

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 15, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Ruthanne Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commissioner
KEVIN HILDEBRAND	Commissioner
JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS	Office of Planning
JOHN MOORE	Office of Planning
DAVE MCGETTIGAN	Office of Planning
KAREN THOMAS	Office of Planning

OFFICE OF ATTORNEY GENERAL COUNSEL PRESENT:

JANICE SKIPPER, ESQ.
MARY NAGELHOUT, ESQ.

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

10:54 a.m.

1  
2  
3 CHAIRPERSON MILLER: Good morning. This  
4 meeting will come to order. I apologize for the  
5 delay. There was trouble on the Metro and that's why.  
6 Maybe some of you also experienced that. Okay. So  
7 that's why we're a little bit behind schedule. This  
8 is the June 15<sup>th</sup> Public Meeting of the Board of Zoning  
9 Adjustment of the District of Columbia. My name is  
10 Ruthanne Miller. I'm the Vice Chair of the BZA. The  
11 Chair, Mr. Geoffrey Griffis, is out of town, and so I  
12 will be conducting the proceedings with my colleagues  
13 Mr. Curtis Etherly, to my right, Mr. John Mann from  
14 NCPC to my left, and with Mr. Greg Jeffries from the  
15 Zoning Commission and also with us is Mr. Cliff Moy  
16 from the Staff, Janice Skipper from the Office of  
17 Attorney General and Ms. Beverley Bailey from the  
18 Staff.

19 Copies of today's meeting agenda are  
20 available to you and are located to my left in the  
21 wall bin near the door. We do not take any public  
22 testimony. Oh, I'm sorry, excuse me. I'm leading the  
23 public hearings, excuse me. We will take public  
24 testimony today, because we are going to be having a  
25 hearing and not a meeting, bear with me.

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1           Please, be advised that this proceeding is  
2 being recorded by a court reporter and is also webcast  
3 live. Accordingly, we must ask you to refrain from  
4 any disruptive noises or actions in the hearing room.

5           When presenting information to the Board, please,  
6 turn on and speak into the microphone, first, stating  
7 your name and home address. When you are finished  
8 speaking, please, turn your microphone off, so that  
9 your microphone is no longer picking up sound or  
10 background noise.

11           All persons planning to testify either in  
12 favor or in opposition are to fill out two witness  
13 cards. These cards are located to my left on the  
14 table near the door and on the witness tables. Upon  
15 coming forward to speak to the Board, please, give  
16 both cards to the reporter sitting to my right.

17           The order of procedure for special  
18 exceptions and variances is: (1) Statement and  
19 witnesses of the applicant; (2) Government reports,  
20 including Office of Planning, Department of Public  
21 Works, etcetera; (3) Report of the Advisory  
22 Neighborhood Commission; (4) Parties or persons in  
23 support; (5) Parties or persons in opposition; (6)  
24 Closing remarks by the applicant. Okay.

25           Pursuant to Sections 3117.4 and 3117.5,

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1 the following time constraints will be maintained.  
2 The applicant, appellant, persons and parties, except  
3 an ANC in support, including witnesses 60 minutes  
4 collectively. Appellees, persons and parties, except  
5 an ANC in opposition, including witnesses, 60 minutes  
6 collectively. Individuals three minutes. These time  
7 constraints do not include cross examination and/or  
8 questions from the Board.

9 Cross examination of witnesses is  
10 permitted by the applicant or parties. The ANC within  
11 which the property is located is automatically a party  
12 in a special exception or variance case. Nothing  
13 prohibits the Board from placing reasonable  
14 restrictions on cross examination, including time  
15 limits and limitations on the scope of cross  
16 examination.

17 The record will be closed at the  
18 conclusion of each case, except for any materials  
19 specifically requested by the Board. The Board and  
20 the Staff will specify at the end of the hearing  
21 exactly what is expected and the date when the persons  
22 must submit the evidence to the Office of Zoning.  
23 After the record is closed, no other information will  
24 be accepted by the Board.

25 The Sunshine Act requires that the Public

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1 Hearing on each case be held in the open before the  
2 public. The Board may consistent with its Rules of  
3 Procedure and the Sunshine Act enter executive session  
4 during or after the public hearing on a case for  
5 purposes of reviewing the record or deliberating on  
6 the case. The decision of the Board in these  
7 contested cases must be based exclusively on the  
8 public record. To avoid any appearance to the  
9 contrary, the Board requests that persons present not  
10 engage the Members of the Board in conversation.

11 Please, turn off all beepers and cell  
12 phones, at this time, so not to disrupt these  
13 proceedings. The Board will now consider any  
14 preliminary matters. Preliminary matters are those  
15 which relate to whether a case will or should be heard  
16 today, such as requests for postponement, continuance  
17 or withdrawal or whether proper and adequate notice of  
18 the hearing has been given. If you are not prepared  
19 to go forward with the case today or if you believe  
20 that the Board should not proceed, now is the time to  
21 raise such a matter.

22 Does the Staff have any preliminary  
23 matters?

24 MS. BAILEY: Madam Chair Miller, Members  
25 of the Board, good morning. Staff has none.

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1 CHAIRPERSON MILLER: If not, let us  
2 proceed with the agenda. Would all individuals  
3 wishing to testify today, please, rise to take the  
4 oath? Ms. Bailey, would you administer the oath?

5 (Whereupon, the witnesses were sworn.)

6 CHAIRPERSON MILLER: Ms. Bailey, would you  
7 call the first case?

8 MS. BAILEY: Thank you. The first case is  
9 Application No. 17169 of Karen Epstein, pursuant to 11  
10 DCMR 3104.1, for a special exception to allow a one-  
11 car garage addition to an existing single-family  
12 detached dwelling under section 223, not meeting the  
13 side yard requirements, at section 405. The property  
14 is located in the R-1-A District at premises 4470  
15 Dexter Street, N.W., also known as Square 1341, Lot  
16 45.

17 Mrs. Epstein, do you go by Epstein or  
18 Epstein?

19 MS. EPSTEIN: Epstein.

20 MS. BAILEY: Thank you.

21 CHAIRPERSON MILLER: Could you identify  
22 yourselves for the record, please?

23 MR. EPSTEIN: Yes, my name is Anthony  
24 Epstein and this is my wife Karen.

25 CHAIRPERSON MILLER: Okay. Thank you. We

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1 have looked at the record in this case thoroughly and  
2 you have a very strong case, but would you like to  
3 briefly address your special exception request?

4 MR. EPSTEIN: Thank you. I will be brief.

5 Our house is towards the bottom of a hill. The water  
6 kind of drains down and our current garage essentially  
7 obstructs the flow of water. Sometimes with heavy  
8 rains it then goes into our basement. What we want to  
9 do is tear down the existing two-car garage and build  
10 a one-car garage adjacent to our house. We need a  
11 special exception going 4 feet into the setback in  
12 order to do that.

13 We are very fortunate to be in the  
14 neighborhood we are in. We are fortunate with our  
15 neighbors. We've talked to them. They support this.

16 We have designed it in a way that is compatible with  
17 the neighborhood. Our immediate next door neighbor is  
18 happy about this. I sent a letter to the ANC  
19 supporting it, because it kind of really opens up the  
20 back more. Our current garage really blocks his view.

21 CHAIRPERSON MILLER: And which neighbor is  
22 that? We have a few letters of support from  
23 neighbors.

24 MR. EPSTEIN: This is Mr. Teren, T-E-R-E-  
25 N.

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1 CHAIRPERSON MILLER: Okay.

2 MR. EPSTEIN: At 4480 Dexter Street. So  
3 the additional will preserve the availability of light  
4 and air. It will maintain and we hope improve the  
5 character of the neighborhood. And we -- you know, as  
6 I said, our neighbors unanimously support it. You've  
7 gotten the report from the ANC which held the hearing  
8 and unanimously voted to support it as well. We  
9 obviously would be happy to answer any questions  
10 anybody might have.

11 CHAIRPERSON MILLER: Does any Board  
12 Members have questions? Okay. In which case, we can  
13 go to Mr. Moore with the Office of Planning.

14 MR. MOORE: Good morning, Madam Chair and  
15 Members of the Board. The Office of Planning will  
16 stand in support of the application therefore on the  
17 record.

18 CHAIRPERSON MILLER: And, Mr. and Mrs.  
19 Epstein, do you have a copy of the Office of  
20 Planning's report?

21 MR. EPSTEIN: Yes, Mr. Moore was kind  
22 enough to share that with us.

23 CHAIRPERSON MILLER: Okay. And do you  
24 have any questions for the Office of Planning?

25 MR. EPSTEIN: No. It's a very thorough

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1 and complete report.

2 CHAIRPERSON MILLER: I have a question for  
3 the Office of Planning. I think there was a  
4 recommendation on page 3 that no windows be placed on  
5 the north wall of the garage to help ensure the  
6 privacy of neighboring property and limit any light  
7 from the garage on the adjoining property. Mr. Moore,  
8 did you make that recommendation?

9 MR. MOORE: Yes, we did.

10 CHAIRPERSON MILLER: Is that something  
11 that you think should be a condition of the special  
12 exception?

13 MR. MOORE: We didn't put it in a formal  
14 condition, but maybe we should.

15 CHAIRPERSON MILLER: Okay.

16 MR. EPSTEIN: If I could address that?

17 CHAIRPERSON MILLER: Yes?

18 MR. EPSTEIN: When we had spoken with the  
19 neighbor on that side, he has actually expressed a  
20 preference that we do have a window there, because he  
21 doesn't want to look at just a solid blank wall. I  
22 mean, frankly, we are happy -- I mean we would like to  
23 go along with his preferences if he wants us to put  
24 some kind of shades or something, so if it's at  
25 nighttime and it's a problem, you know, we could do

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1 that. But I'm -- I would like, if we could, keep the  
2 option of putting windows in the garage.

3 CHAIRPERSON MILLER: And which neighbor is  
4 that?

5 MR. EPSTEIN: Mr. Teren again.

6 CHAIRPERSON MILLER: Same neighbor. Okay.  
7 Okay. And there is not expected to be a whole lot of  
8 activity in the garage, I assume?

9 MR. EPSTEIN: No. There will be less  
10 activity. I mean, the window that now faces there is  
11 the kitchen and there is a lot more activity in our  
12 kitchen than there will be in our garage.

13 CHAIRPERSON MILLER: Okay. Do my Board  
14 Members have any questions for Office of Planning?

15 BOARD MEMBER ETHERLY: Perhaps just as a  
16 follow-up to Mr. Moore's -- to your question to Mr.  
17 Moore. Does the retention of the window on the north  
18 side present any major concerns to Office of Planning  
19 if it is retained?

20 MR. MOORE: We thought it was in  
21 protection of the neighbors. If the neighbor is in  
22 favor of it, who are we to oppose.

23 BOARD MEMBER ETHERLY: Okay. Thank you.  
24 Thank you, Madam Chair.

25 CHAIRPERSON MILLER: Okay. Now, is what

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1 we call time for closing arguments. Do you have any  
2 closing remarks you want to make?

3 MS. BAILEY: Madam Chair, we do have our  
4 ANC.

5 CHAIRPERSON MILLER: Oh, I'm sorry. Thank  
6 you. Is the ANC here? Are there any persons here in  
7 support or opposition to this application? Okay.  
8 Thank you, Ms. Bailey. Okay. So here we are. Would  
9 you like to make some closing remarks?

10 MR. EPSTEIN: I have nothing to add.

11 CHAIRPERSON MILLER: Okay.

12 BOARD MEMBER ETHERLY: Well, I'll just  
13 note for the record, Madam Chair, that we are in  
14 receipt of the written report of the ANC at Exhibit  
15 25, ANC Commission 3-D, which did take a vote at which  
16 a quorum was present on May 5<sup>th</sup> to support the  
17 application of the Epstein's and that was a 5-0 vote  
18 in support of that application.

19 CHAIRPERSON MILLER: Thank you. And I  
20 believe we also have three letters from neighbors in  
21 support.

22 BOARD MEMBER ETHERLY: Excuse me, Madam  
23 Chair, with your leave, I would be more than happy if  
24 you and my colleagues deem it appropriate to make a  
25 motion at this point in time and it would be my motion

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1 to approve Application No. 17169 of Karen Epstein  
2 pursuant to 11 DCMR section 3104.1, for a special  
3 exception to allow a one-car addition to an existing  
4 single-family detached dwelling, under section 223,  
5 not meeting the side yard requirements in the R-1-A  
6 District at premises 4470 Dexter Street, N.W., Square  
7 1341, Lot 45, and I would invite a second.

8 BOARD MEMBER MANN: Second.

9 BOARD MEMBER ETHERLY: Thank you very  
10 much, Mr. Mann. I think we have had substantial  
11 discussion in terms of our testimony and the written  
12 submissions regarding the special exception here. And  
13 in relevant fashion, I think it is clear on the record  
14 that this addition would not have a substantially  
15 adverse impact on the use or enjoyment of any abutting  
16 neighbors or property owners and clearly the record  
17 supports that with the written submissions that we  
18 have gotten from the neighbors of the applicant.

19 With regard to the addition's impact on  
20 availability of light and air, I think, it is very  
21 clear, additionally, that there is substantial  
22 agreement that this will be an improvement on the  
23 existing condition, both for the applicant, of course,  
24 and also for adjacent property owners, and that there  
25 is no concern about any undue compromise of privacy

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1 and use and enjoyment of neighboring properties.

2 With that in mind, Madam Chair, I'm very  
3 happy to support the project.

4 CHAIRPERSON MILLER: Very well said. And  
5 if there are no other comments, then why don't we call  
6 the vote. All those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those opposed?  
9 All those abstaining?

10 MS. BAILEY: The Board has voted 4-0-1 to  
11 approve the application. Mr. Etherly made the motion,  
12 Mr. Mann seconded, Mr. Jeffries and Mrs. Miller are in  
13 support, Mr. Griffis is not present today. And is  
14 this a summary order, Madam Chair?

15 CHAIRPERSON MILLER: Yes, it is. And I  
16 also meant to say this earlier, but it's a summary  
17 order and there won't be any conditions.

18 MS. BAILEY: Okay. Thank you.

19 CHAIRPERSON MILLER: That concludes your  
20 case.

21 MS. EPSTEIN: Thank you very much.

22 MR. EPSTEIN: Thank you all.

23 CHAIRPERSON MILLER: Thank you. Ms.  
24 Bailey, would you like to call the next case, please?

25 MS. BAILEY: Thank you. And that is

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1 Application No. 17168 of Ann Spiegall, pursuant to 11  
2 DCMR 3103.2, for a variance from the residential  
3 recreation space requirements under section 773, a  
4 variance from the nonconforming structure provisions  
5 under subsection 2001.3, and a variance from the off-  
6 street parking requirements to allow the renovation,  
7 including deck addition, of an existing building into  
8 a four unit apartment house in the C-2-A District at  
9 premises 500 and 502 Florida Avenue, N.W. The  
10 property is also known as Square 475, Lot 19.

11 CHAIRPERSON MILLER: Good morning. Could  
12 you, please, identify yourself for the record?

13 MR. WATERS: Yes, good morning. My name  
14 is Reginald Waters and I am the agent for 500 and 502  
15 Florida Avenue, N.W.

