

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,
JUNE 19, 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 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Vice Chairperson
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Maxine Brown-Roberts, Office of Planning
David McGhettigan, Office of Planning
Arthur Rodgers, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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<u>16733 ANC-2C</u>	6
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(202) 955-3000

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16730 ANC-2F

JACQUES B. DEPUY, Esq.	19
Greenstein DeLorme & Luchs, P.C. 1620 L Street, N.W. Suite 900 Washington, D.C. 20036 (202) 452-1400	

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APPLICATION OF BP AMOCO CORPORATION

16648 ANC-6A

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WITNESSES

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(9:30 a.m.)

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CHAIRPERSON REID: All right Mr. Glasgow.

MS. BAILEY: Madam Chair, may I please call the case before Mr. Glasgow gets started?

CHAIRPERSON REID: I'm sorry, one small technicality.

MS. BAILEY: A small technicality. Application #16733 of the Salvation Army, pursuant to 11 DCMR 3103.2 for variances from the floor area ratio requirements (sub-section 1706.4), for the residential recreation space requirements (sub-section 773.3) and from the requirements for width of an open court (sub-section 776.1) for the construction of a hotel and apartment building; and the DD/C-2-C District at premises 525 and 575 Massachusetts Avenue N.W., (Square 484, Lot 25).

All those wishing to testify, please stand and raise your right hand.

(Witnesses sworn.)

Mr. Glasgow, it's all yours.

CHAIRPERSON REID: All right now, Mr. Glasgow, first let me confirm, is there anyone here in opposition to this case? All right. Not having seen any letters of opposition Mr. Glasgow, basically the Board has read over the materials that have been submitted,

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1 so it's going to stand on record for the most part. Just
2 give us the salient points of your case and we can dispose
3 of this fairly quickly today.

4 MR. GLASGOW: Well, we certainly are prepared
5 to stand on the record, and with respect to the Statement
6 of Applicant that has been submitted and the report of
7 the Office of Planning as it is addressed to all the
8 variance areas of relief, and how it is that that standard
9 is met in this Application.

10 CHAIRPERSON REID: Okay.

11 MR. GLASGOW: We have here today Mr.
12 Fazakerley of CG Investments, a representative of the
13 owner or the contract purchaser, developer of the
14 property, and Mr. David Jacobs also of the developer.
15 We have Mr. George Dove, the architect of the project
16 and Mr. Stephen Sher, the land planner.

17 Mr. Dove and Mr. Sher have previously been
18 accepted as expert witnesses so that if there are any
19 questions, we can have our experts address those; and
20 I believe Mr. Fazakerley has also been accepted by an
21 expert by this Board before in the area of real estate
22 development.

23 We are prepared to answer any questions that
24 you may have on this Application.

25 CHAIRPERSON REID: Mr. Fazakerley, would you

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1 like to say anything?

2 MR. FAZAKERLEY: I'm just I think I'll take
3 your admonition that we can move along, and we'll stand
4 on the record, and happy to answer questions Madam Chair.

5 MR. GLASGOW: And we believe we've covered
6 each and every point required with our submission, and
7 with the report of the Office of Planning that all elements
8 of the Application are covered and have been deemed to
9 meet the requirements for the granting of the Application.

10 If there are any questions of the Board,
11 we're happy to submit them. Otherwise, we can go through
12 our presentation.

13 CHAIRPERSON REID: You're saying otherwise,
14 go through presentation. No, we do have a few questions.

15 First of all Mr. Glasgow, while I said to expedite this,
16 but please give us the salient points of your particular
17 case, specifically how you are, how you have met your
18 test for the relief that you're asking for? Yes, just
19 summarize that very quickly.

20 MR. GLASGOW: I'll be happy to call Mr.
21 Stephen Shur to proceed with a summary of his testimony.

22 CHAIRPERSON REID: Yes.

23 MR. SHUR: Madam Chair, members of the Board,
24 for the record my name is Stephen E. Shur, the Director
25 of Zoning and Land Use Services of the law firm of Holland

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1 and Knight, LLP.

2 CHAIRPERSON REID: Okay.

3 MR. SHUR: For the record, staff will give
4 you my eleven-page outline. I'm going to summarize that
5 in three thoughts.

6 CHAIRPERSON REID: Okay.

7 MR. SHUR: We have three areas of relief,
8 variance on the residential FAR, variance on the
9 residential recreation space, and a variance on the width
10 of the open court at the rear of the property. That's
11 thought Number One.

12 Thought Number Two, the first two variances
13 are basically timing questions as far as this development
14 is concerned, because the Zoning Commission has proposed
15 to amend the regulations that if at such point that they
16 adopt I

17 CHAIRPERSON REID: Right.

18 MR. SHUR: I those amendments, those two
19 areas of relief would not be necessary.

20 CHAIRPERSON REID: Right.

21 MR. SHUR: We did not know at the time when
22 we filed this Application, what the timing of the Zoning
23 Commission was going to be, but it's going to be soon.

24 But, because of the need to go forward with this project,
25 we would ask for the Board's relief on those two variances

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1 as well.

2 Point Number Three, as to the open court
3 situation, the property is, I'll use the word interrupted
4 by a public alley which extends into the site from the
5 north. Mr. Dove has pointed to that alley. We have
6 sufficient open space on both sides of that alley and
7 including the alley to more than meet the court
8 requirement, if that alley did not extend into the site.

9
10 So, what we have is an exceptional situation
11 created by the penetration of that ten-foot alley into
12 the site and thereby dividing our open space to the east
13 and to the west. If you take the space in its entirety,
14 we more than meet the width of the minimum court
15 requirements.

16 As you can see, on the front of the property,
17 on the Mass Avenue side, we have a space of approximately
18 the same dimensions and we don't need a variance for that
19 space.

20 CHAIRPERSON REID: Yes.

21 MR. SHUR: The variance is occasioned only
22 because you can see the radius of the circle extends into
23 the area of the alley. If the alley weren't there and
24 didn't extend into the site like that, we wouldn't need
25 a variance at all on the open court. So, that is the

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1 basis of our relief on the court. Now I think as we have
2 said, and as we've put in writing, we otherwise meet the
3 tests of the regulations for the relief that we've asked
4 for.

5 CHAIRPERSON REID: And, at the properties you
6 need?

7 MR. SHUR: I'm sorry, it is an exceptional
8 situation because of █

9 CHAIRPERSON REID: The configuration?

10 MR. SHUR: █ that configuration of the site.

11 CHAIRPERSON REID: Okay. All right. And
12 there's no adverse impact to your knowledge?

13 MR. SHUR: No.

14 CHAIRPERSON REID: You have no complaints or
15 no opposition or anyone who raised any issue regarding
16 this particular Application going forward?

17 MR. SHUR: Not to our knowledge.

18 CHAIRPERSON REID: Okay.

19 MR. SHUR: This is a use █ it's a combination
20 of hotel and apartment house use, both uses highly desired
21 in this immediate neighborhood.

22 CHAIRPERSON REID: Yes.

23 MR. SHUR: You have the Convention Center one
24 block away to the northwest, and you've got the hotel
25 on that side of the property facing in that direction.

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1
2 We've got a 200-room apartment house on the
3 opposite side of the ■ not on the opposite side, but on
4 the east side of the site, and a single building on the
5 site, and we've in the outline, we've identified and
6 addressed all the comp plan provisions which suggest those
7 are appropriate uses for this particular site in this
8 neighborhood.

9 CHAIRPERSON REID: All right. Board
10 members, questions?

11 MR. GRIFFIS: Yes, Madam Chair, a quick
12 question on the courtyard, if you might want to bring
13 that plan back up. I don't think this is incredibly
14 critical; however, I'm seeing a dimension from the open
15 Courtyard #2 that goes into the alley easement of 33'
16 4 ■", but I see on the table, on the same sheet which
17 is the Submittal #9 in our packet, Courtyard #2 width
18 is listed as 36.35. Just, frankly for clarification,
19 the square footage of the open court doesn't change in
20 either cases.

21 MR. SHUR: I'll let Mr. Dove, the architect,
22 address that.

23 MR. DOVE: I noticed the inconsistencies in
24 the table. The table is prepared by the Department of
25 Planning, and I think that in our submission we indicated

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1 that the variance we are requesting is 9.53 feet which
2 equates to the 33.37 dimension you see on the plan. It
3 was interpreted as 36.35 in this table, and I've made
4 cross-outs referencing that the variance 9.53 feet, not
5 6.55 feet.

6 MR. GRIFFIS: Okay. And in terms of the alley
7 easement, that is actually on your property and counts
8 towards part of the Courtyard #2, correct?

9 MR. DOVE: Yes.

10 MR. GRIFFIS: Okay. While we're in all the
11 tabulations, just as the record is a matter-of-right FAR
12 on this site is 8.5 as listed above, and what's your total
13 proposed FAR?

14 MR. DOVE: 10.04.

15 MR. GRIFFIS: Okay.

16 MR. DOVE: 3.5 of which would be for the hotel
17 and the remainder is for the apartment house.

18 MR. GRIFFIS: Right, 6.54 for the
19 residential.

20 MR. DOVE: Correct.

21 MR. GRIFFIS: Okay. That's all I have.

22 CHAIRPERSON REID: Other questions? Mr.
23 Hood, questions?

24 COMMISSIONER HOOD: No, I have no questions.

25 CHAIRPERSON REID: Ms. Renshaw?

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1 VICE-CHAIRPERSON RENSHAW: No questions at
2 this time.

3 CHAIRPERSON REID: All right that there are
4 no questions, move now to government reports, Office of
5 Planning.

6 MS. BROWN-ROBERTS: Good afternoon Madam
7 Chairman and members of the Board. My name is Maxine
8 Brown-Roberts from the Office of Planning. The Office
9 of Planning's report was late and therefore we ask that
10 it be accepted on the record.

11 CHAIRPERSON REID: Right. I forgot to
12 mention that. I have no problem with waiving the rules
13 to allow your late submission unless there are objections.
14 Okay.

15 MS. BROWN-ROBERTS: I think the Applicant has
16 stated and the Office of Planning supports, what they
17 have presented today that they have met the requirements
18 of Section 3103.2, which allows granting of the variances.

19 In this case, for the recreational space and the FAR,
20 which there are currently zoning amendments in for those,
21 we do support those two cases. Regarding the variance
22 for the courtyard, we also support that because of the
23 practical difficulty by the rear of the property line
24 which isn't even in the public alley that is perpendicular
25 to the property line, and therefore limits the area to

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1 accommodate the court.

2 In summary, the proposed variance is to
3 increase the residential FAR and reduce the residential
4 recreational area, and also for the open court to the
5 rear of the property, meets the provision of Section
6 3103.2.

7 The proposed development to provide
8 residential units and hotel use in the Mount Vernon area
9 over and above what is currently permitted by the zoning
10 regulation is a goal of the city.

11 The request to increase the residential FAR
12 on this site is not premature and studies by the Office
13 of Planning and the Citizen's Task Force have made the
14 recommendation to increase the FAR. This final approval
15 will be considered in approximately a month.

16 The Office of Planning therefore recommends
17 that the Board of Zone Adjustment approve these variances.

18 CHAIRPERSON REID: Thank you.

19 MS. BROWN-ROBERTS: Thank you.

20 CHAIRPERSON REID: Questions Board members
21 for the Office of Planning? All right. Do we have to
22 have the government reports? That was in I okay. ANC,
23 do we have any representation from ANC?

24 VICE-CHAIRPERSON RENSHAW: Madam Chair,
25 there was no report from ANC-2C in our packets.

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1 CHAIRPERSON REID: Okay, then not having
2 received a letter from the ANC, then the assumption is
3 that they have no problem or objection to this particular
4 Application. Then no one's here in support or
5 opposition, so closing remarks by the Applicant.

6 MR. GLASGOW: Madam Chair, we would like to
7 request the Board to proceed forward and dispose of this
8 case today and issue a Bench Decision as there is no
9 opposition to this Application, and we believe that we
10 have met the burden of proof for the areas of relief
11 requested.

12 CHAIRPERSON REID: Okay. Board members?
13 Motions?

14 COMMISSIONER HOOD: Madam Chairman, I move
15 approval of Application Case #16733. They have
16 demonstrated the property's unique, no exception or
17 practical difficulties or exception on due hardship.
18 They've also have demonstrated they will not propose any
19 detriment to the integrity and the Zone Plan embodied
20 by the zoning regulation en masse. And anything else
21 that anyone else wants to add into that motion is fine.

22 CHAIRPERSON REID: I will second it. Mr.
23 Hood, did you say that there was no practical difficulty,
24 or are you saying that they have demonstrated that there
25 was?

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1 COMMISSIONER HOOD: They have demonstrated
2 that there was exceptional practical difficulties.

3 CHAIRPERSON REID: Okay. All right. And
4 also there's no adverse impact that the Application would
5 cause and I would concur with my colleague, Mr. Hood.
6 Any other comments? No discussion? All in favor aye.

7 VICE-CHAIRPERSON RENSHAW: Abstain. And may
8 I say for the record, I'm abstaining because we received
9 a lot of this information today and I have not had
10 sufficient time to review it, so I'm just going to abstain.

11 CHAIRPERSON REID: Okay.

12 MS. BAILEY: Staff will record the vote as
13 3-0-1 to approve the Application. Motion made by Mr.
14 Hood, seconded by Mrs. Reid, Mr. Griffis in agreement,
15 Ms. Renshaw abstaining.

16 COMMISSIONER HOOD: Madam Chairman, let me
17 just state for the record, while we were doing some of
18 that, I was sitting here reviewing some of the material,
19 so I feel fully confident in what I voted. This actually
20 | one thing I'm impressed about, it definitely is what
21 the Zoning Commission is doing and that's with the
22 downtown housing district, so |

23 CHAIRMAN REID: Absolutely.

24 COMMISSIONER HOOD: | I just wanted to put
25 that for the record.

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1 CHAIRMAN REID: Thank you.

2 MR. GRIFFIS: Also Madam Chair, actually
3 before we leave, I would also state that during our break
4 I read the reports that came in and just this one quick
5 clarification. I don't think it's going to change
6 anything here, but in your west elevations and, actually
7 all your elevations which we didn't review and go through,
8 but it's listed 112 floors and you might want to take
9 a look at that, and I don't think that's what we've
10 approved today.

11 CHAIRMAN REID: Did we approve that?

12 (Whereupon, the above-entitled matter went
13 off the record.)

14
15 COMMISSIONER HOOD: This next case. I think
16 I need to wait until it's called.

17 CHAIRPERSON REID: Let me finish this up.
18 Will you call the case please?

19 MS. BAILEY: Application #16730 of Bundy
20 Development Corporation pursuant to 11 DCMR 3103.2 for
21 variances from the floor area ratio requirements under
22 Section 402, and the height limitations under Section
23 400, to allow the construction of an apartment house in
24 the R-5-C District at premises 1320 13th Street, N.W.
25 (Square 243, Lot 26).

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1 All those wishing to testify, would you
2 please stand. All those persons wishing to testify in
3 this case, please stand, raise your right hand.

4 (Witnesses sworn.)

5 COMMISSIONER HOOD: Madam Chair, before we
6 go any further on this case, I'm going to be recusing
7 myself on Case #16730. I participated in the down-zoning
8 of this area, and also actually made the motion, so I
9 would think it would be for the best interest of the
10 Applicant and of this Board that I recuse myself.

11 CHAIRPERSON REID: Okay. All right. Thank
12 you Mr. Hood.

13 MS. BAILEY: Madam Chair, prior to proceeding
14 into the case, there is a request for party status. I'm
15 not sure if the persons who are requesting party status
16 is present. It's Edward Reed (phonetic) and Robert
17 Lawrence (phonetic). The request was received in a
18 timely manner.

19 CHAIRPERSON REID: Okay.

20 MR. DEPUY: Madam Chair, if I can address
21 that, there is a letter that's been handed to the staff,
22 I thought by Ms. Booth withdrawing that request and, in
23 fact, indicating support.

24 MS. BAILEY: Oh, I don't think we have that.
25 Those persons are not here. They decided not to testify?

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1 MR. DEPUY: That's correct.

2 MS. BAILEY: Okay. All right. Good.

3 Thank you very much. You can go ahead and proceed.

4 MR. DEPUY: Thank you. Madam Chair, members
5 of the Board, for the record I'm Jacques DEPUY, attorney
6 with Greenstein DeLorme & Luchs, and in lieu of an opening
7 statement, in view of the time, we'll go directly into
8 our witnesses. I'd like to call Ms. Pamela Bundy and
9 ask her to give her name and address for the Board, and
10 her statement to the Board. Ms. Bundy.

11 MS. BUNDY: Good afternoon. My name is
12 Pamela Bundy. It's 12:30 and I live at 1626 Nicholson
13 Street N.W., Washington, D.C. Good afternoon everyone,
14 Madam Chair and Board.

15 I am appearing before you today to request
16 a variance for my land at 1320 13th Street N.W. Prior to
17 purchasing the property on October 31, 1999, I personally
18 inquired at the Office of Zoning and was told by a staff
19 member that the property was zoned R-5-D.

20 On November 10, 1999, I confirmed the
21 information I had been given by obtaining a Certification
22 of Zoning showing it's R-5-D. Based on that
23 certification, I hired an architect. After confirming
24 the zoning himself in the D. C. Zoning Atlas on June 13,
25 2000, the architect drew up the plans for my new building

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1 the Icon (phonetic).

2 On August 23, 2000, I obtained a proposal
3 to provide real estate services from Julie and Jay
4 Stutley, also indicating that the land was zoned R-5-D.

5
6 The architect and I took the plans and artist
7 renderings and numerous revisions to these plans to two
8 Logan Circle area advisory neighborhood commission
9 meetings on December, 2000 and January, 2001. We also
10 had two meetings with the Logan Circle Community
11 Association in January, 2001, and two meetings with the
12 Historic Preservation Review Board January, 2001 and
13 February, 2001.

14 Many changes and revisions grew out of the
15 six meetings and were incorporated into my final design,
16 which received approval from each community group and
17 then from the Historic Preservation Review Board. No
18 mention was made by any community organization, including
19 the ANC-2F which supported my project at that time, or
20 anyone else of actual or prospective rezoning.

21 It was in the course of a chance meeting in
22 the D. C. government office on an unrelated matter on
23 February 20, 2001 that an architect happened to mention
24 to my architect, Eric Colbert, that the particular parcel
25 of land may have been rezoned. My architect immediately

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1 went to the Zoning Administrator's Office, where he was
2 again advised that the zoning was R-5-D.

3 On March 20, 2001, I obtained a sub-division
4 plaque, signed by the Zoning Administrator, certifying
5 that the property was zoned R-5-D.

6 On March 26, 2001, I filed an Application
7 for a Building Permit with the D. C. Consumer Regulatory
8 Affairs, seeking permission to build an apartment
9 building within the FAR, the height lot occupancy yard
10 and other requirements of the R-5-D zoned district.

11 At no time, did I receive any notice of the
12 proposed rezoning of the property or learn of it from
13 any other source. As of today, your map still shows the
14 property to be R-5-D.

15 I would like to point out that even though
16 I believed at the time that I had the legal right to build
17 my building to a height of 90 feet, I never proposed to
18 do so. In fact, my design always proposed a building
19 to 75 feet in recognition of the Historic Districts in
20 which the building is located and the height of nearby
21 and adjacent buildings.

22 Furthermore, in recognition of the recent
23 concerns expressed by the Office of Planning, and the
24 ANC-2F, I have instructed my architect to reduce the
25 building height from 75 feet to 68, and it is this reduced

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1 building height that I would like you to approve.

2 To conclude the chronology, since approval
3 of my proposal by all neighborhood groups and the HPRB,
4 I have instructed my architects and engineers to prepare
5 full construction drawings, plans and elevations,
6 including detailed plans for all HVAC, plumbing,
7 electric, and other systems, fire suppression and
8 prevention, parking and loading, structural elements,
9 facade detailing, foundation, roof and pin house, and
10 my architects and engineers have prepared such working
11 drawings.

12 Such plans and drawings were filed in March
13 of this year at the DCRA, and are currently under review
14 by DCRA officials. Actually, we're expecting the permit
15 any day, probably within the next couple of weeks.

16 I have also obtained bank financing
17 commitments and construction proposals based on the
18 approved design, construction plans, and drawings.

19 I have at all times acted in good faith on
20 the information as to the zoning of the property that
21 I received from the D. C. government officials. I was
22 not represented by an agent or an attorney when I purchased
23 the property, but nevertheless I took numerous actions
24 to exercise due diligence in researching the zoning of
25 the property.

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1 Although I was advised by a staff member of
2 the Office of Planning that I could sue the District
3 government, I do not have any interest in or resources
4 to pursue such a lawsuit.

5 I seek to build a relatively small 19-unit
6 condominium building on a very wide street in a
7 neighborhood characterized by many 90-foot buildings,
8 including the historic Iowa apartment building across
9 the street. My building at 75 feet was deemed to be
10 compatible with the Historic District by the Logan Circle
11 Community Association, the ANC, and the D. C. Historic
12 Preservation Review Board.

13 I simply can not remove one or two floors
14 from this small project, because it would mean the loss
15 of too large penthouse units. This would dramatically
16 reduce the square footage by about 18 percent and would
17 render the project unfeasible.

18 Sadly, my construction costs would not be
19 reduced proportionately to the financial impact of the
20 loss of these units, and I could not go forward, nor could
21 I get a bank loan for such a project. The delays that
22 would be necessary to start a construction would likely
23 increase my costs and would mean that the potential buyers
24 who have been waiting for this new building, would likely
25 be forced to look for other housing.

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1 I'm offering a quality building at moderate
2 prices for the area that would substantially contribute
3 to the revitalization of the neighborhood.
4 Nevertheless, in consideration to the concerns of the
5 Office of Planning and the Neighborhood ANC, I am willing
6 to offer a solution.

7 I want to find a win-win situation for
8 everyone concerned. I have discussed the possibilities
9 with my architect and we had determined that we can
10 implement a workable building at the height of 68 feet.

11 I've had him to design a new building at that height,
12 which he will present to you this evening. This addresses
13 concerns about building height and allows me to retain
14 the crucial fifth floor, which is essential to the
15 builder's economic feasibility. Certainly the
16 neighborhood would be better served by a well-designed
17 building than it is by an empty lot.

18 I request your approval for my project as
19 revised, and thank you for your consideration on my views.

20 With your approval, I'm hopeful that I can start
21 construction within 30 days. Thank you.

22 CHAIRPERSON REID: Okay. Thank you Ms.
23 Bundy. Are there any questions Board members so far?
24 All right.

25 MR. DEPUY: Madam Chair, in support of Ms.

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1 Bundy's statement that the zoning map, even as of today,
2 shows the property at R-5-D, I checked myself this
3 morning. The electronic map which is available from the
4 web site still shows the site as being R-5-D and I'd like
5 to submit that for the record if I might.

6 CHAIRPERSON REID: That's a good point and
7 I was going to address it later, but I might as well just
8 go ahead and do it now.

9 Ms. Sansone, could you please speak to this
10 issue where a developer has been given misleading
11 information from DCRA as to what can be done with the
12 property and use the good faith to do so only to find
13 later that it's not what is being reflected in several
14 governmental documents as available to the public? I
15 think this is the first time we've had this.

16 MS. SANSONE: Madam Chair, there have been
17 situations where an Applicant or someone to seeking to
18 build a project, has detrimentally relied on government
19 officials perhaps regarding the map or the requirements
20 of the zoning regulation, but that reliance has to be
21 reasonable, and it has to be detrimental before that could
22 be considered as perhaps one of the unique conditions,
23 or exceptional conditions affecting this property.

24 The Office of Zoning is the office that is
25 responsible for keeping the map, as amended from time

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1 to time by the Zoning Commission, and that would be the
2 office that one would look to to find out what is the
3 correct zoning.

4 It's troublesome that so many of the other
5 I that it's not corrected and so many of the other offices
6 seem to be mistaken; however, at some point there have
7 been materials published in the D. C. Register providing
8 notice of the down-zoning. The Office of Planning
9 report seems to indicate a lengthy history, where
10 participants in this process would have been aware that
11 the area was down-zoned.

12 So I think we have a factual question here
13 about whether there was in fact reliance, whether it was
14 reasonable in light of the public process that's going
15 on, whether any reliance is detrimental being that the
16 error has been caught now, fairly early on in the process
17 before construction is started. So, these are issues
18 that the Board will have to grapple with in considering
19 whether there should be any type of estoppel consideration
20 here.

21 CHAIRPERSON REID: But also, I think that we
22 need to try to see what we can do to encourage the various
23 governmental entities to be consistent with whatever it
24 is.

25 If the Zoning Commission has down-zoned a

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1 building for a particular purpose or whatever, that that
2 is then I that information is generated through all of
3 the related entities that would be germane to zoning or
4 to the process so that it would not, a citizen or a
5 developer would not have to even go through the trauma
6 at determining later that they bought a building, or they
7 bought a lot for one purpose, and find that it's something
8 different. To me, I think that is just unconscionable.

9 And so the reason why developers go to the
10 District or go to the government officials, is to get
11 correct information and it just seems to me that that
12 information should be forthcoming correctly.

13 MS. SANSONE: Madam Chair, I think that is
14 definitely something the Board will have to weigh, but
15 I think that there's a countervailing argument too that
16 could be made, in that the Zoning Commission undertook
17 the rezoning. They put a lot of effort and work into
18 it. There were participants in that process. They have
19 expectations as well.

20 And, I think we do have to be very cautious
21 of allowing one error to keep compounding other errors,
22 and again, I think what the Board does need to look at
23 is, was there reasonable reliance? Was it detrimental?

24 CHAIRPERSON REID: Well, before we even get
25 to that, notwithstanding the fact that that could be

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1 proffered as a basis for a variance request, the point
2 I'm making is that notwithstanding that, still I think
3 that we should try to signal to our various entities that
4 there should be some collaborative effort to make sure
5 that, if in fact, one board or a commission makes a very
6 important zoning change, that it is communicated to DCRA,
7 to the Office of Zoning, the Zoning Administrator, so
8 that everyone is in sync. And I think that what we need
9 to do is to generate a letter that will talk to the Director
10 of Zoning, Office of Zoning, to ask for her to please
11 generate something that would help to alleviate this kind
12 of problem from resurfacing.

13 MS SANSONE: Yes.

14 CHAIRPERSON REID: All right. Now, thank
15 you.

16 MR. DEPUY: Madam Chair, before I call our
17 witness, would the Board accept a copy of the electronic
18 map which was printed out showing the map as indicated
19 as of today?

20 CHAIRPERSON REID: That could be sure, that
21 can be submitted into the record.

22 MR. DEPUY: Thank you.

23 MR. GRIFFIS: Can I answer to that?

24 CHAIRPERSON REID: Yes.

25 MR. GRIFFIS: Just for a point of

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1 clarification on the web site zoning map, there is a
2 disclaimer that it's not the official map, so if it
3 and secondly, as part of zoning regulations, the map is
4 implicitly part of our documents that we review.

5 So, all that being said, the direction I'm
6 going is, I think the difficulty comes and what you're
7 speaking to, is what do the developers and frankly
8 architects look to in terms of establishing the record
9 of what each of the parcel and zoning might be? If one
10 relies on the web site, even though it has the note that
11 says you shouldn't, where is then the official map?

12 And it seems to me, looking at the time line
13 that's been given by testimony here, is that actually
14 all of the avenues for determining the exact zoning on
15 the site were pursued and went beyond the dates that were
16 actually being moved to on the government side of changing
17 the zoning.

18 So, I'm not drawing any conclusions right
19 now, but I just wanted to make those statements.

20 CHAIRPERSON REID: There's a problem that
21 we've discussed with the Zoning Commission that the zoning
22 map does not always reflect the most current zoning, if
23 there has been any type of down-zoning or rezoning or
24 zoning changes. And, that's a very serious problem that
25 we're aware of and that we're trying to correct now.

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1 The electronic zoning map that was pulled off the
2 internet, well that's something that's relatively new.

3 MR. GRIFFIS: I understand.

4 CHAIRPERSON REID: I'm not making excuses
5 for it.

6 MR. GRIFFIS: Right.

7 CHAIRPERSON REID: But that still has its,
8 you know, problems but nonetheless I

9 MR. GRIFFIS: I guess succinctly put is, "what
10 is the official zoning map" would be the question.

11 CHAIRPERSON REID: The answer is "there is
12 none."

13 MR GRIFFIS: Right.

14 CHAIRPERSON REID: And I say that like, kind
15 of tongue-in-cheek because there is a glitch with the
16 printing of the maps to reflect all the various and most
17 current zoning changes, and that is something that I
18 know that there's been some discussion about moving to
19 try to address that problem more efficiently, but it has
20 not happened yet.

21 And I know that some architects and
22 developers come here to the Office of Zoning and have
23 their site certified before proceeding, because of that
24 problem.

25 And once it's certified, then there is no

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1 doubt that that's official official, but of course, you
2 think that when you go to DCRA, whatever they tell you
3 there, that's also official, but I think that the most
4 official is coming here to the Office of Zoning to get
5 a certification.

6 MR. GRIFFIS: Right.

7 CHAIRPERSON REID: Zoning certification.

8 CHAIRPERSON REID: But if I'm not mistaken,
9 the Applicant actually has certification of R-5-C.

10 MS. BUNDY: I have a certification.

11 CHAIRPERSON REID: Oh, I'm sorry, you do?

12 MS. BUNDY: Yes, ma'am.

13 CHAIRPERSON REID: From where? From this
14 office?

15 MS. BUNDY: From this office.

16 MR. GRIFFIS: It's certified on 3/20/01.

17 MS. BUNDY: I came here personally. I'm
18 sorry.

19 CHAIRPERSON REID: Wait a second.

20 VICE-CHAIRPERSON RENSHAW: We don't have a
21 copy yet.

22 MR. GRIFFIS: Well, actually if I

23 CHAIRPERSON REID: Office of Planning report?

24 MR. GRIFFIS: Correct, laid out a schedule
25 and that's what I was speaking to in terms of there are

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1 two courses --

2 VICE-CHAIRPERSON RENSHAW: Is that something
3 that just came in?

4 MR. GRIFFIS: I simultaneously happening, but
5 also in the original documents, in the statements, I
6 forget where I saw it.

7 MR. DEPUY: It's in the original Application.

8 MR. GRIFFIS: Right, in the original
9 Application.

10 CHAIRPERSON REID: Oh, when she does a
11 chronology of I okay, wait a minute, let me look at that.

12 MR. DEPUY: We submitted a copy of the
13 certification with the original BZA Application.

14 CHAIRPERSON REID: Oh, wait a minute. Let
15 me find the BZA Application.

16 MR. GRIFFIS: It says here November 10, 1999,
17 that was the year it actually certified the R-5-D zoning.

18 MS. BUNDY: Yes, exactly.

19 CHAIRPERSON REID: Wait a minute. But, when
20 it was certified, when you got it certified you came here,
21 and you said that you submitted that with the BZA
22 Application?

23 MS. BUNDY: Yes.

24 CHAIRPERSON REID: I don't know if we have
25 that. I don't remember seeing that, that it was I the

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1 certification from the Zoning Director?

2 MR. DuPREY: From the Office of Zoning, and
3 I have extra copies if you would like.

4 CHAIRPERSON REID: All right, please, because
5 I don't I do you have it?

6 MR. GRIFFIS: I know I read it in an original.

7 MS. SANSONE: Madam Chair, I don't believe
8 it's in the file, but I just wanted to point out that
9 when the Applicant received her certification, that was
10 correct. That was the correct zoning. The property was
11 rezoned after that time.

12 CHAIRPERSON REID: Oh, okay. Okay. So,
13 when was it rezoned? Does anyone know that date?

14 MS. SANSONE: Madam Chair, in the Office of
15 Planning report, it states that the Zoning Commission
16 Order was published on February 25, 2000 in the D. C.
17 Register and typically the map amendments become
18 effective upon the publication in the Register.

19 VICE-CHAIRPERSON RENSHAW: But I wanted to
20 ask, perhaps Ms. Sansone knows the answer. Our Zoning
21 Commission representative isn't here to testify. I wish
22 he was.

23 CHAIRPERSON REID: Yes.

24 VICE-CHAIRPERSON RENSHAW: I wanted to find
25 out when the Zoning Hearing took place. Ms. Bundy

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1 purchased her property in October of 1999. The Order was
2 dated, the Rezoning Order was dated January 10, 2000,
3 but there is an extensive outreach when any of these
4 rezoning or down-zoning hearings take place. It's
5 published in the D. C. Register.

6 There is a public hearing or two or three.

7 There is notification of those within X number of feet,
8 I think it's 200 feet of the site. And, I expect that
9 it is the Zoning Commission not Zoning Commission's
10 but the Office of Zoning's responsibility to notify all
11 of these persons, and especially whoever is on record
12 as owner of the property. And the owner of the property,
13 of course, is invited in, is encouraged to come and
14 testify.

15 MS. BUNDY: That paperwork has yet to be
16 changed. I mean, I'm still not the owner of the property
17 if you go and look it up.

18 VICE-CHAIRPERSON RENSHAW: Who is the owner?

19 MS. BUNDY: I'm the owner.

20 VICE-CHAIRPERSON RENSHAW: You're the owner?

21 MS. BUNDY: I'm the legal owner, but in terms
22 of if I go and pull it, if you go and pull the match and
23 see who owns it, it's the old owner's name that's still
24 on it.

25 CHAIRPERSON REID: Sometimes unfortunately,

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1 this is another glitch with the governmental workings.

2 The official public record is behind, that you pull up
3 from the internet and also from the real estate records.

4 From the real estate computer, the public record is not
5 current always as to the most recent owner. So, if you
6 pull up a property that settled within the last couple
7 of months, last few months, it may still reflect the
8 previous owner.

9 MS. BUNDY: Yes.

10 CHAIRPERSON REID: So, then that being
11 that's another glitch which means then that the most
12 current owner would not receive the information germane
13 to the property that they just recently purchased.

14 MR. GRIFFIS: Madam Chair?

15 CHAIRPERSON REID: Yes.

16 MR. GRIFFIS: If I might respond to Ms.
17 Renshaw, I think, I believe in the Application, but
18 correct me, but I believe I read in the Pre-hearing
19 Statement that was submitted in our document, that she
20 had actually done numerous presentations in the
21 community, and I believe I recall a statement by the
22 Applicant that she was shocked or, whatever the words
23 were, that it was never brought to her attention that
24 there was a down-zoning process underway.

25 VICE-CHAIRMAN RENSHAW: Because that

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1 down-zoning process is through the Office of Zoning.

2 MR. GRIFFIS: No. But, I understand, except
3 the fact that from the statement by the Applicant, the
4 community organizations, and I believe it was the Logan
5 Circle Association and one other, were in fact a part
6 of the down-zoning discussions and workings. As you
7 said, it would be a community outreach.

8 CHAIRPERSON REID: So, are you saying that
9 I Ms. Bundy, are we to understand that when you went to
10 the organizations to make your presentation, they were
11 aware of the fact that that had been down-zoned?

12 MS. BUNDY: Absolutely.

13 CHAIRPERSON REID: Nobody bothered to mention
14 that to you?

15 MS. BUNDY: No one, as I stated, and maybe
16 I can make you a copy of my testament here, but as I stated
17 in here, what did I say? Here's what I said. I said
18 "I went to six different meetings between" I it was between
19 December of 2000 and February of 2001, two with the ANC-2F,
20 two with the Logan Circle Community Association, and two
21 with the HPRB. And I said "no mention from any
22 organization" - no one said anything of, you know, that
23 it was rezoned, there was a prospective rezoning. No
24 one ever said anything.

25 CHAIRPERSON REID: Or asked if you knew that,

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1 brought it to your attention that perhaps you might not
2 be aware of the fact that it had been rezoned. I find
3 that to be strange indeed.

4 MR. GRIFFIS: Actually one clarification.
5 You say you attended those meetings. Did you give
6 presentations?

7 MS. BUNDY: Absolutely. Me, Eric, Gayll.

8 VICE-CHAIRPERSON RENSHAW: But, did you
9 discuss in these six meetings the zoning classification?

10 MS. BUNDY: Absolutely.

11 VICE-CHAIRPERSON RENSHAW: Did you say that
12 you are R-5-D?

13 CHAIRPERSON REID:: Was it was reflected in
14 the submissions that I

15 MR. COLBERT: We stated the building height,
16 and obtained unanimous approval from all the groups, and
17 no one ever questioned the fact that we were unanimously
18 approved at a 75-foot height.

19 CHAIRPERSON REID: Are we to assume they
20 didn't know that it had been rezoned? I mean something
21 just doesn't I

22 MR. COLBERT: This is the ANC that approved
23 it unanimously.

24 CHAIRPERSON REID: But then, we have a letter
25 now from ANC that, I think that's the correct memo that

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1 I looked at, but that basically we're not in support.

2 MS. BUNDY: That's what we're confused about
3 also.

4 CHAIRPERSON REID: That I there was an earlier
5 letter I remember seeing that was I because I wondered
6 what their position exactly was, but they were like kind
7 of on the fence, kind of provisional. We do approve it.
8 We do support it, but I

9 VICE-CHAIRPERSON RENSHAW: I don't remember
10 any other letter than what we received today, a letter
11 from ANC-2F dated June 15.

12 CHAIRPERSON REID: Oh, okay I'm sorry. I
13 thought maybe that was another one. No, no it was this
14 case. I have to put my hands on it, but there was another
15 letter.

16 VICE-CHAIRPERSON RENSHAW: Well, you go ahead
17 and look and I will just make reference that this is Helen
18 Kramer, the Secretary who has written and stated that
19 "at its regularly publicly noticed monthly meeting of
20 June 6, 2001, a quorum present I

21 CHAIRPERSON REID: Okay, we're going to get
22 to that in a moment.

23 VICE-CHAIRPERSON RENSHAW: Do you want me to
24 go ahead?

25 CHAIRPERSON REID: Not yet.

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1 VICE-CHAIRPERSON RENSHAW: Then I will stop
2 there.

3 CHAIRPERSON REID: Okay, we'll come back.

4 VICE-CHAIRPERSON RENSHAW: Yes.

5 MS. BUNDY: I also have the letters also to
6 support all the initial approvals from the LCCA, the ANC.

7 CHAIRPERSON REID: We saw that. We're going
8 to get to that as we go through the case, and that's what
9 was kind of throwing me, the fact that there seemed to
10 be so much support and then there was like, kind of a
11 change, and I wasn't really sure what that was stemming
12 from.

13 Nonetheless, let us just continue through
14 the various segments of the case and then we can try to
15 get our arms around this whole situation.

16 MR. DuPUY: Just to clarify, Madam Chair,
17 members of the Board, January 22, 2001, ANC-2F wrote a
18 letter to Mr. Turkish (phonetic) Bozeberg, the Chairman
19 of the Historic Preservation Review Board, a copy of which
20 is in the file.

21 CHAIRPERSON REID: Yes, that's the one I'm
22 also referring to.

23 MR. DuPUY: In support of the project at 75
24 feet. And I just wanted to make sure that the Board was
25 aware that that earlier letter had been filed and was

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1 in your materials as well.

2 CHAIRPERSON REID: Right. Okay. That's the
3 one I was thinking about. All right. Thank you.

4 MR. DuPUY: At this point, I'd like to call
5 Mr. Eric Colbert. Mr. Colbert.

6 MR. COLBERT: I'm Eric Colbert and I live at
7 3829 Fessenden Street N.W. and I would just like to say
8 that Pamela ■ I work with a lot of different types of
9 developers. Pamela's just starting out, but we work
10 with, you know, bigger folks too, and the amount of effort
11 that she put in to try to verify the zoning, she did as
12 much or even more than the majority of my clients. And,
13 as you know, we do a lot of work in the District and a
14 lot of historic districts.

15 When she asked me to start working on the
16 project, I reviewed her zoning certification, and then
17 I also reviewed the printed zoning maps that are
18 published. We reviewed the online zoning map in addition
19 to that.

20 I'd also like to say that I'm very active
21 in that area. Just before that, I completed an addition
22 on 20 Logan Circle, and we had done a new building that's
23 just a block away on 1310 12th Street. And then we now
24 have under construction something that we were doing the
25 plans for at that time, 1223-1229 12th Street which is

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1 an existing building and an addition.

2 And, I never became aware of any rezoning.

3 I didn't see any signs that would have impacted Pamela's
4 site, and that's very surprising because I most like every
5 other month, I'm either at the Historic Review Board,
6 or appearing before that particular ANC. We have a
7 couple, three, apartment buildings under construction
8 in that area right now.

9 And as Pamela mentioned, we attended six
10 public meetings and had unanimous support of the ANC.
11 We met with the ANC on two different occasions. And,
12 I have six drawings here of facades that reflect the
13 various refinements that we made to reflect the
14 community's concerns. As a matter of fact, one of the
15 Commissioners, Leslie Miles, even suggested that we make
16 the first floor of the building a couple feet higher,
17 which we did, increasing the height of the building.

18 We met with the Logan Circle Community
19 Association. In their letter there was no opposition
20 to our building height or size. As a matter of fact,
21 the head of the Logan Circle Community Association is
22 the architect for the building on the left here, which
23 is at 90 feet.

24 Pamela did not get caught by the neighbors.

25 This is not one of the situations where she was trying

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1 to pull the wool over somebody's eyes and, you know,
2 somebody from the community was sharp and did research
3 and caught it. That's not what happened.

4 She voluntarily came forward, and I am 100
5 percent sure that we could have obtained a building permit
6 and proceeded with construction and obtained all our
7 inspections and the Certificate of Occupancy under the
8 current approved design because I, personally, am the
9 one that checked with Mr. Tory Bellow, and he confirmed
10 I the minute someone even mentioned the possibility that
11 there was a rezoning in the area, I went to him and he
12 has base books in his office which we looked through,
13 and it had the R-5-D zoning right on there.

14 So, in going through all these issues, you
15 know, I think that it's very clear that Pamela did due
16 diligence in terms of trying to establish what the correct
17 zoning was. In terms of the issues of architecture, I
18 think that it's my personal opinion that the height, as
19 designed, is appropriate. And, as a matter of fact, even
20 after all these public hearings, we were refining the
21 design to meet the community's concerns.

22 As Jacques and Pamela pointed out, we are
23 willing to take substantial height off the building.
24 We never intended to go with the 90 foot height, what
25 was permitted under what we thought was the zoning. We

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1 got approved at 75 with input from all the folks in the
2 area, and now we're willing to go down to 68. We think
3 that's an incredible compromise, and about a quarter over
4 what the current revised R-5-C zoning permits 60. We
5 want to go to 68 and not anywhere near the 90 that the
6 zoning we thought.

7 But architecturally, I think that the
8 building is very much in scale. As you can see, 13th Street
9 is a very wide street, a very commercial street, a very
10 noisy street. And therefore, having an apartment
11 building as more of an appropriate use, it's more of a
12 viable economic use than trying to put in something that's
13 more like a townhouse, just because of the fact that the
14 street itself has a certain harshness to it.

15 And, as you can see on these photographs,
16 thank you Gayll, these show the blocks right in our area.

17 This is N Street. This is called Tug Towers, which is
18 a modest apartment building, but again the 90-foot height.

19 And there's this one that's under construction, a 90-foot
20 high building, and then there are a few row buildings,
21 and there's our site, and then this is the development
22 that Pamela just finished at the corner.

23 And then, when you go across the street, you
24 can see the historic building, the Iowa, across the street
25 at 90-feet, and then there is a car wash across from us,

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1 and then there's the gas station, and then a 90-foot high
2 apartment building. This is being converted to an
3 apartment building, as a seniors building 90-foot high,
4 and then the next building, then there's some parking
5 | a lot, and then there's the hotel on the corner which
6 is another 90-foot high building.

7 So, we feel that our very modest structure
8 here is a very nice transitional piece. And the other
9 thing, architecturally the Historic District is always,
10 when you see it, one of the charming aspects of it is
11 that you have these different building heights, unlike
12 K Street where everything is chopped up at the same height.

13 It gives the Historic District texture, and we want to
14 take something now that's a very, you know, eyesore in
15 the community and Pamela wants to develop it.

16 And I think she's gone out of her | when she
17 was developing the building on the corner, you know, she
18 has an incredible track record with that of going beyond
19 what's necessary in order to complete the project.

20 For instance, there was a roof on there that
21 she agreed to replace, but in finding out what was
22 involved, she probably spent about \$50,000 extra and
23 that's just a twelve or thirteen unit condominium project
24 in the roof alone. And there were other issues, that
25 was her first project, this is her second. But, you know,

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1 she has done this with a lot of integrity, in terms of
2 the way she's gone ahead and addressed the issues with
3 these residential projects.

4 The other thing is, in terms of hardship,
5 for her to have to go back now, we'd have to go back through
6 all these different community agencies. We'd have to
7 go back to the Historic Preservation Review Board, back
8 to the ANC, back to the Logan Circle Citizens Association,
9 if we were to substantially revise the building.

10 We have touched base with Steven Colecut,
11 the staff person, and he's agreed that with this reduction
12 that we've done from 75 to 68 feet, since we've established
13 the same integrity of the previously-approved design,
14 he feels confident that we could move ahead with our
15 project expeditiously.

16 Pamela is a small developer and I think that
17 this will be a significant hardship for her, and I'm asking
18 that that be taken into consideration. Thank you very
19 much.

20 CHAIRPERSON REID: Thank you Mr. Colbert.
21 I have one question. The pictures that you have right
22 here, the center pictures, what is that building that,
23 that tall building that I no right there where you're
24 pointing, exactly where you're pointing, yes.

25 MR. COLBERT: Yes, this is an elevation

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1 drawing of that. That's a new apartment building that's
2 currently being constructed.

3 CHAIRPERSON REID: Okay.

4 MR. COLBERT: And it's at 90 feet. Another
5 thing I want to point out |

6 CHAIRPERSON REID: Wait just a minute. Now,
7 that is right | the way that you have those pictures |

8 MR. COLBERT: This is correct. This is a
9 scale-adjusted position. This is exactly the
10 relationship between this building and our building to
11 scale.

12 CHAIRPERSON REID: Okay, now that building
13 is what height?

14 MR. COLBERT: This is 90. The zone line is
15 right here.

16 CHAIRPERSON REID: That got in before the
17 rezoning of the |

18 MR. DEPUY: No, that's an R-5-E isn't it?

19 MR. COLBERT: This was not, I guess, rezoned
20 or.

21 CHAIRPERSON REID: Oh, I see it's still the
22 R-5-E District?

23 MR. COLBERT: Yes, I guess it was previously
24 SP or something, is that correct?

25 CHAIRPERSON REID: Okay. All right.

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1 VICE-CHAIRPERSON RENSHAW: Madam Chair, I
2 would like to have some determination as to exactly what
3 the historic, not the historic, but the rezoned area was,
4 from what to what? Is it half a block or is it several
5 blocks? We have to pull the Zoning Order and see how
6 it is described.

7 MS. BAILEY: Mr. DuPuy? Excuse me, Mr.
8 DEPUY, the plans that are being presented to the Board,
9 are those plans and photographs in the file sir?

10 MR. DEPUY: Not the new building that was just
11 drawn. I have copies of those.

12 MS. BAILEY: Yes, we do need those.

13 MR. DEPUY: I'm going to give you those right
14 now.

15 MS. BAILEY: Okay, thank you.

16 CHAIRPERSON REID: Can you answer that
17 question Mr. Colbert?

18 MR. COLBERT: I have the current printout from
19 the online resource, but it doesn't show where the change
20 occurred. I don't have that information personally right
21 now.

22 CHAIRPERSON REID: Oh.

23 MR. DEPUY: I believe someone's indicating
24 in the audience that they might be able to answer that,
25 on the right here, the gentleman.

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1 CHAIRPERSON REID: Okay, well then he'll come
2 up to testify. Apparently someone else has some
3 information. We'll see if we can get it during the course
4 of the whole case, and if not, then we can try to get
5 it from staff.

6 MR. DEPUY: Madam Chair, I have a copy of the
7 Zoning Commission Order if that's what you're looking
8 for?

9 CHAIRPERSON REID: That's what we're asking
10 for so that we can see exactly what area is affected by
11 the rezoning.

12 (Pause)

13 VICE-CHAIRPERSON RENSHAW: Does the 68 feet
14 include the penthouse on the top?

15 MS. BUNDY: Yes, ma'am. Yes, it does.

16 VICE-CHAIRPERSON RENSHAW: So, the actual
17 building is what?

18 MS. BUNDY: 68, the entire I

19 MR. COLBERT: Well, no, I think that the
20 elevator would actually extend above the 68, but that
21 is something that would be, even if under any zoning height
22 limit, the elevator would be allowed to go higher than
23 the main building roof, and if you're talking about the
24 elevator override, that would be higher than the 68, but
25 that would be setback from at more than a one-to-one

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1 ratio from the perimeter of the building.

