail,
12 6,692 square feet of retail space, which will
13 need, you know, a great deal of loading and
14 unloading services most likely to satisfy
15 whatever type, whether that is a restaurant, or
16 whether it's a retail clothing facility or
17 something to that effect.

18 In addition to that, you are now going to
19 have a top A, you know, Class office building,
20 which will also need services satisfying and
21 maintaining that location, and accessing that
22 property.

1 That is my main concern especially as I
2 indicated, it's a dead end alley, you are already
3 using the alley for different types of loading
4 and unloading for Mather and for Gallup.

5 My first question is does it satisfy the
6 first prong and then going to the third prong,
7 you know, of whether this would create any
8 challenge to the public good in regards to
9 traffic conditions.

10 I do rely, obviously, heavily on the
11 Gorove study, but I do think that there were just
12 a couple of areas where, you know, I think that I
13 did have some concern in regards to identifying
14 the exact aspects especially considering that
15 they are asking for reduction in loading berths
16 from 2 to 1, then, you are going to have most
17 likely more trucks in a location because instead
18 of having 2 loading berths at one time, you are
19 going to have to have multiple trucks coming in
20 and using that single platform and maybe even
21 waiting to gain access to that single platform.

22 I did think that Office of Planning's

1 recommendation for a loading coordinator may
2 address that concern, but I think I have kind of
3 identified all my issues. I will open up the
4 floor to other Board members and maybe they can
5 provide me with a clear way of seeing this last
6 issue.

7 MR. JORDAN: I think that the loading
8 issue is not a big problem for me. I understand
9 the concern. I think we have identified how this
10 particular lot is so narrow and how it is
11 situated in regards to the Mather building.

12 I think there has been concessions on
13 everything else in regards to what is necessary
14 for this building, so something that really has
15 to give, and they don't have a lot of room here
16 to really put in any additional berth.

17 I think you said something very
18 important. I think when we had this set before,
19 we kind of had at least three or four different
20 people from Mather that were here in opposition,
21 and I think we have kind of solved that, I think
22 they might have solved that issue, because they

1 are not here today, and I think that is something
2 that is very impactful for me, because I think
3 they have had a series of meetings with them, and
4 evidently they are comfortable with that issue,
5 so that they obviously are not finding a problem
6 for loading as set forth.

7 Being where they are, with a very narrow
8 alley all the way around this particular
9 building, loading is a problem, period, I don't
10 care how you put this thing in here, and I just
11 think that I don't have a problem with the one
12 berth as the finding, because I think that this
13 property has a special uniqueness to it with both
14 sides of the alley and the other building, so I
15 just don't.

16 I think it's a clear difficulty in being
17 able to do this with a large berth.

18 MR. HINKLE: Thank you, Madam Chair.

19 Just in terms of the size, I think that
20 was one of your concerns that you mentioned, it
21 is a difficult site in terms of its size and to
22 get that downtown overlay requirement for the

1 retail on the site, and put it in the loading at
2 the same time that is required.

3 So, I do see the size as one factor that
4 does meet the first prong of the variance test.

5 In terms of the loading, my real concern
6 is how it would impact cars coming in and out of
7 the garage on this site. I think if there could
8 be some management of the loading dock either in
9 terms of restrictions on times or some building
10 coordinator in terms of loading, I think that
11 would be helpful.

12 It would certainly help to restrict
13 loading activities at key times, I believe, and
14 that is my main concern.

15 MR. HOOD: I also would agree on the
16 loading. Where I think Mr. Van Pelt does a great
17 job, I think he does his homework. I don't
18 necessarily always agree with him, he knows that,
19 but I will tell you that I think that with the
20 Office of Planning's recommendation, this is a
21 difficult site.

22 I have not participated in the first

1 part. From what I understand, I didn't know you
2 had people down who were in opposition, and not
3 saying anything today, and I also noticed that in
4 the Office of Planning's report, I know that Mr.
5 Jessick, when he sends stuff out to other
6 government agencies, he usually gets a good
7 response, and I noticed that no one took the time
8 to respond this time, which tells me that
9 obviously, as the Applicant has already
10 mentioned, that I think this project, as it comes
11 to us at this point in time, is a better flavored
12 project for this particular site.

13 Madam Chair, while I do share your
14 concern with the loading, because I was sitting
15 here thinking about what mess we may be getting
16 ready to create, but also have -- Mr. Van Pelt, I
17 also have respect for his work, so I think I
18 would buy his argument, and I think that with the
19 manager or someone to manage that, the process,
20 the timing, it is done in other places in this
21 city, and I think it could be done here.

22 CHAIRPERSON MOLDENHAUER: I think I do

1 agree with everybody in that regard, but I guess
2 my only question would be is this an exceptional
3 circumstance.

4 Again, my one last question would be if
5 there was another loading berth, it would be
6 about 360 square feet, which obviously would mean
7 that they wouldn't be able to meet their retail
8 requirement, but I guess the question is a
9 tradeoff. Obviously, the retail requirement,
10 yes, it is part of the zoning requirement, but it
11 is obviously a financial benefit for the property
12 owner.

13 Here, they are taking away something that
14 might actually be necessary in regards to
15 maintaining traffic, you know, reduction in
16 traffic issues, maintaining a smoother
17 transition, with having a larger office space.
18 Who knows what type of retail will go in there
19 that might need additional loading.

20 So, my question here is, is that
21 potential desire of the Applicant in regards to
22 asking for this concession versus another

1 sufficient. Obviously, we heard OP indicating
2 that it is encouraging to have retail at least
3 part of the DD overlay.

4 This is one of those areas where two
5 zoning regs do conflict, and what is then
6 potentially the relief that, you know, and
7 obviously, it is the Applicant's choice to
8 request for relief on one versus the other.

9 Obviously, and I think that -- and one
10 thing I am being handed is the DDOT report -- I
11 know that they had reviewed the request and that
12 they found that there was to be no adverse impact
13 on the traffic network and no objections to the
14 project, that they were going to recommend
15 obviously for TDM measures in that regard and for
16 some additional recommendations to provide for
17 traffic management on the project.

18 I have some concerns. I do think that I
19 agree with the other Board members that, you
20 know, while my concerns are still there, I do
21 think that the Gorove/Slade report probably has
22 addressed it, and I think DDOT. Our job is to

1 rely upon other agency's recommendations, and
2 here we have DDOT's recommendation, and we have
3 OP's recommendation.

4 I will throw those last couple of
5 questions out there and see if anybody has any
6 additional comments before we move forward.

7 [Pause.]

8 CHAIRPERSON MOLDENHAUER: I see everyone
9 is still looking at the DDOT report. Once
10 everyone is finished, we will move forward.

11 [Pause.]

12 MR. HOOD: Madam Chair, page 2, where it
13 talks about the site access and loading, DDOT's
14 analysis says loading operations are not expected
15 to increase and property management will control
16 service and loading activities during peak
17 periods to mitigate impacts on the transportation
18 network.

19 I understand what you are saying. I read
20 this and again Mr. Van Pelt knows when I am out
21 there, I always tell him when I am in traffic, I
22 always think about him, and I am sure that in

1 this case, if it doesn't work, you guys are
2 probably going to have to move, so I just think
3 that there is going to be enough effort, and I
4 think to compensate from the retail to this, I
5 think is workable.

6 I think that all those who worked on this
7 have figured this strategy out, and then I am
8 hoping it works, but I kind of share your
9 concern, because you hate to approve something
10 and two years later you say did I do that, or did
11 I have a part to play in that fiasco, so I
12 understand.

13 CHAIRPERSON MOLDENHAUER: Well, that
14 being said, does anybody have a motion?

15 I will submit a motion to approve
16 Application 18277 for 11 DCMR 3104.1, and 3103.2,
17 for a special exception from the roof structure
18 requirements under 777,400.7, and 411.5, a
19 variance from the loading requirement under
20 Sections 2201.1, 2203.2, and a variance from the
21 open court requirements under Section 776.1, to
22 allow a new office building on the ground floor

1 retail at premises 624 9th Street, N.W., with the
2 following conditions:

3 The condition that the property shall
4 employ a full-time loading coordinator to
5 coordinate and to restrict any loading activities
6 or services during peak periods to mitigate
7 impacts on the traffic network; and also to work
8 with other neighboring uses of the alley to
9 reduce any impacts.

10 A motion has been made. Is there a
11 second?

12 MR. HINKLE: Second.

13 CHAIRPERSON MOLDENHAUER: A motion has
14 been made and seconded. All those in favor say
15 "aye."

16 [Chorus of ayes.]

17 MR. MOY: The staff would record the vote
18 as 4 to 0 to 1. This is on the motion of
19 Chairperson Moldenhauer to approve the
20 application for the special exception and
21 variance relief, the multiple reliefs. Second
22 the motion, Mr. Hinkle. Also, in support of the

1 motion, Mr. Hood, Mr. Jordan. No other Board
2 members participated. The motion also carries
3 the condition as described by the Chair in her
4 motion. So, again, the vote is 4 to 0 to 1 to
5 approve, and the motion carries.

6 [Pause.]

7 CHAIRPERSON MOLDENHAUER: I would just
8 like to indicate that there was no opposition in
9 that prior case. I would like to waive the
10 requirements and ask that a summary order be
11 issued.

12 MR. MOY: Thank you, Madam Chair.

13 Application No. 18281

14 MR. MOY: The next application before the
15 Board for action is Application No. 18281. This
16 is the application of the Association of American
17 Medical Colleges, pursuant to 11 DCMR 3104.1, and
18 3103.2, for special exception relief under
19 Sections 771.1, and 411.11, relating to penthouse
20 setback requirements, and Section 2108.1,
21 relating to the minimum number of required
22 parking spaces and for a variance from Section

1 1701.7, relating to required setbacks for
2 buildings fronting on Mount Vernon Square. This
3 is to construct a new office and retail building
4 with below grade parking in the DD/C-2-C District
5 at premises 611 through 627 K Street, N.W., and
6 616 through 640 New York Avenue, N.W. property
7 located at Square 451, Lots 2, 3, 4, 31, 801,
8 806, 807, 810, 811, 820, 821, 824, 825, 826, and
9 830.

10 CHAIRPERSON MOLDENHAUER: Good morning.
11 If everybody could introduce themselves for the
12 record, please.

13 MR. UTZ: Sure. I am Jeff Utz of
14 Goulston & Storrs.

15 MR. JARVIS: I am Bernard Jarvis of the
16 Association of American Medical Colleges.

17 MR. BARANES: Shalom Baranes, Shalom
18 Baranes Associates, Architects.

19 MR. STRICKLAND: Matt Strickland, HWA
20 Parking.

21 MR. FEOLA: Phil Feola with Goulston &
22 Storrs.

1 CHAIRPERSON MOLDENHAUER: Good morning.

2 I think that this is a great project, you
3 know, having driven back and forth on New York
4 Avenue for many, many years, and I lived in the
5 Penn quarter for six years, I am very excited.

6 I see no issues with this case. I will
7 see if Board members have any specific questions
8 about any of the relief that is being sought.
9 Other than that, you can rest on the record
10 unless you have any additional comments.

11 MR. UTZ: Sure, I think we would rest on
12 the record.

13 CHAIRPERSON MOLDENHAUER: The only
14 question I do have is the architectural plans
15 don't show the historic facade that clearly, the
16 one that you have is kind of, it's like fuzzy. I
17 would just be curious if you had a better
18 picture. More plans, of course.

19 MR. UTZ: There is a picture on page 10
20 in the plans that Mr. Moy is currently
21 distributing, a prospective that shows it, I
22 think better than other ones.

1 CHAIRPERSON MOLDENHAUER: This is the one
2 that was kind of fuzzy, I think you were trying
3 to show the trees, and then the trees are kind of
4 over the top of --

5 MR. UTZ: Right. Page 11 shows how they
6 look from the inside of the building since they
7 are integrated into the fabric of the project.

8 CHAIRPERSON MOLDENHAUER: I love the way
9 that it is integrated into the interior of the
10 project anyway, but that is a side note.

11 If there is no questions from Board
12 members, then, I will see if there is anybody in
13 the audience in support or in opposition to this
14 case.

15 Seeing none, I will turn to the Office of
16 Planning for their report.

17 MR. GOLDSTEIN: Good morning, Madam
18 Chair, members of the Board. My name is Paul
19 Goldstein with the D.C. Office of Planning. OP
20 recommends approval of the special exception
21 relief to accommodate the proposed office and
22 retail building.

1 It is located at 611 through 627 K
2 Street, N.W., and 616 through 640 New York
3 Avenue, N.W. Our report did express no
4 opposition to the relief, the area variance
5 request. It is a little bit nuanced, but we
6 think the Applicant has made the case. We just
7 felt that it wasn't the strongest case we had
8 seen for the relief. It is very de minimis.

9 The square footage relief accounts for
10 about 0.1 percent of the overall square footage
11 in the building. We don't have any objection to
12 it. We kind of nuanced our answer -- our
13 evaluation on that a little bit for the Board.

14 With that, I will rest and take any
15 questions that you may have.

16 CHAIRPERSON MOLDENHAUER: Thank you.

17 Do Board members have any questions for
18 the Office of Planning?

19 Seeing none, does the Applicant have any
20 questions for the Office of Planning?

21 MR. UTZ: No, we don't.

22 CHAIRPERSON MOLDENHAUER: Then, at this

1 point in time, we will turn to the ANC report,
2 and this report, again, we will have to take a
3 preliminary matter on the ANC.

4 Is there anybody in the audience from
5 ANC-6C?

6 Seeing none, no one. Our Exhibit 30 was
7 filed late and will thus require relief from our
8 requirement for timely filings in order for us to
9 review it, and for it to be made part of the
10 record.

11 That, as I said earlier, obviously, we
12 have -- we weigh the benefits and the doubts have
13 obviously always only allowed documents that are
14 timely filed into the record, but at the same
15 time, we want to give ANCs great weight, and that
16 being said, we will allow the documentation into
17 the record.

18 This report does indicate that on Friday,
19 November 25th, that they did have a meeting that
20 was notified by the Board, and that they reviewed
21 it, and that they would like to see that they are
22 considered for great weight, but that

1 unfortunately, that their ANC will not meet until
2 December 15th, and thus, they would not be able
3 to get us a report until December 17th. Thus,
4 they are asking that we hold off -- I am sorry,
5 is there a comment from counsel?

6 MR. FEOLA: Yes, ma'am, I want to make
7 sure that -- told me a long time ago not to
8 oppose ANCs, so I will not oppose ANC-6C's
9 request, but I want the Board to be aware that
10 the property is in ANC-2C, and there is a letter
11 in the record of support for ANC-2C, and the late
12 appearance of 6C in this was a little bit
13 surprising to us.

14 They got notice of this application both
15 from the BZA and from us back in September, and
16 it just surprised us. We have been before the
17 Mount Vernon Square Association and a whole
18 number of neighborhood supporters that did not
19 object.

20 So, I just wanted the Board to be aware
21 of that as it decides whether or not it should
22 give ANC-6C basically another month and a half.

1 CHAIRPERSON MOLDENHAUER: I don't know
2 about a month and a half. They are asking, they
3 would have it to us by at least December 17th,
4 which to me is only about 20 days, so less than a
5 month.

6 MR. FEOLA: The Board wouldn't deliberate
7 on the case until January 10th.

8 CHAIRPERSON MOLDENHAUER: Until January,
9 yes.

10 I do recognize that obviously, they are
11 not the specific ANC, 6C is not, but they are a
12 bordering ANC, and doesn't their jurisdiction go
13 straight down 6th Street, which this project is
14 bordering on, 6th and K?

15 MR. FEOLA: The project, it borders 7th
16 and an alley, and then there is intervening
17 property to 6th Street, but, yes, it is close.
18 That is why we included them in our property
19 owner list, and that is why we sent them notice,
20 because they are close.

21 CHAIRPERSON MOLDENHAUER: That being
22 said, it is obviously on issues that the Board

1 will have to consider since I have a waiver to
2 let that letter in. It will be part of the
3 record, and I am just looking at my record to see
4 where my letter from ANC-2C is.

5 This is just our Exhibit 31, which
6 indicates that at a regularly scheduled meeting
7 on October 5th, 2011, that the Commission met at
8 a duly called and properly noticed meeting with a
9 quorum present and voted 4 to 0 to support the
10 application.

11 That being said, that letter will receive
12 great weight, and we will discuss ANC-6C at a
13 later point in the proceeding.

14 At this point in time, we will turn to
15 the Office of Planning -- I did their report,
16 sorry -- we will turn back to the Applicant for
17 any closing remarks.

18 MR. FEOLA: Again, Mr. taught me a long
19 time ago quit while I am ahead, so we really have
20 nothing to say, but we appreciate your
21 consideration and the relatively shortness of the
22 hearing. Thank you.

1 CHAIRPERSON MOLDENHAUER: Thank you.
2 Obviously, the Board members know and I think the
3 Applicant knows my general feeling on this case.
4 I think that it does satisfy the requirements,
5 but I do think at the same time, this is an area
6 where the ANCs are very close, and there is a lot
7 of activity in that area where I would not want
8 to, especially when the ANC does send a letter
9 requesting some additional time, and it is not a
10 great deal of time. If we were to put this on a
11 decision calendar, we are not trying to postpone
12 it, to a great deal.

13 I would recommend to the Board that we
14 wait, and we put this on decision for our first
15 decision case would be January 10th, and at that
16 point in time, we would be able to hopefully
17 provide the Applicant with a quick response.

18 Do Board members agree with that? Does
19 anybody have any concerns or questions?

20 MR. HOOD: Yes, Madam Chair. I think that
21 given the courtesy, Commissioner Silva, I have
22 worked with him in the past, and just giving them

1 a courtesy, but I will agree with you. I think
2 this is a great project. I actually like the
3 design -- you all don't get into the design --
4 but I actually like this project. Hopefully, the
5 ANC-6C will come back with something very
6 favorable.

7 MR. HINKLE: I agree as well, Madam
8 Chair. I think this is an important project for
9 the neighborhood, and, you know, the borderline
10 of the ANCs is right there, so I think providing
11 the courtesy to ANC-6C is appropriate.

12 CHAIRPERSON MOLDENHAUER: Very well. I
13 think everyone is in agreement. What we will do
14 is I will put this case in decision for January
15 10th, allowing an opportunity for ANC-6C to
16 provide any additional reports.

17 We will leave the record open for that,
18 and that alone, and obviously, if ANC-6C does not
19 get us a letter by then, we will make our
20 deliberation, but we will have at least provided
21 them the opportunity. I hope to hear from them.
22 I think that they did provide a letter today, and

1 I hope that at least this will provide their
2 input.

3 [Pause.]

4 CHAIRPERSON MOLDENHAUER: Based on OEG's
5 recommendation, I think that what we are going to
6 do, just in case there are any issues that arise
7 from the ANC letter, we will actually put this --
8 and actually, I think it addresses the timing
9 also -- we will put it on a limited hearing, so
10 we will continue.

11 This is not going to be a conclusion to
12 this hearing, it is going to continue the hearing
13 to December 20th, and Mr. Hood is on the calendar
14 that day, and we will put this on the first case
15 for that morning, and so in that way, we will
16 allow the ANC to present any information to us on
17 the 20th.

18 We will review it. If there is any
19 responses that the Applicant deems necessary at
20 that point in time, or maybe even if ANC-2C wants
21 to counter or respond to something that ANC-6C
22 says, we will allow that, and then if things are

1 proper, we could then potentially then do a
2 decision at that point in time prior to the
3 January 10th date.

4 So, that being said, this case will
5 continue for the morning, and will be the first
6 case on the docket for December 20th.

7 MR. FEOLA: Thank you for your
8 consideration and for the timing. It is very
9 important to the Applicant.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much, and this case will be continued to December
12 20th, and we can then move on to our next case of
13 the morning.

14 Application No. 18274

15 MR. MOY: The next application for the
16 morning session and would be the last item for
17 the morning session is Application No. 18274.

18 This is the application of Little Deli
19 Delicatessen, Trading as Chuck's Deli, pursuant
20 to 11 DCMR 3103.2, for a variance from the use
21 provisions to allow a delicatessen on the first
22 floor (lobby) of an existing apartment house

1 under Subsection 350.4, in the DD/R-5-E District
2 at premises 1221 Massachusetts Avenue, N.W.,
3 property located in Square 282, Lot 44.

4 CHAIRPERSON MOLDENHAUER: Good morning.
5 If the parties and counsel will please introduce
6 themselves.

7 MR. SHEARILL: Mike Shearill.

8 MR. DAVIS: John Davis, counsel for the
9 Applicant.

10 MR. SIM: Chuck Sim.

11 CHAIRPERSON MOLDENHAUER: Thank you for
12 introducing yourselves. At this point in time, I
13 know that from our prior hearing, Office of
14 Planning has provided a supplemental report and
15 the relief that is now being sought is a special
16 exception relief.