16 CHAIRPERSON MILLER: Okay. You may  
17 proceed.

18 MR. WATERS: Thank you. Good morning.  
19 Again, my name is Reginald Waters and I'm the agent  
20 for 500 and 502 Florida Avenue, N.W. I am appearing  
21 before you today to ask for relief in the form of two  
22 variances. First, I would like to give you a  
23 background. Since our initial filing, we have met  
24 with the D.C. Office of Planning and on June 1<sup>st</sup> we did  
25 actually send or file a supplemental amendment to the

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1 Board requesting a change in the variances, and I'll  
2 read them to you.

3 We have actually changed the first  
4 supplemental filing which will reflect the change of  
5 new ownership. It is no longer owned directly by Ann  
6 Spiegall, which is owned by 500 and 502 Florida Avenue,  
7 LLC, which Ann Spiegall is a member and we did file  
8 that. And following our meeting with the Office of  
9 Planning, we --

10 CHAIRPERSON MILLER: This --

11 MR. WATERS: I'm sorry.

12 CHAIRPERSON MILLER: I'm sorry. What did  
13 you file an amendment on? Did you file an amendment  
14 changing the ownership?

15 MR. WATERS: Well, I filed and I just  
16 wanted to register that I was the agent for the new  
17 entity.

18 CHAIRPERSON MILLER: Okay.

19 MR. WATERS: And I just filed saying that  
20 the entity is now 500 and 502 Florida Avenue, LLC.

21 CHAIRPERSON MILLER: And is that a  
22 supplemental pleading that is in our records?

23 MR. WATERS: Yes, I filed it. Yes, ma'am.

24 CHAIRPERSON MILLER: Okay.

25 MR. WATERS: Yes, Madam Chair, I did.

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1 CHAIRPERSON MILLER: Okay. Thank you.

2 MR. WATERS: You're welcome.

3 CHAIRPERSON MILLER: Continue, sir.

4 MR. WATERS: Thank you. Based on our  
5 meetings with the Office of Planning we amended the  
6 original filing to add additional information with  
7 regard to variance 2001.3, a variance to alter  
8 existing nonconforming structure, and this is to allow  
9 the construction of an outdoor stairwell to access  
10 from the courtyard to a rooftop deck, instead of our  
11 original request to allow a deck for entry and egress.

12 We are retracting the variance request for relief  
13 from any recreational space, as we would like to  
14 include the recreational space. Lastly, we are  
15 requesting parking relief, so we are actually asking  
16 for two variances and not the three we initially filed  
17 for.

18 On June the 2<sup>nd</sup> we presented our case to  
19 ANC-2C Commission at their monthly meeting. The  
20 Commission led by Chairman Mahdi Leroy Thorpe voted in  
21 support of the development and we do have a letter of  
22 their support which was just faxed over this morning  
23 and I believe it was presented to you. I have a copy  
24 here if it was not. We have incorporated into the  
25 design the limitations of the space of the new design.

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1 We have no access from the rear of the building and  
2 the building occupies full frontage on both 5<sup>th</sup> Street  
3 and Florida Avenue.

4 The building was actually constructed in  
5 1932 and occupies 90 percent of the lot with no  
6 consideration for any recreational space. We are able  
7 to accommodate the recreational space only if we  
8 locate the recreational space on the roof. With the  
9 existing conditions of the low bearing wall and the  
10 stair structure internally, we could not locate a  
11 second set of internal stairs without taking away  
12 space from the four units that we would like to put in  
13 place.

14 So the first item we are requesting is  
15 relief from 2001.3 to construct stairs in the  
16 courtyard leading to the roof. And if you would look  
17 here, I can show you what we are talking about. This  
18 is actually the existing structure on 500, the corner  
19 of 5<sup>th</sup> and Florida Avenue, N.W. as it is now. And what  
20 we do have here is the rear of the building. There is  
21 a courtyard and a breezeway and a door here that leads  
22 from the 5<sup>th</sup> Street side into the courtyard, and this  
23 is what the courtyard looks like in the rear.

24 This is the rear of the building here.  
25 There is a path for recreational space, but if we use

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1 this area for recreational space, it would only be  
2 about 162 square feet of recreational space. So what  
3 we are asking for is relief to build a stairwell here,  
4 a wooden stairwell, to go up to the rooftop deck and  
5 then we can accommodate a 25 x 25 area for  
6 recreational space, without disturbing this courtyard.

7 And it would also be accessible by all of  
8 the residents, because there is a common doorway  
9 leading to that, without being intrusive and having to  
10 go through the building and go from the first floor  
11 all the way up to the roof. And secondly, there is  
12 already one stairwell that is in place that if we  
13 place another stairwell above that, we would have  
14 another setback and decrease the amount of useable  
15 space for any actual tenants. And we feel this way  
16 accommodates us in the existing use of the building  
17 and not having to gut the entire building.

18 Our plan is to keep the building in tact  
19 and just renovate the building as it is. So that is  
20 the first item of relief that we are asking for as to  
21 construct that external stairwell.

22 BOARD MEMBER ETHERLY: Madam Chair, if I  
23 may, I just wanted to just be clear in terms of the  
24 picture.

25 MR. WATERS: Sure.

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1 BOARD MEMBER ETHERLY: Mr. Waters, the  
2 portion of the subject property is just that part  
3 right there?

4 MR. WATERS: Yes.

5 BOARD MEMBER ETHERLY: Okay.

6 MR. WATERS: Well, this is, unfortunately,  
7 a very awkward piece of property, as you can see, and  
8 I'll answer your question, but I would like to show  
9 you from the frontal view.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. WATERS: If we are here, this is the  
12 corner, the back of this building is this building  
13 here.

14 BOARD MEMBER ETHERLY: Okay.

15 MR. WATERS: And it abuts here with the  
16 adjacent building.

17 BOARD MEMBER ETHERLY: Okay.

18 MR. WATERS: So we're asking for relief to  
19 place a stairwell here in this open courtyard.

20 BOARD MEMBER ETHERLY: Okay.

21 MR. WATERS: And there already is a 3 foot  
22 access going through this door here to get to the  
23 courtyard.

24 BOARD MEMBER ETHERLY: Okay. Thank you.

25 MR. WATERS: Okay. You're welcome.

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1 COMMISSIONER JEFFRIES: Excuse me, Mr.  
2 Waters.

3 MR. WATERS: Yes?

4 COMMISSIONER JEFFRIES: I'm looking at  
5 this floor plan here. That are in the back you just  
6 pointed to is that this piece or I'm just trying to  
7 relate that to this floor plan. Are you familiar with  
8 this floor plan?

9 MR. WATERS: May I just take a quick look?

10 COMMISSIONER JEFFRIES: Yes, sure.

11 MR. WATERS: I just want to show you.  
12 Yes, this is --

13 COMMISSIONER JEFFRIES: So this 11 foot 1  
14 is that that section there?

15 MR. WATERS: Yes, that is the exterior.  
16 That is correct.

17 COMMISSIONER JEFFRIES: Okay. And so then  
18 the wall that is to the right here is jutting out here  
19 is the 14 feet?

20 MR. WATERS: That's correct. We did  
21 actually file an additional drawing.

22 COMMISSIONER JEFFRIES: Okay.

23 MR. WATERS: Just to show the breezeway  
24 here.

25 COMMISSIONER JEFFRIES: Yes.

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1 MR. WATERS: But that is correct. From  
2 here the corner of this building, which is 502 Florida  
3 Avenue to the end of 500 Florida Avenue is 14 feet 7  
4 inches.

5 COMMISSIONER JEFFRIES: Yes. 14 feet 7  
6 inches?

7 MR. WATERS: Yes, and let me -- I believe  
8 I have it. Here we are.

9 COMMISSIONER JEFFRIES: Okay.

10 MR. WATERS: This is the first floor that  
11 you were asking about.

12 COMMISSIONER JEFFRIES: Yes.

13 MR. WATERS: And here would be the deck.

14 CHAIRPERSON MILLER: I'm sorry, you need  
15 to be on a microphone, if possible.

16 MR. WATERS: Okay. I'm sorry. That's the  
17 bottom floor.

18 BOARD MEMBER ETHERLY: But that was the --  
19 feel free to sit down. But that was the, I think, one  
20 of the updated drawings that we received.

21 MR. WATERS: Yes.

22 BOARD MEMBER ETHERLY: So I think we have  
23 it if you can just walk us through it from the table.

24 MR. WATERS: Sure.

25 BOARD MEMBER ETHERLY: I think we'll be

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1 able to follow it.

2 MR. WATERS: No problem. From the  
3 breezeway on the 5<sup>th</sup> Street side of the building, we're  
4 able to walk through the doorway to the back, to the  
5 rear, to the courtyard. The courtyard is 14 feet 3  
6 inches deep by 11 feet 1 inch wide. And we're asking  
7 can we put a 6 foot x 4 stairwell from the base of the  
8 courtyard all the way up here.

9 BOARD MEMBER ETHERLY: Yes.

10 MR. WATERS: To gain access to a rooftop  
11 deck, which sits on both properties. The only way we  
12 can actually meet the requirement for recreational  
13 space is to use both structures and to have the 25 x  
14 25 foot recreational space and small deck.

15 BOARD MEMBER ETHERLY: And just for the  
16 benefit of my colleagues, I think the updated plans  
17 that we are looking at are enclosed at Exhibit 23,  
18 which is dated June 1.

19 MR. WATERS: Yes.

20 BOARD MEMBER ETHERLY: It's the supplement  
21 to the detail statement.

22 MR. WATERS: That is correct.

23 BOARD MEMBER ETHERLY: So at the rear of  
24 that exhibit are the plans that have the reference to  
25 the breezeway and the measurements that Mr. Waters is

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1 referring to and I'm looking at what follows -- it  
2 follows the surveyor's plat.

3 COMMISSIONER JEFFRIES: Mr. Waters, can  
4 you point your drawing, your floor plan looking north?

5 I just want to follow something here for a minute.  
6 Yes.

7 MR. WATERS: Certainly.

8 COMMISSIONER JEFFRIES: Point it north.

9 MR. WATERS: Oh, here?

10 COMMISSIONER JEFFRIES: Yes.

11 MR. WATERS: Well, it is actually, the way  
12 I'm looking at it would be yes, north. Yes, this  
13 would be --

14 COMMISSIONER JEFFRIES: Can you turn it  
15 around as you're talking? I just want to put -- can  
16 you just --

17 MR. WATERS: Okay. You need it. I  
18 thought you wanted me to do it.

19 COMMISSIONER JEFFRIES: Okay. So the 14  
20 feet is from the --

21 MR. WATERS: From this building here.

22 COMMISSIONER JEFFRIES: Yes.

23 MR. WATERS: To the back of 502 Florida  
24 Avenue.

25 COMMISSIONER JEFFRIES: Okay. And so your

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1 design takes -- some of that space is being chewed up  
2 by the 4 feet, this area here?

3 MR. WATERS: By the stairs.

4 BOARD MEMBER MANN: I'm confused about  
5 something here.

6 MR. WATERS: I'm sorry.

7 BOARD MEMBER MANN: What direction is the  
8 camera facing in that photograph?

9 MR. WATERS: Certainly, the camera is  
10 facing east.

11 BOARD MEMBER ETHERLY: He is saying this  
12 dimension is 14 feet.

13 MR. WATERS: On the other side of the  
14 structure 5<sup>th</sup> Street is running north.

15 BOARD MEMBER ETHERLY: If I may, Madam  
16 Chair, just to give you a sense of, I think, what we  
17 are struggling with a little bit, Mr. Waters, is  
18 probably we are heading toward the need for some  
19 clarification in terms of squaring the pictures with  
20 the drawings to get a sense for, I think, what we  
21 agree is an awkward building.

22 MR. WATERS: Certainly.

23 BOARD MEMBER ETHERLY: It's an awkward  
24 property and we're trying to orient ourselves with the  
25 pictures, the representations, the photographic

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1 representations and the drawing. So perhaps coming  
2 between where Mr. Mann's question was and Mr.  
3 Jeffries, once again what we are looking at here is  
4 the drawing that you have there, okay, if you could  
5 hold that up for me one more time.

6 MR. WATERS: Certainly.

7 BOARD MEMBER ETHERLY: This perspective  
8 that we see right here --

9 MR. WATERS: Would be standing --

10 BOARD MEMBER ETHERLY: Is that --

11 MR. WATERS: Yes, right here. Standing in  
12 this alleyway facing --

13 BOARD MEMBER ETHERLY: Looking up.

14 MR. WATERS: Yes, looking up.

15 BOARD MEMBER ETHERLY: Okay. I see.

16 MR. WATERS: Okay.

17 COMMISSIONER JEFFRIES: So that door  
18 that's in your -- in the photo would fall where on  
19 that drawing?

20 BOARD MEMBER ETHERLY: On the drawing.

21 MR. WATERS: It would be right -- if you  
22 could -- well, Mr. Etherly, if you could just start  
23 right here, it would be here right above my finger.

24 COMMISSIONER JEFFRIES: Okay.

25 BOARD MEMBER ETHERLY: And what is the

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1 text say right there? Is that the text for the  
2 proposed outdoor stairwell?

3 MR. WATERS: It says proposed outdoor  
4 stairwell to rooftop deck.

5 BOARD MEMBER ETHERLY: Rooftop deck.  
6 Okay. So I think in the drawing that we have this  
7 door -- in the plan that we have, this door is not  
8 represented presently, correct?

9 MR. WATERS: It's just an opening. Yes,  
10 it's an opening. That's correct.

11 BOARD MEMBER ETHERLY: It's an opening.  
12 Okay.

13 BOARD MEMBER MANN: Is that the opening  
14 that says 3 feet?

15 MR. WATERS: Yes, that's the opening that  
16 will say 3 feet. That's correct.

17 COMMISSIONER JEFFRIES: Mr. Waters, if I'm  
18 looking north, correct, as I look at this photo, I'm  
19 looking north?

20 MR. WATERS: No, you're looking east.

21 COMMISSIONER JEFFRIES: I'm looking east?

22 MR. WATERS: Yes. If you take the  
23 drawings that you have and you point them going out  
24 the building --

25 COMMISSIONER JEFFRIES: Okay.

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1 MR. WATERS: It's actually constructed  
2 north to south.

3 COMMISSIONER JEFFRIES: Yes, yes.

4 MR. WATERS: Which would mean that north  
5 is going this way.

6 COMMISSIONER JEFFRIES: Right over there.

7 MR. WATERS: Yes. So we're looking in the  
8 alley going east towards 5<sup>th</sup> Street.

9 COMMISSIONER JEFFRIES: Okay. On the  
10 other side there is -- 5<sup>th</sup> Street is running north to  
11 south.

12 COMMISSIONER JEFFRIES: Okay. Okay.

13 BOARD MEMBER MANN: One of the things that  
14 we haven't gotten to yet, but that I'm a little bit  
15 confused about is that looks like a pitched roof. Is  
16 that correct?

17 MR. WATERS: On this side of the building?

18 BOARD MEMBER MANN: Yes.

19 MR. WATERS: That is correct. Yes, it is.

20 BOARD MEMBER MANN: Is that where the  
21 proposed deck is going?

22 MR. WATERS: Well, when you step -- and  
23 the stairwell is going to go here.

24 BOARD MEMBER MANN: Yes.

25 MR. WATERS: And we have an 8 foot setback

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1 from the stairwell to the edge, and the roof is  
2 actually -- what we couldn't show in the photograph,  
3 but it actually starts further north. It doesn't  
4 start on a pitched roof. There are two buildings  
5 together. The rear of this building, you are correct,  
6 is a pitched roof. This is the side of the building  
7 here. This is the front of the adjacent building 1818  
8 5<sup>th</sup> Street and this is the side of 1818 5<sup>th</sup> Street. And  
9 we come up the back of the building, the roof is flat  
10 here at the corner where we saw here. You are correct  
11 there is a pitch here, which is not visibly shown, the  
12 corner of the pitch. We are proposing the rooftop  
13 deck to go -- bear with me one second if you will, it  
14 runs parallel to the building angle.