2 MR. GRIFFIS: Just for some clarification
3 though, you're not showing your elevator penthouse on
4 that elevation, or are you? On the top elevation that's
5 rendered?

6 MR. COLBERT: No, I think that.

7 MR. GRIFFIS: Okay, I think the question
8 actually from the Board member is this. Can you point
9 to 68 feet on that elevation? Is it the parapet or is
10 the top of the roof of the bays that you show?

11 MR. COLBERT: The 68 feet is to the roof
12 height.

13 MR. GRIFFIS: Correct.

14 MR. COLBERT: And this dotted line shows where
15 we were, the previously approved 75, so that shows you,
16 it gives you an idea of how much we're coming down from
17 the previously approved design.

18 MR. GRIFFIS: Right.

19 VICE-CHAIRPERSON RENSHAW: And the bumps
20 above the 68 feet are the mechanical equipment, or is
21 it the separation?

22 MR. COLBERT: No, these are just
23 architectural embellishments.

24 MR. GRIFFIS: On top of the projection of the
25 bays that are coming out at the elevation, if I read that

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1 correctly, is that right?

2 VICE-CHAIRPERSON RENSHAW: So that's I

3 MR. COLBERT: Yes.

4 MR. GRIFFIS: So, you have four bays on that
5 primary facade that have architectural embellishments
6 that cover the bays?

7 (Pause)

8 MR. COLBERT: Right. My project architect,
9 Gayll, is informing me that the elevator would only stick
10 up about three feet more than the main roof.

11 MR. GRIFFIS: Would that mean if you have your
12 elevator penthouse three feet, you basically have a
13 four-foot parapet or larger?

14 MR. COLBERT: Yes.

15 MR. GRIFFIS: Yes.

16 MR. COLBERT: So, you really wouldn't see it
17 from the front.

18 MR. GRIFFIS: Right.

19 (Pause)

20 MR. DuPUY: Yes, I gave you two copies of text
21 amendments from my file. I gave you my only copy, sorry.

22 CHAIRPERSON REID: Is this the copy that you
23 gave us, because this says 1997? Is this what you just
24 gave us? Did this come from you?

25 MR. DuPUY: No. No.

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1 CHAIRPERSON REID: Okay, where is the piece
2 that he just gave you? You gave it to Mr. Hart? Oh okay,
3 we don't have that yet, all right. Okay. I see. I was
4 just confused. I just didn't know where this came from.

5

6 Okay, well let's go ahead and proceed through
7 and then when it comes, we just want to see it. All right,
8 Mr. Colbert.

9 MR. COLBERT: There's one more architectural
10 point I'd like to make, and that is that the top floor
11 is only about a half, a little over half of the floor,
12 and that's an important issue because the most
13 significantly impacted neighbor is the condominium in
14 the back, who is supporting us, and so the building height
15 is one-story less in the back than on facing the wide
16 13th Street.

17 CHAIRPERSON REID: Oh, okay.

18 MR. COLBERT: Thank you.

19 CHAIRPERSON REID: All right. Thank you.
20 If there are no more questions, we'll move now to the
21 Office of Planning report.

22 MR. RODGERS: Good afternoon to the board,
23 and Madam Chair, my name for the record is Arthur Rodgers.
24 I'm with the Office of Planning. In reviewing this case
25 and realizing that it was more of a legal interpretation

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1 than anything else, the Office of Planning took a very
2 narrow view at viewing this, and looked strictly upon
3 the three tests. And so at this time, I'd like to sort
4 of walk through my report.

5 First of all, in reviewing the Zoning
6 Certification is technically correct. In consultation
7 with the Office of Corporation Counsel, I'd like to point
8 out that in 3028.9, the official change doesn't take place
9 until the zoning is published, the zoning change is
10 published. And, if you look at the time line that we
11 provide in our report, that date happened a couple months
12 after certification from the Office of Zoning.

13 Now, if building permits had been filed, the
14 building permits would have been held to a different
15 standard though. The building permits would have had
16 to have been filed at the most restrictive zoning under
17 the set-down report which would have been R-5-B at the
18 time.

19 And basically, I guess otherwise I'll just
20 skip to my analysis in Section 7. In reviewing the case,
21 we realize that the circumstances had created a very odd
22 situation for the Applicant, and it was unfortunate.
23 And we felt that you could make an argument that it had
24 created a unique circumstance; however, with regards to
25 Test 2, we didn't feel that this met the practical

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1 difficulty. And the reason for this being, is all the
2 process that has led up to this point has been essentially
3 costs incurred, pre-development costs incurred. We felt
4 that was a very important part of this.

5 And then finally on Test 3, we felt that it
6 was the harm to the intent of the zoning regulations
7 was somewhat mitigated by the Historic Preservation
8 Review of the project, reducing the height to 75 feet,
9 and as in our report, we stated that this seemed to be
10 an appropriate height. But we did also state that in
11 absence of the Historic Preservation Review process, the
12 same protections would not have occurred, and so there
13 is somewhat of a precedent.

14 It's certainly possible that developers in
15 the future could receive a certification and then proceed
16 based on that, even though if a building permit had been
17 pulled, it would have been necessary to pull it at the
18 most restrictive zoning as the regulations state.

19 And we also sort of agree with the Applicant
20 that the as stated in our report, that the community
21 while approved it for the Historic Preservation Review
22 has turned it down for the zoning variance, and again
23 while it's not their responsibility to inform the
24 Applicant of the proper zoning, they had unanimous
25 approval in one instance, and unanimous denial in another,

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1 and that seemed kind of odd to us.

2 Again, just to summarize on a very narrow
3 interpretation, we didn't feel that it met the practical
4 difficulty test, that all the damages that were incurred
5 were fees that are part of the development process, and
6 it's unfortunate, but that was our conclusion.

7 CHAIRPERSON REID: All right. Any
8 questions?

9 MR. RODGERS: Oh, and I'm sorry, if the Board
10 would like, I have a copy of the report that the Office
11 of Planning filed for the zoning case, and if the Board,
12 so I can put this into the record if they want.

13 CHAIRPERSON REID: All right. Okay. Thank
14 you very much.

15 MR. GRIFFIS: If I might mention? I have one
16 question and remember this did come in late, but looking
17 at Test 3 in your memo which speaks to the impact, you're
18 talking about a building of 90 feet in height, and I'm
19 just trying to get to the bottom of this. Can you speak
20 to that a little bit more? Have you discussed or have
21 any comments been made to us about the 68 foot height
22 that is being proposed at this point?

23 MR. RODGERS: Well, as we stated in our
24 report, at the 75 feet, we let's see if I can find it.
25 Test 3, the second, end of the second paragraph, "however

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1 the Historic Preservation development review process has
2 mitigated this impact by limiting the height of the
3 building to 75 feet, which is more appropriate to the
4 urban landscape of the neighborhood." So certainly, we
5 think at 68 feet that would still hold true.

6 MR. GRIFFIS: I'm frankly not understanding,
7 because your first paragraph says that it is not
8 appropriate, but then you say it's mitigated by 75 feet.

9 And so today, you're saying, in fact, perhaps at 68 it's
10 okay.

11 MR. RODGERS: Well, the zoning classification
12 would allow a 90-foot building, and in our statement what
13 we felt would be inappropriate, that a 90-foot building,
14 if you imagine taking the building at the end of the block,
15 at the southern end of the block and locating it in the
16 middle of the block, that would be inappropriate to the
17 neighborhood.

18 The purpose of, or the conclusions of the
19 zoning case was that there should be a gradual step down
20 to Logan Circle, and so therefore, if we take a 90-foot
21 building and we insert it into the middle of the block,
22 that would not provide us the intent of the zoning case.

23 However, as I said, because of the Historic Preservation
24 Review process, it was reduced to 75 feet and they felt
25 that that was appropriate to the neighborhood. And in

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1 a situation like that, we would defer to that process.

2 And again, but just to comment on that
3 though, in the absence of the Historic Preservation Review
4 process, then a 90-foot building would be by right, and
5 again we would say that would be harmful to the intent
6 of the zoning regulations.

7 CHAIRPERSON REID: Oh, okay but what are you
8 saying? Are you saying that if, in fact, the building
9 height were reduced to 68 feet, that then it would
10 mitigate, it would better mitigate any adverse impact
11 and then did you say you would then be supportive of the
12 Application? Is that what I'm hearing you say or?

13 MR. RODGERS: Well, with response to Test 3,
14 we think that 68 feet would be appropriate. However,
15 the reason why we primarily recommended denial was we
16 didn't think this met Test 2, and that was the practical
17 difficulty.

18 CHAIRPERSON REID: So, you're saying that I
19 wait.

20 MR. RODGERS: At 68 feet we think it would
21 be appropriate for the neighborhood.

22 CHAIRPERSON REID: All right. But, if it met
23 Test 2, then you would be amenable to approving the
24 Application, or recommending approval of the Application,
25 but you can't I but the practical difficulty part of it

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1 is something you don't think they have met the test of?

2 MR. RODGERS: Correct, yes.

3 CHAIRPERSON REID: All right. Thank you for
4 very much. Any other questions? Mr. DuPuy?

5 MR. DuPUY: I have cross-examination. Do you
6 have questions?

7 CHAIRPERSON REID: All right.

8 MR. DuPUY: On Test 2 Mr. Rodgers, you heard
9 the testimony of Ms. Bundy that by removing a floor, the
10 project would become uneconomic, which is more than simply
11 saying that there are some pre-development costs. Does
12 that testimony convince you otherwise than was in the
13 report that your office submitted?

14 MR. RODGERS: Well, in response I have sort
15 of a counter question. Is it based on the total square
16 foot of the building, on what's achievable? Or, is it
17 based on the height? Because, you could fit the same
18 number of floors within the 60-foot limit, and so you
19 could fit the top floor within the 60-foot limit base.
20 The building that you've designed has a very high
21 floor-to-floor heights.

22 In the original design that was submitted
23 at 75 feet, it was twelve and a half feet, an average
24 of twelve and half feet for each floor. And so,
25 therefore, within the 60-foot building, and in fact, I

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1 think if you look at the 90-foot building, let me count
2 them. If you look at the sixth floor of the building
3 to the left, the 90-foot building, I believe that's
4 probably at around 60 feet. It's kind of hard to tell
5 from the drawing. So, "no" I guess is the short answer
6 because you can still fit that top floor in within the
7 height limit.

8 MR. DuPUY: And with respect to that second
9 test, isn't it not true that the Court of Appeals has
10 said that increased costs can be a basis for the second
11 test?

12 I refer you to Gil Martin versus D. C. Board
13 of Zoning Adjustment, in which Test #2, practical
14 difficulties is also referred to as "unnecessarily
15 burdensome." It talks about economic uses of property,
16 specifically including "increased costs and reduced
17 enjoyment of the property."

18 Would you not concede that in order to
19 redesign this project as you're suggesting, to go to
20 60-feet, that that would indeed result in some very
21 significant increased costs and a reduced enjoyment of
22 the property to the Applicant in compliance with that
23 test?

24 MR. RODGERS: As to increased costs, I'm not
25 sure how they would increase if the building was shorter.

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1 And otherwise, with regards to the case, the legal case
2 you cite, I would defer to Corporation Counsel.

3 MS. SANSONE: Madam Chair, if I could just
4 jump in for a minute. This is a variance Application.

5 We have the three-pronged test of course, unique or
6 exceptional conditions of the property, which are
7 normally the land or it could be an existing structure.

8

9 And here we have a little oddity in that
10 there's a kind of odd history with possible misinformation
11 that the Board may want to weigh in.

12 But the second test, Practical Difficulty,
13 that has to stem from those unique conditions. It can't
14 just be that the building is more expensive one way or
15 the other. It has to tie back into what is making this
16 property exceptional or unique or unusual in the first
17 place.

18 CHAIRPERSON REID: Okay.

19 MR. DuPUY: If I can respond since that seemed
20 to be a legal point. Obviously, our argument is that
21 the incorrect information we got from the government
22 resulted in a project design which is before you today,
23 which was approved by the community and HPRB at a certain
24 height and a certain mass and a certain design. And so
25 the circumstances which we regard as exceptional, clearly

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1 led to the practical difficulties to this Applicant, which
2 is why we're here today.

3 I see there being a very clear connection
4 between the extraordinary circumstances of all the bad
5 information that this Applicant got, the incorrect
6 subdivision, the incorrect certification, the incorrect
7 information from DCRA, et cetera, which led to a design
8 which has considerable costs. You've heard the testimony
9 of the Applicant that this project is in for building
10 permits. That's considerable costs that have been
11 incurred in putting together this project now pending
12 before DCRA.

13 So, I think since we're counsel and I are
14 making legal arguments, our response is clearly there's
15 a relationship between the first test and the second test,
16 and I would simply point out that the Planning Office
17 seems to have conceded Tests 1 and 3, so I won't argue
18 those.

19 But I do have two other quick questions of
20 the Planning Office. Am I correct that the written report
21 refers only to the request for the height variance and
22 not with respect to the FAR variance? You did not take
23 any objection to the FAR variance in your written report,
24 is that correct?

25 MR. RODGERS: It was not specifically

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1 mentioned.

2 MR. DuPUY: Thank you, that's the answer to
3 my question. Okay, that's the only question I have for
4 the Planning Office.

5 CHAIRPERSON REID: Okay, thank you. Let's
6 see, I just have one question and that is to Ms. Bundy.

7 With the design, and given the difficulty that you now
8 are faced with, would it be possible to make any
9 adjustments that would allow you to be in compliance with
10 the zoning regulations?

11 And not without a variance, the Office of
12 Planning recommended, or mentioned that the height is
13 really important by the fact that the ceilings are high
14 vaulted or something, and that looking at the other
15 development at the sixth-floor level, it's possible
16 perhaps that it could be redesigned in such a way that
17 it would permit you to move forward with your project
18 without having to seek the variance. Would that cause
19 you a hardship, or practical difficulty?

20 MS. BUNDY: I don't know if the building to
21 the left is exactly to scale, so I would probably have
22 to defer that to the architect and so on and so forth.

23 CHAIRPERSON REID: Okay, Mr. Colbert.

24 MR. COLBERT: Yes, I'd like to answer that
25 question. I think that it would be technically possible

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1 to come very close to exact compliance with the 60-feet.

2 CHAIRPERSON REID: Yes.

3 MR. COLBERT: The problem with that is, is
4 Pamela has a much smaller building, for instance, than
5 the condominium that's being constructed on the corner,
6 and I have the opportunity to work with a number of
7 developers, and one of the other ones that we work with
8 a lot, that is kind of the dominant or one of the largest
9 in D. C., has a web site that you have to go onto to answer
10 questions about what is the most important thing to you
11 about a new apartment.

12 And, ceiling height is the most important
13 thing that people answered consistently. I mean, it's
14 just no I that is like dominant for like just day in and
15 day out.

16 For Pamela to become competitive with that
17 other product, because she has a smaller building, her
18 development costs are so much greater because she doesn't
19 have an economy of scale. She has to have some kind of
20 little edge that would give her a competitive just to
21 identify her product.

22 And also from a historic perspective, an
23 eight-foot ceiling is just not going to cut it. That's
24 something that's really I I think from a marketing
25 perspective, that would really be a disaster for Pamela

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1 to be limited to that.

2 MS. BUNDY: Secondly, I would like to add that
3 we're also having to consider this is a historic building
4 and it's being requested of me that I have to use certain
5 materials for the facade, and so on and so forth. So,
6 I'm also having to absorb that costs also.

7 MR. COLBERT: I think another point is that
8 the kind of compromise that we've talked about, to go
9 down to 68, has been something that the staff indicated,
10 the historic staff indicated we could get approved for
11 that without having to go back through this whole series
12 of other public meetings with the community.

13 And in order to go down to 60, I think it
14 would require a significant enough level of design so
15 it would trigger a whole new series of community meetings
16 and going back to the Historic Preservation Review Board,
17 which would be a huge time problem for the Applicant.

18 CHAIRPERSON REID: If you had known that this
19 particular parcel had been rezoned, then it would not
20 have been something that you would have been interested
21 in developing in another way?

22 MS. BUNDY: I probably would have not
23 purchased it, yes. Because initially, I was looking at
24 it from a 90-foot perspective, you know. I was looking
25 at R-5-D, and I'm thinking "wow, it can go to 90 feet."

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1 So actually, when I spoke with Eric and we consulted
2 about my project, we knew that based on the existing
3 buildings in the neighborhood, that 90-feet would never
4 fit. It would never been accepted and so on and so forth,
5 and that's why we initially based it on 75 feet.

6 CHAIRPERSON REID: Okay.

7 MS. BUNDY: I mean, I never proposed to anyone
8 to do it at 90 feet.

9 CHAIRPERSON REID: I understand. Thank you.

10 VICE-CHAIRPERSON RENSHAW: Madam Chair, I'm
11 sitting here with about ten pounds of Zoning Commission
12 files from the case, having to do with the rezoning or
13 down-zoning of this property.

14 And I'm looking at one that said that there
15 is going to be a hearing on Thursday, May 6, 1999. That
16 predates when you purchased your property Ms. Bundy.
17 And, it was going to be here at 7:00 and the case has
18 been rescheduled from April 1, 1999 when announcements
19 went out. And it mentions your Square 243 as being under
20 consideration in the Logan Circle/Thomas Circle sub-area.

21 And it said "rezoned from R-5-D to R-5-B, those portions
22 of squares" and it lists 243 now zoned R-5-D. So, it
23 looks like that what the rezoning was, was down to R-5-B,
24 not R-5-C?

25 MR. DuPUY: That was the original proposal

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1 and then the Zoning Commission adopted it at R-5-C, not
2 as initially advertised.

3 MR. GRIFFIS: It was set down.

4 MR. DuPUY: It was set down at R-5-B. The
5 ultimate decision by the Commission was R-5-C.

6 VICE-CHAIRPERSON RENSHAW: I haven't come up
7 with the actual decision yet. That's going to take me
8 another year, I think.

9 MR. RODGERS: Madam Chair, if I could go ask
10 the Application, going into your question in terms of
11 height and how you might reduce it. First of all, was
12 there in your due diligence in the purchase price, any
13 analysis on FAR feet that corresponds to the purchase
14 price? Basically, did you look at the maximum you could
15 build on this site which would then give you the analysis
16 of what it was worth to purchase?

17 MS. BUNDY: Yes, I did.

18 MR. GRIFFIS: Also, hearing I may perhaps I
19 well, first of all, let me also make a statement that
20 I think the OP report is incredibly well organized dealing
21 with the complication of this, and I think it's
22 specifically important to have this chronology, which
23 must have taken some time. As you see, we can't pull
24 it together yet ourselves.

25 But, in terms of the down-zoning, I'd like

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1 to make I guess a comment on that. Obviously we don't
2 have jurisdiction on that, but actually I'd ask the
3 architect. In your understanding of the down-zoning,
4 it is to step down the building heights as it goes north
5 on 13th Street to Logan Circle, is that correct?

6 MR. COLBERT: Yes, that was the intent.

7 MR. GRIFFIS: Okay. Do you find that it
8 wouldn't, and I won't belabor this very long, but isn't
9 that almost impossible in that the stepping down will
10 happen on one side of the street, but we have existing
11 structures that are at 90-foot level, in fact very close
12 going up to the circle.

13 MR. COLBERT: That's correct.

14 MR. GRIFFIS: And, thirdly was there, in terms
15 of the Historic Preservation Review Board, they looked
16 at this elevation that we're looking at, is that correct?

17 MR. COLBERT: No, this one has actually been
18 reduced from what they approved.

19 MR. GRIFFIS: Oh, I see. Okay. Well, in
20 terms of the height and the floor plates on that current
21 elevation, it looks to me that it's trying to match, in
22 fact, one of the adjacent buildings and draw the floor
23 lines across. That's often a comment made by Historic
24 Preservation and is appropriate in the Historic District?

25 MR. COLBERT: That's correct.

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1 MR. GRIFFIS: That's all I have.

2 MR. COLBERT: Yes, that was one of the issues
3 that came up in the historic meetings was the alignment
4 of the floors and the compatibility of materials with
5 the neighborhood buildings. Also, this building will
6 fill in the last remaining site on this side of the street,
7 so there's no more opportunity for building other
8 structures. The existing ones are protected by the
9 Historic District.

10 MR. GRIFFIS: If I could make a point of
11 clarification. I think the Applicant, Ms. Bundy
12 mentioned that this was a historic building, when in fact,
13 I believe you meant to say that this was a building in
14 a Historic District.

15 CHAIRPERSON REID: Yes.

16 MS. BUNDY: Correct.

17 MR. GRIFFIS: And you, in fact, you talked
18 of materials, you are using synthetic material within
19 the Historic District on your new construction.

20 MS. BUNDY: Correct.

21 CHAIRPERSON REID: Okay. All right. Thank
22 you very much. Let's try to move along and finish the
23 government reports. The ANC representative is here?
24 Okay. Please come forward. Thank you very much. We'll
25 bring you back up for closing remarks.

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1 MR. HINTERLONG: I'm Bob Hinterlong,
2 H-I-N-T-E-R-L-O-N-G. I represent ANC-2F. We had
3 referred this matter to our Community Development Council
4 Committee which debated the issue and they voted in favor
5 of us turning down the height of 75 feet. In an open
6 meeting of the ANC, we voted unanimously against the
7 proposal.

8 CHAIRPERSON REID: Can you give us a reason,
9 your rationale as to why?

10 MR. HINTERLONG: The step down issue they were
11 talking about, you know, the idea of moving from
12 Massachusetts Avenue towards Logan Circle and stepping
13 down gradually as they approach the Circle. And, the
14 height for that particular parcel was 60 feet, and we
15 thought that was appropriate for the space. I think you
16 really need to see the space to get an idea of how much
17 impact the additional height would have in the
18 neighborhood.

19 CHAIRPERSON REID: Helen Seemer is your
20 secretary?

21 MR. HINTERLONG: Yes, ma'am.

22 CHAIRPERSON REID: Okay. Now, there was,
23 apparently January 22nd she wrote a letter to Turkish
24 Bozeberg of the Historic Preservation Review Board,
25 basically indicating that you had voted 6-0 to approve

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1 the general design concept. But that was, like you said,
2 that was before you were aware of the fact that there
3 was a height issue?

4 MR. HINTERLONG: I believe that's correct
5 Madam Chair.

6 CHAIRPERSON REID: Okay.

7 MR. HINTERLONG: I was not a member of the
8 ANC at the time.

9 CHAIRPERSON REID: Did you all explore the
10 possibility of the difference and impact that the 68-foot
11 height would do?

12 MR. HINTERLONG: I'm hearing about 68 feet
13 for the first time today.

14 CHAIRPERSON REID: Yes. What you heard about
15 at the meeting was 75?

16 MR. HINTERLONG: 75, that's correct.

17 CHAIRPERSON REID: Was that ANC aware of the
18 fact that that particular site had been down-zoned, I
19 mean rezoned or now it's rezoned?

20 MR. HINTERLONG: At what point in time?

21 CHAIRPERSON REID: When the presentation was
22 made to you by Ms. Bundy?

23 MR. HINTERLONG: The I

24 CHAIRPERSON REID: What she was presenting
25 to you was not in actuality the correct zoning that was

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1 germane to that particular site? Were you aware of that?

2 MR. HINTERLONG: We were not, initially we
3 were not aware that there was a height problem. When
4 we became aware there was a height problem, that's when
5 we ■

6 CHAIRPERSON REID: So you didn't know it had
7 been rezoned?

8 MR. HINTERLONG: That is correct to the best
9 of my knowledge.

10 CHAIRPERSON REID: All right, so are you
11 saying then that if it were 68 feet, if that change was
12 made, do you think that your ANC would be more amenable
13 to that particular ■

14 MR. HINTERLONG: That I don't know Madam
15 Chair. As I said, I'm hearing 68 feet for the first time
16 today.

17 CHAIRPERSON REID: Well, all right, knowing
18 that you can't speak for your full ANC, what I'm asking
19 you what do you think? What would be your position?

20 MR. HINTERLONG: I would defer to the
21 Community Development Committee. I had the opportunity
22 of appointing myself to that Committee, which studies
23 matters like this. This is not one of my strong suits,
24 and therefore, I opted rather than appointing myself,
25 to appoint two other people, both of whom are architects,

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1 to vote in my stead.

2 CHAIRPERSON REID: Okay.

3 MR. HINTERLONG: So, I would defer to what
4 the Community Development Committee would say.

5 CHAIRPERSON REID: All right, well your
6 letter states that there was a vote taken on June 6th.
7 What we're looking at is just one second there.

8 VICE-CHAIRPERSON RENSHAW: Yes, the letters
9 to the Board are supposed to be signed by the Chair, not
10 the secretary.

11 MR. HINTERLONG: You'll be on my pay grade
12 ma'am.

13 VICE-CHAIRPERSON RENSHAW: What?

14 MR. HINTERLONG: I said you'll be on my pay
15 grade here, but I'll pass that message along.

16 CHAIRPERSON REID: Yes, well could that be
17 corrected just for to make sure the Record is correct?

18 MR. HINTERLONG: Yes, ma'am.

19 CHAIRPERSON REID: And reflect that the
20 letter came from the Chairman of the Board and that there
21 was a vote taken, unanimous vote 5-0 to oppose the
22 Application. "After careful consideration of the
23 Applicant's argument at a public meeting of the Community
24 Development Committee, the majority sentiment was against
25 allowing new construction to loom over the adjoining

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1 historic row houses." And, that was at the 90-feet or
2 at the 75-feet?

3 MR. HINTERLONG: That was at the 75 feet.

4 CHAIRPERSON REID: At 75 feet. So that's
5 what you all were voting on?

6 MR. HINTERLONG: Correct.

7 CHAIRPERSON REID: Okay. All right. Thank
8 you. Any questions? Board members? Applicant?

9 VICE-CHAIRPERSON RENSHAW: Just to ask, when
10 is your next meeting? Is your Committee that deals with
11 development, does that mean meet independent of the
12 Commission meeting?

13 MR. HINTERLONG: Yes, ma'am.

14 VICE-CHAIRPERSON RENSHAW: And when is the
15 next meeting of that committee?

16 MR. HINTERLONG: It's at the end of this
17 month. They meet if, and only if there are matters to
18 be looked into. Months when there's nothing on the table,
19 they simply don't have a meeting. So, I don't know if
20 there is going to be one this month.

21 VICE-CHAIRPERSON RENSHAW: And your next
22 regular meeting of the ANC is?

23 MR. HINTERLONG: The first week in July.

24 VICE-CHAIRPERSON RENSHAW: The first week in
25 July.

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1 MR. HINTERLONG: Yes.

2 VICE-CHAIRPERSON RENSHAW: All right. Thank
3 you.

4 MR. HINTERLONG: Though that may have been
5 changed because of the 4th of July. I'm not sure.

6 VICE-CHAIRPERSON RENSHAW:: All right.

7 CHAIRPERSON REID: Can't speak from the
8 floor, sir.

9 MR. HINTERLONG: Thank you.

10 MR. DEPUY: I have one question of this
11 witness.

12 CHAIRPERSON REID: Oh, I'm sorry.

13 MR. DEPUY: No problem.

14 CHAIRPERSON REID: Go ahead.

15 MR. DEPUY: Just one question, Mr.
16 Hinterlong.

17 MR. HINTERLONG: Yes, sir.

18 MR. DEPUY: Does the ANC resolution
19 specifically address the requested FAR variance or just
20 a height variance?

21 MR. HINTERLONG: I believe just the height
22 variance.

23 MR. DEPUY: Okay, thank you.

24 MR. HINTERLONG: I believe.

25 MR. DEPUY: I have no further questions.

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1 (Pause)

2 CHAIRPERSON REID: All right. Thank you.
3 Let's see now. How many people are here in support of
4 the Application? Support? And how many in opposition?
5 None. Okay. Will the person in support please come
6 and give us your testimony quickly. We're going to try
7 to wrap this up before lunch.

8 MR. ROOTHS: Good afternoon. My name is Ed
9 Rooths, R-O-O-T-H-S. I live at 1312 13th Street N.W.,
10 in the same block and the same side as the proposed
11 building.

12 CHAIRPERSON REID: Okay.

13 MR. ROOTHS: I came in support of the
14 Application because I'm on the Developmental Committee
15 and we do have a meeting June 27th, you know.

16 CHAIRPERSON REID: The Developmental
17 Committee of?

18 MR. ROOTHS: Of the same ANC.

19 CHAIRPERSON REID: Of the ANC, okay.

20 MR. ROOTHS: And Mr. Hinterlong was not a
21 member of the ANC Board when we voted for, I mean when
22 they voted for this, and he was the least informed member.
23 So, you don't have a true reflection of the chronological
24 data that led up to this, because as a member of the
25 Developmental Committee, we weren't aware of the height

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1 variance because the ANC Board had kept this information
2 at their level what was going on and they were going to
3 those meetings.

4 But, anyway what I wanted to address is that
5 I live right next to the 90-foot building, and the
6 downsizing I mean the I and I've talked to all my
7 neighbors in that block on both sides. They had to work
8 today, and they all addressed that they had no problems.
9 They said if it was the difference between, you know,
10 45 and 60 feet, then they wanted the 45 feet.

11 But, you know, once you get up to a certain
12 height it doesn't adversely affect you that much because,
13 like I said, my building is probably, it's four stories,
14 so I'm only at the 40-foot level and I got 50 feet above
15 me, so if they'd have built it only at 60 feet, it would
16 have been a lot better than 90 feet for my purposes.

17 And that's the same approach that my
18 neighbors are taking. On both sides of that lot, the
19 neighbors expressed no concerns. They also signed
20 letters of support for Ms. Bundy which we provided to
21 her. And we have had the people along that block on that
22 side of the ANC, both on the 13th Street and over on Rummard
23 (phonetic) Avenue, we don't have, because I represent
24 them in the Developmental Committee, no one expressed
25 to me any reservations.

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1 The Developmental Committee voted in the
2 majority against it, but most all of those people came
3 out of the other sections of our ANC. They didn't come
4 out of our section in voting against it.

5 So, it's, like I said, we would just
6 appreciate it that there wasn't going to be another
7 90-foot building which would have made it totally, you
8 know, out of sync, but we had no problems at 75 feet.

9 And then when Ms. Bundy came to us in some
10 of our meetings and presented to us what she, how she
11 had went through everything and our witnessing of her
12 being bludgeoned at a couple of our, at our last
13 Developmental Committee meeting by some people, we felt
14 that, you know, it was just, that we would just have to
15 show our support at this hearing. And like I said, they
16 just, a lot of the neighbors weren't able to make it here
17 today, but we do have letters representing their stances.

18 And, like I said, at 60 or 75 feet, my
19 neighbors expressed there's no issue because you've
20 already, 15 feet, they just don't want another 90-foot
21 building, you know. That's their biggest thing, just
22 not 90 feet.

23 CHAIRPERSON REID: Okay.

24 MR. ROOTHS: Thank you for your time.

25 CHAIRPERSON REID: Thank you very much.

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1 Next.

2 MR. BERGER: My name is Paul Berger. I live
3 at 1325 13th Street. It's the Iowa. It's across the
4 street from this lot. There's a lot of issues and my
5 background, I'm a businessman and I think you have seen
6 the concerns and addressed them in your conversations
7 about how unfair the process has been to Ms. Bundy from
8 the beginning to her final, when she found out, and I
9 can't emphasize that too much.

10 But, aside from that, let me explain because
11 I don't get involved in the community matters much, but
12 this has got me so upset that I've taken the time off
13 to come down here, and I'll try to step you into the
14 process.

15 The first time I found out about what was
16 going on, I was talking to Ms. Kramer and she told me
17 about the zoning problem and how they were trying to down
18 step to the Circle. That sounds like a reasonable
19 approach, considering what they're doing with the
20 District and the Historic District.

21 And then after living in the area for twenty
22 years, I decided to go out and really see what the
23 neighborhood, and what that block looked like when you're
24 stepping down and that statement is almost the most
25 ludicrous thing I have ever heard when someone looks at

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1 the buildings. And you can't see it from the drawings
2 what you've got here, because he hasn't finished the rest
3 of the block to the Circle.

4 As you see, he has the 90-foot building, then
5 you drop down to this gentleman's building which is lower
6 than the next three townhouses which are higher. And
7 then, Ms. Bundy's building is already zoned at the lower
8 level, at least one story above that. The next building
9 over, the roof line is higher than all the other townhouses
10 because of the roof line.

11 Then as you come towards the Circle, the next
12 two houses or three houses are two-story houses, and then
13 the corner house goes back up again. And then you come
14 across the street to the Iowa which is 90 feet.

15 So, for anyone to say that this is stepping
16 down, it's nuts. And, in fact, if you look in general,
17 her building will gradually help step down, and it's all
18 in this one block. And it's not in the block because
19 of where the Iowa is standing.

20 Now we go to the process because after I saw
21 this, I went to the meetings. I went to the Community
22 Development meeting and I could be wrong on this, but
23 the vote was 6-1 against. Now, of the seven
24 Commissioners, or of the seven members, I only heard two
25 of them speak against the building. To the best of my

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1 recollection, four of them did not say anything. Now,
2 the two that were the only ones that spoke in my
3 remembrance, were two ANC Commissioners. So, the vote
4 went 6-1.

5 Now, I'm not sure of whether Mr. Hood was
6 recently just being very correct in his decision of not
7 sitting in on this because he voted on the down zone,
8 he recused himself, or whether he was just hungry for
9 lunch.

10 But, when you went to the ANC Commissioners
11 meeting, would they tell you that they voted unanimously
12 against it? Two of the Commissioners who were on the
13 Committee voted. I don't understand under any rules or
14 regulations, how a Commissioner can be on a Committee
15 and make a recommendation, and then sit on that Committee,
16 or as a Commissioner and vote. They almost have to recuse
17 themselves.

18 And, the Committee Member who was Ms. Kramer,
19 the Commissioner, who presented the Committee's position
20 to the Commission, I believe she made many factual errors.

21 In fact, I tried to question her on them and I was told
22 I could not speak. So in my opinion, she made a false
23 presentation in some respects and let's not get into
24 anything. Helen Kramer's a good friend of mine but I
25 think she was wrong and I think they ramrodded this denial

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1 through.

2 And considering that many mistakes were made
3 by the District Government, I mean, how someone can down
4 zone the property and not inform the owner in over a year,
5 is beyond me. And I just think that I and again, I've
6 talked to many neighbors and I believe you may have letters
7 from them, because it doesn't make any sense in allowing
8 her to go as high as she can and not go and make the building
9 viable. Therefore, I'm here speaking for her. Thank
10 you.

11 CHAIRPERSON REID: Thank you very much.
12 Okay, next.

13 (Pause)

14 MR. WILLIAMS: Good afternoon Madam Chair and
15 members of the Board of Zoning Adjustment. My name is
16 Lindsley Williams. I live at 3307 Highland Place N.W.
17 in the District of Columbia.

18 I'm a land use planner, an expert in the field
19 of land use planning and zoning in the District of
20 Columbia. I work for the law firm of Holland and Knight.

21 Our client is George W. Kalimaris (phonetic)
22 and his partners that are known legally as KJGC
23 Associates, LLC. That LLC is co-owners of properties
24 located directly across from the site that's the subject
25 of today's discussion. It is the commercial properties

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1 that are located in the middle of Square 280 which I will
2 depict to you on the map that I've hung up, and that should
3 be in the back of the book that's before you.

4 I'm pointing out a yellowed area of Square
5 280. The associates and the other co-owners of that
6 property have been very much familiar with the zoning
7 history of this area for as long as they've been there,
8 and they've been there since before 1958. And most
9 recently, I became involved as a practicing land use
10 planner, assisting them in representing their interests
11 in the proceeding that Ms. Renshaw has gotten at least
12 some of the weight of with her.

13 I can spend a lot of time, which I don't want
14 to take, to give you an elaborate set of background on
15 all of this. Suffice it to say, I will try to digest
16 it down to the points that I think are particularly
17 relevant to the case.

18 In my letter to you on behalf of the
19 associates, I argue in contrast to the Office of Planning,
20 that I feel that they meet each and every one of the
21 three-pronged tests that you need to consider in granting
22 the variance.

23 But, before I get to that discussion, kind
24 of harping back to the immediately prior witness'
25 discussion, I also provide you with at least my own

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1 personal thoughts as a former Zoning Commissioner, on
2 the impact and importance of looking at the reliance
3 questions, and they have been placed before you by Mr.
4 DEPUY and Ms. Bundy in their presentation in this case.

5 What we have in this situation is a history
6 that goes back at least as far in terms of process as
7 1983 or thereabouts, when the Zoning Commission adopted
8 what is called The Set Down Rule. The Set Down Rule
9 essentially provides that during the pendency of a case
10 that involves a Declaration of Change for zoning rights,
11 either through a map change or a combination of map and
12 zoning text amendments, that the Commission will direct
13 the Zoning Administrator to not issue permits for anything
14 more than the most restrictive of the provisions that
15 are then under consideration.

16 Case #97-7 began as a comp plan consistency
17 case in the mid 1990's and it was then under the direction
18 of the Office of Planning, and an early planner in that
19 world that some of you may remember Nathan Gross.

20 Thereafter, Mr. Gross retired and went to
21 work for a law firm here in the City and the case was
22 taken over by David Colby. Mr. Colby did not last as
23 long as the case did. It then went to Steve Cochran and
24 the case was bifurcated or trifurcated, along it's way
25 becoming 97-7, which included some Text Amendments and

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1 it also became a Companion Case #97-7I.

2 All of those folders, or at least most of
3 them, are sitting in the office to your left and my right.

4 And in the section of the folders of 97-7I, one of the
5 folders, I think it's Jacket #2, contains a sheath of
6 letters that I'm going to say is approximately 3/4 of
7 an inch to an inch thick, which is returned rejection
8 notices from failed advertisement of the case when they
9 make a distribution to the property owners. They're
10 saying "hey, we're thinking about making a change." You
11 mail out something that describes it. That many letters
12 from the immediate area came back, "owner unrecognized"
13 or words to that effect.

14 We have also in this case a situation where
15 the Zoning Administrator was not practicing what the
16 Zoning Commission directed. There were other permits
17 that were issued in the area throughout the life cycle
18 of Case #97-7 which bore evidence that the Zoning
19 Administrator was granting them on the basis of the zoning
20 that was then in place R-5-D, even though the projects
21 themselves were in excess of the R-5-B, which is what
22 was being advertised.

23 I do not want to use my time here to go into
24 the particulars of that, let's just say that the general
25 stance and operation over at DCRA was that the Set Down

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1 Decision of 1983, the rule that said "operate under the
2 most restrictive rule" was not being followed.

3 Thereafter, the case ultimately got decided
4 as Mr. Rodgers put into his time line. But the
5 information about what the case ordered, did not make
6 it into the Zoning Atlas.

7 And what I did, at the cost of quite a few
8 hours, is to prepare for you, and it's the last map in
9 the materials that I supplied. I'll step over to it now.

10 The diagram of the area immediately south
11 of Logan Circle, in which I tried to show either former
12 or current zone lines by a black line, and then to indicate
13 the areas by borders where no change was made by the Zoning
14 Commission. It may not have been advertised or whatever,
15 in white tags, and then to put a green edge around the
16 areas where the Zoning Commission Orders, they're cited
17 in Footnote 2 on Page 3, where changes were directed and
18 where yet, as you will compare this to the previous map
19 that I supplied which is off of the web site, where the
20 changes were not faithfully carried forward.

21 And that led to the situation where Ms.
22 Bundy's property was characterized on the Zoning Atlas
23 as R-5-D and, in fact, following the recommendations of
24 Office of Planning, the Commission adopted R-5-C.
25 Correctly again, Mr. Rodgers stated the theory, and a

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1 number of people have pointed to it, that the ideas was
2 to step down in height and density as 13th Street moved
3 from Massachusetts Avenue north, and as it got into the
4 immediate area of Logan Circle.

5 Where the Commission drew the line, more or
6 less, was at N Street. That's where the R-5-E zoning
7 almost stops, except for the IBEW site, which is now being
8 developed, that is under construction that Mr. Colbert
9 talked about. That sole cite was a residual of the S-P-2
10 zoning, and the whole theory of this case, and indeed
11 the whole kind of corporate attention of the City to this
12 case, seemed to have been to focus on the S-P Districts,
13 and that's what the case was mainly about. But little
14 things were grafted in and the case went on and on and
15 on.

16 On the Zoning Commission, I believe only Mr.
17 Parsons (phonetic) and possibly the architect of the
18 Capitol lasted with the case from the beginning to the
19 end. It didn't have continuity of care from the Office
20 of Planning. It didn't have continuity of care from most
21 of the Zoning Commission. There was a lot of reading
22 going on, just like Mr. Griffis had to do in an earlier
23 case, and the Commission reached the conclusion that it
24 would adopt, not the R-5-B Set Down Decision, the
25 suggested down-zoning, which was part of that sort of

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1 periphery to the S-P-2 case which is what it was mostly
2 about, but instead would try to keep the densities that
3 were allowed at R-5-D, more or less, by finding something
4 in the menu of zones.

5 R-5-B allows a 50-foot high FAR of 1.8 and
6 certain other things I won't go into. R-5-D allowed 90
7 feet at 3.5. But along the way, the Commission had to
8 put in for an entirely different set of purposes an R-5-C
9 zone that had the same maximum percentage of lot
10 occupancy.

11 It had many characteristics in common with
12 R-5-D, except for height. And it said, the Commission
13 did, "we're going to change the area of Square 280 to
14 R-5-C. We're going to change the area north of IBEW site
15 and the Eddystone (phonetic) Apartment on Square 243,
16 to R-5-C on the 13th Avenue face but respect the community
17 desire to have tighter controls yet on the western half
18 of Square 243 and sweeping north."

19 And so the result was, moving back to the
20 map, the western half of Square 243 and all of the previous
21 R-5-D portions of Square 242 and 242 north were rezoned
22 to R-5-B, with a clear zone line being depicted right
23 down the middle of Square 243 at the rear of the property
24 line.

25 That's the history, except for the little

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1 blue marks, which I believe are potential oversights
2 by the Zoning Commission, and those lots may never have
3 been rezoned effectively by the Zoning Commission Order
4 from R-5-D, constituting something of an issue for
5 follow-up I suspect, or opportunity if you know the
6 owners.

7 In any event, that's the history of that and
8 Ms. Renshaw, I hope this begins to answer some of your
9 questions on that.

10 I participated actively in that case and Mr.
11 Kalimaris suggested that we come over and do everything
12 we can to give our endorsement to the project that Ms.
13 Bundy has advanced. Now, what we've looked at are the
14 plans at 75 feet; 68 feet is new to us, but I'm going
15 to say from my eyeballing of them, I believe that it would
16 not change our client's point of view that this is
17 something which would be approved.

18 I would bring this to the Board's attention
19 as I try to draw my testimony to a close. Theory: step
20 down the height from the south end of the block to the
21 north end. What is the zoning permitted at the south
22 end of the block of Square 243? The answer is 90 feet.

23 What is the zoning at the north end? The zoning there
24 is R-5-B. The maximum height that's permitted under that
25 is 50 feet. What is halfway between 50 and 90? 70.

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1 What is the Applicant proposing? 68.

2 This sounds to me like it's achieving
3 something in fact that we don't yet have the regulatory
4 mechanism. There is no 70-foot zone. But, you have in
5 this Application something which embodies the exact
6 spirit of the zone theory that was advanced in the
7 decision.

8 So, for that reason, for the reason that the
9 elevator is not going to pop up another 18 feet, which
10 creates a kind of a huge imposing thing. You've had
11 direct testimony on that from the Applicant. You know
12 that the back half, the rear half of the project is going
13 to be open on the upper floors so that there will be minimal
14 impact on the properties to the west, not my clients.
15 This is ladies and gentlemen an approvable case. It meets
16 every test that's needed by this District. That
17 concludes my testimony.

18 CHAIRPERSON REID: Thank you very much. I
19 just have one quick question, and that was incidentally
20 it was a very enlightening presentation and I do
21 appreciate that. My question is, in regard to the
22 practical difficulty aspect, could you elaborate on that
23 a bit please?

24 MR. WILLIAMS: Sure. First, you may want to
25 turn to Page 4 of my letter, but I take the note here

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1 that in her case this land became characterized by
2 development | by information about the kind and density
3 of development that was permitted that was not and perhaps
4 ultimately the total truth, but it is something where
5 she pursued it, not once, not casually, but going back
6 at it again and again. "Is this right?" "Yes, it's
7 right." "Are you sure?" "Yes, I am."

8 So, she then got information and that
9 information became integrally associated with the very
10 character of the land as though it were the same thing
11 as an odd shape. It was an attribute of the land as it
12 was conveyed, and that to me is what distinguishes this
13 case and I'm very satisfied that she has a practical
14 difficulty that is properly before this Board for
15 disposition and approval.

16 CHAIRPERSON REID: Let's address this a
17 little bit Mr. Williams. The first part of the test in
18 regard to the uniqueness, and I think that has been
19 demonstrated.

20 I think everyone agrees that the
21 circumstances that are germane to the difficulty with
22 getting the correct zoning and everything does constitute
23 a uniqueness circumstantially.

24 Then what has to flow from that is the
25 practical difficulty that resulted from that, that then

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1 made it difficult for the Applicant to be able to the
2 comply with the existing zoning regulations. Are you
3 saying that an extension of the first prong goes into
4 the second prong making it a practical difficulty now
5 for the Applicant?

6 MR. WILLIAMS: I think in answering that Madam
7 Chair, you have to look, not only at the boundaries of
8 the property, but the area in which you cited which is
9 adjacent to and is indeed the three older townhouses,
10 perhaps it's four, one of which I believe is among if
11 not the oldest surviving structure in the entire Logan
12 Circle area.

13 But, you have a situation where to the extent
14 that picking up on a discussion that was talked about
15 earlier about trying to carry through the floor plates,
16 and carry through the character of the area, the Iowa
17 has high floor-to-floor distance and I think they're
18 around 11 feet. I don't want to testify to that at this
19 point, the older houses.

20 So I feel that one test does extend, Madam
21 Chair, into the second and that once you begin to operate
22 in strict conformity that you'd find yourself on the
23 opposite side of having satisfied the folks with Historic
24 Preservation that you were doing something that was in
25 keeping with the character of both the Greater 14th Street

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1 Historic District and the older Logan Circle Historic
2 District, both of which this site sits within. I think
3 I made my way through that sentence okay.

4 CHAIRPERSON REID: Pretty good.

5 MR. RODGERS: Madam Chair, if I might.

6 CHAIRPERSON REID: Yes.

7 MR. RODGERS: The Iowa has been brought up
8 several times and in reviewing the records that we have,
9 the report that the Office of Planning filed for this
10 case and also the report that was filed for the zoning
11 case, if you look at the picture of the Iowa, it has seven
12 floors, and the report says it's 81 feet tall. So,
13 several people have stated that it's 90 feet, and I don't
14 know if that's I I open that for the BZA to consider.

15 MR. WILLIAMS: Mr. Rodgers is entirely
16 correct. The Iowa, I didn't remember the exact footage.

17 I remembered it as being in the low 80's from the earlier
18 case, and it does have the floors and we're dealing with
19 about 10 or 11 foot floor-to-floors based on that math.

20 CHAIRPERSON REID: Thank you very much. Any
21 other questions? Okay. All right. We do also have
22 within our file several letters in support of this
23 Application, and we do also have other letters in
24 opposition to. Now, we have closing remarks by the
25 Applicant.

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1 Mr. DEPUY: Thank you Madam Chair and members
2 of the Board. Given the hour, I'll be brief. First,
3 I'd point out that the testimony today has been
4 incontroverted with respect to the FAR variance, and no
5 parties, no agencies, not even the ANC took exception
6 with the FAR variance, so we believe that that has not
7 been in controversy today.

8 With respect to the height variance which
9 has been in controversy, we would suggest that we have
10 met the three tests. The Planning Office conceded in
11 its report the first test. They seem to, if I can put
12 words in their mouth, have conceded the third test with
13 respect to the reduced height of 68 feet, and I guess
14 we're at disagreement with respect to the second test.

15
16 It's our view that the circumstances, the
17 very unusual circumstances here, and in my twenty-five
18 years of experience I've never seen a situation in which
19 an Applicant has been given so much bad advice by so many
20 different agencies, and it has obviously put us in the
21 position that we're in today.