17 You just submitted some additional
18 documentation that we have not seen previously,
19 this is brand-new?

20 MR. DAVIS: Right, it's just a rewrite.
21 We had previously, the application that we had
22 sent and the justification was for a use

1 variance, and this time we have redone it as an
2 application and justification for the special
3 exception.

4 CHAIRPERSON MOLDENHAUER: Would you like
5 to present any additional argument as to how you
6 satisfy the special exception standards?

7 MR. DAVIS: Yes, Your Honor, and I think
8 it is outlined to a great extent also in the
9 memorandum from the Office of Planning, but in
10 this particular case, there had been both
11 convenience store and a couple of delicatessens
12 in the same building on the first floor lobby of
13 the building over the last actually about 10
14 years. I think the first special exception was
15 granted probably about 10 years ago.

16 There has been a mixed use for this
17 building for a number of years going back over 20
18 years, including a number of commercial
19 establishments, and currently, on that first
20 floor lobby space there are four for-profit
21 commercial establishments currently.

22 There is a photography studio. There is

1 a fitness center and Pallotti studio. There is
2 an optometrist, and there is a dental group.

3 This space that we are requesting for the
4 special exception would be using part of the
5 space that had been given up by one of the
6 medical tenants who had more space than they
7 needed, and a couple of years ago had given up
8 the space, approximately 400 square feet of
9 space, and that space has not been used in the
10 interim.

11 The landlord had actually approached the
12 Applicant, my client, as well as some of the
13 persons from the tenants association, and
14 requested that since the previous deli had gone
15 out of business a couple of years ago, it would
16 be nice if they had something in the area of a
17 prepared food shop in that lobby in order that
18 tenants within the building can have something as
19 a convenience. There are a number of senior
20 citizens in the building who, when the weather is
21 inclement, have some difficulty getting out and
22 getting food, getting newspapers, and the like.

1 So, as a result of that, this application
2 is actually in response to an express need both
3 by the tenants association and by some persons in
4 the neighborhood, as well as the landlord.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much.

7 Does that conclude all your presentation?

8 MR. DAVIS: Well, essentially. I mean we
9 think that in view of the fact that there had
10 been some C-1, the medical establishment that had
11 given up the space had been granted the exception
12 on the basis of C-1, so it is really a prior use.

13 All of the adjoining neighborhoods are C-2. This
14 has been C-1. This is a use that is consistent
15 with prior use and is also consistent with what
16 has been in the building in the past.

17 It is supported by the ANC, it is
18 supported by the tenants association, and by the
19 landlord, and there is not much more that we can
20 say that is not in the written report.

21 We think that certainly there would be no
22 detriment to the public good, that it would not

1 in any way impair the intent, purpose and
2 integrity of the zone plan as set forth in the
3 zoning regulations and the zone map, but that
4 instead it would be more like a community
5 service.

6 It wouldn't have any adverse effect on
7 traffic because most of the business would be
8 walk-in business, either people who are in the
9 building or people who are in the adjoining
10 apartment buildings or office building.

11 In terms of the requirements of
12 Subsection 2003.1, we think all the requirements
13 there are met, because of the fact that there is
14 absolutely no way that the relief that we are
15 requesting would adversely affect the surrounding
16 neighborhood in any way, either in terms of
17 future plans or in current use, and we think that
18 there are no deleterious effects, there are no
19 adverse effects that would come from either
20 traffic or from noise from older, what have you.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much.

1 Do Board members have any questions?

2 Seeing none, then, at this point in time,
3 I will see if there is anybody in the audience in
4 support or in opposition to this case.

5 Seeing none, then, we will turn to the
6 Office of Planning for their report.

7 MS. THOMAS: Good morning, Madam Chair,
8 members of the Board. Karen Thomas with the
9 Office of Planning.

10 The Board requested OP to go back to the
11 Zoning Administrator and verify whether, in fact,
12 the relief should be special exception relief
13 pursuant to Section 2003, whereby the previous
14 use that occupied the 400 square foot space was,
15 in fact, a use, was, in fact, being changed to a
16 use that is similar, another nonconforming use
17 that would be permitted within that same
18 category.

19 The Zoning Administrator did concur that
20 this was, in fact, so. The optometrist's office
21 was first permitted in a C-1 where the prepared
22 food shop is permitted, so that it would comply

1 with Section 2003.1.

2 So, we reviewed the application under
3 that provision, under that Subsection, and we
4 did, in fact, find that it met those criteria,
5 and we support the release being granted under
6 this Subsection.

7 Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much.

10 I have no questions about this plan, do
11 any of the Board members have questions for OP?

12 Thank you very much for going back and
13 working with BZA and the Applicant in this case.

14 I think that was very helpful.

15 At this point in time, I will turn to see
16 if we have anybody present for the ANC report. I
17 see no one.

18 MR. DAVIS: Your Honor, there should be a
19 letter from the ANC in your file.

20 [Pause.]

21 CHAIRPERSON MOLDENHAUER: We actually
22 didn't have a formal report from the ANC. We had

1 oral statements that there were recommendations
2 in support of it, but we don't have anything in
3 our record.

4 That being said, we will turn back to the
5 Applicant for any closing remarks.

6 MR. DAVIS: Your Honor, I have none. I
7 think we pretty much set forth everything as
8 clearly as we can.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much.

11 At this point in time, we will conclude
12 the hearing. We will enter into a deliberation.

13 I will just start us off. I think that as this
14 case came before us before was a variance,
15 obviously, we had some concerns that the
16 Applicants satisfy the variance test.

17 I think through a dialogue and a
18 discussion with the Applicant, the Office of
19 Planning, and then having them go back and take a
20 look at the potential relief under 2003.1, we
21 have a revised request for relief under special
22 exception standard, which I think here is

1 obviously much more appropriate and actually
2 would permit approval of this application.

3 I think that the Office of Planning
4 provided a very thorough report in that regard to
5 analyze this under a special exception, under
6 2003.1, and I do agree with them that the
7 Applicant has satisfied all the standards under
8 2003.1, 2, and 3, and I think that there is
9 nothing further.

10 I do think that obviously, a prepared
11 food shop under the definition has a limitation
12 on 18C, no drive through, and that the Applicant
13 has already articulated that the hours are going
14 to be from 6:30 a.m. to 6:30 p.m., and I think
15 that those also contribute to having no effects
16 on the noise and aspects of the neighboring
17 property.

18 Also, the Applicant indicated that the
19 tenants association and landlord are in support.

20 Is there any additional deliberation from
21 Board members?

22 Seeing none, I will submit a motion, a

1 motion to approve Application 18274 for a special
2 exception under 11 DCMR 3104 pursuant to
3 Subsection 2003.1, to permit a prepared food shop
4 on the ground floor of the apartment building
5 located at 1221 on Mass Avenue, N.W., with hours
6 from 6:30 a.m. to 6:30 p.m.

7 A motion has been made. Is there a
8 second?

9 MR. HINKLE: Second.

10 CHAIRPERSON MOLDENHAUER: The motion has
11 been made and seconded.

12 All those in favor say "aye."

13 [Chorus of ayes.]

14 MR. MOY: The staff would record the vote
15 as 4 to 0 to 1. This is on the motion of the
16 Chairperson to approve the application for a
17 special exception relief from Section 2003, which
18 would allow for changes in nonconforming uses to
19 a prepared food shop.

20 Second the motion, Mr. Hood also
21 supported the motion, Mr. Jordan, Mr. Hinkle, and
22 a Board member not present, not voting. So,

1 again, the final vote is 4 to 0 to 1. The motion
2 carries.

3 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
4 Moy.

5 Seeing as there is no opposition in this
6 case, the Board would like to waive the
7 requirement and ask that a summary order be
8 issued. Thank you.

9 MS. GLAZER: Madam Chair, I think I may
10 have misspoke when I said that the 18-person
11 limit was in the definition. It is not, it is in
12 Section 712.1, which states that sort of the
13 converse of the situation, that the uses
14 permitted in the C-1 if, by special exception, if
15 it's more than 18, therefore, the reverse is
16 true; if there are less than 18, it is allowed as
17 a matter of right.

18 CHAIRPERSON MOLDENHAUER: Okay. I think
19 that we did, though, include it as one of the
20 conditions, as well as the timing, so I think
21 that that was addressed.

22 Thank you very much for identifying that

1 on the record.

2 That being said, the application has been
3 approved, and I believe that that is all of our
4 cases for this morning.

5 So, we will reconvene at one o'clock.
6 Thank you.

7 [Luncheon break.]

8 CHAIRPERSON MOLDENHAUER: This hearing
9 will please come to order.

10 Good afternoon, ladies and gentlemen. We
11 are located today in the Jerrily R. Kress
12 Memorial Hearing Room at 441 4th Street, N.W.
13 Today is November 29th, 2011, Public Hearing in
14 the Board of Zoning Adjustment for the District
15 of Columbia.

16 My name is Meridith Moldenhauer,
17 Chairperson. Joining me today, to my left, is
18 representative of the Zoning Commission, Chairman
19 Anthony Hood. To my right is Mayoral Appointee
20 Lloyd Jordan, and to my far right is
21 representative of the National Capital Planning
22 Commission. Jeffery Hinkle.

1 Copies of today's agenda are available to
2 you and are located to my left on the wall bin
3 near the door.

4 Please be advised this proceeding is
5 being recorded by a court reporter and is also
6 being webcast live. Accordingly, I must ask you
7 to refrain from any disturbing noise or actions
8 in the hearing room.

9 When presenting information to the Board,
10 please turn on your microphone, first stating
11 your name and home address. When you are
12 finished speaking, please turn off your
13 microphone, so that your microphone is no longer
14 picking up any sounds or background noise.

15 All persons planning to testify either in
16 favor or in opposition are to fill out two
17 witness cards. These cards are located to my
18 left on the table near the door, on the tables in
19 front of you. Upon coming forward to speak to
20 the Board, please give both cards to the court
21 reporter sitting to my right.

22 Also, if you wish to file any additional

1 written testimony or documentation today, please
2 submit an original along with 12 copies to the
3 Secretary for distribution. If you do not have
4 the requisite number of copies, you can go across
5 the hall to the machine in the Office of Zoning
6 and have copies made.

7 The order of procedures of special
8 exceptions and variances are as follows: one,
9 statement of the Applicant and Applicant's
10 witnesses; two, persons and parties in support;
11 three, persons and parties in opposition; four,
12 reports of the ANC; five, government reports
13 including the Office of Planning and Department
14 of Transportation; six, rebuttal and closing
15 statements.

16 Pursuant to Section 3117.5 and 3117.4,
17 the following time constraints will be
18 maintained. The Applicant, Appellant, persons
19 and parties except the ANC including their
20 witnesses will be given 60 minutes collectively.

21 The appellees, persons and parties, except the
22 ANC in opposition will be given 60 minutes

1 collectively. Individuals will be given 3
2 minutes, and organizations will be given 5.

3 These time restrictions do not include
4 cross-examinations or questions from the Board.
5 Cross-examination of witnesses is permitted by
6 the applicant or parties. The ANC within which
7 the property is located is automatically a party
8 to a special exception or a variance case.
9 Nothing prohibits the Board from placing
10 reasonable restrictions on cross-examination,
11 including limitations on time and limitation of
12 the scope of cross-examination.

13 The record will be closed at the
14 conclusion of each case, except for any material
15 specifically requested by the Board. The Board
16 and the Staff will specify at the end of each
17 hearing what is expected and the date and time in
18 which that information must be submitted to the
19 Office of Zoning. After the record is closed, no
20 other information will be accepted by the Board.

21 The District of Columbia's Administrative
22 Procedures Act requires that a public hearing on

1 each case be held in the open before the public.
2 Pursuant to Section 405(b) and 406 of the Act,
3 the Board may, consistent with the rules and
4 procedures and the Act, enter into a closed
5 meeting on a case for purposes of seeking legal
6 counsel on a case per D.C. Code Section
7 2-575(b)(4) and/or deliberating on a case
8 pursuant to Section D.C. Code 2-575(b)(13), but
9 only after providing the necessary Public Notice
10 and in the emergency closed meeting after taking
11 a roll call vote.

12 The decision of the Board in these
13 contested cases must be based exclusively on the
14 record. To avoid any appearance to the contrary,
15 the Board requests that parties not engage
16 members of the Board in conversation.

17 Please turn off all beepers and cell
18 phones at this time as to not disturb these
19 proceedings.

20 The Board will now consider preliminary
21 matters. Preliminary matters include request for
22 postponement, continuance or withdrawal, or

1 whether proper adequate notice of a hearing has
2 been given.

3 If you are not prepared to go forward
4 today or if you believe that a case should be
5 postponed, now is the time to raise such a
6 matter.

7 Mr. Secretary, do you have any
8 preliminary matters?

9 MR. MOY: Madam Chairperson, we do have
10 one major preliminary matter, and that is the
11 request for a postponement to Application No.
12 18248 of Abdo.

13 CHAIRPERSON MOLDENHAUER: Okay. We will
14 hear that case quickly and address that request.

15 Should we call the case?

16 Application No. 18248

17 MR. MOY: Yes, sorry. That would be
18 Application No. 18248 of Abdo Development LLC,
19 pursuant to 11 DCMR 3103.2, for a variance from
20 the off-street parking requirements under
21 Subsection 2101.1, a variance from the parking
22 space size requirements under Subsection 2115.1,

1 a variance from the parking accessibility
2 requirements under subsection 2117.4, and a
3 variance for the loading requirements under
4 Subsection 2201.1. This is for the construction
5 of a new apartment building in the R-5-E District
6 at premises 1427 Rhode Island Avenue, Northwest,
7 property located in Square 210, Lots 27 and 28.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much. Good morning -- good afternoon, actually.

10 MS. PRINCE: Good afternoon. Alison
11 Prince of Goulston & Storrs here on behalf of
12 Abdo Development.

13 I'm here today to request a second and
14 final postponement. I thought we would be in a
15 position to go forward today. Some last-minute
16 issues came up with the most affected property
17 owner, the property owner to the west. We'd like
18 to make every effort to resolve those. We think
19 a second postponement will give us that time, and
20 if we haven't resolved them by then, we may not
21 proceed.

22 CHAIRPERSON MOLDENHAUER: Okay. You said

1 30 days, but obviously, with the holiday, that
2 pushes us into January, and our January calendar
3 is already pretty full. So I was looking at it,
4 and I think probably the earliest time that we
5 can schedule this for, unless, Mr. Moy, you see
6 some other time we can squeeze it in, would be
7 February 14th.

8 MS. PRINCE: Valentine's Day, isn't that
9 nice?

10 CHAIRPERSON MOLDENHAUER: I wasn't
11 thinking about that.

12 [Laughter.]

13 MS. PRINCE: That's fine.

14 CHAIRPERSON MOLDENHAUER: So we'll do it
15 for the 14th in the afternoon. Hopefully, it
16 will be a good Valentine's Day for all.

17 MS. PRINCE: Thank you.

18 CHAIRPERSON MOLDENHAUER: Okay, thank
19 you.

20 Now, before we now proceed, before any
21 other preliminary matters, if all individuals
22 wishing to testify today can please stand, and

1 the oath will be administered.

2 MR. MOY: Do you solemnly swear or affirm
3 that the testimony you're about to present in
4 this proceeding is the truth, the whole truth,
5 and nothing but the truth?

6 [Witnesses sworn en masse.]

7 MR. MOY: Ladies and gentlemen, you may
8 consider yourself under oath.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much, Mr. Moy. We can call our first case of the
11 afternoon.

12 Application No. 18284

13 MR. MOY: Yes. Good afternoon, Madam
14 Chairperson, members of the Board. The first
15 case before the Board this afternoon is
16 Application No. 18284. This is the Application
17 of AMGR 2055 L Owner LLC, pursuant to 11 DCMR
18 3104.1 and 3103.2. This is for a variance from
19 the parking requirements under Section 2101 and a
20 special exception from the rear yard requirements
21 under Section 774, to permit the expansion of an
22 existing office and switch gear building through

1 the acquisition of transferrable development
2 rights in the C-3-C District. This is at
3 premises 2055 L Street, N.W., property located in
4 Square 100, Lots 121, 2005 through 2010.

5 CHAIRPERSON MOLDENHAUER: Good morning or
6 -- I keep on saying "morning." Good afternoon.
7 If the parties can please introduce themselves?
8 Thank you.

9 MS. SHIKER: Good afternoon. My name is
10 Christine Shiker. I'm with the law firm of
11 Holland & Knight. I am joined today by Pam
12 Frentzel-Beyme from Monument Reality and
13 representing the Applicant. To my left is Jane
14 Nelson, the architect from Nelson Architects. We
15 also have Steven Sher from the law firm of
16 Holland & Knight and Erwin Andres from
17 Gorove/Slade, rounding out our panel

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much.

20 I've looked through the record, and I
21 think everything is fairly full. I would just
22 say if you want to maybe focus a little bit just

1 on the variance case and the parking, I don't
2 think there needs to be a lot of presentation or
3 any on the special exception relief. So, if you
4 want to present on that issue, that would be
5 helpful.

6 MS. SHIKER: Okay, great. I would ask
7 Ms. Nelson to walk through the challenges and
8 constraints that are associated with our parking
9 variance, and then we'd be prepared to answer any
10 questions. Thank you.

11 MS. NELSON: My name is Jane Nelson. I'm
12 with Nelson Architects. Good afternoon.

13 All right. So I'll just fast-forward to
14 the presentation and actually would go to the
15 parking.

16 The site is a corner lot. It faces 21st
17 Street and L Street. The parking entrance is on
18 21st Street, the middle of the building, and it
19 has two levels of existing parking.

20 The parking area in the basement
21 basically fills up about 100 percent of the lot,
22 so we really don't have any leeway to expand

1 horizontally for the garage, and lowering it to a
2 third level is also an impracticality with the
3 existing structure above.

4 When we started looking at the parking
5 requirements, the first thing we came across is
6 what do you classify the switch gear. The
7 building has switch gear and related functions on
8 floors one, two, three, and partial fourth, and
9 then also some in the basement levels.

10 We met with -- we were not able to find
11 the Zoning Computation Chief for when the
12 building was first permitted, and so we met with
13 the Zoning Administrator to discuss what he felt
14 the classification of the switch gear is. That
15 determination by the Zoning Administrator was
16 that it is the optical transmission node, which
17 is parked at 1:3000.

18 So, with the existing building and the
19 proposed eighth floor addition, the parking
20 calculations would require 90 spaces for office,
21 31 spaces for the switch gear, for a total of 121
22 spaces.

1 The existing building in the two levels
2 of parking has 79 standard spaces and 22 compact
3 spaces for a total of 101 existing spaces. For
4 the purposes of the zoning calculation, we did
5 not include the compact spaces, so we are
6 requesting relief for 42 spaces.

7 But in those 42 spaces, again, I just
8 want to point out that approximately 37 percent
9 of the building is actually switch gear and
10 related functions.

11 And that's pretty much it for the
12 parking. Any questions?

13 CHAIRPERSON MOLDENHAUER: Do Board
14 members have any questions for Ms. Nelson?

15 [No audible response.]

16 CHAIRPERSON MOLDENHAUER: Seeing none, if
17 you can present any additional witnesses?

18 MS. SHIKER: I'll ask Mr. Andres to talk
19 about the adequacy of the parking that's
20 provided. Again, the practical difficulty is
21 related to the existing condition, the existing
22 structure and ramps within the building, and the

1 lack of having any additional space for
2 additional parking levels or spaces, and so I'd
3 ask Mr. Andres to talk about the adequacy of the
4 parking that's provided.

5 MR. ANDRES: Good afternoon, Chairwoman
6 Moldenhauer and members of the Board. My name is
7 Erwin Andres, principal of Gorove/Slade
8 Associates.

9 With respect to the parking that's
10 provided and the adequacy for the parking, there
11 were several factors that are used to validate
12 that the parking that we're proposing is adequate
13 to serve the proposed demand. The first point is
14 the fact that the site is well served by transit
15 located on the north side of L Street, between
16 21st and 20th. It's within four blocks of the
17 Foggy Bottom and the Farragut West Metro Stations
18 and also five blocks to the Farragut North Metro
19 Station.

20 There are about 19 bus routes that are
21 within one block of this site. It's also one
22 block away from the existing Circulator bus and

1 the future K Street transit way, which will also
2 provide extensive transit service, and it's also
3 located within five blocks of seven Capital
4 Bikeshare stations.

5 So, given the site's location in the
6 urban core and its ability to take advantage of
7 the existing transportation resources, we believe
8 that the fact that its location provides a great
9 benefit to the site.

