

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 17, 2001

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:42 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID Chairperson

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD Commissioner

NATIONAL CAPITAL PLANNING COMMISSION:

SUSAN MORGAN-HINTON Commissioner

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning
Arthur Jackson, Office of Zoning
Steven Cochran, Office of Planning
Andrew Altman, Director, Office of Planning

COMMISSION STAFF PRESENT: (Continuing)

Jennifer Steingasser, Office of Planning
John Fondersmith, Office of Planning
Robert Brown, Office of Planning
James Thackaberry, D.C. DH&C,

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

C O N T E N T S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS.	4
<u>APPLICATION OF LATIN AMERICAN YOUTH CENTER:</u>	
<u>16668 ANC-1A</u>	7
KAREN KRAMER, ESQ.	12
Covington and Burling	
1201 Pennsylvania Avenue, N.W.	
Washington, D.C. 2004	
(202) 662-5167	
WITNESSES	
MEGHAN WALSH	29
LORI KAPLAN.	35
<u>APPLICATION OF JOAN SUTTON FOR HOPE VILLAGE:</u>	
<u>16699 ANC-8B</u>	85
STACY LEWIS, ESQ..	86
Temple Law Offices	
1200 G Street, N.W., Suite 370	
Washington, D.C. 20003	
(202) 628-1101	
WITNESSES	
LEONARD GRAY	91
EYDIE WHITTINGTON.	100
JOSEPH WILMER.	110
JAMES MURPHY	120
PHINIS JONES	122
<u>APPLICATION OF BENJAMIN MEADLEY:</u>	
<u>16686 ANC-4B.</u>	194
<u>APPLICATION OF MILLENNIUM GEORGETOWN PARTNERS, LLC</u>	
<u>16702 ANC-2E.</u>	196
RICHARD B. NETTLER, ESQ	210
Robins, Kaplan, Miller & Ciresi, L.L.P.	
1801 K Street, N.W., Suite 1200	
Washington, D.C. 20006	
(202) 775-0725	
WITNESSES	

ANTHONY LANIER. 245
EMILY EIG 272
SHALOM BARANES. 280
DAVID BIRD. 321
CARRIE A. JOHNSON 323
BARBARA DOWNS 344
BARBARA ZARFMAN 346
DOROTHY MILLER. 386

P R O C E E D I N G S

(9:42 a.m.)

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, Ladies and Gentlemen. This is the April 17th, 2001 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Susan Hinton, representing the National Capital Planning Commission, and representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions and variances is, one, statement and witnesses of the applicant.

Two, government reports, including the Office of Planning, Department of Public Works, et cetera. Three, the report of the Advisory Neighborhood Commission, the ANC.

Four, parties or persons in support. Five, parties or persons in opposition, and, six, closing remarks by the applicant.

1 Cross-examination of witnesses is permitted by
2 the applicant or parties, and the ANC within the property is
3 located is automatically a party in the case.

4 The record will be closed at the conclusion of
5 each case, except for any materials specifically requested by
6 the Board, and the staff will specify at the end of the hearing
7 exactly what is expected.

8 The Sunshine Act requires the public hearing on
9 each case be held in the open before the public. The Board
10 may, consistent with its rules of procedures and the Sunshine
11 Act, enter executive session during or after the public hearing
12 on a case for purposes of reviewing the record, or deliberating
13 on the case.

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

18 Please turn off all beepers and cell phones, or
19 set them to vibrate at this time, so as not to disrupt these
20 proceedings.

21 At this time the Board will consider any
22 preliminary matters. Preliminary matters are those which
23 relate to whether a case will or should be heard today, such as
24 a request for a postponement, continuance, or withdrawal, or
25 whether proper and adequate notice of the hearing has been

1 given.

2 If you are not prepared to go forward with the
3 case today, or if you believe that the Board should not
4 proceed, now is the time to raise such a matter. Are there any
5 preliminary matters?

6 MS. BAILEY: The staff has none, Madam Chairman.

7 CHAIRPERSON REID: The staff has none. Okay. We
8 will not proceed with the first case, and I would like to ask
9 for your indulgence in pardoning us for being delayed this
10 morning. Thank you. Okay.

11 MS. BAILEY: Good morning. The first case of the
12 morning is Application Number 16668, of Latin American Youth
13 Center, pursuant to 11 DCMR 3104.1, for a special exception
14 under Section 334, for a community service center and under
15 Subsection 3103.2, for a variance from Section 2101 of the
16 parking requirements, and a variance from Subsection 405.9,
17 the side yard setback requirements in an R-5-B District at
18 premises 3035 15th Street, Northwest, Square 2672, Lot 872.
19 All those wishing to testify would you please stand.

20 (All witnesses were sworn.)

21 MS. BAILEY: Thank you. Members of the Board,
22 the Office of Planning and ANC-1A are both recommending
23 approval of the application, with conditions. The property was
24 properly posted, and the affidavit timely filed.

25 The staff has attached to our summary of the

1 cases a listing of all of the board actions, previous board
2 actions in the subject square, and the case is ready to go
3 forward.

4 CHAIRPERSON REID: All right. Thank you. Ms.
5 Bailey, let me ask you a quick question. This list of previous
6 -- is it previous actions in the square?

7 MS. BAILEY: Yes, Madam Chair.

8 CHAIRPERSON REID: So this is a chronological
9 type of breakdown of what orders have been issued as it
10 pertains to this whole square?

11 MS. BAILEY: Exactly. The second column over is
12 a listing of the square, and the third column are the lots,
13 addresses, and so forth; and the last column identifies whether
14 the application was granted, withdrawn, dismissed, and so
15 forth.

16 But it is for the entire square and it is fairly
17 accurate. It lists -- I guess it starts back as long as the
18 records have been kept in the Office of Zoning for that square.

19 CHAIRPERSON REID: Okay. Thank you. All right.
20 Proceed.

21 MS. KRAMER: Good morning, Chairman Reid and
22 Members of the Board, and Staff. My name is Karen Kramer, and
23 I represent the Latin American Youth Center.

24 I am here this morning with Lori Kaplan, who is
25 sitting to my left, who is the executive director of the Latin

1 American Youth Center, and Megan Walsh, sitting to Lori's left,
2 who is our architect who has designed this project and the
3 model before us this morning.

4 I will be speaking initially giving an overview
5 of the application for the community service center, and the
6 two variances, and also highlighting the Latin American Youth
7 Center's plans to implement the recommendations of the ANC and
8 the Office of Planning.

9 Following my presentation, Lori Kaplan will speak
10 a little bit further concerning the project itself and the
11 intended uses of the new art center facility; and finally Megan
12 Walsh will speak about the renovations specifically planned for
13 the art center, and we will discuss the model, and we will
14 discuss some of the specific problems with the lot and the
15 current structure that requires some other renovations that we
16 are proposing.

17 CHAIRPERSON REID: Okay. Did you give us your
18 address when you gave your name?

19 MS. KRAMER: No, I did not.

20 CHAIRPERSON REID: Please do.

21 MS. KRAMER: I am with Covington and Burling, and
22 we are located at 1201 Pennsylvania Avenue, Northwest.

23 CHAIRPERSON REID: Okay. This application, as
24 far as I know, does not have any opposition. Is there anyone
25 here in opposition to this particular case?

1 (No audible response.)

2 CHAIRPERSON REID: And you have the approval --
3 the Office of Planning has recommended approval, and the ANC-1A
4 has also recommended approval, and you did have a previous
5 order.

6 Now, as such, you can basically expedite your
7 case. Give us the salient points. You don't have to -- and
8 the board members have read your complete submission, and as
9 such, give us the salient points, and basically your case can
10 be expedited fairly quickly.

11 There was one thing that I did want to discuss
12 with you, and that was in regard to the relief under which you
13 are coming today. We had some discussion, and it appears that
14 the relief that you are asking for is a special exception, and
15 for a variance.

16 MS. KRAMER: That's correct.

17 CHAIRPERSON REID: Now, the special exception is
18 for the community service center under Section 334.1.

19 MS. KRAMER: Yes.

20 CHAIRPERSON REID: And that's fine. However, we
21 feel that the variance that you are asking for, the parking
22 variance, is one that could perhaps be made a lesser burden and
23 that you could then proceed under a special exception for the
24 parking.

25 Basically, what we have on record are two parking

1 agreements, where you have proffered to offer parking outside
2 ot your facility. There is one parking space made available,
3 and under the existing guidelines, under 2101, you would be
4 required to provide seven additional spaces.

5 Well, we feel that you could come under a special
6 exception relief for parking under 2116.5, which is a special
7 exception, which is a lesser burden -- am I making sense --
8 which is easier to do, and when we get to that point, we can
9 talk about you making it as a condition of any approval that
10 the agreement that you have given us be amended to reflect a
11 beginning and ending date.

12 Right now it just says that you can park there,
13 but there is no guarantee to us that at any point that -- well,
14 tomorrow they may say that they changed their minds.

15 So we need something a little bit more
16 definitive, and that has both the date that they will allow you
17 to begin parking, and up until how many years or whatever, and
18 that can be done prior ot the order being issues, okay?

19 And as we go along, perhaps it will make more
20 sense, and we can clarify it further. But basically we know --
21 we have ascertained that you don't really need to have a
22 variance for the parking. You can go under a special
23 exception.

24 MS. KRAMER: Thank you.

25 CHAIRPERSON REID: You are quite welcome.

1 MS. KRAMER: If you would like, we can start by
2 talking about parking.

3 CHAIRPERSON REID: Okay.

4 MS. KRAMER: Maybe that makes the most sense.

5 CHAIRPERSON REID: Right.

6 MS. KRAMER: I guess I will start by just giving
7 you a little bit of background on the Latin American Youth
8 Center and this facility, so that everyone is familiar with
9 where we are.

10 The Latin American Youth Center is an
11 organization based in Columbia Heights that provides a variety
12 of services to neighborhood youth. It is currently located at
13 1419 Columbia Road.

14 It is in the process of outgrowing that facility,
15 and therefore it has acquired this new house at 3035 15th
16 Street, and looking to expand its arts programming to that
17 facility. And 15th Street, and 3035 15th Street is located
18 approximately a block from the Columbia Heights Metro Station,
19 and in close proximity to a number of other bus routes.

20 The clientele of the center generally come from
21 Columbia Heights and the surrounding communities, and most of
22 them do not own cars, and either take public transportation or
23 bike, or walk to the center.

24 The staff that we anticipate at the center at
25 this point is five full-time, and potentially up to four part-

1 time employees. The specific employees that have been
2 identified at the present time to be the full-time staff at the
3 center, of those, three are currently employed by the Latin
4 American Youth Center at 1420 Columbia Road.

5 And of those three, two do own cars and already
6 take advantage of the Latin American Youth Center's parking
7 arrangements. So they already have parking within close
8 proximity. And the third, as far as we know, does not own a
9 car, and takes public transportation or walks to work.

10 So at this point, with respect to parking, we
11 don't see any increased use of parking with respect to staff
12 located at the youth center. However, we are aware that this
13 is an issue, particularly that concerned the ANC.

14 And we will be amending the Latin-American Youth
15 Center's employee manual to make it clear that employees who
16 work at the facility on 15th Street should not park on 15th
17 Street, and should take advantage of the other parking
18 available.

19 In addition, all of the advertisements as the ANC
20 has requested concerning any sort of programs or events at the
21 15th Street site will highlight the easy accessibility of
22 public transportation.

23 So we think that as the ANC is concerned about
24 parking, we know that people in the neighborhood are concerned
25 about parking. The combination of these two things, plus the

1 general use that we expect for the 15th Street facility, should
2 really alleviate any big parking concerns.

3 And in addition, as you are aware, we do have the
4 potential for additional parking at the two facilities; the
5 unit facility and the Columbia Village facility. So those are
6 our two issues to address the first two concerns of the ANC.

7 A third concern of the ANC recommendation
8 concerned access to the outdoor theater. As you can see from
9 our model, we have quite a bit of space in the back of the
10 house.

11 CHAIRPERSON REID: You know what? We
12 couldn't really see that that well, and you can put it right up
13 here.

14 MS. KRAMER: All right.

15 CHAIRPERSON REID: Thank you.

16 MS. KRAMER: The property line for the house runs
17 the narrow sort of triangular stretch going back.

18 CHAIRPERSON REID: Right here?

19 MS. KRAMER: Right there.

20 CHAIRPERSON REID: Okay.

21 MS. KRAMER: And the plan is to try and renovate
22 the back of the house with a deck, and to then have some
23 outdoor performance space in the back of the house.

24 Both the ANC and the Office of Planning had
25 different concerns and recommendations concerning that space.

1 The ANC's particular concern was access and security of that
2 outdoor space, and we have taken that into account.

3 There is currently a chain linked fence
4 surrounding that space which will remain, and the Latin
5 American Youth Center will not allow anyone to go back there
6 after hours.

7 Our plans call for putting in lights in the back,
8 which may include motion sensor lights, to serve as a deterrent
9 to anyone entering that space after hours, and in addition the
10 Latin American Youth Center owns the two houses on either side
11 of 3035 15th Street.

12 Current plans in the works may be to turn those
13 into some sort of youth group homes that would be staffed 24
14 hours a day, which would provide additional staff on site that
15 could watch that back yard to see that there was no trespassing
16 on it in the evening.

17 The Office of Planning's specific concern and
18 recommendation was outdoor performances end at 10 o'clock p.m.,
19 and that is certainly something that the Latin American Youth
20 Center is prepared to do to make sure that all of it is summer
21 performances and before 10 o'clock.

22 Finally, the ANC had a recommendation that we
23 work with the ANC to establish some sort of community advisory
24 board to keep the ANC up to date on the Latin American Youth
25 Center's plans both for this facility and for the other

1 properties that it owns in the neighborhood.

2 The Latin American Youth Center is interested in
3 working closely with the ANC and the community to keep them
4 aware and to get their input as to the Latin American Youth
5 Center's plans.

6 Following up on the meeting at the ANC, Lori
7 Kaplan sent a letter to the ANC, in-part responding to some of
8 the ANC's concerns on parking. But also indicating that she
9 and the Latin American Youth Center wanted to work with the ANC
10 to come up with the best way to keep the ANC informed.

11 So we view that as a ongoing process of working
12 with the ANC, and the Latin American Youth Center, to increase
13 communication, and we think we have started along that road.

14 CHAIRPERSON REID: Okay. How are you going to do
15 that on a continuing basis?

16 MS. KRAMER: Lori Kaplan will address that a
17 little bit further.

18 CHAIRPERSON REID: Okay.

19 MS. KAPLAN: I have spoken to Chair McIntyre, who
20 unfortunately I think could not be here today. She had some
21 personal issue to address, but what we talked about is just
22 getting a liaison between the youth center and the ANC, but
23 formalizing it, where they would name a person, and I would
24 come regularly, or representatives from the Latin American
25 Youth Center would regularly come to ANC meetings, which we are

1 happy to do anyway.

2 But we would look for a formal way to create a
3 liaison between the ANC and the Latin American Youth Center.
4 The letter that I sent on March 19th, I can get you all copies
5 of that.

6 MS. KRAMER: I have copies if the Board would
7 like copies.

8 MS. KAPLAN: It addresses -- it just says that
9 you mentioned a liaison between the youth center and the ANC
10 would address this situation. Please let me know how we can
11 implement this idea. So I see Chair McIntyre often, and we
12 will be able to figure out a way to implement that.

13 CHAIRPERSON REID: And did she -- and was she
14 amenable to that? In other words, that you having a member
15 attend the ANC meetings regularly was suitable to her for
16 addressing their concerns, as far as communication was
17 concerned?

18 MS. KAPLAN: I think so, but I think she was also
19 thinking that someone from the actual ANC, in addition to the
20 Latin American Youth Center staff, would serve in a liaison,
21 and it wouldn't just be the Latin American Youth Center staff.

22 That we would create a relationship with some members of the
23 ANC.

24 CHAIRPERSON REID: Are you saying perhaps an
25 advisory committee or something like that? You mean something

1 different and apart from just you going to their meetings

2 MS. KAPLAN: Right.

3 CHAIRPERSON REID: And establishing an advisory
4 committee or something, where you have the ANC and the Latin
5 Youth organization, as well as -- well, the Latin American
6 Youth Center, as well as perhaps some other persons from the
7 community to participate in that particular activity?

8 MS. KAPLAN: I think that's right.

9 CHAIRPERSON REID: Okay. That's fine.

10 COMMISSIONER HOOD: Madam Chair, can I ask a
11 question? Is Ms. McIntyre the single member district
12 commissioner for the area in which the youth center is located?

13 MS. KAPLAN: She is. She happens to be the chair
14 of the ANC, and she is also our specific commissioner.

15 COMMISSIONER HOOD: Okay.

16 MS. KRAMER: At 1419 Columbia Road, which is our
17 headquarters.

18 COMMISSIONER HOOD: Okay.

19 CHAIRPERSON REID: All right.

20 MS. KRAMER: Thank you. Moving on, we have
21 applied for a special exception as a community service center,
22 and I can discuss our specific points that meet those
23 requirements, or I can move on to the variance if the Chair
24 would prefer.

25 CHAIRPERSON REID: No, you can go ahead and give

1 us how you meet those requirements for this special exception.

2

3 MS. KRAMER: We have applied for a special
4 exception as a community service center under Section 334 of
5 the zoning regulations, which also require us meeting the
6 standards under Section 3104.

7 We have submitted a detailed statement of
8 existing and intended use which outlines that, and the Office
9 of Planning's report also outlines how we meet those standards.

10 First, the LAYC's submission and demonstrated
11 commitment to the community meets the requirements because a
12 community service center is a category created to accommodate,
13 quote, organizations created to improve the social or economic
14 well-being of the residents of the neighborhood of the center.

15 As I have mentioned before the primary clientele
16 of the center will be youth located in the surrounding Columbia
17 Heights and other neighborhoods. And the Latin American Youth
18 Center has been an important part of the community now for a
19 number of years.

20 In addition, per Section 334.4, the art center
21 will be convenient to the neighborhood in which it is proposed
22 to be located for the reasons that I have just discussed.

23 Second, the community service center and art
24 center will not be objectionable to neighboring properties.
25 Again, as we have discussed, the main clientele will be the

1 youth located in the neighborhood.

2 And with respect to particular concerns, as to
3 how it might impact the neighboring properties, the Latin
4 American Youth Center does own the properties on either side,
5 and one additional property on the same block.

6 So we don't anticipate any problems with respect
7 to the neighborhood, and in addition to the degree that there
8 are any lingering concerns, we hope to be able to address them,
9 such as addressing the ANC's recommendation concerning security
10 access to the back yard space.

11 Third, structural changes are not to be made in
12 community service centers except as required by other
13 regulations or laws. The structural changes that we are
14 proposing with respect to the art center are necessary for the
15 functional use of the property as an art center, and to meet
16 current building code requirements.

17 In particular, the stair tower that we are going to add
18 at the back is necessary to meet certain fire code
19 requirements.

20 We also understand from the Office of Planning's
21 report that the Zoning Administration staff of the building and
22 land regulatory administration view that the Board may waive
23 this section of the special exception requirements for relief,
24 and if that is appropriate, we would certainly request that the
25 Board do so.

1 Fourth, the Latin American Youth Center is a non-
2 profit organization, and non-profit is one of the requirements
3 for a community service center. We don't anticipate that there
4 will be any for profit activities involved in the art center
5 other than potentially a small snack bar of some sort for use
6 by the youth that frequent the center.

7 And that any profits from the sales in that snack
8 bar will be going directly back into the money of the art
9 center in order to run the art center. So it will not be any
10 sort of a profit center.

11 And finally with respect to the requirements of
12 Section 3104 of the zoning regulations, the art center will be
13 in harmony with the general purpose and intent of the zoning
14 regulations.

15 The alterations that we have proposed are modest
16 in scale, and they will rehabilitate this building from what is
17 currently a boarded up vacant property, and making it once
18 again a vibrant property on the street.

19 But although that will happen, we are not going
20 to be changing the scale of the property. The only real
21 visible alterations will be the stair tower in the back and a
22 front porch with a handicap p accessible ramp, and perhaps
23 some decking in the back for use of our outdoor performance
24 space.

25 We are not going to be changing the physical view

1 of this building very much from the street, and so it will
2 continue to look as it does, and to continue to be in
3 conformity with the rest of the neighborhood.

4 Moving on to the parking variance requirement.
5 We have prepared this as the request for a variance, and so I
6 will discuss it that way, although I am happy to discuss it
7 also as a request for a special exception if the Chair would
8 like or prefer.

9 CHAIRPERSON REID: Well, remember that you still
10 -- and not withstanding the fact that if we amend the
11 application to request a variance, and the special exceptions
12 out of a variance for the parking situation, there still
13 remains the variance for the side yard setback.

14 MS. KRAMER: Yes.

15 CHAIRPERSON REID: And under 4405.9, and so you
16 still have to discuss the variance anyway. So proceed.

17 MS. KRAMER: In terms of the variance for
18 parking, some of the standards for granting a variance include
19 difficulties with the shape of the property, topographical
20 considerations, undue hardship to the owner, and exceptional
21 practical difficulty.

22 We believe that we will qualify for a variance
23 under all of these points. And as the Office of Planning's
24 report has explained, and as you can see from our model, our
25 lot is narrow and shallow in shape, and the rear is even

1 narrower than the front.

2 In addition, there is no real good access to the
3 rear. So even if we were to turn the rear of the house into
4 parking, we would need to make some sort of arrangements with
5 other property owners in order to get cars back there.

6 And if we were to do so, we would obviously
7 destroy the ability to use the rear yard for an outdoor
8 performance space, which is one of the attractions of this
9 property, and one of the ways that we hope the art center could
10 be integrated into the community.

11 In addition, we respect to the topography of the
12 lot, as you can see from the model there is a very large tree
13 located in the back of the property. We have had an arborist
14 come and look at the tree. His report is included in the
15 materials that we have submitted.

16 The tree is a large white oak. It is quite old,
17 and it has a critical root radius of approximately 50 feet. In
18 his view, anything that we would do that would encroach on that
19 root radius could be detrimental to that tree.

20 And so we would be reluctant to go anything that
21 would require us to pave over the area or in any way
22 potentially harm that tree, which we also think is an asset to
23 the neighborhood and to the art center.

24 So for those reasons, we think that we are good
25 candidates for a variance, and in addition as we have discussed

1 in our proposals, and as I have mentioned earlier today, we do
2 not believe that the traffic to be generated by this new
3 facility will be car traffic, but will only be foot traffic
4 because of the clientele who are likely to visit the facility,
5 and are unlikely to come by cars.

6 And the staff of which we are aware currently
7 will not be driving and new staff will be told that they need
8 to park in other places other than on 15th Street.

9 Moving on to the final issue, the side yard set
10 back variance, our request for a variance here follow according
11 to many of the same categories as the request for a parking
12 variance.

13 Again, the lot is narrow, and we have specific
14 topographical issues and we would have extraordinarily
15 practical difficulty in order to meet the side yard set back
16 requirements.

17 In addition, we have some functional issues here
18 that would make it difficult to meet the side yard setback
19 requirements. The side yard requirement in the R-5-B district
20 is 8 feet on both sides. The property currently has a side
21 yard setback of 1-1/2 feet on the left side, and approximately
22 6 feet on the right.

23 Accordingly, we understand that we do not need a
24 variance on the right side since the building was built prior
25 to 1958. So I am going to address the left side of the

1 building.

2 On the left side of the building, we are planning
3 to construct a front porch in the front of the building, with a
4 handicap accessible ramp, and I just wanted to clarify that
5 that porch and ramp will be flush with the left side of the
6 building.

7 So it will have a side yard setback of only 1-1/2
8 feet, and therefore we would need a variance of 6-1/2 feet,
9 which is different from what the Office of Planning's report
10 had said.

11 In the back, the stair tower will require a side
12 yard setback of 3.2 feet, and therefore, we would need a
13 variance of 4.8 feet. Megan Walsh will discuss this in a
14 little bit more detail in terms of the programmatic use of the
15 space, and how the stair tower, constructed where it does,
16 enhances that programmatic use.

17 But essentially for the flow of the building, we
18 feel that it is very important to put the stair tower where we
19 are planning to construct it, and not to try and move it any
20 further into the interior of the building.

21 That would interrupt the flow in the building,
22 and the use of the programmatic space would also encroach
23 further on the root structure of the tree, and could
24 potentially be detrimental to the tree, and obviously more
25 expensive to the degree if we had to remove the tree or destroy

1 the tree in any way.

2 And with respect to the front porch, in terms of
3 the functional use, it is important that we keep the front
4 porch and the ramp flush with the building, which makes the
5 most sense from a structural perspective.

6 And at this point, I think I will turn it over to
7 Megan and she can address that a little bit more.

8 CHAIRPERSON REID: Are there any questions of
9 this witness, Board Members, before she continues?

10 COMMISSIONER HOOD: Do you want to ask questions
11 as we go along, or when they finish?

12 CHAIRPERSON REID: Well, I mean, if you choose
13 to. I just want to give you the opportunity.

14 COMMISSIONER HOOD: I have a question about the
15 arborist and the tree.

16 CHAIRPERSON REID: All right.

17 COMMISSIONER HOOD: I think the recommendation
18 from the arborist is that you stay as far away from the tree as
19 possible.

20 MS. KRAMER: That's correct.

21 COMMISSIONER HOOD: Did the arborist come out and
22 do any drilling samples, or take any tests?

23 MS. KRAMER: I don't believe so, but Megan might
24 be able to answer that.

25 MS. WALSH: I was with the arborist when he came

1 out to the site, and --

2 CHAIRPERSON REID: Madam, could you give your
3 name and your address before you speak on the record.

4 MS. WALSH: My name is Megan Walsh, and my
5 address is 2231 Ontario Road, Northwest. I was with the
6 arborist when he came out to the site and looked at the tree,
7 and his explanation of the tree and how it receives food is
8 that all of the root structure for a tree is within the first
9 six inches of the soil.

10 And that extends out approximately 50 feet, and
11 his recommendation was that the less that we touch that the
12 better, and the further away from the center that we touch it
13 the better, because the roots reach out further as they get
14 further away.

15 And he didn't do any testing of the soil or
16 anything like that at the time, and I think that was sort of
17 the general knowledge of how the tree grows that he was giving
18 to us, and before anything else that would be affected.

19 COMMISSIONER HOOD: But I guess the commitment is
20 to preserve the tree, and what I am reading here is that it is
21 oak, and it is hundreds of years old.

22 And I know that we have had cases before where
23 there is a big effort to preserve the tree. My concern is that
24 when you start doing your construction, it takes 3 to 5 years
25 to even know that you have done damage.

1 MS. WALSH: Right. We talked about methods to
2 ensure that we don't hurt the tree during construction, which
3 are that we would not allow any heavy equipment in that back
4 area, and we would also have mulch all over the area
5 surrounding the tree.

6 And that there would be specific instructions not
7 to remove that mulch with a backhoe or something that would dig
8 that out afterwards. We have on one of our other properties,
9 we also have some youth that work with the Latin American Youth
10 Center in a program called "Youth Build" and they are involved
11 -- they are going to be involved with the construction of
12 another property.

13 And we expect that they would probably be
14 involved with helping us to preserve the tree with setting down
15 the mulch and what not at the outset before the contractors
16 even get there.

17 COMMISSIONER HOOD: And are you still going to
18 retain your arborist throughout the construction process?

19 MS. WALSH: Yes, we are and we are intending to
20 have him -- he said that the tree is actually in very good
21 shape. There are a couple of things that the previous owner
22 may have done to cut a branch here or there. And he intends to
23 deal with those things, but he said generally it is in very
24 good shape.

25 COMMISSIONER HOOD: Thank you, Madam Chair.

1 CHAIRPERSON REID: All right.

2 MS. WALSH: So to continue with the side yard
3 setback issue.

4 MEMBER HINTON: Madam Chair, I just wondered if
5 there are full-sized plans in the folder, and if so, could I
6 see them. Thank you.

7 CHAIRPERSON REID: You can proceed while she is
8 looking.

9 MS. WALSH: Okay. I wanted to discuss the exact
10 location of the stair tower and the other reasons to keep it as
11 far from the tree that have to do with the function of the
12 building and the existing structure.

13 The first thing that I would like to call
14 attention to is does everybody have a copy of the plans.

15 CHAIRPERSON REID: Yes. What page?

16 MS. WALSH: Okay. I would like for you to look
17 at Exhibit F, page 3, which is the second floor plan. On that
18 plan, I would to call your attention to something that I
19 described in my architect's statement, which is that there is a
20 corridor -- well, there is an existing stair in the building,
21 and when you get to the top of that stair, there is a corridor
22 that runs along from front to back in the house.

23 That separates two spaces; one, which is
24 approximately 9 feet wide, and the other, which is
25 approximately 15 feet wide. We are trying to keep the stair

1 tower, in addition to keeping it as far from the tree, we are
2 trying to keep this stair tower so that it can access that
3 corridor without cutting through those spaces, or cutting
4 through the larger space in particular, because we would lose
5 valuable program spaces.

6 If we had a corridor that sort of winded through
7 the building, we would not be able to use those larger rooms
8 for programs that we are intending to use.

9 So the idea of locating this stair tower where it
10 is, is to minimize the corridor space. It is also -- it will
11 prevent the youth center from having to reframe larger areas of
12 the interior of the building to accommodate their programs, and
13 therefore it would cost less for them to do it this way.

14 And generally the back area, the further that you
15 would move that stair tower over towards the tree, we would
16 impede on the back area, in terms of creating a deck that could
17 be handicap accessible, and the further that goes over, the
18 less space there is to have people to get out on that deck and
19 use it for the outdoor performances.

20 Does anyone need clarification? I know that I
21 just gave a lot of information?

22 CHAIRPERSON REID: No, you did pretty well. Does
23 that conclude your testimony?

24 MS. WALSH: Well, I would also just like to speak
25 about the house a little bit, because I brought the model, and

1 so I think it is important that it is brought up that this
2 house is going to serve other purposes than just functions of
3 programs.

4 The concept for the design of the house is that
5 the students working in the house will eventually be
6 contributing to the architecture of the house, in terms of
7 creating panels for railings.

8 As you can see from the model, there is examples
9 of art work that are installed right on the building itself.
10 This building is going to have a special kind of spirit and
11 life to it that over time will change and it will reflect the
12 work of the students that are working there.

13 There is a lot of energy that I think a house
14 like this would bring to the neighborhood. I actually live
15 right down the street from it, and as these two houses are now
16 boarded up, and not used, I think this will be a vibrant area
17 once these houses are renovated.

18 And I think it is an exciting project, and I
19 think that we need to work -- I think that the youth center
20 needs to have consideration, because it is a small building,
21 and they are trying to accommodate programs in there. It is
22 not like a warehouse or what not.

23 It is hard to accommodate the programs that they
24 are trying to accommodate, let alone trying to redo the entire
25 structure to accommodate a setback of a stair tower.

1 COMMISSIONER HOOD: Madam Chair, I have a quick
2 question.

3 CHAIRPERSON REID: All right.

4 COMMISSIONER HOOD: Ms. Walsh, what is going to
5 be done with the existing stairs?

6 MS. WALSH: The existing stairs are going to be
7 repaired, and they are going to remain where they are.

8 COMMISSIONER HOOD: And the new stairs, is that
9 basically used for egress?

10 MS. WALSH: Yes, the new stairs are fully
11 enclosed, fire-rated, set of stairs, that are required for
12 egress.

13 COMMISSIONER HOOD: Thank you.

14 CHAIRPERSON REID: Okay. Thank you.

15 MS. WALSH: Thank you.

16 CHAIRPERSON REID: All right. Next.

17 MS. KAPLAN: I will be brief, but I am the
18 Director of the Latin American Youth Center, and my name is
19 Lori Kaplan. I live at 1741 Irving Street, Northwest, which is
20 about I guess 2 or 3 blocks from these properties.

21 The youth center has been in the community now
22 for almost 30 years. We got our not for profit status in 1974.

23 In 1995, we purchased 1419 Columbia Road, which at that time
24 was an old boarded up building.

25 And at that point it had been considered a

1 nuisance property, because there was a lot of unsavory activity
2 going on, and we worked and renovated that building, and we
3 moved into it.

4 And it became the youth center headquarters in
5 August of 1998. As soon as we moved in, we realized because it
6 took so long to build it, and raise the money, and do all the
7 things we had to do, that we pretty much outgrown it by the
8 moment that we moved in.

9 And we began thinking about how are we going to
10 do all the things that we do, and want to do, and one of the
11 things that we quickly realized in the new facility was that a
12 lot of the educational things that we do gave way to leaving
13 enough room for all of the art things that we do.

14 And historically the youth center had been very
15 involved in engaging all neighborhood youth -- Latino, African-
16 American, Vietnamese -- any young people in the neighborhood in
17 the arts.

18 And some of you may know of some of the work that
19 the center has done. A lot of the murals on Georgia Avenue and
20 the Mount Pleasant mural, and there was a number of the murals
21 and art activities that have been done by kids and diverse
22 groups of kids at the center over the years.

23 And so we began really in 1998 and '99 saying
24 that we needed to figure out how the arts programming at the
25 youth center could grow and expand, and have adequate space to

1 do all of the things that we wanted to do with the neighborhood
2 kids.

3 And feeling that arts is just a great way to
4 engage kids, and get them thinking about their community, and
5 improving their community, and the values and the mission that
6 the youth center has.

7 Anyway, it was a long story, but we figured out
8 that these two old boarded up buildings, and which were pretty
9 gross actually for many years, were going to be auctioned.

10 And we kind of traced them down, and figured out
11 that they were in foreclosure with a bank in Rhode Island. And
12 we made a pretty low offer, and the owner I guess from Rhode
13 Island, to the bank and the bank decided that we might as well
14 get rid of the property.

15 And so they sold us the building when it was
16 still affordable to buy something half-a-block from the subway.

17 It was right before the subway opened, and now I think we
18 would not have been able to buy them.

19 So we got each of those buildings at a very
20 reasonable rate, and of course we didn't really know what bad
21 shape it was in, and how much it was going to cost to do the
22 renovations and all of that.

23 But anyway we had a vision and figured that this
24 could be a really neat asset to this art house. So here two
25 years later, here we sit trying to bring this vision to life,

1 and it is a vision that involves bringing young people and
2 artists into a community to work together.

3 We would like to have it have a little
4 entrepreneurial spin so that kids who can do really beautiful
5 art work can eventually try to grow and develop that skill and
6 sell it.

7 But we look forward to cleaning up that corridor.

8 That is a big part of our mission as well. Currently, there
9 is a lot of unsavory activity that goes on right at that corner
10 of 15th and Irving.

11 And we feel that cleaning the buildings up and
12 renovating them, and having a greater presence there involving
13 the young people in the renovations, in the design, in the art,
14 is all about rebuilding the community and creating a safe
15 neighborhood space for young people to learn and grow with
16 adults who care about them.

17 So that is really the vision of what we hope to
18 accomplish and we are very excited. We think that Meghan has
19 worked real closely with a number of the staff at the youth
20 center to bring this design to life.

21 And Karen has really worked hard to figure out
22 all this zoning stuff, and we are just so pleased to be here
23 and to present this to you, with the hopes that in a year or 18
24 months we could invite you to an opening, and you could see
25 what is now a boarded up building really come to life with art

1 and young people, and the spirit of the community that we are a
2 part of and live in actually. Thank you.

3 CHAIRPERSON REID: Thank you. Okay. Now, if
4 there are no questions by the board members, we will go now to
5 government reports, and the ANC report.

6 MEMBER HINTON: I had a couple of reports, Madam
7 Chair.

8 CHAIRPERSON REID: Okay.

9 MEMBER HINTON: Just two questions. I don't see
10 in the record that you have given us any sort of map that shows
11 this property and the other properties around it that you own.

12
13 Is there something in your application that shows
14 that? And let me tell you why I am interested in it. We got
15 something from our own staff that has some lot lines on it, and
16 it is not showing what the youth center also owns.

17 But I want to have an understanding of the
18 adjacent properties, and how much they actually are able to see
19 into their rear yards to see what is happening there.

20 MS. KAPLAN: Okay. Let's see. I think there was
21 a map in the planning report. It is not a great map, but there
22 is in the document that the planning --

23 CHAIRPERSON REID: Yes, we have that.

24 MS. KAPLAN: Actually, there is -- I don't have a
25 map in front of me.

1 CHAIRPERSON REID: Well, you said that you own
2 the properties on both sides.

3 MS. KAPLAN: We do, and I will tell you the
4 addresses.

5 CHAIRPERSON REID: And both adjacent properties
6 are on the map, and it shows that 3035 is the subject property,
7 and then you own 3033?

8 MS. KAPLAN: We own 3033, 3035, and then there is
9 a little gap of some land, and then the next address is 3043,
10 which we also own, and 3045, which we own. Those are the four
11 buildings.

12 They are right in a row, and they are not row
13 houses, and 3045 and 3043 share a wall. So there is no space
14 between them. And 3033 and 3035 are each -- they are not row
15 houses and they are detached. So there are four right in a
16 row.

17 And it is the last house, and then there is the
18 old church sanctuary, and then you hit that intersection where
19 15th, and 16th and Irving merge. So it is the last four houses
20 on that block of 15th Street before you hit Irving and 16th
21 Street.

22 And then right across the street is Lincoln
23 Middle School, and right before or over and around is Bell. So
24 you know that at 3:30 about a thousand kids hit the street, and
25 a lot of them come to the youth center.

1 But we are looking for more and more activities
2 for them to do, but anyway it is those four houses. So we own
3 those four addresses.

4 MEMBER HINTON: And the properties that go with
5 the two units that are semi-detached, the 3043 and 3045, the
6 back yards for those, does that go all the way back towards the
7 public alley?

8 MS. KAPLAN: No, those two facilities
9 significantly have no back yards.

10 CHAIRPERSON REID: It looks like they are
11 landlocked.

12 MS. KAPLAN: Yes, there is a huge play area
13 behind them, but's owned by the people at 1470 Irving, the
14 National Capital Presbyter. So really of the four houses that
15 we have purchased, the only one that has any significant land
16 behind it is 3035.

17 The rest -- I mean, that is the downside to these
18 properties, is that there is not enough back yards. We would
19 love to have that, but we don't, and 3035, the art house, is
20 the only one with the back yard.

21 So it is the one that we feel like we can respect
22 and honor that tree, but also create a really neat area for
23 young people to congregate in off the street in a safe space,
24 as opposed to on the corner, and at the bus stop, and the other
25 places they currently congregate.

1 MEMBER HINTON: Okay. And then from 3033, you
2 would have a view into the back yard of 3035?

3 MS. KAPLAN: We would.

4 MEMBER HINTON: But not from the other two
5 properties?

6 MS. KAPLAN: No, you could probably see the back
7 yard from 43, and on the side windows I'm sure. If you were
8 standing and looking out -- well, there isn't a deck, but if
9 you had a deck or if you were looking out a window on the side,
10 you could see into the back yard.

11 MEMBER HINTON: Yes, further back. I am thinking
12 up closer to the building once you build this stair tower.

13 MS. KAPLAN: You can barely see that back yard at
14 all from the street. If you are walking down 15th Street, you
15 barely know that that back yard is back there, because there is
16 just not a lot of room between those buildings. So you would
17 have to kind of walk back to see them.

18 MEMBER HINTON: Okay. The only other question
19 that I had is has the arborist looked at your proposed plans
20 and seen the amount of decking that is going to go in under
21 that tree and the stair tower, and has he offered an opinion as
22 to how damaging that might be to the tree?

23 MS. WALSH: When we were out at the site, I
24 brought the plans to tell him what our proposal wa, and even
25 there we made a decision on the site, and I had my structural

1 engineer out there, and that we would do a different kind of
2 footing than I had originally intended

3 And I had originally intended a continuous board
4 footing, but after the discussion with him, we have decided
5 that we are just going to do point support footings to minimize
6 anything that is happening to the tree.

7 And he will be involved with that. I put he and
8 my structural engineer in contact with each other so that
9 decisions that get made about the structure go by the arborist.

10 MEMBER HINTON: Okay. Thank you.

11 COMMISSIONER HOOD: Madam Chair, I have just one
12 other question. I think between the ANC and the Office of
13 Planning, they had a total of five conditions that they wanted
14 us to impose. Did you all have any problems with those five,
15 Ms. Kramer?

16 MS. KRAMER: No, we had no problems with any of
17 the five, and we are prepared to meet them.

18 COMMISSIONER HOOD: Okay. Thank you.

19 CHAIRPERSON REID: Okay. Thank you very much.
20 We will move now to government reports, which is the ANC
21 report. And we did receive a letter from ANC-1A, and the
22 Chairperson, Elizabeth McIntyre, who reported that there was a
23 meeting where this particular case was taken up.

24 And there was a vote taken with a quorum present,
25 and they voted in favor of the application. They did, however,

1 have the conditions that were just brought up by Mr. Hood, and
2 he asked would those conditions be suitable to you.

3 And they were basically that the staff will be
4 directed to use LAYC's already established parking arrangement
5 next to the headquarters building at 1419 Columbia Road, and
6 not on-street parking on 15th Street, and, two, advertisements
7 of events at the new facility shall state the proximity to the
8 Columbia Heights Metro and local bus routes.

9 And, three, access to the outdoor theater will be
10 secured from after hour use; and, four, the LAYC shall accept a
11 representative of the ANC or designated by the ANC on their
12 community advisory board, or in any case keep ANC-1A informed
13 of the community progress on their 15th Street properties.

14 And I think we discussed that a little earlier
15 about the establishment of the community advisory board, and
16 that's in quotes, and so apparently that is not in place yet.

17 But nonetheless the implication is that there
18 will be one, and you have already agreed that you will work
19 with them to establish a community advisory board.

20 And then in addition to that there are a couple
21 of other conditions that we can talk about. One, of course,
22 was the Office of Planning report, and which I will go to next
23 if there are no questions about the ANC report.

24 COMMISSIONER HOOD: Madam Chair, I just wanted to
25 make a comment about the ANC report. I don't know if we have

1 anyone here from the ANC, but I noticed that they said that it
2 takes six members for a quorum, and they have eight
3 commissioners, but the vote was seven to zero.

4 So that would mean that either one commissioner
5 either abstained or didn't -- well, or something. So I was
6 just wondering --

7 CHAIRPERSON REID: Well, it says that six makes a
8 quorum out of ten, and eight commissioners were there, and the
9 vote was seven to zero, with one abstention.

10 COMMISSIONER HOOD: Oh, I didn't see that.

11 CHAIRPERSON REID: One abstention, and seven
12 votes, with eight people in attendance. Oh, yours is
13 different. Where did this come from?

14 COMMISSIONER HOOD: It was in the packet.

15 CHAIRPERSON REID: Well, it is a little
16 confusing. Now, the Office of Planning report.

17 MS. STEINGASSER: Madam Chairman, I would just
18 like to note that Ms. McIntyre of the ANC did call at the last
19 minute and apologize for being unable to attend. She had a
20 funeral that she got called to this morning. So that's why she
21 is not here.

22 CHAIRPERSON REID: Thank you.

23 MS. STEINGASSER: My name is Jennifer
24 Steingasser, and I am with the Office of Planning, and I will
25 briefly go over our report. The Office of Planning reviewed

1 the application and the citations referred to us by the Zoning
2 Administrator's Office, which were a special exception relief
3 under Section 334 for a community service center, and a side
4 yard variance and a parking variance.

5 We went through the application and felt that the
6 standard for special exception relief had been met, and that
7 the evidence had been provided. We felt that the application
8 was indeed a community service center that provided -- that was
9 an organization that provided for the economic and social well-
10 being of the residents in the neighborhood.

11 We felt that the service center was located so
12 that it was not objectionable to neighboring properties, and as
13 we just described the neighborhood and the facilities that they
14 were serving.

15 We felt further to help enforce these conditions
16 that a recommendation was made that the performances be limited
17 such that they end no later than 10:00 p.m.

18 Regarding Section 334.3, structural changes could
19 not be made except as required. We did discuss this issue with
20 the zoning administrator's office, and it was their
21 determination that the board had discretion within the overall
22 section of 334 to address this issue.

23 Based on that, we reviewed the case, and the
24 conditions provided, and the application, and felt that the
25 temporary community service, which was originally the criteria

1 established under 334 was originally intended to preclude
2 changes that would restrict the use of the building for
3 residential use. We didn't feel that the changes

4 provided or hindered that if that were to ever be the case,
5 though we don't foresee it as being a requirement in this case.

6 We went through Section 334.4, and felt that the
7 use was indeed reasonably convenient to the neighborhood. It
8 was located right in the middle of the neighborhood it serves,
9 and is extremely close to the junior high school.

10 The group is clearly a non-profit and the only
11 sales addressed were within the center for a snack bar for
12 those who use the facilities, and we concluded that the special
13 exception was in harmony with the general purpose and intent of
14 the zoning regulations, and did not adversely affect any of the
15 neighboring properties.

16 With regards to the variances, we looked at the
17 required side yard setbacks, and I did discuss with Ms. Kramer
18 this morning that the front porch will be flush and not 3.2
19 feet, but rather 1.5 yard setback, and we still have no
20 objections to those variances.

21 We felt that the exceptional practical
22 difficulties were met by reason of exceptional narrowness,
23 shallowness, or shape of the property, and when the original
24 adoption of the regulations.

25 And the lot is extremely long and narrow, and

1 about half-way back the lot tapers to a triangular point,
2 making it even more narrow, which we felt was indeed unique in
3 this neighborhood, and we recommended in favor of the side yard
4 setbacks.

5 With regard to the parking, we felt that these
6 same unusual conditions applied. They did have no rear access
7 off the alley, and no really good access off 15th Street that
8 wouldn't require altering the building, which would thus
9 restrict the improvements that they were actually trying to
10 make. We felt that they met the hardship test for a
11 variance on parking, and we would certainly make the same
12 recommendation based on the lesser standard of no adverse
13 impact if the special exception criteria is established for the
14 parking.

15 And based on that, we recommended approval of the
16 applications, with the condition that outdoor performances end
17 no later than 10:00 p.m.

18 CHAIRPERSON REID: All right. Thank you. Are
19 there any questions of the Office of Planning report?

20 (No audible response.)

21 CHAIRPERSON REID: All right. Thank you very
22 much. All right. Persons in support of the application.

23 (No audible response.)

24 CHAIRPERSON REID: Persons in opposition.

25 (No audible response.)

1 CHAIRPERSON REID: Closing remarks by the
2 applicant.

3 MS. KRAMER: Madam Chair and Members of the
4 Commission, I wanted to thank you for inviting us to appear
5 here this morning. We believe, as Lori Kaplan and Meghan Walsh
6 have discussed, that this building will be an asset to the
7 neighborhood, and that the Latin American Youth Center really
8 has an opportunity to enhance its current programming, and to
9 make an exciting and important contribution to the
10 neighborhood.

11 We believe that the changes that we are proposing
12 are consistent with the neighborhood itself, and that the
13 request for the special exception and the two variances will
14 not create a structure that has any detrimental impact on the
15 surrounding community. And for those reasons we respectfully
16 request that our application be granted.

17 CHAIRPERSON REID: And are you requesting also a
18 bench decision and summary order?

19 MS. KRAMER: Yes, we would be happy to receive a
20 bench decision.

21 CHAIRPERSON REID: Okay. Board Members.

22 COMMISSIONER HOOD: Madam Chairman, I am not
23 clear. I would make a motion to approve, but I wasn't clear
24 about the variance. Have we straightened that out?

25 CHAIRPERSON REID: With the amendment, and if you

1 make the motion, then we would make the motion to approve and
2 amended to reflect what we talked about earlier in regard to
3 substituting the parking variance for a special exception under
4 2116.5.

5 COMMISSIONER HOOD: Okay. What I would do then
6 is make the motion and you can add the appropriate language. I
7 would make a motion that we approve Application 16668.

8 I see that there is no adverse impacts under our
9 zoning regulations of Section 334; and also I make a motion
10 that we also approve the two variances.

11 CHAIRPERSON REID: And for the record state your
12 defense of the position that you took in regards to the motion,
13 as to why you think they should get approval.

14 COMMISSIONER HOOD: Well, the special exception
15 does not have any adverse impact to the community. It is
16 actually advantageous to the community and supports the
17 surrounding neighborhood.

18 I don't believe that the parking would be a
19 substantial detriment to the community, and the side yard
20 setback would not make any difference to the application.

21 CHAIRPERSON REID: Right. And I would second it
22 and add that in supporting and concurring with my colleague's
23 motion that they have satisfied the test for the relief for
24 which they are requesting in regard to the burden of proof of
25 both the special exception and for a variance.

1 And that they had demonstrated that the property
2 is indeed unique by virtue of the fact that the topography, as
3 well as the shape of the property, is irregular, and that the
4 practical difficulty that is exhibited by virtue of the fact
5 that they cannot meet the zoning requirements because of the
6 fact that there is not enough space for the side yard setback.

7 The Office of Planning has recommended approval
8 of the application and the ANC as well as come on board as
9 being an approval. There does not appear to be any adverse
10 impact, and just the inverse actually, and that it is providing
11 a very, very needed facility in the community.

12 And giving the youth there an opportunity to
13 participate in some very positive activities, and keep them
14 involved in things that would be very good for their
15 development overall, and that certainly that is something that
16 the neighborhood and the community would like to see being done
17 there.

18 Also, it does not appear to impair the intent or
19 integrity of the zoning regulations or the map, and as such I
20 feel that it certainly does warrant approval.

21 Also, I would like to say that we talked earlier
22 about amending the application from the variance under 2101 to
23 a special exception, which is less of a burden for an accessory
24 parking lot under 2116.5.