22 But, it's as a result of that misinformation
23 or incorrect information that this Applicant went forward
24 with the community, with the Historic Preservation Review
25 Board, with the design which was approved as has been

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1 testified to today, went forward with working drawings
2 which has also been testified to today, or well along
3 the process, and we believe that perhaps the building
4 permit, but for this zoning issue, could be issued within
5 a matter of weeks.

6 So, we believe that the practical difficulty
7 is the increased costs which would result as a result
8 of a redesign were it to be necessary.

9 Also, the economic infeasibility if a floor
10 would have to be removed, and so we believe that the
11 circumstances have led to the practical difficulty
12 suffered by this Applicant and that there will be no harm
13 to the public because of the reduced height, because of
14 the approvals by Historic Preservation, because of the
15 materials that are being used in the facade of this
16 project, which the testimony has indicated are far beyond
17 what a matter-of-right project would be, and because of
18 the fifth floor being only a partial floor, stepping back
19 away from the project to the rear.

20 All those factors would indicate mitigation
21 of any possible adverse consequences and therefore, we
22 submit there are no substantial detriment to the public
23 good as a result of this project. Thank you.

24 CHAIRPERSON REID: Thank you. Board
25 members? Any discussion? Motion?

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1 VICE-CHAIRPERSON RENSHAW: Madam Chair, just
2 a clarification. If this building is reduced to 68 feet,
3 is there a reduction in the FAR too?

4 MR. COLBERT: No.

5 VICE-CHAIRPERSON RENSHAW: Why not?

6 MR. COLBERT: Were it simply I

7 MS. BAILEY: Mr. Colbert, would you please
8 speak on the microphone.

9 MR. COLBERT: Even though Pamela felt the
10 building would be more marketable at the 75 foot height,
11 we felt obligated to come here today with a compromise
12 position, and we feel that with the 68 feet we can still
13 achieve a product that will be something that we can work
14 with. We're not reducing the I our proposal is not to
15 reduce the floor area, but simply reduce the
16 floor-to-floor height and that's how we plan to achieve
17 the 68 feet.

18 CHAIRPERSON REID: Board members, I would
19 move that we approve this Application. I think that given
20 the circumstances under which the Applicant has had to
21 contend in regard to erroneous information being given
22 to her by several officials of the D. C. Government, and
23 moving forward, based upon what she deemed to be the
24 correct zoning, as well as the fact that that in my opinion
25 would be a unique circumstance that would constitute the

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1 first prong of the test.

2 The second prong as to practical difficulty,
3 the fact that any developer who is contemplating putting
4 a development up has to then spend a considerable amount
5 of time and funds to try to meet their deadlines and to
6 have their project move forward.

7 And that was what was stymied by the fact
8 that there was so much erroneous information, and the
9 fact that she has now, once finding out what the correct
10 zoning was, that she has moved to try to mitigate any
11 adverse impact and to pull the project into close
12 compliance by reducing the height to 68 feet, which seems
13 to be in keeping with the objective of the Zoning Amendment
14 to rezone it, rezone that area by moving the height down
15 as you go towards downtown.

16 And the fact that there's a 90-foot building
17 right there just a few feet away, and her building would
18 be substantially lower than that, and would be in keeping
19 with that ebbing of the height as you move down, there
20 does not appear to be any adverse impact as far as light
21 air traffic, noise and the like as far as parking is
22 concerned. And, it appears that it does not impair the
23 intent and integrity of the building regulations in the
24 map.

25 However, I would, I think that the

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1 Application was that there doesn't appear to be a problem
2 with the FAR so I think that that's a given, but the part
3 in regard to the height, I think the Application is for
4 75, is it, for it to be amended to 68.

5 MR. GRIFFIS: Second.

6 CHAIRPERSON REID: Any further discussion?

7 VICE-CHAIRPERSON RENSHAW: Yes. I think
8 it's unfortunate that we have had to discuss at length
9 the zoning mishap. We don't like to see these glitches
10 come about, and yet with Ms. Bundy here she has experienced
11 it. And, we regret it very much. However, that area
12 in which she is situated has been rezoned, and we have
13 to consider the fact that a rezoning is a rezoning and
14 that's just the fact of the matter. It is a rezoned area.

15 Furthermore, Ms. Bundy came here proffering
16 a different height of 68 foot instead of 75 feet, and
17 while that sounds very good, the community has not had
18 an opportunity to weigh in. Our ANC representative who
19 we had here today said it's the first he's known about
20 it, and I do not wish to jump over the ANC and give a
21 blessing, or make a pronouncement when the community has
22 yet to hear a revised plan that the developer is offering
23 to the community.

24 I would suggest that this matter go back to
25 the ANC. There is a Committee Meeting at the end of the

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1 month. It's not too far away, get on the schedule. Their
2 meeting, their ANC meets within the first week, I believe,
3 of July and here is someone from the ANC who's got his
4 hand up, but that may not happen because of the holiday.

5 Could you hold a special meeting?

6 In any case, a proposal could be made to the
7 ANC to hold a special meeting on this matter if the
8 Committee wants to do so. So therefore, I am not going
9 to be able to give my, put in my vote for this other than
10 to abstain at this time, because I do feel that it is
11 a matter that should be first judged at the ANC because
12 of the difference in height which is substantial, and
13 it weighs in her favor. However, I would like the ANC
14 to pull rank on this one.

15 CHAIRPERSON REID: Well, the fact of the
16 matter is, and I understand that Ms. Renshaw, but I think
17 that, remember even though the ANC, they come to this
18 Board and they may give their opinion or they may make
19 a recommendation, this Board is not bound to always bow
20 by the decision of the ANC. We are an independent Board.
21 We have the authority to make our own decisions. We
22 reviewed the Application in its entirety, and will look
23 at all aspects of it.

24 And I think that given the fact that the ANC
25 has already overwhelmingly unanimously given their vote

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1 to Historic Preservation, it's an indication to me that
2 they were at one point in support of this Application.

3
4 Nonetheless, before I would see the
5 Application just completely fail, I would consider
6 allowing the ANC to have some further input, but at the
7 same time, I think that it's unfair to have a developer
8 have to wait, as time is money, for the ANC to weigh in
9 again and try to keep fighting a situation that from a
10 logical point of view, I can see no reason why we couldn't
11 just go ahead and move forward on it.

12 Apparently this person was, this Applicant
13 was caught in a crossfire between a rock and a hard place,
14 and I think that it's important for us to try to see what
15 we can do to try to assist where we can developers who
16 are trying to do something in neighborhoods that would
17 contribute to the advancement and revitalization.

18 Also, one last point before you say anything,
19 one last point. Also, the Applicant has agreed to utilize
20 Historic Preservation materials which I'm sure is at
21 considerable additional expense, in order to further try
22 to advance, you know, the compatibility of the building
23 with the community.

24 MR. GRIFFIS: Madam Chair, if I might also,
25 I absolutely concur with you and I think the issue that

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1 would go back to the ANC is height, based on their own
2 comments. And as you've stated, they supported 75 at
3 one point and have now rejected it. We're not clear on
4 why that happened.

5 But, the issue that would go before them is
6 the 8 foot variance at this point because what we're
7 looking at is 68 feet, correct? So, what we're asking
8 for is based on the definition of the building height,
9 we would have a 68-foot building that is to come down
10 from 75. I'm not sure how much more impact the ANC could
11 have, because I believe that the case has been strongly
12 made today that shows in support of granting the variance
13 just for the 8 feet.

14 VICE-CHAIRPERSON RENSHAW: The issue before
15 Mr. Griffis, the issue before the ANC would be the zoning
16 of the District which is R-5-C versus R-5-D, and that
17 would be the issue that would be taken up at the ANC,
18 though first at the Committee level.

19 CHAIRPERSON REID: You know, it appears to
20 me that the ANC was aware of the rezoning but they were
21 taking up the issue of the variance, not the rezoning
22 but the fact that this was a request for a variance from
23 the zone, because of existing zoning in that District.

24 VICE-CHAIRPERSON RENSHAW: But, I don't know
25 whether there had been any change in the leadership of

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1 the ANC, whether those who had been on the case and
2 testified at the down-zoning are no longer on the ANC.

3 I don't know that. It's not been testified to.

4 CHAIRPERSON REID: But, Mrs. Renshaw, even
5 if you don't know that, then what would keep you from
6 taking an independent position from the ANC based on what
7 has been presented. It is not necessarily always to go
8 with what the ANC recommends and we can depart from that.

9 VICE-CHAIRPERSON RENSHAW: No, we give great
10 weight to the ANC.

11 CHAIRPERSON REID: But we do not always |

12 VICE-CHAIRPERSON RENSHAW: And when someone
13 from the ANC comes before this Board and said "gosh, it's
14 the first I've heard about it" then I say that
15 procedurally, the developer in this case should go back
16 to the ANC to elaborate on the change of plans.

17 CHAIRPERSON REID: Well, yes they have great
18 weight but we gave them weight.

19 VICE-CHAIRPERSON RENSHAW: I think that is
20 the best way to go.

21 CHAIRPERSON REID: I think that we can give
22 them great weight, but at the same time we should utilize
23 a bit of discretion and our own judgement as to what we
24 feel would be in the best interest, not only of the BZA
25 but also the Applicant and also the City. That would

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1 be my recommendation, that we move forward and confirm
2 it today.

3 VICE-CHAIRPERSON RENSHAW: Unfortunately, we
4 don't have a quorum to do that. In other words, the vote
5 is going to |

6 CHAIRPERSON REID: Well the vote | well, the
7 thing about it is I would not move forward with the vote.

8 I was not recommending that we even have a vote because
9 of the fact that there has been an issue raised again
10 about the ANC and the ANC's position and the fact that
11 there are only three members here. But, I just want to
12 caution this Board on allowing | the ANC has great weight
13 as well as the Office of Planning. That doesn't mean
14 we can not take exception to or we could depart from the
15 ANC's position.

16 Sir, did you wish to say something before
17 we close? Come up forward please.

18 MR. ROOTHS: The only member of the ANC that
19 changed was Mr. Hinton. The other ANC Board Members have
20 been ANC Board Members for the last four years since I've
21 been living there, and I couldn't understand why they
22 sent him. He's the most newest. He knew nothing and
23 like he said, he wasn't at the Developmental Committee.
24 He didn't understand what was going on. He voted with
25 what he thought he should vote with.

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1 CHAIRPERSON REID: Okay, thank you very much.
2 Thank you. So, I guess Mr. Hart I

3 MR. HART: Madam Chair?

4 CHAIRPERSON REID: What I would recommend
5 given this situation is that we I did you say that the
6 ANC could not have a special meeting or you didn't know,
7 you have to find out?

8 MR. HART: I couldn't even address that area.

9 CHAIRPERSON REID: When is their next
10 regularly-scheduled meeting?

11 MS. BAILEY: Sir, please come to the table.
12 You need to be on the microphone. I'm very sorry.
13 That's okay.

14 MR. HART: I couldn't address that situation.
15 The next scheduled meeting is in August right now as
16 far as we know, because they haven't scheduled a meeting
17 for July. The July meeting would be in the week of July
18 4th, and they don't like to have meetings on holidays.
19 And, I'm not aware of the ANC having a meeting until
20 August.

21 CHAIRPERSON REID: Okay well, then what do
22 we do in regard to trying to get an ANC, full decision,
23 and not hold the progress up for two months?

24 VICE-CHAIRPERSON RENSHAW: I would recommend
25 that the committee your ANC has reviewing zoning in your

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1 area take this up at the meeting at the end of the month,
2 and recommend an action one way or another and submitting
3 that to the Chair and the Chair can call a special meeting,
4 especially for this case. It can be done.

5 MR. GRIFFIS: Madam Chair, could we I

6 MR. ROOTHS: Ms. Renshaw, I'm not saying it
7 can't be done, but the thing is that you're trying to
8 commit people that got jobs and other situations and
9 plans.

10 CHAIRPERSON REID: Summertime, vacation.

11 MR. ROOTHS: You're just looking to try and
12 force the ANC into the process when they, when like I
13 said, we supported the process up to one point as an ANC
14 and then like all of a sudden it went south on Ms. Bundy,
15 and that's why I thought it was unfair, you know.

16 CHAIRPERSON REID: Yes.

17 MR. ROOTHS: And I just said, they sent their
18 most inexperienced member.

19 CHAIRPERSON REID: Okay, well you said that.

20 MR. ROOTHS: Yes, okay. And I just think
21 that, you know, trying to get me to say what could happen
22 at a meeting at the Developmental Committee at the end
23 of the month is impossible, because I'm the
24 pro-development, pro-growth, and I went around and I got
25 up the letters, so they had no reason to want to go and

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1 look at actually going anywhere with me on that issue.

2 MR. HART: Madam Chairman, may I ask a
3 question please?

4 CHAIRPERSON REID: Sure.

5 MR. HART: A question and a comment. Sir,
6 it's been my experience with the ANC's, don't they go
7 to the break in August, the majority of the ANC's?

8 MR. ROOTHS: Sir, it might also be a break
9 in August. There might not be another meeting until
10 September.

11 MR. HART: That's the point I'm trying to
12 make, yes.

13 MR. ROOTHS: Yes, you're right. That just
14 went out of my head at the moment, but I know that July
15 1st.

16 CHAIRPERSON REID: So that wouldn't go until
17 September.

18 MR. ROOTHS: Yes, I just know the first week
19 in July there is not a meeting. That has already been
20 determined. There will not be a meeting because several
21 of the members said they were going to be out of town
22 or unavailable for that.

23 MR. GRIFFIS: Madam Chair, is there any way
24 that we might set a time schedule for the ANC to respond
25 to the Board and move ahead on the approval of this, based

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1 on a condition that we are able to review the ANC letter
2 that is submitted?

3 CHAIRPERSON REID: Well, we could give them
4 a time certain to respond and if they don't, then we could
5 still take a vote, but that does not address the immediate
6 concern of Ms. Renshaw because we'd be right back in the
7 same boat, because if they don't respond, then she
8 wouldn't want the vote on this issue except for to vote
9 inconsistent with the ANC position.

10 MR. GRIFFIS: Right, I think there are two
11 points to that. One, if we were to give a schedule, it
12 might motivate a meeting to be called; and secondly, if
13 a meeting wasn't called, I think that we could perhaps
14 implicitly say that the ANC was not, as we have before,
15 was not opposing the Application.

16 CHAIRPERSON REID: Well, another thing too
17 is that I was not really very impressed by the presentation
18 that was made by the ANC, because I asked why, what caused
19 the change and there was nothing proffered to us as to
20 why. I don't think that gentleman knew. Is that
21 gentleman still here? I don't think that he was really
22 aware of what had happened, but I think the point is well
23 taken. MR. ROOTHS: He wasn't aware.

24 CHAIRPERSON REID: I think Mr. Griffis the
25 point is well taken that we ask for a response from the

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1 ANC in regard to this matter by a date certain, which
2 would be after the meeting that they're supposed to have,
3 the Committee, the Community Development Meeting
4 Committee, and perhaps a letter from the chairperson to
5 give us some guidance as to what their position is, and
6 then take the vote at our next regularly scheduled meeting
7 which would be July 3rd.

8 MR. GRIFFIS: Well, perhaps an alternative
9 is that we let the record stand. We do have a letter
10 from ANC-2F, though it was asked for to be signed by the
11 Chair, I believe Ms. Renshaw said. But we could let the
12 letter stand. We could have a vote today.

13 VICE-CHAIRPERSON RENSHAW: Another way to
14 handle it is to have the Development Committee meet at
15 the end of the month. That was the meeting that was,
16 it has been stated as going to happen, and a letter go
17 from that committee to the Chair asking for a telephone
18 vote. And under the circumstances, that can happen.

19 CHAIRPERSON REID: Well, the main thing is
20 we don't want to make a mistake here. This is an
21 extremely important Application, as they all are, but
22 important to the extent that we have someone who spent
23 \$50,000 now in anticipation of building a building, having
24 gone forward with erroneous information and then for there
25 to be another snafu here on this BZA because of the fact

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1 that there was some type of miscommunication with the
2 ANC, I don't want to see that happen.

3 So, if we can get from them what their
4 rationale is, and if they're amenable to the fact that
5 there's been a compromise with the height and the Historic
6 Preservation concerns being addressed, that we would like
7 to get their new vote based on the new information that
8 has been presented here today.

9 MR. ROOTHS: All I can do is go home and send
10 them an email, you know, but like I said I'm not authorized
11 to call any type of meeting or anything else. It's going
12 to have to be some type of official response from you
13 in order to make that happen.

14 CHAIRPERSON REID: Well, we will. We will
15 request it.

16 MR. ROOTHS: You know, as I said, you know,
17 it was just a total shift from the group, the people that
18 live around this building have been supportive. The
19 people, you know, the other ■ it's just been a total shift.
20 So, I don't understand it.

21 CHAIRPERSON REID: Well, if the people who
22 were around the building are the same people who sent
23 in the letters and the same people who are there on the
24 ANC as well, the Commission?

25 MR. ROOTHS: No, they're not on ANC.

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1 CHAIRPERSON REID: Okay, well then the I

2 MR. ROOTHS: Our ANC member has been
3 temporarily, is temporarily, you know, she moved, so our
4 ANC voice is vacant. So, all these members that voted
5 that had this sudden urge, changed their position after
6 she left.

7 So, you know, like I don't know why they
8 changed their positions, but they all changed their
9 position after our ANC member left. Barbara left in the
10 end of May or middle of May and then, like I said, we
11 came to a meeting and it was just like a total change
12 on positions of what was happening in our area with ANC.

13
14 And, I, you know like I said, and the
15 gentleman, he didn't attend, he wasn't at the, he was
16 only at the last meeting that they took the vote on, and
17 he wasn't at the Developmental Committee, hasn't been
18 at any other meetings.

19 CHAIRPERSON REID: Okay, well let's just move
20 ahead. We've spent considerable time on this now, and
21 I think that we can request that there be a special meeting
22 and that they be given the new information and that they
23 make a recommendation based on the new information that
24 was presented here today by a date certain, and if we
25 don't receive it by that date certain, then we'll go ahead

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1 and make our vote accordingly.

2 VICE-CHAIRPERSON RENSHAW: Yes.

3 CHAIRPERSON REID: And we will have then
4 extended them, afforded them the opportunity to do so.

5 VICE-CHAIRPERSON RENSHAW: Absolutely.
6 But, also state in the letter the appropriate zoning with
7 this piece of property.

8 CHAIRPERSON REID: I think that they would
9 be aware of that.

10 VICE-CHAIRPERSON RENSHAW: Put it in the
11 letter that they recommend.

12 CHAIRPERSON REID: No. No. What I'm saying
13 is that legally we would have to state all the facts,
14 all the material facts for them to be able to have a basis
15 for a discussion and making a vote. Okay.

16 All right. Now, Mr. Hart, they would have
17 a letter in to us by █

18 MS. BAILEY: Madam Chair, when was the Board
19 contemplating making the decision, at the July, or at
20 a Special Public? That would determine when the
21 information comes in. Is it at the July 3rd meeting or
22 thereafter?

23 CHAIRPERSON REID: That's not █ well, the
24 issue was █

25 VICE-CHAIRPERSON RENSHAW: The meeting.

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1 CHAIRPERSON REID: I after the Board meets
2 the end of this month. Now, our next meeting is July
3 3rd so obviously that's not enough time. So what we would
4 have to do is to put another meeting date applied to a
5 hearing in July, maybe the next, what would that be the
6 10th of July?

7 MR. HART: May I suggest something Madam
8 Chair?

9 CHAIRPERSON REID: Yes. Please.

10 MR. HART: The gentleman here is not sure that
11 he will be able to motivate his ANC to do anything. He's
12 not authorized to. But, would you consider two to three
13 weeks a reasonable time to get something going and respond
14 to us? You know, we have meeting dates that we should
15 make decisions. The next one is July 3rd, which is just
16 two weeks away. Put another week on that and we can have
17 a Special Meeting before a hearing which will be the
18 hearing of July 10th. So, I'm saying to you, would two
19 weeks be reasonable for your vote?

20 MR. ROOTHS: I think two weeks would be
21 reasonable from today, you know, in order to get
22 everything, to get the process, because if you keep delay,
23 delay, it just I

24 CHAIRPERSON REID: Well, we have to bring
25 closure and so we have to give them a time frame and have

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1 them, give them the opportunity, a reasonable amount of
2 time to respond and that's it.

3 MR. HART: Yes, okay so what we'd like to do
4 is to have a decision meeting on July 10th. What I would
5 like from your group is to have something back to us July
6 5th.

7 MR. ROOTHS: You'd have to send that to the
8 ANC Chairman, Mr. Stephenson (phonetic). He's the only
9 one that can call that meeting, you know, and stuff.

10 MR. HART: Okay.

11 MR. ROOTHS: So, you know, if it's possible
12 he'll have to contact you and let you know. If it's not
13 possible then, you know, he'll ■

14 MR. HART: Okay. Let me ask you this, did
15 you say your Chairmanship is vacant?

16 MR. ROOTHS: Our area is vacant.

17 CHAIRPERSON REID: The single member district
18 representative for this area.

19 MR. HART: Is vacant?

20 MR. ROOTHS: Is vacant.

21 CHAIRPERSON REID: Right.

22 MR. HART: Okay, well we need to speak to the
23 Chair of the ANC.

24 MR. ROOTHS: Yes.

25 MR. HART: All right, fine. We will write

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1 him immediately with these dates that I'm giving now on
2 the record. Is that fine, Madam Chair?

3 CHAIRPERSON REID: Yes.

4 MS. BAILEY: Madam Chair, so there's a Special
5 Public Meeting to be held on July 10th at 8:30 a.m.

6 CHAIRPERSON REID: That's correct. All
7 right. Then that will conclude today's morning session.

8 So, to the Applicant, that will be the time that we will
9 take this matter up given the circumstances that you have
10 witnessed here today as to why we've had to extend it.

11 Thank you very much. That concludes this morning's
12 session.

13 (Whereupon, the proceedings went off the
14 record.)

15

16

17

18

19 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

20 CHAIRPERSON REID: Good afternoon ladies and
21 gentleman. Oh, it's evening now. I'm really sorry.

22 We do apologize for the fact that we started so late today,
23 but that was something beyond our control, so please
24 indulge us.

25 Please come to order. Ladies and gentleman,

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1 this is the June 18th Public Hearing of the Board of Zoning
2 Adjustment, District of Columbia. My name is Sheila
3 Cross Reid, Chairperson. Vice-Chair Renshaw will be
4 joining us shortly. Susan Hinton (phonetic)
5 representing the National Capitol Planning Commission
6 is not here today. Representing the Zoning Commission
7 is Anthony Hood and also Board Member Jeff Griffis.

8 A copy of today's Hearing Agenda is available
9 to you. They're located to my left near the door. All
10 persons planning to testify, either in favor or in
11 opposition are told to witness cards. These cards are
12 located underneath the table in front of us. When coming
13 forward to speak to the Board, please give both cards
14 to the reporter who is seated to my right.

15 The order of procedure for special exception
16 and variances is: 1) Statement and witnesses of the
17 Applicant; 2) reports including Office of Planning,
18 Public Work, et cetera. Before they avouch a
19 neighborhood commission, private persons in support,
20 private persons in opposition and then closure remarks
21 by the Applicant. Cross-examination of witnesses is
22 permitted by the Applicant or parties. The ANC within
23 which the property is located is automatically party in
24 the case.

25 Record will be closed at the conclusion of

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1 each case except for any materials specifically requested
2 by the Board and staff will specify at the end of the
3 hearing exactly what is expected.

4 The Sunshine Act requires that the Public
5 Hearing in each case be held and open for the public.
6 The Board may, consistent with these rules and procedures
7 and the Sunshine Act enter Executive Session during or
8 after the Public Hearing or on a case for purposes of
9 reviewing, enter the Executive Decision during or after
10 the Public Hearing on a case for purposes of reviewing
11 the record or deliberating on the case. Decision of the
12 Board in these contested cases must be made exclusive
13 of the public record. The Board hears anything that
14 appears to the contrary, the Board would request that
15 persons present not engage with members of the Board in
16 conversation.

17 Please turn off all beepers and cell phones
18 at this time so as not to disrupt these proceedings.
19 The Board will make every effort to conclude the Public
20 Hearing as near as possible to 6:00 p.m. If the case
21 will not be completed before 5:00 p.m. the Board will
22 decide whether it can complete the case or have the case
23 remaining on the agenda.

24 At this time, the Board will be accepting
25 preliminary matters. Preliminary matters are those

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1 which are related to other cases that really should be
2 heard today, except for requests of postponements and
3 continuance for weather, if proper notice of the case
4 has been given.

5 If you are not prepared to go forward with
6 the case or if you believe the Board should not proceed,
7 now is the time to raise such a matter.

8 Are there any preliminary matters? Does
9 staff have any preliminary matters?

10 MS. BAILEY: No Madam Chair, staff does not.

11 CHAIRPERSON REID: All right. Then will you
12 please call the case for the afternoon.

13 MR. GRIFFIS: Madam Chair one note. I have
14 read the case and am prepared to sit.

15 CHAIRPERSON REID: Okay, thank you very much.

16 MS. BAILEY: The case this afternoon is
17 Application #16648 of BP Amoco Corporation, pursuant to
18 11 DCMR § 3104.1 for a special exception under subsection
19 726.1 for the development and expansion of an existing
20 gasoline service station including a pump island canopy,
21 an upscale food mart/convenience store (including a
22 Metropolitan Police Department substation or kiosk) and
23 an automatic car wash in a C-2-A District at 300-332 H
24 Street, N.E. The property is located in Square 776 on
25 Lots 9, 25-27, 29, 51-53, 800, 814-819 and 821.

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1 All those persons wishing to testify, would
2 you please stand. All those person testifying in this
3 case please stand and raise your right hand.

4 (Witnesses sworn.)

5 CHAIRPERSON REID: All right, ready? Go
6 ahead.

7 MR. BROWN: Madam Chairman, members of the
8 Board, and welcome Mr. Griffis. My name is Patrick Brown
9 from Greenstein DeLorme & Luchs. I am counsel for BP,
10 and since we last met on this matter, the Amoco portion
11 of BP Amoco has been dropped, so it's now just the BP
12 Corporation, just to clarify that. And you'll find me
13 saying Amoco by habit throughout the hearing.

14 CHAIRPERSON REID: Okay.

15 MR. BROWN: With me this afternoon is from
16 BP, Mr. Steven Faletto. Also from BP is Mr. John
17 Lombardo. Next to me is Daniel Duke, professional
18 engineer from Bowler (phonetic) Engineering, and behind
19 me Osborne George from O.R. George and Associates, our
20 traffic consultant.

21 Before we begin the case, I'd like to set
22 forth a number of things. First, in reading off the
23 caption for the case, it refers to the original proposal
24 which consolidated, as Mr. Duke will say, a number of
25 lots into a single development proposal, and also included

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1 besides the gas station, a food mart and a car wash.
2 The car wash has been eliminated from the proposal,
3 notwithstanding that that is a matter-of-right use in
4 this District. Also, the project has been consolidated
5 to Lot 53 as you'll see shortly. Lot 53 is the existing
6 site of this gasoline service station which has been there
7 since 1959 at least.

8 What I'd like to do before we start is put
9 some context to this case. I think it may help one and
10 streamline our presentation, streamline the
11 presentations of the Office of Planning, and hopefully
12 streamline the presentations of those who are interested
13 in this case.

14 This is a Special Exception case. This is
15 not a variance case. This is not a rezoning. This is
16 not a lot of other things that fall within the zoning
17 category. As such, it's a limited review and
18 jurisdiction of the Board and the people involved.

19 Special exception says in a C-2-A zone, the
20 zoning regulations say that a gas station is a use that's
21 presumed compatible with the zoned District subject to
22 meeting a number of enumerated criteria, and that it
23 doesn't create adverse and objectionable conditions.
24 That's the end of our discussion.

25 The Board has scrupulously over time limited

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1 Special Exception cases to just that, the enumerated
2 criteria, recognizing that the Zoning Commission has
3 recognized in making the zoning regulations that that
4 use is presumed compatible. We're in a C-2-A zone which
5 is a middle level commercial area which says that a
6 gasoline service station is presumed compatible subject
7 to the criteria.

8 Those criteria are fairly objective. One,
9 it's not within 25 feet of a residence district unless
10 separated by a public alley. In this case, there is a
11 public alley.

12 It does not create dangerous or
13 objectionable traffic conditions. Mr. George, who's no
14 stranger to this Board, will testify at some length about
15 that. There's also a DPW report that indicates no adverse
16 traffic impact.

17 The Board may impose requirements and design
18 appearance screening, lighting, or other requirements
19 needed to protect adjacent properties. Required parking
20 may be stacked, but without moving vehicles onto public
21 space. In this case, we have excess parking and all of
22 it is fully accessible.

23 All vehicular entrances must be more than
24 25 feet from a residence district. In this case, that
25 is true.

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1 No driveway or entrance may be less than 40
2 feet from an intersection. In this case, as we'll show,
3 that is true.

4 Discussions of the Comprehensive Plan of
5 architectural design review have no place in these
6 proceedings and we'll discuss that over time. You'll
7 note I have a motion in the record to exclude the Office
8 of Planning report based on its almost entire reliance
9 on the Comprehensive Plan.

10 The Court of Appeals has made it very clear
11 to those of us who worry about these things, including
12 the Board, that the Comprehensive Plan has no place in
13 this proceeding, and any discussion of that I think is
14 inappropriate and would taint the record that we're
15 preparing here today.

16 CHAIRPERSON REID: Wait a minute Mr. Brown.
17 Repeat that. You're saying that the Comprehensive Plan
18 has no place in these proceedings?

19 MR. BROWN: Madam Chairman, and I've laid it
20 out in my brief, the Comprehensive Plan does a lot of
21 things. The Comprehensive Plan does not have a role in
22 a Special Exception case before the Board of Zoning
23 Adjustment.

24 The Court of Appeals, as I've cited in my
25 brief, has been very clear on that. The Comprehensive

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1 Plan is an aspirational planning document. Primarily
2 in the zoning context, it's to serve in the context of
3 matters that would be coming before the Zoning Commission.

4 A PUD or as more often a Map Amendment or a Text Amendment,
5 its guidance in the creation of the zoning laws. This
6 Board's role is more limited in applying the existing
7 laws.

8 Can I, just for, and I think it's an important
9 distinction to draw. The Comprehensive Plan, which is
10 cited improperly in my view, says that in Ward Six that
11 gasoline, what they call "gas and go stations" should
12 be prohibited. That's in the Comprehensive Plan. In
13 the zoning regulations, they say the complete opposite,
14 that in our view in the C-2-A zone, a gasoline station
15 is presumed compatible subject to meeting certain
16 criteria.

17 So, we have a situation where the zoning
18 regulations, which are the law of the BZA, the law of
19 the land, are in conflict with the Comprehensive Plan.

20 We have to have one standard. That's the zoning
21 regulations as they exist at this moment.

22 Putting this into additional context, this
23 property was recently rezoned as part of the Union Station
24 area, and this property was specifically zoned C-2-A.

25 The Zoning Commission who makes the zoning

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1 regulations in the map, made a specific determination
2 that this property would be zoned C-2-A. And again, the
3 regulations as they're written say "in a C-2-A zone" and
4 it doesn't matter whether it's 3rd and H N.E. or Wisconsin
5 Avenue N.W., a C-2-A zone, a gasoline service station
6 is presumed compatible subject to meeting the criteria.

7 So, again we need to follow the law as it
8 exists now in the zoning regulations. The Comprehensive
9 Plan, should the Zoning Commission decide to revisit the
10 site or any other site for zoning purposes, then the
11 Comprehensive Plan would play a role. Again, we're in
12 a very limited Special Exception case subject to very
13 narrow criteria which we're prepared to respond favorably
14 to in every case.

15 So, I think to avoid one proceedings to draw
16 on without reaching the critical issues or draw on it
17 in a way that misses the point and wastes a lot of efforts,
18 and quite frankly create expectations that are
19 unreasonable for both sides, that we need to focus in
20 on that point, and we're prepared to move forward on that
21 basis.

22 COMMISSIONER HOOD: Madam Chair, may I just
23 interrupt Mr. Brown.

24 CHAIRPERSON REID: Please.

25 COMMISSIONER HOOD: Mr. Brown, unfortunately

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1 your argument kind of troubles me, and I would also, Madam
2 Chair, like to hear from Ms. Sansone.

3 We have cases in front of us now in the Zoning
4 Commission where we have been inconsistent and things
5 are not consistent. Our charge is to be consistent, not
6 to be inconsistent with the Comprehensive Plan.

7 And here today, you're coming in front of
8 me telling me something totally different, when the courts
9 have remanded things back to the Zoning Commission for
10 us to take care of.

11 But, Ms. Sansone, I would ask Mr. Brown's
12 comment that the Comprehensive Plan has no jurisdiction
13 over Special Exceptions. I believe that's basically the
14 way you stated it Mr. Brown. Am I correct? I don't want
15 to misquote you.

16 MR. BROWN: No. No. And that's what the
17 Court of Appeals has said. Now, we have to draw a
18 distinction in the court |

19 COMMISSIONER HOOD: That's all I need because
20 I don't want to belabor. Just like you're trying to move
21 ahead, we want to move ahead. My concern and my question
22 is to Ms. Sansone. Is he correct? Because, on the Zoning
23 Commission we have a lot of stuff now in front of us where
24 we're inconsistent and have been inconsistent and trying
25 to find some consistency. So, I'm just curious if his

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1 statement is correct.

2 MR. BROWN: Can I quickly interject?

3 COMMISSIONER HOOD: Let me hear from Ms.
4 Sansone, Mr. Brown. Mr. Brown.

5 MR. BROWN: I can answer your question in two
6 seconds and I'd like to do it.

7 COMMISSIONER HOOD: Madam Chair:

8 MR. BROWN: You're wearing your Zoning
9 Commission hat, which is an important hat, and that's
10 where when you're wearing your Zoning Commission hat you
11 consider the Comprehensive Plan. And, if in your Zoning
12 Commission hat, you do something that's inconsistent with
13 the Comprehensive Plan, the Court of Appeals is correct
14 in saying so.

15 But again, today we're all here wearing our
16 BZA hats, which is very different. And I think Ms.
17 Sansone will point out the distinction, and that when
18 we are, in fact, before the BZA in a Special Exception
19 case, the Comprehensive Plan plays no role, because it

20 |

21 COMMISSIONER HOOD: Mr. Brown, I heard you
22 and I didn't want to be rude to you, but I directed that
23 to Ms. Sansone because I wanted to hear from her. I had
24 already that from you so we could have saved that time.

25 Ms. Sansone, if you could elaborate please.

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1 MS. SANSONE: Yes, Madam Chairman, Mr. Hood,
2 what Mr. Brown is stating is generally correct insofar
3 as the Board is charged with looking at the specific
4 criteria that are in the Special Exception section, the
5 pertinent section, and then the general criteria for
6 granting a Special Exception.

7 Now, and that has been a long and standing
8 interpretation of the Court of Appeals; however, in the
9 Comprehensive Plan itself, in Section 112.6, in the
10 Comprehensive Plan is enacted as an Act of the D. C.
11 Council. It directs the Zoning Commission and the Board
12 of Zoning Adjustment also, to look to the District
13 elements of the Comprehensive Plan for general policy
14 guidance.

15 And then in Paragraph B of that Section of
16 the Comp Plan, it says "to the extent they are relevant,
17 the objectives and policies of the District elements of
18 the Plan shall be considered in" and it lists a variety
19 of cases, but it specifically mentions Special Exception
20 decisions.

21 And then in Paragraph C, it goes on to say
22 "in issuing or processing any building or construction
23 permit, or any certificate of occupancy, the Zoning
24 Administrator, the Board of Zoning Adjustment, and the
25 Zoning Commission shall evaluate the proposal in

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1 conjunction with the applicable sections of the
2 Comprehensive Plan and the Comprehensive Plan maps."

3 There's a very recent case out of the Court
4 of Appeals in 2000, the National Cathedral Neighborhood
5 Association versus the District of Columbia Board of
6 Zoning Adjustment, that was published at 753(a) (2) 984.

7 And on Page 987, what the District of Columbia Court
8 of Appeals stated was that "in a Special Exception case,
9 the Board of Zoning Adjustment is", based on this
10 Comprehensive Plan section, "the Board of Adjustment is
11 required to look to the District elements of the
12 Comprehensive Plan for general policy guidance."

13 So, what that would seem to say is that the
14 Board is required to look at the Comprehensive Plan for
15 background and policy matters, but in evaluating the
16 Application, the Board is to go into the zoning regulation
17 and look at the existing criteria that are stated in the
18 regulation to decided whether or not to grant the Special
19 Exception.

20 So, Mr. Brown is correct to a large extent,
21 but now the Court of Appeals and the Comp Plan have
22 recognized that the Board can look at the Comprehensive
23 Plan for background information, policy information, and
24 the Board can weigh that in deciding whether the
25 Application meets the criteria of the regulations.

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1 COMMISSIONER HOOD: Okay. Thank you Ms.
2 Sansone. Thank you Madam Chair.

3 CHAIRPERSON REID: Mr. Brown, how long do you
4 think it will take you to put on your case?

5 MR. BROWN: Probably about forty minutes.

6 CHAIRPERSON REID: Okay, let me acknowledge
7 Council Member Ambrose here today. Were you coming in
8 to testify? Let me take you out of sequence because we
9 realize that your time is very limited and thank you for
10 coming in today. Would you please come up and give your
11 testimony. Then you're free to leave rather than having
12 to wait, if you don't mind. Thank you.

13 COUNCIL MEMBER AMBROSE: Thank you Madam
14 Chair for allowing me to testify. I do have some things.
15 I have testified in this case before. What you will
16 see today is a different project than the project that
17 came originally before you. And, I testified against
18 that project then, and I testify today against the
19 project, and I do that because the community, I think
20 you will hear, is still in opposition to this project
21 for a number of reasons.

22 They are in opposition, as you will hear,
23 because of the twenty-four hour nature of the project
24 with very large lights that will be on all night. They
25 are in opposition because the project creates additional

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1 traffic along the entrances to the gas pumps, that is,
2 it does not increase the number of pumps, but it increases
3 the access to those pumps by putting aisles on both sides
4 of them. They are also in opposition, I believe, because
5 of the mini-mart.

6 And I will say that as a Council Member for
7 this Ward, I am in strong opposition to having a mini-mart
8 at this site. There is, of course, no question of having
9 an ABC License as part of the mini-mart, since our overall
10 D.C. laws do not allow that. Also, let me tell you the
11 community would never allow an ABC License at this site.

12 I am in opposition to the mini-mart because
13 this particular gas station at this site has been a problem
14 area for this community. We have in the record, I
15 believe, a letter from the police department attesting
16 to the fact that there are multiple calls to this site.

17 Now, would that be the case with a different
18 kind of operation? I don't know, but I know that it is
19 a troubled neighborhood. It is a neighborhood in
20 transition, and one that the community is trying very
21 hard to get together.

22 In fact, I just came from a little end of
23 the school year picnic at J.O. Wilson School, which is
24 not far from this site, and our Metropolitan police
25 officers in PSA 103, which happens to be this particular

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1 PSA, work very, very hard with the community to try to
2 get things together. A mini-mart at this site would not
3 make their job easier.

4 So, I think there is still a whole lot of
5 work to be done. I frankly would like to see a higher
6 and better use of this site, given the fact that we are
7 going to have some extraordinary development very close
8 by. Not only are we going to have the Alcohol, Tobacco
9 and Firearms Headquarters very close by, but it now
10 appears that we will have the SEC and the FTC as well.

11 So, I think this is a significant site on
12 H Street which is a corridor that we all want to bring
13 back to its glory days, if you will. This was, of course,
14 the second busiest retail corridor in the City, second
15 only to F Street, and it can, I believe, come back to
16 life as a significant commercial corridor in this area.

17 So, Madam Chair, having said all that, this
18 project still in my view as the Ward Council Member does
19 not bring anything to the development of H Street or to
20 the mitigation of public safety issues in this community.

21 Thank you.

22 CHAIRPERSON REID: Thank you very much. Any
23 questions, Board members? Thank you very much for
24 bringing us your testimony.

25 MR. BROWN: Madam Chair, before turning it

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1 over to Dan Duke, I would like to just finish my context
2 remarks.

3 As I said, this is an existing gasoline
4 station. It's been in existence since 1959. There are
5 an ongoing ability to operate that gas station.

6 There's a matter-of-right potential for that
7 gas station, which is not being I we're before the Board
8 asking for Special Exception, not pursuing the
9 matter-of-right. The food mart, mini-mart, convenience
10 store is a matter-of-right use in the C-2-A zone, so that
11 we need to focus in on the context of this case which
12 is an existing gas station. It's been there since, I
13 hate to admit, before I was born.

14 And, a company wishing to make a substantial
15 investment to improve that site have attempted to respond
16 to concerns raised that are consistent with their business
17 and consistent with some of the issues and needs of the
18 community. We haven't been entirely successful and I
19 think you'll probably at the end believe we may not have
20 been successful enough, but not for lack of attempt or
21 trying.

22 But, remembering the context of an existing
23 gas station, I think, will be helpful in your
24 deliberations, and with that I'd like to turn it over
25 to Dan Duke who will take you from where we were to where

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1 we are, and particularly focus in on the areas where we've
2 attempted to respond to the Office of Planning, the
3 neighborhood, and others in the various issues and
4 concerns they've raised.

5 With that, Mr. Duke.

6 MR. DUKE: Thank you. For the record, my name
7 is Daniel Duke. I'm employed by Bowler Engineering PC,
8 Civil Engineering Consultant for BP Amoco on the H Street
9 project.

10 Today I will be presenting a series of
11 exhibits for the Board's review that will depict the
12 existing conditions of the property, the previous
13 Application that was proposed for the BP site, and the
14 current Application which will entail several items for
15 your review.

16 Tonight as you're reviewing each of the
17 exhibits for the site plan, exhibits that are before you,
18 H Street I

19 (Background conversation.)

20 MR. BROWN: Madam Chair, we're going to go
21 over the plans a little closer and have Mr. Duke,
22 particularly since you all seem to have congregated here.

23 CHAIRPERSON REID: Those persons in the back,
24 have you had an opportunity to see these? If not, you
25 can come up and just stand over here so you can see exactly

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1 what they are presenting to us.

2 (Setting up exhibits.)

3 CHAIRPERSON REID: As a matter of fact,
4 there's a glare. Can that be turned off? I'm sorry.
5 Behind the post back there, can you see? Can you see
6 all right? Okay.

7 MR. BROWN: Sorry for the confusion there.

8 CHAIRPERSON REID: That's all right.

9 MR. DUKE: Okay, to pick up where we left off
10 there, each of the plan documents, H Street is oriented
11 towards the bottom of the plan and runs in an east-west
12 direction, 3rd Street runs in a north-south direction
13 and is on the western side of the property, and 4th Street
14 is on the eastern side of the property and also runs in
15 a north-south direction.

16 CHAIRPERSON REID: You can actually sit down,
17 as long as I while you're here.

18 MR. DUKE: I'm going to be switching out
19 boards and stuff like that, so I'll just run through these
20 quickly.

21 CHAIRPERSON REID: All right.

22 MR. DUKE: The first plan is the existent
23 conditions plan and that depicts the site as it currently
24 exists when the Application was submitted.

25 The existing Amoco Station is located in the

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1 southwestern corner of the property and consists of a
2 four multiple-product dispenser I I'm sorry, excuse me,
3 six multiple-product dispenser canopy, located in the
4 southwestern corner of the property.

5 Throughout the site, on Lot 53 was a very
6 large building that contains several other users, such
7 as at one time or another, a taxicab repair facility,
8 a doctor, and then several other users.

9 In addition to that, there was a series of
10 dilapidated and condemned buildings that were located
11 along the frontage of H Street at the corner of 4th Street.

12 To date, those buildings, the condemned ones, have been
13 demolished and the existing large building on Lot 53 has
14 also been removed.

15 The previous Application consisted of a
16 eight-dispenser canopy that was in a linear format which
17 fronted almost entirely on H Street, consisted of almost
18 200 feet of canopy frontage on H Street. A 4,200 square
19 foot building was located in about the center of the
20 property, and then a car wash was located on the
21 northwestern corner of the site.

22 This plan entailed the closing and
23 relocation of several alleys that would have required
24 rerouting of significant traffic throughout the property.

25 In addition to that, this plan included additional paving

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1 that is further to the north of the site, which would
2 have allowed for stacking to the car wash. In other
3 words, you would have had vehicles stacking back there,
4 engines idling, things along those lines.

5 The initial Application also included
6 architecture as depicted on our third exhibit here. This
7 is your 4,200 square foot convenience store food mart
8 which contained a green and white aluminum containing
9 material paneling system as its facade, and on the top
10 of the exhibit here, you can see the linear canopy which
11 contained eight multiple-product dispensers.

12 The proposed Application is depicted in the
13 upper right of our exhibits. Now, you can see on this
14 Application, due to input from the community, several
15 meetings, and a decision by BP to reduce the size of the
16 development, the BP product has been limited entirely
17 to Lot 53, so there will be no impact to the alleys, no
18 relocation of alleys, no widening of alleys, nothing along
19 those lines.

20 In addition to that, the areas of the
21 condemned buildings that front on H at the corner of 4th
22 have also been taken out of the Application. And also,
23 please note that BP controls two properties that are
24 located in the center of Square 776 that were originally
25 a part of this Application, which have also now been

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1 removed.

2 The proposed layout will include a
3 eight-dispenser canopy; however, this will be a stacked
4 canopy. Where originally you were looking at eight
5 dispensers all in a row, all fronted on H Street, the
6 new canopy has been modified to only have four dispensers
7 fronted on H Street. They are in a stacked design in
8 order to reduce the length of the canopy fronting on the
9 street.

10 The convenience store remains the same in
11 the square footage and layout. It's still the 4,200
12 square foot building, but it too has been moved further
13 back on the property. And you'll also note that the car
14 wash has been removed, and that was one of the concerns
15 expressed by the community. Please keep in mind, the
16 car wash is a buy-right use, but in the interest of moving
17 this project along, BP decided to eliminate that aspect.

18 With this layout, because of the stacked
19 canopy, the whole site itself has been pushed further
20 back off the frontage of H Street. In addition to that,
21 the parking has been relocated further back as well.

22 The zoning requirements require 15 parking
23 spaces. The site contains 21. Fifteen of the parking
24 spaces are located directly in front of the convenience
25 store furthest from H Street to provide the easiest access

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1 to the canopy. There are a series of six parking spaces
2 to the side that front on 3rd Street, that are primarily
3 for employee access, and not necessarily intended for
4 customer access. Also with this layout, you will note
5 that the alley system has been entirely maintained, and
6 will not be impacted by the Lot 53 only development.

7 With this proposed Lot 53 development, a
8 significant amount of landscaping walls will be proposed
9 throughout the site. That includes shrubbery and other
10 types of bushes at the front of the property, a series
11 of shade trees toward the rear, as well as other types
12 of screening materials, including a ten-foot fence which
13 will be, as BP is currently proposing it, a ten-foot
14 board-on-board fence combined with a three-foot brick
15 retaining wall which is going to vary in height depending
16 on the topography and where the fence is located. The
17 fence will extend from the northern property line to the
18 eastern property line, up to the access to the BP Station
19 from the alleyway.

20 In addition to the landscaping that's
21 proposed throughout the site, BP will also propose to
22 reconstruct the sidewalks that front on H Street, and
23 construct a sidewalk connection at 3rd Street, the
24 intention being with the reconstructed sidewalks and the
25 sidewalk connection to the convenience store, that will

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1 help facilitate pedestrian access for those pedestrians
2 that wish to utilize the facility.

3 In conjunction with the work within H Street,
4 the access is going to also be refined and redefined to
5 help improve circulation throughout the site. Currently,
6 for the existing station, there are three access points
7 to H Street for Lot 53. The current proposal will reduce
8 that number to two access points, will also define those
9 with curving and with the reconstructed sidewalks to help
10 clearly delineate where the cars are traveling through
11 and where the pedestrians are crossing.

12 The intention is to provide convenient, safe
13 and efficient access to the gasoline facility and to the
14 convenience store for the motoring public. And then
15 tying that in with the sidewalk connection to 3rd Street,
16 will also help facilitate pedestrian access.

17 Speaking of 3rd Street, there will be one
18 access point that connects directly to 3rd Street, which
19 will line up with the drive aisle between the parking
20 spaces in front of the building and the proposed canopy.

21 An additional access point will be located on 3rd Street,
22 which will primarily access the employee parking spaces,
23 trash enclosure, and loading zone.

