

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
JANUARY 14, 2003

+ + + + +

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 H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
ANNE MOHNKERN RENSHAW, Vice Chairperson
CURTIS ETHERLY JR., Board Member
DAVID A. ZAIDAIN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS, Commissioner

BZA STAFF PRESENT:

BEVERLEY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning
JOHN NYARKU, Office of Zoning

OTHER AGENCY STAFF PRESENT:

STEPHEN COCHRAN, Office of Planning
ARTHUR JACKSON, Office of Planning
STEPHEN MORDFIN, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

COREY BUFFO, Esq.

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

10:29 a.m.

CHAIRPERSON GRIFFIS: I would like to call to order our 14 January 2003 Public Hearing of the Board of Zoning Adjustments in the District of Columbia. My name is Geoff Griffis. I am Chairperson.

Joining me today is the Vice Chair, Ms. Anne Renshaw, also Mr. Etherly on my right. Mr. Zaidain will be joining us later and had an obligation this morning. Mr. Zaidain is representing the National Capital Planning Commission. With us representing the Zoning Commission is Mr. Parsons.

Copies of today's hearing agenda are available to you. They are located at the table where you entered into the hearing room. If we do not have adequate copies, please indicate that to Staff. We will make more copies available.

A couple of very quick things. I need to let everyone know that these proceedings are being recorded. Attendant to that, we ask that everyone refrain from making any disruptive noises or actions in the hearing room.

Also when coming forward to present to the Board you need to fill out two witness cards. Witness

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1 cards are available at the table where you entered in
2 and also at the table in front of us. When coming
3 forward, those two witness cards go to the recorder
4 who is sitting to my right.

5 I would ask that everyone here present
6 today turn off your cell phones and beepers so that we
7 don't disrupt any of the proceedings. The order of
8 procedure for special exception and variances is first
9 statement and witnesses of the Applicant. Second
10 would be any government reports attendant to the
11 application. Those include of course Office of
12 Planning and DDOT if submitted.

13 Third would be reports from the ANC, the
14 Advisory Neighborhood Commission. Fourth would be
15 parties or persons in support. Fifth would be parties
16 or persons in opposition. Finally sixth we would have
17 closing remarks by the Applicant.

18 Cross examination of witnesses is
19 permitted by the Applicant or parties in the case.
20 The ANC within which the property is located is
21 automatically a party in the case. The record will be
22 closed at the conclusion of each public hearing on the
23 case except for any materials specifically requested
24 by the Board. The Board will be very specific of what
25 that material should be and when it is to be submitted

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1 into the Office of Zoning. After the receipt of that
2 information of course it goes without saying that the
3 record would be then closed.

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

11 The decision of the Board in contested
12 cases and in all cases must be based exclusively on
13 the public record. So we ask people present today not
14 to engage Board Members in conversation so that we do
15 not give the appearance that we are in fact not basing
16 our decisions wholly on the public record.

17 Is everyone clear on that? Okay. The
18 Board will now consider any preliminary matters.
19 Preliminary matters are those which relate to whether
20 a case shall or can be heard today such as a request
21 for postponement, withdrawal, or whether proper and
22 adequate notice of the hearing has been given. If you
23 are not prepared to go forward with a case today or if
24 you believe the Board should not proceed, now is the
25 time to raise such a matter.

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1 I will turn to the Office of Zoning Staff
2 first and say good morning to Mr. Moy, and also Ms.
3 Bailey was with us and had to step out briefly. Mr.
4 Nyarku is also here. We are ably staffed. Mr. Moy,
5 do we have any preliminary matters with the morning
6 agenda.

7 MR. MOY: No, sir, not at the moment.

8 CHAIRPERSON GRIFFIS: Thank you. Let's
9 call our first case. Is there anyone in attendance
10 today that has preliminary matters? You can indicate
11 by walking up to the table. Not seeing anybody get
12 up, it does not appear that we have any. Let's call
13 our first case.

14 MR. MOY: Mr. Chairman, if I may just for
15 a moment, on any other preliminary matters, I just
16 want to point out that in the case applications for
17 the hearing we do have a withdrawal for Application
18 Number 16964, the application of the D.C. Public
19 Schools on behalf of Verizon Wireless Incorporated.

20 CHAIRPERSON GRIFFIS: That is correct. We
21 have a letter in the record indicating that
22 withdrawal. Is that correct?

23 MR. MOY: That's correct, sir.

24 CHAIRPERSON GRIFFIS: No forward action
25 would be needed in that regard.

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1 MR. MOY: The first case in the hearing is
2 Application 16961. That is the application of
3 Citiwide Computer Training Center, pursuant to 11 DCMR
4 3104.1, for a special exception to establish a
5 community service center (job training) under section
6 334, in the R-5-D District at premises 3636 16th
7 Street, N.W., Units AG-32 and BG-41 which is the
8 Woodner Apartment Building on Square 2624, Lots 831
9 and 832. If there are any witnesses who plan to
10 testify, I need to administer the oath.

11 CHAIRPERSON GRIFFIS: Is anybody here
12 attendant this application that will be giving
13 testimony today? If you would stand and give your
14 attention to Mr. Moy.

15 MR. MOY: Please raise your right hand.

16 WHEREUPON,

17 ANTHONY CHUUKWU
18 was called as a witness and, having been first duly
19 sworn, was examined and testified as follows:

20 MR. MOY: Thank you.

21 CHAIRPERSON GRIFFIS: Good morning, sir.
22 I would have you introduce yourself with name and
23 address.

24 MR. CHUUKWU: Good morning, Board Members.
25 Good morning, Chair. My name is Anthony Chuukwu.

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1 I'm the Executive Director for Citiwide Computer
2 Training Center. We are applying for a special
3 exception to use Suites BG-41 and AG-32 to provide job
4 training to low income D.C. residents.

5 Specifically, we provide computer training
6 to low income residents. We use applications such as
7 Microsoft Office package to provide job training. We
8 provide Microsoft Windows, Word, Excel, Powerpoint,
9 Access, Outlook to individuals who are considered low
10 income and who may not be able to have access to these
11 programs because of their income.

12 CHAIRPERSON GRIFFIS: Excellent. I think
13 the record is fairly full in terms of the program and
14 what is going to take place there. I'm wondering if
15 you would be amenable to standing on the record and
16 just taking questions from the Board at this time.

17 MR. CHUUKWU: Yes, sir.

18 CHAIRPERSON GRIFFIS: Okay. You
19 understand what that means.

20 MR. CHUUKWU: Sorry.

21 CHAIRPERSON GRIFFIS: That's okay. I just
22 want to be clear. Let me just say that it would mean
23 that you don't need to present the case. The Board
24 feels that the case is presented well enough in its
25 submissions. We may just have limited questions that

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1 we would want answered.

2 MR. CHUUKWU: That would be fine.

3 CHAIRPERSON GRIFFIS: Very well then.
4 Let's begin. First of all, your organization is a
5 non-profit. Is that correct?

6 MR. CHUUKWU: Yes, sir.

7 CHAIRPERSON GRIFFIS: Very well. It is as
8 stated in the record that the students come from the
9 building and actually from the surrounding area. Is
10 that correct?

11 MR. CHUUKWU: Yes, sir.

12 CHAIRPERSON GRIFFIS: Good. No structural
13 changes are being made in the facility. Is that also
14 correct?

15 MR. CHUUKWU: Yes, sir.

16 CHAIRPERSON GRIFFIS: Do you know of any
17 opposition to this application?

18 MR. CHUUKWU: No, sir.

19 CHAIRPERSON GRIFFIS: Do you know any
20 conditions that you may be setting up that would be
21 objectionable to any adjacent neighbors?

22 MR. CHUUKWU: Well, we talked about
23 traffic flow to the building and noise control. Those
24 we have also addressed. The building management has
25 provided us with passes to our students to park their

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1 cars in the garage.

2 CHAIRPERSON GRIFFIS: Right. So there's
3 adequate parking being provided in the building
4 itself.

5 MR. CHUUKWU: Yes.

6 CHAIRPERSON GRIFFIS: So you don't see any
7 objectionable conditions being created in terms of the
8 parking.

9 MR. CHUUKWU: Right.

10 CHAIRPERSON GRIFFIS: It is located on the
11 first floor that is as described in the application as
12 a retail mall.

13 MR. CHUUKWU: Yes, sir.

14 CHAIRPERSON GRIFFIS: So you have a public
15 area that is accessed into yours. It would not in
16 fact create a negative impact on the residents above.
17 Correct?

18 MR. CHUUKWU: Yes, sir.

19 CHAIRPERSON GRIFFIS: Okay. Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: Good morning.

21 MR. CHUUKWU: Good morning.

22 VICE CHAIRPERSON RENSHAW: Your present
23 operation, is that on level AG or level BG?

24 MR. CHUUKWU: Both of them are on the
25 ground level. AG-32 and BG-41 are on the ground

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1 level.

2 VICE CHAIRPERSON RENSHAW: Are you
3 presently in both of those areas?

4 MR. CHUUKWU: Yes, ma'am.

5 VICE CHAIRPERSON RENSHAW: All right. So
6 it's just continuing the use that you have.

7 MR. CHUUKWU: Yes, ma'am.

8 VICE CHAIRPERSON RENSHAW: Who are the
9 principals of Citiwide Computer?

10 MR. CHUUKWU: I'm the Executive Director.
11 We have nine board members that volunteer their time
12 in support of the program. They help make policies
13 and implement decisions on behalf of Citiwide.

14 VICE CHAIRPERSON RENSHAW: Just for the
15 record, who is the President of your board?

16 MR. CHUUKWU: She is Helen Ennub. She's a
17 lawyer. She's not presently here because she is at
18 work right now.

19 VICE CHAIRPERSON RENSHAW: All right. You
20 have been operating since 1995.

21 MR. CHUUKWU: It's 1993 specifically.
22 Yes, ma'am.

23 VICE CHAIRPERSON RENSHAW: In that
24 location.

25 MR. CHUUKWU: In that location since 1995.

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1 VICE CHAIRPERSON RENSHAW: But this is
2 your first experience before the Board.

3 MR. CHUUKWU: Yes, ma'am.

4 VICE CHAIRPERSON RENSHAW: So we finally
5 caught up with you.

6 MR. CHUUKWU: Yes.

7 VICE CHAIRPERSON RENSHAW: Thank you. One
8 more question. In AG-32, you have 30 adults.

9 MR. CHUUKWU: Yes. That unit has adequate
10 space to accommodate 30 adults.

11 VICE CHAIRPERSON RENSHAW: That's 30
12 adults at one time.

13 MR. CHUUKWU: At one time.

14 VICE CHAIRPERSON RENSHAW: Then BG-41 has
15 space for 20 adults.

16 MR. CHUUKWU: For 20 adults. Yes, ma'am.

17 VICE CHAIRPERSON RENSHAW: So what is the
18 total number that you serve?

19 MR. CHUUKWU: Do you mean per year or at
20 one time?

21 VICE CHAIRPERSON RENSHAW: Well, how about
22 both?

23 MR. CHUUKWU: Per year, I think it's 100
24 to 150 individuals. At one time even though we have
25 30 and 20 in both places, we don't stick 30 at one

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1 time in AG-32 or 20 at one time in BG-41.
2 Approximately I would say in AG-32 about 15 and in BG-
3 41 at most ten at a time.

4 VICE CHAIRPERSON RENSHAW: Thank you.

5 MR. CHUUKWU: Yes, ma'am.

6 CHAIRPERSON GRIFFIS: Anything else? Any
7 other questions from the Board Members? Then I think
8 in fact 334.1 is also satisfied in terms of looking at
9 in terms of the organization of this being set up and
10 proves social and economic well being of residents. I
11 think the record is full on that account.

12 Let us go then to government reports. I
13 have indication only of an Office of Planning report
14 in terms of agencies. Our Planning representative is
15 here today. I would ask if they find it sufficient to
16 stand on the record.

17 MR. JACKSON: Hello. My name is Arthur
18 Jackson with the D.C. Office of Planning. Yes, the
19 Office of Planning will stand on the record.

20 CHAIRPERSON GRIFFIS: Very well. Thank
21 you. Did you have any questions of the Office of
22 Planning report? Are you in receipt of that?

23 MR. CHUUKWU: No, sir, I don't --

24 CHAIRPERSON GRIFFIS: You don't have a
25 copy of the Office of Planning report.

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1 MR. CHUUKWU: Not yet.

2 CHAIRPERSON GRIFFIS: We'll get you a copy
3 of that before you leave because it's well worth
4 looking at.

5 MR. CHUUKWU: Okay.

6 CHAIRPERSON GRIFFIS: Any Board questions?
7 Woodner is a pretty big building. Isn't it?

8 MR. CHUUKWU: Yes.

9 CHAIRPERSON GRIFFIS: Not that this has
10 anything to do our application. However, the aerials
11 that we look at, wow.

12 VICE CHAIRPERSON RENSHAW: It's deceptive
13 from 16th Street. You don't get the feeling of how
14 large that building is.

15 CHAIRPERSON GRIFFIS: That's very true.
16 We digress a little bit.

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
18 don't see an ANC report in the record.

19 CHAIRPERSON GRIFFIS: I do not see it
20 either. Is that what you said?

21 VICE CHAIRPERSON RENSHAW: ANC-1E. I did
22 not see it.

23 CHAIRPERSON GRIFFIS: Did you present to
24 the ANC?

25 MR. CHUUKWU: We made efforts to contact

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1 the ANC office, but at the time I think because of the
2 election there wasn't any specific person we could
3 contact. We contacted the Office of Board of
4 Elections.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. CHUUKWU: They told us that they were
7 going to be sworn in on the second. We tried with
8 John Moore of the Office of Planning. We made several
9 efforts to contact them, but nobody could specifically
10 get in touch with any elected official who a had
11 responsibility for our area at that time.

12 CHAIRPERSON GRIFFIS: Okay. So there was
13 some complication in terms of the new elections and
14 also in terms of the redistricting in terms of the
15 composition of ANC-1E in which case you did not
16 actually present or get a report from them.

17 MR. CHUUKWU: Yes, sir.

18 CHAIRPERSON GRIFFIS: However, you do have
19 a letter from the council member, Mr. Graham. If I'm
20 not mistaken, it is in fact also in support. So you
21 met with a council member on this.

22 MR. CHUUKWU: Yes, sir.

23 CHAIRPERSON GRIFFIS: Very well. Any
24 other questions? I don't have any other indications
25 of government reports attendant to this application.

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1 VICE CHAIRPERSON RENSHAW: We have just to
2 note the petitions in the record in support.

3 CHAIRPERSON GRIFFIS: Right. Which we
4 will get to. That's appropriate to do now. I will
5 ask if there is anyone here to give testimony today
6 either in favor or opposition of this application.
7 This application is 16961 of Citiwide Computer
8 Training Center. Not seeing anyone approach the table
9 at this time, I would assume that there is no one here
10 to give public testimony.

11 As Ms. Renshaw has just indicated we do
12 have a significant amount of signatories, and actually
13 if you look at those addresses many of them have their
14 residency in the Woodner which was being talked about
15 in terms of serving the adjacent communities. Very
16 well. Anything else you would like to say in
17 conclusion?

18 MR. CHUUKWU: I would implore on the Board
19 to approve our application because I think it's for
20 the common good.

21 CHAIRPERSON GRIFFIS: Good. Thank you
22 very much. I think it's evidenced in the record that
23 it is true. I would move approval of Application
24 16961, the Citiwide Computer Training Center, pursuant
25 to special exception to establish the community

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1 service center under section 334 at the premises 3636
2 16th Street, N.W. Those are attendant to the units
3 AG-32 and BG-41.

4 VICE CHAIRPERSON RENSHAW: Second.

5 CHAIRPERSON GRIFFIS: Thank you, Ms.
6 Renshaw. Any discussion? All those in favor signify
7 by saying aye.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: Opposed.

10 (No response.)

11 MR. MOY: The Staff would record that vote
12 as 4-0-1. The one with Mr. Zaidain being not present,
13 not voting. Four in favor is the Chairman, the Vice
14 Chairperson, Mr. Etherly, and Mr. Parsons.

15 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.
16 Thank you very much.

17 MR. CHUUKWU: Thank you, sir.

18 CHAIRPERSON GRIFFIS: Have a good day,
19 sir.

20 MR. CHUUKWU: Thank you.

21 CHAIRPERSON GRIFFIS: Can we call our next
22 case please?

23 VICE CHAIRPERSON RENSHAW: I just would
24 like to say congratulations on a very worthwhile
25 program.

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1 MR. CHUUKWU: Thank you.

2 MR. MOY: The next case application is
3 16965, the application of 2914 11th Street, LLC,
4 pursuant to 11 DCMR 3103.2, for a variance from the
5 nonconforming structure provisions under subsection
6 2001.3, a variance from the lot occupancy requirements
7 under section 403, and variances from the open and
8 closed court requirements under section 406, to allow
9 an addition to an existing apartment house in the R-4
10 District at premises 2914 11th Street, N.W. in Square
11 2853, Lots 813 and 858 per sub.

12 At this moment if there is anyone who will
13 be testifying, please come forward so I can administer
14 the oath. Please raise your right hand.

15 WHEREUPON,

16 GLADYS HICKS, BRIAN HUNT, WAYNE GLEASON, and

17 STEPHEN STRASSER

18 were called as witnesses and, having been first duly
19 sworn, were examined and testified as follows:

20 MR. MOY: Thank you.

21 CHAIRPERSON GRIFFIS: Okay. Is everyone
22 duly sworn in? Very well. That means you are all
23 telling the truth today. You understand that. That
24 being said, Board Members, can you see everything from
25 that distance? Actually, no.

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1 You are going to have to move it forward
2 because what I'm going to need is when you speak you
3 are going to have to stay on the mic. Our cordless
4 isn't working so well. What works well is to pick up
5 this corner. So if you could just move it all in. We
6 don't have a huge crowd today that's looking at these.

7 That's excellent. Then as close as you
8 can to the table. That's going to be the most
9 important. Of course, anyone who wants to look at
10 these that cannot see them should move their chairs up
11 into an area that they can in fact view them
12 adequately. While they are doing that if I could have
13 the folks at the table introduce themselves and give
14 their address for the record please.

15 MS. HICKS: Good morning. My name is
16 Gladys Hicks. I'm a zoning consultant. My street
17 address is 7710 Merrick Lane, Landover, Maryland. The
18 zip code is 20785.

19 MR. HUNT: My name is Brian Hunt. My
20 address is 1603 U Street, N.W., Washington, D.C.
21 20009.

22 MR. GLEASON: Good morning, Mr. Chairman
23 and Members of the Board. I'm Wayne Gleason. I am
24 the owner and managing partner of 2914 11th Street
25 LLC.

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1 CHAIRPERSON GRIFFIS: I see. Mr. Hunt.

2 MR. HUNT: Yes. I'm the architect.

3 CHAIRPERSON GRIFFIS: Very well. Before I
4 go too far into this, Ms. Hicks, I'm going to ask you
5 to address what relief we're actually here to look at.

6 I have some concern as we look at this in terms of
7 the nonconforming courts on this building. I did not
8 see the ramifications of why we would have a variance
9 for nonconforming courts in this application as the
10 nonconformity and the courts themselves are not
11 changing.

12 So I think we ought to address that. I
13 think you also have reviewed the Office of Planning
14 report. I think the Board Members will have
15 questions. So if you could perhaps summarize or
16 encapsulate for us what we're doing here today that
17 would be very helpful.

18 MS. HICKS: Okay. This matter is before
19 the Board of Zoning Adjustment pursuant to an
20 application by 2914 11th Street LLC on the initial
21 review of the application, sections 406.1 the minimum
22 open court width and also with the minimum area of a
23 closed court requirement, also a variance from section
24 403.2, the maximum allowed lot occupancy requirement.

25 CHAIRPERSON GRIFFIS: Yes. Actually to

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1 expedite things, Ms. Hicks, we have all that. I know
2 what the application says.

3 MS. HICKS: Okay.

4 CHAIRPERSON GRIFFIS: What I want to know
5 is just your thought and justification for why.
6 Here's my opinion. My Board will have to concur or
7 disagree with me. These variances for the courts
8 shouldn't be before us. I'm not sure they need relief
9 is what I'm saying.

10 MS. HICKS: Okay. I feel like they need
11 relief because there are existing balconies that are
12 being taken down on the south side of the building and
13 the western side of the building. The closed court is
14 on the southern side of the building. Once those
15 items are removed with a raise permit that area is no
16 longer grandfathered in. In order to get a building
17 permit for an addition, and this would be considered
18 an addition to replace, it's my opinion that it needs
19 Board of Zoning Adjustment approval.

20 CHAIRPERSON GRIFFIS: So you are saying
21 that they have already been removed. Perhaps you
22 don't want to answer that. Do you not fall under
23 2001.2 where it says "Except as provided in 2001.11
24 and 2001.12, ordinary repairs, alterations and
25 modernization to the structure including structure

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1 alterations shall be permitted?"

2 How is changing out an exterior egress
3 there not a structural modification, alteration, or
4 modernization which would be permitted? My point is
5 you are before us for these courts. I don't see how
6 these courts are changing which is odd that I am
7 arguing with you that you shouldn't be asking for
8 relief, but there it is.

9 MS. HICKS: Yes. I'd like Stephen to
10 answer.

11 CHAIRPERSON GRIFFIS: We're going to need
12 to turn some of those off.

13 MR. HUNT: I understand what you are
14 saying in the case of the closed court, the removal
15 and the reconstruction of the fire escape. It is
16 largely because what is there is dilapidated. It
17 needs to be replaced.

18 CHAIRPERSON GRIFFIS: Right. And what you
19 are replacing it with is identical in terms of
20 dimension to what was there.

21 MR. HUNT: Not identical. We're taking
22 some liberties with it. That goes to the open court.
23 Although there is evidence that there were balconies
24 there. They have not been there for some time. In
25 the open court, we are asking to be able to build

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1 balconies within that space.

2 We're asking to I guess make a
3 modification within an open court which is currently
4 nonconforming. There are a couple of options. The
5 bigger notion is the percentage of lot occupancy.

6 CHAIRPERSON GRIFFIS: Right. That's
7 exactly true. I think we would do away with the
8 variance for the courts. Conceivably with the open
9 courts you have we'll run the balcony all the way out
10 to the building. You do away with a nonconforming
11 open court, but you're still going to get hit with lot
12 occupancy.

13 MR. HUNT: Correct.

14 CHAIRPERSON GRIFFIS: I think we should go
15 into lot occupancy and nothing else. Are you allowed
16 the building code to put that exterior egress therein?

17 MR. HUNT: Actually we went through
18 predevelopment design review. The building comes very
19 close to qualifying as a single stair building, single
20 means of egress building.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. HUNT: There are two of the apartments
23 in the building. The understanding was we could when
24 we talked with the structural review is stay with the
25 single existing stair as our single means of egress if

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1 two of the units had separate means of egress. So our
2 options were either to reuse the existing stair, that
3 not being feasible, we're proposing rebuilding.

4 CHAIRPERSON GRIFFIS: I see. If this was
5 new construction, you wouldn't have the same argument.

6 MR. HUNT: Correct.

7 CHAIRPERSON GRIFFIS: Very well. Clearly
8 the building code is way out of our jurisdiction, but
9 I note the Board Members had some concern about what
10 we were actually looking at. That being said, Ms.
11 Hicks, how much time are you requiring to present your
12 case this morning?

13 MS. HICKS: Most of the case in chief will
14 be with the architects walking through the floor
15 plans. Also this project backs up to --

16 CHAIRPERSON GRIFFIS: Do you think we can
17 do that in 20 minutes?

18 MS. HICKS: Yes. We think we can do it.

19 CHAIRPERSON GRIFFIS: Good. I'll give you
20 15 minutes and then our questions. Then we're going
21 to move on to other things.

22 MS. HICKS: Okay.

23 CHAIRPERSON GRIFFIS: Clearly if we need
24 more time, we'll take it, but I want to give you a
25 little bit of a parameter. Also, I'll give you

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1 direction. We don't need to walk through all the
2 units. We don't need to get into the building much at
3 all.

4 But we do need a very strong case made for
5 us to deliberate on with this lot occupancy. More
6 importantly I think we ought to focus on the addition
7 to the rear of the building because I think that is
8 what is probably going to give you the most problem
9 and was not directly said the most articulated piece
10 in the application for your case. So I will try and
11 stop talking so that you guys can talk a little bit.

12 MR. HUNT: Okay. I'll proceed. The
13 initial motivation for the small additions on the
14 rear, and I emphasize small because the foot print of
15 the addition on the rear is about 135 square feet, was
16 one to take some spaces inside the building that were
17 awkward. They were undersized.

18 There was a rear portion of the building
19 that was an awkward size. It's just to be able to
20 enlarge the living spaces there. It was also to give
21 the rear of the building a more presentable elevation.

22 One of the considerations is that back
23 here in the alleys it's actually not a typical alley
24 in that there is a development Harvard Mews Townhouses
25 as you can see that Stephen is pointing to now.

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1 Harvard Mews Townhouses was constructed in such a way
2 that the fronts of half of the units actually face
3 into the block. So as you can see the three story
4 townhouses actually have their front doors facing into
5 the center of the block looking at the rear of our
6 building. Another consideration is that the rear of
7 our building clearly you can see evidence, and I think
8 the Office of Planning backs this up, that there were
9 wood frame balconies on the rear of our building.

10 CHAIRPERSON GRIFFIS: On the rear of the
11 building.

12 MR. HUNT: On the rear of the building.
13 The doors have been bricked up now.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. HUNT: There are remnants of the wood
16 being there.

17 CHAIRPERSON GRIFFIS: I see. I'm going to
18 need to interrupt you for a minute.

19 MR. HUNT: Sure.

20 CHAIRPERSON GRIFFIS: I forgot that I
21 needed to disclose something on this application.
22 I'll take comments on it. I do live on Columbia Road
23 which is around the corner from this and actually
24 share that alley. I am outside of the 200 feet
25 notification, so I didn't get my letter from Office of

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1 Zoning but nor should I have. I'd just ask Board
2 Members if they have any quick comments about me
3 proceeding and hearing this case.

4 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
5 do you feel that you are prejudiced or biased in any
6 way?

7 CHAIRPERSON GRIFFIS: I absolutely do not
8 think I would be prejudiced or biased.

9 VICE CHAIRPERSON RENSHAW: Very good.

10 CHAIRPERSON GRIFFIS: In any case, I think
11 the only additional piece that may be different than
12 other Board Members is I have substantial knowledge of
13 that site having lived there for 12 years. But that
14 is it. I will try not to bring that into the
15 deliberation on this.

16 MEMBER ETHERLY: Mr. Chairman, I don't
17 have any concerns but just to get a little bit of
18 clarification with regard to the proximity of your
19 residence to the alley. Do you use the alley to any
20 significant extent? Does the alley abut the rear of
21 your property? Once again noting that you are outside
22 of the zone of notice as required by the zoning regs.