10 Another important component is that of
11 the 101 parking spaces that are provided, there
12 are actually 22 that are not counted as part of
13 the calculation, because they're noncompliant;
14 however, they are 22 physical spaces that you
15 could fit a car in. So, even though the
16 requested variance is 42 spaces, in essence it's
17 only -- it's less than -- it's more than half of
18 that, given the fact that there are parking
19 spaces that don't account for compliance spaces,
20 but it physically can fit vehicles.

21 One of the other items that contributed
22 to the parking supply being adequate is that the

1 switch gear equipment, as was previously
2 identified, generates a zoning demand of 32
3 parking spaces. Based on our experience with
4 these types of uses, given the fact that is
5 94,000 square feet, 32 spaces that are required
6 by Zoning won't necessarily require that many,
7 given the Verizon technicians that are there on a
8 daily basis to serve those -- serve that
9 equipment.

10 The actual demand for that switch gear
11 equipment is going to be in the range of 5 to 10
12 technicians, and all those technicians won't be
13 there all day.

14 The last item to support the variance is
15 the fact that given the recent Draft Amendment of
16 the Zoning Rewrite, the proposed modifications to
17 this site would not require this project going
18 before the Board of Zoning Adjustment.

19 So, with those factors, we believe that
20 the parking provided will be adequate to serve
21 the site.

22 CHAIRPERSON MOLDENHAUER: You may have

1 said this. I'm sorry. What is the current
2 number of vehicles required for the switch gear
3 that's on the facility now?

4 MR. ANDRES: Well, the switch gear total
5 space is 94,000 square feet, roughly, and that
6 parking -- the Zoning parking requirement for
7 that is 32 spaces.

8 CHAIRPERSON MOLDENHAUER: Not the Zoning
9 parking. Verizon, they're on the site right now.
10 How many spaces do they use currently?

11 MR. ANDRES: In the range about 10.

12 CHAIRPERSON MOLDENHAUER: Okay. And do
13 they take up a regular standard-size space, or do
14 they take up a larger space because it's a
15 service vehicle?

16 MR. ANDRES: Well, for some of them, it's
17 employees that are just there servicing the
18 equipment, and it's not the actual vehicle
19 itself.

20 CHAIRPERSON MOLDENHAUER: So, out of the
21 10, did you get a count of what the variety was?
22 Maybe somebody else can better answer the

1 question.

2 MS. FRENTZEL-BEYME: Hi. Good afternoon.

3 I'm Pam Frentzel-Beyme with Monument Realty.

4 I'd like to answer that question, if I could.

5 The Verizon technicians, if they do have
6 oversized vehicles, they actually can access a
7 portion of the building where some of the larger
8 vehicles can fit, which is access from the alley,
9 and it's not counted in any of the spaces. There
10 are two spaces at the bottom of that ramp.

11 CHAIRPERSON MOLDENHAUER: Can you show
12 that on the diagram? Maybe Ms. Nelson can pull
13 up a diagram and just identify that.

14 MS. FRENTZEL-BEYME: Yeah. I don't know.
15 Do we have a pointer? I can just go over there.

16 So, if you look up in this section here -
17 - and this is actually the basement level. We'd
18 have to go up one more floor.

19 Back here where this alley ends, it shows
20 a ramp here. That actually goes down, and there
21 is quite a high ceiling, ceiling clearance there,
22 and that's where Verizon trucks, if they are

1 large and cannot fit in the garage -- that's
2 where they would go. Otherwise, the contractors
3 drive regular vehicles or pickup trucks or other
4 vehicles that can fit in the garage.

5 CHAIRPERSON MOLDENHAUER: But right now
6 it's 10 vehicles that are used for the current
7 Verizon switch equipment that's located on site?

8 MS. FRENTZEL-BEYME: Up to 10. I mean,
9 they're in and out of the building all day.

10 CHAIRPERSON MOLDENHAUER: Okay.

11 MS. FRENTZEL-BEYME: So that's just kind
12 of an estimate.

13 CHAIRPERSON MOLDENHAUER: Okay, thank
14 you.

15 I don't know if I jumped in, in the
16 middle, or if you were already done. Sorry.

17 MR. ANDRES: Well, I did finish. If
18 there's sections you want me to repeat, I'd be
19 more than happy to.

20 CHAIRPERSON MOLDENHAUER: I don't have
21 any other questions. Do any other Board members
22 have any questions?

1 MR. JORDAN: Just one quick one. In
2 regards to the configuration with the -- in the
3 parking garage, I understand part of your concern
4 is that the conditions -- that there's poles that
5 are already there and things you can't move that
6 are in -- is it proposing, is it going to show
7 any kind of safety hazards or issues of getting
8 around in the garage? Is it a tight squeeze
9 driving in that garage?

10 MS. SHIKER: When the garage was
11 constructed in the mid 1960s, it was constructed
12 in compliance with zoning. The regulations have
13 just changed over time. In 1964, '65 period when
14 this was constructed, only standard spaces
15 counted for zoning, and you were required to have
16 14-foot aisles. This garage was built fully in
17 compliance with that 17-foot aisles, standard
18 spaces. We can't figure out exactly the
19 configuration, but we can tell by the structure
20 of the building where the aisles are and
21 obviously where the ramps are.

22 The garage does operate acceptably and

1 will continue to operate that way with the
2 parking that's proposed.

3 CHAIRPERSON MOLDENHAUER: Any other Board
4 questions?

5 [No audible response.]

6 CHAIRPERSON MOLDENHAUER: Seeing none, do
7 you have any other witnesses?

8 MS. SHIKER: If there are any other
9 additional issues you'd like for us to address,
10 we'd be happy to. Otherwise, we believe that the
11 information that we've provided in the record and
12 through our testimony today satisfies both the
13 standard for the variance for the parking
14 requirements as well as the special exception for
15 the rear yard, and we'd ask for the Board to
16 consider this case at its earliest time. Thank
17 you.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much. I appreciate the brevity, and I think that
20 it's answered all my questions.

21 Do any Board members have any final
22 questions, or you can address it at a later date?

1 [No audible response.]

2 CHAIRPERSON MOLDENHAUER: Then at this
3 point in time, I'll see if there's any
4 individuals in the audience in support or in
5 opposition to this case.

6 [No audible response.]

7 CHAIRPERSON MOLDENHAUER: Seeing none,
8 then I'll turn to the Office of Planning for
9 their report.

10 MR. MORDFIN: Good afternoon, Madam
11 Chair, and members of the Board. I'm Stephen
12 Mordfin with the Office of Planning.

13 And the subject application is in
14 conformance with the variance criteria to reduce
15 on-site parking, because the original parking
16 requirement for the building is unknown, making
17 it impossible to grandfather in the parking and
18 requiring that the building be parked to current
19 standards.

20 Also, because the aisle widths within the
21 garage conform to 1964 requirements, use of
22 compact spaces cannot be used to satisfy the

1 parking requirement because of the nonconforming
2 aisle widths. The exceptional situation
3 resulting in a practical difficulty is the
4 inability of the Applicant to grandfather in the
5 parking or provide additional on-site parking.
6 The impact or the reduction of parking would be
7 minimized through the use of compact spaces, even
8 though they cannot be used to provide required
9 parking, the reduced parking demand that the
10 switch gear in this particular building would
11 generate and the proximity of the site to various
12 public transportation options.

13 Therefore, the Office of Planning --
14 therefore, there would be no substantial
15 detriment to the Zone Plan, and the Office of
16 Planning recommends approval of the variance
17 request.

18 Subject to application is also in
19 conformance with the specific special exception
20 criteria to reduce the rear yard, because
21 adequate separation would be provided for the
22 provision of light and air. There are no

1 habitable rooms within either the subject or
2 adjacent building.

3 Adequate parking, loading, and access to
4 parking loading would be provided, assuming the
5 requested parking relief is granted.

6 DDOT has no concerns with the request,
7 and the site is not historic. The relief would
8 allow the Applicant to expand the switch gear
9 while also providing office space, a desirable
10 use within the C-3-C and DD Overlay, and the
11 relief would allow the Applicant to extend the
12 height of the building, making it more consistent
13 with striding development.

14 Therefore, the request conforms to the
15 specific requirement to reduce the rear yard
16 requirement, and the Office of Planning
17 recommends approval of the special exception
18 request.

19 Thank you.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much, Mr. Mordfin.

22 Do any -- does the Applicant have any

1 questions for the Office of Planning?

2 MS. SHIKER: We do not.

3 CHAIRPERSON MOLDENHAUER: No. Do any
4 Board members have any questions for the Office
5 of Planning?

6 [No audible response.]

7 CHAIRPERSON MOLDENHAUER: Seeing none,
8 thank you.

9 Then at this point in time, we'll turn to
10 see if anybody in the audience is present from
11 ANC-2A.

12 [No audible response.]

13 CHAIRPERSON MOLDENHAUER: Seeing no one,
14 I'll indicate that we have Exhibit 25 in our
15 record, which states that at a duly noticed and
16 regularly scheduled meeting of the ANC on October
17 19th, 2011, with a quorum present of 5 members,
18 they voted unanimously 5 to 0 to support the
19 application. This letter satisfies our standards
20 and will receive great weight.

21 We also -- just in regards to agency
22 reports, I'd like to also note that we do have a

1 report from DDOT, which is dated November 17th,
2 which indicates that they've reviewed the
3 application, and that they find that this
4 application would have no adverse impact on
5 traffic, that they would recommend that the
6 Applicant implement a TDM to reduce the demand
7 for automotive trips, and that they would also
8 encourage Metro SmartCards to staff and to
9 encourage mass transportation, such as Capital
10 Bikeshares, Metro and Metrorail systems and the
11 Circulator.

12 That being said, I'll turn back to the
13 Applicant for any closing remarks.

14 MS. SHIKER: We believe that the
15 application presented satisfies the burden of
16 proof, and we'd request that the Board approve
17 the application.

18 Thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much.

21 At this point in time, I will conclude
22 the hearing, unless any Board members have any

1 final questions of the Applicant.

2 [No audible response.]

3 CHAIRPERSON MOLDENHAUER: Seeing none,
4 then the hearing will be concluded, and we'll
5 enter into deliberation.

6 This case before us, I think, is a fairly
7 straightforward case. There is a request for
8 relief for special exception for a rear yard
9 requirement under 774, and I think that I'll
10 incorporate Office of Planning's report. I don't
11 think that there's going to be any impact on any
12 light and air issues in regards to that relief
13 that's being sought. Any issues in regard to the
14 ability for neighboring windows, to be able to
15 have their light or air obstructed or any issues
16 of privacy, we heard no neighboring properties
17 express any concerns in that regard or have any
18 objection.

19 In addition to that, ANC recommended
20 their approval.

21 We also then had a variance request for
22 off-street parking here. There is going to be a

1 reduction in parking, and it was going to be a
2 requirement of 121 spaces, and they were
3 proposing 79 and 22 nonconforming compact spaces.

4 I think that this case was fairly
5 straightforward. It's a prior existing building
6 that was built in 1964, as testified to both in
7 the prehearing statement and by the Applicant's
8 counsel today. The preexisting condition created
9 a challenge where the floor plan, the core
10 structure of the building did not allow for any
11 additional change in regards to the structure or
12 any additional vehicles or -- sorry -- any
13 additional parking.

14 They also cannot determine the
15 grandfathering of exactly the number of spaces
16 prior to 1965 due to the layout, and I think that
17 also, based on the testimony regarding the square
18 footage of the switch gear on floors one, two,
19 three, and partially on the fourth, that based on
20 that square footage, there would be a need for 32
21 spaces based on the regulation, but that
22 currently only about 10 spaces are being used,

1 and they're being used periodically. I think
2 that that -- that definitely went to show that
3 that was a unique experience, which also would
4 not create any detriment to the public good or
5 the Zone Plan in regards to reducing that. And
6 we also have DDOT's approval as well.

7 That being said, I would be in favor of
8 supporting this application, and I'll see if
9 there's any additional deliberation from Board
10 members.

11 [No audible response.]

12 CHAIRPERSON MOLDENHAUER: Seeing none,
13 then I will submit a motion, a motion to approve
14 Application No. 18284, pursuant to 11 DCMR 3104.1
15 and 3103.2, for a variance from the parking
16 requirements under Subsection 2101.1 and a
17 special exception from the rear yard requirements
18 under Section 774, to permit the expansion of an
19 existing office and switch gear building through
20 the acquisition of transferrable development
21 rights in the C-3-C Zone District at premises
22 2055 11th Street -- L Street, N.W.

1 A motion has been made. Is there a
2 second?

3 MR. HINKLE: Second.

4 CHAIRPERSON MOLDENHAUER: A motion has
5 been made and seconded. All those in favor, say
6 "aye."

7 [Chorus of ayes.]

8 MR. MOY: Staff would record the vote as
9 4 to 0 to 1. This is on the motion of
10 Chairperson Moldenhauer to approve the
11 application for variance relief from Section
12 2101, special exception relief from the
13 requirements of the rear yard under Section 774.
14 Second the motion, Mr. Hinkle. Also in support
15 of the motion, Mr. Hood and Mr. Jordan. No other
16 Board members participating. Again, the final
17 vote is 4 to 0 to 1. The motion carries.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much, Mr. Moy, and seeing that there's no
20 opposition in this case, the Board would like to
21 waive the requirements and ask that a summary
22 order be issued.

1 MR. MOY: Thank you, Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Thank you.

3 MS. SHIKER: Thanks.

4 Application No. 18285

5 MR. MOY: The next application before the
6 Board is Application No. 18285. This is the
7 application of Verizon Washington DC Inc. and
8 EastBanc Inc., pursuant to 11 DCMR 3103.2. This
9 is for a variance from the building height under
10 Section 930.1, floor area ratio under Section
11 931.2, lot occupancy under Section 932.1, rear
12 yard setback under Section 933.2, and
13 nonconforming structure provisions under Section
14 2101.3. This is to allow the construction of an
15 addition to an existing telephone switch building
16 in the W-1 District at premises 1045 Wisconsin
17 Avenue, N.W., property located in Square 1189,
18 Lot 830.

19 CHAIRPERSON MOLDENHAUER: Good afternoon.
20 The parties can introduce themselves for the
21 record.

22 MS. BRAY: Good afternoon. I'm Kinley

1 Bray with the law firm of Arent Fox on behalf of
2 the Applicant, EastBanc and Verizon Washington
3 DC.

4 MR. STERNLIEB: I'm Joe Sternlieb.

5 CHAIRPERSON MOLDENHAUER: Your mic is not
6 on, Mr. Sternlieb.

7 MR. STERNLIEB: Sorry. Joe Sternlieb
8 with EastBanc.

9 MR. BRENNER: Good afternoon. Greg
10 Brenner with WB Engineers and Consultants.

11 MR. HUCKA: Gary Hucka with Verizon.

12 MR. HASSAN: Hany Hassan with Beyer
13 Blinder Belle. We are the architects.

14 MS. MCCARTHY: Ellen McCarthy with Arent
15 Fox.

16 CHAIRPERSON MOLDENHAUER: Okay. We also
17 have a request for party status in this case, so
18 I don't know if we can make room at the table for
19 the party status request or --

20 MS. BRAY: Actually, the party status
21 request was withdrawn this morning.

22 CHAIRPERSON MOLDENHAUER: Oh. I have not

1 gotten any documentation of that.

2 MS. BRAY: Okay. It was sent to me by
3 your staff this morning around nine o'clock, but
4 the individual or the organization requesting
5 party status is here.

6 CHAIRPERSON MOLDENHAUER: Okay. We'll
7 pause for a moment.

8 MR. MOY: Yeah. Let me check with the
9 file room manager. If it came in this morning,
10 it may be a little bit delayed in filing.

11 [Pause.]

12 CHAIRPERSON MOLDENHAUER: Okay. I did
13 see that, so that is fantastic. So we can then
14 just move forward with the case, and we will let
15 you start your presentation.

16 MS. BRAY: Thank you, Madam Chair and
17 members of the Board.

18 So you've met our team, but as a
19 preliminary matter, I'd like to request that Mr.
20 Hany Hassan, Ms. McCarthy, and Mr. Greg Brenner,
21 who is the consultant to Verizon, be designated
22 as expert witnesses and tendered to the Board.

1 Mr. Hassan and Ms. McCarthy have both
2 testified before this Board on numerous occasions
3 in their respective fields of architecture and
4 planning and zoning. Their CVs were included in
5 the Applicant's prehearing statement.

6 Mr. Brenner, I have his CV here. He has
7 over 20 years of experience in designing,
8 managing, and implementing over 1,000 projects
9 for Chesapeake and Potomac Telephone, Bell
10 Atlantic, and now Verizon, and has previously
11 also been accepted as an expert in these types of
12 communication facilities that we're dealing with
13 on the subject site before this Board and other
14 similar bodies.

15 CHAIRPERSON MOLDENHAUER: If you can
16 obviously present a copy of the CV to -- do you
17 only have one copy? I mean, I think that,
18 obviously, due to the fact that we only have one
19 copy, we'll have to -- I don't know what the
20 necessity would be to have an expert on that
21 topic just yet. It may not be necessary based on
22 the evaluation and the other information we hear,

1 so why don't we just move forward with the case.
2 When we get to that point, if it's necessary for
3 us to review his CV and determine him to be an
4 expert, we can do that at that time.

5 MS. BRAY: But as to Mr. Hassan and Ms.
6 McCarthy?

7 CHAIRPERSON MOLDENHAUER: Yes, they are
8 deemed experts. Thank you.

9 MS. BRAY: Thank you.

10 Finally, as another preliminary matter --
11 and I hope this made it into your file -- late
12 last night, we revised our self-certification
13 form to correct some of the information in the
14 prehearing statement.

15 As this project has progressed, we have
16 obtained new surveys of the property, which
17 disclosed a few things that impact the extent of
18 the relief we're requesting but not the design,
19 and we filed a revised self-certification showing
20 a reduction in the amount of relief we have
21 requested with respect to FAR.

22 So we have gone from what was previously

1 8.6 percent deviation from the overall FAR on the
2 project to 2.3 percent deviation from the overall
3 FAR and from a request for 15 percent increase
4 over the existing nonresidential FAR condition to
5 3.3 percent deviation. So the amount of relief
6 has been reduced, and that's as a result of the
7 survey disclosing the measuring point for the
8 building changing and the -- our previous
9 calculations were based on the conservative
10 assumption that the floor heights of the existing
11 switch building aligned more closely with floors
12 one and two of the proposed development, and the
13 new survey actually shows -- and I can submit a
14 cross-section for the record -- that they
15 actually more closely align with the G1 and the
16 one level and G1 is only partially chargeable to
17 FAR.

18 So, nonetheless, we still are requesting
19 the variances, but we just wanted to correct that
20 for the record.

21 And the second part of that revised self-
22 certification form is a change to the proposed

1 building height due to the change in the
2 measurements at the top of the curb, which
3 eliminates the need for height variance.

4 CHAIRPERSON MOLDENHAUER: Okay. So we
5 did receive that, and we have the changed
6 certificate.

7 And I just want to make sure I understand
8 this. Obviously, the change is due to -- when
9 you surveyed the property again, you understood a
10 new, I guess, ground level in order to measure
11 the building from that point and then evaluating
12 where each level was and then being able to
13 measure the FAR, is that kind of a brief summary
14 or synopsis of exactly what happened?

15 MS. BRAY: That's right. The design of
16 the building didn't change at all, but the
17 position of the ground relative to each floor --

18 CHAIRPERSON MOLDENHAUER: In relation to
19 each floor --

20 MS. BRAY: -- changed.

21 CHAIRPERSON MOLDENHAUER: -- okay.
22 That's what I thought. I just wanted to make

1 sure I understood that before we get started.

2 Okay. That is fine. Obviously, we'll
3 take out the relief that's being sought for the
4 height requirement. There is no height
5 requirement, and you are now seeking -- the
6 reduction is -- can you just go through those
7 figures again, so I can make sure I have it
8 correctly?

9 You initially -- total permitted is 2.5
10 FAR, and now your requested FAR is?

11 MS. BRAY: 2.56 overall.

12 CHAIRPERSON MOLDENHAUER: 2.56. Okay.
13 And your lot occupancy?

14 MS. BRAY: Lot occupancy remains the
15 same.

16 CHAIRPERSON MOLDENHAUER: It's still 96?

17 MS. BRAY: That's correct.

18 CHAIRPERSON MOLDENHAUER: Okay.

19 MS. BRAY: And the nonresidential floor
20 area ratio goes from -- what was previously
21 requested was 1.38 to 1.24.

22 CHAIRPERSON MOLDENHAUER: And nothing

1 else changed?

