

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 12, 2002

+ + + + +

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., Geoffrey Griffis, Chairperson, presiding.

PRESENT:

GEOFFREY GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Member
JAMES HANNAHAM	Zoning Commission
DAVID LEVY	National Capital Planning Commission

STAFF PRESENT:

BEVERLY BAILEY	Zoning Specialist
PAUL O. HART	Zoning Specialist
JOHN K.A. NYARKU	Zoning Specialist
SHERI PRUITT	
MARIE SANSONE	Corporation Counsel
JOHN FONDERSMITH	Office of Planning
JOHN MOORE	Office of Planning
JERRILY KRESS	

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(9:44 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen, the hearing will now come to order. This is the 12th of February, 2002 Public Hearing of the Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Anne Renshaw, also Curtis Etherly. Sitting to my right, David Levy, representing the National Capital Planning Commission and representing the Zoning Commission today is Mr. Hannaham.

Copies of today's hearing agenda are available to you. They are at the table at the door that you did come in. If you don't have enough, please let us know and we'll get them out there.

Let me run through a few quick things. Everything that we do here is on the record, so I would ask that you be aware of that and also that you refrain from any disruptive noises in the audience or actions that might distract us in focusing our attention on what we should be focusing on.

When presenting information to the Board, please speak into the microphone and when you do come up, I will ask you, if you don't recall, to state your name and your home address before presenting your testimony.

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

1 are located at each end of the table in front of us. They're
2 also on the table as you entered in.

3 Upon coming forward to speak to the Board, you
4 can give both cards to the reporter who is sitting to my right,
5 with the microphone, that tips you off that's the recorder.

6 The procedure of the order for special exceptions
7 and variances this morning will be first. We will hear
8 statements and witnesses of the applicant second. We will go
9 through government reports, Office of Planning, Department of
10 Public Works, etcetera.

11 Third we will hear from the Advisory Neighborhood
12 Commission. Fourth, parties or persons in support. Fifth would
13 be parties or persons in opposition and sixth, finally, we will
14 have closing remarks by the applicant.

15 We do have a continuation of an appeal, which has
16 different procedures. We have outlined that before, so I will
17 not go through that at this point.

18 Cross examination of witnesses is permitted by
19 the applicant or the parties. The ANC within which the party is
20 located is automatically a party in the case.

21 The record will be closed at the conclusion of
22 each case, except for materials specifically requested by the
23 Board.

24 The Board and staff will specify at the end of
25 the hearing exactly what is expected and the date when the

1 persons must submit the evidence to the Office of Zoning. After
2 the record is closed, no other information will be accepted by
3 the Board.

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

10 The decision of the Board in these contested
11 cases must be based exclusively on the public record. To avoid
12 any appearance to the contrary, the Board requests that persons
13 present not engage members of the Board in conversation.

14 At this time I would also ask you to turn off all
15 of your cell phones and beepers so as not to disrupt the
16 proceedings.

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

22 If you are not prepared to go forward with a case
23 today or if you believe that the Board should not proceed, now
24 is the time to raise such a matter.

25 Before I take that, I will turn to staff to see

1 if there are any preliminary matters, but before I do that I
2 also just want to introduce the staff that's with us today.

3 Starting at this far end, Ms. Beverly Bailey, who
4 keeps us in order. Mr. Hart, who advises us well and I must say
5 and I want to take a special moment to say how happy we are to
6 have Sheri Pruitt with us today and also Ms. Sansone will be
7 joining us as Corporation Counsel.

8 With that, I would ask staff for any preliminary
9 matters.

10 MS. BAILEY: Mr. Chairman, members of the Board,
11 good morning. There is a preliminary matter. It has to do with
12 the third case. That's application number 16832. There is a
13 request for that application to be continued at a later date.

14 CHAIRPERSON GRIFFIS: Good morning.

15 MS. ZIGNER: Good morning, Mr. Chairman, members
16 of the Board. My name is Jeannine Rustad Zigner, I'm from
17 Robins, Kaplan, Miller & Ciresi, on behalf of the applicant.

18 We submitted a letter initially asking for a 30
19 day continuance. We're now asking for a continuance, and I
20 spoke to staff about this, until April 30.

21 There's been a redesign of the building. HPRB
22 had some concerns which we need to address and also a new
23 architect is being retained. Hopefully, that decision will
24 finally be made this week.

25 We also want the additional time to meet with

1 Office of Planning and adequately address their concerns, DPW.
2 We've notified the ANC of this request for continuance. They
3 are in support of the application. They've submitted letters to
4 HPRB.

5 This has been ongoing for a while and we just
6 want to have the adequate time to prepare.

7 CHAIRPERSON GRIFFIS: Do we have any of the
8 letters from the ANC? I didn't see any. Do we have any, other
9 than your letter that you're aware of? You said they submitted
10 to HPRB, did they submit to us?

11 MS. ZIGNER: I spoke to the client and they were
12 contacting the ANC. It was their understanding something had
13 been submitted and I informed them that it had, in fact, had not
14 yet been submitted.

15 CHAIRPERSON GRIFFIS: Is that something that came
16 in this morning? Did we get any other additional information on
17 this?

18 MS. BAILEY: No, Mr. Chairman, we did not receive
19 anything from the ANC.

20 CHAIRPERSON GRIFFIS: Okay, Board members,
21 concerns, questions?

22 MEMBER LEVY: Mr. Chair.

23 CHAIRPERSON GRIFFIS: Yes.

24 MEMBER LEVY: One question. Are we still going to
25 be seeing the same project basically?

1 MS. ZIGNER: Basically the same, but again there
2 are concerns of HPRB, some design issues and some issues that
3 OP, the Office of Planning, has raised, which there may be a
4 little difference in the project, but substantially it will be
5 the same.

6 MEMBER LEVY: Same site, basically the same uses?

7 MS. ZIGNER: Yes.

8 MEMBER LEVY: Mix of uses?

9 MS. ZIGNER: Yes.

10 MEMBER LEVY: Okay, thank you.

11 CHAIRPERSON GRIFFIS: Any other questions,
12 comments? Okay.

13 As you know, this Board takes seriously
14 continuances. It obviously disrupts our schedule. I think this
15 is a fairly strong reason for not hearing this today and I might
16 add that we have a heck of a lot to do this morning.

17 So all that in balance, I would say that we grant
18 the continuance. Let's look at schedules. You had indicated
19 April 30, is that correct?

20 MS. ZIGNER: That is correct.

21 CHAIRPERSON GRIFFIS: Staff, can you tell me what
22 our schedule is?

23 MS. BAILEY: Mr. Chairman, we can accommodate the
24 applicant on April 30. It would be the first case in the
25 afternoon. That's starting at 1:00 p.m. We do, however, also

1 caution the applicant in case any of the variances will change
2 based upon redesign to notify us as soon as possible.

3 MS. ZIGNER: We will submit to give you adequate
4 time to publish that.

5 CHAIRPERSON GRIFFIS: You don't anticipate that at
6 this point?

7 MS. ZIGNER: We don't at this point.

8 CHAIRPERSON GRIFFIS: Okay. All right.

9 MS. ZIGNER: If we can reduce, we'd be happy, but
10 we don't anticipate that will be possibly.

11 CHAIRPERSON GRIFFIS: Certainly let us know as
12 soon as you do know anything of that nature and if not, we will
13 see you on April 30 at 1:00 p.m.

14 MS. ZIGNER: Thank you very much.

15 CHAIRPERSON GRIFFIS: Thank you. Any other
16 preliminary matters?

17 MS. BAILEY: Not from staff, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Okay. I know we had
19 received a call from the first applicant. Is the first
20 applicant here before we call the case, Abigail Parker, Case No.
21 16808? Not seeing hands shooting in the air, I would assume
22 that they are not.

23 Okay, Board members, I suggest we move on. Let's
24 call the next case for the morning.

25 MS. BAILEY: Application number 16833 of TP2 LLC,

1 pursuant to 11 DCMR ?3104.1, for a special exception from the
2 limitation on the number of roof structures and the roof
3 structure setback requirements under subsection 411.11, and
4 pursuant to 11 DCMR ? 3103.2, a variance from the residential
5 recreation space requirements under section 773, to permit the
6 construction of a mixed use (apartment house and retail) in a C-
7 2-A District at premises 306 Carroll Street, N.W. (Square 3354,
8 lot 26).

9 All those wishing to testify, please stand to
10 take the oath, all those persons wishing to testify.

11 CHAIRPERSON GRIFFIS: Can we just get the
12 applicant's attention. You're being sworn in at this time. If
13 you could just give your attention to the staff member at the
14 far right.

15 WITNESSES OATH

16 All persons to be testifying before the Board of Zoning
17 Adjustment as witnesses were duly sworn at this time.

18 CHAIRPERSON GRIFFIS: Okay, the first thing we
19 need to go through as a Board preliminary matter, I need to
20 disclose the fact that I am employed with Hickock Warner Fox
21 Architects and they are a consulting firm on this project.

22 Let me just indicate the fact that I have had no
23 involvement through my office on this project, nor have I had
24 any possibility of discussion or coordinating the application
25 here.

1 I think that I can be, in fact, impartial and
2 fair in deliberating on this case. I will certainly not see any
3 personal monetary awards or detractions by the approval or
4 disapproval of this case and I don't think I bring any sort of
5 personal bias, outside of the fact that these are two of my
6 favorite sections to discuss in the regulations 411.

7 That being said though, I would ask for comments
8 from my Board members and then I will actually ask for comments
9 from the applicant and participants in this.

10 Let me just set it forward, I don't have any
11 applications for a party status. Is anyone in the audience
12 anticipating to be a party in this?

13 (Nothing.)

14 CHAIRPERSON GRIFFIS: Very good. And there it is,
15 let me sit back and hear Board comments or questions.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman, on the
17 matter of a possible recusal, I believe that it is up to the
18 individual to analyze the case at hand and to determine whether
19 he or she, as the case may be, can sit and make a fair and
20 impartial judgment and if you say that you can do so in regard
21 to this case, then I will take your word for that.

22 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.
23 Others?

24 MEMBER LEVY: Mr. Chair.

25 CHAIRPERSON GRIFFIS: Mr. Levy.

1 MEMBER LEVY: Just to clarify. Did you at any
2 time provide any advice to the applicant regarding the preparing
3 of this case?

4 CHAIRPERSON GRIFFIS: No, I did not. In fact, I
5 am not certain that my firm had much to do with putting together
6 the application that's been submitted.

7 I mean I certainly know that the project was in
8 the office. We are consulting and I am frankly not 100 percent
9 sure of what that means. I know we're probably doing the
10 construction documents. There is another architect that's
11 actually working on the design.

12 The only thing that I did know from my firm,
13 being in management meetings and staffing, is that this project
14 was coming to the BZA and that was it.

15 MEMBER LEVY: Okay.

16 MEMBER ETHERLY: Mr. Chairman, if I may. I
17 understand that we may see some witnesses who are affiliated
18 with the firm before us today. Could you speak a little bit to
19 your relationship as it relates to any of the witnesses that
20 will appear.

21 CHAIRPERSON GRIFFIS: Yes, thanks and that's an
22 excellent point. From the case file there is two witnesses from
23 my firm. One of which I obviously can see right now, is an
24 associate in the firm.

25 As an associate, he holds a position in the firm.

1 There's also a project manager there. The associate that is
2 here today, Mr. Caudle, is part of the corporation, but is not a
3 direct boss of mine necessarily.

4 If we were to work on projects, he would
5 certainly be the associate, I would probably be the project
6 manager. We do not have that situation at this point.

7 MEMBER ETHERLY: So you do not anticipate having
8 any type of supervisory responsibility as it relates to this
9 case for any personnel that may be involved at this time?

10 CHAIRPERSON GRIFFIS: Right, absolutely not.

11 MEMBER ETHERLY: Okay. Thank you, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Yes.

13 MEMBER LEVY: Mr. Chair, I have no objections to
14 your participation in this case today.

15 CHAIRPERSON GRIFFIS: Thank you. Anybody else.

16 COMMISSIONER HANNAHAM: Mr. Chair, I have no
17 objections either. I respect your statement and your integrity
18 and that's really what it boils down to. Thank you.

19 MEMBER ETHERLY: One final question, Mr. Chair,
20 and then I think we'll be ready to proceed. Do you anticipate
21 any difficulty in maintaining a firewall as it relates to this
22 case in your continuing responsibilities at the firm?

23 CHAIRPERSON GRIFFIS: Yes, that's an excellent
24 question. I have no question that would be easily done. I have
25 my own projects in my office. This one is running, in fact, on

1 a different floor than I am actually sitting, so I would
2 anticipate that there would not be a lot, outside of staffing
3 issues and then progress reports in terms of how it relates to
4 the management of the firm. Other than that I wouldn't.

5 VICE CHAIRPERSON RENSHAW: And Mr. Chairman, would
6 you recuse yourself and step away from meetings, staff meetings,
7 where this case is discussed if it's not determined today?

8 CHAIRPERSON GRIFFIS: Oh, most certainly. If the
9 order isn't out and there were substantive questions on the
10 actual hearing, I would have no questions, in fact, I wouldn't
11 want to hear it, no. It would be no problem at all.

12 MEMBER ETHERLY: Mr. Chairman, I appreciate your
13 disclosure. I would be prepared to support your continued
14 participation in this case at this time.

15 CHAIRPERSON GRIFFIS: Thank you very much. I
16 would ask the applicant to make comments on this. And is anyone
17 else anticipating that they want to weigh in on this, although
18 we usually just go for parties, but I've noticed an awful lot of
19 witnesses being sworn in.

20 So if you have a comment or feel strongly, I
21 would ask you just to come up to the table while I ask the
22 applicant to make a comment on this.

23 MR. GELL: Thank you, Mr. Chairman. My name is
24 Stephen Gell, a zoning attorney, and I'm representing the
25 applicant, speaking for the applicant.

1 We have no objection to your participation. If
2 that's the decision of the Board, we'll accept the Board's
3 decision in either case.

4 CHAIRPERSON GRIFFIS: Thank you, Mr. Gell.
5 Anybody else. I think we've flushed that out fairly well. So
6 now it's up to me whether I want to go to coffee and let you
7 guys run this or get through it.

8 I think we ought to proceed. I will sit and, in
9 fact, I will just reserve the right if I find that I am getting
10 into things, it's not anticipated, but getting into things that
11 I do not think I can hear impartially, I will leave and put Mr.
12 Renshaw, Vice Chair, in charge.

13 That being said, let us turn over to you, Mr.
14 Gell, to introduce your witnesses and begin your case, please.

15 MR. GELL: Thank you, Mr. Chairman. I'm very
16 happy to present the application of Russell Katz, who is
17 President of TP2, the applicant, the owner of the property in
18 this case, on which is expected to be built several units of
19 housing and retail on a site in the historic district that's
20 been a very difficult site for many people who have contemplated
21 construction on the site. In fact, it's been vacant for many,
22 many years. Attesting to the fact that it is, indeed, an
23 extremely difficult site.

24 I would say that as we present our testimony,
25 what you will hear is that this applicant followed what you

1 would consider a textbook approach to dealing with projects.

2 In fact, he has been meeting with the community,
3 every group, every element of the community, certainly the ANC
4 and several other organizations.

5 Right from the beginning has made numerous
6 changes in response to the concerns that they had expressed.
7 Has continued to work with them right up until now and some of
8 those folks are here to testify.

9 He has indeed done it the right way and I think
10 it is a credit to him and the way he approached it. This wasn't
11 something that he did because I urged him to do it. Obviously,
12 that's the approach I like to take. This was something that he
13 had actually been doing before I came onto the case.

14 One matter of business before I turn it over to
15 the witnesses. First of all, Russell Katz will be testifying as
16 the owner. He's also an architect. Mr. Frances Phipps, who is
17 a neighbor and who is also a professional planner will be
18 testifying.

19 I believe Linda Gray and Sara Green will also be here. They
20 will be introduced at a later time.

21 Finally, Mr. Laurence Caudle will be the
22 consulting architect and we would ask that he be accepted as an
23 expert witness on design for this project. You have his resume.

24 CHAIRPERSON GRIFFIS: Okay, Mr. Gell, let's take
25 that up first so we can proceed and then while the Board members

1 are pulling that out and finalizing their thoughts on it, I
2 would ask you just to give me an estimation of time.

3 First, can I see, is there anyone here in
4 opposition, to testify in opposition today? Okay. And the
5 rest, I'm assuming, would mean support. Okay, so can I see
6 hands of opposition? Okay.

7 All right, Board members, if you would not mind.

8 Frankly, I'm not going to comment on taking in the expert
9 witness. I think that's an issue you guys can deal with
10 yourself and knowing that Mr. Caudle is in the same firm as I.
11 Please, Ms. Renshaw, I would ask you to make comments.

12 VICE CHAIRPERSON RENSHAW: Yes, Mr. Caudle is
13 before us an expert witness. I would like my Board members to
14 discuss this, please.

15 CHAIRPERSON GRIFFIS: If I could interrupt. I
16 think, Mr. Gell, just for clarification, your proffering him as
17 an expert witness in architectural design, correct?

18 MR. GELL: That is correct.

19 VICE CHAIRPERSON RENSHAW: Just to ask if we have
20 the gentleman's resume?

21 MR. GELL: That should be attached to your
22 package.

23 VICE CHAIRPERSON RENSHAW: To the package?

24 MR. GELL: Yes.

25 VICE CHAIRPERSON RENSHAW: All right. Do the

1 Board members have any questions for Mr. Caudel as an expert in
2 architectural design? Mr. Levy.

3 MEMBER LEVY: Madam Vice Chair, I have no
4 questions and no objections.

5 VICE CHAIRPERSON RENSHAW: All right.

6 MEMBER ETHERLY: Madam Vice Chair, no questions
7 and no objections.

8 VICE CHAIRPERSON RENSHAW: Mr. Hannaham?

9 COMMISSIONER HANNAHAM: No, I have none, thanks.

10 VICE CHAIRPERSON RENSHAW: All right and I don't
11 have any objection to Mr. Caudel as an expert witness. Mr.
12 Griffis.

13 CHAIRPERSON GRIFFIS: You guys are too easy,
14 frankly. But, nonetheless, we can move.

15 VICE CHAIRPERSON RENSHAW: Do you want a second
16 round?

17 CHAIRPERSON GRIFFIS: Let's set the clock for ten
18 minutes of questions each on the expert witness. Mr. Gell,
19 please proceed.

20 MR. GELL: Yes, without further adieu, I'm going
21 to call on Russell Katz to present the project to you.

22 MR. KATZ: Hi, my name is Russell Katz.

23 CHAIRPERSON GRIFFIS: We are getting terrible
24 feedback, so what we're going to try and do is keep certain
25 mikes down, rather have one mike on at the time. Can I just

1 interrupt here, why are we getting that? Do we have a remote
2 mike that's out here? It doesn't happen all the time, so I'm a
3 little concerned. I'm getting a lot of it. I'm going to turn
4 my mike off and turn it over to you. Just give me your name and
5 address, please.

6 MR. KATZ: Russell Katz, 1250 27th Street, N.W.,
7 Washington, D.C. 20007. I am the owner of the property, the
8 developer of the property and I'm also an architect.

9 I have collaborated with Laurence Caudel and his
10 staff at Hickock Warner Fox in the design of the project.

11 I'd like to introduce the site to you. It's a
12 site that I found because I'm a property owner of another
13 building that's just about 300 feet north of this one, a 36 unit
14 apartment building that I bought and renovated myself and own
15 and operate.

16 CHAIRPERSON GRIFFIS: Is that TP1?

17 MR. KATZ: No, it should be, but it's not. Good
18 question. So in my time and to come, I became very familiar
19 with the area around the Metro station and with this site, which
20 is hard to miss. It's right across the street from the Metro
21 entrance and it's quite blighted and that has been that way
22 since I've known it. It turns out it's been that way for the
23 last 20 years.

24 I would say that I do think it's a fantastic
25 location and an interesting site and it's been very challenging

1 and the investment in this is for me, very exciting. I'm glad to
2 be investing further in the Tacoma community.

3 The site itself is a very odd site. It's an odd
4 triangular plan, which if you can't see in the packets that we
5 gave you, there are boards here that indicate as well, with
6 sharp changes in grade.

7 It's a through site from Carroll Street back to
8 Vine Street and Vine Street has a very small access area which
9 flares out more or less at grade, but rising steadily to some
10 retaining walls about three quarters of the way north on the
11 site that mark a significant change in grade of 10 to 12 feet.

12 The site then slopes down towards Carroll Street
13 and further along Carroll, it slopes down 9 feet from the east
14 to the west.

15 The acoustics on the site are a major impediment.
16 We're on grade mostly with the Metro, which is not actually too
17 much of a noise problem, but the CSX trains and the MARC and
18 Amtrak also run on the tracks and when the CSX goes by with
19 three or four locomotives, you feel the ground shake. It's a
20 major impediment to the site.

21 Further, the site includes part of a wall that
22 was built by WMATA, by Metro, when they were modifying and
23 putting in the station. That wall comes about 20 feet into our
24 site. It's about two and a half feet thick of reinforced
25 concrete and it's been something that we have to work around

1 because it's not going anywhere.

2 In short, there's really no question as to why
3 the site's been unbuilt for so many years. It took a lot of
4 creativity and a long process, looking at a lot of different
5 possibilities to arrive at a viable solution.

6 And I'd like to note as well that this solution
7 is on the margin. I would say it's difficult enough that with
8 all the impediments on the site, I'm glad that we're just making
9 it through, but it's not a sure deal by any stretch.

10 I'll talk a little bit about our design approach,
11 which has really been three fold. Number one, it's been to meet
12 with community early enough and number two, to build green,
13 build environmentally sensitive and number three, to design and
14 respect to the historic context.

15 I bought the site in April of 2001 and
16 immediately contacted the ANC representatives, essentially
17 Patterson and Sara Green. I talked with Loretta Neumann of
18 Historic Tacoma, Brian Baker, who was at that time the head of
19 Planned Tacoma.

20 I spoke with Rosalyn Frazier from the Office of
21 Planning, Adrian Fenty and many more other individuals in the
22 first two weeks of owning the property.

23 What that did was open up a good dialogue that
24 continued for the last 9 to 10 months and on more occasions than
25 I can really count, I've met with individuals, groups, etcetera,

1 to get to the point where we are now and I'm very proud of the
2 consensus that we've built along the way.

3 Some of the things in the design that have
4 responded to community concerns, there are numerous ones, and
5 I'll just mention a few just to give an indication.

6 First, we had the building right to the lot line
7 on Carroll, ultimately realizing that the sidewalk that's left
8 by the city was quite narrow, as narrow as five and half feet in
9 some places and that wouldn't do.

10 Of course, we would have preferred if the city
11 would build a wider sidewalk, but in response to community
12 concerns, we widened the sidewalk and increased it's size by 65
13 percent, giving 750 square feet back to the street.

14 We've also started out with a fire stair on the
15 northwest corner, which was a response to the Metro wall, which
16 comes into the site, essentially occupying the best space for a
17 fire stair.

18 However, after meeting with the community and
19 looking at the design further, we realized it presented a very
20 blank facade to the residents across the street and to people
21 who walk underneath the overpass towards the retail shops. So
22 we found a way to move it inside, thus giving corner retail,
23 which is a great Washington type of retail, back to the
24 community.

25 We originally had a stucco facade, which is now

1 brick. We had smaller windows, which are now larger and we also
2 worked with the northeast facade to make it more open and
3 welcoming to those people coming down the street from Maryland.

4 There were also responses that we made on the
5 ground floor plan, in terms of traffic circulation and the
6 pedestrian circulation.

7 We've been very focused on reestablishing the
8 pedestrian experience on this street and Laurence will speak
9 more to that in our latest plan, which does differ somewhat from
10 what you have. We've made one modification.

11 What we've tried to do is limit the amount of
12 cars that come through and limit the number of curb cuts as
13 well?-.
14

15 CHAIRPERSON GRIFFIS: Let me interrupt you right
16 there.

17 MR. KATZ: Yes.

18 CHAIRPERSON GRIFFIS: Do you have copies of the
19 plans that you're going to be discussing that have been revised?

20 MR. KATZ: We don't, we just have the boards. We
21 can provide copies.

22 CHAIRPERSON GRIFFIS: Okay. Yes, well, we're
23 going to do what you have, so that's all right and then we'll
24 get copies. Yes, don't confuse us yet before you want to get
25 into that.

MR. KATZ: It's a relatively minor modification,

1 but it's something that I think is trying to make it better.

2 CHAIRPERSON GRIFFIS: Excellent and we're going to
3 need you to walk us through what the difference and all that
4 because we've obviously been looking at all this and so when we
5 see something different, we'll just need to understand it.

6 MR. KATZ: Right. That's why I wanted to point
7 out that it's just the one change.

8 CHAIRPERSON GRIFFIS: Okay, great.

9 MR. KATZ: As far as the building green, I won't
10 go much into detail on that because that's not what we're here
11 for, but I'd just like to put in the plug that it's something
12 which is very important to us, building low impact and building
13 a healthy environment.

14 CHAIRPERSON GRIFFIS: When you say, building
15 green, what does that mean, it's going to be painted green?

16 MR. KATZ: No, it's not green, that wouldn't be
17 historical. It means that you try to build something that's
18 going to have a low impact on the environment. You try to
19 manage storm water on site, use low toxic materials, recyclable
20 materials, design spaces that are well lit by natural light, get
21 fresh air and so forth, well insulated walls, high efficiency
22 mechanical systems. The list goes on and on, but it's about a
23 healthy environment, both for people and for the ecology.

24 CHAIRPERSON GRIFFIS: I see, so this isn't
25 actually a green building?

1 MR. KATZ: That's right.

2 CHAIRPERSON GRIFFIS: Okay, which maybe
3 understands the axons and the perspectives of the green roof?

4 MR. KATZ: With the green roof, that's right.

5 CHAIRPERSON GRIFFIS: Okay, we'll get there.

6 MR. KATZ: Yes.

7 CHAIRPERSON GRIFFIS: Good.

8 MR. KATZ: The third thing was, of course,
9 building in a historic district, you have to work to respect the
10 historic context.

11 The first thing that we did in that regard was to
12 choose the building use as retail and residential. We looked at
13 other uses, but ultimately this was the most in conformance with
14 the neighborhood.

15 Also the retail on the street, I think, is a
16 major amenity to the community. It's something that through
17 the markets studies that I've seen and that I've had done, it's
18 not as well supported as the residential.

19 Nonetheless, because of the location and the
20 urban quality and especially because of the gap between the west
21 and the east side of the tracks, it's that kind of amenity which
22 really is important in terms of bringing the community together.

23 Also, we've kept the height of the building quite
24 low to relate to the context. We're well below the height limit
25 and because of that and the other site constraints, been limited

1 to about 63,000 square feet of building and an FAR which would
2 allow for 85,000.

3 We've worked closely with HPRB staff and with
4 community groups to develop the design and are quite pleased
5 that we received HPRB approval last week, on the 7th.

6 CHAIRPERSON GRIFFIS: You did receive?

7 MR. KATZ: We did receive.

8 CHAIRPERSON GRIFFIS: Final approval?

9 MR. KATZ: I think they call it final conceptual
10 and we work with the staff member until we go to the building.

11 CHAIRPERSON GRIFFIS: They're a hard group to
12 commit to anything.

13 MR. KATZ: Right.

14 CHAIRPERSON GRIFFIS: Can you just reiterate what
15 you have said in terms of the FAR. You indicated that you
16 haven't built this out to a 100 percent of allowable FAR?

17 MR. KATZ: That's right.

18 CHAIRPERSON GRIFFIS: And by keeping the height
19 down or is it the historic impact that has curtailed you from
20 doing that, just give me briefly why.

21 MR. KATZ: I would say that it was in response to
22 the context and what we wanted to do was keep the height down,
23 so that we would be more in keeping with the scale of the
24 buildings in the neighborhood, which was our move, it wasn't
25 something dictated by HPRB, but something that we thought was

1 appropriate.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. KATZ: And what I'm saying is that, along with
4 the constraints of the site, which Laurence will speak to in
5 terms of the design, have limited our FAR to that amount.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. KATZ: It's a matter of site and location.

8 CHAIRPERSON GRIFFIS: That's clear.

9 MR. KATZ: With that, I'll hand it over to
10 Laurence to explain the design of the project and the zoning
11 application. Thank you.

12 MR. CAUDEL: All right, thank you, Russell. For
13 the record, my name is Laurence Caudel. I'm an associate with
14 Hickock, Warner, Fox Architects and we've been working with
15 Russell Katz on the development of this project.

16 As Russell has stated, the site?-

17 CHAIRPERSON GRIFFIS: I'm sorry to interrupt, can
18 you just give an address, please?

19 MR. CAUDEL: I'm sorry, the address is 1023 31st
20 Street, N.W., Washington D.C.

21 As Russell said, the challenges of the site were
22 pretty enormous. Basically, I will summarize it as being three,
23 but the irregularity of the site, this triangular shaped site,
24 which is much wider at Carroll Avenue and quickly narrows as you
25 move southward toward Vine Street.

1 Also, there's a major grade elevation change also
2 from Carroll to Vine Street, which allows us to get the ground
3 floor level, which basically raises the residential portion on
4 grade and on level with the Metro tracks.

5 CHAIRPERSON GRIFFIS: Let me just interrupt you
6 just briefly. Board members, are you clear on what has just
7 been said, can everyone see those boards? Okay, thank you.

8 MR. CAUDEL: Okay. The narrowness of the site,
9 also the adjacency to the Metro tracks and not so much the
10 Metro, but as Russell stated, the CSX tracks. They are rather
11 imposing in their presence and their noise as they move directly
12 by the site.

13 As we had exhaustively discussed solutions for
14 the site, dealing with those major challenges, the solution that
15 you see before you, this courtyard building, was by far the one
16 that accommodated most of those challenges and mitigated them by
17 far.

18 The courtyard is organized with a ring of
19 apartment residences, most of which face inward onto the
20 courtyard. The only exception to that is along Carroll Street.

21 There are some apartment units that face on Carroll Street.

22 What happens therefore is in all the residences
23 that face the courtyard have balconies that open onto the
24 courtyard and I'll discuss that a little bit more in just a
25 moment.

1 As I stated earlier, the residences are basically
2 on three floors, plus the loft, mezzanine level, which is
3 basically we call three and half floors above, are the second
4 floor, the duplex levels on the top floor.

5 But to accommodate the grade change, as you see
6 in the section that Suzanne is showing, we are able to put that
7 retail space that Russell felt was very important to accommodate
8 in the project in that lower level and it fit very nicely on the
9 site in that location and extending it from the corner to corner
10 of the site, basically continues the urban fabric.

11 Let me talk about the circulation of the building
12 a little bit. In plan, there are two entrances to the site.
13 The major entrance for the residences is on Vince Street, which
14 is the south, narrow end of the site.

15 CHAIRPERSON GRIFFIS: While you are getting into
16 that, circulation is going to be important, but what I want to
17 have, perhaps quickly, it's your case to make, but what we need
18 to do is start talking about the variance and the special
19 exception that you're actually here for.

20 So as things are related to that, which I think
21 we're probably getting to?-.
22

23 MR. CAUDEL: We're segueing into it, yes.

24 CHAIRPERSON GRIFFIS: And I appreciate trying to
25 figure out this site, but that being said, please continue.

26 MR. CAUDEL: Okay, I'll try to be as brief as I

1 can about that then. You enter from Vine Street, that's the
2 major entrance to the residences. There is also a secondary
3 entrance on Carroll Avenue, where there is an elevator, which
4 connects all the floors, since it goes all the way down to the
5 ground level at that point.

6 I think at that point, I'll just start leading
7 into the variances. The first I'll talk about is the rooftop
8 enclosures. The variance is for three rooftop enclosures,
9 instead of one and the set back distance of those rooftop
10 enclosures.

11 CHAIRPERSON GRIFFIS: Just be specific, it's
12 actually a special exception, if I'm not mistaken, for the
13 rooftop.

14 MR. CAUDEL: Okay. Let me talk about the first
15 enclosure, which is the elevator as I discussed earlier, at that
16 point in the site, it is for the elevator over run, which
17 actually sits back properly from the edges of the building.

18 CHAIRPERSON GRIFFIS: Can you put that up and is
19 this roof plan we're looking at, 3.5, I think. I can't see it
20 actually, 843.5. Is that any different than what was submitted?
21 So we haven't hit the changes yet?

22 MR. CAUDEL: We have not hit the changes yet.

23 CHAIRPERSON GRIFFIS: Okay, good.

24 MR. CAUDEL: So that small enclosure you see in
25 the northeast corner is the elevator over run, which sits back

1 properly from the edges of the building.

2 CHAIRPERSON GRIFFIS: And is there only one
3 elevator in this building?

4 MR. CAUDEL: There's only one elevator in this
5 building, yes.

6 In the southeast corner is a mechanical
7 enclosure, which also encloses the stair that will lead for
8 access to the roof. It is set back all but with four inches per
9 what the zoning requires.

10 Architecturally, it's actually just an extension
11 of the wall around the mezzanine level. In other words, it does
12 not project up any higher, so visually, architecturally what we
13 were able to do was just make it look like the enclosure is an
14 extension of that mezzanine level.

15 The third enclosure is the cooling tower
16 enclosure and cooling towers are much higher. The reason we
17 located in this location is for community concern, they were
18 quite concerned about visual impact on Carroll Avenue, so we did
19 not want to locate it close to Carroll Avenue. In fact, we
20 located it at the midpoint of the site and we located it
21 adjacent to the railroad tracks.

22 So it is as far from Vine Street as possible, as
23 far from Carroll Avenue as possible and adjacent to the railroad
24 tracks, not next to any other occupied lot.

25 CHAIRPERSON GRIFFIS: The four inches, that seems

1 to be pathetically minimal. There's absolutely no way to make
2 it compliant?

3 MR. CAUDEL: The four inches from the set back?

4 CHAIRPERSON GRIFFIS: My understanding is and what
5 you've indicated is that this is a stair and mechanical
6 enclosure, meaning there are egress stairs coming up, accessing
7 the roof, correct?

8 MR. CAUDEL: Right.

9 CHAIRPERSON GRIFFIS: So that stair placement is
10 based on the plan that is below it and there's no way that
11 shifts over or becomes smaller or a different location?

12 MR. CAUDEL: It truly is just an architectural
13 extension of the form that is there now and we didn't introduce
14 another?-.

15 CHAIRPERSON GRIFFIS: Which will start the
16 alignment of what's actually there also.

17 MR. CAUDEL: Right, right.

18 CHAIRPERSON GRIFFIS: Which is an interesting
19 question about?-. Anyway, for four inches I'm not going to
20 spend more time on that.

21 MR. CAUDEL: Okay. The cooling tower. The
22 cooling tower is not a story because it is 18'6" high, as
23 allowed in terms of height, but we're not set back clearly.
24 We're only set back 5'2", but the difficulty, as you can see, is
25 the narrowness of the building and the fact that we wanted to

1 get it away from Carroll Avenue and Vine Street as far as
2 possible.

3 Any where we are along top of the building, we're
4 going to be too close to the edges of the site.

5 CHAIRPERSON GRIFFIS: Okay and that's cooling
6 tower on 3.5?

7 MR. CAUDEL: Yes.

8 CHAIRPERSON GRIFFIS: Cooling tower option two,
9 correct? And that's what we're looking at?

10 MR. CAUDEL: Yes.

11 CHAIRPERSON GRIFFIS: Is that clear to everybody?
12 Okay.

13 MR. CAUDEL: The second variance is to the
14 required recreation space in the building. The zoning requires
15 20 percent of recreation space. We are asking for 15 percent.

16 CHAIRPERSON GRIFFIS: I'm sorry.

17 MR. CAUDEL: Yes?

18 CHAIRPERSON GRIFFIS: I may be the slowest one up
19 here, which is why I ask so many questions. Did you go through
20 option one or you are presenting option two, cooling tower. On
21 that level it's 18'6" high and the set back is, I know it's in
22 here, but give it to me again.

23 MR. CAUDEL: 5'2"

24 CHAIRPERSON GRIFFIS: 5'2".

25 MR. CAUDEL: Yes.

1 CHAIRPERSON GRIFFIS: We're not looking at option
2 one?

3 MR. CAUDEL: No.

4 CHAIRPERSON GRIFFIS: Good. Okay. Great, let's
5 talk about recreation space.

6 MR. CAUDEL: Okay, recreation space. We are
7 asking for a 15 percent, instead of 20 percent. Again, the
8 irregular configuration of the site lends us to ask for this
9 exemption because it's very difficult to get that full 20
10 percent.

11 The courtyard, as I stated earlier, was a very
12 important element to this project. It was important because we
13 wanted to protect the residences from the adjacencies of the
14 Metro tracks. To do that, we feel that the development of the
15 courtyard and the quality of the space is very important.

16 Even though we are asking for 15 percent of 20
17 percent, we are adding as much value to the design of this
18 courtyard as possible. There are many flowering bushes, large
19 mature trees, a little bit of water element is going to be
20 included into the courtyard and also every unit, as I stated
21 earlier, that faces the courtyard has a balcony that opens up
22 onto the courtyard as well.

23 Unfortunately, we can not count those open area
24 balconies towards the recreation space. It counts towards the
25 areas of the residences itself.

1 I would like to touch on the bike path issue a
2 little bit. The bike trail that had been suggested to go onto
3 the site would be along the railroad track side and that would
4 require a ten foot easement, which would eat easily half way
5 into that side of the building as we've developed it.

6 As I said from the beginning of my testimony, we
7 really went through a lot of studies on this site and trying to
8 fit a building on this site. The railroad tracks just almost
9 dictated, along with the other adjacencies that we have, an
10 inward courtyard building to be able to provide a reasonable
11 atmosphere for this type of building.

12 To put the ten foot easement on this property
13 would almost negate the courtyard concept all together. It
14 would just propose way too many challenges to be able to make it
15 work.

16 CHAIRPERSON GRIFFIS: Okay and I thank you for
17 that. For Board members, which we are very aware of and I know
18 Office of Planning is probably going to talk about this bike
19 path. It actually is not part of our jurisdiction.

20 It puts us into the context of what this project
21 is and all the pieces that are involved in it, which is very
22 important, this Board takes very seriously, but I want one, for
23 the applicant and for anybody else testifying, we have no
24 jurisdiction, so there can not be any, necessarily, ruling
25 directly to that issue.

1 MEMBER LEVY: Mr. Chair.

2 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

3 MEMBER LEVY: Mr. Caudle, I'd like to ask you some
4 questions about the rooftop penthouses. You've talked and Mr.
5 Katz talked as well, about the unusual nature of the site.

6 You've described a project that has three
7 separate penthouses, two of which additionally have set back or
8 are looking for set back variances.

9 Would you talk a little bit about what
10 specifically is causing you to have three separate enclosures,
11 rather than one as required and also, I'd like you to talk
12 about, give me a little clearer indication of who's likely to
13 see the two structures that are not set back properly and what
14 materials they're made out of.

15 MR. CAUDEL: That's a good point. As I said
16 earlier, as Russell was working with the community to get as
17 much input as possible, the height of the whole building, the
18 whole development itself was always a great issue.

19 While we could locate the mechanical cooling
20 tower along Carroll Avenue toward the back of the building, it
21 would suddenly impose itself on the courtyard, but more
22 importantly, from the visuals that we created and studied up and
23 down Carroll Avenue, you would still see this large structure
24 and we did every effort that we can to mitigate the height of
25 the building to the community. We even stepped back the fourth

1 floor and just simply located the cooling tower, even though we
2 could, would unfortunately undermine all the concerns that the
3 community had.

4 That's why we asked for that we put it in the
5 middle of the site, from Vine Street and Carroll Avenue, clearly
6 it's the most distance from either end.

7 It's not adjacent to the east side because
8 clearly there's a building right adjacent to there. We didn't
9 feel that would be the reasonable solution.

10 Locating it to the Metro tracks, it is only
11 clearly the Metro tracks on that side and on the other side, I
12 believe it's only from Blair Road, which you begin to see the
13 cooling tower a little bit, but it has the least visual impact
14 than actually locating on Carroll Avenue, which we could do as a
15 matter of right.

16 MEMBER LEVY: You have a stair penthouse and
17 elevator penthouse.

18 MR. CAUDEL: Correct.

19 MEMBER LEVY: Could you go into a little bit as to
20 why those are separate?

21 MR. CAUDEL: That's also a good point. The reason
22 why they're separate is because we want clearly the elevator to
23 connect to all levels and it is only on that end of the site,
24 where we have that lower ground level.

25 We do have a little bit of basement, but it runs

1 an extraordinary amount of distance of the site and in fact, it
2 is just storage area in the basement. It would make a
3 reasonable secondary entrance to the site, to be able to get
4 from one to the other for residences. We prefer them not to
5 move through the basement, cellar, storage area to get up into
6 the residences and to the elevator.

7 MR. KATZ: I'd like to add that the location of
8 the stair on the back of the site was because that location
9 integrates with that higher roof form. In the front, it would
10 stand out as another separate element.

11 CHAIRPERSON GRIFFIS: Is it also a place for code
12 compliance?

13 MR. KATZ: It could have been on the front or the
14 back for code compliance.

15 CHAIRPERSON GRIFFIS: I see, okay.

16 MR. KATZ: The elevator really had to be on the
17 front, as Laurence pointed out, because of the site section and
18 how it connects to all lobbies. So we took the other ones to
19 the back.

20 You asked about who else would see it. Really,
21 nobody. Vine Street is a dead end street. It dead ends right
22 at our entrance, so the only people that would see it would be
23 people that pull into our parking lot.

24 MR. CAUDEL: Again, it seemed a little better
25 design solution to add on to the upper mezzanine level, than it

1 was to keep building up the elevator over run.

2 CHAIRPERSON GRIFFIS: So basically what I'm
3 hearing is that you're addressing some of the operating
4 difficulties. Obviously, the size of the building lot has
5 impacted the placements of these and also the other conditions
6 of the historic, the community input and the surrounding area
7 having influence on this, which actually speaks directly to 411,
8 which I think is appropriate.

9 The other question, to follow up Mr. Levy, is
10 materials. You know that the board does have jurisdiction over
11 the, I love the range for this one, they just put in the word
12 design. But nonetheless, materiality and such and the whole
13 point that it goes to 411 is that trying to mitigate the impact
14 of roof structures.

15 I think we've found that residential and mixed
16 use are the most difficult to have a single penthouse.
17 Obviously, you don't have a center of building here, you have a
18 courtyard. Whereby a traditional core would and you could bring
19 it up, I think this Board has seen all too many times, the
20 compliant roof plans that actually create the top of a wedding
21 cake of a building and they're not necessarily, I think, running
22 with the exact intent of what 411 is suppose to do, which is
23 just to animate the roof top and not have it sterile.

24 So to that, this Board has taken great interest
25 in materials and integration and to buildings and massing of

1 buildings. So if you could speak briefly to how, for instance,
2 the determination of each of these structures will be, the
3 materials, how they'll connect perhaps to what you're using.

4 MR. CAUDEL: Well, the cooling tower that is
5 against the railroad tracks, that whole elevation is going to be
6 stucco, against the railroad tracks and that enclosure as well
7 will be stucco.

8 In fact, all the enclosures are going to be
9 stucco as all the roof top elements are, including the mezzanine
10 level enclosure. So they just carry on the same architectural
11 materials as the rest of the building.

12 CHAIRPERSON GRIFFIS: So for my clarification, on
13 3.5 that we're looking at, the dashed lines are actually
14 proposed continuing partitions that are enclosing your stair
15 tower and your cooling tower?

16 MR. CAUDEL: That's correct. No, no. Oh, I'm
17 sorry, yes, it's dashed for the cooling tower as
18 well, yes.

19 CHAIRPERSON GRIFFIS: Well that actually makes a
20 heck of a lot more sense now. I wasn't reading it that way, but
21 okay.

22 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Yes.

24 VICE CHAIRPERSON RENSHAW: I have some questions
25 for the applicant on 773, the residential recreation space. And

1 773.8 states that no less than 50 percent of the total
2 residential recreation space shall be outdoors and you have 100
3 percent outdoors.

4 MR. KATZ: Close to 100. What we've done is we've
5 counted the parts of the lobby where you have areas for seating.
6 We've counted the bike parking areas, as per direction from Mr.
7 Toye Bello at the Zoning Office and the rest of the balance is
8 the courtyard. So I would imagine that the courtyard makes up
9 some 90 percent or so.

10 VICE CHAIRPERSON RENSHAW: This so called 90
11 percent of the residential recreation space will only be usable
12 in the warmer months, so therefore we have maybe four months
13 that the recreational space will not be able to be used.

14 I'm curious to know whether in your design you
15 have a central meeting room where the apartment dwellers can get
16 together for some meetings or some function. Do you have
17 anything like that set aside?

18 MR. KATZ: The lobby could suffice for that. It's
19 a decent size lobby and there will be seating.

20 I would counter to say that I think the courtyard
21 will not be actively used during the winter months, is something
22 that everybody's apartment does look out onto and so there will
23 be the appreciation of it from the apartment.

24 VICE CHAIRPERSON RENSHAW: I am sure that it is
25 going to be a very pretty point for your entire development.

1 I'm wondering in that regard, since you spoke about or your
2 colleague spoke about the landscaping, what you are going to
3 have on that site, in the courtyard. Do you have a landscape
4 plan and do you have a plan for maintenance of the foliage?

5 MR. KATZ: Yes, we do. It's going to be actually
6 quite interesting. The courtyard is also the bio retention
7 area, so it's going to have, the civil engineer is working on
8 the filtration plan, the soil types and sand types.

9 There's a cistern that collects the overflow
10 water and we're working with a very good landscape architect who
11 specializes in these kind of environmentally, ecologically
12 friendly environments.