23 CHAIRPERSON GRIFFIS: The alley that runs
24 by this apartment building, and you can see it on the
25 site plan here, runs east-west. My townhouse backs up

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1 onto that alley, yes.

2 MEMBER ETHERLY: Okay.

3 CHAIRPERSON GRIFFIS: This is sitting on
4 11th. I am over towards 13th, and 12th Street does
5 not run through that block.

6 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
7 take you at your word that you are not biased in any
8 way, not prejudiced. We'll go with that.

9 CHAIRPERSON GRIFFIS: Thank you very much.
10 Does the Applicant have any opinion or objection to
11 me continuing this case?

12 MR. HUNT: No objection.

13 MS. HICKS: No objection.

14 CHAIRPERSON GRIFFIS: Does anyone
15 attendant to this application in the hearing room
16 today or anyone in this hearing room today have any
17 comment and objection for me to continue hearing this
18 case? You can come forward. I will give the
19 obligatory five seconds for people that come up to the
20 table. Not seeing any movement towards the table,
21 let's continue. I'll try not to interrupt.

22 MR. HUNT: Okay. One of our concerns was
23 the actual appearance of the rear of our building.
24 Clearly it had more architectural interest. It may
25 have been dilapidated with porches. At least it had

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1 some more interest.

2 So one of our concerns was this is more
3 than a typical service alley. There is a sense of an
4 open space at the center of this alley. We wanted to
5 put a good face on our building facing into the
6 Harvard Mews.

7 CHAIRPERSON GRIFFIS: Do you show that on
8 the site plan somewhere? You were pointing to
9 something below that I can't see.

10 MR. GLEASON: In this picture on the lower
11 right hand side if you stand and that door and face
12 outward, you're looking at the pictures that are above
13 it. So what we're saying is when a person stands at
14 their front door, looking out from their front main
15 entranceway they see the rear of this building in this
16 state of disrepair.

17 CHAIRPERSON GRIFFIS: So the point is that
18 there is an interior alley court almost that has
19 building entrances which is what you are looking at
20 there. That's what you are talking about when you
21 animate the view of the interior.

22 MR. GLEASON: Right.

23 CHAIRPERSON GRIFFIS: I see.

24 MR. GLEASON: Because this is a court
25 created by the front entrance in that lower right hand

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1 photograph of Harvard Mews. What they look upon is
2 our building that we're looking to modify.

3 CHAIRPERSON GRIFFIS: So the rear of your
4 building faces the front of two townhouses.

5 MR. GLEASON: That's correct.

6 MR. HUNT: And there is also an oblique
7 view from an additional group of townhouses.

8 MS. HICKS: Because right where Steve is
9 pointing, those are the main entrances to that half of
10 the units. There's also fronts on Harvard Street. So
11 they are back to back structures with fronts on
12 Harvard and fronts on the court.

13 CHAIRPERSON GRIFFIS: Okay. But the ones
14 that front on Harvard, the rear of those look on the
15 rear of the apartment building. I think the
16 uniqueness of this is what you have just said. It's
17 that you have the front entrances and the facades of
18 an interior alley townhouses that face the rear of the
19 apartment building. That seems to be a relationship
20 that doesn't normally come about.

21 MR. HUNT: Correct.

22 MS. HICKS: That's right.

23 MR. HUNT: Another important consideration
24 is realizing that we had a nonconforming structure.
25 When we started the project, the existing building was

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1 at 78 percent lot occupancy. We had the opportunity
2 to purchase an adjacent 750 square foot alley lot.
3 Steve, if you could show that. The appendage on the
4 left shows the addition of that 750 foot alley lot.

5 We purchased that lot for several reasons.

6 It meant that our addition would conform at least if
7 not to the percentage of lot occupancy requirements at
8 least to the rear yard setback requirements. It also
9 allowed us to provide parking which would have been
10 difficult. It allowed us to provide both parking and
11 green space at the rear of the building which would
12 not have been possible before.

13 This was a fortunate coincidence that this
14 piece of property was available. Steve can show you
15 at the back of the lot where we would propose putting
16 four parking spaces and further landscaping. That
17 would not have been possible without control of that
18 lot.

19 CHAIRPERSON GRIFFIS: Do you have details
20 of what that landscaping is or being proposed? Also,
21 is this going to be secured parking or open alley
22 parking just on the surface?

23 MR. HUNT: It's surface parking, not
24 interior. It may or may not have a security gate on
25 it. I believe that as part of the record you have a

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1 copy of these drawings. The ground floor plan does
2 show our proposed landscaping scheme.

3 CHAIRPERSON GRIFFIS: But those aren't
4 just nice embellishments on the site plan. That's
5 actually what is proposed.

6 MR. HUNT: Correct. Absolutely.

7 CHAIRPERSON GRIFFIS: So you are looking
8 at an addition of seven trees around.

9 MR. HUNT: Well, we have to be careful as
10 to which is on our property. Steve, maybe you can do
11 the actual count of which trees fall on our property.

12 I guess they all do fall on our property. Is that
13 correct?

14 MR. STRASSER: These two trees here fall
15 on the property. Actually all of these are shown as
16 more low bushes rather than trees surrounding this
17 area. (Indicating.) So it's actually two trees in
18 this rear yard and low bushes surrounding the parking
19 spaces.

20 CHAIRPERSON GRIFFIS: Is there any curb
21 defining that area? What's drawn just stops. Is that
22 going to be all flush?

23 MR. HUNT: There is no plan for a curb.
24 Although, it may serve necessary just for grading run
25 off and the like. The idea is to have just asphalt

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1 paving back there.

2 MR. GLEASON: There is an existing fence
3 that defines the adjoining property just behind where
4 those trees are shown.

5 CHAIRPERSON GRIFFIS: Whose fence is it?

6 MR. GLEASON: Belonging to Harvard Mews.

7 CHAIRPERSON GRIFFIS: It is. And adequate
8 lighting for the parking in back?

9 MR. HUNT: I'm sure we would. We haven't
10 actually gotten to that point. As an amenity
11 certainly for our building there would be if there is
12 not adequate lighting in the alley.

13 MR. GLEASON: There will be lighting and
14 security cameras in the rear of the building.

15 CHAIRPERSON GRIFFIS: Where do the
16 security cameras go? Are they cabled into the units
17 so it's self monitoring the units or is there a door
18 person?

19 MR. GLEASON: It will be cabled into a
20 central monitor just for recording purposes but won't
21 be monitored 24 hours a day.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. HUNT: Mr. Gleason, being the owner of
24 other multi-family properties, has extensive first
25 hand experience in these types of security issues.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. HUNT: A consideration here too is
3 that the building as we got it, the building as
4 purchased, the foot print of the building covered 78
5 percent of the lot. Even though we're asking to make
6 several small additions, because we were able to add a
7 750 square foot lot to the existing lot, and it has
8 been subdivided so it is a single lot of record now,
9 actually reduces the overall percentage of lot
10 occupancy to 73 percent.

11 So the net result by purchasing and adding
12 the adjacent lot, we're actually lowering the total
13 percentage of lot occupancy to 73 percent. For what
14 it's worth, we are also reducing the number of
15 apartment units in the building. Originally the
16 number of units was 16. We are reducing it to 11.

17 Normally a multi-family residential
18 building in R-4 zone would require at least 900 square
19 feet of lot size per unit. The building as we
20 purchased it had only about 316 square feet of lot
21 size per unit. By expanding the lot size and reducing
22 the number of units we're increasing that square
23 footage to 529 square feet of lot size.

24 CHAIRPERSON GRIFFIS: Okay. Let me just
25 direct you a little bit because that doesn't help us.

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1 MR. HUNT: Okay.

2 CHAIRPERSON GRIFFIS: I understand in
3 terms of the process that you haven't tried to
4 compound this to the maximum extent.

5 MR. HUNT: Sure.

6 CHAIRPERSON GRIFFIS: We may all be in
7 consensus that this is the best project we've ever
8 seen. The problem is we need to look at very specific
9 things for us to approve this variance. That would go
10 and I think you should speak, and you've started to
11 touch upon it, but what is the uniqueness of this that
12 creates your practical difficulty, that moves you to
13 add this addition onto the back? Then we will look at
14 whether there is any substantial deterrent to the
15 public good and everything else.

16 MR. HUNT: Right.

17 CHAIRPERSON GRIFFIS: Clearly I think we
18 need to spend more time on the uniqueness and
19 practical difficulty.

20 MR. HUNT: Which goes back to the primary
21 motivation. In reconfiguring the building on the back
22 of the building on what is the southeast corner, the
23 dimensions of the existing room at the back were so
24 small as to make it difficult to use, to fit our plans
25 in there. So we were seeking to enlarge that.

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1 The finished distance would be about nine
2 feet across. What we were seeking to do on the first
3 three levels, you notice that the top level what we've
4 created is balcony on top of this. But the idea was
5 to be able to increase the room size for what was
6 otherwise an awkward small space at the back of the
7 building and also be able to increase the amount of
8 window at the back of the building.

9 CHAIRPERSON GRIFFIS: Okay. But --

10 MR. HUNT: So the small awkward size of
11 that --

12 CHAIRPERSON GRIFFIS: I think I can help
13 you out here. You've stated the fact that you've
14 reconfigured that back in order to make it, let's say,
15 usable space or more accommodating for modern
16 contemporary use.

17 MR. HUNT: Yes.

18 CHAIRPERSON GRIFFIS: Perhaps it's
19 important for you to tell us what that reconfiguration
20 was. What was the motivation? Was this an efficiency
21 that's now become a two bedroom? Do you know what I
22 mean? What was it that didn't just make this
23 reconfiguration something that you wanted to do?

24 MR. HUNT: We have a series. This was a
25 space that originally was configured to contain

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1 bathrooms. In the reconfiguration of the building in
2 laying it out, we were creating mostly or exclusively
3 two bedroom units.

4 CHAIRPERSON GRIFFIS: Why?

5 MR. HUNT: Because that seems to be what
6 the market wants these days.

7 CHAIRPERSON GRIFFIS: Is that a modern
8 adaptation of an apartment building into two bedroom
9 units?

10 MR. HUNT: It is. As you can tell with
11 the reduced number going from a total of 16 units down
12 to 11 units, we're creating larger apartments which is
13 what is expected. What we typically do is larger more
14 open plan spaces. This was an odd space that was the
15 result of the old open court being put there. So yes
16 it was an attempt to modernize the building. It was a
17 small finger of space that didn't suit our needs for
18 bedroom space, living space.

19 CHAIRPERSON GRIFFIS: So if I understand
20 you correctly, this was built in 1909 or something of
21 that nature.

22 MR. HUNT: Yes.

23 CHAIRPERSON GRIFFIS: The turn of the
24 century. And the interior layout actually perhaps was
25 of validity and use at that time period, but the times

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1 have changed. And the new layouts reflect that.

2 MR. HUNT: Correct. The existing layout
3 was a series of small broken up rooms, narrow
4 hallways.

5 CHAIRPERSON GRIFFIS: Okay. So let's talk
6 about --

7 MR. GLEASON: I think it's also important
8 to indicate that we define these now as bedrooms, and
9 closet space wasn't feasible within that space. They
10 could have been used as a study or a den. But in
11 order for us to identify these as bedrooms and add the
12 necessary closet space, we needed this reconfiguration
13 or we continued to need the relief for this
14 reconfiguration.

15 CHAIRPERSON GRIFFIS: Okay. So the
16 reconfiguration actually comes then from the
17 requirements, perhaps code requirements but also in
18 terms of contemporary use requirements.

19 MR. GLEASON: Yes. And also what we are
20 trying to do is create two bedroom space because
21 that's where the shortage is in the community. I own
22 buildings with an abundance of efficiencies and one
23 bedrooms that we're now converting and moving towards
24 conversion to two bedrooms. The community right now
25 needs more two bedroom units. They don't exist in the

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1 market with the amount of plenty as one bedroom
2 efficiency is.

3 CHAIRPERSON GRIFFIS: Good. I think that
4 clearly goes to the second test which talks about the
5 public good and how first of all it wouldn't be a
6 deterrent to it, but you are saying that this is
7 actually a positive impact to the public good. Very
8 well.

9 MR. HUNT: I guess in terms of the
10 additions, we discussed the addition at the rear of
11 the property. We have the two additions. One is in
12 the open court. The open court being balconies on the
13 first, second, and third floors within the open court.

14 Although they were no longer in existence when we
15 came upon the building, there is also evidence from
16 the photographs.

17 If you look on the easel, the upper right
18 hand photograph shows the open court. Again, it shows
19 doors that have been bricked up. It shows the
20 remnants of wood balconies having been in that spot.

21 CHAIRPERSON GRIFFIS: That's the exterior.
22 Or are you talking about in the court?

23 MR. HUNT: Well, actually within the open
24 court there were apparently balconies.

25 CHAIRPERSON GRIFFIS: You can't find any

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1 documentation about what size those actually were.

2 MR. GLEASON: As of this point, we have
3 not been able to find photographs that document what
4 was existing.

5 CHAIRPERSON GRIFFIS: Any sort of archival
6 permits or anything of that nature.

7 MR. GLEASON: No. We have not found any
8 archival information. I'm still searching for
9 photographs but no archival information. What we are
10 making an attempt to do here is replicate what we
11 believe to be a similar configuration to what existed
12 in the building previously. We're trying to restore a
13 building from a historical standpoint although not
14 required to something that would conform to what
15 existed in the past.

16 CHAIRPERSON GRIFFIS: Right. You have
17 three courts in this building. Is that correct?

18 MR. HUNT: Correct.

19 CHAIRPERSON GRIFFIS: The court off the
20 alley, is that being addressed? What's happening with
21 that?

22 MR. HUNT: That's a fire stair that's no
23 longer needed. All we're doing is removing portions
24 of that. We're not asking to add anything within
25 that.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. HUNT: So that's not part of this.

3 CHAIRPERSON GRIFFIS: So you are doing
4 structural modifications to the metal structure that's
5 in that court.

6 MR. HUNT: Yes.

7 CHAIRPERSON GRIFFIS: Then the open court
8 on the south side of the building is where we had just
9 pointed out that there had apparently been porches
10 before. What we're requesting is putting porches back
11 in that space, roughly 40 square feet a piece, that
12 would not go towards making the court any less
13 conforming than it is now. We're not modifying the
14 width of the court. It's currently about seven feet
15 wide.

16 CHAIRPERSON GRIFFIS: So is it your
17 opinion that we wouldn't be looking at the court but
18 rather the lot occupancy that would be increased with
19 that projection?

20 MR. HUNT: Right. Although you've
21 indicated that it doesn't carry the same weight, a
22 couple of considerations are that because of the
23 addition of the 750 square foot lot our net lot
24 coverage is decreasing. One thing worth pointing out
25 is that on the balconies too in terms of the public

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1 good is we are building the balconies with materials.
2 They will be steel balconies with perforated
3 stainless steel decking which is a material that
4 allows plenty of light and air in. So in terms of
5 health requirements, light, and air, we are not --

6 CHAIRPERSON GRIFFIS: Is the egress stair
7 going to be of the same construction?

8 MR. HUNT: Yes. So going on to the closed
9 court, there's a greater need for the stair there in
10 that it meets a life safety requirement. For
11 providing egress for two of the units, it too will be
12 using the same materials, steel frame with perforated
13 steel decking. This is material we've used before
14 with very positive results in terms of allowing light
15 and air into that space especially considering that
16 these are south facing. They will get direct
17 sunlight.

18 CHAIRPERSON GRIFFIS: I think that's
19 clear. You just brought up an interesting issue in
20 terms of life safety. Is there work happening on this
21 building that actually tie the addition to any sort of
22 life safety upgrades? I'll let you think about that.

23 MR. HUNT: Okay.

24 CHAIRPERSON GRIFFIS: What else? Anything
25 else in your presentation?

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1 MR. HUNT: I think that about covers it.

2 CHAIRPERSON GRIFFIS: Very well. Board
3 Members, any other questions? Let's move on then and
4 go to government reports. My notes indicate that we
5 have an Office of Planning report and an Office of
6 Planning member with us here to present it today.

7 MR. COCHRAN: For the record, my name is
8 Stephen Cochran. Office of Planning would like to
9 stand on its report with respect to any of the
10 variances requested for the open court and closed
11 court and certainly anticipates that there may be some
12 questions. With respect to the addition on the rear,
13 we would like to highlight a few things in our report.

14 There was some confusion in the
15 application as to whether the addition addresses life
16 safety issues. They were at one point referred to as
17 fire balconies. There's no fire egress functioning
18 within this addition. To accomplish that, you would
19 have to have a circular stair that goes down through
20 someone else's bedroom or living room to get out to
21 the ground floor. There's nothing like that.

22 So they are simply at addition to make the
23 new apartments nicer which is at the core of the case.

24 OP has discussed this case. We don't like the
25 architecture. We don't like the new design. But the

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1 zoning regulations don't necessarily deal primarily
2 with aesthetics.

3 There isn't to some extent unfortunately
4 any demonstration of a practical difficulty here.
5 There may be a demonstration of they won't be quite as
6 marketable. But if you look at sheet A-02, yes, you
7 have a master bedroom that becomes larger. You have a
8 guest bedroom that becomes larger. But there's
9 nothing that says that either of those would be an
10 inadequate size were the addition not put on.

11 If you look at sheet A-03, you have what
12 would become a full dining room as opposed to perhaps
13 a smaller dining room or kitchen with a dining area.
14 You have a living room with about three feet added to
15 it, but it would certainly be an adequately sized
16 living room without the addition.

17 Somehow you are able to have a guest
18 bedroom on sheet A-04 that is the same size as the
19 current structure because you are simply having a
20 deck. Clearly there are just inconsistencies in here.

21 We're dealing with the need to justify the addition
22 as opposed to simply saying that it makes for a nicer
23 building.

24 The Office of Planning simply doesn't find
25 that it meets the tests that are required for

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1 uniqueness or practical difficulty. OP doesn't feel
2 however that granting the relief would pose any
3 substantial deterrent to the public good. In fact, it
4 would look better from the rear. Although, the
5 buildings to the north would continue to have the same
6 flat facade, the Harvard Court Condominiums would look
7 out at a more attractive rear structure.

8 That doesn't though say anything about
9 whether the Applicant could have made the rear of this
10 building more attractive with changes in fenestration,
11 decoration, whatever without putting the bays on. So
12 OP kind of likes the bays, but we don't think it meets
13 the tests that are required by the regs.

14 CHAIRPERSON GRIFFIS: Very well. I think
15 that's clear in your report. Just for clarity, this
16 Board does in fact look at design in many respects if
17 not all. But that being said, I'm sorry, Mr. Cochran,
18 is there anything further you want to illuminate on
19 your report?

20 MR. COCHRAN: No, sir.

21 CHAIRPERSON GRIFFIS: The Applicant is in
22 receipt of the Office of Planning report. Correct?

23 MS. HICKS: Yes.

24 CHAIRPERSON GRIFFIS: Cross examination of
25 the Office of Planning.

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1 MR. HUNT: No questions.

2 CHAIRPERSON GRIFFIS: Board Members,
3 questions of the Office of Planning.

4 COMMISSIONER PARSONS: I'm a little
5 confused at your last sentence. I thought that you
6 said that you didn't like the architecture in the
7 beginning of your presentation. But then you seemed
8 to say that you liked it at the end.

9 MR. COCHRAN: Oh, no. As individuals
10 separate from our paychecks, we like the architecture.

11 COMMISSIONER PARSONS: Okay. Thank you.

12 MR. COCHRAN: As planning professionals,
13 we don't think it meets the test.

14 COMMISSIONER PARSONS: I got you. I
15 misunderstood. Thank you.

16 CHAIRPERSON GRIFFIS: I think that's an
17 important piece. As I stated, we need to satisfy the
18 tests in order for us to move on an approval of this.

19 Otherwise, it does present itself with a design. Mr.
20 Cochran, you don't find the uniqueness in several
21 respects. First of all, that there is an existing
22 building that can perhaps be documented, if not, can
23 be seen in the photographs presented in this case that
24 there was a structure at the rear of this building
25 that did accommodate and animate the back side of the

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1 building.

2 The uniqueness of the fact of when we look
3 at additions oftentimes when we look at the deterrent
4 to the zone or rather the public good I would say in
5 terms of noise and lighting, we have a unique
6 situation that this fronts an interior alley court.
7 So it actually fronts primary facades thereby
8 indicating that there is a visual impact of whatever
9 happens there that is unique to this property.

10 I've also heard in this case that there is
11 the uniqueness of a turn of the century, almost 100
12 year old, apartment building that was configured for a
13 lifestyle perhaps accommodating that period of time.
14 As we know, most of the Victorian or Edwardian
15 townhouses in the city don't have closets which is an
16 interesting point that was brought up in terms of
17 storage. Do you not find those a uniqueness in terms
18 of the requirement for a reconfiguration for a more
19 contemporary modern living?

20 MR. COCHRAN: Let me address the second
21 one first. The Applicant is already reducing the
22 number of units from 16 to 11. I've been in the
23 building. There has been substantial demolition.
24 There will be substantial reconfiguration. We're not
25 really dealing anymore with the interior of an

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1 Edwardian structure given the amount of --

2 CHAIRPERSON GRIFFIS: I understand. But
3 that's what motivates the demolition is the
4 reconfiguration. They haven't demolished unsound
5 walls and replaced them in the same place. Do you
6 understand what I'm saying?

7 MR. COCHRAN: I do. I think you just made
8 the Office of Planning's argument.

9 CHAIRPERSON GRIFFIS: Well, I certainly
10 don't agree. How do you see that?

11 MR. COCHRAN: By saying that they are not
12 demolishing walls and putting them back in the same
13 place.

14 CHAIRPERSON GRIFFIS: I understand that.

15 MR. COCHRAN: In effect, you're getting,
16 aside from structurally, universal space that can be
17 reconfigured in many different ways. The Applicant
18 has not demonstrated that it tried to meet the zoning
19 regulations and couldn't.

20 CHAIRPERSON GRIFFIS: That's an
21 interesting point, but perhaps we could have the
22 Applicant address if they can whether there was
23 configurations that did not involve the addition. But
24 here's my point. When looking at the reconfiguration,
25 we have the Applicant testifying to the fact that they

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1 have to reduce the number of units, 16 to 11, in order
2 to accommodate a more contemporary unit layout.

3 Thereby having this addition also fits within
4 that reconfiguration. That's my only point. Any
5 other questions of the Office of Planning? Has the
6 Applicant come up with any cross examination questions
7 of the Office of Planning with that new testimony that
8 was given?

9 MR. HUNT: Well, this is more of a
10 clarification or I guess it would be a question to the
11 Office of Planning. Although we have gutted the
12 interior of the building, there were certain
13 constraints that were still present. One is the
14 exterior, the parameter walls of the building and the
15 interior structure.

16 CHAIRPERSON GRIFFIS: Is that a question
17 to the Office of Planning?

18 MR. HUNT: I guess the question would be
19 does the Office of Planning not see that even though,
20 yes, we have gutted the building, we do have limiting
21 constraints. Isn't it apparent that one of those
22 constraints is the small dimensions of that back
23 space? There, tearing down interior walls did not
24 enlarge that space. It's a small awkward space.
25 Isn't that apparent?

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1 MR. COCHRAN: The Office of Planning
2 agrees that there are constraints. I would be
3 reluctant to say that the Office of Planning agrees
4 one way or another that the spaces are small and
5 awkward. That's a matter of personal taste.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GLEASON: I would also add, and I
8 think that this is a unique constraint, I think by
9 current standards of room that is because of the
10 exterior wall dimensions that limit us to a nine foot
11 or less width in dimension of a room for a bedroom is
12 an awkward and unique space constraint in trying to
13 sell the scale of condominiums that we're trying to
14 sell here.

15 Unless we make this modification, we are
16 constrained because of the shape of that and that nine
17 foot width with a very unusable space. If you look at
18 that drawing that we've presented to you in adding a
19 closet without the bays being added, it makes that a
20 very small room. It borders on being feasibly a
21 marketable, usable bedroom at least.

22 CHAIRPERSON GRIFFIS: Okay. Well, we're
23 just going to have to watch the marketability of it
24 because that opens up a whole other argument that
25 we'll spend months on you trying to justify and prove.

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1 I think that's well put in terms of size and
2 applicable use of a bedroom. I think we can
3 deliberate on that.

4 Let's move on unless Mr. Cochran, do you
5 have anything else to add? We do appreciate your
6 report. I think frankly it's directness and substance
7 is excellent. Other government reports? I don't see
8 any. I do see the attendant ANC. Ms. Renshaw, do you
9 have that in front of you?

10 VICE CHAIRPERSON RENSHAW: Yes. Advisory
11 Neighborhood Commission 1-B has communicated with the
12 Board. Deborah Thomas, the Chairperson sent a letter
13 on January 7, 2003. She stated that at it's regularly
14 scheduled monthly meeting on January 2, 2003, the ANC
15 voted in support of the variance application for 2914
16 11th Street, N.W. The Commission expressed no issues
17 or concerns pertaining to the application.

18 The Applicant had requested to make a
19 presentation at the December 2002 regularly scheduled
20 monthly meeting, but due to snow that meeting was
21 canceled. The ANC has 11 commissioners. Six
22 constitute a quorum. Seven commissioners were present
23 for the unanimous vote of support for Case Number
24 16965.

25 CHAIRPERSON GRIFFIS: Thank you, Ms.

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1 Renshaw. Any comments on the ANC letter?

2 MR. GLEASON: No. We're grateful for
3 their support.

4 CHAIRPERSON GRIFFIS: Right.

5 MS. HICKS: Mr. Gleason also has and we
6 would like to submit a petition. I don't know if this
7 is the proper time. It's community members in support
8 of the project.

9 CHAIRPERSON GRIFFIS: Really? That would
10 be fine.

11 MS. HICKS: Mr. Gleason has the
12 information.

13 CHAIRPERSON GRIFFIS: Okay. We can give
14 great weight to the ANC position. That's all the
15 attendant government reports. So we do go to parties
16 or persons in opposition or in support of this
17 application. They can come forward. Now would be an
18 appropriate time if you want to submit petitions in
19 support. You can give it to the Staff. How many
20 copies are you submitting?

21 MR. GLEASON: I have two copies.

22 CHAIRPERSON GRIFFIS: I see.

23 MR. GLEASON: These are from neighbors on
24 Columbia and --

25 CHAIRPERSON GRIFFIS: Those petitions are

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1 from neighbors on Columbia and Harvard you stated.

2 MR. GLEASON: Columbia and 11th Street.

3 CHAIRPERSON GRIFFIS: Columbia and 11th.

4 Well, we'll get copies of that to the Board Members.

5 We can then take that up. Anything else? Any other

6 people? I've given that opportunity. Let us go to

7 closing remarks by the Applicant.

8 MS. HICKS: In conclusion, the property is
9 unique in that it fronts on 11th Street, the age of
10 construction, and also that it backs up to the
11 condominium Harvard Muse. Also, Harvard Muse has
12 units which front on the rear court. From some of the
13 main entrances, you can see the rear of the structure.