15 BOARD MEMBER MANN: Right. But I don't  
16 understand. I also see where the proposed outdoor  
17 stairwell to the rooftop deck is, but that's several  
18 feet removed from the deck itself.

19 MR. WATERS: Yes, we have -- yes, that's  
20 correct. You have to -- we would have to create a  
21 walk -- a path.

22 BOARD MEMBER MANN: Over the pitched  
23 portion?

24 MR. WATERS: No, the pitched portion --  
25 no, it would not be over the pitched portion. The

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1 pitched portion is near the rear here. We would  
2 outlet closer away from the pitch, so we don't have to  
3 deal with anything over the pitch roof structure. So  
4 if you walk up the landing here, and walk over to your  
5 left to north to the deck.

6 BOARD MEMBER MANN: I guess I'm still  
7 unclear as to where the pitch part starts.

8 MR. WATERS: Well, I'm not 100 percent  
9 sure where the pitch part starts or ends, but it  
10 starts here where the buildings abut each other. And  
11 I don't know how many feet we are back.

12 BOARD MEMBER MANN: But at any rate the  
13 stair landing at the roof level is on a pitched roof.

14 MR. WATERS: No, no, Mr. Mann, it is not.  
15 Well, let me take that back. Some of it, yes, may  
16 be, but the majority of it is not at the corner where  
17 this pitch is.

18 BOARD MEMBER MANN: Okay. So none of that  
19 is actually -- that's not yet reflected in the plans?

20 MR. WATERS: Where the deck is?

21 BOARD MEMBER MANN: Where the access  
22 between the stair landing and the deck.

23 MR. WATERS: It is in the supplemental  
24 filing if you saw it.

25 BOARD MEMBER MANN: That's what I'm

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1 looking at, but there is no access shown between the  
2 landing --

3 MR. WATERS: Oh, I understand. Yes, there  
4 is no path.

5 BOARD MEMBER MANN: -- and the roof deck.  
6 A portion of which may or may not be on the pitched  
7 portion of the roof.

8 MR. WATERS: Yes, you're correct. And  
9 that's why I said --

10 BOARD MEMBER MANN: Which may or may not  
11 affect how far above the actual roof structure that  
12 access way is.

13 MR. WATERS: Yes, that is correct.

14 BOARD MEMBER MANN: And that's part of the  
15 problem.

16 CHAIRPERSON MILLER: Okay.

17 MR. WATERS: Okay. All right. I  
18 understand. I didn't understand that.

19 CHAIRPERSON MILLER: Mr. Waters, you are  
20 not an architect, I gather. Is that correct?

21 MR. WATERS: I'm an engineer.

22 CHAIRPERSON MILLER: Engineer. Okay. I  
23 think that the Board is going to need a site plan and  
24 floor plans and more specific plans detailing some of  
25 these things. For instance, one of my questions is do

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1 you know how high the stairwell will be above the roof  
2 deck?

3 MR. WATERS: I'm sorry, the stairwell  
4 above the roof?

5 CHAIRPERSON MILLER: Will it go above the  
6 roof deck, the stairs?

7 MR. WATERS: No, it's going to be flush.

8 CHAIRPERSON MILLER: The railing?

9 MR. WATERS: The railings?

10 CHAIRPERSON MILLER: Yes.

11 MR. WATERS: It will be flush. The  
12 railings will be 3 feet above.

13 CHAIRPERSON MILLER: The railings will be  
14 3 feet above?

15 MR. WATERS: Yes.

16 CHAIRPERSON MILLER: Okay. You can  
17 continue, but you can see that we are struggling a lot  
18 with trying to find what you are discussing on the  
19 plans.

20 MR. WATERS: Certainly, and we will be  
21 happy to clarify it.

22 CHAIRPERSON MILLER: Okay.

23 MR. WATERS: That's not a problem.

24 CHAIRPERSON MILLER: So we will be asking  
25 you for more specific plans.

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1 MR. WATERS: We will be happy to give  
2 them.

3 CHAIRPERSON MILLER: Okay. But you can  
4 continue with your presentation.

5 MR. WATERS: Okay. Well, that actually  
6 was -- if there are no more questions on the roof, we  
7 wanted to go to the next item.

8 CHAIRPERSON MILLER: Let me just double  
9 check. Are there any other questions about the roof  
10 from the Board Members?

11 BOARD MEMBER MANN: Well, we need, I  
12 think, better plans and elevations, so that we can  
13 more clearly see what the extent of the roof deck  
14 structure is and what portion is on a pitched roof and  
15 which is not and how far above the structure of the  
16 roof that roof deck is at its lowest point and at its  
17 highest point.

18 MR. WATERS: Certainly.

19 CHAIRPERSON MILLER: Is there any  
20 penthouse or mechanical equipment on the roof?

21 MR. WATERS: No, there is not.

22 CHAIRPERSON MILLER: Okay.

23 COMMISSIONER JEFFRIES: Did anyone ask for  
24 a site plan?

25 CHAIRPERSON MILLER: I did, but you may

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1 want to reiterate exactly what you need, your being an  
2 architect.

3 COMMISSIONER JEFFRIES: Well, what you  
4 have given us is, in fact, just floor plans that could  
5 fall from the sky and be any place in the District of  
6 Columbia. We just need to see this floor plan in the  
7 context of the adjacent site. For example, you know,  
8 the bedrooms that are right on Florida Avenue, I would  
9 like to see, you know, the curbs and, you know, get a  
10 sense of just -- and I know it is not much, but I just  
11 want to get a sense of how this floor plan sits and  
12 the context of the adjacent area just a little bit  
13 more.

14 MR. WATERS: Okay. That's not a problem.

15 COMMISSIONER JEFFRIES: Okay. By showing  
16 some of the adjacent buildings and, for example, the  
17 courtyard, so some sense of enclosure, so we can get a  
18 sense of just exactly, you know, what this is going to  
19 look like.

20 MR. WATERS: Certainly.

21 COMMISSIONER JEFFRIES: Okay?

22 MR. WATERS: Certainly.

23 COMMISSIONER JEFFRIES: Okay.

24 BOARD MEMBER MANN: One of the things that  
25 I was a little confused about that you might be able

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1 to clarify on the floor plans is on the first floor  
2 floor plan no interior stairwells are shown on how you  
3 access the second floor. On the second floor floor  
4 plan there is a stairway shown, but I don't understand  
5 how that relates to the floor below it.

6 MR. WATERS: There is on the first floor,  
7 the stairwell on the first floor is on the east --  
8 next to the opening, the breezeway opening to get to  
9 the courtyard and that's just showing where the stairs  
10 ascend up.

11 BOARD MEMBER MANN: Can you point to it?

12 MR. WATERS: Certainly. Those are the  
13 stairs ascending up. There is no relation to the --

14 BOARD MEMBER MANN: You're pointing to the  
15 first floor floor plan?

16 MR. WATERS: First floor, that's correct.

17 BOARD MEMBER MANN: See we don't have -- I  
18 don't think the Board has that.

19 BOARD MEMBER ETHERLY: We don't have that.

20 MR. WATERS: I'm sorry. That was filed on  
21 the 1<sup>st</sup>, but I don't know why it wasn't presented to  
22 you, but we can present that again to you. That's not  
23 a problem.

24 BOARD MEMBER MANN: Okay.

25 BOARD MEMBER ETHERLY: That might answer

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1 some of our questions.

2 BOARD MEMBER MANN: So you can articulate  
3 entrances from the outside in, show stairway, just  
4 egress all of that just so -- have someone sort of  
5 figure all that out so it is clear about how one  
6 enters this building and gets through it.

7 MR. WATERS: Sure. And I believe that  
8 probably will be answered when -- I'll actually find  
9 the date stamped information that was filed.

10 BOARD MEMBER MANN: Okay.

11 MR. WATERS: Because that was part of what  
12 was being -- that was another question that we worked  
13 with the Office of Planning on and that they wanted to  
14 see --

15 BOARD MEMBER MANN: Okay.

16 MR. WATERS: -- the entrances and the  
17 egress as well.

18 BOARD MEMBER MANN: Yes.

19 MR. WATERS: So that's not a problem.

20 BOARD MEMBER ETHERLY: Madam Chair, I'm  
21 not going to try to summarize, because I know Staff is  
22 doing a correct job of keeping it all together. But  
23 just once again to kind of give us some context here,  
24 I think, in terms of the first variance that we are  
25 talking about with regard to the nonconforming

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1 structure provisions, the additional information, the  
2 additional site plan elevations --

3 MR. WATERS: Yes.

4 BOARD MEMBER ETHERLY: -- to the extent  
5 you can really tighten up how they illustrate when the  
6 interior of the subject property will be very, very  
7 helpful, because as I look at the two plans that we  
8 have, one in Exhibit 9 and one at Exhibit 23, neither  
9 one of them on the first floor show that stairway  
10 access to the second floor that Mr. Mann was speaking  
11 about.

12 MR. WATERS: Certainly.

13 BOARD MEMBER ETHERLY: So I think that  
14 will be helpful to clear up. But definitely for your  
15 variance application really cleaning up that courtyard  
16 illustration, I think, is going to be very critical,  
17 because I just don't think the information is there  
18 yet to sway me one way or the other. At this point, I  
19 would be hard pressed. I just don't think I'm  
20 understanding clearly enough the relationship between  
21 the deck, as you propose it, for placement on the  
22 roof. So really giving us a clear indication of how  
23 you are suggesting the deck is going to be situated,  
24 and then also that stairway access, I think, would be  
25 very important, because there is an issue with the

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1 deck.

2 MR. WATERS: The stairway from the deck?  
3 I'm sorry.

4 BOARD MEMBER ETHERLY: The stairway access  
5 to the deck, because as you will hear in the Office of  
6 Planning's presentation, there is a question about the  
7 stairway access impacting the court requirements  
8 depending on what the size of the stairway is. So I  
9 think that's going to be very important. I think an  
10 additional piece that we didn't reference  
11 specifically, but will bear some analysis on your part  
12 and that of your design team should be also giving us  
13 some clearer measurements as it relates to the court  
14 area.

15 If I understand correctly, based on kind  
16 of where we are right now, we don't really have a  
17 clear measurement of what the court width and court  
18 area will be in the -- under the new design, under the  
19 design that you are currently talking about. So some  
20 clear indications or just some tightening up, make  
21 sure your numbers are correct with regard to that  
22 courtyard area will be very helpful. And if I  
23 understand correctly or recall from our conversation  
24 during Executive Session, I think, you might have to  
25 do two sets of that court area and court width

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1 measurements.

2 One set would be straight without the  
3 stairway counted in or factored in, I should say. The  
4 stairway access to the roof deck.

5 MR. WATERS: Yes.

6 BOARD MEMBER ETHERLY: One that would be  
7 not counting that stairway.

8 MR. WATERS: Yes, with the area.

9 BOARD MEMBER ETHERLY: Within the area.

10 MR. WATERS: Sure.

11 BOARD MEMBER ETHERLY: And the width. So  
12 two separate measurements. One without the stairway  
13 factored in and then one with the stairway factored  
14 in. I mean, perhaps once again as we get in with the  
15 Office of Planning, we probably can get some  
16 clarification on that to make sure we are clear. But  
17 just in terms of that first variance that we're  
18 talking about, I think that additional information  
19 will be very helpful in terms of really fleshing out  
20 the application on that first variance part.

21 COMMISSIONER JEFFRIES: Okay. I just have  
22 one question on something you mentioned.

23 BOARD MEMBER ETHERLY: Yes, sir.

24 COMMISSIONER JEFFRIES: You mentioned  
25 stair access to get to the courtyard. There is no--

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1 BOARD MEMBER ETHERLY: To get to the roof.

2 COMMISSIONER JEFFRIES: To the roof.

3 Okay.

4 BOARD MEMBER ETHERLY: Okay.

5 COMMISSIONER JEFFRIES: Oh, there is no  
6 stair access to the courtyard.

7 BOARD MEMBER ETHERLY: Understood.

8 COMMISSIONER JEFFRIES: Okay.

9 BOARD MEMBER ETHERLY: Understood.

10 COMMISSIONER JEFFRIES: So it's existing  
11 and then proposed, effectively, what -- okay. I think  
12 I have everything then that we need for that.

13 BOARD MEMBER ETHERLY: Okay. Thank you,  
14 Madam Chair.

15 CHAIRPERSON MILLER: And I know we're not  
16 finished. Ms. Bailey is going to reiterate at the  
17 end, but just with respect to the roof, we really need  
18 a clear picture of what the roof is going to look  
19 like, how high the railings are going to be above the  
20 roof, are there paths to the roof deck or what is this  
21 roof deck, you know, going to look like. Okay.

22 MR. WATERS: Understood.

23 CHAIRPERSON MILLER: Okay. Any other  
24 questions from the Board, comments?

25 BOARD MEMBER MANN: Yes.

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1 CHAIRPERSON MILLER: Go ahead.

2 BOARD MEMBER MANN: The buildings were  
3 built in, let's see what is it 500 and 502 Florida  
4 Avenue, 1932?

5 MR. WATERS: Yes, that's correct.

6 BOARD MEMBER MANN: They were built as two  
7 separate structures or as one single structure?

8 MR. WATERS: As far as we know, they were  
9 two separate structures.

10 BOARD MEMBER MANN: Okay.

11 MR. WATERS: That's what the documentation  
12 says and the plat is one plat, but there is a firewall  
13 between the two structures and we have no other  
14 information other than the property information that  
15 was given to us here by the District.

16 BOARD MEMBER MANN: So the firewall that  
17 is in -- the existing firewall that is indicated on  
18 the floor plans falls on the same line as the  
19 property, the dividing line between those two?

20 MR. WATERS: Yes.

21 BOARD MEMBER MANN: Okay.

22 MR. WATERS: That's correct.

23 BOARD MEMBER MANN: Okay.

24 BOARD MEMBER ETHERLY: Can you still  
25 access -- you can access either property from inside

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1 the -- from the interior, correct?

2 MR. WATERS: Yes.

3 BOARD MEMBER ETHERLY: Meaning if I wanted  
4 to go from 500 to 502, would I have to go outside?

5 MR. WATERS: Yes, you would.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. WATERS: There is no path between the  
8 two.

9 BOARD MEMBER ETHERLY: Okay.

10 BOARD MEMBER MANN: You mean --

11 MR. WATERS: No, there's no path inside  
12 the building.

13 BOARD MEMBER MANN: Right.

14 MR. WATERS: There is a firewall in  
15 between the two structures.

16 BOARD MEMBER MANN: Under current or  
17 proposed?

18 MR. WATERS: Current, current.

19 BOARD MEMBER MANN: But under proposed you  
20 can get between the two, correct?

21 MR. WATERS: To get between the two  
22 structures?

23 BOARD MEMBER MANN: Yes.

24 MR. WATERS: Yes.

25 BOARD MEMBER MANN: Okay.

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1 MR. WATERS: Yes, you can on the proposal  
2 right now.