13 So she's placing plants and trees that specialize
14 in absorbing water and processing pollution run off because we
15 actually take the water from the roof and from the parking lot
16 into the courtyard. It's a comprehensive plan, both in terms of
17 the aesthetics and in terms of the function.

18 VICE CHAIRPERSON RENSHAW: What are your plans to
19 protect that area where, you said there's going to be water
20 collection spot. Is that going to be a fountain?

21 MR. KATZ: There's a separate water element, which
22 acts like a fountain to create ambient noise, once again to
23 mitigate the sound of the train. It's a separate element
24 completely from the cistern, which is sunken into the ground and
25 which we have an access hatch to, etcetera, but is not open.

1 It's not an open cistern, it's an enclosed cistern.

2 VICE CHAIRPERSON RENSHAW: That's what I wanted to
3 know.

4 MR. KATZ: You actually keep the cistern enclosed,
5 you don't want any light, whatsoever, getting into it or else
6 algae will grow, so part of the treatment of the water is to
7 keep it completely enclosed.

8 VICE CHAIRPERSON RENSHAW: But there will not be
9 any area where children can tumble into a water spot?

10 MR. KATZ: No, everything is going to be perfectly
11 safe. In fact, the water element is covered by a grating, with
12 railings the whole way, so that it's accessible for handicapped
13 residents as well, but safe for children.

14 VICE CHAIRPERSON RENSHAW: All right. Do you have
15 this landscape plan and the maintenance plan for our files?

16 MR. KATZ: Well, the landscape plan is on, the
17 trees are indicated on the plans. The maintenance plan will be
18 developed. We're taking contractor proposals that are going to
19 include ongoing maintenance.

20 But I should point out this is a rental apartment
21 building that I will continue to hold and own, so maintenance is
22 one of the very important things to me and that's why we're
23 trying to put a lot of quality into the project from the
24 beginning.

25 VICE CHAIRPERSON RENSHAW: Thank you.

1 MR. KATZ: I think I should add as well, as a
2 further point about the request for the variance and also your
3 question about providing a common space to gather.

4 This building, in this configuration, does work,
5 but that we really are on the margin in terms of having enough
6 rentable square footage. We did look at the possibility of
7 excavating more basement for something like that, but we can't
8 do that near the Metro tracks because of the adjacent
9 construction requirements and every where we looked, we were
10 boxed in one way or another, so what we tried to do was to
11 really put the budget into the area where the maximum people
12 would get the usage of it, well still maintaining the feasible
13 project.

14 MEMBER LEVY: Mr. Chair.

15 CHAIRPERSON GRIFFIS: Yes.

16 MEMBER LEVY: Just a quick follow up to Ms.
17 Renshaw's line of questioning. I'd like to ask Mr. Katz just to
18 indicate whether there is any type of public recreation space in
19 the vicinity of the building.

20 MR. KATZ: Yes, there is. There's a large park
21 across the street. The Metro's land area is about six acres. I
22 know this is another issue of another development, but what I do
23 understand is that in the least, one acre of that land will be
24 kept for a public green that will be nicely landscaped.

25 At this time there is a public green, it could us

1 some improvements, but it is there for the public to use.

2 CHAIRPERSON GRIFFIS: Okay, I think Mr. Gell has
3 well advised you that there is a three prong test for the
4 variance. I think we've hit home a uniqueness that you're
5 talking about and with the shape. You were getting there and I
6 need you to speak a little bit more to the exceptional or
7 practical difficulties in being able to provide the 20 percent
8 of the recreation space.

9 I think in the record, what was submitted and
10 also what you're talking about, I want to caution you that the
11 economic argument goes only so far. If we can talk to actually
12 the layout.

13 For instance, I believe it was in the record that
14 the dimension of the residential units would not be functional
15 if that courtyard expanded, based on the fact that the site is
16 getting narrower as it continues through.

17 If there are other things that you need or would
18 like to add to that, it would be important to do so.

19 MR. KATZ: I would say, that yes, what we've tried
20 to do is strike a balance where we have a just reasonable size
21 of unit and that was 25 feet for us so that we could carve
22 balconies out, but still provide decent living space.

23 What it left us with is a courtyard, which
24 aesthetically just does work, but we wish it could be larger,
25 any smaller would be much worse.

1 The other places that we looked for additional
2 recreation space were on the roof. However, the premise of
3 making the courtyard for outdoor recreation space was to block
4 the sound from the train. The roof would be exposed. As well,
5 we would be required to take two stair towers for emergency
6 egress and I believe the elevator as well, for handicap access
7 to the roof, which would financially burden the project to the
8 point where we couldn't do the project.

9 And essentially the same argument would go for
10 the basement. We need mechanical space. We're providing bike
11 storage, which is an important amenity for this project, but we
12 also need storage space and if we were to lose the mechanical
13 space and lose the storage space, then we wouldn't have a
14 functional building again.

15 So we've been hemmed in and what we've tried to
16 do is to also provide balconies for each unit. I believe that
17 all but, I think 10 of the 58 units do have their own balconies,
18 which is a great amenity and the oddity for us, the ironic part
19 of that is that actually counts towards the residential gross
20 area requirement for which we have to provide recreation space.

21 CHAIRPERSON GRIFFIS: Right, good, thank you.

22 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'd like
23 to ask the applicant what he is doing to mitigate the business
24 of the ground shaking. You referenced that in your testimony,
25 that this is exceptional piece of property because you're so

1 close to the CSX tracks and that you feel the ground shaking, so
2 if you feel the ground shaking, won't those in the apartment
3 feel the tremors also?

4 MR. KATZ: You do feel the ground shaking. It's
5 actually quite minor. Really, more than anything, you hear the
6 train. The experience I had where the ground was really shaking
7 was when I was in a neighbor's trailer. There's an industrial
8 site next door and they are just on blocks and on a trailer.

9 We're trying to put a lot of building mass on the
10 side towards the train. That wall should be a masonry wall to
11 really absorb and deflect the sound.

12 The vibration, I don't think, is the biggest
13 issue, it's really the sound and in order to kind of get away
14 from both of those though, what we've done is design the
15 building so we have the single loaded corridor towards the train
16 track. The corridor itself being two walls before the units and
17 then further layers of closet and kitchen space and so forth.

18 CHAIRPERSON GRIFFIS: Okay. I think we've dealt
19 with that. Let me say one thing about recreation space. I mean
20 we've seen this quite a bit, especially with downtown. It's
21 obviously in the commercial overlays.

22 It seems to me, actually, and I think Office of
23 Planning is going to talk a little bit specifically of some of
24 the area plans that were done, the comprehensive plan, but it
25 seems to me, actually to be bringing buildings into the opposite

1 direction that we are actually trying to encourage in our urban
2 areas.

3 I certainly think that in residential buildings
4 that an amenity can be provided in terms of interior space for
5 as you say, a meeting room or something like that for the
6 tenants, but isn't, in fact, the whole point of mixed use
7 building is to have residences live, one, like this one near a
8 Metro site, for public transportation, but two, and most
9 importantly, to get them out onto the street.

10 I mean why do we want our retail with doors on
11 the sidewalks. Why do we want little town centers and all that.

12 We want people out walking, making the street safe and
13 enjoyable for everybody.

14 So the more we try and capture them in the
15 building itself and have them recreate and be enclosed, we
16 actually start to isolate and remove people from the streets.

17 That has probably nothing to do with what we need
18 to deal with today, however, I just thought I would take a
19 moment and discuss that.

20 VICE CHAIRPERSON RENSHAW: Then, Mr. Chairman, you
21 must say shopping is an active recreational use?

22 CHAIRPERSON GRIFFIS: I get a lot of calories
23 burned shopping, so, no, I think it is. It obviously fits into
24 the whole, I mean we're looking at?-.
25

Specifically this Board doesn't look at general

1 context and city wide things, but it is important we understand
2 that each project fits within the larger puzzle of the city and
3 so, yes, I think, obviously retail has an awful lot to do with
4 the viability of downtown areas. Be it downtown Tacoma, be it
5 downtown D.C. and yes, you do need people that are going to shop
6 or you're not going to have the stores and if you don't have the
7 stores, you don't have the services, you don't have the
8 services, you get people in cars and they're all driving to
9 Virginia to buy groceries, but I don't feel very strongly about
10 it.

11 (Laughter.)

12 MEMBER LEVY: Mr. Chair.

13 CHAIRPERSON GRIFFIS: Yes.

14 MEMBER LEVY: I just want to reiterate and the
15 reason I thought it was important to bring up the fact that the
16 record shows there's a common green across the street from the
17 project is because, I think there is some recreation space that
18 fits well into the city grid, you know, the project site.

19 CHAIRPERSON GRIFFIS: And I think that's an
20 excellent point and I think the Office of Planning has attached
21 whether it's going to happen or not happen, the plans that are
22 looking at and I think that's absolutely appropriate to have a
23 common area, common green space.

24 Certainly that's a major part of any community,
25 but you want to then get people there. You don't want to have

1 them encapsulated into a building itself, but let's not digress
2 too far into that and let's stay focused on the specific case at
3 hand.

4 MR. CAUDEL: Mr. Chairman, I'd like to just go
5 back to the change that we alluded to earlier.

6 CHAIRPERSON GRIFFIS: Oh, yes, that would be
7 important.

8 MR. CAUDEL: I just briefly wanted to point it
9 out to you. On the plans that you have in front of you, the
10 ground level shows two exits, curb cuts onto Carroll Avenue from
11 the ground level, but since then, we have completely eliminated
12 the curb cut closet to the Metro tracks.

13 CHAIRPERSON GRIFFIS: Oh, I see.

14 MR. CAUDEL: And now only have the one curb cut
15 remaining at the top.

16 CHAIRPERSON GRIFFIS: I see. That doesn't have
17 anything to with the variance for this project, does it?

18 MR. CAUDEL: No it does not, but I wanted to point
19 that out.

20 CHAIRPERSON GRIFFIS: Okay, so that's the change
21 that's actually made. All we're going to do is, obviously we'll
22 require that be submitted, A2, which is the board that you're
23 showing now, be submitted for file and that it was presented
24 here today. Okay.

25 MR. GELL: Yes, thank you, Mr. Chairman. I want

1 to introduce Francis Phipps, who is a neighbor and who is a
2 planner in her own right and owns some property that would be
3 involved in any change in any bike trail alignment that might go
4 through the site and she has some other comments. I'd like to
5 ask her to speak at this point.

6 MS. PHIPPS: Good morning. Thank you for the
7 opportunity to come. I'm Francis Phipps, 7064 Eastern Avenue,
8 N.W. and I'm speaking today as the owner and renovator of the
9 historic Cade-Lee Mansion, which is a Class 2 monument,
10 individually listed on the National Registry of Historic
11 Properties.

12 As such, we are in the same alignment as Mr.
13 Katz, along the CSX railroad and we share some of the same
14 issues he's trying to address.

15 But I'm also speaking today as the President of
16 the Phipps Group, which is an economic revitalization firm, land
17 use planning and we specialize in working in historic districts
18 and I have been the planning consultant of record for over 20
19 years in the City of Annapolis.

20 And, in fact, yesterday I was speaking to the
21 Director of Planning of the City of Annapolis and he mentioned
22 that something we had been working on for over 20 years was
23 finally being resolved and I said, well, all's well that ends
24 well and he said, no, Francis, being in planning, you should
25 know that all's well that ends.

1 And I think that's what we're here about today.
2 For the 32 years I've lived in this community, this site has
3 been our own personal ground zero in Tacoma Park.

4 I can't convey to you the blighted sense this has
5 in the central 100 percent location, directly across from the
6 Metro and it's combined in this effect by a brooding Metro
7 overpass abutment and over the years, since I have studied this
8 area and once officially was paid for it, I have heard the
9 retailers on the 4th and Butternut side say to me, Francis,
10 there are two jurisdictions. We have all the complexities of
11 both jurisdictions in trying to address the market area of both
12 jurisdictions with a line that is invisible to everyone, except
13 local officials.

14 So what happens is that planning for
15 transportation stops at our borders. Planning for economic
16 development and design continuity stops at our border and it
17 goes right through our main street, which Carroll Avenue.

18 Repeatedly, I have had people who have come into
19 the 4th Street retail area, which is the heart of the D.C.
20 retail area say to me, Francis, Marylanders will not come under
21 the bridge and that's true for many reasons. Some are
22 psychological, some are physical.

23 It is extremely important that we begin to
24 address this and I'm quite pleased that the small area planning
25 effort did say that one of the main priorities was to begin to

1 create a retail and pedestrian continuity along Carroll Street
2 to unite 4th Street, which needs a great deal of help, with old
3 town Tacoma, which seems to be prospering at this time.

4 Over the years, I actually have done plans for
5 both these areas and what I'd like to say today is 20 years ago
6 I had just completed a plan for the Tacoma - D.C. aspect and a
7 developer came in and offered a contingent contract on this very
8 property we're talking about today.

9 Once he assessed, every one was very excited.
10 Metro hadn't arrived. We thought, thank God, we're going to
11 begin to get the type of commercial and residential support that
12 will support our neighborhoods around it.

13 Once he looked at the site and assessed the true
14 difficulties and the change of grade, the abutments are
15 substantial impediments and once he faced the remarkable
16 interest of our community, we are a very active community, he
17 withdrew his offer.

18 That site has remained vacant for 20 years. No
19 one else has had the courage or frankly, the insanity to go in
20 and say, I'm going to work with this site, I'm going to work
21 with this community.

22 If Tacoma had defined the type of developer who
23 would be right for this site, they couldn't have come up with
24 anyone better than Russell Katz.

25 He's green, Tacoma Park is green. He has appealed

1 to many of the environmentalists in our area with the type of
2 conditions and construction he's going to create.

3 Secondly, speaking as someone who has a historic
4 property directly adjacent to the railroad tracks, I can tell
5 you the issue of sound is substantial.

6 He is enormously creative and courageous in
7 addressing this and I think in the placement of his units and
8 facing them inwards to create the courtyard, this is, I think
9 truly a creative response to something I, in my existing
10 property, can not truly address.

11 Lastly, and I won't continue on because I think
12 you've heard the technical aspects, I simply want to mention the
13 Metropolitan Branch Trail and I want to say clearly, I am an
14 affected owner.

15 There are four alternatives in play for our
16 Tacoma area. We always seem to be very rich in options. This
17 is one, the Eastern Alignment, which would impact Mr. Katz's
18 property and mine as well.

19 I think I just want to take half a minute to
20 describe what it is because often when we say the word, bike
21 trail, we have an image of sylvian path, you know, that is very
22 charming as you're going through or an urban, you know, off the
23 side of the road, type of striped pathway, which allows the
24 bikers to go from one area to another.

25 I want to be clear and present to you as it was

1 presented to me by the trail designer, the description of this
2 one particular alignment.

3 It is none of the two options I described to you.

4 It entails from Piney Branch Road down to Mr. Katz's property,
5 approximately one quarter of a mile.

6 In that one quarter of a mile, there are two
7 bridges. The first bridge would be over Piney Branch Road and
8 is proposed to be hung, suspended from the existing CSX railroad
9 bridge.

10 The second is the bridge from the Metro site,
11 over onto Mr. Katz's property and that bridge has not yet been
12 described.

13 But the more interesting configuration is what
14 occurs between those two bridges, which goes on for
15 approximately three tenths of a mile, which due to the
16 substantial change in grade, as you've heard discussed, which
17 has come about because this is actually the watershed of the
18 stream.

19 It is going to be an elevated steel cage, which
20 varies in height from 5 to 28 feet because it will stay at the
21 same level of the Metro railroad bed and it would be suspended
22 from the Metro retaining wall, which will be cantilevered with
23 steel girders, which will have to penetrate the wall at regular
24 intervals for three tenths of a mile.

25 Since this original alignment was proposed, the

1 small area plan has proposed putting in a parking garage
2 directly in the path of where they thought this alignment would
3 go and additionally 70 to 90 townhouses.

4 In conclusion, I want to talk about costs on
5 this, but I do think costs are an issue. In conclusion, there
6 are three other alignments and I'm delighted to say that I hope
7 that the renaissance of Tacoma, the commercial area, that I've
8 awaited for 30 years is about to begin.

9 We have not only Mr. Katz's property, but kitty
10 corner across the street, there is another development being
11 proposed, which has seen the bike trail on the western side as a
12 benefit and the developer is incorporating in his plan an
13 alignment, which would serve his building and the 4th Street.

14 Lastly, I'd just like to say that's not why we're
15 here today. We're here today to see if this building is
16 consistent with the plan, the general plan, the specific plans,
17 if it meets community goals, if Mr. Katz has truly worked to
18 reflect community concerns and incorporated them into the
19 redesign and I believe the answer to all those questions is,
20 yes. Thank you very much.

21 CHAIRPERSON GRIFFIS: Thank you very much. And I
22 imagine that's the inclusive we, why we're here today. Is that
23 what you're saying?

24 MS. PHIPPS: That's correct.

25 CHAIRPERSON GRIFFIS: So those points are very

1 important, but we also have the variance test and the special
2 exception to address, which you've done and Mr. Katz's
3 application has done. Mr. Gell, is there further witnesses
4 you're calling?

5 MR. GELL: Mr. Chairman, first of all I'd like to
6 mention that Ms. Phipps' testimony has been given to you in
7 writing, several copies.

8 I'd like to reiterate what Mr. Katz has testified
9 to, that he did look at other alternatives in order to
10 accommodate the bike trail?-.
11

12 CHAIRPERSON GRIFFIS: Do you want to save that for
13 closing remarks, Mr. Gell, or do you want to do it now?

14 MR. GELL: Just that was it.

15 CHAIRPERSON GRIFFIS: Okay, I'm sorry. Say it
16 again then because I interrupted you.

17 MR. GELL: Yes. I simply wanted to emphasize what
18 he had said about trying to accommodate the bike trail by
19 looking at other options.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GELL: And that was impossible. We were going
22 to have Ms. Linda Gray speak to you. She's Vice Principal of
23 Roosevelt High School and Vice President of the Eastmont Co-Op
24 Association. She was not able to make it and I can understand
25 why, it's a school day, but we have copies of her testimony
saying that this would be perhaps the worst place to put the

1 bike trail, from the purposes not only of this project, but of
2 their Co-Op and of the community as well.

3 With that, I would like to thank Suzanne Pullman
4 for handling the boards for us and that will conclude and we'll
5 come back with a comment later on.

6 CHAIRPERSON GRIFFIS: Good, right, closing
7 remarks. Let me just make a quick statement about the trail,
8 which I've started out saying and now we've heard testimony on
9 it.

10 It is absolutely important and I think it's
11 important in terms of the building site and the whole context of
12 the area. It is not before us today.

13 We try to be very efficient and effective in our
14 hearing cases and deliberating on cases and moving on, so I want
15 to caution other folks that may be coming up to give testimony
16 on the bike trail. It's probably more pertinent to put it in
17 writing.

18 It is not part of our jurisdiction or
19 deliberations on this case, so I will, in fact, not hear lengthy
20 testimonies on it and would ask that you submit it in writing if
21 you feel we need to see it.

22 So, with that said, let's move on. Board
23 members, other questions of the applicant at this time,
24 otherwise we're going to go to Office of Planning.

25 MR. GELL: Mr. Chairman, just one minor thing. We

1 do have modified data sheets available.

2 CHAIRPERSON GRIFFIS: Oh, modified.

3 MR. GELL: Really just showing that change that
4 you've already been told about that we can present to you and
5 we'll do so when we leave.

6 CHAIRPERSON GRIFFIS: I'm sorry, modified to
7 reflect what?

8 MR. GELL: Modified to reflect the change in the
9 parking area and the?-.

10 CHAIRPERSON GRIFFIS: Right, the removal of a curb
11 cut, which actually may have given you one more parking space or
12 two or something of that nature.

13 MR. GELL: Hopefully.

14 CHAIRPERSON GRIFFIS: Okay and parking not being
15 in front of us, as I understand. Oh, dear. Right, let's move
16 on. Office of Planning. Good morning to you.

17 MR. FONDERSMITH: Good morning, Mr. Chairman,
18 members of the Board. I'm John Fondersmith and I'm presenting
19 the report of the Office of Planning on this case.

20 This is an interesting?-.

21 CHAIRPERSON GRIFFIS: Let me interrupt you, Mr.
22 Fondersmith. Mr. Gell, I'm going to need you to stay at the
23 table please.

24 MS. BAILEY: Mr. Chairman, the Office of Planning
25 report does need to be waived in.

1 CHAIRPERSON GRIFFIS: Needs to be waived in?

2 MS. BAILEY: Yes.

3 CHAIRPERSON GRIFFIS: I'd say we'd waive that in
4 and let me also just say, Mr. Fondersmith, this is a lengthy,
5 descriptive, comprehensive report from the Office of Planning
6 and I absolutely appreciate it. I know you're going to get into
7 it and I'm sure the applicant was aware that the Tacoma Central
8 District Plan was also attached to our Office of Planning report
9 and memo and there's all sorts of great information here.

10 However, Mr. Fondersmith, in note of time, if you
11 can, quickly point us to the absolutely pertinent pieces that we
12 need to look at today.

13 MR. FONDERSMITH: Very good, thank you. This was
14 filed on February 5. Let me just note that and move on.

15 Well, we were saying, it's an interesting site in
16 itself and as you've seen the report and you've heard a lot of
17 things come together here, the historic district, the Central
18 District Plan, the issue of the bike trail and so on, but let me
19 go on then to what you're really focused on and if there are any
20 questions to us, from our prospective, on the site and so on,
21 what you've heard about, we can come back to that.

22 As we did say, there's references in our report,
23 we've attached pages from this Central District Plan and we can
24 talk about that.

25 So you have the two, the special exception and

1 the variances requested. I think it's important to say on the
2 special exception, this is the roof structure, that there's
3 really two things being asked for here. I mean there's two
4 parts of that.

5 One is having three roof structures, rather than
6 one central roof structure and the other is the set backs.

7 We looked at, because of the configuration of the
8 building, which derives from the site and the way it's laid out.

9 I mean to cut to it, we think it's reasonable to have the three
10 roof structures, rather than one.

11 You've heard the reason why they want the
12 elevator at the front of the building and the reason they've put
13 the others to the rear, really to reduce visibility from Carroll
14 Street and to fit in with their needs.

15 So we think that's a reasonable thing to do and
16 the board can allow three roof structures, rather than the one.

17 Then you get to the set backs. So be clear that
18 the first one on the set backs, this is the elevator, there's
19 not an issue. It's set back okay.

20 The second one, as you heard, lacks being set
21 back the correct distance by four inches and whether that could
22 be shaved a little bit to fall, I don't know, but we felt that
23 given the purpose of it, which was putting it back at the rear
24 of the site, be out of sight, that four inches was not really a
25 problem.

1 The third one, which is the one you might focus
2 on, again has been put at the rear of the site and it is higher
3 than the other two so it will be visible. It is set 15 feet
4 from the rear of the building, so it's lacking 3 feet, but it's
5 less, it's 5'2" on the side.

6 As you heard, they placed it here where it would
7 be least visible, it's next to the railroad track and there will
8 be visibility from the other side of the track, so to speak,
9 from Blair Road, you would be able to see it a little bit better
10 than it would be if it had been set back.

11 But we have looked at that and we think in
12 balancing everything and the location at the rear of structure,
13 we would urge, we would recommend as we have, the approval of
14 the special exceptions for the roof structures on both counts.

15 Then the second issue here is the variance for
16 residential recreation space, not reaching the full amount. And
17 again, we think in light of trying to accommodate this unusual
18 site, this so called pie shape, we call it pie shaped site, we
19 think the solution that the applicant has proposed, grouping the
20 apartment units around the courtyard, putting the remaining
21 parking requirements in the rear of the site, off Vine Street,
22 in a site planning context, we think that makes sense.

23 But that does mean that and of course the
24 frontage of the building is important the way it has been
25 aligned, does align along Carroll Street. That's a whole other

1 kind of urban design land use thing to get alignment of the
2 building there and was subject to historic preservation review
3 and so on.

4 But we do, in looking therefore at the shortfall
5 on the residential recreation space, we think there are reasons
6 because of the shape of the property and the unusual situations,
7 you're dealing with, I think you can say the practical
8 difficulty here of accommodating that and given the role of this
9 building in the overall context, we do not believe that granting
10 this variance would substantially impair the intent purpose and
11 the integrity of the zone plan.

12 So we have recommended that the variance from the
13 residential recreation space be granted.

14 I think I should touch on some of the other
15 reviews that have taken place and let me just reiterate that
16 there has been, on the part of the developer, from what we get
17 from the community and what we get from our own staff, this is
18 historic preservation staff, a great kind of working
19 relationship and the developer trying to be accommodating this
20 project to a number of different demands. I think that is
21 important to say.

22 You have the list, let me just note on the ANC
23 report, which you'll hear, there's just a typo there, it's
24 January 24 meeting, not the 25. The Historic Preservation
25 Review Board did approve this on the consent calendar last week,

1 as you've heard and the remaining design details will be worked
2 with the preservation staff.

3 Now, as you say, it's not directly before you,
4 but we did want to make sure that the issue of the Metropolitan
5 Branch Bike Trail was raised here and we've done that.

6 The Metropolitan Branch Bike Trail, however it
7 finally goes, is an important project to the city, this
8 connection between here at Union Station and up to the District
9 line and on into Maryland and we note here some progress that
10 has been made and it's just unfortunate that these things have
11 not quite come together at this time in timing sense and all
12 been worked out, but that's where we are with the bike trail at
13 this point and hopefully, those kind of issues are going to be
14 addressed.

15 You have there a report from the District
16 Division of Transportation, attached to our report, and they
17 mention the bike trail issue and also there's possible traffic
18 impacts, which again is not before you, but we just want to make
19 sure that is understood. There is some concern about the
20 impact.

21 Our description on page 10 on that, now has been
22 changed by the applicant's revision of the parking entrance. It
23 now has just one parking entrance off Carroll Avenue, having
24 reduced the retail space slightly.

25 I think you can say that both in a retail

1 continuity sense and only having one entrance in there, rather
2 than two, this represents an improvement. Again, that's not
3 before you, but it's a refinement in the project.

4 So in summary, the Office of Planning recommends
5 approve the special exception for relief from the limitation on
6 the number of roof structures and roof structure set back and
7 the variance from the residential recreation space requirement,
8 developer providing 15 percent, instead of 20 percent.

9 We believe additional work is needed, essentially
10 outside the BZA review to address the issue of Metropolitan
11 Branch Trail and the traffic circulation issue. That concludes
12 my report.

13 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
14 Fondersmith. Absolutely appreciate that and appreciate the
15 summary. As I indicated it was a very lengthy and detailed
16 report.

17 I want to just touch on one thing in terms of
18 Metropolitan Branch Trail alignment. It is clear from your
19 report that you actually went to the comprehensive plan, section
20 509, I believe it's 2J. You have said it as 509.1.

21 Be that as it may, part of your analysis and
22 recommending approval of the special exception and variance
23 included that view of the comprehensive plan. Is that correct?

24 MR. FONDERSMITH: That's right.

25 CHAIRPERSON GRIFFIS: Okay. Please turn on your

1 mike if you're going to talk.

2 MR. FONDERSMITH: Support completion of a
3 feasibility study and other measures necessary to construct the
4 Metropolitan Branch Trail for bicyclists and pedestrians
5 adjacent to Metro Rail red lined between Union Station and the
6 Maryland border.

7 CHAIRPERSON GRIFFIS: Right, okay. All I wanted
8 to do was establish that fact. I think the Board members are
9 also looking at that in terms of deliberating on this case.

10 Secondly, I want to say to your report and your
11 conclusion of the Tacoma Central District Plan, it is clear that
12 this proposed project that we're reviewing today actually falls
13 within line of one of the priority redevelopment sites and
14 actually looks to, my quick analysis of doing this full thing, I
15 can be honest, I haven't read the entire report because it has
16 little to do with what we're dealing with, but I've gone to
17 pertinent points that the Office of Planning was pointing to and
18 that is the typology of building and also the land use is
19 aligned with what the small plan is advocating for.

20 Other questions of Office of Planning at this
21 time? Does applicant have any cross examination of the Office
22 of Planning?

23 MF. GELL: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Thank you very much. Mr.
25 Fondersmith, again I thank you very much for this.

1 We have gone through the other reports. Mr.
2 Fondersmith appreciatively attached that, so I do not think we
3 have any other government reports, aside from the ANC at this
4 time. Is that correct, Board members?

5 In which case, let us move on to ANC 4B and is
6 there someone here to testify. Very good. Do you want to come
7 forward? If we could just make space, one chair.

8 MS. BAILEY: Mr. Chairman, while Ms. Green is
9 coming forward, I just wanted to make a correction. I
10 mistakenly spoke that the Office of Planning had submitted their
11 report late. It was timely filed, however the ANC, their report
12 does need to be waived in. I was looking at the wrong line.

13 CHAIRPERSON GRIFFIS: Well, we knew somebody was
14 in trouble, we just had to figure out who it was. Thank you.
15 Well, our apologies to Mr. Fondersmith for getting that in time.
16 Okay, please proceed.

17 MS. GREEN: My name is Sara Green and I am the
18 Secretary for Advisory Neighborhood Commission 4B, as well
19 Single Member District 4B-01.

20 We did submit lengthy testimony yesterday and I
21 will not read it if you have seen it. Again, I apologize for
22 the lack of understanding on the time deadline and it will not
23 happen again. We do understand right now.

24 I just wanted to reaffirm what a number of my
25 neighbors and the City Office of Planning has just said.

1 This is a good project and I think it's going to
2 be very, very good for Tacoma and this is what our Advisor
3 Neighborhood Commission, after meeting, having Mr. Katz to three
4 meetings, knowing that he was meeting with many other community
5 organizations. That he would meet with anybody at anytime at
6 the site to answer any questions.

7 This is what we agreed to do in January. We're
8 very pleased at the investment that Mr. Katz is making in this
9 community on a very, very visible site.

10 I've lived in the community for about 27 years
11 and it's sometimes very painful to drive by that site. There's
12 a disconnect. You look at it and you say, wait a minute, this
13 is a Metro station, this is where people walk, why doesn't
14 anybody want and then of course you look at the site and you
15 realize, well, you can understand.

16 But we're extremely happy that somebody is taking
17 the time and the effort to do this and to work with us so
18 closely. We hope that you will approve the request and this
19 application. Thank you.

20 CHAIRPERSON GRIFFIS: Good. Thank you very much.
21 A couple of technical things here. Do we actually have a
22 letter from the ANC on letterhead?

23 MS. GREEN: I'm sorry. Again, I apologize, we do
24 not have letterhead.

25 CHAIRPERSON GRIFFIS: Okay.

1 MS. GREEN: What we do when we write letters is we
2 make up our own letterhead, you know, on the computer as we type
3 it.

4 CHAIRPERSON GRIFFIS: I see.

5 MS. GREEN: We do that for our agendas, for the
6 meeting notices and everything else, since it varies. We just
7 haven't wanted to go to expense of.

8 CHAIRPERSON GRIFFIS: Okay, I just wanted to make
9 sure I wasn't missing something.

10 MS. GREEN: No.

11 CHAIRPERSON GRIFFIS: Questions of the ANC.

12 VICE CHAIRPERSON RENSHAW: It's just to add, Ms.
13 Green, welcome.

14 MS. GREEN: Thank you.

15 VICE CHAIRPERSON RENSHAW: Thank you for your
16 testimony on behalf of ANC-4B. Do we have a letter in the file
17 from your Chairman stating that you would be the person to
18 present the testimony today?

19 MS. GREEN: No, I apologize, you do not. What
20 happened is that, again, without realizing the time, when I was
21 informed that we might not be exactly according to the
22 regulations, the testimony was written.

23 Our Chairman began the beginning of the testimony
24 asking for my appearance. He's seen and heard this testimony.

25 VICE CHAIRPERSON RENSHAW: I see.

1 MS. GREEN: And that was the decision. Because he
2 wanted to be here and could not be here.

3 VICE CHAIRPERSON RENSHAW: All right. Was this
4 testimony presented at a public meeting?

5 MS. GREEN: No, it was not. This was testimony
6 that was written over the weekend, in conjunction with the
7 motion that was passed at the January 24 meeting.

8 We anticipated that the testimony would have to
9 be written, but it was not written until this weekend.

10 VICE CHAIRPERSON RENSHAW: All right. Thank you
11 for clarifying.

12 CHAIRPERSON GRIFFIS: Any other questions,
13 concerns for the ANC at this time? Okay. Any cross examination
14 for the ANC?

15 MR. GELL: No, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Thank you. We thank you
17 very much and we're all going to chip in and get you some
18 letterhead so we don't have complications on that.

19 Okay, let's keep moving this along. I'm going to
20 call persons giving testimony in support of the project at this
21 time to come up to the table. Can I have an indication. Yes,
22 now you can leave the table.

23 Oh, yes, please. And we're going to try to get
24 this done as quickly as possible, in terms of getting people up
25 here. What I'm going to do is run right down the table. Have

1 you, of course, introduce yourselves. You were all here when
2 you were being sworn in, correct? You've all been sworn in.
3 I'm going to run, starting on this side, coming down. I'll have
4 everyone introduce themselves as they begin to speak and we have
5 four people in support and in opposition, three minutes each.

6 I'm not going to run the clock because it gets a
7 little bit precarious. I will be watching my clock though. So
8 I'm going to interrupt you if you go well beyond that. If you
9 think you're going to go well beyond that, tell me now, maybe we
10 can ascertain that.

11 I do need to move this on. So that being said, I
12 will also do that to the opposition just to be fair and we now
13 have this testimony and also, you just indicated if you've
14 submitted written testimony or are thinking of submitting
15 written testimony and with that.

16 MS. NEUMANN: Thank you. I'm Loretta Neumann. I
17 reside at 7124 Piney Branch Road, N.W. in D.C. I've Vice
18 President of Historic Tacoma, which is an organization that
19 covers both D.C. and Maryland. I also Co-Chair the D.C.
20 Historic Preservation Committee of Historic Tacoma.

21 I've lived in the neighborhood 28 years. I was
22 involved in the early planning around the Tacoma Metro stop in
23 the early '70s and I have been involved in virtually every
24 planning issue relating to our community ever since.

25 I've tried to support development when I can. We

1 haven't had much, that's why you haven't seen Tacoma here. But
2 I've also been active in opposing developments that we didn't
3 like.

4 So when we encounter a developer, such as Mr.
5 Katz, who was so willing initially, like he said, in the first
6 two weeks that he started. He called me and some of the others
7 in the community to get our views and what we wanted at that
8 site and what we would like it to be.

9 We have worked with him very closely. We've made
10 extreme demands on this man. When that sidewalk was too narrow,
11 we said widen it and he did. Giving up his own property to the
12 public. If that doesn't count as recreation space, I would be
13 very disappointed. I wish it could count because it is part of
14 our neighborhood and it's a public recreation space for us, as
15 well as pedestrian obviously.

16 I've study the application very closely, so has
17 Historic Tacoma. We've met on it, we've voted on it. There
18 have been public processes throughout with the ANC, with Plan
19 Tacoma, another organization I'm also a founder of and there
20 were many opportunities for other people if they had other views
21 about this development to bring that forward at that time.

22 I was shocked to discover that the people
23 promoting the Metropolitan Branch Trail were going to come in at
24 the last minute and oppose it, when in our community, getting
25 consensus is not easy and on this one, we do finally have it.

1 Thank you.

2 CHAIRPERSON GRIFFIS: And thank you very much.
3 And as indicated, you've submitted written testimony, which
4 we'll go through also. Good morning, sir.

5 MR. BROCKETT: Good morning. I'm James Brockett
6 and I own the adjoining properties to this property and we've
7 owned it for 12 years and would just like to say that we've very
8 excited about what Mr. Katz is doing and have been waiting a
9 long time to see something happen to that property and I think
10 it will help and benefit all of us. That's about it.

11 CHAIRPERSON GRIFFIS: Great. Thank you and just
12 for clarification, you're on the adjoining side, which is moving
13 away from the railroad station.

14 MR. BROCKETT: Actually, my address is 306.
15 There's a little mix up there with then numbers.

16 CHAIRPERSON GRIFFIS: Oh, so you're applying for
17 the.

18 (Laughter.)

19 MR. BROCKETT: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BROCKETT: Our existing building is to the
22 left side.

23 CHAIRPERSON GRIFFIS: Towards Tacoma?

24 MR. BROCKETT: Towards Tacoma, yes.

25 CHAIRPERSON GRIFFIS: Okay. On the same side of

1 the street. Okay, thank you.

2 MS. MOSS: Hi, I'm Bonnie Moss. I live at 6825
3 Piney Branch Road, N.W. I'm hear representing Plan Tacoma and
4 you received our letter last week. I brought additional copies
5 today.

6 CHAIRPERSON GRIFFIS: Right, yes.

7 MS. MOSS: And I'm going to be brief. I just
8 wanted to state that our committee has voted on-. Mr. Katz
9 brought his design to us and he then brought the variance and
10 the exception issues before us and explained them in details.

11 Our organization's support for this is
12 overwhelming and it would be hard to exaggerate the importance
13 of this development to us and our community and Mr. Katz has
14 been indeed, very extraordinary in his forthcomingness with us
15 and his willingness to work to make this a wonderful
16 development.

17 And we're very happy with him. We very strongly
18 support this and we hope you'll approve these. Thank you.

19 CHAIRPERSON GRIFFIS: Great, thank you very much.

20 A quick question. You indicated you represent Plan Tacoma,
21 correct?

22 MS. MOSS: Yes.

23 CHAIRPERSON GRIFFIS: And it's a neighborhood
24 association, how many members in the association, what is it's
25 geographic area.

1 MS. MOSS: The geographic, what is the geographic
2 area?

3 CHAIRPERSON GRIFFIS: Well, it's Tacoma Park, we
4 can assume, right?

5 MS. MOSS: Yes. I would say, I'm not completely
6 sure. I think we have about 100 paid members. Don't hold me to
7 that.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. NEUMANN: We don't'?'-. I'm also a member of
10 Plan Tacoma, one of the founders. The premise of Plan Tacoma is
11 that anyone can come and be represented there, so when we have
12 meetings, they're well attended. We probably have 70, 80 people
13 at a meeting.

14 CHAIRPERSON GRIFFIS: I see.

15 MS. MOSS: It's the major planning and use citizen
16 involvement organization in Tacoma, D.C.

17 CHAIRPERSON GRIFFIS: Great, thank you and thank
18 you very much for coming down here to give testimony.

19 MR. TURNER: Good morning, my name is Chris
20 Turner. I've lived in Tacoma Park since 1973. When I was a
21 little kid, I went to the Tacoma Park Elementary School,
22 Coolidge for Youth Orchestra, Gonzaga High School, AU, Howard
23 for law school and I love the neighborhood.

24 My family owns three houses in the historic
25 neighborhood of Tacoma, D.C. and we're very much in support of

1 what Mr. Katz is doing and his request for a variance.

2 The property is very unique and I think that's
3 been stressed over and over today. One point that I'm not sure
4 everyone is aware of, although I think that we've learned that
5 when Metro was put in, the B&O railroad tracks, which are CSX
6 tracks were pushed out on either side of the tracks so that
7 Metro could be in the middle.

8 The freight train tracks had to be on the outside
9 so they could go to all the warehouses that are farther down,
10 you know, near Fort Totten, Brookland and Rhode Island.

11 So that property actually lost land sometime in
12 the early '70s and when arguments are made, as I'm sure the bike
13 path supporters will make, that this is a business man and he
14 should have been aware of all the problems, I think the BZA
15 should be aware that when you have such a pie shaped piece of
16 land next to the railroad tracks that you've already lost a
17 portion. No one wants it and no one has ever wanted it.

18 EEYA, the people that want to develop the Metro
19 station land and they gave it up because they didn't like it.

20 So it's very upsetting. A year after Mr. Katz
21 told everyone that he wants to build here, to find all these
22 people who don't live in the neighborhood, who are angry about
23 what's happening.

24 So that's why I'm in support and sorry to be so
25 enthusiastic.

1 (Laughter.)

2 CHAIRPERSON GRIFFIS: No reason to apologize for
3 that. We like enthusiasm.

4 Is there anyone else here to testify in support
5 at this time? Okay.

6 MEMBER LEVY: Mr. Chair.

7 CHAIRPERSON GRIFFIS: Yes.

8 MEMBER LEVY: Quickly, I just want to point out
9 that there are two additional letters in support in the file.
10 One from the Eastmont Cooperative Incorporated on Eastern Avenue
11 and I don't know if we touched on this or not, but an
12 organization called Historic Tacoma, Inc.

13 CHAIRPERSON GRIFFIS: No, that's the testimony
14 that we just heard today from Ms. Neumann.

15 MEMBER LEVY: Okay.

16 CHAIRPERSON GRIFFIS: But that's important to
17 round out the entire support for this. Okay. Any questions,
18 Board members, of the testimony we've just heard?

19 VICE CHAIRPERSON RENSHAW: No, just to thank our
20 guests for their presentation.

21 CHAIRPERSON GRIFFIS: Indeed.

22 VICE CHAIRPERSON RENSHAW: It's very, very helpful
23 to have the community come before the BZA and explain such
24 matters as you have submitted.

25 CHAIRPERSON GRIFFIS: Mr. Gell, any cross

1 examination of these witnesses or testimonies?

2 MR. GELL: No, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Thank you very much and
4 again, we all thank you for coming down this morning. I'm going
5 to ask for people giving testimony in opposition to come to the
6 table at this time. Also, let me just make sure you all filled
7 out witness cards and gave them to the recorder.

8 And while we're having this quick transition, I
9 want to assess our morning schedule, which is often out of our
10 control and unpredictable and we're seeing evidence of that this
11 morning.

12 We have a big continuing appeal case that was to
13 be called sometime around 10:30 or 11:00 o'clock this morning
14 and I've noticed that numerous folks are coming in for that.

15 I want to do this, Board members, at this time. I
16 want to indicate that we probably will not call that until 1:00
17 p.m. We will have to assess the last application for this
18 morning and then we'll probably need a quick break.

19 But rather than have people sit around here for
20 another hour or two, hour and half let's say. Is that
21 appropriate, Board members? Everyone okay with that?

22 So I would ask that anyone involved in that case,
23 for the appeal that's continuing, I see Mr. Feel is here and I'm
24 assuming that, I'm not seeing other representatives, but I'm
25 assuming they're here and around, if we can just pass and the

1 staff will get the word out.

2 So I would focus on 1:00 p.m., to be back here
3 and we will continue with the morning session at that time.

4 Sorry for the interruption. Other details. I
5 love maps. Let me just make that a point of record while we
6 have a moment here, especially in color. I get a lot of grief
7 for comments like that at lunch from my Board members, but you
8 know, you have to take them when you can.

9 Thank you both for coming down this morning and I
10 would do the same thing. We'll start on this end. If you
11 would, introduce yourself, give me your address and please
12 proceed. Again, I would ask that we be succinct and we afford
13 about three minutes and we'll liberally watch the clock.

14 MS. JONES: My name is Ellen Jones and I'm the
15 Executive Director of the Washington Area Bicyclist Association,
16 located at 733 15th Street, N.W. in Washington D.C.

17 WABA is non-profit organization incorporated in
18 the District of Columbia. Our mission is to create a healthy,
19 more liveable region through bike advocacy. We have 5400
20 members in the region, 1700 of whom live in the District of
21 Columbia.

22 We heard you loud and clear today. I understand
23 that you do not have jurisdiction over the development of the
24 Metropolitan Branch Trail. However, we do believe the issue of
25 the trail is directly related to whether a variance should be

1 granted for two reasons in this case.

2 First of all because of the comprehensive plan.
3 The trail is part of the comprehensive plan, as was noted by the
4 Office of Planning and as this Board well knows and all zoning
5 decisions must be consistent with the comprehensive plan.

6 And secondly, in order to be given a title two
7 variance, the developer must show that there is no substantial
8 detriment to the public good and I will be extremely succinct in
9 describing the public good that is represented by this facility
10 if I may. Thank you very much.

11 The Metropolitan Branch Trail directly supports
12 revitalization goals of the Tacoma Park community. It is smart
13 goals for Tacoma Park. Smart goals offers the long term benefit
14 of sustained economic activity within the fabric of liveable
15 communities.

16 Such communities favor transit, walking and
17 bicycling in their design. The result is affordable
18 transportation, cleaner air and an infrastructure that
19 encourages active lifestyles to combat the growing national
20 public health epidemic of obesity.

21 We maintain that granting this variance would be
22 a substantial detriment to the public good in this area and
23 undermine the \$16 million dollar public investment in the
24 Metropolitan Branch Trail that is being made by the District and
25 Federal Governments.

1 I will not give you a description of the trail,
2 nor will I walk you through the alignments. I will simply ask
3 you to please look at the map, which I have circulated to you.
4 And what you see on the map are the four possibly alignments for
5 the Metropolitan Branch Trail in the area of Tacoma Park. Other
6 witnesses have referred to this. These were developed as part
7 of the small area planning process.

8 I will only direct your attention to note that
9 the red line and the dark green line are options, which we refer
10 to as options A1 and A2. Both of these options would be our
11 preferred alignments for the trail. They provide, in the
12 encircled area, which includes the applicant's property, a grade
13 separated crossing over Carroll Avenue.

14 I listened with interest to comments being made
15 by the members of this body regarding the availability of green
16 space and recreational space in the area.

17 Reference was made to green space that exists
18 across Carroll Avenue from this property. While it is wonderful
19 that green space is there, it is extremely difficult and
20 dangerous to get to that green space from the developer's
21 property. So while it may be apparent from a distance, the
22 reality and the practicality of using that green space is
23 severely limited because of the problems that the Metropolitan
24 Branch Trail would help remediate with a grade separated
25 crossing that would run along the western border of the

1 applicant's property.