14 The property owner is very concerned about
15 the visual impact, the visual balance of the rear wall
16 and feels like the addition also serves as an
17 aesthetic function in addition to making the interior
18 space usable and functional. These objectives are
19 difficult to obtain within the confines of the
20 existing structure.

21 We would rather have the Board review the
22 application, vote on the application versus getting a
23 stop work order and going into any additional expense.

24 The project does need Board of Zoning Adjustment
25 review even if it is just for section 2001.3 and lot

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1 occupancy. I strongly feel that it also needs the
2 open court provisions to be approved on the
3 application.

4 CHAIRPERSON GRIFFIS: One of the Board
5 Members has a question of what actually the stop work
6 order was.

7 MS. HICKS: There has not been any stop
8 work order issued. We are trying to look ahead and
9 not get into that position.

10 CHAIRPERSON GRIFFIS: Indeed. I think the
11 board is very amenable to acting on this. I do not
12 believe that the Board, and I can take other's
13 opinions but I think I have a good feel for this
14 application that they are not prepared to act on it
15 today.

16 What I would propose is that the Applicant
17 brief the Board as quickly as possible on the
18 variances that are required in terms of the courts and
19 also the lot occupancy and would in fact elaborate and
20 restate their provisions of each of the tests required
21 under the variance. We have illuminated quite a few
22 today. I think those need to be in fact discussed and
23 perhaps substantiated and one might say can be
24 illuminated upon. I think that will make this a much
25 stronger case and one that can move towards approval.

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1 At this point, I think that the Board
2 probably has enough questions that we could spend most
3 time that would not be effectively used trying to get
4 them answered. I will ask you how long you think you
5 need to prepare that type of information to present to
6 the Board.

7 MR. HUNT: We're prepared to submit that
8 information, the additional illumination, by a week
9 from today. Does that meet the Board's schedule?

10 CHAIRPERSON GRIFFIS: A week from today.
11 That means we would have submissions on Tuesday. We
12 could set that for the following Tuesday for decision
13 making. Let me just check our schedule. That would
14 make it February 4. Is that correct?

15 MR. MOY: Yes, sir, that could work.

16 MR. GLEASON: Is this solely a written
17 submission or would that be more testimonial?

18 CHAIRPERSON GRIFFIS: No. We're setting
19 this for decision making. Decision making would be a
20 public hearing which you probably sat laboriously
21 through this morning where we have no more public
22 testimony. It's actually straight deliberation of the
23 Board.

24 MR. GLEASON: Okay.

25 CHAIRPERSON GRIFFIS: Yes. We would be

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1 looking for very direct, very substantiated written
2 submissions attendant to the case presentation today.

3 MR. GLEASON: Okay. We will have those
4 prepared a week from today.

5 CHAIRPERSON GRIFFIS: A week from today.
6 That means that we can set it for decision making on
7 February 4. Is that correct, Mr. Moy?

8 MR. MOY: Yes, sir. We can have that on
9 the 4th with submissions by January 21.

10 CHAIRPERSON GRIFFIS: Okay. I think Ms.
11 Renshaw is about to ask you did you have discussions
12 or circulate a petition to the Harvard Muse owners.

13 MR. GLEASON: We did not, but we would be
14 glad to.

15 VICE CHAIRPERSON RENSHAW: Would you do
16 that? I think since they are looking out on the back
17 of your property and there is substantial work on the
18 back of your property that your proposing that their
19 signatures would be important.

20 MR. GLEASON: We would be happy to. Thank
21 you for the recommendation.

22 CHAIRPERSON GRIFFIS: Okay. Anything
23 else? Board Members, let's be very clear on exactly
24 what we are doing and asking for. Actually, I will
25 ask the Applicant if they are clear.

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1 MR. HUNT: Yes. Just clarification on how
2 our proposed zoning variance meets the tests.

3 CHAIRPERSON GRIFFIS: That's correct. I
4 would also ask you to give specific detail of what you
5 are planning for that parking area, how it interacts
6 with the Harvard Muse. I'm sure they are going to be
7 interested if you are speaking with them on how that
8 landscaping might be affected and any sort of exterior
9 lighting that would be appropriate obviously for that
10 residential area but also to provide for security of
11 your tenants that are parking in those spaces.
12 Anything else, Board Members? Very well. Are you
13 clear on dates for submissions?

14 MR. HUNT: Yes.

15 MS. HICKS: Yes.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. One last question. The addition which
18 we see in model form here which we have to keep the
19 model now because it's part of the record. No, I'm
20 kidding. Do you have a photograph of it? Are there
21 proposed materials involved in that addition?

22 MR. HUNT: Yes. We're proposing using a
23 split-faced concrete block for the structure, aluminum
24 windows as we are using throughout the project.

25 CHAIRPERSON GRIFFIS: What's the skin on

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1 that going to be?

2 MR. HUNT: The skin as well will be the
3 split-faced concrete block.

4 CHAIRPERSON GRIFFIS: I see.

5 MR. GLEASON: Can I just add something in
6 closing because there won't be anymore testimony? In
7 our acquisition of this building, we did go to some
8 expense to acquire an additional lot here that's been
9 added and now subdivided and joined to this lot. That
10 lot was not in the public interest. It was a lot that
11 collected garbage, trash, and was subject to repeated
12 violations by city clean standards regulations.

13 We did this with the intention of having
14 an ability to not encroach upon a setback as we
15 anticipated restructuring something here that
16 replicated the porches that originally existed on the
17 structure. We went to an expense of \$60,000 to
18 acquire this for that purpose.

19 Our intention was here to bring the
20 building back to where it was somewhat historically,
21 to try and overcome this unique situation where we had
22 a nine foot room space on the back southwest corner of
23 the building that was not what we perceived to be very
24 usable, in addition to creating a parking space that
25 was not required by code. We've added three or four

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1 parking spaces here that if we did not acquire the lot
2 we could have gotten around and not had to add any at
3 all.

4 So we've gone to some expense and to some
5 large degree of effort here to try to design something
6 that not only overcame the uniqueness and the
7 constraints that we face but also did as much as we
8 possibly could to improve and contribute to the public
9 good from an aesthetic standpoint of our neighbors and
10 for the usable space for the people from a light and
11 recreational space for the people to be using the
12 building. Thank you.

13 CHAIRPERSON GRIFFIS: Excellent. I think
14 that's a fantastic point to close with. What you are
15 stating is establishing a uniqueness in terms of how
16 your actual actions based on the existing structure
17 and how you tried to bring it close to conformity or
18 into conformity with several of its nonconforming
19 aspects.

20 MR. GLEASON: That's correct, Mr.
21 Chairman. Thank you.

22 CHAIRPERSON GRIFFIS: Very well. Anything
23 else? Anything further? Board Members? Very well.
24 You are not needed to be present of course on the 4th,
25 but we will take this up on the 4th. We will look for

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1 your submissions on Tuesday. We're going to take a
2 five minute recess and then go to the last case of the
3 morning. Off the record.

4 (Whereupon, the foregoing matter went off
5 the record at 11:42 a.m. and went back on
6 the record at 11:53 a.m.)

7 CHAIRPERSON GRIFFIS: On the record.
8 Okay. If we're ready, let us resume and call the next
9 case.

10 MR. MOY: Yes, Mr. Chairman. The next
11 case is application 16966, application of NEST, N-E-S-
12 T, and Totah Venture, LLC, pursuant to 11 DCMR 3104.1,
13 for a special exception to allow a mechanical
14 penthouse not meeting the set back requirements under
15 section 411 (770.6(b)), and pursuant to 11 DCMR
16 3103.2, a variance from the floor area ratio
17 requirements under section 771, and a variance from
18 the rear yard requirements under section 774, to allow
19 the construction of a retail/office building with an
20 accessory parking garage in the C-4 District at
21 premises 1426-1430 K Street, N.W. That's in Square
22 218, Lots 808 and 823.

23 A couple preliminary matters, Mr.
24 Chairman. First is we have a late submission from the
25 ANC. It's their report which is dated January 10,

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1 2003, so you may wish to waive that into the record.
2 Second, we have a request for party status first being
3 from Ually, U-A-L-L-Y, Spencer and second being from
4 Shaw Pittman LLP who is representing Chevy Chase
5 Savings which is also a request that the Board waive
6 the 14 day party status deadline to allow them party
7 status. That completes my brief, sir.

8 CHAIRPERSON GRIFFIS: Okay. Board
9 Members, let's take up party status first. We'll
10 address the ANC's report. We'll need to hear from any
11 party in the case and if awarded, any objections to
12 receiving that.

13 Let's look at first of all the Ually
14 Spencer. Are there questions from the Board Members
15 that need discussion? It's indicated that the
16 property is 200 feet away from the property in
17 question today.

18 MR. CAIN: Mr. Chairman, if I could ask a
19 question, who is this person? Could you identify for
20 the record who they are?

21 CHAIRPERSON GRIFFIS: Yes. Actually,
22 we'll start with you. Did you want to identify
23 yourself?

24 MR. CAIN: I'm Michael Cain, attorney for
25 NEST and Totah Venture, LLC, the Applicant in this

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1 case. This is the first we've heard of this interest.

2 CHAIRPERSON GRIFFIS: Is that so? You
3 don't have a copy of the party status application.

4 MR. CAIN: Only for Chevy Chase, not for
5 the other person or property or whatever.

6 CHAIRPERSON GRIFFIS: This was timely
7 filed, so it would have been in the record. But let
8 us get you a copy of that if you don't have it.

9 MR. CAIN: Okay.

10 CHAIRPERSON GRIFFIS: I will, as the Board
11 Members rereview this -- An excellent question. The
12 name on the application is Ually Spencer. They are
13 representing a Trammel Crowe Company which is the
14 management agent and representative of the owner of
15 901 15th Street, N.W. Is Ually Spencer present today?

16 (No response.)

17 CHAIRPERSON GRIFFIS: That's an
18 interesting note. Well, clearly there are six
19 criteria that we ask for in terms of establishing our
20 deliberation on the party status application whether
21 we grant or deny it.

22 There is an indication on this in terms of
23 the effect of this property owner that they are
24 concerned with the proposed garage for this new office
25 building. It would cause terrible traffic congestion

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1 in the alley where the existing office building share
2 for the other garage accesses. So clearly the
3 congestion in the alley, the use and impact on the
4 alley.

5 Trammel Crowe is the accompanying
6 management agent. They are representing the owner.
7 The distance of the property and the proposed site is
8 200 feet. The leasing of McPherson would be impacted
9 in that the building would have a difficult parking
10 access problem, deliveries or off street -- causing
11 tenants to consider sites where access is not an
12 issue.

13 The alley currently services three parking
14 garages and deliveries for the other properties. The
15 alley dead ends at the point where this property is
16 being proposed. Those are descriptions of relevant
17 matters because the proximity, and this is the most
18 important, how this person and representative feels it
19 would be more significantly distinct or uniquely
20 affected in character and kind because of the close
21 proximity of the proposed property.

22 McPherson, we believe our property would
23 be impacted the most. I think they are in terms
24 talking about the unique impact would be in the alley
25 in the rear. Let's hear from the Applicant in this

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1 party application. Do they have any objections that
2 might fill in our deliberation on this? Are you aware
3 of where this property is located?

4 MR. CAIN: If it's 901 15th, this should
5 be on the corner of 15th and I.

6 CHAIRPERSON GRIFFIS: 15th and I? Do you
7 have a site plan that shows the block? If it's on the
8 corner of 15th and I, could it share this alley?

9 VICE CHAIRPERSON RENSHAW: Refer to Tab 10
10 in your submission dated December 30, 2002. It shows
11 the square and a portion that is highlighted that is
12 your building.

13 MR. CAIN: That's us, yes.

14 VICE CHAIRPERSON RENSHAW: Can you
15 identify from this map where 901 15th Street is?

16 MR. CAIN: I would expect 901 to be Lot 80
17 which is in the southwest corner, but they don't
18 identify it in their application. They do reference
19 it by name I think. I believe that to be the name of
20 that building, McPherson building.

21 CHAIRPERSON GRIFFIS: Are you very
22 definitive on that?

23 MR. CAIN: No I'm not. It would have
24 helped me if they would have given us a lot number to
25 go with this address. That block of 15th is the odd

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1 number block between I and K.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. CAIN: Chevy Chase I think is 925, so
4 they are in the same block. I think the one that they
5 are talking about is the large building on the
6 southwest corner, square 218. I don't see why they
7 would be any more affected than anyone else in the
8 square with this kind of an issue.

9 COMMISSIONER PARSONS: Chairman, I don't
10 quite understand the relevance of the parking garage
11 entrance and its impact on the alley to the case
12 before us. We're talking about a variance for upper
13 floors. This parking garage I assume can be built as
14 a matter of right. Maybe I'm misunderstanding.

15 CHAIRPERSON GRIFFIS: Is that your
16 understanding?

17 MR. CAIN: Yes it is.

18 CHAIRPERSON GRIFFIS: Right. I would tend
19 to agree, Mr. Parsons, but I would go a step further.
20 I think we would take that into effect in the
21 variance. However, I don't see how this property if
22 it is on I Street would be uniquely or any different
23 than the rest of the properties that share that alley.

24

25 That would in fact be a shared concern of

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1 all the property owners there and therefore will be a
2 concern to this Board in terms of addressing any sort
3 of impact. So I would be more inclined without
4 further substantiation to deny the party status in
5 this case. Let me hear from others.

6 COMMISSIONER PARSONS: I agree.

7 VICE CHAIRPERSON RENSHAW: I would agree
8 too.

9 MEMBER ETHERLY: I'm going to agree, Mr.
10 Chair.

11 CHAIRPERSON GRIFFIS: Okay. Very well.
12 Then I'll take that as the concensus of the Board.
13 Let us take up the second request for party status.
14 First we need to waive or not waive that into the
15 record. There is an issue in terms of the late
16 submission for a request for party status which is
17 required 14 days prior to the hearing.

18 The issue has been brought up that
19 notification was not received timely enough for Chevy
20 Chase Savings to put in their request for party
21 status. We run into this quite often, Board Members.

22 I hate not to address it in that I don't think that
23 this is a patent response that we would then waive
24 everything in just because they were unaware.

25 They were served according to the record

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1 2925 15th Street, N.W. to the Chevy Chase Savings FSB
2 care of the leasing department on the ninth floor.
3 The address went to 7501 Wisconsin Avenue. There was
4 an indication in the submission to waive it in because
5 the organization is so large it may not have gotten to
6 the right people. That's management. I don't think
7 we can get into that.

8 However, I think we have taken into
9 consideration in terms of accepting party status that
10 which would fill and create a fair hearing on this
11 matter. The party also indicates that is something
12 that we should take into consideration. I find that
13 is more moving for me to entertain the party status
14 than anything else. Let me hear from others.

15 VICE CHAIRPERSON RENSHAW: I would tend to
16 accept the party status request of this applicant
17 represented by Shaw Pittman understanding that this is
18 the only property as it states which the subject
19 property backs up to.

20 CHAIRPERSON GRIFFIS: Okay. Let's not get
21 into the subject of the application --

22 VICE CHAIRPERSON RENSHAW: The subject
23 matter, but I would agree to accepting this into the
24 record.

25 CHAIRPERSON GRIFFIS: I tend to agree. I

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1 think we ought to move if I can get a concensus that
2 we waive it in. Let me just clarify the fact that we
3 have several ways of announcing the public hearing.
4 Of course, the property is posted. So therefore the
5 adjacent owner should be aware that's happening.

6 So we don't get into a situation where we
7 aren't afforded a fair and full hearing, let us waive
8 in the report and now take up party status
9 application. That is for Chevy Chase Savings FSB. Is
10 the Applicant in receipt of this request for party
11 status?

12 MR. CAIN: Yes, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Okay. Any comments
14 on the application, Ms. Renshaw?

15 VICE CHAIRPERSON RENSHAW: As I stated
16 just a few minutes ago, Chevy Chase Building as it
17 stated in the request is the only property which the
18 Applicant backs up to. So I think they have a rather
19 unique position. We should afford them the party
20 status request.

21 CHAIRPERSON GRIFFIS: Any others?

22 MEMBER ETHERLY: Mr. Chairman, I'm going
23 to agree with my colleague Ms. Renshaw. When you look
24 at these two party status request applications, one of
25 which we've just denied, I think what sets them apart

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1 is that there's greater specificity with regard to
2 this particular application as it relates to impact on
3 the site. As Ms. Renshaw noted, the proximity of the
4 building I think creates a significant need for the
5 representative of that property and representative
6 tenant to be on the table.

7 I'll note for the record that as part of
8 the party status application a letter was submitted to
9 Chevy Chase Bank on the behalf of what appears to be
10 four tenants of that particular property. So I think
11 I would be in support of the application.

12 CHAIRPERSON GRIFFIS: Okay. Mr. Cain, do
13 you have any objections or concerns of the
14 application?

15 MR. CAIN: Mr. Chairman, I guess I don't
16 have any official objection. One thing we ask you to
17 bear in mind is that because the statement came in
18 very close to the hearing date in order for us to try
19 to effectively respond to the issues they highlight we
20 may find ourselves in the position of having to ask
21 the Board if we can come back with something. We will
22 try to address those issues, but we just got the
23 statement of reasons last night at 5:00. We'll try to
24 address them, but we may be behind the eight ball a
25 little bit.

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1 CHAIRPERSON GRIFFIS: Okay. I think
2 that's perfectly appropriate. I think we can give
3 ample time to do that. Mr. Sullivan is present today.

4 Am I right? Mr. Sullivan, do you know what the lot
5 number is for your client?

6 MR. SULLIVAN: 75.

7 CHAIRPERSON GRIFFIS: Indicated as 75.
8 Board Members, if you go back to Exhibit 10 of the
9 Applicant, you will note the unique positioning of
10 that. Then if I don't hear any objection I would take
11 it as concensus of the Board that we grant party
12 status to Chevy Chase Savings as represented by Shaw
13 Pittman at this time. I think we're able to proceed.

14 COMMISSIONER PARSONS: I would only add,
15 Mr. Chairman, I don't understand their main points and
16 would ask them to embellish them as we proceed. I
17 understand loss of light. I don't understand loss of
18 space. I don't understand loss of value to its
19 property.

20 CHAIRPERSON GRIFFIS: Right. Indeed.

21 COMMISSIONER PARSONS: I would agree on
22 the basis of light, but I don't understand the other
23 arguments at all.

24 CHAIRPERSON GRIFFIS: I think that's an
25 excellent point. It would be the requirement that the

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1 party in opposition avails itself to proving that case
2 in terms of the opposition to the variance. Are we
3 ready?

4 MR. MOY: Mr. Chair, if I may interrupt to
5 administer the oath.

6 CHAIRPERSON GRIFFIS: Yes. Indeed. If
7 everyone who is going to give testimony today would
8 please stand and give their attention to Mr. Moy.

9 WHEREUPON,

10 RICHARD DONNALLY and ALAN NESSIM
11 were called as witnesses and, having been first duly
12 sworn, were examined and testified as follows:

13 CHAIRPERSON GRIFFIS: Very well.

14 MR. CAIN: Mr. Chairman, we could do two
15 housekeeping matters before we get to our case in
16 chief.

17 CHAIRPERSON GRIFFIS: Yes. The restrooms
18 are out there. Oh, not that kind of stuff.

19 MR. CAIN: Not that kind of stuff. We
20 would like to submit a corrected affidavit of posting.

21 When the representative signed the affidavit, she
22 mistakenly signed it the day she put the posters up
23 rather than the day after checking to make sure the
24 posters were still up.

25 CHAIRPERSON GRIFFIS: I see.

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1 MR. CAIN: So we have a current signed
2 affidavit. Unfortunately, you already have our
3 photographs with the other. If I may submit this for
4 clarification.

5 CHAIRPERSON GRIFFIS: Yes. That's a copy
6 for the record.

7 MR. CAIN: This is the original.

8 CHAIRPERSON GRIFFIS: Okay. What I'm
9 going to ask is as we proceed through this that
10 anything that is submitted a copy will also be
11 presented to the party in opposition currently so that
12 they may review it as we do. We'll make copies of
13 that and get it to Mr. Sullivan. You had another?

14 MR. CAIN: I have another housekeeping
15 matter. We had originally framed this case to involve
16 two variances and one special exception. The one
17 variance for floor area ratio was done out of an
18 abundance of cautioning because the zoning
19 administrator's referral memo said we needed it.

20 We didn't think we needed it because the
21 floor area in question is in the form of projection
22 and public space. You will note from Planning Office
23 report that they agree that's not FAR. The ANC says
24 they don't think that's FAR. We don't think it's FAR
25 either.

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1 Now at last the zoning administrator has
2 written us a letter telling us he doesn't think that
3 it's FAR. So we would like to withdraw that aspect of
4 our application. That is specifically an application
5 for a variance from FAR limitations.

6 CHAIRPERSON GRIFFIS: Do you have
7 something from the ZA that indicates that?

8 MR. CAIN: We have a letter if I can find
9 it which I can briefly read for the record and then
10 provide copies. It is not specific to our project.
11 It is however referencing the project.

12 Quoting from Mr. Kelly, one of the project
13 architects. "Any floor area projection approved by
14 building inspection division of DCRA into public space
15 does not count as building area for zoning purposes.
16 The FAR is counted from property line to property
17 line." Then it goes on. In this case, I do have a
18 number of copies for you if I may submit it.

19 CHAIRPERSON GRIFFIS: Yes. That would be
20 good because this is actually a referral case. This
21 is not a self certification. Is that correct?

22 MR. CAIN: Yes.

23 CHAIRPERSON GRIFFIS: Okay. What you are
24 about to submit is clearly an amendment to the ZA's
25 referral letter.

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1 MR. CAIN: I'm going to treat it as that.
2 It basically says I didn't have a chance to look over
3 your plans again, but I agree with you in principal.
4 If you are outside the building parameter and outside
5 the lot, it's not FAR.

6 CHAIRPERSON GRIFFIS: Correct.

7 MR. CAIN: Our design as you will hear
8 from our architect is within the 10.0 limitation that
9 would be applicable to this site.

10 CHAIRPERSON GRIFFIS: Okay. The most
11 expeditious way would be to just have the ZA amend
12 this letter and have this put into the record. The
13 more laborious way will be for us to walk through all
14 the plans, and actually we start doing our
15 calculations of FAR if we go through that. If in fact
16 the plans can be definitive, then so be it. But I
17 think the ZA letter would be important.

18 MR. CAIN: We tried to do it that way for
19 you, Mr. Chairman, but with the holidays and things.

20 CHAIRPERSON GRIFFIS: I understand. I
21 think what we'll do though is make a note that we'll
22 leave the record open to accept that if it does in
23 fact come through. Anything else?

24 MR. CAIN: No, sir.

25 CHAIRPERSON GRIFFIS: I think you should

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1 proceed.

2 MR. CAIN: With those housekeeping matters
3 out of the way, that leaves us with a variance
4 application for relief from the minimum required rear
5 yard and for a special exception to allow us to place
6 a mechanical penthouse on the roof in a manner that
7 allows for effective and efficient usable office space
8 within the structure. The property in question is two
9 side by side lots at 1426 and 1430 K Street, N.W.

10 On the south side of K close to the
11 intersection of 15th, one block removed, there's a
12 building on the corner. If you are looking at the
13 rendering graphs, you can identify the building on the
14 corner. The property is zone C-4. The Applicant
15 proposes to build a modern, class A office building in
16 place of two high rise, vacant, distressed buildings
17 that currently occupy the site.

18 The Applicant will present two witnesses,
19 Mr. Alan Nessim who is the project manager for the
20 developer and Mr. Richard Donnally who is the project
21 architect. I believe you have written statements of
22 theirs already in the file. So we will try not to go
23 laboriously through the statements but to hit the high
24 points and to try to answer your questions.

25 CHAIRPERSON GRIFFIS: That's an excellent

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1 point. I think that's exactly the way you should
2 proceed. All of the Board is in receipt of your
3 submission and have all read it. So we're pretty up
4 to speed on that.

5 MR. CAIN: I think with that said I don't
6 need to draw your attention to what the relevant tests
7 are and that kind of thing because you know them very
8 well. I'd like to call our first witness, Mr. Alan
9 Nessim. Mr. Nessim, would you please identify
10 yourself for the record?

11 MR. NESSIM: Good morning, Mr. Chairman
12 and Members of the Board. My name is Alan Nessim. I
13 am one of the founding members of NEST and Totah
14 Venture, LLC as a single asset entity for the purpose
15 of a development as you can appreciate. My address is
16 5225 Pooks Hill Road in Bethesda, Maryland.

17 MR. CAIN: Is your company the owner of
18 the property in question?

19 MR. NESSIM: Correct. We own the
20 building, the existing structures and the land.

21 MR. CAIN: Can you tell the Board what
22 approximately the land area is of the two parcels?

23 MR. NESSIM: The two lots encompass an
24 area of 7,200 square feet.

25 MR. CAIN: What's on site right now?

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1 MR. NESSIM: On site right now is an
2 office building which was built in 1951 and an
3 adjacent contiguous structure made of concrete which
4 used to be a parking garage. The parking garage was
5 15 floors, low floor to floor height. The office
6 building has 13 floors.

7 They are both vacant and in a general
8 state of disrepair. They have been vacant for the
9 past ten years. There are problems like some homeless
10 people living in the area, some infestation by
11 animals, et cetera, the general things that one would
12 expect after such a long time.

13 MR. CAIN: Are there any environmental
14 issues with either structure?

15 MR. NESSIM: Yes. We have found with a
16 full environmental study that the buildings contain
17 some asbestos and PCBs in the light fixtures. There
18 are two underground storage tanks which need to be
19 taken care of as well as bird guano and some mold that
20 has built over the years. We have a full schedule to
21 remediate this prior to demolition of the structures.

22 MR. CAIN: Is the site served by a public
23 alley?

24 MR. NESSIM: Yes.

25 MR. CAIN: Where is the alley?

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1 MR. NESSIM: The alley is in the rear of
2 the building. However, there is an important point
3 that the alley does not run the entire length of the
4 rear yard property line. So we only have access to a
5 small piece of the alley.

6 MR. CAIN: Are you familiar with an order
7 entered by the Board of Zoning Adjustment about ten
8 years ago affecting this property?

9 MR. NESSIM: Absolutely.

10 MR. CAIN: Mr. Chairman, I would like to
11 ask the Board to take official notice of the BZA order
12 number 15169 dated May 17, 1991. We may talk about it
13 from time to time.

14 CHAIRPERSON GRIFFIS: That's part of your
15 attachment. Is it not?

16 MR. CAIN: It's part of our attachment.

17 CHAIRPERSON GRIFFIS: What was the
18 appendix number?

19 MR. CAIN: I think it's the last item.

20 CHAIRPERSON GRIFFIS: Indeed it is 12.

21 MR. CAIN: We attached it both times, so I
22 wasn't able to respond right away.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. CAIN: It has two different attachment
25 numbers.

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1 CHAIRPERSON GRIFFIS: For clarification,
2 it's stated in the front that this was for a similar
3 if not exact relief in terms of penthouse and rear
4 yard set back. Is that correct?