25 And that would then mean that prior to the order

1 being issued there be an amended agreement, a parking
2 agreement, the two parking agreements, both with the Columbia
3 Heights Village and the Community Health Center that would have
4 a definite term, beginning and ending, concurrent with the
5 conditions of the term of the approval for your particular
6 application, which we will talk about when we talk about the
7 conditions for the application. Is there anything else? Ms.
8 Hinton.

9 MEMBER HINTON: I wanted to inquire of the
10 applicant how many staff do you anticipate staffing the
11 facility with?

12 MS. KAPLAN: We anticipate five staff people, one
13 of whom would be part-time. That is in terms of full, and then
14 we wrote in the application four part-time additional, which
15 would either be part-time staff or consultant artists, working
16 with the young people.

17 MEMBER HINTON: All right.

18 MS. KAPLAN: But in terms of ongoing,
19 on-the-site, supervised in the facility, there would be five.

20 MEMBER HINTON: And how many parking spaces are
21 you planning to provide based on the agreements with these
22 other facilities?

23 MS. KAPLAN: Well, we can figure that out. Of
24 the five, one doesn't have a car currently. I mean, four of
25 those five already work for the Latin American Youth Center,

1 and so these aren't five additional new people to the
2 neighborhood.

3 CHAIRPERSON REID: No, she is asking how many in
4 your agreement, how many spaces are you going to have allocated
5 for your facility?

6 MS. KAPLAN: Well, I think right now with
7 Columbia Heights Village, we can use up to 40, and with the
8 Community Health Center, I think we rent up to 20. I don't
9 remember those exact spaces, but it more than covers the staff.

10 CHAIRPERSON REID: You are required to have at
11 least seven all together.

12 MEMBER HINTON: Okay. Well, my recommendation
13 would be then for us to go based on the zoning regulations,
14 that if the regulations would normally require a space for
15 every 600 feet in the facility, and I think that came out to be
16 about eight spaces.

17 So I would think that we would have a condition
18 with the approval that at least eight spaces would be provided
19 for the use of the people staffing this facility at either of
20 these two places.

21 CHAIRPERSON REID: They have one already on site,
22 and there is one provided and so they need an additional seven.

23 MEMBER HINTON: Is it in the front yard?

24 MS. KAPLAN: There is a side lot.

25 MEMBER HINTON: I didn't see anything on the site

1 plan that looked like a parking area.

2 CHAIRPERSON REID: I think somewhere it was
3 stated that there was one parking space provided. Is there a
4 parking space provided on site?

5 MS. KAPLAN: Well, I am looking --

6 CHAIRPERSON REID: One, or is there --

7 MS. KAPLAN: Well, I guess there is --

8 CHAIRPERSON REID: Notwithstanding wherever on
9 site or off, as long as there are at least eight spaces
10 provided on the other --

11 MS. KAPLAN: Earmarked for this specific
12 facility.

13 CHAIRPERSON REID: Yes, and anything in addition
14 to that that you want to provide is fine, as long as it is no
15 less than.

16 MS. KAPLAN: Okay.

17 MEMBER HINTON: And I think we should put some
18 conditions on the --

19 CHAIRPERSON REID: Yes, here is the parking
20 spaces on the survey. I knew there was one that I saw.

21 MS. KRAMER: As a practical matter that may not
22 be a great space to actually use, although it is not --

23 CHAIRPERSON REID: Well, not withstanding that,
24 as long as -- I mean, you said you had 40 or what did you say
25 you had?

1 MS. KAPLAN: Well, right now we probably use a
2 total of 40 or 50 spaces out of those two lots, but what I will
3 do when we get the letters is we will pick up the wording based
4 on the variance.

5 But what I hear that you want is a minimum of
6 eight spaces earmarked for that facility.

7 MEMBER HINTON: Correct.

8 MS. KAPLAN: And out of those one or the other of
9 those two lots.

10 CHAIRPERSON REID: Correct.

11 MS. KAPLAN: And we will get letters that reflect
12 that, because it is really -- some of the staff are already
13 working, but they are just going to change locations. So they
14 are parking there already anyway.

15 MEMBER HINTON: And then I think the Board's
16 approval should be under the special exception, which is
17 providing off-site parking, rather than the variance for
18 parking at all.

19 CHAIRPERSON REID: We are going to amend it --

20 MEMBER HINTON: Yes.

21 CHAIRPERSON REID: -- to reflect that there will
22 be a variance, a special exception, and -- well, two special
23 exceptions and one variance.

24 MEMBER HINTON: I would recommend as conditions
25 that we limit the number of staff not to exceed 10, which I

1 think what would fit in your program, and the number of users
2 not to exceed 50 at any time on the site. There were four
3 conditions recommended by the ANC that I think that we should
4 adopt.

5 And there was a mention that there would be
6 lights provided in the back yard, possibly motion sensor. I
7 would like to require that they be motion sensor just to ensure
8 security of that area behind the buildings, because it is not
9 very visible from the street or from some of the other
10 facilities.

11 CHAIRPERSON REID: And the other conditions that
12 were contained in the previous summary order that you received
13 in 1995; that the applicant shall keep the premises clean and
14 free of debris, and we talked about the number of full or part-
15 time staff persons. Give me the number again?

16 MS. KAPLAN: Well, what the recommendation was no
17 more than 10.

18 CHAIRPERSON REID: Okay. No more than 10.

19 MS. KAPLAN: And that's fine. I doubt that we
20 would have that many.

21 CHAIRPERSON REID: And the hours of operation was
22 9:00 a.m. to eight o'clock p.m., Monday through Friday.

23 MS. KAPLAN: Well, the 1419 facility is that, and
24 the headquarters, and the statement from 1995 states 9:00 a.m.
25 to 8:00 p.m., Monday through Friday, and I think 9:00 to 5:00

1 on Saturday.

2 CHAIRPERSON REID: From 10:00 to 6:00.

3 MS. KAPLAN: So, 10:00 to 6:00.

4 CHAIRPERSON REID: What do you anticipate these
5 hours being?

6 MS. KAPLAN: Probably similar, although I doubt
7 that it will open at eight in the morning. It would probably
8 be more like noon to 8:00 from Monday through Friday, and 10:00
9 to 6:00 on Saturdays.

10 CHAIRPERSON REID: So are you saying this is what
11 you want to stipulate?

12 MS. KAPLAN: I am not sure yet.

13 CHAIRPERSON REID: Well, you have 9:00 to 8:00
14 right now.

15 MS. KAPLAN: That's fine. That's fine.

16 CHAIRPERSON REID: And then from 10:00 a.m. to
17 6:00 p.m. on Saturday.

18 MS. KAPLAN: Right.

19 CHAIRPERSON REID: However, remember now, you are
20 adding the aspect of the performing center, the art center, and
21 the Office of Planning recommended that those --

22 MS. KAPLAN: That those events end by 10:00.

23 CHAIRPERSON REID: -- end by 10 o'clock. Now,
24 that would probably be on the weekend, right?

25 MS. KAPLAN: Yes.

1 CHAIRPERSON REID: So you need to contain that
2 within the conditions.

3 MS. KAPLAN: That would be weekend and summer.
4 It could be a non-weekend night during the summer, because
5 that's when the kids are all out of school.

6 SECRETARY PRUITT: Madam Chair, you could have
7 the regular hours as indicated and just said no performance on
8 any night shall extend past 10 o'clock, and so it gives them
9 the flexibility of having performances that night.

10 CHAIRPERSON REID: Right. What I was grappling
11 with was the non-weekday or the weekday evening performances in
12 the community, and if there is noise, that might be disruptive
13 to the neighbors in the community. Would it be?

14 MS. KAPLAN: Well, the neighbors are kind of kind
15 of us, but there is --

16 CHAIRPERSON REID: Well, the noise that you might
17 generate as a result of an outside performance would not carry
18 over into --

19 MS. KAPLAN: I don't envision huge speakers. I
20 mean, this is a small thing.

21 CHAIRPERSON REID: Well, we didn't have anyone
22 come to testify that they anticipated that there would be a
23 problem, but I was just raising that. But since there has not
24 been any testimony, I have no problem with it.

25 MS. KAPLAN: Okay.

1 CHAIRPERSON REID: Just as Ms. Pruitt mentioned
2 that the performances would not exceed 10 o'clock, or would not
3 go beyond 10 o'clock at night on any given night.

4 MS. KAPLAN: That's fine.

5 CHAIRPERSON REID: And we talked about the
6 community liaison. Now, the term, are we saying that the term
7 would still be -- that it is for 10 years? What did you
8 request?

9 MS. KAPLAN: We did not request a specific term.

10

11 CHAIRPERSON REID: Okay. So we need to put a
12 term in. Board Members, is 10 years satisfactory, or do you
13 have any caveats in that regard?

14 COMMISSIONER HOOD: Is that normally what it
15 would be?

16 CHAIRPERSON REID: Well, they had already had an
17 approval for 10 years for the other or for the previous order.

18

19 MEMBER HINTON: In this case, I see the
20 applicants are making quite a bit of a financial commitment in
21 the change of the property, and upgrading the property, and
22 renovating, and I think it might be more reasonable to give a
23 longer time period, such as 15.

24 CHAIRPERSON REID: Normally I would agree with
25 that, as I am very much in favor of this project, but

1 nonetheless I think that given the fact that this is a the
2 first time that we have had this outdoor performances, maybe
3 they can come back in 10 years so we can assess from the
4 community if in fact there has been a problem, and that would
5 be my only caveat in that regard.

6 COMMISSIONER HOOD: I can go with 10.

7 CHAIRPERSON REID: And the other thing was that -
8 -

9 MS. KAPLAN: Madam Chair, can I just ask for your
10 consideration, and if you are willing to consider the
11 facilities stay open past 8:00, that since the order was going
12 to say no performance would end by 10:00, or that all the
13 performances would end by 10:00, that we could then have the
14 flexibility to stay open until 10:00.

15 And we will probably close at 8:00 anyway, but to
16 not box us in on some evenings that we may want to stay open
17 until 10:00, even if there is not an outdoor activity going on.

18 CHAIRPERSON REID: I have no problem with that,
19 and I will tell you why. Often in the summer time kids don't
20 have anything to do.

21 MS. KAPLAN: And it stays light until 9:00.

22 CHAIRPERSON REID: Right. So I have no problem
23 with that.

24 MS. KAPLAN: Okay. Great. Thank you.

25 SECRETARY PRUITT: So you just want to amend it

1 so that the hours of operation are until 10:00 at night for all
2 nights?

3 CHAIRPERSON REID: Yes.

4 MS. KAPLAN: Right.

5 CHAIRPERSON REID: And there was one other -- the
6 parking, the term, but it seems that there was one other
7 condition that we talked about.

8 MS. KAPLAN: Is it about the advertising maybe?

9 CHAIRPERSON REID: No, the agreement. That the
10 parking agreement be submitted prior to the issuance of the
11 order that will reflect that the lease, or that -- well, that
12 they are basically just providing it to you, and it would
13 reflect or be concurrent with the term of your order for 10
14 years.

15 MS. KAPLAN: I will ask them to say 10 years. I
16 guess anything can happen to either of those, and I have to be
17 honest. You know, the clinic could decide to move, but I will
18 say that this is what we would like, and maybe they would say
19 that as long as they are physically -- I don't think either of
20 them have any intention to go anywhere.

21 But because we don't control those properties,
22 all I can do is ask them to reflect the desires of the
23 Commission, of the Board.

24 CHAIRPERSON REID: Well, do you think they would
25 have a problem with renting those spaces?

1 MS. KAPLAN: Not at all, as long as they are
2 physically there. The concern that I have given everything
3 that is going on in Columbia Heights is that somebody could
4 come along and buy them or something, you know.

5 CHAIRPERSON REID: Then perhaps what we should do
6 then is stipulate that you have an agreement that the parking
7 is provided off-site for the length of the term of your
8 particular order, wherever that might be.

9 And if in fact something happens where parking
10 cannot be provided on one of the sites, that it is incumbent
11 upon you to make sure that you are able to find parking to
12 comply with this order some other place.

13 MS. KAPLAN: That sounds fine. I can just
14 envision them saying that somebody wants to buy us, and we
15 don't want to be held hostage to this.

16 CHAIRPERSON REID: Sure. Sure. I can understand
17 that, and that is a good point that you raised. And I think
18 handling it the way that I have just mentioned --

19 MS. KAPLAN: It puts the responsibility back on
20 us.

21 CHAIRPERSON REID: Exactly.

22 MS. KAPLAN: Okay. That's fine.

23 CHAIRPERSON REID: With the onus to you, and then
24 relieve any entity that had agreed to let you park there become
25 reticent about the fact that now they are put under an order,

1 and could cause a difficulty, and I could understand that.

2 SECRETARY PRUITT: As long as you provide eight
3 parking spaces throughout the 10 years, it doesn't matter if it
4 is there or other places.

5 MS. KRAMER: Madam Chair, I just wanted to
6 address one more issue on the parking. I would like to make it
7 clear, if possible, that we will find some way to make eight
8 spaces available, but I don't want to see the Latin American
9 Youth Center forced to buy monthly contracts that they don't in
10 fact need to use, and if there is any way to avoid doing that.

11 For instance, currently there is no one that we
12 anticipate that is going to need an additional monthly
13 contract. I believe that these facilities will tell us that
14 they will make monthly contracts available to us should they
15 need it.

16 However, it seems somewhat excessive to require
17 us to purchase eight contracts for which there is no use. So
18 if we can word it in a way to make clear that we will be
19 required to provide up to eight parking spaces if they are
20 needed, and these facilities are willing to make those
21 available, or we will find other facilities that will do so,
22 will be a lot less onerous than requiring us to buy additional
23 monthly contracts.

24 CHAIRPERSON REID: I don't think there was any
25 discussion here whatsoever in regard to the purchase of a

1 monthly contract.

2 MS. KAPLAN: But we do pay currently. The
3 employees pay and the youth center pays part of it. So that is
4 how we got into those lots.

5 CHAIRPERSON REID: You pay for 40 spaces?

6 MS. KAPLAN: Well, we pay for the exact number
7 that we need based on each staff person who has a car, and who
8 needs to park there.

9 CHAIRPERSON REID: Well, again, there was no
10 discussion on this board with regard to you purchasing or
11 purchase contracts for parking spaces. Basically, it would
12 stipulate that the eight spaces had to be provided, however you
13 chose to do it. I mean, that's not -- we didn't stipulate
14 that.

15 MS. KRAMER: Correct, and I would just like to
16 make clear that we would be providing them by saying that they
17 are available in these facilities for purchase, and we would
18 have an understanding in our written agreement with these
19 facilities that up to eight spaces would be available for
20 purchase by our employees.

21 CHAIRPERSON REID: I am not really following what
22 you are saying.

23 MS. KAPLAN: I think what Karen is saying is if
24 we go now and say we need to earmark eight spaces in either of
25 those two lots for 3035 - 15th Street, and the reality is that

1 we may not need eight, because the people who work there -- I
2 mean, we couldn't fill those.

3 What Karen, I think, is saying is that we don't
4 want to have to pay for eight if we are not using eight, or
5 there is no need to use them.

6 SECRETARY PRUITT: But it is the zoning which
7 requires the eight, and it is not based on use. It is what the
8 board has set based on zoning, versus use. I mean, suppose if
9 nobody drove, but still the zoning would require a certain
10 amount of parking. You are not exempt from that.

11 CHAIRPERSON REID: I understand your point. Ms.
12 Sansone, let me ask you to weigh in on this. What they are
13 saying is that if -- well, the zoning requires eight spaces,
14 and we are saying that you should provide them.

15 However, they are saying that if in fact they
16 find that because people are walking or whatever that they
17 don't need eight spaces, and they don't want to have to
18 purchase or pay the rent on the eight spaces if they don't
19 really need it. So how do we address that? I am not really
20 sure.

21 MS. SANSONE: Madam Chairman, I am not sure
22 either. The requirement of eight spaces would not of course
23 just be staff. It might be visitors or other people coming to
24 the facility that might be using those spaces.

25 So the issue -- well, there are a couple of

1 issues here. One is the number being eight required spaces,
2 and then the other question being where are they being
3 provided, on-site or off-site.

4 And the special exception that we are discussing
5 or that the Board has moved to approve is to provide these
6 spaces off-site, and not to actually reduce the number.

7 So I don't know how we -- well, if the argument
8 wants to be made to reduce the number --

9 SECRETARY PRUITT: Madam Chair, I believe if we
10 write the order that eight off-site spaces should be provided
11 at all times, it gives the applicant the opportunity to go
12 search for them.

13 I mean, we are not saying that you have to buy
14 eight spaces here. If you can have a lease or an agreement
15 that somebody will always allow you to provide -- maybe three
16 spaces here, and two spaces there, as long as throughout the
17 life of your order that you provide eight spaces, then you
18 would be in compliance.

19 CHAIRPERSON REID: But they have to pay for them.

20 SECRETARY PRUITT: Not always. I mean, they may.
21 Under this particular contract, they do, to pay for each
22 space, but --

23 CHAIRPERSON REID: Well, as Columbia Heights
24 continues to be developed, there is going to be such a dearth
25 of parking, that those parking spaces will be at a premium.

1 Now, there may be an alternative to that that may
2 address this issue, and the issue would be that if in fact you
3 do have eight spaces, I would think that there would be no
4 problem of you subleasing those spaces to someone else if you
5 don't need them.

6 MS. KAPLAN: I can't speak for the owners. I
7 mean, the health center in Columbia Heights Village, they are
8 working collaboratively with the youth center. This
9 relationship actually grew out of the 1995 zoning hearing, and
10 we have had no problem with it from '95 or since '95.

11 I mean, maybe there is a way that it can be
12 written that we expand the option, and we can go up by an
13 additional eight spaces in the relationship that we have with
14 them.

15 CHAIRPERSON REID: You can't do that. You cannot
16 do that. Whatever the zoning regulations require, we cannot
17 alter or --

18 MS. KAPLAN: No, I was suggesting that we say to
19 those two lots that we get an additional eight parking spots,
20 and that we are allowed the option to go up to an additional
21 eight more, knowing that those additional eight are earmarked
22 for the art house.

23 But in the event that there is no art house
24 employee using it, an employee of 1419 can use it. I mean, we
25 are already renting a number of spaces from them, and so in a

1 way that it can be written so that it is clear that if there is
2 eight -- that the need for eight at that art house, they get
3 eight of those parking spots in those two lots.

4 It is very difficult to actually -- and I have to
5 be honest -- to open it up for visitors, because once we are
6 renting it, they make you put this tag that sticks to your car,
7 and they are not really encouraging that it be used for
8 visitors.

9 I don't want to pretend that it is something that
10 it isn't. It was really to address the additional staffing
11 needs off-street for 1419, and I am sure that they are willing
12 to help us address the additional staffing needs up to eight
13 for 3035.

14 MEMBER HINTON: And I think that is sufficient,
15 because this is a neighborhood sort of community center, and so
16 most of the people coming are going to be from the
17 neighborhood. It is not likely that they would drive.

18 But in the event that some do drive, there would
19 be on-street parking available, especially if you ensure that
20 your employees are not using the on-street parking spaces, but
21 rather parking off-street.

22 MS. KAPLAN: No, we want our employees off-
23 street, and that's why we developed these relationships with
24 these two lots. And that is totally the intention for the
25 staffing needs of 3035 as well.

1 MEMBER HINTON: Well, I think what you talked
2 about is that in keeping the arrangement that you have, but
3 just making sure that eight of the spaces that you have are
4 available for the people that staff this facility. That is
5 what we are asking for. MS. KAPLAN: Right, because

6 we are actually even renting more spaces currently than what
7 the '95 zoning required. So we are already exceeding, and that
8 would encompass the additional eight.

9 MEMBER HINTON: Yes, and so I think that's fine.

10 MS. KAPLAN: But somebody is going to have to
11 word that to where it is acceptable.

12 CHAIRPERSON REID: Well, the wording, Ms. Pruitt,
13 is that --

14 SECRETARY PRUITT: That would be part of their
15 agreement that you would have to then review that you are
16 asking them to set.

17 MS. KAPLAN: I would just ask that someone -- I
18 need to go to both of those facilities and ask for these
19 updated letters. So I just need the wording that is agreeable.

20 SECRETARY PRUITT: That at all times eight spaces
21 would be earmarked for the use of the art house and that
22 address, because it is for employees, and visitors, even though
23 it is not exactly conducive.

24 CHAIRPERSON REID: But the term part.

25 MS. KAPLAN: Well, ideally we want it for 10

1 years, but if that relationship ends prior to 10 years, it is
2 incumbent upon the Latin American Youth Center to find eight
3 spaces earmarked for 3035.

4 SECRETARY PRUITT: And so the order would say
5 that the applicant should provide eight spaces for so and so at
6 all times. How you get there will be your responsibility.

7 CHAIRPERSON REID: Right. Any other questions or
8 any other points?

9 MS. KRAMER: I would just like to add that given
10 what we know about the development of Columbia Heights, I think
11 it is going to be quite difficult for these facilities to set
12 aside eight spaces, and for them to tell us that they are not
13 going to rent them to anyone else.

14 CHAIRPERSON REID: You mean, after we just solved
15 the problem?

16 MS. KAPLAN: Well, I think maybe what I would
17 like to do is that if we can't get the letters exactly as we
18 have just talked about, what is the mechanism then to address
19 that, because it was based on doing the variance versus the
20 exception.

21 CHAIRPERSON REID: Well, the only other thing is
22 that --

23 MS. KRAMER: Because I don't want to hold up the
24 whole --

25 CHAIRPERSON REID: Well, Ms. Sansone, maybe we

1 should just kind of revisit the reason why we felt the special
2 exception was better than the variance, and that the zoning
3 administrator did not require a variance for parking in the
4 first place. And then we decided that this would be a way to
5 address it.

6 MS. SANSONE: Well, Madam Chair, the starting
7 point for this analysis is that the zoning regulations require
8 a certain number of spaces for all uses according to the
9 schedule that is in Section 2101 So applying that schedule, the
10 board determined that would be eight spaces.

11 Now, in order to reduce that number of spaces,
12 the applicant could ask for special exception relief to cut the
13 number in half down to four spaces, and that's provided for in
14 Section 2108.

15 If the applicant wants to go below the 50
16 percent, below four, then that becomes a variance, and they
17 have to meet the variance test. So, Madam Chair, the question
18 is does the Board wish to eliminate the parking requirement for
19 this facility, or--

20 CHAIRPERSON REID: I would have no problem with
21 that, or the special exception for going below 50 percent,
22 because that area is developing so fast, and the Metro Station
23 is right there on the corner, right around the corner from this
24 facility, as well as it is right on 15th and 16th Street, which
25 is a major thoroughfare that has plenty of public

1 transportation.

2 And given the fact that this be a non-profit
3 entity, and most of the persons who will be coming to the
4 facilities are from the neighboring community, then to put a
5 burden on them to require that parking might be arduous given
6 the fact that at some point within the next 19 years, I would
7 anticipate that parking would become very expensive there.

8 And if they don't need it, but have to maintain
9 it, does not make a lot of sense. Eight spaces might be
10 thousands of dollars a month.

11 SECRETARY PRUITT: Madam Chair, are you offering
12 them an amendment to that condition?

13 CHAIRPERSON REID: I think so. I think so.
14 Perhaps recommending that the application be amended to reflect
15 the special exception to -- what was the subsection that allows
16 less than 50 percent for parking?

17 MS. SANSONE: A 50 percent reduction is allowed
18 under Section 2108.2 by special exception.

19 CHAIRPERSON REID: 2108.2?

20 MS. SANSONE: Yes. So I guess what that would
21 mean is that the applicant would be getting a special exception
22 to reduce the number to four, and then another special
23 exception to provide under Section 2116.5 to provide the
24 remaining four spaces off-site.

25 CHAIRPERSON REID: And that would be a variance

1 that would be required, right?

2 MS. SANSONE: No, Madam Chair, those are two
3 different special exceptions.

4 CHAIRPERSON REID: And excessive to special
5 exceptions, wouldn't it then require three special exceptions
6 to this particular application, and wouldn't that require a
7 variance?

8 MS. SANSONE: No, the reduction down to four
9 would be allowed special exception, and if you want to go below
10 four, that is a variance.

11 CHAIRPERSON REID: Two special exceptions.

12 MS. SANSONE: No, just as to the number. If you
13 want to go below four spaces, then that is a variance relief,
14 and no special exception. And then to provide the remaining
15 four spaces off-site, that is a different type of special
16 exception for off-site accessory parking.

17 So overall it would be three special exceptions
18 in this case; the use, the number of parking spaces, the
19 location of the parking spaces.

20 CHAIRPERSON REID: Okay. Would you spell out for
21 me exactly what special exceptions and the subsection, and the
22 variance, and the subsection, and then I would recommend that
23 we amend the application accordingly.

24 MS. SANSONE: Yes, Madam Chair. The first
25 special exception is under Section 334 to allow the use as a

1 community service center.

2 CHAIRPERSON REID: Okay.

3 MS. SANSONE: The second special exception is
4 under 2108.2 to reduce the parking spaces by 50 percent to four
5 required parking spaces.

6 CHAIRPERSON REID: Okay.

7 MS. SANSONE: The third special exception is
8 under 2116.5 to permit the applicant to locate those four
9 remaining required parking spaces off-site. Then there would
10 be a variance under the side yard variance under Section 405.9.

11 CHAIRPERSON REID: Okay. So now we have two
12 variances and two special exceptions.

13 MS. SANSONE: Just one variance; three special
14 exceptions and one variance.

15 CHAIRPERSON REID: Oh, I'm sorry, right. Three
16 special exceptions and one variance, and the variance only for
17 the side yard setback. Okay. And then that would in fact
18 remove -- actually, you look so quizzical, and you look like
19 what in the world is going on -- the requirement for all
20 parking spaces or just four?

21 MS. SANSONE: Four.

22 CHAIRPERSON REID: Four parking spaces. So now
23 you only have to provide four parking spaces. You have one on
24 site, and --

25 MS. KRAMER: We have one on site, and we still

1 come up with the same problem.

2 CHAIRPERSON REID: You have three that you have
3 to provide.

4 MS. KRAMER: And three that we have to provide.
5 My only question is whether to the degree that we are already
6 providing spaces to the two people who are going to be working
7 there, and who already drive and park, whether we were going to
8 need to add additional spaces, because in fact the users of the
9 spaces are already accommodated.

10 CHAIRPERSON REID: But that is still counted
11 towards your three, the three additional ones. You have one on
12 site, and then you have three others, and then you said two
13 people who are already driving and have to be accommodated with
14 parking.

15 MS. SANSONE: Correct.

16 CHAIRPERSON REID: And in essence, it would be
17 one additional that you would have to provide off-site.

18 MS. KRAMER: So if I understand you, you are
19 removing this --

20 CHAIRPERSON REID: The eight, the requirement for
21 the eight parking spaces.

22 MS. KRAMER: Well, you are removing this special
23 earmark for that site, and as long as we can get the staff who
24 are there parked, we don't need to get additional ones, or we
25 do need to get additional ones?

1 CHAIRPERSON REID: However you choose to use
2 them, you still will be required to provide four parking
3 spaces. You have one on site, and so that would mean three
4 additional.

5 MS. KRAMER: So the letters have to --

6 CHAIRPERSON REID: And not in addition to what
7 you already have, and what you are already providing, and that
8 is four totally. However you determine to divvy that up, and I
9 don't think we can do any better than that can we, Ms. Sansone?

10 MS. SANSONE: Madam Chair, I think that is
11 probably as good as we can do under special exception relief.
12 Now, I suppose if this doesn't work out in the long term, the
13 applicant could always come back and apply for the variance to
14 further reduce the number of parking spaces.

15 I mean, the only other alternative for the board
16 would be right now to consider a variance to eliminate or
17 further reduce the number of parking spaces.

18 SECRETARY PRUITT: That's how the application was
19 originally advertised.

20 CHAIRPERSON REID: Well, I would like to do that
21 to give them that relief, and then whatever parking spaces that
22 they feel that they need for the staff, they would have the
23 responsibility of providing that, but they would not be
24 required under oath to do so, because like I said before,
25 pretty soon I think those parking spaces are going to be so

1 expensive, and they don't need them. Do you see what I am
2 saying?

3 So that would be my preference.

4 MS. SANSONE: Well, Madam Chair, in that case, if
5 you wish to go back to the way that the applicant originally
6 applied for it --

7 CHAIRPERSON REID: A variance from Section 2101.

8 Okay. So, scratch that. The last 15 minutes, scratch all of
9 that. Let's go back to the original application, the special
10 exception under 334, and a variance under 2101, and a variance
11 under 405.9., right?

12 MS. SANSONE: Yes.

13 CHAIRPERSON REID: Okay. Now, that eliminates
14 you being required to provide any parking, and whatever parking
15 you decide that you want to provide, that's great. But you
16 don't have to worry about over time that being a difficult
17 task.

18 SECRETARY PRUITT: So you need to please amend
19 your motion, because we had already amended --

20 CHAIRPERSON REID: I just did. I said scratch --

21 SECRETARY PRUITT: So this will be the amendment
22 of the amended motion.

23 CHAIRPERSON REID: This goes back to the original
24 relief being sought in the application, and basically we kind
25 of just tap danced all around and came back to where we were

1 before.

2 MS. SANSONE: Madam Chair, I believe Mr. Hood
3 made the motion, and --

4 COMMISSIONER HOOD: And I will accept that.

5 CHAIRPERSON REID: Well, he asked me if I would
6 put the --

7 COMMISSIONER HOOD: Yes, if she would interject
8 all the in's and out's, because I don't do that often, but I
9 will accept it.

10 CHAIRPERSON REID: All in favor?

11 (A chorus of ayes.)

12 CHAIRPERSON REID: No opposed.

13 MS. BAILEY: The staff will record the vote as
14 three to approve the application; motion made by Mr. Anthony
15 Hood, and seconded by Mrs. Reid, and Mrs. Hinton in agreement.
16 Mrs. Ann Renshaw not present, not voting.

17 CHAIRPERSON REID: Okay. Thank you, and good
18 luck. I think that is a wonderful program that you have there,
19 and I am sorry that we had to go around and about so much, but
20 ultimately because of her persistence, we were able to be as
21 helpful as possible.

22 MS. KRAMER: Thank you.

23 CHAIRPERSON REID: And thank you. Sometimes
24 these things are very convoluted.

25 MS. KAPLAN: Thank you very much.

1 CHAIRPERSON REID: You are quite welcome. Let's
2 take a five minute recess, and we will be right back.

3 (Whereupon, at 11:30 a.m., the hearing was
4 recessed, and was again called to order at 11:35 a.m.)

5 CHAIRPERSON REID: All right. Ms. Bailey, call
6 the next case.

7 MS. BAILEY: Application Number 16699 of Joan
8 Sutton for Hope Village, pursuant to 11 DCMR 3104.1, for a
9 special exception under Section 358 and from Subsections 358.2,
10 and 358.7, and 358.8, to establish the Community Based
11 Residential Facilities, and that is CBRFs, in a square that
12 another CBRF with seven or more persons, to establish a CBRF in
13 a square with more than one CBRF, or within 500 feet of
14 another; and to establish facilities with more than 20 persons
15 at premises 2844, 2920, and 2912 Langston Place, Southeast,
16 Square 5741, Lots 132, 851, and 866; and to continue a
17 Community Based Residential Facility and increase the number of
18 beds by one per room at premises 2908, 2840, and 2850 Langston
19 Place, Southeast, Square 5741, Lots 130, 131, and 850, in an R-
20 5-A District. All those wishing to testify, please stand and
21 raise your right hand.

22 (All witnesses were sworn.)

23 MS. BAILEY: Members of the Board, we do have a
24 report from the Office of Planning, and a waiver is required to
25 accept that report into the file. We also have a report from

1 the police department, and from ANC-8B.

2 The affidavit was timely filed and the property
3 properly posted. This is a self-certified application. We
4 have eight letters of support in the record, including a letter
5 from Council Member Sandi Allen.

6 Just a couple of brief notes. The applicant --
7 the announcement was read, but I just want to make clear that
8 the applicant is requesting to add one person per room at the
9 premises, and a new CBRF or new CBRFs are not being
10 established. These are existing facilities on the site. And
11 with all of that the case is now ready to go forward, Madam
12 Chairman.

13 CHAIRPERSON REID: Okay. Is there anyone here in
14 opposition to the case?

15 MR. WILSON: I am.

16 CHAIRPERSON REID: All right. Go ahead.

17 MS. LEWIS: Good morning, Madam Chair and Board
18 Members, and staff. I am Stacy Lewis, sitting in for Jennette
19 Henry, who originally filed this application. However, she is
20 in trial this morning and I am here on her behalf.

21 We are from the Temple Law Offices, and the
22 address is 1200 G Street, Northwest, Suite 370, Washington,
23 D.C. 20005.

24 CHAIRPERSON REID: And your name again, Madam?

25 MS. LEWIS: Stacy Lewis.

1 CHAIRPERSON REID: All right.

2 MS. LEWIS: The Hope Village is asking for a
3 special exception to increase the occupancy of the residential
4 pre-release facility pursuant to 11 DCMR Section 358.8.

5 The current needs of the District of Columbia for
6 pre-release bed space has exceeded availability. Therefore, we
7 are making this request. The program in this proposed request
8 is to increase capacity and is supported by the community.

9 We have only one opposition that we are aware of
10 that is in the file, and that is by an officer that has stated
11 -- or a Lieutenant who has stated his opposition, and it is
12 part of the record.

13 CHAIRPERSON REID: We intend to call as witnesses
14 should it be necessary, and in the order that I am naming them,
15 Mr. Leonard Gray, Eydie Whittington, Joe Wilmer, and James
16 Murphy, and perhaps Phinis Jones.

17 I believe the application packet is complete and
18 sufficient to satisfy the request presented to the board today.

19 We are asking the increased bed space of one per room track
20 the current CFOs.

21 We have a CFO that is permanent for three
22 buildings, and there are three where the track expires on
23 December 2013. So we are asking that this exception track
24 those time periods. I have nothing further.

25 CHAIRPERSON REID: Okay. Let's see. Before you

1 get started, we have a little housekeeping. The application
2 was for a special exception, but my understanding now is that a
3 variance would be required because of the fact that the
4 subsection that you are applying under is not correct.

5 Let me see. Was it -- Ms. Sansone, which one was
6 it that they were supposed to have applied under?

7 MS. SANSONE: Yes, Madam Chair. There is some
8 confusion in this case. The facility is described and the
9 certificates of occupancy are for an adult rehabilitation home,
10 and a substance abusers home. Those uses are permitted under
11 the regulations under Section 357 as a special exception.

12 Now, when we go to 357, it limits the homes from
13 1 to 20 persons, subject to the board's finding that the use
14 meets the standards and requirements of the following section
15 of the regulations, Section 358.

16 Now, that section, the applicant has applied
17 under 358, but the use there is for a youth residential care
18 home, or a community residence facility as that term is defined
19 in the Department of Health regulations.

20 And for the adult rehabilitation and substance
21 abusers homes, the board is directed to evaluate that request
22 under Subsections 358.2 through 358.7 of the regulations, and
23 then 358.9. And so a problem arises in that --

24 CHAIRPERSON REID: And what about 358.8?

25 MS. SANSONE: That's what I am trying to get to.

1 358.8 is the part of the regulations that would allow the
2 board to approve this use as a special exception for more than
3 25 persons.

4 However, that regulation is specifically excluded
5 from the board's authority to approve adult rehabilitation
6 homes or substance abusers homes. Now, this doesn't mean that
7 the board can't act on this request. It is just that it needs
8 to be characterized as a use variance in order to achieve this
9 number of residents.

10 And this seems to have been an original error in
11 the board's earlier approvals, and it is very confusing when
12 you try to go back and read the certificates of occupancy and
13 the board's order, and then try to match them up to the
14 regulations.

15 But as they are, they are basically not matching
16 up, and so really the best way to handle this case is to
17 consider the application as a use variance, Madam Chairman.

18 Now, because there is a previous approval from
19 the Board, and there are certificates of occupancy in place
20 under longstanding and long term, the doctrine of estoppel
21 would come into play. So that the burden of proof would not be
22 as strong as it usually is.

23 This facility is in place, and operating, and we
24 have to be mindful of that in evaluating the application
25 against the standards of a use variance. And the other

1 consideration, too, is that in providing a public service that
2 would also tend to make the burden of proof not as strong as
3 you would normally think for most use variances is that it
4 would be.

5 CHAIRPERSON REID: Okay. Thank you, Ms.
6 Sansone. We will proceed under 357, correct, for a use
7 variance?

8 MS. SANSONE: Well, 357 is the correct category
9 for adult rehabilitation homes and substance abusers homes; and
10 then in order to allow the number that they are asking for,
11 that aspect should be evaluated as a use variance.

12 CHAIRPERSON REID: Okay. I hope that that was
13 clear. Basically as clear as mud, huh? Well, basically what
14 we are doing is correcting what was an original, and a mistake,
15 in regard to the type of relief that was being requested.

16 And what Ms. Sansone said in a nutshell is that
17 given the fact that this particular mistake had gone undetected
18 for so long, and had been so used and operating under the wrong
19 subsection for so long, and no one caught it, that the burden
20 of proof, even though for use variance is typically the most
21 difficult to prove, that some consideration would be given to
22 you because of the fact that it is fraught with all these
23 problems, and that these mistakes were not of your doing in a
24 nutshell.

25 MS. LEWIS: Thank you. We will proceed by

1 calling our first witness, Leonard Gray.

2 MR. GRAY: Good morning, Madam Chair, and Board
3 Members, and staff, my name is Leonard Gray, and I have a
4 written report here. Do you have it? I don't know if you do.

5 I am pretty sure we can get you a copy if you don't have it.

6 But I would like to read what I have, and if you
7 would like to have a copy of this, you may. My name is Leonard
8 Gray, and I am happy to have this chance to add my verbal
9 support to Hope Village Application Number 16699.

10 CHAIRPERSON REID: Excuse me, but anyone who
11 testifies, please give your full name and your address.

12 MR. GRAY: I'm sorry, let me start over. My name
13 is Leonard Gray, and I live at 800 Southern Avenue, Southeast,
14 Apartment 322.

15 CHAIRPERSON REID: All right. Go ahead.

16 MR. GRAY: My name is Leonard Gray, and I am
17 happy to have this chance to add my verbal support to Hope
18 Village Application 16699, which would increase the number of
19 residents by one person per room at that facility.

20 As a past resident and present community advisory
21 board member of Hope Village, I am intimately aware of the
22 crucial need for additional beds for persons waiting to be
23 integrated into the community. With the increasing number of
24 incarcerations, additional beds are essential for ex-offenders
25 as they attempt to rebuild their lives and reunite with their

1 families.

2 Hope Village has committed its services and
3 programs in making sure that its residents have every
4 opportunity for a smooth transition to become a good and
5 productive citizen.

6 I, too, have made that commitment as a member of
7 its advisory committee. I can look back on the worthwhile and
8 satisfying experiences that I had at Hope Village. Its sound
9 and personal employment counseling afforded me an opportunity
10 to focus on the important things in life.

11 They challenged me to face each day with a sense
12 of hope and positive expectations. By taking advantage of the
13 services provided, I was eventually able to parlay my skills
14 into a position as executive assistant to the president of a
15 nationally acclaimed non-profit organization. I ask that you
16 approve BZA Application Number 16699 for Hope Village. Thank
17 you.

18 I would like to add a few personal words if I
19 may. As is stated in my written report, I am a past resident
20 of Hope Village. When I got to Hope Village, I didn't think
21 that there was a need for me to stop over, and once I went home
22 and was confronted with that situation, Hope Village proved to
23 be very beneficial for me.

24 It afforded me the opportunity to make a
25 reassessment, and to get a plan, and to reevaluate myself as a

1 whole to see what I needed to do. I thought I was ready, but I
2 just don't think it is a good idea for people to leave an
3 institution and go right to the street, because I was
4 confronted with an uncertainty.

5 And I know that there are countless other people
6 behind me that their situation is not the same as they left it,
7 and I am one of them. I thought it would be, but you know,
8 rooms change when you move, and other family members have other
9 problems come up, and so the whole thing just kind of messes up
10 when you go back, and you don't see what you left there.

11 So that's why Hope Village was so important to
12 me, and I am glad that it was there. I am thankful for that,
13 because I needed that. And I am sure a lot of people in my
14 position are going to need that type of services as well.

15 So we need to keep Hope Village there by all
16 means, and if necessary, by all means. And secondly I would
17 like to add that I don't think that increasing the capacity at
18 Hope Village will in any way erode its effectiveness.

19 I can say that when I was there that I didn't
20 have the luxury of having my own room. But we all knew what we
21 had to do, and we all knew why we were there, and we remained
22 focus and took advantages of the services that they offered,
23 which proved to be beneficial for me.

24 I thought I knew a lot about basic life, but you
25 know, a lot of people are coming home, Madam Chair and Board

1 Members, and they usually know one way of life.

2 And when you mention job preparedness or job
3 readiness, they couldn't intelligently answer that. They know
4 how it goes, but there are techniques to it, and they just
5 don't know. And I didn't know, even though I had worked prior
6 to coming to Hope Village.

7 And in terms of techniques, I couldn't verbally
8 give them to you, but I thought I could go through the process,
9 but I did need assistance, and Hope Village provided that.

10 They have some sound services that if taken
11 advantage of you can really prevail, and that's what I did. I
12 took advantage of what they were offering, and I was able to
13 parlay that into a job at Capital Service Management,
14 Incorporated, under Mr. Phinis Jones.

15 He afforded me the opportunity to better myself
16 and to do things that I wanted to do in life that were
17 positive, and he offered that to me. And then from there I was
18 able to go to my present job where I am now.

19 So I am here in support of that application, and
20 I just don't believe, Madam Chair, that the more people that
21 you have that you are going to have problems. I just think
22 that you will be able to serve a lot more people.

23 And Hope Village is capable and has the ability
24 to do that. I was at one of the board meetings, and I am on
25 the advisory board meeting there, and discussions were centered

1 around enhancing existing programs to accommodate the present
2 population, but also for future residents that are coming.

3 And nothing was really etched in stone, but I
4 listened to them, and I looked at them, and they showed me that
5 they cared from both ends. They were trying to do things to
6 accommodate their residents, as well as trying to get their
7 situation under control.

8 And I think it is a good thing to have Hope
9 Village there. I really benefited from it, and I can tell you
10 some good stories, but that would be hearsay because they are
11 not here to support it, but I have run into some past
12 residents, as myself, and some present residents.

13 And what I try to do to past residents is that we
14 generally have a discussion on how we are doing, and how well
15 we were served and that type of thing. And for the most part,
16 they were glad that Hope Village was there as well, because
17 they are doing well.

18 And I believe that it was a direct result of
19 coming through Hope Village, that transition into the
20 community. As for myself, again I am glad that they were
21 there. It proved to be really beneficial for me.

22 And I just don't believe increasing their
23 capacity would in any way deteriorate their effectiveness,
24 because as I stated, when I was there I didn't have my own
25 room, but we all prevailed and took advantage of the services

1 that they were offering.

2 CHAIRPERSON REID: Thank you so much, and we
3 really appreciate your testimony here this morning.

4 MR. GRAY: I am willing to answer any questions
5 you may have.

6 CHAIRPERSON REID: Questions from the Board?

7 COMMISSIONER HOOD: Can I ask one question? Mr.
8 Gray, I received something from the Metropolitan Police
9 Department, and when you were at Hope Village was Woodland
10 across the street?

11 MR. GRAY: Yes.

12 COMMISSIONER HOOD: Did you find that to be for
13 yourself a place that would kind of make you fall back because
14 of the activities that were going on at Woodland?

15 MR. GRAY: No.

16 COMMISSIONER HOOD: Did it make you want to
17 regress and go back?

18 MR. GRAY: No, not for me personally. I remained
19 focused, and I believe that a large portion of the population
20 remain focus. I was not distracted in any way. I don't
21 believe that if you have a sincere effort and determination to
22 do the right thing that will distract you.

23 I will give you a good example. My mother
24 unfortunately lives around the corner from where they had that
25 kind of activity, and it doesn't affect my family or me at all,

1 and it didn't then.

2 COMMISSIONER HOOD: So would you say that by that
3 being across the street that gave you an incentive of not to go
4 back?

5 MR. GRAY: Absolutely, just the opposite.

6 COMMISSIONER HOOD: Okay. Thank you.

7 CHAIRPERSON REID: Mr. Gray, let me follow up on
8 that whole conversation. If in fact you had been returned to
9 your community, and the same types of problems that were
10 existing before you left, were they still there? Would they
11 still be there?

12 MR. GRAY: I'm sure, and they still are there.

13 CHAIRPERSON REID: They are still there? I mean,
14 are they still there right now?

15 MR. GRAY: Yes, Ma'am.

16 CHAIRPERSON REID: So if in fact there had not
17 been a place like Hope Village for you to go to, then what do
18 you think would have happened?

19 MR. GRAY: I would hate to think that, Madam
20 Chair. You know, leaving an institution and going directly to
21 the street, and to stand there and scratch your head, because
22 your living conditions may not be the same.

23 So you are standing there scratching your head,
24 and before you know it, those people that are probably still
25 hustling will greet you home, and before you know it, you are

1 kind of back into that life already because they are going to
2 offer you something.

3 You don't have any money, and you have no job,
4 and you didn't have time to stop and really make an assessment
5 and have a plan. And that's why it is so important that Hope
6 Village remain.

7 CHAIRPERSON REID: Thank you.

8 MR. GRAY: Absolutely.

9 CHAIRPERSON REID: Are there any other questions?

10 (No audible response.)

11 CHAIRPERSON REID: Okay.

12 COMMISSIONER HOOD: Madam Chair, I would be
13 interested in having the police department testify in this
14 matter with proper time, because I have some concerns.

15 CHAIRPERSON REID: We can talk about that letter
16 as well, but thank you so much.

17 MR. GRAY: Surely.

18 MS. LEWIS: Our next witness will be Eydie
19 Whittington.

20 MS. WHITTINGTON: Good afternoon, Madam Chair,
21 and Members of the Board. I am going to be brief, but I think
22 it is important to be here to tell you my relationship with
23 Hope Village, and I have been in Ward 8 for may 12 or 13 years.

24 And I actually started my relationship with Hope
25 Village not as a council member, but as an ANC Commissioner.

1 And even during that time, Hope Village was community based,
2 and was very receptive and accessible to the needs of that
3 particular community.

4 And as I became council member for Ward 8, Hope
5 Village was even much more visible and much more essential in
6 helping out Ward 8 and the community. They participated for my
7 entire tenure in a cleanup that took place once a month for the
8 entire tenure that I had.

9 And it was a great turnout. The participants
10 were willing, and there was quite an allegiance to Ward 8 and
11 to the community to do what they could to help the community
12 build itself up, and I enjoyed that relationship.

13 When I left the Council, I continued my
14 relationship with Hope Village. I was doing an internship and
15 I needed to work in a facility such as Hope Village because I
16 am doing a thesis on ex-offenders. So I wanted to focus on
17 Hope Village.

18 And I actually got involved in the academic and
19 life skills programs that they offered. I was one of the life
20 skill instructors, and one of the GED instructors, and I saw
21 firsthand for a very long time the structure and the challenges
22 that they put forth to the residents of the facility to help
23 them make that smooth transition from being incarcerated to
24 coming into the street.

25 I am pleased to say that it has just been a

1 wonderful relationship, not only with myself, but with the
2 community within Ward 8, and I hope very much that you will
3 accept the application to have them upgrade their beds because
4 we really do need it.

5 We honestly do need a facility such as the one
6 that Hope Village offers, to help us build that bond and
7 establish that life line from incarceration to the community.
8 If you have any questions, I will be glad to answer them.

9 CHAIRPERSON REID: Ms. Whittington, I do have a
10 question in regard to your letter, where you said that the
11 services provided by Hope Village is vital to our community,
12 because it greatly reduces recidivism.

13 Can you speak to that, as to your tenure as the
14 ANC Chair, and also as a Council Member for Ward 8? From your
15 observations, what in effect are you referring to as far as
16 what you had observed in regard to recidivism?

17 MS. WHITTINGTON: Well, that points back to what
18 Leonard Gray just said. We are talking about job readiness,
19 because we know that it is important to help the inmates of
20 Hope Village to become job ready and have job placement.

21 So they have a number of structured programs
22 there that would help at least reduce the recidivism, and to
23 make sure that they don't go back to prison. They have
24 excellent job placement, and they have excellent structure.

25 The challenges are great, and they have a no

1 tolerance policy there. All of it helps to reduce the fact
2 that they would go back, and everybody wants a job.

3 If they had jobs and they were prepared to work,
4 their changes of going back to prison would lessen.

5 CHAIRPERSON REID: All right. Any other
6 questions?

7 COMMISSIONER HOOD: I have a follow-up. Ms.
8 Whittington, as serving as the Council Member for Ward 8, and
9 also as an ANC Commissioner, the same question that I asked Mr.
10 Gray I ask you, because this is only the second time that I
11 have ever seen a letter from the police department having an
12 objection to something.

13 And I usually have a problem when the police
14 department has an objection, especially when I see that the
15 majority of the community is in support. Their concern was the
16 Woodland Terrace across the street, and this being a negative
17 factor, I guess, on residents of Hope Village.

18 Through your experiences would that have a
19 significance, or would you believe, or have you ever
20 experienced Woodland being an impact on Hope Village? That is,
21 if you follow my question.

22 MS. WHITTINGTON: Well, I am actually surprised
23 to see the letter myself, because during my tenure on the
24 council, I always used to go over to talk to Commander Robinson
25 about Woodland Terrace.