24 With the gasoline facility, you always have
25 underground storage tanks. The tanker truck is proposed

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1 to enter off H Street, deliver product to the underground
2 storage tanks, and then pull back onto H Street. This
3 was designed such that the tanker truck is entering and
4 exiting the major highway, or major roadway. We
5 intentionally kept the tanker truck off 3rd Street, so
6 there wasn't any detrimental impact to any adjacent
7 neighbors or the traffic on 3rd Street.

8 The proposed Lot 53 plan, as you've seen,
9 contains some significant modifications from the previous
10 development.

11 As we've indicated, it is located only on
12 Lot 53, which is a 39 percent reduction in area from the
13 original Application. The car wash has been eliminated.

14 The alleys are not impacted with the new development.
15 All alleys will remain open and untouched. To the rear
16 of the site, in the proposed Application as I indicated,
17 will be a ten-foot board-on-board fence combination brick
18 wall as it's currently proposed, to help screen the
19 property to the north and east of the site.

20 As we discussed earlier, the canopy has been
21 adjusted from a linear eight MPD layout, to a stacked
22 MPD layout, which results in a 42 percent shorter canopy
23 as viewed from H Street.

24 In addition to that, the setbacks have been
25 improved. The front setback has been increased to be

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1 20 percent deeper than the original setback. Originally,
2 the canopy was 29 feet from the H Street right-of-way.

3 The proposed canopy will be 40 feet from the H Street
4 right-of-way. To the east, adjacent to the residents
5 that front on 4th Street, the original plan contained
6 a setback of 63 feet from their property lines. The
7 proposed plan will contain 120 feet separation from the
8 food mart to the property lines of those residences.

9 And finally, towards the rear, the original
10 setback to the car wash was 18 feet, and the original
11 setback to the convenience store was 48 feet. Under the
12 new layout, the total setback to the convenience store
13 will be 51 feet, so that too has been increased.

14 Now, walking through the standards for
15 Special Exceptions that relate to the technical aspects
16 of the plan, one of the first requirements is that it
17 is not located within 25 feet of residential district
18 unless separated by an alley. As you can see, we have
19 alleys that border us to the east and an alley to the
20 north, as well as a significant landscape buffer to the
21 north as well.

22 The parking is required on site. It is not
23 to stack on the public right-of-ways. As we discussed,
24 the required parking is located in front of the building
25 and then additional employee spaces are located to the

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1 side of the building off 3rd Street.

2 Vehicular access is required to be 25 feet
3 from any residential zone. The 3rd Street access point
4 has been located 25 feet from the property line.

5 And then finally, the driveways are required
6 to be 40 feet from any intersection. The access points
7 on H Street and on 3rd Street are both located over 40
8 feet from that intersection.

9 I'm going to switch out a couple boards here.

10 MR. GRIFFIS: Madam Chair, if I might just
11 ask a quick question. Before you took down the plan I

12 MR. DUKE: Sure.

13 MR. GRIFFIS: I within the upper right-hand
14 side, how do you want us to distinguish that? Anyway,
15 it's the new plan that's proposed. My question is, do
16 we have that submitted as part of the record? I don't
17 find those plans in my folder.

18 MR. BROWN: They were submitted prior to the
19 March 19th hearing. I mean, we can obviously provide.

20 MR. GRIFFIS: The updated plans that we're
21 seeing here?

22 MR. BROWN: Yes. Yes.

23 (Background discussion)

24 MR. BROWN: Madam Chair, are we ready to
25 proceed?

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1 CHAIRPERSON REID: Just one second please.

2 (Discussion regarding exhibits.)

3 CHAIRPERSON REID: The final plan should be
4 the one we have in our file. We don't?

5 MR. BROWN: I'm not sure. This plan is not
6 going to be very different from that plan.

7 MR. GRIFFIS: We want to use this plan.

8 MR. BROWN: Madam Chair, since I'm the one
9 who filed them, I don't think they changed since

10 CHAIRPERSON REID: The final plans should be
11 the ones that we have in our file. We don't?

12 MR. GRIFFIS: I'm not sure. I mean, this plan
13 is not going to be very much different from that, if we
14 want to use this plan.

15 CHAIRPERSON REID: Whatever deviations
16 should be here and as a matter of fact, whatever you
17 present today will become a part of the permanent file
18 anyway, so.

19 MR. BROWN: Madam Chair, I mean, and since
20 I'm the one who filed them, I don't think they changed
21 since they were filed, but we'd certainly provide a set
22 of these for every Board member and for the file aspect.

23 CHAIRPERSON REID: Just for the file I think,
24 Mr. Griffis. Mr. Griffis, would you like a separate one?

25 MR. GRIFFIS: I'm sorry.

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1 CHAIRPERSON REID: Would you like an updated
2 version?

3 MR. GRIFFIS: Yes, at some point. I mean,
4 I can easily use the visuals that they're presenting
5 today.

6 CHAIRPERSON REID: Okay. All right, thanks.
7 I just wanted to make sure we had them. All right.

8 MR. DUKE: Okay. The next series of
9 exhibits, the first one that I want to point out on the
10 lower left corner here, is a photometric lighting study
11 for the proposed BP Station located entirely on Lot 53.

12
13 We've already heard some comments today, and
14 throughout the community meetings that there is a great
15 concern with the lighting levels of the site, both from
16 a safety standpoint and from a over-lighting concern that
17 sometimes arises at gas station developments.

18 The plan before you tonight contains
19 foot-candle readings throughout the site which are a
20 generated view of a computer program, and essentially
21 a foot-candle is a level of intensity of light at a given
22 point.

23 Now, typically on many of the recent gasoline
24 facilities that have been constructed in Washington, D.
25 C. and throughout the Washington Metropolitan Area will

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1 contain lighting intensities as high as 100 or 115
2 foot-candles underneath the canopy.

3 In the case of the BP Station, this canopy
4 is only going to be lit in the 50 to 60 foot-candle range
5 underneath the canopy. So, the 50 to 60 foot-candle range
6 is a much reduced from your typical gas station
7 development lighting standard; however, it still provides
8 enough light to allow for safe operation of the facility
9 including access and utilization of the gasoline
10 dispensers.

11 This plan also depicts a one-foot-candle
12 line which extends around the property which essentially
13 indicates that there's going to be no excessive overflow
14 of light outside of the site.

15 At the same time, we have sought to
16 illuminate the access points efficiently to define the
17 location at night for drivers entering and exiting the
18 site. In addition to that, you'll note that the landscape
19 area to the rear of the ■ or to the north of the proposed
20 convenience store, lights will be ■ lighting will be
21 included to the rear of the store in order to illuminate
22 the area and not allow unfriendly people to hide in these
23 areas.

24 Typically, you know what is a foot-candle?
25 Where the lighting level in this room's probably 80

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1 foot-candles or more, whereas a one-foot-candle is
2 roughly equivalent to the light given off by a standard
3 household lightbulb.

4 Additionally on this plan, you'll see there
5 are several details for the proposed lighting fixtures
6 that are going to be located on the site. There will
7 be a series of pole-mounted lights that are going to be
8 located around the perimeter of the site. These
9 pole-mounted lights are shielded so that light doesn't
10 escape through the top or out of the sides of the fixture.

11 They direct the light down and to the front of the fixture
12 itself.

13 Additionally, there are going to be a series
14 of lights installed within the canopy that are going to
15 be installed directly to the steel beams within the
16 canopy. They will be located above the face, above the
17 bottom of the canopy so that as you're driving along H
18 Street, you won't be, you know, looking at a drop lense
19 that sticks down below the bottom fascia of the canopy.

20 COMMISSIONER HOOD: Madam Chair, if I could
21 just interject?

22 CHAIRPERSON REID: Sure.

23 COMMISSIONER HOOD: I've been sitting here
24 conferring with my colleague, and we don't seem to have
25 the plan. I think that if they knew they were coming

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1 in front of us, that we should have I understand the
2 Board and everything that I see in front of me, but if
3 the Applicant knew they were coming in front of us, I
4 believe that it would have been advisable to them to make
5 sure that we had something in front of us. I personally
6 think that is very disrespectful to this Board.

7 CHAIRPERSON REID: Just the previous one.

8 MR. GRIFFIS: Well, actually then why don't
9 we check the file first. And this, actually lighting
10 plan that we're looking at, I don't see attached in the
11 new plan and that was our I

12 MR. BROWN: This plan is new. This plan has
13 not been submitted and welcome Ms. Renshaw.

14 VICE-CHAIRPERSON RENSHAW: Thank you.

15 MR. GRIFFIS: Do you have smaller copies that
16 we may just look at up close?

17 MR. DUKE: Well, I'm finished with presenting
18 the exhibit. I'd be happy to pass it out. We knew at
19 the very end that this was going to be an issue. We ran
20 the program just so we would have the information for
21 the discussion. It was not meant by no means to be any
22 type of disrespect. That was not intended.

23 COMMISSIONER HOOD: Let me ask you, how long
24 I you said you knew that was an issue. How long have
25 we been knowing that this has been an issue?

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1 MR. DUKE: Well certainly throughout all the
2 community meetings, any time that we're designing a
3 gasoline station facility, lighting is a concern. This
4 plan was put together recently in response, or in
5 preparation for this hearing, and in preparation for any
6 future submissions too.

7 COMMISSIONER HOOD: So I guess what you're
8 saying, you also haven't even run it past the community?

9 MR. BROWN: No, we have not.

10 MR. DUKE: We have not.

11 MR. BROWN: Well, and Mr. Hood, I think, we've
12 had a series of meetings going back for the better part
13 of a year with the community. This is one of the issues
14 that is kind of, perhaps a sleeper is the right word.

15 CHAIRPERSON REID: With the lighting?

16 MR. BROWN: Lighting in our earlier
17 discussions was not a significant concern. We've had
18 a series of meetings including in May and with the Square
19 776 Residents, and as a result, Mr. Duke prepared this.

20 I think it's helpful and I wish perhaps we would have
21 had it sooner, but it's helpful, one in meeting the test
22 but even more helpful, I think, is responding to people's
23 concerns that, in fact, lighting is not going to be
24 something that they need to be worried about.

25 So, again, 20-20 hindsight, maybe we should

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1 have done it sooner and submitted it sooner, but we'd
2 like to get that information to the Board. It is one
3 the specific criteria set forth in the Special Exception
4 language.

5 CHAIRPERSON REID: All right. Mr. Hood,
6 would you like them to get a copy of this?

7 COMMISSIONER HOOD: I guess I'll just have
8 to deal with that, but this is really my whole ■ I mean,
9 I think this is our third time back here.

10 CHAIRPERSON REID: Yes.

11 COMMISSIONER HOOD: Anyway, I'll let them
12 finish their presentation.

13 MR. DUKE: With respect to architecture, I
14 showed an exhibit that depicted the original building
15 proposal for this site.

16 The next exhibit, which is on the upper
17 left-hand side here, depicts the revisions or
18 modifications that have been made to the BP site in order
19 to accommodate some of the concerns that we have heard.

20
21 In order to create a development that will
22 blend in architecturally better with the surrounding
23 neighborhood, we have proposed a brick facade throughout
24 the entire, each facade of the building. You will see
25 that the green band, dark green band, is located to the

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1 top and left of the building, and then the brick facade
2 will extend along the bottom and right-hand side of the
3 building. And also, that brick character will be
4 continued on each side and to the rear of the proposed
5 convenience store.

6 In addition to that, the signage on the site,
7 which will consist of two monument-style ID signs, will
8 be also faced with a brick material in order to match
9 the brick of the convenience store and to help tie it
10 into the neighborhood as well.

11 The first ID sign is a higher 15-foot sign.

12 Originally, we had a 25-foot sign, which would be located
13 on the corner of 3rd and H, and the second sign is a lower
14 sign which will be 9 feet in height, which will be located
15 at the corner of H Street and the alley.

16 The canopy, as you can see in this exhibit,
17 has been reduced from the eight MPD's facing H Street
18 to the four MPD's facing H Street. Each of these columns
19 here will contain one of the dispensers.

20 Now, the roof of the canopy is something
21 that's totally new for major petroleum gasoline station
22 development. Instead of having a shoe box style box on
23 top of the canopy, it will be a very thin, very sleek
24 canopy that will contain solar panels throughout the top
25 of the canopy.

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1 Now, these aren't the traditional solar
2 panels that look like big window panes laid on top of
3 a roof, but they have curvature. They're opaque, and
4 actually when you're standing underneath the canopy
5 refilling your car, you'll be able to look up into the
6 superstructure of the canopy, see the solar panels, and
7 actually if the sun's behind it, you can actually look
8 beyond the solar panels and see the sun.

9 In addition to that, the dispensers are a
10 new, modern design. Instead of having a large box next
11 to the canopy column, the dispensers are actually
12 integrated into the canopy column. It creates a much
13 sleeker design. It increases the site lines, and doesn't
14 obstruct views as you're looking from the street up to
15 the convenience store.

16 In addition to that, the pumps are going to
17 be of such a modern nature that they actually have, or
18 will at some point have internet access to web sites like
19 maps and weather channel and headline news and web sites
20 along those lines.

21 Within the convenience store, which leads
22 us to the next exhibit which is on the upper right-hand
23 side, you'll see that it provides a series of interior
24 photos within the convenience store, and Pat you might
25 want to correct me but, I do not believe these have been

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1 submitted to the Board. However, they've been presented
2 at several community meetings, and the intention is just
3 to give the Board a flavor of what is going to be the
4 offering of this facility.

5 One of the main aspects is going to be a
6 Wabean Café, which is going to be a made to order sandwich
7 shop within the store, which will provide almost an Au
8 Bon Pain like offering. Au Bon Pain is actually BP's
9 consultant for when they design these interiors. But,
10 it's going to be a more upscale type of sandwich offering.

11 It's not just going to be hoagies. It's going to be
12 the soups, salads, and things along those lines.

13 In addition to that, there's a series of
14 seats within the convenience store which allow people
15 to sit down and rest while their sandwiches are being
16 made and soups are being poured. It's not intended to
17 be a sit-down restaurant. You don't have waiters and
18 waitresses coming to serve you, but it does create an
19 atmosphere where people can hang out there while they're
20 waiting for their sandwiches to be made.

21 The store will also offer fresh fruit,
22 vegetables, household items such as cleaners, detergents,
23 other chips, snacks, milk, eggs, other household items.

24 So, it's a much more upscale convenience store. It's
25 almost on the lines of a food mart rather than your strict

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1 prepackaged walk-in buy type items. It has a more upscale
2 offering to it.

3 And finally, this exhibit at the bottom are
4 just several pictures of a recently constructed BP Station
5 in Indianapolis. Some of the pictures have the new sleek
6 pump design that's integrated into the canopy column.
7 The center picture, you can see up inside the canopy and
8 see how the lights are inside of the canopy, and you can
9 look actually up into the solar panels, and then several
10 other views. Like on the side view here, you can see
11 the arched nature to the top of that canopy.

12 MR. BROWN: If I could interject, Madam Chair?

13 CHAIRPERSON REID: Yes.

14 MR. BROWN: It's been submitted. It wasn't
15 in color, but the Wabean Café menu.

16 CHAIRPERSON REID: I have it. Mr. Hood, do
17 you have that?

18 MR. BROWN: And I'd be happy to send this one
19 up. It also looks better in color.

20 CHAIRPERSON REID: Yes, you can send it up
21 but we do have it in black and white.

22 MR. DUKE: On a final note, regarding the
23 proposed BP Development, you'll note that it is an
24 existing gasoline facility, so there are existing
25 underground storage tanks. Those storage tanks are going

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1 to be removed in accordance with all local and Federal
2 regulations, and disposed of properly.

3 The new tanks that are going to be installed
4 are going to be double-wall fiberglass-type tanks, which
5 will meet or exceed all Federal and local requirements
6 for safety, fire protection, overfill protection, and
7 items along those lines.

8 All necessary permits for the development
9 of this station will be submitted to the DCRA and any
10 other necessary agency, so that all proper permits are
11 obtained should this project proceed forward.

12 And, I will note also that D.C. only requires
13 a single-wall tank to be installed and, as I indicated,
14 the BP Station will propose a double-wall fiberglass type
15 tank.

16 CHAIRPERSON REID: Do you have a question Ms.
17 Renshaw?

18 VICE-CHAIRPERSON RENSHAW: Well, first of all
19 I want to extend my apologies to the Applicant and also
20 to their community representatives here. I was detained
21 "upstairs" and will have to read the record to be brought
22 up to date as to what forty-five minutes or an hour's
23 worth of testimony.

24 But, I did want to ask two things. First
25 of all, on the photograph showing the canopy from one

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1 of your stations out of the area, right down here on the
2 left-hand side, that's it, showing the canopy and the
3 solar lighting. How high is the canopy off the ground
4 versus a typical canopy that's over a gas pump right now
5 in a typical old-fashioned station?

6 MR. DUKE: Well, any gasoline facility is
7 going to be proposed to allow fire trucks, rescue
8 equipment, other types of equipment to navigate
9 underneath the canopy. The bottom of those canopies are
10 typically 16 feet, which is very close to what the existing
11 canopy is at this station. I don't know the exact
12 dimension, but being at the site and looking at it and
13 knowing the industry, and this ■ the proposed canopy is
14 going to be 16 feet to the bottom of the fascia.

15 VICE-CHAIRPERSON RENSHAW: Is that 16 feet?

16 MR. DUKE: That's correct.

17 AUDIENCE MEMBER: That picture looks higher
18 than 16 feet.

19 VICE-CHAIRPERSON RENSHAW: It does.

20 CHAIRPERSON REID: It does.

21 MR. DUKE: Well, let me check. The detail
22 that we are proposing includes 16 feet to the bottom of
23 the canopy. I don't know in this perspective if the
24 canopy looks higher or not from the photograph, but I
25 do know that all plans that I've received to date for

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1 this type of canopy, it has been 16 feet from the finished
2 grade to the bottom of the canopy.

3 VICE-CHAIRPERSON RENSHAW: That's well in
4 excess of the height of a fire truck.

5 MR. DUKE: Well, I don't know the exact height
6 of the fire truck. I don't know if it's 14 feet to the
7 top of the fire truck or 13 feet. I'm sure there's some
8 kind of factor of safety, so that if the truck does clear
9 underneath it and it's not going to hit anything on the
10 canopy.

11 VICE-CHAIRPERSON RENSHAW: The other
12 question I have of your little dispenser units above that,
13 that show the new, sleek kiosk approach, do those talk
14 to you?

15 MR. DUKE: That I don't know. Maybe you want
16 to ask one of the BP representatives that are here today.

17 AUDIENCE MEMBER: They do not talk to you.

18 VICE-CHAIRPERSON RENSHAW: They do not talk
19 to you, so they're silent dispensers.

20 MR. DUKE: Not yet, at least.

21 VICE-CHAIRPERSON RENSHAW: Not twenty-four
22 hour of map instructions or anything like that?

23 AUDIENCE MEMBER: Just to clarify that, it's
24 just limited cam web sites that feed these programs, local
25 news, local weather. It's not full internet access.

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1 And when you're done your fueling operation, that goes
2 away.

3 MR. DUKE: Also, I have a series of blow-ups
4 of these, some of these interior shops which I'll show
5 to the Board at this time. These are actual blow-ups
6 of the store which shows a little more detail on the Au
7 Bon Pain and some of the seats in the facility. You see
8 a cart in the background, other things, fresh fruit and
9 other vegetables. And then in this area, are the series
10 of seats as well as there's a bench seating facility on
11 the other side of these |

12 CHAIRPERSON REID: Seats also on the other
13 side?

14 MR. DUKE: Yes, well it's kind of like a coffee
15 bar type seat, where you sit up on a stool and there's
16 a little bench. This is another detail. See, these are
17 the coffee bar-style bench seats.

18 CHAIRPERSON REID: I see.

19 MR. DUKE: And then the fresh fruit and
20 vegetable cart would be on this side. But you can see,
21 you know, there's a lot, many bread-type items and much
22 more upscale decor. Not trying to promote the image of
23 like a Starbucks where it has that type of architecture
24 inside of it, but it's something to kind of, you know,
25 looks better than a Subway or a Jerry Subs and Pizza,

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1 and other types of offerings.

2 COMMISSIONER HOOD: Madam Chair can I ask Mr.
3 Duke if he's finished.

4 CHAIRPERSON REID: Sure.

5 COMMISSIONER HOOD: I want to go back and see
6 a rendering you have on the right-hand side, the lower.
7 I notice in your example of your BP Station, that looking
8 in the background, looking around it in relationship to
9 close proximity of a residential neighborhood, there's
10 plenty of open space there.

11 I'm wondering if you have an example of a
12 BP setting in a residential, or in our case in a C-2-A
13 area, another example around the country. Because that
14 one right there, you have all open space, and as far as
15 I'm concerned, that's not a good relationship for me just
16 looking at it from a visual.

17 I'm just wondering if you could provide for
18 the record, one that, maybe a budding, a residential area
19 or something in a more close proximity as opposed to all
20 that open space.

21 MR. DUKE: Today, I do not have pictures of
22 a station within that type of environment. For the
23 purposes of these views, this is just to help you get
24 an idea of what the final product can look like, what
25 the canopy actually does look like in almost three

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1 dimensions, not necessarily how it relates to the other
2 properties around it.

3 COMMISSIONER HOOD: Okay, well that's I what
4 I'm visually doing, I'm taking what you have there and
5 putting it there.

6 MR. DUKE: Yes.

7 COMMISSIONER HOOD: So, I think it would be
8 advantageous if you could provide something for the
9 record, nothing elaborate, something so that I can see
10 the relationship.

11 MR. FALETTO: Steven Faletto for the record
12 from BP. This is such a new concept Mr. Hood that that
13 was one of the first ones that was done in Indianapolis.

14 I only think we have about ten of them open in the country
15 right now. We're proposing a bunch of them within
16 residential districts, in cities all over the country,
17 but we don't have an example at this point, not one in
18 a city right now.

19 COMMISSIONER HOOD: So, that doesn't exist.

20 All of them are build on open space is what my point
21 is?

22 MR. FALETTO: Today, yes. I've been working
23 on one right now in downtown Baltimore, that is right
24 next to Memorial Stadium, that's in a proposed residential
25 area. They've taken us in with open arms. They're ready

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1 for it to open today.

2 COMMISSIONER HOOD: Okay, well next time I'm
3 over there, maybe I'll stop in and use it. Thank you
4 Madam Chair.

5 VICE-CHAIRPERSON RENSHAW: Madam Chair?

6 CHAIRPERSON REID: Yes.

7 VICE-CHAIRPERSON RENSHAW: I would like to
8 ask the representative to go to the diagram, the map of
9 what is the area that we're talking about. The canopy,
10 the new modern canopy would be at the lower level right
11 there? And would you put your fingers on where these
12 signs are going to be? One is 15 feet high and one is
13 9 feet.

14 MR. DUKE: Yes, the larger sign will be
15 located at the corner of H Street and 3rd Street, the
16 15-foot sign, which is right here.

17 VICE-CHAIRPERSON RENSHAW: Right there.

18 MR. DUKE: And then the lower sign will be
19 located at the corner of H Street and the alley.

20 VICE-CHAIRPERSON RENSHAW: Why is it
21 necessary to have a 9-foot sign at that location, right
22 by an alley?

23 MR. DUKE: (No audible response.)

24 VICE-CHAIRPERSON RENSHAW: Because right
25 next to the alley starts the residents.

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1 MR. DUKE: The residential properties are
2 located in this block right here.

3 VICE-CHAIRPERSON RENSHAW: And come around
4 the corner, what's that? Right in there?

5 MR. DUKE: This is commercially-zoned
6 property that fronts on H Street, which was purchased
7 by BP and was originally a part of this Application.
8 This portion of the property has been eliminated from
9 the Application, and now BP only proposes within this
10 envelope. There was, in the original Application, a sign
11 located at the corner of 3rd and H. With the scaling
12 back of the project, this sign has been relocated to the
13 corner of H and the alley.

14 VICE-CHAIRPERSON RENSHAW: Again, why is it
15 necessary to have a sign at that location?

16 MR. DUKE: The primary intention is for
17 motorists traveling along H Street to be able to see price
18 and information or the services offered within the BP
19 development before they get to the site and not, you know,
20 after they pass the sign. If you have further questions
21 on the marketing aspect, I would defer to ■

22 VICE-CHAIRPERSON RENSHAW: Is that a one-way
23 street or a two-way street?

24 MR. DUKE: The alley?

25 VICE-CHAIRPERSON RENSHAW: No. No. No.

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1 H?

2 MR. DUKE: H Street?

3 VICE-CHAIRPERSON RENSHAW: Which one is H?

4 MR. DUKE: H Street is located on the bottom
5 of the plan.

6 VICE-CHAIRPERSON RENSHAW: On the bottom,
7 two-way.

8 MR. DUKE: Here's 3rd Street is on the
9 western side of the plan.

10 MR. BROWN: And H Street is two-way, three
11 lanes each, going each way, so it's a major arterial.
12 One of the things, Ms. Renshaw, is not only the design
13 of the signs as far as the brick facade, but the size
14 of those signs was changed in response to comments made
15 from the community.

16 As you can see, the matching BP sign there
17 is considerably taller than the signs we're talking about,
18 and also, and modern. And so what we've done is change
19 the signs, as you can see on the upper board there.

20 Unfortunately, they have to be a certain size
21 because the law requires a lot information to be on them.

22 By law, you have to post the prices of all three grades
23 of your product, so it has to be of certain size and then
24 also a fairly modest BP Logo there, the helix which is
25 new.

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1 VICE-CHAIRPERSON RENSHAW: And how are these
2 lighted?

3 MR. BROWN: The actual sign panels themselves
4 will be internally illuminated, such as the helix is,
5 which is the green and white sunburst emblem. That will
6 have an internal light. The numbers on the price and
7 information will have an internal light, but the rest
8 of the sign itself will not be illuminated. It will have,
9 instead of in this photo on the right-hand side, instead
10 of the green and white backing, that will be the brick
11 backing to match the brick on the convenience store.

12 VICE-CHAIRPERSON RENSHAW: Okay.

13 MR. GRIFFIS: Madam Chair?

14 CHAIRPERSON REID: Yes.

15 MR. GRIFFIS: While we're talking about the
16 canopy, I thought you made a comment about a 42-inch
17 decrease in the canopy. I'm not sure if I misunderstood.
18 The plans I have are 118 feet roughly is the newly
19 proposed canopy, as opposed to the original Application
20 that was 201 plus feet.

21 MR. DUKE: Right. I may have mis-spoken.
22 That was a 42 percent reduction.

23 MR. GRIFFIS: 42 percent, okay.

24 MR. DUKE: And the frontage on H Street.

25 MR. GRIFFIS: Oh, okay.

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1 MR. DUKE: The length of the canopy that
2 fronts on H Street has been reduced.

3 MR. GRIFFIS: By 42 percent?

4 MR. DUKE: That's correct.

5 MR. GRIFFIS: I may have misheard you. To
6 that, which you call the MPD's, the multiple-product
7 dispensers, known to many of us perhaps as the pumps.
8 How many are originally proposed, or I should say in the
9 original Application there were, and it's just not right
10 in front of me, but I

11 MR. DUKE: The original Application contained
12 eight dispensers or pumps. The current Application
13 contains eight pumps but in a different arrangement.

14 MR. GRIFFIS: Configuration, okay. Now when
15 you say pumps, just for my own clarification, that's
16 double-sided so cars fuel on both sides?

17 MR. DUKE: That's correct.

18 MR. GRIFFIS: So, in fact your servicing can
19 deal with sixteen cars at once?

20 MR. DUKE: That's correct.

21 MR. GRIFFIS: Okay. One last question, Madam
22 Chair. You don't have any dimensions on the site plan
23 that I have in front of me, in terms of the curb cuts.
24 You've made the statement that you are in excess of 40
25 feet from what you are calling the fueling truck entrance

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1 and exit. And two questions to that: 1) could you provide
2 actually dimensions on that, and how you'd dimension it
3 to achieve that 43; and 2) how it is, it's your statement
4 if I understand correctly that you actually will not have
5 vehicular traffic, customer traffic, coming in and out
6 of those curb cuts, or is that not correct?

7 MR. DUKE: Okay, to answer the first set of
8 questions, the driveway access points are required to
9 be 40 feet from the intersection of the curb lines of
10 our streets.

11 MR. GRIFFIS: Correct.

12 MR. DUKE: So, if you extend the curb lines
13 of the streets and then go back 40 feet, the driveway
14 is not, the access point is not allowed to be in that
15 area.

16 MR. GRIFFIS: Right.

17 MR. DUKE: And then on our plan, we have
18 extended those curb lines and depicted a dimension on
19 it.

20 MR. GRIFFIS: You have depicted a dimension?

21 MR. DUKE: Yes.

22 MR. GRIFFIS: Okay, I don't have the dimension
23 on this for some reason.

24 MR. DUKE: And then with respect to the
25 driveways themselves, the maximum width that they're

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1 allowed to be is 25 feet and each of our driveways will
2 be 25 feet. And then to answer the next series of
3 questions, the tanker truck will only enter and exit from
4 H Street, but customers or vehicular traffic, regular
5 passenger cars, will be able to enter and exit the site
6 from H Street as well.

7 CHAIRPERSON REID: Okay. One other question
8 regarding the lighting. Where's the other I move the
9 other plan up that shows the lighting. That was one of
10 the issues that was raised with the community. The
11 lighting that you have decided upon, are they reflective
12 of the concerns that were raised by the community, as
13 far as I guess the wattage and also the direction of where
14 of the light, how the light is directed?

15 MR. DUKE: Certainly in part the community
16 plays a very important role in the lighting design of
17 a site. Obviously, you don't want to build a site that
18 annoys all your neighbors and keeps them awake at night,
19 because then they're going to be complaining all the time.

20
21 It is I the industry in the old days used
22 to over-light the sites, the motto being brighter is
23 better. Now, the sites are being designed, in particular
24 with this one, considering the proximity of the
25 residential districts, has been designed to a level that

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1 we feel allows for safe utilization of the conveniences
2 and services provided at the facility, and at the same
3 time does not over-light the site.

4 That's why I speak to the foot-candle
5 aspects. The foot-candles are contained within the site
6 and is not so intense entering into the site as your
7 traditional gasoline facility.

8 CHAIRPERSON REID: All right. Now, wait a
9 minute. I don't know if you're answering a different
10 question from the one that I asked?

11 MR. DUKE: Okay.

12 CHAIRPERSON REID: The question I asked was,
13 were these the lights that I did you decide on these lights
14 in conjunction with what the community had expressed that
15 they would like to see done there?

16 MR. DUKE: The lights that the community
17 requested, light to stay on the site, and they never said,
18 you know, "give me a lighting fixture that looks like
19 this."

20 We know from designing sites and from
21 building sites, what you want is a light fixture that
22 directs the light down and into the site and has shields
23 on the sides. So, you know, these are actually the
24 corporate standards for lighting interior to a site.
25 That is BP's standard to shield the light on the sides

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1 and direct it down into the site.

2 It is BP's standards to mount the canopy
3 lights above the fascia, above the bottom of the fascia
4 of the canopy, and not have drop lense that stick down
5 below the bottom fascia of the canopy.

6 CHAIRPERSON REID: Let me rephrase my
7 question. Are these the lights that the community, that
8 when you met with the community they expressed a
9 preference for having them being put in their community?

10 I didn't ask the corporate decision and why BP decided
11 on those lights. I asked, my question was, are these
12 the ones that the community specifically were in agreement
13 to your putting there?

14 MR. BROWN: Madam Chair, can I answer that?

15 CHAIRPERSON REID: No. No. I'm sure he's
16 well able to answer the question.

17 MR. BROWN: I'm not so sure he was at the
18 meeting where that was discussed. I mean, the community.
19 and I'll let them speak for themselves, the community
20 didn't say we like this light or we don't like this light.

21 They expressed specific concerns about lighting, and

22 |

23 CHAIRPERSON REID: And were those concerns
24 addressed? Were they answered? Were these | I'm sure
25 that these, there would have to be some discussion and

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1 then there would be a presentation and then they would
2 say "well, I think that these would be suitable."

3 And one of the issues was not only the
4 intensity of the light, but also the hours that these
5 lights would be, you know, glaring during the night.

6 And I do understand that there is a concern
7 about security and I'm sure that the community is too,
8 but I know that there was an issue in trying to find the
9 type of lighting that, while maintaining the security
10 that will be necessary would not be disruptive or would
11 not be considered an adverse impact as far as the project
12 is concerned.

13 MR. BROWN: I think the best I can do is the
14 neighborhood told us that they'd like the lights contained
15 within the site.

16 CHAIRPERSON REID: Yes.

17 MR. BROWN: They didn't say you need to go
18 X, Y and Z bulb. This is our response to that.

19 CHAIRPERSON REID: So, you don't know. In
20 other words, you don't know yet. Why don't we just wait
21 for the community to come up and they'll tell us.

22 MR. BROWN: Sure.

23 CHAIRPERSON REID: Thanks.

24 VICE-CHAIRPERSON RENSHAW: I would like to
25 ask and just to tag onto Mrs. Reid's question, the diagram

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1 at the left, are those wavy lines, do they have anything
2 to do with the light spill on the site? Do you have any
3 |

4 MR. DUKE: The diagram, the dark line on the
5 lower left exhibit?

6 VICE-CHAIRPERSON RENSHAW: Exactly.

7 MR. DUKE: That depicts the one-foot-candle
8 line throughout the site. In other words, the light
9 intensity of a light bulb, just a light bulb, would be
10 contained within that ring. So, as you go beyond that
11 ring, you have less light than a light bulb gives off.

12 VICE-CHAIRPERSON RENSHAW: What's less
13 light?

14 MR. DUKE: Considering a one-foot-candle is
15 roughly what a light bulb gives off.

16 VICE-CHAIRPERSON RENSHAW: Yes. What kind
17 of a light bulb?

18 MR. DUKE: Well, standard household.

19 VICE-CHAIRPERSON RENSHAW: 60-watt?
20 40-watt? 200-watt?

21 MR. DUKE: I don't know the exact wattage,
22 but from what I understand it's somewhere in the 60-75
23 wattage range.

24 VICE-CHAIRPERSON RENSHAW: All right, well
25 that's bright.

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1 MR. DUKE: It's typical, it's an industry
2 standard that you don't have greater than that amount
3 of light going off site.

4 VICE-CHAIRPERSON RENSHAW: What I'm getting
5 to is we have a 16-foot high canopy. Are there trees
6 that are buffering equal to the height of the canopy to
7 shield the neighbors from that kind of light spill?

8 In other words, that canopy looks to be so
9 high that even though the lights are tucked under the
10 fascia, it's going to spill out into the neighborhood
11 anyway, and you're going to be able to see that canopy
12 and underneath that canopy for a couple of blocks away.

13 And, of course, that's what you want from a marketing
14 standpoint. You want everyone to notice. It's like a
15 beacon, but not to a resident.

16 MR. DUKE: Absolutely. You are correct that
17 the canopy is located in this area. This is back to the
18 plan view here. It is 16 feet in height, so as you're
19 driving along H Street or you're on 4th Street, there
20 is the potential that you could look up into the canopy.

21 My point is that the lights are not located at the bottom
22 of the canopy, they're located up within the canopy.

23 VICE-CHAIRPERSON RENSHAW: You're still
24 going to be able to see them from quite far away.

25 MR. DUKE: From a point far away. How far

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1 away I can't answer that question right now.

2 VICE-CHAIRPERSON RENSHAW: When can you?

3 CHAIRPERSON REID: Well, the community, let's
4 hear from them.

5 VICE-CHAIRPERSON RENSHAW: Yes, but he said
6 he couldn't answer it right now and so I'm just charging
7 him to answer it within a date certain.

8 MR. DUKE: I could figure it out within a
9 couple days, by the end of this week.

10 VICE-CHAIRPERSON RENSHAW: Thank you.

11 CHAIRPERSON REID: Thank you. Yes?

12 COMMISSIONER HOOD: Can I just add one?

13 CHAIRPERSON REID: Yes.

14 COMMISSIONER HOOD: I'm having a difficult
15 time, and I'm sorry that Mr. Fuller (sic), they accepted
16 him with open arms over in Baltimore, but I sure hope
17 you all presented a lot better over there than what I'm
18 hearing here today, because I'm seeing a plan and then
19 the information I have in my packet I for example, I know
20 Mr. Brown knows and I'm going to bring up the issue about
21 the Metropolitan Police Department, but I'm seeing
22 something here that's totally different than what I have
23 here in my file, and to me that's not fair.

24 I don't know my colleagues feel, but the
25 Metropolitan Police Department are the safety mechanism

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1 for this City, and as far as I'm concerned, they have
2 not seen your new plans or anything. So, I don't know
3 where they are, and my charge when I took the oath was
4 to protect the safety and health of the residents of the
5 District of Columbia. And for them not to even be able
6 to weigh in on this, because they have not seen or had
7 an opportunity to respond, I think is totally unfair,
8 and I'm sure that you will be able to answer that Mr.
9 Brown |

10 MR. BROWN: Sure.

11 COMMISSIONER HOOD: | about the
12 Metropolitan Police Department, but again, I'm looking
13 at a letter that's dated December 11th. Now if there's
14 another letter in here, I may have missed it.

15 MR. BROWN: We have a more recent letter.
16 They've seen the plans. I've met with the, Mr. Rochelle
17 (phonetic) and I, my co-counsel, we've met with the
18 Executive Assistant Chief.

19 COMMISSIONER HOOD: Who did you meet with?

20 MR. BROWN: Chief Gaynor, the Executive
21 Assistant Chief.

22 COMMISSIONER HOOD: Okay. Did he provide a
23 letter or anything.

24 MR. BROWN: He did not. Mr. McManus and I
25 forget his title, I can provide copies |

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1 COMMISSIONER HOOD: He's a block Commander.
2 That's all right. I know who he is.

3 MR. BROWN: William McManus, Assistant Chief
4 of Police. I have a copy of a letter he provided us.
5 I'm glad to send that up. We were going to talk about
6 that later.

7 COMMISSIONER HOOD: Oh, okay well maybe I'm
8 jumping, but let me just say I

9 MR. BROWN: Well, let me circulate it just
10 to allow you.

11 COMMISSIONER HOOD: But still you have to give
12 the staff. But let me just say, my original point is
13 that maybe, if this was presented to some of those entities
14 and even the Office of Planning report, I believe, is
15 still recommending it be denied.

16 But, I guess my point is if this is the first
17 time you all are presenting this, then maybe it would
18 have been easier if you would have done it to go through
19 the proper channels though, OP and the Metropolitan
20 Police Department which is going to be very key and very
21 important, and I'm speaking even before I see the letter.

22
23 So, I just find it kind of I it's kind of
24 hard and it's uneasy to sit here and weigh all the
25 information when I know there's still some issues out

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1 there lingering, especially with the police department.

2 Thank you Madam Chair.

3 MR. BROWN: And I understand Mr. Hood, and
4 hopefully at the end of our presentation we've put the
5 information out. I mean this is, and you made a good
6 point. This is our third visit. This is the first time
7 we've actually presented the case. This case has
8 evolved. It's evolved in fits and starts. We've
9 responded. The lighting plan is new because we felt it
10 necessary to provide documentation. The letter from the
11 Chief of Police is new because it happened recently.

12 COMMISSIONER HOOD: Let me just say this to
13 you Mr. Brown. This doesn't ask, my question, what he's
14 saying is that they don't want to put resources in the
15 work station. That has no relevance to what the issues
16 were at the beginning.

17 MR. BROWN: Yes. Well, one of the ■ Mr. Hood,
18 if you'd allow me, one of the things we've offered and
19 I still believe from past experience is a community work
20 station is an effective tool in maintaining the security
21 of the site. Quite frankly, the police department isn't
22 interested in doing that at this point.

23 But, if you go on and you read their letter,
24 and I've got to take the Assistant Chief and Chief Gaynor
25 at his word. He says "should BP Amoco gain enough

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1 community support to proceed with the gas station" in
2 other words, if the station is approved "MPD will provide
3 the required level of patrol and strategy necessary to
4 maintain a high quality of life in the neighborhood."

5 Now, Chief McManus sent us a letter earlier
6 raising some specific concerns. We responded to those
7 by I one of his significant issues was videotape
8 closed-circuit TV's. We've added that to our proposal.
9 We've put that in our agreement that we're offering
10 either as a condition or an agreement with the community.
11

12 And then, the same gentleman writes back
13 after I meet with his boss, and tells the Board and me
14 and my client that they're going to provide police
15 protection adequate to operate the facility. I've got
16 to take him at his word at that. He knows the importance
17 of the issue. His boss knows the importance of the issue.

18 And quite frankly, he's come under enormous political
19 pressure in this case, but he's made a commitment to
20 provide the resources to this neighborhood, which is good
21 news. And if he doesn't, BP's going to hold him
22 accountable, the dealer's going to hold him accountable,
23 and I hope the members of the neighborhood hold him
24 accountable.

25 So, I think the work station would be nice

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1 and the offer is standing. I think they made an
2 unfortunate decision on that issue. There are other
3 things being done on security by BP and the dealer, so
4 I think we've attempted to respond to that, and again
5 the police have indicated that they're going to provide
6 their resources and strategy to safeguard the community,
7 and we have to take them at their word at that.

8 COMMISSIONER HOOD: I understand what you're
9 saying. I'm not going to belabor the point, Madam Chair,
10 but you're talking to someone who deals a lot with the
11 police department, and I can assure you that all their
12 resources are not going to be around Amoco. I can tell
13 you that up front | BP, I'm sorry.

14 But, I can tell you I'm still troubled. This
15 letter here doesn't do anything for me and Madam Chair,
16 I don't know if I moved too far ahead, but I'm just trying
17 to weigh this new information with going around and
18 trying to explain to other folks about the plan and here
19 we are. It's like we're on A here but we're on B in our
20 file and C is somewhere else. So, I'm just trying to
21 see how we can formulate and put all this together.

22 But I can tell you that I'm troubled still
23 by the police department, this letter here doesn't do
24 anything as far as I'm concerned to justify the issues
25 that were raised in the first two cases. And I'm just

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1 shocked that we're really back here in the same place
2 as far as I'm concerned or maybe even worse off than what
3 we were previously.

4 CHAIRPERSON REID: All right. Thank you very
5 much. Any other questions Board members? All right.

6 MR. GRIFFIS: Madam Chair, actually I do have
7 one perhaps quick question. Reading the file, I've
8 noticed there's been some conversations about placements
9 of structure and I wonder if there was any sort of, let's
10 say, design study done in terms of the placement of the
11 convenience center and then the placement of canopy and
12 pumping. Two, I guess directly, was any structure ever
13 proposed in your plans for the corner of H and 3rd, or
14 fronting on H Street?

15 MR. BROWN: Can I interject, and Dan may want
16 to speak to the technical arguments. We've looked at,
17 and we met with OP. We met with OP several times. They
18 made proposals that had to do with reconfiguring the site.

19
20 Essentially at either bringing the food
21 mart, the convenience store, to H Street or in some way
22 flipping so that the canopy was off of H Street behind
23 the building. We've looked at those from various angles.
24 We've even had unsolicited proposals from an architect
25 who I believe is here today. We've looked at those from

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1 a variety of perspectives, the site itself.

2 One of the primary concerns is the people
3 who live immediately adjacent to the property on the I
4 and 4th Street and 3rd Street. One of the concerns we
5 had is that attempting to reconfigure the site so that
6 either the canopy was hidden behind the store further
7 interior to the site, is that brought it in closer to
8 the residential neighborhoods, the residences. That
9 certainly, wasn't comforting to us. I suspect, and I'll
10 let them speak for themselves, wasn't comforting to the
11 neighbors because again, we've had the discussion of the
12 light and the canopy, and bringing that source of light
13 closer to them.

14 It also internalized further toward the
15 residences, that part of the operations that could be
16 concerning, the vehicles, the noise. There are fumes.

17 And, also what had ended up happening is
18 that, and you'll see a plan that we have been presented
19 and may be presented today, which I think I have some
20 concerns about its actual presentation, but had a
21 configuration where H Street, which is the major arterial,
22 the road that's most set up and commercially zoned to
23 handle traffic, actually being diminished, and 3rd Street
24 adjacent to the Children's Museum becoming a primary means
25 of ingress and egress to the site.

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1 So, we've looked at a lot of things. Quite
2 frankly, we also have looked at BP's business needs and
3 also their business experience. They were forced in
4 another location to build a site that essentially turned
5 the world upside down, put the pumps interior and the
6 building toward the exterior of the site, and I believe
7 the number is 40 percent below projections, so that that
8 site, and I'm not asking for sympathy, but the fact of
9 the matter is that site is 40 percent below what it needs
10 to break even. And BP isn't going to build a site that
11 can't meet it's cost of operation.

12 So, we've looked at a lot of things. There
13 have been some things that we've done partially. We've
14 moved the pumps back, because that was an issue. We moved
15 them back further. The building itself is part of the
16 buffer, and by bringing it forward and putting the canopy
17 on the other side, you lose that buffer from the building.

18 I've seen plans where parking is accessed
19 from the alley for deliveries and employees. Again, we
20 didn't think that's an appropriate response and
21 appropriate imposition on the neighbors.

22 So again, we've looked at a lot of things.
23 This is a good plan that tries to respect the residents,
24 take advantage of the conditions, which is H Street being
25 a major arterial, and also recognize that we don't want

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1 to put the tanker trucks on 3rd Street because that's
2 a residential street, and if we don't bring it from H,
3 then it's 3rd.

4 So, that's the long winded answer to your
5 very short question. And there have been, as I said,
6 there have been changes incorporated. They haven't been
7 exactly what was proposed, but in spirit I think they've
8 been incorporated.

9 MR. GRIFFIS: Thank you. I think you've
10 answered it. Thank you, that's all I have.

11 CHAIRPERSON REID: Okay. We must really move
12 this along now, because the evening is getting on and
13 we have just had the Applicant's portion. Just one final
14 question. Mr. Brown, I guess you've answered this. The
15 agreement, the Community Development Agreement?

16 MR. BROWN: Yes.

17 CHAIRPERSON REID: The copy I have is a draft
18 copy. It's unsigned.

19 MR. BROWN: Yes, and it is !

20 CHAIRPERSON REID: Is this something that was
21 proffered by you to the community?

22 MR. BROWN: Yes, it was. And, if I could step
23 back, one of the things, and we've talked with the
24 community, we've met at Ms. Robinson's house over on 4th
25 Street several times, is they expressed specific

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1 concerns. Others have expressed specific concerns.

2 Kind of format-wise one of the concerns is
3 well, "how do we hold you to this?" And, one of the things
4 I've said and I've done it many times in BZA matters is,
5 we'll put it in a written agreement. It's a contract
6 between, in this case BP Amoco, or BP, excuse me, in this
7 case Mr. Wilhelm, the dealer who actually by law has to
8 operate this site, because again, in D. C. there's the
9 divorcement, the refiners cannot operate gasoline service
10 stations.

11 So Mr. Faletto and BP are responsible for
12 the building of the site. Mr. Wilhelm is responsible
13 for the day-to-day operation of the site. So, both those
14 parties are signatories to the agreement and then others
15 in the community who are interested. It was an attempt
16 on our part to put down on paper the things that we
17 discussed. We're prepared to make that a condition of
18 our approval, whether it's signed or unsigned. It's not
19 a finished product, I can say, from the community's
20 standpoint, but certainly from our standpoint we would
21 sign this document or make this part of an Order today.

22 CHAIRPERSON REID: But Mr. Brown, I really
23 fail to understand. What are you saying? That you have
24 an agreement that they haven't agreed upon that you
25 proffered to them, so it's not really an agreement, is

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1 it?

2 MR. BROWN: As I've said in my cover letter,
3 it's a draft agreement that we're willing to discuss,
4 but it also sets forth I

5 CHAIRPERSON REID: But, wait. Wait. Wait.
6 What's the point? If you're going to give us an
7 agreement, then the agreement should represent what has
8 been agreed upon by both parties. Now, to just give us
9 an unsigned draft, that doesn't tell us much.

10 MR. BROWN: Well, it does tell you something.

11 CHAIRPERSON REID: What?

12 MR. BROWN: It's not a finished product. It
13 tells you: 1) that BP has set down and put in writing
14 a commitment to certain things. We're prepared to I

15 CHAIRPERSON REID: But, excuse me before you
16 go any further. An agreement by virtue of its very nature
17 is a meeting of the minds between two opposing parties,
18 or two interested parties, that reflects what the two
19 parties have agreed upon. Without that, you don't have
20 an agreement.

21 So, it seems like to me that before even I
22 it doesn't even make sense to even put this in here unless
23 it reflects some effort or some movement between the two
24 of you. But just to say, okay this is what we offered
25 to them, doesn't really amount to a hill of beans.

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1 MR. BROWN: And I think it's not a finished
2 product and I understand your concern, but it does
3 represent something of value.