2 MS. BRAY: That's right.

3 CHAIRPERSON MOLDENHAUER: Okay.

4 MR. JORDAN: Let me go back a second. So
5 we have a FAR reduction from 2.77 to 2.56?

6 CHAIRPERSON MOLDENHAUER: Mm-hmm.

7 MS. BRAY: The original application was
8 2.77, and the prehearing statement, we amend it
9 to 2.71.

10 MR. JORDAN: And that lot occupancy went
11 from 96 to 80 --

12 MS. BRAY: Hasn't changed.

13 CHAIRPERSON MOLDENHAUER: Still 96, yeah.

14 MR. JORDAN: But the building height is
15 no longer a request?

16 CHAIRPERSON MOLDENHAUER: It is no longer
17 required.

18 MR. JORDAN: Thank you.

19 CHAIRPERSON MOLDENHAUER: Okay. And
20 that's correct? That's everything?

21 MS. BRAY: Yes, that's correct.

22 CHAIRPERSON MOLDENHAUER: I am just

1 looking at this again. I think if you can focus
2 most of your presentation on the FAR relief, but
3 mostly on the lot occupancy, your variance for
4 lot occupancy, all the way up to the 96 percent,
5 that I think would be one of the areas that I
6 find the hardest, I guess, standard to meet, and
7 everything else, I think, is quite full in your
8 report.

9 MS. BRAY: That's where the bulk of our
10 presentation is focused already.

11 CHAIRPERSON MOLDENHAUER: Okay,
12 fantastic.

13 MS. BRAY: So, with that, I'd like to
14 turn the mic over to Joe Sternlieb with EastBanc
15 who is standing in place of Mary Mottershead, who
16 we had previously identified. Unfortunately,
17 she's out with the flu today, but Mr. Sternlieb
18 can walk through briefly the proposed development
19 and his relationship to development.

20 MR. STERNLIEB: Good afternoon. I'm Joe
21 Sternlieb with EastBanc.

22 EastBanc has been an active developer of

1 mixed-use projects in -- with a concentration in
2 Georgetown and the West End for 25 years.
3 EastBanc is best known for participating in the
4 development of the West End Ritz, a mixed-use
5 residential hotel and retail project, the
6 Georgetown Incinerator, which is also a mixed-use
7 residential hotel, retail, and entertainment
8 project, as well as Cady's Alley, which is an
9 aggregation of 25 buildings on the west side of M
10 Street in the commercial district that will be
11 redeveloped into a 92,000-square-foot retail area
12 along with apartments and office space above.

13 One of our other well-known projects in
14 Georgetown is 3307 Water Street, which is similar
15 to the project we're proposing to you today, in
16 that the site was adjacent to an unmovable public
17 utility, Pepco, and adjacent to the C&O Canal,
18 and it was presented -- it presented at the time
19 a number of design and engineering challenges
20 that we were able to overcome. And we delivered,
21 I think, what was a very well-received
22 condominium building.

1 EastBanc is the largest developer/owner
2 of retail space in Georgetown with a total
3 portfolio of about 300,000 square feet with
4 tenants ranging from the 560-square-foot Sweet
5 Green to the 20,000-square-foot new Brooks
6 Brothers. Many consider us to be the premier
7 developer of urban mixed-use residential projects
8 in the region, and that extends beyond just
9 EastBanc employees.

10 Somebody else wrote the first end, and I
11 put the second part in.

12 The project before you today is similar
13 to many of the projects that our firm has
14 completed in Georgetown, in that it's a
15 challenging site with obstacles that we are
16 proposing to turn into opportunities

17 The existing building on the site has a
18 footprint of approximately 17,000 square feet and
19 a setback of 100 feet from Wisconsin Avenue,
20 running a full 180 feet further east along the
21 canal, making it a very, very deep site.

22 The building is used by a public utility,

1 Verizon, as a switch, a phone switch housing
2 communications equipment that cannot feasibly be
3 relocated or interrupted nor, unlike other
4 Verizon locations, can anything be practically
5 constructed on top of the existing building
6 structure.

7 The space between the building and
8 Wisconsin Avenue is an unattractive, depressed,
9 paved surface parking lot for 20 cars that has
10 appeared as a broken tooth in the Georgetown
11 retail streetscape for over 50 years.

12 EastBanc is proposing to build a mixed-
13 use addition to the existing switch facility with
14 approximately 37,000 square feet of new
15 residential development, containing up to nine
16 units, and approximately 39,000 square feet of
17 nonresidential development, including 34,222
18 square feet of existing space devoted to the
19 switch, and a little less than 5,000 square feet
20 of retail development, which will be located in
21 two separate spaces on either side of the
22 residential entrance.

1 Our retail development plan for the
2 building is based on both the site location,
3 where Wisconsin Avenue was a retail storefront
4 street, and not a location where residential
5 units can be practically marketed or occupied on
6 the ground floor, as well as on our experience as
7 a retail developer in Georgetown.

8 Requiring enough space to attract the
9 kind of retailer that will draw people across the
10 canal and greatly improve the retail connection
11 between M and K Street, as well as across
12 Wisconsin Avenue, and this is a goal that we
13 share with both the community and with the Office
14 of Planning.

15 The space is most likely to be a very
16 high-quality apparel or design-oriented tenant
17 and not a restaurant space.

18 Our experience -- in our experience,
19 Wisconsin Avenue and M Street in Georgetown
20 function best from an urban street experience
21 perspective as continuous storefronts where the
22 amount of ground floor space is maximized for

1 retail uses. Due to the elevation in this
2 building, its relatively small footprint, the
3 needs of the residential core, and the need to
4 provide high-ceiling parking spaces for Verizon
5 trucks, we have only been able to get one full-
6 size retail space on to the site at about 4,100
7 square feet and a second small space at 876
8 square feet, south of the residential lobby.

9 This project received unanimous support
10 from ANC-2E as well as design concept approval
11 from the Commission on Fine Arts, consistent with
12 the recommendations of the Old Georgetown Board,
13 and you will hear from the Office of Planning
14 later today.

15 All three entities are supportive of
16 retail along this stretch of Wisconsin Avenue to
17 fill the gap created by the current surface
18 parking lot. The CFAOGB actually recommended
19 that we maximize the extent of storefront windows
20 along Wisconsin Avenue, providing more visible
21 retail than we had originally proposed to them.

22 With that, I'll conclude and will turn it

1 over to Gary Hucka who is representing Verizon
2 here today.

3 Thank you.

4 MR. HUCKA: For Verizon -- excuse me,
5 Board members. The point I want to go over today
6 is the concept of being able to build over the
7 existing switching station there. Both Greg
8 Brenner and I are here today to answer any
9 questions that you have.

10 I'll go over a real quick, just simple
11 point, that when the building was originally
12 designated, it was not designed to be expanded
13 upward. It was designed to be expanded toward
14 Wisconsin Avenue. It has been expanded once, and
15 we project no more need to expand the building.
16 That's why we can dispose of the surface parking
17 lot today.

18 So, in general, the building, as I said,
19 was designed to be expanded toward Wisconsin. It
20 was not designed to be expanded upward. That's
21 the long and the short of the reason you can't
22 build over it.

1 Greg can go over the really technical
2 issues with floor loading columns, those kind of
3 things, if that's where you -- if you want to go
4 into those type of details.

5 Are there questions?

6 CHAIRPERSON MOLDENHAUER: No. But I do
7 think I'd like to hear the structural aspect as
8 to why it can't, so I think that that would be
9 helpful.

10 MR. BRENNER: Okay. Madam Chairman,
11 members of the Board, I'm Greg Brenner with WB
12 Engineers and Consultants, 6701 Democracy
13 Boulevard, Bethesda, Maryland.

14 This facility, as Gary indicated,
15 designed to expand horizontally, while other
16 facilities in the District of Columbia vary, some
17 designed to go vertically, others not, the
18 foundations, the columns, the floor loading
19 associated with existing structure does not
20 permit a vertical addition.

21 The ability to go vertically could be
22 accommodated if there were feasible ways to get

1 into the facility, excavate, improve the
2 foundation structure, and bolster the columns or
3 drop additional columns into the facility.

4 However, being a telecommunications
5 switch facility, the facility planned in a 20-by-
6 20 grid. The layout of equipment and cable
7 racking does not permit these vertical additional
8 columns, nor does it permit for the excavation
9 within the basement to improve the foundation
10 structure, because of the spacing and existing
11 location of all the equipment, which cannot be
12 moved, for obvious reasons.

13 CHAIRPERSON MOLDENHAUER: I just have a
14 question. The current existing Verizon building,
15 is that built from lot line to lot line?

16 MR. BRENNER: So, on one side, it is.
17 The other side, you've got the parking lot.

18 CHAIRPERSON MOLDENHAUER: On the side of
19 the canal?

20 MR. BRENNER: The canal, it is --

21 CHAIRPERSON MOLDENHAUER: I'm talking
22 about the width of the building.

1 MR. BRENNER: The width of the building
2 is not quite to the property line at the canal.

3 CHAIRPERSON MOLDENHAUER: Okay.

4 MR. BRENNER: It's just inside of that,
5 if I recall.

6 CHAIRPERSON MOLDENHAUER: But there is no
7 room possible to potentially build almost a --

8 MR. BRENNER: Your --

9 [Simultaneous speaking.]

10 CHAIRPERSON MOLDENHAUER: -- structure
11 above it and kind of encase it?

12 MR. BRENNER: You're tight up to the
13 alley.

14 CHAIRPERSON MOLDENHAUER: Okay.

15 MR. BRENNER: Right. So you can't drop
16 columns outside of the exterior building wall.

17 CHAIRPERSON MOLDENHAUER: Okay.

18 MR. BRENNER: And at the -- at the canal
19 side, too close to the canal to feasibly come
20 down and land additional columns and span the
21 full width of the building.

22 CHAIRPERSON MOLDENHAUER: Okay. Thank

1 you.

2 MR. BRENNER: It's just not feasible.

3 CHAIRPERSON MOLDENHAUER: That answers
4 that question. It was hard to see from some of
5 the diagrams exactly where the current building
6 is in relationship to the property line. That
7 does provide some clarity in my mind.

8 Do you have any additional testimony?

9 MR. BRENNER: If you have any questions.

10 MS. BRAY: Mr. Brenner, can you just walk
11 through very quickly what the function of the
12 switch is. You said the layout of the equipment
13 doesn't really permit movement.

14 MR. BRENNER: There's certain elements
15 within the facility. You've got a mainframe,
16 where all the telephone lines come into the
17 building, roughly runs parallel with the alley.
18 This mainframe cannot be interrupted along the
19 alley. That's where your phone lines come in and
20 out. Once they come into the mainframe, they're
21 patched. Then they extend out to the myriad of
22 different switch facilities that serve different

1 needs of the community. You've got 911 service.
2 You've got regular telephone, you know, old
3 analog service. You've got digital services.
4 You've got a whole host of switches, and the
5 cable racking, I guess, most of you might be
6 familiar with like a land room where you've got a
7 piece of equipment and a cable rack overhead, and
8 that distribution goes out to your office space.

9 Well, these floor-to-floor heights in
10 these types of facilities are 14 feet clear, and
11 they allow three layers of cable racking, which
12 in some instances can be loaded 30 inches deep of
13 existing cable, which doesn't permit the ability
14 to move things around very easily. That cable
15 has been there for 30, 40, 50 years and goes out
16 -- is an umbilical to the community, serving
17 telephone service.

18 So the ability to move equipment and
19 cable in this grid that's overhead and on the
20 floor, which is very well coordinated at the
21 network planning phase to drop columns is nearly
22 impossible in most facilities. In this facility,

1 we haven't come up with a way to permit any
2 additional interior columns to help support a
3 vertical addition.

4 MS. BRAY: And on the parking associated
5 with the building, currently there is a surface
6 parking lot, and can you just walk through what
7 the use of that parking lot is currently and what
8 the future parking needs of Verizon will be?

9 MR. BRENNER: Sure. So these types of
10 facilities are generally unmanned facilities.
11 They have one or two people periodically on site.
12 There may be one person that roams from this
13 site to 2055 L Street, which you just heard on,
14 and two other sites to tend to the frame. You
15 know, this person has a new service, so they
16 patch them in. They're not on site full-time.

17 However, there's periodic visits by
18 outside plant technicians. These are the folks
19 that are dispatched by other facilities where all
20 the vehicles are housed, go out into the
21 community, because there's a trouble. They go
22 out to the community. They repair the trouble.

1 Then they have to go back to the central office
2 that that line is coming out of to either make a
3 further repair or verify the connectivity. So
4 it's periodic traffic in and out. That parking
5 lot, in my 20 years going down there, is probably
6 10 percent occupied at any one given time.

7 The need for Verizon is periodic parking
8 for employees on site, for real estate folks,
9 property management folks that are servicing the
10 building infrastructure elements, as well as
11 these technicians and the periodic -- technicians
12 that come to service the facility. So, on
13 average, I would say that there is a need for
14 four to seven parking spaces.

15 MS. BRAY: And what kinds of vehicles are
16 these folks driving to the facility?

17 MR. BRENNER: Predominantly, they're
18 service vans and company cars; however, the
19 outside plant folks that are out in the
20 neighborhood servicing troubles are typically in
21 either vans or bucket trucks. The commercial
22 folks typically are in vans, but residential

1 folks are usually in bucket trucks. So the
2 parking, we need to be able to accommodate the
3 height of the bucket truck.

4 MS. BRAY: Thank you.

5 What's the maximum height of the fleet
6 vehicles that you need to accommodate?

7 MR. BRENNER: These fleet vehicles
8 generally are 12 feet, 6 inches, but I think the
9 -- in working with the architect, in order to
10 maintain a floor-to-floor in that grade elevation
11 change, I think we're somewhere in the
12 neighborhood of a 14-foot-clear garage opening to
13 get in.

14 MS. BRAY: And do you have any point of
15 reference to compare that to a typical garage
16 opening? And perhaps Mr. Hassan can answer that
17 in his testimony, but just from a general design
18 perspective, for Verizon facilities, is a 14-
19 foot-clear ceiling height taller than what you
20 would normally see in a typical parking garage?

21 MR. BRENNER: It can be, depending on the
22 vehicles that come in. Yes.

1 The vehicle maintenance facilities where
2 these vehicles go to park oftentimes will have a
3 14-foot-clear garage.

4 MS. BRAY: Okay. Thank you.

5 With that, I'd like to turn to the
6 architect, Mr. Hany Hassan from Beyer Blinder
7 Belle Architects and Planners, who has a
8 PowerPoint presentation and can walk through that
9 with the Board, and I believe we have hard copies
10 for you as well, which I'll submit.

11 MR. HASSAN: Thank you. Good afternoon.
12 My name is Hany Hassan. I'm a principal with
13 Beyer Blinder Belle Architects and Planners. We
14 are the architects responsible for this project
15 for EastBanc.

16 A very brief overview of the site, it's
17 at the intersection of Wisconsin Avenue and the
18 C&O Canal. A little bit closer view of the site
19 and its context, once again, showing Wisconsin
20 Avenue and the canal, and you can see -- I know
21 it's kind of -- because of the light, on this
22 particular screen, it's kind of a -- it's not

1 very visible, so maybe we can either dim the
2 light a little bit? Thank you.

3 Oh. Now I can't see.

4 [Laughter.]

5 CHAIRPERSON MOLDENHAUER: You have a
6 light on your desk. There you go.

7 MR. HASSAN: Thank you very much.

8 Now you can see the site a little bit
9 more clearly from the vantage, from this vantage
10 point, Wisconsin Avenue running north-south. You
11 can see the switch, the Verizon switch building,
12 and the empty parking lot that was made reference
13 to before.

14 Also, an important building that -- in
15 this view is Grace Church and its beautiful green
16 front yard on Wisconsin Avenue.

17 Just looking at the context, by
18 comparison, those are two streetscapes on the
19 west side of Wisconsin, you could see the street
20 wall continually intact with the exception of the
21 gap, what is the CEO Canal register.

22 By contrast, if you look towards the east

1 side of Wisconsin, where you could see that gap
2 or the void that is created by the parking lot
3 that was made reference to before.

4 This view may be emphasized at this point
5 more than any. Wisconsin Avenue with its 312
6 continuity all along Wisconsin you could see the
7 void that is missing there prior to reaching the
8 open space of Grace Church.

9 We believe that this development and this
10 project will fill in this gap and create the
11 necessary street wall continuity on Wisconsin
12 Avenue.

13 Another description of the site when you
14 look at it from if you are standing on Wisconsin
15 Avenue right at the corner of the C&O Canal, and
16 you look down at this depressed empty parking lot
17 situated between the C&O Canal and the Grace
18 Church front yard, you could just see this a
19 little bit more clearly from this particular
20 vantage point.

21 You do also see the Wisconsin bridge with
22 the stone wall, with the arched bridge and

1 displayed wall that is also an important feature
2 of the site.

3 The existing site encompasses the Verizon
4 switch building and the empty parking lot in
5 front of it reaching Wisconsin Avenue, and it is
6 bound by the C&O Canal and the alley.

7 I will just go very briefly through some
8 of the constraints that we have encountered in
9 the design of this project. Some of it has to do
10 with the topography in terms of steep slopes.
11 Some of it is related more to the lot occupancy
12 of the Verizon building. The frontage is
13 relatively long, and I will go through that a
14 little bit more in detail on the C&O Canal, and
15 the Verizon switch building requirements that you
16 have heard a brief of that description earlier.

17 From the elevation points that you see on
18 the site, there is a difference in elevation
19 between the corner of the site and the northwest
20 corner, the C&O Canal and Wisconsin, down to the
21 diagonal in the southeast corner is approximately
22 10 feet difference in elevation.

1 Also, the site slopes downward towards
2 the water. It is approximately 7.5 feet, and
3 there is a drop right at that corner of
4 intersection of the canal and Wisconsin of
5 approximately 14 feet down to the canal level.

6 This picture also emphasizes it even more
7 so. I mean this photograph is not tilted,
8 actually, the site is severely sloped, I can
9 emphasize that a little bit with these diagrams.

10 There is approximately a 6 percent slope
11 along Wisconsin and the 14-foot drop that I have
12 just mentioned earlier down to the canal level,
13 and displayed wall at approximately 30 degrees,
14 and the very limited gap between the property and
15 the edge of the canal wall, which is
16 approximately 4 feet.

17 In terms of lot occupancy, this picture
18 really tells it better than any. You could see
19 that the switch building occupies approximately
20 60 percent, that's 59 percent of the lot
21 occupancy, which leaves very limited space if we
22 were to consider the 80 percent lot occupancy, so

1 the remaining part of the site in terms of lot
2 occupancy is very, very limited.

3 This view is at a different time when
4 there was more parking on the particular lot, but
5 the purpose of this image is to show the length
6 of the frontage on the canal, which is 280 feet
7 or so, and the length of the property, which is
8 approximately 100 feet or so, so there is a lot
9 of depth in terms of the site, very limited
10 frontage, and no accessibility from the canal, of
11 course.

12 Those couple of diagrams emphasize the
13 frontage a little bit more in details. What you
14 are seeing on the section above, it shows the
15 proposed building on Wisconsin, which is a 4-
16 story building, but it drops down to 5 along the
17 canal, by comparison to the existing building on
18 31st Street, which is a 5-story building.

19 So, even though the two buildings are
20 similar in height, but the appearance of our
21 proposed building is only 4 stories above
22 Wisconsin level, and it drops down towards the

1 canal to 5 stories. You could see, of course,
2 the 2-story span of the existing switch building.

3 This section shows a different kind of
4 constraint that we have also encountered,
5 obviously, because the Verizon building is there
6 to stay with its existing height of approximately
7 70 feet.

8 It did not necessarily align with our
9 floor elevations, and I will explain that
10 constraint a little bit more in detail, so there
11 is obviously a misalignment there of the building
12 which is natural because of the different uses.

13 We spoke earlier about the requirements
14 of Verizon. This facility needs to be open and
15 in operation all the time, it cannot -- the
16 operation cannot be interrupted.

17 You have also heard about the difficulty
18 in terms of any expansion vertically on the site
19 above the switch building. But in terms of
20 operation, the requirement specifically for the
21 number of vans and bucket trucks, and we thought
22 it may be useful to just complement this with

1 some of the images of the very specific vans and
2 trucks that Verizon uses to service the community
3 and periodically, have to come to this site,
4 which we had to accommodate in the design of the
5 ground level of this building.

6 In terms of the proposed building, you
7 could see that we have attempted to occupy the
8 remaining lot, but there is just a very subtle
9 setback or a notch that is on the northwest
10 corner, and that meant to accommodate the
11 historic wall of the Wisconsin bridge and
12 displayed wall.

13 This has come up during our presentations
14 and approvals from OGB and the Commission of Fine
15 Arts. This reveals the displayed wall as well as
16 the Wisconsin bridge arch and the stone wall that
17 is in this particular area.