1 Woodland Terrace has a negative impact on Ward 8
2 altogether. It is not at all -- the focus was never Hope
3 Village. It was always with Woodland Terrace, and because
4 Woodland Terrace and Hope Village are right next door to each
5 other, and that the members of Hope Village are inmates, the
6 you don't know where to differentiate between where the
7 problems are coming.

8 But I will tell you sitting on the council that
9 the problem is really with Woodland Terrace. It is not at all
10 directly at all associated to Hope Village. Hope Village has a
11 no tolerance policy; a no tolerance policy, and their programs
12 are very structured, and when I was doing my internship there,
13 the class was standing room only all day long.

14 They wanted to get the information that all of
15 the members and myself wanted to bring to them, and they wanted
16 to do something with their lives. Now, when I left the
17 facility and had to walk past Woodland Terrace, now that is
18 another story.

19 So I have always felt that it was public housing
20 in Woodland Terrace that was much more -- that had a much more
21 negative impact on that facility and throughout Ward 8.

22 COMMISSIONER HOOD: So someone who has actually
23 put a lot of time and effort there, and I understand that you
24 are doing a thesis statement, but would you say through your
25 education that it would be beneficial, and maybe Hope would

1 benefit Woodland Terrace? Would you say that would be
2 beneficial through your education?

3 MS. WHITTINGTON: I think Hope Village not at all
4 could have a negative impact on Woodland Terrace.

5 COMMISSIONER HOOD: But do you think that by Hope
6 Village being where it is that it may to some point benefit
7 Woodland Terrace?

8 MS. WHITTINGTON: Well, I think that it could,
9 because if you see what the inmates at Hope Village are doing
10 to better themselves, I think that would only serve -- well,
11 you can see the results on what happens there, and that would
12 certainly benefit.

13 COMMISSIONER HOOD: And forgive me for asking
14 those questions, but I am not too familiar. So I want to try
15 and visualize this picture. Okay. I'm finished. Thank you.

16 MEMBER HINTON: I just have a couple of
17 questions. Ms. Lewis, my questions go to sort of the staffing
18 and more about the facility. Are we going to get testimony
19 having to do with that?

20 MS. LEWIS: We can make that available, yes.

21 MEMBER HINTON: Okay. Great. Then I don't have
22 any questions. Thank you.

23 CHAIRPERSON REID: I did have one other question.
24 In regard to Lieutenant Farr's letter, I think that what I am
25 ascertaining from this is that Woodland Village is one of the

1 worst drug areas in the 7th District, and as such the people
2 who live in Woodland Village may have been incarcerated, and
3 then do some of those same people come back and come into Hope
4 Village basically?

5 Is that what I am understanding? Does that
6 happen?

7 MS. WHITTINGTON: You know, I am not sure how the
8 process works, but I would tend to think that -- and I don't
9 know. You would probably have to ask one of the staff members
10 back here about that. But I don't think they try very hard to
11 bring a person back to the half-way house in the same
12 neighborhood.

13 I think they try structurally to send them
14 someplace else, and I don't know if that is working. But they
15 don't try to send you back next door to the same facility.

16 CHAIRPERSON REID: Okay. Thank you.

17 MS. WHITTINGTON: And may I just say that for all
18 of the students that I had in my class -- and I was there for
19 two years during my internship, and none of them were from
20 Woodland. None of them were from the neighborhood. They were
21 all from Northwest and some from Southeast, but not in that
22 particular neighborhood. I can't remember one.

23 CHAIRPERSON REID: Okay. Thank you.

24 COMMISSIONER HOOD: Madam Chair, I wanted to ask
25 you a question. In reading this letter are you -- well, I

1 guess I am after the adverse impact, and is that what he is
2 actually saying here, the lieutenant?

3 CHAIRPERSON REID: It seems that he fears that
4 that is a drug corridor, and some of the people who are coming
5 into Hope Village have had problems in the past, and because of
6 the fact that it may be across the street that that may have a
7 negative influence on the people who are there.

8 And from the questions that you have been asking,
9 I gathered that no matter where those people come out of
10 incarceration or drug problems in the future, no matter where
11 they came to, the problem would still exist and is infested
12 all through that area.

13 So then the question is that Hope Village, what
14 role does Hope Village serve, and that is as a transitional --
15 a buffer from where they went to make sure that they don't go
16 back. But the location of it is across the street from this
17 highly drug infested area.

18 But the issue is that the placement of this
19 particular facility, and because of the fact that the problem
20 is there in the community, then they are providing something to
21 offset the negative influence by putting something positive
22 there so that if they come back from the incarceration or being
23 on drugs that rather than being dropped back into the community
24 that there is a mechanism in place to assist them in not going
25 back to the same life that they left in the first place,

1 because there was nothing there.

2 There was no support system to help them to make
3 the transition out, and that's what I am hearing, and that is
4 something that is evident not just in that particular location,
5 but all over the City, as well as the country.

6 COMMISSIONER HOOD: Right. Thank you for being a
7 witness, Madam Chair.

8 CHAIRPERSON REID: You have to kind of have lived
9 a little bit to understand it, you know. Well, not lived being
10 drugs, but been exposed to it, and having people that you know
11 and family who have had problems of that nature.

12 MR. COCHRAN: Madam Chair, unless the Lieutenant
13 is here, I just wanted to note that I may be the only person
14 in the room who has actually talked to the Lieutenant, and to
15 the Commander. So I would be happy to try and give their
16 impression or whatever is appropriate.

17 CHAIRPERSON REID: When we come to the opposition
18 part, and you would be under the government reports, and then I
19 would ask if you would like to add to that, or try to clarify,
20 and basically since he is not here, we are trying to speculate.

21 COMMISSIONER HOOD: Madam Chair, can I just say
22 for Mr. Cochran so he can be ready, I can tell you that from
23 the outset I am very appalled with this letter from the
24 Metropolitan Police Department, and hopeful when we get to that
25 point, then maybe since you are the only person who has talked

1 to them, then maybe we can go from that point. Thank you.

2 CHAIRPERSON REID: Thank you very much. Our next
3 witness, unless Ms. Whittington has any other comments.

4 MS. WHITTINGTON: Thank you.

5 MS. LEWIS: Our next witness is Joe Wilmer.

6 CHAIRPERSON REID: All right.

7 MR. WILMER: Good afternoon. My name is Joe
8 Wilmer, and my home address is 3416 Burgh Lane, Edgewater,
9 Maryland. I am presently the administrator and director at
10 Hope Village. I am in charge of their programs from the time
11 that the individual enters our -- well, actually from the time
12 that we accept the individual from the institution to their
13 release.

14 Just in response to one of the questions that I
15 heard previously, or that needed to be answered, was just what
16 type of staffing and so forth that we have at Hope Village.

17 As you probably can see from our application, we
18 have six individual housing units. There are no dormitories,
19 but apartment styled facilities. There is actually one and two
20 bedroom apartments.

21 Our staff is a 24 hour facility, and we have
22 correctional staff which we call charge-of-quarters around the
23 clock. There is two individuals on the midnight shift, and two
24 individuals on the 3:00 to 11:00 shift, and we have one person
25 that works the day shift.

1 In addition to those staff assigned to each one
2 of the buildings -- and we are not talking about in total, but
3 just each building has that staffing pattern as far as the
4 charge-of-quarters. We also have two case managers and we also
5 have one vocational counselor.

6 There is also a drug counselor who also does life
7 skills, which can vary from family counseling to money
8 management, stress management, AIDS awareness, nutrition, and
9 so we have those life skill courses that we provide for the
10 individual, in addition to GED preparatory.

11 We have the individuals right now for an average
12 of about 60 days. Individuals are eligible to come to a half-
13 way house when they are within six months of release, but to
14 the need in the District of Columbia area, individuals coming
15 back to the Metropolitan Washington area, the average stay is
16 probably about 60 days.

17 That way they can utilize the beds more times
18 during that 12 month period of time. The individual, when they
19 -- well, I get all the referrals, whether they come from
20 Federal institutions or from the D.C. Department of
21 Corrections. I will have final say on whether we accept the
22 individuals or not.

23 We have an agreement with the community that
24 individuals that have previous arrests for sexual offenses,
25 arson, or serious assault, we do not take. Everybody else we

1 take into the program and try to assist them into the positive
2 release into the community.

3 We try to for the first seven days in the Federal
4 Program, or for the first 14 days in the District Program,
5 individuals are not allowed to go anywhere.

6 It is like a cooling down period of time, where
7 they are assessed, and where they are staffed with the drug
8 counselor, and the case worker, and vocational counselor, and
9 the parole officer that is going to be supervising their case
10 once they are released.

11 After that period of time, their whole goal is
12 where we focus them to getting a job, and a place to stay if
13 they need it, and any counseling that they need to support them
14 in that. We also have as mentioned, we have a zero tolerance
15 towards drugs and alcohol, and the first positive urine, you go
16 back to prison.

17 The first positive alcohol, you go back to
18 prison. We have individuals where their only job is to take
19 the specimens and send them out to be tested, and when they
20 return the individuals are gone.

21 We also track the individuals in the community.
22 They are only allowed out of the facility for program
23 activities. That is either job seeking, getting their I.D. or
24 getting them social security cards so they can actively seek
25 employment.

1 They are only allowed enough time out using
2 public transportation to get and from the place that they are
3 supposed to be. If they are unaccounted for, they are subject
4 to disciplinary actions, and which can result in them going
5 back to prison if it cannot be substantiated that there is not
6 a legitimate reason for them not being where they are supposed
7 to be or back to the facility on time.

8 We try to take and do as much for them as we can
9 in order to help them make a satisfactory adjustment out there.

10 As mentioned in some of the comments, you are away from the
11 community for a period of time, and you come back and the
12 support that you thought you had may not be there.

13 The family situation may have changed, and so
14 that period of time in the halfway house allows them to maybe
15 get that first month's rent, get that deposit, get the savings
16 account together, so that when that release date does come,
17 they do not have to revert back to illegal activity in order to
18 support themselves and the community.

19 And a lot of times when an individual comes right
20 from the institution to the street, they used to give them a
21 little bit of money, and a change of clothes, and that's it.

22 So your only contact for the last one, two, three
23 or four years, or however long you have been incarcerated, has
24 been the individuals there with you. So we give them a
25 different set of individuals in order to associate with.

1 For the most part the guys do what they are
2 supposed to do. There are some individuals, because of
3 weakness or because of not wanting to work and have that tax
4 money taken out, because I am used to keeping all the money I
5 make on the corner. So now I have to pay social security
6 benefits, and everything else.

7 And so there is a lot of people not willing to do
8 that and for those individuals, we try to identify them early,
9 and send them back to custody if that is what is needed. But
10 for the majority of the people, they really don't want to go
11 back.

12 And they don't want to revert back to illegal
13 activities, and so we give them that opportunity. We provide
14 three meals a day, 365 days a year. We wash their clothes for
15 them once a week when we wash the linen in each one of the
16 buildings. So we try to just try and keep them
17 focused on what they need to do, because most of the
18 individuals coming there are going to go out by way of parole.

19 They are going to be home anyway within 60 days. So do they
20 benefit from the program, or do they come right out to the
21 street because there is not a place for them?

22 So we are already existing, and so it is a matter
23 of do we allow more people to take advantage of the program.
24 That's pretty much what we are here for today. But if they
25 don't have a job or a place to stay, they cannot go out on

1 parole.

2 So that is the primary focus, and most come with
3 a place to stay, but most do not come with a job already there,
4 and even if they have leads, they have to get a social security
5 card and I.D. before they can even get a job.

6 So we try most of the time, because of the short
7 period of time that they have there, is keeping them focused on
8 what they need to do, and getting them out on time on parole
9 with a viable job and a place to stay.

10 That's pretty much it and an overview of Hope
11 Village, but I can entertain any questions that you might have.

12 CHAIRPERSON REID: Questions?

13 MEMBER HINTON: Mr. Wilmer, I have just a couple
14 of questions. I wanted to go over -- you were talking really
15 quickly, and I tried to take good notes, but the number of
16 staff -- and this is per building, of which you have six
17 buildings, is that right?

18 MR. WILMER: Yes.

19 MEMBER HINTON: What I have is two on the day
20 shift and two on the night shift, and two case managers, a
21 vocational counselor, and a drug and family issues counselor.
22 And then someone you called charge-of-quarters.

23 CHAIRPERSON REID: What was that number again?

24 MEMBER HINTON: Did I miss anybody?

25 MR. WILMER: Well, basically what we have in each

1 building, is we have two midnight shift, and they work from 11
2 o'clock at night to 7:30 in the morning.

3 You have a 7:00 to 3:30 person, and there is only
4 one 7:00 to 3:30 person, and if you noticed, there is an
5 overlap in the shifts so that any concerns can be passed over
6 to someone who is not running out, and if you have got
7 problems, and nobody is aware of it. Or you have got somebody
8 late, and no one is aware of it, or if somebody had to go to
9 the hospital and so forth.

10 Then they work to 3:30 in the afternoon, and then
11 you have a shift from three o'clock in the afternoon to 11:30
12 at night. There are two individuals assigned to that post. So
13 basically in each building, you have five correctional staff.

14 Now, we call them charge of quarters, and we have
15 actually changed their name. A lot of people say they are
16 inmates, or convicts, or whatever. When they get to us, they
17 are residents. They are residents of our program.

18 We changed the name to correctional staff, but if
19 you look at their job description, it is correctional officer,
20 but they are charge of quarters in our facilities. It is
21 almost like how do you paint the room or what kind of music you
22 play over the intercom. It can change people's perceptions or
23 personalities.

24 So those are our titles and so forth, and so the
25 charge-of-quarters are actually correctional staff. In

1 addition to that, the around the clock correctional presence,
2 you have two case managers, and so the caseloads are divided
3 down between the two case managers.

4 They are responsible for setting up movement
5 relative to visiting their families, and processing their
6 staffings, and making sure that they are meeting their goals,
7 and at the end processing their paperwork to the parole officer
8 and then requesting their parole certificates from the U.S.
9 Parole Commission.

10 And making sure that they get out on time so that
11 he next person could benefit from the bed. Then you have a
12 vocational counselor, and not only do they have leads for jobs,
13 because we have been doing this for quite a while, and so we
14 have individuals and places that want our people.

15 Our people have to show up on time, and they have
16 to do a good job, or otherwise they are subject not to get out
17 on time. If they don't have a job or lose their job the day
18 before or the day of parole, they don't go home, because now
19 you have to come up with a new plan.

20 So they want our people to work for them
21 basically, and so they do that in addition to making sure that
22 they are at work every day. They are responsible within five
23 working days verifying that the employer knows that this
24 individual is a resident of Hope Village, and that if he
25 doesn't show up or comes late to let us know.

1 If the person is not working out, let us know so
2 that we can give him somebody else that is going to work out,
3 and they also verify that if they worked 40 hours that week
4 that they are getting paid for 40 hours that week.

5 CHAIRPERSON REID: But that is eight persons for
6 each building?

7 MR. WILMER: That is eight directly. Now, that
8 is program stuff, and we are not talking about the maintenance
9 staff we might have, or the security staff that we might have.

10 CHAIRPERSON REID: Well, let's get a figure.
11 Let's get a number of approximately how many employees you will
12 have.

13 MR. WILMER: A minimum of eight, directly in the
14 facility, and directly working with each client.

15 CHAIRPERSON REID: But is that per building?

16 MR. WILMER: Per building, yes.

17 CHAIRPERSON REID: And so overall?

18 MR. WILMER: That is about 48 direct program
19 staff if my math is correct.

20 MEMBER HINTON: Do you see any need for increased
21 staff with the increased number of residents that you are
22 asking for?

23 MR. WILMER: Not really, because you are not
24 adding that many individuals. The work is pretty much the same
25 type of work. In other words, you are processing the people

1 into teams, and you are processing them out to look for jobs.
2 You are checking up on them. So you are not really increasing
3 the number of people staff wise.

4 And I am still just talking about direct staff.
5 I am not even including in there the drug counselors, the urine
6 monitors, and so forth, or the kitchen staff, or the
7 maintenance staff that are in and out of the buildings doing
8 their particular jobs.

9 I am talking about individuals directly working
10 with the individual on a day-to-day basis, and so that is not
11 even including the midnight supervisor that we have.

12 If a problem comes up there is an individual on-
13 site that they can call, and on the 3:00 to 11:00 shift, there
14 is also a supervisor on staff not working a post that is there
15 to handle any problems that may come up.

16 CHAIRPERSON REID: And is that all included in
17 the 48 staff members?

18 MR. WILMER: No, it's not. Those are in addition
19 to it.

20 CHAIRPERSON REID: Okay. We need to know a
21 figure. And you don't have to give it to us right now if you
22 want to figure it out. But we need to know approximately how
23 many employees and staff people that will be on the premises.

24 MR. WILMER: Okay.

25 CHAIRPERSON REID: So that way we can get an idea

1 of what type of intensity will be present at that particular
2 facility.

3 MR. WILMER: Okay. I can give you that before
4 the end of this hearing.

5 CHAIRPERSON REID: Well, you will have closing
6 remarks and at that time you can give it to us. Thank you.
7 Any other questions?

8 COMMISSIONER HOOD: Madam Chair, I have just one
9 quick question. You are asking for the increased number of
10 beds by one per room, and for example, in 2908, you have six
11 people in the basement. Am I correct?

12 MR. WILMER: Correct.

13 COMMISSIONER HOOD: I mean, for the sake of
14 discussion, you have six in the basement and so that would make
15 it seven in the basement; and 13 on the first floor, whereas,
16 now you have 12.

17 MR. WILMER: There should be roughly around --
18 and I can check to make sure, but there is probably six per
19 floor, because you are talking bedrooms, and you have two, one
20 bedroom apartments, and two, two bedroom apartments, on each
21 floor. So if you are talking per bedroom, then that would be
22 six.

23 COMMISSIONER HOOD: So, six per floor; is that
24 correct?

25 MR. WILMER: Yes.

1 COMMISSIONER HOOD: Well, I will wait until the
2 Office of Planning, because I am looking at their numbers and
3 what they have for each address, and so I will wait and ask
4 them. Thank you.

5 MEMBER HINTON: The numbers that I was looking at
6 for the bedrooms, are there currently three people in each
7 bedroom and the proposal is to add a fourth?

8 MR. WILMER: Well, we make sure that we are
9 meeting the bed space for the American Correctional
10 Association. In other words, there has to be so much living
11 space per each individual. So in some of the bedrooms you
12 might have -- let's say for a one bedroom apartment now, you
13 might have two, or you might have a single and a bunk.

14 But we make sure because of office space, because
15 we have people who work inside those buildings where the guys
16 live. So we probably would be adding where there is two
17 singles now, we would probably put a bunk there instead of
18 having a single.

19 Our beds are made to where you can stack and put
20 the extra bunk on top, rather than having the two singles
21 there.

22 MEMBER HINTON: And you said something about the
23 American Correctional Association. Are there standards that
24 have been developed for the amount of space per resident, like
25 minimum standards?

1 MR. WILMER: Yes. There are national standards
2 that have been made, and not all facilities have gone for it,
3 and gone for accreditation and been accredited.

4 But we saw it as being a need because we want to
5 make sure that we are doing it the best way the professionals
6 think that it should be done. So we have been accredited, and
7 we recently or the last time that we were accredited was in
8 January of this year, I think.

9 You know, you go for reaccreditation every three
10 years, and so in those standards, you have to meet not only
11 standards for staff, but also for residents, and there is a
12 living space requirement for residents.

13 And even adding in the individuals that we are
14 requesting, it would not exceed those particular standards.

15 MEMBER HINTON: Great. Thank you.

16 CHAIRPERSON REID: Thank you.

17 MR. WILMER: Thank you.

18 CHAIRPERSON REID: All right.

19 (Discussion off the record.)

20 CHAIRPERSON REID: All right. Your next witness.

21 MS. LEWIS: Our next witness is from the
22 Department of Corrections and that will be Mr. James Murphy.

23 MR. MURPHY: Good afternoon, Madam Chair and
24 Members of the Commission, my name is James Murphy, and I am
25 with the D.C. Department of Corrections. My address is 300

1 Indiana Avenue.

2 My position with the Department of Corrections is
3 that I am an administrator, and I am responsible for oversight
4 management of all of the halfway houses operated by the
5 District or managed by the District through contractual
6 obligations.

7 I wanted to say that the D.C. Department of
8 Corrections is in favor of this petition for increased bed
9 space. I wanted to say to you that consistent with the
10 Revitalization Act that we all operate under with the
11 reorganization of government that we have seen that there is a
12 definite need for increased bed space in the District of
13 Columbia.

14 The bed space as we have it right now is of two-
15 fold; the District, as well as the Federal Government. In the
16 coming year the District Government will be responsible for
17 primarily sentenced misdemeanors and pretrial persons.

18 Right now that obligation requires us to maintain
19 only pretrial and misdemeanors, but also felons. Under the
20 forecast that we have used, we estimate that we might need
21 approximately 485 beds, and that's right now, and that does not
22 include the Federal Government.

23 So what we are saying is that this petition right
24 here will go a long ways in satisfying the requirement for the
25 need for the government. Let me also say to you that when we

1 talk about community correctional centers that we are talking
2 about public safety, and we are talking about the most sensible
3 and the most reliable way of how we release persons back into
4 the community.

5 I would say to you about housing people in
6 community correctional centers that we afford them a degree of
7 accountability, structure, and opportunity, and counseling.

8 All of the persons that reside in the community
9 correctional centers are afforded services and the opportunity
10 to locate employment, and they also have on-site with this
11 rearrangement of government.

12 We have what we call parole officers on-site who
13 also facilitate in this servicing of the population. I would
14 say to you that Hope Village has demonstrated experience and
15 has demonstrated performance in managing the halfway houses.
16 They are an accredited facility.

17 So not to make or belabor this situation any
18 longer, I find favor with this application for increased bed
19 space.

20 CHAIRPERSON REID: Thank you. Board Members,
21 any questions?

22 (No audible response.)

23 CHAIRPERSON REID: All right. Thank you. Your
24 next witness, please.

25 MS. LEWIS: Phinis Jones.

1 MR. JONES: Thank you, Madam Chair, and Members
2 of the Board, I don't have a prepared statement. I would like
3 to talk about and try to clear up some confusion --

4 MS. BAILEY: Excuse me, sir. Please identify
5 yourself.

6 MR. JONES: I'm sorry. My name is Phinis Jones,
7 and my address is 3215 Martin Luther King, Junior Avenue, in
8 Southeast Washington. I have been with Hope Village for about
9 15 years doing community relations. It has been 15 years.

10 And under a previous order that I would like to
11 start with from this Board, which I believe was in our third
12 hearing, or the first hearing that I came with Hope Village, I
13 suppose that is when the numbers got wrong, in terms of what
14 section we were applying under or what section for relief that
15 we were granted under.

16 Because we have followed it ever since and I have
17 been involved in every case since that time, but the Board
18 instructed Hope Village by order to set up an advisory board, a
19 community advisory board. That community advisory board is
20 made up of the police, the Department of Corrections, community
21 individuals, and a past resident of Hope Village, which Leonard
22 Gray serves.

23 Now, I have been active for 15 years on that
24 board, and we had good participation from the police department
25 up until about two years ago, and we had that participation

1 fall off our regular quarterly meetings.

2 The CEO and myself met with Commander Robinson
3 and indicated that we wanted the police to renew its commitment
4 and attend our regular meetings on a quarterly basis that would
5 help us transfer information from the police department to us,
6 and of course from us back to the police department.

7 We sought a meeting after I met with the Office
8 of Planning with Inspector Robinson to accompany with me and
9 Mr. Cochran. And we have been granted a meeting, but we
10 couldn't get it prior to this hearing. We have one for the
11 25th of this month.

12 We told him the urgency of it because we wanted
13 to meet and to discuss the concerns that the police had in
14 light of the fact that they had not been participating in our
15 advisory board meetings.

16 Further in that meeting with Inspector Robinson,
17 we indicated that -- and I don't want to be too hard on what is
18 there, but a lot of the community housing developments are
19 changing.

20 Willow Creek is changing, and new townhouses are
21 going up, and there is a pre-bid conference on Notts Hill, or
22 Frederick Douglas as we testify today. That one is coming on
23 line as a Hope Six out of HUD.

24 And I suspect that in a short period that
25 Woodland Terrace will be renovated or changed to townhouses or

1 something. But as it is now, we deal with it, and we have
2 dealt with it at Hope Village. We have done cleanups, and we
3 have worked with former management over there.

4 We take the residents, the D.C. residents, and go
5 over and do regular cleanups that Council Member Whittington
6 talked about, to try to bridge those gaps.

7 We have met regularly in the past with the
8 residents, but the problem that we have now is just a breakdown
9 in communication with the police department. We met with the
10 CEO of Hope Village, and suggested that we would place a
11 trailer on our parking lot for the police department to do
12 their reporting and that kind of thing.

13 The commander thought that was -- he didn't want
14 to do that because his officers would kind of hide out there.
15 So then we offered at least to have a book like they have in
16 some of the banks in some of the neighborhoods.

17 And Commander Robinson agreed and we placed a
18 book, and the officers for about two years attended -- they
19 would make their rounds, and they would come into Hope Village,
20 and they would sign the book so that we had some record.

21 The commander could then see how often they were
22 coming, and they just stopped. And we have been trying to
23 institute that again, because we want that presence, and we
24 believe that presence helps the entire community there.

25 What I did yesterday after receiving this letter

1 that came in to you opposing this yesterday, I initiated with
2 our council member to ask her to intervene with Inspector
3 Robinson and to schedule a meeting so that we could have this
4 dialogue, so that he can detail someone back on our advisory
5 board that can give him firsthand information.

6 And I think we are going to work diligently to
7 get that done. The other thing that I would like to speak to
8 just quickly is that it was alluded to was the standards of
9 ACA.

10 This is the third time in January that we were
11 accredited down in Nashville, and the third accreditation that
12 we have had. And all of those standards that we absolutely
13 abide by with the accrediting organization, we looked at this
14 application, in terms of the space requirement for
15 accreditation, because we would not want to lose that.

16 And it does not violate that as Mr. Wilmer has
17 said, and we would urge the board to approve this application.

18 The other thing I will mention is that we have looked at other
19 facilities. We thought it would be best to do smaller
20 facilities.

21 Some of you probably read that we were over in
22 Ward 7, and we looked at our resident roster, and we had about
23 62 people last fall that was from zip code 118 in Ward 7.

24 We thought that we would open a small facility
25 that would accommodate about 50 people in that area. We went

1 to the community and said we can't give you the names, but here
2 are the addresses.

3 They are from your community, and they are
4 release addresses and they are coming back here. Would you
5 support us in opening a small facility for a three year period
6 and look at it, and we got no support. They literally ran us
7 out of there.

8 We have looked at other wards where we have a
9 large number of addresses for their release addresses. We know
10 where they are going back, and so we look at those addresses
11 from time to time and say, gee, we have got 80 people from Ward
12 5, and that was the case in 1998.

13 And we met with the council member of Ward 5 at
14 the time, the late Harry Thomas, and said we are housing a
15 significant number of people in Ward 8 that have release
16 addresses in Ward 5. Would you support us in finding a small
17 facility that we would operate.

18 Mr. Thomas was very gracious, and he said, you
19 know, you have got to find something that is suitable and the
20 community. And we looked in Ward 5 and we never found anything
21 that was suitable.

22 Therefore, it brings us back today to say would
23 you consider the increase and the relief that we are asking for
24 here. So we have tried other communities, and we just can't
25 get it done.

1 We do have the support at Hope Village, and we
2 have the support from our school board member, and council
3 member, and the ANC, and the majority of the community. We do
4 have this opposition from the police department, which really
5 surprised me in that they should be coming to advisory board
6 meetings on a regular basis.

7 With all due respect to Mr. Cochran's diligent
8 work and his outstanding report, I would urge the board -- we
9 were here in '98, and you granted 15 years, and we are asking
10 that this relief, if you grant it, and we urge you to grant it,
11 to let it run concurrent with those 13 years remaining that you
12 granted in 1998.

13 And of course the three buildings that are
14 permanent, let that run concurrent with the permanent zone. I
15 thank you, and I am prepared to answer any questions that you
16 have.

17 CHAIRPERSON REID: Mr. Jones, I do have one
18 question. Now that you have been in operational for 2-1/2
19 years since your order was issued, have you had any complaints
20 from any of the neighbors or the citizens with regard to the
21 conduct of the facility or with the residents of the facility
22 in regard to noise, or adverse behavior, or illicit behavior,
23 or anything that had an impact on the community negatively?

24 MR. JONES: No. In the last 2-1/2 years, we have
25 had one complaint. If you will visualize these six garden

1 apartment styled buildings, there is one private home
2 sandwiched right in between the -- there is three buildings,
3 and there is this private home, and then there is three
4 additional buildings.

5 We have met and meet regularly with the owner of
6 that private home, because it is just right between the two
7 buildings. And he was concerned about the number of people
8 going to the dining hall.

9 And we made sure that the security staff have
10 people when they are coming out of the building and going to
11 the dining hall that they move on, and that is the only
12 complaint that we have had.

13 CHAIRPERSON REID: There have been no complaints
14 about trash or debris, or anything like that?

15 MR. JONES: Absolutely not, and as a matter of
16 fact, I am glad that you mentioned that. In addition to the
17 residents taking care of our grounds, they take care of the
18 grounds in the immediate surrounding area.

19 We have worked with Reverend Liscomb of Allan's
20 Church as far as that end, in terms of cleaning up on Angel
21 Place and his church parking lot, and we do that on a regular
22 basis, and he has a letter of support in our packet.

23 CHAIRPERSON REID: Thank you. Any other
24 questions?

25 COMMISSIONER HOOD: Madam Chair, I just wanted to

1 follow up. It is not necessarily pertaining to this case, Mr.
2 Jones, but you mentioned in Ward 5, and in working with the
3 late Harry Thomas, and I am just wondering what happened when
4 you were not able to come to an agreement to find a facility?

5 What actually happened to those residents who
6 came from Ward 5 and who actually needed to go back to Ward 5?

7 What happened to them?

8 MR. JONES: They remained at Hope Village. We
9 have them from all over this City now, and if we looked at the
10 addresses, we have to have a release address.

11 Mr. Wilmer spoke to that, and the minute that
12 someone comes to the facility, we know what address he put down
13 and where he is going back. When Mr. Gray came into the
14 facility, he had given the Department of Corrections that when
15 I am released from the halfway house, or when I am released
16 from incarceration, here is my home.

17 So we have those addresses, but we continue to
18 house them from all over the City. And Ms. Whittington pointed
19 out that there was a time -- and I think Mr. Murphy still tried
20 to do that with the Department of Corrections.

21 There is a facility on New York Avenue, and if
22 someone is perhaps from Woodland Terrace, he would send them to
23 that facility on New York Avenue so that they are not adjacent.

24 We don't get very many people, and quite frankly I don't
25 recall any that would have Woodland Terrace as a release to

1 address.

2 COMMISSIONER HOOD: Okay. And I believe the one
3 on New York Avenue is scheduled to move?

4 MR. JONES: I am not sure, and Mr. Murphy can
5 probably speak to that. That is a Department of Corrections
6 run facility, and I can't speak to that.

7 COMMISSIONER HOOD: Well, it was scheduled to
8 move, but I was just wondering the effect of people actually
9 going back into the direct neighborhood, as opposed to maybe
10 another neighborhood.

11 MR. JONES: The vast majority of these
12 individuals want to work and want to do the right thing. Mr.
13 Wilmer pointed out that you have a couple of isolated cases
14 here and there, but that's life, and you expect that.

15 I have a heating and air-conditioning company,
16 and I believe right now that I have probably 5 or 6 guys that I
17 have hired directly from Hope Village doing heating and air-
18 conditioning. I work all over the City, and in Maryland and
19 Virginia.

20 It is Davis-Bacon skills, and so they come out
21 as a laborer, and you are not at minimum wage. You are at a
22 minimum Davis-Bacon wage right now for an unskilled laborer of
23 \$9.17. That is what you must pay them.

24 So the vast majority of individuals want to work,
25 and want to do the right thing. I hired Mr. Gray I am happy to

1 say over 11 years ago, and he stayed with me a little less than
2 a year, and he has been with the United Black Fund working for
3 -- I guess he actually let me and went to the council with
4 Council Member Rolark. That's how long it has been.

5 And when she was defeated, he went with her, and
6 now she runs the United Black Fund, and that is who he is with
7 as her executive assistant.

8 There is a countless number of cases like this
9 where people want to do the right thing, and get their lives
10 together. Leonard has been in his current job now for the last
11 10 years.

12 COMMISSIONER HOOD: So if you don't have room in
13 Hope Village, then where do they go? Do they just go back to
14 the street?

15 MR. JONES: Well, as Mr. Wilmer pointed out --
16 and he didn't go into much detail, but it used to be 120 days
17 or 6 months, and unfortunately or fortunately we live in a
18 society, depending on how you see it, we live in a society that
19 when you do your punishment that people are coming home.

20 It is a question of whether it is better if they
21 come through a structured environment, where vocational
22 counselors work with them and get them a job, and they go on
23 and slowly reintegrate with their families and move on with
24 their lives, or do we go back to the old system where you just
25 open the door and give you \$25, and a map, and a sandwich, and

1 say go.

2 And that's the way it once was. When I started
3 with Hope Village, it was 120 days or 6 months before their
4 release date. If you listen to Mr. Wilmer's testimony, now I
5 believe we down to 60 days and in many cases less than that.

6 So we are headed down to zero days where people
7 are going to get out, and we won't know where they are once
8 they do their time in an institution. We have had cases when
9 the Department of Corrections sent people to Ohio, and they are
10 as far away now as New Mexico, and they are doing most of their
11 time in an institution there.

12 We are going to reach the point if the community
13 holds to its position where people are going to do their time
14 in an institution and they are coming home, and nobody knows
15 where they are going.

16 And I just believe that is the wrong approach to
17 take I think to bring them back as Mr. Gray has testified, and
18 his experience is the best approach to this problem.

19 COMMISSIONER HOOD: Thank you.

20 MR. JONES: You're welcome.

21 CHAIRPERSON REID: Thank you very much. Does
22 that conclude your presentation?

23 MS. LEWIS: Other than my closing statement,
24 that's all I have.

25 CHAIRPERSON REID: All right. We will go to

1 government reports, and the Office of Planning.

2 MR. COCHRAN: For the record, my name is Steve
3 Cochran, and I am with the Office of Planning.

4 CHAIRPERSON REID: Are you going to be requesting
5 a waiver?

6 MR. COCHRAN: It is so usual that I forget. Yes,
7 the Office of Planning requests a waiver for its late report to
8 be admitted into the record.

9 CHAIRPERSON REID: I have no problem with it
10 unless the Board Members have any objections.

11 MR. COCHRAN: I assure you though that we have
12 instituted a self-destruct mechanism for the macro that we have
13 that turns out the "would you please accept this waiver," and
14 soon it will stop. Okay.

15 But anyway it did give us the opportunity to meet
16 with the applicant and learn much more about the facility. It
17 seems to the Office of Planning that there are three general
18 categories that the Board might want to consider on this.

19 One is the procedural issues that Ms. Sansone not
20 only alluded to, but explained in such clarity earlier. The
21 other is the tests, be it under 357 or 358, and the third,
22 which is not technically something that we are supposed to be
23 addressing, but clearly it is one that the Board is interested
24 in, would be the social context of the application.

25 CHAIRPERSON REID: No, excuse me, let me stop you

1 right there. It is the adverse impact aspect of it that we are
2 concerned about, and that we spoke to the fact of the police
3 department having objections because of the location of it, and
4 trying to get some understanding as to what adverse impact was
5 being alleged, because it wasn't clear, and that was kind of
6 brought out.

7 But in all instances we are talking about as it
8 pertains to the regulations, and in this instance it is the
9 adverse impact of it, and the fact that it does exist.

10 MR. COCHRAN: I will try to address that. As far
11 as the procedural aspects go, I think again that Ms. Sansone
12 explained that very well. The Office of Planning completely
13 agrees with Ms. Sansone and it actually explains some of the
14 difficulty we had in understanding some aspects of the
15 application and some of the internal contradictions on when
16 things were being cited as a facility for greater than 20
17 people, and yet the tests were alluding to greater than 25
18 people, et cetera.

19 So clearly there has been some confusion, and I
20 think that the applicant attempted to deal with certificates of
21 occupancy that may not have been the most appropriately written
22 in the past, and I hope that the Board will try to clear it all
23 up once and for all this time, because clearly Hope Village is
24 a very good facility that should have a CFO record that is as
25 clean as its own operational record.

1 Given that, we have to look at the expansion
2 under 357.1 for greater than 20 people. It is in fact we feel
3 unique, and there is undo hardship, and if I sound like I am
4 acting a bit on the fly on this, it is because I am.

5 Marie and I just talked about this this morning,
6 and there is the uniqueness of them having assembled six
7 buildings over a period of roughly 21 or 22 years.

8 They have a number of previous approvals from
9 this board, and so there is the establishment issue that Ms.
10 Sansone alluded to, which reduces the burden of proof on the
11 applicant for the uniqueness.

12 There is also a great deal of community
13 acceptance for this long-standing facility, and I regret to say
14 that having community approval for a facility like this in
15 Washington or any major city is probably a unique condition.

16 As far as undue hardship, we feel that it does
17 meet the test, mostly because of the same reasons that it is
18 unique. It has been around for quite some time. Specifically
19 with respect to the number of beds, we would have a somewhat
20 more difficult time arguing hardship.

21 Not so much for the facility, because there has
22 not been a demonstration that to continue operating the
23 facility the facility needs to expand, nor has there been a
24 demonstration that it needs to expand by the hundred-and-28
25 beds that are proposed.

1 The hardship is more of the hardship of a larger
2 case, where -- and pardon my frankness, where nobody else wants
3 to accept this kind of a facility. This facility is needed.
4 Hope Village has a unique track record, in that no one,
5 including the police department, has criticized the way in
6 which Hope Village is run.

7 And so the hardship is, one, that the facility
8 wants to continue to serve its potential clients, and there
9 seems to be very little alternative.

10 CHAIRPERSON REID: Let me see if I can help you
11 out a little bit with that.

12 MR. COCHRAN: Thank you. This is when I regret
13 that something is being taped.

14 CHAIRPERSON REID: Would the hardship also be
15 perhaps the fact that without it the ANC would suffer a greater
16 demise, or a greater detriment?

17 MR. COCHRAN: I thank you for your help on that,
18 but I am not prepared to say that the immediate community would
19 suffer from the lack of Hope Village. I certainly think that
20 the ward would and the city would, because of the lack of
21 correspondence between the residents of the facility and their
22 zip codes where they will be getting placed.

23 As various managers at the facility have just
24 testified, they attempt to not have residents at the facility
25 who in the future are going to be living across the street or a

1 block away, et cetera.

2 I am also not prepared to say that Hope Village
3 is referenced by the community as a shining example of how the
4 community could be better. I am wording that carefully because
5 the references to Hope Village have all been positive; from the
6 resident manager at Woodland Terrace, to the police department,
7 to other members of the community.

8 Everyone has said that within the fence of Hope
9 Village, and basically within the walls, it is extremely well
10 run. There is no problem with anything going on inside of Hope
11 Village.

12 In many ways -- and I think to summarize what I
13 was saying, in many ways Hope Village is an island. On that
14 island and within those gates, and within the fenced in
15 security, it is a very well run facility. It is secure, et
16 cetera.

17 It is the surrounding neighborhood that is the
18 problem. So that's why I can't say that Hope Village is making
19 a positive impact on the surrounding neighborhood, primarily
20 because I don't have any information about outreach programs,
21 et cetera, et cetera.

22 If I had that kind of information, and if there
23 were some sort of outreach programs, perhaps I could answer
24 affirmatively to what you were suggesting.

25 CHAIRPERSON REID: Well, I was just trying to --

1 well, given the fact that this kind of came up, and it had not
2 really been addressed, and trying to see how we could best
3 approach that, and I am just wondering if in fact any benefit
4 would have to go to the surrounding community, or could it be
5 the city?

6 MR. COCHRAN: Well, certainly if you were to be
7 writing a decision, you would have to refer to benefits to the
8 city, I think.

9 CHAIRPERSON REID: Well, yes, but I don't think
10 typically within orders if we necessarily reflect that the
11 city, or the community, or what, and we just basically say that
12 it was demonstrated that there was an undue hardship.

13 MR. COCHRAN: Yes. I just avoid using the words
14 of benefit to the neighborhood; benefit to the community, and
15 benefit to the ward, and benefit to the city, yes.

16 CHAIRPERSON REID: And also what occurred to me
17 while we were speaking, Steve, was that -- and to complicate
18 matters more, and we want to try and be correct here, is that
19 the undue hardship would have to have -- would be upon the
20 owner of the property, and who is the owner?

21 MR. COCHRAN: Joan Sutton is listed as the owner.

22

23 CHAIRPERSON REID: Who?

24 MR. COCHRAN: Joan Sutton, S-U-T-T-O-N, of
25 Rockville, Maryland, is listed as the owner.

1 CHAIRPERSON REID: Of the property?

2 MR. COCHRAN: Yes.

3 CHAIRPERSON REID: Okay. Then I think we did
4 have a letter where she had -- well, do we have a letter from
5 the owner in the file somewhere that authorized --

6 MS. LEWIS: Yes, I believe so.

7 CHAIRPERSON REID: Now, if you go to the undue
8 hardship one, then we have to think that through a little bit,
9 unless you have some suggestions and we can come back to that.

10

11 MR. COCHRAN: Offhand, I would like some more
12 time to think about what the undue hardship might be on the
13 owner.

14 CHAIRPERSON REID: Well, we just this morning
15 ascertained that it was under a different section, and as such
16 sometimes these things have to be kind of thought through and
17 to be approach differently, and I don't know exactly what that
18 is.

19 But I just want to make sure that we don't set a
20 precedent inadvertently. That would be incorrect.

21 MR. COCHRAN: Okay. The owner could certainly
22 continue to operate the facility without the expansion of beds,
23 and would continue to -- well, the investment that the owner
24 engaged in to comply with earlier BZA conditions would continue
25 to be a useful investment for the operation of this facility at

1 232, as opposed to 360 residents.

2 CHAIRPERSON REID: So the previous order was the
3 special exception?

4 MR. COCHRAN: Yes.

5 CHAIRPERSON REID: So we didn't even have to deal
6 with the written approval for a variance, even though that was
7 incorrect in the first place. Well, why don't we just go on
8 through it and when we come back to closing remarks, by that
9 time perhaps we would have been able to put our arms around it
10 better.

11 MR. COCHRAN: All right. And then I would like
12 to spend just a little bit more time explaining more about
13 exactly what the applicant seems to be asking for.

14 It is an increase in the number of beds per unit.

15 Now, visualize a garden apartment complex of six buildings,
16 and actually a very attractive and well maintained, better than
17 many of the surrounding apartments and housing complexes.

18 Some of the units are one bedroom units, and some
19 of the units are two bedroom units. On page 3 of the Office of
20 Planning report, Roman Numeral V, the second paragraph,
21 explains how the applicant wants to increase the number of
22 beds.

23 In a two bedroom unit, one bedroom is larger and
24 one bedroom is smaller, and in the larger bedroom they would be
25 adding or basically have two bunks rather than as they do now

1 one bunk and one single bed.

2 So that's how you would get the increase in the
3 number of beds in that unit. In the one bedroom unit, they
4 would just go uniformly to having two bunks.

5
6 Now, the rest of the unit has its old living
7 room, and the kitchen has been turned into essentially a quiet
8 area, so that residents can get away from other residents that
9 they may not be wanting to see at the moment, or simply to
10 meditate, because all of this is enabled by communal dining
11 facilities.

12 Is that clear on how they want to increase the numbers of beds?

13

14 CHAIRPERSON REID: Yes.

15 MR. COCHRAN: Under the proposal, one bedroom
16 apartments that currently have one double-bunk and one single
17 bed would have two double-bunk beds in the future.

18 Two bedroom units, which currently have one
19 double-bunk and one single bed in each of the bedrooms, would
20 in the future have two double-bunk beds in the larger bedroom,
21 and continue to have one double-bunk bed and one single bed in
22 the smaller bedroom.

23 COMMISSIONER HOOD: Mr. Cochran, can I just ask
24 you if you don't mind if I interrupt you, but can you turn to
25 page four, and I asked this earlier when Mr. Wilmer was

1 testifying. Now, this reflects the count, am I correct?

2 MR. COCHRAN: No, this reflects the CFO, and
3 there is not complete congruence between the CFOs and the
4 description that the applicant has given on how the buildings
5 are used.

6 The CFOs refer to floors, and the applicant
7 refers to numbers of units. So the CFO doesn't make any
8 reference to the numbers of former apartments that there were
9 in each of the garden apartment buildings that are now part of
10 the Hope Village.

11 The applicant refers to units, but nowhere, be it
12 in the CFOs or in the applicant's information, do we know how
13 many units there are. This is an interesting application, and
14 this is what I have inferred and tried to put together on how
15 it would likely work.

16 COMMISSIONER HOOD: Okay.

17 MEMBER HINTON: Mr. Cochran, could I draw your
18 attention to the letter? It is attached to your report, and it
19 is the first page of the letter, dated April 11th.

20 Now, my understanding is -- and I guess if you
21 look at the third paragraph, my understanding of this was to
22 add one bed to every single bedroom.

23 MR. COCHRAN: Right.

24 MEMBER HINTON: And then it has the number of
25 units listed there. So I went through and did the math, and

1 that's exactly what they are proposing, because if you do 39
2 times 1, plus 40 times 2, plus 3 times 3, you get 128.

3 MR. COCHRAN: Okay. My report was completed the
4 day before, and at that time I only had the oral information
5 from a meeting, and that's how it was described to me. I'm
6 sorry, but I did not see that paragraph.

7 MEMBER HINTON: No, that's okay. So that was my
8 understanding, that there will be one bed added to every single
9 bedroom. Now, I don't think that helps us with the
10 discrepancies that we have with this CFO, but I think that
11 really helped me understand what actually the proposal was.

12 That no matter what is in each bedroom now, there
13 is going to be one more bed, and if you look at the total
14 number of 232 existing residents, and 82 existing bedrooms,
15 that is almost three, or three residents per bedroom now.

16 So then the proposal would be about four. So
17 that is how I worked out the numbers if that helps at all.

18 COMMISSIONER HOOD: Madam Chair, can I ask
19 another question?

20 CHAIRPERSON REID: Sure. All right.

21 COMMISSIONER HOOD: Mr. Cochran -- and you may
22 have alluded to this earlier, but the letter response to the
23 Lieutenant, you said that you were the only person who had
24 spoken to him?

25 MR. COCHRAN: Yes. Well, at least as far as I

1 know in this room, unless the lieutenant is here in deep cover.

2 COMMISSIONER HOOD: Could you just elaborate on
3 actually what that letter is?

4 MR. COCHRAN: Because the original application
5 didn't have as much information as is now in the record, I
6 talked to the ward planner, and the ward planner and I called
7 around to different people in the community.

8 Among the people that we checked with were the
9 police department, and I did not know it at the time that I was
10 writing the report that the police would actually be putting
11 their names forward.

12 So I thought that I would preserve some
13 confidentiality, but both the commander and the lieutenant said
14 that they had some problems with the expansion.

15 To put it most directly, because of the
16 possibility of having the inclinations of supply and demand,
17 and with the supply of the kinds of drugs that the residents of
18 Hope Village have been trying to get away from, and working to
19 continue to get away from in their placement at Hope Village,
20 that that supply exists across the street.

21 And those suppliers perceive the potential for
22 demand at Hope Village, because they are looking at a resident
23 population that has demonstrated an interest in drugs in the
24 past, and so there is an incentive to cluster around a
25 potential source of demand.

1 That's where the police department's problem
2 comes within this. It is what happens outside the gates. Now,
3 in speaking with the applicant, I understand that residents
4 have jobs, and there is a lot to do in a day, and that is one
5 reason why it is highly structured. You know, idle minds and
6 workshops.

7 And the applicant says that the attempt is to
8 keep everybody busy going to the bus, and going to the job, and
9 coming back, and there is a curfew, et cetera, et cetera.

10 I don't think -- well, I mean, one could
11 speculate that the potential suppliers don't know quite as much
12 about the operation of Hope Village and that structure as we
13 now do here in this room.

14 And so there might be an incentive to try to
15 tempt people. That is pretty much all the police were saying.

16 On the other hand, you know, what is going on outside the
17 walls of Hope Village is perhaps more in the bailiwick of the
18 police department than it is of Hope Village.

19 And if the police are having difficult dealing
20 with or controlling the supply of drugs in the neighborhood,
21 perhaps it is more incumbent upon them rather than Hope Village
22 to change their operations. Nevertheless, percentage wise, it
23 is a large increase.

24 COMMISSIONER HOOD: They may have to be inclined
25 to do just a little more work. One of my concerns is from what

1 I have heard from Mr. Jones, to be frankly honest, is that if
2 this goes forward -- because we don't know that it is going
3 forward -- is that they also get back on the panel, because I
4 think they have discontinued their input and their cooperation
5 with the advisory panel, or whatever you have there.

6 MR. COCHRAN: I think that is what the testimony
7 was earlier.

8 COMMISSIONER HOOD: And I really took this letter
9 very seriously, because the Metropolitan Police Department, as
10 well as our job, is to protect the safety and health of the
11 residents of the city.

12 And this really goes a long way and I wanted to
13 make sure that Lieutenant Farr really had done his home work
14 before submitting something. I know that the commander is well
15 versed with Hope Village, and I am looking at this as coming
16 exactly from the Lieutenant as far as the --

17 MR. COCHRAN: I talked to the commander first,
18 and he felt that after saying a few things that really -- that
19 the person who was most knowledgeable about Hope Village was
20 the PSA officer, which is why he referred me to Lieutenant
21 Farr.