2 CHAIRPERSON GRIFFIS: Do you mind if I interrupt
3 you?

4 MS. JONES: Yes. No! I don't mind.

5 CHAIRPERSON GRIFFIS: Okay. Just for
6 clarification, when you say a grade crossing you indicated.

7 MS. JONES: Yes.

8 CHAIRPERSON GRIFFIS: Which means they're crossing
9 the street on the level or are you saying above grade?

10 MS. JONES: Above the grade.

11 CHAIRPERSON GRIFFIS: Indeed and that's the bridge
12 that we've been hearing a little bit about, so you'd actually
13 have a bike and pedestrian bridge. Where would you get on that,
14 from Vine Street?

15 MS. JONES: Where you would get on to, going north
16 or south?

17 CHAIRPERSON GRIFFIS: Let's start coming from
18 D.C.?

19 MS. JONES: Coming from D.C., you would?-.

20 CHAIRPERSON GRIFFIS: But say you're not on the
21 trail and you're in Tacoma Park. I guess this is where I go to
22 the heart of the issue. That's a Metro station. If there is
23 problems crossing Carroll Street, well for goodness sakes then
24 we would hope that there's a heck of a lot people walking to
25 that Metro station.

1 It seems more of a problem of getting proper
2 pedestrian crossings and maybe lights, in terms of?-. I don't
3 know where the lights are right now, the traffic lights and the
4 signaling, but isn't that more of a critical issue of crossing
5 Carroll Street and I'm talking about just access to the green
6 and then we can get into more of the pertinent pieces.

7 But also, couldn't that be facilitated, in terms
8 of bringing the bike trail down on grade, rather than having it
9 isolated. I'm not sure why that's an important piece of having
10 it above the Carroll Street.

11 MS. JONES: Have you ever been on the Capital
12 Crescent Trail in Montgomery County in the area of River Road?

13 CHAIRPERSON GRIFFIS: I don't leave the District.

14 MS. JONES: I don't blame you. But the Capital
15 Crescent Trail that Montgomery County and National Park Facility
16 was originally designed to have an at grade crossing on River
17 Road in the area of the Fresh Fields and American Plant Food,
18 for those who live in that part of the world and shop in that
19 area.

20 What was found, was over time the crossing of
21 River Road, with this busy car and truck traffic required for
22 safety and continuity's sake that an above grade, a bridge
23 crossing be placed in that area to make it easier, safer and
24 more convenient for folks to cross that street.

25 Carroll Avenue is a very busy street. It has

1 lots of congested and heavy traffic that flows through there.

2 One would wish, I agree with you that Metro and
3 the District would have looked at the issue of station access 25
4 years ago when that station was planned, but as we know,
5 unfortunately, pedestrian and bike access to many of our Metro
6 stations was not thought about and I think they assumed people
7 would arrive by helicopter to some of these stops.

8 But in fact, folks have to get there and often on
9 paths, such as Carroll Avenue, that puts them at severe conflict
10 with heavy traffic and because of that and because of the
11 continuity that the trail would provide by having a grade
12 separated crossing, we think the benefits of the trail would be
13 furthered and the benefits of the trail are important because
14 it's only when non-motorized traffic has a comparative advantage
15 over motorized traffic that people will choose to use it.

16 And those advantages are advantages that a grade
17 separated crossing would provide, protection from faster,
18 heavier motorized vehicles, directness of route, elimination of
19 stopping points and moderation of changes in grade.

20 If the trail can't offer these advantages with a
21 grade separated crossing, then bicycling and walking loses the
22 advantage and the choices people make about how they travel.

23 The lack of these advantages has contributed to
24 the congestion and air quality problems that plague us today in
25 this region.

1 In conclusion, I would like to say that while the
2 applicant's request for a variance of the residential
3 recreational space requirement not be granted because it would
4 foreclose the best alignment for the Metropolitan Branch Trail,
5 thereby reducing the safety and effectiveness of the trail if
6 this alignment is nonetheless selected or even undermining the
7 realization of the goal of building the trail altogether with
8 it's concurrent public good.

9 By contrast, accommodating the trail within the
10 development would be an ideal substitute for the recreation
11 space required by zoning.

12 Indeed we might we even suggest that a variance
13 of the full 20 percent of recreational space be warranted under
14 these circumstances, thereby allowing the developer more
15 economically usable space and offset any economic harm to the
16 developer.

17 Without such an accommodation, granting the
18 variance would be directly contrary to the transportation
19 element of the D.C. comprehensive plan, which I mentioned
20 earlier, section 509.1, which states as it's goal, support
21 completion of a feasibility study and other measures necessary
22 to construct the Metropolitan Branch Trail.

23 The variance relief will therefore create a
24 substantial detriment to the public good and undermine the
25 comprehensive plan.

1 It does not appear to us, under these
2 circumstances, the developer has satisfied the very heavy burden
3 of proving that the sort of exceptional circumstances that
4 exist, justify a variance and I thank you very much.

5 CHAIRPERSON GRIFFIS: Well, thank you very much.
6 Let me just ask you a couple more quick questions to you in
7 terms of trying to understand why, as you've indicated A1 and
8 A2, red and green lines of the bikes are the number choices of
9 the Washington Area Bicyclist Association because you've made
10 some excellent points and that is giving priority to pedestrians
11 and bicyclists and I think as a D.C. resident and I absolutely
12 agree and in fact, I often have hard times crossing the street
13 with our allowable right on reds and speeding people.

14 But what this seemed to do in my mind, this seems
15 to be kind of the direct connection from north, downtown. As
16 you pull it off right to the railroad station and as you remove
17 the bicycles from the street, you're actually not making the
18 connections that you say are so important and I again would go
19 back to the fact that if we can accommodate bicycles and
20 pedestrians, then we start to prioritize them on our street
21 levels.

22 I don't see how these two actually make
23 connections to Tacoma Park. It's almost as if, how quickly do
24 we get people through this area and on and it's almost like the
25 commuting route and my analogy would be how we've closed off

1 streets downtown that we've often said, gosh, pedestrians just
2 get run over by cars all the time, so let's close the streets
3 and not have cars on them and we've seen how the isolation of
4 uses do not have the direct relationship we have.

5 MS. JONES: And what I suggest is that the inverse
6 is correct now. The lack of safe and separated spaces for
7 bicycles and pedestrians in the Tacoma Park area at this point,
8 the automobile traffic has the effect of isolating bicyclists
9 and pedestrian.

10 That automobile traffic on the narrow streets
11 that exist in the area of Tacoma Park preclude the viability of
12 bicycling and walking in Tacoma Park. The motorists have the
13 effect of shutting out those uses currently.

14 CHAIRPERSON GRIFFIS: And I don't disagree with
15 you, but I think that's the battle that needs to be fought and
16 hopefully pedestrians and bicyclists will win.

17 By separating, I think you compound the fact that
18 our roads will get more and more congested with vehicles. I
19 mean it's like when we open up a new highway that we've
20 increased in size by two lanes and as soon as it opens it's at
21 full capacity.

22 Once we allow the automobile to take over, then
23 we won't have the opportunity for bicyclists and pedestrians,
24 but I'm depressed a little bit. I think I get your point. Mr.
25 Levy, you have a question?

1 MEMBER LEVY: Yes, I'd like to follow up on that
2 if I could. Ms. Jones, aside from the issue that we've talked
3 about, which is grade separation on these two preferred
4 alignments, what you've described as preferred alignments.

5 Are there other factors that make the other two
6 alignments we see on this map you handed us, are there other
7 factors that make those A1 and A2 alignments superior?

8 MS. JONES: In comparison to the alignment B,
9 which you see on your map in light green and alignment C, which
10 you see in brown. It's a little bit hard to pick up. Alignment
11 C being the western alignment.

12 What you find is on alignment B is primarily on
13 street. It goes along Eastern Avenue to Cedar Street, then on
14 to Carroll, Maple, Sandy Spring and then under the tracks at
15 Aspen.

16 The on street segments would not be pleasant
17 places to bicycle. Carroll Avenue and Cedar Street are not
18 great places to ride and share the road with cars because of
19 extreme restrictions on available right of way in the road.
20 There isn't room on those roads.

21 As much as we wish, there is not room on those
22 rides to stipe a bike lane for bicyclists to operate safely from
23 traffic offering that comparative advantage for people to choose
24 bicycling.

25 In option C, the western route, it would also,

1 although it does provide a crossing of Piney Branch, it does
2 require bicyclists and pedestrians to, on the western side, go
3 through what we call a five legged intersection in the area of
4 Blair, Cedar and 4th Streets.

5 This is one of the most confusing and dangerous
6 intersections for motorists in the area and the western
7 alignment would place bicyclists and pedestrians into that mix
8 in a five way intersection, which we think avoiding that would
9 be a tremendous advantage for options A1 and A2 over option C.

10 And I very much understand the importance of
11 integrating trail networks into the street fabric and isolating
12 bicyclists and pedestrians from street traffic, but I think a
13 balance has to be struck and I think in this area, given the
14 absolute limitation about what could be done in the roadway in
15 order for bicyclist and walking to even approach a balance with
16 motorized use, we need to be able to have the grade separated
17 and protected crossings through this area just to reach a
18 balance.

19 CHAIRPERSON GRIFFIS: Thank you.

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Yes.

22 VICE CHAIRPERSON RENSHAW: Just a few questions
23 for Ms. Jones. What's the time table on the trail's
24 development?

25 MS. JONES: Currently the Division of

1 Transportation, the D.C. Division of Transportation has a
2 contract that is studying the acquisition and right of way
3 issues associated with the trail corridor.

4 Much progress is being made further south, in the
5 area of Union Station, 2nd Street and 1st Street. The trail has
6 been incorporated into the construction of the New York Avenue
7 Metro station, where we will have a grade separated facility
8 along the rail line and the New York Avenue area.

9 The preliminary design is underway on the 8th
10 Street segment, N.E. and in the area that affects the applicant
11 today, the majority of the work that has been done is the
12 identification of alignments in the small area plan, but it
13 would also be included in the study that I referenced, the D.C.
14 Division of Transportation is doing on right of way and
15 acquisition.

16 VICE CHAIRPERSON RENSHAW: What this would mean,
17 acquiring private land. In other words, what provisions are
18 being made to acquire private land, rather than having this
19 trail along public space?

20 MS. JONES: Yes and the issue of acquiring private
21 land or easements across and through private land is going to
22 have to be addressed by the D.C. Division's study.

23 VICE CHAIRPERSON RENSHAW: So your study is and
24 the development of this trail is how many months or years away?

25 MS. JONES: Ms. Renshaw, I would really have to

1 defer to the D.C. Division of Transportation, as they are the
2 agency that is conducting this study and I would feel a little
3 awkward speaking for them.

4 VICE CHAIRPERSON RENSHAW: And it's the D.C.
5 Department of Transportation that votes on this?

6 MS. JONES: There are the agency that's
7 responsible for this study of the trail corridor, yes, ma'am.

8 VICE CHAIRPERSON RENSHAW: You state that 1700 of
9 your members live in the District. How many of the 1700 are
10 residents of the Tacoma Park area?

11 MS. JONES: In the Tacoma Park area we have
12 approximately 142 members.

13 VICE CHAIRPERSON RENSHAW: Okay. All right and
14 did all of your membership vote on your remarks today, was this
15 paper circulated to your membership?

16 MS. JONES: The Washington Area Bicyclist
17 Association is governed by a Board of Directors, which is
18 elected by our membership annually and the Board of Directors
19 has approved this testimony.

20 VICE CHAIRPERSON RENSHAW: All right. Thank you.
21 I thought that would be good to have that on the record.

22 MS. JONES: Yes, thank you.

23 CHAIRPERSON GRIFFIS: Okay, that's been very
24 informative. Let me ask one last question, unless other Board
25 members want?-. Yes, Mr. Hannaham.

1 COMMISSIONER HANNAHAM: I don't necessarily want
2 to plow through things we've already gone through, but just back
3 to the alternative alignments. It's the green eastern alignment
4 is the one that would bypass this proposed development entirely?

5 MS. JONES: Yes, sir.

6 COMMISSIONER HANNAHAM: What problems do you have
7 with that one?

8 MS. JONES: Yes, sir. That would be alignment B.
9 The alignment of alignment B, it really takes the trail to the
10 very borders of Tacoma Park and our feeling about alignment B is
11 that it's very indirect for the rest of the route, thereby
12 losing that comparative advantage of the trail for the public
13 good and it also takes people on some of the most heavily
14 congested and narrow streets in the area.

15 This would almost entirely be on street, Mr.
16 Hannaham. And it really also limits accessibility for Tacoma
17 D.C. residents moving it that far away as well from the central
18 part of the area.

19 We really can't see any benefits to this, except,
20 perhaps, it might be the least expensive thing to do, so if cost
21 was the only consideration that should be weighed in making
22 these decisions, that would probably argue for this route
23 because it's the least expensive, but we don't really think it
24 gives any of the benefits of the other, alignment A1 and 2 would
25 provide.

1 COMMISSIONER HANNAHAM: But if that's true then it
2 might also cause you to reconsider your position to object to
3 this project. It's possible that you might, in the light of the
4 feasibility of that option reconsider your position and
5 opposition to the project.

6 Because you're making a very strong argument
7 against the variances and the special exception, but is it the
8 only course of action that you have to still continue the trail
9 and still have the project?

10 It is serving people in the community too. I
11 mean the bicyclists, there are many more people who seem, in
12 this community, to be organized in this particular effort.

13 MS. JONES: Well, while that is true, you could
14 take that alignment or even come up with another fifth or sixth
15 alignments for the trail.

16 What happens is that you lose the benefits that
17 the trail provides to the public by choosing other alignments
18 and so having to choose other alignments that result in a loss
19 of the benefit that the facility could provide, we think is a
20 loss to the public good.

21 COMMISSIONER HANNAHAM: Okay, but then it's a
22 matter of a balance?

23 MS. JONES: Yes.

24 COMMISSIONER HANNAHAM: What you see from your
25 perspective is public good versus people in the community?

1 MS. JONES: Yes, sir.

2 COMMISSIONER HANNAHAM: Because they view this
3 project as a benefit in development in their community.

4 MS. JONES: Yes and?-.

5 COMMISSIONER HANNAHAM: So those are the kinds of
6 judgments we're looking at too.

7 MS. JONES: Absolutely.

8 COMMISSIONER HANNAHAM: Thank you.

9 CHAIRPERSON GRIFFIS: No, thank you, Mr. Hannaham.
10 Okay and thank you very much for your testimony and I think
11 there's a lot of substance in the written document that was
12 submitted also that we will deliberate with and again,
13 appreciate the graphic. That's obviously very helpful. Good
14 morning, sir.

15 MR. MEIJER: Good morning. My name is Dan Meijer.
16 I live at 929 Gist Avenue in Silver Spring, Maryland, just over
17 line in downtown Silver Spring.

18 However, today I am testifying out of respect for
19 my father, long time resident, 1956, of the District of
20 Columbia, who has for the last 10 years of his life, he's now 80
21 years old, spent many hours advocating for a bike trail from
22 Silver Spring to Union Station.

23 At a well attended public hearing last year, held
24 at a local D.C. library, D.C. government transportation
25 representatives clearly stated that the Mayor of the District of

1 Columbia views this bike path as a future alternative commuter
2 route.

3 We were told that his decision was based on
4 reducing D.C. traffic congestion and to help D.C. comply with
5 it's Clean Air Act obligations.

6 None of these goals will occur if the bike path
7 does not take a direct route as originally proposed.

8 The present design of this project effectively
9 blocks this route. For that reason, the proposed building
10 design creates a substantial deterrent to the public good.

11 If the building set back at the Metro property
12 line and there's already a five foot easement involved, so we're
13 asking for an additional five foot, that's all. If that were
14 sufficient to accommodate such an important public amenity, I
15 believe the applicant would meet his recreational area of zoning
16 requirements.

17 I have asked my attorney to review the variance
18 application. He questions the legality of this requested
19 variance for the reasons stated in the attached letter for your
20 review, which I brought to your staff last week.

21 With regards to the Cade House issue, I'd like to
22 bring to the Board's attention that matter came before this
23 Board back in 1974 and I would like to submit to this Board a
24 copy of the memorandum that was sent to this Board by the Office
25 of Planning and Management during that case, which I retrieved

1 from your own files and it gives various reasons for delaying
2 your decision on that matter and in closing it says, because of
3 the efforts to provide an alternate to the demolition of the
4 historic shingle style building, we recommend that the BZA delay
5 approval of Mr. Dreyfus's application to allow time for a
6 compromise to be reached.

7 I really feel that the same courtesy that was
8 provided to the Cade House, which resulted in its preservation
9 today, be granted to the Washington Bicycle Association and
10 their members, so that the plans can be publicly debated and
11 properly debated before individual property owners can
12 effectively block it.

13 Thank you very much and thank you for reviewing
14 this matter from such a broad urban planning perspective.

15 CHAIRPERSON GRIFFIS: Thank you and just for
16 clarification, your attorney is David W. Brown?

17 MR. MEIJER: From Knopf & Brown, yes.

18 CHAIRPERSON GRIFFIS: Okay and did you provide
19 copies of this to the applicant?

20 MR. MEIJER: Not yet. I will today, if you wish.

21 CHAIRPERSON GRIFFIS: I would absolutely wish
22 that. Okay, thank you very much and I know Board members looked
23 at this. I was assuming frankly that the applicant had it. We
24 will give time for the applicant to respond to this, unless they
25 are able to respond?-. No, actually I don't want you to respond

1 right now, but do you have any cross examination of the witness,
2 Mr. Gell? You can just shake your head no and I will indicate
3 that for the record.

4 MR. GELL: Mr. Chairman, we did in fact have a
5 copy of the letter.

6 CHAIRPERSON GRIFFIS: Oh, you did? Okay, good.

7 MR. GELL: Prior to the testimony and Mr. Brown's
8 letter as well. But I have no questions for this witness.

9 CHAIRPERSON GRIFFIS: Great, thank you. So the
10 letter, you have had it and great. Thank you again for coming
11 down this morning and is there anyone else here to testify
12 today?

13 MEMBER LEVY: Mr. Chair.

14 CHAIRPERSON GRIFFIS: Yes.

15 MEMBER LEVY: Quickly, just for the record. I
16 just want to point out that there's a letter in the file that
17 appears to be from somebody who's opposing Mr. Meijer.

18 MR. MEIJER: I wasn't aware of that. I'd like a
19 copy of that, please.

20 MEMBER LEVY: Opposing his testimony. It's from
21 somebody named Dodie Butler, 5th Street, N.W.

22 CHAIRPERSON GRIFFIS: Right, indeed and what you
23 can you do is when the case is returned, you can go and make a
24 copy of that.

25 MR. MEIJER: I brought my checkbook for the

1 photocopy machine.

2 CHAIRPERSON GRIFFIS: Fabulous. I didn't know it
3 took checks.

4 MR. MEIJER: That's all they accept.

5 CHAIRPERSON GRIFFIS: All right, any other
6 questions for that testimony? Good.

7 MS. FERSTER: Good morning. My name is Andrea
8 Ferster, I live at 3647 Veazey Street, N.W. I'm testifying
9 today as a member of the Washington Area Bicyclist Association.
10 I've been a member since 1983. I'm also a native Washingtonian
11 and a parent of two native Washingtonians.

12 I'm here to speak in opposition to the variance.

13 I believe that the developer has not satisfied it's burden of
14 proof. That granting the variance would not cause a substantial
15 detriment to the public good.

16 It seems to me that the fact that this variance,
17 the recreational use variance would foreclose the most optimal
18 alignment of the Metropolitan Branch Trail. It is indeed a
19 substantial detriment to the public good.

20 I was taken here by the developer's
21 acknowledgment, early on today, that the courtyard that's being
22 provided as part of the development is what makes it impossible
23 to leave the space that's required for the Metropolitan Branch
24 Trail.

25 Given this acknowledgment, it seems to me that

1 this really is short sided and very uncreative approach to the
2 recreational space requirement.

3 Why doesn't the developer eliminate the courtyard
4 altogether, in order to enable a top quality trail to be
5 provided in this location.

6 Where there is such a good solution, a win-win
7 solution, it seems to me that it's clear that the developer has
8 not demonstrated that there are practical difficulties that
9 would warrant meeting that very high burden that the developer
10 must meet in order to justify a variance.

11 And let me just also say in my personal capacity
12 and this is another hat that I wear, which is as a General
13 Counsel to the Rails to Trails Conservancy, which is a national
14 non-profit organization formed to promote the use of our
15 nation's rail corridor infrastructure for trails and alternative
16 transportation uses.

17 Trails are not about charm anymore. They're not
18 about green space. More and more increasingly, trails are now
19 about safety. They are about providing safe routes to school
20 and safe routes to recreational areas, safe routes to shop to
21 and safe routes for people to get around to.

22 Let me just also say in my capacity as a parent
23 of two children who are confirmed walkers in the District of
24 Columbia. We walk everywhere. We walk to school, we shop, we
25 do everything on foot or by bicycle and I'm a militant walker.

1 When I walk my children to school I go across the
2 street slowly and when a car?-. Usually somebody talking on a
3 cell phone, turns the corner and is not paying attention, I hold
4 my hand up and I say, stop, and I walk across the street in the
5 time that I'm going to take, but I do not allow my children to
6 walk to school by themselves.

7 My children are not even at a height where they
8 could even be seen by the people who are turning those corners
9 so quickly, talking on their cell phones.

10 Even on corners that are controlled by traffic
11 signal, I do not let my children walk to school by themselves,
12 which is so different from when I grew up in the District of
13 Columbia and I grew up in Shepherd Park, which is quite near the
14 Tacoma Park area and I do recall being a child and walking those
15 streets by myself.

16 But it's different today. These are mean streets
17 today and as much I wish that it was possible for the city to
18 introduce traffic calming and traffic control measures that
19 allow children to walk safely on the sidewalks and cross streets
20 and get to places where they need to go by themselves, we're not
21 there yet and I don't know when we ever will be there.

22 There are so many changes that need to be made to
23 get to that place, so we need safe routes for children to use
24 and if they look like cages, that may be the price we need to
25 pay until we get to a point where kids can walk.

1 CHAIRPERSON GRIFFIS: Thanks, Ms. Ferster and I
2 think you bring a very large discussion, which I'd love to have
3 at some point.

4 First of all, you bring up the point of safety
5 and I absolutely concur to the fact that there has to be some
6 provisions for safety for crossings. A small anecdote, but the
7 Mayor is putting out those signs in the middle of the
8 crosswalks.

9 In my neighborhood, they've been hit by cars so
10 many times, they're gone and then are replaced, so let alone how
11 dangerous it is for a pedestrian to walk across, but it gives a
12 good indication of what we do need to do and continue to do to
13 be vigilant.

14 Safety brings up an interesting point and if I'm
15 not mistaken, this is anecdotal, not scientific, but are there
16 not a lot of safety concerns with isolated trails that have no
17 connection to blocks and streets?

18 If I'm not mistaken, some of the trails in Reston
19 have come under some very difficult crime statistics in terms of
20 their own isolation.

21 And again I go back to the point of the only way
22 we're going to win the battle for bicyclists and pedestrians is
23 to have the battle and not to have isolation.

24 You look at a lot of the Midwestern cities, for
25 cold conditions, have the tunnels or the crossings and they

1 found that their streets are absolutely desolate and the
2 retailers are dying or they have some suburban interior focus to
3 mall type situations that they have to accommodate.

4 If I'm not mistaken, those cities are actually
5 removing those or trying to remove those to get people back down
6 on the streets.

7 Again, this is a huge issue. I'll give you the
8 opportunity to quickly respond to my monologue, but we hear the
9 fact of what is the balance and what is trying to be done here
10 in terms of this bicycle trail.

11 MS. FERSTER: Well, just briefly, my response is
12 that I don't want my children to fight that battle, they're too
13 small.

14 CHAIRPERSON GRIFFIS: Yes and I appreciate that.

15 MS. FERSTER: If it's possible for there ever to
16 be a balance between vehicles and people who are walking and
17 bicycling, it's not going to occur while they're still children,
18 I assure you and the reality is that there is no balance now.
19 The battle is heavily weighted against the pedestrian.

20 CHAIRPERSON GRIFFIS: Right.

21 MS. FERSTER: There are just too many strong,
22 social societal factors that are preventing people from getting
23 out of their cars and walking.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. FERSTER: It's a huge, huge, problem. It's

1 not going to be solved in the next decade.

2 CHAIRPERSON GRIFFIS: It is huge. Two last
3 things, an important point. I also walk my five year old
4 daughter to school in the mornings and pick up in the
5 afternoons, so I know exactly what you're talking about, how
6 difficult it is to cross streets and I would not, of course
7 she's five, she's not walking to school on her own, but it would
8 be difficult to predict an age that a child would, I would feel
9 safe with.

10 Again, a large issue and to digress from this.
11 The other main important point of this is that this project
12 approved or not approved is not solving all these problems and I
13 think this Board will take into great consideration all the
14 factors that are in fact a part of this, but again, I would
15 underscore, I don't see how the denial of this would actually
16 save the bicycle trail.

17 Granted, we have a few of the options and it
18 would obviously help to support, but we still don't have the
19 determination that those are actually the ones that would
20 progress and actually be done.

21 That being said, any other questions for the
22 testimony at this time? Any other people wanting to testify
23 in?-. Oh, I'm sorry, Mr. Hannaham.

24 COMMISSIONER HANNAHAM: Thank you, Mr. Chairman.
25 I just have one question. I was fascinated with the statement

1 by Ms. Ferster with respect to substituting the proposals
2 recreation space with the bike trail. How would that work?

3 MS. FERSTER: Well, it seems to me that is the
4 perfect role for the Office of Planning to play. They're the
5 agency that really should be involved in implementing the
6 comprehensive plan by brokering a solution, like opposing a
7 variance, but persuading the developer to adopt a design that
8 would eliminate this courtyard, which as far as I'm concerned is
9 a very, very poor trade off for a first class trail that is one
10 of the only off roads, one of the few off road trails that is
11 possible to develop in this urban context.

12 So it seems to me the trade off is very poor.
13 Eliminate the interior courtyard, which is only useable four
14 months out of the year and only by a few residents of this
15 building.

16 All together, give the developer more usable,
17 rentable square foot to develop and make room, leave a space for
18 the trail, just leave it there and don't foreclose this trail as
19 an option.

20 And I would have liked to have seen the Office of
21 Planning playing that more proactive and creative role toward
22 meeting a recreational use space requirement through a facility
23 that is very important to the entire community, not just Tacoma
24 Park, but to the entire community of the District of Columbia,
25 as well as the comprehensive plan.

1 COMMISSIONER HANNAHAM: Thank you very much.

2 CHAIRPERSON GRIFFIS: Anything else, Board
3 members? Mr. Gell?

4 MR. GELL: I'll address some of the issues in my
5 wrap up.

6 CHAIRPERSON GRIFFIS: Okay, no cross examination?

7 MR. GELL: No.

8 CHAIRPERSON GRIFFIS: Okay and last, I just want
9 to make sure that no one is here to give testimony in support or
10 opposition. This is your final and last call to do so.

11 Not seeing a rush to the table, Mr. Gell, I would
12 turn to you for closing remarks.

13 MR. GELL: Thank you, Mr. Chairman. I would like
14 to make a few points about the testimony that you heard. I may
15 not look it, but actually when I worked for the District, I very
16 often biked to work several miles.

17 But more to the point, Russell Katz bikes to work
18 everyday and so you're looking at people who are not oblivious
19 to the concerns of bikers and in fact, would like to very much
20 work with them in any way we can and in fact, Russell Katz has
21 done so and has found that trying to accommodate this bike trail
22 is simply going to destroy the possibility that he could build a
23 project there and I think he's made that point clearly enough.

24 I would also suggest that the 142 bikers in
25 Tacoma Park will find that the other alignments, B and C, are

1 much easier to get to then the ones that WABA has testified that
2 it prefers.

3 So if their concern is really for the residents
4 of Tacoma Park, they may want to rethink that testimony.

5 We could wait for more studies, we could wait for
6 more decisions. We have no idea when that's going to happen and
7 where you have other viable options and in fact, those are the
8 options that might be selected anyway when all is said and done.

9 We suggest that here's a project that's ready to
10 go. For all of the relevant issues, I think we have shown that
11 this project is one of great merit and really deserves to have
12 the very, very small variance that we're asking, which is a five
13 percent difference in the recreation space and the special
14 exception, which doesn't have quite the burden of proof that the
15 variance does. I think that both of these things are highly
16 merited.

17 With respect to the legal memorandum that you've
18 received. I think Mr. Brown has accurately stated what the tests
19 are and I think that we have, through our testimony, shown that
20 in fact, we have met all of the burdens for a variance. We've
21 shown uniqueness, we've shown practical difficulty through our
22 testimony because I believe that we really addressed the
23 relevant issues and I don't regard the bike trail as being
24 necessarily one of those.

25 I would, at least for the record, ask that we get

1 a bench decision and a summary order. I realize that's asking a
2 great deal, but I think that it might be possible and it's
3 simply a suggestion on our part.

4 Again, we think this is a project that is ready
5 to go. It may never be built if it isn't built now. It's
6 barely feasible, but it is feasible and your help will actually
7 get this off the ground. So thank you very much, appreciate the
8 time.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Gell.
10 Board members, last questions of the applicant at this time.

11 Let me first clarify the fact that I'm not sure I
12 can do a bench decision at this time because we have opposition
13 in this case and I'd be corrected if that's?-.
14

15 MS. PRUITT: Excuse me, Mr. Chair. You can't do a
16 bench decision only if there's a party in opposition.

17 CHAIRPERSON GRIFFIS: Oh, indeed.

18 MS. PRUITT: But generally the Board, you know,
19 really likes to consider all sides when there's a lot of
20 opposition.

21 CHAIRPERSON GRIFFIS: Yes, right.

22 MS. PRUITT: But you are allowed to do a bench
23 decision because there are no parties in opposition.

24 CHAIRPERSON GRIFFIS: Technically, I'm allowed.

25 MS. PRUITT: Technically.

CHAIRPERSON GRIFFIS: But as we have heard

1 opposition testimony, I think Ms. Pruitt has well said that the
2 Board members often like to deliberate a little bit on that.

3 But I will open this up to, just let me take
4 quick comments on that. If Board members are ready to proceed
5 today or we will set this for decision making.

6 MEMBER LEVY: Mr. Chair.

7 CHAIRPERSON GRIFFIS: Yes.

8 MEMBER LEVY: I think it's appropriate that we
9 deliberate on this case at some length and it would be more
10 appropriate to set a decision meeting at a future date.

11 CHAIRPERSON GRIFFIS: Okay. Any other Board
12 members?

13 VICE CHAIRPERSON RENSHAW: Yes, I concur. We've
14 received quite a few pieces of testimony this morning and I'd
15 like to take an opportunity to look at these and review them
16 prior to making a decision.

17 CHAIRPERSON GRIFFIS: Okay.

18 MEMBER ETHERLY: Mr. Chairman, just as a
19 preliminary matter, the merits of the case notwithstanding, I
20 would like to commend the applicant for the outreach they've
21 done with the community.

22 In my short time here on the Board, it's rare
23 that we've seen the kind of dialogue that's taken place, so I
24 definitely appreciate that.

25 That being said, I'd be prepared to act today on

1 a bench decision, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Thank you very much. Mr.
3 Hannaham, do you have an opinion?

4 COMMISSIONER HANNAHAM: I personally would be
5 prepared to make a bench decision today too. Thanks.

6 VICE CHAIRPERSON RENSHAW: How does our Chair vote
7 on that?

8 CHAIRPERSON GRIFFIS: Yes, no kidding. Let me
9 talk schedule. Well, first of all, Board members, I appreciate
10 this and that would be an indication to me that we don't need to
11 have any other further submissions on this, so we could close
12 the record today. I did not have a list of anything that we
13 were actually looking at in terms of getting.

14 Mr. Gell, I'm trying to balance an awful lot here
15 and so what I want to do is get a quick, what is the impact on
16 the project if a March 5 decision making was made?

17 MR. GELL: I would obviously say that time is of
18 the essence for the project. What Mr. Katz is saying is
19 timeliness is of the essence. We would ask for a decision as
20 quickly as possible.

21 What you'd be doing is adding three weeks and the
22 project is somewhat hamstrung already because all of the hoops
23 we've had to jump through, so it would be helpful to us if you
24 could possibly do it today.

25 CHAIRPERSON GRIFFIS: So, Mr. Gell, if I heard out

1 of both of my ears, you were saying that there would be some
2 impact if we kept this until March 5, which would be our normal
3 first of the month decision making.

4 I would propose a compromise and maybe that's why
5 I sit in the middle of the two sides here and that we take a
6 week, deliberate and set this for a special public meeting on
7 the first agenda item of next Tuesday, which I don't know what
8 the date is, but the staff's going to tell you that and we can
9 get this done, up or down at that time.

10 That way, frankly, we have sufficient time to go
11 through and deliberate on all of the oral testimony, which is a
12 very important part of this case and in every case and I think
13 that's what we can do at this time.

14 MS. BAILEY: That's February 19, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Right, February 19.

16 MS. BAILEY: And that's a special public meeting
17 at 9:00 a.m.

18 CHAIRPERSON GRIFFIS: Correct.

19 MR. GELL: All right. Thank you very much, Mr.
20 Chairman.

21 CHAIRPERSON GRIFFIS: Yes. Anything else we need
22 to include? Is that clear what's happening for the applicant?

23 MR. GELL: We understand that you expect a
24 decision by February 19 and that will be satisfactory.

25 CHAIRPERSON GRIFFIS: Correct.

1 MS. PRUITT: And that the record is closed.

2 CHAIRPERSON GRIFFIS: Is there a question?

3 MR. GELL: No, we have no further information to
4 submit.

5 CHAIRPERSON GRIFFIS: Very good. So as staff has
6 correctly indicated, the record is closed on this. We will
7 deliberate and have our special meeting next week, 9:00 a.m. and
8 I thank you all for coming down today and I thank you all for,
9 frankly, your interest and passions in this on either side.

10 With that, it is 12:10 p.m. and we are going to
11 take a ten minute recess. We will back at 12:20 p.m. and we
12 will call the next case of the morning and see if we live
13 through this. Thank you very much, we'll be back in ten
14 minutes.

15 (Whereupon, the foregoing matter went off
16 the record at 12:14 p.m. and went back on the
17 record at 12:34 p.m.)

18 CHAIRPERSON GRIFFIS: Okay, when staff is ready, I
19 think we're back and appreciate that small break. We can call
20 the next case.

21 MS. BAILEY: Application number 16808 of Abigail
22 Y. Parker, pursuant to 11 DCMR ? 3104.1 for a special exception
23 to allow a child development center (40 children ages 6 months
24 to 3 years) with before and after school program (25 children
25 ages 4 to 12 years) and 12 staff under section 205 in the R-2

1 District at premises 2907 7th Street, S.E. (Square 5951, Lot
2 808).

3 Is there anyone else other than Ms. Parker who
4 will be testifying on 16808?

5 ABIGAIL Y. PARKER

6 A person to be testifying before the Board of Zoning Adjustment
7 as a witness was duly sworn at this time.

8 CHAIRPERSON GRIFFIS: As this is still the
9 continuation of the morning schedule, it may be inappropriate,
10 but I have to say good afternoon to you and we're glad to see
11 you back here today.

12 We don't have any preliminary matters on this, is
13 that correct?

14 MS. BAILEY: No, Mr. Chairman, only to say that
15 this is a continuation. This case was first heard on December
16 18 and this is a continuation of that hearing.

17 CHAIRPERSON GRIFFIS: Okay, yes, indeed. In which
18 case, it may be appropriate, we have a new Board member and I
19 just want him to indicate the fact that he's read the entire
20 file and is ready to proceed with this case, if that is so the
21 case.

22 MEMBER ETHERLY: Thank you very much, Mr. Chair.
23 I have indeed read the case file and will be prepared to sit and
24 adjudicate on this case before the Board. Thank you, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Great. Thank you very much.

1 And as I recall last, we didn't get to far into the specifics
2 of this. There was some need for further information on it and
3 we will proceed to look to see that is in and also to hear your
4 case.

5 Ms. Parker, why don't you begin and proceed.

6 MS. PARKER: Good afternoon. I apologize for my
7 delayed arrival this morning. It was due to two traffic
8 accidents on 295. Praise God. I understand some of the Board
9 members experienced the same trouble.

10 Anyway, I'm hear requesting a special exception
11 to have an extension to the existing day care center that we
12 have at 657 Lebaum Street, S.E. The 2907 7th Street abuts
13 across from the alley to the existing child care center and we
14 have been there in the Congress Heights community for over 25
15 years.

16 We went around to the neighbors because there's a
17 definite need. We can not service, we have families now that
18 some of the children have to go other places because we are
19 unable to accommodate them for the before and after or either
20 for the infant care.

21 So we purchased a house that was at 2907 7th
22 Street. It was a burned out house. It had been vacant for 11
23 years and they were using it as a facility for a crack house and
24 so we purchased it to provide an extension to the existing child
25 care center.

1 We have the support of the community. The ANC
2 Chair was here last time in support and this morning.
3 Unfortunately, she had to leave and we have the support of our
4 Council person, Councilwoman Sandy Allen. We also have the
5 support of the Office of Planning, you know, in support of us.

6 I want to respond in reference to section 205,
7 the child/elderly development centers and under 205.1, I'll go
8 through the questions and just respond like I did in writing.
9 Do you need me to do that?

10 CHAIRPERSON GRIFFIS: I think that would be great
11 and actually what I'm going to ask these Board members to do is
12 frankly, interrupt you with questions on each of the specific
13 topics.

14 MS. PARKER: Okay.

15 CHAIRPERSON GRIFFIS: So we might get through this
16 a little bit quicker.

17 MS. PARKER: Okay. Under 205.1, use as a
18 child/elderly development center shall be permitted in R-1
19 District if approved by the Board of Zoning Adjustment, in
20 accordance with the conditions specified in 3108 of Chapter 31
21 of this Title, subject to the provisions of this section.

22 CHAIRPERSON GRIFFIS: Before you answer that. You
23 don't need to read any of the sections because one, we have it
24 front of us, so we know it. So if you want to just go to 25.1
25 and your answer and address it and then two and three. That

1 would be tremendous.

2 MS. PARKER: Thank you so much. The new facility
3 will be an asset and it's much needed. Like I said, the
4 previous house had been vacant for 11 years and there had been
5 four different fires. It was being used as a crack house and it
6 was an eyesore and a danger to the community because it was
7 really unsafe. It was an unsafe premises.

8 Under 205.2, the center should be capable of
9 meeting all applicable codes and license requirements. The
10 proposed extension would meet the standards established by the
11 Department of Health, Licensing and Regulations, Administrations
12 and Human Service Division.

13 The facility is being designed to comply with the
14 BOCA code.

15 CHAIRPERSON GRIFFIS: Do you have a license for
16 that or do you have an application in now for license on that

17 MS. PARKER: I have an application.

18 CHAIRPERSON GRIFFIS: And then you will go
19 through, obviously the inspection and?-.

20 MS. PARKER: Oh, yes.

21 CHAIRPERSON GRIFFIS: So none of that has occurred
22 at this point?

23 MS. PARKER: No, the facility is not even
24 finished.

25 CHAIRPERSON GRIFFIS: Exactly, right. So that

1 would happen when it was done. Okay, thank you.

2 MS. PARKER: Under 205.3, the center shall be
3 located and designed to create no traffic problems.

4 Currently, the center we have now, most of our
5 clientele are under the TANF, the welfare to work reform, so
6 they either use the bus transportation or they walk. We have a
7 lot that even walk, you know, to the facility and they're the
8 ones that are expressing the needs because some of the parents
9 have to bring one child to us and then take another child
10 somewhere else for care, so that imposes a hardship for them.

11 So they are really just anxiously awaiting for an
12 expansion so that we can service the family as a whole, as
13 opposed to them having to go, get on the bus and then go to
14 another facility after coming to us.

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman, may I ask
16 a question of Ms. Parker?

17 CHAIRPERSON GRIFFIS: Yes, indeed.

18 VICE CHAIRPERSON RENSHAW: Ms. Parker, in this
19 section 205.3, which speaks to no objectionable traffic
20 conditions and no unsafe condition for picking up and dropping
21 of children.

22 First of all, I wanted to reference the fact that
23 you've used the Dawn to Dusk Child Care Center, you reference
24 this and it's one of four references to Dawn to Dusk Child Care
25 Center. Is Dawn to Dusk you?

1 MS. PARKER: Yes.

2 VICE CHAIRPERSON RENSHAW: It's you?

3 MS. PARKER: Yes.

4 VICE CHAIRPERSON RENSHAW: And you run the
5 facility across the way?

6 MS. PARKER: Yes.

7 VICE CHAIRPERSON RENSHAW: All right and this is
8 an extension?

9 MS. PARKER: Yes.

10 VICE CHAIRPERSON RENSHAW: I just wanted to clear
11 this up. Why then is the application in the name of Abigail
12 Parker and not Dawn to Dusk?

13 MS. PARKER: Actually, both premises are in
14 Abigail Parker, even 657 Lebaum.

15 VICE CHAIRPERSON RENSHAW: All right, but you call
16 your child care center, Dawn to Dusk?

17 MS. PARKER: Yes.

18 VICE CHAIRPERSON RENSHAW: And the new facility
19 will be called Dawn to Dusk?

20 MS. PARKER: Well, the new facility will actually
21 be my home. I will live upstairs.

22 VICE CHAIRPERSON RENSHAW: Oh, I see. I wasn't
23 clear about that at all. You state in this paragraph, 205.3,
24 that the Dawn to Dusk Child Care Center provides a van to pick
25 up and drop off some of the children in the immediate

1 neighborhood. I wondered how many is some and also, where is
2 your drop off point?

3 We had asked you specifically the last time to
4 make sure that we had some kind of a diagram to show where you
5 drop off these children.

6 MS. PARKER: Okay, we're servicing the public
7 schools, you know, right there in the vicinity.

8 VICE CHAIRPERSON RENSHAW: But aren't children
9 being brought to your place?

10 MS. PARKER: Yes.

11 VICE CHAIRPERSON RENSHAW: And where are they
12 dropped off? Do they use an alley? Do you use an alley system,
13 where the children are dropped off? Are they dropped off in the
14 center of your existing building? Are they going to be dropped
15 off at this new extension facility?

16 MS. PARKER: Okay, they're dropped off right at
17 the front door or the side entrance. There are two entrances.

18 VICE CHAIRPERSON RENSHAW: On what streets,
19 reference the streets.

20 MS. PARKER: Lebaum Street and 7th Street.

21 VICE CHAIRPERSON RENSHAW: All right and how many
22 children use the van?

23 MS. PARKER: Do you mean as far as we transport to
24 two schools?

25 VICE CHAIRPERSON RENSHAW: Yes.

1 MS. PARKER: Approximately 15.

2 VICE CHAIRPERSON RENSHAW: All right. That's it
3 for now, I'll have additional questions.

4 CHAIRPERSON GRIFFIS: Well, I think going to that.
5 You just indicated and we're just going over the plans here
6 that this is going to be your house. On what level are the
7 children actually going to be in?

8 MS. PARKER: If you see, it says the first floor
9 and the basement in the application.

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. PARKER: That will be used for the extension.

12 CHAIRPERSON GRIFFIS: So in the plans, the
13 basement has indicated rooms of family rooms, utility. On the
14 first floor, you have a kitchen, a living room, family room and
15 a dining room.

16 MS. PARKER: Well, see, that was because it was
17 being constructed as a house.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. PARKER: And then, what we are doing, the fire
20 alarm, the sprinklers and everything that goes with it, so that
21 we can use the space for an extension.

22 CHAIRPERSON GRIFFIS: So how many children are you
23 proposing to have in this facility?

24 VICE CHAIRPERSON RENSHAW: 40 kids.

25 MS. PARKER: Right. The infant/toddler is the 40.

1 CHAIRPERSON GRIFFIS: Right.

2 MS. PARKER: And the before and after program, 25.

3 VICE CHAIRPERSON RENSHAW: They're going to be
4 then, once again, in the basement area and on the first floor
5 only?

6 MS. PARKER: Yes.

7 VICE CHAIRPERSON RENSHAW: And they are not going
8 to use any of these bedrooms?

9 MS. PARKER: Oh, no. They will use the entire
10 first floor and the entire basement area. It's approximately
11 2300 and some square feet.

12 MEMBER LEVY: Mr. Chair.

13 CHAIRPERSON GRIFFIS: Okay, yes.

14 MEMBER LEVY: I'm sorry, did I cut you off, Ms.
15 Renshaw?

16 VICE CHAIRPERSON RENSHAW: No, go ahead.

17 MEMBER LEVY: I'm confused. The drawings that
18 were given to us as part of the file today, they don't give me
19 the information that I need to consider this case. They don't
20 appear to represent a day care center. There's not really a
21 site plan. Perhaps I'm missing something, but I'm having a hard
22 time figuring that these drawings are showing a day care center.

23 VICE CHAIRPERSON RENSHAW: It's the configuration
24 of the basement and the first floor where these 40 plus 25
25 children are going to be housed, I just don't understand where

1 they're all going to be and how they get in and out of the
2 house.

3 And you've got a new addition on the house? It
4 says on the surveyor's map, you have a new addition. Is this
5 coming before us now, this new addition?

6 MS. PARKER: No, actually, that was two lots that
7 were combined. Initially, that was two lots that was combined
8 on the site plans.