4 CHAIRPERSON REID: Like?

5 MR. BROWN: Well, one we've worked with the
6 people.

7 CHAIRPERSON REID: But, you don't have
8 anything.

9 MR. BROWN: I think there are a number of
10 issues in there that we have agreement on. For instance,
11 we've committed in writing that there will be no car wash.

12 CHAIRPERSON REID: Okay, but did you sign
13 whatever part you agreed upon, then that should have been
14 reduced to the agreement and signed by both parties to
15 give to us so we could kind of glean where the community
16 is and where you are and what areas that you have come
17 to agreement on.

18 MR. BROWN: Ideally, my preference would be
19 to have a signed, sealed agreement. We do not. But,
20 I think that shows on some significant issues, at least
21 BP's position, and it's important. And also, BP is saying
22 that there may not be a meeting of the minds between all
23 the parties, but certainly those things in the context
24 of the Board's action, you could, and the Board all the
25 time puts conditions on approvals.

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1 I don't have an agreement finalized, but if
2 the Board in approving this project were to say "BP, your
3 approval is conditioned upon the items I've listed in
4 that agreement, no car wash, hours of operation for the
5 Walbean Café, the fact that we'll put no vending machines
6 outside."

7 CHAIRPERSON REID: Okay, but Mr. Brown.
8 Excuse me for interrupting you. I don't think that you've
9 ever seen this Board make a ruling like that in a situation
10 where you had the Office of Planning, the ANC, and several
11 neighborhood organizations, considerable opposition in
12 a case, take a position where we would just basically
13 override everything that we're hearing and make a decision
14 and give you conditions. That's not usually, in the six
15 years I've been on this Board, that has not happened.
16 Typically, the Board will weigh all the various entities
17 and points of view and then come to a conclusion.

18 In this instance, more than anything, I
19 think, I would have liked, and I speak only for this Board
20 member, I would have liked to have seen some movement.

21
22 I think that we recommended two other times
23 that you came before us that there be some intensified
24 proffers between meetings between you and the community
25 to try to mitigate some of the concerns with adverse

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1 impact, and come to a closer meeting of the minds so that
2 we would then have less to do. Because, you know, it
3 just makes it very, very difficult for us.

4 But anyway, let's move forward.
5 Cross-examination, I think we had two parties and the
6 ANC. Does anyone wish to cross-examine the Applicant?

7 The parties were I all right, come forward please. I
8 think someone named Talley (phonetic) and I

9 MR. BROWN: Madam Chair, just to be clear,
10 we're going to cross-examine Mr. Duke, because we're not
11 finished with our case.

12 CHAIRPERSON REID: Oh, gee. That's right,
13 Mr. George and who else?

14 MR. BROWN: That's it.

15 CHAIRPERSON REID: Oh, I'm sorry Mr. George.
16 I'm sorry.

17 MR. BROWN: I'm happy to allow
18 cross-examination for Mr. Duke now just to keep it fresh
19 if that's the Board's preference.

20 CHAIRPERSON REID: No. No, well not unless.
21 Okay. All right. Mr. George.

22 VICE-CHAIRPERSON RENSHAW: It might be good
23 to have cross-examination of Mr. Duke.

24 CHAIRPERSON REID: Would you like, you're one
25 of the parties, right? Would you like to cross-examine

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1 Mr. Duke now or wait until after Mr. George does the
2 traffic?

3 MR. TALLANT: I do have a few questions.

4 CHAIRPERSON REID: Well, come on. Is the ANC
5 representative here? Would you like to cross-examine
6 Mr. Duke now or after Mr. George?

7 UNKNOWN: After Mr. George.

8 CHAIRPERSON REID: Okay.

9 MR. Tallant: Madam Chairman, members of the
10 Board. My name is Drury Tallant. I'm here representing
11 the Stanton Park Neighborhood Association. I have just
12 a few very quick questions for Mr. Duke.

13 Mr. Duke, what was the square footage of the
14 original historic gas station at this location? The
15 neighborhood scaled gas station?

16 MR. DUKE: Do you mean the area that was
17 originally controlled by Amoco, the existing station?

18 MR. Tallant: That's correct.

19 MR. DUKE: That was roughly, I don't remember
20 the number at the top of my head, but it was about 7,500
21 square feet.

22 MR. Tallant: 7,500. I thought in an earlier
23 meeting you said 5,500.

24 MR. DUKE: 5,500-7,500.

25 MR. Tallant: And the square footage of the

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1 new gas station?

2 MR. DUKE: Roughly 40,000 square feet, in that
3 range.

4 MR. Tallant: Okay, so that's all of Lot 53.

5 MR. DUKE: Right.

6 MR. Tallant: So, the increase in the gas
7 station operation is something on the order of six to
8 seven times. You're going from a neighborhood scale gas
9 station to a regional scale gas station?

10 MR. BROWN: He can testify as to, you know,
11 so many times bigger, but the concept of a regional thing
12 is spoken.

13 MR. Tallant: Okay.

14 CHAIRPERSON REID: Sustained. Keep it
15 germane to this particular case and the testimony that
16 we've heard today.

17 MR. Tallant: Okay.

18 CHAIRPERSON REID: Please. Thank you.

19 MR. Tallant: I noticed that, if you could
20 put the board up showing the site plan please. In the
21 treed area behind the station, you stated that that will
22 be a dimly-lit area between a building and a ten-foot
23 high board-on-board fence. What mechanisms for security
24 do you have to keep that fairly large, dimly-lit
25 landscaped area from being a real haven for criminal

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1 activity?

2 MR. BROWN: I object to the concept of
3 dimly-lit. I mean, we've indicated that it will be lit
4 to make it safe. Let's be fair about it. The question
5 is ■ you're asking a question, and you should ask it in
6 the proper way.

7 MR. TALLANT: Well then, the lighting was
8 stated as not to be so bright as to disturb the neighbors,
9 so it's either brightly lit and will disturb the neighbors
10 or dimly-lit and won't disturb the neighbors?

11 MR. BROWN: No, it's properly lit to respect
12 the neighbors and achieve the objectives. So, if we could
13 move on, I object to that question.

14 MR. Tallant: What provision ■

15 CHAIRPERSON REID: Well, first of all just
16 let me think about that. Ask it in the context which
17 was testified here today. I think that you ■ how did
18 you characterize the lighting?

19 MR. TALLANT: Dimly-lit.

20 CHAIRPERSON REID: Did you say "dimly-lit"?

21 MR. TALLANT: I did, yes.

22 CHAIRPERSON REID: No. No. I'm speaking to
23 the Applicant.

24 MR. TALLANT: Oh, I'm sorry.

25 MR. DUKE: I don't recall the exact wording.

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1 The light in that area is intended to shoot down and
2 inwards, to illuminate all of the ground areas.

3 CHAIRPERSON REID: Well, diffused lighting
4 in that area? Is that what you're saying?

5 MR. DUKE: It will not be as intense as the
6 lighting underneath the canopy.

7 CHAIRPERSON REID: Okay.

8 MR. DUKE: It will not be as intense as the
9 lighting in front of the store.

10 CHAIRPERSON REID: So, it's kind of vague as
11 to what type of lighting is there. I mean, you're not
12 really describing it?

13 MR. BROWN: Well, he described the type of
14 lighting as wall-mounted.

15 MR. GRIFFIS: Was it on the lighting plan?
16 Do we have a specific light fixture that was proposed
17 for that area?

18 MR. BROWN: Also, the foot-candle drawing
19 will show the light being radiated at that location.

20 MR. DUKE: The detail depicts lighting levels
21 of .04 to .2, .3, so it's going to vary in the area
22 depending on how close you are to the light source.

23 Like I said, the intention being it's an
24 enclosed area. It's going to be fenced all the way
25 around, including tying into the convenience store, so

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1 we're going to be deterring people from entering that
2 area, but at the same time, we're going to provide light
3 fixtures, building-mounted lights that would illuminate
4 that area to a sufficient degree to not allow dark pockets
5 or dark areas for people to hide within.

6 MR. GRIFFIS: So, they're going to be
7 wall-mounted on the back of the convenience store?

8 MR. DUKE: They would be wall-mounted on the
9 back of the convenience store. We're also proposing four
10 lights that would be located directly on the fence,
11 shining inward to the property.

12 CHAIRPERSON REID: Okay, now your questions.

13 MR. BROWN: There will also be video cameras
14 out there.

15 CHAIRPERSON REID: Okay, but ■

16 MR. TALLANT: As I understand it now, then
17 there's a fence running between the building and the
18 board-on-board fence at the property line?

19 MR. DUKE: To clarify the fence placement,
20 there's actually two different fences. The first fence
21 is the one that was requested by the community, a ten-foot
22 high fence which is located on the north and east property
23 lines in the area of the C store, directly on the property
24 line.

25 Now, that area's also enclosed with a fence

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1 that will connect from that fence along the property lines
2 to the convenience store in order to close off that area
3 and prevent people from wandering back into this area.

4 MR. TALLANT: The parking that's accessed off
5 of 3rd Street, it looks as though the cars that would park
6 there would be backing up into the public space, and
7 perhaps backing out onto 3rd Street in order to get out.

8 Could you clarify how cars get in and out of there?

9 MR. DUKE: Cars would enter, as you indicated,
10 off 3rd Street, pull into the spaces. There's sufficient
11 room from the back end of the parking space to the curb
12 line for a vehicle to back out, turn around, and pull
13 out onto 3rd Street, or there would be a potential for
14 a vehicle to back out onto 3rd Street and then continue
15 on.

16 MR. TALLANT: Because I believe you also
17 stated that there's a requirement that a driveway be no
18 wider than 25 feet, and it certainly looks like that
19 driveway on the public space along 3rd Street is well in
20 excess of 25 feet.

21 MR. DUKE: This type of driveway
22 configuration is an acceptable practice for the
23 Department of Public Works. It contains of two portions
24 of a driveway, separated by a concrete island.

25 MR. TALLANT: Okay. What is the length of

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1 the driveway access off of the alley, immediately to
2 the east of the project? Yes, right there.

3 MR. DUKE: This driveway, if you want to
4 classify it as a driveway, it's really an access to the
5 alley.

6 MR. BROWN: Your microphone is off.

7 MR. DUKE: Pardon me. The driveway that
8 borders on the alley is 90 feet in width, which provides
9 access from the BP property to this alley.

10 MR. TALLANT: And is there any separation
11 from, anything to visually separate the canopy from the
12 backs of the half a dozen houses that would be looking
13 over that alley and to the canopy?

14 MR. DUKE: Within Lot 53, you have the open
15 driveway. There is the open | there's the alleyways.
16 There's the additional properties that separate the
17 canopy from the residential properties.

18 MR. TALLANT: That's not really answering my
19 question. Is there anything that visually separates the
20 back of those properties from the canopy?

21 MR. DUKE: On the BP property, there's not.

22 MR. TALLANT: Okay. From the second floor
23 of the houses on I Street and on 4th Street, you have a
24 one-story convenience store which is how, what is the
25 height of that convenience store?

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1 MR. DUKE: I believe the convenience store
2 is roughly 22 feet in height.

3 MR. TALLANT: I see.

4 MR. DUKE: It's 16 feet to the top of the main
5 portion, and then where the tower feature is, it's 22
6 feet to the top of that tower.

7 MR. TALLANT: The tower feature.

8 MR. BROWN: Parapet.

9 MR. TALLANT: Oh. Does that parapet go all
10 the way around the building, or is only on the H Street
11 elevation?

12 MR. DUKE: This is the exhibit of the building
13 elevations. This is the parapet right here. That is
14 16 feet to the top of it. This is the additional feature
15 on the right-hand side of the building, and that is 22
16 feet to the top of it.

17 MR. TALLANT: I see, thank you. So, from the
18 I perhaps you will not be able to answer this question,
19 but will it be possible from the second floor of the
20 residences on I Street and 4th Street, that they will be
21 able to see over your building to the canopy?

22 MR. BROWN: I don't think he can answer what
23 they can see from somebody else's house on I Street.
24 I mean, that's putting Mr. Duke in an unfortunate
25 position.

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1 CHAIRPERSON REID: Well, Mr. Duke can say he
2 doesn't know.

3 MR. DUKE: I would not be able to answer that
4 question.

5 MR. TALLANT: Okay.

6 CHAIRPERSON REID: All right. Thank you.

7 MR. TALLANT: What is the surface of the
8 driving area, the paved area, for the cars in the gasoline
9 service area? Is it concrete?

10 MR. DUKE: Underneath the canopy?

11 MR. TALLANT: Yes.

12 MR. DUKE: That's concrete.

13 MR. TALLANT: So, it's a very light reflective
14 surface?

15 MR. DUKE: It is a light, it's a white-colored
16 surface. I would not describe it as reflective.

17 MR. TALLANT: Does your foot-candle map
18 represent any of the reflected light from that surface?

19 Is it simply measuring the light that's coming from the
20 fixture, or is it also measuring the light that is
21 reflected, for lack of a better word, off of light-colored
22 surfaces like the concrete?

23 MR. DUKE: The photometric study provides
24 information on the light coming from the fixtures. I
25 do not know what percentage of light, if any at all, is

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1 reflected off the canopy mat itself. I do know, and this
2 is from doing previous Applications, that studies have
3 been completed to determine how much light goes from,
4 is reflected from the canopy mat up through the solar
5 panels.

6 So, if you were standing on top of the solar
7 panels, how much light would you see shining up through
8 that? And, I know from the studies that were prepared
9 by lighting consultants, that it is such a diminutive
10 amount of light, that it can't even be detected with a
11 light meter which is used to calculate light intensities.

12 MR. TALLANT: That's through the canopy, not
13 reflected off the surfaces.

14 MR. DUKE: That's correct. I don't know what
15 would be reflected up, but I was trying to provide
16 information on one.

17 MR. TALLANT: Those are all my questions for
18 Mr. Duke. I did have some others regarding other issues
19 that were raised, but I'll hold those until later.

20 CHAIRPERSON REID: To who?

21 MR. TALLANT: Regarding the agreement.

22 CHAIRPERSON REID: Yes, but to who?

23 MR. TALLANT: I suppose Mr. Brown.

24 CHAIRPERSON REID: Mr. Brown. How many do
25 you have?

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1 MR. TALLANT: I think I will hold them until
2 later if that's okay.

3 CHAIRPERSON REID: Well, I don't know. I
4 think that you better ask now because we're moving toward
5 6:00 and then we have to make an assessment, so you maybe
6 should go ahead and ask them quickly. How many do you
7 have?

8 MR. TALLANT: Really, just a couple.

9 CHAIRPERSON REID: Okay.

10 MR. TALLANT: One has to do with the mechanism
11 by which we would hold BP Amoco to any agreement, and
12 as the Board quickly recognized, there is no community
13 agreement to date.

14 CHAIRPERSON REID: Nor testified as to.

15 MR. TALLANT: But if there were one, what
16 mechanism would we have to hold BP Amoco to be responsive?

17 MR. DUKE: Well, it's twofold. It's clearly
18 in the agreement, which is standard in these things.
19 One, it would be made a condition of the Board's approval,
20 so it would be subject to zoning approval, zoning
21 enforcement. Also, it's a contract between the parties
22 and it would be independently enforceable against BP
23 and/or their franchisee dealer if they failed to comply
24 with it. So, that's it in a nutshell and it's set forth
25 right in the document.

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1 MR. TALLANT: Does that mean then that if you
2 fail to live up to it, that the community would have to
3 take you to the court in order to get you to live up to
4 it?

5 MR. BROWN: No, if you also remember, the
6 agreement provides a complaint procedure which provides
7 a number of mechanisms to complain to BP, not only at
8 the local level, the regional account executive who's
9 responsible for this site, but it also provides copies
10 to higher-level authority, and an appeal process if, in
11 fact, BP and the dealer do not comply with the terms of
12 that process.

13 So, it takes you into the upper reaches of
14 the Middle Atlantic Region for BP and that's the
15 decision-making unit for this area. So, I think it
16 provides a number of means and it also provides time tables
17 that BP has to act within a certain period of time. It
18 also provides other mechanisms.

19 The intent is not to have a contract that
20 needs to be enforced, a contract that everybody
21 understands and lives up to and if they're not they'd
22 be held accountable in a more informal matter but so that
23 they're accountable. So I think that's it.

24 CHAIRPERSON REID: Okay.

25 MR. TALLANT: And then I have one question

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1 for Mr. Faletto.

2 CHAIRPERSON REID: Okay.

3 MR. TALLANT: Which was whether the gas
4 station will serve diesel fuel?

5 MR. FALETTO: No, it will not.

6 CHAIRPERSON REID: Okay. Thank you.

7 MR. TALLANT: Thank you.

8 CHAIRPERSON REID: All right. George?

9 MR. BROWN: I'd like to have Mr. George
10 recognized an expert in traffic engineering. He can give
11 you a brief description of his career, but certainly the
12 Chairperson and perhaps Mr. Hood have heard from him
13 plenty of times before.

14 CHAIRPERSON REID: Yes, we have.

15 VICE-CHAIRPERSON RENSHAW: Yes.

16 MR. BROWN: Mr. Griffis, you may be familiar
17 with his work and it would appropriate to recognize him
18 as an expert witness.

19 CHAIRPERSON REID: I would recommend that we
20 do recognize that Mr. George who was here before us many
21 times and we are very familiar with him and his work,
22 unless there's an objection from any Board member? Okay.
23 Or anyone else, any party? All right, thank you.

24 MR. BROWN: Madam Chairman, can you see those
25 all right?

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1 CHAIRPERSON REID: Yes.

2 MS. BAILEY: Mr. Brown, did Mr. George submit
3 a report?

4 MR. BROWN: He submitted a report earlier,
5 and I believe he's also submitted a revised report. This
6 is before March 19th.

7 CHAIRPERSON REID: Okay.

8 MR. BROWN: This is just a graphic to help
9 you understand his report. He also has it in reduced
10 versions so that the Board members can look at it from
11 the dais. Hopefully, it will help in the presentation.

12 CHAIRPERSON REID: Mr. George, given the
13 lateness of the afternoon, could you give us the salient
14 points, the highlights of your case, just to succinctly
15 convey to us what your findings have been, an analysis?

16 MR. GEORGE: I'd be glad to Madam Chair.

17 CHAIRPERSON REID: Thank you.

18 MR. BROWN: Madam Chair, with the caveat that
19 traffic is one of the enumerated criteria here and I've
20 heard Mr. George's presentation. It's brief, but I don't
21 want to rush him because every word he has to say is
22 important, particularly as an enumerated criteria.

23 CHAIRPERSON REID: Thank you Mr. Brown. I
24 think that we all realize that and Mr. George in his
25 infinite wisdom in traffic matters, will use his

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1 discretion to give us what he feels is pertinent and most
2 important.

3 MR. GEORGE: Thank you, Madam Chair, members
4 of the Board. For the record, I'm Osborne George, traffic
5 and transportation planning consultant, and I'm pleased
6 to be here this afternoon.

7 In order to facilitate the presentation,
8 I've got three exhibits and especially for you, Mr. Hood,
9 we have them in reduced form.

10 MR. HOOD: Thank you.

11 MR. GEORGE: And especially for you Mr.
12 Griffis, we'll refer to them as pumps instead of MPDU's.

13 MR. GRIFFIS: Thank you.

14 MR. GEORGE: I'll try to be as brief as
15 possible Madam Chair. In the record, there are two
16 reports, a report that's dated December 4, 2000 which
17 was prepared to address the issue of the potential traffic
18 impact, as well as the alley closure that had initially
19 been proposed by the Applicant.

20 We also prepared a subsequent report, dated
21 March 15, to address the modified proposal which the
22 Applicant, which is now before you. Both reports are
23 in the record. Both have been reviewed by the Department
24 of Public Works, and I believe letters from Mr. Kenneth
25 G. Leyden from that department is in the record.

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1 Madam Chair, I'd like to draw your attention
2 to the exhibit to the right which shows the existing
3 situation. I have always believed that it is important
4 to discuss transportation and traffic in the context of
5 land use, and that's the exhibit you have which says
6 "existing land use and roadway network."

7 So, if I could draw your attention to this
8 exhibit, it shows the site as existed up until late last
9 year with the gas station, the gas station office, and
10 a medical office, an auto repair garage on the north side.

11 There are a total of 221 ■

12 CHAIRPERSON REID: Just one second, Mr.
13 George.

14 COMMISSIONER HOOD: We have a slight problem.

15 CHAIRPERSON REID: We all don't have
16 everything.

17 COMMISSIONER HOOD: You two have the
18 proposed, we have existing, so maybe we can share.

19 MR. GEORGE: There should be two sets. One
20 says "existing." The other says "proposed."

21 CHAIRPERSON REID: Right. We just figured
22 that out.

23 MR. GEORGE: Okay.

24 VICE-CHAIRPERSON RENSHAW: Half of us have
25 proposed and the other half has existing.

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1 CHAIRPERSON REID: Let's get that straight.
2 Okay, well continue. Continue while he's making the
3 copies for us.

4 MR. GEORGE: All right. As I said, this is
5 the site. The property, I think Parcel 53. There are
6 221 residential units within the square. This is the
7 vacant portion that has been talked about.

8 As far as adjacent land uses, and I'm tempted
9 to use the word sensitive land uses since we're talking
10 about impacts and safety. We have, of course, the
11 residential units. We have the Children's Museum, an
12 institutional use to the west. And to the north side,
13 we have commercial office and commercial hardware, and
14 I think there's a bakery back there. And further to the
15 northwest, there are considerable employment uses.
16 Those have a bearing on some of the things I'll say later,
17 as far as the traffic access in the site. But, this just
18 sets the scene.

19 You've heard before, H Street which runs east
20 to west, is classified on the Department of Public Works
21 roadway map as a principal arterial serving in the range
22 of 25,000 to 30,000 vehicles per day.

23 At the onset of our study, two things
24 happened. First of all, we discussed the Applicant's
25 proposal with the Department of Public Works to ensure

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1 that the study area, roadway and network we addressed
2 was in consonance with their concerns and with what they
3 felt was a reasonable roadway network to be evaluated.

4 Secondly, our attention was drawn to the
5 section of the zoning regulations which says that the
6 Applicant was required to demonstrate that the proposed
7 use will not cause, and I would like to quote as closely
8 as I can, "that the operation of the proposed use shall
9 not create dangerous or objectionable traffic
10 conditions." We believe we have demonstrated that.

11 You've heard that the site has existed for
12 over 40 years. Our studies of the adjacent intersection
13 shows that they both operate quite acceptably.
14 Currently, level of service B and better. This is very
15 good. Level of service D is the City standard, so we're
16 well above the standards stipulated by the City.

17 We've looked at safety. We collected
18 accident records from the Department of Public Works
19 dating back three years. Unfortunately, one of the areas
20 was missing. There are accidents at the intersection.

21 The level of accident does not rise to such to one that
22 it warrants specific safety concern.

23 As far as the future situation, we did two
24 things, and I would like to now draw your attention to
25 the second exhibit, "the proposed conditions."

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1 Mr. Duke has gone to considerable detail in describing
2 the site, the access arrangements, and so on, and I'll
3 be brief here to discuss it, primarily from the
4 perspective of safety and in ensuring that I attempt to
5 address the condition as stipulated in the zoning
6 regulation.

7 The site is currently accessed via a very,
8 what I would call ill-defined access pattern. There are
9 three driveways between 3rd Street and the alleyway. In
10 fact, that was shown on Exhibit 1, on the first, the
11 existing, three driveways and in fact, one of them can
12 be defined as a large driveway perhaps, close to 50 feet
13 wide, allowing or promoting a very ill-defined access
14 pattern. These are consolidated into two well-defined
15 driveways, at 25 feet wide with the proper distance from
16 the intersection as again described by Mr. Duke.

17 The alley would remain, allowing access into
18 the square and between H Street and I Street to the north.

19 The access points to the west of 3rd Street, I think,
20 make for good and efficient access. We are told by the
21 Applicant that the parking spaces along the west side
22 are intended to be used primarily by employees, so we
23 do not have a high turnover.

24 I think a question was raised as far as
25 vehicles backing into the roadway. The parking needs

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1 of this development are met within the frontal area of
2 the store. So, this would be primarily employees with
3 a very low turnover rate. I think this makes for a safe
4 and efficient access situation.

5 We've heard about the fuel deliveries, which
6 typically would occur late at night, early in the morning.

7 It would be via the eastern entrance off H Street into
8 the pump area, the fueling tanks at this point, and out
9 and heading westbound into toward the City.

10 So, from the perspective of the arrangement
11 of the site, we think it's quite efficient. The existing
12 site you saw took traffic away to the north or to the
13 rear in close proximity to the residences. I'm not a
14 noise consultant, but obviously the shutting of doors,
15 and so on, is not something that you would want to have
16 in close proximity to the residences. We think this keeps
17 the activity, so to speak, in the frontal area of the
18 store. It makes for efficiency and safety.

19 Continuing to try to be brief, I'd like to
20 refer you to the third exhibit, which is a table showing
21 the trip generation. Trip generation in the interest
22 of the public refers to the number of trips, vehicle trips
23 we're referring to here, which the sites generate,
24 typically during the heaviest one hour in the morning
25 peak period and the corresponding one hour in the

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1 afternoon peak hours.

2 We were able to look at the trip generation
3 of the site under the existing situation, and that's the
4 first bulleted item across. We looked at it under the
5 Applicant's former proposal to develop the convenience,
6 the gasoline station, the convenience market, and the
7 car wash. And, we looked at it considering the current
8 proposal for the gas station with the convenience market
9 alone. We had good sources of trip generation data from
10 the Institute of Transportation Engineers, as well as
11 from COG.

12 But I'd like to draw your attention to the
13 very last item at the bottom. What we did was took the
14 conservative approach, and whereas all of these studies
15 indicate that typically between 80 to 90 percent of trips,
16 vehicle trips, accessing a gas station are captured from
17 the adjacent stream.

18 We took the conservative approach and we said
19 "we will simulate a situation where only 50 percent was
20 attracted from the adjacent stream" and we added that
21 additional 50 percent to the traffic at the adjacent
22 intersection. In other words, we double counted by a
23 factor of some three, in order to determine whether this
24 would have any significant impact.

25 Our computations of the future levels of

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1 service, even using that conservative approach, shows
2 that the intersection would continue to operate quite
3 acceptably at level of service C or better. Again, the
4 Department of Public Works has accepted our findings in
5 both cases.

6 In order to further address the issue of
7 safety, we looked at perhaps what I referred to earlier
8 as a sensitive issue, perhaps the most sensitive land
9 use, the Children's Museum to the west.

10 They operate on a schedule I'm told from 9:00
11 a.m. to 7:00 p.m. every day of the week. We're told that
12 most of the children who access the center, the Museum,
13 do so by bus, by school busses, by tour busses, and that
14 they're dropped off within the site. Further, we're told
15 that the visitation by the younger ones occur generally
16 between 10:00 a.m. and 2:00 p.m. which is well outside
17 both the morning and afternoon peak periods.

18 This sensitive use is well catered for.
19 They have cross-walks and sidewalks along all the
20 frontages of the property. Our observation is that
21 there's not significant pedestrian traffic now. Even
22 if that traffic increases, with the defined access
23 situation we think they would be well catered for.

24 Madam Chair, there's a lot more that I could
25 say, but I believe our analysis has shown conclusively

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1 that the Applicant's proposal will not cause the
2 objectionable conditions that have been defined clearly
3 by the regulations, and so I'm pleased to conclude and
4 to answer any questions you may have.

5 MR. GRIFFIS: Madam Chair, if I might ask a
6 quick question?

7 CHAIRPERSON REID: All right.

8 MR. GRIFFIS: Is there a possibility of a turn
9 lane or perhaps directly, H Street has a double line
10 between the east traffic and the west traffic, correct?

11 MR. GEORGE: Yes, sir.

12 MR. GRIFFIS: Okay, so it's a double yellow,
13 so if you cross the 3rd Street intersection, you could
14 not turn left into the gas station, is that correct?

15 MR. GEORGE: Coming from which direction
16 please?

17 MR. GRIFFIS: I'm sorry. If you're coming
18 across the bridge, if you're traveling east.

19 MR. GEORGE: Yes.

20 MR. GRIFFIS: Across 3rd Street intersection.

21 MR. GEORGE: Yes.

22 MR. GRIFFIS: Across it, you could not enter
23 the H Street | you couldn't use those entrances off of
24 H Street?

25 MR. GEORGE: Yes, you could. Yes, you could.

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1 Yes. According to the Motor Vehicle Code, I mean you
2 do it, these entrances have existed pretty much forever.

3 MR. GRIFFIS: Let me make it clear. In your
4 analysis, are you proposing that people are crossing that
5 double yellow line on H Street, if they're traveling east?

6 They will take a left turn to use the H Street entrance?

7 MR. GEORGE: We're not proposing that Mr.
8 Griffis. Our observation is that currently people or
9 motorists heading eastbound along H Street, and wishing
10 to access the station, do so by making a left turn here,
11 and also by making a left turn here. Both are legal
12 maneuvers.

13 MR. GRIFFIS: Well, I would question whether
14 it's legal to make a left turn across a double yellow,
15 but I'll leave that to you.

16 MR. GEORGE: Oh, yes.

17 CHAIRPERSON REID: Is that legal? I see
18 people do it.

19 MR. GEORGE: It certainly is legal.

20 MR. GRIFFIS: But doing it and making it legal
21 is two different things.

22 CHAIRPERSON REID: No, I mean I what I'm
23 saying is that I see it so often that I didn't think it
24 was illegal.

25 MR. GEORGE: I can verify that.

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1 MR. GRIFFIS: I've seen a lot of red light
2 running, too.

3 CHAIRPERSON REID: That's true.

4 MR. GRIFFIS: But let me just follow up on
5 that because it's the same point, what I'm seeing in terms
6 of your trip generation summary. First of all, the
7 existing gas station twelve pump, compared to the existing
8 gas station sixteen pump, AM peak, we're going from 173
9 total to 161.

10 MR. GEORGE: Yes.

11 MR. GRIFFIS: There's a drop. I'm not sure
12 why that is, but more to the point, PM peak we're going
13 from 133 with a twelve pump, compared to the 214 at the
14 sixteen pump. Obviously the old and the new proposed.
15 What that tells me, is that you're actually trying to
16 capture most of your peak trips in the afternoon hours,
17 or evening hours, PM as you've labeled it. Based on that,
18 and based on the transportation, is it not correct to
19 say that most of the traffic would be coming out of the
20 City traveling east, and then trying to get into that
21 station?

22 MR. GEORGE: I think I notice the difference
23 in the numbers, Mr. Griffis, and I agonized over it myself.

24 I use the term agonized somewhat loosely. Please keep
25 in mind that what we have in the first column is empirical

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1 data. It's what was actually observed, counting traffic,
2 the average of two days of counts. What we show is simply
3 a projection, and as you can appreciate, building an
4 office building or whatever land use projecting into the
5 future, it's only a projection.

6 So, it could be that what we're showing is
7 that this site for whatever reason generated relatively
8 low traffic. Keep in mind that it's not comparable to
9 the use that is proposed. Right now, it's a gasoline
10 station with an auto garage and office use. That's quite
11 different.

12 So, unfortunately in planning, we can only
13 do the best we can. We take empirical data and we go
14 forward with projections. For some reason, IT shows for
15 the gasoline station with convenience market in the
16 afternoon the rates are a bit higher than in the morning.

17 So, if you compare the afternoon with the morning, rather
18 than comparing it with the empirical data of one location,
19 perhaps there would be a better resonance.

20 VICE-CHAIRPERSON RENSHAW: Would you also
21 define the AM peak hours, and the PM peak hours? What
22 are those?

23 MR. GEORGE: Okay, define in terms of when
24 they occur?

25 VICE-CHAIRPERSON RENSHAW: Yes. When it

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1 corresponds to this data.

2 MR. GEORGE: Yes, between 7:45 to 8:45 and
3 8:00 a.m. to 9:00 a.m. That's the morning. Let me just
4 flip to the page here in my report.

5 The morning was generally 8:00 to 9:00 a.m.
6 and Ms. Renshaw, I'm very glad that you asked this
7 question, because in terms of the peak demand created
8 by the gas station, that was a bit earlier it was actually
9 7:15 to 8:15.

10 So, it's usually a favorable situation when
11 the hour of the peak land use demand does not coincide
12 with that of the adjacent street system.

13 MR. GRIFFIS: That brings up an interesting
14 point. You can give the hours of the PM, but even though
15 perhaps I'm not exactly following how you do your
16 projections, but either way you look at the numbers, you
17 will have an increase in the PM or you'll have volume
18 in the afternoon. And you made the statement that, in
19 fact, the Children's Museum was mostly used in the
20 afternoon hours?

21 VICE-CHAIRPERSON RENSHAW: 10:00 to 2:00.

22 MR. GEORGE: Between 10:00 and 2:00. That's
23 the peak touring or visitation period for the children.

24 MR. GRIFFIS: Okay.

25 VICE-CHAIRPERSON RENSHAW: The PM hours?

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1 MR. GEORGE: The PM for the street system was
2 between 4:30 and 5:30.

3 VICE-CHAIRPERSON RENSHAW: Okay.

4 CHAIRPERSON REID: Mr. Hood?

5 COMMISSIONER HOOD: May I ask Mr. George?
6 Mr. George, I was glad to hear you say I was concerned
7 when I heard the architect say about backing out on 3rd
8 Street.

9 MR. GEORGE: Yes, sir.

10 COMMISSIONER HOOD: But I think you have
11 addressed it to where it will not the site is sufficient
12 enough to where there won't be any backing out on 3rd
13 Street? Is that what I heard to be correct?

14 MR. GEORGE: Well, I wouldn't go so far as
15 to say there would ever be, but again, the parking, Mr.
16 Duke, I'm quoting you, I think, 14 parking spaces, 15
17 is what is needed. It's all provided to the front of
18 the store. An additional six spaces are provided along
19 the west side and those are going to be designated to
20 be used by the employees so that there would be very little
21 low turnover, obviously once or twice per day, to let's
22 say perhaps up to three times for each space.

23 COMMISSIONER HOOD: Okay. That answers my
24 question. Also, on H Street, have you made any
25 recommendations to the Applicant to try to get with DPW,

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1 because a lot of times those entrances are blocked on
2 H Street. They have signs where it says "do not block
3 this entrance" or something. I think that I just see
4 a problem with those entrances being blocked and people
5 trying to get in and out of a gas station from the H Street
6 side.

7 MR. GEORGE: Yes.

8 COMMISSIONER HOOD: Did you evaluate that or
9 look into that?

10 MR. GEORGE: Yes. First of all, studies have
11 shown that since most of us who drive, purchase gas, try
12 to look for convenience, that most users access stations
13 along the driving route. So, you would much prefer to
14 come in and drive in here, because particularly since
15 we're talking about a significant number of commuters.
16 You have the opportunity to turn in and drive in to where
17 that is more convenient. So, the vast majority would
18 do that, make a right turn in and a right turn out to
19 continue westward.

20 There will be some of this. There is some
21 of this. Again, it isn't illegal and I would just like
22 to not leave the record any way muddled and say that every
23 two-way street in the City has a double center line down
24 the middle, and you've got driveways from McDonald's to
25 People's drug stores to office buildings and people turn

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1 in and out. We drive along roadways and we hope that
2 the person in front of us is not turning a left, making
3 a left. So, it's done every block in the City and it
4 is legal.

5 COMMISSIONER HOOD: But Mr. George, back to
6 my other question, I understand you saying convenience.

7 If you go into that first entrance on the right, going
8 west on 18th Street, if I'm stopping to get some gas.

9 MR. GEORGE: Yes, sir.

10 COMMISSIONER HOOD: Going to that first
11 entrance. When I come back out of the second entrance,
12 it's going to be blocked.

13 MR. GEORGE: It may be. I think the
14 likelihood that is that it won't because we've
15 demonstrated that you have such a good level of service
16 here. So, that says that on each signal cycle it's very
17 likely that the vehicles waiting would clear. The
18 signals along H Street are interconnected. They're part
19 of the City's signalized system, so you have synchronized
20 flow along the roadway.

21 But, in addition to that Mr. Hood, they could
22 choose to exit along 3rd Street at this point and make
23 a right turn there. So, you have multiple opportunities.

24 COMMISSIONER HOOD: I guess I was just
25 wondering if your recommendation would also be to maybe

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1 put a sign up to the Applicant to work with DPW to say
2 "please do not" whatever they say "do not block the
3 entrance."

4 CHAIRPERSON REID: Or, don't fight.

5 MR. GEORGE: Yes. Yes.

6 COMMISSIONER HOOD: Just consider it. I'm
7 not a traffic expert. Just consider it.

8 MR. GEORGE: Yes. No, I quite understand.

9 That would run, would help some but it would be aiding
10 the users of the roadway I I'm sorry, of the gas station
11 at the expense of the users of the thoroughfare, and DPW
12 has as one of its objectives to facilitate the flow of
13 traffic. That's normally done where you have a major
14 entrance perhaps. If you had a lot of traffic into and
15 out of the alley way, that might have been appropriate.

16 But close to an intersection like this, it's something
17 that Mr. Brown would be happy to raise with DPW, but in
18 my experience it would cut both ways in terms of impact.

19 MR. BROWN: And Mr. Hood I

20 COMMISSIONER HOOD: Thank you Mr. George.

21 Mr. Brown, it's cool. Thank you Mr. George.

22 MR. GEORGE: Yes, sir.

23 VICE-CHAIRPERSON RENSHAW: Two quick
24 questions. First of all, on accident data, can you tell
25 us where the accidents occurred? Were they at the stop

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1 lights? Were they mid-block in your three year
2 collection of data? That's question Number 1. Question
3 Number 2 is, if the employees are parking where I see
4 four spaces but you say six spaces are going to be up
5 there, and that's going to be for, dedicated to employees,
6 why is it necessary to have two entry exits especially
7 one so close to residential units?

8 MR. GEORGE: Okay. I'll answer the first,
9 and I may need to defer to Mr. Duke on the second. This
10 plan is illustrative. It's not a detailed plan, and we
11 simply wanted to show here that there is parking. The
12 detail as far as the number of spaces is on the official
13 site plan. So this plan, again, is illustrative.

14 As far as the need for two entrances, I
15 believe that garbage truck access is here. There's a
16 pad pretty much at this point where garbage trucks would
17 back in to unload garbage. I believe that is the reason,
18 but Mr. Duke is more qualified to answer this.

19 VICE-CHAIRPERSON RENSHAW: Well, that brings
20 up another matter of having the garbage collection so
21 close to residential units. That's going to be an
22 annoyance! So, that would have to be rethought, but
23 again, who has the accident data who could tell me whether
24 or not those accidents have occurred at the intersections?

25 MR. GEORGE: Yes. The Department of Public

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1 Works considers an intersection to include the
2 environment, the intersection environment, and that
3 includes a distance of approximately 100 feet on all
4 approaches, not just at that single point.

5 So, there are situations, Ms. Renshaw, when
6 the level of accident occurrence is very high. We would
7 actually go into looking at collision diagrams and so
8 on to identify the cause. With the level of accidents,
9 neither DPW or our analysis suggests that there is that
10 level of safety concern, so we didn't go into that detail.

11 But I would say it represents accidents
12 occurring within the intersection environment and that
13 includes roughly 100 feet on either side. So, if someone
14 banged into each other at the Museum entrance, let's say,
15 which is I believe within that 100 feet, that would be
16 included with this data.

17 But, if you would like to I Mr. Brown, I don't
18 want to proffer without your permission. If you would
19 like further investigation from DPW as to precisely where,
20 we would endeavor to get that information and provide
21 it.

22 VICE-CHAIRPERSON RENSHAW: Yes, I would like
23 to know how many accidents at these intersections in front
24 of the gasoline BP Amoco along the, what is it 3rd Street?

25 MR. GEORGE: This is 3rd Street.

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1 VICE-CHAIRPERSON RENSHAW: Along H and along
2 3rd.

3 MR. GEORGE: Yes, we'll endeavor to get that
4 information.

5 VICE-CHAIRPERSON RENSHAW: Thanks.

6 MR. GEORGE: Yes ma'am.

7 CHAIRPERSON REID: Mr. Griffis?

8 MR. BROWN: Ms. Renshaw, is three-year time
9 frame sufficient?

10 VICE-CHAIRPERSON RENSHAW: Yes, let's start
11 with that. Yes.

12 CHAIRPERSON REID: Okay. Thank you very
13 much, Mr. George.

14 MR. BROWN: Ms. Renshaw had a question that
15 I think Mr. Duke, having to do with the trash, and also
16 I'd like to put his drawing up so you can refer to it.

17 MR. DUKE: The trash enclosure is located
18 within, on the northern end of the property by the northern
19 access on 3rd Street. I note that it is an enclosure.

20 It will be enclosed within a brick wall facility, and
21 the access off 3rd Street is designed for the refuse truck
22 to pull directly up to the enclosure and then back out
23 and reenter 3rd Street. The dumpster itself is also
24 completely enclosed and has a lid on it as well.

25 VICE-CHAIRPERSON RENSHAW: Yes.

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CHAIRPERSON REID: All right.

(Whereupon, the proceedings continued in
Evening Session.)

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 VICE-CHAIRPERSON RENSHAW: Garbage pickup is
4 what? Once a week? Twice a week? Every day? Twice
5 a week?

6 MR. DUKE: I don't know what the exact trash
7 pickup times will be for the BP facility.

8 CHAIRPERSON REID: Well, we need to I can that
9 be provided? Hello? Mr. Duke, can that be provided?

10 MR. DUKE: We could research with the BP
11 Operations folks and see if we can determine that
12 information.

13 CHAIRPERSON REID: Yes. That's fairly
14 important.

15 MR. DUKE: Okay.

16 CHAIRPERSON REID: Thank you. Now,
17 cross-examination. The ANC had questions for Mr. George.
18 Oh, give it to the reporter? And, you can speak in this
19 mike here.

20 MR. BROWN: Madam Chair, before we start, if
21 I could just draw the Board's attention to Mr. Leyden's
22 March 19, 2001 memo which gives his favorable
23 recommendation. I won't provide you, unless you'd like,
24 another copy.

25 CHAIRPERSON REID: No. We haven't gotten to

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1 the government reports yet, at which time we would
2 acknowledge his report as well as the OP Report and the
3 ANC Report. Thank you.

4 Give your name and your address please, sir.

5 MR. HALL: For the record, my name is Robert
6 Hall. I reside at 240 Parker Street N.E. which is in
7 pretty close proximity to this particular site. It's a
8 one-way, one block street that is located between 2nd and
9 3rd Street N.E. and I and K northeast, and I use this
10 particular intersection quite a bit. I am the ANC, the
11 SMD representative for 6A-01 where this site exists.

12 My cross-examination to Mr. George,
13 questions. The concerns voiced by the community had a
14 lot to do, not so much always with the vehicular traffic
15 but also with the pedestrian concerns. The vision for
16 this corridor is that we can revitalize or bring back
17 the type of pedestrian traffic that this corridor enjoyed
18 in its hay day so to speak.

19 Along the H Street side of the development,
20 our major concern is that we're talking about a lot more
21 volume that currently or previously existed on the site.

22 So, we're talking about increasing volume here,
23 increasing volume here, and increasing volume here. I
24 think that BP has done a good job as far as the volume
25 flowing in here and here is a questionable area.

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1 But the question is, with that heavy flow
2 of traffic, Mr. George, coming from the west side headed
3 east, and the fact that it is legal to make those left
4 turns, has your study considered the idea of traffic
5 backing in these lanes here in an attempt to make those
6 left turns onto this site?

7 And this is a downgrade, this hill, and I
8 experience quite often people come down off this bridge
9 at a high rate of speed, and the idea I have you considered
10 the idea that maybe turning left here could cause
11 congestion and possibly an additional number of accidents
12 in this particular intersection?

13 In addition, I ask this area between this
14 curb cut and the intersection here would also experience
15 a great number more vehicles in this small region, so
16 there's also a great potential for congestion along 3rd
17 Street which is more so a residential access to H Street
18 than commercial. It kind of creates a small commercial
19 access area on a street with a residential nature.

20 So, those are my concerns regarding
21 vehicular traffic.

22 CHAIRPERSON REID: Now, what's the question?

23 MR. HALL: That is I the question is did your
24 report or are your findings I in arriving at your findings,
25 have you considered those two aspects, because I hadn't

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1 heard anything about them being raised as concerns?

2 CHAIRPERSON REID: Okay.

3 MR. GEORGE: Thank you Mr. Hall. First of
4 all, there is a reasonable number of vehicles turning
5 here. No. I think you said you live back in here, and
6 as you know there are offices back here. There's a major
7 office building here. I think there are approximately
8 four stories. There's commercial activity here.

9 So, there's a considerable amount of traffic
10 turning in here right now. And, unfortunately I believe
11 the reality is that, as planners we look at what exists
12 and we observe what happens. There's no significant
13 level of accidents occurring presently.

14 I think one of the reasons for that is flow
15 along H Street is very directional. In the morning, it's
16 very heavy westbound and light eastbound. In the
17 afternoon, the reverse takes place. And so, let's say
18 in the afternoon, if I can just, you know, try to focus
19 in on your question, in the afternoon when this might
20 be significant, perhaps residents returning home and
21 whatnot, this flow would be quite light, and so there
22 would be the gaps in traffic.

23 I must let you know also that subsequent to
24 our study, one of the things that DPW contacted us for
25 our data and they are considering perhaps timing the light

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1 to allow for an exclusive green phase. So, not only were
2 we able to show safety, but again perhaps this has prompted
3 DPW to look to see, know that they have data. And, that
4 is one of the things that they often claim they don't
5 have data to do the studies. They are proposing to
6 perhaps re-time and re-phase the light here to better
7 facilitate access.

8 So, I would say that as an outcome of this,
9 is perhaps enhanced safety rather than safety deficiency.

10 That was one question. Was there a second part to it
11 please?

12 MR. HALL: I also asked about this particular
13 area here which is a more residential type street.

14 MR. GEORGE: Yes, all right. You define this
15 as a residential type street, but I would say that, I
16 think, my count shows that the entire western frontage
17 here is institutional. This is commercial, and there
18 are five houses along here. There are also parking meters
19 along here. I believe, isn't that correct? Parking
20 meters along both sides?

21 MR. HALL: There's parking meters on I Street.

22 MR. GEORGE: On both sides. So, it is
23 somewhat ■ there is some activity there associated with
24 the Museum parking meters and activity associated with
25 this use. I would say rather than classify this as a

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1 residential street, I would perhaps use the term collector
2 street. It collects traffic from some of the side streets
3 between H and K, and takes them down to this arterial.

4 So, it's not like we're talking about a cul-de-sac or
5 a court or something here. This is, you know, a
6 reasonable amount of activity.

7 MR. HALL: Okay.

8 CHAIRPERSON REID: Okay, thank you.

9 MR. HALL: I had one more question.

10 CHAIRPERSON REID: All right.

11 MR. HALL: Rather quickly, I don't think that
12 this is a two-way street here, this block.

13 MR. GEORGE: Yes, it is.

14 MR. HALL: Are you sure?

15 MR. GEORGE: The block further to the east
16 is one-way, but this block, I drove it today, so I'm sure.

17 MR. HALL: In this direction, heading from
18 east to west on I Street, this particular block here?
19 I don't think it's two-way. I don't think I've ever
20 driven down that street to go to my house right around
21 the corner.

22 MR. GEORGE: Okay.

23 MR. HALL: So, that would be a revelation for
24 me. Maybe I'm incorrect.

25 MR. GEORGE: Yes, I'm positive as a human

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1 could be. I drove it both ways today.

2 MR. HALL: Okay.

3 MR. GEORGE: It is one-way eastbound from 4th
4 Street, but it is two-way between 4th Street and 2nd Street,
5 as positive as I can be.

6 MR. HALL: All right. I understand.

7 CHAIRPERSON REID: Okay.

8 MR. HALL: My last question to Mr. George was
9 about pedestrian traffic, and I think a lot of study
10 focuses on us not having more ■ this causing not more
11 accidents and things of that nature, but there's also
12 the aspect of pedestrian traffic and pedestrian safety.

13
14 I think the increased volume in these two
15 entrances, although it's serves the vehicles well, I think
16 it is a major deterrent to pedestrian traffic. If we
17 are to see the type of increase in pedestrian traffic
18 on the corridor, I think that because of the high volume
19 of vehicles coming in and out of these entrances, you're
20 going to see a higher volume of pedestrian traffic on
21 the opposite side of the street simply because it seems
22 safer to walk there, which could ■ my question is, has
23 your study considered, because I haven't heard anything
24 about it, the possibility that we will have pedestrian
25 congestion attempting to try to get to the Children's

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1 Museum, get kind of jumbled up here at these opposite
2 corners across the street due to the fact that it's not
3 very user-friendly on this side?