3 COMMISSIONER JEFFRIES: So this is two  
4 buildings.

5 MR. WATERS: There are two buildings that  
6 have one plat that are separately addressed, 500 and  
7 502 Florida Avenue.

8 BOARD MEMBER ETHERLY: And under the  
9 proposed design you would be able to access both  
10 addresses from the interior of the building.

11 MR. WATERS: No not --

12 BOARD MEMBER ETHERLY: You would still  
13 maintain you would still have to go outside in order  
14 to access the adjacent property?

15 MR. WATERS: Yes, there are four separate.  
16 They would be -- there are two separate buildings  
17 still with two units in each building.

18 BOARD MEMBER ETHERLY: Okay.

19 MR. WATERS: And the courtyard access that  
20 already exists is where we would give common access to  
21 get to the common recreational space.

22 BOARD MEMBER ETHERLY: Okay. And just one  
23 final question. I'm going to come back to the picture  
24 that shows the rear of the building.

25 MR. WATERS: Okay.

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1 BOARD MEMBER ETHERLY: Thank you very  
2 much. The opening that is indicated there --

3 MR. WATERS: Yes.

4 BOARD MEMBER ETHERLY: -- if I were to  
5 walk through that opening, where does that opening  
6 lead in the floor plan?

7 MR. WATERS: It leads to the other side of  
8 5<sup>th</sup> Street. It's just a breezeway. I'm sorry, to 5<sup>th</sup>  
9 Street not the other side. It would bring you out,  
10 Mr. Etherly, right here.

11 BOARD MEMBER ETHERLY: Okay. Thank you.  
12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Do you have a copy of  
14 the plat?

15 MR. WATERS: Yes, I do have a copy of the  
16 plat.

17 CHAIRPERSON MILLER: And is it in our  
18 record?

19 MR. WATERS: Yes, the plat is in the  
20 record.

21 CHAIRPERSON MILLER: Okay.

22 MR. WATERS: Well, let me say I filed the  
23 plat.

24 CHAIRPERSON MILLER: Okay. Thank you.  
25 Thank you. Okay. Any other questions? Is anybody

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1 here from the -- well, no, we don't want to go to ANC  
2 yet. Well, is anybody here from the ANC?

3 MR. WATERS: Well, before we go, we still  
4 have one other issue I wanted to talk about.

5 CHAIRPERSON MILLER: Okay.

6 MR. WATERS: In terms of variances.

7 CHAIRPERSON MILLER: Yes.

8 MR. WATERS: With parking.

9 CHAIRPERSON MILLER: Parking, yes.

10 MR. WATERS: Yes, that was the other  
11 variance.

12 CHAIRPERSON MILLER: Yes.

13 MR. WATERS: And again, lastly, we are  
14 requesting parking relief as we were sharing with Mr.  
15 Mann 500 and 502 Florida Avenue are two individual  
16 single-family dwellings separated by a firewall. We  
17 don't know at which date the properties were both  
18 combined as one plat, meaning Lot 19, Square 475.  
19 Because each of these units was a single-family  
20 dwelling, they would have been required to have one  
21 parking space for each unit totaling two parking  
22 spaces.

23 In the new development, we are asking to  
24 develop four units, and based on subsection 2101.1 of  
25 the D.C. Municipal Regulations Schedule of Parking, we

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1 are required to have one space for every two units.  
2 That would be two parking spaces. Although we are  
3 developing these properties, it is not about a parking  
4 requirement which was effective May 12, 1958 and the  
5 structure was built before 1932, predating the  
6 regulation.

7 At the time the structure was built,  
8 parking was not included on the lot as it's 90 percent  
9 occupied. It is not available on the property right  
10 now. And what we are asking for is a variance to  
11 waive the parking requirement as the plus two spaces  
12 and the minus two spaces cancel each other out and the  
13 situation does cause an exceptional practical  
14 hardship, because we cannot create any other parking.

15 There is no physical land available to create parking  
16 on this particular facility. And we are asking for  
17 relief in the form of a variance and we also feel that  
18 because the Metro is two blocks away that that will  
19 reduce the demand for actual parking as well.

20 CHAIRPERSON MILLER: To just clarify what  
21 do you mean by the plus two, minus two cancel each  
22 other out?

23 MR. WATERS: Well, as we were speaking  
24 with the Board of Zoning about this particular issue  
25 and understanding how -- what variance we would need

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1 to ask for --

2 CHAIRPERSON MILLER: You mean the Office  
3 of Zoning?

4 MR. WATERS: I'm sorry, the Office of  
5 Zoning.

6 CHAIRPERSON MILLER: Okay.

7 MR. WATERS: Excuse me. Not the Office of  
8 Zoning, I'm sorry. The Board, we spoke with the folks  
9 here in the Board of Office of Zoning.

10 CHAIRPERSON MILLER: Right.

11 MR. WATERS: And they felt that because  
12 there were two parking spaces that should have been  
13 allowed for each single-family dwelling and we're --  
14 because we are developing this property, we would need  
15 to have two parking spaces, that one of them would  
16 cancel the other out is what they said. We would have  
17 already plus two from having the structure.

18 CHAIRPERSON MILLER: Okay.

19 MR. WATERS: Just sharing the information.

20 CHAIRPERSON MILLER: Thank you. Okay.  
21 Any questions from the Board? And there isn't a  
22 member from the ANC here, I gather.

23 MR. WATERS: No, the only thing we have  
24 from ANC is their letter of support.

25 CHAIRPERSON MILLER: Okay.

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1 MR. WATERS: And if you would like, I can  
2 read that. It's very short.

3 CHAIRPERSON MILLER: No, I think we have  
4 it.

5 BOARD MEMBER ETHERLY: Madam Chair, we've  
6 got that in as Exhibit 26.

7 CHAIRPERSON MILLER: Right.

8 BOARD MEMBER ETHERLY: I might perhaps  
9 look to Staff just to confirm, given the submission of  
10 the ANC letter, would we need to waive that letter in?

11 MS. BAILEY: Yes, Mr. Etherly.

12 BOARD MEMBER ETHERLY: Okay. Madam Chair,  
13 given the fact that we received the letter today from  
14 the ANC, which indicates their position on the  
15 proposed application, we would have to waive that in.

16 And I might note I neglected to mention that we would  
17 also need to address the issue of posting as, I think,  
18 Staff indicated that the applicant posted a property  
19 one day late, so we would also need to take care of a  
20 waiver if we deem it appropriate on the posting issue  
21 and the ANC report submission.

22 CHAIRPERSON MILLER: Okay. Why don't we  
23 deal with them one at a time. With respect to the ANC  
24 letter, does anybody have any objections to waiving in  
25 the ANC report? Okay. Then I gather by consensus we

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1 can move that in. And posting, Mr. Waters, do you  
2 know was it posted one day late or what is the story  
3 with that?

4 MR. WATERS: No, the actual hearing sign  
5 was posted on the June -- two weeks before the day  
6 after -- Tuesday after Memorial Day, but the affidavit  
7 was not filed until yesterday. There was just a delay  
8 and a loss of our team members in not posting that,  
9 but the actual signage was picked up and posted the  
10 day it should have, the last day before, two weeks  
11 prior, excuse me, to the hearing. So we dropped the  
12 ball and didn't file the affidavit.

13 CHAIRPERSON MILLER: So it's the affidavit  
14 that's --

15 MR. WATERS: It's the --

16 MS. BAILEY: No, Madam Chair.

17 CHAIRPERSON MILLER: Okay. Ms. Bailey?

18 MR. WATERS: The affidavit wasn't filed.

19 CHAIRPERSON MILLER: Would you?

20 MS. BAILEY: It's 15 days prior to the  
21 Public Hearing, so you filed 14 days. You posted the  
22 property 14 days.

23 MR. WATERS: All right.

24 MS. BAILEY: But it's actually 15 days  
25 prior to it.

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1 MR. WATERS: All right.

2 MS. BAILEY: So that's fine.

3 MR. WATERS: Yes, all right. We were  
4 then, in fact, a day late with the filing and also the  
5 affidavit as well.

6 BOARD MEMBER ETHERLY: Yes.

7 CHAIRPERSON MILLER: Okay. But the ANC is  
8 obviously aware of this application.

9 MR. WATERS: Yes, the ANC meeting was June  
10 the 2<sup>nd</sup>.

11 CHAIRPERSON MILLER: Okay.

12 BOARD MEMBER ETHERLY: Madam Chair, I'm  
13 sorry, did you make a presentation to the ANC?

14 MR. WATERS: Yes, we made a presentation  
15 at their meeting.

16 CHAIRPERSON MILLER: And do you have any  
17 neighbors that you discussed this with?

18 MR. WATERS: No, we did the actual  
19 immediate neighbor is the house -- is for sale.

20 CHAIRPERSON MILLER: Yes.

21 MR. WATERS: And the condominium on 5<sup>th</sup>  
22 Street the units are being sold there in the  
23 transition, so no, we have not spoken to anyone  
24 directly about this.

25 CHAIRPERSON MILLER: Okay. So you didn't

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1 speak to the owners of the building?

2 MR. WATERS: No, we did not speak to the  
3 owners of the building.

4 CHAIRPERSON MILLER: Okay.

5 MR. WATERS: Either building.

6 CHAIRPERSON MILLER: But there aren't  
7 residents in them right now. Is that correct?

8 MR. WATERS: In the building, in 504, no,  
9 there is not anyone occupying that. And in the  
10 condominium on 5<sup>th</sup> Street, I'm not sure what the status  
11 of occupancy is. We weren't able to find that out.

12 CHAIRPERSON MILLER: Okay.

13 BOARD MEMBER ETHERLY: Madam Chair,  
14 perhaps as a suggestion for how to proceed, I wouldn't  
15 have an objection to waiving the posting requirement,  
16 despite the one day lateness in terms of posting and  
17 filing of the affidavit. I am comforted by the fact  
18 that the ANC did take a look at this matter, of  
19 course, and that there was a presentation done on  
20 behalf of the applicant. So I would be supportive of  
21 waiving the posting requirement in this instance and  
22 also waiving our rules to accept the ANC Commission 2C  
23 submission dated June 15<sup>th</sup>.

24 I would note just for the benefit of the  
25 record that the ANC submission while it does indicate

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1 that there was a 4-0 vote in support of the  
2 application, unfortunately, did not note what the  
3 necessary quorum was for that particular ANC. But  
4 once again, I would still be supportive of accepting  
5 the ANC report as submitted as well as waiving our  
6 rules to accept the posting issue.

7 CHAIRPERSON MILLER: Okay. I just want to  
8 comment. I think we already decided to accept the ANC  
9 report. But I would say that it does not look to me  
10 like it rises to the level of being granted great  
11 weight, because it doesn't seem to -- not only does it  
12 not address the quorum question, but it doesn't really  
13 address the issue. But we do take into consideration  
14 certainly that the ANC supports the application.

15 I would concur that it is only one day  
16 that we are talking about with respect to the posting,  
17 so I would go along with waiving our rules to grant  
18 that.

19 BOARD MEMBER ETHERLY: That's fine.

20 CHAIRPERSON MILLER: Okay. Then I think  
21 we can do that by consensus as well. Okay.

22 MR. WATERS: Thank you.

23 CHAIRPERSON MILLER: Do you have anything  
24 further on your application or shall we go to the  
25 Office of Planning?

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1 MR. WATERS: No, that was everything we  
2 had on the application.

3 CHAIRPERSON MILLER: Okay. Well, you will  
4 have a chance for closing.

5 MR. WATERS: Okay. Thank you.

6 CHAIRPERSON MILLER: And ask any questions  
7 of the Office of Planning. Okay.

8 MR. MCGETTIGAN: Thank you, Madam Chair.  
9 For the record, my name is David McGettigan from the  
10 Office of Planning. We do have two structures on this  
11 site and the applicant is proposing to convert them  
12 into one structure, so he is going to remove an  
13 entrance into 502 and turn it into a window and create  
14 a common entrance in 500 that will access a hallway,  
15 which will open to the right through the firewall and  
16 through a door into the unit that will be on the  
17 ground floor, 502, and then another door to the left  
18 which will open into the unit on the bottom floor of  
19 500.

20 On the second floor, access will be from  
21 5<sup>th</sup> Street. There is an existing stairwell towards the  
22 back of the property that goes up to the second floor.

23 Again, that will open onto a common corridor that  
24 will be basically above the corridor below and allow  
25 access to the two units on the right and left. I did

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1 mention to the applicant about not having the stairway  
2 reflected on the first floor and he did revise it. He  
3 got me a copy of the plan. He didn't, unfortunately,  
4 get it to the Board, but we'll -- he did accommodate.

5 Basically, it pulls back the closet. It's just a  
6 very small regular closet, not the deep walk-in closet  
7 that is show there, to accommodate the stair landing  
8 and revised the bathroom and turned it 90 degrees. So  
9 it fits under the stairs.

10 As far as the exterior of the structure, I  
11 don't think the applicant is proposing any substantial  
12 changes, except on the second floor there is going to  
13 be a slight addition over the bay in the public space.

14 If you look at the picture of the front of the  
15 building, that bay is only on the first floor, and so  
16 he will be adding a bay over top of that to provide  
17 some more space on the second floor, but that again  
18 extends into public space, so he would have to get  
19 approval from Public Space on that situation.

20 But I think hopefully that clarifies some  
21 of what is being proposed. And initially the project  
22 came in for the relief from the recreation space and  
23 we talked to the applicant and encouraged him to try  
24 and put a rooftop deck, because we thought some  
25 recreation space provided would be important. The

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1 small court in the back is only 14 x 11. It really  
2 isn't enough outdoor space for any use. It was only  
3 going to provide that the exterior space for the units  
4 that would be and what is now 502, so only two of the  
5 units would have access to that space.

6 So now, we have changed the breezeway  
7 wasn't shown on the plans initially, so there is a  
8 breezeway at the far end of the property that goes  
9 into the courtyard, which wasn't clear in the  
10 beginning, and that will be able to be accessed by all  
11 of the residents from the exterior, so they can get  
12 back to that courtyard, which, I think, is important  
13 in providing for access to garbage can storage and  
14 things that they will need to be providing for the  
15 tenants and then an exterior stairwell which the  
16 Office of Planning feels could take up that court to  
17 provide access to the roof, since the court doesn't  
18 have a lot of other functionality as an open space.

19 And then providing access to rooftop deck  
20 could be a nice amenity for the developing, having a  
21 rooftop deck on there. It was designed,  
22 unfortunately, at the last minute, so there are some  
23 more details that the applicant obviously needs to  
24 provide. How do you get from the stairway to the deck  
25 and if the deck -- the area that he is showing for the

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1 deck, 4 x 6, is actually adequate to provide a wide  
2 enough stair access. I think those are some things  
3 that the applicant should look at.

4 But some reasonable intrusion into the  
5 closed court, I think, the Office of Planning supports  
6 to provide some sort of access there. The  
7 Comprehensive Plan calls out this area as moderate  
8 density residential, the C-2-A Zoning isn't  
9 particularly thought to be consistent with that  
10 designation, so the conversion of this from a  
11 commercial use to completely residential use would be  
12 in keeping with the Comprehensive Plan and is  
13 certainly permitted in the C-2-A Zone.

14 As far as the exact relief that is  
15 required for the lot occupancy, we still, at the time  
16 of our report and still now, are not sure what  
17 percentage the stairway is going to take up, but  
18 hopefully the applicant can find that when redefining  
19 the design and provide that number. As far as the  
20 parking space goes, of course, we would support.  
21 There is no way to provide, without demolishing the  
22 building, any parking on-site.