9 CHAIRPERSON GRIFFIS: But the actual project is
10 all new construction?

11 MS. PARKER: Yes.

12 CHAIRPERSON GRIFFIS: There was, conceivable for
13 this plot plan, an existing two story frame with basement that
14 was removed and what we're seeing as an addition, along with
15 where it was indicated as existing is the new house. Okay, a
16 little confusing.

17 VICE CHAIRPERSON RENSHAW: I'm just confused, Ms.
18 Parker, if we are not seeing an application for a new house,
19 rather than an application for a child care center. Do you have
20 a permit for this house?

21 MS. PARKER: Yes. Yes.

22 CHAIRPERSON GRIFFIS: Did the construction permit
23 state that it was actually going to be a child care center or a
24 single family residence?

25 MS. PARKER: It probably said a single family

1 residence.

2 CHAIRPERSON GRIFFIS: I see.

3 MS. PARKER: They told us that we could have five
4 children as a matter of right in the single family home.

5 CHAIRPERSON GRIFFIS: Right.

6 MS. PARKER: But that we had to apply for a
7 special exception to have more.

8 CHAIRPERSON GRIFFIS: Right. So, in effect, we
9 don't necessarily need to be looking at the single family home
10 aspect of it, but the special exception for the child care
11 center.

12 Perhaps I'm correct and maybe staff can help us
13 out here, but we could too picture this as a built house. We
14 have the plans for this house, it exists. Ms. Parker lives in
15 it and she is now here before us for a special exception for the
16 child care facility for 40 children.

17 MS. PRUITT: Mr. Chairman, you're correct. In the
18 past, the Board has reviewed existing houses where people have
19 wanted to place day care centers on the first and basement
20 levels of their homes for more than five children.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. PRUITT: And they've come before the Board.

23 CHAIRPERSON GRIFFIS: Right, okay and I think what
24 I'm hearing from the Board members is some concern about layout
25 and use and in many respects, we need to look at that, but in

1 addition to that, I would be fairly clear, you're getting a
2 license for this child care center, correct?

3 MS. PARKER: It will have to be licensed.

4 CHAIRPERSON GRIFFIS: Part of the licensing and
5 the health inspections and the code inspections will be looking
6 at the exact space and utilization of it.

7 MS. PARKER: And even the amount.

8 CHAIRPERSON GRIFFIS: The number of children?

9 MS. PARKER: Yes.

10 CHAIRPERSON GRIFFIS: Yes, indeed.

11 MEMBER LEVY: Mr. Chair.

12 CHAIRPERSON GRIFFIS: Yes.

13 MEMBER LEVY: I understand what you're saying.
14 I'm still concerned that the materials that we have before us,
15 which we have to use to help us make a decision in this case,
16 don't represent?-. There's not enough information to show these
17 spaces are going to be used for the proposed use for us to
18 deliberate in an intelligent manner.

19 MS. PARKER: So in other words, should I wait
20 until I build a house. In other words, it's going to be a house
21 and what I need is a special exception in order to have more
22 than five children.

23 MEMBER LEVY: The point that I'm trying to make,
24 Ms. Parker, is that the levels that you're telling us you're
25 going to use for the child care center, the first level and the

1 basement. The drawings that we have don't even indicate that
2 they're being used for that. They are called family room and
3 living room and dining room and so I'm having a hard time
4 visually what the child care center is actually going to be.

5 There's also not a site plan that addresses the
6 issues that Ms. Renshaw was bringing up about drop off and pick
7 up and those are the kinds of issues that we need to deliberate
8 upon to make a decision in the case.

9 CHAIRPERSON GRIFFIS: Okay, what I would suggest
10 we do is continue on with questions and perhaps Ms. Parker can
11 give some indication and then we will, if need, ask for
12 submissions on this and we'll be brief as possible and if you
13 can't answer whatever it is, we'll just move on from it.

14 But do you want to talk briefly about?-. First
15 of all, it's my assumption, tell me if I'm correct, that your
16 first floor, which is in fact, your living and dining room and
17 kitchen area would, during the day, have children in it and then
18 during the evening would facilitate your use. Is that correct?

19 MS. PARKER: No. I'm going to use the first and
20 bottom floor for all child care. I'm going to use it strictly
21 for the children and I will use the top floor for my space.

22 CHAIRPERSON GRIFFIS: All right, okay. So you
23 don't have cooking facilities on the second floor for your
24 space?

25 MS. PARKER: I will use the same cooking

1 facilities.

2 CHAIRPERSON GRIFFIS: I see.

3 MS. PARKER: Do you understand what I'm saying?

4 CHAIRPERSON GRIFFIS: Well, I'm trying to get
5 there. So you're going to be cooking in the kitchen on the
6 first floor, but only living and utilizing the second floor for
7 your own residence?

8 MS. PARKER: Right.

9 CHAIRPERSON GRIFFIS: So the first floor, outside
10 of the kitchen, which the kitchen, I imagine, would also work
11 for snacks and such for the kids and the first floor and the
12 basement would be kids, second floor and kitchen would be used
13 for your residence.

14 MEMBER LEVY: Can I just clarify on that point?

15 CHAIRPERSON GRIFFIS: Yes.

16 MEMBER LEVY: Ms. Parker, are the plans that we
17 have in front of us, do they represent how the day care center
18 is going to be built or did that change from what we're
19 looking?-. Are we looking at what you're actually going to
20 build or has been built?

21 MS. PARKER: Well, the structure itself is the
22 same. Like I say, it's built according to the codes as far as
23 the fire alarms and sprinkler and things of that.

24 The space may change as far as utilization, but
25 that space will definitely be designated.

1 MS. PARKER: But the drawings, I'm looking at
2 drawing A-5, which shows your first floor floor plan for
3 example. Will your first floor, in fact, have a kitchen, a
4 dining room, a family room, a living room and a bathroom.

5 MS. PARKER: Those will no longer be living room,
6 dining room. They'll be rooms, but they won't be used for that
7 purpose.

8 MEMBER LEVY: But the layout will be the same?

9 MS. PARKER: The layout will be the same.

10 CHAIRPERSON GRIFFIS: Okay and I think you note
11 some of the concerns. I have another concern in terms of the
12 layout and I think we're trying to go to establish some of the
13 pieces of the special exception here.

14 But, first of all, you don't have a closeable
15 separation from the second floor to the first floor. That may
16 be an issue for code, in that you have two different uses.

17 Secondly, the bathrooms don't seem to be one
18 count correct for 40 kids and I don't know that specifically.
19 We're not looking code specifically, but I do believe that there
20 are also some provisions for child development center in terms
21 of size of fixtures for bathrooms, etcetera and it's not
22 indicated necessarily that is the case being provided for here.

23 Third and last, I guess, is the stair dimension
24 down to the basement. In terms of the population that will be
25 on each floor, I don't have a dimension on those, but my quick

1 look at it, doesn't look like they are actually wide enough.

2 Some concerns, perhaps, you need to take into
3 account and maybe we will have some indication on submissions
4 for that.

5 Now let's talk to and Ms. Renshaw was bringing it
6 up and I think now we have an idea of what's happening here,
7 talk about specific drop off.

8 A van pulls up that's dropping the kids off,
9 where are they? You've indicated that they're on 7th Street.
10 Can you give us an indication of what the parking and what the
11 traffic is on 7th Street.

12 MS. PARKER: Okay, 7th Street is a one way that
13 comes down and turns at Lebaum. It's a short corner out to
14 Martin Luther King.

15 MR. WOOD: Mr. Chair.

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. WOOD: John Wood, Office of Planning. Let me
18 try to help clarify that for you. 7th runs north toward Martin
19 Luther King. Lebaum intersects with 7th on the south end.
20 There's an alley between the two.

21 The original structure is on the corner of the
22 alley on 7th. Her extension is on the other side of the alley
23 on Lebaum. If that will help in terms of clarification.

24 MEMBER LEVY: Do we have anything showing Lebaum
25 Street? I don't have anything.

1 CHAIRPERSON GRIFFIS: That's what I can't find.

2 MEMBER LEVY: I see Portland Street.

3 MS. PRUITT: It's listed as an alley on the site
4 plan that was submitted, Exhibit No. 3.

5 MS. PARKER: Yes, that's the alley for the new?-.
6 Right there, between the two.

7 MS. PRUITT: Your lot is on the alley, but the
8 addition would be on the opposite side of the alley.

9 MS. PARKER: The opposite side of the alley.

10 MEMBER LEVY: Ms. Parker.

11 MS. PARKER: Yes.

12 MEMBER LEVY: Correct me if I'm wrong, but you
13 said there's an existing day care center that you're operating
14 that's in yet another building, right?

15 MS. PARKER: Across the alley.

16 MEMBER LEVY: And it's on Martin Luther King?

17 MS. PARKER: No.

18 MEMBER LEVY: Okay, it's on Lebaum?

19 MS. PARKER: It's on 7th and Lebaum.

20 MEMBER LEVY: On the corner?

21 MS. PARKER: Right on the corner of 7th and Lebaum.

22 MEMBER LEVY: Great, thank you.

23 CHAIRPERSON GRIFFIS: Okay, back to that then.
24 They pull up on 7th Street, is there parking on that side? Is
25 there a no parking drop off designated area?

1 MS. PARKER: No, we have off street parking for
2 the 657 Lebaum also.

3 CHAIRPERSON GRIFFIS: Okay, well, then talk to me
4 about, a van then pulls into the alley and pulls onto the site
5 and drops the kids off?

6 MS. PARKER: Right, right.

7 CHAIRPERSON GRIFFIS: At either of the facilities?

8 MS. PARKER: Right.

9 VICE CHAIRPERSON RENSHAW: And where does the van
10 park when it's not in use?

11 MS. PARKER: The van for the school?

12 VICE CHAIRPERSON RENSHAW: For your school.

13 MS. PARKER: It will park in either one of the
14 facilities because we have off street parking.

15 MS. PRUITT: Where would the off street parking be
16 located?

17 MS. PARKER: For the new facility, it's on the
18 side. Like I said, there was two combined lots and there are
19 three parking spaces being provided on the side.

20 VICE CHAIRPERSON RENSHAW: On the alley side?

21 MS. PARKER: I'm sorry?

22 VICE CHAIRPERSON RENSHAW: on the alley side? The
23 alley bends.

24 MS. PARKER: No, not the alley side. It's on the
25 opposite side of the building.

1 CHAIRPERSON GRIFFIS: How do you get into them,
2 off of 7th Street or the alley?

3 MS. PARKER: Through the alley.

4 MS. PRUITT: Is it separated by fence for a play
5 area?

6 MS. PARKER: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MEMBER ETHERLY: Mr. Chairman, if I may.

9 CHAIRPERSON GRIFFIS: Yes.

10 MEMBER ETHERLY: Ms. Parker, thank you for helping
11 us work through this. I think we're all trying to visualize in
12 our head the layout and the flow of traffic.

13 I have to be careful, in terms of not bringing to
14 much outside knowledge to this, but I'm vaguely familiar with
15 the area from a prior living experience.

16 Is the alley that we're talking, that we're
17 discussing, is it used in a two way fashion? Meaning if you
18 enter into the alley off of 7th Street, continue around to the
19 back of the property, can you continue through that alley back
20 to Portland?

21 MS. PARKER: Yes.

22 MEMBER ETHERLY: Okay, okay.

23 MS. PARKER: Or there's another cut off further up
24 in the alley for Martin Luther King.

25 MEMBER ETHERLY: Okay. In your experience with

1 this alley, has the alley been used in a two way fashion?
2 Meaning you may have some motorists who will attempt to, off, I
3 believe, Portland or Martin Luther King, come the other way?

4 MS. PARKER: The only thing you can do is come in
5 through the one way street, which is 7th Street.

6 MEMBER ETHERLY: Okay.

7 MEMBER ETHERLY: See, 7th Street is one way.

8 MEMBER ETHERLY: Oh, I see and if you come in the
9 alley from the other side, you have no where to go.

10 MS. PARKER: You have no where to go.

11 MEMBER ETHERLY: Understood. Okay and as you were
12 asked earlier, there is a fence that's separating the back side
13 of that property from the alley?

14 MS. PARKER: Right, right.

15 MEMBER ETHERLY: And what type of fence is that,
16 do you recall? Is that a chain link fence or perhaps a wooden
17 fence?

18 MS. PARKER: Right now it's a six foot chain link.

19 MEMBER ETHERLY: Okay, right now it's a six foot
20 chain link.

21 MS. PARKER: Yes.

22 MEMBER ETHERLY: So if your van is effecting a
23 drop off in the back of the property, let me pause that. You're
24 doing your drop offs in the front of the property, off of 7th
25 Street, for this particular facility?

1 MS. PARKER: You mean for the new facility?

2 MEMBER ETHERLY: For the new edition, yes, pardon
3 me.

4 MS. PARKER: For the new edition, it can either be
5 done either way. You can pull in the back from the alley, if
6 you come off of Portland and you can pull into the back to the
7 parking or you can stop right in front, on 7th.

8 MEMBER ETHERLY: Okay and once again, the number
9 of spaces in that back parking portion of the property?

10 MS. PARKER: Three.

11 MEMBER ETHERLY: Three spaces.

12 MS. PARKER: And it runs the side of the
13 building.

14 MEMBER ETHERLY: Okay, thank you very much. Thank
15 you, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Thank you. What I'm going to
17 do at this point is actually run down?-. I think the Board is
18 fairly familiar with the section that you're coming in for
19 special exception and what I'm going to ask you to speak to just
20 briefly is, hours of operation for the existing facility and
21 then how they will change and what you're proposing for the new
22 facility.

23 MS. PARKER: The hours of operation are 6:00 to
24 6:00.

25 CHAIRPERSON GRIFFIS: And that would be the same

1 in the new?

2 MS. PARKER: Yes.

3 CHAIRPERSON GRIFFIS: See, the answer is shorter
4 than the question, which is always a great thing. Okay,
5 anything else you want to add at this point?

6 MS. PARKER: Did you want me to continue down the
7 questions or?

8 CHAIRPERSON GRIFFIS: No, not unless, I think
9 we've hit on all the pertinent points, unless you're seeing
10 something that you think we've missed.

11 I'll give you a chance to conclude also. Yes, Mr. Hannaham,
12 please ask.

13 COMMISSIONER HANNAHAM: I may be going back and I
14 might have missed something. Are these requirements for code
15 and licensing, have they been started or are they pending? Is
16 this still all under way? It's a work in progress?

17 MS. PARKER: It's all underway. Right, it's a
18 work in progress.

19 COMMISSIONER HANNAHAM: And that includes the
20 Human Resources people?

21 MS. PARKER: Yes.

22 COMMISSIONER HANNAHAM: Because they would be very
23 much concerned with the child care center.

24 MS. PARKER: They make the determination either
25 way.

1 COMMISSIONER HANNAHAM: So all of these things are
2 in a state of flux?

3 MS. PARKER: Right.

4 COMMISSIONER HANNAHAM: Your new addition is also
5 being renovated and set up, as you've just described it?

6 MS. PARKER: Right.

7 COMMISSIONER HANNAHAM: Okay, I think I have a
8 good picture of it. Thank you very much.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Hannaham.
10 Anything else at this time?

11 MEMBER ETHERLY: Ms. Parker, we may have already
12 gone over this area a little bit, but could you speak to the
13 relationship between what you're using the existing facility now
14 for and what you're going to be using the proposed addition for?
15 Meaning in the current building, is that presently where you
16 have the 40 infants and toddlers and the 25 for the before and
17 after?

18 MS. PARKER: Oh, no. In the current building,
19 we're currently licensed for 40 some children, but that's not
20 meeting the needs.

21 MEMBER ETHERLY: Understood.

22 MS. PARKER: And this is why we sought to expand,
23 okay, to the other facility. Licensing, irregardless, will not
24 let you use anything but the first or basement floor. You can't
25 go to the second floor.

1 This is why I decided, since I'm getting older,
2 rather than to run back and forth between the two facilities, so
3 then I said, I would, you know, just stay in the top floor.

4 MEMBER ETHERLY: Okay. So after the?-, when and
5 if the new addition comes on line, how will you spread out your
6 administrative functions and the population of children that
7 you're serving between the two buildings?

8 In the new addition, you'll be on the second
9 floor, that will be your residence space. You've identified the
10 basement floor and the first floor for exclusive use of the
11 populations that you're serving. What will continue to be the
12 mix in the first building?

13 MS. PARKER: It will continue to have child care
14 also. However, the new addition is larger. The first floor and
15 the second floor of the new addition is larger than the existing
16 building, which is only the first floor and the second floor,
17 there's no basement floor.

18 MEMBER ETHERLY: Okay.

19 MS. PARKER: But the new addition is larger than
20 the existing facility, which will accommodate the needs, like I
21 say, that we have where the families are concerned.

22 And when you say before and after, not all
23 children come in at the same time. You may open at six.

24 MEMBER ETHERLY: Different schedules.

25 MS. PARKER: You see what I'm saying, so you have

1 all different schedules. Our thing is that we will accommodate
2 before and after, which is usually a couple of hours in the
3 morning and a couple of hours in the evening for 25 children.
4 The preschoolers will be 40 children during the day.

5 MEMBER ETHERLY: So at any even time, is it
6 appropriate or can you say at any given point in time how many
7 children you have on site, all together?

8 MS. PARKER: I would venture to say, the way it
9 runs, basically now, you will run approximately 40 to 45
10 children at any given time.

11 MEMBER ETHERLY: Any given time, got you. And do
12 you have any food preparation areas in the first building?

13 MS. PARKER: Yes, I do.

14 MEMBER ETHERLY: So you have an existing kitchen
15 there?

16 MS. PARKER: Right, right.

17 MEMBER ETHERLY: But that building is not being
18 used in any residential capacity.

19 MS. PARKER: Oh, no.

20 MEMBER ETHERLY: It's entirely for use of the
21 program?

22 MS. PARKER: Right.

23 MEMBER ETHERLY: Okay, thank you very much, Ms.
24 Parker. Once again, we're trying to visualize and trying to get
25 a flavor for precisely how you're going to structure this space

1 and I think that's what you kind of hear us struggling with, so
2 thank you very much.

3 MS. PARKER: Yes, I was told by Licensing that I
4 had to come here for the special exception. Like I say, they
5 told me that I could have five as a matter of right.

6 MEMBER ETHERLY: Understood, thank you again.
7 Thank you, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly.

9 MEMBER LEVY: Ms. Parker, just to further clarify
10 and I apologize for beating this to death, but when the new
11 building opens, will you then have the existing building with 40
12 children, plus the new building with another 40 children, plus
13 the after care?

14 MS. PARKER: Yes.

15 MEMBER LEVY: So you will be keeping both
16 buildings?

17 MS. PARKER: Yes.

18 MEMBER LEVY: So you'll be running?-

19 MS. PARKER: That's why I said extension.

20 MEMBER LEVY: But they're not connected.

21 MS. PARKER: No.

22 MEMBER LEVY: They're two buildings on two lots,
23 operated as a single operation.

24 MS. PARKER: Right.

25 MEMBER LEVY: Okay, thank you.

1 VICE CHAIRPERSON RENSHAW: Ms. Parker, do you have
2 one set of faculty or do you propose two sets of faculty? In
3 other words, are you going to have 12 faculty over at your new
4 place versus a comparable number at your old place?

5 MS. PARKER: Well, that is if I'm allotted the
6 maximum amount of children. Your faculty goes again by the
7 number of children.

8 VICE CHAIRPERSON RENSHAW: Number of children,
9 right.

10 MS. PARKER: Even if I get a special exception
11 here, it's the Department of Health that determines,
12 irregardless, to what is done. We're renovating a building
13 according to code for a child care center. However, they will
14 determine what the final figure will be, as far as license
15 capacity.

16 VICE CHAIRPERSON RENSHAW: In you present
17 building, do you have a separate space for the faculty where
18 they can rest or take a break or do they just mix with the
19 children for the hours that you are open, from 6:00 to 6:00.

20 MS. PARKER: Currently they use the office space
21 and they have individual bathrooms and things like that, but no,
22 I don't have a separate lounge, per se, in the existing
23 building.

24 Which is another thing, with the new facility,
25 you see what I'm saying. The quarters that were upstairs that

1 would be my personal quarters could be because I live alone, so
2 I don't have a problem.

3 VICE CHAIRPERSON RENSHAW: And do you have an
4 office on the first floor or an office on the second floor where
5 you do your business?

6 MS. PARKER: Currently in the new facility?

7 VICE CHAIRPERSON RENSHAW: Yes.

8 MS. PARKER: You mean the facility I'm in now?

9 VICE CHAIRPERSON RENSHAW: In the old facility and
10 in the new facility.

11 MS. PARKER: The office space will be upstairs in
12 the new facility, where my quarters will be and I currently have
13 a small office space in the existing building.

14 VICE CHAIRPERSON RENSHAW: All right, thank you.
15 You're taking us on a virtual tour of your new house.

16 CHAIRPERSON GRIFFIS: Mr. Etherly.

17 MEMBER ETHERLY: Thank you, Mr. Chair. Ms.
18 Parker, as we talked a little bit about the issue of food
19 preparation and service.

20 MS. PARKER: Right.

21 MEMBER ETHERLY: That raises a question regarding
22 trash removal and collection and I think it's helpful to break
23 up the question. What do you do now and maybe what do you
24 envision happening when the new addition comes on line.

25 So in terms of your existing facility, how is

1 trash pickup handled there, do you just put the trash out as you
2 would at any residence and have it picked up twice a week?

3 MS. PARKER: No, we have to have a private pick
4 up.

5 MEMBER ETHERLY: Do you maintain a dumpster for
6 that facility?

7 MS. PARKER: Right.

8 MEMBER ETHERLY: So you would envision a similar
9 process for the new addition as well?

10 MS. PARKER: Yes.

11 MEMBER ETHERLY: And this may be getting too deep
12 into detail, but do you know off hand how the garbage pick up or
13 the hauling is handled from an access standpoint. Do those
14 trucks come into the alley that we've been talking a little bit
15 about to pick up the trash from your dumpster?

16 MS. PARKER: They come through the back alley,
17 right.

18 MEMBER ETHERLY: They come to the back alley. Is
19 that a large scale trash pickup vehicle, meaning one of those
20 real loud things that we all hear all the time in the morning,
21 if you can recall?

22 MS. PARKER: Well, it varies. I have a small, an
23 independent.

24 MEMBER ETHERLY: So a small contractor who comes
25 and helps out.

1 MS. PARKER: Right.

2 MEMBER ETHERLY: All right, thank you again, Ms.
3 Parker.

4 CHAIRPERSON GRIFFIS: Ms. Parker, are you aware of
5 any of the other agencies that have submitted in writing to you,
6 but didn't make it into our case file, in terms of the Health
7 Department and any sort of reports or review of this
8 application?

9 MS. PARKER: No.

10 CHAIRPERSON GRIFFIS: Okay, let's go to the Office
11 of Planning, which is here with their report and it may shed
12 some light on it and I would ask, of course, if you could
13 summarize, but you are welcome to proceed.

14 MR. ADAMS: Good morning, slash, afternoon. John
15 Wood, Office of Planning.

16 Ward Eight has the city's highest level and
17 number of youth population. Among that population there's a
18 critical need, of course, for child care services.

19 Ms. Parker is a provider and has been one for 20
20 years, with an excellent reputation in the Ward, as is indicated
21 in the ANC letter and I've interviewed other members of the ANC
22 and I have it on high authority because we have an employee in
23 our office who has a child in her facility.

24 CHAIRPERSON GRIFFIS: Is that a conflict of
25 interest?

1 (Laughter.)

2 MR. WOOD: Somewhat. Ms. Parker has a unique
3 opportunity. Her existing facility is across the alley from a
4 building that was blighted and crime ridden that she could use
5 an extension to her facility to help provide more services for
6 that community.

7 I won't go through the tests, I believe much of
8 your questions flushed out, met the questions in the test.

9 With that being said, the Office of Planning
10 believes that Ms. Parker has met the burden of proof in the
11 application and we recommend that the Board approve the
12 application. If there are any questions, I'd be glad to try to
13 address those.

14 CHAIRPERSON GRIFFIS: Great, thank you. Any
15 questions for the Office of Planning? Thank you very much and
16 we do appreciate and the full report, we do have and it is part
17 of the record and you do go through all the sections.

18 One quick question pertaining to 205.9, I believe
19 it is, is the written reports from other agencies. Did you
20 receive or have any contact with the Health Department?

21 MR. WOOD: No.

22 CHAIRPERSON GRIFFIS: Any other agencies?

23 MR. WOOD: No, I didn't.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. WOOD: I would like to clear up one point that

1 the Board discussed quite extensively.

2 Keep in mind, Board members that neither 7th nor
3 Lebaum are major thoroughfares. Martin Luther King serves that
4 function.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. WOOD: The major employee in the area is St.
7 Elizabeth's and you know they have their own parking and so
8 there's adequate parking in the public space.

9 CHAIRPERSON GRIFFIS: Okay and there is street
10 parking on 7th Street?

11 MR. WOOD: Yes, there is, although it's one way.

12 CHAIRPERSON GRIFFIS: Okay. All right, anything
13 else for Office of Planning? We do have a DPW report that has
14 no objection. It is Exhibit No. 24. I don't think we need to
15 go into that.

16 Is there anyone else here this morning, which is
17 afternoon actually, but it is part of the morning case and then
18 we'll get to the ANC, but anyone else here for this case to
19 testify, opposition, support? Okay, let's hear from the ANC.

20 VICE CHAIRPERSON RENSHAW: The ANC-8C sent in a
21 letter dated December 3, 2001 that stated that they held a
22 public meeting on November the 7th, 2001 at the 2901 Martin
23 Luther King Avenue, S.E. The notice was duly distributed to the
24 public.

25 Seven Commissioners, four Commissioners

1 constitute a quorum. There were five Commissioners present at
2 the meeting. They voted to support the special exception to
3 operate Dawn to Dusk Child Development Center on the first level
4 at this location.

5 The vote was unanimous and the letter is signed
6 by Mary Cuthberg, the Chair of 8C and she noted that the Dawn to
7 Dusk has been in the community for 25 years and that the
8 services are desperately needed, especially for children whose
9 parents will be participating in the welfare to work program and
10 that the location is conveniently located to two Metro rail
11 stations and the bus stop is a half block away.

12 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.

13 MEMBER LEVY: Mr. Chair.

14 CHAIRPERSON GRIFFIS: Yes. Let me just note
15 that's Exhibit No. 23. Yes.

16 MEMBER LEVY: Just to point out that Exhibit No.
17 37 is a letter of support from Council Member Sandra Allen from
18 Ward 8.

19 CHAIRPERSON GRIFFIS: Thank you, very important
20 point. We do have a lot of support for this. I would think
21 that if we don't have other questions, Board members, I would
22 propose that we set for decision making, keep the record open to
23 accept the following items.

24 One, on the site plan and this can be easily
25 done, just even by hand. We need an indication of where the

1 play area actually is for this facility and how it is portioned
2 off from anything else and frankly, I would have an indication
3 of how it's accessed from the building.

4 Secondly, draw in where the actually parking is.

5 The DPW has indicated that they had a site visit and saw that
6 there was enough space for the parking, but we're making it up
7 on where it actually is at this point until you show us.

8 MS. PARKER: You didn't see it? I thought I had
9 submitted it.

10 MEMBER LEVY: Mr. Chair, there are three.
11 Basically there is a space that's divided into three pieces, but
12 I guess what we need to see is something that shows how the cars
13 are going to be parked so we can understand how they get in and
14 out as well. It's just drawn on a copy of the plat.

15 VICE CHAIRPERSON RENSHAW: Just for reference,
16 it's drawn on Exhibit No. 22 and it states, parking side lot of
17 building, one, two and three stacked parking. I take it that
18 one of these is handicapped, has to be reserved for handicap.

19 MS. PARKER: Yes.

20 VICE CHAIRPERSON RENSHAW: So I had a question.
21 If three parking spaces are needed and one is reserved for
22 handicap, then don't you need another one?

23 CHAIRPERSON GRIFFIS: And the other indication is
24 the site plan that this is drawn on, my assumption was that the
25 double lot, according to this site plan went to the lot line,

1 which is your 7th Street frontage would be 50 feet. Those are
2 on a different piece of the property.

3 So if that's the case, if that's where they are,
4 yes, we're going to need to know how they get access and
5 frankly, I'm going to need to know where the property line is
6 because?-.

7 MS. PARKER: From the alley, okay.

8 CHAIRPERSON GRIFFIS: Anywhere, I just need the
9 definition of it because, I'm going to hold this up, which is
10 Exhibit No. 2 for you to see and the blue is what I've drawn on
11 for my own notes. We have this line here. I was assuming this
12 is the property line.

13 You've now indicated that parking is over that line. I need to
14 know where the actual property line is then for the facility.

15 So all encompassing, it could be one plan, that's
16 all it's going to show, but it's going to show where the play
17 area is, it's going to show the parking and then I would suggest
18 for, because the Board's concerned and just for their
19 edification and understanding the utilization of this that you
20 might want to just relabel your rooms at a minimum and help us
21 figure out how it's actually going to function.

22 I'm going to ask Office of Planning to look to
23 the other agencies for their review and written reports, which
24 is 205.9 and just to make sure that we have that minimum, sent
25 this over to them for their review and hopefully can get a

1 report out of them.

2 Anything else, Board members?

3 VICE CHAIRPERSON RENSHAW: Mr. Chairman. On the
4 diagram, which shows the parking, if you would just put an
5 indication of drop off, so that we understand the route of the
6 van into the back of the property or the route of cars.

7 MEMBER ETHERLY: And Mr. Chairman also, if you
8 could denote dumpster locations, both as it related to the
9 existing facility and the proposed facility. That would also be
10 very helpful, Ms. Parker. Thank you. Thank you, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Any other items? Okay, is
12 that clear, Ms. Parker?

13 MS. PARKER: Yes.

14 CHAIRPERSON GRIFFIS: And if it isn't, staff's
15 about to say it again and we're going to give you a date on the
16 decision making for that and submissions of that information.

17 MS. BAILEY: Mr. Chairman, you asked Ms. Parker to
18 identify the play area on the site plan, parking, where the
19 correct property line is located, drop off and pick up, the
20 location of dumpsters for the existing and proposed facility and
21 the rooms are to be labeled as to where the child development
22 center is to be located in the basement and the first floor.

23 You also asked the Office of Planning to contact
24 the government agencies, DPW, Department of Health, to provide
25 their input on this project.

1 CHAIRPERSON GRIFFIS: Yes, she indicated dumpster.
2 Thank you very much and great note taking. What date do we
3 have that we're setting for a decision and when do we need this
4 information in by?

5 MS. PRUITT: The first available date would be
6 March 5 for decision.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. PRUITT: But all submissions should be due by
9 February 24.

10 CHAIRPERSON GRIFFIS: 24. Ms. Parker, is that
11 conceivable for you to make that?

12 MS. PARKER: Yes.

13 CHAIRPERSON GRIFFIS: Okay, so that's the 24th and
14 then?-. .

15 MS. PRUITT: For a March 5 decision.

16 CHAIRPERSON GRIFFIS: What day is the 24th?

17 MS. PRUITT: Monday.

18 CHAIRPERSON GRIFFIS: Okay. Good. Anything else
19 we need? We'll verify the fact that whether the 24th is
20 actually a Sunday or a Monday, knowing full well that
21 submissions will be due on a Monday. I don't have a calendar in
22 front of me and you don't want to trust my judgment, but we have
23 some conflicting information, so it's either the 24th or the
24 25th, Monday.

25 Okay and again, thank you very much, Ms. Parker

1 and you don't need to here on the 5th, but if you are, we will
2 see you then and we will let you know what happens.

3 MS. PARKER: Thank you very much.

4 CHAIRPERSON GRIFFIS: Okay. At this time it is
5 still continuing from the morning. What I'm doing right now is
6 calling Ms. Ferster to the table. We are going to conduct
7 questions from the Board of the legal argument that was
8 presented to us in the last case.

9 After that, and I don't know how long that will
10 take but I don't anticipate that will take very long, we will
11 take a very short and brief lunch break for the Board and come
12 back to follow-up with the district government and the property
13 owners cases and continue on with this. We have two other cases
14 in the afternoon also to do after this appeal so, bearing that
15 in mind, we will be updating schedules as time progresses.

16 Of course, we had a case this morning -- well, we
17 can't control the time that a lot of these cases take up and we
18 need to hear all the information so we appreciate everyone's
19 patience in doing this. With that, we will let Ms. Ferster come
20 to the table and get organized. We will take that time also to
21 transition

22 (Whereupon, off the record.)

23 MS. BAILEY: Mr. Chairman, should I go ahead and
24 call the case at this time?

25 CHAIRPERSON GRIFFIS: Yeah. Let me just restate

1 what we're doing because, in fact, my own Board members are not
2 clear, which means I was not clear to everybody. This is what
3 we will do. At this point as we ended our last -- this is a
4 continuing appeal which will be called.

5 At last when we adjourned we had indicated Ms.
6 Ferster was going to be called back to the table for questions
7 from the Board about her legal argument. I will entertain
8 objections from the other participants. There will be no cross-
9 examination of this. This is for clarification of the legal
10 argument for the Board's sake. We will have a few questions of
11 ms. Ferster and give her an opportunity to answer.

12 After we have Ms. Ferster's questions, we will
13 take a short break. I would anticipate that we will be taking a
14 break in about 20 to 25 minutes at most. After that, again, we
15 will break for lunch. We will return and resume the Boys' Town
16 case. I will assess the entire afternoon as the case continues
17 of how we will schedule and when and how we will call the other
18 two cases of the afternoon.

19 Hopefully that is clear now. I know very well
20 the Board members are very hungry having been here since early
21 this morning and had very little break. To that, let's call the
22 case and we can get right into it.

23 MS. BAILEY: Appeal No. 16791 of Southeast
24 Citizen's for Smart Development, Inc. and Advisory Neighborhood
25 Commission 6B, pursuant to 11 DCMR 3100 and 3101 from the

1 administrative decision of Michael D. Johnson, Zoning
2 Administrator, allowing the location of Father Flanagan's Boys'
3 Town Phase I (a residential group home) in a C-2-A District at
4 premises 1308, 1310, 1312, and 1314 Potomac Avenue, S.E. (Square
5 1045, Lots 134, 136, 137, 138).

6 Mr. Chairman, the witnesses have been sworn
7 previously.

8 Is there anyone here who will be testifying today
9 who has not been sworn previously?

10 Mr. Chairman, no one has indicated that they have
11 not been sworn so the case is now ready to go forward.

12 CHAIRPERSON GRIFFIS: Thank you very much. Thank
13 you very much.

14 Okay. Board members, as I indicated, we want to
15 just go back and start with a few brief questions to Ms. Ferster
16 about the legal argument that was being made. I will start it
17 out.

18 Ms. Ferster, one of the exhibits that was
19 actually put before the Board and submitted was Exhibit No. 8 of
20 your binders which happens to be part and parcel the
21 environmental impact and intake forms. You know the rest of it
22 is in there.

23 What I'd like to do is have you speak briefly to
24 the fact of how that pertains, how it is directly connected to
25 the Zoning Administrator's decision in this case. I will give

1 you a little lead here also that I will ask probably the same
2 thing of the comprehensive plan and how it relates. What I'm
3 asking essentially is how do you connect the dots from these?
4 How is it pertinent for us in assessing the Zoning
5 Administrator's decision on this case? How does it fit in?

6 MS. FERSTER: Exhibit 8 is the material that's
7 been submitted as part of the D.C. Environmental Policy Act,
8 environmental screening. Is that correct?

9 CHAIRPERSON GRIFFIS: Right. And there was some
10 testimony to the environmental intake form.

11 MS. FERSTER: Right. I think what we stated
12 earlier when this issue concerning the relevancy of these
13 exhibits came before the Board in December was that our
14 position, of course as a matter of law, is that we have four
15 residential care units that are part of a single facility and
16 they should have been viewed as such by the Zoning
17 Administrator.

18 CHAIRPERSON GRIFFIS: I understand that.

19 MS. FERSTER: And that we think that the building
20 permit applications themselves are quite clear on that point
21 inasmuch as the permit applications show that they are four
22 contiguous lots and virtually identical developments by a single
23 developer.

24 However, in addition to that information showing
25 that these are likely to be part of a single facility, that

1 submission alone should put the Zoning Administrator on notice
2 that these four building permits need to be viewed collectively
3 in terms of whether or not they are a single CBRF of 24 persons
4 versus four separate CBRFs.

5 CHAIRPERSON GRIFFIS: You indicated that
6 submission. Can you just clarify what submission you're talking
7 about?

8 MS. FERSTER: That would be in Exhibit 2 which
9 includes the building permit application and the applications
10 themselves. That's the information that was directly before the
11 Zoning Administrator which he reviewed and on which he based his
12 determination that these were, in fact, four CBRFs, not one
13 CBRF.

14 We submit that that information, the building
15 permit applications, are illuminating because they show -- they
16 are virtually identical. If you look at them, you will see that
17 everything in each of those building permit applications is
18 exactly the same except for the lot number. The lot numbers are
19 consecutive and show in the site plan.

20 It shows that they are adjacent lots. Given that
21 submission and the fact that the Zoning Administrator clearly
22 viewed these four applications together, he didn't receive them
23 on March, April, May, and June. He received each of them on
24 December 7, 2000.

25 He reviewed them all at the same time. Every

1 D.C. official who reviewed these building permits signed off on
2 these building permit applications on the same day. You will
3 see that the sign-offs each are on the same day. These
4 applications were reviewed together.

5 CHAIRPERSON GRIFFIS: I don't think we question
6 that. I think it's fairly clear. Now you've moved away from
7 Exhibit 8 to Exhibit 2 which is the permit application.

8 MS. FERSTER: That's correct.

9 CHAIRPERSON GRIFFIS: I need you to go back to
10 Exhibit 8 and tell me the pertinence and tell me your argument.
11 We've included it so tell me how it substantiates your argument
12 that these are -- that this is one facility. Somehow this ties
13 into how the Zoning Administrator erred is what I'm trying to
14 get at.

15 MS. FERSTER: That's correct. Now, once
16 receiving those four building permit applications and
17 understanding them to be basically processed as a single entity,
18 it seems to be a likely and logical next step for the Zoning
19 Administrator to go to the building permit file and review the
20 other materials or, indeed, ask the developer to submit the
21 other materials that describe the project that are being
22 submitted as part of the general permitting process.

23 Those are the Exhibit 8 materials. Those
24 materials are even more striking than the building permit
25 applications because those materials show the project as a

1 single project. The developer describes them as the
2 Pennsylvania Avenue "campus." There's a site plan that shows
3 that the four residential care units are all in a compound
4 that's surrounded by a fence and entered through a single
5 driveway.

6 Our view is that the building permits alone show
7 that this is a single development but if there had been any
8 question that they were not, the information was already in the
9 agency's own file showing that, in fact, the owner itself viewed
10 -- the developer itself viewed these as a single facility.

11 This is simply just part of the difficult and
12 somewhat unreal situation that we are in here today in trying to
13 argue that these are not a single facility. My clients keep
14 telling me, "Why do we have to make this argument? Everybody
15 knows this is one facility." The developer in all its
16 materials, to the neighborhood in all its descriptions to the
17 Government officials has said this is one campus.

18 We are simply pointing to some of the evidence.
19 Not all of it but just some of the evidence that is out there,
20 and this is particularly pertinent evidence because it's in the
21 agency's own files so it would have been quite easy for the
22 Zoning Administrator to have viewed that information.

23 Of course, the Zoning Administrator has the
24 authority and the regulatory authority to ask the developer to
25 submit additional information and could have done that at

1 anytime and could have received the same information directly
2 without going to the agency's file and it could have received
3 additional information, descriptive literature that's being
4 passed out to neighbors and supporters.

5 CHAIRPERSON GRIFFIS: I think that bring up an
6 interesting point that I want to get clarification on. I know
7 I've said it numerous times but I will say it again. You've
8 indicated that common sense, or the people that live in the
9 neighborhood know what this is and why should you have to make
10 that argument.

11 I appreciate that and I think the fact of the
12 matter is, whatever it be, one's impression or one's
13 understanding of it is one thing. What we have before us,
14 specifically the Board of Zoning Adjustment, is a minutiae of
15 what is entailed there.

16 Again, we are trying to get to -- they have
17 indicated in the record that they've called this a campus plan.

18 That doesn't by definition say that the Zoning Administrator
19 made an incorrect ruling.

20 So, what I'm indicating is the fact that we have
21 popular opinion of what this is, I still need to be brought to
22 where we are in the regulations and show the case by which an
23 error has been made. That's why I'm just trying to flush out
24 clarification here.

25 What I'm hearing you say right now is that the

1 environmental impact statement, the intake form, should have
2 been considered in the permitting process in order to designate
3 this and, therefore, would have put it into a different zoning
4 view. Is that correct?

5 MS. FERSTER: Let me see if I can clarify our
6 position a little better. There are two issues before you. One
7 is a matter of fact and one is a matter of law. The factual
8 issue, and this has nothing to do with what lots the buildings
9 are on or what the owner needs to do in terms of submitting
10 building permit applications.

11 The factual issue that this is a single facility
12 and that's not our common sense view. This is the developer's
13 own characterization of the project, not just to the community
14 but to the agency itself as part of the environmental review
15 process. For example, one facility. That's the fact. We don't
16 think there is any dispute about that fact.

17 There is not a single -- it would be very
18 difficult for the developer in light of the number of documents
19 where the developers characterize this as a single facility that
20 the developer could dispute the fact. What this turns on --

21 CHAIRPERSON GRIFFIS: Let me address that because
22 couldn't you conceivably then, a luxury apartment building
23 developer downtown says this is a world class hotel, the best in
24 Washington, D.C. Could you sue them because you didn't find it
25 was the best place? It was differently represented in their

1 publications or to the community?

2 You keep referring to the fact that Boys' Town
3 has issued and said to the community what this is. I'm not sure
4 -- what I'm getting to directly is I'm not sure how much we can
5 take that as part of our deliberations.

6 You've made a strong point, I think, in terms of
7 looking at the environment impact that they characterize as part
8 of a permitting process what this was. Is that correct?

9 MS. FERSTER: That's correct. I guess the
10 response to your hypothetical is that this is a legally relevant
11 fact, okay? What the --

12 CHAIRPERSON GRIFFIS: What's a legally relevant
13 fact?

14 MS. FERSTER: Whether or not this is four
15 independent --

16 CHAIRPERSON GRIFFIS: I don't dispute that.

17 MS. FERSTER: -- CBRFs.

18 CHAIRPERSON GRIFFIS: What I'm disputing is you
19 referring to the building owner as describing to the community
20 what this is and trying to hold that as a legal fact that we
21 need to have deliberation on.

22 Let me just interrupt because I thought -- did
23 you have an objection? I want to be very clear and we have the
24 participants here. There will be no cross-examination of this
25 so I do need to hear any objections and I'll entertain those.

1 MS. SULLIVAN: For the record, Marty Sullivan
2 from Shaw, Pittman on behalf of Father Flanagan's. No, I don't
3 really have an objection. I think I have some helpful
4 information but if you weren't intending to get into a back and
5 forth discussion on the legal issues. If you want to, I can
6 also ask court counsel to come up and we can do that.

7 The reason that I probably caught your attention
8 was the appellant is putting some credence in the fact that the
9 EISF was done as an entire project. In fact, there's no other
10 way to do it. If this was done individually record lot by
11 record lot for the EISF, we would be exempt.

12 MEMBER ETHERLY: Mr. Chair, pardon me for
13 interrupting the representative there, but it may be useful to
14 get some guidance from corporation counsel because I want us to
15 be real careful in that as counsel for the appellant is going
16 through her closing, I don't want to necessarily have us venture
17 too far into a full-blown debate during the midst of that. It
18 might be useful if not to get some clarification, just issue
19 that caution.

20 CHAIRPERSON GRIFFIS: Right. No, I think Mr.
21 Sullivan was just trying to bring some clarification in.
22 Frankly, I would advise that we don't continue with that at this
23 time because what I'm trying to do is flush out Ms. Ferster's.

24 As helpful as you might be, it is an odd item for
25 you to be helpful to Ms. Ferster at this time. We appreciate

1 that. What I'm going to try and do is again just try and
2 expedite this just for our clarification. If there are
3 objections, I'll entertain that. Thank you.

4 Where were we, Ms. Ferster?

5 MS. FERSTER: We were at Exhibit 8. Again, all I
6 can say is that the information in Exhibit 8 as part of the
7 environmental impact screening process contains narrative
8 descriptions of the project that go beyond what was required for
9 the environmental impact screening form which might have
10 required a cumulative impact analysis even if they were four
11 separate projects but actually used the developers own
12 description of the project. That's all.

13 They call it their Pennsylvania Avenue campus and
14 they have a site plan. It's relevant that even if there were
15 some independent requirement in the environmental screen
16 regulations that require independent CBRFs to be evaluated
17 collectively, that did not require this developer to
18 characterize that development as our Pennsylvania Avenue campus.

19
20 And, of course, the site plan shows it's a campus
21 and the site plan shows it's a single facility. Again, I would
22 stress, and perhaps I can turn Mr. Sullivan's argument back on
23 him on that point.

24 The fact that an independent requirement in the
25 building permit regulations may have required this developer to

1 submit four separate building permit applications should not be
2 used as a way to obscure the reality that this is a single
3 facility. It is a single facility and their own description of
4 the project shows it.

5 CHAIRPERSON GRIFFIS: Good. Thank you.

6 Board members, other questions?

7 MEMBER ETHERLY: Mrs. Ferster, let me take a stab
8 at this. I think there are a couple of different routes from a
9 legal standpoint that you could conceivably take to get us where
10 you want us to go. To get me where you might want to go. Let
11 me put it like that.