22 COMMISSIONER HOOD: Right. And let me just say
23 this, Madam Chair, and no disrespect to the Lieutenant, but if
24 they change like they do in Ward 5 every three months, you
25 really are not in tune to exactly what is going on.

1 And I think that's why it is key for them to get
2 back into the advisory committee, and so I will leave that
3 alone.

4 MR. COCHRAN: Well, this letter discussion, to
5 some extent is why we are recommending approval for five years,
6 because if there are issues they will come out in five years.
7 And if there aren't, it will be clearer, and at the time of
8 renewal there would be the opportunity for a longer and more
9 permanent approval.

10 But again to explain our recommendation, the five
11 years refers only to the increase in the number of beds. Under
12 our recommendation, it would revert back to the current number
13 of beds, both for the three buildings that have the permanent
14 CFOs, and the three buildings that have the CFOs that expire in
15 2013.

16 CHAIRPERSON REID: Well, let's see. You are
17 recommending five years, correct?

18 MR. COCHRAN: That's correct, Madam Chair.

19 CHAIRPERSON REID: And the previous order
20 recommended 15 years. Now, a couple of things that I wanted to
21 mention here. One is that in regard to Officer Farr's letter,
22 there are a couple of concerns that I have.

23 And that is, one, I concur with Mr. Hood, in that
24 there has not been the participation necessary to ascertain
25 what in fact was happening at Hope Village.

1 Two, if in fact we were given some type of
2 information as to statistically the number of people at Hope
3 Village who had been arrested because they had gotten involved
4 with the activity across the street.

5 And that may be a little more compelling, and
6 then, three, in any instance where there is drug addiction in
7 general, it extends from the community that the person is
8 involved in or around, and unfortunately as was testified to
9 here today, that's where they return.

10 The difference is that Hope Village provides a
11 structure by which it gives them another alternative, no matter
12 where they are, to be able to have an option as to what they
13 can do with their lives, rather than going right back to where
14 they came from, rather than getting their lives straightened
15 out and trying to do something different.

16 And that's where I think the difference is, and I
17 don't know if Officer Farr understands that. And the other
18 thing that you referred to as in regards to the five years, I
19 think that if we had testimony that there had been a problem
20 and there was -- well, we do have someone here in opposition.

21 But considerable community opposition, such as
22 the ANC, and different people coming in and telling us
23 different things that had happened, and why they think this
24 should be turned down, I think then that I would be more
25 inclined to go along with that five years.

1 But in this particular case, it has a history,
2 and it has demonstrated that it is not causing an adverse
3 impact in the community, and as such, I would not be in favor
4 of the five years that you recommended. I would be more in
5 favor of what was recommended previously.

6 Are there any other questions of Mr. Cochran?
7 The applicant can cross-examine if you have any questions.

8 MEMBER HINTON: I have another question. Mr.
9 Cochran, I think you were going to take us through the zoning
10 history and make a comparison to the CFOs, and I would find
11 that really beneficial. If you could do that, because maybe I
12 can just ask you my question.

13 I am looking at your report, and I see that the
14 BZA action that covered three of the building addresses, but
15 not the other three. And it is not clear to me if the other
16 three were ever covered under a zoning action.

17 The other three seem to have been covered under a
18 zoning action, because they are alluded to in the last BZA
19 report. The BZA report -- the only reason that I knew about
20 the earlier case was because when the BZA made its last ruling,
21 it said basically that Hope Village had to comply with the
22 conditions in the previous ruling.

23 CHAIRPERSON REID: Where is that? Is that in the
24 previous order? Where did you see that, Mr. Cochran?

25 MR. COCHRAN: In the order that is from 1998, I

1 believe.

2 CHAIRPERSON REID: Yes, I am looking at that, and
3 where does it say that?

4 MR. COCHRAN: Excuse me, Madam Chair. I just
5 have to find the exact wording.

6 (Brief Pause.)

7 MR. COCHRAN: Okay. This is in the 1998 order,
8 and number 9 of the conditions, it says that the applicant
9 shall install and thereafter maintain in conditions the plants
10 and materials which are specified in the proposal, which is
11 attached to the letter, dated December 30th, 1998, Exhibit
12 Number 31, in the record of Case 14876.

13 And from that I surmised that in essence the BZA
14 was saying, look, you promised us to do certain things as part
15 of this order. We are reiterating that we want you to do what
16 we told you to do 10 years ago, and they seem to have.

17 CHAIRPERSON REID: I think it is instructive also
18 now that you have pointed that out that in this order of 1998
19 that it also stipulates -- wait a second, I just saw it. Give
20 me a second here.

21 (Brief Pause.)

22 MS. BAILEY: Madam Chair, while you are thinking,
23 we have --

24 CHAIRPERSON REID: No, here it is. "No personal
25 or entity appearing as a party to this case testified in

1 opposition to the application." So apparently the ANC there,
2 too, and there were no other parties that had testified in
3 opposition, even though it had been then in existence for 10
4 years. I think that is instructive as well.

5 MR. COCHRAN: Oh, absolutely. The pattern of
6 both cases is very similar, with the exception of the letter
7 from the police officer.

8 CHAIRPERSON REID: Right.

9 MR. COCHRAN: The only difference seems to be the
10 scale of the density and the intensity, which is -- well, if
11 the standards of the accrediting body are met, then it becomes
12 a subjective consideration for the board.

13 CHAIRPERSON REID: If the standards of what?

14 MR. COCHRAN: Of the accreditation body for this
15 kind of facility are being met as far as numbers of square feet
16 per resident.

17 CHAIRPERSON REID: Well, it would have to be.

18 MR. COCHRAN: The primary reason we suggest that
19 it be reconsidered in five years is that it is unusual in our
20 experience to look at a 56 percent increase.

21 Usually these facilities are thought to be -- the
22 idea behind these facilities is more to have individual
23 buildings integrated into a community, as opposed to having a
24 campus.

25 Now, this campus seems to be very well run, and

1 very well managed, et cetera. We just had a little bit of
2 hesitation about such a quick jump in the numbers.

3 While we recognize that it is probably necessary
4 given some other Federal decisions on where certain similar
5 facilities won't be located just in the last month.

6 CHAIRPERSON REID: I do know what you are
7 referring to.

8 MEMBER HINTON: Maybe the applicant can explain
9 better the sort of history because what I see is that there
10 were originally three zoning case numbers, and I am guessing
11 that there was one for each property, because they are
12 sequential and it is 14876, and 14877, and 14878.

13 MR. COCHRAN: Ms. Hinton, again I hope the
14 applicant will correct me, but what I inferred was that there
15 was the purchase of three buildings, and then three additional
16 buildings.

17 And the first case probably referred to the first
18 three buildings, and then the second case referred to the total
19 of six. Now, we are looking again at a total of six buildings.

20 MEMBER HINTON: Well, okay. Let me read it again
21 because when I read the second one, it specifically refers to
22 three, and --

23 MR. COCHRAN: Well, I was assuming though that
24 was the second group of three buildings, because the first
25 three buildings have permanent CFOs, and the second three

1 buildings have CFOs that were for 15 years. And again I
2 inferred that that means that the complex expanded in 1998.

3 MEMBER HINTON: So that is what we need to check
4 then just to make sure that those first three cases covered the
5 first three addresses, is that right?

6 MR. COCHRAN: That's what I would guess. That's
7 what I inferred.

8 MEMBER HINTON: Okay.

9 MS. LEWIS: Madam Chair, if you would allow me to
10 defer to Mr. Jones to answer that question.

11 CHAIRPERSON REID: Okay.

12 MR. JONES: I believe we can add clarity. I have
13 been with Hope Village community relations for 15 years, and as
14 I testified there are six buildings. Initially before my time,
15 and the CEO's time who is presently there now, the three
16 buildings were permanent and the BZA offered 20 years ago, or
17 30 years ago, or at some point.

18 We have brought the last three buildings on three
19 different occasions as I have been with it. We have got three
20 -- the Board would not grant more than three years. They
21 granted three years and that three years expired, and we came
22 back, and I don't have the date.

23 And then they granted three additional years, and
24 in the three additional years they had some requirements, such
25 as lighting, a community advisory board, and all those things

1 that I testified to.

2 And then those three years expired in 1998. We
3 can in '98 and said that this is the third time we have been
4 before you, and we have no opposition.

5 To the contrary, we have support under the two
6 previous times, and so therefore grant us more time, and at
7 that point in 1998, the Board granted us 15 years. So, in '98,
8 it alluded to the two previous times for the three buildings in
9 question, if that clarifies it.

10 MEMBER HINTON: Thank you.

11 CHAIRPERSON REID: Okay. Thank you very much.
12 We move now to persons or parties in support. Is there anyone
13 here to testify in support?

14 (No audible response.)

15 CHAIRPERSON REID: Well, did I say the ANC? I'm
16 sorry. We did have a report from the ANC, Advisory
17 Neighborhood Commission 8B, and basically they are in support.

18 Hold on a second.

19 (Brief Pause.)

20 MR. COCHRAN: Madam Chair, on the matter of the
21 ANC, technically there is a question about whether the BZA is
22 required to give that vote great weight or take it as serious
23 advisement because that ANC has been under reorganization for
24 quite some time it seems.

25 And when that vote was held there were three

1 people there. The three commissioners were there, and there
2 was a unanimous vote to support this.

3 However, the third commissioner had not yet been
4 sworn in. That commissioner has since been sworn in. So you
5 have a case where you have three current commissioners who
6 voted for it, but at the time of the vote only two of them were
7 actually official commissioners.

8 I just wanted you to be aware of that, but there
9 certainly has been a clear ANC support for, and sentiment for,
10 et cetera.

11 CHAIRPERSON REID: Okay. I am just trying to --
12 well, the letter that we have is from Commissioner Patterson.
13 Do we have one from the full ANC?

14 MR. COCHRAN: There is a letter from the Acting -
15 -

16 CHAIRPERSON REID: The one I have is from January
17 27th of 2001. Is there another one?

18 MS. SANSONE: There is one from March 26th,
19 Exhibit 52.

20 MS. LEWIS: Madam Chair, may I defer to Mr. Jones
21 again for clarification?

22 CHAIRPERSON REID: Okay.

23 MR. JONES: Thank you very much. I was involved
24 in obtaining the support from the ANC, and we had the same
25 questions that I think Mr. Cochran has alluded to.

1 So what you have in your packet is that you have
2 three sets of letters. You have a letter from two
3 commissioners, two single commissioners, before a vote in their
4 individual support.

5 At that point, we thought that they ought to take
6 it to the ANC and actually vote on it. They did that, and
7 there was -- and that was in April that the ANC had a meeting,
8 and they was concerned about the turnout, and there was another
9 project that I also alluded to that was on the agenda for
10 March, and they were concerned about the turnout.

11 And they put it on the schedule for April. No,
12 I'm sorry, they were concerned about the turnout for February
13 and they put it on the schedule for March, where there would be
14 a large turnout because there was a large development project.

15 They then took a vote, and Mr. Cochran is
16 absolutely right. The two people that wrote individual letters
17 then affirmed it in that meeting, and the third person who had
18 been appointed or elected had not been sworn.

19 There was no opposition from that third person,
20 and they then wrote a letter saying that it was unanimous. I
21 then went back to the ANC and asked them to indicate who was
22 present. So they wrote a third letter indicating who was
23 present in that meeting, which came into the file last week.

24 CHAIRPERSON REID: Well, I had a note -- and I
25 can't put my hands on the letter as I just got it, but anyway I

1 had a note that there was not a quorum present, and it did not
2 reflect that there was a quorum present. It says unanimous,
3 but now Mr. Cochran says that there were only three people
4 present, one of which had not been sworn in at that point.

5 So basically I guess the essence of it all is
6 that there seems to be a favorable support on the part of the
7 ANC and some of the other commissioners of the ANC, and single
8 member district representatives.

9 Anyway, because of the fact that they did not
10 have a quorum, we cannot afford them the great weight.
11 Nonetheless, it is reflected in the record that there was a
12 favorable response to and favorable support of this application
13 by the "ANC."

14 All right. Thank you very much. We move now to -
15 - well, the other governmental letter which we should note in
16 this portion is the letter from the Office of FAR, which he was
17 opposed to the application.

18 And basically the issue he raised was that it was
19 across from the Woodland Terrace projects, and we have talked
20 about what he alleged, and we determined that perhaps the
21 opposition came from their assessment of the situation.

22 But that it appeared that the officers had not
23 been involved recently on the advisory board as far as
24 understanding what was happening with it, and the fact that
25 their contention is that the residents of Hope Village would be

1 lured or would be attracted to go across the street, and that
2 is a very subjective position that of course that he is taking.

3 There is one particular officer who is
4 writing the letter, and the Board will note that the letter
5 came in opposition to this application for that reason. Now,
6 persons in opposition, please come forward.

7 MR. WILSON: Good afternoon. My name is Charles
8 Wilson, and I am the Chairperson of Advisory Neighborhood
9 Commission 8-A, and I appreciate this opportunity to come
10 before you all.

11 And I would like to say that I am speaking on
12 behalf of myself as a commissioner, and to say that my single
13 member district 8A03 borders Hope Village. And I guess to
14 first of all clear up some matters, and some things that I
15 didn't understand, and didn't know, the report of the Office of
16 Planning, I apparently had looked at the file as recent as
17 Friday, I believe, and it wasn't in there.

18 There was a letter I believe from the police
19 department, and that wasn't in there. So I don't have access
20 to that information other than what has been said here.

21 And I should also say that I don't object to Hope
22 Village. I don't think that this hearing is about whether to
23 establish Hope Village or not, and that wasn't clear from the
24 various provisions that were cited in the initial provision.

25 I thought it was to establish, and that was the

1 language in the various provisions of the board regulations
2 cited. But I am pleased to learn that it is not that, but I am
3 also -- you know, I would just like to comment on the statement
4 that Mr. Cochran made in his report or in his statement about
5 the huge number of increase that is being asked.

6 That is a substantial increase, and I wonder as a
7 commissioner, just in terms of facilities, are the current
8 facilities equipped to handle that staff wise, and facilities
9 wise, and kitchen space, and the extra beds, and personnel, and
10 that kind of thing.

11 And a couple of other things here. This Hope
12 Village borders -- again, the housing development there,
13 Woodland, and there is another one directly across the street,
14 which is also in 8B. But, you know, I reject the idea that
15 Woodland is a problem for Hope Village.

16 The people in Woodland have lived there and
17 struggled for years with drugs, and alcohol, and other kinds of
18 problems that some of the people in Hope Village have fallen
19 victim to.

20 But nevertheless there are families over there.
21 In doing my outreach to the community and running for office as
22 an ANC commissioner, I made it a point to go up in there and to
23 know who the folks in Woodland were.

24 And they weren't just drug dealers, and they
25 weren't just drug addicts, and alcoholics. They were mothers,

1 and single mothers, trying to get their kids to school on time,
2 and get them past the drug addicts, and all the other activity
3 out there.

4 There are grandmothers there who would come out
5 routinely and sweep their fronts and I got to know some of
6 these people by name, and to kind of just say that Woodland is
7 a problem for Hope Village kind of obscures what is really
8 going on here.

9 And Hope Village in its past may have a really
10 good record there, but again I went out to a lot of these
11 folks' houses in my campaign as a commissioner, and not only in
12 Woodland did people voice concerns about the drug activity,
13 because they don't like it either.

14 And I have committed myself to working with these
15 people to try to do something about that, but I have also
16 talked to folks on Irving Street, and folks on Harvard Street,
17 and folks on 24th Street, and all of that is my single member
18 district.

19 But I noticed that this is a residential
20 community, and there are children all in this community. And
21 folks in that community have told me that they see guys who
22 park their cars on their streets and walk down to the halfway
23 house.

24 Again, I am not saying that there is anything bad
25 about Hope Village. I think it is a much needed resource in

1 our community, and I can really appreciate Mr. Gray, because I,
2 too, was in the Department of Corrections frankly, and I know
3 how hard the community looks at people who come out of there,
4 who come out of that system.

5 But there are some -- and again this might go to
6 the management and supervision of Hope Village, and to monitor
7 that kind of thing; that a guy would park his car around the
8 corner, and it has offended some of the folks in that area,
9 because I have knocked on doors in that area and one of the
10 things they voice is that guys will leave their cars around the
11 corner and go on down to Hope Village.

12 So there are concerns from the community, but
13 there are things that I think Hope Village can manage. I am
14 basically here because I am against the increase.

15 That kind of increase is more of a dumping and
16 not a real thought out plan to integrate people back into the
17 community, and at the same time be able to give them the kind
18 of assistance through resources and facilities that is required
19 to help them make their adjustment back into the community.

20 And on the outreach or the advisory board that
21 the Hope Village has. We have a civic association in Fort
22 Stanton, which is where I actually am at, and I would like to
23 think that -- and a lot of guys that come down to the
24 playground a lot of time, and the seniors are concerned about
25 that.

1 But they have not said to me anything negative at
2 all, but it is just a concern. But I would like to see some of
3 the guys come down there, come to some of the meetings, or come
4 to the ANC meeting and get themselves known in the community.

5 CHAIRPERSON REID: By some of the guys, do you
6 mean the residents?

7 MR. WILSON: From the residence, yes, and come
8 down to some of these meetings and really let themselves be
9 known. I think that is probably the best way to relieve a lot
10 of the fears and tensions someone in the community might, you
11 know if they come down and participate in some of the meetings
12 like that.

13 And I would certainly invite the folks from Hope
14 Village down to the ANC meetings. And then there is one other
15 point about the letter of support from 8B in support of this.

16 I looked at what quorum meant real close under
17 the ANC law, and theirs is like mine and they have seven
18 members, and a quorum -- you can only obtain a quorum under the
19 language of the ANC law when you have a majority of the seats
20 filled, and the majority of those commissioners are at a
21 meeting.

22 That is what is a quorum, and so a quorum is not
23 just three people in this case. They can only a quorum if they
24 have four commissioners, and four seats filled.

25 And I would encourage the board to look at those.

1 And then one final thing. On the various or the conflict in
2 the various statutes or provisions of the Board of Zoning
3 regulations that were quoted.

4 I would urge the Board that before it makes a
5 decision on whether to allow this increase to try to clarify
6 that, because if I can just cite here Title 11, 358.9, which
7 says that the board shall submit the application to the Office
8 of Planning for coordination, review, and report of impact,
9 along with reports and writings of all relevant departments and
10 agencies of the city.

11 And I don't guess the sense that public works and
12 human services, and those kinds of --

13 CHAIRPERSON REID: That has been done. Those
14 referrals have been made, and if in fact those various
15 departments would like to participate or have input, they will
16 send us information or come to the hearing, but it has been
17 referred to them.

18 MR. WILSON: I am reading, I guess, from or my
19 interpretation here is that there is supposed to be some report
20 from those.

21 CHAIRPERSON REID: No, if they choose to.

22 COMMISSIONER HOOD: Often times we don't get a
23 report. We also would like it oftentimes, but that doesn't
24 happen.

25 MR. WILSON: I think that would conclude my

1 presentation.

2 COMMISSIONER HOOD: Madam Chair, can I just
3 comment on something?

4 CHAIRPERSON REID: Sure.

5 COMMISSIONER HOOD: Mr. Wilson, I just want to
6 make sure that you understand that we did afford ANC-8B the
7 great weight in which they were entitled because of that very
8 issue.

9 And from what I am understanding, you said that
10 they had seven commissioners, and there were only three people
11 present, and of which two were actually commissioners.

12 MR. WILSON: Yes.

13 COMMISSIONER HOOD: We didn't afford them the
14 great weight to which they are entitled. So I wanted to make
15 sure that you knew that. Also, I thought it was an excellent
16 idea -- and I am sure that Mr. Jones and counsel has heard you
17 mention -- that some of the people from Hope Village come to
18 ANC meetings.

19 My concern is that I have never really heard
20 anybody give out an invitation like that, and I want to just
21 commend you. I don't know if that can be arranged at Hope
22 Village, but I think that is an excellent idea.

23 And also I do concur with you when you mention
24 about the people who live up in the dwellings are mothers who
25 are trying to get their kids to school on time, because I also,

1 too, was faced in my community with Montana Terrace, which is
2 the same issue.

3 We have some good people living up there, and I
4 applaud you for going up into the area and actually seeing what
5 is going on. My problem is that a lot of people want to talk
6 about it, but they never go in to see exactly what is going on,
7 and I just wanted to commend you for those things. Thank you.

8 CHAIRPERSON REID: Thank you very much. Any
9 other questions, Board Members?

10 (No audible response.)

11 CHAIRPERSON REID: All right. Closing remarks.

12 MS. LEWIS: Yes, thank you. In closing, I first
13 would like to acknowledge that we do have present Jeff Frarone,
14 CEO of Hope Village, and he is present here at this meeting
15 today. I think the testimony adequately supports the
16 application, and I think we have met our burden.

17 I would also request a bench decision be rendered
18 at the conclusion of my statements to you. The increased
19 capacity that was requested, it takes it from a level of 232 to
20 360 persons, and we are adding 128 persons.

21 I think after hearing the testimony of Mr.
22 Murphy, the need is 485. So I think this only nearly begins to
23 address the community-wide need, and I would like the Board to
24 keep that in mind.

25 Also, realizing the rapid change in the property

1 values in the District of Columbia, it does not seem very
2 likely that a new facility will be on the horizon, and so we
3 are only merely trying to address an immediate need in a way
4 that is most appropriate today.

5 Again, the Board wanted to know about the staff.

6 It has been reported to me that there is between 80 to 90
7 staff persons at the facility, and in speaking with the CEO of
8 the facility, and addressing the issue of adequacy of staff,
9 they have assured me that they have considered the increased
10 numbers and whether the current staffing is adequate, and they
11 believe that it is.

12 And I think in consideration, too, of the length
13 of time to be given great weight is the length of time that
14 they have operated this facility, and the manner in which they
15 have operated the facility, the accommodations, and the
16 accolades that have come as a result of their accomplishments
17 at the facility.

18 I have had an opportunity to visit the facility
19 myself, and found it to be a very clean facility, and a very
20 well maintained facility. And also a facility that was
21 monitored and secure.

22 I think in terms of asking for or addressing the
23 concerns about the drug opportunity that has been presented in
24 the community because of it being a high area of drug
25 trafficking, what we have proposed that as a condition that if

1 the board would consider increasing the current screening for
2 drug and alcohol intake of the residents.

3 Currently, the Hope Village staff collects urine
4 samples from residents and utilizes the laboratory approved by
5 the Bureau of Prisons, and if possible if this Board is
6 concerned, that we would increase the level of testing if that
7 would address your need.

8 CHAIRPERSON REID: Which need is that?

9 MS. LEWIS: Well, to address a concern, because
10 there was some testimony and there was some question about the
11 availability of drugs in the area to the residence of Hope
12 Village, and the whole idea of the facility is to monitor these
13 individuals for a period of 60 days, and to report back to the
14 prisons.

15 Because if there is a violation, if there is
16 found to have been a violation in terms of drug screening and
17 alcohol screening, then these persons are subject to be
18 returned to prison.

19 And I think what needs to be clarified is that
20 these prisoners have what is called a tail or time that can be
21 added to their sentence. So they are coming out and their
22 release is conditional, and if there are violations, they can
23 go back and serve additional time.

24 So I think the Board needs to be mindful of that,
25 that this is not a final stop if there is found to be

1 violations of their conditions of release. So in that regard,
2 we would ask as a condition, if possible, or if desired by this
3 Board, that we amend the conditions of dropping urine and
4 collecting urine.

5 And it has been pointed out to me also that this
6 may be a contractual issue and that we will have to look into
7 it further, but again that is something that Hope village would
8 consider doing in the future, in terms of if it can be modified
9 in their contract.

10 but again I would like to point out that this is
11 done at the request of, and it has been done by the Bureau of
12 Prisons and their current drug and alcohol testing
13 requirements.

14 Also, the public safety issues. I think this
15 program clearly addresses the public safety issues because
16 again we have a program that allows persons to come into a
17 controlled environment for a period of 60 days in preparation
18 of being released into the community.

19 They are required to have jobs, and required to
20 maintain employment during that period of time, with a great
21 deal of support from Hope Village. So I think that addresses
22 that need.

23 Also, in terms of the hardship, it was addressed
24 whether or not the hardship placed on Ms. Sutton, in terms of
25 the owner versus the community hardship, I think in terms of

1 her being able to maintain her contractual relationship and to
2 be able to enter into a contract, an additional contract with
3 the facilities that are requiring that the residents be placed
4 there, I think that she has a right to be able to make those
5 types of contracts.

6 And she has been approached to increase the bed
7 size, and so I think it would place a hardship on her, in terms
8 of her contractual relationship with the person that she is
9 currently in contract with, because they have made this
10 request, and she is attempting to honor this request as a basis
11 of her continual ongoing contractual relationships.

12 And of course with no contracts there are no
13 facilities. So I think that is important to take into
14 consideration. In terms of asking for 15 years versus a 5 year
15 period, I think the hardship that would be placed on Ms. Sutton
16 again, and the CEO, is that 5 years down the road that we don't
17 anticipate a decrease in need for beds, but an increase in need
18 for beds.

19 So therefore we would be back at this table
20 incurring great expense, and time, and effort to again approach
21 the board and ask them for this additional time. So I think it
22 is very reasonable that they would be granted the 15 years, or
23 actually it is 13 years, because there has already been a
24 balance of two years gone on the original CFO.

25 And that on the CFO that has no expiration, that

1 this tract be maintained for the duration of that certificate
2 of occupancy. In terms of the opposition that we heard today,
3 I did not glean from his testimony that he had actually visited
4 the facility, or had seen the facility, to see just how well
5 run it is.

6 But we appreciate his comments. However, I think
7 if he had been given an opportunity to come and see the
8 facility that he would agree that it is a very well run
9 program, and it is very well maintained. And in conclusion we
10 would ask that we be granted the relief that has been sought
11 today.

12 CHAIRPERSON REID: Thank you. Let's see. Ms.
13 Pruitt, in regard to the issues that were brought up in the
14 beginning of this particular case, could you please speak to --

15 SECRETARY PRUITT: I would just like to clarify
16 for the record that the board intended to amend this
17 application. I am asking questions and I just wanted to verify
18 to amend this application so that it would be reviewed under
19 Section 357 for an adult rehab and substance abuse, as well as
20 for a use variance to allow more than 20 residents per unit.

21 That would then bring this particular application
22 in compliance with the CFOs that have been issued, and I
23 believe the applicant has addressed that through its testimony,
24 and so I just wanted to verify that. And then also you need a
25 motion if the board is going to amend this application.

1 CHAIRPERSON REID: Okay. I would move that we
2 amend the application to reflect Section 357 for under special
3 exception for substance abuse and adult rehab. And also?

4 SECRETARY PRUITT: A regular use variance to
5 allow more than 20 people per unit.

6 COMMISSIONER HOOD: I second.

7 CHAIRPERSON REID: All right. All in favor?

8 COMMISSIONER HOOD: Aye.

9 MEMBER HINTON: Aye.

10 CHAIRPERSON REID: Aye.

11 SECRETARY PRUITT: Thank you.

12 CHAIRPERSON REID: Now, board members, do you
13 want to dispose of this case today, or do you feel that we
14 should do that at our next regularly scheduled meeting?

15 MEMBER HINTON: Madam Chair, I would prefer to
16 give this some thought and read back through some of the
17 previous orders, and make sure that I have everything straight
18 in my mind before I vote.

19 CHAIRPERSON REID: And Mr. Hood?

20 COMMISSIONER HOOD: Well, I know which way I am
21 going to move, and so I am prepared. But if you are all
22 uncomfortable --

23 CHAIRPERSON REID: Well, I feel comfortable with
24 taking the vote today. The only aspects of it was in regard to
25 the hardship in regard to the use variance being upon the

1 owner.

2 And it was proffered to us by the applicant's
3 counsel that it would be a contractual hardship predicated upon
4 the fact that given the previous orders there is now in place a
5 contract, and the question would be how do we apprise that, and
6 how do we then move forward accordingly.

7 Ms. Sansone, do you have any thoughts on that, or
8 do you also feel that perhaps that a decision should be made at
9 our next regularly scheduled decision meeting?

10 MS. SANSONE: Well, Madam Chair, if the Board is
11 comfortable with moving forward, I don't know that you need
12 more time to work on conditions. But perhaps I could just
13 address hardship for just one second.

14 The staff provided the board with a copy of one
15 of the earlier orders with a decision date of 1989, and that
16 was processed interestingly enough as a special exception under
17 Section 357 for the adult rehabilitation home and substance
18 abuser.

19 And it also contained a use variance to allow
20 more than 20 residents. So in a sense we are kind of going
21 back to one of the early orders in the approach.

22 But there is a discussion on page 7 of the --
23 there is a full board order in that case, and with respect to
24 the use variance, one of the things that the Board had
25 considered at that time was that even though this was a use

1 variance, it seemed to resemble or have some of the
2 characteristics of an area variance.

3 And the order says the requested relief would not
4 change the identity of the use which may be conducted at the
5 sites through the approval by the board, but rather they would
6 change the extent to which that use may be conducted.

7 And then there is also an important conclusion,
8 and I think it goes to hardship. The program goals of the
9 Department of Corrections cannot be achieved by a facility of a
10 smaller size at the subject location, and there is no other
11 reasonable alternative to meet the program needs of the area of
12 the Department of Corrections.

13 So I just kind of wanted to point out those two
14 things, which I think could perhaps could help the board in
15 analyzing the hardship aspects.

16 CHAIRPERSON REID: But in the last thing that you
17 referred to in regard to the hardship, again, that would not
18 necessarily be upon the owner would it? And another thing is
19 that the aspect of it being -- well, would this be one of those
20 instances where we could perhaps approach it as a hybrid
21 variance?

22 MS. SANSONE: Madam Chair, I believe that is what
23 the 1989 findings seem to be suggesting; that it is really not
24 -- that the use itself is allowed in this District, but that it
25 is really just the scope and the size of the use.

1 And I think that where you have a use that is
2 serving public needs and there is contractual relationships
3 with a public entity that perhaps that also figures into the
4 question of hardship on the owner because here we had the
5 Department of Corrections saying they would have a hardship.

6 And I think that the board can weigh that as sort
7 of an unusual situation, but this is a different application
8 than a use to establish a purely commercial for profit type
9 establishment.

10 So I think that there is some difference here
11 that the board can weigh in grappling with the hardship issue.

12 COMMISSIONER HOOD: Madam Chair, I just want to
13 make sure that I am hearing the same words that I heard
14 yesterday at the zoning commission, hybrid PUD. Now, I have
15 heard a hybrid variance. I don't want us to go down the wrong
16 road.

17 I am having the same concerns that I had about
18 this time yesterday. Either we could just make it a use or
19 not, and I would be comfortable if we leave the word hybrid
20 out.

21 CHAIRPERSON REID: Well, that was our escape
22 clause. We could not really pigeonhole this particular
23 application in either one completely. So the only alternative
24 was to approach it maybe from a different angle, and this is
25 why we started to talk about a hybrid.

1 COMMISSIONER HOOD: Well, that was the same sense
2 that Ms. Sansone was saying and the same argument that we had
3 yesterday. But I want to make sure that on down the road that
4 BZA Order Number 628 or whatever it is, hybrid PUD, or a hybrid
5 use variance, does not set a precedent that may come back to
6 affect us in a negative way. And I just feel very
7 uncomfortable about hybrid in front of the use variance.

8 MS. SANSONE: Madam Chair, perhaps I could belay
9 some of Mr. Hood's concerns. In the variance arena, the Court
10 of Appeals on several occasions has recognized that there is a
11 hybrid variance, and it is something that has characteristics
12 of both a use and an area variance.

13 And the Court has analyzed it by looking at the
14 particular variance under both tests, and just sort of weighing
15 them both. And this is particularly true of parking lots or
16 parking variances, where they tend to have some aspect of use
17 and some aspect of area.

18 So unlike the PUD problem the zoning commission
19 was confronting yesterday, there really is a thing out there
20 called a hybrid variance, and it has been recognized and upheld
21 by the Court of Appeals.

22 COMMISSIONER HOOD: So, Ms. Sansone, it is not
23 exactly what I -- I guess that hybrid just set me back off
24 again. So if we can proceed like that, and you feel
25 comfortable with that, then I have no problems with calling it

1 a hybrid in this case.

2 CHAIRPERSON REID: I think so, Mr. Hood, if we
3 could just lift the language from the previous order. It does
4 not say hybrid specifically. Nonetheless, it certainly does
5 mean that, and if you have any discomfort with that word, then
6 we don't have to necessarily use the word, except that it says,
7 "As to the variance, we believe that the board concludes that
8 there are use variances, but have significant characteristics
9 of non-use variances. The request would not change the
10 identity of the use that may be conducted at sites through
11 approval by the Board. Rather, they would change the extent to
12 which that use may be conducted."

13 And that is the language that would perhaps solve
14 the problem.

15 COMMISSIONER HOOD: As long as we could go back
16 to that court case, I guess, and find out exactly which one it
17 was, and maybe provide that to the file, because again my
18 concern is what happens along down the road when everyone comes
19 back up with a hybrid use variance.

20 As Ms. Sansone just said, if there is already
21 evidence of it, and the Court of Appeals has already said there
22 is a hybrid use variance, then I feel comfortable; as opposed
23 to a hybrid PUD yesterday.

24 CHAIRPERSON REID: Okay. Now, we are back to Ms.
25 Hinton. Ms. Hinton, do you still feel uncomfortable with

1 proceeding today, or do you still wish for additional time,
2 because obviously we do have to have three votes in order to
3 proceed. If not, then we would have to wait.

4 MEMBER HINTON: I would really prefer to take
5 some time to take a look at the conditions that are required in
6 the old orders.

7 CHAIRPERSON REID: All right. Then that being
8 the case, Mr. Hood, I think that Mrs. Hinton has expressed a
9 need for additional time. And I don't think it would hurt,
10 because certainly there has been a lot of discussion here
11 today, and there have been some inconsistencies.

12 And for us to kind of get everything squared and
13 get our arms around exactly what we are doing, as well as
14 determining what conditions would be attached to this
15 particular order, we can then schedule the decision for our
16 next regularly scheduled meeting date, which would be?

17 SECRETARY PRUITT: May 1st.

18 CHAIRPERSON REID: Is there anything else that we
19 need from the applicant?

20 SECRETARY PRUITT: No, I don't believe so. I
21 didn't know if the board would like Ms. Sansone to provide you
22 with the court case that she is referring to for review.

23 CHAIRPERSON REID: Yes, absolutely, and also
24 there has been some legalese today that we probably need to
25 have briefed for us so that we are able to get a clearer

1 understanding as to exactly what we are approaching here.

2 I think that in this instance that it is a matter
3 of making sure that we proceed correctly procedurally in regard
4 to this case. Any other discussions?

5 (No audible response.)

6 CHAIRPERSON REID: If not, we will conclude this
7 morning's session and I really apologize for the fact that it
8 has gone so late.

9 MEMBER HINTON: If I could make one request of
10 the applicant. Could you please submit in writing the zoning
11 history of all six of the properties, and which zoning cases
12 there were, and which orders applied to which specific
13 addresses, and what the conditions were of those orders. And
14 specifically the time limits and the number of residents that
15 were allowed.

16 MR. COCHRAN: Madam Chair, could I also suggest
17 that Mrs. Hinton may want to ask for clear linkage between or
18 with the individual CFOs and the orders.

19 CHAIRPERSON REID: Oh, okay.

20 MR. COCHRAN: The previous orders.

21 MEMBER HINTON: Yes, thank you.

22 SECRETARY PRUITT: Madam Chair, just for
23 clarification, the applicant should have this information in by
24 April 24th for a decision on May 1st.

25 CHAIRPERSON REID: Okay. All right. Then we

1 will conclude this morning's session, and I do apologize for
2 the delay today. The morning cases just took much longer than
3 we anticipated. So we will break now for approximately 20
4 minutes, and we will resume with the afternoon session. Thank
5 you.

6 (Whereupon, the hearing was recessed at 1:50
7 p.m.)

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A F T E R N O O N S E S S I O N

(2:25 p.m.)

CHAIRPERSON REID: Good afternoon. First of all, let me first apologize for the delay, and that the morning session had gone on much longer than what we had initially anticipated. The hearing will please come to order.

Good afternoon, Ladies and Gentlemen, this is the April 17th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Susan Hinton, representing the National Capital Planning Commission, and representing the Zoning Commission is Anthony Hood.

Copies of today's hearing are available to you. They are located to my left at the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

When coming forward to speak to the board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions in variances is, one, statement of the witnesses of the applicant; two, government reports, including the Office of Planning and the Department of Public Works, et cetera.

Three, the report of the Advisory Neighborhood Commission. Four, parties or persons in support. Five,

1 parties or persons in opposition; and six, closing remarks by
2 the applicant.

3 Cross-examination of witnesses is permitted by
4 the applicant or parties. The ANC within which the property is
5 located is automatically a party in the case.

6 The record will be closed at the conclusion of
7 each case, except for any material specifically requested by
8 the Board, and the staff will specify at the end of the hearing
9 exactly what is expected.

10 The Sunshine Act requires that the public hearing
11 of each case be held in the open before the public. The Board
12 may consistent with its rules of procedure under the Sunshine
13 Act, enter into executive session during or after the public
14 hearing on a case for purposes of reviewing the record or
15 deliberating on the case.

16 The decision of the Board in these contested
17 cases must be based exclusively on the public record. To avoid
18 any appearance to the contrary, the Board requests that persons
19 present not engage the Members of the Board in conversation.

20 Please turn off all beepers and cell phones at
21 this time so as not to disrupt these proceedings, or put them
22 on vibrator. The Board will make every effort to conclude the
23 public hearing as soon as possible and before six o'clock p.m.

24
25 If the afternoon cases are not completed at six

1 o'clock p.m., the board will assess whether it can complete the
2 pending case or cases remaining on the agenda. At this time
3 the board will consider any preliminary matters.

4 Preliminary matters are those that relate to
5 whether a case will or should be heard today, such as a request
6 for postponement, continuance, or withdrawal, or whether proper
7 and adequate notice of the hearing has been given.

8 If you are not prepared to go forward with the
9 case today, or if you believe that the Board should not
10 proceed, now is the time to raise such a matter. Are there any
11 preliminary matters? Does the staff have any preliminary
12 matters?

13 MS. BAILEY: Yes, Madam Chair, we do. It
14 concerns Application Number 16686, Benjamin Meadley. Is there
15 anyone here in the audience for that case, Application Number
16 16686?

17 (A show of hands.)

18 MS. BAILEY: Would you please come to the table.

19
20 CHAIRPERSON REID: I don't think that's
21 necessary.

22 MS. BAILEY: They are not the applicants.

23 CHAIRPERSON REID: The applicant is not here, and
24 basically the applicant is the one who has requested the
25 continuation of the case.

1 MS. BAILEY: In addition to that, Madam Chairman,
2 there is not an affidavit of posting, and an affidavit of
3 posting was not filed in this case.

4 CHAIRPERSON REID: Okay.

5 BOARD MEMBER HOOD: Madam Chair, I didn't get a
6 copy of the letter. Do we know why the applicant --

7 CHAIRPERSON REID: Well, the letter says
8 basically in pertinent part in the request for continuance a
9 lacking of preparedness for having a request -- for ample time
10 allocated for proper representation. Let me know the present
11 status of not being available for this hearing, Benjamin D. --
12 I can't read his name.

13 MS. PRUITT: Meadley.

14 BOARD MEMBER HOOD: When did we receive that
15 letter?

16 MS. PRUITT: Madam Chair, maybe I can shed some
17 light on it. Around twelve o'clock, Mr. Meadley called the
18 office and he was told by staff that if he wanted a continuance
19 that he needed to come down and request it directly from the
20 Board, and that the Board was the only authority to be able to
21 grant the continuance.

22 Mr. Meadley got here around 12:30, and said he
23 was here, and I indicated to him that this case was going to be
24 heard in the afternoon session, and he would have to wait, and
25 that you were still in the middle of the first session.

1 He indicated that he could not wait, and I
2 suggested that the best that I could do for him was that if you
3 were to write something, I can provide the Board with it. But
4 typically needs a compelling reason to continue a case, and
5 usually the applicant needs to ask for it directly, or a
6 representative.

7 So today was the first that we had any notice
8 that he needed a continuance.

9 CHAIRPERSON REID: Okay. Board Members, is there
10 any discussion?

11 BOARD MEMBER HOOD: Madam Chair, these slots are
12 -- well, unfortunately, for him to give us a letter and say
13 that he can't make it, these slots have been allotted months in
14 advance.

15 I don't think it is fair to the 6 or 7 people
16 that I see in the audience that have come down to participate
17 in this case, and plus reading from the material, and plus
18 reading the recommendations from OP, I am read to dispose of
19 this case today.

20 CHAIRPERSON REID: Is that a motion, Mr. Hood?

21 BOARD MEMBER HOOD: Okay. Yes, I make that as a
22 motion.

23 CHAIRPERSON REID: To?

24 BOARD MEMBER HOOD: To dispose --

25 CHAIRPERSON REID: To dismiss?

1 BOARD MEMBER HOOD: To dismiss Application Number
2 16686.

3 BOARD MEMBER HINTON: Would we be denying the
4 request for a continuance, and therefore dismissing the
5 application for failure of the applicant to appear?

6 BOARD MEMBER HOOD: I will add that.

7 BOARD MEMBER HINTON: Great. I would second that
8 motion.

9 CHAIRPERSON REID: All right. The motion is to
10 deny the request for a continuance, and to then dismiss the
11 case entirely. All in favor?

12 (A chorus of ayes.)

13 CHAIRPERSON REID: Opposed?

14 (No audible response.)

15 MS. BAILEY: The staff will record the vote as
16 three to zero to dismiss Application Number 16686 of Benjamin
17 Meadley. Madam Chair, are you ready to call the next case?

18 CHAIRPERSON REID: Please.

19 MS. BAILEY: Application Number 16702 of
20 Millennium Georgetown Partners, LLC, pursuant to 11 DCMR
21 3103.2, for a variance from the height requirements of
22 Subsection 930.1, and from the floor area ratio (FAR)
23 limitation of Subsection 931.1 to construct mixed-use
24 buildings/structures of residential, hotel, and commercial uses
25 in a W-1 District at premises 3100 South Street, Northwest,

1 Square 1189, Lot 88.

2 All those wishing to testify would you please
3 stand. All those persons wishing to testify, please stand and
4 raise your right hand.

5 (All witnesses were sworn.)

6 MS. BAILEY: There is a request in this case for
7 party status, Madam Chair. I am not sure if you want to take
8 that up at first. The Office of Planning is recommending
9 approval. There is also a report from the Department of
10 Housing recommending approval.

11 We have a DPW report, and we have a report from
12 the Commission of Fine Arts which is strongly opposed to the
13 application, and ANC-2E has indicated that they are very
14 concerned. But as I indicated, there is a request for party
15 status from the Citizens Association of Georgetown, represented
16 by Ms. Barbara Downs, President.

17 CHAIRPERSON REID: I think we would probably want
18 to take up the issue of party status prior to getting into the
19 case. Barbara Downs, would you come up, please. Would you
20 give your name and address.

21 MS. DOWNS: Barbara Downs, 3321 P Street,
22 Northwest, Washington, D.C.

23 CHAIRPERSON REID: Okay. You wanted to request
24 party status?

25 MS. DOWNS: Yes, we would like to testify against

1 granting the variance.

2 CHAIRPERSON REID: Okay. Who is we?

3 MS. DOWNS: I am the president of the
4 association, and Barbara Zarfman from our preservation
5 committee is here.

6 CHAIRPERSON REID: And that would be the Citizens
7 Association of Georgetown?

8 MS. DOWNS: Yes.

9 CHAIRPERSON REID: And have you been designed or
10 do you have a letter authorizing you to represent the
11 organization?

12 MS. DOWNS: Well, I am the president of the
13 organization, and I wrote a letter asking for party status.
14 What else do I need?

15 CHAIRPERSON REID: Just one second, please, as I
16 read your letter.

17 (Brief Pause.)

18 CHAIRPERSON REID: Okay. On what basis are you
19 requesting party status?

20 MS. DOWNS: We are requesting party status on the
21 basis of having severe doubts about the granting of a variance
22 to the applicant for adding an extra story about historic
23 issues, and about historic preservation issues, and zoning
24 issues.

25 CHAIRPERSON REID: Well, yes, I understand that.

1 However, the criteria for party status is that you must
2 demonstrate how you or your association is any more aggrieved
3 than anyone else in that community, and that cannot be
4 represented by the ANC.

5 MS. DOWNS: Well, we speak for the community. We
6 have a long association with preservation issues with the old
7 Georgetown Act. We have been present and weighed in on all of
8 the hearings on the waterfront, and the zoning of the
9 waterfront. I think I listed all of those in my letter.

10 CHAIRPERSON REID: Well, the question was how
11 does that make you or your organization more aggrieved than any
12 other persons who lived in that community?

13 MS. DOWNS: Well, I think we are speaking for the
14 community and the people who live there. I am not sure how
15 that makes us more aggrieved, more or less aggrieved.

16 SECRETARY PRUITT: Ms. Downs, in order to be
17 granted party status, you have to demonstrate that you or your
18 group are more so than the general public to get party status.

19 But you can testify as an organization in opposition or in
20 support at any time.

21 MS. DOWNS: Okay.

22 SECRETARY PRUITT: So that it would not preclude
23 you from doing that.

24 MS. DOWNS: Okay. So why don't we just -- well,
25 we also, Ms. Zarfman just mentioned that we have also brought

1 legal action to defend the zoning and preservation issues over
2 many years. So we have a long background in this.

3 CHAIRPERSON REID: I don't think you need to have
4 party status in order to be able to bring an action.

5 MS. DOWNS: Okay. If we just testify as an
6 organization can we do that?

7 CHAIRPERSON REID: You will be given an
8 opportunity to testify as an organization.

9 MS. DOWNS: That's fine.

10 CHAIRPERSON REID: That is something that would
11 be automatically granted to you if you wish.

12 COMMISSIONER HOOD: Madam Chairman, I am not sure
13 that I am ready to vote on this, but from what I am hearing,
14 and what I read in the letter, she is representing a thousand
15 members in the civic association, and they are also the people
16 who would probably be most affected.

17 So I don't know how necessarily aggrieved that
18 they are, because I don't think it has been spelled out. But I
19 am personally in favor of them having party status.

20 CHAIRPERSON REID: Well, the test is more
21 aggrieved than anyone else in the community, or that they could
22 not be represented by the ANC, and that is the criteria.

23 COMMISSIONER HOOD: Well, often times as you
24 know, and we know, a lot of people go to the civic association
25 meetings, and do not take it upon themselves to go and deal

1 with the ANCs. Unfortunately that is the reality of it.

2 So I am inclined to give them party status.

3 CHAIRPERSON REID: All right.

4 MR. NETTLER: If I might respond.

5 CHAIRPERSON REID: Mr. Nettler, certainly.

6 MR. NETTLER: In the first place, pursuant to the
7 zoning regulations, any organization or individual seeking
8 party status must file a request to do so within a certain time
9 frame, and that is two weeks before the hearing on the matter.

10 They must set forth in that request for party
11 status and comply with certain requirements that demonstrate in
12 fact just the issue that has been raised about how they are
13 being treated differently than any other member of the
14 community.

15 There was no filing by the Citizens Association
16 two weeks prior to the hearing in this matter, and in fact
17 notwithstanding the fact that this matter has been discussed
18 with the Citizens Association, with the ANC, before the Old
19 Georgetown Board, where the civic association had participated,
20 for over two months now.

21 And it is our position that, one, having failed
22 to comply with the rules of this board and the zoning
23 commission, and the rules that were adopted by the zoning
24 commission, and having failed to I think demonstrate that they
25 represent a position or are aggrieved as the Chair has said,

1 aggrieved in a way that is different from other members of the
2 community -- and they did participate in the Advisory
3 Neighborhood Commission hearing on this as well -- that they
4 aren't entitled to party status.

5 They certainly are entitled to present testimony
6 and we are familiar with what that testimony will be, and we
7 are prepared to address that testimony.

8 But I think party status is something that the
9 zoning commission was very concerned about when it changed the
10 regulations for community organizations, and ensured that they
11 file those documents two weeks prior to the hearing.

12 COMMISSIONER HOOD: Let me just add that having
13 been one of the members that voted for that, even though we put
14 things in place sometimes, we have been very flexible. Not
15 just with this group, but even with applicants that come down.

16 And if we stick to that, a lot of times we wouldn't even have
17 any hearings.

18 CHAIRPERSON REID: Well, the fact of the matter
19 is that she can always request a waiver. That is not uncommon.

20 Ms. Hinton, did you have any comments?

21 MEMBER HINTON: I am concerned that the request
22 was not put into the file in a timely fashion, and I would be
23 willing to consider waiving that, but I haven't heard any
24 justification for what I feel is the more important part, and
25 that is explaining how this citizens group is going to be more

1 affected than other persons that are in the general public.

2 That is a burden that I don't feel that the board
3 can waive, and if you can explain how you meet that criteria, I
4 would be willing to consider waiving the 14 days.

5 MS. DOWNS: Well, we have members who live very
6 close by, but I think as Georgetown residents that we area all
7 aware of the project and the impact it has on the entire
8 community.

9 MEMBER HINTON: Did you look at 3106.2 at all,
10 because it puts out what you have to submit in writing. One of
11 the things that it asks for is the distance between the closest
12 property owner's property and this property.

13 So what we are looking for is how close do people
14 actually live, and not just to be a resident, but I think that
15 they have to be -- oh, they can be a tenant, a trustee, or a
16 mortgagee.

17 MS. DOWNS: I think there are residents bordering
18 it on South Street, and also on 31st Street. I know Wisconsin
19 Avenue.