18 We attempted to occupy the remaining
19 portion on the north part of the site to make the
20 available square footage work for this particular
21 use.

22 In terms of the character of the

1 building, this view is from Wisconsin, and it
2 does show the street wall continuity, the
3 building is right at the property line.

4 It introduces more retail, which was a
5 recommendation from both OGB and the Commission
6 of Fine Arts while we are going through the
7 approval process, and our client EastBanc also
8 believes in the same subject in terms of center
9 rising that whole area and create the linkage
10 between the north and the south side of the canal
11 in this case.

12 In terms of the choice of materiality for
13 the building enclosure, we have used the stone as
14 a base for the building for the first floor with
15 masonry above, and the building is a bit lighter
16 up at the top with more glass and steel as you
17 see in this configuration.

18 As you turn the corner towards the canal
19 on the north side, we maintain the datum of the
20 stone base that dropped down to create the 5-
21 story building, but it all continued with stone
22 reaching the canal level, which is very

1 consistent with the character of the context of
2 this site.

3 On the south side of the building, still
4 the datum continues around there, and this is
5 where you see the entrance to the garage where we
6 had to accommodate not only parking for the
7 residents, but also parking for Verizon.

8 This is the view that not very many
9 people would see above the Verizon building at
10 approximately 70 feet in height, but the datums
11 are still continuing all around with the same
12 material.

13 We also thought that perhaps this section
14 illustrates some of the challenges that we had to
15 face while trying to meet the height limitations
16 of 45 feet, and the slope of Wisconsin at 6
17 percent, you could see the ability to enter the
18 building, enter the retail, and the constraint
19 that is created with respect to height.

20 Again, if you go towards the canal, there
21 is approximately 4 feet remaining as you reach
22 the canal level, and it drops down approximately

1 4 feet from the corner.

2 The retail, there is a small retail on
3 the south side of the building that you see next
4 to the building entrance, but on the north side,
5 the retail drops down towards the canal, and here
6 is the type of constraint that we had to
7 encounter while we are setting the limit of the
8 building height to 45, it produced approximately
9 11 feet for retail, which is sort of doable, but
10 it is somewhat compromised.

11 The other element here, which was made
12 reference to before in terms of the height of the
13 trucks required, trucks and vans, obviously, the
14 trucks are a little higher of the 12 foot 3, you
15 see on this illustration, and in order for us to
16 maintain that height and also respect the
17 entrance and the lobby on Wisconsin, we had to
18 accommodate that by raising that level to
19 approximately 14 feet.

20 The typical floor consists of 3
21 apartments per floor with a central core, but the
22 first floor really is what represented the

1 biggest challenge for us. You could see that
2 this is really at multiple levels. This image
3 here we are showing the Wisconsin level and the
4 alley level at the same time.

5 So, you could see the requirement of the
6 Verizon trucks and vans, and their maneuver to
7 get in and out of the site is rather tight.

8 Also, the entrance ramp of the residence
9 going down towards the north, and also the
10 remaining retail on the north and south side,
11 which really leaves very little space or occupied
12 space on that level, and that was one of the most
13 difficult things for us to be able to accommodate
14 the core and the egress requirement and also
15 accommodate all the vehicular entrance to the
16 site in a safe manner.

17 MS. BRAY: Mr. Hassan, while you are on
18 that side, the parking that is shown on this, and
19 you just said it was difficult to accommodate a
20 lot of occupyable space, is the parking
21 chargeable to FAR on the first floor?

22 MR. HASSAN: In this area, it is

1 chargeable.

2 MS. BRAY: One hundred percent chargeable
3 even though it is a parking unit.

4 MR. HASSAN: Right. And as you go down
5 the ramp, you could see because of the limited
6 space that we have and the location of the core
7 for it to register up at the typical floor, it
8 also produced relatively inefficient parking
9 level.

10 With respect to the roof, we have
11 accommodated a pretty substantial percentage of
12 green roof on the site facing Wisconsin and the
13 canal. We located all the mechanical equipment
14 away from Wisconsin and also away from the
15 churchyard, the front yard.

16 You also see on the roof level, there is
17 one elevator that goes up to that level, and the
18 required egress requirement, but there is also a
19 communal recreation area, as well as the pool at
20 the rooftop.

21 This is just an overall image of how the
22 site will be completing the void that existed for

1 many years now along Wisconsin immediately
2 adjacent to the Verizon switch building, and you
3 could see in this image the type of uses that are
4 going to be on the roof and the presence of the
5 green roof at that level.

6 This slide concludes my presentation, and
7 I would like now to turn this over.

8 MS. BRAY: I have a couple more questions
9 for you though. Can you go back to slide No. 21
10 in the presentation?

11 MR. HASSAN: Yes.

12 MS. BRAY: Let me see, maybe it's not
13 slide 21. I wanted to see the south elevation and
14 the alignment of the floor heights. Here we go,
15 that's it, 22, I guess it is. I don't have my
16 glasses on, so I shouldn't try to read it from
17 here.

18 You started to say in your testimony that
19 alignment of the floors cause an issue with lot
20 occupancy, and I just wanted you to elaborate a
21 little bit on that.

22 You are familiar with the lot occupancy

1 requirements and how that is calculated, and the
2 W-1. The section 932.3 states that in a mixed
3 use building, you calculate lot occupancy on a
4 horizontal plane at the first level where the
5 residential uses begin.

6 MR. HASSAN: Right.

7 MS. BRAY: But in this case, since the
8 floors don't align, how do you count lot
9 occupancy?

10 MR. HASSAN: Well, there is a missing
11 piece to this image which really is the center
12 point of Wisconsin on the left side of this page
13 where it really marks the floor height, the
14 height of the building of 45 feet. That sets
15 pretty much the first floor level.

16 If you imagine that the Verizon switch
17 building being 2 levels, prior to this proposal,
18 it was a 2-level building, but as you put this
19 building in context, then, the lower -- the first
20 floor of the Verizon building becomes more of
21 like a basement level as opposed to first floor.

22 MS. BRAY: So, in this image, it looks

1 like there is a portion of, you know, 4 or 5 feet
2 of the Verizon building that is extending into
3 the second floor.

4 MR. HASSAN: Right.

5 MS. BRAY: And that is where the
6 residential uses begin?

7 MR. HASSAN: Yeah, and as you could
8 imagine, if we were to align the building at this
9 level, then, we either have to go beyond the
10 maximum height, the maximum permitted height, and
11 you could just since then you see the difficulty
12 by having this alignment.

13 MS. BRAY: But if you did that, would you
14 end up with a lot occupancy that is what we are
15 proposing, at 96 percent, or would you calculate
16 lot occupancy as something much less, because it
17 is just the residential portion of the building?

18 MR. HASSAN: That is really not going to
19 be effect -- I think the limitation of the 80
20 percent lot occupancy is near impossible here
21 because the Verizon building occupies 60 percent.

22 MS. BRAY: Because you have to count the

1 switch.

2 MR. HASSAN: Right.

3 MS. BRAY: Okay.

4 MR. HASSAN: Any other?

5 CHAIRPERSON MOLDENHAUER: Mr. Moy, if we
6 can get the lights. Thank you.

7 MS. BRAY: Our final witness is Ellen
8 McCarthy, who will testify as to the compliance
9 with the experience criteria.

10 CHAIRPERSON MOLDENHAUER: Before we get
11 there, I just want to see if any Board members
12 have any questions about the layout or the
13 architectural aspects of this.

14 I just want to make sure I understood.
15 If you are actually looking at this from
16 Wisconsin, you are going over the canal bridge --
17 I want to make sure my question is focused -- if
18 you are going over the canal bridge on Wisconsin,
19 how many stories is the structure going to appear
20 to be?

21 MR. HASSAN: Four stories.

22 CHAIRPERSON MOLDENHAUER: Four stories.

1 And you were saying that one of the I guess
2 aspects of the building is to fill in the void
3 and to mirror some of the projects on Wisconsin,
4 since obviously you have got the -- you took a
5 picture of the parallel with Wisconsin, but the
6 Philomenas and then the Rugby store, and, you
7 know, I know my Georgetown well, I grew up there.

8 Those are all about two stories and now
9 you are looking at putting a building that is
10 going to be 4 stories. One thing I don't see is
11 how that is going to blend into the architecture
12 of the streets.

13 MR. HASSAN: Maybe this --

14 CHAIRPERSON MOLDENHAUER: This is the
15 first page is new, that is not part of prior
16 submission when I was looking at it over the
17 weekend.

18 MR. HASSAN: I can either look at this or
19 I could bring it up on the screen, but what we
20 attempted to do here, if you look at the choice
21 of materials and the massing, two things.

22 One, the masonry aligns with the shorter

1 building. You could just see how as the
2 Wisconsin elevation drops, stores the water, and
3 the building gets taller, but it still aligns
4 with some of the building north of the canal.

5 As it reaches south toward the other
6 development on K Street, which is missing in this
7 image here, beyond the churchyard, that is also
8 another missing rebuilding that is taller.

9 CHAIRPERSON MOLDENHAUER: That is the new
10 building that is connected with the rest.

11 MR. HASSAN: Correct.

12 CHAIRPERSON MOLDENHAUER: How many
13 stories is that?

14 MR. HASSAN: I think that is a 5-story
15 building. Joe, maybe you could help.

16 MR. STERNLIEB: It's taller than that,
17 but I think it's 90 feet at the center point.

18 CHAIRPERSON MOLDENHAUER: I think it is a
19 setback, though, because it's not that tall from
20 the actual street level.

21 MR. STERNLIEB: When you are on K Street,
22 actually you are under the highway, so you are

1 sort of looking back up at it.

2 CHAIRPERSON MOLDENHAUER: But I am not
3 talking about it from K. I mean you can call it
4 K or water, K to the left, and water to the
5 right, and my parents live right down the street,
6 so again I know the area very well.

7 But I mean I am talking about if you are
8 looking at it from Wisconsin.

9 MR. STERNLIEB: The elevation of
10 Wisconsin is quite a bit lower there, so the
11 question is if -- I want to make sure I
12 understand your question -- the building is
13 taller. If you are standing on Wisconsin looking
14 dead at it, it is taller than this building is if
15 you are on Wisconsin looking dead at it, but I
16 couldn't tell you exactly by how much.

17 CHAIRPERSON MOLDENHAUER: Okay. I am
18 trying to understand especially with a lot of the
19 density and a lot of alignments here, what I am
20 asking for is right on Wisconsin, and I think
21 that that is one of my concerns and my question.

22 MS. BRAY: Right. It's one of the

1 reasons why we have really tried to keep this as
2 close to the 45 foot height limit as possible,
3 but one other point to mention I think is that as
4 compared to the building that is directly
5 adjacent to the switch, we are talking about
6 comparable heights.

7 I think the roof structure extends a
8 little bit higher than the building on 31st
9 Street, but the buildings are of comparable
10 height.

11 CHAIRPERSON MOLDENHAUER: What buildings
12 are of comparable height?

13 MS. BRAY: The building immediately to
14 the east of the switch on 31st Street, which
15 shares basically a rear yard boundary.

16 CHAIRPERSON MOLDENHAUER: Okay, so the
17 building that it abuts to. Okay.

18 Do Board members have any additional
19 questions at this time?

20 Seeing none, then, if you would like to
21 present, Ms. McCarthy.

22 MS. BRAY: Ms. McCarthy, would you like

1 to present your testimony?

2 MS. McCARTHY: I would. Good afternoon.

3 Thanks, Chairman Moldenhauer, and members of the
4 Board.

5 My name is Ellen McCarthy. You have
6 qualified me as a witness, so I will skip the
7 qualification section, and pretty much go lightly
8 over the description of the site, because I think
9 that you have already gotten a fairly good
10 description of the site.

11 But one thing that I would emphasize, as
12 you have seen, the site is rather oddly thin and
13 long, and where it touches Wisconsin Avenue is
14 only 100 feet in width, and there is an awful lot
15 going on there that has to occur in order to be
16 able to relate to Wisconsin Avenue.

17 But the length of the building is 283
18 feet, which is more than twice the width, and
19 this length is along the C&O Canal, which as we
20 have seen is a considerably lower datum and is
21 responsible for exposing a great deal of what
22 would normally be below grade, you know, back of

1 house kind of stuff, parking, storage, and that
2 sort of stuff, and having that count in the FAR.

3 The site was rezoned to W-1 in 1973 from
4 the M and C-M zoning, which had previously
5 characterized the Georgetown waterfront, and that
6 makes the switch nonconforming in several ways.

7 It is constructed along the rear lot line
8 directly abutting the office building behind it,
9 and thus, doesn't meet the rear yard requirement.

10 It also contains approximately 1.2 FAR of
11 nonresidential space in a zone which limits
12 commercial space to a maximum of 1 FAR.

13 To put the site in context, which helps
14 to show the importance of creating that link to
15 Wisconsin Avenue, which doesn't now exist, the
16 general vicinity has undergone considerable
17 redevelopment over the past decade with the
18 former city incinerator located across South
19 Street on the other side of Grace Church,
20 transformed by EastBanc into a mixed use project
21 with a cinema, hotel, retail, and residential
22 uses.

1 South of that project is the new
2 Georgetown waterfront park, a lovely and dramatic
3 redevelopment of a former parking lot and staging
4 area for road equipment. Just to the northeast,
5 across the canal -- to the northwest, I am sorry,
6 across the canal is the Georgetown Park Shopping
7 Mall, which is in the process of being
8 redeveloped.

9 The bulk of the structures in the area
10 are a mixture of uses with ground floor retail
11 helping to create a lively pedestrian character,
12 and either offices or residential uses above,
13 making it even more important to achieve retail
14 continuity along Wisconsin Avenue.

15 The site is currently characterized on
16 the future land use map as mixed use, medium
17 density residential, moderate density commercial,
18 which means that the W-1 zoning is actually a
19 little low compared to the comprehensive plan
20 future land use map.

21 The generalized land use policy map
22 characterizes the area as regional center, which

1 is described as having the largest range of
2 commercial functions outside of the central
3 employment area, so there is definitely support
4 within the comprehensive plan for dense, denser
5 development on that site, and certainly denser
6 than what we are calling for.

7 So, what it means is the project that is
8 proposed for the site is certainly not
9 inconsistent with the median density residential
10 designation on the future land use map and the
11 regional center designation on the future land
12 use map, and, in fact, does offer less
13 residential than we would otherwise be entitled
14 to.

15 Now, in terms of the requested release,
16 Hany, could we get the chart? I don't think I
17 have the most up-to-date hard copy. While Hany
18 locates the chart, the slide, on your handout
19 that you received the hard copy of, the
20 PowerPoint, if you look on page 41, it summarizes
21 the relief that is being requested, which is
22 basically an area variance from the restrictions

1 on expansion of nonconforming structure devoted
2 to a conforming use, use variance from the
3 requirements of Section 31.2 to allow expansion
4 of already nonconforming/nonresidential floor
5 area ratio, an area variance from the lot
6 occupancy requirements, and an area variance from
7 the rear yard requirements to allow the
8 construction of addition to the existing
9 building.

10 So, if you go to the chart, you see how
11 pretty minor the relief requested is. We have an
12 existing height of 17, we are allowed 45, and we
13 are proposing 45, so we have no relief there.
14 The existing commercial GFA is above what would
15 be allowed, and we have proposed only a slight
16 expansion of that, so that that includes the
17 parking and the retail, the parking which would
18 only be considered in chargeable FAR because of
19 the grade problem.

20 The residential GFA existing, there is
21 none on the site. We would be permitted up to
22 2.5 FAR on the site, or up to 1.5 FAR with 1 FAR

1 of nonresidential use. We are proposing 37,000
2 square feet, so in effect, we are not using 5,000
3 square feet of the residential GFA to which we
4 would be entitled.

5 This puts us all slightly over the
6 overall GFA that would be permitted for the site.

7 It's 1,600 feet more than the 71,000 that is
8 permitted, and that means it is 2.3 percent
9 overall beyond what would normally be permitted
10 on the site.

11 With regard to the lot occupancy, the
12 existing building is almost 60 percent. We are
13 allowed 80 percent. We are proposing 96 percent.

14 That is the largest variance at 20 percent, and
15 I will address that in more detail in my
16 presentation.

17 But before I go into the individual
18 tests, I think it is very important to understand
19 the zoning history of the site and the context
20 for the W zones. Although it is difficult to
21 fully imagine now, the Georgetown waterfront
22 until 30 or 40 years ago was a dirty, smelly,

1 smoke-filled chain, gritty, industrial area.

2 I remember well the aromas of Proffen
3 Myers [ph] rendering plant perfuming the air
4 during my college years hanging around in
5 Georgetown, and a power plant right on the water
6 used coal transported by the rail line. There
7 were flour and paper mills, and, you know, they
8 are always really sweet smelling, along with lime
9 kilns. All of that had been the order of the
10 day, but 30 or 40 years ago, they were gradually
11 being phased out.

12 The M and CN zoning that was on the site
13 had been appropriate for a busy industrial
14 sector, and it prohibited residential use, but it
15 did permit office use as a matter of right up to
16 6.5 FAR.

17 At that time, around '72, '73, two
18 proposals had been floated for very large office
19 buildings that took advantage of the FAR that was
20 permitted, and it caused a huge storm of
21 controversy.

22 Proponents were making the waterfront

1 similar in scale to the character of Georgetown
2 above M Street, wanted to severely down zone,
3 wanted moratoria, but the property owners, many
4 of the property owners wanted to be able to
5 proceed at the full commercial density, the 6.5
6 FAR to which they felt that they were entitled.

7 The Zoning Commission called a time out,
8 did a massive and detailed study in conjunction
9 with the National Capital Planning Commission and
10 the Commission of Fine Arts, and in the end, the
11 Commission decided, they declined to dramatically
12 down zone, and instead they proposed the creation
13 of the W zones, which were one of the first, if
14 not the first, mixed use zones in the City.

15 The W zones were described in the zoning
16 or are described in the zoning regulations as
17 applied to waterfront areas that are
18 geographically historically or locationally
19 unique, and where the public health, safety,
20 general welfare, and amenity would be promoted
21 and protected by the encouragement of mixed uses.

22 So, that mixed use idea and the historic

1 character were really drilled into the W zones
2 from the get-go.

3 The regs also described the purpose of
4 those zones as to encourage a diversity of
5 compatible land uses at various densities
6 including accommodations of residential, offices,
7 retail, recreation, arts, cultural and other
8 miscellaneous uses, and point out that the W-1
9 Zone is specifically designed to provide a
10 variety of housing, service, employment, and
11 recreational opportunities in one location.

12 So, clearly, our project is the
13 embodiment of what the W-1 Zone had considered,
14 they were trying to encourage in the waterfront
15 area.

16 While the Commission agreed with those
17 who felt industrial uses and zoning were no
18 longer appropriate to the Georgetown waterfront,
19 it argued in orders that were attached to our
20 prehearing statement that a reasonable amount of
21 density should be permitted to encourage the
22 redevelopment of industrial areas.

1 I said that we believed greater
2 reductions in height and density that then are
3 adopted herein, that if they made it any less
4 than what the W zones were, they would limit the
5 economic opportunities for the redevelopment of
6 this area.

7 There would be this paradox. Industrial
8 property owners might just hold onto marginal
9 operations rather than redevelop the area to
10 remove blighted conditions, and in an interesting
11 piece of foreshadowing, they commented ugly
12 industrial structures and parking lots could
13 remain if there is no incentive for
14 redevelopment.

15 Indeed, up until this point, despite the
16 incentives that were provided by the W zones, the
17 matter of right zoning with all the obstacles
18 that we are discussing today has provided so many
19 stumbling blocks that the redevelopment
20 envisioned above by the Commission has not been
21 able to be accomplished.

22 The requested zoning relief will clear

1 the last barriers to accomplishing what was begun
2 by the zoning change in '73 to redevelop a less
3 than lovely industrial structure and its parking
4 lot. Sorry, Gary, I don't mean to call your baby
5 ugly.

6 Furthermore, the Commission noted we
7 agree with the view that reductions in potential
8 commercial development are needed to preserve the
9 ambience and stability of the entire Georgetown
10 area and have reacted to it by sharply reducing
11 the potential for large office buildings.

12 That was the purpose of the limitations
13 on the nonresidential or the commercial density.
14 You don't find in reading the order in that case
15 that the Commission had contemplated that, in
16 fact, maybe some of those industrial uses were
17 going to have to remain and would take up the
18 envelope that was being provided for in a limited
19 fashion in the regulations, and I think this is
20 the situation which is occurring today.

21 So, the W zones were articulated to
22 provide a mix of uses with W-1 along the canal at

1 the lower height at 45 feet and the density of
2 only 2.5.