23 Since there were two structures prior to  
24 1958, each structure would be sort of grandfathered a  
25 space and so therefore they would-- this would have

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1 been -- had two grandfathered spaces and that's where  
2 we're not sure that they actually need relief from  
3 that, because there is two structures. But they are  
4 on one record lot now. I don't know when it was made  
5 a record lot, so there's no evidence that we could  
6 find, no records we could find to when it was joined.

7 Presumably, it was two lots at one time and converted  
8 at a later date into a single lot of record.

9 But if that -- because it is a single lot  
10 of record, if that effects the interpretation of the  
11 Zoning Administrator that they need relief from the  
12 parking requirements, it certainly would seem to not  
13 harm anything to grant relief from the parking. And,  
14 you know, better safe than have to come back. So we  
15 recommend approval of the parking variance. The  
16 extraordinary exceptional situations are just the  
17 existing structure. This is really just a  
18 rehabilitation of a structure and there is, you know,  
19 practical difficulties in meeting this strict  
20 requirements of the code, particularly, in regard to  
21 lot occupancy and providing rec space.

22 So overall, we think the project is going  
23 in the right direction and I think it's going to be a  
24 better project than what was first submitted, and we  
25 support the application.

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1 CHAIRPERSON MILLER: Thank you. I have a  
2 question with respect to the court. I think on page 3  
3 of your report you addressed the question of whether  
4 the stairway could be considered a projection and if  
5 it's not a projection, then they would need a variance  
6 from the court requirements. Is that correct?

7 MR. MCGETTIGAN: Yes, what I was saying is  
8 the 2100.6 allows a fire stair to project into closed  
9 courts, that's 4 feet. So if he creates an external  
10 fire stair type structure, I think that that might be  
11 allowed. I'm not sure how the Zoning Administrator is  
12 interpreting that, so I wasn't sure. Again, better to  
13 grant relief and see what, but so yes, I'm not sure  
14 whether they actually were needed. Again, the design  
15 of the stair, the question is 4 feet wide enough to  
16 provide adequate access for a stairway and turning to  
17 go, you know, up there or perhaps a spiral staircase  
18 could be designed that would be adequate to provide  
19 access.

20 CHAIRPERSON MILLER: Okay. So we don't  
21 really even know what the stair is going to look like.

22 I had in mind that it was an enclosed stairway for  
23 some reason. I don't know whether it was presented  
24 that way, but it may not be.

25 MR. MCGETTIGAN: There would be no reason

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1 to enclose it since it's just going up to a deck and  
2 would only probably be used for when it was nice  
3 outside.

4 CHAIRPERSON MILLER: Okay. So again, it's  
5 going to turn on the specific design probably.

6 MR. MCGETTIGAN: That's right.

7 CHAIRPERSON MILLER: Of your stairs and  
8 other things. Okay. Do others have questions?

9 BOARD MEMBER MANN: Yes.

10 CHAIRPERSON MILLER: Yes?

11 BOARD MEMBER MANN: That second floor bay  
12 window addition, is that on the bay window on Florida  
13 or on 5<sup>th</sup>?

14 MR. MCGETTIGAN: On 5<sup>th</sup>.

15 BOARD MEMBER MANN: It's on 5<sup>th</sup>, so that's  
16 the larger one. So the first one is already an  
17 existing two floor bay window?

18 MR. WATERS: Sorry, Mr. Mann. They both  
19 exist only on the first floor here. We actually would  
20 like to project up both of them to the second floor.

21 BOARD MEMBER MANN: So on both Florida and  
22 on 5<sup>th</sup>?

23 MR. WATERS: Yes, and remove this  
24 projection here. There is a projection that's  
25 currently here. That is the entrance to 500 Florida

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1 Avenue. We would like to remove that.

2 MR. MCGETTIGAN: There is no bay window on  
3 it that I know.

4 MR. WATERS: It's --

5 MR. MCGETTIGAN: That's existing.

6 MR. WATERS: That's existing. This does  
7 exist on 5<sup>th</sup> Street.

8 BOARD MEMBER MANN: And on the proposed  
9 drawings.

10 MR. WATERS: And they do exist on the  
11 proposed drawings as well.

12 MR. MCGETTIGAN: Okay. So you're going to  
13 build over that and expand?

14 MR. WATERS: Yes, we would like to take  
15 both of the bay windows up one floor.

16 MR. MCGETTIGAN: Okay.

17 MR. WATERS: Still in public space, yes.

18 BOARD MEMBER MANN: Okay. And my other  
19 question is I'm not certain that Office of Planning  
20 will be able to answer this so much, but I'm going to  
21 pose this anyway, because I think it goes to the  
22 spirit of providing the recreational space, although  
23 it's more kind of a layout issue.

24 Right now, you would have to leave the  
25 building on the Florida Avenue side. As you left, you

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1 would go to the right and you would make a right on  
2 5<sup>th</sup>. Go all the way down 5<sup>th</sup> and then make a right into  
3 the Breezeway to get into the courtyard to access the  
4 stairs to the roof deck, right?

5 MR. WATERS: Yes, that is correct, Mr.  
6 Mann.

7 BOARD MEMBER MANN: I just wonder if any  
8 consideration was given to providing access to the  
9 courtyard at the southern end of the hallway on the  
10 first floor to make the recreational space easier and  
11 more convenient for the tenants, rather than having to  
12 go outside and around the building to the backyard  
13 first.

14 MR. WATERS: Certainly. We could make  
15 both of them available. It was an issue of storage,  
16 as well, on the first floor. Because this building is  
17 so small, the storage area in the rear of the first  
18 floor, as you can see, has a storage area in the front  
19 and then behind that, that's where the mechanical, the  
20 ventilation system was going to be.

21 BOARD MEMBER MANN: Yes. I mean, it just  
22 might provide more accessible recreation space, which  
23 goes to the whole spirit of having recreation space.

24 MR. WATERS: Sure.

25 MR. MCGETTIGAN: Isn't there a door there

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1 already in the back and into the courtyard?

2 MR. WATERS: There is a door that leads  
3 from 502, that's correct, that goes out to the rear.

4 MR. MCGETTIGAN: And aren't on the revised  
5 plans, isn't the storage space now -- oh, no, that's  
6 on the second floor. But isn't there space under the  
7 stairs perhaps that you could put storage if you don't  
8 have enough ceiling height perhaps for your bathroom?

9 You might consider providing a hallway back and  
10 providing a storage or the mechanical area under the  
11 stairs.

12 MR. WATERS: Certainly. We don't have --  
13 and again, we were very excited after we met with the  
14 Office of Planning about trying to create the  
15 recreational space, but we are running into just some  
16 practical difficulty in accommodating the space and  
17 keeping the building at least with liveable, large  
18 enough bedrooms and so forth.

19 So anything that we can do in the design,  
20 we would be more than happy to do in working in that.

21 So we will look at a design to see if we can  
22 accommodate that without taking away any additional  
23 space. But our intent of refiling this information  
24 was to try to create recreational space and realizing  
25 initially that the level of difficulty that we had in

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1 this small structure of doing so.

2 CHAIRPERSON MILLER: You have a copy of  
3 the Office of Planning's report, I assume?

4 MR. WATERS: Yes, I do.

5 CHAIRPERSON MILLER: Okay. And you are  
6 entitled to ask any questions right now, if you have  
7 any, of Mr. McGettigan.

8 MR. WATERS: No, I think I have asked Mr.  
9 McGettigan.

10 CHAIRPERSON MILLER: Okay.

11 MR. WATERS: We have been very responsive  
12 to any questions that we have had and, again, it was  
13 through his efforts and his guidance that we are  
14 trying to really create some recreational space,  
15 because we just felt that initially, because of the  
16 structure and the existing condition of the building,  
17 it was extremely difficult to meet the level, again,  
18 of the recreational space. And if you noticed even on  
19 the rooftop, to have all the dimensions at 25 feet,  
20 the actual deck is not square. It's parallel. It's  
21 not actually a perfect square. So we are trying to  
22 find a way to do that, so I don't have any questions  
23 of him at this time.

24 CHAIRPERSON MILLER: Okay.

25 MR. WATERS: I assume that we'll work to

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1 see how we can meet the needs of trying to create an  
2 interior entrance to the courtyard, as well as keeping  
3 that same exterior entrance just as a secondary  
4 entrance that all residents would have access to, but  
5 it also speaks to the level of practical difficulty.  
6 This is a very strangely shaped building. We didn't  
7 construct this building. We're just trying to  
8 maximize the use of this building and without tearing  
9 it down, we're very limited.

10 We have looked at at least six different  
11 designs of creating this building, so that we could  
12 have two rooms, a large bedroom and then a study or  
13 some other type of room, and the only design we came  
14 up with is the north-south design that already exists.

15 We looked at the east-west design, but then we ran  
16 into the problem of having to keep the firewall intact  
17 and creating access across the two of them.

18 So I'm saying all of that to say that  
19 we're working with a high level of practical  
20 difficulty and we think we can meet the requirements  
21 for the recreational space, but I think it may take  
22 some effort and some continued guidance and we will  
23 present whatever we need to to make sure that all of  
24 the BZA Board Members understand what it is that we're  
25 trying to do with the recreational space, and then

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1 keeping that in line, of course, with the Permits  
2 Office to make sure that they don't have any concerns  
3 with how we're planning to do this.

4 CHAIRPERSON MILLER: Okay.

5 MR. MCGETTIGAN: Madam Chair?

6 CHAIRPERSON MILLER: Yes.

7 MR. MCGETTIGAN: If I could say something  
8 about that. On the rooftop deck, as far as the width  
9 of it being measured on the angle like that, I don't  
10 know that the Zoning Administrator is going to accept  
11 that. So we may still need some relief from the  
12 dimensional requirements of the recreation space on  
13 the rooftop deck, so we need to make sure in the  
14 design. Though I think it can be pushed back closer  
15 to the interior unit, the interior wall in each of the  
16 buildings, so we may be able to get a little more  
17 width on there, but he needs to look at that, maybe  
18 sit down with the Zoning Administrator or a zoning  
19 technician and see what the restrictions are on the  
20 design of the decks.

21 CHAIRPERSON MILLER: This is where I think  
22 we are at this point. I think the Board understands  
23 the concept of what you're trying to do, and we  
24 realize that you need various variances in order to  
25 get there, but it looks like your design is still very

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1 rough and not really where it should be for our  
2 review, because, basically, we need to approve plans  
3 that are going to actually go forward and go to the  
4 Zoning Administrator.

5 So let me just pause for one second before  
6 I go do that and make sure that there aren't any other  
7 Governmental reports here, anybody else from any  
8 agencies, and I don't see anybody from the ANC and  
9 nobody is here, I don't believe, speak now if you are,  
10 to speak in support or opposition. Okay.

11 So it's between us now. Okay. So  
12 basically, we understand the concept. You can make  
13 some closing remarks if you like. We're not going to  
14 decide this today, because as we have requested, as we  
15 have gone through these hearings, revisions, more  
16 specific site plans, floor plans, etcetera.

17 And so what you can do is continue to work  
18 with an architect and with the Office of Planning and  
19 with the Office of Zoning and figure out, you know,  
20 what your final plan is going to be and what variances  
21 you will need to seek. And you can amend your  
22 application if you need to to seek additional  
23 variances, such as from the court requirements or if  
24 you need to change certain things as your design gets  
25 very specific. Yes?

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1 BOARD MEMBER ETHERLY: Madam Chair, I  
2 would just note I agree with the direction in which  
3 you are heading wholeheartedly. The only thing that  
4 might be of interest, given the last point that Mr.  
5 McGettigan noted regarding the size of that deck,  
6 might be as we give some thought to setting this for  
7 decision making, there is clearly going to be a  
8 substantial amount of documentation that Mr. Waters  
9 and his team will have to pull together to fine tune  
10 that design.

11 So just thinking ahead on scheduling, I  
12 mean, I think the parking variance is workable and we  
13 have enough information there, but because of the  
14 breadth of information that you need to pull together,  
15 because of that possibility that there might be some  
16 additional relief required, which conceivably could  
17 raise notice questions, you know, depending on whether  
18 or not there is some additional relief required, I  
19 don't know whether or not that gives us enough time to  
20 look at the first decision meeting.

21 I mean, I'm getting a little bit ahead of  
22 ourselves, but just to kind of indicate some of my  
23 thinking. I don't know if that will give us enough  
24 time really to shoehorn the additional submissions in  
25 in time for our regular scheduled decision meeting in

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1 July. So I'm just thinking ahead.

2 CHAIRPERSON MILLER: Well, my thought is  
3 that I don't think that this needs additional  
4 advertising, because you're really not changing what  
5 you're doing and you're not changing the degree of  
6 relief. You are seeking a variance and it's just  
7 modifying these variances, but, you know, unless I  
8 have strong objections. But our next regular decision  
9 making is July 6<sup>th</sup> and the question is can you pull  
10 everything together for our review at least a week  
11 before that, which would be --

12 MR. WATERS: Roughly in two weeks.

13 CHAIRPERSON MILLER: In two weeks. Okay.

14 MR. WATERS: Certainly, and I would like--

15 CHAIRPERSON MILLER: And the other comment  
16 I would like to make, and then you can respond, is  
17 that we had a little discussion up here about whether  
18 or not we needed another hearing on this, and we  
19 didn't think so. We think we can decide it by looking  
20 at your revised plans and further pleadings, but I  
21 would like to hear from you also whether that's  
22 amenable to you.

23 MR. WATERS: Certainly. Well, I just have  
24 two questions of clarification and I do appreciate the  
25 consideration and the willingness to have this

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1 submitted at the next decision making meeting. First  
2 of all, I see the two matters of information we need  
3 to submit. One to answer Mr. Jeffries' questions in  
4 regard to where the site actually sits with 5<sup>th</sup> Street  
5 and Florida Avenue just to have more details of the  
6 curbs on an actual site plan was one matter that was  
7 taken up.

8 And the second matter was dealing with Mr.  
9 Mann's questions, of course, with the stairs and where  
10 the stairs lead off onto the roof and so forth and the  
11 pitch, if we're going to go over the pitch or not, and  
12 just have a different look, an oblique view, a  
13 different view of where the stairs actually sit and  
14 the access to the actual stairs was one of the other  
15 issues.

16 And with that issue with the stairs in  
17 working to see what the Office of Planning -- if there  
18 are some other variances that we had not or had not  
19 been considered, at the time, within a closed  
20 courtyard and to detail more of those particular  
21 drawings and anything associated with the stairs.

22 CHAIRPERSON MILLER: Ms. Bailey will  
23 reiterate.

24 MR. WATERS: Okay.

25 CHAIRPERSON MILLER: I'm sure she has been

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1 keeping track.

2 MR. WATERS: Certainly.

3 CHAIRPERSON MILLER: But I think there was  
4 more than that, and I know I was asking you about roof  
5 elevations.

6 MR. WATERS: Yes, that's what -- I'm  
7 sorry.

8 CHAIRPERSON MILLER: Okay.

9 MR. WATERS: When I was talking about the  
10 stairs, I was actually -- I was lumping that together,  
11 but that's fine. We can make sure we clarify, but in  
12 saying that my comment was going to be that once we  
13 compile the report, working with the Office of  
14 Planning and meet the level of proof, the burden of  
15 proof for the documentation, then we can submit it,  
16 which would be a week before the July 6<sup>th</sup> meeting.