12 Pardon me while I try to work through this logic.

13 Exhibit No. 32 is the response of Father Flanagan's Boys' Home
14 owner. Let me walk through a little bit of that argument and I
15 want to get a flavor for your response. Essentially the
16 starting point is Section 201.1, Subsection (n), Subsection (1)
17 -- Subsection (n)(1).

18 If you are a facility in a C-2-B zoned district,
19 youth or residential care home of up to six youths, you, as a
20 matter of right, can do your thing. We have four developments
21 here. Now, the argument is don't look at those as separate and
22 distinct entities. Look at them as one comprehensive whole.

23 I'm having trouble finding help in making that
24 jump because the argument is these are all separate individual
25 facilities with up to six individuals. If that is indeed the

1 case, help me fashion in my head what is the test that you
2 envision or could conceivably envision for the Zoning
3 Administrator to apply in a situation like this? I think I hear
4 you saying it, okay?

5 That's fine if you're up to six individuals. You
6 have no quarrel with that. If on the face of the permit
7 application or if on the face of other submissions there are
8 certain indicia which suggest common ownership which suggest
9 common administration.

10 Then that takes you out of 201.1(n)(1). I'm
11 grappling with what's the test that we would perform, or what's
12 the test that would be put into place for the Zoning
13 Administrator to follow. That's my first part. I'll pause
14 right there to let you respond.

15 MS. FERSTER: What we were -- how we would
16 respond and how we intend to respond certainly in closing
17 arguments and in our proposed findings of fact and conclusions
18 of law because it is a very legal argument.

19 MEMBER ETHERLY: Yes.

20 MS. FERSTER: That is, that there is well
21 established zoning principles embodied in case law, fortunately
22 not in this jurisdiction because our case law is not that well
23 developed on this point, but elsewhere that's undisputed that
24 says that if you have contiguous lot in common ownership, that
25 for certain zoning purposes they should be considered as a

1 single lot certainly in order to avoid some kind of subversion
2 of his own plan or some kind of way to evade zoning
3 requirements.

4 That's a well established principle in zoning
5 law. It particularly focuses on the question and the difference
6 between a lot versus a lot of record. When the zoning
7 regulations are clear that the focus of zoning should be on a
8 lot of record, then you look at the lot lines that are recorded
9 with the Office of Surveyor.

10 But when the zoning regulations don't specify
11 that the focus of the zoning review needs to be on a lot of
12 record and the regulation here at issue, 732.1 does not mention
13 lot at all much less lot of record, then the Zoning
14 Administrator has the legal authority, indeed the obligation
15 under that generally accepted principle to view several
16 contiguous lots in common ownership as a single lot, It's all a
17 lot.

18 Now, they may have to file a building permit for
19 each structure on each individual lot of record for purposes of
20 determining whether the individual principle structures meet the
21 various area requirements, setbacks and side yards and such.

22 But for purposes of the use restriction contained
23 in 732.1, the question is are they contiguous lots in common
24 ownership. If the answer to that is yes, the Zoning
25 Administrator has the authority to consider the lots as a single

1 lot and a single facility.

2 Now, our view on the factual issue is, therefore,
3 that the building permit application on its face was enough to
4 put the Zoning Administrator on notice that this is the type of
5 situation that he would have wanted to look more closely at to
6 determine whether or not this is a situation where the four
7 contiguous buildings by the same developer, etc., virtually
8 identical, should be considered a single entity.

9 The information in Exhibit 8, as well as the
10 information provided by Pat Harden is additional questions that
11 the Zoning Administrator could have asked because it is
12 certainly conceivable that notwithstanding the common ownership
13 and contiguous lot issue, maybe they were separate CBRFs but
14 unlikely.

15 MEMBER ETHERLY: But it's your contention that in
16 order to get to that information that points to the single
17 ownership or the single direction of this campus or facility,
18 it's that generally accepted principle of law that you are
19 encouraging this body to take notice of. I think that's a real
20 critical point.

21 I think it is perhaps where our Chairman was
22 heading us to is we're in some uncharted waters here. You can't
23 jump into that lightly. Part of what I think is going to be
24 useful here is talking about, as you've started, the spirit of
25 the zoning regulations, zoning laws, and how that spirit is

1 frustrated by the potential outcome here. That's one piece.

2 Now, continuing to kind of base my questions from
3 Exhibit 32, there's this other piece of Zoning Commission order
4 725 which you've probably seen or heard your counterparts on the
5 other side of the fence make some hay over.

6 What I'm interested in knowing or hearing some
7 conversation about is are there any concerns, or should there be
8 any concerns about FHA compliance here, Fair Housing Act,
9 meaning there's the argument that's hanging out there on the
10 part of your counterparts that to reach a different outcome here
11 raises some serious concerns about different or disparate
12 treatment with regard to individuals that are disabled or
13 handicapped.

14 I want to get some feedback from you because I
15 didn't hear a lot of it in your argument and your presentation
16 when we were last together. Is that a valid concern? Should we
17 be worried about that? Or is there something about CBRFs
18 perhaps from a Governmental interest standpoint.

19 I don't want to get us too much into equal
20 protection and all that good stuff but as an attorney myself, I
21 get a little ansi when we start talking about treating different
22 populations differently without some clear indication of what
23 the rationale is. Any thoughts or response on that front?

24 MS. FERSTER: Let me just say that I did not
25 address fair housing issues in my opening statement because in

1 the earlier hearing in December that topic was ruled off limits
2 for both parties, meaning the Fair Housing Act question was
3 ruled out of order. I think appropriately so inasmuch as that's
4 a direct challenge to the regulations themselves, No. 1.

5 If, in fact, the application of the regulations
6 as determined by the Zoning Administrator and by this Board
7 would result in a Fair Housing Act problem, then that's a matter
8 to take up with the Zoning Commission.

9 If, in fact, there is a Fair Housing Act issue,
10 the other point that we would certainly make is that there's a
11 process, a mechanism that has been adopted by this jurisdiction
12 for allowing owners who believe that fair housing concerns have
13 not been accommodated in Government regulations or the
14 applications of Government regulations to ask for reasonable
15 accommodation. This proceeding here is not about the Fair
16 Housing Act because the owner hasn't asked for reasonable
17 accommodation on the basis of fair housing issues.

18 The owner has simply said that they are entitled
19 to get their building permit because this is a matter of right
20 development under the zoning regulations. I believe that the
21 Board's earlier view was correct, that the Fair Housing Act
22 issue just simply doesn't play any part in this Board's
23 determination.

24 MEMBER ETHERLY: Okay. Thank you very much, Ms.
25 Ferster.

1 Thank you very much, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Yes. Anything else, Board
3 members? I would think obviously we'll go to testimony that was
4 given in legal arguments.

5 Mr. Levy.

6 MEMBER LEVY: Yes, Mr. Chair.

7 Ms. Ferster, in some of the written materials
8 that you presented to this Board at the first hearing, you
9 indicated that, and I'll quote, and this is from your opposition
10 to Father Flanagan's Boys' Home motion to strike.

11 On page 2 you say, "There's ample precedent in
12 the zoning regulations for considering a project that is spread
13 out over several adjoining lots to be a single facility." I
14 wonder if you have some examples of that.

15 MS. FERSTER: I think Mr. White testified on that
16 point and gave a few examples which are campus plans, for
17 example. Of course, he acknowledged that is governed by a
18 separate regulatory process, PUDs, etc.

19 But the point of this is lot lines are not --
20 recorded lot lines are not some rigid unviolatable zone by which
21 the Zoning Administrator must confine his analysis. In fact,
22 there are situations where a zoning determination goes beyond
23 lot lines and that's really his only point.

24 We think that if, in fact -- I don't know at this
25 point what the owner's argument is. We're just trying to

1 anticipate it.

2 CHAIRPERSON GRIFFIS: If I understand Mr. Levy's
3 question, he's actually read a quote from your submission. I
4 believe it was from one of the motions to strike. You indicated
5 there was ample precedent for the zoning regulations for
6 considering projects that are spread out. You did in your own
7 quote, if I'm not mistaken, say college campus planning.

8 What I think Mr. Levy asked was what else? What
9 other things are we looking at that don't have necessarily the
10 specific reg process, PUDs, campus plans. Where else do we look
11 for that type of example?

12 MS. FERSTER: Well, we provided a hypothetical.
13 Again, I'm not as familiar as perhaps you are or the Zoning
14 Administrator is of
15 situations --

16 CHAIRPERSON GRIFFIS: I'm only putting to you
17 this question because --

18 MS. FERSTER: -- before him.

19 CHAIRPERSON GRIFFIS: You said, for example,
20 precedent. I'm just trying to elicit from you what are those
21 ample precedents.

22 MS. FERSTER: The campus plan was certainly one
23 precedent.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. FERSTER: And we understand that there is,

1 for example, a child development center which we are aware of
2 that is spread out over several different lots of record.

3 Now, we don't know how the zoning treatment of
4 that child development center went but we have been told that
5 there are situations where a child development center, for
6 example, is located in a series of row houses which are all on
7 separate recorded lots of record.

8 Yet, it's been viewed as a single facility. That
9 sort of thing. We're not in a position, unfortunately, to
10 actually pull out Zoning Commission or BZA orders evidencing
11 that treatment. What we are relying on principally is the
12 general principle that, No. 1, you can view several lots of
13 record as a single lot.

14 The regulations themselves encompass that
15 definition. The regulations say a lot may be more than a single
16 lot of record. That's what the definition in zoning regulations
17 say. It is also an interpretation that allows this Board and
18 the Zoning Administrator to ensure that occupancy restrictions
19 on developments are not evaded by simply spreading them out over
20 several different lots of record.

21 CHAIRPERSON GRIFFIS: Okay. Good. Thank you.

22 Other questions, Board members, at this time?

23 BOARD MEMBER: Not at this time.

24 CHAIRPERSON GRIFFIS: Great. Then, Ms. Ferster,
25 we thank you very much for subjecting yourself to our questions

1 and clarifications.

2 At this point we are going to take a -- it is
3 five of 2:00 right now. We are going to take a 20-minute recess
4 and be back. This is our lunch break for the day and we will
5 continue. Let me just reiterate the process. Well, we know
6 what it is. We'll continue this in 20 minutes, 2:15 roughly.
7 Thank you very much.

8 (Whereupon, at 2:00 p.m. off the record for lunch
9 to reconvene at 2:35 p.m.)

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

23

2:35 p.m.

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25

CHAIRPERSON GRIFFIS: Can I have your attention
for a moment. Is the applicant 16826 City Gate here at this

1 time? Are they outside? That would be great if you could get
2 them for me. I sent the rest of the Board members home. I'm
3 just going to run this whole show. I just need a representative
4 of City Gate. If you wouldn't mind sitting down. If you would
5 just turn on your mike and give me your name and address.

6 MR. BERGFALK: Lynn Bergfalk, 3568 Brandywine
7 Street, N.W.

8 CHAIRPERSON GRIFFIS: And you're representing?

9 MR. BERGFALK: I am representing City Gate.

10 CHAIRPERSON GRIFFIS: Okay. Mr. Bergfalk, we
11 have several issues for this afternoon. One of the most
12 important is there was an awful lot of submissions that came in
13 this morning for the Board. One very pertinent which is an
14 update of an Office of Planning Report.

15 I have talked to Board members in our brief
16 lunch, which actually extended longer than it should have,
17 whether we could actually get through this and actually read it
18 to a sufficient level that we could call this case. Board
19 members are indicating that they will not be able to do that.

20 Additionally, what we've had, as I'm sure you saw
21 the memo that went out, there was an issue of additional
22 sections of relief that are needed for this application. What
23 we would not like to do is readvertise. I think the Board can
24 deal with that.

25 In that sense, we also have not been able to look

1 at this case in terms of those sections. What I'm proposing to
2 you now is that we reschedule this to the 19th of February in
3 the afternoon. Oh, I'm sorry, third case in the morning, which
4 turns out mostly to be our afternoons.

5 Do you want to check your schedule? Do you want
6 to take a minute? Let me throw the whole picture out here.

7 MR. BERGFALK: Okay.

8 CHAIRPERSON GRIFFIS: If the 19th of February is
9 not available to you, we're off into April already. We are, in
10 fact, squeezing this in. You see what happens when we squeeze
11 in cases. We don't try and do that very often but we understand
12 the importance of this.

13 Quite frankly, as I've indicated, there's a lot
14 of information we have. I'll just hold this up. I mean, this
15 entire piece was submitted this morning. I don't know when
16 Board members are going to look at that.

17 MR. BERGFALK: Sure. Sure.

18 CHAIRPERSON GRIFFIS: We are kind of going to be
19 flapping in the wind if we call this case.

20 MR. BERGFALK: We will do whatever we need to do
21 to facilitate the Board giving the proper attention to this.
22 That's fine.

23 CHAIRPERSON GRIFFIS: Okay. We don't have any
24 other parties in this case at this time. Is that correct? Do
25 we have parties in this case?

1 MS. BAILEY: Mr. Chairman, no one has requested
2 party status. As you know, the ANC is automatically. I'm not
3 sure if there is a representative here today.

4 CHAIRPERSON GRIFFIS: Is there an ANC
5 representative here today? All right. I think I've gotten an
6 indication that they have left. There it is then. We'll put it
7 on the third case in the morning of the 19th of February, '02.

8 DIRECTOR KRESS: And I would like to ask Ms.
9 Bailey to make sure that she gets in touch with the ANC and
10 informs them of this change of date.

11 CHAIRPERSON GRIFFIS: Good. Thank you very much
12 and thank you for your patience.

13 MR. BERGFALK: You're welcome.

14 CHAIRPERSON GRIFFIS: I'm now going to go track
15 down the rest of the Board members and we'll continue up with
16 the morning session.

17 (Whereupon, at 2:40 p.m. off the record until
18 2:43 p.m.)

19 CHAIRPERSON GRIFFIS: Let me also have the -- are
20 the participants for 16830, the appeal of ANC-2A here? You can
21 just raise your hand. Okay. This is what I'm going to do. We
22 are anticipating getting to your case today but I do not think
23 you need to sit here. I would ask that you come back at 5:00.

24 Of course, you are more than welcome to sit here
25 but you have some time. At 5:00 we will assess where we are and

1 when we might be getting to it. Please let anyone else know
2 that might be here for that.

3 If you're going to speak, could you come up to
4 the table?

5 MS. TYLER: Thank you. My name is Maria Tyler.
6 The case is in my single member district but I am not
7 representing ANC-2A before this Board. However, I do have a
8 question, Mr. Chair. Does that mean that, for example, at 5:00
9 you may be putting it on another -- scheduling it for another
10 date, our case?

11 CHAIRPERSON GRIFFIS: That's a great possibility.

12 MS. TYLER: It is a distinct possibility?

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. TYLER: Thank you very kindly.

15 CHAIRPERSON GRIFFIS: Sure. We're going to try
16 our best. Again, I can't predict. We have for the case that
17 we're calling now a 45-minute time on the Zoning Administrator's
18 case. That is without Board questions and cross-examination.
19 Then we go into Father Flanagan's case which we do have some
20 time on. I don't have it right in front of me.

21 Again, cross-examination is a minimum of two
22 hours to three hours that we're already doing. Then we have
23 additional pieces to it. What we are assessing the Board is
24 perfectly prepared not to see their families tonight and stay
25 and call this case.

1 What I will need is an indication of whether the
2 applicants -- the participants in the appeal want to do that.
3 If there's a consensus at this point, which would be very
4 helpful, that is not going to go or be appropriate, basically
5 you want to reschedule this, I can take two minutes to hear that
6 right now and why don't you all come to the table.

7 Let me just forewarn you rescheduling this puts
8 us into 2003, I think. Let me get the schedule out. Is, that
9 is a joke, for the record. I think we're looking at April or
10 May. Is someone with me on the schedule? Ms. Bailey, are you
11 looking at it? Thank you.

12 MS. BAILEY: Yes, Mr. Chairman. April 16.

13 CHAIRPERSON GRIFFIS: April 16 in the morning?
14 Is that correct?

15 MS. BAILEY: Yes, Mr. Chairman. That's open at
16 this point.

17 CHAIRPERSON GRIFFIS: Okay. That's what we have.

18 MR. PRICE: I'm Richard Price. I live at 2555
19 Pennsylvania Avenue, N.W. I'm the appellant in this case. We
20 would prefer to be heard today if we can.

21 CHAIRPERSON GRIFFIS: Okay. And you're a co-
22 appellant. Correct?

23 MR. PRICE: Yes.

24 CHAIRPERSON GRIFFIS: Is the other participant
25 here?

1 MR. PRICE: I'm also speaking for ANC-2A.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. CUMMINS: Excuse me, Mr. Chair. Paul Cummins
4 of Shaw, Pittman on behalf of the property owner Farhad Nasserri.
5 We would also like to proceed with this case today. This is an
6 appeal case of a building permit issued in October.

7 Postponing this case, this is a case where the
8 building is ongoing construction. It is a point where the
9 building interior is almost finished with. The dry walling,
10 exterior brickwork is almost completed. It would be very
11 beneficial that we get this done as soon as possible.

12 CHAIRPERSON GRIFFIS: Okay. Everyone is prepared
13 to stay today?

14 MR. CUMMINS: Um-hum.

15 CHAIRPERSON GRIFFIS: That's what we'll propose.
16 Again, I would check back at 5:00 and we'll update what's
17 happening. Thanks.

18 Okay. Refocusing on the last case of the
19 morning. We will be now turning to the third segment in the
20 process of this which goes to the Zoning Administrator's case.
21 Let me just outline where we've been.

22 Well, let me outline where we're going. The
23 third was the Zoning Administrator's case. We will then go to
24 Father Flanagan's case and we will reassess where we are after
25 those two segments. Good. As they set up, let us get ready

1 here.

2 (Whereupon, off the record.)

3 CHAIRPERSON GRIFFIS: Okay. Good afternoon.

4 MS. BROWN: Good afternoon, Mr. Chair, members of
5 the Board. Marie-Claire Brown, Assistant Corporation Counsel on
6 behalf of the Zoning Administrator.

7 Before we begin with the Zoning Administrator's
8 case, the District of Columbia Zoning Administrator is moving
9 that this Board dismiss this case on the grounds that the
10 appellant has failed to demonstrate by preponderance of evidence
11 that this Zoning Administrator's decision was rendered in error.

12 We are prepared to take the Board briefly through
13 the testimony that's been elicited here and it's clear that the
14 case has failed to be made at this point. Even as early as this
15 afternoon it appeared that the Board was presenting yet another
16 opportunity for the appellant to demonstrate. The Zoning
17 Administrator's position is that they have failed at this. If
18 the Board wants to hear the basis, we are prepared.

19 CHAIRPERSON GRIFFIS: I think you should
20 continue.

21 MS. BROWN: The reason why we're here before this
22 Board is because there is an appeal of a decision that was made
23 by the Zoning Administrator. That's a legal matter and not a
24 factual matter. I believe we heard Ms. Ferster herself say
25 today that what we have before us is an issue of fact and an

1 issue of law. What we're dealing with is the issue of fact.

2 The record is completely void of any legal issues
3 that would support their position. Their expert witness was
4 placed on the stand. Mr. White conceded all of the points that
5 we're prepared to make at this point, that the Zoning
6 Administrator, in fact, testified on cross-examination in
7 response to Mr. Hanaham's inquiries.

8 He testified that the Zoning Administrator
9 followed the regulations by the book. He said that maybe he
10 should have looked outside of the regulations. It's clear
11 within the regulations that mandates the D.C. code that the
12 Zoning Administrator is bound to enforce the regulations as
13 they are set forth.

14 The issue as to the comprehensive plan was
15 brought up and it's also been made clear. Mr. Friness also
16 testified and we are prepared to demonstrate the case from D.C.
17 Court of Appeals that supports the position that the
18 comprehensive plan is merely a guide. There is nothing that
19 requires the Zoning Administrator to look to the comprehensive
20 plan in rendering the decision.

21 In this case, clearly there's nothing that can be
22 demonstrated that would have required anything other than the
23 Zoning Administrator to apply the regulations as they are. The
24 regulations in this case as opposed to others are clear.

25 There is a regulation that deals with CBRF for

1 six or less youth. That's 201.1(n)(1). That was the deciding
2 factor here. The Zoning Administrator used that regulation.
3 When Ms. Ferster was asked with respect to ample precedent
4 earlier today, she couldn't come up with any precedent.

5 The only precedent that she could site was the
6 campus development plan and her expert, in fact, agreed that the
7 campus development plan has nothing, absolutely nothing to do
8 with the reason why we are here today. This is not an
9 institution of higher learning.

10 Just by way of example, the type of testimony,
11 and I'm quoting from -- I'm paraphrasing from the transcript,
12 Mr. White agreed that according to 11 DCMR 2517.1 Boys' Town is
13 precluded from building two or more structures on a single lot
14 where it's within 25 feet of a residential district. The
15 evidence has shown, and will continue to show, that there is a
16 residential district within 25 feet of the proposed project and
17 so, therefore, is impossible to construct on a single lot.

18 He went on to say that essentially lawyers and
19 developers have circumvented the system but the fact remains,
20 and the regulations are crystal clear, that each permit must be
21 issued based on a per-record lot determination.

22 Again, he stated that the Zoning Administrator
23 followed all the regulations. He testified that the Zoning
24 Administrator doesn't like other people fooling around with
25 their procedures. Well, in this case we are only dealing with

1 what the Zoning Administrator did and the Zoning Administrator
2 did well what was within his legal requirements. He did what he
3 was supposed to do and he's not required, nor is he permitted to
4 go outside of the regulations.

5 As to the testimony of the expert, Ms. Harden,
6 who is a social worker, her only input as far as this was
7 concerned was consistent with the spirit of the regulations the
8 Zoning Administrator should have taken into consideration and
9 therapeutic needs of the children.

10 Nowhere in the regulations, nowhere in District
11 of Columbia law is the Zoning Administrator required to look at
12 the clinical and therapeutic needs of persons who are going to
13 occupy a building. He's concerned with buildings, the issuance
14 of building permits, whether they are consistent with land use
15 and requirements in the District of Columbia, nothing more and
16 nothing less.

17 That essentially summarizes the position of the
18 District with respect to this. I think the Board has enough
19 evidence before it that it can grant the motion to dismiss.

20 CHAIRPERSON GRIFFIS: Thank you.

21 Questions on the motion? Ms. Ferster.

22 MS. FERSTER: Thank you. I'll respond briefly
23 but, again, I am prepared to respond in more depth in a closing
24 statement as well as in the proposed findings of fact and
25 conclusions of law which is where we should go on a legal

1 question that in our view as a precedential effect for not just
2 the citing of community-based residential facilities but other
3 developments.

4 Let me just respond briefly to the points that
5 the District makes in its motion to dismiss. First, we disagree
6 that Mr. White has conceded in anyway that the Zoning
7 Administrator followed his regulations.

8 Perhaps he misunderstood a question that the
9 District had asked, but his testimony is quite clear that he
10 believed that this case is controlled by Section 732.1 of the
11 zoning regulations and that the Zoning Administrator violated
12 that section by failing to -- by considering this separate CBRFs
13 for six children rather than a single CBRF for 24 children.

14 His testimony is quite clear that is the
15 applicable provision that has been violated. To the extent that
16 there is any misunderstanding during cross-examination, it was
17 clearly a misunderstood question because I don't think he ever
18 intended to concede that the Zoning Administrator violated --
19 did not violate any regulations. His direct testimony is quite
20 clear on that point.

21 The next issue that I think is important is that
22 the zoning regulations are not clear on this question. That is
23 whether the point that the District makes is that the Zoning
24 Administrator must confine his analysis to a single lot of
25 record.

1 I have seen no regulation yet that says that the
2 Zoning Administrator must make a determination about whether
3 CBRF is matter of right versus special exception based on
4 confining his review to a single lot of record. If you look at
5 the regulation that we believe is applicable, 732.1, it doesn't
6 even mention lots at all.

7 The regulation that the District cites, which is
8 the regulation that governs building permits, it simply says
9 that an owner in order to build a building needs to have a
10 single building on a single lot of record, which is what they've
11 done here.

12 That has nothing to do with what the Zoning
13 Administrator has to do or what the Zoning Administrator has to
14 look at. That just applies to what the owner needs to do. The
15 owner needed -- if he's going to build four separate principal
16 structures, they each have to be on a separate lot of record.

17 The owner did that here. That has nothing to do
18 with what the Zoning Administrator -- how the Zoning
19 Administrator needs to look at that. So we don't think that
20 regulation is on point and we have yet to see a regulation that
21 has been cited by the Government that suggest that there is
22 somehow this confinement in terms of the Zoning Administrator's
23 analysis to lots of record.

24 Then finally, and this is a really important
25 point because the District cites our inability to be able to

1 show you that there is a precedent for developers spreading
2 developments over several lots and the Zoning Administrator
3 viewing that development as a single lot of record as somehow a
4 concession on our part that, in fact, this is a permissible
5 thing for the owner to do here.

6 We submit that the lack of precedent on this
7 issue just shows that this is an application that simply is
8 pushing the envelope in terms of what developers can get away
9 with in the District of Columbia. This is a precedent that we
10 feel if you set here for CBRF uses, that will basically give a
11 green light to developers to spread development over lots of
12 record as a way of evading occupancy limits.

13 One can envision the application of that
14 principle to go beyond CBRFs and into any kind of development
15 where the zoning regulations say that there should be a limit on
16 occupancy and developers can evade that by spreading it out.

17 It's an important point and we don't think that
18 there should be any dismissal at this juncture without a full
19 briefing and legal discussion of that issue. We are prepared to
20 site case law in support of our legal position.

21 CHAIRPERSON GRIFFIS: Thank you, Ms. Ferster. I
22 do agree that this application may be pushing the envelope.
23 That doesn't necessarily -- well, there it is.

24 Yes, Mr. Feola.

25 MR. FEOLA: Thank you, Mr. Chairman. For the

1 record, Phil Feola on behalf of Father Flanagan's Boys' Home,
2 the property owner. We obviously support the District's motion
3 to dismiss for failure of the appellant to achieve its burden of
4 proof here.

5 The way I understand the appellant's argument is
6 essentially if you call something something that it's not, then
7 it doesn't fit in what the Zoning Administrator did here. They
8 are calling it something that it's not. We heard some
9 discussion about what is a facility, what isn't a facility,
10 whether you go to Webster's.

11 The zoning regulations define this use. It's a
12 youth residential care home for six or less students or
13 children. It's in there. It's called out as a use. It's also
14 called out in 101.1(n)(1) that it's permitted here as a matter
15 of right period.

16 It doesn't say looking at the property next door.

17 It doesn't ask the Zoning Administrator to look at whether or
18 not they are separate ownerships. It doesn't even say that you
19 have to look to see whether there is a CBRF nearby.

20 In fact, some other sections that appellant has
21 argued for do put that requirement on the Zoning Administrator
22 but this section doesn't. I think it just says, "Youth
23 residential care home for not more than six persons plus
24 resident supervisor and family are permitted." The regs
25 couldn't be any clearer than that.

1 If you doubt that, all you need to do is look at
2 order 725 which created this section of the zoning regulations.

3 It's in Tab B of our prehearing submission on page 4. At that
4 time youth residential care homes four to eight were only
5 permitted by special exception prior to order 725. The Zoning
6 Commission changed that.

7 In that order it says, speaking about the
8 previous regulations, "It is this aspect -- I'm going to quote.

9 I bear your indulgence on the quote from 725. "It is this
10 aspect placing greater restrictions on CBRFs we may house
11 handicapped persons than are placed on unrelated adults
12 occupying a dwelling which could be subject to a challenge under
13 the provisions of the Fair Housing Act Amendments."

14 A notice of public hearing proposed an increase
15 in the maximum number of residents allowed in a Class A facility
16 which the CBRF was previously -- the youth residential care home
17 was classified, from the current four to eight with no spacing
18 requirement. No spacing requirement. It didn't say spacing but
19 only if they're owned by the same people. It says no spacing
20 requirement.

21 This, in effect, eliminates the five to eight
22 categories in the R1, R3, R4, C1 zones for the Class A
23 facilities which are now permitted as special exceptions and
24 have spacing requirements. They took it out. They took this
25 category out of special exception and spacing requirements.

1 Now appellant is coming along and saying, "Ignore
2 that because we're going to call this something else." Yeah, if
3 you call it a grocery store it may not be printed in the zone
4 but you can't call it something that it's not.

5 The Zoning Administrator correctly looked at the
6 definition of this use and didn't find that he had to look next
7 door because there's nothing that the Zoning Commission told him
8 to do like a campus plan, like a bigger CBRF, like other things.
9 He evaluated these four applications.

10 It is totally irrelevant that they are owned by
11 the same owner. It is totally irrelevant that they have some
12 other common traits as far as the zoning regulations are
13 concerned. We support the District's position and we don't
14 think appellants have proven their -- carried their burden.
15 Thank you.

16 CHAIRPERSON GRIFFIS: Okay. Thank you, Mr.
17 Feola. I would not question if this was one facility and one
18 lot that we wouldn't be here. What you've indicated I think
19 goes to the heart of the issue of why we're here.

20 I think Ms. Ferster -- well, let me speak first
21 of all that the District Government made a point that we had to
22 call back Ms. Ferster because she hadn't made the case. I would
23 just like to get clarification of why we did that.

24 First of all, on the ample amount of information
25 that was brought in, not to mention the four hours of striking

1 testimony just clarifying for our own minds in deliberation, it
2 was important for us to try and get specific answers to a few of
3 the questions that were somewhat burning in their own testimony.

4 I don't think it can be decidedly read that we had no
5 confidence in the legal argument that was made, but rather we
6 needed further clarifications for our own use.

7 I would like to hear Board members' comments on
8 the motion before us to dismiss.

9 MEMBER LEVY: Mr. Chair.

10 CHAIRPERSON GRIFFIS: Yes.

11 MEMBER LEVY: One concern that comes immediately
12 to mind is the fact that this Board directed the appellant to
13 put off closing remarks until we have heard from all the parties
14 in the case. I would be concerned that there's pertinent
15 information that the appellant plans to put out before this
16 Board that has not yet been done.

17 CHAIRPERSON GRIFFIS: Okay. Any others?

18 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I want
19 to explain to the appellants and to the audience that I did not
20 weigh in on Ms. Ferster earlier because, if you recall, I have
21 to leave early at our last hearing. I came to this meeting
22 unaware that Ms. Ferster was going to be recalled to the table.

23

24 I have listened closely and have, I believe,
25 benefitted from her explanation to the Board. I do not feel in

1 anyway that we should close out this case at this point, Mr.
2 Chairman. I think that a great deal is still coming to us.

3 We have questions to ask. We have deliberations
4 to make. We have much to learn from the proposed findings of
5 facts that are submitted to the Board. I think that we should
6 hear this case to its ultimate conclusion.

7 CHAIRPERSON GRIFFIS: Okay. Any others? I would
8 concur. I think the motion is premature so I will deny the
9 motion to dismiss. It's premature in the fact that we have
10 moved some of the order of closing arguments.

11 I think that we are looking for further
12 information and putting together the case and, therefore,
13 granting that would not, in fact, give the opportunity for Ms.
14 Ferster and her participants to make their full and entire case.

15 With that, I would ask you, Ms. Brown, to start your testimony.

16 MS. BROWN: Just for the record, Mr. Chair, it's
17 my understanding that at closing arguments there's no new
18 evidence that comes into the record. That's simply the position
19 of the -- that's simply the summary and position of the counsel
20 for the party.

21 CHAIRPERSON GRIFFIS: Indeed, there is some
22 importance to it. Otherwise, we wouldn't have it. There is
23 also opportunity for cross-examination which may elicit some new
24 information or, in fact, counter some information that's already
25 given.

1 We are sort of looking for part of one of the
2 witnesses, Ms. Harden, that you brought up, spoke to and she was
3 included as an expert witness. I forget the exact thing we did
4 but social worker. There was a question of definition of the
5 program and how it might go to the definition of this facility.

6 It was offered by Father Flanagan that they
7 would, in fact, provide testimony that spoke specifically to the
8 programming of this area. I can go on with a few others but I
9 don't think we need to. The point being that we are looking for
10 further information on both sides of the case.

11 MS. BROWN: And with that in mind, it's the
12 District's understanding that all closing arguments will be made
13 at the conclusion of all of the evidence based on your
14 instructions on the first day.

15 CHAIRPERSON GRIFFIS: Yes, that's correct.

16 MS. BROWN: Just briefly an opening statement.
17 This case is about one issue only, and that is whether the
18 Zoning Administrator properly issued four building permits to
19 Father Flanagan's Boys' Town to construct four single family
20 dwellings at 1308 through 1314 Potomac Avenue SE.

21 In determining whether a permit is to be issued,
22 the Zoning Administrator is guided by one thing and one thing
23 only. That's the zoning regulations and affect in the District
24 of Columbia.

25 Underlying this case is the notion that the

1 reality that nobody wants a CBRF in his or her neighborhood.
2 That is not the issue that is before us here today. In this
3 case the appellant believes that there should have been more
4 done by the Zoning Administrator than what is required by law.

5 The appellant argues that the Zoning
6 Administrator should have reviewed the application and the
7 context of the nature of the project and the final result of the
8 project in making a determination of whether or not to issue
9 those permits. To do so would be an improper use of the Zoning
10 Administrator's authority or discretion.

11 The Zoning Administrator will show that
12 regardless of how inappropriate a particular project may appear
13 to the members of the community, the only test is where the use
14 of the land is permitted by law in the District of Columbia.

15 The relevant testimony that you've heard about
16 the manner of operations of the Boys' Town facility, how other
17 projects have been developed, or whether this project is
18 consistent with the District's comprehensive plan, the mayor's
19 initiatives, and any other strategic plans are merely red
20 herrings to distract the Board from the real issue at heart.

21 The fact at hand is that the use of the land as
22 proposed by Father Flanagan's Boys' Town is consistent with
23 District of Columbia law and, moreover, it is expressly
24 permitted by the District of Columbia law and, therefore, the
25 building permits were properly issued.

1 Administrator is quite mechanical, if you will, being that the
2 Zoning Administrator is no more than a glorified clerical
3 office, but I'll try to work you through the mindset and the
4 process of revision and application.

5 The first question is in the mind of the reviewer
6 is whether or not the documentation provided meets the
7 requirements of 3202.2 which requires a building permit
8 application completely completed, a set of three D.C. surveyor's
9 plans reflecting record lots with the surveyor's office, and a
10 set of four blueprints reflecting floor plans, elevations of
11 buildings to be constructed.

12 The next step is to determine what the zone
13 district of the subject premises is. After that you want to
14 know what the proposed use of the subject premises would be.
15 The next exercise would be to determine the most restricted zone
16 district within which the proposed use is allowed.

17 In this instance I think ample evidence has been
18 established at 201.1 and allows the use that was proposed of a
19 youth residential care home for six residents and not subject to
20 radius limitation.

21 CHAIRPERSON GRIFFIS: Mr. Bello, let me ask you.

22 Sorry to interrupt you but just as you're going through this
23 you're talking about the general process but you are also
24 talking about the specific process that you used in reviewing
25 this case. Correct?

1 MR. BELLO: Which is uniform.

2 CHAIRPERSON GRIFFIS: Yes. So, for
3 clarification, we're actually talking about four individual
4 processes that you would actually have gone under this process
5 all being the same.

6 MR. BELLO: Absolutely. The uniformity of it is
7 that each separate recorded lot is an independent entity and, as
8 such, the description speaks to one lot at a time.

9 CHAIRPERSON GRIFFIS: Okay. Thank you.

10 MR. BELLO: Then the next question will be
11 whether the proposed use of the lot is a matter of right.
12 Knowing that there is a hierarchy of zone districts and that the
13 R-1 zone is the most restrictive zone in the city, and M zone
14 being the least restrictive, and knowing the fact that the use
15 provisions of the zoning regulations have a compounding element,
16 that it is inconceivable that a use that's allowed in the most
17 restrictive zone or district would otherwise not be allowed in
18 an infinitely less restrictive zone. The subject premises' own
19 C-2-B.

20 MS. BROWN: But that's not -- I understand that
21 in terms of the cumulative effect of zoning. An R-1 use would
22 be allowable in a less restrictive zone but it's not the case
23 entirely of everything allowed in R-1. Correct?

24 MR. BELLO: Well, where there would be exceptions
25 the zoning regulation would specifically speak to that.

1 CHAIRPERSON GRIFFIS: Would note that to zoning.

2 MR. BELLO: Exactly.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. BELLO: Then the next process would be to
5 determine whether the proposed buildings would comply with
6 setback requirements, bulk height restrictions, and parking
7 requirements. And FAR is applicable.

8 If all these tests are met, then the application
9 is approvable singularly. Whether there are several buildings
10 being constructed by a builder is irrelevant to this process.

11 I think it's important to note that a subdivision
12 process does not have to be in conjunction with proposed
13 construction. That a property owner may embark on a subdivision
14 of a vacant lot without the necessity to want to construct upon
15 them.

16 If the requirements of the subdivision rules are
17 met, that the Zoning Administrator must approve that
18 subdivision. The point is that the subdivision of the subject
19 sites here could have been done one year prior to the building
20 permit application.

21 MS. BROWN: Mr. Bello, can there be more than one
22 structure on a record lot?

23 MR. BELLO: The regulations does not allow more
24 than one structure on a record lot. Any such proposal is an
25 anomaly that requires overview of the Board of Zoning

1 Adjustments through a theoretically lot subdivision is not
2 within the authority of the Zoning Administrator.

3 MS. BROWN: In this case there were four record
4 lots -- four lots of record, correct?

5 MR. BELLO: That is correct.

6 MS. BROWN: Knowing that the builder and
7 developer was the same entity and knowing that this was part of
8 a larger project, was any consideration given to the fact that
9 the four building were part of a larger project?

10 MR. BELLO: Absolutely not as it would not have
11 made any difference if the four buildings were being constructed
12 consecutively by four different builders.

13 MS. BROWN: And consistently does it matter that
14 the construction is only one component of a larger project?

15 MR. BELLO: There is no specific section of the
16 zoning regulations that speaks to that.

17 MS. BROWN: Did there come a time when violations
18 were alleged by the appellant or any other group with respect to
19 this approval?

20 MR. BELLO: The opposition to the application was
21 brought to our attention very early in the process so this
22 application attracted extra scrutiny, if you will.

23 MS. BROWN: What extra steps were taken to rise
24 to that extra scrutiny?

25 MR. BELLO: Well, there weren't any particular

1 extra steps other than to be sure that all elements of the
2 zoning regulations were complied with.

3 MS. BROWN: Was there a determination as to
4 whether or not an environmental impact statement was required?

5 MR. BELLO: That's not the responsibility of the
6 Zoning Administrator in determining whether a building permit
7 application is approvable or meets the zoning regulations.

8 CHAIRPERSON GRIFFIS: Can you repeat that
9 question, Ms. Brown?

10 MS. BROWN: I asked him whether or not -- whether
11 or not environmental impact statement was required. I believe
12 he answered that was not --

13 MR. BELLO: It's not the responsibility that the
14 Zoning Administrator is charged with.

15 CHAIRPERSON GRIFFIS: Right. Okay.

16 MS. BROWN: Do you know whether or not any of our
17 mental impact statement was ever conducted on this property?

18 MR. BELLO: I believe one was voluntarily done by
19 the developer or the builder.

20 MS. BROWN: What was the conclusion that was
21 reached with respect to the Zoning Administrator after the
22 community concerns were raised?

23 MR. BELLO: The conclusion was that the proposed
24 construction on each side met all applicable requirements of the
25 zoning regulation and as such was approved.

1 MS. BROWN: I believe you testified earlier that
2 a youth residential care home is permitted as a matter of right
3 in a C-2-B zoning district?

4 MR. BELLO: That is correct subject to 201.1(n).

5 MS. BROWN: And, therefore, there is no need for
6 a special exception, correct?

7 MR. BELLO: That's correct.

8 MS. BROWN: Does that determination depend on the
9 number of residents in each home?

10 MR. BELLO: Yes, it does.

11 MS. BROWN: And in determining that, what was the
12 number of residents that was viewed for each home in this case?

13 MR. BELLO: The number of residents for each
14 subdivided lot was six residents not including two resident
15 staff members.

16 MS. BROWN: Similarly there's no distance
17 requirement for this type of facility, correct?

18 MR. BELLO: No, ma'am. There isn't.

19 MS. BROWN: Do you know under what circumstance
20 there is a distance requirement for CBRFs?

21 MR. BELLO: For seven or more residents. The
22 radius limitation for the R-1 zone is 1,000 feet and subsequent
23 zones is 500 feet.

24 MS. BROWN: Assuming that Father Flanagan's Boys
25 Town had Father Flanagan's Boys' Town had submitted one

1 application, one building permit application to the Office of
2 the Zoning Administrator for the development of four buildings,
3 what would have been the result?

4 MR. BELLO: That application would have been
5 denied.

6 MS. BROWN: Why?

7 MR. BELLO: Because Section 202.3 does not allow
8 the placement of multiple buildings on one single lot of record.
9 Nor can you construct on a tax lot without recording it with
10 the surveyor's office.

11 MS. BROWN: Is there any other way that a
12 building permit could have been issued to Father Flanagan's
13 Boys' Town for the construction of these four units?

14 MR. BELLO: Absolutely not.

15 MS. BROWN: Is there anything that would permit
16 this development to be considered one structure under the D.C.'s
17 municipal regulations?

18 MR. BELLO: There's no specific section of the
19 zoning regulations that speaks to that.

20 MS. BROWN: And you are familiar with Section
21 721.5?

22 MR. BELLO: Yes, I am.

23 MS. BROWN: Take a minute and look at it.

24 MR. BELLO: Section 721.5 requires a youth
25 residential care home for seven to 15 residents not including

1 residents, supervisors, or staff and their families who should
2 be allowed as a matter of right provided there are no other such
3 facilities within a 500-foot radius of the subject premise.

4 MS. BROWN: Does Section 721.5 have any
5 application in the case before the Board today?

6 MR. BELLO: Absolutely not.

7 MS. BROWN: You heard the testimony of Mr. White
8 when we were last before the Board and there was a reference to
9 this project as a campus. What types of developments are
10 considered campuses for purposes of the zoning regulations?

11 MR. BELLO: Well, I can only assume that Mr.
12 White employed the use of the campus plan language literally but
13 in the context of zoning regulations, a campus plan approval is
14 subject to Zoning Commission review and is only pertinent to
15 institutions of higher learning.

16 MS. BROWN: And this is not considered one of
17 those uses?

18 MR. BELLO: Apparently not.

19 MS. BROWN: Based on all of the analysis that you
20 heard before your testimony, is there any legal basis upon which
21 you can conclude that the permits could have been issued or
22 denied? Do I need to repeat myself?

23 MR. BELLO: Yes, please.

24 MS. BROWN: Based on the testimony that you heard
25 leading up to today, is there any -- based on the analysis of

1 that testimony, is there any basis upon which the building
2 permits could have been denied?

3 MR. BELLO: Without exceeding the authority
4 vested in the Zoning Administrator's Office, no.

5 MS. BROWN: You also heard testimony about the
6 comprehensive plan and the Ward 6 plan. What function does
7 either of those plans have with respect to the zoning review
8 process?

9 MR. BELLO: Not much. The comprehensive plan is
10 not a self-executing document. I think clearly that because the
11 zoning regulations prior to June 30, 1938, was adopted to be in
12 full force and effect, that there is no debate. There will be
13 inconsistencies between the zoning regulations and the
14 comprehensive plan.

15 The critical question is whether the Zoning
16 Administrator possesses the authority to rewrite such or to
17 amend for such inconsistencies without overstepping the bounds
18 of his authority. The question is, in essence, the Zoning
19 Administrator would be if he were to evoke an element of the
20 comprehensive plan in denying a building permit application.
21 That can be approved as a matter of right.

22 MS. BROWN: Is there any instance that you know
23 of where you would have to look to the comprehensive plan or the
24 ward plan to determine whether or not a permit can be issued?

25 MR. BELLO: It would be a fruitless exercise

1 actually.

2 MS. BROWN: As far as you know, where there is an
3 inconsistency between the plan and the zoning regulations, how
4 is that inconsistency resolved?

5 MR. BELLO: The Zoning Commission has the
6 exclusive authority to remedy such inconsistencies.

7 MS. BROWN: Are you as the Zoning Administrator
8 acting as the Zoning Administrator empowered to enforce any
9 regulations other than the zoning regulations?

10 MR. BELLO: Absolutely not.

11 MS. BROWN: When reviewing the permit
12 application, are you required to look to any other projects
13 owned by the permit applicant in making your decision or
14 conducting your review?

15 MR. BELLO: There's no section in the zoning
16 regulations that requires that.

17 MS. BROWN: And similarly in the case of a CBRF,
18 are you required to look at the programmatic aspect of the
19 applicant in making your -- in conducting your review or issuing
20 your permits?

21 MR. BELLO: No, I'm not. It would be tantamount
22 to asking if these are going to be four single family dwellings
23 for the Zoning Administrator to consider whether the same family
24 members were going to be living in these four different
25 buildings. There is no subsection in the zoning codes that

1 requires that.

2 MS. BROWN: Mr. Bello, are you required to take
3 into consideration in your review and issuance of the permits,
4 the community's needs or the community's concerns with respect
5 to a particular project?

6 MR. BELLO: Not if the project is approvable as a
7 matter of right.

8 MS. BROWN: And, again, this project was
9 approvable as a matter of right?

10 MR. BELLO: That is correct.

11 MS. BROWN: I have nothing further.

12 CHAIRPERSON GRIFFIS: Thank you, Ms. Brown.

13 We're going to have questions from the Board
14 first. Then we'll have redirect and then we'll have cross-
15 examination. You know what? I'm sorry. Yes. Just speak up
16 when I -- we did actually establish the fact that we were not
17 having Board questions first.