3 Unfortunately, the Commission did not
4 draw a distinction, as I was just saying, between
5 commercial office space they were attempting to
6 discourage and other nonresidential uses, such as
7 the existing industrial facilities and retail
8 uses.

9 In most cases, the mixture that the
10 zoning permits is sufficient to eliminate the
11 industrial uses. The majority of the former
12 industrial buildings have long since ceased their
13 manufacturing operations, those that are
14 contributing buildings to the historic district
15 and could be converted have been adaptively
16 reused, and many of them were also able to take
17 advantage of the historic preservation tax credit
18 as part of their redevelopment.

19 Those which were not historic buildings
20 were generally razed and replaced with
21 sympathetic new construction. Unfortunately, the
22 public utility use of the nonconforming Verizon

1 switch, which is not a contributing building to
2 the historic district, has not been, and cannot
3 be, abandoned. It plays a continuing vital role
4 in assuring telecommunication service to the
5 District, nor can it be adaptively reused.

6 You can see along one whole section of it
7 there aren't even any windows, because even if it
8 could be abandoned, because structurally, it is
9 not possible to build above the building or to
10 reinforce the structure to permit that without
11 disturbing ongoing operations.

12 So, therefore, unlike most of the
13 industrial uses, which were able to be
14 discontinued, and the structures which were able
15 to be converted to conforming uses, the switch
16 sits there using up all the nonresidential FAR
17 allotment, which was not contemplated by the
18 Zoning Commission when it placed that limit.

19 In addition, the amount of nonresidential
20 space required for switching operations already
21 exceeds the matter of right limit for
22 nonresidential, and therefore would allow for no

1 additional retail at the street level along
2 Wisconsin Avenue as the Commission contemplated
3 when it created the W zones, and as the Office of
4 Planning, Commission of Fine Arts, and the ANC
5 have asked the applicants to include in any
6 addition to the switch.

7 So, we go to the test for variances. I
8 know you are familiar with them, so we will skip
9 over them, and get to test No. 1, which is
10 uniqueness. I would say as we struggled to
11 comprehend this site, it is truly unique, it is
12 steeply sloped from the apex at the southwest
13 corner at Wisconsin and Waters Alley, down to the
14 canal, a difference of 11 to 14 feet, but as one
15 part of this site slopes down, the site along
16 Wisconsin Avenue slopes up.

17 The lot is oddly configured being more
18 than twice as long as it is wide, but despite its
19 length, it borders on only one public street, and
20 that is only along its narrow side. The fact
21 that the canal constitutes the grade on the long
22 side of the building, as we said, creates a

1 situation that makes a high percentage of the
2 lowest level of the existing utility building
3 chargeable to FAR, approximately 76 percent of
4 even the lowest level of the switch is
5 chargeable.

6 Yet, even though all of that length of
7 that building along the canal is chargeable to
8 FAR, there is no vehicular access, there is no
9 pedestrian access on that side of the canal. The
10 tow path is actually on the other side of the
11 canal, and as you have seen in the photos, there
12 is really no easy way even for pedestrians to
13 stroll by.

14 So, therefore, because you don't have any
15 access along the canal, even though it is counted
16 as FAR, the owner is deriving virtually no value
17 from being at grade, particularly since, on the
18 Wisconsin Avenue side, the building is
19 underground and renders a substantial portion of
20 the lower level unsuitable for residential space
21 within the underground portion of the property.

22 There is no question about the fact that

1 in addition to the topography, the existing
2 utility building itself contributes to the
3 uniqueness of the property. So, as we have seen,
4 it is not practical to move, it is not practical
5 to build up on top of it.

6 It takes up 60 percent of the lot
7 occupancy, leaving only 5,800 square feet on
8 which to build the proposed mixed use project if
9 were to hold to matter of right standards.

10 In order to build on the current, but,
11 then, on top of that, in order to eliminate the
12 parking lot, so we have some place to build, the
13 proposed new structure has to accommodate the
14 trucks necessary to service the switch. That
15 further erodes the footprint at the street level,
16 exacerbating the need to expand the base of the
17 building beyond the 5,800 square feet beyond the
18 current lot occupancy limitations.

19 In addition to the fact that then, on top
20 of that, you have got the height limit which
21 restricts the ability to go up, so you can't just
22 operate in a smaller footprint and push up,

1 because then you bumping up against the 45 feet
2 that you are limited to.

3 Because of the grade differential, the
4 square footage that must be devoted to the truck
5 parking and counsel's FAR requires a large amount
6 of space in and of itself.

7 The switch building as it exists is also
8 nonconforming in terms of the rear yard and
9 having FAR of 1.2 exceeding the 1.0 limitation of
10 nonresidential space, but in addition because of
11 its height and the height limitation in the W-1
12 Zone, combined with the extraordinarily high
13 ceiling required in the first level of the garage
14 in order to accommodate the trucks, the building
15 exceeds the lowest level of residential in the
16 new structure by 5 feet.

17 This gets to your concern, Madam Chair,
18 about the lot occupancy, and it would be easier,
19 if you could sum it up in your mind the slide the
20 Mr. Hassan was showing, where the Verizon
21 building -- Slide 20 in your package -- the
22 Verizon building comes in at a point which is

1 more than 5 feet higher than the lowest level of
2 the building in which residential is located.

3 The W-1 Zone is one of those zones where
4 for lot occupancy, you can measure the lot
5 occupancy above a plane that is at the lowest
6 level of the residential. So, if the switch
7 building were 5 feet lower, or this building had
8 the ability to make that floor 5 feet higher,
9 this building would be basically 36 percent lot
10 occupancy because it would be only 36 percent
11 when you measure above that plane.

12 But because of the switch building and
13 our inability to alter that, and the height
14 limit, which gives us the inability to raise the
15 first residential level without losing an entire
16 floor, then, this is another constraint which
17 affects our ability to meet the lot occupancy
18 with anything close to the 20 percent.

19 I believe as cited in my testimony, we
20 are talking about Section 932.3 of the
21 regulations which permit you to measure lot
22 occupancy above a horizontal plane at the lowest

1 level of the residential development in the
2 building.

3 Last, while it is not residential,
4 neither is the switch truly a commercial use in
5 the same sense that office or retail space would
6 be. The owner of the property can't derive a
7 commercial value from the space, it is simply
8 providing a necessary public service.

9 The Zoning Commission looked to
10 commercial and residential space as you saw from
11 the citations from the order on W-1, they looked
12 to that space as incentives to help sort of
13 cross-subsidize the elimination of the industrial
14 space.

15 I would argue, in fact, that the current
16 public utility use of the existing building is
17 neither commercial nor residential, and should be
18 considered basically a neutral, subtracted from
19 the overall consideration of nonresidential
20 space.

21 I think there is pretty good precedent in
22 the zoning regulations for doing that if you look

1 at the R-1 Zones, our most restrictive zones,
2 they permit mass transit facilities and parking
3 lots for car sharing vehicles even though both of
4 those are clearly not residential uses. They
5 permit both of those uses as a matter of fact.

6 The other precedent or example is you can
7 probably think of any number of locations around
8 the City where they have those little PEPCO
9 substation houses that are brick, look like
10 little brick colonial houses except they are
11 actually substations. They are in low density
12 residential areas, and based on our research, we
13 could find no BZA cases that permitted them, but
14 no language in the regs that specifically exempt
15 them either.

16 So, I would say that the existing switch
17 building is very much a public service utility
18 kind of building that if you could -- I am not
19 talking about formally changing the regs -- but
20 if you could within your mind mentally subtract
21 that space, everything else about our project
22 basically works.

1 So, while the W-1 Zoning in the future
2 land use map encourage these types of residential
3 uses that don't contribute to the vibrancy and
4 vitality of the site to be phased out, this site
5 can't be phased out. It's a public service use.

6 The next best thing is to wrap the existing
7 structure as much as possible and add the uses
8 that create the effects that the Zoning
9 Commission was trying to achieve through W-1.

10 So, given all those uniquenesses and
11 constraints on the site, the strict application
12 of the zoning regs would result in an undue
13 hardship or serious practical difficulty.

14 Let's look, first of all, at the
15 expansion of the existing nonconforming
16 structures devoted to conforming uses. The
17 zoning regs do actually allow flexibility to
18 expand nonconforming structures that are devoted
19 to conforming uses, but they only permit it if
20 the proposed structure would comply with lot
21 occupancy requirements and the addition or
22 enlargement will not increase or extend any

1 existing nonconforming aspects of the structure.

2 So, while the zoning regs contemplated
3 that flexibility, we get zapped by the fact that
4 neither of the conditions are true in this case,
5 because it's nonconforming with respect to rear
6 yard setback and maximum permitted nonresidential
7 FAR.

8 So, any expansion of the building
9 requires a variance under Section 2001.3. It is
10 clear that this would constitute a serious
11 practical difficulty. If the property complied
12 strictly with the maximum permitted
13 nonresidential FAR requirement, it would mean no
14 change at all could be made to the existing
15 switch, which is entirely devoted to
16 nonresidential uses and already exceeds the
17 permitted FAR.

18 This would create great difficulty in
19 attempting to modernize the structure, so I think
20 it is pretty clear what the hardship would be in
21 that case.

22 With the rear yard setback, we are

1 already nonconforming, we are not changing that.
2 I don't think we need to dwell on that. With
3 regard to lot occupancy, existing building
4 occupies almost 60 percent of the lot. W-1 Zone
5 requires 80 percent lot occupancy.

6 Since the proposed building can't be
7 constructed over the switch, in order to adhere
8 to the regs, the new structure would have to
9 utilize no more than 21 percent of the lot, which
10 is approximately 5,800 square feet.

11 It is virtually impossible to fit any
12 portion of the ground floor program, the lobby
13 and any amount of retail space into such a small
14 space. 5,800 gross square feet in area wouldn't
15 allow for the simultaneous coexistence of the
16 three critical program requirements that need to
17 be accommodated on the first floor of this
18 building in order for it to be redeveloped at
19 all.

20 One, adequate vertical circulation to the
21 upper floor; two, sufficient horizontal
22 circulation for the vehicular access to the lower

1 parking levels via the ramp; and, three,
2 requisite parking for the Verizon motor pool and
3 space for maneuvering the fleet.

4 The architects have indicated that the
5 proposed design of these elements is consistent
6 with typical mixed use buildings, and is neither
7 too generous, nor excessive. In fact, the
8 building core has been designed to be compact and
9 includes only two elevators, two fire stairs to
10 comply with code, and two vertical shafts for
11 pressurization and other mechanical elements.

12 The parking ramps have been minimized to
13 only 20 feet wide, which is less than ideal for
14 two-way traffic. Lastly, the Verizon vans and
15 bucket trucks are far larger than standard
16 vehicle dimensions, and therefore, they have
17 larger turning radius requirements that have to
18 be accommodated on that first floor.

19 Fitting all that within 5,800 square feet
20 just can't happen. Attempts to minimize the
21 building below the proposed footprint and meet
22 program requirements have been unsuccessful to

1 accommodate the program requirements within the
2 remaining 20 percent lot coverage would not be
3 possible.

4 But over and above those issues, you have
5 got the fact that this building, if it's going to
6 fulfill the needs of the W-1 Zone, this building
7 has to connect to Wisconsin Avenue. Right now,
8 as you have seen, you have got Wisconsin Avenue,
9 then, you have got this gap, there is no direct
10 entry point.

11 So, unless you build a building and put
12 it up next to Wisconsin Avenue, the retail is not
13 going to work, but if you build the building and
14 put it up to next to Wisconsin Avenue, and then
15 you have got the switch back here, you either
16 leave a vacant space here, in which case you have
17 got a problem, because then the switch doesn't
18 have access to a public street, and that we can't
19 do.

20 So, you have got to fill in between the
21 switch and Wisconsin Avenue, so you can make the
22 retail work on Wisconsin Avenue, and complete the

1 streetscape, and if you are going to do that, you
2 can't do that without getting a variance from the
3 strict adherence to the regs.

4 Finally, there is the height issue of the
5 switch building which I think I just described,
6 which otherwise would allow us to take advantage
7 of the horizontal plane, and we would definitely
8 be in conformance with the lot occupancy. We
9 would have a lot occupancy of 35 percent instead
10 of the 96 percent.

11 Last, on the issue of the undue hardship,
12 with regard to the use variance, as you know, use
13 variances require a showing of hardship, a
14 greater burden than just practical difficulty
15 based on the Palmer decision.

16 In order to prove hardship, you have got
17 to prove that a reasonable use can't be made of
18 the property in a manner consistent with the
19 zoning regs.

20 Now, this makes sense for use variances
21 that are introducing uses that otherwise would
22 not be permitted in a zone. If you are talking

1 about introducing a concrete plan into a
2 commercial district, you have got a serious
3 burden to justify to show why you can't use that
4 property for anything other than this use.

5 In this case, we are just confronting a
6 technicality of the zoning regs, which is that if
7 you have more area of a use, then, that use is
8 limited to being in a zone, it counts as a use
9 variance rather than an area variance.

10 So, I would say we should have a lesser
11 interpretation of the undue hardship requirement,
12 and I can see the Chairman is not buying that
13 one, so let me go into the rest of the argument,
14 which even if you assumed we had the very high
15 burden to meet, we still meet.

16 You all are familiar with the perimeter
17 method, so I won't go into detail about how the
18 perimeter method was applied to calculate the FAR
19 in this case, but in the instant case, although
20 the lowest level of the proposed development is
21 completely below grade on three sides, due to
22 that low level of the length of it along the

1 canal, and the exceptional depths of the lot, 76
2 percent of the lower level, the G1 floor, which
3 is devoted entirely to parking and switch uses,
4 is chargeable to gross floor area.

5 The relief is required from the overall
6 FA requirements in the W-1 Zone as the entire
7 development will result in an FAR of 2.56, a 2.3
8 percent increase over the maximum permitted.

9 Given the existing nonconformity as to
10 nonresidential FAR, the addition of any
11 nonresidential space above grade, such as the
12 ground floor retail, violates the maximum
13 permitted area devoted to nonresidential uses
14 pursuant to Section 931.2.

15 While other properties in the area are
16 somewhat similarly affected by the manner in
17 which the FAR must be calculated where there is a
18 significant change in grade from the street to
19 the canal level, do the amount of floor space
20 required for the switch and the parking
21 facilities that must be provided within the
22 proposed development, to serve the Verizon

1 vehicles and the new usage, this method of
2 calculation uniquely burdens this property plus
3 many other properties that are similarly burdened
4 by the FAR calculation have uses that can relate
5 to the canal and can be accessed from the canal,
6 which this one cannot, and they have access from
7 other streets along their length, which this one
8 does not.

9 MS. BRAY: Ms. McCarthy, if you were to
10 count the switch in the way that you explained
11 the perimeter method impact, you wanted to build
12 a project that would strictly comply with the
13 zoning regulations, could you have a mixed use
14 building at all other than the switch?

15 MS. McCARTHY: If we did not have the
16 switch, yes, we could, but with the switch, no,
17 we can't.

18 MS. BRAY: So, you would end up with a
19 residential only building?

20 MS. McCARTHY: Yes.

21 MS. BRAY: Is that what you believe was
22 contemplated under the W-1 zoning and the

1 portions of the Zoning Commission order that you
2 read?

3 MS. McCARTHY: No, not only did not
4 contemplate it, but we would have a problem even
5 having the residential building because of the
6 need to provide the parking for the Verizon
7 trucks and the fact that that adds to the
8 nonresidential state.

9 MS. BRAY: And in your opinion, does that
10 represent an undue burden on a developer in the
11 W-1 Zone?

12 MS. McCARTHY: Yes, it does.

13 CHAIRPERSON MOLDENHAUER: Thank you.
14 Does that complete the testimony?

15 MS. BRAY: Would you just give us one
16 second to make sure we have covered everything.
17 I know it has been quite a while, so the Board's
18 indulgence for just a moment.

19 [Pause.]

20 MS. McCARTHY: Just two sentences on the
21 last test, but no harm to the integrity of the
22 zone plan and no adverse impact on neighboring

1 property. As you can tell from the whole
2 elucidation on the --

3 CHAIRPERSON MOLDENHAUER: I don't know if
4 you need to really go to the zone plan issue, if
5 you want to just touch on the issue of
6 neighboring property.

7 MS. McCARTHY: Okay. There is no adverse
8 impact on the neighboring property. The relief
9 requested is minor, most of the conditions for
10 which the relief is sought have existed for more
11 than 50 years with no apparent negative effects.

12 The addition of nine units of residential
13 plus less than 5,000 square feet of retail is not
14 likely to introduce noise or traffic congestion.

15 The relief from the lot occupancy while
16 it is the most substantial relief, will not have
17 an adverse impact given the proximity of the
18 project to the open space on the canal and the
19 open space at Grace Church meaning there is more
20 than sufficient light and air, and the rear yard
21 condition has existed since the switch was
22 constructed in 1954, and is not being changed by

1 the new construction.

2 Thank you very much for your patience.

3 CHAIRPERSON MOLDENHAUER: Thank you.

4 Do Board members have any questions for
5 the Applicant or any of the witnesses?

6 Seeing none, at this point in time I will
7 see if there is anybody in the audience in
8 support or in opposition to this case. Please
9 come forward.

10 Were you here and you were sworn when we
11 swore in witnesses? Okay. If you can stand up,
12 and we will administer the oath.

13 Anybody else actually that wishes to
14 testify, that was not here previously? Okay.

15 MR. MOY: Do you solemnly swear or affirm
16 that the testimony you're about to present in
17 this proceeding is the truth, the whole truth,
18 and nothing but the truth?

19 [Witness sworn.]

20 CHAIRPERSON MOLDENHAUER: One, you will
21 have to fill out two witness cards and provide
22 them to the court reporter after you have

1 completed your testimony, and when you start,
2 can you turn on the microphone. The green light
3 will turn on, say your name and your home
4 address.

5 MR. BRADLEY: Yes, can you hear me?

6 CHAIRPERSON MOLDENHAUER: Yes.

7 MR. BRADLEY: Great. My name is Bruce
8 Bradley with Castleton Holdings. I am the
9 adjoining property owner just to the east of the
10 site. Very quickly, I would say that while I
11 have not had a chance to review the plans in
12 depth, I know of the project, I have seen some
13 information, and we are generally in support of
14 the project.

15 There are two items that I would like to
16 have on the record as the adjoining property
17 owner. One is in looking at the plans today, on
18 the rooftop there appears to be HBAC equipment
19 that is facing our property.

20 Our property, we are in the process of
21 converting it into an ultra luxury hotel, so the
22 views are of paramount importance here, and I

1 would just ask that the developer be required to
2 work with us to provide some type of adequate
3 screening that minimizes the negative impact to
4 our property.

5 Secondly, while I believe we have a
6 verbal agreement with Verizon, because of our
7 construction activities at the adjoining
8 property, it is equally important that we have
9 some kind of cooperative agreement to be able to
10 access our site and to complete the exterior
11 repairs.

12 So, those are just the two items I would
13 like to note, and otherwise we are in support of
14 the project.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much, Mr. Bradley. The first item is the visual
17 appearance and things of neighboring properties,
18 we can address. The second issue in regards to
19 construction is something which is outside the
20 scope of our Board. We do not get involved in
21 construction deals. While we always encourage
22 property owners to work together, and I hope that

1 you can work together --

2 MR. BRADLEY: I think we are doing that,
3 yes.

4 CHAIRPERSON MOLDENHAUER: I just want to
5 make sure you know the boundaries and limitations
6 of our Board and our scope. Thank you.

7 MR. BRADLEY: Thank you.

8 CHAIRPERSON MOLDENHAUER: Is there
9 anybody else? If you don't want to come forward,
10 but there were some concerns probably previously
11 from the Grace Church, and if someone is present
12 and would like to, I am not pushing you, but if
13 you would like to, I would just like as a
14 neighboring property owner to maybe hear from you
15 if you are interested.

16 You would need to come forward and
17 actually put yourself on the record. I
18 appreciate that.

19 MR. MOY: Do you solemnly swear or affirm
20 that the testimony you're about to present in
21 this proceeding is the truth, the whole truth,
22 and nothing but the truth?

1 [Witness sworn.]

2 CHAIRPERSON MOLDENHAUER: Good afternoon.
3 You can turn the microphone on.

4 REV. GRAHAM: I am Reverend John Graham.
5 I am the rector or pastor of Grace Episcopal
6 Church, which is to the south of the proposed
7 development along Wisconsin Avenue.

8 We had several concerns which we have
9 worked with EastBanc personnel and their counsel
10 to resolve, and have memorialized that in I guess
11 it would be called a letter or memorandum of
12 agreement with which we are satisfied.