17 CHAIRPERSON MILLER: Right.

18 MR. WATERS: And that's what our goal is  
19 right now.

20 CHAIRPERSON MILLER: And once you have  
21 revised your plans, you're going to have to probably  
22 revise your application a little bit to address the  
23 new variances though. I don't think that should be  
24 too difficult, because your reasons will probably be  
25 very similar.

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1 MR. WATERS: Certainly. So that would --  
2 well, just another question of clarification.

3 CHAIRPERSON MILLER: Yes.

4 MR. WATERS: That would be -- July 6<sup>th</sup> is  
5 actually two weeks, three weeks from today, so we  
6 would need to be prepared to submit everything in on  
7 the 29<sup>th</sup>.

8 CHAIRPERSON MILLER: Can you do that?

9 MR. WATERS: Yes.

10 CHAIRPERSON MILLER: Okay. I mean, you  
11 don't have to. It's your choice.

12 MR. WATERS: No, we would like to. I  
13 understand that there is a question of clarification  
14 and what we're looking at, but we don't actually think  
15 that this is terribly -- we're not asking for a number  
16 of variances, so we think that since we already have  
17 presented that two weeks is fair for us and we would  
18 like to at least move ahead.

19 COMMISSIONER JEFFRIES: Mr. Waters, I'm  
20 sorry, I'm going to have to depart. I have another  
21 appointment here, but just one thing and I'm certain  
22 that Barbara, sorry, Beverley will make certain that  
23 that's the case, but elevations.

24 MR. WATERS: Certainly.

25 COMMISSIONER JEFFRIES: Okay. More

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1 articulated elevations, particularly off of Florida  
2 Avenue and so forth.

3 MR. WATERS: Okay.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. WATERS: Thank you.

6 CHAIRPERSON MILLER: Okay. Do you have  
7 any other questions or closing remarks that you want  
8 to make?

9 MR. WATERS: The last closing remark we  
10 would like to make is, again, thank you for letting us  
11 present our case and we do think all of this is a very  
12 small -- these are very small structures. We think  
13 that what we are proposing to do is actually going to  
14 beautify and continue to develop the actual area.  
15 We're taking a building that is an eyesore right now  
16 and we want to develop it. We don't actually want to  
17 change the character of the building. That's why we  
18 aren't asking for variances to build higher. We would  
19 just like to take the building and brick the building  
20 front, of course, and also have a wrought iron fencing  
21 just right here on the side and just make the area  
22 aesthetically look better.

23 CHAIRPERSON MILLER: Is that wrought iron  
24 fencing going to be on public space or private  
25 property? Do you know?

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1 MR. WATERS: Well, we hadn't actually --  
2 that's part of the plan, but I don't have any  
3 documentation or any drawings that I can submit to you  
4 for that, and would that be something that we would  
5 need to speak with the Board, with you all, about or  
6 would that be something we would have to speak with  
7 the Public Space through the permits process about? I  
8 don't know that we'll --

9 CHAIRPERSON MILLER: It looks like from  
10 the picture it's public space, but, you know, I just  
11 think, you know, when you're having these discussions  
12 with Office of Planning and Zoning, just tell them  
13 everything that you have in mind, you know, so you  
14 don't miss anything.

15 MR. WATERS: Certainly. As we said, we  
16 have -- again, we have gotten this far because of the  
17 Office of Planning.

18 CHAIRPERSON MILLER: I'm sorry to  
19 interrupt you. While it's on my mind, I think you  
20 probably should also amend. While you're amending  
21 your application, you should amend it to reflect the  
22 proper owner. And do you have any other comments? I  
23 didn't mean to interrupt.

24 MR. WATERS: No.

25 CHAIRPERSON MILLER: Okay.

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1 MR. WATERS: Actually, no, I don't.

2 CHAIRPERSON MILLER: Okay. And Mr.  
3 Etherly?

4 BOARD MEMBER ETHERLY: You reminded me,  
5 Madam Chair, just make sure, because I don't believe I  
6 saw it in our submission, you noted that you did  
7 submit documentation reflecting that change in the  
8 ownership status. If you could just confirm that we  
9 are in receipt of that, because I didn't see it in the  
10 file that that was prepared for the Board Members, so  
11 just confirm that we do have that.

12 MR. WATERS: Certainly, Mr. Etherly. I do  
13 actually -- when I did file those documents, I kept a  
14 date stamped copy for myself.

15 BOARD MEMBER ETHERLY: Okay. That's fine.

16 MR. WATERS: And I'll make a copy of the  
17 date stamped copy. We did, although I'm not sure why  
18 it's not in the package of information, because there  
19 is a lot. I realize that we did file some additional  
20 information and we do have all that information date  
21 stamped, so that we can make a photocopy and show that  
22 we did submit that to you all.

23 CHAIRPERSON MILLER: Okay. Now, I think  
24 Ms. Bailey will reiterate all the things that, you  
25 know, we talked about that you will need to do in the

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1 interim.

2 MR. WATERS: May I ask one last question,  
3 please?

4 CHAIRPERSON MILLER: Yes, sure.

5 MR. WATERS: Will I receive documentation  
6 just showing, so we can actually know and see what we  
7 have in the form of a letter what we do need or should  
8 we just rely on just writing it down here.

9 CHAIRPERSON MILLER: Yes, we don't issue  
10 that kind of a decision.

11 MR. WATERS: Right.

12 CHAIRPERSON MILLER: But if you are  
13 unsure, you can double check with Ms. Bailey in the  
14 Office of Zoning.

15 MR. WATERS: All right.

16 CHAIRPERSON MILLER: Right here. Yes, Ms.  
17 Bailey?

18 MS. BAILEY: What I have, Madam Chair, is  
19 a revised site plan and revised floor plans,  
20 elevations. You are to articulate the points of  
21 access into the building. You are to clearly  
22 articulate the courtyard including its width, stairway  
23 access, revised plan to show the roof, clearly show  
24 the court requirements and a roof plan.

25 Now, I went through those pretty fast but,

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1 in essence, that's basically in the context of the  
2 discussion what was asked for.

3 MR. WATERS: And I got all of it. Thank  
4 you.

5 MS. BAILEY: Okay.

6 CHAIRPERSON MILLER: Ms. Bailey, I have  
7 some more to add then.

8 MS. BAILEY: Okay, sure.

9 CHAIRPERSON MILLER: He is to supply  
10 documentation showing the change in owner. He is to  
11 amend the next application to reflect the new owner.  
12 And Mr. Etherly was getting at the difference in the  
13 court width from as it is now and how it will be with  
14 the stairway in the courtyard.

15 MR. WATERS: Would that be -- excuse me.

16 CHAIRPERSON MILLER: All right.

17 MR. WATERS: Were you referring to the  
18 area or --

19 BOARD MEMBER ETHERLY: It was included in  
20 Ms. Bailey's summary, but just with more specificity,  
21 the court area and the court width.

22 MR. WATERS: The area, all right.

23 BOARD MEMBER ETHERLY: So two separate  
24 measurements, but for each of those measurements, you  
25 know, do one set that includes the stair and then one

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1 that does not, because the question is once we  
2 understand how much, how large that stair access is,  
3 that may have an impact on the court area and court  
4 width if it's counted. So we need to see what the  
5 court area and court width is without the stair and  
6 the stairway access to the roof, and then what it  
7 would be if you include the stair access to the roof.

8 MR. WATERS: Certainly. And with that,  
9 would we still submit one original and 20 copies when  
10 we resubmit, when we refile?

11 MS. BAILEY: Yes, yes, and I think we also  
12 asked you to clarify the relief that is being asked  
13 for. It may be the same as what was indicated  
14 previously or it may change depending on what your new  
15 plans are. Just clarify the relief for us.

16 MR. WATERS: Certainly.

17 CHAIRPERSON MILLER: Well, you will be  
18 doing that by filing a revised application, correct?

19 MR. WATERS: Yes.

20 CHAIRPERSON MILLER: Right.

21 MR. WATERS: We will file and include  
22 everything that was asked, but we will file an amended  
23 application and with working with the Office of  
24 Planning, if the court is the space, the stairwell and  
25 the court does become something, we have to ask for an

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1 additional variance, we will do that.

2 CHAIRPERSON MILLER: Okay.

3 MR. WATERS: That's the only part that we  
4 would have to work with the Office of Planning to  
5 ensure that we are asking for the correct variance.

6 CHAIRPERSON MILLER: Right, and that's one  
7 other thing, Ms. Bailey, and that was what the  
8 stairway is going to look like, how open it's going to  
9 be, because that affects whether or not you're going  
10 to need a variance in the court.

11 MR. WATERS: Depending on --

12 CHAIRPERSON MILLER: Whether it's a  
13 projection or whatever, we need to know what type of  
14 stairway is there.

15 MR. WATERS: Sure. Right now we put --  
16 the only thing we can tell you with any specificity is  
17 that it's going to be an outdoor. It's not going to  
18 be enclosed.

19 CHAIRPERSON MILLER: All right. But  
20 you'll have more specificity when you file, correct?

21 MR. WATERS: Yes, and just a clarification  
22 on that. Other than showing the stair as a type of --  
23 once we make sure that we can have the type of stairs  
24 correct and the dimensions of it, what exactly would  
25 you like other than the elevation and where it is and

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1 how it looks? What other information should we  
2 include?

3 CHAIRPERSON MILLER: Well, what I had in  
4 mind is there is a provision that deals with  
5 projections in the regulations describing certain  
6 stairways that the Office of Planning was referring  
7 to, and he can show you that.

8 MR. WATERS: Right.

9 CHAIRPERSON MILLER: So that we can  
10 determine whether or not to even consider that within  
11 that regulation or not. That's why we're asking.

12 MR. WATERS: No, that's not a problem. I  
13 just wanted to be clear when we submitted that.

14 CHAIRPERSON MILLER: I don't think I have  
15 that right in front of me at this point.

16 MR. WATERS: Okay. As long as we know.  
17 We know where to find it now. And if that were the  
18 case and we presented everything in terms of the  
19 stairs and realizing that we may have to consider  
20 another variance once you see that, then we would have  
21 an opportunity to address that issue?

22 CHAIRPERSON MILLER: Yes. That's why I'm  
23 saying you should revise your application.

24 MR. WATERS: Okay.

25 CHAIRPERSON MILLER: To reflect the

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1 modifications that you have made in your design, so  
2 that you're actually asking for the appropriate  
3 relief.

4 MR. WATERS: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MR. WATERS: I'm agreeing with that.

7 CHAIRPERSON MILLER: Okay.

8 MR. WATERS: I'm saying once you all  
9 review it, if there was something that additionally  
10 was needed, that we would have a chance to address  
11 that? Okay.

12 MS. BAILEY: Madam Chair?

13 CHAIRPERSON MILLER: Yes?

14 MS. BAILEY: Perhaps an additional  
15 hearing, because I gathered from what the gentleman is  
16 saying if there are some additional questions after  
17 the filing comes in, would he have an opportunity to  
18 address those questions and that wouldn't be the case.

19 MR. WATERS: That's not.

20 CHAIRPERSON MILLER: That's right. That  
21 would not be the case.

22 MR. WATERS: No, that's not. Okay.  
23 That's not --

24 CHAIRPERSON MILLER: If we set for  
25 decision making, we decide at that point.

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1 MR. WATERS: Well, that's not what I was  
2 actually asking. I'm sorry. That's not what I was  
3 asking.

4 CHAIRPERSON MILLER: Okay.

5 MR. WATERS: I was just saying if we  
6 submitted something to you guys and you had a question  
7 for us, even if we addressed everything here and there  
8 was something else that came up with the courtyard,  
9 would we have the opportunity to address that? No,  
10 I'm fine with the process. I just wanted to know if  
11 we're at the decision making stage, it's just the  
12 decision made and we're done?

13 CHAIRPERSON MILLER: Yes.

14 MR. WATERS: That's pretty much it? Okay.  
15 That's fine. Then I'm fine with that. I don't have  
16 any other questions about that. Thanks. I'm done  
17 with my comments.

18 CHAIRPERSON MILLER: Okay. I would say  
19 this, not that I'm normally in a position to say this,  
20 but, I mean, if you find you cannot get all this  
21 information within two weeks, we can put it off to a  
22 later decision making.

23 MR. WATERS: Certainly.

24 CHAIRPERSON MILLER: Just let us know.

25 MR. WATERS: When would that next decision

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1 making meeting be?

2 CHAIRPERSON MILLER: That's July 6<sup>th</sup>.

3 MR. WATERS: The one after July 6<sup>th</sup>.

4 CHAIRPERSON MILLER: Oh, July, August. We  
5 may have one the first week in August.

6 MR. WATERS: Okay.

7 CHAIRPERSON MILLER: Is that correct? I'm  
8 pretty sure we usually do that before our break, we  
9 have one more. August 3<sup>rd</sup>?

10 MS. BAILEY: Yes, but so far there isn't  
11 anything scheduled for August 3<sup>rd</sup>.

12 CHAIRPERSON MILLER: Right.

13 MR. WATERS: Okay. All right. Thank you.

14 CHAIRPERSON MILLER: Okay.

15 MS. BAILEY: Madam Chair, could we,  
16 please, just set a date when the information is to  
17 come in?

18 CHAIRPERSON MILLER: Right.

19 MS. BAILEY: And that would be June 29<sup>th</sup>.  
20 Would you have a problem with that, close of business,  
21 June 29<sup>th</sup>?

22 MR. WATERS: No, I actually have that date  
23 written down as the date we were discussing, a week  
24 before the July 6<sup>th</sup> date. Thank you.

25 MR. MCGETTIGAN: Madam Chair, would you

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1 need anything else from the Office of Planning?

2 CHAIRPERSON MILLER: I'm sure we would  
3 love a response from the Office of Planning. We  
4 didn't factor that in. How much time would you need  
5 on that then?

6 MR. MCGETTIGAN: Well, hopefully, I will  
7 know everything before he submits it on the 29<sup>th</sup>,  
8 because he will be working with me.

9 CHAIRPERSON MILLER: Right.

10 MR. MCGETTIGAN: But I would still like a  
11 few days after he has got everything together to make  
12 any supplemental report.

13 CHAIRPERSON MILLER: Can you do it in any  
14 fewer days than 14 or not really?

15 MR. WATERS: Yes, we will.

16 CHAIRPERSON MILLER: Good. Could you do  
17 it like in 10 days and then give Office of Planning  
18 time to respond?

19 MR. WATERS: Let me just -- I just want to  
20 look at my calendar, so we can be clear on the dates  
21 that we need.

22 CHAIRPERSON MILLER: Right.

23 MR. WATERS: So now, we're actually saying  
24 next Friday, the 25<sup>th</sup>? Is that -- I guess, or the 24<sup>th</sup>  
25 of June? Would that give enough time?

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1 CHAIRPERSON MILLER: That's fine. It's up  
2 to Office of Planning. Would that give you enough  
3 time to get to us by -- well, probably not.

4 MR. WATERS: Or what if we say the 23<sup>rd</sup> of  
5 June? Would that be better, Mr. McGettigan?

6 MR. MCGETTIGAN: I'm going to be off on  
7 the 24<sup>th</sup> and 25<sup>th</sup>. Why don't you just go ahead and get  
8 something to me first thing in the morning on the 28<sup>th</sup>  
9 and I'll try to have something by the end of the 29<sup>th</sup>.