5 MR. CAIN: It was similar as to penthouse.
6 It's the same as to rear yard.

7 CHAIRPERSON GRIFFIS: Right. Similar to
8 penthouse and same as rear yard. The issue that this
9 does not help you directly in any sort of proposed
10 reconstruction is the fact that this was not actually
11 invoked. The construction that the relief was granted
12 to was not fulfilled. Is that correct?

13 MR. CAIN: That's correct, Mr. Chairman.
14 However, we believe that some of the findings, if
15 still accurate and correct, could be of guidance to
16 the Board.

17 CHAIRPERSON GRIFFIS: Right. If I'm not
18 mistaken, you refer to in also a previous -- Oh, I
19 guess the previous BZA order was to allow the storage
20 which was the -- use. Is that correct?

21 MR. CAIN: Yes. And that has no relevance
22 to what we're seeking to do here.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. CAIN: In particular, I'd like to draw
25 Mr. Nessim's attention to paragraph 9B of that order

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1 which talks about the site, its alley service, and its
2 relation to alley service for other properties in the
3 square and in surrounding squares and ask if he's had
4 a chance to try to determine if those factors are
5 still extant ten years later.

6 MR. NESSIM: Yes. This is something we
7 wanted to point out regarding the uniqueness of the
8 rear of our site. In this paragraph, it states that
9 "The subject site the only known corner lot in the
10 subject square and William the 13 surrounding squares
11 which lacks public alley access running the length of
12 the property line." I cannot absolutely confirm that
13 this statement is true.

14 However, I went to the surveyor's office
15 downtown and examined the maps of the immediately
16 surrounding squares. I found that in squares 198,
17 199, 216, 219, 220, 217, 248, 215, 222 there were no
18 apparent similar lots. Meaning, I did not personally
19 find any alley which ran the length of the entire
20 property line. I'm sorry. What I mean is I did not
21 find any other lot which does not have an alley which
22 runs the entire length of their property line.

23 MR. CAIN: Which is not on a corner.

24 MR. NESSIM: Which is not on a corner.

25 Absolutely. Thank you.

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1 MR. CAIN: Could you just briefly describe
2 for the Board what is up and down both sides of your
3 block at this stretch of K Street?

4 MR. NESSIM: There is generally commercial
5 office buildings on both sides.

6 MR. CAIN: Are they high rise buildings?

7 MR. NESSIM: Yes, high rise buildings, 130
8 feet maximum of similar characteristics that we would
9 seek to build, class A office space. It's very common
10 on a street like K Street and in the business district
11 that the property lies.

12 MR. CAIN: Did you give any consideration
13 to trying to reuse the existing structures?

14 MR. NESSIM: Certainly. That was our
15 initial approach. Actually we marketed it, and we put
16 together this investment as a renovation. However, in
17 the process we realized that it was completely
18 unfeasible. We have determined to demolish the
19 structures and build a brand new building.

20 There's a few reasons for this. The first
21 one is because the existing building had a larger
22 square footage than the building that we propose to
23 build right now so that it probably made more sense.
24 Obviously not having to demolish a structure makes
25 more sense. But the layout of the existing building

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1 proved to be inefficient for various reasons which our
2 architects will point out and I'll briefly describe
3 right now.

4 One is the floor to floor heights were not
5 consistent. There were different floor to floor
6 heights throughout the building. They were so shallow
7 in some cases that it would be unfeasible to meet an
8 eight and a half floor to ceiling heights once the
9 building was complete which as you all know is quite
10 key to market probably successfully.

11 The floor plate of the existing building
12 is an L shape. It contains a scissor stair. It just
13 doesn't allow for an efficient layout once hallways
14 are --

15 CHAIRPERSON GRIFFIS: I'm sorry to
16 interrupt. Can we just put that board up so we can
17 actually see it? The L shape is one of the adjacent
18 buildings. Can you point that out again?

19 MR. NESSIM: Right.

20 CHAIRPERSON GRIFFIS: I see. You are
21 indicating as the written submission indicates that
22 the floors don't line. They are actually of different
23 heights or levels.

24 MR. NESSIM: Yes.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. NESSIM: And the building doesn't have
2 parking which is something that we think is important
3 to provide.

4 CHAIRPERSON GRIFFIS: Okay. There's no
5 parking available. Also as you just said and also
6 it's indicated in the written submission that the slab
7 to slab is very low which therefore doesn't
8 accommodate an office building because of its
9 requirements.

10 MR. NESSIM: Essentially correct, sir,
11 yes. Two issues. Number one is that in the shallow
12 floors eight and a half feet which is the standard
13 measurement that I'm using cannot be reached.

14 CHAIRPERSON GRIFFIS: Why can't it be
15 reached?

16 MR. NESSIM: Because I believe that in the
17 shallow floors the slab to slab height is about eight
18 feet, nine inches perhaps. So in order to accommodate
19 ventilation systems, sprinklers, electricity, et
20 cetera, it's very complicated and rather impossible.

21 CHAIRPERSON GRIFFIS: I see. So you have
22 mechanical, electrical, and plumbing in the ceiling
23 that drops the ceiling for your habitable space. Is
24 that correct?

25 MR. NESSIM: Correct.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. NESSIM: And furthermore, not all the
3 floors are of the same height. There are some floors
4 that are higher than others in this structure,
5 inexplicably.

6 CHAIRPERSON GRIFFIS: Then in the written
7 submission you just said scissor stairs were also in
8 the building which --

9 MR. NESSIM: Which makes the property
10 immediately not appropriate for any kind of GSA
11 leasing or purchase.

12 CHAIRPERSON GRIFFIS: What does that mean?

13 MR. NESSIM: That means that the GSA will
14 not entertain any real estate that contains a scissor
15 stair or meaning not two separate stairwells.

16 CHAIRPERSON GRIFFIS: Why is that do you
17 think?

18 MR. NESSIM: I'm not quite sure. I'm not
19 an expert in this matter, but I will be glad to defer
20 to my architect.

21 CHAIRPERSON GRIFFIS: I think this should
22 be very clear. Obviously I'm trying to pull this out
23 of you. Is everyone clear on the Board what a scissor
24 stair is? So we have that established. If you would
25 just document quickly why you can't maintain a scissor

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1 stair in an existing building or for that matter put a
2 scissor stair back into a new structure.

3 MR. DONNALLY: Yes. Good afternoon. I'm
4 Richard Donnally of Donnally Gubcek (PH) Associates in
5 Gaithersburg, Maryland. GSA has stricter standards
6 than the building code for the District. Many other
7 districts will allow a scissor stair in a renovation,
8 but GSA does not accept that. It's just a higher
9 standard of safety.

10 CHAIRPERSON GRIFFIS: Would a scissor
11 stair be allowed in a new construction?

12 MR. DONNALLY: No.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. CAIN: Mr. Nessim, did you have
15 opportunities to discuss the project with any of your
16 neighbors?

17 MR. NESSIM: Yes. We presented the
18 project before the ANC-2F meeting. We were
19 unanimously approved. Furthermore, we received
20 compliments on our design.

21 MR. CAIN: Did you meet with your
22 neighbors on either side?

23 MR. NESSIM: Yes we did. We met with Mr.
24 Jemal who owns the building immediately to the left of
25 your view. He was very enthusiastic upon the prospect

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1 that we would build a new office building. And Mr.
2 Lenier on the right which is the corner building who
3 also had positive comments.

4 VICE CHAIRPERSON RENSHAW: How about going
5 around the block? Did you turn the corner and speak
6 to those building owners who own property on 15th
7 Street?

8 MR. NESSIM: Not directly, no. We did
9 not.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. CAIN: Mr. Nessim, did you give any
12 consideration to developing a matter of right building
13 on the site that conforms to all the zoning
14 requirements?

15 MR. NESSIM: Yes. Indeed.

16 MR. CAIN: What, if anything, did you
17 discover about your ability to conform to the rear
18 yard requirement and produce a marketable and
19 efficient structure?

20 MR. NESSIM: I'd like to defer to my
21 architect to answer this question in full with
22 details, numbers, explanations, et cetera, anything
23 that the Board may require. I will generally say that
24 this is as they will show quite a shallow site and a
25 little bit narrow. Without the rear yard set back

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1 that we're asking for, it would really cramp up that
2 space to the point where the inefficiency would be
3 very substantial. The court factor would be far to
4 large in order to make economic sense of this project.

5 MR. CAIN: Unless the Board has any
6 questions for Mr. Nessim, I'm going to ask Mr.
7 Donnally to pick up on that last question.

8 CHAIRPERSON GRIFFIS: Any questions?
9 Excellent. Let's move on then.

10 MR. NESSIM: One little note. I had
11 omitted saying that we did go across the street to
12 1425 and asked the owner, Blake, about what they
13 thought about our project. They also had positive
14 things to say about it.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. CAIN: Mr. Donnally, would you be kind
17 enough to set the stage for the proposal with
18 dimensions, features?

19 MR. DONNALLY: You mean just go ahead and
20 describe the building?

21 MR. CAIN: Yes, the proposed building.

22 MR. DONNALLY: The proposed building is a
23 12 story structure which combines the two existing
24 buildings, lots on the site. I believe we have
25 combined those lots. We're trying very hard to be

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1 respectful of the neighborhood.

2 We didn't feel we could compete with the
3 historic and classical facades of the adjoining
4 buildings, so we decided to go with an unadorned,
5 fairly transparent facade. The aluminum fin that runs
6 vertically up the building with the spire is placed at
7 the junction of the existing 1426 and 1430 buildings.

8 The balconies on the top two floors
9 reflect existing conditions. There are balconies on
10 the existing building. That also enables us not to
11 disturb the cornice of the corner building which
12 actually overhangs our property line.

13 We're redesigning the back of the building
14 which we have colored. We did not have a rendering of
15 it. It will be white brick or precast very light in
16 color. The glass will be blue tinted or very clear
17 glass. We have placed a terrace on top of the
18 existing loading area. The existing loading area was
19 two stories high.

20 Our loading area and entrance to our
21 garage is one story high, so we've actually lowered
22 that and we've placed a terrace on top of that which
23 will have trees and pots. We wanted to have a nice
24 view for our tenants on our second floor, and we
25 thought it would dress up the alley. We have pictures

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1 of the existing alley which we may get to.

2 It's very derelict. The rear of the
3 building is basically unpainted concrete and brick.
4 It does have some windows on about two-thirds or less
5 of the rear facade. Our facade will have glass the
6 whole length of the rear facade.

7 CHAIRPERSON GRIFFIS: Is there going to be
8 enough light for those trees to grow?

9 MR. DONNALLY: Well, yes. I'm glad you
10 brought that up.

11 CHAIRPERSON GRIFFIS: Actually, I'm going
12 to have you turn off mics on the table so that we
13 don't have a lot of feedback. Good.

14 MR. DONNALLY: We have done some sight
15 line studies of the sun. The reason that we felt
16 comfortable with asking for a rear yard variance
17 similar to the other is we looked at the fact that the
18 south sun comes and reflects off our building back
19 into the alley. We are not blocking the sun from the
20 east or west direction. That's limited by existing
21 buildings.

22 Show how our building sticks out from the
23 existing building, well, how our building sticks out
24 from the required set back. That's the existing
25 parking garage which sticks out into the required set

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1 back and the existing chimney on the left also sticks
2 out. (Indicating.) That already blocks the light from
3 the east and west as well as the adjoining buildings
4 are also of a height. So the sun that comes in is
5 when the sun is high. It can't even come in no matter
6 what when the sun is at the lower angle.

7 CHAIRPERSON GRIFFIS: So what you are
8 pointing out there is the existing condition.

9 MR. DONNALLY: The heavy line is the
10 existing condition.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. DONNALLY: Show them the proposed
13 condition. That's the proposed condition, the line of
14 the building above the first floor. (Indicating.)

15 CHAIRPERSON GRIFFIS: Above the first
16 floor.

17 MR. DONNALLY: Then the dotted line just
18 inside the existing building is the required set back.

19 Note that the existing building was already
20 encroaching on the required set back as well as the
21 parking garage building at 1426 and the chimney.

22 COMMISSIONER PARSONS: Mr. Chair, if I
23 may.

24 CHAIRPERSON GRIFFIS: Yes.

25 COMMISSIONER PARSONS: I'm not sure that

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1 particular diagram is in our file.

2 CHAIRPERSON GRIFFIS: No. I don't believe
3 that it is.

4 COMMISSIONER PARSONS: It differs from the
5 site plan which is. The site plan, sheet C101,
6 outlines the existing in the dashed line. It doesn't
7 include the chimney.

8 MR. DONNALLY: The other problem is that
9 is showing the existing building at the ground line.
10 So it includes the two story existing trash and
11 loading area.

12 COMMISSIONER PARSONS: Yes.

13 MR. DONNALLY: This diagram shows above
14 the first or second floor.

15 COMMISSIONER PARSONS: So where does the
16 chimney start?

17 MR. DONNALLY: It starts as it comes out
18 of the second floor.

19 COMMISSIONER PARSONS: Okay.

20 MR. DONNALLY: I believe we want to talk
21 about the marketability. Do you want the question
22 that Alan gave me?

23 MR. CAIN: Well, first, Mr. Donnally, if
24 you could briefly take us through the zoning
25 parameters of the proposed project, height, FAR, lot

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1 occupancy for the record.

2 CHAIRPERSON GRIFFIS: Actually, I think
3 we'd only be concerned with those that need relief
4 unless it helps the case in giving us everything.

5 MR. CAIN: Then let's focus, if you don't
6 mind, Mr. Donnally, on FAR. What is it that you have
7 calculated the plan upon and designed the plan to
8 achieve in terms of FAR?

9 MR. DONNALLY: Okay. First, I would like
10 to point out that the existing building had a 10.7 FAR
11 because it encroached on the rear yard set backs and
12 also because they had an extra floor in there because
13 they had very tight floor to floor heights. We did
14 intend to squeeze an eight foot, six ceiling within
15 that existing. I think the floors are nine foot,
16 eight right now on the office building and eight foot,
17 eight on the garage.

18 We knew we had to tear the garage down.
19 That was unachievable. We thought we could work
20 within the existing 1430 building and only tear down
21 the garage. That didn't work as we got into it more
22 and more.

23 We thought it was a typical ten foot,
24 eight floor to floor in D.C. It was even worse. We
25 just looked at all kinds of ways. We could not get

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1 that eight foot, six ceiling. All of our leasing
2 agents which were represented by the Ackorage (PH)
3 Company said you have to get an eight foot, six
4 ceiling or you're not going to market. So we had to
5 go back to removing the building.

6 The existing FAR of the building was 10.7.
7 We originally asked for 10.4 when we were including
8 the projection in the public space. That projection
9 is not assured. We are only assured that it won't
10 count as FAR. We are not assured that we will get
11 that projection. So with the projection on the site
12 within its property lines, our FAR would be 9.93.

13 CHAIRPERSON GRIFFIS: Which would make it
14 conforming. Is that correct?

15 MR. DONNALLY: Correct. We're allowed up
16 to a 10.0 FAR. We would be slightly under the FAR
17 limit.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. CAIN: Mr. Donnally, if I could direct
20 your attention to the rear yard variance request.
21 What is required and what is proposed?

22 MR. DONNALLY: Required is 27 feet.
23 Proposed is a little over 16 feet.

24 MR. CAIN: Could you explain to the Board
25 why you believe the 16 foot rear yard is necessary to

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1 meet the programmatic requirements of this project?

2 MR. DONNALLY: Yes. This site is
3 encumbered by quite a few restrictions and economic
4 restraints. As I said, we originally thought we were
5 going to save a substantial portion of the existing
6 building. We then wound up having to go away from
7 that.

8 In having to go away from that, you have
9 to do more of the containment of the asbestos. We
10 have to actually remove it instead of contain it.
11 That raised our costs for environmental concerns
12 tremendously. The cost of demolition of the entire
13 site had to be taken into account. Then we had to
14 come back and design the building with a new core
15 which met the new standards for 88 toilets and two
16 fire stairs and two elevators.

17 The point of that is that the core is a
18 certain set size. As the floor plate shrinks, you
19 still have that same size core. We're at a minimum
20 core. We have a very high core factor around 18
21 percent which is close to the top of what we can get
22 away with and still have a successful building that
23 can actually be used. As the footprint of each floor
24 shrinks, that core factor goes up.

25 So we just kept getting pressure to move

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1 the rear wall out and get a building which was more
2 usable to the tenants. The existing set back would
3 have required a 65 foot deep, 93 foot wide building.
4 As we lay that out with the core we found that the
5 rear behind the core got so tight that it wouldn't
6 even lay out efficiently for office space.

7 Another cost that comes up with the small
8 footprint of the building is you get a higher skin to
9 floor area ratio. That again drives the cost up. So
10 this building is extremely expensive per square foot
11 to construct. On top of that, we have the constraints
12 of demolition and environmental.

13 MR. CAIN: Would you direct your attention
14 to the part of the application that addresses the
15 mechanical penthouse and its location and set backs?

16 MR. DONNALLY: Yes. I'd be glad to. Our
17 proposed set back will be six feet which again matches
18 a previous application.

19 CHAIRPERSON GRIFFIS: Would you mind
20 moving that diagram up if that's what you're going to
21 show? And do you have a roof plan that we could look
22 at at the same time? So we have on the right 105 and
23 on the left 302, section and a roof plan.

24 MR. DONNALLY: The required set back is 18
25 and a half feet for a penthouse that can be as high as

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1 18 and a half feet. We have provided less than the
2 required on the rear. We have provided more than
3 required on the two sides at 20 feet. But we have 30
4 feet in front on the K Street side which is where it's
5 really visible. We didn't feel that having it closer
6 to the rear wall was detrimental in any way. Due to
7 the angle of view, it's difficult to see.

8 CHAIRPERSON GRIFFIS: Right. Isn't your
9 point though that no matter where you place it, it
10 would be nonconforming because of the given size of
11 your core? Based on the location of the footprint,
12 based on the required size of the mechanical and your
13 stair and elevator tower, somewhere it will have to be
14 noncompliant.

15 MR. DONNALLY: Not really. We are under
16 the allowed 37 percent roof coverage.

17 CHAIRPERSON GRIFFIS: I'm not talking
18 about roof coverage. I'm talking about set back. Can
19 you set this in the center of that footprint and it's
20 conforming on all sides?

21 MR. DONNALLY: Yes we could.

22 CHAIRPERSON GRIFFIS: I see. Why won't
23 you do that then?

24 MR. DONNALLY: Because of the layout of
25 the floor space and the layout of the parking garage

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1 drives the core into a certain place that if we had to
2 move it up front it would not function well for multi-
3 tenants. It would not function well for the ramp in
4 the parking garage. It would make it virtually
5 impossible to get our layout of the garage.

6 CHAIRPERSON GRIFFIS: So it may not
7 function if you had to move it in order to conform
8 with 411.

9 MR. DONNALLY: That's correct.

10 CHAIRPERSON GRIFFIS: We'll show the
11 plans, but the ramp obviously just like the office
12 floor plate needs clearances for vehicles to circle
13 around the core.

14 MR. DONNALLY: That's right.

15 CHAIRPERSON GRIFFIS: Okay. So you made a
16 decision if you had to you would move it closer to the
17 rear and that would have less impact from the front of
18 the structure.

19 MR. DONNALLY: That's right. So we would
20 have less impact from K Street which we felt was the
21 primary thing that we wanted to watch out for.

22 CHAIRPERSON GRIFFIS: Okay. And you find
23 that the limited depth of the site doesn't give you
24 great flexibility in terms of laying out the floor
25 plate and also the parking plans.

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1 MR. DONNALLY: That's correct.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. CAIN: What is the set back for the
4 rear wall?

5 MR. DONNALLY: It's six feet.

6 MR. CAIN: And do you require any
7 flexibility in order to achieve final plans on the
8 lateral dimensions?

9 MR. DONNALLY: On the 20 foot side
10 dimensions, we've been going a little bit further in
11 design and we're finding we're having trouble fitting
12 our mechanical equipment in. We may wish to change
13 that 20 foot set back on the sides to the 18.5. That
14 would still be within the zoning regulations. We will
15 have the additional set back on the front. That is
16 not a problem.

17 CHAIRPERSON GRIFFIS: I don't think that
18 would give the Board any concern unless it in fact
19 needed some sort of relief. If you are bringing it
20 within conformity, I think that's what we're looking
21 at. Okay.

22 MR. CAIN: Excuse me one second. I have
23 gotten out of my sequence here. Mr. Donnally, are
24 there any other considerations for fire and life
25 safety compliance or ADA compliance that you believe

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1 it's important for the Board to know in order to
2 understand the project?

3 MR. DONNALLY: Well, just that we had to
4 get rid of the scissor stair because GSA would not
5 consider that building and in fact we could not build
6 a new building with a scissor stair. We had to make
7 the bathrooms large enough to accommodate the new ADA
8 requirements. Those two or three items have driven up
9 the size of the core and created a problem for us in
10 getting a building that will have any chance of being
11 able to be built within the market.

12 I want to point out one other thing I
13 forgot on the penthouse. I was looking at the 1991
14 decision. I think they actually got a four and a half
15 foot set back approved on their rear for the
16 penthouse.

17 MR. CAIN: Were they talking about the
18 same rear yard set back as we are today in that case?

19 MR. DONNALLY: No. They were granted the
20 same waiver we are applying for to 16 feet.

21 MR. CAIN: Did you make an effort to try
22 to track what that prior case talked about and did?

23 MR. DONNALLY: Yes. We investigated. We
24 had designed the building before we got that, but we
25 investigated and looked at their reasons for their

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1 hardships. It was interesting. They had the same
2 building design that we had. They had the core in the
3 same place. They had arrived at the same conclusions.

4 I think that was for the FDIC. It was designed by
5 Skidmore. I have those drawings somewhere.

6 MR. CAIN: Is there anything else you
7 think that would help the Board to know about either
8 the design or the project and its programmatic
9 elements?

10 MR. DONNALLY: Just that we're very
11 excited about this project. I did talk to an owner
12 across the street who was purchasing 1010 K Street.
13 He was extremely happy to see that we were improving
14 the neighborhood, the existing building. We have
15 photos of the rear of the existing building. I
16 apologize that we don't have photos of the front.
17 It's a terrible blight on D.C.

18 CHAIRPERSON GRIFFIS: You have submitted a
19 photograph from the front.

20 MR. DONNALLY: Of the existing?

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. CAIN: There should be photographs in
23 the prehearing submission.

24 CHAIRPERSON GRIFFIS: In appendix four.

25 MR. DONNALLY: If it's not a blow up, you

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1 can't tell how bad it is. But if you would walk by
2 the building, you would know.

3 CHAIRPERSON GRIFFIS: I think most of us
4 are probably familiar. Anything else?

5 MR. CAIN: Mr. Nessim, is there anything
6 additional since we started hopping around that you
7 would like the Board to know in order to understand
8 the project or your programmatic requirements?

9 MR. NESSIM: Yes. I would like to make a
10 brief mention regarding the initial opposition that we
11 had to our case. Regarding the diminishing light that
12 Chevy Chase is concerned about, I'd like to point out
13 that the line that we proposed to build up until is
14 only 11 inches further back than the existing
15 furthestmost line of the chimney shown in the existing
16 building.

17 CHAIRPERSON GRIFFIS: Can we bring that
18 up? I have no idea what you are talking about.

19 MR. NESSIM: The line that we propose to
20 build on is only 11 inches behind the furthestmost rear
21 wall of the chimney shown in the existing structure
22 which is designated by the bold line.

23 CHAIRPERSON GRIFFIS: Your rear yard set
24 back is straight across. Correct? It doesn't have
25 that indentation. But what you are saying is it's

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1 only 11 inches set back from the chimney and actually
2 is not as far back as that other nub off of the alley.

3 MR. NESSIM: That's right. Chevy Chase
4 Bank only goes more or less to halfway across to where
5 our building is. The back of our building will be
6 predominantly glass. Whereas, now it's predominantly
7 brick.

8 Glass, looking towards the south will
9 reflect sunlight down into that hole when the sun is
10 high. I believe that if there is light that
11 diminishes it will be very insignificant at all.
12 Perhaps the light would even be increased by the
13 reflection of the glass. It's hard to say.

14 CHAIRPERSON GRIFFIS: Okay. For my
15 purposes, do you have any sort of overlay that shows
16 an existing section with the proposed new? We're
17 seeing in plan how it lays out.

18 MR. NESSIM: Rick, please.

19 MR. CAIN: If we could direct that
20 question to Mr. Donnally, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. DONNALLY: We've just put up a section
23 where we studied the proposed set backs and the light
24 coming into the alley. If you would point out the
25 existing Chevy Chase Bank building. It has as you see

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1 in the rear yard plan an eight foot set back for a
2 light well for their own use. Show them the set back.

3 So we've shown the two conditions where we
4 have the 16 foot. Then we've shown the condition
5 where they have an additional eight feet within their
6 property. Where we have the 16 foot condition, they
7 only have one row of windows. They have blocked up
8 the others.

9 In the photo, this row of windows is at
10 the 16 foot condition. (Indicating.) This window is
11 covered with boxes and is used as a storage room. We
12 have not been able to get into their space to see what
13 the other uses of these rooms are. But the other
14 windows are blocked up. The eight foot set back area
15 has more windows and is obviously office space.

16 In the section, we also want to show that
17 as we've said the south sunshine in the summer and in
18 the winter will penetrate the court and will reflect
19 off our new rear. This is the existing rear of the
20 parking garage which is all filled in with concrete,
21 unpainted. (Indicating.) The existing building has
22 these windows and then a solid shaft, chimney that
23 comes up.

24 So we're going to take that rear facade
25 which is dark and dingy and has a lot less glass and

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1 make it white with glass. It will reflect a
2 substantial amount of sunlight. We've placed the
3 terrace at the bottom to have something that's
4 actually nice to look out on. So we're trying to take
5 all those things into account in our design.

6 CHAIRPERSON GRIFFIS: Can you indicate on
7 that section with your sight lines? First of all, is
8 that correct in terms of where the sun is? If I am
9 reading that correctly, there's actually no direct
10 sunlight into the Chevy Chase adjacent building.

11 MR. DONNALLY: Not into their building, no
12 because our rear facade is on the north.

13 CHAIRPERSON GRIFFIS: Right. Secondly,
14 can you point out perhaps just estimating where the
15 existing building is in relation to your section? Not
16 the Chevy Chase, I want your existing building.

17 MR. DONNALLY: (Indicating.)

18 CHAIRPERSON GRIFFIS: Okay. That's shown
19 with that dashed line.

20 MR. DONNALLY: The main facade is where he
21 has his pen now. Point to the chimney line. It's out
22 there. (Indicating.) Then the parking garage is there.

23 CHAIRPERSON GRIFFIS: Okay. That's very
24 helpful.

25 MR. DONNALLY: Are there any questions on

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1 the alley and the light and air? I have one more item
2 to cover if there are no questions on that issue.