13 CHAIRPERSON MOLDENHAUER: So you have no
14 more concerns anymore in regards to any
15 obstruction of view or light and air or anything
16 to that effect from the church or the project?

17 REV. GRAHAM: Our primary concern
18 probably was, and still is, obstruction of view.
19 We have been told that the project as it is will
20 frame our grounds in a way that enhances them,
21 even though the corner of the building will cut
22 off a view from the canal bridge of most of our

1 front yard.

2 I hope that turns out to be the case. I
3 think they argued that it is necessary for the
4 building to be of construction that it is in
5 order to make the project work.

6 CHAIRPERSON MOLDENHAUER: I appreciate
7 you coming down, you know, coaxing you. I
8 appreciate that. Thank you.

9 REV. GRAHAM: I will fill these out then.

10 CHAIRPERSON MOLDENHAUER: Please do.
11 Thank you very much, Reverend Graham.

12 Do any Board members have any other
13 questions or any parties or witnesses?

14 Seeing none, if there is no other
15 individuals in support or in opposition in the
16 audience, then, at this point in time we will
17 turn to the Office of Planning for their report.

18 MR. COCHRAN: Good afternoon, Madam
19 Chair, and members of the Board. OP wishes that
20 it could stand on the record. Unfortunately, we
21 can't completely, but after the submission of the
22 additional information today, and the extensive

1 testimony, we are very close to being able to
2 rely on just the report that we submitted.

3 As you can tell from our report, OP
4 generally wanted to be able to recommend approval
5 of all of the requested variances, and we had
6 recommended approval of the variances for the
7 expansion of a nonconforming structure, the
8 nonresidential FAR, and the rear yard setback.

9 Most of these are givens. Ms. McCarthy
10 has adequately explained why you can't do
11 anything with the existing Verizon switching
12 station that would help improve the neighborhood
13 without expanding an already nonconforming
14 structure, the rear yard is already a
15 nonconforming also.

16 With respect to the nonresidential FAR,
17 it has gone down a bit. Again, I believe the
18 Applicant has explained why they are going only -
19 - I believe it's 0.058 over the total FAR. The
20 existing structure already is nonconforming with
21 respect to nonresidential FAR. Any development
22 on the site is going to require an expansion of

1 that nonconformity.

2 The unusual circumstance that the
3 Applicant is facing, there are several, but the
4 most important one is that the canal was
5 constructed 180 years ago when they excavated the
6 hill. If the hill hadn't been missing, in
7 effect, an awful lot of the Applicant's site
8 would be below grade. So, they really do have an
9 exceptional condition.

10 If you look at the rest of the topography
11 around there, you over to 31st Street, the canal
12 begins to approach the grade level, but from
13 about the middle of that block on west, there was
14 still a hill, and the Applicant just got a lot of
15 their territory excavated.

16 With respect to lot occupancy, OP did
17 believe that the Applicant had demonstrated the
18 exceptional conditions and the hardship that
19 would result if the lot occupancy couldn't be
20 expanded beyond what the zoning regulations
21 permitted.

22 We think that today, they did demonstrate

1 the degree of the necessary lot occupancy. We
2 had had concerns about degree, not about the
3 overall concept.

4 They retracted their request for the
5 height, so we can comfortably recommend that the
6 BZA approve all of the remaining relief
7 requested.

8 With respect to the public good, it is
9 actually a quite positive project both
10 functionally in terms of continuing Wisconsin
11 Avenue's traditional role as a high street, as a
12 retail street, continues it on down to the river,
13 and aesthetically it certainly makes the
14 streetscape complete. You are not looking at the
15 Verizon switching station.

16 Along those lines with respect to a
17 question that the Chair had earlier, I think if
18 you look at Applicant Slide 7, you will see that
19 the Ritz Carlton Hotel, you can see four stories
20 above the yard of the Grace Church. The
21 Applicant's structure would not be any taller
22 than that, and probably just a little bit less

1 because the -- well, I am not going to go into
2 all that.

3 But anyway, it is consistent with the
4 height of the adjacent new construction to the
5 south, and OP has no question about whether it
6 has a substantial impact on the zoning
7 regulations after the testimony today. I think
8 Ms. McCarthy amply demonstrated that it actually
9 is quite consistent with the W-zones intentions.

10 I am happy to answer any questions, but
11 that concludes our testimony.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much.

14 Does the Applicant have any questions of
15 the Office of Planning?

16 MS. BRAY: No, we do not.

17 MR. JORDAN: I didn't hear the part where
18 you were in opposition to the request.

19 MR. COCHRAN: We had never been in
20 opposition. We just said that at this time we
21 can't recommend approval, which meant we were
22 encouraging the Applicant to please submit a

1 little bit more documentation of why the degree
2 of the relief was needed. The Applicant has
3 since done that.

4 MR. JORDAN: So, you now can recommend.

5 MR. COCHRAN: Absolutely.

6 MR. JORDAN: Okay.

7 CHAIRPERSON MOLDENHAUER: Any other
8 questions of the Office of Planning?

9 Seeing none then, at this point I would
10 turn to the ANC-2E. No one is in the audience,
11 but we do have a letter of support.

12 MR. MOY: Madam Chair, I don't have the
13 official --

14 CHAIRPERSON MOLDENHAUER: Ms. Gray, did
15 we actually have a letter? We do? Do you have
16 it in one of your submissions? I just was
17 looking through your submissions. Sometimes you
18 have them attached, and I don't see it.

19 I see the letter from the Fine Arts
20 Committee, the Commission on Fine Arts.

21 MS. BRAY: I am having trouble putting my
22 finger on it. It was dated November the 1st, and

1 it was submitted by the ANC, I believe on the
2 14th of November. It was not in our packet. It
3 was submitted separately, and we received a copy
4 of it from the ANC.

5 MR. HINKLE: Madam Chair, it's Exhibit
6 13.

7 MS. BRAY: We would be happy to provide
8 that to the Board.

9 CHAIRPERSON MOLDENHAUER: I am looking
10 right now at our exhibit log, and I don't see a
11 copy of the ANC letter.

12 MR. MOY: Madam Chair, I have the
13 official record, and if it has been filed, it is
14 not in our official record.

15 CHAIRPERSON MOLDENHAUER: It is not in
16 our official record either, what I had.

17 MS. BRAY: I would be happy to submit it
18 to the Board today. I mean I have a copy of it.

19 CHAIRPERSON MOLDENHAUER: Do you have a
20 copy?

21 MS. BRAY: We have an electronic copy of
22 it in PDF form that we would be happy to submit.

1 CHAIRPERSON MOLDENHAUER: I am sure if
2 you guys want to go across the hall, you can
3 figure out a way to get it printed out. You can
4 e-mail it to somebody in the office and then they
5 will print it out or something to that effect.

6 Right now obviously, as it stands, we
7 don't have a copy of the ANC report. At this
8 point in time, let me turn back to the Applicant
9 for any closing remarks.

10 MS. BRAY: Thanks very much for your
11 patience as we presented this somewhat complex
12 case. Just a few remarks. This is a clear
13 confluence of factors case where these various
14 factors combined to create, not only serious
15 practical difficulties, but really an undue
16 hardship on the property owner.

17 Those factors, existing nonconforming
18 status at the site as to nonresidential FAR,
19 which is exceeding the maximum permitted
20 nonresidential FAR in the zone by 20 percent,
21 significant deviation from what would have been
22 permitted under today's zoning.

1 The fact that this is a public utility
2 use that cannot be relocated or interrupted,
3 making development above the existing building
4 completely infeasible. The extraordinary depth
5 along the canal which skews the calculation of
6 FAR, but in reality, only about half of the floor
7 area on the lower level is usable for anything
8 other than functions like the switch, which do
9 not require day lighting or parking, because it
10 is physically below the grade on half of the site
11 along Waters Alley.

12 Finally, the requirement to provide
13 parking for the Verizon vehicles servicing the
14 switch in the local neighborhood calls for
15 extraordinary height, which requires the parking
16 to be located on the first floor of the building
17 where it is actually 100 percent chargeable to
18 floor area ratio.

19 All of these factors create serious
20 practical difficulties and rise to the level of
21 undue hardship because under a strict
22 interpretation of the zoning regulations, they

1 operate to prevent the owner of the property from
2 developing a truly mixed use building in
3 accordance with the requirement and entitlement
4 of the zone district in which it is located.

5 We have requested a minimum amount of the
6 relief necessary to provide any viable retail use
7 along Wisconsin Avenue, keeping in mind that only
8 the switch, but also parking for Verizon is
9 counted as nonresidential FAR.

10 If those were considered neutral as was
11 suggested by Ms. McCarthy in her testimony, we
12 would be underbuilding the site in terms of both
13 nonresidential and overall FAR. As it stands
14 now, we are building approximately 5,000 square
15 feet less residential FAR than a property owner
16 would be entitled to, but that would not result
17 in a mixed use building.

18 As to adverse impacts, we have the
19 support of neighboring property owners, the
20 support of the ANC, which we will be able to get
21 to you in a letter, approval by OGB, and the
22 Commission of Fine Art, and support of the

1 National Park Service who obviously has an
2 interest because the property is along the C&O
3 Canal.

4 With respect to the adverse impact, and
5 one of the comments from Mr. Bradley, I just want
6 to address that, if you will take a look at Slide
7 No. 27 in the Applicant's PowerPoint
8 presentation, the east elevation, which is
9 essentially what someone on the west facade of
10 Mr. Bradley's property would be looking at, there
11 is a screening along the upper level of the
12 floor, and the other thing to keep in mind is if
13 you look at the plat, this is the two facades as
14 they face each other are 183 feet away from each
15 other, and we are talking almost the length of a
16 city block, so it is a significant setback,
17 although the Applicant certainly will take Mr.
18 Bradley's concerns into effect and provide
19 appropriate screening.

20 The rooftop does have a fair amount of
21 screening green roofs, and other amenities, so it
22 is not just a mechanical --

1 CHAIRPERSON MOLDENHAUER: Aren't there
2 also mechanical equipment on top of the current
3 switch, and is that going to --

4 MS. BRAY: There is existing mechanical
5 equipment on top of the switch.

6 CHAIRPERSON MOLDENHAUER: Will that be
7 removed, or will that be screened?

8 MS. BRAY: I believe that will remain.

9 CHAIRPERSON MOLDENHAUER: Will any
10 screening be done on that?

11 MR. HUCKA: Not anticipated. It will
12 remain exactly as it is.

13 CHAIRPERSON MOLDENHAUER: Would it be
14 anticipated based on comments of the neighboring
15 property owner today?

16 MR. HUCKA: We will take it under
17 advisement, but it was not anticipated that the
18 construction or converting into an ultra-high end
19 hotel or the condominium that is created would
20 necessitate any changes to our current and
21 existing equipment.

22 MS. BRAY: If you look at the aerial

1 photo in Slide 4 of the presentation, you can see
2 that there actually is a screen around the
3 existing mechanical, and that that is going to be
4 at a significantly lower level than the upper
5 floors of Mr. Bradley's development.

6 CHAIRPERSON MOLDENHAUER: I am actually
7 thinking of people that actually buy these units
8 looking down onto --

9 MS. BRAY: I don't think there is a way
10 to actually cover over the top of them to screen
11 them, but there is an existing mechanical screen
12 around that equipment.

13 One other note. The Applicant has
14 requested flexibility in our prehearing statement
15 with respect to the interior layouts, so that
16 there is the ability to either increase the
17 amount of residential square footage and decrease
18 the amount of retail square footage as necessary
19 to accommodate the retail tenants.

20 We believe that what we are providing is
21 ideal for the type of tenants that they would
22 like to attract, but in the event that that space

1 is too large, the Applicant requests the
2 flexibility to convert that to residential under
3 the same existing overall FAR that we have
4 requested 2.56.

5 With that, unless the Board has any other
6 questions, I think we have completed our case and
7 we would respectfully request a decision at the
8 Board's earliest convenience.

9 CHAIRPERSON MOLDENHAUER: Ms. Bray, I
10 want to make sure I understand that last comment
11 you made about flexibility. You were saying that
12 if for some reason you can't use all of the
13 retail space, that you would want to be able to
14 convert that as convertible space to be part of
15 the residential.

16 MS. BRAY: Correct.

17 CHAIRPERSON MOLDENHAUER: And that that
18 obviously is not going to change --

19 MS. BRAY: It would not change the
20 overall figure for FAR.

21 CHAIRPERSON MOLDENHAUER: And it would
22 actually decrease the nonconforming

1 nonresidential FAR, as well.

2 MS. BRAY: Right.

3 CHAIRPERSON MOLDENHAUER: Does that also
4 go against part of your argument that obviously,
5 the retail is what is needed in the W zone or on
6 this corridor?

7 MS. BRAY: It wouldn't, because what we
8 were talking about is actually a conversion of
9 space that is in the rear of the retail space.
10 You look back at those floor plans, that retail
11 space is 68 feet deep, it is pretty deep, it is
12 pretty narrow.

13 I think there is a portion of that space
14 on that first floor that a retailer may or may
15 not want, and in that case, I think we would like
16 the flexibility to be able to apportion that to
17 the residential uses in the building.

18 Again, because we are requesting the lot
19 occupancy, it doesn't impact the lot occupancy
20 calculation, it doesn't impact the overall FAR,
21 it would just provide the Applicant an occupancy
22 to not have to come back to the Board to make a

1 minor change like that.

2 CHAIRPERSON MOLDENHAUER: And just you
3 will identify that as expandable space.

4 MS. BRAY: Right.

5 CHAIRPERSON MOLDENHAUER: Also, to just
6 kind of backtrack a little bit, we have the ANC-
7 2E report, which will be a new exhibit in our
8 documentation. We will waive our requirements
9 since obviously, we did not receive this until
10 right now, and I don't know what happened
11 previously, it definitely was not part of our
12 record previously, so we will waive our
13 requirements to admit this into the record.

14 This indicates that on October 31st,
15 2011, they had a regularly scheduled, publicly
16 held meeting in which seven commissioners were
17 present, representing a quorum, and they voted
18 unanimously to adopt a resolution which indicated
19 that the ANC had not objection to the application
20 for the variance requests for the addition of
21 nonconforming structures, floor area ratio, lot
22 occupancy, and rear yard.

1 So, this letter would meet all of our
2 great weight requirements, and we will give it
3 great weight in support of the application.

4 That being said, I think that that
5 concludes our hearing today, thank you very much.

6 I think we will just jump right into
7 deliberation on this case.

8 Even though it was a complicated case and
9 the various relief that was being sought, I think
10 that Board members probably have a handle on it
11 by now, and we can kind of attack it.

12 We will all just kind of go relief on
13 each different item of relief. Let's just talk
14 about the general variance. I think the property
15 definitely satisfies the variance standard.

16 I think that the topography of the site,
17 the existing condition we heard specific
18 testimony from the Applicant and Verizon's
19 engineer in regards to the limitations on the
20 building, and the constrictions of the current
21 site, how there is no visible way to be able to
22 build up horizontally on the existing building.

1 I think that is a unique situation.

2 I don't personally calculate or consider
3 the size of the lot of be unique. I find the lot
4 to be a rectangular shape, and so I don't for
5 purposes of deliberation, calculate that into a
6 confluence of factors. I do find the location
7 right next to the canal to be a unique situation,
8 and as I said previously, the topography and
9 relationship to the sloping of the property on
10 Wisconsin Avenue, and then also the sloping
11 downwards towards the canal to be a unique
12 aspect.

13 I think that in conjunction with that,
14 there is undue hardship on the Applicant in
15 regards to try to provide some useful development
16 and expansion on the project property, but while
17 still trying to conform to certain requirements.

18 I think as stated by the Applicant in my
19 OP, any potential expansion here would be an
20 expansion of a nonconformity due to the fact that
21 the property, the current switch building goes
22 all the way to the rear yard, and so that would

1 still be in existence.

2 I guess one of my major concerns of the
3 project was the lot occupancy, just the density
4 that they were going to be putting on Wisconsin
5 Avenue, the request to go from a 90 percent
6 permitted residential use to a 96 percent, and
7 especially when we see a lot of applications,
8 they start creeping toward that 100 percent lot
9 occupancy, I think that that definitely most of
10 the times gives the Board pause, because it feels
11 as though they are asking for an exorbitant
12 amount of relief, and the question is what types
13 of factors they can prove.

14 I think that that might have been what
15 Office of Planning was initially struggling with
16 when they initially could not make a
17 recommendation. But that being said, I think
18 that based on the testimony here, based on the
19 historical nature of the area, the W zone, the
20 fact that we initially had a party status in
21 opposition who then came forward and testified in
22 favor, we have another neighboring property owner

1 who indicated their general support for the
2 project, and our strong encouragement of the
3 property to continue to work with all property
4 owners to make sure, and obviously to provide
5 their best efforts and their good faith to make
6 sure that all property owners can achieve a
7 harmony especially in an area where you do have
8 so many different uses.

9 I think that that is one thing that the
10 Zoning Commission has done a really great job
11 trying to address as the City becomes more of a
12 mixed use environment, and I think it is great
13 opportunity, but it always creates some
14 challenges and hopefully, we can always continue
15 to work to address those.

16 But I think that there has been
17 sufficient testimony in regards to the elevation,
18 the statements in regard to the floor leveling
19 and regard to the fact that the portions of the
20 switch will be counted towards lot occupancy and
21 the specific way in which lot occupancy is
22 calculated in the W Zone, to me, I mean this is

1 just a basic lot occupancy calculation, I have
2 concern about it, but because the W Zone already
3 provides this unique calculation, and I was just
4 looking at it again today, in the regs, I think
5 that that to me allows you to get over the hump
6 in regards to the 96 percent because not only is
7 there a unique way of calculating lot occupancy
8 in the zone, but also because of the existing
9 factors which allow this property to satisfy
10 variance, it also creates the higher likelihood
11 of having a higher lot occupancy than it may in
12 another circumstance.

13 So, that being said, I would actually be
14 in support of the requested relief on this
15 project in its entirety.

16 I will open up the floor for
17 deliberation.

18 MR. HOOD: I would just agree with your
19 comments, Madam Chair. I would be fully in
20 support of this, and also I think Ms. -- I said I
21 would just agree, I didn't say I would disagree -
22 - let me slow down. I was trying to make it move

1 on.

2 I would agree with your comments. I said
3 I would just agree, but anyway, I would agree
4 with your comments and being supportive, and also
5 I want to acknowledge the work of Ms. McCarthy,
6 who is well known in this city, but I can tell
7 you her testimony left no questions. I think it
8 was very detailed and when you are looking at
9 other zoning commission orders dealing with the W
10 Zones, and I think it was very detailed, and it
11 left me not to have to ask any questions.

12 So, thank you Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much, Chairman Hood.

15 Any other comments or contributions from
16 Board members?

17 Seeing none, then, I will submit a
18 motion, a motion to approve Application 18285
19 pursuant to 11 DCMR 3103.3 for variance from the
20 floor area ratio under Section 931.2, lot
21 occupancy under Section 932.1, rear yard setback
22 under Section 933.2, and nonconforming structure

1 under Section 2001.3, to allow the construction
2 of an addition to an existing telephone switch
3 building in the W-1 District at premises 1045
4 Wisconsin Avenue, N.W.

5 A motion has been made. Is there a
6 second?

7 MR. HOOD: Second.

8 CHAIRPERSON MOLDENHAUER: A motion has
9 been made and seconded.

10 All those in favor, say "aye."

11 [Chorus of ayes.]

12 MR. MOY: The staff would record the vote
13 as 4 to 0 to 1. This is on the motion of
14 Chairperson Moldenhauer to approve the
15 Application No. 18285 for the four variance
16 relief as cited by the Chair, second the motion
17 Mr. Hood, supporting the motion Mr. Jordan and
18 Mr. Hinkle, no other Board members participating.

19 Again, the motion to approve is on the vote of 4
20 to 0 to 1. The motion carries, Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much, Mr. Moy, and seeing that we have no

1 opposition in this case as an individual in
2 opposition had withdrawn and support, I would
3 like to waive our requirements and ask that a
4 summary order be issued.

5 MR. MOY: Very good. Thank you.

6 CHAIRPERSON MOLDENHAUER: Thank you.

7 Application No. 18197

8 MR. MOY: The next and final application
9 for the afternoon session is Application No.
10 18197.

11 This is application of 1211 - 10th
12 Street, N.W. LLC. I am going to read the caption
13 as advertised, as originally advertised, which is
14 pursuant to 11 DCMR 3103.2 for a variance from
15 the lot occupancy requirements under Section 403,
16 and a variance from the court requirements under
17 Section 406, to permit a rear addition to and
18 conversion of a one-family dwelling into a four
19 unit apartment house in the R-4 District as
20 premises 1211 10th Street, N.W., property located
21 in Square 368, Lot 82.

22 [Pause.]