10 That's the best I can do. That will be real tight  
11 for me.

12 MR. WATERS: Well, we could try.

13 MR. MCGETTIGAN: I think I'm going to have  
14 a hearing on the 29<sup>th</sup>, too.

15 MR. WATERS: We can try our best efforts  
16 to have something by Tuesday the 22<sup>nd</sup>.

17 MR. MCGETTIGAN: Okay. Yes, that would  
18 work better if I could get something on the 22<sup>nd</sup>, then  
19 I would have a couple of days to do something and a  
20 couple of days for us to review.

21 MR. WATERS: Okay. Well, we're going to  
22 work together with the Office of Planning to have some  
23 information to them on the 22<sup>nd</sup>, all the documents that  
24 we were requested for.

25 CHAIRPERSON MILLER: Okay. You think you

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1 can do that though, realistically?

2 MR. WATERS: Well, I think realistically,  
3 it's going to take a little bit of effort, more  
4 effort. We would have to start today, but we can do  
5 that. Realistically, Madam Chair, we can.

6 CHAIRPERSON MILLER: You can? Okay. So  
7 that date would be June 22<sup>nd</sup> you would submit your  
8 revised application and drawings and site plan and all  
9 documents to Office of Planning and Office of Zoning?

10 MR. WATERS: Yes.

11 CHAIRPERSON MILLER: And Office of  
12 Planning would submit to the Board their response or  
13 comments on that by June 29<sup>th</sup>. Is that correct? Okay.  
14 Thank you.

15 MR. WATERS: Thank you all.

16 CHAIRPERSON MILLER: Ms. Bailey, would you  
17 like to call the next case?

18 MS. BAILEY: Sure, Madam Chair.  
19 Application No. 17167 of Welch Family Limited  
20 Partnership Sixteen, on behalf of FCD-Development LLC,  
21 pursuant to 11 DCMR section 3104.1 and 3103.2, for a  
22 special exception from the roof structure  
23 requirements, that's section 411, a special exception  
24 and variance to extend the DD/C-2-C Zoning Regulations  
25 by 40 feet onto the portion of the premises zoned C-2-

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1 A, that's section 2514.2, and for variances from the  
2 width of court requirements, section 776, the building  
3 setback requirements, section 1706.15, the lot  
4 occupancy requirements, section 772.1, and the rear  
5 yard requirements, section 774.1, to permit the  
6 development of an apartment house in the DD/C-2-C  
7 District at premises 910 M Street, N.W., Square 369,  
8 Lots 834, 861, 862, 865, 866, 872, 873 and 876. I  
9 could never do that again.

10 CHAIRPERSON MILLER: Are you finished?

11 MS. BAILEY: Madam Chair, the case is  
12 ready to go forward.

13 CHAIRPERSON MILLER: Thank you. Good  
14 afternoon. Could you introduce yourselves for the  
15 record, please?

16 MR. GLASGOW: Certainly. Thank you, Madam  
17 Chair. For the record, my name is Norman M. Glasgow,  
18 Jr. of the Law Firm of Holland and Knight here on  
19 behalf of the applicants in this case requesting  
20 certain special exception and variance relief, and I  
21 won't go back through those since it's already been  
22 handled.

23 The project is located in Housing Priority  
24 Area A at 910 M Street, N.W., in the block immediately  
25 west of the Convention Center and that will be

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1 described in more detail by the architects. Here with  
2 me today is Mr. Kyrus Freeman also of Holland and  
3 Knight, Mr. Don Deutsch on behalf of the applicant on  
4 my immediate right, the land planner, Mr. Lindsley  
5 Williams who has been accepted as an expert witness  
6 before by the Board and we do have a copy of his  
7 resume, if that's needed for the record, and Mr. Phil  
8 Esocoff and Sasha Rogen of the architectural firm of  
9 Esocoff and Associates. Mr. Esocoff is offered as an  
10 expert witness also, and he has been accepted as an  
11 expert in the past by the Board. We do have copies of  
12 his resume also, if you need that.

13 CHAIRPERSON MILLER: Okay. I am familiar  
14 with Mr. Williams. I am not familiar with Mr.  
15 Esocoff, so I would like to see his resume.

16 MR. GLASGOW: Would you like to get him  
17 qualified? Yes. Thank you. It's a single copy.

18 BOARD MEMBER ETHERLY: Madam Chair, while  
19 we're getting that resume, I would have no objection  
20 to Mr. Williams' designation as an expert.

21 BOARD MEMBER MANN: I don't know who he  
22 is, but I'll take your word for it.

23 CHAIRPERSON MILLER: Okay. Then I gather  
24 by consensus we'll recognize Mr. Williams as an expert  
25 in land planning.

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1 BOARD MEMBER ETHERLY: Madam Chair, no  
2 objection with Mr. Esocoff as well.

3 CHAIRPERSON MILLER: I just want to  
4 clarify. In what is Mr. Esocoff being offered as an  
5 expert in exactly?

6 MR. GLASGOW: Residential architecture.

7 CHAIRPERSON MILLER: Okay.

8 MR. GLASGOW: I think he was accepted by  
9 the Board as an expert witness in the 400  
10 Massachusetts Avenue Project, which the Board approved  
11 about 18 months or so ago.

12 CHAIRPERSON MILLER: Okay. Well, I have  
13 no problem looking over this resume and recognizing  
14 him as an expert. Do you, Mr. Mann? Okay. Then by  
15 consensus, the Board will recognize him as an expert  
16 in that and you can proceed.

17 MR. GLASGOW: All right. Thank you. I  
18 wanted to make sure that the Members of the Board have  
19 a copy of our statement of applicant that was filed in  
20 this case.

21 CHAIRPERSON MILLER: We do.

22 MR. GLASGOW: All right. Thank you. Now,  
23 before proceeding with the testimony of the witnesses,  
24 I would like to offer a brief opening statement. The  
25 applicant is here today seeking certain special

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1 exception and variance relief to construct a  
2 residential project at the subject site. As you can  
3 see by the plats that are attached as Exhibits A and B  
4 in the statement of the applicant, the project has an  
5 unusual shape with a very broad frontage along M  
6 Street of 205 feet and then narrows to a width of only  
7 76 feet at the southern portion of the lot. Also, the  
8 lot has several steps in it, indentations where it  
9 sort of goes in in a stair step fashion, particularly  
10 along its east side and then one along its west side.

11 The western frontage is also impacted by a  
12 20 foot wide easement, which prohibits construction.  
13 As will be explained by the expert witnesses, this  
14 unique shape of the lot, its ratio of frontage and  
15 width along M Street and then at the narrowness at the  
16 southern end, the impact of the easement, the  
17 provisions of the regulations, which affect uniquely  
18 this property in the square, create conditions unique  
19 to this site resulting in practical difficulties as to  
20 its development.

21 In addition, we have met with ANC-2C, ANC-  
22 2F and the Office of Planning. We understand that the  
23 reports of ANC-2F and ANC-2C are in the record in  
24 support of the application, and we have seen a copy of  
25 the report of the Office of Planning, which is in

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1 support of the application. If there are no  
2 preliminary questions, I would like to proceed with  
3 the testimony of the witnesses.

4 CHAIRPERSON MILLER: I just have a  
5 preliminary question, so I have my setting right. The  
6 property is located in ANC-2C. Is that right?

7 MR. GLASGOW: Yes, it's located in ANC-2C  
8 right on the line between 2C and 2F.

9 CHAIRPERSON MILLER: Okay. So ANC-2F is  
10 the abutting ANC?

11 MR. GLASGOW: That's correct.

12 CHAIRPERSON MILLER: Okay. Go ahead.  
13 Thank you.

14 MR. GLASGOW: All right. With that, Mr.  
15 Deutsch, would you, please, identify yourself for the  
16 record and proceed with your testimony?

17 MR. DEUTSCH: Thank you. My name is Don  
18 Deutsch and I'm the senior managing director with  
19 Phasin Enterprises. Phasin is a regional developer of  
20 retail, office and residential from the D.C. market to  
21 south Florida. Now, the principals of Phasin,  
22 particularly myself, have been very active in D.C. and  
23 we're currently developing the 64 unit Bentano Project  
24 at 912 F Street and the 260 unit 400 Mass Ave. Project  
25 at 4<sup>th</sup> and Mass in the east end. That project will be

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1 completed in August. Esocoff and Associates is the  
2 architect for that project as well.

3 We're excited about our next development  
4 opportunity at 9<sup>th</sup> and M. This site is, approximately,  
5 30,000 square feet and currently functions as a  
6 parking lot across from the historic homes on M  
7 Street. The proposed project will be a 190 unit  
8 condominium project with three levels of underground  
9 parking. We will adhere to the two height  
10 requirements along M Street with a 60 foot height  
11 along M Street stepping back 40 feet to the 110 foot  
12 height towards the interior of the block.

13 We believe that we have worked very  
14 closely with the various community groups, with the  
15 stake and the development of this site. We have met  
16 with the Logan Circle Citizens Association, the  
17 Blagden Alley Association, as well as Chip mentioned  
18 the two ANC meetings both with ANC-2C and ANC-2F. And  
19 finally, we have presented to HPRB. We received  
20 strong support from each of these groups.

21 We believe that we will create a great  
22 development as we have at 4<sup>th</sup> and Mass, and we'll  
23 enhance the unique neighborhood in a housing priority  
24 area. While we have some constraints and practical  
25 difficulties that will be detailed by our expert

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1 witnesses, we believe that we do meet the burden of  
2 proof for the variances requested. I will now turn  
3 the floor over to Phil, to Phil Esocoff. Thank you.

4 MR. ESOCOFF: Good afternoon, Madam Chair,  
5 Members of the Commission. I am Phil Esocoff. I am  
6 principal of the firm Esocoff and Associates. We're a  
7 20 person architecture firm practicing in the District  
8 and we're doing quite a number of apartments and  
9 condominiums, about 1,600 at last count between  
10 recently completed and planned and under construction  
11 projects, most of them along Mass Avenue, but a more  
12 notable one would be the Jefferson in Penn Quarter  
13 where Woolly Mammoth is moving in.

14 So we're fairly knowledgeable about how  
15 apartment buildings need to be laid out and to be  
16 functional and economic in the sort of design sense of  
17 economy of means. In the interest of time, I'll move  
18 quickly to the project. Can you just flip that over?

19 The site is generally located, this red  
20 area here and this little piece of yellow, at the  
21 corner of 9<sup>th</sup> and M Street, N.W. This large brown area  
22 on the exhibit we have here is the Convention Center,  
23 and there is an underpass from the Convention Center  
24 going along 9<sup>th</sup> Street across the street of the Bruce  
25 Blanche historic row houses and we're in the Shaw

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1 Historic District, so this project comes under HPRB's  
2 jurisdiction and they have approved the height, mass,  
3 bulking, setbacks.

4 All the things that are inherent in what  
5 our request from you is today has already been  
6 approved volumetrically from an aesthetic  
7 compatibility point of view by the HPRB. We do need  
8 to go back for just sort of final resolution of  
9 materials, fenestration, those kinds of refinements.

10 The site is abutted to the west by what I  
11 identified here as townhouses, but are actually part  
12 of Mount Vernon Plaza, which is an apartment house  
13 that has a lower wing along M Street to respond to the  
14 townhouses across the street, but it's really one  
15 apartment house, the big white building here. That's  
16 90 feet high and then a courtyard. And the townhouses  
17 currently under construction, another project of ours,  
18 a 90 foot plus building, Quincy Court, is on 1117 10<sup>th</sup>  
19 Street and we also have Quincy Park, which is under  
20 construction at the corner of 11<sup>th</sup> -- 10<sup>th</sup> and L Street.

21 Along 9<sup>th</sup> Street are these historic and  
22 mostly unoccupied small scale historic structures,  
23 which I'm sure will be renovated and brought back to  
24 life as this area is rejuvenated. Plans seem to be  
25 moving forward on lots of fronts all along there. And

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1 that area is zoned for 50 feet high. I say that,  
2 because it affects some of the issues we're talking  
3 about today.

4 So the site is zoned DD/C-2-C, but then  
5 there's a small portion of it, 40 feet here, that is  
6 zoned DD/C-2-A and by a special exception we could  
7 move that line, I guess, 35 feet. But because the old  
8 lot line was 40 feet, one of the things we're asking  
9 is to not have to offset our building 5 feet at that  
10 point, because it kind of destroys the insides of the  
11 buildings.

12 CHAIRPERSON MILLER: I just want to  
13 interrupt for one second. Are you asking for a  
14 special exception and a variance then in these kind of  
15 situations, so that's why there are so many?

16 MR. ESOCOFF: That's correct.

17 CHAIRPERSON MILLER: Okay.

18 MR. GLASGOW: That's right, and if you see  
19 from the Office of Planning report, we have three  
20 special exceptions for roof structures.

21 CHAIRPERSON MILLER: Yes.

22 MR. GLASGOW: You know, so it looks like  
23 there is this big, long list, but if you just zell it  
24 down to, all right, do you have a roof structure  
25 special exception, yes, and it's in three parts. Do

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1 you have a lot line issue? Yes, and that's in two  
2 parts. One is a special exception and one is a  
3 variance for that last 5 feet.

4 CHAIRPERSON MILLER: Right. Okay.

5 BOARD MEMBER ETHERLY: Madam Chair, if I  
6 may just -- I know we had some conversation about it  
7 during executive session and I think it's a relatively  
8 small and straightforward point, but this might just  
9 be a logical time to deal with it, so we can move the  
10 rest of the presentation fairly uninterrupted. But  
11 just as you began to reference the issue of 2412.2, we  
12 just had some conversation about the interpretation of  
13 2412.1 in concert with .2.

14 Could you just perhaps either flag it for  
15 some discussion as you get further into the  
16 presentation, but the question simply was does 24, if  
17 I have my cite correct, it was 24.

18 MR. WILLIAMS: It was 25 for the chapter.

19 BOARD MEMBER ETHERLY: Thank you. Does  
20 that particular provision, .2, stand on its own or do  
21 you need to speak to .1 and the requirements of  
22 demonstrating the sole ownership, 1958 and all of that  
23 good stuff? I think our understanding is that you do  
24 not, .2 stands on its own face.

25 MR. GLASGOW: Correct.

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1 BOARD MEMBER ETHERLY: But I just wanted  
2 perhaps to have some discussion at the appropriate  
3 time on that interpretation.

4 MR. GLASGOW: Sure. I think we can  
5 address that right now if you would like.

6 BOARD MEMBER ETHERLY: Okay, okay.

7 MR. GLASGOW: It talks about in 2514.1,  
8 that does not require BZA, and so if you're going to  
9 BZA then you're in 2514.2, so they are distinct.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. GLASGOW: In that section. I have  
12 never been able to get 2514.1 to work right all the  
13 way through from A to E, but theoretically if you're  
14 able to do that, then you just proceed on that basis.  
15 Yes, so that's a matter-of-right provision.

16 BOARD MEMBER ETHERLY: Okay.

17 MR. GLASGOW: When you have a zoning line  
18 crossing, a zoned district boundary line crossing a  
19 lot, and then 2514.2 is everything else where it  
20 crosses.

21 BOARD MEMBER ETHERLY: Okay. So  
22 essentially, I tend to agree with you. You're just  
23 talking about two separate sets of circumstances, and  
24 2514.1, if you have that set of circumstances, as you  
25 said, if you're fortunate enough to have it --

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1 MR. GLASGOW: Right.

2 BOARD MEMBER ETHERLY: -- then you can go  
3 ahead and do what you need to do. But for all other  
4 circumstances, you have 2514.2.