3 CHAIRPERSON GRIFFIS: Anything?

4 (No response.)

5 CHAIRPERSON GRIFFIS: You are going to
6 have to pull all of this back up when you get cross
7 examined. Go ahead.

8 MR. DONNALLY: That's okay. I got a late
9 phone call from John Parsons. Is that right? Or from
10 someone at Park Service asking what it looked like
11 from McPherson Square.

12 COMMISSIONER PARSONS: Not me.

13 CHAIRPERSON GRIFFIS: I certainly hope it
14 wasn't Mr. Parsons on this case.

15 MR. CAIN: For the record, Mr. Chairman,
16 it was Mr. David Murphy.

17 CHAIRPERSON GRIFFIS: I see.

18 MR. DONNALLY: He said what will the
19 impact be from McPherson Square. So I went out
20 actually yesterday afternoon and took a photo. This
21 is the existing 1430 building. (Indicating.) That's
22 the parking garage at 1426. It's a jumble of red
23 brick, white, something else. We're going to clean
24 that up and make it uniform materials. The impact of
25 bringing it out another six feet is minimal I believe

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1 from McPherson Square. I was asked to bring that. I
2 brought it.

3 CHAIRPERSON GRIFFIS: I see.

4 MR. DONNALLY: Any other questions?

5 COMMISSIONER PARSONS: Before you put it
6 down, I'm trying to figure something out. Let me see
7 any of your floor plans which may be behind that
8 exhibit. It makes no difference which of the floor
9 levels we're looking at. It could be roof. Fine.

10 Can you see in the lower left there of the
11 left image the adjacent building is shown extending
12 beyond yours? Is that correct? To the south. Is
13 that the adjacent building?

14 MR. DONNALLY: That's correct. The Chevy
15 Chase building is actually down. I'd have to look at
16 the site plan. I believe it goes down here and then
17 comes out there. (Indicating.)

18 COMMISSIONER PARSONS: I'm just trying to
19 get that corner oriented to the photograph that you
20 just showed us.

21 MR. DONNALLY: Okay.

22 COMMISSIONER PARSONS: Or do I have it
23 upside down? Let me ask you. Where is the brick
24 building?

25 MR. DONNALLY: The Carry building is on

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1 the corner.

2 CHAIRPERSON GRIFFIS: It's to the left of
3 that.

4 COMMISSIONER PARSONS: On your drawing.

5 MR. DONNALLY: About here. (Indicating.)

6 CHAIRPERSON GRIFFIS: To the left.

7 COMMISSIONER PARSONS: So that is not
8 shown on your drawing the wall of that brick building.

9 CHAIRPERSON GRIFFIS: The rear wall.

10 MR. DONNALLY: This is the rear wall of
11 the Carry building. (Indicating.)

12 COMMISSIONER PARSONS: Okay.

13 MR. DONNALLY: It stops about here or here
14 and then comes back up. (Indicating.)

15 COMMISSIONER PARSONS: So although we can
16 barely see the existing building, if you were to
17 center yourself in McPherson Square where the statue
18 is, you probably wouldn't be able to see --

19 MR. DONNALLY: (Inaudible.)

20 CHAIRPERSON GRIFFIS: Actually, you are
21 not being picked up on the record. I'm going to have
22 to have you speak closer to a mic.

23 MR. CAIN: Mr. Chairman, while he is
24 moving, this is part of our reaction to the light and
25 air question.

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1 CHAIRPERSON GRIFFIS: I see.

2 MR. CAIN: We have copies of photos.
3 Maybe it would be useful to have them in front of you
4 rather than trying to see it from the board.

5 CHAIRPERSON GRIFFIS: Very good.

6 MR. DONNALLY: I was standing on the far
7 side of McPherson Square approximately there taking my
8 pictures. (Indicating.) If you were standing in the
9 center, no, you wouldn't see our building.

10 COMMISSIONER PARSONS: Thank you.

11 CHAIRPERSON GRIFFIS: Okay. Anything else
12 from the Board at this time?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Very well. Mr.
15 Sullivan, cross examination of the witnesses you have
16 heard presented today.

17 MR. SULLIVAN: Good afternoon. My name is
18 Marty Sullivan with Shaw Pittman representing Chevy
19 Chase. I do not have any cross examination for the
20 Applicant.

21 CHAIRPERSON GRIFFIS: Very well. Let's
22 move on then. Let us focus our attention on the
23 Office of Planning report that has been submitted. We
24 welcome again the Office of Planning representative
25 this afternoon.

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1 MR. JACKSON: Mr. Chairman, Members of the
2 Board, my name is Arthur Jackson. I will go through
3 the Office of Planning report. I will try to be brief
4 because I understand you have read it. I just want to
5 point out some particular points.

6 I think it would be good just for the sake
7 of reference if you pull out the map from the Office
8 surveyor dated August 19 that the Applicant used to
9 show the existing proposed conditions. Do you have
10 something along this line that you could put up?

11 CHAIRPERSON GRIFFIS: While that is
12 getting coordinated also, is the party in opposition
13 in receipt of the Office of Planning report? They
14 have indicated that they are.

15 MR. JACKSON: All right. The first
16 reference is to the existing two lots, 808 and 823.
17 The two lots are located east of the intersection of
18 15th Avenue and K Street. They are approximately
19 7,200 square feet.

20 There are two existing buildings on the
21 lots which the Applicant has decided that they want to
22 demolish to construct a new office building. The
23 proposal is to develop a 12 story building with ground
24 floor retail and a basement garage which would service
25 the building. That garage would be accessed from the

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1 adjacent public alley which appears to be an extension
2 of Presbyterian Alley.

3 Based on the Applicant's testimony this
4 morning, it appears that they are now only seeking one
5 variance which would be for the rear yard set back and
6 one special exception for the roof structure. Based
7 on that, I will proceed with my report on that basis.

8 What's being requested is an area variance
9 to reduce the rear yard requirement for the upper
10 floors. Then the special exception is to reduce the
11 rear yard set back for an enclosure that's attached to
12 the penthouse. If you note on the penthouse
13 illustration, the actual penthouse building is where
14 the stairs and elevators are. Then there will be
15 mechanical equipment outside which will have an
16 enclosure around it which will essentially be just a
17 wall to screen the mechanical equipment in the
18 interior.

19 You are very familiar with the
20 requirements to grant variances and for special
21 exceptions. First I will touch on the requirements to
22 grant the variance. Staff feels that there are
23 several characteristics that makes this case unique.
24 Referring again to the plat, there is a rectangular
25 lot and an adjacent irregular lot, Lot 823, that would

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1 be combined to create the site for this development.

2 Neither lot has a property line that abuts
3 the entirety of the public alley. That's when you
4 combine both lots. The resulting lot would not have a
5 public alley along its entire rear property line. It
6 does appear from our review of the plats in the area
7 that we can confirm the Applicant's statement that
8 this is one of the few interior lots that does not
9 have a continuous rear property line along a public
10 alley.

11 In addition, we think that it's unusual
12 because the unusually wide dimension of the right away
13 of K Street. This property could possibly be built to
14 a height of 168 feet. Of course, that's not allowed
15 on the zoning regulations. It's limited to 130 feet.

16 But based on the height act, it would be 20 feet plus
17 the width of right away in front of it. So we think
18 that makes the property somewhat unique.

19 As for the location of the core, Staff
20 looked at just taking the core volume that exists and
21 plopping it in the middle of a building that's 65 feet
22 wide. It appears that the core and the circulation
23 area in front and behind it is approximately 35 feet
24 in depth. So to put it in the middle of a 65 foot
25 deep footprint, you wind up with 30 feet in the front

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1 and back.

2 If there was any additional square footage
3 that was taken away for circulation, then you have
4 less than 15 feet of clear space for the office space
5 which appears to be very limiting in terms of how the
6 site could be used. As has currently been experienced
7 of Staff with regard to design, we did not go in and
8 try to redesign the core to make it work. We took
9 what they presented as what the requirements would be
10 and worked with that.

11 Based on what was presented, we think that
12 the case for not being able to work with the existing
13 core within the allowable depth to create the space
14 that was needed for its office development did tend to
15 be one that we could support. Therefore, we thought
16 that the granting of the variance for the rear yard
17 set back would be appropriate based on the difficulty
18 in accommodating the core within the allowable
19 footprint.

20 As for the penthouse, we note that the
21 penthouse enclosure would only be six feet from the
22 rear property line. However, with the additional
23 space with the building being 16 feet from the rear
24 building lot wall, but the building wall is 16 feet
25 from the rear property line, we would think that in

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1 essence the southern end of the penthouse enclosure
2 would be 22 feet from the southern property line which
3 in effect would give enough protection for a property
4 south of there.

5 We note that the comprehensive plan also
6 supports this type of development in the area of the
7 site. Staff notified the office tenants to the
8 adjacent buildings to the south. It took some effort,
9 but we finally got into one of the offices to talk to
10 someone in the building to see what they thought the
11 impact of this development would be.

12 Attached to our report is a fax that we
13 received from the residents explaining what their
14 concerns were. Briefly, the residents expressed
15 concern about the height of the building, the
16 potential impact on air and light. I will note on the
17 orientation map that shows the alley and the adjacent
18 property that the building is located to the north of
19 the bank property and that the open space is open to
20 the north of the bank property.

21 The sun in this area goes from east to
22 west. Therefore, the height of the building north of
23 the bank property would seem to have a minimal impact
24 on the amount of light that would get into the
25 building. This is actually reinforced by the

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1 illustration that's before me, sun exposure condition.

2 Since the bank property is much shorter
3 than the surrounding buildings, I'm talking about the
4 Carey Building on the corner, this property, and then
5 there appears to be another tall building to the east,
6 the impact of having a taller building on this side
7 would seem to be minimal because most of the light
8 would come in either coming east to west or from the
9 south. That was our basic assumption given the
10 circumstances that were presented to us.

11 So based on that information, we came to
12 the following conclusions with regard to the concerns
13 expressed by the adjacent residents. The first
14 conclusion is that the 130 foot building height is
15 permitted as a matter of right because the adjacent
16 right of way in front of the property is over 110 feet
17 wide. The tenants' building is located to the south
18 and in fact changes that the tenants proposed to make
19 to the existing conditions would allow more light and
20 air to get to the lower levels of this property.
21 Although the rear structures would still cover the
22 first floor.

23 In addition, because most of the light
24 enters from overhead from the east to the west, then
25 we don't think that there should be a reduction in the

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1 amount of light that goes to the building. Again,
2 these are basic assumptions based on the orientation
3 of the site and the property attached and the bank
4 property to the south.

5 We also sent copies of the application to
6 the Metropolitan Police Department, Fire Department,
7 and Department of Public Works. The Public Works
8 Department has not responded to our inquiry. The
9 Police Department and Fire Department sent responses.

10 They conditionally recommend approval of the
11 application. I think you may have received an
12 additional response that was a fax that was submitted
13 subsequent to my report.

14 At any rate, based on these findings, the
15 Office of Planning recommends approval of the variance
16 for the rear yard set back to 16 feet for the upper
17 floors of the proposed development and approval for
18 the special exception to produce the required set back
19 for the penthouse from 18 and a half feet to six feet.

20 That concludes our report. We'll stay to answer
21 questions.

22 CHAIRPERSON GRIFFIS: Thank you very much.

23 What was the additional report that you thought might
24 have been faxed in?

25 MR. JACKSON: I have one from the Fire

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1 Department.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. JACKSON: That may be another
4 application. I'm sorry.

5 CHAIRPERSON GRIFFIS: I don't have
6 indication that we had anything additionally
7 submitted.

8 MR. JACKSON: I should say that we
9 forwarded a report to the Department of Public Works.

10 We were expecting that the Public Space people would
11 respond having to do with putting the access from the
12 alley into the garage and to the fact of protecting
13 over the right of way. But to date, no response has
14 been returned.

15 CHAIRPERSON GRIFFIS: Very well.
16 Questions from the Board of the Office of Planning?

17 VICE CHAIRPERSON RENSHAW: I want to thank
18 Mr. Jackson for his report. It's very comprehensive
19 as usual. On page two, just a very minor point, is
20 this a typo where you talk about M Street in the first
21 paragraph?

22 MR. JACKSON: The architectural plans, is
23 that what you are looking at?

24 VICE CHAIRPERSON RENSHAW: "The first
25 floor retail along M Street frontage." Aren't we

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1 talking about K Street?

2 MR. JACKSON: Yes we are.

3 VICE CHAIRPERSON RENSHAW: All right.
4 Thank you. In the last --

5 CHAIRPERSON GRIFFIS: Isn't that a
6 transfer retail development that we're looking at?

7 MR. JACKSON: Not in this case, no.

8 VICE CHAIRPERSON RENSHAW: Not in this
9 case.

10 CHAIRPERSON GRIFFIS: I see.

11 VICE CHAIRPERSON RENSHAW: So in two
12 places in that paragraph, just a correction.

13 MR. JACKSON: All right. Thank you.

14 CHAIRPERSON GRIFFIS: I was just joking
15 with that case. You were concerned with my attention
16 to this application. Any other questions from the
17 Board? Very well. Does Applicant have any cross
18 examination questions of the Office of Planning?

19 MR. CAIN: No, sir.

20 CHAIRPERSON GRIFFIS: Parties? Yes.

21 MR. SULLIVAN: Briefly. Marty Sullivan
22 representing Chevy Chase. Mr. Jackson, you seemed to
23 say that the unusual width of K Street is a unique
24 condition.

25 MR. JACKSON: Only with regard to the

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1 potential height that could be built on this property
2 if it was just left to the Height Act. With this
3 case, it seems to be unusually wide since most of
4 downtown is usually between 80 and 120 feet.

5 MR. SULLIVAN: So the maximum height
6 permitted under the Height Act and the zoning regs is
7 130 feet.

8 MR. JACKSON: In most locations. There
9 are some specific instances where it can exceed that.

10 MR. SULLIVAN: Do you know what the
11 maximum permitted height under the Height Act and
12 zoning regs is generally is on 15th Street? Do you
13 know what the width of 15th Street is?

14 MR. JACKSON: No I don't.

15 MR. SULLIVAN: Do you know what the width
16 of 16th Street is?

17 MR. JACKSON: Well, 15th Street appears to
18 be 100 feet, so that would be 120 feet.

19 MR. SULLIVAN: You stated that the rooftop
20 structure now would only be 22 feet away from the
21 Chevy Chase property if this variance and special
22 exception were approved. Do you know what the
23 distance would be if the variance and special
24 exception were not approved?

25 MR. JACKSON: No. Because if the variance

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1 and special exception were not approved assumingly
2 they would have to relocate the core itself which
3 could shift it north or south.

4 MR. SULLIVAN: Do you know what it would
5 be required to be?

6 MR. JACKSON: It would be equal to the
7 height of the enclosure which would be 18.5 feet.

8 MR. SULLIVAN: Plus the required set back.

9 MR. JACKSON: Yes. Because it would be
10 18.5 feet from the edge of the building.

11 MR. SULLIVAN: So it would be 18.5 feet
12 plus the required set back of 27 feet. Is that
13 correct?

14 MR. JACKSON: Yes.

15 MR. SULLIVAN: Which is somewhere around
16 44 or 45 feet.

17 MR. JACKSON: Yes.

18 MR. SULLIVAN: I have no further
19 questions.

20 CHAIRPERSON GRIFFIS: Thank you.
21 Actually, a quick clarification. You had made a
22 statement in your reporting that there was just a
23 mechanical equipment and then they are surrounded with
24 no roof. But I want to make absolutely clear that
25 what is showing is that it is in compliance with 411

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1 in terms of a single height of the penthouse.

2 MR. JACKSON: Right.

3 CHAIRPERSON GRIFFIS: So although you are
4 drawing a distinction, there's a mechanical room or
5 enclosure and then there's the core. It is one
6 penthouse that we're looking at which goes to it.

7 MR. JACKSON: Right.

8 CHAIRPERSON GRIFFIS: Or they could have a
9 proper set back if that screen wall was six feet.
10 Then they would need relief from the 411 in terms of
11 differing heights. So you get caught either way in
12 terms of what this application is.

13 MR. JACKSON: Right.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 else?

16 MR. JACKSON: No, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Let us move on then.
18 I have an indication of the ANC-2F report. Ms.
19 Renshaw, do you have that?

20 VICE CHAIRPERSON RENSHAW: I don't.

21 CHAIRPERSON GRIFFIS: Oh, in fact, I have
22 indication that there is no ANC report.

23 MR. CAIN: Excuse me, Mr. Chairman. We
24 got a faxed copy of their report last night.

25 VICE CHAIRPERSON RENSHAW: Do you have a

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1 copy with you?

2 MR. CAIN: I do.

3 CHAIRPERSON GRIFFIS: That was distributed
4 to us this morning. It was handed to us.

5 MR. CAIN: I'm asleep at the switch here.

6 VICE CHAIRPERSON RENSHAW: All right. We
7 do have it.

8 CHAIRPERSON GRIFFIS: Mr. Moy had
9 mentioned that as one of the things we needed to waive
10 in. It was handed to us as we were coming out. Is
11 there any objections to the Board or any of the
12 Applicant or party in accepting and waiving our rules?

13 If there is no indication, I think we can waive and
14 accept the report. Ms. Renshaw, do you want to
15 summarize?

16 VICE CHAIRPERSON RENSHAW: The report from
17 ANC-2F is dated January 13. It's signed by Helen
18 Kramer, the Chair. At its meeting on January 8, a
19 quorum was present. They voted five to zero to
20 support the application of NEST and Totah Venture or
21 the special exception to allow the mechanical
22 penthouse not meeting the set back requirements and
23 the variance for the rear yard requirements under
24 section 774.

25 A discussion of the issue of whether a

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1 variance is required for an additional 0.4 FAR. It
2 said it's not necessary under the zoning regulation,
3 but ANC-2F supports it if the zoning administrator
4 persists in his mistaken opinion. The commission
5 welcomes the proposed replacement of two derelict,
6 vacant buildings with a new building having
7 architectural merit.

8 CHAIRPERSON GRIFFIS: Very well. Any
9 comments on the ANC report from the Board?

10 (No response.)

11 CHAIRPERSON GRIFFIS: I think we can move
12 on. I will just note as the Office of Planning report
13 indicated that they did have a letter from fire and
14 EMS department which was attached to their report.

15 VICE CHAIRPERSON RENSHAW: With
16 conditions.

17 CHAIRPERSON GRIFFIS: With conditions.
18 That's all I have in terms of agency reports. Let us
19 move on then. Is there anyone here attendant to
20 application 16966 to give testimony in support of the
21 application? Persons in support.

22 (No response.)

23 CHAIRPERSON GRIFFIS: Then let us go to
24 parties in opposition for the presentation of their
25 case. Gentlemen, if I could ask you to make some room

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1 for the party in opposition to have their
2 presentation.

3 MR. SULLIVAN: Good afternoon, Mr.
4 Chairman and Members of the Board. My name is Marty
5 Sullivan of Shaw Pittman here representing Chevy
6 Chase. As you have already seen, Chevy Chase is the
7 property that is directly abutting the Applicant's
8 property along almost its entire width of the rear of
9 that property. It's probably about 80 or 90 percent
10 of the rear of that property, not half.

11 You have a statement in the record. I
12 would just like to briefly touch on some points from
13 that statement. As to the exceptional conditions of
14 the Applicant's property, I believe size of the
15 property was mentioned. The Applicant's property may
16 be small by some standards. By the standards of this
17 square, it's definitely not exceptional.

18 Of the 11 or 12, if you count both of
19 their properties, properties in this square, there are
20 three large properties over 20,000 square feet and
21 then there are eight smaller properties. Of those
22 eight properties, the Applicant's property happens to
23 be the largest. As to shape, it's very narrowly a
24 square shape. I'm not sure what's exceptional about
25 that. It has a small cut out in one corner. So does

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1 the adjacent Chevy Chase property.

2 As to depth, the reason we have the rear
3 yard set back requirement is to protect the property
4 which would be affected by relieving one of this
5 requirement under the zoning regulations. It is based
6 on height for a reason. Presumably as the height
7 increases, the need for the set back is greater.
8 Therefore, if the depth of the property is not as
9 long, then you still need the same amount of set back
10 regardless of that depth.

11 As to the unique conditions mentioned by
12 the Office of Planning regarding the width of K
13 Street, all of K Street has that width for one thing.

14 And 15th Street has the width of 115 feet and 16th
15 Street is 160. So most properties in that area are
16 permitted a height of 130 feet under the Height Act.

17 Regarding practical difficulty, despite
18 all the discussion of elevators and floor plans and
19 GSA requirements, the practical difficulty is that the
20 property possibly can't be developed with the amount
21 of square footage that the developer would like to
22 develop it with. As a result of the size of the
23 property, I don't know if that goes to the level of a
24 practical difficulty because they can't get the square
25 footage that they need.

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1 Obviously if the height is lower, you get
2 a bigger footprint because you don't need as much of a
3 rear yard. Maybe then the footprint of the building
4 can accommodate some of these design issues brought up
5 by the Applicant. Regarding the substantial detriment
6 to the public good, regardless of whether you find a
7 hardship or a practical difficulty with the
8 Applicant's application, if there is a substantial
9 detriment to the public good, the Board should still
10 not approve. I would point you to a
11 letter I believe you have in the record from tenants
12 of the Chevy Chase property. This is how we first
13 discovered that this case was going on. From my
14 statement, I did not mean to imply that the Applicant
15 had not served notice properly. I did not want to use
16 that as the reason that the Applicant had failed in
17 any way. That was just the fact, that Chevy Chase did
18 not know about it. That was why we filed late.

19 The tenant in the letter has stressed to
20 us that they wish to emphasize their strenuous
21 objection to the proposed variances. They saw it as
22 an encroachment into the enjoyment of the light and
23 air, light and space. I think I used those words
24 interchangeably. So that was what we meant by
25 "space," light and air that currently exist and that

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1 is currently provided for under the zoning
2 regulations.

3 Apparently the tenants believe that there
4 is going to be economic damage. They have in their
5 letter threatened or implied a reduction in rent.
6 Therefore, already we have suffered some economic
7 damage because we have to be here at this hearing.
8 But Chevy Chase agrees with the tenant that moving a
9 property or a building 40 percent closer than is
10 permitted under the zoning regulations when there is
11 only 27 feet there to begin with, it's 130 foot
12 building and the Chevy Chase building is six stories,
13 it can't help but have a significant effect on the
14 light and air to the Chevy Chase building.

15 MEMBER ETHERLY: Mr. Sullivan, if I could
16 interrupt for a quick moment. I want to get a little
17 bit of assistance just in terms of orientation. You
18 note that there are a couple of illustrations that
19 have been provided by the Applicant. There was some
20 reference to the proximity of your property to the
21 subject property.

22 Once again unfortunately we don't have
23 them labeled yet so I can't necessarily identify them
24 by exhibit name. In terms of the two large
25 photographs of the rear alley, could you indicate once

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1 again where the Chevy Chase property is located in
2 that alley if you see it represented on one of the
3 photographs?

4 MR. SULLIVAN: I'm not sure I see it
5 represented. That's it. That's the extent of it.

6 MEMBER ETHERLY: Okay.

7 MR. SULLIVAN: If I'm looking correctly,
8 the first two pictures on the top left, it's this wall
9 back here. (Indicating.)

10 CHAIRPERSON GRIFFIS: That's part of it.
11 The one picture over. Right there. (Indicating.)
12 That's the edge of the rear of the Chevy Chase
13 building. Correct?

14 MR. SULLIVAN: Correct.

15 MEMBER ETHERLY: Terrific. Thank you very
16 much, Mr. Donnally. Mr. Sullivan, once again I'm
17 asking more just from the standpoint of getting a
18 sense for the logistics of your property, not
19 necessarily because I believe it might be germane. I
20 don't know yet. In terms of how the tenants spaces
21 are laid out on the rear of the building, do you have
22 a sense of how those floors or those windows are being
23 used on the back there?

24 MR. SULLIVAN: I'd have to say that I
25 don't have a very specific information on that.

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1 MEMBER ETHERLY: Okay. No problem. Once
2 again, there was an indication during the Applicant's
3 case in chief referencing some of the boarded up
4 windows toward the lower floors. While I'm not
5 necessarily thinking that might be an issue or any
6 germane point, I'm just trying to get a sense of how
7 that space is being currently used. Thank you, Mr.
8 Chair.

9 CHAIRPERSON GRIFFIS: Okay. Mr. Sullivan,
10 anything else?

11 MR. SULLIVAN: Yes. Just one more point.
12 Regarding the requirement that an approval of a
13 variance not impair the integrity of the zoning
14 regulations, as to the unique condition alleged that
15 the property actually abuts a property line as opposed
16 to a public alley, I believe would absolutely impair
17 the integrity of the zoning regulations in this way.
18 There are two possible measurement points for the rear
19 yard.

20 One is if you abut a property. Another is
21 if you abut an alley. If you abut an alley, you get
22 an extra ten feet. If it's a 20 foot alley, you get
23 to use the midpoint measuring point of that alley.
24 The fact that they are actually subject to a less
25 advantageous measuring point should not be a unique

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1 condition which grants them relief from that measuring
2 point. It's a boot strap argument saying because
3 we're subject to 774.9(b) I believe it is that then we
4 are entitled to relief from that particular section.

5 So I believe it actually makes that
6 section null and void theoretically. Any property
7 owner that needs a variance now can come in and say
8 I'm subject to the measuring point on the property
9 line rather than midpoint of the alley. Therefore, I
10 should not be subject to a measuring point on that
11 property line. I believe that directly impairs the
12 zoning regulations.

13 As to the case in general, I don't think
14 the alleged unique conditions of size or shape rise to
15 the level of approval of a variance. Therefore, it
16 generally impairs the zoning regulations in that
17 respect. On behalf of Chevy Chase, we request that
18 the Board deny this variance request and special
19 exception request. Thank you.

20 CHAIRPERSON GRIFFIS: Very well. Thank
21 you. Cross examination and then we'll take Board
22 questions.

23 MR. CAIN: Thank you, Mr. Chairman. Mr.
24 Sullivan, is it the position of Chevy Chase Bank that
25 the current conditions enhance the value of their

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1 property?

2 MR. SULLIVAN: I'm not in a position to
3 know what their viewpoint is on that actually.

4 MR. CAIN: Do you or the bank see any
5 improvement in the existing condition from the
6 proposal of the Applicant to provide glass where there
7 is now concrete in the rear of the existing structure?

8 MR. SULLIVAN: Until these photos showed
9 up, the tenants or any representative of Chevy Chase
10 has not been informed regarding these plans. The
11 Applicant spoke to both adjacent neighbors and spoke
12 to somebody across the street but never seemed to
13 approach Chevy Chase. So they are not familiar with
14 these plans. I don't know what they would say about
15 the design of the back of the building.

16 MR. CAIN: Do you know what they would say
17 about the proposal to drop the level of the structure
18 immediately adjacent from two stories to one story?

19 MR. SULLIVAN: I don't think I know
20 specifics that would allow me to negotiate what they
21 would or would not like. I think they would have been
22 amenable to that process earlier.