4 MR. GEORGE: Okay. All right. First, I
5 think it's a significant improvement over what is there
6 now. There are three entrances. It's very ill-defined,
7 so this defines it.

8 MR. HALL: I agree.

9 MR. GEORGE: Okay. Then you have 25 feet,
10 then you have Mr. Duke this section of sidewalk is perhaps
11 what?

12 MR. DUKE: 30 to 40.

13 MR. GEORGE: 30 to 40 feet, so you have call
14 it refuge islands between these two. But, I would just
15 invite you I mean, as part of this study, we spent quite
16 a bit of time in the corridor.

17 Down here, H Street, H and 8th Street where
18 you've got the Rite Aid and the McDonald's and the beauty
19 salon and so on, I mean you're talking about pedestrian
20 traffic, and you've got the same driveways, in and out
21 of the McDonald's. You know, sometimes you have driven
22 in and out and made those observations.

23 So, you're talking about many times the level
24 of pedestrian activity, and less traffic in and out here.

25 And I really do not believe, Mr. Hall, that pedestrian

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1 safety is compromised.

2 The bus stop, there's a significant degree
3 of pedestrian traffic coming down along 4th Street and
4 to the bus stop. There's also bus transfers from this
5 bus stop, this line to this line, so there's a fair amount
6 of traffic here, but along the frontage here, no I don't
7 think so.

8 MR. HALL: All right. Thank you, sir. I'd
9 just like to for the record point out that those I

10 CHAIRPERSON REID: You'll have an opportunity
11 to testify. This is only I

12 MR. HALL: Oh, testify. I have another
13 question. I can ask that.

14 CHAIRPERSON REID: But, you already asked
15 your final question.

16 MR. HALL: I have a question on
17 cross-examination of Mr. Duke.

18 CHAIRPERSON REID: Okay. Mr. Duke, okay.

19 MR. HALL: And, the exhibit I'm interested
20 in is the light study. I don't know the technical term
21 of it.

22 CHAIRPERSON REID: The lighting plan?

23 MR. HALL: Yes, there's a really I what type,
24 photometric.

25 CHAIRPERSON REID: Okay, more technical term.

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1 MR. HALL: Photometric light analysis. My
2 question is that, is when you enter your information into
3 the computer to produce, you said this is computer
4 generated. Did you request that the computer make an
5 assessment of the light distribution outside of the Lot
6 53? In other words, was the computer program required
7 to measure the light dissemination solely on Lot 53, or
8 does this light just magically disappear along these
9 borders that I'm looking at?

10 MR. DUKE: To answer your question, yes, the
11 computer program is set up in order to analyze the light
12 levels beyond the property line. Typically, when you
13 are running these types of studies, once you go beyond
14 your one-foot candle line you shut it off, because you
15 would register zeros beyond that point. So, you can see
16 along our property line, there are numbers outside of
17 the property line, and also along 3rd Street, numbers
18 outside of the property line.

19 MR. HALL: Yes.

20 MR. DUKE: To capture any light level readings
21 beyond the Lot 53 itself.

22 MR. HALL: Okay. It just seems to me that
23 the light just kind of goes from some measurable point
24 to ■

25 CHAIRPERSON REID: But ask, put it in the form

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1 of a question.

2 MR. HALL: I apologize. My question is, is
3 this a representation that the light goes from a
4 measurable amount of light to an amount of light that
5 is not measurable by this mechanism?

6 MR. DUKE: The lights standing at the property
7 line would measure a much lower foot-candle reading than
8 if you were standing within the property, say underneath
9 the canopy. If you're underneath the canopy, it's going
10 to measure 50 foot-candles. If you're standing at the
11 property line holding the light meter, it's going to
12 measure .8 foot-candles.

13 MR. HALL: So, I'm understanding your answer
14 to be that it's not measurable?

15 MR. DUKE: Well, if you're standing well,
16 a light meter only has a certain amount of accuracy at
17 the lower ranges, just the same at the higher ranges.

18 MR. HALL: I see.

19 MR. DUKE: You'd be able to pick up one
20 foot-candle on a light meter, but when you get down below,
21 you know, .2 or .1 it's very difficult to measure.

22 MR. HALL: So, is it measurable but not
23 represented in this exhibit?

24 MR. DUKE: Well, we provide numbers all along
25 our property lines, so I would say that in this case it's

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1 measurable.

2 MR. HALL: But are the lower numbers
3 represented in this exhibit?

4 MR. DUKE: Yes, they are.

5 MR. HALL: Okay. The other question I have
6 is, do you feel that because of this vacant area and these
7 demolished, where you demolished buildings adjacent to
8 the site, that that will give way to this site being
9 visually more prominent as you traverse the corridor?

10 MR. DUKE: Certainly, without the buildings
11 there, there's no doubt that if you're standing on the
12 corner of 3rd and H, it would be easier to look into the
13 site than if any structures were located in this area.

14 MR. HALL: Okay. That's all I have.

15 CHAIRPERSON REID: Thank you. I think we had
16 a couple more. For Mr. Duke or for Mr. George, okay.

17 MR. TALLANT: Again, my name is Drury Tallant.
18 I live at 730 3rd Street. I'm representing the Stanton
19 Park Neighborhood Association.

20 Mr. George, just a couple of things on your
21 map. Is H Street a three-lane street at all times of
22 the day in this block?

23 MR. GEORGE: No, it isn't.

24 MR. TALLANT: Okay, do you know offhand where
25 it changes and the hours that it changes?

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1 MR. GEORGE: Yes, along the frontage here,
2 which is within our study area, this is three lanes between
3 7:00 to 9:30 in the morning, and two lanes the rest of
4 the day. In the afternoon, well the reverse takes place.

5 This is two lanes up until 4:00 in the afternoon, and
6 three lanes from 4:00 to 6:30.

7 MR. TALLANT: So, this is showing the lane
8 configuration only during the peak hours?

9 MR. GEORGE: Exactly.

10 MR. TALLANT: Not during the off-peak hours?

11 MR. GEORGE: You're exactly correct.

12 MR. TALLANT: So, it's not actually a six-lane
13 street?

14 MR. GEORGE: Exactly.

15 MR. TALLANT: Most of the day it's a four-lane
16 street?

17 MR. GEORGE: Exactly.

18 MR. TALLANT: Also, on I Street, I've checked
19 with some of the neighbors, and my own recollection, and
20 I Street is a two-way street from 2nd to 3rd and a one-way
21 street from 3rd to the higher numbers. So, it doesn't
22 make, I don't think, any difference in terms of your
23 analysis, but just to correct your map, it is in fact
24 a one-way street in this location.

25 MR. GEORGE: I drove it today.

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1 MR. TALLANT: You should have gotten a ticket.

2

3 MR. BROWN: Madam Chair, we'll clarify that.

4 CHAIRPERSON REID: How many more questions
5 do you have?

6 MR. TALLANT: A few.

7 CHAIRPERSON REID: A few meaning how many?

8 MR. TALLANT: Three, I think.

9 CHAIRPERSON REID: Okay.

10 MR. TALLANT: You made a point of noting how
11 the peak hours do not conflict with the Museum hours at
12 the Children's Museum?

13 MR. GEORGE: Yes, sir.

14 MR. TALLANT: Did you talk with the people
15 at the Children's Museum about the students that are at
16 that facility, and the hours that parents drop students
17 off and pick them up?

18 MR. GEORGE: (No audible response.)

19 MR. TALLANT: Mr. Evans is here from the
20 Children's Museum. There are a couple of hundred
21 students at that facility who get dropped off in the
22 morning, picked up in the afternoon.

23 MR. GEORGE: Yes.

24 MR. TALLANT: Was that included in your
25 analysis?

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1 MR. GEORGE: No. I got all the information
2 from the Museum which I didn't tell all their functions
3 there. I understand birthday parties and so on on
4 Saturdays, but again those drop-offs and pickups take
5 place within the Museum.

6 MR. TALLANT: No, they largely occur ■ the
7 busses certainly drop off and pick students up on 3rd Street
8 and on I Street.

9 MR. GEORGE: Yes.

10 MR. TALLANT: And the parents to a large
11 degree also pick up and drop off students on the street,
12 as opposed to within the site.

13 MR. GEORGE: Yes.

14 MR. TALLANT: But Mr. Evans, if you would like
15 to consult with him, I recommend that you do that.

16 MR. GEORGE: Yes, okay.

17 MR. TALLANT: As long as you're going to be
18 researching the accident information for this facility,
19 this facility has now been closed for some seven months.
20 I think it would be useful for the Board to note any
21 differences between the accident rates in the past seven
22 months and the previous period.

23 CHAIRPERSON REID: I think Ms. Renshaw asked
24 for accident reports going back three years.

25 MR. TALLANT: Right, but what I would like

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1 Mr. George to make clear is that since December of 2000,
2 this facility has been closed.

3 CHAIRPERSON REID: Okay.

4 MR. TALLANT: And we'd like there to be a break
5 in the accident rate report for the before the facility
6 closed and the after the facility has closed, because
7 now we do not have left-turn traffic coming off of H
8 Street.

9 MR. GEORGE: Yes.

10 MR. TALLANT: Also with regard to the left
11 turn into a commercial facility off of H Street, I am
12 hard pressed to recall any other facilities along H
13 Street, at least out as far as Bladenburg (phonetic) Road,
14 that have a vehicular entrance that is not at a traffic
15 light.

16 MR. BROWN: He's objecting | I mean, he's
17 testifying.

18 VICE-CHAIRPERSON RENSHAW: What's the
19 question.

20 MR. BROWN: Yes.

21 MR. TALLANT: Well, he testified that the left
22 turn situation off of H into this facility is something
23 that's quite common, and I can't think of a one.

24 CHAIRPERSON REID: But you can testify when
25 it's time to testify. But right now, ask him a question.

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1 MR. TALLANT: I'm asking him if he can
2 enumerate the other similar situations along H Street?

3 MR. GEORGE: Well, I would just go right next
4 door and say that there are left turns in and out of the
5 alley. We did a twelve-hour count here and that takes
6 place. At the H Street commercial area, there are left
7 turns I

8 MR. TALLANT: There is a traffic light at that
9 location.

10 MR. GEORGE: Is there only one entrance?

11 MR. TALLANT: Yes, there's only one entrance
12 on H Street and there's a traffic light there.

13 MR. GEORGE: Yes. I couldn't site a specific
14 entrance. I would say along Benning (phonetic) Road,
15 just to the north there.

16 MR. TALLANT: That's a very different
17 situation.

18 MR. GEORGE: Yes, okay.

19 MR. TALLANT: And I would also add that I
20 believe I

21 MR. BROWN: Madam Chair, if it's relevant,
22 rather than having Mr. George kind of speculate, we'd
23 be happy to provide that information.

24 CHAIRPERSON REID: Okay.

25 MR. TALLANT: Also pursuant to that, he

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1 mentioned that there are turns into this alley.

2 CHAIRPERSON REID: Now, you're talking to him
3 again and asking questions of him.

4 MR. TALLANT: Would you please also document
5 if there are any other alleys coming into H Street in
6 a similar situation, because I believe this situation
7 is unique.

8 MR. GEORGE: All right. I'll be happy to do
9 so.

10 MR. TALLANT: Thank you.

11 CHAIRPERSON REID: All right. Thank you very
12 much. Now I

13 MR. McCREA: I have one question of Mr.
14 George.

15 CHAIRPERSON REID: Wait a minute. Are you
16 a party?

17 MR. McCREA: Yes.

18 CHAIRPERSON REID: Oh, sure. What's your
19 name sir?

20 MR. McCREA: Mackie McCrea.

21 CHAIRPERSON REID: Oh, okay that's right.
22 There were two parties. I was wondering what happened
23 to the other party.

24 MR. McCREA: Mr. George, the question I have
25 for you I

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1 CHAIRPERSON REID: Give us your name and
2 address.

3 MR. McCREA: Mack McCrea. I live at 814 4th
4 Street N.E., and I represent the residents from Square
5 776.

6 CHAIRPERSON REID: Okay.

7 MR. McCREA: Mr. George, the question I have
8 for you, as you did your traffic studies, is it customary
9 to talk to the residents about traffic patterns as well
10 as vehicle, as well as pedestrian?

11 MR. GEORGE: I would say, no and can I tell
12 you the reason for that?

13 MR. McCREA: Sure.

14 MR. GEORGE: The reason is that it detracts
15 from the objectivity of the study. There are criteria
16 we follow in terms of the days on which we collect traffic.
17 We wouldn't collect traffic data on a holiday. In fact,
18 we try to avoid it during the week of a National holiday.
19 We don't collect traffic data on Fridays or Mondays and
20 Fridays, because traffic patterns are different.

21 We have actually shown that in situations
22 where you try to consult with the residents, you may get
23 biased opinions. There are situations where we've put
24 down tube counters, the tubes that you see across the
25 road to count traffic, and the residents who know what

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1 they're about, we've had situations where they would go
2 and tap on them with hammers so that we get double and
3 triple the counts and drive back and forth.

4 So, we try to do the study as objectively
5 as possible, and hopefully as part of the Public Hearing
6 process, if issues arise we are able to address them.
7 There are times that we do actually work for a number
8 of civic associations, and we've been given feedback from
9 Mr. Brown and the BP Amoco Team, and where issues have
10 been brought up in the meetings, we have addressed them.

11 MR. McCREA: Okay, thank you. In this case,
12 who are you working for? Are you working under the
13 auspices of DPW, or BP Amoco?

14 MR. GEORGE: We work in accordance with the
15 guidelines established by DPW. We are engaged for pay,
16 full disclosure, by BP Amoco.

17 MR. McCREA: Thank you. No further
18 questions.

19 CHAIRPERSON REID: Thank you. Let's see,
20 there's no further cross-examination. Now, we are
21 supposed to do an assessment at 6:00 to see where we are
22 and how much further we can get today. I don't know if
23 we can finish the case today. Let's have a little
24 discussion Board members.

25 We'll take a recess at any rate, but we have

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1 the OP reports. The OP person is I oh, you're out there.
2 The OP report, the ANC report, cross-examination. Then
3 we have the persons and parties in support, and persons
4 and parties in opposition. And then we have closing
5 remarks by the Applicant.

6 Now, realistically I

7 VICE-CHAIRPERSON RENSHAW: That's over two
8 hours.

9 CHAIRPERSON REID: Realistically, how many
10 people here in opposition to speak?

11 AUDIENCE MEMBER: Some folks left because
12 they've been here all day.

13 CHAIRPERSON REID: Okay, I know. I think
14 that, and Board members I'd like to have your input.
15 I think that if we can get the Office of Planning report
16 done, get all the government reports done, Office of
17 Planning, the ANC, and there's a regular report by the
18 DPW, then I yes, Ms. Renshaw?

19 VICE-CHAIRPERSON RENSHAW: I would just like
20 I if we're going to continue this a little bit, I would
21 like to recommend that we take those community folks ahead
22 of that, if the others wouldn't mind.

23 CHAIRPERSON REID: Ahead of what?

24 VICE-CHAIRPERSON RENSHAW: Ahead of OP, ANC.

25 CHAIRPERSON REID: But, that's going to take

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1 | if we go into the opposition, that's another hour or
2 | two with the cross-examination, I do believe.

3 | VICE-CHAIRPERSON RENSHAW: Well, we have
4 | eight people times five minutes each.

5 | CHAIRPERSON REID: No, they don't have five
6 | minutes each. The parties have five minutes.

7 | VICE-CHAIRPERSON RENSHAW: The parties have
8 | five minutes.

9 | MS. SANSONE: Excuse me, Madam Chair. The
10 | parties would have a comparable period to the Applicant
11 | or a total of |

12 | CHAIRPERSON REID: Collectively.

13 | MS. SANSONE: Collectively.

14 | CHAIRPERSON REID: And the Applicant had
15 | about an hour and a half.

16 | MR. BROWN: For our presentation, we didn't
17 | have |

18 | CHAIRPERSON REID: No, you started about
19 | quarter after 3:00, and you finished about quarter to
20 | 5:00. I was watching the time. Before
21 | cross-examination.

22 | MR. BROWN: I think you're adding more time
23 | because we only had two witnesses.

24 | CHAIRPERSON REID: No. No. So, with the
25 | cross-examination, do you think that, I mean, look if

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1 we think we can wrap it up in about an hour, then I have
2 no problem with that. If you all want to just go ahead,
3 go for it.

4 COMMISSIONER HOOD: Let me say this I go
5 ahead.

6 MR. GRIFFIS: Yes, I would suggest we take
7 a short break, come back and hear the community's
8 testimony, opposition.

9 CHAIRPERSON REID: Then, why don't we finish
10 it, because once we finish with the opposition, that's
11 the end of it. The Office of Planning report is only
12 a few minutes, right? Yes, and if there's
13 cross-examination with the Office of Planning. The ANC
14 report is about how long? A few minutes, so we can finish
15 it today then. That's my only concern to make sure that
16 we had ample time. I think everyone would like to finish
17 it today and not have to come back.

18 VICE-CHAIRPERSON RENSHAW: No, we don't want
19 to inconvenience everyone more than we already have.

20 CHAIRPERSON REID: Yes, it's more
21 inconvenient to have to come back, but if we can go ahead
22 and wrap it, then I have no problem with it. I'm willing
23 to stay for the duration. Take a five minute break, seven
24 minute break. Stretch.

25 MR. GRIFFIS: Maybe we could set an objective

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1 to finish by 7:15 or 7:30?

2 VICE-CHAIRPERSON RENSHAW: Please.

3 CHAIRPERSON REID: By 7:00.

4 MR. GRIFFIS: Okay.

5 VICE-CHAIRPERSON RENSHAW: I think everyone
6 needs to get up and out.

7 (Whereupon, the above-entitled matter went
8 off the record.)

9 CHAIRPERSON REID: All right. Thank you.
10 We'll resume the meeting. Oh, are you going to give your
11 report down there?

12 MR. MCGHETTIGAN: Yes, if that's okay.

13 CHAIRPERSON REID: That's fine. Open your
14 report please, government reports.

15 MR. BROWN: Madam Chairman, before we begin,
16 in light of the discussion we had previously in my Motion
17 to Exclude, I think it was pretty clear from Ms. Sansone's
18 advice that the Comprehensive Plan, other than in a very
19 speculative way, plays no real part in this.

20 CHAIRPERSON REID: No, that's not what it
21 said.

22 MR. BROWN: No, but I think she said it was
23 limited to the District elements, which are the most
24 general concepts of it. The bulk of the OP reports deal
25 with the Ward Six Plan, which is separate from the District

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1 elements.

2 What I would like to do in trying to find
3 the middle ground that's appropriate and doesn't
4 contaminate the record in this case, is if Mr. McGhettigan
5 in his testimony, just as in the Applicant's, other than
6 my initial comments, we didn't mention the Comprehensive
7 Plan because it's irrelevant. We ask him to tailor his
8 presentation to the enumerated items, and any specific
9 references to the District elements.

10 Again, the bulk, if you look at his report,
11 is tailored to the Ward Six which is accepting Ms.
12 Sansone's interpretation, you know, at its broadest
13 level. The bulk of his report is excludable.

14 CHAIRPERSON REID: Wait one second. Ms.
15 Sansone, rather than waste a lot of time with this, my
16 understanding was that when you responded to Mr. Brown
17 was that the BZA could consider the Comprehensive Plan
18 in making this decision, and now he's bringing up the
19 issue of the District element, only as it pertains to
20 the District element, and I'm not clear as to how that's
21 departure from what we normally do, or is it?

22 MS. SANSONE: Madam Chair, I don't believe
23 there really is a departure here. The District element,
24 the Comprehensive Plan is what's published in Title 10
25 of the DCNR. It's the portion that the District of

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1 Columbia prepares. The Board's normal practice is to
2 go through the criteria and the specific sections under
3 which the Special Exception is requested, and then to
4 consider the general elements that are in 3104, the
5 adverse impact in harmony with the zoning regulation.

6 What the Court of Appeals is saying, is when
7 you consider these issues, you should bear in mind the
8 Comprehensive Plan as the background, the policies that
9 come into play in interpreting what these criteria mean,
10 and how they should all work. So, I don't think there's
11 anything out of the ordinary here.

12 The Office of Planning typically does advise
13 the Board on the general land use map. They typically
14 advise the Board on what's contained in the Comprehensive
15 Plan. There doesn't seem to be anything unusual in this
16 case, in what the Office of Planning is presenting to
17 the Board.

18 CHAIRPERSON REID: Okay.

19 MR. BROWN: I differ, Madam Chairman.

20 CHAIRPERSON REID: Wait. Just a second.
21 Board members, let us take up the issue. Mr. Brown's
22 contention is that we should exclude the Office of
23 Planning report from this particular proceeding because
24 it alludes to the Comprehensive Plan. Do we vote on that?

25 MR. MCGHETTIGAN: Madam Chairman, may I

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1 respond to this?

2 CHAIRPERSON REID: You may.

3 MR. MCGHETTIGAN: First of all I

4 CHAIRPERSON REID: Your name?

5 MR. MCGHETTIGAN: This is David McGhettigan
6 from the Office of Planning. My report is not centered
7 around any particular element of the Ward Six Plan. It's
8 a very broad report. It covers the zoning as well as
9 the Comprehensive Plan. Also, it's premature for Mr.
10 Brown to say anything should be excluded from the record.

11 Anything should be acceptable into the record, and it's
12 just up to the Board to weigh whether it's important or
13 relevant, and not to be excluded.

14 Also, you know, saying that the Office of
15 Planning can't use the Comprehensive Plan, is like saying
16 Transportation can't use the traffic report. That is
17 our bread and butter. That's what we do, and it's going
18 to be relevant to our report, and you're specifically
19 directed in the zoning code to consider the Office of
20 Planning's report.

21 CHAIRPERSON REID: Thank you. Can I have a
22 vote?

23 COMMISSIONER HOOD: I don't think we need a
24 vote. We just need to hear the Office of Planning report.

25 CHAIRPERSON REID: This was put like a motion.

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1 COMMISSIONER HOOD: Oh, okay. Well, I make
2 a motion that we hear the Office of Planning's report.

3 MR. GRIFFIS: Second.

4 CHAIRPERSON REID: All in favor.

5 (Chorus of ayes.)

6 CHAIRPERSON REID: Record the vote please.

7 MS. BAILEY: The Board has voted 4-0 to ■

8 CHAIRPERSON REID: No. There's only three
9 of us here.

10 MS. BAILEY: Ms. Renshaw is there.

11 CHAIRPERSON REID: No.

12 MS. BAILEY: Oh, okay, 3-0 to hear the Office
13 of Planning Report. Motion made by Mr. Hood, seconded
14 by Mr. Griffis. Ms. Reid in agreement.

15 CHAIRPERSON REID: All right. Thank you.

16 MR. MCGHETTIGAN: Thank you Madam Chair.
17 Good evening members of the Board. My name again is David
18 McGhettigan from the Office of Planning. I will be
19 presenting the Office of Planning staff report for the
20 Application.

21 Evaluation of this proposal requires some
22 background on the character of the H Street corridor.
23 In addition, the Comprehensive Plan as well as the zoning
24 regulations guide this analysis. These components form
25 the basis for our recommendation.

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1 The H Street northeast commercial corridor
2 was once a vibrant and active commercial area. Key to
3 revitalization of this corridor is maintenance of the
4 urban design characteristics that give the corridor its
5 unique character. The character of this corridor still
6 remains in its series of two and three-story buildings
7 fronting the street that create a pedestrian oriented
8 shopping environment.

9 MR. BROWN: Madam Chair, I object.

10 MR. MCGHETTIGAN: This main street quality

11 |

12 MR. BROWN: Can I interject. I object.
13 We're going forward here, and again we're going far
14 afield. We've already introduced a different set of
15 criteria than enumerated in the zoning regulations.

16 CHAIRPERSON REID: Mr. Brown!

17 MR. BROWN: And reaching a far-reaching
18 discussion about H Street and the historical perspective.

19 CHAIRPERSON REID: Mr. Brown! Thank you very
20 much, but we have already voted to accept this report
21 in and we're going to hear the report, and without further
22 objection. Thank you very much.

23 MR. BROWN: I reserve the right, if necessary,
24 to object Madam Chairman because |

25 CHAIRPERSON REID: Let the record reflect

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1 that you object, but also the Board has voted to hear
2 this report, and we're going to allow him to do so if
3 you don't mind. Thank you.

4 MR. MCGHETTIGAN: Thank you Madam Chair. The
5 character of this corridor still remains in its series
6 of two and three-story buildings fronting the street that
7 create a pedestrian-oriented shopping environment. This
8 main street quality should be preserved by restoration
9 of existing structures, and compatible commercial design
10 along the corridor.

11 These aerial photographs show the
12 predominance of a close building relationship to the
13 street. As we zoom in to the site, notice that the
14 building wall along H Street, also serves as a buffer
15 for the adjoining residential area from the noise and
16 traffic of H Street.

17 The residential areas of Square 776, which
18 is shown in the pattern area here, were previously either
19 screened from the existing Amoco Station, shown in red,
20 by buildings or separated by large intervening space.

21 The main street character of the H Street
22 corridor and the new exposure of the residential units
23 to the H Street noise and traffic are illustrated by these
24 photographs.

25 Entering the corridor from the Hopscotch

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1 Bridge, you can see that any buildings on the corner of
2 3rd and H would be gateway buildings into the corridor,
3 and the Comprehensive Plan presents many goals, as
4 discussed in the staff report, that are not met by the
5 current design. Some of these goals include:

6 Design, residential and commercial, and all
7 other buildings to complement or enhance the physical
8 character of the District.

9 Design buildings to include the use of
10 appropriate arrangements of building materials, height,
11 scale, massing and buffering to complement the immediate
12 region,

13 Reduce conflicts between pedestrians and
14 vehicular traffic in order to increase pedestrian safety
15 and comfort.

16 Create an environment in the public space
17 that attracts people and stimulates redevelopment and
18 commerce.

19 Encourage building massing and scale of new
20 development to be sensitive to establish patterns.

21 Prevent the establishment of gas and go
22 self-service stations, service stations within
23 twenty-four hour mini-marts, or convenience stores
24 throughout Ward Six.

25 As outlined in OP's Staff Reports, the

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1 proposed development is not in harmony with the general
2 purpose and intent of the zoning regulations and map,
3 which have the purpose in the C-2-A of providing
4 facilities for shopping and business needs, housing, and
5 mixed uses.

6 One of the main purposes of the zoning
7 regulations is to provide a use of land that will tend
8 to create conditions favorable to transportation,
9 protection of property, civic activity, and recreational,
10 educational, and cultural opportunities.

11 This project is not in harmony with this
12 purpose. The proposed design lacks adequate buffer from
13 light, noise, and odor impacts, and will adversely impact
14 the use of neighboring properties. The intense
15 automobile use of the proposed development will
16 negatively impact vehicular and pedestrian traffic along
17 the H Street corridor.

18 The requirement that no driveway exit or
19 entrance shall be located within 40 feet of an
20 intersection is not very well met with this development,
21 though we've seen today the plans have changed some from
22 what the Office of Planning has reviewed, and represents
23 an additional traffic hazard to the development.

24 Based on this evaluation, the Office of
25 Planning recommends denial of this Application. The

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1 vehicular use expansion proposed by the Applicant will
2 adversely affect the character of the neighborhood. The
3 Applicant has indicated he is unable to prepare a design
4 that is compatible with the massing and scale of H Street
5 northeast corridor, and the proposed site designed by
6 BP Amoco is not compatible with the neighborhood.

7 That concludes my report. I would say two
8 things that were not mentioned by the Applicant, as tests
9 that need to be met. In 3104, the Board is required to
10 look at adverse impacts on the neighborhood and whether
11 it's in harmony with the zoning ordinance. Any
12 questions?

13 CHAIRPERSON REID: Yes. In regards to the
14 last prong of the test, with the Application being in
15 harmony with the zoning ordinance. Did you have a
16 position on that?

17 MR. MCGHETTIGAN: Yes, as I stated, it's not
18 in harmony with this.

19 CHAIRPERSON REID: Oh, I'm sorry. I didn't
20 understand you to say it is not in harmony.

21 MR. MCGHETTIGAN: It's not. That's correct.

22 CHAIRPERSON REID: Okay. I just want to say
23 I go ahead.

24 COMMISSIONER HOOD: Mr. McGhettigan, I'm just
25 going to ask you. Your report that you gave us was on

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1 the previous, when the Office of Planning had worked the
2 Applicant on what happened previously, because I think
3 you stated you didn't see whatever was presented here
4 today, the new information?

5 MR. MCGHETTIGAN: Yes, we did not see the
6 lighting plan, so we were not able to review and comment
7 on it. Also, there were some changes around where the
8 loading space is that were not reflected in plans that
9 we've seen.

10 COMMISSIONER HOOD: Madam Chair, Mr. Brown
11 seems to want to describe to us what's in the regulations
12 and I'll repeat Statute 726.2 "each Application submitted
13 under this section shall be referred to the Office of
14 Planning in accordance with provisions." It's a clear
15 example of Mr. Brown not following our regulations, and
16 I have problems again with hearing material that's
17 outdated because the plans have changed.

18 Now, here we are again, still sitting here
19 at 6:35. We got old information. The Office of Planning
20 has not seen the new information. I don't want to say
21 I'm redundant or belabor the point, but I think it's an
22 injustice to us on this Board. Thank you.

23 CHAIRPERSON REID: All right. Thank you very
24 much. Cross-examination, Office of Planning?
25 Mr. Brown?

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1 MR. BROWN: Mr. McGhettigan, if I could, and
2 you've spent very little time on the enumerated tests.

3 Yes or no? Is this property, the proposed site separated
4 from a residence district by 25 feet or a public alley?

5 MR. MCGHETTIGAN: Yes.

6 MR. BROWN: So, it is, complies with that
7 criteria. The Department of Public Works issued a report
8 to you which you rely on in making your recommendation,
9 correct?

10 MR. MCGHETTIGAN: Yes.

11 MR. BROWN: As to traffic issues, correct?

12 MR. MCGHETTIGAN: Yes.

13 MR. BROWN: And that report found no
14 objectionable conditions from the proposal, correct?

15 MR. MCGHETTIGAN: Yes.

16 MR. BROWN: So, for purposes of traffic, this
17 project does not create any dangerous or objectionable
18 traffic conditions?

19 MR. MCGHETTIGAN: No.

20 MR. BROWN: It does not create any?

21 MR. MCGHETTIGAN: The DPW's report did not
22 consider the turning movements off of the street. It
23 only considered the level of service at the intersections.

24 MR. BROWN: Nevertheless, the DPW, who's your
25 traffic expert, recommended favorably on this report,

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1 or recommended they had no objection and found no unsafe
2 traffic conditions, correct?

3 MR. MCGHETTIGAN: Yes, but again, they did
4 not look at everything.

5 MR. BROWN: As to the level of parking, do
6 they meet the level of required parking?

7 MR. MCGHETTIGAN: Yes.

8 MR. BROWN: Okay. As to the requirement that
9 all entrances be located 25 feet or more from a residence
10 district, do they meet that criteria?

11 MR. MCGHETTIGAN: Not the plans that I saw,
12 but I ■

13 MR. BROWN: The plans that were submitted to
14 the Board March 19th showed that 25 feet existed from every
15 entrance, and you were provided with copies of every plan
16 that the Board were.

17 MR. MCGHETTIGAN: The plans that the Board
18 has and the ones that I have show that entrance, the
19 northern most entrance on 3rd Street is closer than 25
20 feet. Now, your new plan you've brought today has
21 corrected that deficiency it looks like.

22 MR. BROWN: All right. But currently, 25
23 feet exists from every entrance?

24 MR. MCGHETTIGAN: Based on what you've shown
25 us today, yes.

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1 MR. BROWN: And no driveway or entrance is
2 located less than 40 feet from any intersection, is that
3 correct?

4 MR. MCGHETTIGAN: That's what's been stated
5 here, yes.

6 MR. BROWN: And that's what you said in your
7 testimony, correct?

8 MR. MCGHETTIGAN: Yes, based on what's been
9 said here today.

10 MR. BROWN: Okay. Based on the testimony,
11 the Applicant is providing screening to the site? Yes
12 or No?

13 MR. MCGHETTIGAN: No.

14 MR. BROWN: Not planning a fence and
15 landscaping?

16 MR. MCGHETTIGAN: The fence does not screen
17 the canopy area from all the residential areas. It is
18 only a 10-foot high fence. The trees that are planted
19 are deciduous and will be bare in the winter.

20 MR. BROWN: If you planted evergreen trees,
21 they would.

22 MR. MCGHETTIGAN: If you planted mature
23 evergreen trees of sufficient density, they may provide
24 screen, but you would need to provide it on two sides
25 of the site to adequately screen the residents.

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1 MR. BROWN: In the C-2-A zone generally, the
2 regulations provide that a gasoline service station is
3 presumed compatible, subject to the enumerated criteria,
4 is that correct?

5 MR. MCGHETTIGAN: Only under the authority
6 of the Board, if it doesn't adversely affect the character
7 of the neighborhood and is within harmony with the zoning
8 ordinance.

9 MR. BROWN: So that a C-2-A, which is a
10 mid-level commercial district, does not exclude a
11 gasoline service station?

12 MR. MCGHETTIGAN: Not by right, no.

13 MR. BROWN: And would the Office of Planning
14 have any objection with the continued use of the existing
15 gasoline service station?

16 MR. MCGHETTIGAN: No.

17 MR. BROWN: How do you reconcile the conflict
18 in the Comprehensive Plan, Ward Six element, which appears
19 to prohibit gasoline gas and go with the current
20 applicable zoning regulations in the C-2-A zone, which
21 would permit gasoline service stations subject to the
22 conditions we've described?

23 MR. MCGHETTIGAN: Well, the possibility of
24 changing the zoning only in Ward Six to preclude that
25 specific use has not been presented yet as an

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1 inconsistency with the Comprehensive Plan. The Office
2 of Planning is working on this consistency, and that
3 hasn't been done yet.

4 MR. BROWN: So, you recognize that the current
5 zoning regulations permit this use, subject to the
6 conditions we've discussed?

7 MR. MCGHETTIGAN: Yes, subject to the
8 conditions outlined, yes.

9 MR. BROWN: So that a change in the zoning
10 regulations would be required to implement the
11 Comprehensive Plan in the manner you're describing?

12 MR. MCGHETTIGAN: Only that element. Also
13 the general purposes of the zoning ordinance are in line
14 with a number of the other elements of the Comprehensive
15 Plan which I mentioned in my report, that the fact about
16 the gas and go is only one of many Comprehensive Plan
17 items I listed.

18 MR. BROWN: You've indicated that your
19 suggestion to build a larger building to house a
20 convenience store on H Street, correct? A denser
21 building, taller, you've indicated two-story, is that
22 right?

23 MR. MCGHETTIGAN: Yes, more building mass on
24 H Street would be desirable and compatible with the
25 corridor.

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1 MR. BROWN: And would it be desirable and
2 compatible if, as a result of building that larger
3 building, the pump canopies and activity were closer to
4 the residential district, residences behind the site?

5 MR. MCGHETTIGAN: A reduced canopy area would
6 naturally have to be to the side of a building, yes.
7 So, therefore, it may be closer, though if it were on
8 the 3rd Street frontage, that would not be closer
9 necessarily.

10 MR. BROWN: So, and in encouraging the use
11 of 3rd Street as a major means of, or almost exclusive
12 means of ingress and egress to this site would be a good
13 thing?

14 MR. MCGHETTIGAN: It would not be necessary.
15 You could access the site on H Street still and it
16 wouldn't be any different than the entrance you have on
17 3rd Street now.

18 MR. BROWN: Having gasoline delivery trucks
19 using 3rd Street rather than H Street be desirable?

20 MR. MCGHETTIGAN: The short section of 3rd
21 Street that you would be using would not be any different
22 than what we, what you would not be a great impact.

23 MR. BROWN: Although the car wash is I you
24 acknowledge that a car wash is a matter-of-right in the
25 C-2-A zone, subject to meeting the 15 vehicle cuing

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1 requirement?

2 MR. MCGHETTIGAN: Yes.

3 MR. BROWN: So, the elimination of the car
4 wash in your view was that a desirable change in the plan?

5 MR. MCGHETTIGAN: Yes, because a car wash in
6 this location was not in general keeping with the
7 character of the neighborhood and would adversely affect
8 the neighboring property.

9 MR. BROWN: Even those the zoning regulations
10 permit, as a matter-of-right, a gasoline station?

11 MR. MCGHETTIGAN: They permit it by Special
12 Exception you mean.

13 MR. BROWN: I mean a car wash, excuse me.

14 MR. MCGHETTIGAN: Yes.

15 MR. BROWN: By virtue of abandoning the alley
16 closing, putting aside all the other issues, the ability
17 to screen the site from the residential areas was
18 diminished, is that correct?

19 MR. MCGHETTIGAN: Now, you have an
20 opportunity to build a building on those sites of
21 sufficient height to screen the residents.

22 MR. BROWN: At the rear of the site?

23 MR. MCGHETTIGAN: Yes.

24 MR. BROWN: Isn't that where we proposed to
25 build a building, in the rear of the site?

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1 MR. MCGHETTIGAN: Yes, but you don't have any
2 frontage on H Street which is more desirable.

3 MR. BROWN: More desirable to the residents
4 or to the Office of Planning?

5 MR. MCGHETTIGAN: The building on H Street
6 will screen the residents.

7 MR. BROWN: With the pumps located closer to
8 their houses, please explain that to me.

9 MR. MCGHETTIGAN: You could locate the pump
10 on 3rd Street.

11 MR. BROWN: So then again, you'd be coming
12 back to accessing the pumps from 3rd Street and you said
13 that's not desirable to increase the use of 3rd Street.

14 MR. MCGHETTIGAN: (No audible response.)

15 MR. BROWN: You'd prefer to use a residential
16 street for access to the site to a commercial principal
17 arterial?

18 MR. MCGHETTIGAN: Well, as your own
19 consultant pointed out, it's not a residential street.
20 It's a collector street. The traffic will be

21 MR. BROWN: There are people living on 3rd
22 Street, aren't there?

23 MR. MCGHETTIGAN: Yes.

24 MR. BROWN: I don't think I have any more
25 questions Madam Chairman.

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1 CHAIRPERSON REID: Thank you. Are there any
2 other questions of the Office of Planning? All right.

3

4 MR. TALLANT: Again, my name is Drury Tallant
5 representing the Stanton Park Neighborhood Association.

6 My question to David goes to the definition of a gasoline
7 service station.

8 Mr. Brown made a point of asking whether or
9 not a car wash would be a matter-of-right use. My
10 question is, given that the historic use for the gas
11 station operation was some 5,000 or 6,000 square feet,
12 if a car wash Application were to be made in conjunction
13 with that existing 5,000 square foot or 6,000 square foot
14 gas station operation that would then require
15 considerable

16 MR. BROWN: I'm objecting. He's asking a
17 question I don't think Mr. McGhettigan's in any way
18 qualified to answer, and misses the point.

19 CHAIRPERSON REID: Okay. Wait a minute Mr.
20 Brown.

21 MR. TALLANT: I haven't asked my question yet.

22 CHAIRPERSON REID: Can we hear what the
23 question is first and then you can object before he
24 answers.

25 MR. BROWN: Well, I think I've heard the

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1 question.

2 CHAIRPERSON REID: But, remember, we're the
3 ones that he's really directing the questions for the
4 benefit of, okay. So I think you should let us make sure
5 that we get the question, and then we can determine whether
6 or not it's appropriate for Mr. McGhettigan to answer
7 it.

8 MR. TALLANT: Again, the question is, if you
9 have a 6,000 square foot gas station operation and as
10 an ancillary function to that gas station operation, an
11 Application comes in that would include or add a car wash
12 to that gas station operation that then exceeds the 5,000
13 or 6,000 square foot footprint for the gas station
14 operation, would that be allowed as a matter-of-right,
15 or would that expansion then be required to go before
16 the Special Exception process?

17 CHAIRPERSON REID: I would abstain the
18 objection because that is not germane to any testimony
19 here today.

20 MR. TALLANT: Well, the question was asked
21 during the testimony whether or not a car wash in this
22 situation is a matter-of-right use. And Mr. McGhettigan
23 answered in the affirmative, and I do not believe that
24 is the case, and I wish to raise my objection.

25 CHAIRPERSON REID: Oh, okay.

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1 MR. TALLANT: By clarifying.

2 CHAIRPERSON REID: Right. Mr. McGhettigan
3 said it was not a matter-of-right use?

4 MR. TALLANT: He said it was.

5 CHAIRPERSON REID: I'm sorry, he said it was,
6 and you think that it is?

7 MR. TALLANT: I think that it is not.

8 CHAIRPERSON REID: Wait a minute. I'm sorry.

9 MR. BROWN: I asked him a very specific
10 question and I concur with the Chair. I asked him a very
11 specific question as to the C-2-A zone, not of this site,
12 not in consideration of ■

13 CHAIRPERSON REID: Is a car wash a
14 matter-of-right use in this zone? That was the question.

15 MR. MCGHETTIGAN: Yes, a car wash is a
16 matter-of-right in a C-2-A zone.

17 CHAIRPERSON REID: Okay, and you're saying
18 that you don't think so?

19 MR. TALLANT: Narrowly focused, is the
20 expansion of a gas station operation and it's ancillary
21 functions, such as a car wash, does that trigger a Special
22 Exception requirement?

23 MR. BROWN: And again, I don't think Mr.
24 McGhettigan is competent to answer that question, nor
25 is it relevant. I asked a very specific question in an

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1 isolated context, and I think we're getting █

2 MR. TALLANT: Well, the question Mr. Brown
3 is too isolated, because you're not proposing a car wash,
4 you're proposing a gas station with certain associated
5 uses, and you're trying to build a case that all of those
6 associated uses are allowed as a matter-of-right. My
7 contention is, and the point I wish to clarify, is that
8 the expansion of this historically 6,000 square-foot gas
9 station operation to a nearly 40,000 square foot gas
10 station operation is a huge expansion. Even if █

11 CHAIRPERSON REID: Okay, wait.

12 MR. BROWN: But, that's not relevant to the
13 question he's asking.

14 CHAIRPERSON REID: You want to know is the
15 expansion a matter-of-right?

16 MR. TALLANT: That's correct.

17 CHAIRPERSON REID: All right. You can answer
18 that.

19 MR. MCGHETTIGAN: No, it requires Special
20 Exception.

21 CHAIRPERSON REID: Okay. Thank you. Is
22 that it?

23 MR. TALLANT: That's it.

24 CHAIRPERSON REID: Okay. Thank you very
25 much. Other government reports, we have one from DCW.

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1 VICE-CHAIRPERSON RENSHAW: Yes, we do. This
2 report is dated March 19, 2001 from Kenneth Leyden,
3 Associate Director for Planning, Department of Public
4 Works, and it states that the Department of Public Works
5 has reviewed the revised site plan and accompanying
6 descriptions of the Applicant's development proposal,
7 as described in a letter dated March 1, from the
8 Applicant's attorney, and DPW noted the following changes
9 in the development proposal as compared to the earlier
10 submissions, and they are:

- 11 1) Elimination of the car wash,
- 12 2) The reconfiguration of the gasoline pump
13 islands and parking layout; and
- 14 3) The modification of the station entrances
15 and provisions for access via the adjacent north-south
16 alleyway within Square 776, which will no longer be closed
17 per initial proposal.

18 And it states that DPW concludes that the
19 level of traffic is less than generated under the previous
20 proposal, and will not have a significant impact on the
21 operation of the adjacent intersections of H at 3rd and
22 4th Street N.E., and concludes that the proposed
23 improvements will not have any adverse traffic impact
24 on the adjacent street system and the local area.
25 Accordingly, DPW has no objection to the Applicant's

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1 proposal.

2 CHAIRPERSON REID: All right.

3 MR. BROWN: I'd like to bring it to the Board's
4 attention that you should read that report in conjunction
5 with Mr. Leyden's December 8th report, because the two
6 paint a broader and, I think respond to the full range
7 of issues raised. Again, the conclusion in a favorable
8 way, but a bigger picture. So, I just call the Board's
9 attention to that in his absence. I'm sure he would if
10 he were here.

11 CHAIRPERSON REID: Basically what he did was
12 he expanded on his earlier submission, because we asked
13 of him "do so" and he did. But, why do you think that
14 we need to also refer to the earlier submission? This
15 is broader.

16 MR. BROWN: It's broader. It paints a bigger
17 picture. Besides it's starting from one proposal to the
18 other, but it paints a fuller picture and I'm just trying
19 to be helpful here.

20 CHAIRPERSON REID: Was there anything I well,
21 if you could, was there anything that was left out that
22 you think should be noted for the record in the first
23 submission?

24 MR. BROWN: Let me get back to that page, Madam
25 Chairman. I think he made favorable reference to site

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1 access into the site.

2 CHAIRPERSON REID: Okay.

3 MR. BROWN: Which is an issue that was raised.
4 I'm sorry, I'm having trouble finding it again here.

5 CHAIRPERSON REID: Yes, so are we. It's kind
6 of buried. You want to go ahead Mr. Hall, while we look
7 for that?

8 MR. HALL: Okay, once again Rob Hall,
9 ANC-6A-01, the SMD in question for this proposed
10 development. I have here a letter from the full body
11 which was actually drafted, which I actually drafted and
12 it was signed by the Chair of the full body.

13 This report is submitted in response to the
14 aforementioned Application by BP Amoco for a Special
15 Exception for redevelopment and expansion of a gasoline
16 service station in the C-2 District. Summarily, the
17 Advisory Neighborhood Commission 6-A rests in vehement
18 opposition to the proposed redevelopment.

19 The issues are as follows: The proposed
20 design is completely inconsistent with attendance of the
21 general provisions, transportation, urban design and land
22 use elements of the Comprehensive Plan for the District
23 of Columbia.

24 The initial redevelopment design, as well
25 as all subsequently-submitted redevelopment designs are

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1 viewed to have been produced with utter disregard for
2 the community's greater vision for the planned
3 redevelopment of the H Street corridor. The imminent
4 increase in vehicular traffic that would be brought about
5 by such an expansion as this Application proposes, would
6 adversely affect the surrounding neighborhood in a myriad
7 of ways.

8 These adverse effects include by are not
9 limited to the following: an increase in noise, order,
10 and light pollution; an increased disruption to and
11 discouragement of pedestrian traffic which would harm
12 current and future commerce in the H Street corridor.

13 The Applicant seems to have embraced a
14 redevelopment philosophy that does not provide for the
15 type of design modifications requisite to make this
16 particular redevelopment project contextually
17 appropriate. From the outset and throughout this
18 process, the design issue has been belabored.

19 Virtually every major stakeholder concerned
20 with proper redevelopment of the H Street corridor is
21 emphatically against the approval of this Application
22 on this basis: Lot 53 is a unique site as it is an integral
23 part of the western gateway to the corridor. This site
24 currently presents a unique opportunity, but if poorly
25 designed and redeveloped, it has the potential to present

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1 a unique problem of endowmenable (phonetic) proportions
2 to residential and business stakeholders alike.

3 This site should not be redeveloped as though
4 it were a free-standing along the New Jersey Turnpike,
5 but as though it rests in the midst of a historic
6 neighborhood at the gateway of a historic business
7 corridor.

8 The Commission is of the opinion that the
9 proposed site design is not commensurate with the
10 historic stature of Capitol Hill and the H Street
11 corridor.

12 The proposed redevelopment does not
13 strengthen or enhance the design of the distinguishing
14 physical qualities of the neighborhood or the District.

15
16 It does not include the use of appropriate
17 arrangements of building materials, high scale massing
18 and buffering to complement the immediate region.

19 It does not provide for the development of
20 well-designed streets, sidewalks, or pedestrian ways.

21 It does not reduce conflict between
22 pedestrians and vehicular traffic nor promote pedestrian
23 safety or comfort.

24 It does not optimally utilize the design
25 opportunity presented by the site. It does not emphasize

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1 the public space as a setting for active use.

2 It does not balance a design development
3 sensitivity in order to respect the established
4 residential scale and character of the area.

5 It does not encourage the design of future
6 development to be compatible with the established
7 characters of the surroundings areas.

8 And finally, it does not emphasize the
9 activity function and visual character of the corridor
10 so as to contribute to its overall identity and sense
11 of place.