20 MEMBER HINTON: So they are members of your
21 organization that are adjacent property owners, or right across
22 the street?

23 MS. DOWNS: Yes.

24 CHAIRPERSON REID: I think that given Mr. Hood's
25 assertion that -- and it is true that sometimes you have

1 members in the community who are not necessarily involved with
2 the ANC, but they are rather involved in a civic association.

3 I feel that in the event that you would wish to
4 ask for a waiver, request a waiver, that perhaps we would
5 consider granting you party status, and I would have no problem
6 with that.

7 MR. NETTLER: If I might respond with just one
8 other issue, because there has been a representation that this
9 is a position being taken on behalf of the membership of the
10 Citizens Association of Georgetown, which they say is a
11 thousand members, and which includes members who live close to
12 the site.

13 In the first place the position that is being
14 taken by the Citizens Association of Georgetown was not taken
15 at an open meeting of the organization. There was no members
16 other than the board who were present at the meeting.

17 The applicant was not given an opportunity to
18 make a presentation of the plans that addressed issues that we
19 have been asked to address by the Citizens Association.

20 And in fact many members of the Citizens
21 Association, including those who live adjacent to the property,
22 and including members of the board of advisors to the Citizens
23 Association, have signed letters supporting this.

24 So to say today that this action, or to make a
25 representation that this action by the board, which was made at

1 a closed meeting, and which didn't include members of the
2 community, including members of the Citizens Association,
3 demonstrates that they have the ability to represent the
4 community in a way that is different from whether it is the ANC
5 or any other community association, I don't think simply can be
6 supported.

7 CHAIRPERSON REID: Do you wish to respond to
8 that?

9 MS. DOWNS: I think that is irrelevant frankly.
10 I think there are people whose concerns have been made known to
11 us, and who are adjacent, and who would be here, but they work
12 during the day.

13 MEMBER HINTON: Was this issue discussed at a
14 public meeting of your organization?

15 MS. DOWNS: There was a presentation of the
16 design plan at a meeting of our organization. I believe it was
17 in February.

18 MEMBER HINTON: And the vote was to oppose?

19 MS. DOWNS: No, I don't think it was to oppose.
20 The vote to oppose was made by our board, and it was based on
21 most recent plans that have been done than the plans that were
22 presented.

23 MEMBER HINTON: Plans that were prepared after
24 the February meeting?

25 MS. DOWNS: Yes, after the actual meeting took

1 place.

2 CHAIRPERSON REID: So you are saying that in the
3 interim, between the time that you had a full meeting and your
4 next meeting, that the Board basically took it up as an issue
5 and made a decision on it?

6 MS. DOWNS: Yes.

7 CHAIRPERSON REID: And how many members are on
8 your board?

9 MS. DOWNS: We have about 10 voting members.

10 CHAIRPERSON REID: And what was the vote?

11 MS. DOWNS: Well, the vote was six, and all the
12 members who were able to attend this meeting, voted against the
13 granting of the variance.

14 CHAIRPERSON REID: So the vote was six, but there
15 were 10 members present?

16 MS. DOWNS: There were not 10 members present.
17 There was six members present.

18 CHAIRPERSON REID: Oh, I see. There are 10
19 members of the board and six members were present, and the vote
20 was unanimous in opposition is what you are saying?

21 MS. DOWNS: Yes.

22 CHAIRPERSON REID: All right. Mr. Hood.

23 COMMISSIONER HOOD: Madam Chair, I was just going
24 to respond to Mr. Nettler, and I don't want to belabor the
25 point. But in the absence of a public meeting, civic

1 associations do -- well, their board can act for the group. So
2 your point actually is not relevant.

3 MR. NETTLER: Well, excuse me, but it depends on
4 whether the bylaws and the articles permit them to do so, and I
5 think what is particularly important here is that at the
6 meeting that was held with them, which was an open meeting, we
7 were requested to put in setbacks on the plans in specific
8 areas.

9 We put those setbacks into the project, and we
10 were not allowed to present that at this closed meeting that
11 was held amongst six members of the board.

12 As to whether their bylaws and their articles
13 permit the board to take such action, in that context, I think
14 that is an issue that they are required to demonstrate to the
15 board and not us, because they are taking the position -- and
16 without having filed two weeks in advance, that they are taking
17 the position today that they have that authority.

18 And there is nothing that you have before you
19 that demonstrates that. I understand that there are
20 organizations that allow their board to do so.

21 COMMISSIONER HOOD: Madam Chair, if we proceed, I
22 would ask if we could get that for the record on how they
23 operate.

24 MEMBER HINTON: And can we ask for her response
25 now?

1 MS. DOWNS: Yes. Our bylaws do permit that kind
2 of meeting to take place and permit that kind of vote, and I
3 can furnish you with copies of those bylaws and minutes of the
4 meeting.

5 MEMBER HINTON: At that point then, I would
6 recommend that we go ahead and grant party status, conditioned
7 upon Ms. Downs submitting into the record a copy of the bylaws
8 that permit the kind of vote that took place, and a copy of the
9 membership that demonstrates that some of the members are
10 adjacent property owners.

11 MS. DOWNS: Yes, certainly.

12 COMMISSIONER HOOD: Okay. I will second the
13 motion.

14 CHAIRPERSON REID: All in favor?

15 (A chorus of ayes.)

16 MS. DOWNS: Thank you.

17 MR. NETTLER: Good afternoon. I believe that the
18 Office of Planning has requested to make prior to my beginning
19 --

20 CHAIRPERSON REID: He has, and I was going to
21 address that, but I was going to let you open your case.

22 MR. NETTLER: Okay. Thank you. Good afternoon.

23 My name is Richard Nettler, and I am with the law firm of
24 Robins, Kaplan, Miller and Ciresi, and I represent the
25 applicant, Millennium Georgetown Partners.

1 We are seeking two variances; one from the FAR
2 requirement, which basically covers the interior portions of
3 the project, and a small portion of the added residences; and a
4 height variance for a small part of the site to add those six
5 residential units.

6 As you know the Board is empowered to grant an
7 area variance where it finds three conditions; where the
8 property is unique because of its size, shape, or topography,
9 or a confluence of a variety of different factors.

10 Because the owner would encounter practical
11 difficulties if the zoning regulations were strictly applied;
12 and that the variance would not cause substantial detriment to
13 the public good and would not substantially impair the intent,
14 purpose, or integrity of the zoning plan.

15 In other words, Millennium must demonstrate that
16 compliance with the area restrictions is unduly burdensome and
17 the practical difficulties are unique to this site.

18 In finding an extraordinary exceptional
19 condition, the board may rely upon as I said a confluence of
20 factors. Thus, a condition inherent in the structures built
21 rather than in the land itself may serve to satisfy an
22 applicant's burden of demonstrating uniqueness.

23 In fact the courts and this board have recognized
24 that where you have an historical landmark on the site that
25 that in and of itself may constitute a basis for concluding

1 that a site is unique and the development of that site is
2 unique.

3 The confluence of factors in this case which I
4 think will be testified to and which are set forth in our
5 prehearing statement deal with those historic buildings, and
6 responses to the Department of Housing and Community
7 Development, and the Office of Planning, through a large tract
8 review process, the Advisory Council on Historic Preservation,
9 and the Commission of Fine Arts, the Old Georgetown Board, and
10 many other agencies, including dealing with the Whitehurst
11 Freeway and a number of other factors that are affecting the
12 site, and that will be testified to by a number of witnesses.

13 In addition, the mayor's agent for D.C. Law 2-
14 144, which is the District's preservation law, held that this
15 project that is before you constitutes a project of special
16 merit.

17 The mayor's agent specifically stated that full
18 building restoration and renovation of four historic buildings,
19 including the historic landmark, the Brickyard Hill House, the
20 use selected through an open competition that was handled by
21 the Department of Housing and Community Development, that use
22 provides the greatest benefits to the community and the city,
23 and the project far exceeds that proposed for other special
24 merit projects around the city other than the convention
25 center.

1 That the proposed project goes far beyond what
2 could be built as a matter of right to address arts, retail,
3 residential, and parking issues which have a high priority in
4 Georgetown, and to provide a vitality for a neglected area.

5 In addition, the Department of Housing and
6 Community Development, and the Advisory Council, ensured that
7 there were deed restrictions placed on the development of this
8 site which requires Millennium to provide at least 100,000
9 square feet of residential space, and the incinerator being the
10 site that was sold by the District of Columbia to Millennium.

11 And the 30,000 square feet of retail uses and
12 parking for at least 250 cars, plus one parking space for an
13 additional 500 square feet of additional land area, even though
14 under the zoning regulations we would not have even been
15 required to provide any parking because of the historic
16 structures.

17 As you know the zoning regulations provide a
18 waiver from those requirements. With regard to economic
19 considerations -- and those will be an issue that will arise
20 regarding the practical difficulty component of the situation -
21 - the court has said in its decision in Gill Martin versus the
22 Board of Zoning Adjustment, affirming your decision, that any
23 doubt -- quote, that any doubt that economic use of property
24 may properly be considered as a factor in deciding the question
25 of what constitutes an unnecessary burden or practical

1 difficulty in area variance cases has been eliminated.

2 And in Wolfe the court specifically noted in
3 affirming the decision of the board that the board may properly
4 grant an area variance to permit a conversion, and in that case
5 a building to an apartment use where the marketability of the
6 property would otherwise be unfeasible and investment would
7 yield a loss, rather than a profit.

8 Now, one of the issues that the Commission of
9 Fine Arts and the Citizens Association of Georgetown has
10 brought to you is an issue concerning the rezoning of the
11 waterfront that was done more than 30 years ago, and whether
12 this project is consistent with that rezoning.

13 I think it is interesting to note that under the
14 Commission of Fine Arts review of this project and its
15 opposition, that they are essentially saying that this board's
16 authority in Georgetown does not exist to grant variances,
17 because their position is that regardless of the fact that we
18 approve of the design, it is a better design, and it responds
19 to the issues that we ask it to be responsive to.

20 That because the zoning commission set a 40 foot
21 height limit in Georgetown for this site in 1972 and 1973, that
22 there shouldn't be no waivers from that height limit.

23 And in fact it should be noted that the zoning
24 commission not only set a 40 foot height limit for this site,
25 but allowed it to go up to 60 feet if this is a planned unit

1 development.

2 And in the zoning commission's statement in
3 support of that rezoning, which was a hotly contested matter,
4 and which went before the Federal Courts, and it was prior to
5 home rule, and the zoning commission was required to prepare a
6 quite significant statement in support of its decision.

7 And the zoning commission made it quite clear
8 that the type of development that we are proposing here, and
9 our ability to take care of the topography issues that affect
10 his site, was well within the perimeters of what they
11 envisioned to be done on this site.

12 And I think you will hear more about that from
13 the witnesses and from the Office of Planning as well. The
14 Commission of Fine Arts has said that the topography already
15 limits the vistas north of the C&O Canal down to Wisconsin
16 Avenue and 31st Street.

17 You will hear from the architect that the
18 addition that we are adding here really does no difference to
19 the vista that has been presented. With regard to CAG, the
20 Civic Association of Georgetown, they have made representations
21 regarding changes to this project which you will hear are
22 simply not the case.

23 The public space in the middle of the project,
24 which was considered a major amenity, has not been eliminated.

25 The restaurant and incinerator is still part of the project.

1 The setbacks from the adjoining streets have been reduced, and
2 the cinemas has always been -- the number of cinemas has always
3 been a part of this project, as least since the three years in
4 which the Office of Planning had a large tract review.

5 This is not simply a situation to deal with a
6 mere economic inconvenience, and you will hear a substantial
7 amount of testimony on that. And we have submitted a number of
8 letters and petitions in support of that, ranging from the Park
9 Service, to other agencies, to citizens who live in the
10 immediate area of this project, and throughout Georgetown.

11 And we would ask that you listen to the testimony
12 and urge that you grant the variances that are being sought.

13 CHAIRPERSON REID: How long do you think your
14 case will take?

15 MR. NETTLER: I would say 35 to 40 minutes.

16 CHAIRPERSON REID: And how many witnesses do you
17 have?

18 MR. NETTLER: We have four witnesses, and we have
19 a fifth, where if issues are raised as to traffic issues, is
20 prepared to testify as well.

21 CHAIRPERSON REID: Okay. And how many people are
22 here in opposition to this particular application? How many
23 people are going to testify in opposition? Just two?

24 How many are here in support of the application?
25 Okay. Before we get started, Mr. Altman, would you like to

1 give your report at this time? You requested to be taken out
2 of sequence because you have to leave early, and I want to
3 grant you that request.

4 DIRECTOR ALTMAN: Thank you. I appreciate that.

5 I didn't mean to interrupt the regular programming. But I
6 will be somewhat brief. I appreciate the opportunity to
7 testify in order to make this meeting.

8 I am Andrew Altman, the Director of the Office of
9 Planning, and with me is John Fondersmith, also from the Office
10 of Planning. We are here to address the application of
11 Millennium Georgetown Partners for a height and FAR variance
12 for the Georgetown Incinerator Project in a W-1 District on the
13 Georgetown Waterfront.

14 This application involves an important and
15 complex project in Georgetown, entailing the development of
16 property comprising an entire city block, Square 1189, on the
17 Georgetown waterfront, approximately 56,000, of the 99,000
18 square foot site consists of the Old District of Columbia
19 Georgetown Incinerator property, and the remaining portion of
20 the property, which was assembled by the developer, totals
21 43,000 square feet.

22 As was noted earlier, after the competition, the
23 District Government sold the incinerator property to the
24 developer, and what I would like to do is just provide and base
25 my testimony in two parts.

1 One is some background on the site from the
2 perspective of the District, and the long history that this has
3 been through various review processes, and then go through some
4 of the salient points as to why we believe that the application
5 should be supported.

6 So just by way of background, this project has
7 gone through multiple reviews. The current project has been
8 approved through the Office of Planning through a large tract
9 review, the Old Georgetown Board and the Fine Arts Commission.

10 The developer has supplied a list of reviews that is attached
11 to the OP report.

12 The approved building, which measures 40 feet in
13 height from South Street, is about 81 feet high, measured from
14 K Street, and the elevation is possibly 85 feet on the plane
15 show on the skyline drawings. Well, those will be shown later.

16 The difference is possible because of the steep
17 drop from South Street to K Street. The building is designed
18 to nestle into the hillside, reducing its impact on the views
19 from the north to the river.

20 The request before you is to add an extra floor
21 of residential use, which would increase the height of the
22 residential buildings by 10 feet, 8 inches, above the 40 foot
23 height limit, increasing the FAR on the project from 2.48 to
24 2.89. And 2.5 FAR is allowed in a W-1 zone.

25 The residential buildings in the project are

1 along K Street. The developer has set the added floor, which
2 would be the fifth residential floor, back from 12 to 20 feet
3 on Wisconsin Avenue, and 12 feet on 31st Street, to address
4 community concerns about view lines on these streets.

5 The Office of Planning supports the height and
6 variance request as outlined in our report submitted April
7 10th, 2001. Let me focus some attention about this issue
8 related to the additional height and concerns expressed by the
9 Commission of Fine Arts.

10 And as you know much attention is focused on the
11 height of the added floor, and the added height of 10 feet, 8
12 inches, along K Street. The Old Georgetown Board reviewed the
13 project on April 5th, and reported to the Commission of Fine
14 Arts, and the Commission of Fine Arts doesn't meet until April
15 19th.

16 However, CFA has sent a letter to the BZA, dated
17 April 11th, and the letter recognizes the height of the
18 approved building on K Street because of the measuring point
19 being on South Street, which is on the north side of the
20 project.

21 The CFA letter notes that the Old Georgetown
22 Board -- and I quote here -- stated that from a design
23 standpoint only, the revised scheme of adding an additional
24 floor was acceptable. I think that is a very important point.
25

1 However, in response to the background
2 information on the special zoning designation the concerns of
3 the Citizens Association of Georgetown and various community
4 organizations, as well as the president of the commission
5 efforts to lower the building heights in the waterfront area,
6 the board recommended against the added height given its
7 context.

8 The CFA cites the Commission's past efforts to
9 alter the zoning and to lower building heights on the
10 waterfront. It is important to note, however, that in the
11 zoning commission's statement of reasons why it was adopting
12 Case 73-20 and 73-21 to impose the W Zoning on the waterfront,
13 the commission indicated the following, just to provide some
14 background information with respect to the CFA issue.

15 And in the statement of reasons, it states as follows;
16 that a balanced combination of residential, office, retail, and
17 recreation uses, with varying heights and densities, provides
18 greater design flexibility and opportunities to enhance the
19 quality of life than more traditional single-use zones.

20 It goes on to say that the new zoning imposes the
21 W-1 zone for certain existing enclaves with townhouses, to
22 encourage their preservation and continued used, and encourages
23 reuse of existing vacant structures for new activities.

24 In certain areas of the waterfront moderate
25 levels of development are necessary to provide the economic

1 basis to preserve historic structures, and with emphasis -- and
2 I want to say that this is particularly true of certain
3 warehouses and other industrial buildings which can be adapted
4 for new activities.

5 Reductions in height can accomplish stated
6 objectives in certain areas, but may be counterproductive if
7 imposed too broadly. And I think that helps to set the notion
8 here that design flexibility to accommodate both preservation,
9 the mixed-use nature on the waterfront, is very important.

10 And that it wasn't just simply a strict adherence
11 to a height, a rigid height standard, which I think was
12 paramount concern. Let me walk through some of the key points
13 as to why we are supporting this height and variance request.

14 First, the development is now being constructed
15 under W-1 zoning. It is a significant mixed use project that
16 has 247,800 of above ground space, with residential, hotel,
17 retail, and entertainment cinema uses.

18 The existing process includes approximately 2,700
19 square feet of retail space, not including the theater space, a
20 state-of-the-art multi-screen cinema complex of 2,900 seats and
21 13 theaters; a Ritz-Carlton Hotel, with 91 rooms, and 22
22 residential condominium units.

23 The project has 345 marked parking spaces, plus
24 an operating valet garage, accommodating 500 to 600 vehicles.
25 Though there is not a direct link, this project helps make it

1 possible to eliminate the current parking on the Georgetown
2 waterfront, and there is parenthetically I should note that
3 there is a letter from the park service indicating their
4 support, partially due to this very reason of this relationship
5 to parking along the waterfront and in the neighborhood.

6 The increased height and FAR requested allows for
7 better arrangement of some interior spaces, and the
8 construction of six additional residential condo units and the
9 addition of 10 parking spaces. Parking spaces can be added
10 due to the changes of some of the interior spaces as a result
11 of the increased FAR.

12 However, parking spaces are below grade, and not
13 part of the FAR calculation. The Georgetown incinerator is an
14 important project for the Georgetown waterfront area.

15 Height increased to add the residential units is
16 needed for funds to address the costs of theaters, and theaters
17 will help animate the area. As noted, parking will also
18 benefit the area, and residential and hotel uses bring
19 additional life to the area, and provide among the highest tax
20 revenue per square foot of any uses.

21 As many of you may know, the current climate for
22 theaters as we are working on these across the city has become
23 increasingly difficult to finance, and therefore they are
24 placing additional demands on developers, and frankly on the
25 city as well, to accommodate cinemas.

1 The Georgetown incinerator project fits into the
2 skyline of other buildings along the Georgetown waterfront.
3 While OP understands the analysis that went into the imposition
4 of the W-1 zoning classification here, the BZA has authority to
5 waive height restrictions if the appropriate tests are met,
6 which OP feels is the case here.

7 The CFA letter is essentially opposing a variance
8 for height because it does not comply with the height limits
9 specified in the zoning classification.

10 However, that is why we are here, because the
11 zoning regulations provide for the BZA to grant height relief
12 if a project meets the tests specified in the regulations.

13 The Office of Planning feels that these tests
14 have been met, and John Fondersmith will go into more detail as
15 to how we believe these tests have been met in each instance.

16 Regarding the requirements of a W-1 zone itself,
17 it is important to note that the PUD guidelines for the W-1
18 district allow 60 feet height, and a 3.0 FAR.

19 The proposed change is within those guidelines,
20 and although the applicant has not asked for a PUD, the level
21 of review the project has received is probably about the same
22 as a PUD, and I would suggest that it is more than a PUD, and
23 the amenity package being offered is more than what would be
24 provided as a matter of right.

25 So it already shows you that there is an

1 indication that additional height could be allowed, and would
2 be appropriate at this site if it has an appropriate benefit
3 package, and appropriate benefits to the community, and I think
4 that is amply demonstrated here.

5 ANC-2E stated in its letter to the BZA of April
6 6th that it did not object to the redesign of the project, and
7 the area variance sought, but expressed concern about height
8 and site lines.

9 Since that time the project was set back to
10 improve these site lines. OP believes that the unique nature
11 of this project and the importance of maintaining the movie
12 theaters is grounds for the variance.

13 The major impact on the development of the site
14 was the historic preservation requirement of retaining and
15 respecting the incinerator building, including the dramatic
16 smokestack, retaining historic buildings, and providing open
17 space around the historic buildings.

18 The three small historic buildings were moved
19 off-site, and will be relocated on the site when the
20 construction is completed. The result of retaining the
21 historic buildings and providing open space around them is that
22 this combined space requires a large area, approximately 33
23 percent of the total site area, primarily in the north side of
24 the site.

25 A view corridor for the incinerator building and

1 smokestack extends through the site to the south and provides a
2 view over the Whitehurst Freeway to the Potomac River.

3 At this stage of construction the basis design is
4 set. In addition, the Whitehurst Freeway is located above K
5 Street, immediately in front of the theater space.

6 It is not practical to change the theater space
7 to another use. The practical solution to addressing the cost
8 problem of providing the theater space is to add additional
9 residential units in one more story of residential space.

10 The developer has done this by proposing to add
11 an additional floor of residential space in the two residential
12 buildings, thereby increasing the height of the project 10
13 feet, 8 inches, above the 40 foot height allowed in a W-1
14 district.

15 The additional FAR also permits improved space
16 design of the project, and some space in the hotel and theater
17 areas of the project are rearranged. In summary -- and I
18 should also mention that the Office of Planning -- and I
19 believe also the Department of Housing and Community
20 Development is here, and we support the height and area
21 variances, and we recommend approval.

22 I would say, and John Fondersmith will walk
23 through the specific tests, but when you look on balance at
24 what is being requested -- the additional height, the fact that
25 the height that is being requested, is also if there is an

1 impact, is being mitigated and addressed by the setbacks.

2 So actually I believe that it results in an even
3 improved project, and not just simply a mitigated height issue,
4 and that that height is within I think the guidelines of what
5 is acceptable.

6 And it provides significant economic benefit to
7 the city as a major mixed-use project, and I believe on balance
8 that this project more than meets the tests and the practical
9 difficulties. That there is no detrimental impact, and is
10 providing substantial benefits to the city.

11 I would urge your approval and also given that
12 they are in construction, your expeditious approval, and
13 possibly even if the applicant requests, we would support a
14 bench decision so that this project could move forward.

15 And what I would like to do is to ask John
16 Fondersmith to quickly summarize so that we can go back to the
17 regular programming of what the applicant is going to present,
18 and some of the ways that we believe in our report how this
19 meets the test for a variance.

20 CHAIRPERSON REID: Thank you, Mr. Altman.

21 MR. FONDERSMITH: Okay. We have in our report on
22 page 4, we have inserted a comparison, which we obtained the
23 numbers in the table from the applicant, in order to try and
24 make clear where the changes are in this case, and in this case
25 the various uses and in the FAR.

1 And you can see that it is primarily in the
2 residential use, and the additional floor that is added along K
3 Street. The three tests that we are dealing with here is that
4 the property is unique by reason of its exceptional narrowness,
5 shallowness, shape or topography, or other extraordinary
6 exceptional situation or condition.

7 And by reason of the unique or exceptional
8 condition of the property the strict application of zoning
9 regulations will result in peculiar and exceptional practical
10 difficulties, or to exceptional and undue hardship upon the
11 owner.

12 And then that the variance will not cause
13 substantial detriment to the public good, and will not impair
14 the intent, purpose, and integrity of the zoning plan as
15 embodied in the zoning regulations and map.

16 It is -- and you will hear more about this I
17 think from the applicant, but you have an area in the northern
18 and then extending through the view corridor, of about one-
19 third of the site that is really geared to the incinerator and
20 the historic buildings, and open space, and their view
21 corridors.

22 And although the site is the incinerator project,
23 and the additional other property that was assembled, that
24 really set the pattern for the development of this site, and
25 the other buildings that were grouped around it, with the

1 residential buildings along K Street.

2 And in trying to deal with this considerable fall
3 about 40 feet from South Street to K Street, and fit this
4 package together. And the theaters were inserted into the
5 bottom portion of the project.

6 And so both in terms of the way the developer and
7 his architect approached the design of the project, and in
8 terms really -- well, in practical terms of where the thing is
9 now in construction and coming out of the ground, it is not
10 possible to change it around.

11 And we have this situation with the theaters
12 which are an important part of the project, and an important
13 part really in terms of the city's interest in helping to
14 animate other parts of the waterfront area.

15 Obviously the hotel, the residential and retail,
16 will have some effect there, but the theater use will have a
17 large impact. So we have this real practical difficulty in
18 using in that space, and now as will be spelled out I think in
19 more detail, the financing of that space.

20 Again, because of the arrangement of the site and
21 the freeway, the topography of the site. We do not believe
22 that the variance will be a detriment to the public good, or
23 impair the zoning regulations and map.

24 The important thing to focus on is that we have a
25 project here that has been approved and under construction, and

1 what is proposed is the addition in about 25 percent of the
2 site along the residential portion of the project facing K
3 Street, and facing and looking out over the Whitehurst Freeway,
4 of adding an additional floor.

5 The FAR increases, but because of the
6 rearrangement of the site, the FAR is increased about .4 total,
7 and only a portion of that, about half, is visible as increased
8 bulk, and that of course comes in the additional residential
9 floor.

10 So we believe that the project does meet these
11 tests for a variance, and in view of really the overall design
12 of the project, the design changes that have been made, these
13 are the setbacks along Wisconsin Avenue and 31st Street in
14 order to address some of the view line issues that have been
15 raised.

16 We believe that the additional height and bulk,
17 and that height is again on the southern portion of the
18 project, on the residential buildings, one floor, can be
19 granted without impairing the intent, purpose, and integrity of
20 the zoning plan.

21 We do have a representative of DHCD here also,
22 and a letter in support in the file that is Exhibit 23 from
23 DHCD.

24 DIRECTOR ALTMAN: And I would say in conclusion
25 that the Office of Planning believes that the tests have been

1 met for a variance. We believe that not only have the tests
2 been met, but that the additional height -- the project was set
3 back to improve the addition of the height, and that we believe
4 that the extraordinary benefit that will accrue to the city
5 will bring a tremendous mixed-use project to fruition.

6 And will ultimately bring the benefits to the
7 waterfront, and of a well designed project without a
8 significant adverse impact on the environment or the
9 surrounding neighborhood. But in fact will actually be even an
10 improved design, and so we support that. Thank you.

11 CHAIRPERSON REID: Thank you very much. Now,
12 cross-examination. Are there any questions for the Office of
13 Planning from the ANC or from any parties?

14 (No audible response.)

15 CHAIRPERSON REID: Okay. Board Members, any
16 questions of the Office of Planning?

17 COMMISSIONER HOOD: Madam Chair, I just had two.
18 Mr. Altman and Mr. Fondersmith, you mentioned a PUD. In the
19 discussions with the applicant was it ever mentioned at a time
20 that he should come in under a PUD? Because in my viewing of
21 this, it looks exactly like it is a PUD.

22 MR. FONDERSMITH: Well, we note in there in the
23 original RFP from DHCD that there was just a suggestion that
24 the applicants -- and not meaning this applicant, but the
25 applicants for the incinerator property -- might want to

1 consider a PUD.

2 However, that was not done, and this developer
3 was selected on the basis of this design. The site was filled
4 out as we said with the acquisition of additional private
5 property. So that the full city block is being developed.

6 And if you look at that list which was provided
7 by the applicant, and reattached to our report, and I think
8 maybe there might be even a few missing there, I am not sure
9 what the record is, but this project has certainly gone through
10 a lengthy and full review process.

11 And I think as Mr. Altman said in terms of the
12 amenities that have been provided, the mix of uses, the value
13 to the waterfront area generally, you could think of it in
14 terms of what we have been looking for in a PUD.

15 And so it is important to recognize that having
16 gone through that process, and that approved project in place,
17 which is in this case a matter of right, again what is being
18 requested is a variance of the height along the southern
19 portion of the building.

20 And both the height increase and the FAR increase
21 fall within that range, or less than actually that would or
22 that are outlined in the PUD guidelines. Now, just so there is
23 no confusion, again, this was not a PUD, but it is in that
24 range of what is being suggested now.

25 DIRECTOR ALTMAN: I think one brief comment is

1 that you have to remember that this was also -- as was stated
2 earlier -- through a competition and through a city owned
3 parcel. So it is a relationship between the District of
4 Columbia and a private developer.

5 So you are able to specify the kinds of uses and
6 have what you were looking for on the site, as opposed to
7 purely a private developer coming forward. So often when a
8 city has an RFP for a site, you are able to specify the kinds
9 of benefits, the kind of project that you want to see.

10 So we did not require a PUD, not that in some
11 instances you wouldn't. I think you just emphasized what John
12 Fondersmith said, and I merely pointed out the PUD aspect only
13 in that it is suggested that the height could be allowed, and
14 that 60 feet was already contemplated if one were to go
15 through a PUD.

16 So that the notion that there was an inflexible
17 height limit that was set only at 40 feet, that could never be
18 changed, or need to be rigidly adhered to. That there was
19 already flexibility and recognition that a greater height at
20 this site, at this location within the W-1 zone, was possible.

21 And if there were significant public benefits,
22 then in fact it could be desirable to achieve that height, and
23 that's why we used that simply as a reference.

24 COMMISSIONER HOOD: I need some clarification.
25 Mr. Altman, I believe you referenced. the Commission of Fine

1 Arts' letter. I just wanted to know is this letter based on a
2 revised design with the setbacks, because you mentioned a date
3 when they were going to meet on the 19th.

4 And I wanted to know if this letter here, dated
5 April 11th, included the revised design with the setbacks?

6 DIRECTOR ALTMAN: Our understanding -- and the
7 applicant could address this, is that the Old Georgetown Board
8 did see these setbacks that were made from a previous design,
9 and really made to address some of the community concerns that
10 had been raised. At least that is our understanding; that they
11 saw the setbacks.

12 COMMISSIONER HOOD: So you meant then the
13 Commission of Fine Arts and the Old Georgetown Board? I am not
14 following you.

15 DIRECTOR ALTMAN: The Commission of Fine Arts has
16 looked at it at various times, and they are going to look at it
17 formally again on Thursday, April 19th. They sent you the
18 letter, I guess, kind of in advance of that meeting. I think
19 that -- I am not sure that they saw the setbacks.

20 COMMISSIONER HOOD: Okay. Thank you. No further
21 questions.

22 MEMBER HINTON: Mr. Altman, but you and Mr.
23 Fondersmith referred to buildings on the site, and I was
24 wondering -- I wanted to ask for some clarification because I
25 think what I read in the applicant's statement is that this is

1 all one building, because when they measured the height that
2 there was one measuring point. What is your position on the
3 number of buildings on the site?

4 MR. FONDERSMITH: That's right in that sense. I
5 mean, the project is all tied together. The point was that the
6 residential -- I mean, the height increase is on the
7 residential elements, and maybe we should have said the
8 residential elements which are along the southern portion of
9 the project.

10 The other elements -- and I know that this will
11 be pointed out in more detail -- are the hotel elements and the
12 restaurant, and the incinerator, and the hotel facilities in
13 the old incinerator project.

14 Retail is largely along K Street, and then the
15 theaters opening off of K Street at that K Street level.

16 MEMBER HINTON: Is there an above ground
17 connection that you were able to see that makes this all one
18 building, or is the connection all below, or is that not the
19 definition that you were using?

20 MR. FONDERSMITH: There is some connection there.
21 Of course, it is all tied together below ground, and there is
22 also a connection through the class entry way so to speak into
23 the incinerator, which is the entrance into the theaters also.

24 MEMBER HINTON: Okay. Thank you.

25 CHAIRPERSON REID: All right. Are there any more

1 questions?

2 (No audible response.)

3 CHAIRPERSON REID: Then we will proceed now to
4 Mr. Nettler. Will you start the time.

5 MR. NETTLER: Thank you very much. Before I
6 start with Mr. Lanier, and before the time starts running on
7 me, let me just -- and because this did go out of sequence, I
8 understand the questions that were raised because you didn't
9 have the presentation from us, which would have addressed those
10 issues.

11 So if I might just respond to the three points
12 that were raised. One, I understood completely about this
13 looking like a PUD, and what the applicant tried to do for the
14 last 4 or 5 years was to proceed as a matter of right
15 development.

16 And as you will hear testimony, because of the
17 extraordinary circumstances that have not only hit our project,
18 but the District of Columbia, it necessitated while in the
19 midst of construction for us to go forward as a variance so
20 that we could be able to proceed with this project.

21 With regard to the Commission of Fine Arts, we
22 have not yet made a presentation to the Commission of Fine Arts
23 of this change in the project. What has happened is the Old
24 Georgetown Board reviewed this project at its February meeting.

25 And the Old Georgetown Board supported the

1 project and made a recommendation to the Commission of Fine
2 Arts in support of the project, and specifically stated that
3 the zoning issues that were raised by a representative of CAD
4 were not what were before the Board of Zoning Adjustment, and
5 not before the Old Georgetown Board, and in fact specifically
6 stated that what we had done in here would actually had helped
7 with the vistas along Wisconsin Avenue.

8 A staff member of the Commission of Fine Arts
9 said to the Commission of Fine Arts that -- asked the
10 Commission of Fine Arts to refer it back to the Old Georgetown
11 Board, and to ask the Old Georgetown Board if they were aware
12 of the zoning that was applicable to the site.

13 When we came back to the Old Georgetown Board,
14 and we had made the changes to the project, which provided for
15 the setbacks, the Old Georgetown Board said, and as is reported
16 in the letter, that they had no problem with the design, that
17 the design was appropriate.

18 But because of the zoning issue that they had a
19 concern about the height, because the Commission of Fine Arts
20 had taken a position 30 years ago that they believed that there
21 should be a 40 foot height limit.

22 And that was the referral that was made to the
23 Commission of Fine Arts. The Commission of Fine Arts has not
24 met yet, and it has not yet heard our presentation, and so the
25 letter that has been sent to you is presumably drafted by that

1 same staff member on behalf of the Commission, which has not
2 seen the project yet.

3 MEMBER HINTON: May I ask just one question about
4 that? The reference then in the CFA letter, as the precedent
5 of the Commission's effort, what commission is that? Is that
6 the zoning commission effort or the Commission of Fine Arts?

7 MR. NETTLER: Well, the Commission of Fine Arts
8 is saying that there was a precedent for their effort in
9 seeking reduction of the height. Actually, if you look at the
10 zoning case in 1973, the zoning case arose out of the fact that
11 the Commission of Fine Arts had approved the project that is to
12 our east, and the project that is to our west, at heights that
13 the Park Service was opposed to.

14 And that that was inconsistent with the plan that
15 was developed by the National Capital Planning Commission for
16 the waterfront. So it was not the Commission of Fine Arts that
17 have been spearheading the rezoning.

18 It had been a pre-home rule attempt to modify the
19 zoning to be consistent with NCPC's role as the planning agency
20 for the District at the time. Subsequent to that time, we are
21 the only site -- and again going to our uniqueness, we are the
22 only site that will ever be caught in this situation, because
23 if you look at the zoning map, the sites to the east, which is
24 also reflected in the zoning commission's discussion, the sites
25 to the east are zoned to 90 feet.

1 And the sites to the west are zoned to 60 feet,
2 and they are all built out, and we are the only one caught in
3 the situation that has this topography, and these historic
4 buildings having this impact that you will hear more discussion
5 of from the members of our team.

6 CHAIRPERSON REID: Okay.

7 MR. NETTLER: And I should note, of course, that
8 the incinerator is more than the height limit that is under the
9 zoning regulations, significantly more than the height limit
10 under the zoning regulations.

11 CHAIRPERSON REID: All right. We will now start
12 the time, Mr. Nettler.

13 MR. NETTLER: I would call Mr. Lanier.

14 MR. LANIER: Good afternoon. My name is Anthony
15 Lanier, and I am here on behalf of the developer. I will
16 attempt to avoid repetition of things that have been said
17 previously.

18 Just briefly, the history of this project has
19 been turbulent since 20 years, and this is the third attempt by
20 the City to have this project developed.

21 It was to my knowledge the first time awarded in
22 1986, or in '87, and the developer failed to complete the
23 project, and even commence the project because of economic
24 issues. We were awarded this project in an RFP I believe in
25 1996, in the fall of 1996, or we filed our response to the RFP

1 I think in September of 1996.

2 At the time, we struggled with what uses could be
3 brought to bear below the Whitehurst Freeway given the City's
4 desire to have a revitalization project on this site. And to
5 my knowledge no retail has ever succeeded on K Street.

6 Some restaurants have temporarily succeeded. I
7 think that there is one establishment which has succeeded over
8 a period of time. We at that time came to the conclusion that
9 cinemas were an ideal use for the space below the Whitehurst
10 Freeway, and proposed to the city a combination of residential,
11 and retail in the form of theaters.

12 And we are aware from the previous RFP efforts
13 that the citizens were very much concerned about parking,
14 particularly since the long term goal of the Georgetown
15 citizenship was to eliminate the parking on the harbor parking
16 lot, which subsequently has been returned to the U.S. Park
17 Service, and is scheduled to be eliminated.

18 So in our proposal, we proceeded in proposing
19 parking which we were not required to do as a matter of code.
20 Prior to being awarded the project, we had strong community
21 support, and as a result were awarded the project.

22 In the process of designing and developing this
23 project over a period of 4-1/2 years, we have been many, many
24 times -- and I can't count them -- before the ANC and the
25 Citizens Association of Georgetown, and before various

1 neighborhood groups, particularly the church which adjoins the
2 site on the other side of South Street.

3 We have presented this to the District Housing
4 Review Committee, and we have presented this project at the
5 National Capital Planning Commission, and we have presented
6 this project at the Control Board.

7 We have presented this project at the City
8 Council twice; once for the approval of the sale, and the
9 second time for the closing of an intervening alley on the
10 project.

11 We have assembled this site, which consisted
12 originally of approximately eight single individual sites and
13 buildings. We have presented this project many, many times
14 before the Old Georgetown Board, the Commission of Fine Arts,
15 the Historic Preservation Review Board, and the Mayor's agent,
16 who found the project to be of special merit.

17 And finally we have presented the project before
18 the Office of Planning as a large tract review. I doubt that
19 there is any project in the city which has been reviewed more
20 than this one.

21 To be practical, this project has been the most
22 unique redevelopment any one of us has ever attempted. We have
23 in the past four years I would say specialized in the
24 redevelopment of historic structures, and in order to address
25 Mr. Hood's concerns, in 17 projects, all of which have been

1 reviewed by multiple boards, and very few by this one, we have
2 never received any opposition by anybody in the citizenship.

3 We have always built fully consented projects,
4 and also intended to build this as a fully consented project.
5 Historic development is an expensive proposition, and not
6 simply financially, but also from the complexity.

7 Just to give you an example, we looked for six
8 months in the entire United States to find a specialist who
9 could assure us that the smokestack, which we had committed to
10 retain in a historic context, would not collapse while we
11 blasted into solid rock in order to provide the
12 disproportionate amount of parking we had promised to deliver.

13 So this project has had many burdens on it. We
14 are building against a highway, into rock, underneath the water
15 level, in the middle of a historic district.

16 Notwithstanding that fact, we have had no
17 complaints by any citizens that I know of. We have always
18 maintained a first-class relationship with the citizenship in
19 doing so.

20 In the context of our development, we were faced
21 with an inordinate set of circumstances, namely the financial
22 difficulties the cinema industry entered into.

23 As I already noted beforehand, the cinema aspect
24 became a crucial aspect to the property because it was the only
25 use which accommodated two of the prime concerns of the

1 citizenship, and the city, as well as our goal to have a city
2 revitalization project.

3 The cinemas brought life to K Street. There is
4 currently no life on K Street, and as a result, many of the
5 parking structures which are facing K Street are today
6 unoccupied or closed after hours because people don't like
7 walking alone underneath the highway.

8 The cinemas furthermore provided use of the
9 parking during non-business hours. That means that Georgetown
10 has a lack of parking currently during business hours, a period
11 during which we will not be utilizing this garage, and
12 therefore it is available for public use and a partial
13 replacement of the soon to be eliminated harbor parking.

14 The second issue was that we were providing a
15 use, a conducive use, below the Whitehurst Freeway, thus making
16 this project the first project ever to be designed in
17 Georgetown in recognition of the highway obstruction.

18 The financial difficulties the cinema industry
19 entered into had a stunning effect on the project. In all of
20 our agreements and calculations, we were relying on a \$25
21 million contribution of the cinema industry to provide building
22 cinemas and a rental stream to defray the cost of providing the
23 shell and acquiring the land in the amount of \$1.7 million.

24 Both of those financial contributions were
25 suddenly eliminated. We were therefore faced with a situation

1 where we had to find a solution which allowed us to complete
2 this very unique project in the manner we conceived it without
3 any dramatic delay, given the fact that we are currently
4 pouring concrete to build cinemas.

5 We reviewed all alternative options, i.e.,
6 alternative uses for a big 30 foot high tube below the
7 Whitehurst Freeway. We reviewed things like offices, K-Mart's,
8 whatever, but none of these uses were immediately within our
9 control, and none of these uses could even closely provide the
10 economic scenario that we had just foregone.

11 And none of these uses would have provided
12 parking during the day time, but contrarily would have utilized
13 the parking during the day time, as well as during the evening.

14 In attempting to find a solution, we proceeded to
15 the neighborhood, as well as to the Old Georgetown Ward, and
16 the Commission of Fine Arts, with a requirement for a partial
17 increase in height, setback after various discussions, so that
18 it is minimalistically, if at all, visible from the street.

19 Given that the bulk of the buildings already
20 blocks the view towards the area which we are intending to
21 increase. We have solid community support and believed until
22 recently that we had also reached an agreement with the
23 Citizens Association of Georgetown.

24 I personally reached an agreement with Mrs.
25 Downs, or believed that I had reached an agreement with Mrs.

1 Downs, and another board member of the Board of the Citizens
2 Association of Georgetown, and another board member, whereby in
3 addressing their concerns with our setbacks, we believed that
4 we had resolved any differences that we had.

5 It came as a surprise to me that the Citizens
6 Association required a sudden board meeting, and found against
7 the project, with one of the people that I thought I had an
8 agreement with missing at that board meeting.

9 In order to address your concerns, we have bent
10 over backwards with every step of this project and any other
11 project to seek consensus of the citizenship, and particularly
12 the Citizens Association of Georgetown, and we have never been
13 opposed by that group.

14 We have provided the Zoning Commission solid
15 support of the Georgetown Business and Professional
16 Association, the Advisory Neighborhood Commission, who in their
17 approval noted the concerns of that particular member of the
18 Citizens Association of Georgetown concerns.

19 We have received many individual signatures of
20 the Georgetown's citizens which we accumulated within a period
21 of a few hours, and many, if not most of them, are members of
22 the Citizens Association of Georgetown.

23 We are here supported by the National Park
24 Service as evidenced in writing, and I believe that we have
25 many of our neighbors being available here today to support the

1 project.

2 In short, I believe that this is a unique project
3 built underwater in rock, with an incinerator in the middle, on
4 a sloping side, which I believe we found an excellent solution
5 to resolve with a minimum impact on anybody within the
6 community, and with the ability to seamlessly continue the
7 construction of the project, which otherwise must stop for a
8 lack of capital. Thank you.

9 MR. NETTLER: In lieu of asking Mr. Lanier a
10 question about the cinemas, there was a letter that was sent to
11 the board from Loews Cineplex, which outlines the situation
12 affecting not only the Loews, which has gone bankrupt, but the
13 cinema industry itself, which is substantially bankrupt, and
14 the situation in the District of Columbia.

15 And if you have a copy of that letter, please let
16 me know. If not, I can get you a copy of it.

17 CHAIRPERSON REID: I did not receive one in my
18 package. Did you receive one?

19 MR. NETTLER: If I might hand up then another
20 copy of the letter.

21 MEMBER HINTON: I also do not believe that I have
22 seen the support from the National Park Service.

23 CHAIRPERSON REID: No, I don't have that one
24 either. It just came in?

25 MR. LANIER: I believe that we faxed that this

1 morning at 11 o'clock.

2 CHAIRPERSON REID: It just came in.

3 MR. NETTLER: There area a number of other
4 letters, and I believe there has also been a number of
5 petitions in support of the project that were submitted, and I
6 just want to make sure that you have those as well, or we can
7 do a housekeeping of --

8 CHAIRPERSON REID: Well, what happened is that
9 after we had started the afternoon session, they were given to
10 us, and obviously it is just impossible to stop and read the
11 materials. I mean, there has been a voluminous amount of
12 materials that have been submitted.

13 And what we may have to do is break for about 5
14 or 10 minutes, because there is no way that we can be able to
15 absorb or digest what we are just receiving, because much of it
16 is technical and legal text.

17 SECRETARY PRUITT: Mr. Nettler, the letter from
18 Loews, when was that submitted?

19 MR. NETTLER: It is dated -- well, we received it
20 yesterday, and sent a copy to the board yesterday.

21 SECRETARY PRUITT: Okay.

22 MR. NETTLER: So what we may do is let you
23 proceed with you putting on your case, and then maybe take a 10
24 minute break, and read the materials, and then we will be able
25 to ask questions accordingly.

1 MR. NETTLER: I think that is appropriate. I
2 would direct your attention to the last paragraph on the first
3 page of Loews' letter, and the first paragraph on the second
4 letter, where --

5 CHAIRPERSON REID: We don't have that yet.

6 COMMISSIONER HOOD: We don't have that yet, and
7 they went to make copies for us.

8 MR. NETTLER: When you do have a copy of it, we
9 will get into that then.

10 CHAIRPERSON REID: While we are waiting, is there
11 anything else that you can tell us?

12 MR. NETTLER: Yes, I do have other witnesses, and
13 I have no questions of Mr. Lanier.

14 CHAIRPERSON REID: Okay. Are there any
15 questions, Board Members?

16 MEMBER HINTON: I have one question. I think
17 that the last thing that you said was if this case is not
18 approved, then the project would stop where it is for lack of
19 funding, or lack of capital rather. Where is the capital
20 coming from? I mean, you are still building the theaters.

21 MR. LANIER: I would answer that as follows. We
22 proceeded on this project with a partial permitting process in
23 order to gain time and complete the project as soon as
24 possible. Under those circumstances, we were not able to close
25 our construction financing, and we built it out of our equity

1 portion in the project.

2 If you assume for a moment that traditionally
3 projects are funded today, let's say, in the range of 40
4 percent capital, and 60 percent debt, we have exhausted our 40
5 percent capital, and now we are in the process of closing on
6 our debt.

7 In that process, the cinema industry triggered
8 the event, namely their failure to contribute \$25 million. So
9 the construction lender at once is looking at a situation where
10 they don't have a predictable income stream out of a credit
11 worthy tenant in the form of a lease, nor \$25 million of
12 capital contributions that were budgeted to complete the
13 project.

14 In our solution by being able to add a partial
15 floor to the project, we are able to demonstrate to our
16 construction lenders that we have an additional source of
17 revenue, which when received, can be applied towards the
18 completion of the cinemas.

19 Thus, in essence, utilizing that one floor
20 addition to mitigate the fact that we have lost the liquidity
21 from the cinemas. I hope that answers the question.

22 MEMBER HINTON: Thank you.

23 COMMISSIONER HOOD: Madam Chair, if I might ask
24 Mr. Lanier a question. You stated that today was the first
25 time that you noticed that you had some opposition. To your

1 knowledge what do you think -- why all of a sudden now do you
2 have opposition?

3 MR. LANIER: I believe that there are some
4 particular members of the Citizens Association of Georgetown
5 that have genuine concerns relating to the preservation of
6 Georgetown and its adherence to their guidelines.

7 I do, however, believe that it is misguided in as
8 much that the addition that we are proposing is not visible
9 from the street, or only visible from a very small area on
10 Wisconsin Avenue, since it is being blocked by the majority of
11 the remaining project.

12 So while I don't think it is accurate that only
13 today that I became aware of the Citizens Association of
14 Georgetown's opposition, it is a fact that while I was on
15 vacation that I did become aware of it, and I only returned
16 yesterday.

17 So inasmuch there was not much opportunity to
18 address a foregone conclusion, namely opposition formed in an
19 emergency meeting during my absence.

20 COMMISSIONER HOOD: Okay. Thank you.

21 CHAIRPERSON REID: In glancing over this letter
22 from Loews Complex, it says that the District is one of the few
23 major metropolitan areas in the country that does not yet have
24 a major modern multiplex. It doesn't?

25 MR. LANIER: That is correct.

1 CHAIRPERSON REID: Well, here is what I am trying
2 to understand. A multiplex is the same as a theater? That's
3 what I am trying to ascertain, because it says a multi-theater
4 movie complex in the letter from the Director of D.C. Housing.

5 And then it says that this is a multiplex, and
6 then I think that the Mayor's agent had something about an arts
7 theater. So what exactly are we referring to? I am not really
8 sure since I am seeing so many different terminology.

9 MR. LANIER: Let me first refer to the different
10 terminology, and then give you a layman's attempt of defining a
11 multiplex theater.