23 MR. CAIN: Do you know whether the bank
24 has an opinion or whether you have an opinion whether
25 it would be an improvement to have a landscaped

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1 terrace in place of existing exhaust hoods adjacent to
2 the bank building?

3 MR. SULLIVAN: I don't have an opinion.

4 MR. CAIN: How long has the bank owned the
5 property?

6 MR. SULLIVAN: I don't know the answer to
7 that.

8 MR. CAIN: Do you know if the bank owned
9 the property in 1989?

10 MR. SULLIVAN: I do not.

11 MR. CAIN: Do you know if any of the
12 tenants who were signatories to the letter you
13 referenced to the Board were in residence in 1989?

14 MR. SULLIVAN: No I do not.

15 MR. CAIN: Do you know if any of the
16 tenants who were signatories to the letter are
17 currently in lease negotiations with the bank?

18 MR. SULLIVAN: It is my understanding from
19 the letter that these leases are long term from this
20 point.

21 MR. CAIN: I don't want to repeat Mr.
22 Etherly's question, but I would like to make sure
23 we've covered the point. Do you have any information
24 about what is housed or what occupies the various
25 floors of the Chevy Chase building in the rear and

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1 particularly on the corner that would look out on the
2 new construction?

3 MR. SULLIVAN: I have no evidence or
4 testimony to rebut what the Applicant has presented
5 regarding that side of the building.

6 MR. CAIN: I'm not so much asking you to
7 rebut it. I'm asking if you know what is in there.
8 Is there an office suite? Is there a meeting room?

9 CHAIRPERSON GRIFFIS: Do you know what is
10 in there?

11 MR. CAIN: Is there a back of a house?

12 MR. SULLIVAN: No I don't.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. CAIN: I have nothing further, Mr.
15 Chair.

16 CHAIRPERSON GRIFFIS: Thank you. Board
17 questions for Mr. Sullivan at this time? Mr.
18 Sullivan, if I follow your logic somewhat, first of
19 all you have the Chevy Chase tenants that are
20 complaining that they will have loss of use and
21 economic impact because of the loss of light and air.

22 But you've just indicated that one of the
23 possibilities to bring a matter of right is not to go
24 high enough and therefore reduce the rear yard. How
25 do you balance those two arguments? Basically the

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1 Applicant could as a matter of right move the rear
2 yard even further and closer to your client's
3 building.

4 MR. SULLIVAN: Well, the first point is
5 that it would be in accordance with the zoning
6 regulations. Presumably those regulations were
7 written for a reason. Presumably the length of the
8 rear yard is directly related to the height of a
9 building for a reason.

10 CHAIRPERSON GRIFFIS: If I follow, then it
11 would be the matter of the opinion of your client that
12 the height is going to have more of an impact in fact
13 on the light and air than necessarily the dimension of
14 the rear yard.

15 MR. SULLIVAN: That's how I understand it,
16 yes.

17 CHAIRPERSON GRIFFIS: Okay. I don't have
18 anything further. Anyone else?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Very well. Thank
21 you very much, Mr. Sullivan.

22 MR. SULLIVAN: Thank you.

23 CHAIRPERSON GRIFFIS: Let us go to
24 closing. Let me just interrupt the flow of things
25 here as people are coming in for our afternoon session

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1 that should have started already. We will be taking
2 a lunch recess very briefly I will say after the
3 conclusion. We are now going to hear concluding
4 remarks by this Applicant. We should be going to
5 lunch within five to ten minutes. We will return and
6 call our first case in the afternoon at 2:30.

7 COMMISSIONER PARSONS: Mr. Chairman, I had
8 a couple of questions that I wanted to ask the
9 architect. I know I'm out of order.

10 CHAIRPERSON GRIFFIS: Let's take questions
11 now before we go to closing remarks then.

12 COMMISSIONER PARSONS: Mr. Donnally, is it
13 possible to take the heating and ventilating
14 requirement that you're placing within the penthouse
15 and splitting the difference, that is having half of
16 that unit on the north of the core and mechanical room
17 and the other? In other words, can we move some of
18 this material that's in that HVAC system to the north
19 side of the penthouse?

20 MR. DONNALLY: Number one, it's much more
21 efficient if it's a single unit. Number two, if you
22 even split that in half and you have the clearance
23 around the unit that's required and put it on the
24 front, we would be very close to violating the front
25 yard.

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1 CHAIRPERSON GRIFFIS: So your point is you
2 don't just cut it in half and take half on one side
3 and half on another.

4 MR. DONNALLY: Unfortunately, when you cut
5 it in half, you wind up needing more roof area because
6 you need more clearance on two units instead of just
7 one.

8 COMMISSIONER PARSONS: I thought that was
9 the answer. Thank you.

10 CHAIRPERSON GRIFFIS: Is that it?

11 COMMISSIONER PARSONS: That's it.

12 CHAIRPERSON GRIFFIS: Very good. Unless
13 there's any cross examination of the testimony that
14 was just heard. Indicating no. Let's go to closing
15 remarks.

16 MR. CAIN: Thank you, Mr. Chairman. I
17 don't think under the circumstances I need to belabor
18 our way through the record and through the testimony.

19 We quite obviously believe that we've met the
20 standard for uniqueness. I think Mr. Jackson
21 described it very well. We think the Board agreed
22 with that characterization ten years ago. We have not
23 found anything to suggest that there had been any
24 material changes in the immediate surroundings
25 regarding the property and their alley service in the

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1 intervening period.

2 We think that if we are the only folks in
3 the square who have to have a different measuring
4 point, that makes us different. That makes us
5 certainly different from Chevy Chase Bank which
6 doesn't have that issue. Nobody else has that issue.

7 But apparently nobody else in that box around us has
8 that issue either. So I don't think it's fair to
9 characterize the fact that we're asking for a variance
10 as an opening of the door to casting aside a measuring
11 point that is useful in many other circumstances.

12 We don't think that it is in the public
13 good to have the existing conditions continue. They
14 have continued far too long. Everybody that we've had
15 opportunity to speak to about the project has said
16 please tear it down, the sooner the better. That puts
17 us in the position then of trying to design a building
18 that works on the site.

19 It's not a generous site. It has 93 feet
20 down one dimension, 85 feet down the other dimension,
21 and an 80 foot frontage, then an irregular rear yard
22 and an alley coming in off a stub of it. If you do
23 the arithmetic, a 27 foot rear yard and an 18 and a
24 half foot penthouse set back, you are already 45 feet
25 into at most a 93 foot depth of building, possible

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1 into the lot.

2 Then the core itself is going to move the
3 whole apparatus further to the front of the building.

4 Before you know it, you have no space at all in the
5 front that you can even consider putting on the market
6 to an intelligent tenant. The bulk of the office
7 space then becomes in the rear. That just doesn't
8 work. I think Mr. Donnally walked us through what
9 that does to the layout, why it is inefficient, why it
10 would not be appealing to anybody in their right minds
11 except perhaps a specialty user for the entire
12 building.

13 So we think the practical difficulty and
14 the uniqueness drive each other in this case. You
15 can't talk about one without considering the other.
16 You move the yard and you change everything. You move
17 the penthouse and you change everything. We are in a
18 tight circumstance. We are not a historic structure.

19 We are trying to build a new building in an infill
20 location that is not overly generous, that is a
21 completely built in environment around us, and trying
22 to take into account the effects on the neighbors.

23 We have a historic structure on one side.
24 We'll never be able to go in that direction. The
25 Carrey Building on the other side is probably a good

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1 candidate for historic designation if anybody should
2 ever have designs on doing anything to that building.

3 So we submit to you that the application
4 does indeed meet the standard for area variance, that
5 we have practical difficulty, and we have the
6 requisite unique circumstances situation. We don't
7 have a laundry list of circumstances, but we have a
8 unique situation. That ought to be sufficient.

9 We think moreover that the design team has
10 tried to take into account the effect of light and air
11 on the adjoining properties. They have tried to
12 respond that we have done the best we can do to
13 minimize the impacts. Bearing in mind what Mr.
14 Jackson had to say about the transit of light in that
15 locked in narrow area, we don't think we are creating
16 any significant diminution of light and air. If we
17 use the building materials that we've talked about
18 using and replace that concrete structure with a
19 windowed structure, it can only help the situation
20 back there.

21 So we think that on balance when you
22 deliberate we hope you will agree that the visual
23 impacts, the light and air have been reduced to the
24 extent that we can deal with them in a practical, real
25 world manner. We believe therefore that the variance

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1 and the special exception can be approved without
2 substantially impairing the integrity of the zoning
3 regs and maps. And we ask you to do that.

4 CHAIRPERSON GRIFFIS: Thank you very much.

5 We had talked about leaving the record open for the
6 submission of a response to -- Well, Staff will help
7 me out because now I'm not recalling what I said.

8 MR. CAIN: And I didn't write it down at
9 the time.

10 CHAIRPERSON GRIFFIS: Party status?

11 MR. JACKSON: You wanted additional
12 information from the zoning administrator to modify
13 the --

14 CHAIRPERSON GRIFFIS: That's what it was.

15 The letter from the zoning administrator. The record
16 will stay open for that. That's not going to need any
17 response. That's a referral from the ZA. I would
18 suggest that we set this for a date. Let's see if the
19 dates work if we could meet on February 4. We would
20 ask for the parties and Applicant to submit if so
21 moved brief findings and conclusions attendant to this
22 case. Mr. Moy, why don't you run me through the
23 schedule?

24 MR. MOY: Mr. Chairman, that would give us
25 five cases for decision making on February 4. The

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1 additional materials based on February 4 if we could
2 have submitted to the office by January 21. Is that
3 too close?

4 MR. CAIN: That's too close, Mr. Chairman.
5 I can't deal with that.

6 CHAIRPERSON GRIFFIS: Okay. So we're not
7 going to make it to February 4.

8 MR. MOY: I would suggest then February 11
9 with submission to the office then of -- Could you
10 make January 28?

11 MR. CAIN: I have a whole series of
12 depositions coming within the next ten days.

13 MS. BAILEY: Would you like to suggest to
14 us the date when you can make it on a Tuesday?

15 MR. CAIN: If the deadline would be
16 February 4 for a meeting on February 11, I should be
17 able to meet that.

18 MS. BAILEY: Mr. Cain, we can't hear you,
19 sir. Could you speak up?

20 MR. CAIN: I'm sorry. If the deadline for
21 the meeting on February 11 would be February 4, I
22 could meet that deadline.

23 CHAIRPERSON GRIFFIS: Okay. So your
24 submission in by February 4.

25 MR. CAIN: We're talking about proposed

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1 findings and conclusions.

2 CHAIRPERSON GRIFFIS: Right. Mr.
3 Sullivan, can you make that date? He's indicating
4 yes. Any other problems, questions? Can we set this
5 for February 11?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Then it's done.
8 Very well.

9 MR. CAIN: Thank you for accommodating me.

10 CHAIRPERSON GRIFFIS: We're just going to
11 give your home address to our applicants in the
12 afternoon of February 11 knowing that we'll probably
13 be starting our afternoon late then also based on all
14 the back log we had. That being said, I think that
15 finishes our morning session. I would adjourn the
16 morning public hearing of the Board of Zoning
17 Adjustments of January 14. We will be back by 2:30.
18 Off the record.

19 (Whereupon, at 1:44 p.m., the above-
20 entitled matter recessed to reconvene at
21 2:47 p.m. the same day.)

22

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

2 2:47 p.m.

3 CHAIRPERSON GRIFFIS: On the record. Good
4 afternoon, ladies and gentlemen. I would like to call
5 to order this 14 January 2003 public hearing of the
6 Board of Zoning Adjustments of the District of
7 Columbia. My name is Geoff Griffis, Chairperson.
8 Joining me today is the Vice Chair, Ms. Anne Renshaw,
9 Mr. Curtis Etherly, and representing the National
10 Capital Planning Commission is Mr. Zaidain.

11 Copies of today's hearing agenda are
12 available to you. They are located at the table that
13 is adjacent to the door you entered into the hearing
14 room. Please be aware that the proceedings are being
15 recorded. There are several things attendant to that.

16 First of all, when coming forward to speak to the
17 Board all those planning to give testimony should
18 fill out two witness cards. Witness cards are
19 available at the table where you entered in and also
20 at the table in front of us. Those two witness cards
21 go to the recorder who is sitting to my right.

22 We would also ask that people present
23 refrain from any disruptive noises or actions while
24 the hearing is in session so as not to disrupt anybody
25 giving testimony or the Board's concentration on the

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1 case. Also, when you come forward to speak to the
2 Board, you will need to speak into a microphone. That
3 microphone should be on. I would also ask as you come
4 forward to state your name and address once for the
5 record.

6 The order of procedures today for special
7 exception and variances will be first statements and
8 witnesses of the Applicant. Second would be any
9 government reports. Those include of course Office of
10 Planning and DDOT or any agency reports attendant to
11 an application.

12 Third would be reports from the ANC, the
13 Advisory Neighborhood Commission. Fourth would be
14 parties or persons in support. Fifth would be parties
15 or persons in opposition. Finally sixth we will have
16 closing remarks by the Applicant.

17 Cross examination of witnesses is
18 permitted by the Applicant and parties in the case.
19 The ANC within which the property is located is
20 automatically a party in the case. The record will be
21 closed at the conclusion of each hearing on the case
22 except for any materials specifically requested by the
23 Board. The Board will be very specific on what that
24 material should be and when it is to be submitted into
25 the Office of Zoning. After that information of

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1 course the record would be finally closed and no other
2 information would be accepted.

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

9 The decision of the Board in contested
10 cases and in all cases must be based exclusively on
11 the public record. So we ask people present today not
12 to engage Board Members in conversation so that we do
13 not give the appearance of not deliberating wholly on
14 the public hearing and the case presented.

15 I will ask that everyone now turn off any
16 cell phones or beepers at this time so we don't have
17 any other types of disruptions for the proceedings.
18 We did have a morning session that ran over. We are
19 starting our afternoon late, so we will assess the
20 time needed to address all the cases that are here
21 today. But we will make our best effort to complete
22 our session by 6:00 p.m.

23 I think we should take up any preliminary
24 matters at this time. Preliminary matters are those
25 which relate to whether a case will or should be heard

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1 today such as a request for postponements,
2 continuances, withdrawals, or whether proper and
3 adequate notice of the hearing and application has
4 been provided.

5 If you are not prepared to go forward with
6 a case today or if you believe the Board should not
7 proceed, now is the time to raise such a matter. You
8 can indicate that you have a preliminary matter by
9 coming forward and sitting at the table in front of
10 the Board. I would ask Staff if they have any known
11 preliminary matters for our entertainment at this
12 point.

13 MS. BAILEY: Mr. Chairman, Members of the
14 Board, good afternoon. I believe, Mr. Chairman, there
15 are two. One of which I will discuss. Mr. Chairman,
16 I believe you will pick up on the other one. The
17 first one has to do with Application 16964, D.C.
18 Public Schools on behalf of Verizon Wireless, Inc.
19 That application has been withdrawn, Mr. Chairman, and
20 no further action is required.

21 CHAIRPERSON GRIFFIS: Very good. Thank
22 you very much. The second preliminary matter is I
23 would like to shuffle our schedule. I am going to be
24 calling the appeal, 16950, first.

25 Application 16963 of Toni Thomas

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1 Associates, Inc., we have received the entire file.
2 The Board has read it and reviewed it. There is some
3 concern. What I am going to ask the Applicant to do
4 is step out into the Office of Zoning and talk to
5 Staff briefly.

6 Then we may have a direction that we'll be
7 going with that application. I think that would be
8 the best use of the Board's and the Applicant's time.

9 That being said, let us call the first case of the
10 afternoon.

11 MS. BAILEY: This is a continuation, Mr.
12 Chairman. It's an Appeal Number 16950 of the West End
13 Citizens Association, pursuant to 11 DCMR 3100 and
14 3101, from the administrative decision of David Clark,
15 Director, and Robert Kelly, Zoning Administrator,
16 Department of Consumer and Regulatory Affairs (DCRA),
17 in the issuance of Certificate of Occupancy (C of O)
18 Number CO39477, issued on August 16, 2002, to George
19 Washington University, permitting the occupancy of the
20 subject premises by apartment (residential) and
21 parking use. Appellant alleges that the C of O was
22 issued without full compliance with Zoning Commission
23 Order Number 746-C. The subject property is located
24 at 1957 E Street, N.W.

25 Mr. Chairman, this is a continuation of a

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1 case that was previously heard by the Board. Is there
2 anyone who will be testifying today who was not sworn
3 in previously and needs to be sworn in? Okay. Please
4 stand to take the oath. Please raise your right hand.

5 WHEREUPON,

6 DOROTHY MILLER, ELIZABETH ELLIOTT, BARBARA KAHLOW and
7 SARA MADDUX

8 were called as witnesses and, having been first duly
9 sworn, were examined and testified as follows:

10 MS. BAILEY: Thank you very much. Mr.
11 Chairman, if I'm not mistaken, the Appellant presented
12 their case the last time this case was before the
13 Board. The Zoning Administrator also spoke at that
14 time. Is the property owner present today? I believe
15 that's where we pick this case up, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Is that correct?

17 MS. BAILEY: No, it's not correct?

18 CHAIRPERSON GRIFFIS: I don't know.
19 Actually, Mr. Feola, if you would come forward.

20 VICE CHAIRPERSON RENSHAW: As Mr. Feola is
21 sitting down and gathering his notes, may I say that I
22 wasn't here for the December hearing? I wanted to let
23 you know that I have reviewed the materials in the
24 file save the transcript of the hearing. We will
25 catch up with that transcript before any decisions are

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1 made.

2 CHAIRPERSON GRIFFIS: Very well. So you
3 will review the entire record for that.

4 VICE CHAIRPERSON RENSHAW: Yes I will.

5 CHAIRPERSON GRIFFIS: Excellent. Mr.
6 Feola, is that correct as to where we left off in the
7 presentation of your case?

8 MR. FEOLA: Thank you, Mr. Chairman. Phil
9 Feola with Shaw Pittman on behalf of the University,
10 the property owner. No, I believe the University
11 completed its testimony and was cross examined by both
12 the Appellant and the ANC and the Board.

13 CHAIRPERSON GRIFFIS: Very well.

14 MR. FEOLA: So I think we are finished
15 with our direct case.

16 CHAIRPERSON GRIFFIS: That was my
17 recollection too. I think we'd start then with the
18 ANC if I'm not mistaken.

19 MR. FEOLA: Is it appropriate, Mr. Chair,
20 to bring up a preliminary matter with regard to the
21 ANC?

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. FEOLA: I received a copy of a letter
24 signed by ANC Commissioner Dorothy Miller 2A-04
25 indicating the ANC's request that the rules be waived

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1 to allow them to make a presentation. I guess I
2 didn't see, and maybe I didn't have it, a resolution
3 or some official document from the ANC delineating its
4 position on this matter. Maybe the Board has it, but
5 I have not seen it.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. FEOLA: And I think the rules
8 specifically require that the ANC at a proper meeting
9 with proper notice with a quorum present vote on what
10 position it wants the Board to take. If that
11 resolution isn't in the record, I would suggest that
12 it is inappropriate for Ms. Miller to make a
13 presentation.

14 CHAIRPERSON GRIFFIS: Very well. I think
15 I understand. Ms. Miller?

16 MS. MILLER: We are automatically a party
17 to the case.

18 CHAIRPERSON GRIFFIS: If I could just have
19 you introduce yourself.

20 MS. MILLER: I'm Dorothy Miller.

21 CHAIRPERSON GRIFFIS: Thank you.

22 MS. MILLER: I'm ANC-2A-05 which this
23 property is located in. We have elections, so we will
24 meet tomorrow night to choose a chair. We did have a
25 special meeting. This special meeting is what I'm

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1 testifying to today. I was chosen to represent ANC-2A
2 with Ms. Elliott presenting the testimony.

3 CHAIRPERSON GRIFFIS: Okay. Let's get
4 direct with it. Do you have a letter stating that,
5 the special meeting?

6 MS. MILLER: Yes. I have given it to you.

7 CHAIRPERSON GRIFFIS: You submitted that
8 in.

9 MS. MILLER: Yes I did.

10 CHAIRPERSON GRIFFIS: That's going to
11 indicate that it was properly noticed, that there was
12 a quorum present, and there was a special meeting --

13 MS. MILLER: That's right. As he said, he
14 got a copy of the letter.

15 CHAIRPERSON GRIFFIS: I see. So there was
16 a special meeting of the entire ANC.

17 MS. MILLER: On the 29th. Ms. Elliott
18 left the commission two days later. We have to elect
19 a new chair at the first meeting which is tomorrow
20 night. But we did make a motion that we would move
21 forward, that I would represent with the help of Ms.
22 Elliott who had been representing and has been chair
23 for the last two years.

24 CHAIRPERSON GRIFFIS: Okay. If I'm not
25 mistaken, Mr. Feola made the point that in the voting

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1 that a vote would have taken place as to the position
2 of the ANC. Is that your understanding?

3 MS. MILLER: Well, what we voted was for
4 the position all along that we had taken that we were
5 not a party to the case, basically except because we
6 are the ANC. We were not a party to the agreement
7 that was written up or anything like that. So the
8 commission felt that Ms. Elliott could adequately
9 describe or give the point of view of the ANC.

10 CHAIRPERSON GRIFFIS: I guess that's what
11 Mr. Feola is bringing up. What is the point of view
12 of the ANC?

13 MS. MILLER: That's what she's going to
14 give you this afternoon.

15 CHAIRPERSON GRIFFIS: What is the
16 justification that Ms. Elliott has from the entire ANC
17 of their point of view?

18 MS. MILLER: That we're not a party to the
19 agreement, but we have to automatically be a party to
20 the case because it's in our ANC.

21 MS. ELLIOTT: Chairperson Griffis, may I
22 interrupt?

23 CHAIRPERSON GRIFFIS: Yes.

24 MS. ELLIOTT: I'm Elizabeth Elliott. I'm
25 immediate past chair of ANC-2A. We voted at our

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1 November 13 meeting, and I will explain that in the
2 testimony, to not take a position in this case but to
3 alert the Board as to what our position all along in
4 the case had been in the original Zoning Commission
5 case. Our position is not to take a position. We're
6 here just to give you some information that we think
7 might be germane in making your decision.

8 CHAIRPERSON GRIFFIS: I see. Mr. Feola,
9 do you have a legal opinion on the establishment of
10 the ANC as an intervenor? Clearly in a variance or
11 special exception, the ANC is a party in the case as I
12 state every time we open a session. But in terms of
13 establishing intervenor status.

14 MR. FEOLA: Mr. Chair, Phil Feola for the
15 record. No. I believe the ANC is a party to this
16 case.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. FEOLA: My concern is that we have no
19 indication in the record as Ms. Elliott just said and
20 the testimony she's about to deliver has been adopted
21 by the ANC. They clearly have appointed her and Ms.
22 Miller to represent the ANC, but we don't know the
23 ANC's position by official resolution.

24 Your rules 3115.3 specifically restrict
25 testimony of an ANC representative to that position

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1 taken by the ANC. I would suggest another way around
2 this because I don't want to preclude the ANC from
3 participating is to hold the record open for a
4 resolution from the ANC. It can attach Ms. Elliott's
5 proposed testimony.

6 CHAIRPERSON GRIFFIS: I don't think that's
7 overly burdensome. I think we can use a little bit of
8 common sense in when we wait for that letter. The ANC
9 probably would not have put you in charge of coming
10 down and speaking if they were not somewhat aware of
11 what you were going to say. I think Mr. Feola's point
12 is well taken that we need to follow the regulation
13 3115.3. Do you understand what we are requesting
14 then?

15 MS. ELLIOTT: I'm understanding what you
16 are requesting, but as I said we didn't have an
17 official resolution. We simply took a vote at that
18 time to say that our position would be not to take a
19 position in this.

20 CHAIRPERSON GRIFFIS: Okay. But even that
21 should be stated somewhere addressing the Board.

22 MS. ELLIOTT: Okay. In a letter. Sorry.
23 I apologize.

24 CHAIRPERSON GRIFFIS: Frankly to the total
25 letter of the law and entire intent of the

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1 regulations, the ANC probably would have seen your
2 written statement and approved it and sent you down
3 here to read it. Is everyone clear on that? Is
4 everyone okay on that? We'll leave the record open
5 then to have that letter submitted in terms of a
6 formal action by the ANC establishing what position
7 they are taking in terms of the testimony we are about
8 to hear. It will make more sense I think.

9 MS. MILLER: I need to give my cards.

10 MS. ELLIOTT: I would also ask, an issue
11 has come up. Some information came to our attention.

12 We would like to ask some questions of Mr. David
13 Watts from GWU who sits on the foundation board of the
14 Foggy Bottom Feeding Program Foundation. Apparently
15 he's not here today. Is there any way that we could
16 submit these questions to the Board and get a written
17 response if you feel that's appropriate?

18 CHAIRPERSON GRIFFIS: I think one step at
19 a time would be fine. We'll take the questions and
20 we'll review them. There it is. Not knowing the
21 questions, conceivably we'll send them out for a
22 response and they will be responded by everybody.
23 Okay.

24 MS. ELLIOTT: Okay. I need to get my
25 testimony. Thank you.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 MS. MILLER: I can read my statement which
3 you have heard most of if that's all right with you.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. MILLER: I'm Dorothy Miller,
6 Commissioner for ANC-2A-05. On January 14, 2003, the
7 BZA continues its hearing in the above case. ANC-2A-
8 05 is the single member district in which the George
9 Washington University, 1957 E Street property is now
10 located. At a special meeting on December 29, 2002,
11 ANC-2A unanimously approved that I and Ms. Elliott,
12 Chair of the ANC-2A for the past two years, would
13 represent 2A in this matter.

14 Ms. Elliott in whose single member
15 district the above-titled property was located prior
16 to the redistricting has represented ANC-2A before the
17 Zoning Commission for two years on this property. Ms.
18 Elliott was chair of ANC-2A when the BZA granted the
19 ANC original appeal in this case number 16701
20 concluding that there was no provision for the
21 University's use in a second stage PUD order number
22 746. I defer to Ms. Elliott today to present the
23 ANC's point of view.

24 CHAIRPERSON GRIFFIS: Thank you, Ms.
25 Miller.

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1 MS. ELLIOTT: Good afternoon, Chairman
2 Griffis and Board Members. I'm Elizabeth Elliott,
3 immediate past chair of ANC-2A. I would like to begin
4 with these questions for Mr. Watts. I'll read them
5 over. Then you can decide whether to submit them to
6 GW for Mr. Watts' answers.

7 CHAIRPERSON GRIFFIS: How many questions
8 are there?

9 MS. ELLIOTT: It's seven questions. They
10 are yes or no answers.

11 CHAIRPERSON GRIFFIS: Okay. Let's go
12 through them quickly.

13 MS. ELLIOTT: (1) Are you a GW member of
14 the Foggy Bottom Feeding Program Foundation Board?
15 (2) Do you recall a meeting hosted by GW officials
16 which you attended on July 24, 2002? That included
17 representatives of four cooperative apartment
18 buildings located in ANC-2A. (3) Did you indicate to
19 the non-GW attendees of the meeting that you are a
20 board member of the foundation? (4) Do you recall a
21 GW official at that meeting stating that the Feeding
22 Program was not a project of GW?