18 I had a burning one and I'll probably lose it bey
19 the time it's my turn but let's get cross-examination up first
20 and then we will follow up as established when we started this
21 that Board questions will come after that. Thank you for that.

22 CROSS-EXAMINATION

23 MS. FERSTER: Thank you, Mr. Bello. I have a few
24 questions. You testified that you were the person who reviewed
25 this application, the building permits that are at issue here.

1 Is that correct?

2 MR. BELLO: For purposes of zoning approval that
3 is correct.

4 MS. FERSTER: After you reviewed the applications
5 did you make a recommendation to the Zoning Administrator?

6 MR. BELLO: No. The authority of the Zoning
7 Administrator is delegated to any staff member in the zoning
8 review section to approve an application.

9 MS. FERSTER: So in terms of the determination
10 that it was matter of right, were you the author of the August
11 2000 letter from Michael Johnson that sets forth the Zoning
12 Administrator's determination or is there some separate document
13 that contains your conclusion that these developments were
14 matter of right?

15 MR. BELLO: There is no separate document. The
16 letter that you refer to was offered by the serving Zoning
17 Administrator at that time, Michael Johnson.

18 MS. FERSTER: So your conclusion that these
19 permits were matter of right is simply your notation on the
20 building permit application. Is that correct?

21 MR. BELLO: As signaled by my signature of
22 approval.

23 MS. FERSTER: That's correct. Okay. When you
24 reviewed this project, you were aware that all four building
25 permits that are -- all four of the building permits that were

1 before you were file don the same day. Isn't that correct?

2 MR. BELLO: That is correct.

3 MS. FERSTER: And you are aware that all the
4 subject properties involved in those building permits were owned
5 by the same developer, Father Flanagan? Is that correct?

6 MR. BELLO: That is correct.

7 MS. FERSTER: And you were aware that except for
8 the lot number and the address on each of the building permits,
9 these applications were virtually identical? Is that correct?
10 Or are there any differences in the applications that you would
11 like to point out?

12 MR. BELLO: As I pointed out, the focus would
13 have been on each independent entity as constituted by recorded
14 lot. I wouldn't have paid great attention to the similarities
15 of the application other than the unison of ownership.

16 MS. FERSTER: So you were not aware that all four
17 applications were virtually identical other than the address?

18 MR. BELLO: They could have been. I probably
19 wouldn't have paid much attention to it. Again, my focus would
20 be whether the requirements of the zoning regulations were met
21 on each independent entity.

22 MS. FERSTER: I understand that. And were you
23 aware that all the D.C. Government officials who reviewed those
24 building permit applications signed off on the building permit
25 applications on the same day?

1 MR. BELLO: It's inconceivable that that would
2 happen. Given the review process, the likelihood is that
3 different disciplines would have signed up on different dates.

4 MS. FERSTER: Well, then perhaps I would refresh
5 your recollection then and provide you with a copy of the
6 building permit application so that you could review all four of
7 the applications. I would particularly draw your attention to
8 page 4 of each of the applications and then ask you to
9 corroborate that, in fact, all the sign-offs in terms of DPW,
10 water and sewer, etc., appear to have been done on the same day.

11 MR. BELLO: I think I can answer your question
12 without looking at the application. Again, if you look at your
13 question in the context of each independent entity, the date of
14 signatures on the applications differ by discipline. What
15 you're saying is that all four applications were approved in
16 unison and that is not unusual if a package of applications were
17 submitted simultaneously for several developments on independent
18 lots.

19 MS. BROWN: So these applications were, in fact,
20 viewed in unison.

21 MR. BELLO: Which is not unusual.

22 MS. BROWN: Thank you. So at the time the
23 decision was made, the Zoning Administrator was aware that these
24 were four properties. These were four -- I'm sorry. That these
25 building permit applications involved adjacent contiguous lots

1 that were owned by the same developer, Father Flanagan, and they
2 were processed in unison. That's correct?

3 MR. BELLO: I believe you have answer that, yes.

4 MS. BROWN: And isn't it also correct that the
5 Zoning Administrator has the power to request additional
6 information from a permit applicant in order to ascertain the
7 exact nature of the use of a building?

8 MR. BELLO: If necessary.

9 MS. BROWN: Thank you. Did you or anyone else in
10 that Zoning Administrator's function ask Father Flanagan's Boys'
11 Town to submit additional information concerning the
12 relationship between the four building permit applications?

13 MR. BELLO: Well, for purposes of zoning review,
14 such information would have no relevance and, as such, would not
15 have been required. In terms of applications, this cannot be
16 considered a complex application at all.

17 CHAIRPERSON GRIFFIS: So the answer is no?

18 MR. BELLO: No.

19 MS. FERSTER: And were you at the time of this
20 determination aware of the materials that had been submitted to
21 the D.C. Department of Consumer and Regulatory Affairs as part
22 of the environmental screening process?

23 MR. BELLO: That would not have been germane to
24 my review process so I would not have paid attention to it.

25 MS. FERSTER: Were you also involved in the

1 review of application No. 16531, Father Flanagan's Sargent Road
2 facility?

3 MS. BROWN: Objection. I'm not sure the
4 relevance of this. We've been down this road once before and
5 said that was excluded from this entire testimony as this matter
6 is irrelevant.

7 CHAIRPERSON GRIFFIS: I would agree. Ms.
8 Ferster, you want to rephrase. In fact, Mr. Bello's testimony,
9 which you're crossing, didn't bring that up at all.

10 MS. FERSTER: Perhaps I'll try to rephrase it.
11 I'll try a different question. This perhaps make the relevancy
12 connection. isn't it correct that the Zoning Administrator in
13 the context of the Sargent Road facility specifically pointed
14 out --

15 MS. BROWN: Mr. Chair, this is beyond the scope
16 of the direct examination.

17 MS. FERSTER: Can I ask my question first? Allow
18 me to ask the question and then we can make the determination
19 about whether it's beyond the scope.

20 My question is isn't it correct that the Zoning
21 Administrator in the context of application 65341, which is the
22 Sargent Road facility, specifically pointed out that, and I'm
23 going to quote, "The applicant will own the entire property and
24 will set program requirements on an overall basis." Doesn't
25 this indicate that the Zoning Administrator views the

1 relationship between separate buildings when it's making its
2 determination and ownership?

3 CHAIRPERSON GRIFFIS: Hold on. I sit up late
4 nights thinking I should have gone to law school. Okay.

5 MEMBER ETHERLY: You don't want to do that, Mr.
6 Chair.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 MS. BROWN: Mr. Chair, if I might, this might
9 assist in handling this. The site that she's referring to is an
10 R-2 zoned district that was before this Board in a special
11 exception hearing consisting of one large lot.

12 CHAIRPERSON GRIFFIS: I understand. I do have
13 that application and I'm trying not to be humorist in most of
14 this but sometimes it slips out. We did, in fact, leave in a
15 certain portion that brings in the application that we're
16 talking about.

17 This is a little bit beyond the scope is my
18 feeling in terms of cross-examination question and what I'm
19 trying to balance is the appropriateness of this and how this is
20 brought in.

21 I'm going to ask Ms. Ferster just again to
22 emphasize to me why I should allow you to go beyond the scope of
23 this in order to make your point. I think I would ask you to
24 start with the end of your question, the point you were going to
25 make, and then trace it back to its importance.

1 MS. FERSTER: The relevance is that Mr. Bello has
2 testified that the Zoning Administrator views as somehow
3 irrelevant the common ownership as well as the interrelation of
4 the different buildings that are being proposed in this project
5 and that's been his testimony.

6 We had submitted as part of our original
7 prehearing submission in an April 10, 2000 letter from Michael
8 Johnson, the Zoning Administrator, regarding the Sargent Road
9 facility which involves four residential properties on a single
10 lot as opposed to on separate lots where, in fact, the Zoning
11 Administrator specifically noted, or pointed out, in determining
12 that this was not -- that a special exception relief was
13 appropriate, that the applicant will own the entire property and
14 will set program requirements on an overall basis.

15 I think that is relevant that in that application
16 the Zoning Administrator looked at the interrelationship between
17 separate residential units and considered that relevant in that
18 context.

19 CHAIRPERSON GRIFFIS: Okay. Your question to Mr.
20 Bello would be then essentially, if I'm understanding you, here
21 was a case that the ZA looked at the sole ownership, should you
22 have looked at the sole ownership on this one?

23 MS. FERSTER: That's correct.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. FERSTER: What's the difference.

1 CHAIRPERSON GRIFFIS: Mr. Feola, did you want to
2 comment on this?

3 MR. FEOLA: If I might. I think if counsel wants
4 to proffer this as part of the case, she should have.

5 CHAIRPERSON GRIFFIS: She did by submitting the
6 information.

7 MR. FEOLA: There was no testimony. There was no
8 evidence. Now we're going to ask Mr. Bello questions about a
9 memo that we have nothing established that he had any part in
10 it. There was a memo that this Board asked the Zoning
11 Administrator to write in the context of a special exception
12 case which was ongoing which was first granted by this Board in
13 1992.

14 From a zoning standpoint the facts are so
15 different that it's not relevant to the ruling that the Zoning
16 Administrator made, in my opinion, in this case. This is four
17 separate record lots in a C-2-B zone for which special exception
18 relief is not granted. When Boys' Town first got that special
19 exception on Sargent Road 201(n)(1) didn't exist. The additions
20 that were brought forward require by law to go back through the
21 special exceptions in addition to a special exception that was
22 granted. Thank you.

23 CHAIRPERSON GRIFFIS: Good. Thank you, Mr.
24 Feola. That is important information for the Board to hear in
25 terms of the date of what this is. Certainly we understand with

1 the submissions that we have there is clearly not a direct
2 comprehensive comparison between the two cases. There are,
3 perhaps, individual similarities.

4 Mr. Feola makes a point that Mr. Bello did not
5 make this ruling or this order in reviewing this. I don't know
6 that. It may be true or may not be true but the fact of the
7 matter is Mr. Bello today before us has testified that this is a
8 fairly bureaucratic process of analysis of zoning applications
9 and, therefore, I think it makes no difference who the
10 individual is by your own testimony necessarily and what cases
11 are seen before it.

12 I'm going to allow the question to be answered
13 and I'm going to preface it with for the record, Board members,
14 that we do keep in mind one of the two objections from Ms. Brown
15 and Mr. Feola and Mr. Feola's pointed information, the fact of
16 how different and perhaps how useful the comparison would be so,
17 Mr. Bello, I would have you answer the question and Ms. Ferster
18 can rephrase it again to you as succinctly as possible.

19 MS. FERSTER: I'm referring to the April 10, 2000
20 memo from Michael Johnson to Sheri Pruitt which is actually one
21 of the documents that was submitted by the appellant as part of
22 our initial prehearing submission which was not struck. In
23 fact, the specific decision was made to allow that to stay in
24 the record.

25 CHAIRPERSON GRIFFIS: Right.

1 MS. FERSTER: And my question was that when the
2 Zoning Administrator issued this determination, that special
3 exception relief was appropriate in that application. Isn't it
4 correct that the Zoning Administrator specifically pointed out
5 and made relevant to his determination that, "The applicant will
6 own the entire property and will set program requirements on an
7 overall basis."

8 MR. BELLO: I can attempt to shed light on that.
9 for the record, I had absolutely nothing to do with that
10 letter. I believe that a case is subject to special exception
11 relief before the Board that's being reviewed against the
12 backdrop of the potential adverse impact of the proposal on a
13 site that is on a single lot for multiple buildings which in
14 itself is an anomaly in the zoning regulations.

15 I can only contend that the Zoning Administrator
16 was attempting to assist the Board to measure what the adverse
17 impact of multiple buildings would be on such a site. We are
18 speaking about a matter of right use.

19 Each building on a separate lot and nobody has
20 specifically cited a section of the zoning regulations that
21 would have allowed the Zoning Administrator to view this
22 application in the same context.

23 MS. FERSTER: So is it correct that your position
24 is the main difference between that application and this
25 application is that was on a single lot of record? I'm just

1 trying to clarify the question. The difference is those four
2 residential units were on a single lot of record versus multiple
3 lots as we have here. Is that correct? Is that the key
4 difference?

5 MR. BELLO: Well, that's a key difference and the
6 only commonality is the unison of ownership.

7 MS. FERSTER: Thank you. Let me ask you some
8 questions about your testimony that nothing in the zoning
9 regulations requires you to look at these four building permit
10 applications as a single entity.

11 Is there any regulation that specifically
12 precludes you from looking at these four building permit
13 applications as a single entity in order to determine whether or
14 not this development is matter of right or requires a special
15 exception?

16 MR. BELLO: I think all decisions of the Zoning
17 Administrator must have a basis in this regulation. The focus
18 would be the limits of the authorities and the specific sections
19 that speak to that authority.

20 I don't find anything in the zoning regulations
21 that would compel me to look at the four buildings as one
22 building.

23 MS. FERSTER: Yes, I understand that to be your
24 testimony, Mr. Bello, but that's not my question. My question
25 is whether or not there is anything in the zoning regulations

1 that precludes you from viewing these four contiguous lots in
2 common ownership as a single facility for purposes of
3 determining whether or not this is matter of right.

4 MR. BELLO: The question is what -- the question
5 would be what section of the zoning regulations would allow me
6 to do so. It's not a matter of what precludes me to do what.
7 The point is if I'm going to request or view an application with
8 four buildings on four separate lots as 3202.3 requires, I find
9 nothing in the zoning regulations that would allow me to view
10 them as, to borrow your phrase, one facility.

11 MS. FERSTER: You specifically mentioned 3202.3
12 as the regulation that requires you to view these as separate
13 developments. Is that correct?

14 MR. BELLO: It's the section that requires that
15 each proposed building be erected on a subdivided lot.

16 MS. FERSTER: Okay. I understand that. And
17 where in Section 3202 does it require the Zoning Administrator
18 to make determinations about whether or not the development is
19 met or right based on the fact that the development -- confined
20 to a single out of record. Let me repeat that.

21 Where in Section 3202, in that regulation, and we
22 can put it before you if you'd like, what part of that
23 regulation requires a Zoning Administrator to make its
24 determination about whether or not a development is a matter of
25 right by looking solely at individual lots of record?

1 MR. BELLO: I don't need it. If one assumes that
2 one cannot establish a youth residential care home on a vacant
3 lot that a building must be constructed so the relevant
4 connection is that in order to construct a building, that such
5 building must be constructed on a subdivided lot.

6 MS. FERSTER: Let me ask a few more questions
7 about 3202. This regulation requires a building permit
8 applicant to provide certain information including the shape,
9 topography, and dimensions of the lot to be built upon. That's
10 correct?

11 MR. BELLO: That is correct.

12 MS. FERSTER: And isn't it correct that the
13 reason why you need to have the information about the specific
14 lot of record in which a building is to be built on is to, among
15 other things, perhaps determine whether or not the rear yard
16 minimum lot occupancy requirements in the zoning regulations are
17 met. Isn't that correct?

18 MR. BELLO: It is but one element of the zoning
19 regulations, if you don't view it in a vacuum, there's also the
20 use provisions that has to be contended with.

21 MS. FERSTER: I will get to that but I'm focusing
22 specifically on the area requirements, rear yard, side yards,
23 and set back minimum lot occupancy. That information enables
24 you to make that determination. Isn't that correct?

25 MR. BELLO: Technically so, yes.

1 MS. FERSTER: In determining whether or not a
2 building in the C-2-B zone meets the rear yard and minimum lot
3 occupancy requirements, you need to go to a different regulation
4 which establishes what those rear yard requirements are. Isn't
5 that correct?

6 MR. BELLO: That is correct.

7 MS. FERSTER: And that regulation -- let me just
8 get that in front of me. That regulation, for example, in terms
9 of rear yards is Section 774. Is that correct?

10 MR. BELLO: That's correct.

11 MS. FERSTER: Isn't it also correct that Section
12 774 specifically refers to lots in establishing what a rear yard
13 requirement should be?

14 MR. BELLO: Okay. That's correct.

15 MS. FERSTER: And let's just look at the
16 percentage of lot occupancy requirements. That's in Section
17 772. Isn't that correct?

18 MR. BELLO: That's correct.

19 MS. FERSTER: Obviously that also refers
20 specifically to lots in terms of determining whether or not a
21 development meets the lot occupancy requirements. Isn't that
22 correct?

23 MR. BELLO: That's correct.

24 MS. FERSTER: So it would naturally follow that
25 it the zoning regulations would want a building to be on a

1 specific lot in order to ensure that the Zoning Administrator
2 can determine whether or not those requirements are met. Isn't
3 that correct?

4 MR. BELLO: On a specific lot recorded with the
5 surveyor's office.

6 MS. FERSTER: That is correct. Okay. Now, can
7 you turn also to the regulation 732.1. This is a regulation,
8 unlike the area requirements, that establishes the use
9 requirements. Isn't that correct?

10 MR. BELLO: I'm not sure what you mean by that.

11 MS. FERSTER: This regulation determines what
12 governs how you view whether or not this particular use is a
13 matter of right. Isn't that correct?

14 MR. BELLO: This specific section speaks to the
15 type of community based residential facilities that are subject
16 to special exception relief before the Board of Zoning
17 Adjustments.

18 MS. FERSTER: Okay. And in making your
19 determination about whether the community-based residential
20 facility is a matter of right versus subject to special
21 exception, this would be one of the regulations that you would
22 refer to. Isn't that correct?

23 MR. BELLO: From the use provision perspective,
24 yes.

25 MS. FERSTER: And does this specific regulation

1 refer anywhere to the fact that a community-based residential
2 facility may or may not be located on separate lots? Is lot
3 anywhere mentioned in this regulation as being relevant?

4 MR. BELLO: I can't conceive how you can view
5 this section in a vacuum without the relevant sections that
6 govern construction on lots in the zoning regulations.

7 MS. FERSTER: Isn't it possible that the relevant
8 sections governing lots -- I'm sorry. Isn't it possible that
9 the regulations governing building permits specify -- don't
10 specify whether or not regulation needs -- let me just rephrase
11 that and start over again.

12 When you look at the regulation governing
13 building permits, your analysis as a Zoning Administrator is not
14 confined to 3202.1. Isn't that correct? You need to look at
15 other regulations to determine whether or not a particular
16 development meets both the area and the use requirements for
17 matter of right development. Is that correct?

18 MR. BELLO: As a critical element of the review
19 process, you cannot seek to construct a building without
20 identifying the use to which you want to put that building. In
21 other words, you couldn't file an application just to build a
22 building.

23 MS. FERSTER: That's correct. These
24 applications, in fact, identify the use for the buildings.
25 That's correct?

1 MR. BELLO: That's correct.

2 MS. FERSTER: Are you familiar with the
3 definition of lot in the zoning regulations?

4 MR. BELLO: Yes, I am.

5 MS. FERSTER: Isn't it correct that the
6 regulations specifically say the lot may or may not be the land
7 so recorded on the records of the surveyor of the District of
8 Columbia?

9 MR. BELLO: For the generic definition of lot,
10 that is correct, yes.

11 MS. FERSTER: And isn't the implication of this
12 definition that when the term lot as opposed to lot of record is
13 used in the zoning regulations, that lot may include several
14 lots of record?

15 MR. BELLO: That a lot may include several lots
16 of record. Not within the geographic meaning of what a lot is
17 as a defined boundary of property and not within the meaning of
18 the requirement that a lot be recorded with the surveyor's
19 office which would then have as attended computations as to lot
20 size and dimensions.

21 MS. FERSTER: I'm not sure I understand that
22 question. Is it your testimony that there is no difference in
23 the zoning regulations between a lot versus a lot of record?

24 MR. BELLO: Perhaps I should read the definition
25 of lot. I quote from the zoning regulations, "The land founded

1 by definite lines that when occupied or to be occupied by a
2 building or structure and accessory buildings includes the open
3 spaces required under this title."

4 My point is when you read the definition of lot,
5 you actually paraphrased that a lot may or may not be the land
6 so recorded on the records of the surveyors of the District of
7 Columbia. The regulations, ma'am, recognize that tax and
8 assessment lots existed prior to the zoning regulations in 1958
9 and they continue to do so.

10 The only reason that a recordation with the
11 surveyor's office would be necessary if you were constructing
12 the new structure or if you were building an addition to an
13 existing structure. In fact, there are still numerous tax and
14 assessment lots in the city.

15 MS. FERSTER: Looking at 732.1 again, or 732
16 generally, this refers to community-based residential
17 facilities. Isn't that correct?

18 MR. BELLO: That's correct. That's correct.

19 MS. FERSTER: And this section sets forth
20 specific occupancy rules that determine when a community-based
21 residential facility must be subject to review by the Board of
22 Zoning Adjustment. Isn't that correct?

23 MR. BELLO: That's correct.

24 MS. FERSTER: And is the term "facility" defined
25 anywhere in the zoning regulations?

1 MR. BELLO: The term "facility" is not but the
2 term "youth residential care home" is.

3 MS. FERSTER: And does that definition of youth
4 residential care home specifically refer to a development on a
5 specific lot of record?

6 MR. BELLO: I don't believe that would be a
7 necessary thing to do since the definition on speaks to what a
8 specific use is.

9 MS. FERSTER: Can you point to any other
10 regulation other than 3202 which you referred to elsewhere that
11 precludes the Zoning Administrator from looking at several lots
12 of record on a cumulative basis in making his determination
13 about whether a development is a matter of right versus requires
14 a special exception?

15 MR. BELLO: Well, given that Section 202.3
16 defines the boundaries within which you could embark on the
17 construction, that if the intent of the regulations were to
18 require the Zoning Administrator to look beyond those lines,
19 then there would be overt language in the zoning regulations so
20 specified.

21 MS. FERSTER: So your determination that your
22 review is confined to specific recorded lot lines is based
23 exclusively on 3202. Is that correct?

24 MR. BELLO: I think it's consistent with the fact
25 that the bulk hide and setback requirements also are subject to

1 those defined lines.

2 MS. FERSTER: Thank you. I would like to turn to
3 your statement concerning the comprehensive plan. You indicated
4 that you did not view the provisions of the comprehensive plan
5 as being relevant to your determination on these building permit
6 applications. Is that correct?

7 MR. BELLO: To the extent that they are not self-
8 executing and to the extent that it would considerably exceed
9 the authority of the Zoning Administrator to invoke an element
10 of that plan in denying the matter of right use.

11 MS. FERSTER: But do you agree as a general
12 matter that the Zoning Administrator is required to consider the
13 comprehensive plan in making determinations of whether a use is
14 matter of right versus subject to special exception?

15 MR. BELLO: I don't believe there is any specific
16 language in the comprehensive plan that mandates that.

17 MS. FERSTER: Is it correct that you did not
18 take into account a comprehensive plan in making your
19 determination in this case?

20 MR. BELLO: Well, to the extent that it would
21 have been a fruitless exercise. That's correct.

22 MS. FERSTER: Okay. So specifically then did you
23 consider whether viewing the Boys Town campus as four separate
24 matter of right projects would be consistent with the specific
25 direction in Ward 6 Comprehensive Plan to prevent further

1 concentration of community-based residential facilities in Ward
2 6 neighborhoods? Did you consider that?

3 MS. BROWN: I believe he has testified he did not
4 consider the Ward plan. He can answer.

5 MS. FERSTER: Is that correct? You did not
6 consider that specific provision as the Ward 6 Comprehensive
7 Plan?

8 MR. BELLO: No, I didn't. Let's examine that a
9 little further. If the Zoning Commission opted to amend the
10 zoning regulations to allow CBRFs to establish with six
11 residents without being subject to radium limitation as is
12 allowed six unrelated people to live side-by-side without being
13 subject to radium limitation. It would go to show that the
14 concentration factors were not applied to facilities that house
15 six or less individuals in such facilities.

16 MS. FERSTER: I'm not sure I understand your
17 statement. Are you talking specifically about the comprehensive
18 plan provision that says that the goal of the Ward 6
19 Comprehensive Plan is to prevent further concentration of
20 community-based residential facilities in Ward 6 neighborhoods?

21 MR. BELLO: The answer to the first art of your
22 question was I did not consider that.

23 MS. FERSTER: Okay. One last question. Would
24 you agree that under the zoning regulations if the same owner
25 proposed to construct a youth residential care facility for 24

1 persons which consisted of four separate living units which were
2 all in the same lot, that it was otherwise identical to the
3 current application that a referral to the BZA would be
4 required?

5 MR. BELLO: I'm sorry. Four separate lots or one
6 single lot?

7 MS. FERSTER: Single lot. Would you agree that a
8 referral to the BZA would be required in that context?

9 MR. BELLO: Well, Section 2516 and 17 of the
10 zoning regulations speak to that specifically that the anomaly
11 of being able to place multiple buildings on one single lot of
12 record requires review by the Board of Zoning Adjustments.

13 MS. FERSTER: So if the owner had, in fact,
14 assembled this particular parcel of land into a single lot of
15 record in this case, BZA review automatically would have been
16 required because there is more than one principal structure on a
17 single lot. That's correct?

18 MR. BELLO: That is correct.

19 MS. FERSTER: And in the context of reviewing
20 that application and recommending that the BZA review that
21 application because it was indeed on a single lot of record,
22 would you also ask or suggest that the BZA make a determination
23 about whether or not a special exception was warranted because
24 the use was in excess of 16 children and whether the provisions
25 of 732.1 have been met? I'm sorry. Would the only issue before

1 the BZA have been can this development proceed on a single lot
2 of record?

3 MR. BELLO: Well, I mean, I think it will be
4 consistent with what I've been saying. When you place multiple
5 buildings within a defined line of a record lot, which is an
6 anomaly that is not allowed as a matter of right, then the
7 Zoning Administrator has the authority to look at that
8 cumulatively because the use is present on one lot.

9 MS. FERSTER: So then a special exception would
10 then be required not just because it's on a single lot but
11 because it's in excess of the matter of right occupancy limits
12 in Section 732. Is that correct?

13 MR. BELLO: On both counts, with respect to 732.1
14 and with respect to the requirements of 3202.3.

15 MS. FERSTER: I have no further questions.

16 MR. BELLO: Thank you.

17 CHAIRPERSON GRIFFIS: Please, Mr. Feola.

18 REDIRECT EXAMINATION

19 MR. FEOLA: Thank you, Mr. Chair. For the
20 record, I just have a couple questions.

21 Mr. Bello, is it unusual for a single
22 owner/builder to apply for a series of buildings on separate
23 record lots at the same time or simultaneously?

24 MR. BELLO: Not at all.

25 MR. FEOLA: So it's not unusual if somebody were

1 to build four or 10 single-family houses in a row? They would
2 put together such an application?

3 MR. BELLO: Absolute not.

4 MR. FEOLA: The R-4 zone, I believe, allows
5 flats. Does it not?

6 MR. BELLO: It does as a matter of right.

7 MR. FEOLA: Which means two living units in the
8 same --

9 MR. BELLO: For each lot of record, yes.

10 MR. FEOLA: If someone were to apply for 10 R-4
11 dwelling units, 10 duplexes on 10 separate record lots, meaning
12 20 housing units, single owner, contiguous record lots, would
13 that, in your opinion, turn that use into an apartment building?

14 MR. BELLO: Absolute not.

15 MR. FEOLA: So it would be 10
16 contiguous --

17 MR. BELLO: Independent lots.

18 MR. FEOLA: Thank you. In your experience at the
19 Zoning Administrator's Office, has the Zoning Administrator's
20 office ever looked at the cumulative effect of record lots
21 sitting side-by-side for the determination of whether or not
22 zoning relief was needed?

23 MR. BELLO: Not in my 12 years in that office.

24 MR. FEOLA: Has it ever looked beyond the record
25 lot lines with regard to occupancy limits placed by the Zoning

1 Commission?

2 MR. BELLO: Not in my 12 years of experience, no.

3 MR. FEOLA: I'm going to give you a couple of
4 examples. Maybe one example will satisfy it. An apartment
5 building, in my understanding, of 49 units or less doesn't
6 require a loading berth of 55 feet. Is that correct?

7 MR. BELLO: That is correct.

8 MR. FEOLA: However, if the apartment building
9 exceeds 49 units, it does require that larger loading berth. Is
10 that correct?

11 MR. BELLO: That's correct.

12 MR. FEOLA: If an apartment builder came in on a
13 record lot to build 49 units and applied next door for 49 units,
14 would you require a 55-foot load berth?

15 MR. BELLO: No, sir.

16 MR. FEOLA: So there are many instances, are
17 there not, where limits are placed by the zoning regulations on
18 use or use restrictions with regard to record lot? Is that
19 correct?

20 MR. BELLO: That is correct.

21 MR. FEOLA: Thank you. I have no questions.

22 CHAIRPERSON GRIFFIS: Thank you, Mr. Feola.

23 Ms. Brown, do you have any redirect?

24 MS. BROWN: Just for purposes of clarification I
25 refer to Section 2516 in response to Ms. Ferster's last question

1 to you. I believe the question was whether or not you could
2 approve the construction of four buildings on a single lot. In
3 this particular situation could you have approved four separate
4 buildings on a single lot if that was what was proposed in the
5 application for a building permit?

6 MR. BELLO: The application would be subject to
7 denial.

8 MS. BROWN: And that denial would be based upon
9 what, Mr. Bello?

10 MR. BELLO: It would be based upon the
11 requirements of 3202.3 which requires that each building be on a
12 separate lot of record and would probably invoke the
13 requirements of 2516 or 17 as it may apply which vest the
14 authority in the Board of Zoning Adjustments to grant such
15 special exceptional relief.

16 MS. BROWN: I have nothing further.

17 CHAIRPERSON GRIFFIS: Thank you. Okay, Board
18 members, questions?

19 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'll
20 start. I look forward to my colleagues' questions picking up
21 the slack.

22 Mr. Bello, you are not an unfamiliar face before
23 the Board and we have benefitted from your discussion with us in
24 previous cases. I want to go back to something that has popped
25 up through the testimony.

1 I would like to know where custom and practice in
2 your office fit into all of this. You have some discretions
3 that you bring to the fore, bring to the cases. I would like
4 you to speak to whether or not past customs and or past
5 practices fit into your deliberation on the permits referenced
6 in t his case.

7 MR. BELLO: Historically, yes, but such custom
8 has to have a bases in the regulations.

9 VICE CHAIRPERSON RENSHAW: All right. Now, can
10 you elaborate a bit for us? Could you define custom and
11 practice as it related to this case and then bring it back to
12 the regulations that you're speaking about.

13 MR. BELLO: I mean, in other words, the history
14 of interpretation of zoning regulations is something that is
15 passed on from one generation of a
16 Zoning Administrators to the other and that history dates back
17 many, many years.

18 The reality is that from time to time the zoning
19 regulations are going to be amended and that the current Zoning
20 Administrator has a responsibility to adhere to those amendments
21 as stipulated within its authority. Other than that, again, my
22 point is those customs as you may see fit still have to have a
23 historical relevance and have to have a basis in the
24 regulations.

25 VICE CHAIRPERSON RENSHAW: And, in this case, the

1 customs and the practices related to what? What in the
2 regulations?

3 MR. BELLO: Any specific interpretation of any
4 section of the regulations.

5 VICE CHAIRPERSON RENSHAW: What specific
6 regulation? What I'm after is if you use custom and practice
7 based on some kind of historical basis, it came back to what
8 regulation? In other words, you have discretion. You can look
9 up and see that applications mess in some way. Here you had
10 applications that were pretty similar. Same owner.

11 I mean, you could see and put them side-by-side
12 on your desk and say, "Ah, yes. These four look alike or they
13 were brought in by the same person, the same owner, etc." I'm
14 just wanting for you to match again the regulation. Tell us
15 specifically what the custom of this. What did you reach back
16 and nap as the basis for the discretion that you used on this?

17 MR. BELLO: That would be the requirements of
18 Section 3202.3 which, again, requires that each building to be
19 constructed be constructed and the lot recorded with the
20 surveyor's office.

21 VICE CHAIRPERSON RENSHAW: Okay. if we
22 ultimately decided for the appellants, what would that do to how
23 you adjudicate permits, how you take a look at cases that come
24 before you in the future?

25 MR. BELLO: In the future?

1 VICE CHAIRPERSON RENSHAW: Um-hum.

2 MR. BELLO: If you would ask the question again,
3 please, ma'am.

4 VICE CHAIRPERSON RENSHAW: If we vote in favor of
5 the appellants, what does that do, if anything at all, to the
6 manner in which you judge cases, CBRFs, in the future from now
7 on?

8 MR. BELLO: That is the decision of the Board to
9 the effect that four buildings constructed on four separate lots
10 if similarly --

11 VICE CHAIRPERSON RENSHAW: If there had been an
12 error made.

13 MR. BELLO: Well, to the extent that withstands
14 challenge, in my opinion, we would be rewriting the zoning
15 regulations in infringing upon the vested authority of the
16 Zoning Commission. We would have to respect where that ends.
17 I'm not sure how to answer that question for you at this point.

18 VICE CHAIRPERSON RENSHAW: Then I'll move on.
19 You said it was a fruitless exercise to take a look at the
20 comprehensive plan or do consider the comprehensive plan. Is
21 there something in your professional job description that says
22 you cannot or should not look at the comprehensive plan in
23 making a determination when it is such a basis for the city's
24 planning initiatives?

25 MR. BELLO: Well, there is nothing in the

1 description of my job that requires that I look beyond the
2 zoning regulations. I cannot find anything that bestows the
3 authority upon the Zoning Administrator's Office to do so.

4 VICE CHAIRPERSON RENSHAW: We're looking at
5 interpretation of the District elements. This is the
6 comprehensive plan and I am taking a look at page 19, (c). This
7 is 112.6(c). "In issuing or processing any building or
8 construction permit or any certificate of occupancy, the Zoning
9 Administrator, the Board of Zoning Adjustment, and the Zoning
10 Commission shall evaluate the proposal in conjunction with the
11 applicable sections of the comprehensive plan and the
12 comprehensive plan maps."

13 In line two it speaks of your job, the Zoning
14 Administrator. How do you relate this to what you just said,
15 that anything having to do with a comprehensive plan is
16 fruitless exercise?

17 MR. BELLO: I'm afraid I don't have a copy of
18 that in front of me. If you would oblige me and read exactly
19 what that section says.

20 VICE CHAIRPERSON RENSHAW: All right. And I'm
21 referencing again Section 112.6(c). "In issuing or processing
22 any building or construction permit or any certificate of
23 occupancy, the Zoning Administrator, the Board of Zoning
24 Adjustment, and the Zoning Commission shall evaluate the
25 proposal in conjunction with the applicable sections of the

1 comprehensive plan and the comprehensive plan maps."

2 MR. BELLO: Well, the specific language that I
3 would be looking for there, if indeed I looked to the
4 comprehensive plan, is something that specifically grants me the
5 authority to evoke any element of the comprehensive plan in
6 denying a matter of right application.

7 I don't see any such explicit language. I may
8 very well go through the exercise of evaluating the impact of a
9 comprehensive plan but the critical question is do I possess the
10 authority to deny such a matter of right application.

11 VICE CHAIRPERSON RENSHAW: All right. This has a
12 date of it of February 19, 1999. We are now in 2002. Did you
13 during the 12 years of your term with the DCRA ever bring up
14 that fact to the head of DCRA or do the Zoning Administrator who
15 preceded you?

16 MR. BELLO: What fact, ma'am?

17 VICE CHAIRPERSON RENSHAW: That you say what
18 grants you the authority to deny. In other words, did you
19 reference -- did you ever bring this up? Did you ever discuss
20 it that you don't seem to be able to make the connection? You
21 just don't have the matter of right to deny?

22 MR. BELLO: I can make the connection. I don't
23 have the right. My point is that to evoke an element of the
24 comprehensive plan where a perceived inconsistency is alleged
25 between the zoning regulation and the plan will be to infringe

1 upon the exclusive authority of the Zoning Commission.

2 I think that there's ample evidence that there's
3 expectation that there will be inconsistencies between the
4 zoning regulations because some of the zoning regulations are in
5 the comprehensive plan. Some segments of the zoning regulations
6 probably date back prior to 1938.

7 Clearly the debate is not that there will be
8 inconsistencies. What would make my life easier is if the
9 Office of Planning put it back on the comprehensive evaluation
10 of those inconsistencies and then have the Zoning Commission
11 take a whole sum look at it.

12 VICE CHAIRPERSON RENSHAW: Did you ever point
13 this out that you needed such support?

14 MR. BELLO: There's really nothing in the
15 description of my job that requires that I do that. The sheer
16 magnitude of the job required to do that understands such
17 exercise will take time.

18 VICE CHAIRPERSON RENSHAW: I'll pass for now to
19 another colleague.

20 CHAIRPERSON GRIFFIS: Let me follow up on that,
21 Mr. Bellow. I think you've made your point very clear that
22 essentially you don't possess the authority to evoke the
23 comprehensive plan over the zoning regulations.

24 It's your testimony, then, in fact that Ms.
25 Renshaw cited this piece on the comprehensive plan. I'll put

1 words in your mouth. That's all well and good but you're not
2 given any power to actually enforce that. This has no teeth for
3 you. Is that correct?

4 MR. BELLO: That is correct.

5 CHAIRPERSON GRIFFIS: So that just hanging out
6 there, even if you looked at the Ward 6 plan, the comprehensive
7 plan -- I'm probably going to beat this over again a few times -
8 - looked at the comprehensive plan, looked at the Ward 6 plan
9 and you saw, in fact, the wording -- and I'm just putting this
10 to you --

11 You've testified that you did not look at the
12 Ward 6 plan but supposing that you did, you looked at it and you
13 found that perhaps there was something in conflict and you have
14 these permit applications in front of you but they are put
15 together as a matter of right is what your testimony is and you
16 have the comprehensive plan. You don't have the ability as the
17 Zoning Administrator to somehow connect the two?

18 MR. BELLO: I don't have the ability or the
19 authority to impose what would otherwise constitute an
20 artificial moratorium on matter of right development.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. BELLO: There is the question.

23 CHAIRPERSON GRIFFIS: It is indeed. Okay. Let's
24 change courses a little bit here. You talked -- the word and
25 term facility was brought up in your testimony and also on cross-

1 examination. I wasn't able to write down exactly what you said
2 but you walked into a programmatic definition and its importance
3 in terms of the zoning review of this.

4 I guess my direct question would be when looking
5 at community-based residential facilities, do you have reliance
6 on any definition of facility? For instance, is facility as you
7 looked at this a use definition or a structure definition?

8 MR. BELLO: Well, it's a structure definition in
9 the context in which it is used in the definition of a use. In
10 other words --

11 CHAIRPERSON GRIFFIS: You're going to have to
12 repeat that for me.

13 MR. BELLO: In other words, you could substitute
14 building for facility in that definition.

15 CHAIRPERSON GRIFFIS: Okay. If I'm understanding
16 you correctly, community-based residential building means the
17 same for you as community-based residential facility.

18 MR. BELLO: That's correct.

19 CHAIRPERSON GRIFFIS: So it actually goes more
20 towards structure with community-based residential going towards
21 use with building.

22 MR. BELLO: Exactly.

23 CHAIRPERSON GRIFFIS: Okay. Let me make a quick
24 note here.

25 MEMBER LEVY: Mr. Chair.

1 CHAIRPERSON GRIFFIS: Yeah.

2 MEMBER LEVY: I would like to just follow-up on
3 that question.

4 CHAIRPERSON GRIFFIS: Okay.

5 MEMBER LEVY: Mr. Bellow, is it your testimony
6 that a community-based residential facility could not consist of
7 more than one building by definition given that building is the
8 same as facility, or given that you testified that building is
9 the same as facility?

10 MR. BELLO: That is correct because the context
11 in which the zoning regulations are written speaks to the
12 establishment of specific use within the confines of a lot as
13 defined. If it were otherwise intended, the spacing
14 requirements would be written differently and there would be
15 overt language in the regulations that speak to facilities that
16 may be side-by-side.

17 In the instance where it speaks and requirements
18 are imposed, then there are radius limitations in terms of
19 location of such facilities which is a function of the number of
20 residents.

21 It would be no different than -- it would be no
22 different than looking at several single-family dwellings side-
23 by-side as one facility or if viewed in a comprehensive way,
24 multiple use on several buildings. I can conceive of that in
25 any kind of way.

1 MEMBER LEVY: So would you say, I guess, are
2 there any instances where you would look to see if a use extends
3 beyond one building to multiple buildings?

4 MR. BELLO: No, sir.

5 MEMBER LEVY: Thanks.

6 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Actually, let me follow-up
8 on Mr. Levy because he's going to several things but he's going
9 to use also. I know you gave some testimony but how do you go
10 about deciding and defining the use for an application? Is
11 there special documentation? How do you review the proposed
12 use?

13 MR. BELLO: How do I review a proposed use?

14 CHAIRPERSON GRIFFIS: Yeah. In an application
15 that states a certain use, how would you verify that?

16 MR. BELLO: That the use proposed is, in fact,
17 going to be the use? I'm not sure I understand your question.

18 CHAIRPERSON GRIFFIS: Yeah. For instance, single
19 family has been tossed about. These could be 10 lots, 10 flats.
20 How would you determine that was actually a single family or a
21 flat? How would you go through an application and determine
22 matter of right use?

23 MR. BELLO: Well, it would be a function of the
24 proposed use on the building permit application and the
25 consistency of that with the floor plans presented on the blue

1 prints.

2 CHAIRPERSON GRIFFIS: Okay. And would there be
3 any other documentation that you might look to that would help
4 facilitate the definition of proposed use or the application's
5 written use?

6 MR. BELLO: Well, only if there was a gross
7 inconsistency between the floor plans presented and the proposed
8 use of an application.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. BELLO: Clearly if you reflect a three-unit
11 building on your floor plan and you call it a single-family
12 dwelling, then that's going to call to question exactly what
13 your proposal is.

14 CHAIRPERSON GRIFFIS: Okay. When you say plans,
15 you mean what is actually listed in terms of the permit
16 submission so that would include a site plan. In fact, if you
17 saw -- what they call them? Refueling -- anyway, gasoline pumps
18 on the front, you would probably assume it wasn't a single
19 family.

20 MR. BELLO: Exactly.

21 CHAIRPERSON GRIFFIS: Okay. I get that point.

22 Yes, Ms. Renshaw.

23 VICE CHAIRPERSON RENSHAW: Yes. I would like to
24 ask Mr. Bello how he would respond to the appellant's argument
25 that your interpretation of the zoning regulations provides

1 property owners with a mechanism to avoid the occupancy
2 limitations of the zoning regulations. How do you respond to
3 that?

4 MR. BELLO: Well, my response to be that I would
5 like to see a section pointed out to me in the zoning
6 regulations that would compel me to preclude a property owner
7 from (1) being able to subdivide their lots, and (2) forcing the
8 applicant's hand to place multiple buildings on one lot, or (3)
9 force the applicant to build one building on one lot prior to
10 subdivision. There's no such section in the zoning regulations.

11 VICE CHAIRPERSON RENSHAW: Okay.

12 CHAIRPERSON GRIFFIS: Quick clarification. You
13 testified that this applicant had voluntarily submitted an
14 environmental form or environmental study. I forget what you
15 actually said. Am I not correct in saying that the first step
16 of permitting requirement is, in fact, the environmental intake
17 form?

18 MR. BELLO: Well, the environmental intake form
19 only serves to help determine whether an environmental impact
20 statement will be required.

21 CHAIRPERSON GRIFFIS: Correct. So we start with
22 the environmental impact form which then based on certain
23 credations or requirements may kick you into further
24 submissions. What you're saying is the further submissions that
25 were done were actually done voluntarily or was there something

1 that led the applicant to the -- the permit applicant to submit
2 the further documentation?

3 MR. BELLO: To the best of my knowledge knowing
4 that this is not my area of expertise or responsibility, if
5 viewed singularly, clearly each application would not meet the
6 test for the necessity to provide an EISF.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. BELLO: But there was much in-house debate as
9 to whether under the Environmental Impact Act whether we could
10 look cumulatively at a proposal to invoke such requirement and
11 such debate did not have any conclusion prior to the applicant
12 deciding, "Guess what? I'll provide you one if that takes the
13 trouble away."

14 CHAIRPERSON GRIFFIS: I see. Okay. So it wasn't
15 clear but they volunteered essentially. To reiterate again, do
16 you review any of the environmental impact screening form
17 documentations and submissions as part of your zoning evaluation
18 of a permit?

19 MR. BELLO: It has no zoning relevance in terms
20 of a zoning review.

21 CHAIRPERSON GRIFFIS: Your answer to that that it
22 has no zoning relevance goes to the fact that you don't have a
23 zoning regulation section that instructs you to look at the
24 environmental impact statement form. Is that correct?

25 MR. BELLO: That's correct. In the process of

1 building permit review, of course, as everybody knows, zoning is
2 but one element of it. In fact, even if an environmental impact
3 statement was required, this could occur concurrently with a
4 review of an application.

5 Appending the signature of approval from a zoning
6 standpoint is not predicated under approval of the EISF. The
7 permit may not be issued if that test is not complied with or
8 the application fails on that score, but it certainly wouldn't
9 inform whether or not I could append an approval signature on an
10 application as a matter of right.

11 CHAIRPERSON GRIFFIS: I see. So your point is it
12 could go through the entire permitting process, actually do your
13 environmental screening after you've gone through other reviews,
14 but you wouldn't be able to pick up your assigned permit until
15 the environmental was done. Therefore, you're saying that they
16 are actually separate processes and need no crossing at all.