12 CHAIRPERSON REID: Okay.

13 MR. LANIER: The terminology is different since
14 when we responded to the RFP, we were responding to a much
15 smaller side, or not much of a smaller side, but let's say a
16 side generally half the size of what the side is today.

17 So, therefore, at the time we contemplated a
18 relatively small theater, and named it or contemplated to have
19 an arts theater, which generally has somewhere in the range of
20 500 to 800 seats, and consists of 4 to 6 theaters, in its
21 simplest form.

22 In our attempt to respond to the concerns of our
23 citizens and the city concerns, which were directed towards
24 parking and the retail, we discovered that it was financially
25 impossible to carve out any parking on the existing incinerator

1 side.

2 And that drove us to assemble a larger side, and
3 with the larger side came a larger issue, namely what to do
4 with the building below the Whitehurst Freeway.

5 And at that point very early on, and I would say
6 within the first 12 months of the project, we converted our
7 project from a contemplated arts theater to a multiplex with at
8 the time Sony Corporation, which subsequently became known as
9 Cineplex Odeon as a result of a variety of mergers.

10 A multiplex cinema to the best of my knowledge is
11 defined or is an acronym for a state-of-the-art movie house,
12 which consists generally between some 12 and 21 movie screens,
13 and has a minimum of 2,500 seats, all the way up to 5,000 or
14 6,000 seats.

15 And it has a stadium seating, which are seats
16 that are built on a steep incline, affording so to speak every
17 visitor an equally good view of the screen.

18 So that the last will be treated as well as the
19 first in a way, and so the difference between a multiplex
20 theater of today's market is that one needs high cube space,
21 space that is generally 30 feet high or something in that
22 range.

23 Now, in addressing your question why there are
24 not more multiplex theaters in the city given that we have
25 height limitations, 30 feet of space height is a very expensive

1 proposition, and that in essence boils down to three floors.

2 If we had no height limitation that would not be
3 relevant because it would simply be one FAR. But given the
4 fact that we have a height limitation, the cinemas are
5 effectively using up three floors.

6 If you assume for a moment in office space that
7 every floor creates a rent of somewhere between \$30 and \$40 a
8 square foot, that would mean cinemas would have to pay the
9 equivalent of \$90 to \$120 per square foot, both uneconomic
10 propositions.

11 Hence, there are very few -- there are none to
12 date multiplex cinemas in the city, and I hope that that
13 answers the question.

14 CHAIRPERSON REID: All right.

15 MR. ALTMAN: Chairman Reid, may I just add one
16 thing before I go just as a clarification, and it may help the
17 board just in terms of information along the lines of what you
18 were asking.

19 I am looking at the Loews letter, and something
20 in terms of the environment that I just wanted to attest to is
21 the changing -- or what has been the rapidly changing
22 environment for cinemas across the country.

23 And what this letter is attesting to is how the
24 nature of the financing has started to shift, in terms of what
25 cinemas are looking for, and what they were willing to

1 undertake in terms of costs, and they are now shifting that.

2 And I can tell you that with other things that
3 the city is involved with, such as, for example, Gallery Place,
4 we are also encountering similar difficulties, and that has
5 triggered a rethinking in terms of the project mix.

6 I mean, it is still moving forward, but it is
7 requiring everyone who is involved in trying to bring mixed use
8 projects to fruition, which are very difficult projects to do
9 to begin with, and now with the changes in the cinema industry,
10 and as just was pointed out with the number of bankruptcies, is
11 that they are much more cautious in looking for an absorption
12 of risk, either in this case on the part of the private
13 developer, and in other projects where the city is involved on
14 the part of the city.

15 I think that I would just point that out as kind
16 of a -- in some ways I am trying to provide sort of an
17 objective analysis of this from our own experience, and that
18 what is forced is that this very difficult and practical
19 hardship has forced a rethinking of new solutions.

20 I think in their case what they are proposing is
21 a creative solution to this practical difficulty to counter
22 this financing that has been shifted to them, is to both have a
23 residential provide what I think would be a benefit of both
24 getting the residential and the cinemas.

25 But I wanted to share that with you because it is

1 an environment that we are all operating in, and how we all
2 creatively solve that to bring that benefit to the city.

3 In this case, we actually have one that would
4 bring housing to the city, and in other cases we often have to
5 do things that we necessarily did not want to do, and we
6 contemplated really having a mixed use project, and that is
7 kind of a day to day environment that is very much in flux. So
8 I thought I would share that with you before I go.

9 CHAIRPERSON REID: That's interesting. Now, if
10 in fact --

11 MR. ALTMAN: Well, positively. Well, not
12 positively, but trying to make those projects even work really
13 is demanding all of the kind of creative energy, because I
14 think we all acknowledge the benefit of having cinemas in this
15 city, and the fact that we are underscreened, and want to see
16 those screens come to this city.

17 CHAIRPERSON REID: Now, if in fact Loews is not
18 going to occupy this space as was expected, then what happens
19 to that space?

20 MR. LANIER: I think the only change in the
21 cinema operators attitude, and as Mr. Altman pointed out, is
22 what financial risks are they willing to absorb. They still
23 are producing movies and they want to show them.

24 They just don't want to pay for their own movie
25 theaters anymore, and so they are willing to operate the

1 theaters, Loews is, and is committed to operate them for a fee.

2 CHAIRPERSON REID: Oh, wait a minute. Maybe I
3 didn't understand. You are saying -- because when I read that
4 Loews had filed bankruptcy, and so you are saying that Loews
5 filed bankruptcy, but it is still operating.

6 But the only difference is that rather than
7 expending their own funds that they really don't have anymore,
8 now they want it to be absorbed by you; is that correct?

9 MR. LANIER: Correct.

10 CHAIRPERSON REID: So Loews is still coming?

11 MR. LANIER: Loews is still coming, and Loews is
12 still operating in approximately 900 theaters in the country.

13 CHAIRPERSON REID: So now you have to figure out
14 how you can afford Loews?

15 MR. LANIER: Precisely, and Loews is no different
16 than most other cinema companies, most of which are currently
17 in bankruptcy, and those which are not in bankruptcy are
18 operating as if they were under bankruptcy.

19 In essence, no cinema -- bankruptcy is simply a
20 business tool for these people, and they will emerge from
21 bankruptcy within a period of time, and will be again healthy
22 movie theaters. The simple change in the movie industry has
23 been that they are using other people's money and not their own
24 money anymore.

25 They are exhibitors. Their money goes to produce

1 cinemas, and then they earn a fee for operating movie theaters.

2 That is the major change. So they want us to build the movie
3 theaters, which is an expenditure we did not contemplate in our
4 economic package, nor would I say most other people in the
5 United States at this point.

6 CHAIRPERSON REID: Now, wait a minute. Maybe I
7 am missing something. But are you saying that Loews is pulling
8 out, and then you have to absorb what Loews didn't contribute
9 in the first place, and what is the benefit to the development?

10 MR. LANIER: We will receive now instead of
11 Loews, we receive the revenues from the people visiting the
12 cinemas and paying \$8.00 or \$7.50 per ticket. But we also
13 absorb the risk that --

14 CHAIRPERSON REID: Oh, so you are going to
15 basically take over the management? What I am missing is what
16 is the point?

17 MR. LANIER: In essence, why don't we compare the
18 cinemas to a hotel. We will be building a hotel, and Marriott
19 would be operating it, and after Marriott had received their
20 fee, and paid for all the expenditures, to the extent that the
21 hotel made a profit, we as an owner would receive it. Nothing
22 else is happening.

23 CHAIRPERSON REID: So you are saying basically
24 that it is operating primarily as the anchor or it will attract
25 people to that facility to utilize the other services, and the

1 facilities that are being provided there, and that's the
2 benefit?

3 MR. LANIER: I don't believe that the cinemas are
4 acting as an anchor. They are simply a user of space.

5 CHAIRPERSON REID: No, somewhere in this
6 voluminous amount of material -- and I think it was in the
7 Office of Planning's report -- it did specify that they
8 considered the Loews theater to be a very prominent and very
9 significant part of this whole development was my
10 understanding.

11 MR. FONDERSMITH: If I may comment on that. We
12 consider the theater, the cinema, important, because it will
13 bring life and activity to the Georgetown waterfront, and
14 attract people down to K Street to the waterfront.

15 You have -- I mean, if you look at the table, and
16 these are all obviously good uses, the residential is 22 units
17 and going up to 28 with the variance, with the height. The
18 hotel is 91 rooms.

19 The retail is a relatively -- other than the
20 theater space, is relatively small. So those things are all
21 attracting people on their own in those numbers.

22 Then you look at the theaters with almost 3,000
23 seats and turning over several times a night, that will bring
24 a lot of people to that section of the waterfront, and that is
25 what we meant about the value of the cinemas to the area and to

1 the city, and in taxes, and so on.

2 CHAIRPERSON REID: And then finally my last
3 question is that given the response from Mr. Fondersmith, that
4 when the decision was made to change from the smaller arts kind
5 of theaters, to the larger multiplex theaters, did you present
6 that change to the ANC or to the community?

7 MR. LANIER: That change was made in 1997, and
8 since then we have presented at least 10 times to both of those
9 areas --

10 CHAIRPERSON REID: Okay. And they were basically
11 on board with that?

12 MR. LANIER: Correct.

13 SECRETARY PRUITT: Madam Chair, could I ask a
14 question for clarification?

15 CHAIRPERSON REID: Yes.

16 SECRETARY PRUITT: I am sort of on the same lines
17 with you about the theater. I want to be sure that I am
18 understanding this correctly. You are asking for an additional
19 floor in FAR to offset the money that was withdrawn from the
20 theater so that you can guarantee the bank that you have an
21 income stream to pay back their loan; is that correct?

22 MR. LANIER: That is the set of circumstances
23 which triggered this hearing, and I guess we are asking for an
24 area variance because we feel given the structure of the site
25 with our requirement to retain a lot of open space that we find

1 it difficult to place the use anywhere else on the site within
2 the height limit.

3 SECRETARY PRUITT: Okay. Then my other question
4 in follow-up would be that you are going to have a guaranteed
5 income stream since Loews will be renting, or that's what I am
6 trying to figure out. Will you have a guaranteed income stream
7 since it is not like the theaters have completely abandoned it.

8 They are just not giving you up front money, but
9 they actually will be deriving some income from them because
10 they will be using that space; is that a correct analogy?

11 MR. LANIER: Not quite, because under bankruptcy
12 law your ability to spend money tomorrow or to commit to spend
13 money over a period of time, both are difficult propositions
14 since you are illiquid. So you can't given the fact that you
15 have no money make a promise that you will have money in the
16 future.

17 And as a result, you cannot enter into a lease.
18 All Loews is willing to say is that we will operate the cinemas
19 for you in exchange for a fee. So the cash flow is going the
20 other way. We are now committing to Loews to pay them to
21 operate the movies.

22 SECRETARY PRUITT: But you would get any profits
23 over and above the fee that has been negotiated?

24 MR. LANIER: We would receive the income, yes,
25 and to the extent that there is any, we would receive it.

1 SECRETARY PRUITT: Okay. So at this point,
2 because of the situation, you may not be getting a positive
3 income. You don't know yet?

4 MR. LANIER: Correct.

5 SECRETARY PRUITT: And so you have a guaranteed
6 income that the bank feels comfortable with that they could
7 feel that you could repay your debt?

8 MR. LANIER: The bank feels more comfortable
9 because they know -- or one thing we do know is how to sell
10 condominiums, and how to build condominiums.

11 SECRETARY PRUITT: That's what I am saying. I
12 was wondering -- and so therefore the condominiums are really
13 what are going to subsidize in your view what you need to
14 subsidize so that the bank will feel comfortable because of the
15 uncertainty of the theater and the cinema issues?

16 MR. LANIER: That is correct.

17 SECRETARY PRUITT: Thank you.

18 CHAIRPERSON REID: Thank you. Any other
19 questions?

20 (No audible response.)

21 CHAIRPERSON REID: Your next witness.

22 MR. NETTLER: I have no other questions for Mr.
23 Lanier. But if you look at the large tract review as Mr.
24 Lanier said, which is an exhibit to our prehearing statement,
25 you will note there the reference made there to the change in

1 the theaters.

2 CHAIRPERSON REID: The large tract review; where
3 is that?

4 MR. LANIER: That is Exhibit Number --

5 CHAIRPERSON REID: In your submission?

6 MR. LANIER: Yes, it is in the prehearing
7 submission, and it is Exhibit H. And this was a report by the
8 Office of Planning following meetings before the ANC and public
9 meetings which referenced a change in the theaters that was as
10 Mr. Lanier described.

11 So this has been a longstanding situation that
12 was ultimately then became a part of a public hearing at
13 Grace's Church for purposes of the Department of Housing and
14 Community Development ultimate acceptance of the contract and
15 the project. So that changes were made a long time ago.

16 CHAIRPERSON REID: When did Loews file
17 bankruptcy?

18 MR. LANIER: Approximately 60 days ago; 45 or 60
19 days ago.

20 MR. NETTLER: I am just saying that the changes
21 in there are from the arts theaters, which was a smaller
22 project, and was the incinerator site alone to the larger
23 project, which was the multiplex that you referred to earlier.

24 There was a question that had been asked as to that.

25 CHAIRPERSON REID: Right. So the decision to

1 move to the larger multiplex was obviously not tied to the
2 filling of bankruptcy by Loews?

3 MR. LANIER: No.

4 CHAIRPERSON REID: All right. Are there any
5 other questions, cross-examination questions by the party or by
6 the ANC member?

7 (No audible response.)

8 CHAIRPERSON REID: Okay.

9 MR. NETTLER: Our next witness is Emily Hotaling
10 Eig. Ms. Eig has been accepted before as an expert
11 architectural historian before this Board, and we have
12 submitted her resume, and I would ask for her to be treated the
13 same.

14 CHAIRPERSON REID: Did you submit her resume?

15 MR. NETTLER: Yes.

16 CHAIRPERSON REID: Are you familiar with her Mr.
17 Hood or Ms. Hinton? I'm not. Where is the resume?

18 MR. NETTLER: It is in our prehearing statement,
19 and you will note on page 22.

20 CHAIRPERSON REID: Okay. Let me glance at it.

21 MR. NETTLER: I'm sorry, 29, excuse me. May she
22 begin?

23 (Brief Pause.)

24 CHAIRPERSON REID: I have no problem with the
25 admission of Ms. Emily Eig as an expert witness.

1 COMMISSIONER HOOD: No objection.

2 MEMBER HINTON: No objection.

3 CHAIRPERSON REID: Is there any objection from
4 any of the other parties?

5 (No audible response.)

6 CHAIRPERSON REID: Thank you very much. You may
7 proceed.

8 MS. EIG: Good afternoon. My name is Emily
9 Hotaling Eig, and I am a architectural historian and president
10 of EHT Traceries. I would like to begin by telling you about
11 the site and the historic resources that are associated with
12 it.

13 The largest, and the one that we are most
14 familiar, is the incinerator site. It was designed by the
15 noted Boston engineering firm of Metcalf and Eddy, a fine
16 example of the art modernence style that was interpreted for
17 industrial design specifically for Georgetown in 1932.

18 It is a large red brick and lime stone edifice,
19 and it is significant for its unique purpose built character
20 and form, including the prominent smokestack, as well as its
21 distinguished architectural design.

22 In an unusual interpretation of National Park
23 Service standards, it was deemed by the Historic Preservation
24 Review Board in the 1980s as contributing to the old Georgetown
25 historic district, although it is clearly a unique modern

1 property that could qualify as an individual landmark in the
2 national register.

3 The small brick yard hill house is a modest
4 double-wood framed house that was located on South Street, and
5 it was built for Robert Peters, who was one of the first mayors
6 of Georgetown, and it was built as rental property, circa 1802
7 to 1806.

8 Mr. Peters owned the entire square and this
9 building stands as one, if not the oldest wood frame and brick
10 nogging buildings in Georgetown. It is designated as an
11 individual historic landmark in the District of Columbia.

12 A modest two-story wood framed structure that we
13 called the Red House was built as an alley dwelling that was
14 built for speculative purposes in 1865 through '75. It has
15 been significantly altered in the 20th century, but it will be
16 returned to its site with the new construction.

17 In the mid-19th century a stone stable that was
18 located on Copper Swaith Lane, the fourth resource, was
19 converted to residential use in 1898, when a brick second story
20 was added. It also will be returned to its site.

21 These four properties -- the incinerator and the
22 three 19th century buildings -- which will be returned to their
23 site will be located in conjunction with the new construction.

24 The intention is to create a preservation precinct as we call
25 it, an area that will be surrounded by a large new construction

1 that will be compatible with the historic district.

2 The compatibility has been the intention of the
3 entire project, and all the reviews that Mr. Lanier has spoke
4 of have always been intended to maintain this.

5 The proposed height that is before you today will
6 also be designed with this compatibility in mind. It will not
7 have a negative impact on the historic resources of the site,
8 nor on the Old Georgetown Historic District.

9 The area that this project is within a distinct
10 area of the historic district. It is one marked by a steeply
11 sloped terrain, a waterfront character, and an original purpose
12 that was the focus of commerce and industry.

13 The project that is here is to serve special
14 consideration, for it is unlike the rest of Georgetown. The
15 waterfront is not like the part of Georgetown that is to the
16 north of M Street, and the additional height proposed here does
17 not take away from the unique character of this site, but
18 rather improves the architectural character of the new
19 building.

20 The change in design, and the building mass,
21 allowing for a more articulated volume, includes a modulation
22 of the roof scape forms and setbacks, as well as varied heights
23 from the street. Conversely, if the increase ensures the
24 completion of the project as planned, it will have a positive
25 effect.

1 This major new project will incorporate and
2 restore the landmark houses; two older alley dwellings, and the
3 incinerator itself. The project anticipates the historic
4 rehabilitation of the incinerator, the relocation of three
5 buildings back to their approximate sites, and the restoration
6 of the brick yard hill house.

7 It also is the project that will introduce
8 contemporary uses and dynamic city life into an area that has
9 been marked by abandonment and under utilization for more than
10 70 years.

11 In 1950, when the Old Georgetown Act was passed,
12 the waterfront, to quote the Commission of Fine Arts
13 publication, Georgetown Historic Waterfront, that was
14 originally published in 1968, and revised in 1974 and 1998, was
15 considered -- and I am quoting from this document -- an active
16 center of industry, and also profoundly unattractive.

17 The campaign to manage the future of this long
18 under utilized area of Georgetown met with great interest, a
19 host of approaches and a diversity of opinion of what its
20 future should be.

21 But in the time that has passed, it has resulted
22 in the development of a number of successful projects along the
23 waterfront, projects though that have not resulted in much life
24 to K Street.

25 The existing development surrounding this project

1 includes Washington Harbor, Jefferson Court, the Dodge Center,
2 the paper mill, flower mill, an office building at 3333 K
3 Street. These buildings are of a large scale, massing volume
4 and height.

5 Several are of recent construction, and all
6 represent a type compatible with industrial rather than
7 residential character of Georgetown. There are buildings that
8 are of a profile that follows the bold geometry of the 20th
9 century industrial architecture that is in keeping with the
10 1932 incinerator.

11 They are large strong forms often incorporating
12 earlier structures. They are built of solid materials,
13 generally employing brick, metal, and stone to form their mass
14 rather than the brick and wood of the earlier periods of
15 architecture that is more in the earlier sections of
16 Georgetown.

17 These structures are large and taller than their
18 commercial and residential neighbors above M Street, but they
19 are compatible to one another, to the waterfront, and to this
20 part of the historic district.

21 Specifically, this area is consistent with the
22 purposes of the District's Historic Preservation Act. The
23 addition that is proposed here will retain and enhance the
24 landmark building that is the brick yard hill house, and the
25 incinerator building, and encourage the adaptation of this area

1 for current use, as well as the restoration of the brick yard
2 hill house.

3 The increase in height is consistent with the
4 character of the continual response to new uses and
5 requirements that our historic districts face all over the
6 city, and it is not inconsistent with the Old Georgetown
7 district in this area, and it is not harmful to the historic
8 resources in its immediate environment.

9 In summary the proposed increase in height does
10 not harm the integrity of the historic district or the historic
11 resources. It is a tool that will retain, enhance, and adapt
12 the landmark brick yard hill house, by providing the initiative
13 and wherewithal for its restoration.

14 It will historically rehabilitate the
15 incinerator, and it will ensure that the project will remain
16 compatible with the character of the Old Georgetown Historic
17 District. Thank you.

18 MR. NETTLER: I have just a few questions. Ms.
19 Eig, can you tell the board where the brick yard hill house is
20 today?

21 MS. EIG: Right now it is sitting across the
22 street to the north on a parking lot.

23 MR. NETTLER: And do you know how it got there?

24 MS. EIG: Yes. It was moved with great care by a
25 professional mover from the site so that it would be protected

1 during the construction process of the new project.

2 MR. NETTLER: And it will be returned to the
3 site; is that correct?

4 MS. EIG: Yes, that is correct. There is -- as I
5 said, with great care, there has been a great effort made to
6 protect it and it will be moved back to its original location
7 at the appropriate time and restored.

8 Now, are you aware that a covenant was entered
9 into between -- that an agreement was entered into between the
10 National Capital Planning Commission and the Advisory Council,
11 and the Historic Preservation, and the District of Columbia
12 with regard to the treatment of the incinerator?

13 MS. EIG: Yes, I am.

14 MR. NETTLER: And was that pursuant to the
15 National Historic Preservation Act?

16 MS. EIG: Yes.

17 MR. NETTLER: And are you aware that there is a
18 covenant that was placed on the sale of the incinerator with
19 regard to its retention as part of this project?

20 MS. EIG: Yes.

21 MR. NETTLER: In your opinion, if the applicant
22 needed to utilize the site that is now occupied by the
23 incinerator or the brick yard hill house for the extra density
24 that he has described as necessary to subsidize the theaters,
25 would he be able to demolish the incinerator or the brick yard

1 hill house?

2 MS. EIG: He would not.

3 MR. NETTLER: Thank you. I have no other
4 questions.

5 CHAIRPERSON REID: Are there any other questions
6 from the board members?

7 MEMBER HINTON: I have one.

8 CHAIRPERSON REID: Okay.

9 MEMBER HINTON: What was NCPC's role in that MOA,
10 or what was the Federal interest? Why was NCPC involved?

11 MS. EIG: I believe that there is a programmatic
12 agreement that requires NCPC to take an active role in the
13 creation of the MOAs and that they serve in that role as a
14 signer of them.

15 And I think that Mr. Nettler actually
16 participates in that, and can tell you the logistics of that.

17 MEMBER HINTON: Okay.

18 MR. NETTLER: Actually, under Federal law and
19 District of Columbia law, NCPC must approve of the sale of ex-
20 surplus property of the District of Columbia, and since it must
21 approve a sale that is considered an undertaking under the
22 National Historic Preservation Act, which requires it to then
23 engage in the 106 process with the Advisory Council on Historic
24 Preservation.

25 MEMBER HINTON: So when it was mentioned earlier

1 that NCPC saw this project, is that the vehicle under which
2 they saw the transfer of land or the sale of land, and not the
3 proposed development itself?

4 MR. NETTLER: Well, it was to sell the land, but
5 with the understanding as to what the proposed development
6 would be. That was presented to NCPC at the time.

7 MEMBER HINTON: Okay. Thanks.

8 SECRETARY PRUITT: And have they seen the revised
9 design or will they?

10 MR. NETTLER: No, they are not required to
11 receive it. Well, actually, under the agreement that was
12 entered into the responsibility for doing that was delegated to
13 the District of Columbia.

14 CHAIRPERSON REID: Thank you.

15 MR. NETTLER: Our next witness is Shalom Baranes.
16 I did want to qualify Mr. Baranes as an expert in architecture
17 who has appeared before this board, the Zoning Commission, and
18 a number of other agencies of the District of Columbia, on
19 numerous occasions, and his resume is also a part of our
20 exhibits in the prehearing statement.

21 COMMISSIONER HOOD: Madam Chair, I have no
22 objections. He has testified in front of the zoning commission
23 previously.

24 MEMBER HINTON: I agree.

25 CHAIRPERSON REID: Okay. That's fine with me.

1 MR. BARANES: What I would like to do is start
2 by describing the site to you, and then hopefully in that
3 description you will understand what the unique aspects of it
4 are that has caused this practical difficulties.

5 CHAIRPERSON REID: If there are people i the
6 audience who wish to see this, you may come up so that you can
7 look at what he is basically going to be pointing to as he
8 gives his presentation. All right.

9 MR. BARANES: Anyway, this is showing the site
10 plan here and these two drawings are looking in different
11 directions. The drawing on the left here shows K Street at the
12 bottom, with Whitehurst above it, and then the river would be
13 just off the drawing. And Wisconsin Avenue runs up this
14 way on the left-hand side, and South Street, where we took our
15 measuring point, is the high end of the site, and it is shown
16 right here. This is Grace Church right across the street.

17 And then off to the right here we have 31st
18 Street. So we essentially have the full city block. And on
19 this other drawing, it is reversed, and again you are seeing
20 the river at the top of the drawing, and then South Street,
21 again where we took our measuring point, runs along here.

22 Wisconsin is there, and 31st Street is right
23 here. Now, as it has been mentioned several times, the site
24 has a fairly unique -- several unique aspects, one of which is
25 the change in grade from the north to the south.

1 We have about a 40 foot drop from here down to K
2 Street, and that has required a very extensive excavation, and
3 if any of you saw the excavation, which went on for close to a
4 year, if you remember that it was all solid rock. It was a
5 very difficult and very expensive excavation.

6 Now, it is very unusual in these excavations that
7 we have problems with both rock and water. We usually have one
8 or the other. Here we have both, and the reason that we have
9 water problems are because the hundred year flood plane level
10 of the Potomac River is about 7-1/2 feet above K Street.

11 And we occupy several levels below K Street, and
12 then we have retail, and a theater starting at the K Street
13 level and going down. And we are prohibited from placing any
14 sleeping rooms, such as residential units, or hotel units,
15 below the hundred year flood plane.

16 So what it means is that from elevation -- well,
17 roughly one floor, 7-1/2 feet above K Street, to the elevation
18 of the Whitehurst, which is about 3-1/2 to 4 levels above K
19 Street, we had a whole zone in there that we just couldn't
20 figure out what to do with when we started out this project.

21 It was a very, very difficult challenge for all
22 of us, and the owners came up with the idea of the movie
23 theaters. It was a great use for many different reasons, and
24 aside from all the urban planning reasons that you have heard,
25 architecturally it solved a lot of problems for us.

1 It essentially placed a large volume and it
2 created a podium on top of which we could build residential,
3 and hotel. If it weren't for those movie theaters, we actually
4 would not have been able to accommodate these two uses.

5 And what is interesting also about the hundred
6 year level flood plane is that it has been rising. When
7 Washington Harbor was designed about 25 years ago, or 20 years
8 ago, that hundred year flood plane was elevation 16. It has
9 since been redefined to be 17.5, 17.6 inches.

10 And we have had about four 50-year storms in the
11 last 15 years. So the water situation here has to be taken
12 very seriously, and it has introduced a lot of other expenses
13 to the project besides just dealing with the below grade rock
14 excavation.

15 We have to deal with keeping the water from
16 coming into the building in case a storm like that occurs. So
17 those are unique aspects that pose some difficulties.

18 Other unique aspects really had to do -- and I
19 hate to refer to historic properties as problems, but in fact I
20 think in the context of zoning that they qualify as problems.
21 We had to deal with the location of the incinerator and the
22 smokestack in the middle of the site, as well as the brick yard
23 hill house is what you see right here.

24 As well as two additional structures that you
25 don't see in this rendering behind the brick yard hill houses.

1 And we have moved those, as we mentioned earlier, across the
2 street.

3 But in order to be able to restore those and
4 incorporate them into the site, we had to crate them all, and
5 lift them up, and very slowly move them across the top of this
6 hill into this parking lot behind Grace's Church, and that is
7 currently where they are being stored.

8 And once we complete all of the new construction
9 here, we will pick them up again and wheel them across the
10 street to the locations that you see here.

11 Now, one of the interesting things if you look
12 carefully at these two drawings, is that you will see that
13 there is a difference between this part of the site plan here
14 where we have the brick yard hill house, and all new
15 construction around it, with bridges connecting over to the
16 incinerator.

17 This in fact was our original submission to the
18 Commission of Fine Arts and to the Old Georgetown Board. You
19 will see in this drawing that the -- and it is a little hard to
20 tell from where you are, but that the bridges are gone, and in
21 their place we have two historic structures right here.

22 So in response to these 15 reviews that we have
23 had from the Old Georgetown Board and Commission of Fine Arts,
24 we made several changes, one of which was the creation of this
25 historic precinct that actually -- and which I want to show you

1 in this drawing, as this is our current site plan that
2 corresponds to this one.

3 But we essentially created an historic precinct
4 that you see outlined by this black line in the middle of our
5 site, and in it we left the smokestack and the incinerator.

6 But we also then wound up placing the brick yard
7 hill houses back in their original locations, and then adding
8 these two historic structures in locations that are close to
9 their original locations, but not exactly.

10 And we wound up creating all of this open space
11 around these historic structures so that they could be
12 understood basically in a fashion that is similar to their
13 original context.

14 The incinerator you might recall many years ago
15 was surrounded by a large green area, or which was sometimes
16 green. It was usually brown. But it was a large open area,
17 and it was very important to the Commission that we at least
18 retain that aspect of it so that it could be understood in
19 relationship to its original context.

20 The Commission was also concerned about the view
21 of the incinerator and the smokestack from other parts of
22 Georgetown, from other city streets as you walked around the
23 site.

24 So, for example, they felt -- and there used to
25 be an alley along here, from Wisconsin Avenue, almost on axis

1 or just a little bit off axis with the smokestack. And our
2 initial proposal had anticipated closing most of that.

3 The Commission asked us to reopen that so that
4 someone walking down Wisconsin Avenue would essentially be able
5 to look to the left and see the original incinerator, and I
6 have a drawing that shows that.

7 This is the Whitehurst, and this is the river,
8 and we are going uphill here along Wisconsin Avenue here, and
9 again the Commission was very concerned that someone walking
10 down Wisconsin Avenue down the hill would in fact be able to
11 look up and see the incinerator through our building.

12 So we wound up dividing this entire two separate
13 portions. There were also concerns that --

14 MR. NETTLER: If I could interrupt you for a
15 minute. Wasn't that also a request made by the Historic
16 Preservation Review Board?

17 MR. BARANES: Yes. I am going to -- you're
18 right. I will just abbreviate and refer to the Commission, and
19 I will be referring to the Preservation Review Board or the Old
20 Georgetown Board is that is okay. It was through the reviews.

21 They were also concerned that we were perhaps
22 crowding the brick yard hill houses with the new construction.

23 So that in our revised proposal, we wound up clearing this
24 whole area out as you see here, and essentially substituting
25 the small historic structures for the new construction we had

1 been showing along that site.

2 And I am showing you all of this basically to
3 make the point that a large part of this site was really not
4 useable to us for new construction. Not only did we have a
5 height limit, we were limited at the ceiling of the -- the site
6 essentially had a ceiling on it.

7 We were also limited at the bottom because of the
8 hundred year flood plane, and in addition to all of that we
9 also were limited because of these various view sheds and this
10 historic precinct that we had to create within the site.

11 These are all constraints that basically came
12 with the site, and I think are fairly unique features. In
13 addition to everything that I have described here, I also do
14 want to mention that we were very cognizant of the presence of
15 Grace's Church right across the street.

16 I am not sure if that is an individual historic
17 landmark, but it certainly could be designated one, and we felt
18 that it was important to keep the scale fairly low along here
19 in deference to the church.

20 So that South Street would retain pretty much the
21 historic low scale character that it currently has. And I
22 actually have not really focused on the Whitehurst very much.
23 I mean, that is another man-made feature in addition to all
24 these natural features that I think presented a real challenge
25 to us.

1 As I said earlier the -- well, let me show you
2 this building section. In this lower drawing here, you see the
3 Whitehurst, and this is the Potomac River, and the Whitehurst,
4 and the smock stack, and then South Street is right up here.

5 And again you can see that drop all the way down
6 here, but what this drawing and the drawing above demonstrates
7 is how much of the project has to be built underground into the
8 rock in order to respect the ceiling that we have, the 40 foot
9 height limit.

10 But this whole area below the Whitehurst here and
11 adjacent to the Whitehurst, was really not useable to us for
12 all the reasons that I have mentioned. Plus, the marketing
13 issues of trying to sell condominium units next to the highway.

14
15 And our solution to that again was to set them
16 back away from the Whitehurst, making that strip of the site
17 unusable to us, and then getting them about a floor -- about
18 close to 10 feet -- above the road bed of the Whitehurst so
19 that people living there would at least -- they would be able
20 to hear the cars, but not necessarily see them.

21 So that is another restriction that we had to
22 deal with. What I didn't describe was the various uses that we
23 have here, and let me just quickly go through those here with
24 you.

25 Our whole approach to this site was to make an

1 effort to develop the whole block to give it the appearance of
2 having a series of buildings rather than a single large
3 building.

4 It goes back to your question earlier about the
5 connection. We had zoning pressure to really treat this as a
6 single building, but I think we had a preservation and an
7 aesthetic pressure to make it look like multiple buildings.

8 And we were able to comply with that from, and
9 from a zoning standpoint we are a single-building. Everything
10 is connected, and from a visual standpoint, I think we were
11 fairly successful in treating this visually as a series of
12 multiple separate buildings.

13 Now, the uses along South Street here are
14 primarily hotel uses, and restaurant uses. The main entrance
15 to the hotel will occur through the front door of the
16 incinerator here. So we are in essence reutilizing that
17 building. We are bringing it back to life.

18 You will be able to walk into the incinerator and
19 then essentially go down to a level which connects across the
20 whole site below grade to get you to the rooms on the Wisconsin
21 Avenue side, and then in the other direction to the rooms on
22 the 31st Street side.

23 And I think that is a wonderful use of the
24 incinerator. It is essentially a hotel lobby. Now if you were
25 to go up to and enter the incinerator and move straight ahead,

1 you would see the public restaurant.

2 So we have continued to retain that use in the
3 project. So between the incinerator and the theater lobby down
4 below, we have essentially invited the public into both sides
5 of the project, which I think is very important to really make
6 this a vibrant portion of Georgetown, and to weave these
7 buildings back into the community.

8 So here we have the hotel, and this is a hotel,
9 and then everything stretched along K Street there is
10 residential above the Whitehurst, and then either theaters, or
11 retail, or parking below the Whitehurst, and that is the way
12 that the whole site is divided up.

13 These diagrams basically focus on the change
14 that we are asking for in this hearing today.

15 MEMBER HINTON: Could you identify those plans
16 and titles for the record?

17 MR. BARANES: Sure. On the right we have the
18 roof plan, and on the left we have the K Street elevation, and
19 the South Street elevation. We are essentially proposing to
20 add one floor just to the south side of the site, which is less
21 than 25 percent in terms of coverage.

22 And that additional floor is shown right here.
23 That is the additional floor that we are asking for. When we
24 originally presented this project to the Old Georgetown Board,
25 we had the additional floor on both the east side and the west

1 side, extended out into the yellow area here and the yellow
2 area here.

3 And then we also had it extended into the view
4 shed of the smokestack, both here and here. This is a view
5 shed of the smokestack as seen from the south, and seen from
6 Rosslyn, and as seen from across the river.

7 In response to comments that were made to us by
8 the Old Georgetown Board, we cut the building back here and
9 here. The Old Georgetown Board was not concerned about this
10 setback or this setback.

11 It was only after we presented it to the Old
12 Georgetown Board and the Citizens Association of Georgetown
13 expressed a concern about the setbacks along 31st and Wisconsin
14 Avenue, that we then went back and added this setback here and
15 here.

16 And we did take those back to the Old Georgetown
17 Board, and so I want to be clear that the board never asked us
18 to introduce these two setbacks. When they approved it, it was
19 conditioned on these two setbacks.

20 And in the roof plan here, you can see in the
21 plan how much area that involved essentially removing from our
22 original proposal. We removed the area here, and here, in
23 response to the Old Georgetown Board.

24 And then we removed the area here and here in
25 response to the comments made by the Citizens Association of

1 Georgetown.

2 MEMBER HINTON: Could you clarify, because the
3 transcript is only going to reflect here and here, perhaps you
4 could describe that in a way that will show up in the
5 transcript to reflect what you are referring to.

6 MR. BARANES: Okay. All right. Let's see.
7 Let me go over that again. On the setbacks that are shown in
8 the roof plan on 31st Street and on Wisconsin Avenue, were made
9 in response to the comments received from the Citizens
10 Association of Georgetown.

11 The Old Georgetown Board had approved the project
12 initially without those setbacks being incorporated. The Old
13 Georgetown Board, however, as a condition of their approval,
14 had asked us to introduce setbacks adjacent to the smokestack
15 in that view shed, both directly to the east here, and directly
16 to the west adjacent to the smoke site as I said. Do you think
17 that will cover it?

18 MEMBER HINTON: Yes.

19 MR. BARANES: Good.

20 MR. NETTLER: Before you go. Since the changes
21 to 31st Street and Wisconsin Avenue, the setbacks that Mr.
22 Baranes referred to, were done after the prehearing submission
23 was made in response to the comments of the Citizens
24 Association of Georgetown, and I want to hand up those diagrams
25 that he is referring to so that you will have that as part of

1 the record.

2 And they further show that the area variance
3 requests have been reduced from what was initially applied for
4 because of those reductions in the area that is made by the
5 setbacks.

6 MR. BARANES: I now want to show you -- I am
7 going to show you two pairs of elevations. These are partial
8 elevations along K Street, and they both focus on the eastern
9 side of the property.

10 What you are seeing in these is the smokestack on
11 the left-hand side of each drawing, here and here, and you are
12 seeing the entrance to the theaters, and so that is that view
13 shed looking towards the smokestack.

14 And in the drawing on the right, you are seeing
15 applied to it an indication of the location of the Whitehurst
16 Freeway. The difference between these two drawings is
17 essentially the 10 feet, 8 inches, that we are here requesting
18 approval for.

19 The drawing on the left indicates the project as
20 it was approved by the Commission of Fine Arts and of the other
21 boards, and the drawing on the right indicates the project with
22 the 10 feet, 8 inch addition that you see right here.

23 Now, I have to tell you that these two drawings
24 and the next two do not show the setbacks that I just referred
25 to in yellow. So in fact we have cut this corner back here, as

1 well as here, in response to the Citizens.

2 MR. NETTLER: Now, that is the 31st Street side
3 that you cut back?

4 MR. BARANES: Yes, 31st Street is right here,
5 on the right-hand side of the drawing. Okay. This is the rest
6 of the K Street elevation, and this would be Wisconsin Avenue
7 on your left in both instances, and again the drawing on the
8 left is a partial elevation that indicates the project as it
9 was approved, and the Whitehurst would essentially be located
10 about three feet below the top of the stone wall that you see
11 running along here. That is the location of the Whitehurst.

12 And this is the same drawing with the additional
13 floor. You can see that there are four floors shown right
14 along the left-hand side of the drawing in the bay, and we now
15 have four, whereas before we had three.

16 And so that is the impact. And also I want to
17 note that these two drawings do not show this whole area carved
18 away. This is the area at the top along Wisconsin Avenue as we
19 have indicated in our most recent proposal.

20 Now, I want to conclude by showing you these two
21 drawings. The drawing on the left is labeled, "K Street
22 Elevation," and it shows in elevation on a small scale the
23 buildings starting at 34th Street, and going all the way over
24 to Thomas Jefferson in profile as seen as from across the
25 street.

1 Our project with the smokestack is indicated in
2 this area right here. When we went through our 15 reviews at
3 the Old Georgetown Board and Commission of Fine Arts, one of
4 the issues that was very important was the presence of our
5 building in the context of these taller buildings along K
6 Street.

7 And it was noted -- we presented it and the
8 Commission spent some time discussing this, and agreed with us
9 -- that you essentially have a condition here where the
10 buildings on the west side of K Street are quite tall.

11 And they start to drop down as you move to the
12 east. The waterfront center right here is at an elevation of
13 132, and that is to the top of their penthouse.

14 The building where our office is, which is right
15 here, which is the paper mill, without the penthouse, it is at
16 105 feet, and then there are some lower buildings, but still
17 fairly tall buildings as you move towards 34th Street.

18 But basically what happens is that everything
19 starts to drop as you move to the east, and it was felt that
20 our building in a sense filled in a missing tooth, and it
21 really worked well with that stepping down to the east.

22 Our main roof elevation is at 105, and our
23 penthouse is at 117. So you can see that we are still below
24 this large block of a building. We are more than a floor below
25 the height of that building.

1 The series of photographs that you see on the
2 right show several things, and of course you are seeing a view
3 of the site, and these four here, primarily from across the
4 river. But you can see what we have done here.

5 We have outlined our building in two colors; in
6 yellow along there, and then I don't know if you can see that
7 white line right below it, but -- well, you can't see it.
8 Okay.

9 The yellow line indicates a profile of the
10 building, and the white line shows the profile of the building.

11 So we are trying to indicate the difference in terms of the
12 building when you look at it from across the river.

13 And that is the view down 31st Street, and you
14 can see that the difference, and there you are looking down
15 Wisconsin Avenue. And I know that a concern has been raised
16 over and over about the extent to which our building would
17 block the view of the Potomac as you go down Wisconsin Avenue.

18 The fact is that if you build anything on that
19 site more than two stories that it will block the view of the
20 Potomac. The additional four really do not impact that issue
21 at all.

22 And then I just want to read to you a couple of
23 statements that were made in the Citizens Association of
24 Georgetown letter to you. On the second page -- and I will
25 just read from it. This is one paragraph from the bottom, the

1 second sentence.

2 It says that the public space in the middle of
3 the project that was considered by the community and the D.C.
4 Council could be a major public amenity has been all but
5 eliminated.

6 I don't quite understand that. I have to say
7 this. That the space that they are talking about actually has
8 gotten larger since we started the project. So I can't
9 understand whether this is in reference to what the site used
10 to look like before anything that was proposed for it.

11 But I do want to make the point that in fact that
12 that precinct around that incinerator, that open space precinct
13 has increased in size from our initial scheme.

14 The next sentence goes on to read that the
15 restaurant at the top of the existing incinerator building has
16 been eliminated. Now, it is true that when we initially
17 proposed this project that we might place a restaurant on the
18 top portion of the incinerator, and that we were going to build
19 a new floor.

20 And actually everybody liked that because it
21 would be a public amenity, and as we went through the project
22 what became very important in the approval was the retention of
23 that large open space inside the incinerator.

24 Although the interior of the incinerator is not
25 designated historic, it was stated over and over that you do

1 understand that space from the outside as you look through the
2 large windows.

3 There was a real interest in seeing all of the
4 steel trusses up there and all of that work, and keeping that
5 space open. So we took the restaurant and we dropped the idea
6 of having the restaurant at the top, and we put the restaurant
7 down below on one of the existing levels.

8 Let's see. The next sentence is that it says
9 that the important setbacks from adjoining streets have been
10 considerably reduced, and again I am not sure, but perhaps you
11 could clarify that, or clarify it later, because we actually
12 have increased the setbacks as far as I am aware of. So that
13 concludes my testimony and I will be glad to take any
14 questions.

15 CHAIRPERSON REID: Board Members.

16 MEMBER HINTON: Could you please clarify for me,
17 because it is unclear, but I thought I had understood the
18 zoning regulations to say that building elements or building
19 masses above the ground that are separate cannot be considered
20 one building if their only connection is underground.

21 So could you explain that? I don't know or don't
22 see that your buildings are connected above grade, but maybe
23 you are using a different definition.

24 MR. BARANES: Grade is relative on this site.
25 Because we have the hill, under the zoning regulations, you can

1 actually look at the area, say, halfway down Wisconsin Avenue
2 as being above grade, and if you take a section through the
3 site at that elevation or that plan, everything is connected.

4 Maybe I can give you another example. If you are
5 on a flat site, let's say, and you were building a skyscraper,
6 you might start out with a very large base and go up, and then
7 at some point, at the 30th floor, you might remove the middle
8 and essentially go up with two towers.

9 So you have kind of a U shape. You have two
10 towers at the top sitting on a common base. Now, that is
11 clearly a single building, even though it is expressed as two
12 buildings at the top.

13 That is exactly what we have here, and because
14 the area in the skyscraper, for example, below or before the
15 break of the two towers, we have an area like that that is
16 essentially our podium, which is above grade.

17 MEMBER HINTON: Can you tell me what level that
18 is at? I mean, how do you count the levels on this building?
19 Do you start at K Street?

20 MR. BARANES: Well, we use elevations above sea
21 level to refer to the levels, as opposed to floor levels.

22 SECRETARY PRUITT: Could you possibly illustrate
23 it in one of the sections through?

24 MR. BARANES: Sure. Let's look at the
25 elevation on the left, for example. Take this floor level

1 right here. So from this point up, we are above grade. So if
2 you were to take this elevation and slice across the whole site
3 at that elevation, everything would be connected.

4 I mean, that is the analogous portion of this
5 project to the skyscraper base example that I was describing.

6 MEMBER HINTON: Okay. And is that -- the
7 drawings that I have indicate like a level negative one. What
8 level would that be? Then I have a level plus one, and is
9 there a correlation? So, that is level minus one.

10 MS. JOHNSON: That is level minus one, and that
11 is where the building is --

12 MR. BARANES: Ms. Johnson is going to be
13 testifying right after Mr. Baranes, and so she can get into
14 that issue.

15 MEMBER HINTON: That's fine. Thank you.

16 MR. BARANES: Conceptually is it clear how we
17 are one building?

18 MEMBER HINTON: Yes. Thanks.

19 CHAIRPERSON REID: Okay. This is for you, sir,
20 and my question is directed to you. In the building where the
21 movie theaters will be, can you back up and show me where the
22 movie theaters are going to be located?

23 MR. BARANES: The movie theaters are located
24 under this whole portion of the site, and this portion of the
25 site, and this portion of the site. So actually this is the

1 entrance to the movie theaters at the K Street level, and then
2 this whole area here has movie theaters, and then they wrap up
3 around here.

4 Actually, we have a plan that shows them.

5 CHAIRPERSON REID: Could you point them out?

6 MR. BARANES: Okay. This is the smokestack
7 right here, and that is the entrance. Robert, if you could
8 point to the entrance.

9 (Brief Pause.)

10 CHAIRPERSON REID: Okay. Now, my question is
11 that this is retail on the first level, correct?

12 MR. BARANES: We have some retail here at the
13 corner, and then most of the retail is up here.

14 SECRETARY PRUITT: Could you explain that for the
15 record.

16 MR. BARANES: We have some retail just to the
17 east of the entrance to the theaters, and then we have retail
18 running down Wisconsin Avenue and turning the corner on K
19 Street.

20 CHAIRPERSON REID: Okay. But it is all first
21 level or ground level?

22 MR. BARANES: Yes. It keeps stepping because
23 the grade keeps changing, but it is all ground level retail.

24 CHAIRPERSON REID: Okay. And at this point, the
25 way that it is set out, can you get from this part over here to

1 this part over here? Is that where the traffic flow
2 circulation is?

3 MR. BARANES: Well, there are corridors and
4 stairs that will allow you to traverse across the site this
5 way, but the public -- the intent here is to keep the public
6 that is coming into the theater focused down on K Street, and
7 then to have the various populations that use either the hotel
8 or the residential, focused up here on South Street.

9 SECRETARY PRUITT: Could you go from South Street
10 to K Street, north to south?

11 MR. BARANES: The public cannot do that.

12 CHAIRPERSON REID: So if I were going to a
13 theater, I would either come this way and go over here or over
14 here, or I would come in over here and come into this theater
15 here?

16 MR. BARANES: No, all the theaters are entered
17 through here, the ticket lobby.

18 CHAIRPERSON REID: That's what she just asked
19 you, if in fact you could go from K Street over to -- well,
20 isn't this over by South Street?

21 SECRETARY PRUITT: No, what I asked was could you
22 go from the hotels on South Street to the theater from the
23 public entrance on South Street?

24 MR. BARANES: Through the building to the
25 theaters?

1 SECRETARY PRUITT: Correct.

2 MR. BARANES: No, we are going to make people
3 walk around. Now, we did put in a stairway along the view shed
4 here. So there is a public path with a stairway that will
5 allow you to cut through the site when the gate is open.

6 CHAIRPERSON REID: Okay. All right. And earlier
7 I had made a comment that somewhere I had seen it, and I have
8 to apologize, because I said the Office of Planning report, but
9 it was basically in the letter from the Director of Housing and
10 Community Development, Milton Bailey, in which he said that the
11 MGB has been building for the past year the mixed use with a
12 combination of uses enumerated above, a 2,900 multi-theater,
13 and a movie complex is the major commercial retail anchor for
14 the project.

15 MR. BARANES: Are you questioning whether the
16 theaters --

17 CHAIRPERSON REID: Well, I am basically just
18 ascertaining the prominence of the movie theaters as a part of
19 the whole project, and trying to just get some perspective as
20 to what in fact he was referring to.

21 And then it says that MGD will be most likely be
22 bearing the cost of the movie theaters in tenant build out and
23 will be leasing the movie theaters at least initially at below
24 market rates to ensure the presence of the movie theaters in
25 the project.

1 And that was a basis for making a case for why
2 the additional FAR was needed. I am just trying to try to pull
3 that together. So then initially MGD will be subsidizing the
4 movie theaters, and then what? After a period of time, I
5 suppose, they will be able to increase that amount and that the
6 project would be feasible?

7 The whole idea that I am really grappling with is
8 this. If you are saying that the practical difficulty is
9 economic, and that as a result of the loss or the lack of
10 profitability of the project, because of the fact you now have
11 to subsidize the movie theater, then that is in relation to
12 what?