23 (5) Do you recall that the same GW
24 official stated that the ANC and the BZA were
25 insisting on the Feeding Program? (6) Did you correct

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1 or attempt to correct the GW official's misstatement
2 about the Feeding Program? (7) Did you convey any
3 information about the discussion of the Feeding
4 Program to your fellow foundation board members?
5 That's that series of questions.

6 Again, Chairman Griffis and Members of the
7 Board, thank you for considering the ANC's comments on
8 members of the West End Citizens Association appeal of
9 the DCRA's and Zoning Administrator's decision to
10 issue a C of O to George Washington University for the
11 residential and parking garage portion of its 1957 E
12 Street project. The ANC is appearing today without
13 benefit of counsel.

14 As Commissioner Miller indicated at a
15 special meeting held on December 29, 2002, the ANC did
16 vote to appear represented by Commissioner Miller and
17 myself at this hearing. Because the ANC did not
18 participate in the August 2001 GWU week of
19 negotiations that have ultimately spawned this appeal,
20 at its regular monthly meeting on November 13, 2002,
21 ANC-2A voted unanimously to take no position in this
22 BZA appeal case and to reconfirm to the Board its
23 original and ongoing opposition to the entire 1957 E
24 Street project; the dormitory, academic, and parking
25 garage portions, all university uses, as well as the

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1 amenities package.

2 Also at that meeting, the ANC was informed
3 that the Zoning Commission's final order number 746(c)
4 had been challenged in the D.C. Court of Appeals by a
5 petition for review; York Tenant's Association versus
6 Zoning Commission number 02-11-1061. Although the ANC
7 has precluded from participating in that litigation,
8 ANC-2A unanimously voted to support YATA's appeal in
9 the D.C. Court of Appeals. In the interest of full
10 disclosure, I am a resident of the York apartments and
11 a board member of the York Apartments Tenant's
12 Association.

13 During the Zoning Commission's protracted
14 deliberations in the spring of 2002 on the AGC GWU PUD
15 modification case 01-17M, the ANC received numerous
16 letters from various community groups supporting the
17 ANC's position in the AGC PUD modification case and
18 commenting on their opposition to the GW amenities
19 package. In particular, there was great concernation
20 from our constituents about the previously nonexistent
21 Foggy Bottom Feeding Program Foundation and its
22 potential new subsidized feeding program.

23 We've attached some materials that are all
24 on the record of the original AGC GWU PUD modification
25 case that we think are germane to this case and would

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1 be helpful in your deliberations. We'll give you
2 copies of everything at the end of my testimony.
3 Included therein is an April 9, 2002 letter that was
4 attached to the ANC's April 14, 2002 filing and in
5 which a representative of the Board of Directors of
6 Watergate West Incorporated raised several issues
7 about the feeding program amenity.

8 "It should be understood that acceptance
9 by the Zoning Commission of the feeding program as
10 part of the amenities package would be tantamount to
11 their approval of a change of use of a property,
12 namely from a student dining facility to a commercial
13 venture and a social program to feed the needy and
14 homeless. Despite the change in purpose, the
15 activities will be conducted in a property owned by
16 the University and presumably will still be governed
17 in some measure by the host of regulations that relate
18 to University use."

19 If the contention of the Watergate West is
20 correct, and ANC-2A believes it is, in its final order
21 on this case, D.C. order number 746(c), the Zoning
22 Commission memorialized and sanctioned an improper
23 expansion of and change in uses on GW property; the
24 operation of a feeding program in university property
25 without a special exception hearing for a change in

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1 use. As Watergate West pointed out under the campus
2 plan regulations, the Zoning Commission had no legal
3 basis or authority to approve a change in use in any
4 of GW's noncommercial facilities without a separate
5 public hearing.

6 ANC-2A has only recently learned from its
7 constituents that GW officials hosted a July 24, 2002
8 meeting with representatives from four Foggy Bottom
9 cooperative buildings and with Mr. David Watts, a
10 board member of the Foggy Bottom Feeding Program
11 Foundation in attendance. At that meeting, it was
12 indicated by a GW official that the program at the
13 Virginia Avenue dormitory was not a project of GW but
14 was required at the insistence of the ANC and the BZA
15 much to our surprise.

16 This official further stated that it was
17 GW's view that the feeding program could not succeed
18 as currently required. It is clear that GW was aware
19 of the unsupportability of a feeding program in
20 university property without the proper hearings and
21 proceeded despite this knowledge. It is also clear
22 that GW misrepresented the ANC's position in this case
23 to the ANC's own constituents.

24 Finally, the ANC would like to correct the
25 Appellant's claim in this case that the Board of

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1 Zoning Adjustment was responsible for and directed
2 settlement negotiations. The ANC believes that the
3 BZA is an adjudicative body and does not have this
4 authority. Thank you very much for your time and
5 attention to this matter. I will give you these
6 materials. Thank you.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much. Any questions from the Board?

9 VICE CHAIRPERSON RENSHAW: I do want to
10 review closely that statement of yours, Ms. Elliott.

11 MS. ELLIOTT: I have copies. Thank you.

12 CHAIRPERSON GRIFFIS: I think it was said
13 in this case and appeal and has been in others and I
14 think you properly stated where our jurisdiction ends
15 in terms of giving direction. Cross examination?

16 MS. KAHLOW: I'm sorry. I haven't seen
17 the documents. Could I see them first and then I
18 could cross examine them? This is all news to me.

19 CHAIRPERSON GRIFFIS: If we ask if the
20 other --

21 MS. KAHLOW: I just asked Ms. Bailey and
22 she didn't have copies.

23 CHAIRPERSON GRIFFIS: That's not what I'm
24 asking actually. Would you mind if we moved on to
25 other cross examination and then come back to you?

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1 MS. KAHLOW: That would be fine. Thank
2 you.

3 CHAIRPERSON GRIFFIS: Mr. Feola, the
4 owner's representatives, any cross examination
5 questions?

6 MR. FEOLA: We have none.

7 CHAIRPERSON GRIFFIS: No questions. Okay.
8 Are we making copies of that? What are we doing?
9 You have plenty of copies. Fabulous. Did you pass
10 one back? After a brief review, I will take quick
11 comments about whether additional time is needed to
12 review this before we conduct cross examination.

13 MS. ELLIOTT: As I mentioned, everything
14 in this is in the record of the Zoning Commission case
15 on this particular case. I only have one copy of the
16 questions. Thank you.

17 CHAIRPERSON GRIFFIS: Yes. We're going to
18 need to distribute that around the room and then to
19 us. Mr. Feola.

20 MR. FEOLA: Mr. Chair, after a brief
21 review, I guess I'm puzzled by the relevance of this.
22 We're not debating whether or not a condition imposed
23 by the Zoning Commission is or isn't legal or can or
24 cannot be implemented. We're supposed to be here to
25 determine whether or not the issuance of a Certificate

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1 of Occupancy by the Zoning Administrator followed
2 those conditions.

3 As Ms. Elliott correctly pointed out,
4 there is a Court of Appeals case challenging the
5 Zoning Commission's action. I don't think the Zoning
6 Administrator could have determined in his judgement
7 to not follow the Zoning Commission because he or she
8 thought there was something wrong with those
9 conditions. So most of what I heard Ms. Elliott say
10 and I briefly looked at all go to whether or not the
11 Foggy Bottom Feeding Foundation Program should be
12 permitted by the Zoning Commission.

13 CHAIRPERSON GRIFFIS: Permitted use.

14 MR. FEOLA: Right.

15 CHAIRPERSON GRIFFIS: Are you phrasing
16 that as a cross examination or is that somewhat of a
17 rebuttal testimony? Or are you just questioning the
18 relevancy of what has been submitted?

19 MR. FEOLA: I would phrase it as a motion
20 to strike because it's not relevant to this
21 proceeding.

22 CHAIRPERSON GRIFFIS: Okay. We have a
23 motion before us. Ms. Elliott, do you want to speak
24 to that?

25 MS. ELLIOTT: I believe it is relevant

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1 because this is the major amenity for this PUD
2 project. As I said, it looks like --

3 CHAIRPERSON GRIFFIS: But you are asking
4 us to judge whether this amenity or "major amenity" in
5 your words is actually appropriate. That's not what's
6 under appeal.

7 MS. ELLIOTT: No. I'm just giving you
8 further information on the state of this amenity and
9 basically whether this is even right, whether this
10 Zoning Administrator is even right at this point in
11 terms of going back to the original appeal on this at
12 the time. Yes, part of the zoning appeal that's
13 before the Court of Appeals now may be talking about
14 this, but this was in existence at the time that the
15 Zoning Administrator made the decision on this. I'm
16 just bringing it up as an issue that I think the Board
17 ought to be aware of.

18 CHAIRPERSON GRIFFIS: But how are we
19 supposed to use it is what we really get down to. How
20 does this help us?

21 MS. ELLIOTT: I guess that's up to you.
22 We're not asking you to --

23 CHAIRPERSON GRIFFIS: Well, that puts us
24 in somewhat of a difficult position of getting
25 information that we need to decide how we use it.

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1 Usually it's presented directly on how we're supposed
2 to deliberate on it. I think I understand your point.
3 Others?

4 MS. MILLER: The appeal was that the
5 certificate was issued in error because the contract
6 of which you have no control and the community had no
7 control was not operative or had not been fulfilled.
8 That's the reason why we are presenting the additional
9 testimony.

10 CHAIRPERSON GRIFFIS: No. My
11 understanding of the appeal is not that community
12 contract wasn't fulfilled but one of the conditions of
13 the order was not fulfilled.

14 MS. MILLER: That's right.

15 CHAIRPERSON GRIFFIS: And that went
16 directly to \$100,000 seed fund for a feeding program.

17 MS. MILLER: Correct. Of which there
18 wasn't one at the time.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. MILLER: The community knew nothing
21 about it.

22 CHAIRPERSON GRIFFIS: But if I'm
23 understanding, what I've heard today is you're not
24 necessarily giving us information based on that
25 transfer of funds and setting up of a feeding program

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1 but rather questioning whether its appropriate to have
2 that feeding program. Am I correct?

3 MS. MILLER: No. That he gave them a
4 Certificate of Occupancy that would have made
5 something possible that should not be. Maybe you can
6 explain it better.

7 MS. ELLIOTT: Thank you. We're not saying
8 don't give the money to a feeding program foundation
9 or don't give the money to another already existing
10 group. We're just saying technically we don't think
11 the foundation was proper. So therefore, the money
12 probably should go to -- I mean this is not a
13 judgement that we've made. We're saying that the
14 feeding program foundation can't be set up to operate
15 in a GW facility. Therefore, the money should be
16 going to an already existing program which is what the
17 university has been trying to do.

18 CHAIRPERSON GRIFFIS: I guess that was my
19 point. You are saying that something is established.
20 You said "improper use." For our filters that means
21 it's not a use allowable under the zoning regulations.

22 MS. ELLIOTT: Well, this is what we're
23 saying to you. This was brought up during the
24 discussions in the Zoning Commission. Apparently, we
25 were ignored because this was part of our presentation

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1 that we can't put it to this kind of a use. You would
2 have to reopen the campus plan. You would have to
3 have a separate hearing on whether this could be done.

4 CHAIRPERSON GRIFFIS: So this is even a
5 bigger issue. Let me set you a hypothetical. If
6 there was the transfer of \$100,000 from the university
7 to the identified feeding program and they set up shop
8 and were running right now, you would still have the
9 same concern and issue.

10 MS. ELLIOTT: Well, again, there would
11 probably be some sort of an appeal of that without a
12 hearing.

13 CHAIRPERSON GRIFFIS: It's totally
14 hypothetical. I'm trying to understand the
15 information you are giving us.

16 MS. ELLIOTT: Right.

17 CHAIRPERSON GRIFFIS: Would you not have
18 the same issue and concern?

19 MS. ELLIOTT: Yes. Obviously the
20 community did. We had it with any --

21 CHAIRPERSON GRIFFIS: I'm not questioning.
22 I'm trying to get --

23 MS. ELLIOTT: Right.

24 CHAIRPERSON GRIFFIS: It goes to the fact
25 then we do have a motion questioning the relevancy of

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1 this information. I'd like to hear from other Board
2 Members regarding that.

3 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
4 believe the information is valuable as background. I
5 think we benefit from having as much information as
6 possible. In reviewing all of these documents as we
7 proceed to a decision, we make the decision as to what
8 to keep in front of us and what to set aside in our
9 decision making.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON RENSHAW: I certainly
12 would not eliminate this testimony.

13 CHAIRPERSON GRIFFIS: I think that's well
14 said. I think we do err on the side of getting more
15 information than we need but using our own
16 interpretation. I don't find that what I'm hearing is
17 necessarily prejudicial to any of the cases, the
18 owners or the appeal in and of itself unless Mr. Feola
19 wants to reopen that motion. He's indicating not. I
20 think we can accept it and in our own deliberations
21 establish the more relevancy of it.

22 Let me also just say it is somewhat
23 difficult to make a snap judgement. Clearly we've
24 heard your oral testimony, but we've just been given a
25 document that is I'd estimate 25 to 30 pages long. So

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1 we're not even sure what all is involved in this.
2 That being said, we'll take it in unless there are
3 other objections.

4 MS. KAHLOW: I don't have an objection to
5 accepting it, but I have now looked at the material.
6 You tell me when you are ready for me to discuss it.

7 CHAIRPERSON GRIFFIS: I think we are
8 absolutely ready. We'll take it as a consensus of the
9 Board to accept this information. We'll even give it
10 an exhibit number. Let's proceed.

11 MS. KAHLOW: First you asked a question if
12 this was new material. I have just gone through it
13 and two documents we have never seen. If they were in
14 the other record, they were not served on us as
15 parties. Nonetheless, I don't see the relevance so
16 they have no harm but I would like to ask some
17 questions of the ANC.

18 CHAIRPERSON GRIFFIS: That's fine. But
19 just for total clarity, she was talking about the
20 Zoning Commission case. Is that what you were talking
21 about?

22 MS. KAHLOW: For total clarity, we were a
23 party of the Zoning Commission case. We were not
24 served two of these documents. I have never seen
25 them. I think they have no relevance. It makes no

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1 difference in either proceeding.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. KAHLOW: I am very concerned, Ms.
4 Elliott, about something you just said. The appeal
5 was filed in early September. So at the September 18,
6 October 16, November 13, December 11, or December 29,
7 at any of the five ANC meetings since then, at which
8 public meeting was there a discussion about the Foggy
9 Bottom Feeding Program Foundation?

10 MS. ELLIOTT: It was a special meeting
11 that we had in I believe April 2002. It was a special
12 meeting that was called. You were in attendance at
13 the meeting for part of the meeting. I'm not sure
14 what the exact date was. I would have to look that
15 up. It was an April special meeting particularly on
16 the whole amenities package and the foundation.

17 CHAIRPERSON GRIFFIS: Can I interrupt you
18 for just a second? I just need ten seconds here.

19 (Pause.)

20 CHAIRPERSON GRIFFIS: If I could impose on
21 you just to break your flow a little bit and I will
22 give you some time, but I wanted to address the first
23 case in the afternoon. Let me just say I believe that
24 the Applicant is in fact requesting a continuance to
25 the morning of February 11. That's correct. Very

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1 good.

2 I believe that the application will be
3 continued based on amending of the relief sought in
4 that case. That's also correct. Very well. Then I
5 think we can take that as an official action by the
6 Board. We will set that for February 11 in the
7 morning. Are you aware of where you are on the
8 schedule in terms of the number of cases? Okay.
9 Excellent. Yes, Mr. Etherly.

10 MEMBER ETHERLY: (Inaudible.)

11 CHAIRPERSON GRIFFIS: Good. Very well
12 then. Thank you very much. We appreciate your
13 patience this afternoon. I'm sorry to interrupt the
14 flow of cross examination, but when you are ready we
15 can resume.

16 MS. KAHLOW: Thank you. I'm unclear, Ms.
17 Elliott, you just said an April `02 meeting. Was
18 there any discussion after the Certificate of
19 Occupancy in August `02 and after the appeal was filed
20 in September `02 substantively about the Foggy Bottom
21 Feeding Program Foundation and your position that
22 money should go elsewhere?

23 MS. ELLIOTT: I don't recall,
24 substantively after the appeal, any discussion about
25 that.

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1 MS. KAHLOW: In fact, was there any
2 discussion at the five ANC meetings after the appeal
3 on September 18, October 16, November 13, December 11,
4 and the special meeting on December 29? Was there any
5 discussion whatsoever substantively about the appeal?

6 MS. ELLIOTT: There was no discussion
7 about the Foggy Bottom Feeding Program Foundation, but
8 there was a discussion about our position on that.
9 There was also a discussion briefly that we would
10 maintain our position at that November 13 meeting.

11 MS. KAHLOW: Was there a resolution passed
12 at that point? I just don't have a copy of that, and
13 I was at the meeting. I was unaware.

14 MS. ELLIOTT: We just voted on it. We
15 didn't write out a resolution. As Chairperson Griffis
16 has asked, we'll have to write out a resolution to
17 that effect. We voted to maintain our position at
18 this.

19 MS. KAHLOW: I'm at a little bit of a
20 disadvantage here having been at every one of these
21 ANC meetings and never heard the ANC position
22 discussed publicly. If they do submit something that
23 we've never seen, will we have an opportunity to
24 comment on it since it could be in error?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. KAHLOW: Thank you very much. That's
2 all I have.

3 MS. MILLER: I would like to say we're
4 meeting tomorrow night, so I can put this on the
5 agenda.

6 CHAIRPERSON GRIFFIS: Are we all invited?

7 MS. MILLER: Sure.

8 CHAIRPERSON GRIFFIS: Okay. Good.

9 MS. MILLER: It's open to the public, and
10 we welcome the public.

11 CHAIRPERSON GRIFFIS: It's not a bad time
12 perhaps if you would tell us the time. I'm sure all
13 of you are aware, but it's great to have it.

14 MS. MILLER: It's 7:00 at the State Plaza
15 Hotel.

16 CHAIRPERSON GRIFFIS: Excellent.

17 MEMBER ZAIDAIN: Just to make sure I'm
18 clear, the unofficial position is no position.

19 MS. MILLER: That's correct.

20 MEMBER ZAIDAIN: There will be I assume a
21 resolution coming forward to that effect.

22 MS. MILLER: The reason is we were not a
23 party to the agreement.

24 CHAIRPERSON GRIFFIS: Right.

25 MEMBER ZAIDAIN: Well, that's the

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1 agreement. We keep hearing about that. That's not
2 what is before us as far as what we are doing here.

3 CHAIRPERSON GRIFFIS: Their challenge is
4 to fire everybody up not to take a position.

5 VICE CHAIRPERSON RENSHAW: They can do
6 that.

7 CHAIRPERSON GRIFFIS: Okay. Very well. I
8 think that is excellent. We appreciate your time and
9 being patient this afternoon and sitting with us and
10 giving your testimony. If I'm not mistaken, we can
11 move to any rebuttal testimony and then go directly
12 into closing statements.

13 MS. KAHLOW: May I ask a question first
14 not understanding where we are in the proceedings? We
15 submitted in response to the Board's request documents
16 on December 31 and then responses to documents that GW
17 filed on January 2, instead of December 31, on January
18 7. Are you going to ask us about those? Is that what
19 we're doing right now?

20 What's the difference between rebuttal and
21 closing statements since we're the Appellant? Are we
22 the only ones that get to talk now? I'm a little
23 unclear what the process is right now. I appreciate
24 your explaining it to me.

25 CHAIRPERSON GRIFFIS: It's my

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1 understanding, and our Corporation Counsel
2 representative will correct me or anyone else for that
3 matter, that this is now all you. You are going to
4 present any rebuttal testimony. Any testimony that
5 comes in as rebuttal can be cross examined.

6 MS. KAHLOW: Okay.

7 CHAIRPERSON GRIFFIS: Then after that, we
8 will go to your closing statements. In terms of the
9 written submissions, I think it was decidedly
10 purposeful for that information to come in written
11 form. I know that we are not looking for any
12 additional oral testimony on it. I think it's
13 sufficient with what we have. There has been proper
14 time for responses to all of that if I'm not mistaken.

15 MS. KAHLOW: My question was if you had
16 questions having received it.

17 CHAIRPERSON GRIFFIS: Well, we are always
18 able to ask questions whenever we want.

19 MS. KAHLOW: That's why I wanted to know
20 where we were in the proceedings. So we just passed
21 that stage.

22 CHAIRPERSON GRIFFIS: Yes.

23 MS. KAHLOW: Okay.

24 CHAIRPERSON GRIFFIS: No. We've never
25 passed the stage where we can ask questions.

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1 MS. KAHLOW: Okay.

2 CHAIRPERSON GRIFFIS: So always be
3 prepared. Even in your closing, we may have
4 questions. If they come up, the Board has received it
5 all and read it all. I'm sure they will avail
6 themselves if they have questions.

7 MS. KAHLOW: What I'd like to do is have
8 Ms. Maddux give the rebuttal and me to give the
9 closing if that is all right with you.

10 CHAIRPERSON GRIFFIS: That is perfectly
11 fine with me.

12 MS. MADDUX: Good afternoon. I'm Sara
13 Maddux. I live at 522 21st Street, N.W. I would just
14 briefly touch on some issues that were raised during
15 the presentation by George Washington University.
16 Inasmuch as this is a recorded public record with a
17 transcript, I thought two points were very particular
18 to be addressed.

19 Unfortunately, Mr. Charles Barber who is
20 the Counsel for GW University passed comments on the
21 qualification of the Board Members of the Foggy Bottom
22 Feeding Program Foundation. This had to do with our
23 abilities and whether we were competent or not to run
24 an organization. For the public record, I would like
25 to tell you that David Watts, who is a former

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1 administrator of the District of Columbia Government,
2 is now an employee of the George Washington University
3 with a certain title. I would hold out since George
4 Washington nominated him to serve in this capacity
5 that they would have thought that he had sufficient
6 capacity to do it.

7 The second person from George Washington
8 University is Johnny Osborne who is an Assistant Vice
9 President and a CFO with certain financial
10 responsibilities. I would assume that he is also a
11 capable and able person to run a program. The third
12 person is John Graves who is retired and lives at St.
13 Mary's Court who has a long history of public service
14 with corporations as a responsible official.

15 The fourth person is John C. Batham who is
16 President of the West End. He's a retired banking
17 official and has had other responsible corporate
18 organizations through his career. The fifth person is
19 myself. I have been a member of organizations. I
20 have a certain educational level and corporate
21 experience both with accounting and financial
22 management. I have served in other organizations to
23 bring things to success, particularly our tenant's
24 conversion of our condominium in 1980 which was at
25 that point a \$6 million operation which was big then.

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1 It's not so big now.

2 The point is hopefully all of these people
3 are officials who are responsible, who can carry out a
4 nonprofit corporation program and not be indicted and
5 not go to jail and be trustworthy public people. This
6 is important money to do good for other people.

7 The foundation is legally constituted in the
8 District of Columbia. We have an employer
9 identification number from the IRS. We have filed the
10 nonprofit corporation reports required by the District
11 of Columbia. There is a foundation framework to carry
12 out the program. We have bylaws. We have had
13 meetings. We have official records as required by the
14 District of Columbia.

15 The lack of funding inhibits the
16 credibility of the organization to negotiate with
17 institutions in order to implement this. The
18 financial things that are being incurred by the
19 organization come out of my personal checkbook. The
20 Zoning Administrator, when you raised the issue and
21 this is the second side of looking into the particular
22 elements of the zoning order, you all raised it with
23 us about looking internally into this particular part
24 of the issue.

25 Then I raised in return what's happening

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1 with the landscape plan, what's happening with the
2 retail space. The response was we only go so far. So
3 therefore, I would ask from you all a level review.
4 If you are going to try to do the inner-workings of
5 the foundation, maybe you can assign somebody to do
6 the inner-workings of the landscape plan, how GW is
7 going to go about filling the retail space and all of
8 that. So let's have a level plan for everybody.

9 The last part of this is you brought up
10 the enforcement process. If the zoning orders are
11 going to be written that if people don't do this then
12 this happens, we're going to come into a much more
13 complicated process for zoning orders. There will
14 have to be additional skills and talents brought
15 forth. There will have to be additional legal counsel
16 paid for to make sure everybody is doing it within the
17 framework of what's real, what's possible, and what is
18 an 11 DCMR.

19 So part of my request is let's look at
20 this from a reasonableness standard. The requirement
21 of the order was pay \$100,000 to this foundation which
22 was established. We went down and saw Riggs Bank. We
23 had a meeting with one of the officers of where GW
24 placed the money. It was not a payment for the Foggy
25 Bottom Feeding Foundation to go forward.

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1 So I believe that is very essential
2 information as Ms. Renshaw raised about the other
3 issues. As a little side piece since I just heard, at
4 no point has there been a decision about the placement
5 of this program. So if somebody is going to need a
6 variance or anything else in the District, that
7 process has not gone that far.

8 Believe you me, all of us who have been
9 through this know now that if it's anything like that
10 we would have to come back through another process.
11 But the decision on the implementation of the program
12 has not reached the point that would raise those kinds
13 of issues. I would be happy to answer any questions
14 or furnish any additional information and I appreciate
15 your time.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much. Several things that are brought up. If I
18 am understanding you correctly, what you are stating
19 is you are not refuting the fact that the feeding
20 program isn't up and operational but rather the
21 foundation to set the feeding program up is and that
22 you need in fact this \$100,000 to get the feeding
23 program up and operational.

24 MS. MADDUX: Yes, sir.

25 CHAIRPERSON GRIFFIS: Okay. I don't think

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1 that's --

2 MS. MADDUX: And as much as I would like
3 to do it myself, I don't have those kinds of
4 resources.

5 CHAIRPERSON GRIFFIS: Indeed. A quick
6 clarification in terms of us getting into the inner-
7 workings of the foundation. We have no interest in
8 doing that.

9 MS. MADDUX: Fine. Thank you.

10 CHAIRPERSON GRIFFIS: In terms of the
11 other issues that were brought up, I think we fairly
12 well discussed those and we may hear that if needed
13 but clearly now is not the time.

14 MS. MADDUX: Okay.

15 CHAIRPERSON GRIFFIS: Let me just say I'm
16 a little concerned with how you opened your statement.
17 I want to bring a little bit of clarity from my
18 opinion. I would be glad to hear others.

19 MS. MADDUX: Sure.

20 CHAIRPERSON GRIFFIS: My recollection and
21 my notes from the testimony previously is that there
22 was not testimony given that was disparaging the
23 foundation. In fact, my notes clearly state as you
24 have restated that GW has board members on the
25 foundation. That was clearly stated.