12 Our recommendation is as follows: Advisory
13 Neighborhood Commission 6-A, having properly convened
14 a meeting of the full body on Thursday, June 7th of 2001,
15 and having reached a quorum, having objectively
16 considered the presentations of both the Applicant as
17 well as opposing views from the community, did unanimously
18 vote against the acceptance of this Application, and
19 hereby recommends that BZA Application 16648, requesting
20 a Special Exception to permit redevelopment and
21 enlargement of a gasoline service station, be denied.

22 This recommendation is consistent with
23 opposition by and/or recommendations from the Stanton
24 Park Neighborhood Association, Near Northeast Citizens
25 Against Crime and Drugs, the H Street Association of

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1 Merchants and Professionals, the Residents of Square 776,
2 Scenic America, the DC Preservation League, the Committee
3 of 100 in the Federal City, the National Trust for Historic
4 Preservation, and the Government of the District of
5 Columbia Office of Planning. Sincerely, Yvette
6 Basterachea (phonetic), Chair of the ANC 6-A.

7 I'd like to add just a couple of notes
8 briefly. Another issue that I think came up here in this
9 hearing, is that there is what I consider a substantial
10 amount of information regarding this development that
11 has not been made available to the community regarding
12 the light patterns and some of the other changes that
13 they have presented here, including the expert testimony
14 by their expert witness regarding the impact of the
15 traffic situation.

16 I have some concerns about an expert witness
17 who speaks about traffic, utilizing the argument that
18 the data is simply projections, when it is convenient
19 to the argument of redeveloping this site.

20 Indeed, an opposing argument could be made
21 that his information that substantiates the idea that
22 this is a safe redevelopment project, is based on data
23 which is based on similarly collected data that has been
24 utilized to arrive at those projections.

25 So, I think that we have an issue with that

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1 idea, because it just seems to be presented as a matter
2 of convenience.

3 The photograph that Mr. Duke presented of
4 the site, I think, is very telling with regard to the
5 way this corporation has literally viewed this
6 development, because it looks just like a site that is
7 a free-standing development on the New Jersey Turnpike.

8 I've seen renderings with bricks and pretty
9 pictures which are literally real changes in the plan,
10 and I applaud each and every change that has moved us
11 closer toward some consensus. And there have been
12 changes that I believe move us toward consensus, and at
13 the very same time we are very close to consensus and
14 very far from consensus, because I think Mr. Tallant used
15 the term quite a bit that I took a liking to.

16 This corporation has a tendency to fiddle
17 around the margins a lot, and not really address the
18 concerns of the community at their core. And the main
19 thing that has not happened to this point, is that there
20 has not been a cooperative effort to redesign this site
21 within the context of the greater vision of the community
22 as a whole.

23 I see BP Amoco as a member of the community,
24 as well BP, and I would hope that BP sees itself as a
25 member of the community and instead of pouring funding

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1 into what I consider ineffective and costly litigation,
2 pour that funding into some bricks and mortar and let's
3 together achieve a consensus that is acceptable to
4 everyone here. And, I'm prepared for cross-examination.

5 CHAIRPERSON REID: Thank you.
6 Cross-examination questions?

7 VICE-CHAIRPERSON RENSHAW: I have a question
8 for Mr. Hall. Mr. Hall, did you review, did your ANC
9 review the Community Development Agreement that was
10 advanced by I

11 MR. HALL: Yes, we did.

12 VICE-CHAIRPERSON RENSHAW: I note on the last
13 page that ANC-6A is not included as signatories.

14 MR. HALL: Well, the story with that is that
15 on the, I believe it was the day prior to the meeting
16 of the full body, my experience was that I was
17 hand-delivered this agreement. Now, this agreement, and
18 I'm using the term agreement very loosely, was presented
19 on paper; however, even the signatories of this
20 "agreement" arrived at the full body meeting denouncing
21 this as even being presented as an agreement.

22 So, as far as the ANC is concerned, there
23 is no agreement. This is simply an offering. There is
24 no bargain for exchange established here. This is simply
25 an offering by BP Amoco to the community. I appreciate

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1 the offering, but have contention with the idea of calling
2 it an agreement.

3 VICE-CHAIRPERSON RENSHAW: Right. But, I
4 just wanted to ask, will the ANC be a signator to an
5 agreement? In other words, will you be working with,
6 should this go forward, will you be working with the
7 Applicant to come to an agreement on a Community
8 Development Agreement?

9 MR. HALL: I am extremely willing to work with
10 the Applicant on a Community Development Agreement. I
11 think that, like I said, we're a lot closer to consensus
12 than it appears in this hearing. I think everyone, the
13 major stakeholders, do want to see redevelopment. They
14 just are concerned with exactly how that redevelopment
15 happens and not simply seeing BP Amoco ■ the issue is
16 that BP Amoco seems to see itself as an entity that exists
17 in a vacuum, that they have not considered the
18 externalities at their core of how they're going to affect
19 people.

20 So, to answer your question, yes, I am very
21 willing to try to reach some consensus and get a unanimous
22 vote to approve this Application in a different form.

23 CHAIRPERSON REID: All right. Thank you very
24 much. Mr. Brown, this is cross-examination of ANC.

25 MR. BROWN: Just real quickly Mr. Hall, and

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1 I appreciate your willingness. By the way of background,
2 historically ANC's don't sign these agreements. If you'd
3 like to be participating. CHAIRPERSON REID:
4 Your question would be?

5 MR. BROWN: The Agreement was marked "draft"
6 wasn't it?

7 MR. HALL: Yes, the agreement was marked a
8 draft.

9 MR. BROWN: And to help the process, could
10 you enumerate the specific items you object to? Not that
11 it's incomplete, but for instance, can I give an example?

12 If we say that the hours of operation for the Walbean
13 Café are X hours, and you think it should be different.

14 What in the agreement specifically, do you object to?

15 CHAIRPERSON REID: Oh, no. No. No. No.
16 No.

17 VICE-CHAIRPERSON RENSHAW: We're not going
18 to get into that or we'll be here forever.

19 CHAIRPERSON REID: That is a conversation to
20 have after we're done today. Sit down at the table and
21 hammer out what's and where on both sides and see if you
22 can come to some type of real agreement, and we'd be very
23 open to looking at what you've agreed upon and to see
24 what bearing that has on the decision that we'll be making.

25 But, that can't be done right now. That's too long and

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1 protracted, not something you can just very quickly derive
2 here right now. Okay.

3 MR. BROWN: That's all I have Madam.

4 CHAIRPERSON REID: Thank you. We have one
5 other letter from a single member District
6 Representative, 6A-03, Mr. Keith Jarrell, who has sent
7 a letter basically in opposition to the Application and
8 he's saying the same thing that Mr. Hall has stated, that
9 they'd like to have more communication with BP. They're
10 looking for a resurgence of the H Street corridor, and
11 they'd like to have something consistent with the concerns
12 of the community, and they don't feel there's been enough
13 dialog with BP and the community, and that they would
14 like to, let me just quote this salient part.

15 "They're done. They pull out all stops and
16 hopes of bringing people and organizations into the
17 discussion that really doesn't play any part in the
18 concept of the immediate community. What they have done,
19 doesn't hold any building momentum in formulating a Board
20 to speak on behalf of their proposal, when in reality
21 all they needed to do was redesign the station, listen
22 to the desires of the people that would live near the
23 new station as well as the potential customers. Their
24 inability to listen to us now will only resonate into
25 years of not keeping their promises and not playing the

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1 part of being involved like they now suggest."

2 And, because of that, basically he's saying
3 that he does not support the Application. So it's the
4 same type of message that's being sent from the community.

5
6 Oh, that's another ANC? Okay, I'm sorry.

7 VICE-CHAIRPERSON RENSHAW: We have a letter
8 dated March 19 from Commissioner Daniel Pernell III.
9 He states that it's in reference to this BZA Application
10 and that representatives of BP Amoco have come before
11 6A Commission on three or more occasions.

12 They have gone with the community concerns
13 and on Thursday, March 1, 2001 during a separate meeting,
14 Mr. McCrea did meet with Mr. Pernell, Commissioner Pernell
15 and four other 6A Commissioners at an original meeting
16 site to share concerns but they did not have a quorum.

17 They just had a general discussion. And Mr. McCrea
18 responded that he would get back to ANC-6A with his final
19 results of the Amoco project.

20 And Commissioner Pernell stated that as of
21 Monday, March 19, 2001 he had not heard or received the
22 final results of Mr. McCrea or Ms. Robinson's concerns
23 or resolution. "Nevertheless, I am writing this letter
24 to let the Zoning Commission members know that as the
25 bordering Commissioner, I will support any and all issues

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1 or concerns that Ms. Sara Robinson and Mr. Mackie McCrea
2 have with BP Amoco.

3 CHAIRPERSON REID: Now, who are they? Who
4 are they?

5 VICE-CHAIRPERSON RENSHAW: Sara Robinson is
6 right in the audience.

7 MR. GRIFFIS: They're parties.

8 CHAIRPERSON REID: All right.

9 VICE-CHAIRPERSON RENSHAW: They're parties
10 and they will be addressing that, so perhaps they could
11 comment on this letter also.

12 CHAIRPERSON REID: All right. Thank you very
13 much. Mr. Hall, the ANC or the 6A will receive the great
14 weight to which it's entitled, as will the Office of
15 Planning, and incidentally, the speaker for the Office
16 of Planning, that was a very illustrative presentation
17 you made Mr. McGhettigan. Really loved that.

18 MR. MCGHETTIGAN: Thank you.

19 CHAIRPERSON REID: All right. We have one
20 more government report and that's from the Metropolitan
21 Police Department.

22 COMMISSIONER HOOD: Yes, Madam Chair. We
23 have a letter dated May 8, 2001 from MPD, Metropolitan
24 Police Department, and the salient highlights of this
25 letter is saying "I do not feel it is in the best interest

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1 of the Department to commit resources to a work station"
2 and it goes on to say "should BP Amoco gain enough
3 community support to proceed with the gas station, MPD
4 will provide the required level of patrol and the strategy
5 necessary to maintain a high quality of life in the
6 neighborhood." And, it's signed by William McManus,
7 Assistant Chief of Police.

8 CHAIRPERSON REID: Thank you very much. Okay
9 now, persons and parties in support of the Application,
10 persons and parties in opposition. All right. Parties,
11 Ms. Robinson, Mr. McCrea, Mr. Tallant, come up. We can't
12 hear you back there, so you must come up to the mike and
13 speak to us.

14 MR. TALLANT: Drury Tallant speaking for the
15 Stanton Park Neighborhood Association. Scenic America
16 has requested that they could make their presentation
17 in advance of mine so that Mr. Esocoff could get to another
18 meeting. He's doing this work pro bono, and has already
19 been here for far longer than anyone expected.

20 CHAIRPERSON REID: Who has asked that?

21 MR. TALLANT: The architect that Scenic
22 America engaged to do an alternative proposal.

23 CHAIRPERSON REID: Are they parties?

24 MR. GRIFFIS: They haven't been granted party
25 status.

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1 MR. TALLANT: They don't have party status,
2 no.

3 CHAIRPERSON REID: Wait a minute. Right now,
4 it's the people with party status.

5 MR. TALLANT: Okay.

6 CHAIRPERSON REID: Now, you were going to make
7 a presentation? Basically, you were just going to speak
8 in opposition.

9 MS. MAGUIRE: Speak as an expert witness in
10 opposition.

11 CHAIRPERSON REID: Well, no wait a minute.
12 You have to have a party status.

13 MS. MAGUIRE: I am a neighborhood resident.

14 CHAIRPERSON REID: I understand that, but I

15 MS. BAILEY: Ma'am you're not able to speak.

16 CHAIRPERSON REID: Come up here. You have
17 to have been granted party status. Who wants to speak
18 out of sequence? There is someone else here?

19 MS. MAGUIRE: Scenic America and the
20 architect, Mr. Bill Esocoff.

21 CHAIRPERSON REID: Okay now, Scenic America
22 is a neighborhood organization?

23 MS. MAGUIRE: Scenic America is a national
24 non-profit organization with expertise in matters of this
25 kind, and we I I am also a resident of 631 Maryland Avenue

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1 N.E., a member of the Stanton Park Neighborhood
2 Association. I formerly had an office in the office
3 building just behind this. So, I have both a personal
4 interest and a professional perspective to bring to this
5 commission.

6 CHAIRPERSON REID: Scenic America is speaking
7 on their own behalf or on behalf of someone else?

8 MS. MAGUIRE: We are speaking on our own
9 behalf. We are a national non-profit conservation
10 organization located on Capitol Hill.

11 CHAIRPERSON REID: And you live? And you're
12 located within 200 feet of this particular site?

13 MS. MAGUIRE: No, I do not live within 200
14 feet of the site. I live at 631 Maryland Avenue N.E.
15 in the affected neighborhood.

16 CHAIRPERSON REID: And you just want to
17 testify?

18 MS. MAGUIRE: Yes.

19 CHAIRPERSON REID: And when you say Scenic
20 America, how many people are with Scenic America?

21 MS. MAGUIRE: How many people are here with
22 Scenic America?

23 CHAIRPERSON REID: Yes, speaking on behalf
24 of.

25 MS. MAGUIRE: I am only here on behalf of

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1 Scenic America. Mr. Phil Esocoff, a prominent architect
2 in the District of Columbia, is doing virtually pro bono
3 work for Scenic America on this project, to illustrate
4 the necessity of a proper design process which can help
5 resolve many of these issues.

6 CHAIRPERSON REID: Okay, so Mr. █ what's his
7 name?

8 MS. MAGUIRE: Esocoff.

9 CHAIRPERSON REID: Mr. Esocoff is speaking
10 on your behalf?

11 MS. MAGUIRE: Yes.

12 CHAIRPERSON REID: For Scenic America?

13 MS. MAGUIRE: I will open the remarks and he
14 will do the bulk of the presentation.

15 MR. BROWN: Madam Chairman, I understand and
16 perhaps this is a suggestion you made to me. Mr. Esocoff
17 is here with Scenic America. They're not entitled to
18 party status. Whether they're even entitled to be
19 persons I'm not going to go near.

20 But, they're coming with an alternative plan
21 is my understanding, based on information we have.
22 Competing plans before the BZA, or to come with a plan
23 that competes or tries to overshadow what I'm presenting,
24 I don't think is an appropriate exercise for the Board.

25 I'm not saying that Mr. Esocoff can't provide

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1 us information. We'd like to see his plan, but then all
2 of a sudden we're talking about my talking about his plan.

3 I'm here to talk about my plan and I think the people
4 here who are here need to be talking about my plan. So,
5 I object to the entire process.

6 CHAIRPERSON REID: Okay, wait one second Mr.
7 Brown. Ms. Sansone, in this instance where you have
8 someone who does not have party status, having an expert
9 witness to speak on their behalf, we have not had this
10 happen before. So, would you please weigh in on this
11 matter as to the correct procedure and if it's
12 appropriate?

13 MR. TALLANT: Can I ask a question?

14 CHAIRPERSON REID: Let Ms. Sansone. Please
15 Mr. Tallant, let group counsel speak and then you'll have
16 an opportunity to speak.

17 MS. SANSONE: Madam Chair, I don't think there
18 would be any problem with them. I believe they're
19 entitled to three minutes or maybe it's five minutes under
20 our rules, to just provide their information as persons
21 interested in making comments just like anyone else.

22 CHAIRPERSON REID: I understand that, but
23 we have an expert witness part, speaking on behalf of
24 another person testifying without party status.

25 MS. SANSONE: I believe he could I well, the

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1 organization would only be, it's my recollection it's
2 five minutes. So, they would have to split up.

3 MS. MAGUIRE: We will only take five minutes
4 for the presentation.

5 CHAIRPERSON REID: So, that's okay.

6 MS. MAGUIRE: I don't see any problem with
7 that.

8 CHAIRPERSON REID: Okay.

9 MS. MAGUIRE: Thank you.

10 MR. BROWN: Madam Chairman, but then I

11 MR. TALLANT: My question, Madam Chairman?

12 CHAIRPERSON REID: Excuse me one second.
13 First, let us deal with this particular issue.

14 MR. TALLANT: It's germane.

15 CHAIRPERSON REID: Okay.

16 MR. TALLANT: Whether or not it would be
17 permissible to have Mr. Esocoff appear as my witness.

18 CHAIRPERSON REID: Well, yes. You're a
19 party.

20 MR. TALLANT: I'm a party, correct.

21 CHAIRPERSON REID: So, yes you can have an
22 expert witness so that takes care of it. Okay, fine.
23 Move on.

24 MR. TALLANT: Then I would like to ask that
25 Mr. Esocoff be heard as a witness to the Stanton Park

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1 Neighborhood Association.

2 CHAIRPERSON REID: All right. Come up Mr.
3 Esocoff.

4 MR. BROWN: Madam Chairman, to save some time,
5 if we could proffer I again my understanding is that Mr.
6 Esocoff has got a plan of his own for my project, and
7 I say that, and I don't think that's an appropriate I

8 CHAIRPERSON REID: Well, Mr. Brown I

9 MR. BROWN: Well, that's why I'm asking for
10 a proffer.

11 CHAIRPERSON REID: Allow them to begin their
12 presentation and then if you want to object, but that
13 does not preclude them from being able to proffer anything
14 to us that they want to really. We can't tell them "oh,
15 well you can't present us with whatever you want to say."

16 MR. TALLANT: If I could make just a few
17 preliminary comments to Mr. Esocoff's presentation.
18 Back immediately following the December hearing, Mr.
19 Brown wrote a letter to many individuals and organizations
20 requesting the consolidated and coordinated input and
21 I quote Mr. Brown letter of December 21st "consolidating
22 and coordinating input of various elements of the
23 community."

24 In a two-week period over the Christmas and
25 New Years holidays, we responded to Mr. Brown, and Scenic

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1 America was one of the organizations that was included
2 in that letter. And, we put certain ideas on the table
3 with regard to how a gas station could be designed on
4 this site in a manner acceptable to the community. Mr.
5 Brown never responded to that letter.

6 Mr. Esocoff has been engaged by Scenic
7 America, merely to demonstrate that there are alternative
8 possibilities for how a gas station could be constructed
9 on this site in a manner that is acceptable to the
10 community.

11 CHAIRPERSON REID: Okay. That's fine.

12 MR. TALLANT: I'm not saying that this project
13 is acceptable, because I haven't seen this presentation
14 either.

15 CHAIRPERSON REID: Well, we'll make that
16 determination. Mr. Tallant, then you lead off and then
17 you can have Mr. Esocoff.

18 MR. TALLANT: That was my lead off. I
19 introduce Mr. Esocoff.

20 CHAIRPERSON REID: Then the other persons,
21 the parties can speak and we can get through this.

22 MR. BROWN: Madam Chairman, I still have to
23 renew my objections because again, we're not I've got
24 an Application before the Board. I've made a
25 presentation and then I think the duty of the Board and

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1 the parties involved is to respond to that, not to come
2 back with "gee, this might be better." That puts the
3 Board in a difficult position. You need to decide on
4 the merits of my Application, what I've put forward, and
5 not judging it against something else.

6 COMMISSIONER HOOD: Madam Chairman, can I
7 just interject. They only have five minutes.

8 MR. BROWN: Well, that's not true.

9 COMMISSIONER HOOD: We've spent about ten
10 minutes going through this. They would have been over
11 and done with, I believe. Am I correct? I think they
12 only have five minutes.

13 CHAIRPERSON REID: Members, are you in
14 agreement to allowing them to proceed?

15 MR. GRIFFIS: I am in agreement to allowing
16 them to proceed. I think what we're trying to do in this
17 Special Exception is form a judgment based on criteria
18 and based on information. I think this may, in fact,
19 be pertinent to the issues that we're trying to deal with.

20 MS. ROBINSON: May I say something please?
21 She had already asked me for permission to go ahead of
22 us, the Square.

23 MR. TALLANT: I yield to Sara and Mack to go
24 first.

25 MS. ROBINSON: Okay, so regardless of whether

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1 you're going to listen to them or not, could you just
2 please hear the community. My name is Sara Robinson.
3 I live at 816 █

4 MR. McCREA: Excuse me before you go forward.
5 Madam Chair, what am I hearing? Am I hearing an
6 individual or am I hearing an organization? And do we
7 need to █

8 MS. ROBINSON: I'm an individual.

9 MR. TALLANT: She's an individual.

10 CHAIRPERSON REID: Ms. Robinson is a party.

11 MR. McCREA: Okay.

12 MS. ROBINSON: No, I'm just coming as a
13 representative of Square 776 who, me and Mr. McCrea █

14 COMMISSIONER HOOD: Madam Chair, your
15 microphone.

16 CHAIRPERSON REID: You are in an organization
17 together, right?

18 MS. ROBINSON: Yes.

19 CHAIRPERSON REID: All right. Go ahead,
20 proceed.

21 MS. ROBINSON: My main thing █

22 CHAIRPERSON REID: Name and address.

23 MS. ROBINSON: My name is Miss Sara Robinson.
24 I live at 816 4th Street N.E., Washington. Me and Mr.
25 McCrea has been working closely with the neighborhood.

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I think the main thing that really frustrates me with all entities involved in this process is that we become last on their agenda list, you know. We are the people who will be most affected by whatever BP Amoco do with their lot, and even the vacant lot they have abandoned.

8

9

Everybody else has come forward and all of a sudden we are the gateway to the new H Street corridor.

10

11

12

13

Like I've told everybody, nobody told the residents this, you know. We become the last on the agenda pole. We are the ones who have been policing this neighborhood for the last thirty years.

14

15

16

17

18

Most of these families that live in the neighborhood have been there over thirty to forty years.

So, we have been policing our own neighborhood even before BP Amoco came and tore down all the abandoned buildings.

19

20

21

22

23

24

25

It's very frustrating to hear all these plans, all these different ideas and nobody talks to us.

Now, Mr. Brown stated that lighting was on the back burner. As far as February 3rd, the first meeting we ever had with him, we stated that lighting, we had a whole list A through J, of things that we wanted them to work on.

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1 The thing with BP Amoco is they have their
2 own agenda. It's like ram it, ram it, ram it, ram it.

3 And, they don't hear us. We had the first meeting in
4 October of 2000. They didn't come to meet with the Square
5 until February 3 of 2001. We had two meetings and both
6 of those meetings happened because you, the Board, told
7 them to meet with us.

8 Now, everything has changed. The ANC
9 changed. They got new members. We get different
10 lawyers, different attorneys from meeting to meeting.
11 The neighborhood stayed the same. They have voiced the
12 same concerns over and over again, you know. And, it's
13 like nobody hears.

14 My concern is that like Mr. Hood said, if
15 you sit down and talk with them, they draft a letter.
16 The last ANC meeting, they gave us the draft letter.
17 That's from the meeting that we had May the 12th, and they
18 drafted this draft Voluntary Agreement which was bogus.

19 We said "put up a brick fence." They said "a wood fence."

20 You see what I'm saying? And it's like we got our own
21 agenda.

22 Basically Mr. Faletto said it at the last
23 meeting when we were in the hall. He said he don't have
24 to do whatever he | he's not obligated to meet our
25 concerns, you know.

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1 The arrogance of Amoco is what's keeping them
2 from getting this through. Their arrogance and their
3 just not listening to us as people, and not as a business,
4 just as a person. Everybody got their own agenda,
5 politics, political rise on the ANC.

6 I mean, it's just been so frustrating. I'm
7 just a person that lives on 4th Street that love my
8 neighbors and love my neighborhood. That's all. And
9 the concern for us as a neighborhood has been so lacked
10 by all entities, you know.

11 We got all this attention now because they
12 bought the property, but where was the attention before
13 they bought the property? We don't know nothing about
14 it.

15 Now, they did us a favor by demolishing that
16 property on 4th Street and H Street, because it eliminated
17 all the drug activity in those abandoned buildings.

18 We had called, like I said, we police our
19 own neighborhood. We called every entity in the City
20 trying to get people to shut those buildings down and
21 do what we asked. We call when abandoned cars are in
22 the alley. We did all the things we did as a neighborhood.

23 But now, all of a sudden everybody wants to come in and
24 tell us what to do now. So, don't tell me what to do,
25 just listen to what I want as a resident of that Square.

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1 Now, we had major problems with them during
2 the construction period, and it's in the files. I have
3 pictures. This is 4th Street back and front side. This
4 is I Street. This is the back and front side.

5 Now, their construction started on October
6 3, 2000. They closed this alley. We was up here in a
7 Board room of BZA meeting about closing the main alley
8 they was trying to close. The alley stayed closed for
9 over four months, well for construction sense.

10 They came in to the neighborhood. Okay,
11 this is the garages. We had six garages in the back.
12 There's three here, three behind there. They came in,
13 tore those garages down. Those garage doors were torn
14 down December 4th. The debris, this is how they left it
15 scattered over the alley from the 4th through the 8th of
16 December. The construction crew pulled down the garages
17 door, put all the debris in the alley, left it for a week.
18 Two days before, we had a meeting with them and told them
19 about all the debris that was left.

20 February 3rd they came down and knocked down
21 the garages, and the garages, the bricks stayed however
22 construction left at sundown, that's what we dealt with
23 throughout the night until the next day until they cleared
24 it away. So you got a whole day of the alley was closed
25 on H Street with a fence. The alley was closed on I Street

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1 midway with a fence. And, the bricks were scattered.
2 There's no picture of that, but the bricks were scattered
3 all along there.

4 After that, they started with the houses on
5 H Street, 4th Street. Those houses were torn down and
6 this is what happened. Now all this debris, each day
7 the horror became more unbelievable. These trees were
8 stacked as high as my backyard fence. There was no access
9 to the back of our houses through the alleys, only the
10 small alley on I Street, which a car can barely move.
11 That's one of the smallest alleys in that neighborhood.

12 Next to the trees there was a dumpster. The
13 dumpster covered Mr. McCrea's house, which is 814 and
14 812. That set beside the trees. Next to the trees set
15 two bulldozers, two big Caterpillars. Now, I'm not
16 talking day-to-day, this is like week-to-week, until they
17 cleared that whole two block area radius. They set
18 between 814 all the way to 810.

19 As you can see right here, that's just how
20 close they were to our houses. If there had been a fire,
21 a bomb, anything, if anybody had to come, if any emergency
22 vehicle had to come to our houses and enter through the
23 back, the whole block would have went up. There was no
24 access.

25 Now mind you, BP Amoco, that lot they're

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1 trying to build on now, it was empty. They had put a
2 fence around it and it was empty. Nothing was there,
3 but they decided to pull all this machinery right in the
4 back of our houses and it set there for days and days
5 until they completed construction.

6 On October 3, 2000 that's when the Besto
7 (phonetic) crew came out. They put a dumpster right in
8 the doctor's office, and they filled that dumpster up.

9 With what, I can not tell you. But that dumpster set
10 from October 3, 2000 until the end of February, 2001.
11 Then they pulled that out in the alley on top of all the
12 other stuff you saw today.

13 Their lack for us as people was just, it was
14 just overwhelming. Everyday you came home, it was just
15 something different to deal with, you know.

16 On top of listening to them go to all the
17 different entities and get people who did not live nowhere
18 close to this project, like this bogus Linden Agreement.

19 He lived on 12th Street. I mean, that's how they do
20 things. They get people in place.

21 Like the traffic man. If he went up between
22 3rd and 4th Street, up that street, he went up a one-way
23 street. It's a one-way, okay. We never seen that man
24 before, Mr. George I believe is his name. We never seen
25 him. The lighting fixtures, we never seen it. And it's

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1 just so easy, just like I told them at the last ANC meeting,
2 if they would just listen.

3 Regardless of how they design this property
4 or what design if it's the Office of Planning, their
5 design, the bottom line is they're going to make money.

6 And how can you tell me you're going to add four pumps.

7 That's just common knowledge to me, add four pumps, more
8 traffic, more service. You wouldn't be trying to explain
9 if you didn't think you were drawing more cars into the
10 neighborhood. That just doesn't make sense to me.

11 They've done a lot as far as the downsizing,
12 but as Mr. McCrea can tell you, I never thought the big
13 70,000 square foot gasoline station was really on I I
14 really in my heart of hearts, I really don't believe they
15 really want it there. I believe what they're offering
16 now is what they really wanted from Day One. It's just
17 that they can come before you now and say "yeah, we
18 downsized. We did this. We did this. We did this."

19 A car wash in a residential neighborhood,
20 to me is just the craziest thing I've ever heard. A
21 gasoline station of that magnitude is just the craziest
22 thing I've ever heard in my life, and to think that they
23 could come into our neighborhood and build a car wash
24 that size is really bogus to me.

25 My other concern is the owner. I spoke to

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1 him and didn't even know who he was until Mack said that's
2 the owner. This man was very negligent. The gasoline
3 station was dirty, trifling. People just hung out there.

4 The panhandlers were there. One of the guys that hung
5 out there, I caught him on a Saturday I not a Saturday,
6 a Sunday afternoon, 3:00 in the afternoon with a crow
7 bar and a hammer trying to get in my back door. He did
8 not keep it clean. He was not I now this was just a small
9 little space he was operating. I told him on several
10 occasions we had not seen him.

11 You would think if they were going to keep
12 this man as an owner, that he would be somewhere at a
13 meeting saying "yes, well I'm sorry." Yes, he did one
14 meeting that I attended, but other than that, I haven't
15 seen him since October of 2000.

16 They've been speaking on his behalf. That
17 Agreement they have presented is just bogus. It's just
18 bogus. We definitely do not want that owner back in there
19 running a place of that magnitude. The café, we see that
20 as a loitering hall for all the riff raff in the
21 neighborhood, you know.

22 They tell you the police did not want to
23 invest money, but they tell us they offered the premises
24 to the police, and the police turned them down. Now,
25 they didn't tell us they wanted the police to invest some

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1 money in there. They said "oh, well we're going to set
2 this up. We're going to have this with them and this
3 with that and they don't want it" which was crazy to me
4 again.

5 What I'm saying to Amoco and to this
6 Committee is service is everything. If all of us is here,
7 you know, for service. In the community, you just got
8 to hear us and take our concerns into great consideration,
9 because we're the ones I when they pack up and go back,
10 we're going to have to deal with what's left there. I
11 just ask that you all just, I'm not in agreement with
12 this. I'm far from it.

13 We only met twice and that's because we had
14 to. You know what I'm saying? It's not because they
15 wanted to, we had to. So, until they really sit down
16 and really understand what the community wants and listen
17 and hear us, then we're going to be here I mean, it's
18 going to be a revolving door. And, I'll let Mr. McCrea
19 finish.

20 CHAIRPERSON REID: Thank you. Thank you very
21 much for your presentation. Are there any questions?
22 Any cross-examination? Mr. Hart, we didn't time. I
23 think we have five minutes for organizations, per person.

24 Just put it on. I'll start with Mr. McCrea, but we just
25 kind of got caught up and didn't really time you or realize

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1 that you weren't being timed, but thank you.

2 MR. ROBINSON: Thank you.

3 MR. McCREA: Thank you. I just have a brief
4 statement and then I'm going to I

5 CHAIRPERSON REID: Name and address.

6 MR. McCREA: Excuse me. My name is Mackie
7 J. McCrea. I live at 814 4th Street N.E. I'm a resident
8 of the neighborhood, and I stand here before you tonight
9 to represent the Residents of Square 776.

10 I'm going to try to read a brief statement
11 I have and then I'm going to touch on some of the testimony
12 that I saw going on previously, and then if I can, I would
13 like to run over those pictures real quick because I think
14 a picture says more than a lot of words.

15 CHAIRPERSON REID: Which pictures?

16 MR. McCREA: The pictures I showed you.

17 CHAIRPERSON REID: No. Don't do that.
18 We've already seen the pictures.

19 MR. McCREA: Okay.

20 CHAIRPERSON REID: You can refer to them but,
21 you know, it's twenty minutes to 8:00, so if you could
22 just give us, you know, your presentation and not go
23 through the pictures again.

24 MR. McCREA: Okay.

25 CHAIRPERSON REID: We saw the pictures.

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1 MR. McCREA: Okay.

2 CHAIRPERSON REID: Thank you.

3 MR. McCREA: Sure. Madam Chairman, members
4 of the Board, on behalf of the residents, property owners,
5 and neighbors of Square 776, I thank you for the
6 opportunity to testify, and for all of your efforts in
7 resolving this development issue.

8 I must admit to you that at the last hearing,
9 I thought the matter would be resolved between both
10 parties. Regretfully, this is not the case.

11 Members of Square 776 have met just a few
12 times with BP Amoco and their fine team of lawyers with
13 very minimal results. It appears that they are not
14 willing to listen to Square 776, nor the ANC, nor the
15 Revitalization Committee, nor other civic associations,
16 nor to the Office of Planning, who by the way are the
17 professionals when it comes to development. Yes, we have
18 talked, but they have selectively picked only what they
19 wanted to hear at the detriment of our community.

20 As it stands today, we cannot support this
21 project. No agreement has been made. No agreement has
22 been negotiated. In respect to this draft agreement,
23 please, I ask the Committee to stop referring to this
24 as an agreement. This is trash (rips up "agreement").
25 It was never discussed with us. No agreement has been

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1 made at all.

2 We ask the members of the BZA Board to send
3 a very strong message to this foreign corporation and
4 others that may follow that we strongly encourage
5 neighborhood development, but it must be good
6 neighborhood development, but not at the expense of the
7 neighborhood. We will not tolerate that. Do not allow
8 them to trump the public good for their private gain.
9 I respectfully ask you to vote no to the Special Exception
10 and the expansion. Thank you.

11 CHAIRPERSON REID: Thank you.

12 MR. McCREA: If I may, just a couple of things
13 he mentioned. There was some testimony about the Public
14 Works and Mr. Leyden's report. There are some errors
15 in this report that I think is clear to point out. He
16 mentions in the report that 4th Street is a collector
17 street. It's a collector street on the east side of 4th
18 Street. On the side that we live on, the collection is
19 done in the rear, and that's the rear that they blocked.
20 That's why I wanted to show you the pictures.

21 CHAIRPERSON REID: We have the pictures in
22 the record.

23 MR. McCREA: Furthermore, we attempted to
24 contact DPW twice in regards to this issue, prior to the
25 construction, during the construction, et cetera, and

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1 they declined to comment.

2 In respect to the alley closing, they
3 actually said they had no jurisdiction. They would not
4 respond to any of our letters. When we got Mr. Leyden's
5 letter, I wrote a letter personally to, at that time the
6 Acting Director, Ms. Lisa Holene, asking her to please
7 meet with us, with DPW have their people come out, have
8 them take a look. Let's walk the site together. We
9 received no response from them whatsoever.

10 With respect to the traffic guy, I know he's
11 an expert and I know he means well, but a lot of things
12 he simply missed. Certain streets go certain ways and
13 that's a fact, in that neighborhood. All you have to
14 do is come to the community and ask us. We have never
15 been given allowed to give some positive input to this
16 project, and it's been ramrodded through.

17 Finally, and I know the hour is long, and
18 I would stop by saying this last thing. It really
19 concerned me deeply when they made a really ramrod attempt
20 to close that alleyway. Essentially, what they were
21 going to do was cut off the access to our trash, our fire,
22 et cetera. I could not get into my back yard, and they
23 did it for three months anyway. The nerve of them. The
24 nerve of them to even suggest that without talking to
25 us whatsoever, and they were trying to ramrod that

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1 through.

2 And through this whole process, I think
3 they've been very insensitive and they would not listen,
4 and frankly I think that this project could have been
5 worked if they were willing to talk to all parties involved
6 face-to-face and hear what we had to say. Thank you very
7 much for your time.

8 CHAIRPERSON REID: Thank you. Board
9 members, questions? All right. Thank you.

10 VICE-CHAIRPERSON RENSHAW: I do. One
11 question.

12 MR. McCREA: I know you don't want to see these
13 pictures, but in respect, I know they had the charts up
14 there full and sometimes those architectural drawings
15 don't show the true picture. But, if you look at this
16 picture, it will show you the 30-foot brick wall that
17 we had that sort of like served as a protective cocoon
18 and protected us through the years and a picture's worth
19 its weight in gold, and, I just want you to take a quick
20 look at this.

21 VICE-CHAIRPERSON RENSHAW: Mr. McCrea, may
22 I ask you a fast question?

23 MR. McCREA: Sure.

24 VICE-CHAIRPERSON RENSHAW: Do you know, did
25 you inquire of BP Amoco, whether BP Amoco had a permit

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1 to close the alley? Did you ever see a copy of any permit?

2 MR. McCREA: No, we did not. In fact, we
3 actually contacted all parties that we thought had the
4 jurisdiction, from City Council members to the Office
5 of Planning, to the BZA Board, to the fire department,
6 the police department.

7 By the way the fire department and the police
8 department actually passed on it. We talked to that thing
9 down at 801, what's that called? The Water Department.

10 And eventually, I think, BP Amoco did rescind the
11 Application. They did rescind it, but only after they
12 were encouraged to do so strongly.

13 VICE-CHAIRPERSON RENSHAW: By your
14 organization?

15 MR. McCREA: To be honest with you, I don't
16 think it was a matter of our organization. I think it
17 might have become a nightmare for them politically.
18 That's the only reason they didn't want to close the alley,
19 because the intent was to take over that entire Square
20 as if we didn't exist. The intent was to build a New
21 Jersey-type Turnpike gas station over the entire Square.

22 VICE-CHAIRPERSON RENSHAW: Okay.

23 MR. McCREA: This is another I

24 VICE-CHAIRPERSON RENSHAW: And who owned
25 these garages?

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1 MR. McCREA: I believe, and BP Amoco can
2 correct me, it was owned probably by the Stewart Petroleum
3 Company (phonetic) prior to being turned down. And I
4 think they still may be involved in it.

5 VICE-CHAIRPERSON RENSHAW: Okay. Thank you.

6 MR. McCREA: Sure.

7 CHAIRPERSON REID: Thank you very much.

8 MS. ROBINSON: One more thing before I leave.

9 Ask them how many times have they sent a crew out to
10 sweep the alley since they finished construction? Ask
11 them how many times have they sent someone out to cut
12 the weeds and cut the grass since construction period
13 ended?

14 CHAIRPERSON REID: Ms. Robinson.

15 MR. ROBINSON: Yes, ma'am.

16 CHAIRPERSON REID: When we had
17 cross-examination of the Applicant, you didn't come up
18 and ask any questions.

19 MS. ROBINSON: No ma'am.

20 CHAIRPERSON REID: That's one reason, that's
21 one benefit of having party status. That would allow
22 you to ask whatever the questions you want to ask.

23 MS. ROBINSON: What happened was when you
24 asked for the parties, Mr. Drury stood up and you
25 acknowledged him.

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1 CHAIRPERSON REID: Mr. who?

2 MS. ROBINSON: Mr. Tallant, Drury Tallant
3 stood up and you acknowledged him. We were sitting back
4 there all the time.

5 CHAIRPERSON REID: But every time I said I

6 MS. ROBINSON: I understand what you're
7 saying.

8 CHAIRPERSON REID: I'm saying this because
9 sometimes people don't understand the procedure, but
10 every time I

11 MS. ROBINSON: I'm very new to this ma'am.
12 I'm very new to this.

13 CHAIRPERSON REID: Every time I asked for
14 cross-examination.

15 MS. ROBINSON: Right. I understand I could
16 have asked him a question, but on the same hand I on the
17 same token, I wanted to be able to present myself without
18 interruption. Like Mr. Tallant got up and the ANC guy
19 got up and you had to cut them off because they were making
20 comments. I had more comments that I did questions, you
21 understand?

22 CHAIRPERSON REID: We'll make sure the
23 question is asked. Thank you.

24 MS. ROBINSON: Okay, thank you so much.

25 MS. MAGUIRE: Madam Chair, can Mr. Mackey

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1 submit his photographs for the record, or copies?

2 MR. McCREA: Actually, each one of you should
3 have these.

4 CHAIRPERSON REID: We have copies of these
5 in the file.

6 MR. McCREA: We just got these blown up,
7 that's all.

8 CHAIRPERSON REID: Thank you so much. Is it
9 Mr. Mackie or Mr. McCrea?

10 MS. MAGUIRE: McCrea.

11 MR. McCREA: Mr. McCrea, but Mackie is fine.
12 I have no problem with that.

13 CHAIRPERSON REID: Thank you. Thank you very
14 much. Mr. Esocoff and Mr. Tallant, and there was one
15 other witness? Scenic America?

16 VICE-CHAIRPERSON RENSHAW: Scenic America.
17 She's back there.

18 CHAIRPERSON REID: Are you going to speak?

19 MS. MAGUIRE: I'll speak after they speak.

20 CHAIRPERSON REID: No, you should come up now.
21 Is there anyone else here who wants to speak in
22 opposition? All right, then these three are the last
23 ones, okay.

24 MR. TALLANT: Before getting to my own
25 testimony. I am Drury Tallant again, Stanton Park

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1 Neighborhood Association. I live at 730 3rd Street N.E.
2 about a half a block or so from this gas station.

3 Before I get to my own comments, I'd like
4 to introduce Mr. Phil Esocoff. He's a Fellow of the
5 American Institute of Architects. He's designed many
6 projects in the D.C. area. I won't enumerate them. What
7 I would like to make clear, is that this presentation
8 is not made to demonstrate the answer to this gas station
9 on this site, merely to illustrate that there's other
10 potential designs and other ways to solve the problems
11 of a gas station in an urban neighborhood.

12 From Day One, the community has asked BP
13 Amoco to design a gas station that fits within the urban
14 fabric. BP Amoco has adamantly refused to do that. I
15 think that Scenic America finally got so frustrated with
16 that refusal, that they decided to engage their own
17 architect to demonstrate that such things were possible.

18 So, it's not a demonstration of any kind of
19 engineering solution. It's merely a call for Amoco to
20 engage the community in a design process that arrives
21 at some level of agreement. With that, I introduce Mr.
22 Esocoff.

23 MR. ESOCOFF: My name is Phil Esocoff. I'm
24 an architect in the District of Columbia, and I'm also
25 a resident at 2311 Connecticut Avenue N.W., Calirama

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1 (phonetic) Historic District. I've been here twenty
2 years. I've been practicing for twenty years.

3 I now operate a firm in the east end and I
4 have a lot of experience in historic districts, especially
5 with in fill development, and also with HPRB and planning
6 the developments. Bookings Institution (phonetic) was
7 one of the projects I took through about five or six years
8 of PUD's. It's now a completed residential and office
9 building for Carnegie Endowment.

10 I've also worked on the renovation of the
11 Chilean Embassy, the renovation of Greyhound Bus Terminal
12 into 1100 New York Avenue. I won a Historic Preservation
13 Review Award, currently working on the Jefferson which
14 is Square 457-C across from Shakespeare Theater. It
15 includes Clara Barton's offices and 423 residences,
16 underground parking, a supermarket and a new home for
17 Woolly Mammoth Theater Company. So, a gas station is not
18 too difficult or complex a situation for me to deal with,
19 compared to some of those.

20 Usually I'm on the other side. I haven't
21 been here testifying against anything or offering my help
22 in this way since about twenty years ago. And I know
23 the frustration that clients have sometime and proposers
24 have with the sort of vagueness of opposition or
25 alternative plans. I've taken plenty of alternative

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1 plans and folded them and put them down and said "well,
2 that's not what we're reviewing."

3 But, we're not really reviewing what I'm
4 offering as graphic criticism today. What we're talking
5 about is whether or not there is, in fact, other ways
6 to do this plausibly that could be, in fact, sensitive
7 to the context and still work for the business model that
8 BP has.

9 We certainly live in a capitalist society
10 and there's no reason they shouldn't and aren't entitled
11 to make some money on their investment.

12 I also, maybe contrary to other people,
13 believe in the authenticity and honor of any real aspect
14 of contemporary culture.

15 There's nothing embarrassing about gas
16 stations, and as someone who grew up in New Jersey, at
17 Exit 13 thank you, near the Bayway (phonetic) Refinery,
18 I put my credentials in the petroleum trade up against
19 anyone in this room right now. And, in fact, joining
20 me today is Sasha Rosen (phonetic) a colleague in my office
21 who grew up in Tulsa, and I think he's got the extraction
22 end of it down. I've got the refining end of it.

23 So, I think the question is whether or not
24 there's a thoughtful design solution possible. And, I
25 think the pieces in relationship that we've shown here

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1 are, though not the precise ones they have, are reasonably
2 close to what they had, and in a way that maybe people
3 in opposition to this may not even agree with.

4 I think the Office of Planning would like
5 to see the building out on the corner. I would suggest
6 that we landmark the building called Stop and Shop in
7 Cleveland Park, where in fact we have parking in front
8 of the building, thank you, and it's considered historic.

9 It may be historic example of a non-urban design, but,
10 in fact, it works in a fairly charming way and provides
11 a nice little benefit to the community, and I use that
12 area quite a lot, and nobody's been run over and killed
13 there recently.

14 And so there is a way to bring cars and people
15 together, as we see between the east and west building
16 of the National Gallery of Art, if we do it in the right
17 way and if we suggest that it's a plaza not a parking
18 lot, and then in fact, it's a place where people and cars
19 have a balanced relationship.

20 I think there are also some very interesting
21 idiosyncrasies. It's very easy to talk about the luffa
22 plant, and say we always build at the property line.
23 But there are always these few exceptions in the urban
24 fabric that, in fact, these little hiccups in the way
25 that you'd find in a natural fabric or a weave, in fact

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1 create a sense of character, and this may be one of those.

2 Unfortunately, the building that was
3 renovated in the Children's Museum, something that I've
4 attended frequently with my son over the years, is hard
5 up against the side of the H Street overpass, providing
6 for no public exposure or face along it's southern facade.

7 And, of course, it was designed not to be. That was
8 designed as a seminary, an inward-looking building. But,
9 in fact, it is sort of a landmark of that community and
10 it could become ever more so if it had the right
11 presentation from an urban design point of view.

12 So, when I looked at this site, I looked at
13 it as an opportunity not a problem, to expose and highlight
14 and feature at this end of H Street, a public institution.

15 Often we forget in urban design, that when we plan things
16 in, we don't have to just plan a retail, that at one time
17 in our nation's history, we actually planned for public
18 activities. We didn't just protest every time somebody
19 wanted to build a school or daycare center or a homeless
20 shelter. We actually planned for those things.

21 Today, if you want to build the Capitol,
22 you'd be blocking the view down the mall. People say
23 "well, we can't put a building there. It will block the
24 view from the stadium to the Lincoln." You know, there
25 is a point where actually it's okay to have landmarks

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1 and to present them.

2 So, I felt that presenting a public
3 institution as a landmark as opposed to a gas station,
4 might be a little bit more appropriate and have more
5 transcended meaning in the urban fabric than just
6 presenting the lowest priced gasoline available. On the
7 other hand, I don't think there's anything wrong with
8 commerce. So I thought, how is there a way to balance
9 that in this particular case?

10 Of course, I always like to go back to
11 history, and if you look at the lower left-hand side of
12 the board in black and white is a gas station that was
13 built at 20th and K Street, and low and behold it's an
14 Amoco, and it's at a 45 degree angle and it's got a clay
15 tile roof and, in fact, it has the concession behind where
16 the pumps are, but somehow it doesn't seem like an
17 intrusion, although it's not as pretty as the historic
18 buildings. But, it was certainly a time when there was
19 a little more agreement among people that are all part
20 of one community and they would be embarrassed to do
21 something that's not very nice.

22 Of course, if your in London and you're doing
23 something not so nice in Washington, it's not that you're
24 callous, it's just that it's a little remote and it's
25 hard to see around the globe like that. And so, I don't

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1 think there's anything intentional about this. I think
2 it's just an example of anti-TQM. It's not Total Quality
3 Management because a better station might attract more
4 customers. It might actually enhance and have PR value.

5 But, the relationships that are developed in large
6 bureaucratic organizations sometimes don't allow them
7 to do what's even in their own interest. And I think
8 that's the case that we're facing right here.

9 So, what we tried to do was just illustrate
10 that, in fact, you can do things that maybe the community
11 wouldn't even like, but BP might be able to live with.

12 That if you took the station and turned it at a 45 degree
13 angle, that you could move some of the curb cuts a little
14 further away from the corner. And even though they do
15 work, it doesn't mean that they're optimal where they
16 are, it just means that they're the minimal solution.
17 In the same way that a handicapped toilet stall is an
18 optimal stall. The little one is not optimal. It's just
19 the least you can get away with. And so, people tend
20 to think about things in sort of the minimum as opposed
21 to the optimal way.

22 So, it might be optimal to bring people in
23 a little further east on H Street so that cars stopped
24 at the light didn't prevent left-hand turns, and people
25 could get across an intersection far enough and stop in

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1 that lane to make their left-hand turn without backing
2 people up into the very intersection they just passed.

3 That wouldn't be worse, I don't think. Nor would I think
4 it would be worse to use the alley for what it's intended
5 for, as a way to bring trash and employee cars to the
6 back of the site. That's what alleys are for.