17 MR. BELLO: That's correct.

18 CHAIRPERSON GRIFFIS: Yeah. However, you
19 indicated that you had discussions, or there were discussions.
20 Were you part of those discussions in terms of requiring the
21 environmental statement or form for the permit application?

22 MR. BELLO: The Building Land Regulations
23 Administration is one family, if you will.

24 CHAIRPERSON GRIFFIS: Yeah.

25 MR. BELLO: Of course, everybody's opinion is

1 designed in any subject of debate in terms of policy. To that
2 extent, and in my capacity as the acting Zoning Administrator,
3 yes.

4 CHAIRPERSON GRIFFIS: Okay. And conceivably one
5 of the screening forms is a site plan as we've seen submitted
6 here. I believe also on that is water treatment and drainage.
7 Conceivably and hypothetically that came back in and there were
8 gasoline tanks to be installed throughout the site, and yet the
9 permit application did not indicate it was to be a gas station,
10 to use the same analogy, would that somehow -- how would you
11 deal with that as the Zoning Administrator?

12 MR. BELLO: Well, it wouldn't be unusual for the
13 environmental section of the Health Department. Of course, if
14 such an anomaly were to arise, in other words, if you were going
15 to install a gasoline tank underneath a single-family dwelling,
16 it would not be unusual for the health department to contact the
17 zoning office, too, to so indicate and for me to question that.
18 That obviously would be an anomaly that would require such
19 inquisition.

20 CHAIRPERSON GRIFFIS: Okay. So the Health
21 Department obviously would be contacting you as the Zoning
22 Administrator because it would not be clearly apparent that the
23 use being applied for was the actual proposed construction --
24 constructed use. Does that make sense?

25 MR. BELLO: Sure. It still does not preclude

1 that section from denying environmental impact statement or an
2 application on that basis because they are part of the building
3 permit process.

4 CHAIRPERSON GRIFFIS: Right. No. I would have
5 no question that the Health Department would deny it on face or
6 whatever it is, but you made the statement that they would, in
7 fact, or could conceivably contact you with concern.

8 MR. BELLO: Correct.

9 CHAIRPERSON GRIFFIS: Okay.

10 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Yeah.

12 VICE CHAIRPERSON RENSHAW: I would like to just
13 go back to what Mr. Bello said, that we were talking, or the
14 Chair was talking about the environmental impact form. You said
15 that there was much in-house debate. I'm wondering beyond your
16 mention of BLRA, the Building and Land Regulation
17 Administration, which you characterized as one family, what
18 other entities within DCRA or outside of DCRA had to do with
19 this in-house debate over this application?

20 We have this vision of you being marched out on a
21 plank here and standing by yourself in the wind. This statement
22 of yours led me to believe that there are others behind you, or
23 to the side of you, or in front of you who made a decision on
24 this case.

25 Perhaps you questioned someone as to this is the

1 direction you are going in adjudicating these permits. In other
2 words, were you alone? Were you the sole voice or did you,
3 indeed, have much in-house debate? If yes, who was involved?

4 MR. BELLO: Well, I mean, the debate was the
5 subject of BLRA and DCRA policy, if you will. I don't believe
6 that debate affected the zoning review one way or the other.
7 This was a test case obviously and I believe that Denzell Noble,
8 who is the deputy administrator for BLRA, had actually made the
9 decision that the individual lots were not subject to EISF given
10 the cost of construction on each side. The debate was to the
11 extent as to what will constitute future policy in looking at
12 these kind of developments, singularly or cumulatively for
13 environmental impact purposes only.

14 CHAIRPERSON GRIFFIS: Maybe you should define
15 family for us. No, wait a second. When you talk about there's
16 a group in the family that's there, you're speaking, I'm
17 assuming, and tell me if I'm correct, within DCRA and BLRA you
18 have the Fire Marshall, you have structural inspection, you have
19 the mechanical, electrical.

20 That is essentially the group that you're saying
21 wouldn't necessarily all get together to talk about zoning
22 issues or you're not sitting in on fire reviews or permits.
23 Correct?

24 MR. BELLO: That is correct.

25 CHAIRPERSON GRIFFIS: Okay. All right. Anything

1 else, Board members? Take your time.

2 (Whereupon, off the record.)

3 CHAIRPERSON GRIFFIS: Okay. Any other questions
4 at this time?

5 MEMBER HANNAHAM: I just wanted to ask Mr. Bello,
6 I really understood a lot more about your operations in hearing
7 your response to these questions. Would it be fair to say that
8 you actually view your role and your job as sort of reading it
9 by the book with respect to zoning regulations?

10 MR. BELLO: Anything otherwise would exceed my
11 authority. That's correct.

12 MEMBER HANNAHAM: Thank you.

13 CHAIRPERSON GRIFFIS: Thank you, Mr. Hannaham.

14 Also, I just want to note we did ask at the
15 beginning of this that the District submit generalized matrices
16 of the building permit review and environmental review process
17 which they did. We also have a zoning review flow chart just to
18 refresh the Board. I think that has also been very helpful, as
19 Mr. Hannaham has just stated, the fact of you walking us through
20 the process and through these questions.

21 Anything else? Not at this time? Then I think
22 we have -- gosh, where are we?

23 MS. BROWN: No further witnesses for the
24 District.

25 CHAIRPERSON GRIFFIS: Good.

1 MS. BROWN: We'll be back for closing.

2 CHAIRPERSON GRIFFIS: Thank you.

3 MS. FERSTER: I have just a couple of brief
4 recross questions based on the cross-examination of Mr. Feola
5 and --

6 MS. BROWN: There was no redirect, Mr. Chair. I
7 don't recross is appropriate.

8 CHAIRPERSON GRIFFIS: Let me get a legal opinion
9 on that.

10 MS. SULLIVAN: That is correct, Mr. Chairman. If
11 there was no redirect, there would be no recross.

12 CHAIRPERSON GRIFFIS: Good. Thank you.

13 In which case, we are at quarter to 5:00. We
14 have asked the other case to return at 5:00 for an update.
15 Let's do this, Mr. Feola. If you are acceptable to this, we'll
16 take a quick break and let you get assembled. We'll come back
17 at 5:00, assess where we are for the other application, and then
18 move on from there. Thanks.

19 (Whereupon, at 4:50 p.m. off the record until
20 5:14 p.m.)

21 CHAIRPERSON GRIFFIS: Mr. Feola, if I could just
22 have you up at the table for a quick second. I'm actually going
23 to need Ms. Ferster and Ms. Brown if she's available, when she's
24 available.

25 If I could have your attention, we're just going

1 to do an update on timing for the rest of the afternoon. We're
2 at 5:10. We have indicated that application 16826 will be
3 called today. Mr. Feola, it is not our anticipation looking at
4 the schedule of what we've gone through today that we would get
5 to rebuttal or closings today.

6 What I would like to put before you is that we
7 actually move you also to the next date available and finish the
8 entire case at that time. We have available to us right now
9 February 26 and a large possibility of February 19 which would
10 then -- and, again, as indicated last week, this Board feels
11 strongly to keep this as close and tight in terms of schedule as
12 possible.

13 MR. FEOLA: Phil Feola for the property owner.
14 That would be acceptable to the property owner. On the 19th
15 what time of day are we talking about, in the afternoon or in
16 the morning?

17 CHAIRPERSON GRIFFIS: The 19th we have the
18 afternoon.

19 MR. FEOLA: That works perfectly.

20 CHAIRPERSON GRIFFIS: Okay. It would actually be
21 the last case in the afternoon.

22 (Whereupon, off the record.)

23 CHAIRPERSON GRIFFIS: Okay. And how is the 26th?

24 MR. FEOLA: Everybody is shaking their heads that
25 works as well.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. FEOLA: I think Ms. Brown may have a
3 problem.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. BROWN: Mr. Chair, on the 19th, actually I
6 think the matter that you're hoping may get continued is one
7 that I'm also involved in. That's Georgetown Flea Market. I'm
8 trying to see but we were unable to get a response. I also have
9 another matter before this Board on the 26th. I'm not sure how
10 that plays. I'm only one person in terms of getting my folks
11 together. It could be somewhat of a strain.

12 CHAIRPERSON GRIFFIS: Okay. The strain, just for
13 my understanding, of doing two cases in the same day?

14 MS. BROWN: That's correct.

15 CHAIRPERSON GRIFFIS: Yeah.

16 MR. FEOLA: As much fun as it is to be here,
17 right?

18 CHAIRPERSON GRIFFIS: Yeah, indeed.

19 You have indicated, yes, the 19th we are holding
20 out and that would actually -- I have misspoke. It would be for
21 the entire afternoon if Georgetown falls off. That's what we're
22 speculating at this point and we would obviously not commit to
23 that date. It would certainly make -- that would be acceptable
24 to you, correct?

25 MS. BROWN: If Georgetown falls off?

1 CHAIRPERSON GRIFFIS: Yeah.

2 MS. BROWN: Yes.

3 CHAIRPERSON GRIFFIS: Because we're not doing
4 both. I can guarantee you that.

5 MS. BROWN: If Georgetown falls off, yes, I'm
6 available.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. BROWN: I'm still working with counsel on
9 trying to do that. In fact, I have explained to them the
10 circumstances that this matter has been broken up several times
11 and he understands and is trying to get his clients together.

12 CHAIRPERSON GRIFFIS: And on the 26th, if I'm not
13 mistaken, you just said you'll have two cases again.

14 MS. BROWN: 1018 Constitution Avenue.

15 CHAIRPERSON GRIFFIS: And that poses a bit of a
16 problem for you in terms of pulling that all together.

17 MS. BROWN: As well as my witness.

18 CHAIRPERSON GRIFFIS: Should we take a moment of
19 silence and think about the 19th?

20 (Whereupon, off the record.)

21 CHAIRPERSON GRIFFIS: This is what I propose, and
22 we're going to have to be coordinated but flexible here.

23 Ms. Ferster, you didn't speak to the 19th so let
24 me hear that first.

25 MS. FERSTER: Both of those dates work for us.

1 MS. BROWN: Okay. This is what I want to do. We
2 are looking for a case to come off the schedule on the 19th and
3 then this could go on. What I want to do is focus on that at
4 this point. What we'll do is be able to have contact with
5 everybody as soon as we know something.

6 If it comes up to the date, then we pretty much
7 know we're not using it and then we will reschedule with dates
8 that we hopefully will have more options on. What I'm saying is
9 it is tentatively scheduled for the afternoon of the 19th and we
10 will update and confirm that as we get closer to it.

11 MS. BROWN: Just so you know, Mr. Chair, my able
12 opposing counsel has reminded me. I have rested so my job isn't
13 going to be that significant if the 26th is a definite and we
14 all want to agree on that, that's fine unless we still want to
15 hold out for the 19th.

16 CHAIRPERSON GRIFFIS: I think that's fine. If we
17 have the 26th as a backup, that's great. I would much rather
18 have the 19th. I mean, conceivably we have an afternoon totally
19 free. Let's get this in and we'll have more time. If we can't
20 do it on the 19th, then we have the 26th and it works so we
21 notice those two dates makes communication a little bit easier.

22 MR. FEOLA: So basically, Mr. Chair, we are
23 tentatively set for the 19th and if that falls out, then we are
24 going to go to the 26th. Is that right?

25 CHAIRPERSON GRIFFIS: Then we are definite on the

1 26th.

2 MR. FEOLA: Right.

3 CHAIRPERSON GRIFFIS: And the 26th would be in
4 the afternoon and the last case.

5 MS. BROWN: As soon as I hear from counsel on the
6 Georgetown matter, I will notify Ms. Pruitt immediately.

7 CHAIRPERSON GRIFFIS: Yes. That would be great.
8 Fabulous.

9 Thank you all very much for this afternoon and we
10 will see you hopefully on the 19th. And that concludes this
11 morning's session of the 12th of February, 2002.

12 (Whereupon, this portion of the hearing was
13 concluded.)

14

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

5:22 p.m.

CHAIRPERSON GRIFFIS: Hearing will please come to order. Good afternoon, ladies and gentlemen. This is the 12th of February, 2002 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairpersons.

Joining me today is Vice Chair, Anne Renshaw, Mr. Curtis Etherly, also Mr. David Levy, representing the National Capital Planning Commission and representing the Zoning Commission is Mr. Hannaham with us.

Copies of today's hearing are available to you. They are located at the table at the door that you did enter into. Please be aware that this proceeding is being recorded, so we must ask that you refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please speak into the microphone and state your name and home address before presenting your testimony.

All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located at the end of the table in front of us. Also, I believe, on the table as you entered.

Upon coming forward, to speak to the Board, please give both cards to the reporter, who is sitting to my

1 right.

2 The order of procedure for appeal applications,
3 which is what we'll have this afternoon will be as follows.

4 First, the statement and witnesses of the
5 appellant. Second will be the Zoning Administrator or other
6 government official. Third will be the owner, lessee or the
7 operator of the property involved, if not the appellant. Fourth
8 will be the ANC within which the property is located. Fifth
9 will be the interveners case and sixth will be the rebuttal and
10 closing statement of the appellant.

11 Cross examination of the witnesses is permitted
12 by the applicant or parties. The ANC within which the property
13 is located is automatically a party in the case.

14 The record will be closed at the conclusion of
15 each case, except for any materials specifically requested by
16 the Board.

17 The Board and staff will specify, at the end of
18 the hearing, exactly what is expected and the date when the
19 person must submit the evidence to the Office of Zoning. After
20 the record is closed, no other information will be accepted by
21 the Board.

22 The Sunshine Act requires that public hearings on
23 each case be held in the open and before the public. The Board
24 may, consistent with its rules of procedure and the Sunshine
25 Act, enter into executive session during or after the public

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

3 The decision of the Board in these contested
4 hearings must be based exclusively on the public record. To
5 avoid any appearance to the contrary, the Board requests that
6 persons present not engage the members of the Board in
7 conversation and I would restate and ask that all beepers and
8 cell phones be turned off at this time so as not to disrupt the
9 proceedings.

10 The Board, on a normal day, would make every
11 possibility and effort to conclude public hearings as near 6:00
12 p.m. as possible. I'm not going to give a time right now, we're
13 going to see how this starts to roll and see how far we get into
14 this and we will assess where we are after we get into the case
15 and decide how we continue or finish today.

16 At this time, the Board will consider preliminary
17 matters. Preliminary matters are those that relate to whether a
18 case will or should be heard today, such a request for a
19 postponement, continuance or withdrawal or whether proper and
20 adequate notice of the hearing has been given.

21 If you are not prepared to go forward with this
22 case today or if you believe that the Board should not proceed,
23 now is the time to raise such a matter. Hopefully, we've heard
24 that already if there was any, but let me turn to staff to see
25 if there are any other preliminary matters for the one case.

1 MS. BAILEY: Mr. Chairman, there are two
2 preliminary matters, but for expediency, staff is suggesting
3 that we call the case and then swear the witnesses in and then
4 do the preliminary matters.

5 CHAIRPERSON GRIFFIS: I think that's wise advise,
6 thank you.

7 MS. BAILEY: Appeal number 16830 of Advisory
8 Neighborhood Commission 2A, pursuant to 11 DCMR ?? 3100 and
9 3101, from the decision of David Clark, Director, Department of
10 Consumer and Regulatory Affairs, effecting the issuance of a
11 building permit (No. B439442, dated October 17, 2001) to allow
12 the construction of a new single family dwelling allegedly in
13 violation of the area requirements in an FBOD, that's Foggy
14 Bottom Overlay District, property zoned R-3 as well. The
15 premises is 909 Hughes Mews, N.W. (Square 16, Lot 888.)

16 All those wishing to testify, please stand to
17 take the oath.

18 WITNESSES OATH

19 All persons to be testifying before the Board of Zoning
20 Adjustment as witnesses were duly sworn at this time.

21 MS. BAILEY: Mr. Chairman, the first preliminary
22 matter has to do--, there's a request that Mr. Richard Price be
23 removed as a party to this appeal.

24 MR. TUMMONDS: Mr. Chair, for the record, my name
25 is Paul Tummonds, I'm with the law firm of Shaw Pittman, an

1 behalf of the property owner in this case.

2 The property owner has made the motion that Mr.
3 Price be removed as party/appellant in this case because we feel
4 that Mr. Price has not sufficiently proven how he is an
5 aggrieved person in this case.

6 We understand completely that Mr. Price is an
7 ANC-2A Commissioner and that he is the duly authorized ANC
8 Commissioner to present the ANC's case today.

9 We have no problem with that. What we believe is
10 that Mr. Price, based on where he lives, 2555 Pennsylvania
11 Avenue and the fact that he is the single member district
12 commissioner for the ANC in which this, this property is not
13 located in that ANC, single member district commissioner.

14 This is, in fact, ANC-2A03. The single member
15 district commissioner is Maria Tyler. So we think that the fact
16 that this property is an alley lot, that it is far enough
17 removed from Mr. Price's residence that he has not sufficiently
18 shown how he is aggrieved and that how his rights are somehow
19 impacted greater than the general public.

20 CHAIRPERSON GRIFFIS: Okay, thanks and can I just
21 have everyone introduced that's at the table right now.

22 MR. PRICE: I'm Richard Price.

23 CHAIRPERSON GRIFFIS: Yes, Mr. Price.

24 MR. PRICE: Do I get to respond?

25 CHAIRPERSON GRIFFIS: Yes, in a second. You

1 weren't sworn in? Were you sworn in before?

2 MR. PRICE: No.

3 CHAIRPERSON GRIFFIS: Did you not want to be sworn
4 in today?

5 MR. PRICE: Yes, I didn't see my colleagues up
6 here being sworn in either so I didn't assume I had to be or
7 whatever, I don't know. I thought it was people in the
8 audience.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. PRICE: But I'm glad to be sworn in.

11 CHAIRPERSON GRIFFIS: Okay, why don't we do that.
12 Why don't we just get all formalities out of the way. Ms.
13 Bailey, if you would just swear in Mr. Price.

14 RICHARD PRICE

15 A person to be testifying before the Board of Zoning Adjustment
16 as a witness was duly sworn at this time.

17 CHAIRPERSON GRIFFIS: Now there was an attorney
18 involved for the appellant and I'm not grabbing his name, Mr.?

19 MR. PRICE: Hitchcock. He's not here and will not
20 be testifying. We couldn't afford to have him here.

21 MR. ABDULLAH: Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. ABDULLAH: This is Raouf Abdullah, I'm counsel
24 for the DCRA. As I understand the submission, Mr. Hitchcock was
25 retained to prepare a brief only, according to what has been

1 filed by the appellant and he was not anticipated to be here.

2 CHAIRPERSON GRIFFIS: So who's presenting the
3 case?

4 MR. PRICE: I am.

5 MR. ABDULLAH: Mr. Price and that's the
6 clarification that counsel for the owner was trying to make is
7 that we don't object to the presentation of the ANC case. We
8 don't dispute that the ANC has designated Mr. Price as it's
9 representative. We do question though and we, the DCRA, does
10 join the owner in questioning whether or not a sufficient
11 showing has been made that Mr. Price is an aggrieved person.

12 CHAIRPERSON GRIFFIS: Okay. Well, let me put that
13 to rest right now because in order to bring an appeal, one does
14 not have to qualify for a party status, so that Mr. Price is
15 perfectly able, under our regulations to bring an appeal and if
16 that is what he's doing, which is what is happening, then I
17 don't have any problem with him proceeding.

18 And what I would like to do now is to establish
19 the fact of who and what we're actually doing today.

20 Mr. Price, you will be representing the ANC?-

21 MR. PRICE: 2A.

22 CHAIRPERSON GRIFFIS: 2A. Are you representing
23 anybody else?

24 MR. PRICE: Apart from myself, no.

25 CHAIRPERSON GRIFFIS: How is Mr. Hitchcock's

1 submittals and case to be publicly heard today?

2 MR. PRICE: First of all, I'm not a zoning lawyer,
3 but we commissioned Mr. Hitchcock to do a legal analysis of the
4 zoning law and regs on this issue to help us.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. PRICE: No one of our ANC Commissioners is a
7 lawyer, let alone a zoning lawyer, so we needed some expertise.

8 CHAIRPERSON GRIFFIS: Okay, I see. So he was just
9 helping prepare you today.

10 MR. PRICE: That is correct.

11 CHAIRPERSON GRIFFIS: Now there were other
12 participants that actually, the case file has submissions from
13 Mr. Draude and he was in fact, was going to represent certain
14 individuals in the area. Are you aware of that?

15 MR. PRICE: I am not. I know that the ANC, ANC-
16 2a, originally commissioned Mr. Draude to do some research for
17 us to go into a legal brief that we would file as part of our
18 position. He did do that research and we asked Mr. Hitchcock,
19 instead, to write the legal brief.

20 CHAIRPERSON GRIFFIS: Okay, so it's your
21 understanding that anyone that wanted to participate in this
22 actually has been bundled within the Draude preparations,
23 Hitchcock preparations and you are now the only person that's
24 going to be presenting this case?

25 MR. PRICE: That is correct. Now I may ask Marie

1 Tyler, the Commissioner for the areas, where 909 Hughes Mews is
2 located, Ms. Tyler is sitting behind me, to help me with some
3 technical assistance. If you ask a question I can't answer, I
4 may turn to her and ask her for technical assistance.

5 CHAIRPERSON GRIFFIS: That's fine.

6 MR. PRICE: She's not testifying.

7 CHAIRPERSON GRIFFIS: I see and are you calling
8 witnesses today?

9 MR. PRICE: No.

10 CHAIRPERSON GRIFFIS: Indeed. All right, does
11 that clear the first preliminary matters? Okay, any further
12 preliminary matters.

13 What I've done, we actually had two preliminary
14 matters, what I think I've done is clarified both. The second
15 being for our own edification, the other, Mr. Draude's
16 preparations and participants that may not have been represented
17 and how they were going to be represented, so I think we're
18 clear.

19 In which case, I think we can jump right into it
20 and ask Mr. Price--.

21 MR. ABDULLAH: Mr. Chair, before we jump into it,
22 could we just clarify for the record that the other parties that
23 have previously submitted notices regarding Mr. Draude are no
24 longer parties to the appeal and that in fact, the appeal now,
25 there are two appellants, that is 2A and Mr. Price.

1 I understand that they have dropped out and if
2 they haven't, then we need to clarify that they're still in or
3 who's in, just so we can know who the players are.

4 CHAIRPERSON GRIFFIS: I absolutely appreciate that
5 and we absolutely should do that. Fabulous. I have Exhibit No.
6 14 from a Linda Friesz, a Charles Riesling and Clair and I'm not
7 gong to pronounce this correctly, but Shipshe. If those people
8 are here, can they come to the table. If you're going to speak,
9 I'm going to need you at the table, into a mike.

10 MS. FRIESZ: My name is Linda Friesz. I live at
11 919 Hughes Mews. I wrote the letter to Mr. Draude authorizing
12 him to represent me.

13 I still wish to assert that Mr. Price will
14 represent me. My neighbors, Charles Riesling and Clair Shipshe
15 feel the same. They are not here this afternoon.

16 CHAIRPERSON GRIFFIS: Okay, that brings great
17 clarification and I think that's exactly what the District
18 Government is asking in terms of clarifying who and how this
19 appeal was going forward. Is that correct? Okay, so we have
20 that answered.

21 Okay, for the late folk, what we have just
22 established is that the appeal is being brought together by a
23 joining of a lot of individuals and interests that with a focal
24 point of this pyramid is you, Mr. Price, and we look forward to
25 hearing from you at this time.

1 MR. PRICE: I'm Richard Price. I live at 2555
2 Pennsylvania Avenue, N.W. I'm here representing the position of
3 ANC-2A on this matter and I'm also an appellant in this case.

4 We're here today for three reasons. The first,
5 we seek to uphold the law and regulations of the District of
6 Columbia. As our research and legal brief have found, a
7 building permit was improperly issued for a replacement building
8 at 909 Hughes Mews, N.W.

9 This project requires variances from zoning rules
10 before a permit may be issued and none were requested and none
11 approved by the BZA. Construction on this project should not be
12 allowed to continue until such time as the BZA rules that
13 required variances should be approved.

14 Second, we are here to defend our community
15 against illegal building projects that compromise the livability
16 of our neighborhood. This is not the first time that a building
17 permit has been improperly issued for a project in our
18 neighborhood and we can not understand why this continues to
19 happen, especially when our ANC notified DCRA that our research
20 showed that the subject site of our appeal required variances.

21 What is more, the ANC requested that we be able
22 to review with DCRA officials zoning requirements that would
23 have to met for this site.

24 And finally, third, we are here to protect the
25 integrity of our R-3 overlay district. The Hughes Mews project

1 is in the heart of our R-3 overlay district.

2 This overlay district is indispensable to the
3 identity of our neighborhood as a low scale, residential
4 neighborhood with all the protection that an R-3 district
5 provides.

6 Any new building, including this replacement
7 structure, should conform to the requirements of the regulations
8 specified for this area.

9 Now our case is a straight forward one. We
10 maintain that the building at 909 Hughes Mews requires two
11 variances. As our exhibits make clear, the new house will be
12 built at the end of Hughes Court with the eastern wall on the
13 property line and the western wall right up against the lot line
14 separating Lot 888 and Lot 803.

15 Apart from the rear yard, the house will fill the
16 lot. As such, the new construction fits the zoning regulations
17 definition of a row dwelling, which is a one family dwelling
18 having no side yards.

19 The new construction fails to meet two
20 requirements for a row dwelling in an R-3 district. First, the
21 new construction must meet the minimum lot area requirements set
22 out in Title 11 of DCMR ?401.3, which is 2000 square feet.

23 As the application for 909 Hughes Mews makes
24 clear, the total lot area for this project is 1486 square feet.

25 This falls well short of the minimum requirement.

1 The zoning regulations at Title 11 DCMR ? 401.1
2 state that and I emphasize, except as provided in the Chapter 20
3 through 25 of this Title, in the case of a building on May 12,
4 1958 on a lot area or width of lot or both, less than is
5 prescribed in ? 401.3, the 2000 square feet, for the district in
6 which it is located, the building may not be enlarged or
7 replaced by a new building unless it complies with other
8 provisions of this title.

9 As we read these regs, the new building must meet
10 all requirements of the regulations, including the minimum lot
11 requirement, except for the requirements in Chapters 20 through
12 25.

13 Foggy Bottom overlay district regulations
14 buttress this requirement. Those rules state that buildings
15 constructed on or before the effected date of this rezoning
16 regulation, an existing legitimate uses within the buildings
17 shall be deemed conforming except that no addition, replacement
18 or expansion of the building shall be permitted, unless in
19 conformance with the requirements of the underlying R-3
20 district.

21 There's a second variance that we believe is
22 needed. 909 Hughes Mews, the new construction at 909 Hughes
23 Mews is taking place in an alley and there are zoning
24 requirements for alley dwellings.

25 Title 11 of DCMR ? 2507.2 states and I quote, a

1 one family dwelling shall not be erected or constituted on an
2 alley lot, unless the alley lot abuts an alley 30 feet or more
3 in width and has from the alley access to a street through an
4 alley or alleys not less than 30 feet in width.

5 The surveyor's plat that we submitted with
6 our materials is relevant here. It shows that Lot 888 sits at
7 the southern end of Hughes Court for the western half of Lot
8 888, the 30 foot width requirement is met. We have no argument
9 with that.

10 The same however, can not be said as to the
11 eastern portion of Lot 888. As the map shows, the alley width
12 at the northwest corner of Lot 888 is only 24.96 or 24.98 feet
13 wide, which is less than the 30 feet that ? 2507.2 requires. ?
14 2507.2 is therefore not satisfied as the alley lot does not abut
15 an alley 30 feet or more in width.

16 We maintain 30 feet means 30 feet. It does not
17 mean 30 feet at one part of the lot and something less than 30
18 feet elsewhere.

19 These are narrow alleys and the regulation was
20 created to ensure reasonable access to dwellings in alleys, as
21 well as separation from other buildings at all portions of the
22 alley.

23 The replacement structure I would also add, also
24 represents more intensive use of the site, demanding that the 30
25 foot requirement be met.

1 I'll conclude my statement now by saying that
2 perhaps we would not have to be here today if we had been able
3 to confer with DCRA officials to present our case and findings
4 before they made their determination about zoning requirements
5 applicable to this site.

6 We were even told by one DCRA official that DCRA
7 had put a stop on the issuance of a permit to raise an existing
8 structure on this site. So imagine our surprise when we learned
9 that permits had been granted before we could present our case
10 and also with regard to the razing permit, the ANC was not given
11 30 days notice, advance notice of the razing.

12 As a result, we have to resort to this form and
13 we thank you for allowing us to make our case here today.

14 CHAIRPERSON GRIFFIS: Thank you, Mr. Price. Okay,
15 let's have a couple of questions of Mr. Price if there are any,
16 Board members. Yes, Ms. Renshaw.

17 VICE CHAIRPERSON RENSHAW: Mr. Price, thank you
18 for your presentation. I'd like to ask where is the ZA in all
19 of this? Have you tried to present your case to the ZA? Why
20 isn't he here?

21 CHAIRPERSON GRIFFIS: Oh, he is here, he's sitting
22 in the back.

23 VICE CHAIRPERSON RENSHAW: Sorry.

24 CHAIRPERSON GRIFFIS: And I believe, Mr. Price,
25 in fact, I was going to go to the question, if that's were

1 you're going, Ms. Renshaw.

2 VICE CHAIRPERSON RENSHAW: No.

3 CHAIRPERSON GRIFFIS: That you had indicated that
4 if you had been able to sit down with the Zoning Administrator,
5 we may not be here now. I think you ought to speak to, is there
6 a formal process for that and why you think that has relevancy
7 to the appeal at this point.

8 VICE CHAIRPERSON RENSHAW: Yes and my apologies to
9 the ZA, Mr. Bello, I didn't see you behind the pillar.

10 MR. PRICE: Well, these permits were issued,
11 construction began immediately. We had no other?-. Well, first
12 of all, we had to do our research. We had no other recourse,
13 but to appeal at that point because they were not prepared to
14 stop construction.

15 CHAIRPERSON GRIFFIS: Right, but are you aware of
16 any other process that this would take?

17 MR. PRICE: No, I'm not.

18 CHAIRPERSON GRIFFIS: Okay. Are you aware of any
19 regulations that would prescribe the fact that the Zoning
20 Administrator would sit down with the community to go over
21 permit applications?

22 MR. PRICE: I do not know of any, but I don't see
23 that it's unreasonable.

24 CHAIRPERSON GRIFFIS: I think your assistant may
25 know, so maybe she could whisper something to you.

1 MS. TYLER: My name is Maria Tyler. I live at 949
2 25th Street.

3 MS. BAILEY: Excuse me, were you sworn in, Ms.
4 Tyler?

5 MS. TYLER: No, I have not been sworn in.

6 CHAIRPERSON GRIFFIS: So let's do that.

7 MARIA TYLER

8 A person to be testifying before the Board of Zoning Adjustment
9 as a witness was duly sworn at this time.

10 MR. PRICE: Mrs. Tyler has reminded me that our
11 materials include two letters that we wrote to David Clark, the
12 Zoning Administrator's boss, asking to be able to sit down with
13 the Zoning Administrator's office to talk about this.

14 CHAIRPERSON GRIFFIS: Right and I think we've seen
15 this. Yes, do you have an objection? Let me just clarify
16 something. I'm going to be hearing Mr. Price and that's it,
17 just for clarification.

18 I don't have any problem with you helping him out
19 with the case, as long as it's expeditious and you can take a
20 moment, take a minute and sit and get clarified, but in order
21 for us to be clear, I need one voice, one mike and that would be
22 helpful.

23 MR. ABDULLAH: And to that very point, Mr. Chair.
24 The appellant has given a statement. There was a question
25 placed and I thought Ms. Tyler was here to just answer that

1 question, not to give another statement. I just want to keep
2 control of where we are in this process.

3 CHAIRPERSON GRIFFIS: Exactly, exactly. Mr. Price
4 will be speaking.

5 MR. PRICE: So our letters indicate that Ms.
6 Teresa Lewis in DCRA?-

7 CHAIRPERSON GRIFFIS: Right, that's clear. You
8 wrote letters, asked to sit down with them. My only question
9 is, can you cite any regulations?-

10 MR. PRICE: I can not, no.

11 CHAIRPERSON GRIFFIS: And that's fine and I
12 appreciate that. Certainly, it's something that, you know,
13 should happen, conceivable, and it's good public relations and
14 frankly, it helps us that we don't have appeals. It didn't
15 happen, we're here, so that put aside.

16 I noticed in your Exhibit 1, you've submitted the
17 survey map of relevant part of Hughes Mews is what it's titled
18 and it is your Exhibit 1. I want to get clarification of your
19 testimony here. Hughes, if I'm looking at this, Hughes Court
20 has a 30 foot dimension going north. Is that correct?

21 MR. PRICE: At the western side, yes. Well, that
22 would be going west.

23 CHAIRPERSON GRIFFIS: It goes north, south,
24 correct?

25 MR. PRICE: Going north, at the northeast corner,

1 it's 24.96. And then going east?-.

2 CHAIRPERSON GRIFFIS: The entire alley, the large
3 portion. Forget where it is essentially, where it's close to
4 the site that is under appeal at this point. What I'm just
5 trying to establish here is overall context. Is the major
6 portion of the north, south, labeled on your Exhibit 1, Hughes
7 Court, 30 feet, is that your understanding?

8 MR. PRICE: Well.

9 CHAIRPERSON GRIFFIS: If you don't know, that's
10 fine.

11 MR. PRICE: You know as I read this map and what's
12 at issue here is that there is not 30 feet at the northeast
13 corner of this site and there is a townhouse directly in front
14 of that area.

15 CHAIRPERSON GRIFFIS: Yes. Okay, before you go
16 back down into that, my only question, are you aware and there
17 will be a lot of questions to this, so we'll get to where you
18 want to go, you need to start where I am and that is, the major
19 portion that is labeled on your Exhibit 1, Hughes Court, which
20 shows the alley, the north arrow is in it, there's a number 16
21 in it. Are you following where I am?

22 MR. PRICE: Yes.

23 CHAIRPERSON GRIFFIS: What is the dimension, if
24 you know it, of that area?

25 MR. PRICE: Going north, I would guess?-.

1 CHAIRPERSON GRIFFIS: I don't need a guess. I
2 mean if you don't know, you don't know.

3 MR. PRICE: I don't know.

4 CHAIRPERSON GRIFFIS: That's fine. And can you
5 describe to me, Mr. Price, how and where you get out to the
6 street from that alley?
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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MR. PRICE: Well, there's Queen Anne's Lane, do you see that, there are lots of little numbers obscuring Queen Anne's, just below the 16.

CHAIRPERSON GRIFFIS: Right. That goes directly out?

MR. PRICE: And then you can get out to the street around the hotel as well.

CHAIRPERSON GRIFFIS: Okay. Do you know the dimension of Queen Anne's Lane?

MR. PRICE: I don't know.

CHAIRPERSON GRIFFIS: That's fine. Any other questions from the Board? Cross examination at this time of Mr. Price?

MR. ABDULLAH: Yes, we have a couple questions. Has an order been established?

CHAIRPERSON GRIFFIS: Why don't you sit down and turn on the mike and that's a fabulous point. Why don't we set an order. We're trying just to wing it here as we're winding down a long day. We might as well in fact. This is what I propose. Well, Board members, would you rather question before or after cross examination? Cross examination first? Okay.

So I've already mistaken the entire order, but this is what we'll do. We will have cross examination and then

1 follow it up by the Board's questions. We will have redirect
2 after cross examination and after Board questions and if there's
3 redirect, of course there can be recross.

4 So at that point we will establish, from now on
5 and in fact, after you cross, I'll afford the Board time for any
6 further questions if they have it.

7 MR. ABDULLAH: Thank you, Mr. Chair. Actually, my
8 question was whether the appellee would go first or the owner
9 would go first, in terms of the order of cross.

10 CHAIRPERSON GRIFFIS: Oh, okay. Well, that's even
11 more interesting in setting that and frankly, I don't have an
12 opinion on it, it's up to you guys.

13 MR. ABDULLAH: Well, it seems as the appellee, we
14 would go first.

15 CHAIRPERSON GRIFFIS: That's fine with me.

16 CROSS EXAMINATION

17 MR. ABDULLAH: Mr. Price, again, thank you for
18 making yourself available for us to ask you a couple of
19 questions.

20 Would you please, to assist me in asking you
21 questions, would you turn to your Exhibit 1.

22 MR. PRICE: Yes, I have it open.

23 MR. ABDULLAH: Okay, now as we're looking at the
24 Hughes Court, do you see to the right of 909, the Lot 853?

25 MR. PRICE: I do.

1 MR. ABDULLAH: Is that within the Hughes Court?

2 MR. PRICE: Yes.

3 MR. ABDULLAH: Okay and do you have any knowledge
4 as to what type of structure that is?

5 MR. PRICE: It's a small row house.

6 MR. ABDULLAH: It's row house and does it have an
7 abutting alley that's 30 feet wide on any side?

8 MR. PRICE: No.

9 MR. ABDULLAH: Okay. Now with regard to the
10 houses?-.
11

12 MR. PRICE: Except in the front of it, of course.
13 Right there, where the 27.3 is.

14 MR. ABDULLAH: And that's vacant property there?

15 MR. PRICE: That's the alley.

16 MR. ABDULLAH: Okay, now with regard to the same
17 property, 853. If the property were to be demolished, is it
18 your opinion that they could rebuild that property or would they
19 be, because of the size requirement, would they be precluded
20 from the, either the lot size or the the abutment requirements?

21 MR. PRIZE: It's in a historic district, so I
22 don't think it could be demolished. If it's in a historic
23 district, it's not relevant.

24 MR. ABDULLAH: Well, let's hypothesize that there
25 was an act of God, it burnt down, could they rebuild it in your
opinion or would they be precluded because of the two problems.

1 CHAIRPERSON GRIFFIS: Let me just interrupt and
2 ask why we care about his opinion on that?

3 MR. ABDULLAH: Because we wanted to establish
4 whether or not there is a different rule that's being applied to
5 909 then is being applied to the other?-.

6 CHAIRPERSON GRIFFIS: But why would Mr. Price be
7 the person to answer that and why would it be important.

8 MR. ABDULLAH: Because there's no one else
9 available to. What we have here, property owners that are
10 complaining about a building permit wherein the rules are being
11 applied differently to 909 than have been applied to others and
12 there may be reasons and I want to explore it if they, in their
13 analysis, have determined why there is a special set of rules
14 that should apply to the owner in this particular appeal.

15 CHAIRPERSON GRIFFIS: Okay and what you're
16 indicating is that Lot 853 is one of those properties that may
17 be treated differently, is that correct?

18 MR. ABDULLAH: We're going to present testimony
19 that Lot 853 does not have a 30 foot.

20 CHAIRPERSON GRIFFIS: Okay, well, that's fine.

21 MR. ABDULLAH: Right.

22 CHAIRPERSON GRIFFIS: But let me just ask Mr.
23 Price, are you familiar with the condition of the Lot 853?

24 MR. ABDULLAH: So the R-3 overlay says that if any
25 building?-.

1 CHAIRPERSON GRIFFIS: Wait, let's not go there
2 yet. My question to you, Mr. Price, are you familiar with Lot
3 853 and it's current condition and proposed conditions? Do you
4 have any familiarity with that?

5 MR. PRICE: Yes, I see these townhouses there. I
6 don't quite understand the issue. They're row houses. They've
7 been there for a long time.

8 CHAIRPERSON GRIFFIS: We'll just hold it to
9 answering questions and that will be more efficient on this
10 point.

11 All right, what I've established, Mr. Price, is
12 that you have some familiarity with this and then perhaps you
13 will be able to answer the attorney for the District's question
14 and so I'll let you proceed, as precisely as you can to help
15 them actually understand what you're getting to and more
16 importantly, allow us to understand where you're going, would be
17 appreciated. Please proceed.

18 MR. ABDULLAH: As best I can, Mr. Chair. Do you
19 know whether or not, I'll ask again, just to clarify, is there a
20 30 foot alley that abuts Lot 853?

21 MR. PRICE: No, there is not.

22 CHAIRPERSON GRIFFIS: You know, frankly Mr. Price,
23 this seems to be a very easy question. There's two ways to do
24 it. You can be, yes, there is, no, there isn't or you don't
25 know.

1 MR. PRICE: In the overlay, any nonconforming
2 buildings, structure issues were grandfathered in. And then
3 there's a provision in the overlay, our overlay in the Foggy
4 Bottom, the historic district, if any building is destroyed by
5 fire, collapse, explosion or act of God, it may be reconstructed
6 or restored to its previous condition or to a more conforming
7 residential condition, other than a dormitory.

8 MR. ABDULLAH: That answers my question. I have
9 no further questions.

10 CHAIRPERSON GRIFFIS: Okay, thank you. Mr. Price,
11 what was the cite of that?

12 MR. ABDULLAH: This is 1523.2.

13 MR. TUMMONDS: Just a couple quick questions for
14 Mr. Price. Mr. Price, you're familiar with the statements that
15 Mr. Hitchcock prepared on behalf of the ANC in this case and in
16 regards to the issue of whether or not the subject property
17 properly abuts an alley that's 30 feet wide, are you familiar
18 with the statements that Mr. Hitchcock made in his response?

19 MR. PRICE: Well, I haven't memorized them, but?-.

20 MR. TUMMONDS: How about page 6?

21 MR. PRICE: Okay.

22 MR. TUMMONDS: And at page 6 of that statement, it
23 was mentioned that under ? 2507.2, an alley lot must abut an
24 alley that is at least 30 feet wide continuously. Do you agree
25 with that statement?

1 MR. PRICE: Yes. In my statement I said, 30 feet
2 means 30 feet.

3 MR. TUMMONDS: That's correct.

4 MR. PRICE: So we've clarified that in our
5 statement.

6 MR. TUMMONDS: Okay, could you show me what
7 portion in the language in 11 DCMR ?2507.2 says that 30 feet
8 width needs to say continuously?

9 MR. PRICE: It doesn't say continuously and in
10 fact, I quoted the provision of the law or the regs. It speaks
11 only about 30 feet.

12 MR. TUMMONDS: Correct, but you agree that it does
13 not say continuously?

14 MR. PRICE: (Nothing.)

15 CHAIRPERSON GRIFFIS: Yes, I think he did agree
16 and I think we agree also, having the regs in front of us.

17 MR. TUMMONDS: Next, just a quick question with
18 regards to the minimum lot size requirements.

19 MR. PRICE: Okay.

20 MR. TUMMONDS: You had testified or actually you
21 read the definition of the statement, could you explain to me
22 what your view of the last phrase of the regulations is, when it
23 refers to the fact that the building may not be enlarged or
24 replaced by a new building, unless it complies with all other
25 provisions of this Title.

1 I guess my question is, doesn't that in fact mean
2 that when it refers to other, it's referring to portions of the
3 zoning regulations, not including minimum lot dimension?

4 MR. PRICE: No, I don't agree with that reading.
5 I think other refers to everything other than, except as
6 provided in the Chapters 20 through 25.

7 MR. TUMMONDS: Right, that's the only questions I
8 have.

9 CHAIRPERSON GRIFFIS: Board members?

10 MR. PRICE: Can I submit a photograph for you of
11 this area?

12 CHAIRPERSON GRIFFIS: Well, actually, yes.
13 I can't hear you, so you're not on the record.

14 MR. ABDULLAH: Before it's considered, we might
15 want to find out if he is the one who took the photograph.

16 CHAIRPERSON GRIFFIS: Right, right and I
17 appreciate that and first of all, believe me, I'll be patient
18 even though it's 6:00 p.m. and that you're not an attorney and
19 ***.

20 MR. PRICE: Thank you.

21 CHAIRPERSON GRIFFIS: I absolutely understand.
22 I'm not an attorney either and you're up against some good ones.
23 So, nonetheless, what I do need to do is keep this logical.
24 This is an appeal and bottom line, this will be of a legal
25 standing. You're asking for this Board to rule and you're going

1 to want that ruling to hold up if it goes in your favor and so
2 what I need to do is keep the process here logical and ordered.

3 So normally and Ms. Sansone will tell me if I'm
4 incorrect, but you've had your statement and your witnesses and
5 now you're introducing things after actually being crossed.

6 That being said, why don't you explain what
7 photograph you would like to have put into the record.

8 MR. PRICE: These are photographs taken by Mrs.
9 Tyler, they're not professional photographs, of Hughes Mews.
10 They illustrate the narrowness of the space in this alley and
11 the smallness of the houses and how this new structure has a big
12 impact on them, especially when the distance?-, this new
13 structure does not meet the 30 foot minimum width.

14 CHAIRPERSON GRIFFIS: Well, if we established the
15 fact that it doesn't meet 30 foot width, what do we care how big
16 the house is or how small it is. I'm not sure the size and the
17 context is frankly not part of the appeal either.

18 I would say if it gives us some indication. I
19 mean, I'll let you submit it for the sake of submitting. I'm
20 just not sure of the relevance here, what it's actually going to
21 do for us. So, unless there's other objections, I would just
22 have you take two seconds. Actually, let him listen to me for a
23 second.

24 Take two seconds and just evaluate the fact, does
25 this substantiate the two portions of your appeal that you're

1 trying to do, in terms of minimum lot size and alley.

2 If this is showing us dimension photographs, then
3 by all means, it's very appropriate. If it's showing us
4 context, I'm not sure it's going to be helpful at this time.

5 And I'm going to give you two minutes to do that
6 because I have to call my daughter and tell her I'm not making
7 it home for dinner and I'll be right back, but I'm not going to
8 let any other Board members leave.

9 (Whereupon, the foregoing matter went off
10 the record at 6:12 p.m. and went back on the
11 record at 6:16 p.m.)