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1 My point is I did not walk away with the
2 opinion that they were saying in fact it was a
3 fraudulent or in any way corrupt or in any way
4 nonfunctioning foundation, but it went directly to the
5 feeding program itself being established. The one
6 comment that I do remember, and I would ask you if I
7 am recalling correctly, I'm not going back to all my
8 notes, but that there was not regularly scheduled
9 board meetings that I guess would have facilitated a
10 better communication or a facilitation of setting up
11 the program. Do you want to just address when the
12 board meets and how regularly and when it has in the
13 past?

14 MS. MADDUX: I can provide you the minutes
15 from the meeting. I have the notes from the last
16 meeting. I can give you the date if you will bear
17 with me one minute.

18 CHAIRPERSON GRIFFIS: Sure.

19 (Pause.)

20 MS. MADDUX: The last meeting we had was
21 on August 19. It began at 9:00 a.m. All of the
22 people I previously named were in attendance.

23 CHAIRPERSON GRIFFIS: What was the date on
24 that again?

25 MS. MADDUX: August 19. It had just been

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1 signed. The Certificate of Occupancy had been issued.

2 We had a meeting to assure the bylaws, nomination of
3 officers --

4 CHAIRPERSON GRIFFIS: Was that your first
5 board meeting?

6 MS. MADDUX: No. That's the third board
7 meeting.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. MADDUX: I have the minutes if you
10 will just bear with me a moment.

11 MS. KAHLOW: That was the meeting where
12 the Zoning Administrator in the e-mail traffic that we
13 presented in the record and us all expected the check
14 would be handed over and it was not. That was the
15 beginning of the problems.

16 MS. MADDUX: So therefore immediately
17 following that meeting at 10:50 a.m. Mr. Batham and I
18 met with Caroline West at Riggs Bank to see where the
19 money was. During the meeting, she laughed and made a
20 phone call to Mr. Watts and then finally brought back
21 to us Xerox copies of the deposit slip and the title
22 to the account.

23 The account reads "George Washington
24 University Elliott School escrow account." The
25 deposit was \$300,000. There was no escrow agent name.

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1 There were no signings on it. We have copies of this
2 document. So then it became obvious to us that there
3 was not going to be implementation of the zoning order
4 element which would have passed the money to the
5 foundation.

6 CHAIRPERSON GRIFFIS: You stated a dollar
7 figure. I wonder if you would restate that.

8 MS. MADDUX: Yes, sir. The dollar figure
9 was \$100,000 even.

10 CHAIRPERSON GRIFFIS: I thought it had
11 deposited into a high interest account because I think
12 you said \$300,000.

13 MS. MADDUX: No. If we had all that
14 interest, we wouldn't share that information.

15 CHAIRPERSON GRIFFIS: I want to find out
16 what account that is. So it's the \$100,000. Clearly
17 it wasn't mixed with any other kinds of funds.

18 MS. MADDUX: It's the \$100,000.

19 CHAIRPERSON GRIFFIS: All right. Board,
20 any other questions? Very well. Any cross?

21 MR. FEOLA: No, sir.

22 CHAIRPERSON GRIFFIS: No cross.

23 MS. KAHLOW: I just want to add one thing
24 to make sure of the timeframe. On the August 19
25 meeting when there was no check, we filed our notice

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1 of appeal, the West End, on September 5. Then that's
2 when everything started saying this isn't happening.
3 We hear it's not happening. Everything was going
4 along smoothly until November 19. Then we immediately
5 filed the notice of intent to appeal and then the
6 appeal.

7 CHAIRPERSON GRIFFIS: Very well. Does the
8 Agency have any questions of the rebuttal testimony?
9 None. Then let us move on. Thank you very much. We
10 appreciate you being here.

11 VICE CHAIRPERSON RENSHAW: I do have a
12 question after all. Ms. Kahlow, Ms. Maddux, either
13 one of you, you stated that August 19, 2002 you held a
14 meeting of your board. It was your third board
15 meeting.

16 MS. MADDUX: Yes, ma'am.

17 VICE CHAIRPERSON RENSHAW: How many of the
18 board members were in attendance?

19 MS. MADDUX: All five.

20 VICE CHAIRPERSON RENSHAW: All five. You
21 have minutes of the meeting.

22 MS. MADDUX: Yes I do.

23 VICE CHAIRPERSON RENSHAW: Okay. Thank
24 you.

25 CHAIRPERSON GRIFFIS: Do you want those

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1 submitted, Ms. Renshaw?

2 VICE CHAIRPERSON RENSHAW: Yes. I think
3 that would be a good idea.

4 MS. MADDUX: We would be happy to do that.
5 Thank you.

6 CHAIRPERSON GRIFFIS: The meeting minutes
7 of the 19 August board meeting. Okay. Ms. Miller?

8 MS. MILLER: Could the Agency also have a
9 copy of that?

10 CHAIRPERSON GRIFFIS: No. Wait a minute,
11 let me rephrase. Absolutely. In fact, anything that
12 is submitted will be served on everybody.

13 MS. KAHLOW: That's correct. That's what
14 we do.

15 CHAIRPERSON GRIFFIS: I don't mean to be
16 flippant but we absolutely want to make sure that
17 happens. That being said, the 19 August `02 minutes
18 from the board meeting and attendance will be served
19 on everybody participating in this. Anything else?

20 MS. KAHLOW: Are you ready for closing?
21 I'm a little unclear where we are in the proceedings.

22 CHAIRPERSON GRIFFIS: If I'm clear, I
23 believe we're at closing.

24 MS. KAHLOW: Thank you. I'm sorry for the
25 fellow who is recording this. I didn't give him my

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1 name and address. If I can back up for you, I'm
2 Barbara Kahlow. I live at 2555 Pennsylvania Avenue,
3 N.W. in D.C. I'm sorry to have forgotten that.

4 I am representing with Sara Maddux today
5 the West End Citizens Association. The West End
6 Citizens Association has shown by a preponderance of
7 the evidence that (1) GW is out of compliance with
8 zoning order number 746(c) for the 1957 E Street PUD
9 by not contributing the unconditional required
10 \$100,000 contribution to the Foggy Bottom Feeding
11 Program Foundation by the August 16, 2002 deadline and
12 to this day. The order clearly did not require that a
13 feeding program be in operation before the transfer of
14 funds.

15 During the December 17 hearing, the Zoning
16 Administrator admitted that GW may have intended but
17 did not meet the letter of this condition. He said
18 "They complied with the intent but not the letter of
19 the order." In fact, GW's attempt failed since the so
20 called escrow account was totally and solely within
21 GW's control.

22 We have in the record besides what you
23 heard orally all of the e-mail traffic from the Zoning
24 Administrator to GW telling them affirmatively that
25 they were out of compliance and needed to bring

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1 themselves into compliance. I don't think this is
2 contested at all.

3 (2) GW failed to institute the parking
4 restriction policy for the fall '02 semester. GW's
5 January 2 filing was proof positive that it did not
6 institute that policy before the start of the fall '02
7 semester. It's 10/31/02 attempt was too little, too
8 late, and utterly ineffective. That's what our
9 January 7 rebuttal to that document said. It was too
10 little, too late, and totally ineffective.

11 In fact the students not only in the fall
12 semester but in this current spring semester still
13 don't know that there is supposed to be a restriction
14 policy. For the few vehicles that are allowed to
15 park, they have special provisions and have to be in
16 GW lots instead of in our neighborhoods.

17 (3) The Zoning Administrator did not check
18 that GW was in compliance with the D.C. environmental
19 policy for the projects initiated since the August 17,
20 2001 agreement contract including the three projects
21 in the 23rd Street corridor. The West End's December
22 31 filing expressed the West End's view that the BZA
23 has a key role to play in assuring that this law is
24 not meaningless within the District of Columbia.

25 Second, besides finding GW was out of

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1 compliance, the West End has shown by preponderance of
2 the evidence that DCRA improperly issued the
3 Certificate of Occupancy on the half of the building
4 that's the student housing on August 16 with full
5 knowledge that GW is not yet in compliance since they
6 told us numerous times and told GW they were out of
7 compliance. Third, by the preponderance of the
8 evidence, WECA has shown that DCRA has failed to
9 enforce the zoning order including issuance of the
10 required daily finds.

11 In the filing that we made on December 31,
12 we presented the court orders associated with hearings
13 of these kinds. The court has said and points to the
14 section in the zoning regulations that say you need to
15 enforce and that you can pull the Certificate of
16 Occupancy if there is a lack of compliance on an
17 initial or continuing basis with an order.

18 As a consequence, the WECA requests that
19 the BZA do four things. One is revoke the certificate
20 of occupancy for the western part of 1957 E Street,
21 the student housing part so that the students cannot
22 occupy the dormitory again until GW is in full
23 compliance.

24 (2) They have not yet, according to
25 yesterday's GW Hatchet and that could be incorrect but

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1 we believe it's correct, issued the Certificate of
2 Occupancy for the second half of the building which is
3 the institutional uses, and if it has been issued, to
4 revoke it for the eastern part of 1957 E Street. So
5 either do not issue or revoke considering whatever is
6 going on in that second half.

7 There was some testimony that was quite
8 confusing about that there are hundreds of C of Os for
9 every site. In fact, there is only two major C of Os
10 to occupy. Those are the two we're talking about, not
11 the minuscule ones if there are others.

12 (3) Retroactively back to August 16, 2002,
13 issue the daily maximum fines "for each and every day
14 the violation continues." That is not a discretionary
15 position that DCRA has to take. The regulations are
16 clear. They must issue the fines. The amount is
17 discretionary, not the fact that there are fines.

18 Lastly, we beg the Board to please
19 admonish GW to from this day forward scrupulously
20 comply with each condition in a BZA or Zoning
21 Commission order and with each requirement of D.C.
22 law. For example, for the old hospital site, that
23 they would prepare an EIS for any intended use. When
24 I drove to work today, I saw that they are starting to
25 dig up that site.

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1 Well, nothing has ever been discussed in
2 our community of the old hospital site. I can't
3 imagine that they have an order to dig up that site.
4 We really hope that this lesson has been learned that
5 they have to comply with the regulations. That's an
6 important site for us.

7 Also with respect to 1957 E Street since
8 we've had our hearing, they continue to have new
9 violations. I'll give an example that's pretty
10 important. We put the loading dock and the parking
11 side on 19th Street. They had promised that they
12 would not have loading during rush hour because that
13 is a major commuter artery.

14 Well, I went to work last Wednesday, six
15 days ago, all lanes were blocked so no commuter
16 traffic could get down. We were stopped for ten
17 minutes because they decided to block all lanes in the
18 middle of their construction and their deliveries to a
19 site that doesn't yet have a Certificate of Occupancy.

20 I think the point here is that GW runs on
21 its own sense of entitlement. We need your help to
22 protect our quality of life and to make sure that the
23 zoning orders and the BZA orders for which you spend
24 so much of your precious time are taken seriously.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 I think the Board would absolutely agree with you that
3 we do spend a lot of our precious time and do take it
4 very seriously. That should be complied with. I
5 don't think we make frivolous decisions or conditions
6 on anything. Board, any other questions regarding the
7 closing or any comments about the closing? Any other
8 additional information that we would need submitted in
9 order to fill out the record?

10 (Pause.)

11 CHAIRPERSON GRIFFIS: Then I think that
12 completes the record if I'm not mistaken. Yes?

13 MS. KAHLOW: I think there are three
14 documents that my records show and you will tell us
15 about those.

16 CHAIRPERSON GRIFFIS: To be submitted?

17 MS. KAHLOW: Yes.

18 CHAIRPERSON GRIFFIS: Yes. I'm going to
19 ask the Staff which is taking a running list. I was
20 seeing if we had any additional. Then you can add or
21 subtract depending. Ms. Bailey, did you have
22 something?

23 MS. BAILEY: Mr. Chairman, did the Board
24 make a decision concerning the questions to be
25 submitted to Mr. David Watts? Are those questions to

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1 be submitted to him? Was there a final decision on
2 that?

3 CHAIRPERSON GRIFFIS: Is there consensus
4 opinion on those questions?

5 MEMBER ZAIDAIN: I don't see a problem
6 with submitting it since the witness isn't here.

7 CHAIRPERSON GRIFFIS: Well, that puts us
8 off in some timing. We'll have that submitted. We'll
9 have hopefully the responses and then the response to
10 the responses.

11 MEMBER ETHERLY: Mr. Chair, I just want to
12 note for the record we had a consensus on that but I'm
13 concerned about the relevancy of the questions for Mr.
14 Watts. I'm not concerned enough such that I'll make a
15 huge point about it. But I think the question here is
16 a very focused one which is once again what was the
17 intention behind the order with regard to the
18 condition of the funding grant being made to the
19 foundation.

20 At our first hearing date, we heard
21 substantial testimony on both sides about whether or
22 not there was indeed language which seemed to reflect
23 a condition being placed within the order. I'm just
24 not certain if the questions that would be directed to
25 Mr. Watts, although perhaps very interesting in some

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1 academic fashion, are really going to move us much
2 closer to resolving that particular question.

3 CHAIRPERSON GRIFFIS: I think that's an
4 excellent point. I'd say we burden all of the
5 participants in answering that. In fact, if Mr. Watts
6 in answering the questions responds that he finds it
7 irrelevant, and his representative can discuss that,
8 then we'll take that up as it comes through. Of
9 course, we can then have responses to that.

10 But I would take Mr. Etherly's comment
11 very seriously. That is let's go directly to the
12 heart of the matter of what we need to be focusing on.

13 Otherwise, we are spending an awful lot of time
14 dealing with things that may not be totally on point.

15 Very well.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
17 just to clarify, we are going to advance these
18 questions to Mr. Watts.

19 CHAIRPERSON GRIFFIS: That's correct.

20 VICE CHAIRPERSON RENSHAW: All of them.

21 CHAIRPERSON GRIFFIS: Right. So we're
22 going to need an answer submission date.

23 MS. KAHLLOW: May I ask a technical
24 question?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. KAHLOW: Mr. Watts was not a witness
2 at these hearings because I would have loved to ask
3 him some questions. Do I get an opportunity to ask
4 him questions? I'm not sure how this gets in.

5 MEMBER ETHERLY: And Mr. Chairman, that's
6 an excellent observation by Ms. Kahlow. It perhaps
7 gravitates in a direction that you might not want me
8 to go in, but I agree with her in that because Mr.
9 Watts wasn't offered for testimony once again we just
10 run the risk of running too far field. So I'll leave
11 it there, Mr. Chairman.

12 MR. FEOLA: Phil Feola for the record.
13 Maybe, Mr. Chairman, we can stipulate to whether or
14 not he is an employee of the university.

15 CHAIRPERSON GRIFFIS: I was going to say
16 you could probably answer a lot of these right now.
17 Is that what you are going to?

18 MR. FEOLA: Either I or Mr. Barber can.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. FEOLA: I agree with Board Member
21 Etherly. I don't see the relevance.

22 VICE CHAIRPERSON RENSHAW: Could we also
23 ask Ms. Elliott to comment on the arrangement of Mr.
24 Barber responding?

25 CHAIRPERSON GRIFFIS: Well, Mr. Barber,

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1 you are representing the university. Is that correct?

2 MR. BARBER: I am.

3 CHAIRPERSON GRIFFIS: And Mr. Watts,
4 what's his role in terms of the nature of these
5 questions in terms of the foundation?

6 MR. BARBER: I'm sorry. "What is his
7 role?"

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. BARBER: He's an employee of the
10 university. He's also a member of the foundation.

11 CHAIRPERSON GRIFFIS: Is his
12 representation on the board as an employee of the
13 university?

14 MR. BARBER: Yes it is.

15 CHAIRPERSON GRIFFIS: So conceivably you
16 would be representing him also. Correct?

17 MR. BARBER: That's correct.

18 CHAIRPERSON GRIFFIS: Then I think we
19 could have you answer these questions.

20 MR. BARBER: Okay.

21 CHAIRPERSON GRIFFIS: Unless Ms. Elliott
22 feels differently.

23 MS. ELLIOTT: Elizabeth Elliott again.
24 Mr. Barber nor Mr. Feola was present at this
25 particular meeting that I was asking about. So I

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1 think it would be very difficult for them to be
2 answering questions.

3 MR. FEOLA: But Mr. Watts wasn't present
4 in this hearing.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. FEOLA: He was in this room, but he
7 was not a party. I can't now subpoena every member of
8 the York Tenants Association to come in here and ask
9 them what they think. So there has to be some bounds
10 on where this is going I think.

11 MS. ELLIOTT: Then I guess Mr. Barber can
12 try to answer these questions, but he's not going to
13 be able to since he wasn't participating in the
14 meeting.

15 CHAIRPERSON GRIFFIS: But if we follow
16 that line, Ms. Elliott, then frankly the questions
17 really have no bearing on this hearing because if Mr.
18 Watts isn't a participant in this and your questions
19 go directly to a meeting at which he was in attendance
20 then your questions are misdirected. Perhaps you want
21 to take a moment and direct questions that Mr. Barber
22 could answer. They may very well relate to Mr. Watts
23 and his participation on the foundation and in this
24 meeting. But I agree in terms of the fact that we
25 can't call Mr. Watts here. So in a sense what I would

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1 be doing in accepting this and sending this out is
2 calling Mr. Watts --

3 MS. ELLIOTT: I can attempt to ask Mr.
4 Barber these questions, but I can assure you that
5 probably he won't be able to respond because he wasn't
6 in attendance.

7 CHAIRPERSON GRIFFIS: Right. But do you
8 understand my logic and thinking?

9 MS. ELLIOTT: Yes.

10 CHAIRPERSON GRIFFIS: If he can't, then
11 what relevancy is it to our proceeding?

12 MS. ELLIOTT: Well, it's relevant in that
13 the feeding program foundation, he is a board member
14 that was at this meeting --

15 CHAIRPERSON GRIFFIS: And that's
16 established. I don't think anyone refutes that at
17 this point.

18 MS. ELLIOTT: Right. And he was at this
19 meeting where the ANC was misrepresented, the BZA was
20 misrepresented, so on and so forth. I wanted to
21 correct that in the record and also to bring forward I
22 think it actually strengthens the Appellant's case.

23 CHAIRPERSON GRIFFIS: What helps me
24 sometimes in my own thinking in these kinds of pieces
25 is let's take it to the logical extreme. Let's say

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1 that in fact Mr. Watts or whoever it was,
2 hypothetically say that an official in their capacity
3 indicated that the ANC and the BZA insisted, I would
4 say demanded a feeding program. The answer is the
5 infirmative. That happened. How does that give us
6 bearing on our appeal at this point?

7 MS. ELLIOTT: It's just a series of
8 questions leading to --

9 CHAIRPERSON GRIFFIS: Let's focus on that
10 one hypothetical.

11 MS. ELLIOTT: All right.

12 CHAIRPERSON GRIFFIS: I grant you the fact
13 that in fact somebody in official capacity said the
14 Board of Zoning Adjustment demands that you set up a
15 feeding program.

16 MS. ELLIOTT: Well, it was incorrect.

17 CHAIRPERSON GRIFFIS: I understand that.
18 Let's say that was done.

19 MS. ELLIOTT: Yes.

20 CHAIRPERSON GRIFFIS: That is a
21 hypothetical fact. How does that then inform us for
22 our appeal of whether the condition for the funding
23 was correctly done?

24 MS. ELLIOTT: I guess I'm not
25 understanding what your hypothetical is about here.

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1 MEMBER ETHERLY: Let me take a stab. If I
2 understood correctly the testimony that was offered,
3 Ms. Elliott, and the comments that were made by Ms.
4 Miller, it's the ANC's concern that the establishment
5 of a feeding program on the campus somewhere was
6 outside of the scope or outside of the bounds of the
7 Zoning Commission or the BZA. I think what the
8 Chairman is getting at is if that did indeed happen
9 how does that impact the question of the appeal that's
10 before us. I think where the Chairman is heading is I
11 don't know if that does have an impact.

12 MS. ELLIOTT: Well, that's a separate
13 issue. Yes, you are right in interpreting that the
14 ANC is concerned about that in that for all the issues
15 we stated this is a separate issue wherein we were
16 just informed that this meeting took place and that
17 within the meeting there was an indication with Mr.
18 Watts in attendance that GW had no intention of
19 setting up a feeding program foundation or giving
20 money to a feeding program foundation. They basically
21 said it wasn't a project of GWs, and it would much
22 rather give money to an established program.

23 MR. FEOLA: Mr. Chairman, may I suggest a
24 way to get around this or through this and everybody
25 comes out somewhat whole?

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. FEOLA: A suggestion might be that the
3 ANC, in its submission instead of asking questions of
4 a nonwitness to the proceeding, state what they
5 believe happened, at what time, and at what place.
6 Then the university and West End Citizens have a
7 chance to respond to that as opposed to having a sense
8 of interrogatories. If in fact these questions were
9 asked in cross examination, they would be asked to
10 nobody because that person wasn't here.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. FEOLA: So maybe we can structure it
13 in a statement and then be responded to if there is
14 some problem.

15 CHAIRPERSON GRIFFIS: Ms. Elliott, are you
16 amenable to that?

17 MS. ELLIOTT: Well, I'll try. I'll
18 attempt to put that together and expand on our
19 testimony.

20 CHAIRPERSON GRIFFIS: Would that be
21 difficult?

22 MS. ELLIOTT: Again, I think this goes to
23 the heart of the problem that sometimes we have with
24 GW. We can't get direct information and we can't get
25 at things.

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1 CHAIRPERSON GRIFFIS: But you are asking
2 questions, as in a good cross examination, that you
3 know the answers to. You don't think you could
4 restate your opinion of what actually transpired at
5 this meeting.

6 MS. ELLIOTT: Well, we can do that and
7 then it can be rebutted by the university if that's
8 the case.

9 CHAIRPERSON GRIFFIS: Right.

10 MEMBER ETHERLY: I think that's a good
11 suggestion because ultimately what we are going to
12 have is a question of fact that this Board is then
13 going to have to look at and make some determination
14 individually and collectively as to (1) if it is
15 indeed a question of fact where do you ultimately side
16 on what's the accurate representation and then (2) is
17 that germane, is that relevant to the overall question
18 of was the Certificate of Occupancy granted in error.

19 I think that would be an excellent
20 compromise. The ANC would provide, whether it's in
21 the form of your minutes or in the form of a summary
22 that you and Ms. Miller prepare. I think that would
23 be a very helpful thing. Then we can get responses to
24 that from other parties. The Board can then take that
25 up in its deliberations.

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1 CHAIRPERSON GRIFFIS: Done.

2 MS. ELLIOTT: Okay. Thank you.

3 VICE CHAIRPERSON RENSHAW: I would ask
4 that the statement be very specific rather than very
5 general so that if for instance you are talking about
6 an official stating something that the official be
7 identified and certainly his or her title and
8 connection with the feeding program also be identified
9 so that it's not just a general do you remember
10 somebody saying something.

11 CHAIRPERSON GRIFFIS: That's an excellent
12 point. It would be more productive for the Board in
13 our deliberation. Ms. Miller, did you have something?

14 MS. MILLER: I'm amazed that GW has a
15 number on that because as I vividly recall the point
16 was made that GW would have nothing to do with that
17 feeding program.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. MILLER: I would like to include in
20 that the information from the transcript of the order
21 that verifies what I just said.

22 CHAIRPERSON GRIFFIS: I appreciate --

23 MS. MILLER: GW was not supposed to be a
24 part of the feeding program.

25 CHAIRPERSON GRIFFIS: Let me hear from

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1 other members --

2 MS. KAHLOW: I'm sorry. May I clarify
3 that Ms. Miller is actually incorrect? The documents
4 in the Zoning Commission file and in the documents we
5 filed as you requested in our December 31 filing show
6 the agreement that shows the composition of the Board
7 which was three West End Citizens and two GW.

8 All along it was a joint partnership.
9 That's why I asked cross examination questions of Mr.
10 Barber if he had done his due diligence to the things
11 he had promised to do. It's always been a joint
12 partnership.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. MILLER: I would also like to include
15 the Zoning transcript when they deliberated this point
16 that the feeding program was not the responsibility of
17 GW. So I would like to make sure that information is
18 included because putting a member of GW's board, a
19 vice president on the board to me is a little way out.

20 CHAIRPERSON GRIFFIS: Okay. I think the
21 Board can note your concern of that. That's not at
22 the heart of our issue here of whether --

23 MS. MILLER: It is if GW is going to run
24 it because the Zoning Commission made clear that they
25 were not to run it.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MS. MILLER: That was my impression. But
3 I would like to verify that impression because it's
4 been a year or so.

5 CHAIRPERSON GRIFFIS: Yes. We have about
6 ten more minutes on this.

7 MS. MADDUX: Mr. Chairman, the bylaws
8 require that only the president of the foundation is
9 allowed to speak on behalf of the foundation. The
10 report I just filed with Corporation Division of the
11 Officers were two GW officers and three non-GW
12 officers. Thank you.

13 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
14 again I will say the Board will note your concern. I
15 think what we could conceivably do is walk down this
16 great legal discussion on what it means to "run" and
17 what it means to sit on a board. That being said,
18 we'll take that under advisement. Let us continue
19 with what we are going to have submitted. I think we
20 were up to item number two.

21 MS. BAILEY: The written resolution of the
22 ANC concerning the appeal, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Yes.

24 MS. BAILEY: Then finally the minutes of
25 August 19, 2002 of the Board of Directors of the Foggy

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1 Bottom Feeding Program Foundation Board.

2 CHAIRPERSON GRIFFIS: Excellent. Is that
3 everyone's remembrance? Is there additional material?

4 MS. KAHLOW: Only that you assured us that
5 we could respond to items one and two since we have
6 never seen the ANC's position in any document.

7 CHAIRPERSON GRIFFIS: Let's take things
8 one at a time. I want to make sure we have all the
9 information in the submittals then. After that, we
10 will give you the timing for responses. Then we will
11 have final submissions. Are we getting everything?
12 If anyone has an indication of things we're lacking in
13 terms of submissions, they can come forward. If not,
14 then let us look to schedule and responses and stuff,
15 Ms. Bailey.

16 MS. BAILEY: Mr. Chairman, Staff is
17 suggesting a decision date of March 4. That's the
18 March 4 public meeting of the Board. Submissions
19 would be due on February 7. The responses would be
20 due February 14. Findings of fact would be due
21 February 28. Should I repeat those dates again, Mr.
22 Chairman?

23 CHAIRPERSON GRIFFIS: Is everyone clear on
24 the dates? Just raise your hand if you need us to
25 repeat the dates. It looks like everyone is

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1 absolutely clear. So I'm clear. We have a decision
2 making set for 4 March 2003. Very well. Ms. Bailey,
3 do I have anything else to do today?

4 MS. BAILEY: No.

5 CHAIRPERSON GRIFFIS: Everyone clear? Any
6 other clarifications the Board can make in terms of
7 this appeal? Further information? Very well then.
8 We can adjourn the afternoon session of 14 January
9 2003. Off the record.

10 (Whereupon, the above-entitled matter
11 concluded at 4:08 p.m.)

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