7 If you look at the diagrams of the block,
8 the only other curb cuts are into alleys. Washington
9 wasn't based on the idea of having curb cuts into every
10 property. We didn't have cars in those days, but at least
11 over the years we've accommodated more service into
12 downtown lots for buildings, for commercial buildings,
13 and for institutional buildings, and for residential
14 structures off the alley system wherever possible,
15 because it's just the way the City has been built for
16 the last 200 years. And, I would dare say that I don't
17 think even the Prince of Wales would support this as a
18 design if he were here as a member of the British Corporate
19 Family.

20 So, what we decided was that if the building
21 couldn't come out to the sidewalk, the sidewalk could
22 come back to the building perhaps, and maybe the sidewalk
23 could bend and be covered with brick on the outside face
24 of the lot. But also run across the face of BP's own
25 station so that at least people felt they were walking

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1 along a cut through in the block, and that that could
2 even have Washington street lights, and that the canopy
3 could be painted black the way a lot of street lights
4 are here in Washington, and still have their logo on it,
5 and it's stanchions could have some curved brackets to
6 soften the transition from the vertical to the horizontal.

7 They seem to be able to do curves in their high tech
8 fuel vending machinery, whatever it is.

9 And then, I was even so generous as to say
10 "well, you know the Victorians were a very commercial
11 culture. Most of Victorian brick was mass produced.
12 It wasn't hand-made. They were really the ones into
13 cast-iron curliques. They were really industrializing
14 the world. That wasn't really hand culture, Victorian
15 culture.

16 And, a lot of the bricks you see in Capitol
17 Hill and these Victorian districts are these hand-pressed
18 bricks, and they're done in these lively cheerful
19 patterns. I think about the Sumner School (phonetic)
20 renovation, some of the rooftops in those things.
21 There's nothing alien about that.

22 And so, I mean BP is there, taking all their
23 logos off there and making red brick because they thought
24 they heard "oh, it's got to be red brick" and I'm taking
25 yellow and green bricks, their corporate colors, and

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1 trying to weave them into a pattern onto a building.
2 In other words, if there's some creative thought about
3 this, there's no reason that a building like this, or
4 a building maybe one at the corner.

5 Years ago, I did a drive-in branch bank out
6 at Rhode Island Avenue and the Brookland (phonetic) Metro
7 Stop, a sort of blue building, it was perpetual American,
8 a sort of misnamed institution. And it allowed for people
9 to drive around the building itself as a traffic island.

10 They came in one end on the south side and they came
11 out through the pumps, through the lines, the toll lines
12 where you pick up your money through these little vacuum
13 tubes, and those islands were all aligned with the street,
14 and we brought the same brick across the facade there.

15 And, that turned out to be a good piece of urban design,
16 and it still managed to function very well.

17 So, I guess what I'm saying is that I don't
18 believe that there's any real stumbling block if BP really
19 wanted to engage in site adapting their standard formula
20 of the building at the back, the canopy in the front.
21 We've used the exact same dimensions. We've tried to
22 make sure that circulation worked there. We've done
23 circulation for large buildings. We know how to figure
24 out whether a car can get through there or not.

25 I don't believe that there's a whole lot of

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1 traffic involved in this thing. I think some of these
2 arguments, in a way, they're inaccurate and it sort in
3 a way, it sort of makes the process difficult because
4 some of the things that are said by the proponents and
5 some of the things that are said by the opponents are
6 fairly incidental. They're just sort of desperately
7 either trying to prove or disprove the other person's
8 case. The substance of the matter, the facts of the
9 matter don't seem to be gotten to as thoroughly as one
10 might like.

11 I would also say that what we felt at the
12 end would be a nice gesture that would earn BP some PR
13 points, would be to take the triangle at the corner and
14 put in something that perhaps was perceived almost as
15 a welcoming landmark as you came eastward over the bridge,
16 Hopscotch Bridge, with the nice patterning on the walls,
17 that if you came down there and you saw this colorful
18 piece of sculpture that caught your eye and maybe actually
19 attached. One reminded you of the station behind it and
20 brought some panache to it and cache, and at the same
21 time coming the other way, would sort of set off as a
22 foreground for the Children's Museum, as opposed to the
23 Amoco Museum, and that that could be either a colorful
24 piece of sculpture or it could be an installation of
25 historical gasoline pumps.

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1 CHAIRPERSON REID: Mr. Esocoff?

2 MR. ESOCOFF: Yes.

3 CHAIRPERSON REID: Are you wrapping up?

4 MR. ESOCOFF: Yes, I'm done. I, in fact,
5 wrapped up right there.

6 VICE-CHAIRPERSON RENSHAW: I have a question.

7 MR. ESOCOFF: Sure.

8 VICE-CHAIRPERSON RENSHAW: I wanted to know,
9 in your depiction of the gas station, how high was your
10 canopy?

11 MR. ESOCOFF: I left it at 16 feet. I think
12 that there's | it's unfortunate that there isn't an
13 architect of the District. There's an architect of the
14 Capitol but not an architect of the District, whose office
15 would, in fact, have people who could calculate and
16 professionally critique not just the first light, but
17 the bounce light.

18 We proposed, for instance, a darker
19 blue-black paver, like a hexagonal paver you might see
20 in Central Park and other areas around where duke zebras
21 (phonetic) used to be, that street there has a hexagonal
22 asphalt pavers. They wouldn't bounce as much light as
23 you see at the Tiger Mart on upper Connecticut Avenue.

24

25 So, that's an irritation if you live across

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1 from that, you know, and the underside of that canopy
2 could be a darker, it could be a deep color. It could
3 be a deep green so that it wouldn't be as glary at night
4 when you're trying to look outside. I mean, there are
5 lots of subtle things that could happen that could be
6 every bit as effective for BP, and every bit as compatible
7 to the community. I really don't think there's a
8 lose-lose. I think there's a win-win situation here,
9 and I think that people have to be a little creative and
10 open and little more courageous about opening up
11 themselves to the process. I think mostly, as
12 Shakespeare said "or in the night imagining some fear,
13 how easy is a bush supposed a bear." And, I think the
14 process isn't necessarily a bear if you're open and candid
15 about things.

16 We've heard people from the community said
17 they said they expect them to make profit. Nobody's
18 expecting them to be some kind of non-profit organization.

19 CHAIRPERSON REID: Thank you very much.

20 MR. ESOCOFF: You're welcome.

21 VICE-CHAIRPERSON RENSHAW: Yes.

22 CHAIRPERSON REID: Okay. Who's next?

23 MR. TALLANT: May I? I'll just read my
24 statement through very quickly. For much of the past
25 year, BP has presented essentially the same project to

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1 the community at numerous public meetings. At each of
2 those meetings, BP has heard a chorus of voices
3 criticizing the proposal for introducing a suburban
4 development into an urban neighborhood.

5 At each of those meetings, the community
6 begged BP to abandon their off-the-shelf service station
7 and design a project which offers a positive contribution
8 to the community and the H Street commercial corridor.

9 The community's objection should have come
10 as no surprise to BP. The community has long expressed
11 a desire for neighborhood serving retail, and
12 specifically discouraged gas and go service stations for
13 this corridor in the Comprehensive Plan.

14 The Office of Planning has recommended that this
15 Application be denied. SPNA agrees with and supports
16 the Office of Planning staff report.

17 On two occasions, the Board of Zoning
18 Adjustment delayed this hearing with specific
19 instructions to the Applicant to work with the community
20 in crafting a solution. BP has failed to take the Board's
21 advice to heart and instead has sought only the appearance
22 of working with the community. BP has disregarded every
23 opportunity for meaningful discussion and rejected the
24 community's suggestions.

25 Before addressing the project itself, I want

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1 to acquaint the Board with some of the tactics adopted
2 by BP in their effort to circumvent the weight of public
3 opinion and the Board's instructions to work with the
4 community.

5 Early in the review process, ignoring nearby
6 residents and organizations, BP concocted a draft
7 Voluntary Agreement that was submitted to the BZA in
8 December. That agreement wrongly indicated the support
9 of numerous parties who had never even seen that document
10 prior to its submission to the BZA.

11 At the December, 2000 hearing, BP objected
12 to the Stanton Park Neighborhood Association's request
13 for party status, in an attempt to limit SPNA's
14 involvement in this process.

15 In a letter dated December 21, 2000
16 immediately following the BZA hearing, Mr. Patrick Brown
17 requested the consolidated and coordinated input of
18 various elements of the community. Mr. Brown further
19 requested that those comments be received approximately
20 two weeks later.

21 In response nine organizations, the National
22 Trust for Historic Preservation, Scenic America, the
23 Committee of 100 on the Federal City, DC Preservation
24 League, the Capitol Hill Restoration Society, the Near
25 Northeast Residents Against Crime and Drugs, the H Street

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1 Merchant's Association, Square 776 Residents, and Stanton
2 Park Neighborhood Association, drafted a joint response
3 that was sent to BP on January 10th.

4 A tremendous effort was required to meet BP's
5 request in the two-week time period over the Christmas
6 and New Years holidays. BP has never responded to that
7 letter, indicating that their desire for input from the
8 community was not genuine. The Office of Planning
9 offered to sponsor talks and negotiations. BP refused.

10
11 At the March BZA hearing, BP submitted a
12 Motion to Dismiss the Office of Planning staff report,
13 claiming that the community stated goals as expressed
14 in the Ward Six elements of the Comprehensive Plan had
15 no bearing on the BZA process. BP has thereby sought
16 to limit the information presented to this Board.

17 BP has failed to satisfy the concerns of the
18 immediate neighbors on Square 776, and has not even
19 attempted to address the larger issues of community-wide
20 importance. Instead of positive discussions that might
21 lead to an agreement, BP has limited all discussions to
22 secondary and tertiary issues.

23 The Board has in their file numerous letters
24 from individual citizens. I wish to add, over 250
25 petition signatures that were collected in December of

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1 2000. No doubt there would be a great many more
2 signatures if the community had the resources to collect
3 them.

4 I'm sure you understand this project's
5 consumed an enormous amount of the community's time and
6 effort, and unlike BP's staff and paid consultants, all
7 of our effort has been from civic-minded volunteers who
8 care enough about our community to oppose this
9 inappropriate project.

10 For many years, the small gas station at the
11 corner of 3rd and H was a problem for this neighborhood.

12 During the period from January 23, 1999 through December
13 11, 2000, DC police records contain 186 incidents reports,
14 a rate of nearly two per week. I have those police records
15 here and will submit them into the record.

16 As nearby residents can testify, the number
17 of recorded incidences pales in comparison to the many
18 unreported incidents and quality of life issues arising
19 from that small gas station operation.

20 Complaints to the franchisee of persistent
21 panhandling, fencing of stolen goods, disorderly conduct,
22 et cetera, have gone unheeded for many, many years. The
23 deplorable record of this corporation and its franchisee
24 has the community very concerned about a much larger
25 operation that is inadequately separated from residential

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1 properties.

2 For the reasons noted above, I and much of
3 the community have a deep distrust of BP. We have no
4 confidence in this corporation or the franchisee's intent
5 to adequately address future problems arising from this
6 refueling operation. They failed to address past
7 problems over a period of many, many years and they failed
8 to develop a proposal which develops a positive
9 contribution to this community, despite over one year
10 of community effort.

11 If this gas station is built, the community
12 will be forced to live with whatever consequences result.

13 BP's callous disregard for this community over the past
14 several years, and their conduct throughout this process,
15 indicate the problems arising from a large number of cars
16 and trucks brought into our neighborhood on a twenty-four
17 hour basis will be ignored.

18 The Office of Planning has noted the multiple
19 deficiencies and overall failure of this proposal to meet
20 the criteria for granting a Special Exception.

21 The bottom line is that this project has not
22 been designed to protect the neighborhood or the
23 commercial corridor from the deleterious effects of
24 introducing a large commuter serving gasoline service
25 station into a historic neighborhood retail corridor.

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1 The proposed expansion would take a 5,500
2 square foot neighborhood-scaled gas station into a 35,843
3 square foot twenty-four hour major refueling operation
4 for cars and trucks. The proposed gas station is
5 approximately seven times as large.

6 This project has not been designed to enhance
7 the architectural character of the neighborhood or the
8 commercial corridor. Rather than assessing the
9 appropriateness of the site for the proposed use, BP has
10 insisted on a standard prefabricated building design and
11 site plan without regard to the essentially urban nature
12 of this site.

13 The project under your review today is far
14 more significant than the expansion of a gas station and
15 its harmful effects on the immediate neighborhood.

16 For decades, H Street has been in need of
17 investment to spur a broad economic recovery that extends
18 down the corridor, into the adjacent neighborhoods, and
19 creates benefits for the entire City.

20 This project harms the potential of
21 redevelopment of H Street as a neighborhood-serving
22 retail corridor for the primary benefit of commuters who
23 serve it rather, who contribute little besides traffic
24 to the District of Columbia.

25 The gateway block to the H Street corridor

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1 has excellent public transit access. It's two blocks
2 from Union Station, one block from the proposed Securities
3 and Exchange Commission Building.

4 This highly visible urban site, some seven
5 blocks from the U. S. Capitol, deserves a worthy
6 commercial development. This project sends H Street down
7 the sad path traveled by New York Avenue N.E. by
8 introducing a commuter-oriented retail activity that is
9 out of scale, detrimental to the adjacent neighborhood
10 and contrary to neighborhood-oriented activities.

11 This project provides minimal employment and
12 a small amount of tax revenue, but it imposes a severe
13 harm on the immediate neighborhood, and diminishes
14 commercial opportunities on nearby parcels. On balance,
15 this project is a net loss for the District when compared
16 with other likely developments for the gateway block to
17 the H Street corridor.

18 If the Board is inclined to grant the
19 Applicant's request for a Special Exception, I implore
20 you to consider the needs of the community, and impose
21 reasonable controls.

22 The quality of design and the streetscape
23 amenities must be improved. Genuine separation must be
24 included to protect nearby residents. The hours of
25 operation should be limited to the period between 6:00

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1 a.m. and 11:00 p.m. not just for the Walbean Café, but
2 for the gas station itself.

3 And the Special Exception should be granted
4 only for a limited period of time to assure that there
5 is a meaningful penalty should BP fail to address
6 problems.

7 I hope, however, that the Board would
8 recognize that this proposal is fundamentally flawed and
9 vote to reject it.

10 In recent weeks, the H Street Merchant's
11 Association again voted to oppose this project. ANC-6A
12 has also recently voted a second time unanimously to
13 reject this proposal.

14 They are joined by Ward Six Council Member
15 Sharon Ambrose, the DC Office of Planning, the National
16 Trust for Historic Preservation, Scenic America, the
17 Committee of 100, DC Preservation League, Capitol Hill
18 Restoration Society, Near Northeast Residents
19 Association, Residents of Square 776, Stanton Park
20 Neighborhood Association in rejecting this proposal.

21 Literally hundreds of residents have voiced
22 their opinion in meetings, letters to the Board, and by
23 petition. Seldom has the community been so united in
24 its opposition to a project. We ask the Board to join
25 us by denying the Applicant's request for a Special

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1 Exception. Thank you.

2 CHAIRPERSON REID: Thank you. You're the
3 anchor.

4 MS. MAGUIRE: I'm Meg Maguire. I'm a
5 resident of 631 Maryland Avenue N.E. and have been for
6 about twenty-five years.

7 I come before you as the President of Scenic
8 America, a national non-profit conservation
9 organization, concerned with the built and natural
10 environments, with the scenic quality of the built and
11 natural environments.

12 We have many publications which we
13 distribute nationally, and we are well known for the work
14 that we have done in context sensitive highway design.

15 I truly believe that with a proper design
16 process, there can be much resolution to this issue.
17 The problem is that it has been a very legalistic process,
18 and it's been very much driven by engineers not by creative
19 designers.

20 We commissioned Mr. Esocoff to work on this,
21 not because we promote his solution, but because we
22 believe that there are creative solutions that no one
23 has thought about, and that in process with the community,
24 really listening and then that kind of creative
25 inspiration, that trained designers bring to our built

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1 environment, that a great deal of progress could be made
2 and we could have a win-win situation.

3 BP has an opportunity here to do a world class
4 project for which they will be renowned I can assure you.

5 If they do the right thing here, we are going to let
6 the country really know about that in a very positive
7 way. And, if they don't, we're going to let them know
8 as well. But we fervently hope that they do, because
9 this is a great opportunity for the corporation in the
10 shadow of the Nation's Capitol to do a great thing and
11 to be welcomed into the neighborhood, not vilified as
12 you've heard today.

13 So, we believe that we're very close. We'd
14 like to see BP hire a renowned local architect. Mr.
15 Esocoff would be great. There are others in the City
16 that they could choose, to actually go through a design
17 process with the community and work out these problems.

18 That's what a design process does. It solves problems.

19 Finally, I'd like to say that BP is moving
20 in the wrong direction for our Country. All over America
21 we see changes, dramatic changes in the way communities
22 are demanding to be part of the design. The whole highway
23 engineering community is changing to adopt
24 context-sensitive highway design and Scenic America has
25 been part of that push, both in terms of Federal law,

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1 and in terms of publications and so on.

2 So, even the highway engineers are beginning
3 to think about the context in which they're designing
4 roads and streets in a different manner and in
5 consultation. The State Highway Department in Maryland
6 is one of the leads on this approach, and the results
7 are dramatically different.

8 I'm going to end by saying "we can get to
9 win-win, but only, I think through a design process, and
10 we urge that BP adopts such a process."

11 CHAIRPERSON REID: Thank you very much. Now,
12 any cross-examination, Mr. Brown? Any questions Board
13 members? All right. Then, closing remarks by the
14 Applicant. Thank you very much.

15 MR. BROWN: I promise we'll be brief.

16 CHAIRPERSON REID: Okay. I'm going to hold
17 you to that.

18 MR. BROWN: Pardon?

19 CHAIRPERSON REID: We're going to hold you
20 to that.

21 MR. BROWN: We've heard an enormous amount
22 of information tonight, and going back to where I started,
23 we need to talk briefly about what this case is. It's
24 a Special Exception case to slightly enlarge an existing
25 gasoline station, basically to take a 1959 station and

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1 increase its size by really the measurable quantity is
2 two pumps.

3 And, in the context of a Special Exception,
4 I go back to, and I think when you step back and look
5 at the testimony, we've all of a sudden created an
6 architectural design process. We've created a
7 far-reaching Comprehensive Plan review.

8 This is still a Special Exception case. The
9 zoning regulations, which Mr. Hood and his colleagues
10 establish and amend on a regular basis, and, in fact,
11 confirmed the zoning of this property within the last
12 three years, say that a gas station is permitted here
13 pursuant to a number of very specific conditions.

14 And, I don't want to belabor the point, but
15 none of those conditions are the kind of far-reaching
16 and well meaning but again far-reaching and inappropriate
17 second guessing of the design. And we put a proposal
18 that meets the criteria. Most importantly, we've
19 attempted to respond to the potential issues of concerns
20 of the neighborhood. We've proffered an Agreement, which
21 if you were to ■ it's a draft. It says draft on every
22 page and on every signature line, but if you were to take
23 that Agreement and look at it, there is the basis for
24 what the Board routinely does is impose conditions on
25 approvals.

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1 You may not agree with them and then feel
2 free to craft ones that suit. We've offered hours of
3 operation in various elements. We've offered various
4 other things, restrictions, and obligations that my
5 client is willing to impose upon itself, and Mr. Wilhelm
6 the dealer is willing to impose upon himself.

7 But most importantly, we've met the criteria
8 and to say that "yes, maybe we could have designed this
9 building better so it looks prettier" I don't think is
10 the role this Board wants to get into. There's a Historic
11 Preservation Review Board. There's a Zoning Commission.

12 But, where does it end? And, I think the proposal here
13 meets the criteria and does so in a way that attempted
14 to be sensitive to most particularly Mr. McCrea and Ms.
15 Robinson.

16 It may not be perfect and there may have been
17 missteps along the way, but it certainly takes issues
18 that we've identified from them and tried to respond to
19 them.

20 So, I think I'll leave it at that but just
21 noting that if you go down the checklist of criteria,
22 and there are only about six items, each one of them has
23 been satisfied fully, most importantly the traffic issue
24 I think is of major concern as Mr. Osborne has pointed
25 out and DPW has agreed.

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1 So, I'll leave it at that, and thank the Board
2 for all its time both tonight and previously, and ask
3 if there are any questions.

4 VICE-CHAIRPERSON RENSHAW: Yes.

5 MR. BROWN: I do have a question for Mr.
6 Esocoff. I'd like to get a copy of that? I'll give you
7 my card. With that, I'll leave you.

8 CHAIRPERSON REID: Okay, in regard to the
9 December 8th letter of Mr. Leyden, you had mentioned that
10 and I did find it. Did you find your copy?

11 MR. BROWN: Yes, and I put it away.

12 CHAIRPERSON REID: Well, I looked over it and
13 I didn't see any glaring omission from the second letter.

14 MR. BROWN: I note in here "it should be noted
15 that the convenience store and the car wash are not primary
16 generators of traffic. They are an accessory and support
17 the service station." And it goes to the point that what
18 we're doing here is very much in line with what's there
19 now.

20 The convenience store, and I point out and
21 I'm not doing this to make anything other than kind of
22 put in context. The convenience store, food mart here
23 is a matter-of-right. That could be built on this C-2-A
24 property or any other C-2-A property without a visit to
25 the BZA, assuming it meets the height and other

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1 restrictions which this does.

2 So, again context, we're talking about two
3 additional pumps and a matter-of-right food mart,
4 convenience store, which will offer something that in
5 this neighborhood, an Au Bon Pain type thing, one of the
6 things people have told me is, and I've noticed is, where
7 do you go for a quart of milk on H Street? Where do you
8 go to get a sandwich other than, you know, fast food?
9 And, it's something that H Street, among other things,
10 needs.

11 So, this isn't all bad. There's a lot of
12 good and it's a substantial investment, and investment
13 breeds other investment. So, I think the glass is more
14 than half full, not half empty. And I'll leave it at
15 that.

16 VICE-CHAIRPERSON RENSHAW: Mr. Brown?

17 MR. BROWN: Yes.

18 VICE-CHAIRPERSON RENSHAW: A couple of quick
19 questions.

20 MR. BROWN: Sure.

21 VICE-CHAIRPERSON RENSHAW: For Ms. Robinson,
22 how many times did BP Amoco sweep the alley, and did you
23 have a permit to close the alley?

24 MR. BROWN: I do not believe they had a permit
25 to close the alley. As to sweeping the alley, I don't

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1 know. One of the things that we've committed to in the
2 Agreement, it has been swept. It's a losing battle.

3 We put fences up to keep the dumping, and
4 they throw it over the fence. There's one lot which we
5 didn't fence, which is behind Mr. McCrea and Ms.
6 Robinson's lot. It's the little one, kind of an island.

7 And we can't fence that in because if we put a fence
8 around it, they can't get into their back yards. But,
9 we were there the other day and they're dumping oil and
10 kerosene. You can smell it all over.

11 So, it's an ongoing problem. BP is
12 committed to trying to do the best they can to maintain
13 the site, the vacant part as well as the site they want
14 to develop. And we've also indicated that the neighbors
15 would be consulted when that vacant parcel, something
16 is done with it. There's no plans to do anything.

17 VICE-CHAIRPERSON RENSHAW: And just very
18 quickly, is Mr. Kenneth Wilhelm here?

19 MR. BROWN: He was. He's in the back.

20 VICE-CHAIRPERSON RENSHAW: Would he just
21 stand so that we can see him? Very good. And Mr. Wilhelm
22 is the owner, he's the dealer and the day-to-day operator?

23 All right. And, is Mr. Joseph Mullen (phonetic), the
24 Asset Manager of the Middle Atlantic Business Unit here?

25 MR. BROWN: No, he is not.

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1 VICE-CHAIRPERSON RENSHAW: Was he here at all
2 today?

3 MR. BROWN: No, he was not. Mr. Faletto
4 reports directly to him. He is the I

5 MR. FALETTO: He's the Asset Manager.

6 VICE-CHAIRPERSON RENSHAW: Right. That's
7 what it said, but since his name was on this, it was
8 proffered by Mr. Brown. I wanted to find out if he was
9 here.

10 CHAIRPERSON REID: Okay.

11 MR. BROWN: We felt it important that a more
12 senior official sign it at a higher level.

13 VICE-CHAIRPERSON RENSHAW: Understood.

14 MR. GRIFFIS: Madam Chair, I have a very brief
15 comment. I take issue with a statement that you made
16 in your opening and in your closing actually that perhaps
17 we're not talking about design here.

18 If we go, and it is already a part of the
19 record, but I would reiterate it, Section 26.1, last
20 sentence to the provisions of 706 in Chapter 7 is where
21 we should turn. Chapter 706.5 and I could actually just
22 read it right off of your own Application: "The Board
23 may impose requirements pertaining to design, appearance,
24 screening or lighting or other requirements as deemed
25 necessary to protect adjacent or nearby property."

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1 And so I am somewhat pleased that Mr. Esocoff
2 was here today and was able to give his time to present
3 this, and I think it was very clear to us on the Board
4 that this was not necessarily the solution, but a design
5 foray into options and perhaps maximize the potential
6 of that site. And I am even more pleased that you have
7 asked for a copy of it.

8 MR. BROWN: But again, Mr. Griffis, and it's
9 important to note in fourteen, fifteen years of hanging
10 around the BZA and doing Special Exceptions, that
11 language, and I've seen that language before in these
12 type of cases and other, that language has never been
13 nor intended to talk about the kind of far-reaching "we're
14 going to redesign your project" or "we want you to redesign
15 your project."

16 Again, it was intended to, just as it says
17 "respond to specific issues." One of the problems we're
18 having is, and I think we'd be close to closure on this
19 project, is the expectations that have been created that
20 are incorrect, and I'll reiterate that, that this process
21 in this case involves an ability to redesign this project
22 from the ground up. And that's where we haven't been
23 able to reach closure, with whether it's the Office of
24 Planning or the community.

25 We can talk about the design of this project

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1 as it relates to how it affects the community, but this
2 "we're are the gateway, this is special property" I don't
3 think is the appropriate approach for this Special
4 Exception or any Special Exception.

5 I hate to say it's a more technical approach
6 to "are the lights right? Is the traffic circulating
7 well?" The type of things that are enumerated, not do
8 I like the way your project looks, or is it the best project
9 that could be here and I think that's where we haven't
10 been able to reach closure because the expectations are
11 that this is going to be something other than it's going
12 to be.

13 I think this has an opportunity to be a safe,
14 clean, well run asset to the community. Is it going to
15 be on the front page of Architectural Digest? I hope
16 London doesn't hear me, but probably not. But, I think
17 the criteria that are really important we can meet, and
18 we can do so in a way that isn't offensive. And I don't
19 think this design is offensive. It just might not meet
20 people's expectations.

21 MR. GRIFFIS: Just a quick follow-up, and I
22 would not discuss and debate the scope and I would hope
23 that, in fact, and I know we will not design them when
24 they get here and that's not our intent.

25 However, what was illuminating to me in the

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1 presentations here, not only the testimony, but also in
2 some of the graphic illustrations is that, in fact, if
3 you look at Mr. Esocoff's design, he's used all the
4 elements that you used, and just moved them on the site.

5
6 So, when you talk about, you know, that
7 perhaps at this level we are talking about fixtures and
8 changing lights and walls and all that, I don't disagree
9 necessarily, but here we have again, one can say materials
10 and materials are important, but what's of utmost
11 importance is how those materials are used, and that means
12 placement on a site. That's all I have.

13 MR. BROWN: I don't want to I but, one of the
14 problems is, and this looks pretty. It looks prettier
15 than our project perhaps, but we've looked at it in a
16 reduced form and we want to look at it on a bigger. But,
17 it raises problems that don't meet the criteria that are
18 in the zoning regulations. It's bad from a traffic
19 standpoint. It's bad for the people who live behind it
20 because it increases the use of the alley.

21 So, it's a tradeoff, and again, this is being
22 offered to you as the Promised Land, and I just want to
23 put that in some context. But, we've asked for a copy
24 of it.

25 MR. GRIFFIS: I understand your position.

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1 CHAIRPERSON REID: Let's see now. I know
2 everyone's tired but in closing, I just wanted to mention
3 that having listened to this whole case, which has been
4 long and been a voluminous amount of material that has
5 been submitted, and testimony, I think that in this
6 particular instance, as is the case in most communities,
7 if in fact a developer is coming into a community, I think
8 that it's very important, and I think I mentioned this,
9 that there be some type of meeting of the minds with the
10 people who live there.

11 This community is a community in need. This
12 area has been neglected and blighted and gone through
13 tremendous, tremendous challenges over the last few
14 years. So, obviously they are very desirous of having
15 a nice, solid development come there that could start
16 the revitalization of that area.

17 But at the same time, what they are
18 communicating to us is that, and rightfully so, they don't
19 want just anything. They've demonstrated that they would
20 like for you to listen to what the community wants to
21 see and not have someone come in and say to them "this
22 is what's going to be there, and this is how things have
23 to be" and not take into consideration their concerns.

24 Now, a Special Exception, Mr. Brown even
25 though you're saying that "oh, well you're just going

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1 to put some conditions on it." This is not the case.
2 A Special Exception requires that there be no adverse
3 impact to the neighboring community, and in this instance
4 we're hearing tremendous negative impact, adverse impact
5 that has to be mitigated.

6 For you to come into that community, it is
7 very important, and I thought you all had done it, that
8 you meet with the community residents. You have several,
9 not just residents, but several associations,
10 organizations who are very concerned about what happens
11 in their community. And I keep hearing that their proffer
12 to you, what their concerns are, what the issues are,
13 and that BP is not listening.

14 Now, I don't know how you can expect to come
15 into someone's community and set up shop, a proffer drive
16 entity which they don't mind, without giving some concern
17 or some deference to the people who live there and to
18 find out what is it that they need. What do they want
19 to see?

20 It may well be that coming in to a community,
21 you may not be aware of the fact that if someone says
22 to you I you say "well, we're going to put this café"
23 right in the middle of this particular neighborhood.

24 Well that neighborhood might not be really
25 conducive to that type of café in that we have all kinds

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1 of other elements, loitering or drugs or prostitution
2 or panhandling, homelessness, that that's going to then
3 give them a place to facilitate these illicit activities
4 that might not be the best thing to put there.

5 And if the people are saying to you that "this
6 is what our problem is and we don't think that will work
7 here" then I think it would be constructive to listen
8 and not trivialize the concerns that are being proffered
9 to you by people in the community.

10 Ms. Renshaw often talks of construction
11 plans, and many times when she does, she gets poo-pooed
12 because they say "oh well, there are other regulatory
13 processes that will take care of that" but we're saying
14 here today, that that's not true. Because had that been
15 the case, then those pictures would never have been |
16 they would never have emerged showing us debris and
17 they're talking about their alleys being blocked, and
18 all these problems that these people, who are taxpaying
19 citizens, had to contend with during that construction
20 period, or during the period when there was demolition.

21 That's not right. I mean, you have to
22 demonstrate that you're a good neighbor, and that means
23 that you're not just going to come into the community
24 and take out of the community, but also you're going to
25 come in with the attitude that you have a vested interest,

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1 that you're a stakeholder, that you're concerned about
2 the people and that whatever you put there is going to
3 be a synergistic type of development that's going to be
4 for the better benefit of everyone.

5 And, I think that Mr. Osocoff, his
6 presentation. Mr. Osocoff proffered an alternative, and
7 I'm not advocating his proposal, but what it did was open
8 up, you know, some type of alternative ways of thinking
9 about the approach of that community.

10 There is, I think a vast opportunity there
11 for that particular location and the fact that that's
12 a gateway-type of site. It could be developed in such
13 a way that could be really something that would be a
14 prototype for other types of development of BP, not only
15 in this area, but across the country as well.

16 And, I think that the idea is that there has
17 to be some open-mindedness. Time after time after time
18 I keep hearing "you won't listen. You're not paying
19 attention. You're not taking into consideration the
20 things that the people are saying."

21 But yet still, to put a gas station, a
22 convenience store, and a café, and you did want to put
23 a car wash there too, is an extremely intense use of that
24 particular corner, which has to have an impact, and you
25 have to think in terms of how can you mitigate the impact

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1 to such an extent that the people who live there will
2 feel comfortable.

3 Now, this Agreement I well no, let's not call
4 it an Agreement. This suggestion that you made to the
5 community is meaningless unless you sit down with the
6 community and you give and take. "Okay, what can you
7 live with? What can we do?" Back and forth and you write
8 that down and that's one clause, and you keep going until
9 you have an agreement that everyone can sign.

10 Issues like the fence, the alley closing,
11 the lighting, the hours of operation, the parking, whether
12 or not you're going to sell alcohol or drug-related
13 products, like single cigarettes, pipes, rolling papers,
14 things like that, security issues.

15 All these things have to be addressed, the
16 construction management plan, and I think that it would
17 be very important to have a community relations person
18 or liaison.

19 Because I don't think, Mr. Brown, that you
20 are the best person to deal with this community, because
21 there is too much history. There's animosity. There's
22 hostility. There's a feeling that you're not feeling
23 them, and as such, and I'm not saying this not really
24 critical, but I'm saying it from the vantage point that
25 sometimes the wrong person may be going out to try the

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1 negotiation and that might not be the best person.

2 And since you already have the history,
3 perhaps you need to have an intermediary who could better
4 relate to the community and you, and then try to come
5 to some type of closure, because I can tell you right
6 now, that this Board member would not be inclined to vote
7 in favor of this Application. I don't know how the other
8 Board members feel, but if we took the vote today, my
9 feeling is that I don't think you would really get
10 approval.

11 COMMISSIONER HOOD: Madam Chair, let me just
12 ask, are we going to take the vote today? Are we going
13 to vote tonight? I'm ready to go.

14 CHAIRPERSON REID: Well, that's up to you.
15 I was going to say that if we voted today, I would not
16 vote approval; however, because I feel that the community
17 would really like to see something positive there, I
18 hesitate to vote it down. I'd like to perhaps take it
19 up at our next scheduled meeting date.

20 In the interim, give them one more
21 opportunity to see if they can present to us before we
22 have our decision date, an agreement which reflects the
23 needs and concerns of the community.

24 COMMISSIONER HOOD: Madam Chair, can I just
25 add, I won't be able to say it as eloquently as you did

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1 because I'm also from the Hood and I'll be right down
2 to the point.

3 As far as I'm concerned, from what I'm
4 hearing, you've been disrespectful of the community as
5 far as negotiations. When you come here today with two
6 and three different plans. We comment on one plan. I
7 see another plan that's being presented. I, too, am not
8 inclined to be in favor of this project. And most of
9 all, most importantly I'm going to finish what I started.

10

11 The Metropolitan Police Department is the
12 major entity of safety in this City. And my charge on
13 the Zoning Commission is to protect the safety and the
14 health of the residents of the District of Columbia, and
15 I'm going to do that. So I, too, will not be voting in
16 favor of what's been presented today. Thank you.

17 VICE-CHAIRPERSON RENSHAW: Madam Chair.

18 CHAIRPERSON REID: Yes.

19 VICE-CHAIRPERSON RENSHAW: I'm prepared to
20 vote, but I'm also prepared and would prefer to step away
21 from a terribly long meeting and have a rest and give
22 the community and the applicant a chance to get together,
23 if that is their wish.

24 Here is a wonderful opportunity, Mr. Brown
25 and Amoco, to put this community on the cover of

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5 with it, but run with the community. Don't run in opposite
6 directions.

7 Go for it and we'll come back and we'll vote,
8 I hope, at another point when we're all fresh and can
9 give some focus to the debate, the closing debate, and
10 the vote. But, I wish it would take off and in the right
11 direction, and I'm hopeful that perhaps a little bit of
12 time and a good rest, it might do so.

13 COMMISSIONER HOOD: Madam Chair, I really
14 believe that we are sitting here to raise false hopes.

15 As far as I'm concerned, I would hope that it would go
16 that way Ms. Renshaw, but after these couple of months,
17 and I come back and as far as I'm concerned from the last
18 time I was here until this time, things have gotten worse.

19
20 So, I'm ready to dispose of it tonight. I
21 will be voting against it, but if my colleagues think
22 that a little more time, and I can tell you it's going
23 to take more than a week or two.

24 CHAIRPERSON REID: No. No. The next
25 regularly scheduled business meeting. That would be on

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1 July 3rd.

2 COMMISSIONER HOOD: In two weeks.

3 MR. BROWN: July is probably I don't know
4 what the date was, July 3rd, that's too short a period
5 of time.

6 COMMISSIONER HOOD: You've got a lot of work
7 to do.

8 MR. BROWN: So I

9 CHAIRPERSON REID: The next one would be
10 September because we recess in August.

11 MR. BROWN: That's fine. That's fine. I
12 can't say no.

13 CHAIRPERSON REID: Given the time, I would
14 be willing to give them one more chance, although I must
15 say you really have not paid any attention to us or the
16 community before.

17 VICE-CHAIRPERSON RENSHAW: But then, if we
18 find that you come back in September and you have not
19 taken up our suggestion.

20 CHAIRPERSON REID: With an agreement.

21 VICE-CHAIRPERSON RENSHAW: You have not
22 given us an agreement.

23 CHAIRPERSON REID: A signed agreement I

24 VICE-CHAIRPERSON RENSHAW: A signed
25 agreement.

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1 CHAIRPERSON REID: I with all the things
2 we talked about.

3 VICE-CHAIRPERSON RENSHAW: A signed
4 agreement, management plan attached to it, then we do
5 it in short order and we vote and that's that.

6 CHAIRPERSON REID: Okay. Mr. Griffis can you
7 weigh in on this.

8 MR. GRIFFIS: No, I will not weigh in on this.
9 I will defer to you.

10 CHAIRPERSON REID: All right.

11 MR. HALL: Madam Chair, a couple words here.
12 This is going to be a decision, right?

13 CHAIRPERSON REID: Mr. Hood, do you think that
14 you could bear with us until September --

15 COMMISSIONER HOOD: Oh, sure Madam Chair.
16 I'll definitely deal with the Board.

17 CHAIRPERSON REID: I just to see if, in fact,
18 that given the time and all the concerns being raised,
19 and I hope that this time they think they really take
20 this seriously, that what we want to see is that agreement.
21 If that agreement is not right, then I

22 COMMISSIONER HOOD: I can tell you it's going
23 to be a very busy summer. I know that anytime you want
24 to get something over or do something in opposition or
25 against the community, the best time to do it is in August.

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1 But, I can tell you that they have a lot of work to do
2 in July, because I think most communities, am I correct
3 Ms. Renshaw?

4 VICE-CHAIRPERSON RENSHAW: That's right.

5 COMMISSIONER HOOD: Go on vacation and breaks
6 in August. So, I just want to make sure it's a realistic
7 attempt, and it's going to be a realistic, if September's
8 realistic, then fine. But, they've got a lot of work
9 to do and I don't see it happening.

10 VICE-CHAIRPERSON RENSHAW: They can do it.

11 MS. ROBINSON: I asked him that question
12 before. We asked him if they'd change it and he said
13 no.

14 CHAIRPERSON REID: All right. Thank you very
15 much. Mr. Brown?

16 MR. BROWN: Yes, ma'am.

17 CHAIRPERSON REID: Is there any possibility
18 that there would be any way that there could be some
19 modification or some changes or some type of reaching
20 out by BP to the community, or are we I don't want to
21 spin wheels. Mr. Hood said he's ready to take the vote
22 today. If that's not going to happen, we don't need to
23 raise false hopes, and we can just go ahead and vote and
24 be done with it, save everyone a lot of time and anxiety.

25 MR. BROWN: I'll put it in context and be

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1 candid. If the expectation is that we'll start and
2 redesign this building from the first brick up, I think
3 that's unlikely. Will we respond to the issues, all the
4 issues, that we've heard today and before in a way that
5 attempts to respond to those things, yes. But, again
6 drawing the line is that we're probably not going to get
7 a custom designed building.

8 CHAIRPERSON REID: No, I didn't say that.
9 I mean, for example, let me give you an illustration.
10 When I asked about the lighting, I had to ask three times
11 for Mr. Duke to give me an answer. My question was, did
12 you have community input as to the type of lighting you're
13 putting there to get some idea as to how they felt about
14 it, and he just kind of tap danced all around that
15 question. That's what we don't want to see.

16 MR. BROWN: Okay.

17 CHAIRPERSON REID: Either you're going to or
18 you're not. If you have corporate policy that you just
19 don't in any way take into consideration communities and
20 that you have your modus operandi and you do it a certain
21 way and that's how it's going to be, that's not going
22 to fly. And that's not going to fly today or over the
23 summer, so we might as well go ahead and address that
24 now.

25 MR. BROWN: No, I mean I can guarantee you

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1 that without revealing any attorney-client confidence,
2 that BP does, and we've spent an awful lot of time, maybe
3 not as effectively as we'd like, but we spent an awful
4 lot of time listening to communities. So, I mean that
5 is a threshold issue that we get over.

6 We may disagree and we have disagreed, but
7 we'll work on that, so that's what I can guarantee you.

8 In September, is the meeting late in the month?

9 MR. HALL: The first meeting in September is
10 September 4th. If not, then we're talking about October.

11 We're talking about a decision, so it's a meeting. Your
12 choices are either September 4th or October the 2nd.

13 MR. BROWN: September 4th? I mean, the ball's
14 in our court, but September 4th?

15 AUDIENCE MEMBER: (Unmic'd discussion.)

16 CHAIRPERSON REID: Thank you very much. I
17 appreciate and I understand your frustration.
18 Nonetheless, whether we take a vote today, and typically
19 quite frankly, when we have parties in opposition, we
20 don't usually take a vote on the same day.

21 In the meantime, it would perhaps give an
22 opportunity for both sides to try to come to some type
23 of meeting of the minds and they would also try to mitigate
24 some of the adverse impact, and perhaps you can have a
25 very viable development right there on that corner that

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1 would be something for the community to be proud of, which
2 might be a catalyst to stimulate revitalization all up
3 and down that corridor. So, let's not rule that out.
4 There's no detriment to the community in the interim is
5 there?

6 AUDIENCE MEMBER: (Unmic'd conversation.)

7 CHAIRPERSON REID: The meeting that we'll
8 have to make the decision, that's a Public Meeting but
9 you don't have to attend.

10 COMMISSIONER HOOD: Madam Chair |

11 CHAIRPERSON REID: You don't have to attend,
12 so you don't have to take off work to come to that meeting.

13 COMMISSIONER HOOD: I just want to let him
14 know the record is clear, as far as from what I've read
15 and from what I've dealt with. If there was no
16 representation, I think this Board is intelligent enough
17 to see what's in front of us. So, the record is clear.
18 If nobody was able to make it, the record is here in
19 front of us.

20 CHAIRPERSON REID: Right, you don't have to
21 come to that meeting. You're not allowed to participate.

22 The only thing, if you wanted to come to hear what our
23 decision was, you can come but you're not required to
24 come. There's no obligation whatsoever.

25 Mr. Tallant, actually you're not supposed

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1 to, but just quickly.

2 MR. TALLANT: One question. It's unclear to
3 me at this point whether the direction from the Board
4 is to look at this project from the ground up, or to simply
5 fiddle around the edges, because I hear two different
6 things being said.

7 Mr. Brown is saying that he will not look
8 at this project from the ground up, and I get the feeling
9 from the Board, that that's what you're asking them to
10 do. So, it's not clear to me what's the process.

11 CHAIRPERSON REID: All we're saying is that
12 we'll make a decision at our September meeting. In the
13 interim, whatever you can come up with, both sides can
14 come up with that might pull this thing off, give it to
15 us and we'll run with it.

16 MR. TALLANT: I will say that I will credit
17 Mr. Brown at the December meeting, back some seven months
18 ago. He said that the community and BP Amoco were at
19 an impasse, and he has been absolutely true to his word.

20 CHAIRPERSON REID: But he didn't say that
21 today, Mr. Tallant. I don't want to keep going back and
22 forth. He didn't say that today. Today, he said they
23 would try to see what, in fact, they could do to try to
24 bring about something more positive. Now, let's just
25 give them a chance to see what happens.

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1 MR. TALLANT: Okay.

2 CHAIRPERSON REID: If, in fact, something can
3 happen. I'm not saying that it can.

4 MR. TALLANT: And I'm hearing that that will
5 include the design of the facility.

6 CHAIRPERSON REID: I didn't say that.

7 COMMISSIONER HOOD: Madam Chair, also and us
8 sending them back, are they also supposed to negotiate
9 some more with the Office of Planning and the police
10 department? Because if the police department's stance
11 still stands where it is in September and October, my
12 view will still be the same.

13 CHAIRPERSON REID: Well, I think that we have
14 given them our instructions, and what we would like to
15 see, and it's up to them to do it. I mean, at a certain
16 point, we don't have to keep saying "do this, do that,
17 do the other."

18 COMMISSIONER HOOD: Okay.

19 CHAIRPERSON REID: If I were putting a
20 development there, and my motivations were genuine and
21 honest, then I would try to do whatever I could to be
22 able to make sure that it was successful. It's just as
23 simple as that. So, it's up to them.

24 All right. Can I hit the gavel now? Are
25 we done?

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1 MR. HALL: No. No, not yet. Not yet. Not
2 yet. We have to get some stuff straight. Now, the
3 meeting is September 4th. Though there were a couple of
4 submissions in addition to this meeting of the minds,
5 which is the main thing that I expect of the Applicant
6 and the community members.

7 But there are about three or four requests
8 from the Board. I'm sure you have them, so you don't
9 need them from me. Please get those in by August the
10 28th at the latest, so that I can get it all to the Board
11 members. Are we straight on that? All right. Madam
12 Chair, I'm done.

13 CHAIRPERSON REID: Thank you very much.

14 VICE-CHAIRPERSON RENSHAW: Just for review,
15 we're looking for the accident data, three years' worth,
16 and then we're going to break out the period of when the
17 gas station has not been in operation. That was a
18 request.

19 CHAIRPERSON REID: Yes.

20 VICE-CHAIRPERSON RENSHAW: Also, the trash
21 days and hours. We had asked about that. And we're
22 looking, of course, for this agreement and construction
23 management plan, when I

24 CHAIRPERSON REID: Mr. Hart, do you have all
25 that?

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1 COMMISSIONER HOOD: Yes.

2 VICE-CHAIRPERSON RENSHAW: When the
3 Applicant is back together with us.

4 MS. BAILEY: And if I can add to that, the
5 plans that were presented today, they were revised plans.
6 Those copies need to be submitted to the file and to
7 the parties as well.

8 MR. BROWN: Okay.

9 MS. SANSONE: And there was also information
10 on the spillover on the lighting, or the effect on the
11 neighborhoods.

12 CHAIRPERSON REID: That's right.

13 VICE-CHAIRPERSON RENSHAW: Yes.

14 CHAIRPERSON REID: Okay.

15 MR. TALLANT: Should these drawings be
16 submitted for the record?

17 CHAIRPERSON REID: Yes they should.

18 MR. TALLANT: In what form?

19 CHAIRPERSON REID: Staff will take care of
20 them.

21 MR. TALLANT: Okay.

22 CHAIRPERSON REID: Thank you very much. I
23 know this has been a very long hearing today. Thank you
24 for your indulgence. Thank you staff and the recorder,
25 Ms. Sansone, Court Counsel and the Office of Planning.

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1 VICE-CHAIRPERSON RENSHAW: Yes.

2 CHAIRPERSON REID: This hopefully, our
3 giving this case the full time to air will ultimately
4 manifest something that will be very positive. With that
5 said, have a good evening and thank you very much.

6 MS. SANSONE: Madam Chair, with this new
7 submissions, the parties and the ANC would probably, and
8 OP would probably want an opportunity to review the new
9 information, and perhaps provide comments. I didn't know
10 if Mr. Hart had set a date for that.

11 MR. HALL: A week before the 28th of August,
12 the 21st of August.

13 CHAIRPERSON REID: Do you have a calendar
14 there Mr. Hart?

15 MR. HART: Yes.

16 CHAIRPERSON REID: Does anyone have a
17 calendar? Let's look at the calendar so we can make sure
18 of the dates.

19 MR. BROWN: The 21st of August is a Tuesday,
20 the 28th is the following Tuesday.

21 MR. HART: That's good.

22 MR. BROWN: And then the 4th of September is
23 the following.

24 MR. HART: That's good. For the 21st, the
25 28th and the 4th.

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1 VICE-CHAIRPERSON RENSHAW: Yes.

2 MR. HART: Submission, responses and
3 decision.

4 CHAIRPERSON REID: Okay. All right. Good
5 night. Thank you.

6 (Whereupon, the above-entitled matter was
7 concluded.)

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