13 In other words, the practical difficulty is the
14 loss, but what is the loss? In other words, you have to be
15 able to -- if you are going to make a case of practical
16 difficulty based on loss, then you have to be able to
17 demonstrate what in fact the loss is. Is it without that that
18 the project is just completely infeasible, or is that it is
19 less feasible, or less economically viable?

20 MR. LANIER: We are now faced with the following
21 situation. We need to demonstrate to a third party, the
22 construction lender, that we have sufficient funds to complete
23 the project. Otherwise, they don't want to lend you the money
24 since they don't want to be secured by an uncompleted project.

25 With the bankruptcy filing of Loews, we are

1 missing \$25 million worth of capital, plus we are missing a
2 reliable income source against which the bank was lending;
3 namely, the lease.

4 CHAIRPERSON REID: I understood that, but what I
5 don't understand is -- my question is what about the other
6 portions of the project, the other residential, and the hotel,
7 and the retail, that is not sufficient to offset, is that what
8 I am understanding you to say?

9 MR. LANIER: We will never get to the hotel and
10 the residential because we will not have a construction loan
11 allowing us to even build it.

12 CHAIRPERSON REID: Okay. Very well, but my
13 question is -- that was my whole question, that the point is
14 that the other parts of your project are not significant enough
15 to offset the loss of the movie theaters in order for you to
16 get your financing?

17 MR. LANIER: That is correct.

18 CHAIRPERSON REID: And that is what you are
19 contending to be the practical difficulty?

20 MR. LANIER: I believe the practical difficulty
21 in this case is that we have no other area on the site which to
22 utilize to increase density. So that we need the only area
23 that we can go, which is height.

24 And that is the practical difficulty, and that
25 encumbering the site with all the historic aspects, and let's

1 call it the historic corridor.

2 CHAIRPERSON REID: I think we are saying the same
3 thing, that you need the FAR to put the additional residential,
4 that would then substitute for the loss that you incurred as a
5 result of the bankruptcy of the Loews Theaters.

6 MR. LANIER: Correct. All right.

7 MR. NETTLER: If I might just ask Mr. Baranes
8 some follow-up questions from the ones that you have just
9 raised. Mr. Baranes, if the incinerator, and the brick yard
10 hill houses, and the red house, and the Copper Swaith Alley
11 view shed were not or could be removed, could you subsidize the
12 theater and therefore go forward with the project and make the
13 project feasible by developing those other portions of the site
14 with additional FAR within the zoning regulations?

15 MR. BARANES: Yes, you could.

16 MR. NETTLER: And could you explain how it is
17 that the -- and particularly with regard to the incinerator,
18 how the volume of the incinerator takes up unusable FAR that
19 precludes you from developing the site consistent with the
20 zoning regulations to accommodate that problem?

21 MR. BARANES: The incinerator is approximately 40
22 feet high, and it is a large volume. It is a large cube of
23 space. If that building were not there or if that building
24 were not historic, we would essentially be able to take that
25 cube of space and build 3 or 4 floors in that 40 feet and get

1 the income, capture the income from all of that.

2 And the project would not look any bigger than it
3 looks today. It would not be any taller or not be any wider.
4 but because the building is historic and we are not inserting
5 those floors in there, that volume of the site is essentially
6 not available to us.

7 CHAIRPERSON REID: Well, I think that is a given.

8 We very easily can ascertain that, and that the constraints on
9 the site imposed by the Historic Preservation impedes the
10 ability to be able to use the site to its fullest utility.

11 And that is what has caused us to be here today.

12 Now, when you went to the Historic Preservation, did you try
13 to get any kind of concessions or any kind of -- well, any type
14 of variance waivers, or anything like that?

15 MR. BARANES: Yes.

16 CHAIRPERSON REID: In order to not have to add to
17 the FAR, or add to the height, which basically -- well, one
18 constraint puts you in another constraint, in essence, because
19 here you are today asking for the height and additional FAR,
20 which you are now still facing opposition to because of the
21 perceived blocking of the waterfront or the vista.

22 MR. NETTLER: We requested approval for the
23 demolition of a couple of these very small historic alley
24 structures and we were denied. We were told that we had to
25 restore them, and we were allowed to move them and bring them

1 back.

2 But essentially had we been granted permission
3 to demolish those, we would have had another part of the site
4 available to us for FAR. We couldn't get it.

5 SECRETARY PRUITT: Madam Chair, I have a question
6 for clarification. Because this was an undertaking, you had to
7 go through the advisory council. Wasn't this all discussed in
8 the MOA and then determined what you could do and could not do
9 with the historic structures, which then sort of gave you your
10 constraints for your site?

11 MR. NETTLER: Yes, we worked with -- well, only
12 partially, because you will remember the MOA only concerns the
13 incinerator site, because that is the only --

14 SECRETARY PRUITT: So it did not include the
15 brick house?

16 MR. NETTLER: No. Well, actually, there was a
17 provision of the agreement, because it was understood at the
18 time that we were attempting to do this, that if we were to
19 acquire the rest of the site that we did have to treat the rest
20 of the site in accordance with the Secretary of the Interior's
21 standards.

22 And so that's where the review by the Historic
23 Preservation Review Board came in initially. So we did have
24 that constraint, but it was not complete at the time that the
25 advisory council saw it, and so they made -- they created a

1 process to deal with that situation.

2 SECRETARY PRUITT: Thank you.

3 CHAIRPERSON REID: And then my final question is
4 if in fact -- let's go back to 2 or 3 years ago when you
5 initially made your application, or you got the RFP for this
6 particular development, and it was to house smaller theaters.
7 What was the reason why -- I mean, would that not have been
8 feasible to have -- if you gave less space to the theaters,
9 then you could have given more to the residential, and perhaps
10 be able to achieve the same thing?

11 MR. BARANES: The problem with developing just
12 that half of the site is that we could not accommodate the
13 parking requirements for both the theater and what the
14 community was asking for.

15 Well, not the community I should say, but the
16 District of Columbia. Like Mr. Lanier, I have been involved
17 with this project for about 15 years, and I recall when this
18 was initially designed for a different client.

19 The RFP at that point required that I think we
20 provide 250 parking spaces above the zoning requirement. So
21 under that scenario, we would have had to provide seating or
22 rather parking spaces for the theater, for the residential, and
23 any other uses that we put up there.

24 And then on top of that 250 more spaces -- and
25 that's why the project went nowhere after a developer was

1 selected. You know, I think one other point to consider here
2 is that we in effect have spent enormous resources building
3 this single purpose space, the theater space, which we can't
4 figure out what else to do with it.

5 You know, it was very, very expensive to build,
6 and in very large volumes, and excavated out of rock. You
7 know, had all this happened say three years ago, then we could
8 have redesigned the whole project and put the parking that we
9 are showing now on the west side, and we could have flipped it
10 over to the east side, and we could have used up that space.

11 But in essence the owner here has invested an
12 enormous amount of money building a single purpose space that
13 is pretty tough to put a K-Mart into, or whatever else. The
14 space has no light, and it is very dark. It is below the water
15 table.

16 You would never be able to get a retailer to go
17 in there because it will flood, and theaters are okay, because
18 much of the time theaters are not occupied. So it is a
19 difficult space to deal with, and it is a very expensive space
20 to have built.

21 CHAIRPERSON REID: Okay.

22 MR. NETTLER: But, Mr. Baranes, it does provide
23 the opportunity to build the parking that the city had been
24 seeking for 15 years didn't it?

25 MR. BARANES: Combining the two portions of the

1 block, yes. By doing that we were able to build all this
2 additional parking.

3 CHAIRPERSON REID: Okay. Any other questions,
4 Board Members?

5 (No audible response.)

6 CHAIRPERSON REID: Any cross-examination? Okay.

7 Ms. Zarfman, you are cross-examining, and just so long as only
8 one person cross-examines, that's fine.

9 MS. ZARFMAN: We try to be very respectful of the
10 Board Member's time, and to not extraneously inquire.

11 CHAIRPERSON REID: Okay.

12 MS. ZARFMAN: Very simply, Shalom, with all of
13 the constraints that everybody has spent a great deal of time
14 today talking about, most were known at the start of the
15 project, in terms of the start constraints and the water table,
16 and the rock, and the elevation change.

17 In spite of all of that were you not still
18 allowed and approved to build a complete project within all of
19 those restrictions that allowed full use of your FAR and your
20 height limitations, a generous interpretation of that slope and
21 where in fact buildings are and are not connected?

22 Was that not all possible two months ago,
23 completely approved, and permanent approval from the Commission
24 of Fine Arts?

25 MR. BARANES: Yes, and it all worked because we

1 had the theaters.

2 MS. ZARFMAN: And the only thing that has changed
3 since all of those approvals is the financial health of one
4 tenant, albeit a principal tenant?

5 MR. BARANES: That's correct.

6 MS. ZARFMAN: I am questioning whether, in spite
7 of again a generous interpretation about using economics as a
8 factor, whether economics can be the only factor --

9 MR. NETTLER: Objection. This is not a question.
10 This is becoming testimony and not a question. Ms. Zarfman is
11 beginning to testify, and there is no question.

12 CHAIRPERSON REID: Ms. Zarfman, frame whatever
13 you want to say in the form of a question. You cannot testify
14 and you know that. You can ask a question, but you cannot
15 testify.

16 MS. ZARFMAN: Is not the only factor that has
17 changed is the economic health of a tenant?

18 MR. BARANES: I have to frame my response as an
19 answer. That is the primary thing that has changed, but again
20 what is really relevant here is the fact that we built it. It
21 is built, and there is not much else that we can do with that.

22 Again, had all of this happened before we started
23 construction, we could have realigned the pieces of the project
24 to accommodate all of that, but time has not allowed us to do
25 that.

1 MS. ZARFMAN: Is it then your sense that what
2 needs to go is the protective zoning of the waterfront?

3 MR. BARANES: Well, again, we have done many,
4 many PUDs in our office, and the PUD regulations, the
5 guidelines for this property, do state that you are allowed to
6 go to 60 feet.

7 That is not to say that we would have gotten
8 approval for 60 feet, and we are not asking for 60 feet. But
9 we are proposing this I think without proposing a dismantling
10 of the zoning regulations that apply to the site.

11 MS. ZARFMAN: We will leave the rest for
12 testimony.

13 CHAIRPERSON REID: Okay. Any other questions?

14 MR. NETTLER: Not of Mr. Baranes. Thank you. I
15 have a note from Reverend Bird, who asked if he could testify.
16 He is here in support of the project, and he is not part of
17 our case, but he must leave.

18 CHAIRPERSON REID: Okay. And how many more
19 witnesses do you have?

20 MR. NETTLER: We only have one witness, who is
21 very, very brief.

22 CHAIRPERSON REID: Okay. But he wants to go
23 ahead?

24 MR. NETTLER: Yes. I have a note from him that
25 he needs to leave by 5:30.

1 CHAIRPERSON REID: Okay. I have no problem with
2 that. Sir, you may go ahead.

3 MR. BIRD: My name is David Bird, and I am the
4 Rector of Grace Church in Georgetown. I just want to say that
5 we at Grace are wholeheartedly in favor of the proposal.

6 We have waited for years in hope of some kind of
7 development here, and I think Mr. Baranes was very kind when he
8 referred to the brown or the green property. It has been
9 basically rat infested and literally strewn for an awfully long
10 time.

11 And as you well realize, it was basically a
12 derelict property over there. I will give you one personal
13 example if I may. Some people came to me because they had
14 heard screaming over in the incinerator some years ago, and
15 everyone thought that the first person to go in there should be
16 a priest.

17 So, of course, 2 or 3 people pushed me along up
18 through that, and it was a very frightening experience, and we
19 can laugh now. But, of course, I tried to look wonderfully
20 confident.

21 But really we are just delighted that people are
22 taking this in hand and giving us something that we can be
23 proud of right next to us at Grace Church. So we are delighted
24 that the development is taking place, and we endorse the
25 proposal, and we pray for its speedy completion so that our

1 life can get back to normal.

2 And if I may, I am so grateful to you for letting
3 me go quickly, and may I also leave with you a letter on behalf
4 of the parish. Thank you very much.

5 MR. NETTLER: I am not going to let you go that
6 quickly, but I do have one question for you.

7 MR. BIRD: Of course.

8 MR. NETTLER: You are aware that the applicant is
9 seeking some additional height on the K Street side, primarily
10 the K Street side of the property?

11 MR. BIRD: We are.

12 MR. NETTLER: And you are located on the South
13 Street side of the property are you not?

14 MR. BIRD: Yes.

15 MR. NETTLER: Now, in your view does the
16 additional height on the K Street side of the property impair
17 any views that you have of the Potomac or any other vistas in
18 any different fashion than the project that had been previously
19 approved?

20 MR. BIRD: We don't believe so. The two church
21 wardens, who are the two senior laymen of the parish, met with
22 Mr. Lanier and discussed this right from the beginning, as did
23 I. And they in fact are behind this letter that I am
24 presenting. Is that a sufficient answer?

25 MR. NETTLER: Yes.

1 MR. BIRD: Thank you very much.

2 CHAIRPERSON REID: And your last witness?

3 MR. NETTLER: Our last witness is Carrie Johnson.

4 MS. JOHNSON: I just wanted to say that my name
5 is Carrie Johnson, and I am from Gary Edward Handel and
6 Associates in New York. I am the project architect on this
7 project.

8 I have worked with Gary for 3 years in and 3 days
9 as of today, and I am responsible for the design and
10 construction, and the coordination between the structural, the
11 design, and the MEP, on the entire job.

12 MR. NETTLER: Let me just explain one thing
13 before she testifies. If you will recall, there are two
14 aspects to the variances that are being sought, two aspects to
15 the FAR variances that are being sought.

16 There is the additional density that goes along
17 with the increase in the height of the property, and there is
18 also in an effort to subsidize the theater situation, we have
19 taken space that was not counted as FAR within the building.

20 And what Ms. Johnson will testify is as to what
21 that space is, and how we are seeking a variance for increasing
22 that density by utilizing that space that previously did not
23 count, and Ms. Johnson will discuss how that didn't count and
24 why it would count with this variance. But it is separate from
25 the additional height that we are seeking.

1 MS. JOHNSON: This is a little bit more difficult
2 because I don't have a pointer. But I am going to describe the
3 drawings, and the drawings on the left are a series of floor
4 plans --

5 (Brief interruption.)

6 MS. JOHNSON: Okay. The center drawings on the
7 left are a series of plans that I will take you through,
8 starting from the B-1 parking level, and on the right I just
9 have a partial elevation of K Street, because primarily the
10 additional FAR area that we are asking for shows up in the base
11 of the building, which actually does not impact the elevations
12 whatsoever.

13 Then the additional FAR is that 10 feet 8 up
14 above which Lanier already took you through. So on the B-1
15 level, it is a parking level, and the first level of the
16 parking garage.

17 If we take out or if we provide additional FAR
18 that we are asking for up level minus one, we can take out the
19 area here, and what we want to do is move this up, which is
20 closer to the hotel services, and then this allows us to put in
21 an additional 10 striped parking spaces.

22 I am showing you level minus three, and we don't
23 have additional spaces that are required here, but I wanted to
24 show this level. This is our theater entry level, and we are
25 also -- we have the loading dock over here, and this is also

1 where our hotel service elevators are connected.

2 Those elevators go down to that B-1 level, and
3 then they are going to come on up to the level minus one. This
4 level, minus two, this is the theater mezzanine level, and we
5 are asking for these FAR areas here because we have this
6 incredibly complicated construction for the mechanical
7 equipment room, so as not to count them in the FAR.

8 And instead of putting these things on top of the
9 building, because we have that height limit, and we need to
10 put them into the base and close to the theaters. But right
11 now the construction is cost prohibitive, and it would help us
12 since we are here to try and get those and just have those
13 count as a regular concrete slab area.

14 COMMISSIONER HINTON: Could I just ask a
15 question? So the mechanical equipment will be located within
16 these dashed areas that are shown on the plan?

17 MS. JOHNSON: Right. That is where they are
18 right now, but the construction type is steel. It is steel
19 beam, and steel decking, and then all these diagonal braced
20 beams, and we have a complicated routing of mechanical and MPA
21 equipment around here.

22 So it is more in terms of the construction costs
23 for this, for these two areas. It would be simpler to actually
24 count this towards FAR, to count it as a concrete slab FAR.

25 This is level minus one, and this is the floor

1 where we would like to bring up the back house area that was
2 down in the B-1 level, and add it into these spaces on the west
3 side of the stack, as well as on the east side of the stack.

4 This is our first level of hotel guest rooms, at
5 level minus one, and then also what you are looking at and what
6 we have submitted, I have new sets of 8-1/2-by-11s. This
7 floor, I switched some of the area that we had requested, and -
8 -

9 CHAIRPERSON REID: Well, I was curious as it
10 didn't look the same.

11 MS. JOHNSON: Yes, it is still the same numbers,
12 but it has to do with what we can actually get to because of
13 the structure.

14 CHAIRPERSON REID: And you said that you do have
15 a substitute page for this?

16 MS. JOHNSON: Yes. I will submit it. This is
17 level one, and these areas are just gaps in our building that
18 would help the construction process if this is just regular
19 slab, instead of having to maintain an open space, and not
20 count it towards our FAR.

21 This area right here, this is a critical one.
22 This is underneath the historic house precinct, and we would
23 like to make this regular slab, just to help support the houses
24 which are actually up above here, because we have to put them
25 back and replace them at their same existing elevation.

1 COMMISSIONER HINTON: May I ask you a question?
2 Are you saying that because of the way the previous plans would
3 have constructed these spaces that they didn't count as FAR,
4 although the space was always there?

5 MS. JOHNSON: Right.

6 COMMISSIONER HINTON: But now you are going to
7 construct them with a slab?

8 MS. JOHNSON: Right.

9 COMMISSIONER HINTON: And so now they count?

10 MS. JOHNSON: Right.

11 COMMISSIONER HINTON: And so your use of the
12 space isn't changing?

13 MS. JOHNSON: No. It is only -- well, on level
14 minus one, we are moving part of it downstairs to upstairs.

15 COMMISSIONER HINTON: I understood that part.

16 MS. JOHNSON: And then on this floor, this whole
17 area underneath the historic houses, that stays as it is. It
18 is just the construction type changes. And then in the
19 residential building -- because not all of that back house
20 space will fit probably on the level minus one.

21 And we would like to go ahead and fill these in
22 on level one, because this is the interior court side on the
23 project, and so that has no impact visibly to the public.

24 We would like to go ahead and fill those in,
25 because in terms of construction costs to get it not to count

1 towards FAR, it is easier just to ask to see if we can get a
2 variance to have it count.

3 COMMISSIONER HINTON: So these were voids in the
4 building?

5 MS. JOHNSON: Right.

6 CHAIRPERSON REID: It is open space?

7 MS. JOHNSON: Right.

8 COMMISSIONER HINTON: Okay. Open space like what?
9 I mean, could I have walked across it?

10 MS. JOHNSON: No.

11 COMMISSIONER HINTON: So there were walls all
12 around it and a hole in the middle?

13 MS. JOHNSON: Well, if you were to lo ok at the
14 structural drawings, we only had beams going across. It is
15 just like this and it is all open, but you can't get to it.

16 COMMISSIONER HINTON: And you did that just to
17 make your FAR numbers work?

18 MS. JOHNSON: Yes.

19 COMMISSIONER HINTON: Okay. Sorry. Now, since
20 you have to come here for the variance anyway, it is just
21 cheaper to build it, and so you are just asking to be able to
22 build it the cheaper way, and it will have a floor, and you can
23 walk through it?

24 MS. JOHNSON: Right.

25 MR. NETTLER: So we don't have to have two floors

1 of residential. We are trying to find ways in which to
2 construct the project, which will subsidize the theater in a
3 way that least impacts the development of the project, and by
4 actually cutting the construction costs inside the building,
5 you are reducing whatever you have to seek outside the
6 building.

7 COMMISSIONER HINTON: Okay.

8 MS. JOHNSON: And this I just wanted to show you.
9 This is the additional floor plan. This is a typical
10 residential floor, and this is our additional six units.

11 MR. BARANES: Ms. Hinton, if I might just add one
12 point. Normally when we do buildings, we hang mechanical
13 equipment from the concrete slab. For example, if you were to
14 remove the tiles above us, you would find mechanical equipment.
15 It is hung from the slab above.

16 We are saying here that for cost reasons here,
17 and here we have theaters, and the equipment is very large, and
18 we are hanging it from the slab. And we are trying to save
19 some money now, and so rather than hanging it, what we would
20 like to do is to put a floor underneath the equipment, and not
21 have to hang the equipment, and that is going to save us a lot
22 of money.

23 So that is the reason that we are here dealing
24 with this issue. It is not that we were trying to get around
25 the FAR calculations with our previous scheme.

1 COMMISSIONER HINTON: Okay. Thanks.

2 MR. NETTLER: That concludes our presentation,
3 and rather than me make a closing statement at this time, and
4 given the late hour, and the fact that there are some other
5 individuals who want to testify, and since we do have the
6 opportunity for rebuttal, I would like to let them go forward,
7 and then come back.

8 CHAIRPERSON REID: All right. Thank you, Ms.
9 Johnson. All right. Now --

10 COMMISSIONER HINTON: Madam Chair, I would like
11 to make a request. I would request that all of the drawings
12 that have been shown on the boards, and all the changes, can we
13 make sure that those get into the record?

14 MR. NETTLER: Yes, I think you should have them,
15 but we will make sure that those are submitted.

16 COMMISSIONER HINTON: And I am not sure what is
17 in our book isn't the most correct. So as long as we get the
18 most current version, that's fine.

19 MR. NETTLER: When I filed the prehearing
20 statement, you had everything but the portion that showed the
21 additional setbacks, and that is what I have submitted now. So
22 you should have everything.

23 CHAIRPERSON REID: Including the changes by Ms.
24 Johnson?

25 MR. NETTLER: Right.

1 MS. JOHNSON: I submitted those.

2 CHAIRPERSON REID: Oh, you did? Okay. Great.

3 COMMISSIONER HINTON: Now, those photographs that
4 were on the board that showed the photo simulations with the
5 outline?

6 MR. NETTLER: I have already submitted that.

7 COMMISSIONER HINTON: Great. Thanks.

8 MS. SANSONE: Also a photograph of the model?

9 MR. NETTLER: Could we come back to that at the
10 end of this hearing?

11 CHAIRPERSON REID: Let's see. It is now 5:30,
12 and so what I would like to do is do take a brief recess. We
13 have yet to go to the Department of Housing and Community
14 Development, and then the ANC representative. Do we have the
15 ANC representative here? We have a letter from the ANC.

16 And then we have persons in support? Is that the
17 only person in support?

18 MR. NETTLER: Yes. I think we have submitted the
19 letters and petitions. I believe there is one other person who
20 is out in the hall also.

21 CHAIRPERSON REID: And what about in opposition?
22 We still have just the two people? One party and an
23 individual, and we have cross-examination.

24 But at this point, we will take a recess, a 10
25 minute recess, and then we will resume with the government

1 reports.

2 (Whereupon, the hearing was recessed at 5:33
3 p.m., and was again called to order at 5:43 p.m.)

4 CHAIRPERSON REID: All right. We will resume
5 with the hearing. All right.

6 MR. THACKABERRY: Good afternoon. I am Jim
7 Thackaberry, and I am a project manager at the Department of
8 Housing and Community Development. I am here today to just
9 reaffirm the letter of support that we had previously sent in
10 support of this BZA application.

11 And just to highlight the letter, the District of
12 Columbia, acting through our agency, sold the Old Georgetown
13 Incinerator to Millennium Georgetown Development in May 1999.
14 That was -- they were the winners based on their specific
15 development proposal for this site.

16 And which by the time that we got to the point of
17 sale and settlement included the whole block. And as part of
18 that was included high end of a hundred-thousand square feet,
19 plus or minus, in market rate condominium housing, a boutique
20 hotel, a 2,900 seat multi-move theater complex, and somewhere
21 in the neighborhood of 10,000, plus or minus, square feet of
22 retail.

23 And that is what was in the settlement, and that
24 is what they are committed to, and we have easements on the
25 property to assure that we get the proposal delivered as we

1 accepted it.

2 This project has been under construction since
3 last July, and from the District's viewpoint, we view the 2,900
4 multi-seat theater complex as a critical component of this
5 project.

6 This is the anchor, the use anchor, that is going
7 to bring the crowds back to Georgetown. Not only just for this
8 project, but for all the restaurants and other commercial
9 enterprises in this area of Georgetown.

10 So we view this as a critical project and all the
11 components in the project, including the multiplex theater,
12 will create many good new permanent jobs, and our main purpose
13 here is to support the continued inclusion of this movie
14 theater complex in the project. We view it as a very major
15 element.

16 And Mr. Lanier talked about the economic problems
17 that the movie theater industry has been having, not just here
18 locally, and not just one or two operators. It is an industry
19 wide problem.

20 And this has really created the very special
21 problem here, economic problem, of finding creative ways to
22 keep this major anchor in the project. So he has already
23 talked about that at length.

24 And I won't go into that, except to say that they
25 had to come up with ways to get more cash flow in the project

1 to cover for the shortfall from the theater -- Loews' theaters
2 going bankrupt.

3 I will just read the last paragraph of our
4 letter. "The Department of Housing and Community Development,
5 acting for the District of Columbia, strongly supports the
6 continued inclusion of the movie theater complex in this
7 project, and supports the area variance requested by the
8 developer that will permit the slight changes in the project's
9 exterior appearance."

10 "With the approval of the area variance and the
11 elevation changes, the developer will be able to generate the
12 additional revenue needed to subsidize the operation of the
13 movie theaters in this project."

14 So I thank you for your time.

15 CHAIRPERSON REID: Thank you very much, Mr.
16 Thackaberry. Are there any questions?

17 (No audible response.)

18 CHAIRPERSON REID: Thank you very much. All
19 right. Did we receive the DPW late?

20 SECRETARY PRUITT: We did.

21 CHAIRPERSON REID: All right. And we did receive
22 a letter from or a memo from Ken Laden, from DPW, and basically
23 in pertinent part they stipulate that our review indicates that
24 the additional space will not result in an adverse traffic
25 impact in the area. Accordingly, for transportation's

1 standpoint, DPW has no objection to the proposal.

2 Now, persons in support. I think there was one
3 other person that was going to testify, Mr. Nettler?

4 SECRETARY PRUITT: Madam Chair, excuse me, but
5 did we do the ANC report?

6 CHAIRPERSON REID: No, we did not do the ANC
7 report. The ANC was not present, but we did receive a letter.

8 Thank you for bringing that up. And basically the ANC, ANC-
9 2E, stated that they are very concerned about the added massing
10 of the revised project and strongly urge that the Commission of
11 Fine Arts and Old Georgetown Board to consider requiring
12 revisions regarding height and site lines, especially along
13 Wisconsin Avenue.

14 The ANC met and in which there was a quorum
15 present, and a resolution passed, and then they go into
16 specifying the pertinent parts of the resolution.

17 But the essence of it is that it seems that they
18 are registering strong concern, and they urge the Fine Arts
19 Commission to consider requiring revision, and exactly what
20 that means I am not sure.

21 COMMISSIONER HINTON: Madam Chair, if you look at
22 the second page, there is another paragraph that says,
23 "Therefore, with the exception of the concern noted above, upon
24 which ANC-2E must rely on the expertise of the Commission of
25 Fine Arts and the Old Georgetown Board, ANC-2E does not object

1 to the redesign of the project, and the area variances sought
2 by the applicant before the Board of Zoning Adjustment."

3 CHAIRPERSON REID: Yes. Thank you very much, Ms.
4 Hinton. However, my question is still when they register a
5 concern, and they urge that with the exception of the concern,
6 and that was it seems prior to the letter coming from the
7 Commission of Fine Arts, which came last Friday, that's why I
8 am saying that I am not really sure what this means.

9 They are saying that there is no objection, with
10 the exception of the concern raised in the paragraph above,
11 which refers to urging the Commission of Fine Arts and Old
12 Georgetown Board to consider requiring revisions. Now, again,
13 I am not certain as to what the ANC's position is.

14 SECRETARY PRUITT: The other thing is also that
15 the ANC, I believe, is basing it on a position that the CFA has
16 not seen the revised plans if I am understanding it with the
17 setback.

18 CHAIRPERSON REID: Had not seen it at the time
19 that they issued this letter.

20 SECRETARY PRUITT: Correct.

21 MR. NETTLER: If I might respond to that. At the
22 time of the ANC meeting, Mr. Cochran, who is a member of the
23 board of the Citizens Association of Georgetown, had expressed
24 a desire to see setbacks along Wisconsin Avenue and 31st
25 Street, and made that same request before the Old Georgetown

1 Board at its first meeting.

2 And which while it was rejected by the Old
3 Georgetown Board, that is exactly what you have in the
4 presentation that I was here today, which is that the setbacks
5 have been requested.

6 So to the extent that the ANC, which I think
7 references in terms of whereas the issues that were raised is
8 discussing that, that was the issue that was discussed at that
9 meeting.

10 SECRETARY PRUITT: So, Mr. Nettler, is it your
11 interpretation that the last -- and maybe I should ask Ms.
12 Zarfman, but that the line that says that, "Therefore, with the
13 exception of the concerns noted above, upon which the ANC must
14 rely on the expertise of CFA and Old Georgetown Board, the ANC
15 does not object to the redesign of the project." Does that
16 include the setbacks?

17 MR. NETTLER: They did not object to the redesign
18 of the project that was submitted at that time, which didn't
19 have the setbacks, and therefore we are not objecting to the
20 variances.

21 It subsequently was further redesigned to provide
22 the setbacks that at least Mr. Cochran had been asking for at
23 that meeting.

24 CHAIRPERSON REID: Actually, still it is
25 difficult to ascertain, because Mr. Nettler is interpreting for

1 us what the ANC's position is, and that is --

2 MR. NETTLER: Well, I think it is clear where it
3 says that they have no objection to the area variances, and so
4 it is referring to two different processes.

5 One that goes before the Commission on Fine Arts,
6 which is a design process, and one that comes before this
7 board, which is dealing with the area variances, and the
8 Commission of Fine Arts at the very least, and the Old
9 Georgetown Board, do not have authority to address area
10 variances.

11 CHAIRPERSON REID: What I was trying to say, Mr.
12 Nettler, is that I think that we would request further
13 clarification from the ANC prior to us making a decision.

14 MR. NETTLER: Well, I know that this has been a
15 complicated case, and I know that there are a variety of
16 issues, but with what Mr. Altman said earlier, given the
17 conditions that are affecting the development, I am going to
18 ask you at the end of this proceeding after you have heard all
19 of the testimony to reconsider that request, and authorize the
20 variances that are being sought.

21 But I would like to address it at the end of the
22 proceedings rather than making a decision at this point, and
23 making a decision at this point, and prejudging whether you
24 need that additional information.

25 COMMISSIONER HINTON: Madam Chair, could we just

1 mention the other government reports that are on the record,
2 such as the letter from the Park Service, the United States
3 Department of Interior, and the letter from the Commission of
4 Fine Arts, which is in -- it is in opposition to the added
5 height.

6 CHAIRPERSON REID: Well, I think I did mention
7 the letter from that the Commission of Fine Arts. But the
8 letter from the U.S. Public Service and Department of Interior,
9 I did not mention that. Would you basically summarize that?

10 COMMISSIONER HINTON: The letter is from Sara
11 Bowman, Deputy Associate Regional Director, Lands, Resources,
12 and Planning. The letter says, "The proposed development for
13 the incinerator site is a welcome addition to the Georgetown
14 Waterfront. The incinerator site project and its amenities are
15 important to the vitalization of the Georgetown Waterfront
16 Park, and will bring increased activity to the area."

17 "Additional, the project will provide substantial
18 parking which is necessary in light of our commitment to close
19 the harbor parking facilities adjacent to the Potomac River
20 along K Street in order to convert the area into a park. We
21 and the public are counting on the incinerator project
22 absorbing those cars now parking on the waterfront."

23 CHAIRPERSON REID: Okay. Thank you. And the
24 Park Service?

25 COMMISSIONER HINTON: That was the Park Service.

1 CHAIRPERSON REID: Oh, I see. I thought we had
2 one from the Department of Interior and the Park Service, two
3 letters. So they are one and the same. Now, I think that
4 takes care of all of the government reports.

5 MR. NETTLER: I believe the Georgetown Business
6 and Professional Association also has sent to you a letter
7 which should be in your files.

8 COMMISSIONER HOOD: Madam Chair, here is it here.

9 A lot of stuff came in later as you said.

10 CHAIRPERSON REID: This just in, in a letter from
11 the Georgetown Business and Professional Association in support
12 of the application. In summary, this new proposed development
13 will not only provide entertainment and services for Georgetown
14 residents through their retail and theater development, but
15 will additionally attract non-residents to the area which will
16 benefit surrounding businesses and retail establishments, and
17 that is the essence of it. Any there any other letters in
18 support?

19 COMMISSIONER HINTON: We have a letter from Ms.
20 Kalo in support, Barbara Kalo, also.

21 CHAIRPERSON REID: Okay. That concludes support.

22 Now, persons or parties in opposition, please come forward.
23 All right. You said that your part will take about 15 minutes?

24 MS. DOWNS: I would think so.

25 CHAIRPERSON REID: All right.

1 MS. DOWNS: I am Barbara Downs as I stated
2 before, and I am president of the Citizens Association of
3 Georgetown, and the Citizens Association has long been involved
4 in the history of the waterfront.

5 We testified at the original hearings, which made
6 the waterfront area part of the historic district, and we have
7 been involved in all of the subsequent hearings about the
8 planning of the waterfront, including the proposed project that
9 is now asking for a variance.

10 I want to say that the Citizens Association has
11 always been very supportive of Mr. Lanier and the partners of
12 the Millennium Group, and they have been acting responsibly,
13 and they have preserved the incinerator site, and they have
14 preserved the brick yard hill houses, and they are providing
15 the additional parking so that we can create the waterfront
16 park in Georgetown.

17 But we do have serious concerns about the
18 historic vistas. These historic vistas down Wisconsin Avenue
19 and 31st Street have long been recognized as worthy of
20 preservation by the Zoning Commission, the NCPC, and the U.S.
21 Commission of Fine Arts.

22 The W-1 zoning, with its 40 foot height limit,
23 was expressed applied at Wisconsin Avenue and 31st Street on
24 this site in order to preserve as much as possible that the
25 historic open vistas from the C&O Canal down to the original

1 port area of Georgetown.

2 The arguments offered by the applicant to justify
3 the variances are also something that give us concern. Almost
4 the entire weight of the argument is the change to the natural
5 circumstance of one tenant, rather than the findings and
6 peculiarities specifically cited in D.C.M.R. 3103, paragraph 2,
7 that the applicant must meet in order to qualify for the relief
8 sought.

9 We are asking the Board to deny this request for
10 a variance. We think it would be tantamount to rezoning the
11 site improperly, and would set a dangerous precedent for any
12 other developer who encounters an economic inconvenience.

13 I think it would work to the substantial
14 detriment of the public good, and would substantially impair
15 the intent, purpose, and integrity embodied in the zoning
16 regulations. And now I am going to let Barbara Zarfman speak a
17 little bit to the specifics of the request.

18 CHAIRPERSON REID: What was the last thing that
19 you said? I'm sorry.

20 MS. DOWNS: I said that it would work to the
21 detriment of the public good and would substantially impair the
22 intent, purpose, and integrity embodied in the zoning
23 regulations.

24 CHAIRPERSON REID: Okay. Thank you.

25 MS. ZARFMAN: Thank you, Madam Chair, and

1 Members. We have spent a lot of time today talking about facts
2 that seem to be very straightforward. I thought perhaps if I
3 gave you just a little bit of how we got here, and not just in
4 terms of the design of the building, but the public approval
5 process that it might be helpful.

6 This project was approved by ANC two versions
7 ago. So the people who made these approvals and in essence
8 tied the hands of those that came afterward, because the
9 approvals were given. The authority to subdivide, to close
10 alleys, were all in hand before that then ANC went out of
11 office.

12 I remember particularly their enthusiasm about
13 the rooftop restaurant. They had gone on a site visit with Mr.
14 Lanier and his architects, and they were thrilled that there
15 would be a place at the top of the incinerator building that
16 every member of the public could go to and enjoy the
17 magnificent view up and down the Potomac, and watch the
18 fireworks from this wonderful new thing that was to be created
19 atop this building.

20 It alone justified some of the height elements
21 that were involved. That restaurant is now an internal space,
22 and a hotel, and I think that the view has lost some of its
23 charm. But it was most assuredly a factor in the approval at
24 that time by the ANC Commissioners.

25 The importance of the vistas and the height

1 limit, it has been pointed out that this building fits in among
2 other tall buildings. I think what is overlooked was the
3 commitment on the part of the Commission of Fine Arts, the
4 Citizens Association of Georgetown, and other reviewing bodies,
5 to never let anything like the Dodge Warehouse happen again.

6 It is what led to the creation of this protective
7 zoning, and W-1 specifically was given to this site, and not W-
8 2, but W-1, in the anticipation that the buildings along K
9 Street would be no more than 40 feet tall.

10 They did not want a Wall Street. They wanted a
11 Water Street. They wanted something that had balance and
12 perspective. I am not arguing that Millennium Partners are
13 outside of their rights to measure the height from South
14 Street, but it certainly has created what they are now asking
15 for, which is 117 feet, where 40 had been the intent of the
16 land use planners.

17 The importance of our waterfront has changed
18 incredibly in this period of time. We all view it not nearly
19 as a relic of its industrial past, but as a wonderful place for
20 hope and opportunity for our city.

21 Directly across from this site the community has
22 been working with the National Park Service and the Citizens
23 Commission chaired by Senator Percy, to create a publicly and
24 privately funded national park, which will be another great
25 amenity to this property.

1 But it was intended originally as an amenity for
2 the broader community and for the public at large. The other
3 element that we do believe has disappeared from this plan was
4 something that was incorporated in the City Council resolution
5 authorizing the transfer.

6 And I did not bring with me today, but can get
7 for you, the language referred to a glorious public space at
8 the core of this building. I don't know that I consider the
9 core in the central of that building glorious, but it sure is
10 not public.

11

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MS. ZARFMAN: The only entrance for the public will be through the narrow opening from Wisconsin Avenue when it is not gated. That is an amenity that was an important element in the approval of the sale. It is not there.

One may argue that the space is larger, but I think it is also the parking for all the handicap vans which do not fit in the garage. It is not a glorious public space, and that has disappeared. These are things that matter to us as a community, and it is why despite all of Anthony's charm, and influence, and he can cite which he prides more, this is a project that now that it is going beyond what it can be authorized to do within the rules, we have concerns about granting still more height, creating still more larger a structure on the waterfront.

And becoming an even bigger presence than he has a matter of right authority to build. We have tried to be as cooperative as reason would allow. There has been opposition to the project, and I was at that ANC meeting when the neighbors found out that instead of getting a replacement for the Biograph and the other art theaters that had recently closed, they were getting 3,500 seats of Swartznegger video.

People were literally shaking their heads, and we were assured that these folks knew what they were doing, and

1 that the parking was going to be adequate, and after all they
2 ran theater complexes at Lincoln Center.

3 And we kind of didn't think that Georgetown
4 Waterfront was exactly the equivalent of the West 60s, and our
5 public transportation, as good as it is, isn't quite what the
6 subway system of New York is.

7 But nonetheless the approvals were given, and we
8 have been precluded -- I think you see that in the ANC
9 resolution, as one of the members said what troubles the people
10 who are talking to me about this project is what is already
11 under design and has been approved.

12 The addition of the one extra floor wasn't what
13 was bothering people about the building. It was the building.

14 But nonetheless they did not want to add further approvals.
15 They deferred them to the Old Georgetown Board and the
16 Commission of Fine Arts.

17 They said that his is beyond our level of
18 expertise. We will rely on them to tell us whether this new
19 bigger building is substantially better or worse than what had
20 been previously approved.

21 I have been at all of the meetings of the Old
22 Georgetown Board and the Commission of Fine Arts. They have
23 seen the altered drawings. I believe the letter came with full
24 understanding of the setbacks that had been offered.

25 Their position on the last one was that the

1 addition of the floor was a problem because of the violation of
2 the W-1 zoning, which the Commission had been so much involved
3 in creating, and would serve such a purpose that they believe
4 is so important.

5 I am as sympathetic as anyone to the financial
6 bind that the developers are in. But there is an old rule of
7 thumb in New York that you can't buy a hardship.

8 These are very, very sophisticated folks, and
9 this is a problem for them granted, but I don't believe that
10 this very special block of waterfront in Georgetown, where some
11 say George Washington did actually set foot on into the City,
12 that this should be allowed to get taller, and perhaps taller,
13 and perhaps taller again.

14 It does not work as well in the height limit that
15 has been imposed, even generously reinterpreted from South
16 Street, with minus one level base of the buildings. I just
17 don't know how those mathematics work.

18 Even in the illustration that was given on a
19 building that has a square base and two towers, the base is
20 above ground. I don't know how you measure a building from
21 below ground level and call it a building, when all that
22 appears at sidewalk or walking level are separate buildings.

23 That is the interpretation that is being sought,
24 and once again it will work generously to the advantage of the
25 developer. I just question how often we need to bend the rules

1 in this case so visibly as to make still larger a very large
2 building on the waterfront. I would be happy to answer any
3 questions for the process which has brought us here.

4 CHAIRPERSON REID: Ms. Zarfman, you had an
5 opportunity to cross-examine, and maybe the questions that you
6 brought out that you are just kind of throwing out now.

7 MS. ZARFMAN: Well, they have the right to cross-
8 examine me, and so if they --

9 CHAIRPERSON REID: No, no, the questions that you
10 are asking seems like why did they find a need to bend the
11 rules, and why did they at one point stipulate that there would
12 be this roof top, this wonderful roof top restaurant, with a
13 wonderful view of the monument and the river, and that changed.
14 These are things that we can't answer.

15 MS. ZARFMAN: I am simply trying to explain to
16 you how the project has evolved over time.

17 CHAIRPERSON REID: Right.

18 MS. ZARFMAN: I believe that CAG's letter refers
19 to the fact that amenities that the community thought would be
20 there have disappeared. I fully accept Mr. Lanier's
21 representation that they found the safety considerations of
22 getting egress and access to the rooftop level were simply too
23 difficult to work around.

24 But I do know what the motivation was, and I
25 think it is important that you understand why a community can

1 be excited about a project designed this way, and very unhappy
2 about how it is delivered ultimately.

3 CHAIRPERSON REID: Basically what I think I am
4 hearing you say is why CAG was very supportive and the
5 developer, Mr. Lanier, was very cooperative, and what you were
6 excited about is something different than what ultimately it
7 evolved into.

8 MS. ZARFMAN: Well, I was trying to explain the
9 approval process of the ANC, and the then sitting members were
10 very excited about the contribution to waterfront life that
11 such a rooftop restaurant would have delivered.

12 And I think it was so exciting to them that they
13 were willing to swallow some doubts about 3,500 seat movie
14 theaters. We got the movie theaters, but we don't have the
15 roof top restaurant.

16 And then the next ANC that was elected of course
17 had all the decisions handed to them, and the approvals were in
18 hand.

19 CHAIRPERSON REID: Well, from what I can garner
20 from the letters, or the letter from the ANC as you recall, I
21 did raise the issue that it appeared to me that there appeared
22 to be some consternation on the part of the ANC that they did
23 not really take a definitive position and referred to the CFA
24 to, I guess, interpret it for them, and to give them some
25 guidance as to what in fact they felt was going to go there,

1 and if they felt if it was appropriate, and that is the
2 impression that I got.

3 MS. ZARFMAN: All right.

4 CHAIRPERSON REID: Any questions, Mr. Hood?

5 COMMISSIONER HOOD: Ms. Downs, in your opening
6 statement you referred to how cooperative Mr. Lanier has been.

7 So would you concur with his statement that he has bent over
8 backwards?

9 MS. DOWNS: I would probably not say bent over
10 backwards, but I think he has been very forthcoming with the
11 community as far as presenting his project, and working with
12 the community, and working with different boards.

13 COMMISSIONER HOOD: You know, earlier on when I
14 really wanted to see this organization get party status, I,
15 too, along with the chair expected to hear some questions.
16 Like she said, we can't answer some of the questions that Ms.
17 Zarfman has put forth.

18 Also, I noticed in your testimony, Ms. Zarfman,
19 that your speech was I. I was concerned; and were you just
20 saying I, or is it rather the community?

21 MS. ZARFMAN: I know that there are many in the
22 community who have serious concerns about this project. I
23 would have to tell you that the difference between the extra
24 floor and the project that is already problematic is where
25 people have problems.

1 Tom Birch, an ANC commissioner, who framed part
2 of that motion, said exactly that. He said that people are
3 talking to me and they have concerns about this project. They
4 don't like it, but I don't know that I can tell them that
5 denying the extra floor is going to make it better or make it
6 less worse.

7 COMMISSIONER HOOD: But I guess early on there
8 were a lot of approvals given.

9 MS. ZARFMAN: There certainly were.

10 COMMISSIONER HOOD: Because looking at the back
11 of the Office of Planning's report, this project has gone
12 through a tremendous amount of approvals.

13 MS. ZARFMAN: That's correct.

14 COMMISSIONER HOOD: And I have never seen -- they
15 said 15, and I want to say more than 20. But I guess my
16 concern is early on is it fair -- and I know that things
17 change, and that circumstances change, but is it fair to
18 approve something, and go along with someone, and then get to a
19 point and then say let's stop everything here?

20 MS. ZARFMAN: I don't think that anybody has
21 suggested stopping everything here. As I said when I was
22 inquiring of Mr. Baranes, they had a completely approved
23 project, a financially viable project within all the approval
24 constraints, all the difficulties with the site two months ago.

25 With all the difficulties that were espoused, and

1 with all the regrets that some of us may have, with all of the
2 hard work of the Old Georgetown Board, and making this design
3 better than what was originally presented to them, and that is
4 what took a lot of the reviews.

5 COMMISSIONER HOOD: So, for example, Ms. Zarfman,
6 the rooftop restaurant, I know that can be appealing to a
7 community, and you stated that had disappeared.

8 MS. ZARFMAN: It is not in this project.

9 CHAIRPERSON REID: That was a compromise for
10 allowing or going along with the multicompex theater.

11 MS. ZARFMAN: It was a huge attraction for the
12 then --

13 CHAIRPERSON REID: In other words, it was a
14 tradeoff that you are going to get this beautiful restaurant on
15 the roof, a rooftop restaurant, and so therefore you were more
16 accepting of this multi-theater complex?

17 MS. ZARFMAN: That is the way --

18 CHAIRPERSON REID: And the other thing you
19 mentioned was -- well, was there a city council resolution that
20 spoke to a glorious public space in the center, and the core of
21 the project?

22 MS. ZARFMAN: Yes.

23 CHAIRPERSON REID: What was that?

24 MS. ZARFMAN: It was part of the justification
25 for selling this parcel to this developer.

1 CHAIRPERSON REID: But you said a city council
2 resolution.

3 MS. ZARFMAN: It was part of the legislation
4 passed by the city council authorizing the sale to this
5 developer.

6 CHAIRPERSON REID: But that's legislation? What
7 I don't understand is that if in fact it was legislative, and
8 it was promulgated by the city council, how could it disappear?

9 MS. ZARFMAN: The realities, and the need to
10 accommodate --

11 CHAIRPERSON REID: Well, was it amended?

12 MS. ZARFMAN: No.

13 CHAIRPERSON REID: All right. These are the
14 questions that you all should have been asking at the time that
15 you all had the opportunity to cross-examine. This is what you
16 want to bring out, issues and points that we are not aware of.

17 MS. ZARFMAN: Well, I thought it was important
18 that we do presentation before trying to elicit answers to
19 questions that had no context for you since you had only heard
20 the developer's side of the story.

21 CHAIRPERSON REID: Well, remember when you
22 started to testify and I was opposing your questions and asking
23 you to just frame them so that you don't testify, and so you
24 can elicit the responses that you want so that you can provide
25 us with this information, that right now the points that you

1 brought out I think are significant.

2 Nonetheless, we can't get the answer to them, and
3 if we go back to the applicant, then --

4 MS. ZARFMAN: Well, I guess it is always offered
5 how do you present the case in opposition before you present
6 the case in opposition.

7 CHAIRPERSON REID: Well, what we will do is
8 ascertain for ourselves the answers by going back to the
9 applicant and finding out what we can.

10 COMMISSIONER HOOD: I was just going to ask that
11 since we missed that opportunity, I am not exactly sure how the
12 Board views to proceed. If we could get a brief maybe of Ms.
13 Zarfman's questions.

14 CHAIRPERSON REID: Well, maybe in closing
15 remarks.

16 COMMISSIONER HOOD: But, you see, I am not sure
17 if we can relay all those questions and get the answers from
18 Mr. Nettler.

19 CHAIRPERSON REID: All right. We would ask that
20 Mr. Nettler respond to the questions and ask for Ms. Zarfman
21 to put them in writing.

22 COMMISSIONER HOOD: Right.

23 CHAIRPERSON REID: And to have them responded to
24 by the time that we make a decision.

25 MS. ZARFMAN: I would be pleased to do that.

1 MR. NETTLER: What I would like to suggest if I
2 might interject here is that since we do have an opportunity
3 for rebuttal, I am sure that we are going to put a witness on
4 who can respond to the assertions that have been made by Ms.
5 Zarfman, and maybe even perhaps after my cross-examination of
6 her that you will see whether those are really needed or not.

7 CHAIRPERSON REID: Okay. Well, we will
8 definitely consider what you -- the additional information that
9 you provide with us, and then we will make a determination at
10 the end as to whether or not we feel that we need additional
11 information or whatever.