1 CHAIRPERSON MOLDENHAUER: Good evening,
2 or actually it is still the afternoon. My old
3 clock today is messed up.

4 If the parties can introduce themselves
5 for the record, please.

6 MR. SULLIVAN: Thank you. My name is
7 Marty Sullivan with Sullivan and Barros.

8 MR. SISSON: My name is Charles Sisson.
9 I represent the owner of 1211 10th Street, LLC.

10 MR. GERACHIS: My name is Nick Gerachis.
11 I am the architect on the job.

12 MR. SULLIVAN: Thank you. Good
13 afternoon, members of the Board. On behalf of
14 the Applicant, first of all, I would like to
15 thank the Board for its accommodation in
16 postponing this process more than once and for
17 providing some valuable feedback, as well.

18 We are hopeful that the delays and the
19 advice were not in vain. We are here to present
20 what we think are significantly improved plans
21 and we have also brought with us the architect,
22 Mr. Nick Gerachis to testify about those plans

1 and specifically, to testify in more detail about
2 the exceptional costs and effort necessary to
3 restore the structure within the restrictions of
4 the Historic Preservation Office and in a way
5 that fits with the surrounding neighborhood.

6 Mr. Gerachis will also be available. I
7 know Commissioner May had asked for better
8 photos, and we don't have better photos, but he
9 can explain the photos and hopefully, provide
10 some help on that issue, as well.

11 I would like to briefly address the
12 practical difficulty test. I believe that we
13 have a number of significant instances where this
14 property can be said to be subject to an
15 extraordinary condition.

16 We think that together they produce a
17 strong case for the overall uniqueness of this
18 property. I will highlight some of these items,
19 and Mr. Sisson and Mr. Gerachis will provide some
20 more detail.

21 I think it is important that the Board
22 consider the unique condition of the context of

1 this property in relation to the uses and the
2 structures around it. The surrounding area has
3 much more density than most other R-4 areas. As
4 Mr. Sisson will testify to, across the street is
5 a large apartment building. Next to that
6 building is a 4-unit condo.

7 Two doors up to the north is an 8-unit
8 building that is of similar size as this
9 building. In addition, the area abuts a
10 commercial zone to the east, and the next cross
11 street is Mass Ave., so we are on the edge of
12 downtown, as well.

13 This is not only a unique situation, but
14 it also contributes to the practical difficulty
15 in renovating and marketing a 2-unit, 3-story
16 structure in this area as opposed to creating 3
17 units here.

18 I know a case that the Board recently
19 approved, I don't the case number, it was the
20 1300 block of Wisconsin, N.W., and one of the
21 factors that was considered in that case was the
22 subject property's relative location next to the

1 Georgetown Inn and how that situation in the
2 context of where that property was located
3 contributed to the uniqueness.

4 I think it is kind of a similar situation
5 here where obviously, there is other properties
6 around here, so we are not the only property that
7 is next to an apartment building, but when you
8 combine it with our other unique factors, I think
9 leads to an overall strong picture of uniqueness.

10 Regarding the historic preservation
11 issues, the Historic Preservation Office has
12 informed Mr. Gerachis and Mr. Sisson that the
13 restoration of the exterior of this structure is
14 very important to the Historic Preservation
15 Office, and Mr. Gerachis will provide some
16 information on his interactions with Mr. Callcott
17 on that point, and his testimony I believe will
18 tend to show that the property is unique even
19 within its contributing status in the historic
20 district.

21 I believe that the condition of the
22 property as it has been vacant for 10 years, and

1 deteriorated, is a unique condition in itself,
2 and combined with the marketability of a 2-unit
3 flat, makes restoration a practical difficulty.

4 I would add that just the fact that the
5 property has been vacant for 10 years is an
6 indicator of how this property has defied
7 restoration under the current zoning.

8 I think we have a number of conditions
9 related to the age and the condition of the
10 structure that, as Commissioner May had suggested
11 last time, are extraordinary. It is not just
12 holes in the wall or a paint job that is needed,
13 there are some extraordinary efforts and expense
14 needed that Mr. Gerachis will testify to.

15 There are extraordinary issues related to
16 the necessary excavation of the property as a
17 result of an elevation change, and the fact that
18 the property is landlocked adds to the cost of
19 that excavation and removing that dirt, as well.

20 There is issues with facade protection
21 and the need for a steel frame to support the
22 facade as the work is done.

1 So, that being said, I think the
2 condition of the property is extraordinary,
3 particularly on this block for all those reasons,
4 and when combined with the other factors,
5 including historic preservation comments, the
6 surrounding context, and the market demographics
7 for this neighborhood, the case only gets
8 stronger.

9 Regarding prong 3, as the Office of
10 Planning states, if we can meet the variance test
11 or if we can meeting prong 1 and prong 2 of the
12 variance tests, we believe there is no impairment
13 to the integrity of the zone plan, and I think we
14 do meet those tests, and therefore, don't impair
15 the integrity of the zone plan.

16 We do have ANC support. We have had a
17 vote. I hope you finally have that letter in
18 your record, and the 3-unit configuration is not
19 excessive, and it just fits the surrounding area.

20 It is not very dense compared to all the uses
21 around it, and it should result in no adverse
22 effect to the public good.

1 At this point, I would like to turn it
2 over to Mr. Sisson to discuss the surrounding
3 structures and uses.

4 Thank you.

5 MR. SISSON: Let me again reiterate what
6 Marty said about our appreciation of your
7 forbearance and willingness to give us additional
8 latitude in terms of making our case. We very
9 much do appreciate that.

10 The point in regard to the area is that
11 it has been a site of heavy development in the
12 past, that there is certainly a 20-unit apartment
13 house, a 6-story building across the street from
14 it, and adjacent to that just catty-cornered from
15 our property is an 8-story building, it had 40
16 condominiums in it, so it isn't a matter of low
17 density use in this area.

18 Mr. Sullivan also pointed out that the
19 house directly to the north -- I am sorry -- the
20 second house directly to the north is property
21 that is essentially the same as our property, and
22 it has been developed with 8 condominiums in it.

1 So, the request for 3 I think is not very
2 extreme. We did originally hope to get 4. The
3 ANC did not appreciate that suggestion, and we
4 have accommodated our plans to recognize their
5 reservations.

6 I would also mention the photographs. I
7 am sorry, there was a request for additional
8 photographs. I didn't want you think that we
9 defied that request. The point that I had was
10 Mr. May's comment subsequent to the request for
11 photographs, was that he couldn't tell that the
12 photographs taken were of this property or
13 another property.

14 I just couldn't find a way or think of a
15 way to try to combine both the inside and outside
16 of the property at the same time. So, we did
17 look at it, I apologize, there was no intention
18 not to comply with his request, but I just didn't
19 see that we could improve on what we had already
20 taken.

21 My final comment would be in regard to
22 Mr. Gerachis' presentation. I hope that you will

1 appreciate that some of the costs relating to
2 this renovation compound each other in that when
3 we try to take account of one aspect of the
4 historic designation of the property, that
5 sometimes another component of that designation
6 increase the costs still further, but my point
7 being, for example, when we have to excavate at
8 the rear of the building, it still has to go
9 through the one portal in the front and that one
10 portal will mean that all this will have to be
11 done manually instead of with machines, and that,
12 as you must appreciate, will increase the costs.

13 Those are my thoughts. Thank you.

14 MR. SULLIVAN: Mr. Gerachis, can you
15 discuss a little bit about some of the issues
16 just generally that you have working with a 100-
17 year old or more structure that has been vacant
18 for 10 years?

19 MR. GERACHIS: Well, when Steve looked at
20 it, Mr. Callcott, he said it was one of the few
21 frame buildings left in Shaw that he thought was
22 worthwhile keeping, the facade mainly.

1 So, when we go inside we are going to
2 have to brace the facade completely with some
3 steel to keep it up. We are going to have to keep
4 a portion of the roof that indicates what the
5 pitch ratio was, so we don't exceed that. He
6 didn't want that changed either.

7 So it is going to be elaborate.
8 Secondly, the site goes up 5 to 6 feet as we go
9 backward, and we are going to have to go all the
10 way through the lot in order to get that basement
11 unit in, the third unit, so we have light and
12 ventilation in the back.

13 I think it is going to be a little tough
14 to hold everything together until we can brace
15 it. It will be difficult coming out with the
16 soil, 10th Street is very busy.

17 MR. SULLIVAN: And the fact that the
18 property is landlocked in the back limits your
19 ability to remove some of the excavation?

20 MR. GERACHIS: Decidedly so. We just
21 have the front, just have to go out in front to
22 carefully take apart what is in there now since

1 it has collapsed just about everywhere, all the
2 floors, so it could be a little bit of a problem.

3 MR. SULLIVAN: Thank you.

4 That is just to supplement and complement
5 the previous things that were filed with the
6 pictures and regarding the numbers involved in
7 renovating the property, and I think for a
8 property that has been vacant for this long,
9 these types of things are to be expected, and
10 they do add significant costs.

11 When you tie that together with what is
12 going on in the area demographically, with people
13 wanting smaller units, and a lot of density
14 around, and the marketability of that makes the
15 uniqueness, the unique conditions result in a
16 practical difficulty in doing the renovation, and
17 I think that is one reason it has been vacant for
18 10 years.

19 We don't have anything further, if there
20 are any questions.

21 CHAIRPERSON MOLDENHAUER: Any Board
22 questions?

1 MR. JORDAN: Madam Chair, just real
2 quick. The lot south of you, is that vacant?

3 MR. GERACHIS: Yes.

4 MR. JORDAN: Have you had any discussions
5 with the owner of that property in terms of
6 access?

7 MR. SISSON: Yes, I certainly have. I,
8 in fact, tried to buy the property for some time.
9 It is owned by two elderly ladies, sisters, who
10 evidently inherited the property from their
11 father. One lives in Ohio, and one lives in
12 Florida. Neither wants to have anything to do
13 with any development of the property or any use
14 of the property whatsoever. It has been fenced
15 off and vacant for the last four years that I
16 know of.

17 MR. JORDAN: Again, what is the historic
18 nature of the building?

19 MR. GERACHIS: According to Steve,
20 according to Mr. Callcott, it is one of the few
21 frame buildings of that type left in Shaw, and he
22 considers it of historic significance, post-Civil

1 War house.

2 We worked on the facade to keep it the
3 way he liked to.

4 MR. JORDAN: It has been designated
5 historic?

6 MR. GERACHIS: Yes.

7 CHAIRPERSON MOLDENHAUER: Is it
8 designated or --

9 MR. SULLIVAN: It's not a landmark, it's
10 a contributing building in a historic district.

11 CHAIRPERSON MOLDENHAUER: Has a
12 contributing character. Did you talk to him
13 about the possibility of razing the structure?

14 MR. GERACHIS: Yes.

15 CHAIRPERSON MOLDENHAUER: What was his
16 response to that?

17 MR. GERACHIS: No, he didn't.

18 CHAIRPERSON MOLDENHAUER: Any other
19 questions from Board members?

20 MR. HINKLE: It appears we have some new
21 drawings. I am just curious, have up spoke with
22 HPRB in terms of these new drawings?

1 MR. GERACHIS: I spoke to him regarding
2 the facade and the rear elevation. Steve
3 initially had wanted to keep the wall, the north
4 wall of the existing building, which is why we
5 kind of broke it up in such a fashion, but he
6 relented on that and just said go ahead and take
7 it out, but he wanted to keep that character
8 initially. That is we have that odd bedroom
9 arrangement initially.

10 MR. HINKLE: So, the elements that will
11 be kept are essentially the front facade, maybe
12 the south facade, and a portion of the roof?

13 MR. GERACHIS: Facade.

14 MR. HINKLE: Okay. Thank you.

15 CHAIRPERSON MOLDENHAUER: Any other Board
16 questions?

17 Seeing none, at this point in time we
18 will turn to the Office of Planning.

19 I am sorry, are there any individuals in
20 the audience in support or in opposition to this
21 case?

22 Seeing none, now I will turn to the

1 Office of Planning.

2 MR. COCHRAN: Thank you again, Madam
3 Chair.

4 Let me start with the easy part. OP
5 recommends approval of relief from Section 405.8,
6 and that is the one that would allow an extension
7 to a pre-58 building with a side yard less than 8
8 feet, and we are supporting the Applicant's
9 request to eliminate the side yard, and recommend
10 that you approve that.

11 It is clear that it is a contributing
12 structure. It would be difficult, very difficult
13 actually, to maintain that and have a secondary
14 entrance and yet maintain the integrity of the
15 facade by expanding into the existing side yard,
16 the Applicant would be able to construct a
17 separate entrance for an additional unit and
18 would turn the building into a row structure
19 which would increase their lot occupancy that
20 would be permitted.

21 We are not able to recommend the
22 requested relief from the minimum lot area

1 requirement for a dwelling in the R-4 District.
2 He doesn't think that it is going to have a
3 substantial impact on the neighborhood. If you
4 were to approve this request as the Applicant has
5 testified, there are many buildings in the area
6 that are considerably denser, taller, et cetera,
7 existing within the R-4 Zone, especially this
8 close to the downtown and the convention center.

9 But we are constrained from recommending
10 for it because the Zoning Commission several
11 times has explicitly reinforced the notion that
12 the R-4 Zone is not to be converted into an
13 apartment zone, that it is to be a zone for
14 single family houses and for flats, and anything
15 above two units becomes an apartment.

16 Especially, with the new plans, we are
17 just not able to find our way to concluding that
18 the Applicant has demonstrated that there is that
19 exceptional condition and practical difficulty
20 that would result if they weren't able to convert
21 it into three units rather than the maximum of
22 two.

1 Again, if you did approve that, we don't
2 think that there would be substantial harm to the
3 public, just to the zoning regulations, which of
4 course is significant.

5 CHAIRPERSON MOLDENHAUER: Thank you.

6 Do Board members have any questions?

7 I am sorry, does the Applicant have any
8 questions of the Office of Planning?

9 MR. SULLIVAN: Yes, just one. Isn't it
10 true, Mr. Cochran that the R-4 Zone, and I think
11 this is in the regs, I am sorry, I don't have the
12 regs with me, is generally considered a zone for
13 the conversion of single family and two-unit
14 flats to apartment buildings, it is just that
15 there is a land area requirement, and that is
16 what we are asking for variance from?

17 MR. COCHRAN: No, the regulations are
18 fairly explicit that the R-4 Zone is not intended
19 to be an apartment zone. It does allow in
20 unusual circumstances the conversion, if you have
21 900 square feet of lot area, and that is what you
22 are asking for relief for here.

1 MR. SULLIVAN: Right, but that wouldn't
2 be unusual, if you have the 900 square feet, it
3 is a matter of right.

4 MR. COCHRAN: That's correct.

5 MR. GERACHIS: A structure in that block,
6 we have nothing but masonry apartment buildings
7 basically, and this stands alone and it just
8 doesn't seem like it belongs.

9 MR. COCHRAN: I am sorry, is that a
10 question?

11 MR. SULLIVAN: No, I am sorry.

12 CHAIRPERSON MOLDENHAUER: Then, at this
13 point in time we will -- do you have any other
14 questions for the Office of Planning, Mr.
15 Sullivan?

16 MR. SULLIVAN: No, I don't.

17 CHAIRPERSON MOLDENHAUER: At this point
18 in time, I don't know if we have referenced the
19 ANC report. We received it prior to the last
20 hearing, but I will just indicate that we didn't
21 previously, it is Exhibit 36 in our record. We
22 have a letter dated July 27th, indicating that on

1 July 6, 2011, with a quorum present, ANC held a
2 regularly held noticed meeting, and voted 4 to 0
3 to recommend approval of the following
4 application.

5 So, this letter would receive great
6 weight.

7 That being said, I will turn back to the
8 Applicant for any final comments.

9 MR. SULLIVAN: Thank you. First of all,
10 I neglected to do this. I have an update Form
11 135 that I would like to submit. The proposed
12 lot occupancy is 60 percent. I think it was a
13 little bit less than that when we originally
14 filed.

15 CHAIRPERSON MOLDENHAUER: You can please
16 provide that to Mr. Moy.

17 MR. SISSON: I just would want to add one
18 comment regarding the ANC's letter. At the last
19 hearing on this matter, the Board requested that
20 we re-approach the ANC and ask if they had any
21 further comments, and we have done this, and they
22 did not respond.

1 CHAIRPERSON MOLDENHAUER: Thank you for
2 that update, I appreciate that.

3 MR. SULLIVAN: I want to follow up a
4 little bit with just the R-4 comment, because it
5 is in the regs, I know that it says -- we are not
6 talking about a use change here, that is very
7 clear, it's that the R-4 is for the conversion of
8 row houses to apartments, and we are asking for
9 about 350 square feet, I think.

10 CHAIRPERSON MOLDENHAUER: I don't know if
11 I agree with that. I mean you are asking for --
12 the R-4 only allows a flat or a single family
13 dwelling, and it does not allow a multi-family
14 structure unless it satisfies certain
15 requirements.

16 MR. SULLIVAN: Right, but the R-4 regs
17 start out saying it is one of the purposes of it
18 is for the conversion of row houses to apartment
19 units. It has always been an area variance, but
20 you are right, the requirement is the 900 square
21 feet, which is a density limitation, and we are
22 asking for a variance from that density

1 limitation.

2 If we had another 300 square feet, if we
3 were able to purchase the lot next-door or if we
4 are able to purchase the fairly useless land lots
5 behind us, we wouldn't need that, and it would be
6 the same thing.

7 We could have three units as a matter of
8 right. I just wanted to focus on that, that it is
9 a land area issue is what we have. Conversions
10 are permitted.

11 CHAIRPERSON MOLDENHAUER: I am just
12 looking at Section 330.1.

13 I am sorry, if you want to go back and
14 complete your closing remarks.

15 MR. SULLIVAN: No, that is the only thing
16 I wanted to say. I think that we have a number
17 of issues working with this property, most of
18 which are related to the condition of the
19 structure itself and the fact that there is a
20 desire by the Historic Preservation Office to
21 preserve that building, and I think all of these
22 factors together, I hate to overuse the word

1 "confluence," but it is, and it makes it unique,
2 and what that does is it does protect the
3 integrity of the regulations because it makes it
4 a lot less likely that any other property is
5 going to have the same issues that we have,
6 whether are landlocked by two unusable lots,
7 whether we have comments from Historic
8 Preservation, we are surrounded by these larger
9 buildings of greater density, and we have been
10 vacant for 10 years, and it requires an
11 extraordinary effort and expense to bring this
12 particular structure back into productive
13 existence.

14 That is all I have. I have no further
15 comments. Thank you.

16 CHAIRPERSON MOLDENHAUER: What we are
17 going to do is we are going to put this on the
18 calendar for a decision. I know that Peter May,
19 our Zoning Commissioner, wanted to read the
20 record and participate in this deliberation. So,
21 we will put this on the calendar. I believe we
22 can put it on the calendar for next week.

1 MR. MOY: The only issue I would have is
2 to provide the transcript for --

3 CHAIRPERSON MOLDENHAUER: We can't do
4 that web cam, so why don't we put this on the
5 calendar for January 10.

6 So, this case is concluded and we will
7 decide this case on January 10th. Thank you.

8 MR. SULLIVAN: Thank you.

9 CHAIRPERSON MOLDENHAUER: One final piece
10 of business for the Board. At this point in time
11 as Chair, the Board of Zoning Adjustments for the
12 District of Columbia, and in accordance with
13 Section 405 of the Open Meetings Act, I move that
14 the BZA hold a closed meeting via telephone
15 conference on Monday, December 5, 2011, for
16 purposes of seeking legal advice from our counsel
17 in the following cases scheduled for upcoming
18 decision.

19 Application 18305 of Rodman. Application
20 18116 of Bedard. Appeals 18257 Parrs, and as
21 motion for a second two-year extension
22 Application 17696 and 17696A of Hines, 2100 M

1 Street, LT.

2 Is there a second?

3 MR. JORDAN: Second.

4 CHAIRPERSON MOLDENHAUER: Will the
5 Secretary please take a roll call on the motion
6 before us now that it has been seconded.

7 [Roll call vote.]

8 CHAIRPERSON MOLDENHAUER: As it appears
9 that the motion has passed, I hereby give notice
10 the BZA will hold this aforementioned closed
11 meeting via telephone conference pursuant to the
12 Open Meeting Act, notice will also be posted in
13 the Office of Zoning, Electronic Reading Room,
14 placed in the Office of Zoning Electronic
15 Calendar, on its web site, and published in the
16 District of Columbia's Register in as timely a
17 matter as possible.

18 Thank you very much. That concludes our
19 cases for today. We will reconvene next Tuesday.

20 [Whereupon, at 3:58 p.m., the Public
21 Hearing was adjourned.]

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