12 CHAIRPERSON GRIFFIS: Okay, did we decide about
13 the photograph? I thought I left for that decision?-. Oh,
14 good, let's just move ahead then. There we are. We can get
15 into the Zoning Administrator's case, if you are ready and
16 prepared. Fabulous and I understand you have visuals for us.
17 Oh, okay. Actually, if you would give them the table. Yes,
18 they like to spread out. Okay, you did indicate that you had a
19 site plan, is that correct.

20 MR. ABDULLAH: We have an accurate survey map.

21 CHAIRPERSON GRIFFIS: Survey map, fabulous.
22 Okay, please.

23 MR. ABDULLAH: Good afternoon, Mr. Chair, members
24 of the Board, members of the public. My name is Raouf Abdullah,
25 I'm with the Corporation Counsel. I represent the acting Zoning

1 Administrator and DCRA in this matter.

2 I'd like to briefly state that we intend to put
3 on some evidence that in fact, many of the properties within
4 Hughes Mews don't meet the requirements that have been
5 complained of by the appellants and that there are good reasons
6 and that the same reasons why the other properties that don't
7 meet the requirements are legal, also apply to 909 Hughes Mews.

8 And we're going to present a part, our testimony,
9 our case, our response, our responsive case in chief, Mr. Toye
10 Bello, who is the acting Zoning Administrator. We ask that he
11 be recognized and qualified as an expert and also as a fact
12 witness in this matter.

13 CHAIRPERSON GRIFFIS: Yes, I don't have any
14 problem with that at all as an expert and a fact. Board members,
15 any comments? Please.

16 TOYE BELLO

17 A person to be testifying before the Board of Zoning Adjustment
18 as a witness was duly sworn at this time.

19 MR. ABDULLAH: Okay, Mr. Bello, would you state
20 your name for the record?

21 MR. BELLO: Good evening again. Toye Bello on
22 behalf of the Zoning Administrator's office.

23 MR. ABDULLAH: Mr. Bello, are you familiar with
24 the substance of the appeal before us today?

25 MR. BELLO: Yes, I am, sir.

1 MR. ABDULLAH: And how are you familiar? What was
2 your relationship with regard to the issuance of the building
3 permit?

4 MR. BELLO: I personally reviewed the application
5 and approved it.

6 MR. ABDULLAH: Okay and on what basis did you make
7 the determination that it complied with the zoning regulations
8 in effect when you issued the building permit?

9 MR. BELLO: On the basis that it complied with all
10 the elements of the zoning requirements. These are the minimum
11 lot size, bulk height, set backs and the relevant section
12 pertaining to alley lot developments.

13 MR. ABDULLAH: I'd like to draw your attention,
14 first to the allegation that 909 Hughes Mews is not in
15 compliance with regard to minimum lot size. Do you have a view
16 that differs from the appellant's view?

17 MR. BELLO: Well, absolutely. ? 401.1 is an
18 exception to ? 401.3, as is ? 401.2, which allows an otherwise
19 unimproved vacant lot, under some conditions, which meet 80
20 percent of the requirement of the minimum lot size requirement
21 to be developed as a matter of right, but the relevant section
22 that applies to Hughes Mews or this subject premises, ? 401.1
23 and ? 401.1 reads in part, that except as provided in Chapters
24 20 through 25, that in the case of a building that was in
25 existence prior to 1958, which was constructed on a lot that did

1 not meet the requirements of ? 401.3, that such building may be
2 replaced if the building complies with all other requirements of
3 the zoning regulations.

4 MR. ABDULLAH: Now let me ask you, are you
5 familiar with the allegation that a property within this
6 particular area must abut an alley that's 30 feet wide?

7 MR. BELLO: Yes, I am, sir.

8 MR. ABDULLAH: And where is that regulation?

9 MR. BELLO: I believe it's ? 2507.2.

10 MR. ABDULLAH: The property at 909, does it comply
11 with that requirement?

12 MR. BELLO: It certainly does. The requirement
13 recognizing that more than one alley can abut an alley lot does
14 not require all such alleys to be 30 feet wide, it only requires
15 that one be 30 feet wide, as long as it leads to another 30 foot
16 alley that leads to a dedicated street.

17 MR. ABDULLAH: Are you familiar with any other
18 structures within that same neighborhood?

19 MR. BELLO: There are other structures on Hughes
20 Mews and if my recollection serves me right, some of them were
21 constructed since 1958 as a matter of right.

22 MR. ABDULLAH: You said the structures, do they
23 all have a similar application or a similar requirement with
24 regard to the 30 foot alley abutment?

25 MR. BELLO: Yes, sir. That's a prerequisite for

1 being able to build on an alley lot.

2 MR. ABDULLAH: With regard to that requirement, is
3 there anything that is unique or distinct about 909 that it
4 would permit it to be treated differently than these other
5 structures?

6 MR. BELLO: Absolutely not, sir.

7 MR. ABDULLAH: Now there's been testimony given by
8 the appellant for a 30 foot abutting alley that 30 foot alley
9 must be contiguous throughout a particular side, do you agree
10 with that?

11 MR. BELLO: There's no specific language in this
12 regulation to support that statement.

13 MR. ABDULLAH: What is your view of whether or not
14 it has to be a contiguous 30 feet?

15 CHAIRPERSON GRIFFIS: Didn't he just answer that?

16 MR. ABDULLAH: I asked him if he agreed with that
17 and he says no, but I want him to explain what in fact is his
18 understanding.

19 CHAIRPERSON GRIFFIS: I see, okay.

20 MR. BELLO: Well, ? 2507.2, to be viewed from the
21 perspective of the appellant would substitute the word "an" with
22 "all" alleys. It doesn't say all alleys, it only says an alley.

23 MR. ABDULLAH: No further direct.

24 VICE CHAIRPERSON RENSHAW: Could you go over that
25 again, Mr. Bello, where you talked about "an" alley. Could you

1 go through again.

2 MR. BELLO: And I'll read through ? 2507.2. A one
3 family dwelling shall not be erected or constructed in an alley
4 lot unless the alley lot abuts an alley, it doesn't say all
5 alleys that abuts the lot, 30 feet wide or more in width and has
6 from the alley, access to a street through an alley, again, not
7 all alleys, or alleys not less than 30 feet.

8 I think the reality is that there are alley lots
9 that are completely surrounded by alleys and that not all of
10 those alleys may be 30 feet wide, but I think one of those
11 alleys abuts an alley lot and leads to another alley that leads
12 to a dedicated street, than such lot is improvable as a matter
13 of right.

14 VICE CHAIRPERSON RENSHAW: I need to see your map.
15 I've got questions, but let's see the map.

16 CHAIRPERSON GRIFFIS: Why don't we have cross and
17 then we can get into our questions. Mr. Price, do you have any
18 cross examination? Mr. Price, it's all you, you just need to
19 turn your mike on.

20 CROSS EXAMINATION

21 MR. PRICE: Is it not true that existing
22 structures within Hughes Mews do not meet the 30 foot
23 requirement because they were grandfathered in under the R-3
24 overlay district for the historic district of Foggy Bottom.

25 MR. BELLO: I'm not sure I understand the context

1 of th question, but if we're to agree that some of these alley
2 structures on Hughes Mews were constructed post-1958. I mean
3 there isn't a disagreement there.

4 MR. PRICE: But there's been no new structures
5 since 1958 in the alleys.

6 MR. ABDULLAH: I would ask to caution Mr. Price,
7 if he's going to cross, not to argue with my witness.

8 MR. PRICE: Have there many any new structures
9 built in Hughes Mews since 1958?

10 MR. BELLO: I can't tell you that definitively,
11 but that's why I said to the best of my recollection. There may
12 have been one, but I don't believe that removes from the merits
13 of this discussion.

14 CHAIRPERSON GRIFFIS: Right and Mr. Price, that
15 kind of goes far a field in appeal of a specific case. I mean I
16 understand where you're trying to go with it and you could even
17 ask if Mr. Bello had not approved applications for construction
18 of the area, but I'm not sure he'll be able to recall.

19 I mean that might be a good question for you to
20 ask, but it does kind of go far a field, unless we then pull
21 that in and somehow it was identical to this case, that would
22 then substantiate the argument that this is not a or an error
23 was made in this appeal.

24 MR. PRICE: But I hear them saying at the same
25 time that there are other structures in this alley, on portions

1 of the alley that are less than 30 feet wide.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. PRICE: Well, that exists only because all of
4 those structures were grandfathered in under the R-3 overlay
5 when this area was down zoned after we had it designated a
6 historic district.

7 CHAIRPERSON GRIFFIS: Okay. What I've heard Mr.
8 Bello testify is that he approved this permit because it was
9 compliant with the zoning regulations, so if you want to go to
10 questions and I understand the context you're putting this into,
11 but why don't you continue with your questions of him based on
12 that.

13 MR. PRICE: So Mr. Bello, why, well let's see,
14 what should I say. Could you explain for me, how a matter of
15 right rule exists for a new construction when the law says 30
16 feet must separate the alley, there must be a 30 foot width for
17 the alley for any new building within this area?

18 MR. ABDULLAH: I have to object and I do so
19 reluctantly. Mr. Bello, I think this problem with this *** of
20 new construction, that is not our point of view that this is new
21 construction, so I'm objecting for that reason.

22 In fact, Mr. Bello never said that, but it's
23 important because our position is in fact that this is not new
24 construction, but replacement construction, but if we let that
25 go, we're not going to concede that.

1 CHAIRPERSON GRIFFIS: That's an interesting point
2 you bring up, new versus replacement. A replacement
3 construction, Mr. Bello, would invoke ? 2507.2 on this case?

4 MR. BELLO: It would.

5 CHAIRPERSON GRIFFIS: Okay, so the question that
6 seems to me that Mr. Price is trying to make is was the permit
7 of construction, was the permit application compliant with ?
8 2507.2. Is that right?

9 MR. PRICE: That is correct.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. PRICE: Thank you.

12 CHAIRPERSON GRIFFIS: That's okay. Mr. Bello's
13 response would be?

14 MR. BELLO: That it is in compliance. That in
15 fact, this lot abuts a lot that's 30 feet wide and leads to
16 another one that's 30 feet wide.

17 MR. ABDULLAH: Mr. Chair, I think the problem
18 comes in, the question is asked about a new construction. Mr.
19 Bello has never testified to that. I don't want him answering
20 questions that assumes the correctness that he's now adopting
21 language he never used and in fact, that undercuts our position
22 that this building was preexisting, that this building that is
23 now being built is replacing a preexisting structure that was
24 built prior to May 12, 1958.

25 So it's important that we not allow Mr. Bello to

1 adopt that construction that he never used in his direct
2 testimony.

3 CHAIRPERSON GRIFFIS: And that's fine and I think
4 I saved you in that Mr. Bello just answered the question,
5 whether the permit application was conforming to ? 2507.2 and he
6 answered affirmatively that it was. Now I believe Mr. Price was
7 going to, can you illustrate how it complies?

8 MR. BELLO: Well, I believe that the evidence, at
9 least the only evidence of pertinence here is the record of the
10 surveyors of the district, which indicates the width of existing
11 alleys in the entire district and those records should reflect
12 that the property, which is the subject of appeal here, abuts an
13 alley that's 30 feet wide and leads to another alley, I believe
14 Queen Anne's is what it's called, is 30 feet wide, that leads to
15 a street.

16 CHAIRPERSON GRIFFIS: Mr. Price, did you catch all
17 that?

18 MR. PRICE: As our, but I can't testify now?

19 CHAIRPERSON GRIFFIS: No, this is cross
20 examination. But did you understand his answer?

21 MR. PRICE: So doesn't the plat indicate that
22 there are portions of this alley that this structure abuts that
23 are less than 30 feet in many spots?

24 CHAIRPERSON GRIFFIS: Right and if you have a
25 quick response to that. I think that's a redundant question,

1 Mr. Price, because I think Mr. Bello's position and I know your
2 position and understanding Mr. Bello's position and that's
3 frankly what we're trying to get to, is everybody's position
4 coming out.

5 So if I understand it, we're asking too many
6 times. So Mr. Bello, do you have a quick response to that?

7 MR. BELLO: Well, ? 2507.2 does not require all
8 alleys that abut an alley lot to be 30 feet wide.

9 CHAIRPERSON GRIFFIS: Okay, two last things, Mr.
10 Price. The Shaw Pittman Exhibit No, I forget where it is, we've
11 torn it out of their submittal. A or B, it's actually B because
12 they do their inserts in the back of the, very confusing stuff
13 actually. Have you seen this, Mr. Price?

14 MR. ABDULLAH: Mr. Chair, my staff has an
15 additional copy.

16 MR. PRICE: Yes, I did see it, but I didn't bring
17 it with me.

18 CHAIRPERSON GRIFFIS: Okay, but you've reviewed
19 this. I want to get that in your hand, you have that now. Mr.
20 Bello, you've just been given an indication that Queen Anne's
21 Lane, which is the alley access to the street, Queen Anne's
22 Lane, which is the alley access to the street is 30 feet wide.
23 Is that correct?

24 MR. BELLO: And the surveyor's records should
25 confirm that.

1 CHAIRPERSON GRIFFIS: Okay and is the surveyor's
2 record part of the submission at all, in either of the parties,
3 participants? Okay, so we actually don't have before us
4 documentation that would substantiate that, but it is your
5 testimony that it is.

6 MR. BELLO: We can provide that, that's no
7 problem.

8 CHAIRPERSON GRIFFIS: All right then. Mr. Price,
9 any other cross examination?

10 MR. PRICE: Do you realize that the surveyor's map
11 leaves out structures in this alley to show that far less than
12 30 feet from the 909 Hughes Mews?

13 MR. BELLO: I don't believe that there's any
14 requirements in the zoning regulations that require other
15 structures to be more than 30 feet away from another alley
16 building.

17 CHAIRPERSON GRIFFIS: That's all you have? Okay,
18 Mr. Price, thank you.

19 MR. ABDULLAH: Mr. Chair, very brief, very brief.

20 REDIRECT EXAMINATION

21 MR. ABDULLAH: Mr. Bello, with regard to 909
22 Hughes Mews, was there a structure on that site that was there
23 prior to May 12, 1958?

24 MR. BELLO: Yes, there was and that should be
25 evidenced by a raze permit that was issued to raze the existing

1 building.

2 MR. ABDULLAH: And what is the legal significance
3 of having a structure on that site that was built before May 12,
4 1958?

5 MR. BELLO: That's the very essence of ? 401.1,
6 that if a building exists on a lot prior to 1958, even if that
7 lot does not meet the requirements for ? 401.3., as long as your
8 replacement building complies with all other requirements of the
9 zoning regulations, then you could replace that as a matter of
10 right.

11 MR. ABDULLAH: As a consequence, you are saying
12 that the appellant's point, where they got to grandfathering,
13 applies equally to the property that's the subject of this
14 appeal?

15 MR. BELLO: In the instance of this exception that
16 is provided specifically under that section, yes.

17 MR. ABDULLAH: And just to clarify for the record,
18 are you also testifying that the property that's the subject of
19 this appeal has access to the street through an alley that is at
20 least 30 feet wide?

21 MR. BELLO: As it would be corroborated by D.C.
22 surveyor's records, yes.

23 MR. ABDULLAH: Nothing further.

24 CHAIRPERSON GRIFFIS: Thank you. And I believe?-.
25 Actually, no, I think we need to give Mr. Tummonds an

1 opportunity to cross and sorry, I let some redirect go, but Mr.
2 Price, what that will mean is you can recross, but let's get
3 this cross examination through.

4 MR. TUMMONDS: Just a couple quick questions, Mr.
5 Bello. First, it's standard procedure that in all building
6 permit applications, an official surveyor's plat from the Office
7 of Surveyor's is required to accompany all building permit
8 applications?

9 MR. BELLO: That is correct.

10 MR. TUMMONDS: And you're familiar with Exhibit A,
11 I believe to the statement filed by the property owner on
12 February 6?

13 MR. BELLO: That is correct.

14 MR. TUMMONDS: And in the statement you noted that
15 on October 17, 2001 that the structure complies with all
16 requirements and zoning regulations?

17 MR. BELLO: That is correct.

18 MR. TUMMONDS: And that was based on the notation
19 off the surveyor's plat that shows that it abuts an alley that
20 is 30 feet wide?

21 MR. BELLO: That is correct.

22 MR. TUMMONDS: The second, with regards to the ?
23 401.1, is it your testimony in your experience that the part of
24 the regulations that states that the building needs to apply,
25 needs to satisfy all other requirements. That means that it

1 does not have to satisfy the minimum lot dimension requirements,
2 is that correct?

3 MR. BELLO: Because that is the very essence of
4 the exception.

5 MR. TUMMONDS: Thank you.

6 CHAIRPERSON GRIFFIS: Mr. Price, any recross based
7 on the redirect?

8 MR. PRICE: No.

9 CHAIRPERSON GRIFFIS: Okay. Thanks. Thank you
10 very much and let us move on. Mr. Tummonds.

11 MR. TUMMONDS: Thank you. Paul Tummonds, on
12 behalf of the property owner, Mr. Farhad Nasserri. We'll be very
13 brief. We think that we have filed a rather thorough and
14 complete statement in response to the appellant's case.

15 We think that statement completely and thoroughly
16 address all of the appellant's arguments and we believe that the
17 appellant has failed to carry his burden of the proof in this
18 case as required by the established procedures of the BZA.

19 What we are here to do it to testify. Mr.
20 Nasserri will talk about the process that he undertook to gain
21 community input and the input the Historic Preservation Review
22 Board and BLRA in this process to show that in fact, that ANC-2A
23 did have a large degree of discussion about this project prior
24 to the issuance of the building permit.

25 With that, Mr. Nasserri will make a brief

1 statement. Thank you.

2 MR. NASSERI: Thank you, Mr. Chairman. My name is
3 Farhad Nasserri of 2946 Chain Bridge Road. I am the owner of 909
4 Hughes Mews.

5 During, I believe January or February of 2001, I
6 got involved with the previous owner of this property with the
7 concept of developing it for him or for myself.

8 I had some plans made ready and we had
9 discussions. I believe my first discussion in May with the ANC-
10 2A, informally, actually with Ms. Tyler. I met at her house,
11 presented the plans and after the presentation I requested some
12 input from her.

13 She advised me that the height of the project was
14 too much because we had gone to the 30 foot allowed on the R-3
15 zoning. So consequently we reduced that, we brought it down to
16 comply with the existing homes, the two story homes, so we
17 brought the height down.

18 In any case, I made a formal presentation at the
19 following ANC meeting and after that we made a presentation at
20 the Historic Preservation, which the Chairman of the Historic
21 Preservation asked me to modify the plans some more and we did
22 so.

23 We presented that to the the Historic
24 Preservation, to the ANC and I made, again, a formal
25 presentation at the following, which would be, I believe, July

1 meeting of the Historic Preservation as a second formal
2 presentation and then after that, I met with the Historic
3 Preservation when they approved the plans.

4 At each of these periods, prior to modifying the
5 plans, I met with the DCRA staff to make sure that, since I am
6 not zoning attorney, I was just trying to make sure that what we
7 are trying to modify to will comply with the zoning and when I
8 achieved that, then we would do the modifications.

9 Furthermore, at the completion of the Historic
10 Preservation and the approval by the Historic Preservation, we
11 submitted our plans to DCRA for final approval, which this
12 process would typically take a couple of months.

13 I believe sometime in October, my plans were
14 ready. However, the permits were not issued, specifically the
15 raze permit was not issued and I was advised that the reason the
16 raze permit was not issued was because they had to advise ANC-2A
17 for a one month period and they had sent a letter out, the
18 specific date and they typically give a one week time for the
19 letter to arrive at the ANC and then they would, one month after
20 that date, they would issue the permit and I have the exhibit to
21 show that.

22 My construction permit was issued. However, the
23 raze permit, which is the first one that I need to do prior to
24 construction, was not issued for approximately two and a half
25 weeks after that.

1 MR. TUMMONDS: Thank you and we would also have a
2 very brief presentation from the property owner's zoning
3 consultant, Ms. Gladys Hicks.

4 Ms. Hicks is a former Zoning Administrator.
5 She'll make a brief statement and then she's available for any
6 questions that the Commissioners may have. We would ask that
7 Ms. Hicks be admitted as an expert in this case. She has been
8 admitted by the BZA as an expert in other cases. She was the
9 former Zoning Administrator of the District of Columbia. Ms.
10 Hicks.

11 CHAIRPERSON GRIFFIS: Have you put her
12 qualification in on this case?

13 MR. TUMMONDS: No, we haven't.

14 CHAIRPERSON GRIFFIS: Okay, Board members, it
15 would probably be good to do, submit at some point. We do have
16 a new Board member. I don't have any problem accepting Ms.
17 Hicks. We have, as indicated, accepted before in the past. We
18 will do that today, but if we can that on the record.

19 MR. TUMMONDS: In fact, I have copies of Ms.
20 Hicks' resume.

21 CHAIRPERSON GRIFFIS: Okay, good, if we could just
22 get that.

23 MR. TUMMONDS: Ms. Hicks, have you reviewed the
24 record in this case?

25 MS. HICKS: Yes, I have.

1 MR. TUMMONDS: And you have heard the testimony
2 presented by the Zoning Administrator in this case?

3 MS. HICKS: Yes, I have.

4 MR. TUMMONDS: Would you give us your brief
5 conclusion with regards to whether the Zoning Administrator
6 acted properly in issuing this building permit?

7 MS. HICKS: From looking through all of the
8 documents available at the Department of Consumer and Regulatory
9 Affairs and after listening to the Zoning Administrator and
10 others here, I've come to the conclusion that Mr. Toye Bello
11 followed the zoning regulations within the strict compliance,
12 that he really has no choice but to rule strictly and follow the
13 pertinent rules and regulations and those are specifically ??
14 1523.1, 2507.2 and 401.1

15 On the plat, the structure does abut an alley
16 that is 30 feet in width and it continues to another alley that
17 is 30 feet in width and it does go to a dedicated street.

18 The structure is a single family dwelling, which
19 is permitted under that condition. The fact that there is also
20 another alley, which is less than 30 feet, which is adjacent on
21 another part of the property would not have kept Mr. Bello from
22 approving the permit application.

23 Based on ? 2507.2, it does not state that you
24 have to be surrounded by alleys 30 feet in width, it just says
25 that you have to abut an alley that's 30 feet in width and that

1 alley has to lead to a dedicated street.

2 MR. TUMMONDS: Thank you. Ms. Hicks and Mr.
3 Nasserri are both available for questions.

4 In conclusion, I think that the property has
5 showed that he is done what is really requested of all
6 developers in the District.

7 He's met with the ANC, he tried to address their
8 concerns. He took those changes to the Building and Land
9 Regulation Administration. He worked with the BLRA staff. A
10 permit was issued. He has then commenced work on that properly
11 issued permit.

12 It's mentioned in our statement that work
13 continues and that this project is coming to fruition and we
14 would ask that the BZA deny this appeal. Thank you.

15 CHAIRPERSON GRIFFIS: Thank you, Mr. Tummonds.
16 Ms. Hicks, a questions, well, actually, we're doing cross
17 examination's first, so Mr. Price?

18 MR. PRICE: Nothing.

19 CHAIRPERSON GRIFFIS: Nothing, okay, thank you.

20 MR. ABDULLAH: We have nothing.

21 CHAIRPERSON GRIFFIS: I appreciate that. You
22 speaking up that is, that you have nothing. No, no, no, I will
23 put it on the record that you have no cross examination at this
24 time.

25 Ms. Hicks, you indicated that it abuts a 30 foot

1 alley, it leads to a 30 foot alley that accesses a street,
2 correct?

3 MS. HICKS: Correct, a dedicated street, yes.

4 CHAIRPERSON GRIFFIS: Do you have documentation
5 today that shows what you did to assess that?

6 MS. HICKS: I checked records in the D.C. Office
7 of Surveyor and I also looked at plats.

8 CHAIRPERSON GRIFFIS: Okay. Are you familiar with
9 the owners exhibit attached to the Historic Preservation, which
10 is Exhibit No. C?

11 MS. HICKS: Let me see if I have that exhibit.
12 That looks like a Office of Sanborne map.

13 CHAIRPERSON GRIFFIS: Right. Have you followed
14 the Sanborne map up Hughes Court, north from the site? This
15 Sanborne is actually reading 31 feet Hughes Court dimension, 30
16 feet on the northern portion. Are you following where I am?

17 MS. HICKS: Yes.

18 CHAIRPERSON GRIFFIS: Okay, you're traveling north
19 on Hughes Court and you take a left on Queen Anne's Lane
20 northwest, as indicated. This Sanborne indicates what is the
21 dimension of that portion of the alley.

22 MS. HICKS: Right, it indicates that it's 25 feet.

23 CHAIRPERSON GRIFFIS: Okay, could this Sanborne be
24 different in dimension than the plat that would be on record on
25 at the District?

1 MS. HICKS: It's possible because official records
2 are kept in the D.C. Surveyor's office.

3 CHAIRPERSON GRIFFIS: Okay, are any of the owner's
4 submissions an official plat that would indicate the actual
5 alleys.

6 MR. TUMMONDS: We can provide that for the record.

7 CHAIRPERSON GRIFFIS: I've already gotten that
8 from Mr. Bello, he told me he's going to do that, but you can do
9 it also. Mr. Price, let me come to the quick here. Do you have
10 any documentation that shows me the dimension of the alley that
11 accesses the street?

12 MR. PRICE: Only the same material you have that
13 shows 25 feet for Queen Anne's.

14 CHAIRPERSON GRIFFIS: You're referring to the
15 owner's Exhibit C.

16 MR. PRICE: Well, I think this is something we got
17 from the Zoning Administrator's office, DCRA. It was submitted
18 as part of our material.

19 CHAIRPERSON GRIFFIS: No, I understand. On yours,
20 yours is Exhibit 1.

21 MR. PRICE: Right.

22 CHAIRPERSON GRIFFIS: Is it dimension? Mr. Levy,
23 what's the dimension of Queen Anne's Lane on Exhibit 1?

24 MEMBER LEVY: It appears to say that it's just
25 over 25 feet.

1 CHAIRPERSON GRIFFIS: I see, right, right, right,
2 25.21. All right, any other question of Ms. Hicks? Redirect?
3 Fabulous.

4 Let me also just get some clarification. On
5 standard procedure we would call for the ANC at this time to
6 make their case, but that you are one and the same, we are not
7 doing that, correct?

8 MR. PRICE: That is correct.

9 CHAIRPERSON GRIFFIS: Good. At which point I
10 think we ought to have an open session of questions here for
11 Board members, if there is any of the testimony that was given
12 this evening. Let's take this quick opportunity to do that. We
13 can go to those question and then we'll actually go to rebuttal
14 and closing statements by the appellant. Ms. Renshaw, I will
15 turn it to you, who would you like to question?

16 VICE CHAIRPERSON RENSHAW: I would like to
17 question, Mr. Bello, if you would please.

18 CHAIRPERSON GRIFFIS: Mr. Bello, if you have a
19 moment, would you come to the table?

20 VICE CHAIRPERSON RENSHAW: A statement that you
21 had made. You were into a discussion about the replacement
22 construction is not new and you stated, according to my notes,
23 that this building is replacing a preexisting structure built
24 prior to 1958. What's your definition of a replacement
25 structure?

1 MR. BELLO: Actually, those were general counsel's
2 words.

3 VICE CHAIRPERSON RENSHAW: Oh, general counsel who
4 was acting on your behalf I take it. But if you could define
5 for us, a replacement structure?

6 MR. BELLO: There's really only a semantic
7 difference. I mean new construction is new construction. If
8 you raze a building and you're building a new, it is considered
9 new construction.

10 But the context in which I believe the general
11 counsel was applying is to bring home the point of ? 401.1, to
12 indicate that there was a preexisting building on this lot and
13 that is why ? 401.1 would be applicable in this instance.

14 VICE CHAIRPERSON RENSHAW: If there were a shed in
15 my backyard and I razed it, I had a permit and I razed it and I
16 built a church, could I do that?

17 MR. BELLO: Well, as long as, again, the section
18 refers to a building. A building has a specific definition in
19 the zoning regulations. It doesn't specify what type of
20 building or to what use that building is put.

21 As long as you are replacing with a conforming
22 building and a conforming use, you definitely would be able to
23 do so.

24 VICE CHAIRPERSON RENSHAW: All right. It doesn't
25 mean that you have to replace with a same size building in order

1 to fit the definition of a replacement structure.

2 MR. BELLO: Well, actually, absolutely not. In
3 fact, in nonconforming buildings that may be destroyed by an act
4 of nature, the specific nonconformities that would allow you to
5 recreate that nonconforming structure is with respect to width
6 of lot and area of lot. So ? 401.1 is consistent with what's
7 allowed under Chapter 20.

8 VICE CHAIRPERSON RENSHAW: Mr. Price has mentioned
9 some language in the overlay that had to do with replacement
10 structures I believe and I would just like to have that brought
11 back to mind because it seems to work against what you have said
12 on the act of nature.

13 Mr. Price, would you like to come to the table
14 and just reiterate for us the overlay?

15 MR. PRICE: This is ? 1523.2.

16 VICE CHAIRPERSON RENSHAW: That's it.

17 MR. PRICE: That says if any building is destroyed
18 by fire, collapse, explosion or act of God, it may be
19 reconstructed or restored to its pervious condition or to a more
20 conforming residential condition, other than a dormitory.

21 VICE CHAIRPERSON RENSHAW: To a more conforming.

22 MR. PRICE: Or restored to it's previous condition
23 or to a more conforming residential condition.

24 VICE CHAIRPERSON RENSHAW: All right. What is
25 more conforming? Mr. Bello, what's more conforming, under ?

1 1503.2.?

2 MR. BELLO: Well, ? 1523.2 only speaks with
3 buildings that are destroyed by fire, collapse, explosion or an
4 act of God. That's not the case here. This building was
5 originally razed by the property owner, so that section is not
6 applicable, even though that section seems to allow more than
7 the builder has asked for here, but it's not relevant to this
8 site.

9 VICE CHAIRPERSON RENSHAW: But it was willingly
10 raised by the property owner because the ZA had given it's
11 approval for it to be razed and replaced by a two story house.

12 MR. BELLO: That was the, I believe, the intent of
13 the owner of the property. My concern would have been whether
14 they could do that as a matter of right under the regulations,
15 that's it.

16 VICE CHAIRPERSON RENSHAW: You had a concern
17 whether that could be done?

18 MR. BELLO: No, that would have been my only focus
19 of review, whether they got the appropriate permits and whether
20 they could properly replace those buildings, as long as the
21 replacement was in conformance with all the aspects of the
22 zoning regulations.

23 VICE CHAIRPERSON RENSHAW: And the raze permit
24 went to the ANC?

25 MR. BELLO: I believe the ANC was notified, that's

1 correct.

2 VICE CHAIRPERSON RENSHAW: And did the ANC weigh
3 in, in advance, sign a form saying that it had no difficulty
4 with the raise permit?

5 MR. BELLO: I can't speak to that, but I would
6 surmise since the applicant did eventually obtain the raze
7 permit.

8 VICE CHAIRPERSON RENSHAW: But the raze permit, I
9 thought I understood that the raze permit was after you had
10 already given out, issued the construction permit? Am I right,
11 did I hear correctly?

12 MR. BELLO: That may very well be so, but your
13 question is?

14 VICE CHAIRPERSON RENSHAW: I'm just trying to get
15 at whether the ANC had enough time to give some feedback to the
16 Zoning Administrator's office, the DCRA, which is required as I
17 understand it, prior to the issuance of any construction permit?

18 CHAIRPERSON GRIFFIS: We may be confusing a little
19 bit. If the notification of the raze permit went to the ANC, it
20 would not go back to Mr. Bello. Is that correct?

21 MR. BELLO: That is correct.

22 CHAIRPERSON GRIFFIS: Who would it go back to?

23 MR. BELLO: It would go back to the supervisor of
24 the Permit Section.

25 CHAIRPERSON GRIFFIS: And so the indication that

1 Mr. Bello, if I'm correct, is making, just for clarification
2 here, is the fact that he looked and saw that there was the raze
3 permit granted, he would move ahead with his processing of the
4 permit for construction and he would do his zoning analysis and
5 approval or denial. Is that correct?

6 MR. BELLO: Well, those two processes can occur
7 concurrently.

8 CHAIRPERSON GRIFFIS: Right, the raze permit and
9 the construction permit.

10 MR. BELLO: Exactly.

11 MS. PRUITT: Mr. Chair, maybe for a little bit of
12 clarification. All permits are to go the ANC, but I guess the
13 appealing or the contesting of a permit that way is a DCRA
14 process and not before the Board and so therefore, it's not
15 within the Board's jurisdiction of whether or not the ANC had
16 proper notice and I believe there's a process through DCRA that
17 you then appeal internally that way. So there's kind of a
18 crossing of two types of appeals.

19 CHAIRPERSON GRIFFIS: Okay and what we've
20 established then is Mr. Bello would not have knowledge
21 necessarily of all those workings, but rather?-.

22 VICE CHAIRPERSON RENSHAW: It's just that Mr.
23 Nasserri said that the construction permit was issued and the
24 raze permit was issued two and a half weeks after the
25 construction permit. So I'm just wondering out loud, did the

1 ANC have enough time to weigh in prior to your issuance of a
2 construction permit and it just sounds like you were barreling
3 ahead, issuing the permits without the appropriate time given to
4 the ANC to say, hey, wait a minute, we think we've got a problem
5 over here.

6 Hence, Mr. Nasserri went on with his construction
7 and now we find ourselves in this difficult situation where the
8 appeal has been made, Mr. Nasserri's continued with his
9 construction and there is a glitch.

10 CHAIRPERSON GRIFFIS: Okay, let's get a quick
11 answer from the ANC.

12 MR. PRICE: We did not have 30 working days, we
13 were not notified within enough time required by law, before
14 this building was actually torn down.

15 CHAIRPERSON GRIFFIS: Are you presenting
16 documentation that shows when you received notice and letters?

17 MR. TUMMONDS: Mr. Chairman, I object. I mean the
18 demolition permit process and notice is beyond the scope of the
19 Zoning Administrator's determination of the adequacy of this
20 building permit. I think that's completely outside the scope of
21 this review.

22 CHAIRPERSON GRIFFIS: I appreciate that, Mr.
23 Tummonds and I would agree. What I was trying to do was just
24 put this to quick rest and it does not seem that it can be.
25 Okay, I'm going to uphold that objection and ask if there are

1 any other questions.

2 MEMBER LEVY: Mr. Chair, a question for Ms. Hicks,
3 please. Ms. Hicks.

4 MS. HICKS: Yes?

5 MEMBER LEVY: There are two drawings in the
6 record. One submitted by the appellant and one submitted by the
7 owner's representative, both of which depict Queen Anne's Lane
8 as approximately 25 feet in width.

9 My question is, if in fact, Queen Anne's Lane is
10 proven to be 25 feet in width, is it still your position that
11 this building permit was issued properly?

12 MS. HICKS: I'm not able to answer that because I
13 would have to check first with the D.C. Surveyor's Office to see
14 whether Queen Anne's is a dedicated street or whether it's just
15 considered a public alley.

16 MEMBER LEVY: I believe the question on hand is
17 whether or not the 30 foot alley which abuts the property is
18 then connected to public street by means of another alley at
19 least 30 feet in width.

20 MS. HICKS: Let me check ? 2507. It states that
21 under ? 2507.2, a one family dwelling shall not be erected or
22 constructed on an alley lot unless the alley lot abuts an alley
23 30 feet or more in width and has from the alley access to a
24 street through an alley or alleys not less than 30 feet in
25 width.

1 CHAIRPERSON GRIFFIS: So Mr. Levy's question is
2 hypothetically, if Queen Anne's Lane was 25 feet, would that
3 comply with that section? Your answer is, you need to check
4 with the surveyor's to see whether Queen Anne's Lane is actually
5 a public road or an alley?

6 MS. HICKS: Yes, because not all?-. It could be
7 either considered an alley or a dedicated part of a street, so
8 before I give a definitive answer, I would like to look that up
9 in the surveyor's office because that would be the only place
10 that would have the definitive records.

11 CHAIRPERSON GRIFFIS: Okay. Well, as a matter of
12 fact, in this appeal what we're going to need to look at is
13 exactly what Mr. Bello reviewed in the application on this. I
14 think you'll all be going to the same place.

15 MS. HICKS: Yes.

16 CHAIRPERSON GRIFFIS: So it's going to be
17 pertinent obviously that Mr. Bello submit what we reviewed to
18 make his determination and we will get to that.

19 You bring up an interesting issue of whether
20 Queen Anne's is actually a public alley or a public right of way
21 or street.

22 Any other questions, Board members? Let me just
23 make a quick clarification. Mr. Etherly has family obligations
24 and has to step out and check on those and I do not expect him
25 to come back, but he will get the entire record before any

1 decisions or if he decides this case.

2 So Board members, anything else? Okay. It's
3 7:05 p.m. We're making great time. I want to do this. I want
4 to take 15 minutes. I know it's difficult, but frankly, I have
5 some obligations and phone calls to cancel, unless you can go on
6 without me.

7 We're going to go into rebuttals and closing
8 statements at this time. Take ten minutes? Let's take ten
9 minutes, use the bathroom, grab some water. We'll be right
10 back.

11 (Whereupon, the foregoing matter went off the
12 record at 7:10 p.m. and went back on the record
13 at 7:23 p.m.)

14 CHAIRPERSON GRIFFIS: Mr. Price, do you want to
15 come to the table. Our last and final step in this appeal will
16 be the rebuttal and closing statement by the appellant. Mr.
17 Price, that is you and all you.

18 MR. PRICE: I'll be brief. This is about a legal
19 interpretation of the regulations. Our interpretation is very
20 different from Mr. Nasser's in the following ways.

21 First of all, we believe the requirement for a
22 minimum lot size applies here and to our reading, that provision
23 in the regs, ? 401.1 is very clear.

24 On the issue of 30 feet in width, an alley 30
25 feet in width, Mr. Nasser's attorney argues and as does the

1 city that an alley means one alley. To my mind, those are not
2 equal. This is about alleys in Hughes Mews, the width varies
3 throughout Hughes Mews. This property abuts portions of Hughes
4 Mews alley that are less than 30 feet. It's as simple as that.

5 The word an, if we have to define an now, does not mean one.

6 Second of all, it does not meet the requirement
7 of this same section, 2507, and has from the alley access to a
8 street through an alley or alleys not less than 30 feet in
9 width.

10 The issue is Queen Anne's Lane. Now we know in
11 Foggy Bottom that the Federal Government is beginning to support
12 a program of rehabilitation of alleys in important residential
13 neighborhoods throughout the District.

14 Included in this project will be Hughes Mews, as
15 well as another ally in Foggy Bottom. And for this project,
16 Queen Anne's Lane is considered an alley, so this new building
17 project at 909 does not meet that requirement either of ?
18 2507.2.

19 I think what's also important to keep in mind
20 here is that we have an overlay and yes, nonconforming uses get
21 grandfathered in under this overlay and maybe that creates some
22 kind of confusion, but this is new construction and it should
23 meet the requirements of the regulations and this project needs
24 two variances from our point of view.

25 CHAIRPERSON GRIFFIS: Thank you, Mr. Price. Are

1 you intending that to be your closing also?

2 MR. PRICE: I'm sorry?

3 CHAIRPERSON GRIFFIS: Are you intending that to be
4 your closing, there was no rebuttal to the closing arguments?

5 MR. PRICE: I think so, yes. That is correct,
6 yes.

7 CHAIRPERSON GRIFFIS: Okay. All right. I think
8 we can leave it at that then. Let us do this. I think we're
9 going to need some time to look over some of this stuff. We
10 also have asked for information to be submitted into the file.
11 We can set this for decision making. I would say let us check
12 the first available date at this time for that.

13 MS. PRUITT: The first available date would be
14 March 5 and it's my understanding that the only thing to be
15 submitted would be the surveyor's map that Mr. Bello used to
16 make the decision, that his decision was based on.

17 CHAIRPERSON GRIFFIS: Yes, that's definitely a
18 submittal requirement. Board members, talk to me quickly about
19 other issues for this. Mr. Price actually did just bring up the
20 fact that there's a Federal Project that designates Queen Anne's
21 as an alley. I'm not sure the relevance to this or how it would
22 be designated, but frankly, I'm interested in knowing what that
23 is and what project that is, so I would ask for Mr. Price to
24 submit documentation that he has on that rehabilitative project
25 as indicated by some Federal Agency or possibly monies.

1 You can make any clarifications you need when you
2 submit that in so that we can understand exactly what your point
3 was. Anything else? I really hate to end this.

4 MR. PRICE: Do we have to submit findings of fact?

5 CHAIRPERSON GRIFFIS: Yes, I mean that would be
6 helpful if you would like to do that, yes.

7 MS. PRUITT: Because of the March 5 meeting
8 though, it's going to be a short turnaround.

9 CHAIRPERSON GRIFFIS: Yes, it's going to have to
10 be very fast.

11 MS. PRUITT: Very tight. Which meaning, the
12 information from Mr. Bello and from Mr. Price needs to be
13 submitted by this Friday. Yes, if you want to keep the March
14 meeting. Because you then have a week to respond to each
15 other's information. Because we need to have everything in the
16 office for submission by the 25th, Monday the 25th, for the
17 decision meeting on the 5th of March. Otherwise, we move it to
18 next month.

19 CHAIRPERSON GRIFFIS: Let's be clear about why
20 that is. We need time, first of all, to review this. The Board
21 will have to get all of it. It will all have to be assembled.
22 If you can't make the Friday, that's worth knowing now. We will
23 not accept it if it doesn't come in by Friday, so you will not
24 have that submission into this file.

25 If you can not make that, you can indicate that

1 now and that's fine by us. It does move the decision making
2 another month.

3 MR. PRICE: We'll get it in.

4 CHAIRPERSON GRIFFIS: Okay, Mr. Price has
5 indicated that he can do that. Mr. Bello, do you have any
6 problem getting in the surveyor's map?

7 MS. PRUITT: None whatsoever.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. PRUITT: And so that would mean, Mr. Price,
10 that if you are proposing a draft order, that would need to be
11 in by the following week, which is the 22nd. I'm sorry, the 25th
12 also. Well, you can make a response to what Mr. Bello submits
13 by the 22nd or the 25th. Actually, it should be the 25th, let's
14 keep it all one date.

15 So you don't have to respond to his information,
16 but if you'd like to, that's the date it's due and also a draft
17 order from either side would be due that day too.

18 CHAIRPERSON GRIFFIS: Okay, so one more time.
19 We're going to run down dates and submissions.

20 MS. PRUITT: Mr. Bello is to provide us with the
21 official surveyor drawing that he used to make the decision.
22 Mr. Price is to provide us with information on the new Federal
23 law concerning Queen Anne's Lane. These are both to be
24 submitted by this Friday.

25 Responses by either Mr. Price or Mr. Bello to

1 each other's submission would be due by the 25th, along with any
2 draft order and please remember, serve all this information on
3 each other. That's your responsibility.

4 MR. TUMMONDS: I'm sorry, just to make clear that
5 the property owner is also able to respond to the submissions on
6 the 15th and submit proposed findings of fact and conclusions.

7 MS. PRUITT: Correct, yes.

8 CHAIRPERSON GRIFFIS: Okay, Mr. Price, are you
9 clear on who you're serving all of this information to and the
10 dates that you need to do that by?

11 MR. PRICE: Yes.

12 CHAIRPERSON GRIFFIS: Yes, very good, thank you.
13 Yes?

14 MR. ABDULLAH: A question, Mr. Chair. What's the
15 date the record closes?

16 CHAIRPERSON GRIFFIS: The record will be closed
17 the 25th.

18 MR. ABDULLAH: And if nothing's submitted, it's
19 precluded?

20 MS. PRUITT: Excuse me?

21 MR. ABDULLAH: If material is not submitted by
22 that date, it's precluded from the record?

23 CHAIRPERSON GRIFFIS: Right.

24 MS. PRUITT: Correct.

25 MR. TUMMONDS: The record is officially closed

1 now, except for the things that you discussed that are due on
2 those dates.

3 CHAIRPERSON GRIFFIS: Right. The record is
4 sitting open only to receive those things and the only thing in
5 question about whether it would come in or not would be from Mr.
6 Price. The others would be requirements.

7 MR. ABDULLAH: And in the event that he does not
8 submit it, it doesn't mean that we are pushed into another
9 month, does it?

10 CHAIRPERSON GRIFFIS: Absolutely not.

11 MR. ABDULLAH: Okay. So there is a deadline of
12 the 25th?

13 CHAIRPERSON GRIFFIS: But I can assure you that if
14 we don't have the surveyor's map that we will hold the hearing
15 down at Mr. Bello's office so that we can look at it.

16 MR. ABDULLAH: But if the property owner submits
17 the same document, that satisfies the requirement? An official
18 copy of the surveyor's map regarding Queen Anne's Way, that as
19 long as it's submitted, it doesn't matter where it comes from,
20 is that correct?

21 CHAIRPERSON GRIFFIS: The document will be
22 similar. The submission should come from Mr. Bello because what
23 is at issue for the appeal is what Mr. Bello reviewed, so if you
24 want to have the owner make the copies and do the submissions,
25 as long as there's some sort of documentation that is submitted

1 with it stating the fact that Mr. Bello reviewed that document
2 for this permit. Is that clear?

3 MR. ABDULLAH: Yes.

4 CHAIRPERSON GRIFFIS: Great, anything else. All
5 right, this will conclude the action in session of the 12th of
6 February, 2002. Thank you and everyone have a great night.

7 (Whereupon, the Public Meeting of the Board of
8 Zoning Adjustment was concluded at 7:34 p.m.)