12 MR. NETTLER: And if I might cross-examine the
13 CAG's witnesses.

14 CHAIRPERSON REID: Are you done?

15 MS. ZARFMAN: Yes, Madam Chair.

16 CHAIRPERSON REID: All right. Sure. Did you
17 have any questions, Ms. Hinton?

18 COMMISSIONER HINTON: No.

19 CHAIRPERSON REID: All right.

20 MR. NETTLER: Ms. Downs, let me begin with you if
21 I could. You have been the president of the Citizens
22 Association of Georgetown for how long?

23 MS. DOWNS: This will be my third year.

24 MR. NETTLER: And in those three years how many
25 of the ANC meetings or any other public presentations of this

1 project have you attended?

2 MS. DOWNS: I have attended -- let's see.
3 January, February, March ANC meetings, and I believe the March
4 ANC meeting was where the resolution that you referred to was
5 passed at.

6 MR. NETTLER: And you never attended any meetings
7 prior to this year; is that correct?

8 MS. DOWNS: Oh, no. I attend almost every ANC
9 meeting. I can tell you probably the meetings that I haven't
10 attended.

11 MS. BAILEY: Ms. Downs, if you would speak
12 directly into the microphone so we can pick you up clearly.

13 MR. NETTLER: You attended the Commission on Fine
14 Arts and Old Georgetown Board meetings on this project?

15 MS. DOWNS: No, I did not.

16 MR. NETTLER: Did you attend the council hearing
17 on this project, either of the council hearings on this
18 project?

19 MS. DOWNS: No, I did not.

20 MR. NETTLER: Did you attend the Historic
21 Preservation Review Board hearing on this project?

22 MS. DOWNS: No, I did not.

23 MR. NETTLER: You were present when a
24 presentation was made in February to the Citizens Association
25 of Georgetown by Mr. Lanier were you not?

1 MS. DOWNS: No, I was not at the membership
2 meeting. I was at the board meeting in March when he presented
3 --

4 MS. ZARFMAN: I was at that meeting.

5 MR. NETTLER: I am discussing that with Ms. Downs
6 at this point, and I will get to you, Ms. Zarfman. Thank you.
7 Ms. Downs, do you know how many people were present at that
8 membership meeting?

9 MS. DOWNS: No, I'm afraid not, because I wasn't
10 there.

11 MR. NETTLER: Were there minutes taken of the
12 meeting?

13 MS. DOWNS: Yes, there were minutes taken, and I
14 know that it was a well-attended meeting.

15 MR. NETTLER: And how many people were present at
16 this emergency meeting that was held last week?

17 MS. DOWNS: Six board members were present.

18 MR. NETTLER: And other than the six board
19 members that were present did you show the revised plans to
20 other members of the Citizen's Association of Georgetown prior
21 to that meeting?

22 MS. DOWNS: No, because we actually didn't have
23 the plans.

24 MR. NETTLER: Who had the plans?

25 MS. DOWNS: They were delivered to Bill Cochran's

1 house on Wednesday, April 4th.

2 MR. NETTLER: Is Bill Cochran a member of the
3 board?

4 MS. DOWNS: Bill Cochran is the previous
5 president and is a member of the board of directors.

6 MR. NETTLER: So when you say we didn't have
7 those plans, does that mean that you didn't the plans?

8 MS. DOWNS: We had a board meeting in April, on
9 April 2nd, Monday night, and at that time we had plans brought
10 over I guess from Mr. Baranes' office, and it was a schematic
11 floor plan. It was not a detailed plan, and so we did not
12 discuss it at that meeting.

13 And then Wednesday night, late at night, Mr.
14 Cochran received more detailed plans, and then the next day was
15 the OGB meeting on April 5th.

16 MR. NETTLER: And did you have a conversation
17 with either Mr. Lanier or Ms. Minorset before that emergency
18 meeting that was last week?

19 MS. ZARFMAN: No, I didn't because Mr. Lanier was
20 in Austria.

21 MR. NETTLER: No, prior to the emergency meeting
22 of last week did you have a conversation with Mr. Lanier or Ms.
23 Minorset about any revisions that were made to the project?

24 MS. ZARFMAN: I don't think so. I really don't
25 think so. I may have had a conversation with Minorset. I know

1 that I had a conversation with her sometime within the last
2 week.

3 MR. NETTLER: And prior to Mr. Lanier leaving the
4 country earlier this month did you tell either Mr. Lanier or
5 Minorset that you were supportive of the redesign of the
6 project?

7 MS. ZARFMAN: No, I didn't.

8 MR. NETTLER: Do you know whether anybody else on
9 the Board told Mr. Lanier or Ms. Minorset that they were
10 supportive of the redesign?

11 MS. ZARFMAN: Bill Cochran and I were at a
12 reception with Mr. Lanier in late March, and we looked at
13 essentially this floor plan of small design with the setbacks,
14 and we said that it looks good. I remember saying something
15 like, well, that's a beginning.

16 But my understanding was that this was a
17 schematic kind of idea, and more of a concept than plans.

18 MR. NETTLER: And did you invite him or anybody
19 from his office to come to a further meeting of the board?

20 MS. ZARFMAN: He is always welcome to come to a
21 meeting if he has plans to come to a meeting, and so we didn't
22 have plans to discuss at a regular board meeting.

23 CHAIRPERSON REID: Excuse me, but where are you
24 going with this? Can you wrap or come to a closure?

25 MR. NETTLER: I am trying to. There is a

1 contention being made by the Citizens Association that they
2 represent the community and I am trying to, one, ascertain as
3 to how many members of the community they purportedly are
4 representing in the decision that they have reached here.

5 And, two, the process that they afforded Mr.
6 Lanier, who always is a part of a -- and as was testified by
7 them, and always ready to provide them information about the
8 project.

9 And here, as has been testified to, they had an
10 emergency meeting, never inviting anyone from the project team
11 to make a presentation as to the changes that were made in the
12 project, and now coming before you and suggesting that this was
13 a decision by a community group that represents a thousand
14 people.

15 And I think that when you are asked to weigh the
16 credibility of whether this is a position being taken by the
17 community as a whole, and for the community that even CAG
18 represents, you need to understand whether that is true or not.

19

20 CHAIRPERSON REID: Thank you. All right. Other
21 questions?

22 MR. NETTLER: When you scheduled this emergency
23 meeting did you invite anyone from Mr. Lanier's office or
24 anybody else connected with the project to make a presentation
25 to the Board?

1 MS. DOWNS: No, actually the meeting was
2 scheduled because those drawings which had arrived on Wednesday
3 night, April 4th, Bill Cochran called me the next day and said
4 we should have a meeting and look at these drawings.

5 And so I immediately started calling around and
6 because the week was Easter week, there were several board
7 members who were away. The only time we could do it was
8 Wednesday night at five o'clock; last Wednesday, which would
9 have been April 11th.

10 MR. NETTLER: But you have not had problems in
11 the past of Mr. Lanier coming to meetings even on --

12 MS. DOWNS: No, no, he would come to meetings,
13 but we knew that he was in Austria, and I also knew that Mary
14 Naugelhout was on vacation, too.

15 MR. NETTLER: When you say then that Mr. Cochran
16 had these plans and was called to this meeting, was it Mr.
17 Cochran who was spearheading the opposition among the board
18 members to this project.

19 MS. DOWNS: No, I think all the board members
20 have serious concerns about it.

21 MR. NETTLER: And you weren't present at the OGB
22 hearing that Mr. Cochran testified at were you?

23 MS. DOWNS: No, I was not.

24 MR. NETTLER: So you are not familiar with what
25 he was requesting of the applicant with regard to this project

1 are you?

2 MS. DOWNS: I had discussions with him, and I was
3 at the ANC meeting where he expressed those opinions,
4 essentially dealing with site lines.

5 MR. NETTLER: And are you aware that he requested
6 a setback along Wisconsin Avenue and 31st Street?

7 MS. DOWNS: Yes. Yes, we are.

8 MR. NETTLER: And are you aware that the project
9 provides for a setback along Wisconsin and 31st Street?

10 MS. DOWNS: Right. But, you see, as a board, we
11 had not seen drawings of that setback.

12 MR. NETTLER: So the drawings that you are seeing
13 here today were not the drawings that you saw at that board
14 meeting?

15 MS. DOWNS: Yes. Well, they are, or some of them
16 are the drawings that we saw at the board meeting. There were
17 some side elevations and some front elevations.

18 MR. NETTLER: So how is the setback that you are
19 seeing here today different than the setback that Mr. Cochran
20 was asking for?

21 MS. DOWNS: I think what he was asking for was
22 some more complete plans with an elevation. What we were
23 seeing preliminarily was an overview floor plan, if that makes
24 sense. One sheet, very simple. It was just an overview with
25 little setbacks sort of shaded in.

1 MR. NETTLER: So you don't know then whether the
2 setbacks that are provided in the elevations that you see here
3 today are consistent with what was being requested by your
4 board members do you?

5 MS. ZARFMAN: If I may --

6 MR. NETTLER: Please just answer my question.

7 MS. ZARFMAN: We do still have time on our side.

8 MR. NETTLER: May I continue to ask questions?

9 CHAIRPERSON REID: Yes.

10 MS. ZARFMAN: I guess clarification would not be
11 helpful.

12 MR. NETTLER: Ms. Zarfman, please don't
13 interrupt. Ms. Downs, do you know whether the setbacks that
14 you are seeing here are consistent with what Mr. Cochran was
15 requesting?

16 MS. DOWNS: I think he had problems. I think Mr.
17 Cochran, when he saw the design plans, still had problems with
18 the design.

19 MR. NETTLER: And what were the problems?

20 MS. DOWNS: I think they were design related and
21 they were site line related, and he was not satisfied. But the
22 other board members expressed strong reservations, too.

23 MR. NETTLER: Let me ask you about that. The
24 Citizens Association of Georgetown has talked about the vistas
25 that are impeded by the addition of the floor, notwithstanding

1 the setbacks.

2 Could you tell me with reference to the drawings
3 that you have seen today how the vista along Wisconsin Avenue
4 is different with this additional floor, including the
5 setbacks, than what it was under the project that was approved
6 before?

7 MS. DOWNS: I can't tell you, but I know at one
8 point there was some photographs made that were presented at
9 the ANC looking down the hill. I can't see what is there and
10 whether those photographs were presented.

11 MR. NETTLER: You are aware that those
12 photographs are changed because of an additional setback?

13 MS. DOWNS: Okay. But I think the photographs
14 may be computer images, is that what they are? But the
15 computer image with the setbacks would be if you would go
16 further down Wisconsin Avenue, maybe toward the bridge over the
17 canal, and then take your photographs. Then the site lines
18 would be a lot more dramatic.

19 MR. NETTLER: If you were to take the photographs
20 from the canal?

21 MS. DOWNS: Well, there is a bridge over the
22 canal.

23 MR. NETTLER: I am aware of that.

24 MS. DOWNS: And what I am saying is that you
25 would be closer to the crest of the hill. You really are up

1 towards Wisconsin Avenue.

2 MR. NETTLER: Number 5, which is a close up view
3 of the site from Wisconsin Avenue, is that from the bridge?

4 MS. DOWNS: I don't think so, because there are
5 no buildings. If you were on the bridge, you wouldn't see
6 buildings. You would see Grace Church on the left.

7 MR. NETTLER: So you are saying that if you were
8 on the bridge that the site lines that you have available, or
9 the vistas that you have available with the matter-of-right
10 building are changed significantly by the addition,
11 notwithstanding the setbacks, on Wisconsin Avenue?

12 MS. DOWNS: Yes. I think it is a consideration.
13 I think it is a view that is protected by various ordinances,
14 and it needs to be respected, and that is what our organization
15 does.

16 MR. NETTLER: Now, you said in your testimony is
17 that the 40 foot height limitation in this area should not be
18 violated by this addition. Is it your testimony that in no
19 case should a variance be given from the 40 foot height limit
20 within the W-1?

21 MS. DOWNS: I think within the historic district
22 that no variance should be given.

23 MR. NETTLER: Okay. Regardless of whether the
24 applicant meets the requirements of the Board of Zoning
25 Adjustment, or the zoning regulations, for obtaining a

1 variance, and no variance should be given?

2 MS. DOWNS: I think it should be, but it should
3 be a very strictly applied standard.

4 MR. NETTLER: Now, you heard testimony earlier
5 from the Office of Planning and others that the zoning
6 regulations actually allow you to go up to 60 feet in a W-1
7 zone if you are in planned unit development project. Are you
8 aware of that?

9 MS. DOWNS: Yes.

10 MR. NETTLER: Now, that was a zoning action that
11 was taken by the zoning commission in 1973, which was part of
12 the creation of the waterfront was it not?

13 MS. DOWNS: Well, it was the Washington harbor
14 development.

15 MR. NETTLER: The Washington harbor development
16 in 1973?

17 MS. DOWNS: Wasn't that the variation where that
18 was, where the variance was granted then?

19 MR. NETTLER: No, we are talking about the zoning
20 commission's regulations of 1973 that created the waterfront
21 zone.

22 MS. DOWNS: The waterfront park.

23 MR. NETTLER: The waterfront zone.

24 MS. DOWNS: Yes. Okay. The waterfront zone.

25 MR. NETTLER: And you are aware that the zoning

1 commission permitted you to go up to 60 feet if you had planned
2 unit development?

3 COMMISSIONER HOOD: Madam Chair, unfortunately,
4 like I stated earlier, Mr. Nettler and the applicant did not
5 apply for a PUD, and so I think we are now going down another
6 road in something that does not exist.

7 They don't have a PUD, and so we don't even need
8 to discuss it. The first point I was fine with, but now we are
9 going to keep getting into, and so I would suggest that we move
10 on, Madam Chair.

11 MR. NETTLER: I am not going to keep getting into
12 it, but I will move on.

13 CHAIRPERSON REID: Next question, Mr. Nettler.

14 MR. NETTLER: Ms. Zarfman, were you a member of
15 the ANC or a member of the different ANCs or any one of the
16 ANCs that voted to support this project?

17 MS. ZARFMAN: I was a member of the ANC that
18 followed the one that approved this project. We fought for
19 design elements.

20 MR. NETTLER: Okay. Let me ask you about this
21 restaurant on the roof of the incinerator.

22 MS. ZARFMAN: Correct.

23 MR. NETTLER: It is your understanding that there
24 was a proposal to have a restaurant on the exterior roof of the
25 incinerator?

1 MS. ZARFMAN: It was called a rooftop restaurant
2 on the incinerator building. I remember that it was still in
3 the mind of then commissioner Johnna McFarland at some of her
4 last meetings before she resigned to join the Board of
5 Elections. She was surprised to find that it was no longer
6 part of the project.

7 MR. NETTLER: Well, why don't you point out on
8 the project if you can where this restaurant, this rooftop
9 restaurant, supposedly existed?

10 MS. ZARFMAN: It was to be on the top of the
11 incinerator building.

12 MR. NETTLER: So this was not something that you
13 saw. This is something that Ms. McFarland told you?

14 MS. ZARFMAN: It was part of the minutes of the
15 meeting at which this project won its initial approval back in
16 1998, I think, at the ANC.

17 MR. NETTLER: And you are saying that it is in
18 the ANC resolution that referred to it?

19 MS. ZARFMAN: It is in the minutes that describes
20 the project.

21 MR. NETTLER: Do you have a copy of those
22 minutes with you?

23 MS. ZARFMAN: I don't, but I would be happy to
24 provide them. They are also available on the ANC website.

25 MR. NETTLER: Have you seen the Office of

1 Planning's -- the large track review and the original plans
2 that were submitted with the project, and have you seen those
3 plans?

4 MS. ZARFMAN: No, I don't believe that those ever
5 came to the ANC.

6 MR. NETTLER: You don't believe that the plans
7 that were approved --

8 MS. ZARFMAN: Never to the ANC while I served.

9 MR. NETTLER: Well, you served after the project
10 was approved by the ANC?

11 MS. ZARFMAN: Correct.

12 MR. NETTLER: Would you be surprised to learn
13 that there never was ever a presentation of a rooftop
14 restaurant for this?

15 MS. ZARFMAN: I can only tell yo u that at the
16 site visit done by the then serving members that they were
17 enchanted with this idea. One of them still believed that in
18 her meeting of less than a year ago that a rooftop restaurant
19 was still part of the project.

20 MR. NETTLER: And is it your understanding that
21 the open space around the incinerator, this historic
22 preservation zone, that it is being used for handicap vans?

23 MS. ZARFMAN: I believe at one of the OGB
24 hearings that we were told that that was the only place where
25 oversized vans could provide handicapped access since the

1 structure of the garage was such that it could not accommodate
2 handicapped vans.

3 MR. NETTLER: And you have those on the plans
4 that were approved?

5 MS. ZARFMAN: They were part of the parking
6 plans.

7 MR. NETTLER: And it is your understanding that
8 this open space around the incinerator was reduced by the
9 applicant?

10 MS. ZARFMAN: Pardon?

11 MR. NETTLER: It is your understanding that this
12 open space was reduced by the applicant?

13 MS. ZARFMAN: I believe the glorious public space
14 does not exist around the incinerator site, and I don't believe
15 it is particularly public.

16 MR. NETTLER: Are you aware as to what plan was
17 presented by the council that you suggest was this glorious
18 open space that was referred to?

19 MS. ZARFMAN: I can only tell you what is in the
20 documents that I did review about the council approval.

21 MR. NETTLER: But you are not familiar with the
22 plan that was reviewed by the council itself?

23 MS. ZARFMAN: I can also tell you that the
24 reference to that glorious public space was made an ANC
25 meetings, and OGB meetings.

1 MR. NETTLER: And would you be surprised to learn
2 that this glorious space is actually a smaller space than what
3 was on the plans today?

4 MS. ZARFMAN: I have no idea how it compares.
5 What I am saying is --

6 MR. NETTLER: If you have no idea as to how it
7 compares, then how can you say it has been reduced?

8 MS. ZARFMAN: I am saying that we do not have a
9 glorious public space at the core of this project today.

10 MR. NETTLER: And that is because your definition
11 of glorious is what?

12 MS. ZARFMAN: Something that has access for the
13 public, and is not gated.

14 MR. NETTLER: Now, you testified that the theater
15 has 3,500 seats. Could you tell me where there has been a
16 representation that it has 3,500 seats?

17 MS. ZARFMAN: At that very ANC meeting where the
18 project was approved. I believe the same minutes will show
19 that and that the numbers of seats have varied from 2,500 to
20 3,500. I think CAG's own records show that the ANC records
21 show that.

22 MR. NETTLER: And do you know what these number
23 of seats are provided for in the project that was ultimately
24 approved in the building permit that was issued for this?

25 MS. ZARFMAN: I believe I made reference to 3,500

1 seats as something that caused community concern at the of the
2 ANC approval, and I believe that at that meeting that 3,500
3 seats was the number.

4 MR. NETTLER: So would you be surprised to learn
5 that the plans that you apparently are referring to do not
6 provide for 3,500 seats?

7 MS. ZARFMAN: Richard, I have seen perhaps 40
8 different versions of the plans for this project. I was
9 talking about the set that was available at the time the ANC
10 made a decision.

11 MR. NETTLER: In the CAG letter a reference is
12 made to the fact that the garage space is inadequate for this
13 project. Could you explain what you mean by the garage space
14 being inadequate?

15 MS. ZARFMAN: I believe the interpretation that
16 has been used for this building is that it is a historic
17 building, and I believe that many would view this as a new
18 building on a historic site.

19 If it is a new building, there are requirements
20 for parking that are significantly in excess of what is allowed
21 in the building.

22 MR. NETTLER: Do you know what the parking is
23 that is allowed for the building under the zoning regulations?

24 MS. ZARFMAN: I have not done the calculation,
25 but one of the architects with whom we were talking did, and

1 said that this was not adequate for either the hotel or the
2 movie theaters.

3 MR. NETTLER: Are you aware that the documents
4 that were approved by the Department of Housing and Community
5 Development mandated that the project include not only the
6 spaces that were part of the RFP that was issued, but
7 additional spaces for all of the new development that was
8 provided for on the site, and that that mandate requires
9 parking that is consistent with the zoning regulations?

10 MS. ZARFMAN: I believe that you yourself said
11 that it didn't meet those standards.

12 MR. NETTLER: And when did I say that?

13 MS. ZARFMAN: At one of perhaps the 15
14 presentations that I have heard you make on it.

15 MR. NETTLER: Well, that is news to me that I
16 have made 15, but I appreciate that. So your sense is --

17 MS. ZARFMAN: You have always said that there is
18 no requirement for parking on this site other than what is
19 required as part of the deed of transfer, which is the
20 replacement for most of harbor park.

21 MR. NETTLER: And your testimony is that having
22 said that, that what I am also saying is that they are
23 providing less parking than required in the zoning?

24 MS. ZARFMAN: No, in addition you said that there
25 was parking that was made available through valet parking

1 arrangements that would boost the number of line spots by -- I
2 don't know. I want to say a 75 percent greater number, and
3 that in total there were not the number of marked spots, line
4 spots, in the building that would be required?

5 MR. NETTLER: Now, you are saying that this whole
6 application, or that the CAG letter I guess says that this
7 whole application is merely to address an economic
8 inconvenience; is that correct?

9 MS. ZARFMAN: That is what the Board voted.

10 MR. NETTLER: That the board voted that this is
11 an economic inconvenience?

12 MS. ZARFMAN: Right.

13 CHAIRPERSON REID: Which board?

14 MS. ZARFMAN: The CAG board.

15 MR. NETTLER: So your testimony then is that \$25
16 million less in capital to build this project is an economic
17 inconvenience?

18 MS. ZARFMAN: It is a very troublesome place -- I
19 would not like to be the partners in Millennium Georgetown
20 facing this.

21 MR. NETTLER: Now, let me ask you a question
22 about the measurement of the height. Do you know how long the
23 zoning regulations have permitted the measurement of the height
24 that is being utilized in this matter?

25 MS. ZARFMAN: I didn't contend that you didn't

1 have the right to do it. I contend that with the subdivision
2 that you gain the right to build where 40 feet was intended to
3 be 90 some feet. By categorizing this as one building, you
4 gain the right to do certain things on that site.

5 MR. NETTLER: And is that permitted under the
6 zoning regulations?

7 CHAIRPERSON REID: Excuse me, Mr. Nettler, but
8 how many more questions do you have?

9 MR. NETTLER: About two. And you are aware that
10 the zoning regulations have consistently permitted that to be
11 done?

12 MS. ZARFMAN: I think, Richard, you will realize
13 that what we have said is that you have enjoyed every favorable
14 consideration possible in the site, and still came up with a
15 project that allowed you full FAR and height utilization of a
16 historic site in W-1 zoning, and that asking for more for
17 economic reasons seemed more than what the community believed it
18 should grant.

19 MR. NETTLER: And are you aware that actually
20 approved that we are getting less than the allowable FAR that
21 is permitted under the maximum that is permitted under the
22 zoning regulations?

23 MS. ZARFMAN: How much under the limit is it?

24 MR. NETTLER: I am just asking you if you are
25 aware that --

1 MS. ZARFMAN: You indicated that you were fully
2 utilizing it, and it was an issue that was involved in the
3 board's consideration.

4 MR. NETTLER: Are you aware that it is utilized
5 less than is allowable under the zoning regulations?

6 MS. ZARFMAN: If it is that will be a surprise,
7 and then perhaps you don't need the variance.

8 MR. NETTLER: And is the Association of
9 Georgetown also opposing the variance for the interior FAR
10 increases that are being sought?

11 MS. ZARFMAN: The position that the Board took
12 was to oppose the variances.

13 MR. NETTLER: And what is the basis for opposing
14 the variance for the interior space that they are seeking to
15 convert into useable space?

16 MS. ZARFMAN: The position was that variances on
17 this site should not be granted. So much flexibility had been
18 granted to the utilization of the site that going beyond what
19 was allowed by code should not be granted.

20 MR. NETTLER: And how was reusing the interior
21 space or reconfiguring the interior space inconsistent with the
22 zoning plan or provide an adverse impact on the zoning map,
23 particularly since it creates 10 more parking spaces?

24 MS. ZARFMAN: I would have to think about that,
25 Richard.

1 MR. NETTLER: I have no other questions.

2 CHAIRPERSON REID: Okay. Thank you. Ms.
3 Zarfman, I have one last question, and that was how would your
4 organization like to see the developer change this particular
5 project, or I guess better put, what is it that you would like
6 to see done?

7
8 MS. ZARFMAN: I think that puts CAG in an unfair
9 position of having to know enough about the finances and the
10 business arrangements of Millennium Georgetown Partners to
11 begin to prescribe what might work for them.

12 CHAIRPERSON REID: But you know what you don't
13 want?

14 MS. ZARFMAN: Well, we want what the protective
15 zoning provides for, and we are asking you to defend that,
16 because we don't believe that economic hardship alone justifies
17 the variances in a very important piece of zoning on the most
18 critical block on the waterfront.

19 CHAIRPERSON REID: So you don't want the variance
20 to be granted because you want the zoning or you want to
21 protect the integrity and intent of the zoning regulations and
22 the zoning map?

23 MS. ZARFMAN: Correct, because if we violate it
24 here, what is to say that the next project, the one after that,
25 and the one after that, a further amendment to this project

1 won't come along and justify every bit on the same economics
2 that you are being asked to look at this for?

3 If they find that they can't cool the theaters
4 adequately, and have to put the mechanicals on the rooftop, and
5 use that interior space some other way, it would be every bit
6 the same as the basis on which you are being asked to make this
7 decision.

8 CHAIRPERSON REID: Okay.

9 MS. ZARFMAN: If I may, one of the points of
10 clarification that I couldn't get in from Richard's questioning
11 is that Ms. Downs was not at the CAG's meeting in February, at
12 which a lengthy presentation of this project was made to the
13 members.

14 Two architect members spoke out forcefully in
15 opposition to any variance being given for this project. No
16 one spoke out in favor of it. It is not as though someone is
17 misrepresenting the views of those who have spoken to us and to
18 others.

19 And lastly a question was asked about some
20 flexibility in the W-1 40 foot height. Some flexibility to me
21 doesn't go to 117 feet. I just have trouble wrapping my mind
22 around that justification for what you are being asked to
23 approve here.

24 CHAIRPERSON REID: Okay. All right. Thank you
25 very much. You are done. Ms. Miller.

1 MS. MILLER: Good evening. My name is Dorothy
2 Miller, and I am speaking as a citizen tonight for where all
3 this traffic is going to come to my doorstep.

4 COMMISSIONER HINTON: Ms. Miller, were you sworn
5 in at the beginning?

6 MS. MILLER: Oh, that's right. I wasn't.

7 (The witness was sworn.)

8 MS. MILLER: I would like to make the board
9 members aware of what is going on in the vicinity of 5 or 6
10 blocks of this area, and Mr. Laden's comments that this would
11 not be --

12 CHAIRPERSON REID: I'm sorry, but could you give
13 your name and address for the record.

14 MS. MILLER: Dorothy Miller, 2440 Virginia
15 Avenue, Northwest. And the first thing is that on the 3rd of
16 May, NCPC is making the land exchange with Georgetown so that
17 the Canal Road will be their main exit, and that traffic will
18 be coming along with this traffic.

19 And what I want to make you aware of is that K
20 Street dead-ends only two blocks from this site. And all of
21 the people -- the movie theater for 2,900, the retail, the
22 hotel, and the residential -- will have to come toward
23 Washington Circle, just about 4 or 5 blocks away.

24 We have had a new apartment building put up at
25 2500, and we have had another apartment building across the

1 street, plus an Embassy for the Egyptians. We have had a
2 building at 2501 Pennsylvania Avenue is going to be a time
3 shared building which has gotten approval.

4 And we have an apartment build at 25th and M that
5 has been approved, and we have a new hospital that is supposed
6 to be opening, and we are asking to rezone Square 37 to
7 consider it, and they are coming before us.

8 And I said to the Mayor, please, please put a
9 moratorium on any more building in Foggy Bottom West End. Oh,
10 he says, we are going to save the library. The library is not
11 the point.

12 These streets were never made for the amount of
13 traffic that is now trying to go five blocks either way. With
14 Pennsylvania Avenue closed, the hospital and all the
15 construction, you cannot move.

16 It takes you a half-hour to go one or two blocks.
17 As Mr. Slade said, it is just like his driveway at home. You
18 sit. You sit on 22nd, and you sit on 23rd, and you sit on
19 24th, and you sit on L Street. You do not move. Try it some
20 afternoon.

21 And try 23rd Street, where the ambulances are
22 going to be coming across and where a thousand people walk, and
23 where the babies are trying to leave the hospital that take a
24 half-hour, and there is only one entrance, and there is no
25 parking.

1 I mean, it is unbelievable, and when Mr. Laden
2 says that this will not affect the community, I think you had
3 better go back to DPW and find out what they mean by that,
4 because he obviously did not take into consideration four more
5 apartment buildings, one time-shared, and all these other
6 construction going on, and he knows about them as well as we
7 do.

8 And I would be most grateful if you would demand
9 an absolute good traffic study from the Department of Public
10 Works, because since Mr. Birch left there hasn't been anybody
11 there that could give you one.

12 And I thank you for this time. And by the way,
13 the ANC did not support Mr. Lanier. We tied because someone
14 saw that we tied, and I thank you for the time.

15 CHAIRPERSON REID: All right. Right on time.
16 Very good. Questions, Board Members or Mr. Nettler?

17 COMMISSIONER HINTON: May I ask one question? I
18 have looked at the drawings and I cannot find the distance that
19 the south facade of this building be from the actual
20 waterfront.

21 I know that the waterfront park is between
22 those. Does anybody know what those might be?

23 MR. BARANES: It is 350 to 400 feet.

24 COMMISSIONER HINTON: Thank you.

25 CHAIRPERSON REID: Okay. Closing remarks by the

1 applicant.

2 MR. NETTLER: Well, I do want to have some
3 rebuttal if I could since there have been some issues raised
4 regarding what this project was proposing and there have been
5 at least -- or at least I made a representation that I would
6 give you the opportunity to ask some questions that you may
7 have felt that were not asked. And I would first like to call
8 Mr. Baranes about the project.

9 CHAIRPERSON REID: Okay. I did have a couple of
10 questions that were based on testimony. Was there at any point
11 a discussion about plans for this rooftop restaurant?

12 MR. BARANES: That arose because at some of the
13 initial presentations we were asked whether we could provide a
14 rooftop restaurant, and we never ever did a drawing showing a
15 rooftop restaurant.

16 My answer is that at the time to that question my
17 answer was that the reason that we did not propose a rooftop
18 restaurant was because we would have problems with egress.

19 A restaurant is considered an assembly use, which
20 requires very major stairways for fire egress, and that is the
21 reason that you generally don't see restaurants at the tops of
22 buildings. You generally see restaurants at the bottoms of
23 buildings, because otherwise you would have to build these very
24 large stairways to have large crowds egressing in case of an
25 emergency.

1 CHAIRPERSON REID: But the question was whether
2 there was a promise or proffer of this being a part of the
3 development, this rooftop restaurant?

4 MR. BARANES: We never made one and we never drew
5 one.

6 MR. LANIER: Never. It was a wish at the time of
7 the ANC Chair, Ms. McFarland, and where she said it would be
8 great to have a rooftop restaurant, but it was more of a desire
9 by her than ever a promise by us.

10 CHAIRPERSON REID: Okay. Now, the other question
11 was that there was testimony to the effect that there was a
12 city council resolution in regard to there being a huge public
13 space in the core of the development.

14 MR. LANIER: My only answer to that is the
15 development is not accessible by a small entrance which is
16 gated. If you look at the plans, and if you look at the model,
17 the entire South Street front is open of this development. And
18 there is nobody who stops anybody walking into this
19 development.

20 CHAIRPERSON REID: And so it is there?

21 MR. LANIER: It is a wide open street available
22 for everybody to enter and by virtue of creating a hotel and a
23 public restaurant, we would be self-defeating if we made this a
24 small entrance which we were to gate.

25 CHAIRPERSON REID: So basically what you are

1 saying is that the public space, where there was testimony here
2 today that was definitely being provided, and consistent with
3 the city council resolution?

4 MR. LANIER: Absolutely. We made early on a
5 statement at the ANC that for practical purposes we did not
6 want to have it a walk through block. We made an effort to
7 differentiate the moviegoer from the homeowner.

8 Nobody who lives in a condominium wants to
9 basically mingle with a crowd of moviegoers, and so we made it
10 very, very clear that there was no crossway through the
11 project. But we have consistently maintained the open space of
12 the project and if not increased it.

13 MR. NETTLER: And in fact, Mr. Baranes, since the
14 council hearing it was increased since we agreed since the
15 council hearing to also preserve those additional buildings
16 behind the brick yard hill house; isn't that correct?

17 MR. BARANES: That is correct.

18 MR. NETTLER: And is it correct, Mr. Baranes,
19 that simply because of a subdivision being done here that you
20 could not have taken advantage of the South Street to use for
21 the height along K Street?

22 MR. BARANES: I'm sorry, but would you repeat
23 that?

24 MR. NETTLER: Let me ask it another way. Isn't
25 it true that the incinerator lot always went from South Street

1 to Wisconsin Avenue?

2 MR. BARANES: Yes.

3 MR. NETTLER: So you had always been able to take
4 advantage of the South Street measuring point for anything
5 constructed on K Street for this project; isn't that true?

6 MR. BARANES: That is correct, and also I would
7 just add to that that I think that the zoning commission was
8 well aware of the fact that we were dealing in an area that had
9 all of this topography change when it instituted the 40 foot
10 limit on the W-1, and you do have a right to measure anywhere
11 along the edge of a property, in terms of your height.

12 There are rules for that.

13 And one other point that I would like to add is
14 that as we went through all of the various approvals we were
15 asked to widen the stair that you see off of Wisconsin Avenue
16 between the brown building and the yellow building.

17 We used to have a very narrow stair that went
18 straight down for egress purposes, and the Commission of Fine
19 Arts, and the Old Georgetown Board asked us to widen that and
20 make it more generous, and add some landscaping so that it
21 would be more appealing to the public.

22 And we did do that, and they were aware of the
23 fact that we also had a gate there, which we still do.

24 CHAIRPERSON REID: Okay. Thank you.

25 MR. NETTLER: And one last question for Mr.

1 Lanier. Would you describe the loss of \$25 million out of a
2 \$40 million capital necessary to construct this an economic
3 inconvenience?

4 MR. LANIER: I would say it is a major economic
5 inconvenience.

6 MR. NETTLER: I have no other questions.

7 CHAIRPERSON REID: Okay. Closing remarks. Board
8 Members, did you have any other questions?

9 (No audible response.)

10 MR. NETTLER: As Mr. Altman stated earlier, and
11 as I am going to repeat, and I understand that this has been a
12 lengthy hearing, and that a number of issues that have been
13 raised, there is a desire on the part of the applicant to try
14 and get a decision as soon as possible, if not today, and we
15 certainly would be asking for one today.

16 What I wanted to try and do as far as my closing
17 remarks is focus on what it is that the issue that you have to
18 resolve. And the issue that you have to resolve is whether we
19 meet the three criteria for a zoning variance.

20 And as I have stated there are two components to
21 this variance. There is that which is related to the addition
22 on top, and there is the variance that is related to the
23 interior space.

24 And I am going to preface that by saying that the
25 reason that this is important is because the Millennium has a

1 project -- and this is unusual in the manner in which this is
2 coming before you, because it is a project that is under
3 construction, and a project that is under construction that for
4 the last 5 or 6 years has attempted to be done as a matter of
5 right project, and attempted to deal with either all of their
6 restrictions and advantages that this site posed for this
7 project, and there are many.

8 And at a point where those disadvantages arose
9 became paramount to the continued development of this project
10 was only recently. It precluded us from going forward with a
11 planned unit development because of the time constraints
12 required for going forward with a planned unit development.

13 It was not an attempt to maximize an FAR
14 situation that even under the planned unit development
15 regulations would have allowed us to go beyond at least to go
16 beyond what we provided for here.

17 It was an attempt to deal with a situation to
18 allow this project to be finished. The project is out of the
19 ground, and the theater space is being constructed, whether it
20 can be reused for another purpose that has been visited by the
21 applicants.

22 But the fact is that we are in a situation where
23 this thing is either going to move forward after today or it is
24 not going to move forward. And if the Board makes a decision
25 today or soon after today, that may allow this thing to go

1 forward or not.

2 We of course will have to address the Commission
3 on Fine Arts' issues, but let me then focus in on the Board of
4 Zoning Adjustment's responsibilities, and it is three-fold.

5 Nobody -- I heard no testimony -- disagrees that
6 this site is unique. The site is unique for all the reasons
7 that you have said before that a site in the District of
8 Columbia is unique, because -- and the Courts have agreed with
9 you, because the confluence of a variety of factors.

10 One, The historic incinerator building, and the
11 brick yard hill house, the historic preservation covenant that
12 was placed on this property by a number of different agencies,
13 the covenant that were placed on this property by the District
14 of Columbia government with regard to what might be used.

15 The topography in a sense of how it relates to
16 what you could develop on this site. The relationship to the
17 Whitehurst Freeway. These are all factors that -- and not
18 withstanding the suggestion that this will set a precedent for
19 other sites or further changes here, is simply not the case.

20 As the Court said when it dealt with the Cochran
21 Gallery affirming a decision of yours, that when you have a
22 historic building -- and here we have more than one historic
23 building, and in that case a historic landmark, and here a
24 historic landmark -- that that in and of itself creates a
25 unique condition.

1 Because it presents limits for you as to what you
2 can do under the zoning regulations. And the limits here go
3 way beyond that. Now, whether it is unique is probably the
4 easier issue here, because the issue that really that you have
5 to deal with is what is the practical difficulty.

6 Now, our position is that the practical
7 difficulty is directly related to this uniqueness. Clearly the
8 economic situation that developed is what presented us today,
9 and clearly the Court has said -- and made it clear in Gill
10 Martin -- that for all intents and purposes that it was
11 settling the issue as to whether an economic situation, a
12 substantial economic situation, was a factor that was properly
13 considered when analyzing what is a practical difficulty or an
14 exceptional circumstance affecting it, aside from the unique
15 situation.

16 And it said that it certainly is, and if you can
17 demonstrate -- and in fact Ratcoff on Zoning makes it very
18 clear and which the Court was relying on for its conclusion,
19 makes it very clear that if you have a substantial economic
20 impact, and you have a unique site, which we do, and because of
21 the unique conditions on that site, and the economic impact,
22 you are not able to comply with the zoning regulations, then
23 you have met the criteria for a practical difficulty.

24 \$40 million is necessary to be devoted by the
25 Millennium to build this project, \$40 million. Taking out \$25

1 million is not an insignificant sum. It is not going to be
2 rectified by any other present use, because we are in a
3 position where we have the theaters, and this is not just a
4 Loews, but as to theaters throughout the country, are going
5 bankrupt.

6 You have heard from the Office of Planning, which
7 has had experience throughout the city on this issue, and you
8 have heard the Department of Housing and Community Development,
9 which has experience throughout the city on this issue, that
10 the theater situation simply has changed.

11 But the theater portion of this project is an
12 extremely important component, and it is extremely important
13 not only because of how much space it takes up, it is extremely
14 important because it does something that the Park Service, that
15 the business community, that the residents of Georgetown, that
16 the ANCs and the council have all recognized was an incredibly
17 important part of this project.

18 And that was the ability to provide parking
19 during the day from a use unique to a theater that wouldn't be
20 necessary for the theater use. And so you have all this
21 available parking that could be provided.

22 So if you eliminate the theater use and say that
23 there is some other use out there that would eliminate this
24 practical difficulty, you have essentially eliminated the
25 strongest support that the city, that the community, that the

1 Park Service and everybody else has provided for why this
2 project needs to go forward.

3 It addresses a major concern in Georgetown, and
4 without the Metro in Georgetown, it is really a major concern
5 in Georgetown. So then we are left with the issue as to
6 whether the intent of the zoning plan is being undermined by
7 seeking this variance.

8 And I know that I have made reference to the fact
9 that the zoning commission authorized 60 feet for at least a
10 PUD, and we are not dealing with a PUD, and so I will leave
11 that issue alone.

12 The zoning plan. The zoning plan and the
13 rationale provided by the zoning commission for the rezoning of
14 this area was to eliminate, one, the decrepit buildings that
15 were along the waterfront, and two, to ensure -- and W-1
16 specifically, to ensure that we had residential development
17 that was not just townhouse development.

18 Now, think about that for a moment. If the
19 zoning commission said in its statement of reasons that for W-1
20 that they are looking to have residential development that is
21 not townhouses, but that is apartments and other more dense
22 uses, then they must have understood of course that unlike
23 townhouses, which generally go to 20 or 30 feet, apartment
24 buildings are not going to be simply at 40 feet.

25 Because the zoning commission knew, and as it

1 specifically stated in its rationale, that people were going to
2 take advantage of the topography in this area to be able to
3 develop projects that would allow for essentially a greater
4 density because of being able to use streets like South Street
5 as a measuring point.

6 And because of that topography, also allowed you
7 to maximize your FAR on the site. So therefore we have a
8 situation where the project, the components of this project,
9 are entirely consistent with what the zoning commission wanted
10 to see here.

11 Now, the issue then you are left with is whether
12 that modest, modest addition of height is an impairment of the
13 zoning plan. And you have seen from the studies that were
14 done, from the pictures, you can see the comparison of what
15 that additional height does to the site.

16 It is almost invisible, aside from the fact that
17 it is only less than 25 percent -- and I think now it is 23
18 percent of the site in which you are adding to it, and along
19 Wisconsin Avenue, and along 31st Street, we have stepped it
20 back so you are back at the height that is permitted under the
21 zoning regulations anyway.

22 All that we are left with here is a middle
23 portion over two bays of this residential project that are or
24 that have this additional height. It doesn't impair any views
25 from the canal certainly. Those views are gone with the

1 project as built.

2 It does not impair the views of Georgetown from
3 the Potomac, and you can see that from the pictures that we
4 have presented to you, which are straight ahead against this
5 project.

6 So to say that the modest amount of height that
7 is being requested here, there is nothing about that additional
8 FAR within the building that you can't see that provides for a
9 better way or a more feasible way of doing the construction on
10 this site that could possibly be considered a violation of the
11 zoning plan because it simply reduces the exact same project
12 that you have got with you without the added height.

13 We are asking for both because it is necessary to
14 have the theater use go forward, and to have this project go
15 forward, and we would ask for you to make a decision today.

16 And if not to make a decision today, we would ask
17 for you to give us an extremely abbreviated time to submit
18 proposed findings and that you make a decision at your next
19 meeting, which I believe is on the first Tuesday in May or
20 sooner.

21 CHAIRPERSON REID: Okay. Thank you, Mr. Nettler.

22 Board Members, I think that perhaps since we do have a party
23 in opposition that it would be instructive for us to not try to
24 dispose of this particular case today.

25 In addition, there is some clarification that we

1 need to get I think from the ANC as to what in fact their true
2 position is, and there is quite a bit of material that we need
3 or I need anyway to be able to digest some of what was
4 submitted today and what came out in testimony today in regards
5 to this case.

6 So it would be my recommendation that we take it
7 up at our next regularly scheduled meeting, which would be May
8 1st.

9 SECRETARY PRUITT: I think that is really going
10 to be dependent on the information that you are requesting from
11 the applicant, and then allowing response time by the parties.

12 We have two weeks between now and the next or the
13 1st meeting. We normally provide the parties in opposition at
14 least a week to respond to anything requested from the
15 applicant. So that makes very tight time frames.

16 MR. NETTLER: I would be willing to offer that
17 anything that you are requiring of us, including proposed
18 findings, be provided to you by this Friday. That would
19 certainly give them an opportunity to respond within the time
20 frame.

21 SECRETARY PRUITT: And give them time to respond,
22 and also then that gives them within that same time, since you
23 are going to be providing new information, they can do their
24 findings of fact at the same time. So now it is just a matter
25 of what information, if that is acceptable by the Board.

1 COMMISSIONER HOOD: Madam Chair, let me just ask
2 the staff -- well, the schedule for May 1st is already tight.

3 SECRETARY PRUITT: Yes, it is very full. You
4 have five cases to try.

5 COMMISSIONER HOOD: And one of them I know is
6 where we are going to have to very heavily deliberate.

7 SECRETARY PRUITT: Yes.

8 COMMISSIONER HOOD: I believe that is the one
9 that we did earlier today.

10 SECRETARY PRUITT: That's correct.

11 COMMISSIONER HOOD: In fairness to the public, I
12 don't know if we want to crowd the agenda up for May 1st, and I
13 don't know if that will put anybody in a disadvantage, but I
14 think we want to consider that.

15 MR. NETTLER: If I might just interject, that if
16 we are unable to do that, and we get to where we are not trying
17 to get to a point where the construction has to stop, that if
18 it does go beyond May 1st, and I don't know if you are talking
19 about setting a separate date, or setting June as a date for
20 that.

21 But it will get to a point that construction,
22 once it has to stop, and to begin construction again that it
23 will only increase the impacts on this project if you
24 ultimately decide to put this off beyond May 1st, and
25 construction has to stop, and then you decide to grant the

1 variances.

2 CHAIRPERSON REID: Well, the only other thing I
3 would suggest is that perhaps we could come in early so we
4 could put it on the agenda for May 1st, perhaps as early as
5 8:30.

6 COMMISSIONER HOOD: Madam Chair, I have no
7 problems with coming in at 8:30.

8 CHAIRPERSON REID: Well, it is a public meeting
9 and no participation, and so if we could start that early that
10 would be great.

11 COMMISSIONER HINTON: I would prefer we start on
12 May 1st at eight o'clock.

13 CHAIRPERSON REID: Well, I don't think I can do
14 eight o'clock. I can get here at 8:30. Mr. Hood, is that good
15 for you?

16 COMMISSIONER HOOD: Yes, 8:30 is fine.

17 CHAIRPERSON REID: Then 8:30. If you could
18 submit your information on disk or by E-mail.

19 MR. NETTLER: That's fine.

20 COMMISSIONER HOOD: I don't know if this would
21 belabor it, but if we have it fine, and if we don't, fine. I
22 have concern about Mr. Laden. Ms. Miller brought up some
23 issues about traffic, and I do know in that area that traffic
24 just sits.

25 I would like for Mr. Laden, if at all possible,

1 to look at Mr. Slade's -- even though we didn't have testimony
2 on it, I would like for Mr. Laden to review it, and see if he
3 concurs with it.

4 I don't know if that is typically done, but I see
5 here from looking at his report, he does recognize that it is
6 an issue down there, but he doesn't really say that this is
7 going to be detrimental and adverse to the community. And I
8 would like for Mr. Laden to look over his points and see if
9 this report is sufficient.

10 MR. NETTLER: I have no objection to that, Mr.
11 Hood.

12 SECRETARY PRUITT: And he reviewed that for 1998
13 and that was three years ago, and there have been changes.

14 MR. NETTLER: Well, I understand that.

15 COMMISSIONER HOOD: Well, I would like for him if
16 at all possible to drop us a note on that.

17 SECRETARY PRUITT: The staff will write a letter
18 requesting that he review it and that it be due by Friday.

19 COMMISSIONER HOOD: And also, Madam Chair, I
20 think you may have mentioned this about the questions from Ms.
21 Zarfman and Ms. Downs, and the Association and we were asking
22 them that they do a brief. I don't know if we have time for
23 all of this. I am not sure it is that many questions.

24 CHAIRPERSON REID: Well, did you have additional
25 ones?

1 COMMISSIONER HOOD: Well, I know that Ms. Zarfman
2 was going to provide us the proof that there was a promise made
3 about the rooftop restaurant, or from the ANC minutes about
4 that. Just those little things and if we could have that.

5 SECRETARY PRUITT: If you could provide that by
6 Friday, Ms. Zarfman, so that the other side has a chance to
7 respond.

8 MS. ZARFMAN: All right. And our response to
9 that?

10 MR. NETTLER: Mr. Nettler's information would be
11 due by the 20th, and your information to us by the 20th to Mr.
12 Nettler, and Mr. Nettler's response to your request would be
13 due on the 27th, and your response would be due on the 27th.

14 MR. NETTLER: And I understand that you are
15 referring to my proposed findings, correct?

16 SECRETARY PRUITT: No, that is one thing. Let's
17 see. ANC to submit revised letter, and request from DPW to
18 review applicant's traffic reports, minutes from ANC. Correct,
19 I don't think we really have anything from you directly that
20 needs to come in. Is that what the Board wishes and is there
21 anything that I have missed?

22 COMMISSIONER HINTON: If the CFA final report is
23 available, could the applicant please submit that for the
24 record?

25 SECRETARY PRUITT: Yes, from their meeting on the

1 19th. So if you can get something as soon as possible, and
2 submit it to us.

3 MR. NETTLER: I am not expecting it to be any
4 different from their letter, but we will submit it to you.

5 MS. ZARFMAN: Did you also want that city council
6 resolution?

7 CHAIRPERSON REID: Certainly it won't hurt. If
8 you have it, and you can provide it to us, fine. That won't
9 hurt.

10 SECRETARY PRUITT: Please indulge me for a few
11 more seconds to be sure that everybody understands what is due.

12 The ANC is to submit a revised letter, and request from DPW to
13 review applicant's traffic plan, and minutes from the ANC, city
14 council resolution, and CFA report, if possible, based on the
15 hearing. That will all be due on the 20th.

16 All responses and findings of facts to these
17 issues by both party and applicant will be due by the 27th for
18 a decision on May 1st.

19 CHAIRPERSON REID: And so that will then conclude
20 today's hearing. Thank you very much.

21 (Whereupon, the hearing was concluded at 7:25
22 p.m.)

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