5 MR. GLASGOW: Right, you're down to .2  
6 when you're before the Board.

7 BOARD MEMBER ETHERLY: Okay. Thank you.  
8 Thank you, Madam Chair.

9 MR. ESOCOFF: Before I go any further into  
10 the different zoning things, perhaps I should just  
11 quickly review the plans, because the interior of the  
12 building and how it works is very germane to why we  
13 need some of these exceptions.

14 CHAIRPERSON MILLER: Right, and I would  
15 also say, though you probably are doing this, when you  
16 are reviewing the plans, if you could just show us  
17 like in that instance, okay, that was the 35 feet,  
18 which goes to the special exception we're asking and  
19 the 5 feet is for the variance.

20 MR. ESOCOFF: Right, right.

21 CHAIRPERSON MILLER: You know, so we can  
22 tie them to what we need to decide on.

23 MR. ESOCOFF: Okay.

24 CHAIRPERSON MILLER: Okay.

25 MR. ESOCOFF: Here is the ground floor

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1 plan where we have our units and the main entrance for  
2 pedestrians off the street. We're bringing our garage  
3 entrance off the alley system and our loading is also  
4 coming off the alley system, so we can keep the front  
5 of the building fairly unblemished. Do you want to  
6 just flip that over?

7           And here is the easement and alleys. On a  
8 typical floor, we have a double loaded corridor that  
9 runs parallel to M Street and then another one that  
10 runs north-south, and we have our elevator core  
11 located sort of on this southern leg. One of the  
12 reasons I would point out that it's located this far  
13 back, as opposed to what normally you would do, which  
14 is in this dead corner where it's hard to get a unit  
15 to lay out and have adequate window, because you're  
16 way back here, is because of the 40 foot setback the  
17 zone requires on the front. We have to pull our  
18 building back at a certain point and we didn't want  
19 our elevator core at the face of the building, because  
20 that's highly sellable and it makes a nicer building  
21 to have windows on the facade, rather than a blank  
22 wall.

23           I would also point out that in making  
24 these units viable, we have in one of our -- and I'll  
25 get into this specifically later. That 4 foot issue

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1 we were discussing before, that's in there about  
2 extending 4 feet into the 40 foot setback is over a  
3 front of the building. We're doing that, obviously,  
4 for aesthetic reasons, but there is also planning  
5 reasons.

6 In order to make these units ADA  
7 accessible on their lower level for FHA and ADA  
8 reasons, and we found this out during some two local  
9 units down at the Jefferson, Square 457C, where Woolly  
10 Mammoth is. We have some units there. There are two  
11 level units. We found it was very difficult to do a  
12 viable two level unit if you have to have a powder  
13 room, a handicap accessible powder room, which is  
14 larger than a normal powder room, kitchen, dining and  
15 living room, so that people can come and make the unit  
16 visitable, so that a handicapped person, a physically  
17 challenged person, can visit any resident and have  
18 access to sort of the common areas and a powder room.

19 So even though a unit that is two levels high might  
20 not be accessible for all residents, the law does like  
21 it to be accessible for anyone who would like to be a  
22 guest at any resident.

23 CHAIRPERSON MILLER: Well, when does that  
24 law kick in? I mean, is that --

25 MR. ESOCOFF: Oh, that's already in place.

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1 That's in effect.

2 CHAIRPERSON MILLER: No, I mean, is that  
3 for all apartments? I mean, single family dwellings  
4 don't have to comply with that, I assume.

5 MR. ESOCOFF: I don't know how that works.

6 CHAIRPERSON MILLER: But it applies to  
7 apartment buildings?

8 MR. ESOCOFF: Yes, multi-family housing,  
9 yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. ESOCOFF: So it's very advantageous to  
12 have some of these bay projections where we can get  
13 them to make that a viable amount of living/dining  
14 space with that kitchen and two units upstairs. Next.

15 When we get up to the rooftop, in order to  
16 get the recreation open space, you know, we want to  
17 have this wing to use and later on you'll see that in  
18 order to get the court -- the court variance we're  
19 asking for will allow us to make this wing feasible as  
20 a rooftop recreation zone, but also make the units on  
21 that upper level feasible, so that they don't have to  
22 narrow down to the same width as the corridor. Next.

23 These are some of the elevations you have  
24 seen, but more refined, calling out the lower level.  
25 That is that 60 foot height and these are actually set

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1 back 40 feet and some of these are bays.

2 BOARD MEMBER MANN: Were those refined in  
3 response to HPRB or just --

4 MR. ESOCOFF: Oh, yes.

5 BOARD MEMBER MANN: Okay.

6 MR. ESOCOFF: Yes. And as you get back,  
7 these are some of those 4 foot projections. Here is  
8 our main penthouse and in your package, we still have  
9 the second penthouse down at the end of this wing to  
10 provide required egress for use of the roof. You need  
11 two means of egress and we need both stairs to come up  
12 and one is detached from the other.

13 We have been working hard to actually  
14 produce that, so one of the things we're going to be  
15 asking is for a second penthouse, for the setback from  
16 the edge to be less than one to one, but also if we  
17 can make it lower, for the ability to actually vary  
18 the height as opposed to making it uniform height for  
19 the second penthouse. The other one conforms. So  
20 having a second penthouse requires an approval.

21 CHAIRPERSON MILLER: That's not asked for  
22 in your filing or it is asked for?

23 MR. ESOCOFF: Yes.

24 CHAIRPERSON MILLER: Okay.

25 MR. ESOCOFF: And that has been typically

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1 something we have had to ask for in a lot of apartment  
2 houses, because I don't think Zoning anticipated  
3 apartment houses when they talked about compact one  
4 penthouse on a building. They were thinking about an  
5 office building with a compact core or apartment  
6 houses that didn't have recreational space on the  
7 roof. So you only needed one means of egress.

8 Like I live in a condominium on  
9 Connecticut Avenue, a historic building, and we only  
10 have one means of egress from the roof, so we have a  
11 very tight limitation on who can go up there and today  
12 we probably wouldn't be able to built it at all.

13 CHAIRPERSON MILLER: This is the 60 feet  
14 height that we're looking at?

15 MR. ESOCOFF: No, the 60 foot height is  
16 here. This is 110 and this is the penthouse that's 18  
17 foot 6.

18 CHAIRPERSON MILLER: Okay.

19 MR. ESOCOFF: Setback one to one.

20 CHAIRPERSON MILLER: Now, 110, does that  
21 include railings and things like that or not?

22 MR. ESOCOFF: That's the roof. It doesn't  
23 include -- these are parapets and ornamental rails,  
24 not parapets so much as piers. They are more  
25 ornamental than they are required. We could make them

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1 all out of wire mesh if we wanted to, but once again,  
2 for HPRB and for ourselves, we're trying to make them  
3 an attractive ending to the building.

4 CHAIRPERSON MILLER: Okay.

5 MR. ESOCOFF: These are some of the  
6 elevations that are still being developed. This blank  
7 wall represents really where the zoning is on our  
8 abutting lot. This faces the Convention Center, the  
9 narrow end of the wing. That's right here. You can  
10 see there's the setback and there's the bay, then  
11 there's that low penthouse and in the distance you see  
12 the tail end of this and this faces east also.

13 And HPRB was very concerned that we treat  
14 these elevations as fronts, and so we're putting as  
15 much effort into those and they will be receiving some  
16 more bays and balconies before we're done. And you  
17 can see that we have actually taken some of these, the  
18 composition of these relates to the earlier drawing at  
19 the top of the first tier of units. Can you go back  
20 to that for just one second?

21 So we're trying to make the penthouses not  
22 something that disappears, because even set back one  
23 to one, I think it's a fallacy that they disappear.  
24 The building I use as touchstone is the DuPont Circle  
25 Building, the triangular building down there, south of

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1 DuPont Circle. I mean, that penthouse is really a cap  
2 to that building. It's a beautiful top and I would  
3 encourage people to be harsh critics of penthouses and  
4 assume that they will be seen even at one to one, but  
5 that they will be attractively built, not just in  
6 uniform materials as the Zoning Code says, but really  
7 developed architecturally at the same level as a crown  
8 to the building.

9 And if you have noted the building we're  
10 doing up the block here, 4<sup>th</sup> and Mass, if you see that  
11 penthouse from a distance, you will see that has been  
12 very carefully manicured to keep louvers under control  
13 and out of sight and all kind of -- all the little  
14 kind of acne that shows up on these. Keep that as  
15 pimple free as possible.

16 And this is the alley elevation. That  
17 will also be receiving a little bit more festivity,  
18 architectural festivity as will all this area here.  
19 You can see some of those showing up already.

20 And one thing I want to point out, that  
21 this area from this point up, this is the back of that  
22 single loaded corridor and from the submission we put  
23 in until now, we have actually added windows, so that  
24 doesn't look like a party wall. And one of the  
25 reasons we have gone to these two level units is for

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1 two reasons. If you have a single loaded corridor,  
2 that's obviously very inefficient. If you have a  
3 single loaded corridor that serves the lower level of  
4 a two story unit, then it's actually serving two  
5 levels of the building and it, in essence, has become  
6 a double loaded corridor.

7 But the other nice thing about that is  
8 that on the second floor, there is an apartment.  
9 There is a second bedroom that's over the corridor  
10 looking and getting south light. So when people look  
11 up at this building at night, they will actually see  
12 lights going on and off, not just uniform lights in a  
13 corridor the way you see in some buildings. It will  
14 actually feel inhabited, because it will be inhabited  
15 and people will gain the benefit of southern exposure,  
16 as well as northern exposure, sort of make it feel  
17 much more domestic, residential on the front of the  
18 building and not a party wall or a rear. You have a  
19 question?

20 CHAIRPERSON MILLER: Well, I just wanted  
21 to get my setting here. These are on the alley or  
22 these face an alley?

23 MR. ESOCOFF: Well, these actually face  
24 the back. They are at the back of the building and  
25 they face partly the alley and partly the court.

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1 CHAIRPERSON MILLER: And what's on the  
2 other side? Is there another building?

3 MR. ESOCOFF: There are low buildings here  
4 that haven't been renovated yet and they will stay  
5 low. They are in a 50 foot zone and they are  
6 historic, so it's all -- and contributing historic  
7 buildings.

8 CHAIRPERSON MILLER: So do these affect  
9 the light, I'm just curious, on those lower buildings?

10 MR. ESOCOFF: Well, no, they only come up  
11 -- no, because it's north of them.

12 CHAIRPERSON MILLER: Yes.

13 MR. ESOCOFF: And we have done shadow  
14 studies to show that.

15 CHAIRPERSON MILLER: Okay.

16 MR. ESOCOFF: The shadows fall,  
17 essentially, on the part of our building that is set  
18 back and on the roof of the adjoining building where it  
19 is to be built, but minimally affects any other  
20 properties and we did those at not the most  
21 advantageous times of the year either.

22 CHAIRPERSON MILLER: Shadow studies?

23 MR. ESOCOFF: We did shadow studies.

24 CHAIRPERSON MILLER: Right.

25 MR. ESOCOFF: For the community and they

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1 were satisfied with that, especially the people just  
2 north of us, because they would be the most  
3 potentially affected group. Next, please.

4 This is the elevation along the easement.

5 There is a 20 foot easement, which also impacts our  
6 property that runs north-south. I believe it's a  
7 replacement to an alley that used to extend north-  
8 south a little bit further west, and was moved or  
9 closed in order to effectuate the construction of  
10 Mount Vernon Plaza. So we have that in position.  
11 It's not just a pass-through. We really can't build  
12 on that at all, but it does afford us the  
13 opportunities for windows.

14 And then at the end you can see we're  
15 starting to develop more of an elevation that's meant  
16 to be seen from a distance, because it's an empty  
17 city-owned lot that comes off of 10<sup>th</sup> Street that we're  
18 trying to work with our owners, the owner of this  
19 project, and Quincy Court to develop more as a  
20 community amenity, more like a landscaped service lane  
21 since it's not a very buildable lot. We think that  
22 would be a nice improvement.

23 One of our agendas as architects in the  
24 city is to get the alley systems to look a little  
25 nicer, find opportunities to plant trees there and

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1 make them more central courts to the blocks as opposed  
2 to service alleys, because like the penthouses you  
3 think of them as ugly, they will become ugly. If you  
4 think of them as potentially attractive, quiet oases  
5 then they could become that, and the proof would be if  
6 you have the opportunity in the future to go see the  
7 project down where Woolly Mammoth is, we covered over  
8 the loading dock in the middle of that block and  
9 really, it's a central courtyard of that project.

10 BOARD MEMBER MANN: That's the area  
11 indicated in white on the lower drawing there?

12 MR. ESOCOFF: Yes.

13 BOARD MEMBER MANN: And it's city-owned?

14 MR. ESOCOFF: It's a city-owned lot.

15 BOARD MEMBER MANN: Is it a --

16 MR. ESOCOFF: Which the property is  
17 supposed to become a substitute for the alley that was  
18 closed, but never was.

19 BOARD MEMBER MANN: So it's not really a  
20 dedicated public alley, but it's just --

21 MR. ESOCOFF: No.

22 BOARD MEMBER MANN: I see.

23 MR. ESOCOFF: But we're trying to offer to  
24 adopt it and landscape it. This gray area just south  
25 of Mount Vernon Plaza is solid concrete and it's an

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1 easement like the one that runs north-south along our  
2 side and probably they are calling it their rear yard.

3 I don't know, but it's concrete and it's got all  
4 their transformer vaults under it. So the opportunity  
5 to landscape there is negligible, if at all. So we're  
6 hoping to soften that area in here and create this  
7 piece of our elevation as sort of an ending axis for  
8 that.

9 CHAIRPERSON MILLER: I'm sorry. Can you  
10 clarify for me what it is you said you would like to  
11 adopt to landscape?

12 MR. ESOCOFF: Oh, no, no, this is not part  
13 of this.

14 CHAIRPERSON MILLER: Is that city  
15 property? Is it easement? Oh, it's not part of this  
16 application?

17 MR. ESOCOFF: No, it's a good deed kind of  
18 thing. It's not part of this application.

19 CHAIRPERSON MILLER: But it's related to  
20 this building?

21 MR. ESOCOFF: I shouldn't have brought it  
22 up.

23 MR. ESOCOFF: No, I'm just saying that  
24 since that remains open, we're trying to make this  
25 into more of a figurative elevation that actually is

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1 meant to be seen as an axial element. That's all.  
2 I'll move on from there.

3 This shows the context. These are the low  
4 rise buildings that adjoin us to the west. Here is  
5 our site. It's empty, filled with parking now, and  
6 there is Mount Vernon Plaza and the high part is here.

7 These are the buildings across the street, some of  
8 their details.

9 And then we have some perspectives we  
10 created to show the setbacks. Do you want to turn the  
11 -- and these are what we presented to HPRB. This is a  
12 before view. There is Mount Vernon Plaza. There are  
13 the Bruce Blanche houses and you can see the setback  
14 here and our building coming up. Next.

15 And this is all within the zoning, except  
16 for those bays. Here's a view looking the other way  
17 and it's almost invisible, the new addition. Here's  
18 without it. And this is why we're concerned with what  
19 the rear portion of the setback wing looks like in  
20 this penthouse, because it will be seen going along 9<sup>th</sup>  
21 Street as a backdrop to these buildings in the same  
22 way that if you go to D Street now and the project  
23 down in Square 457D and 6<sup>th</sup> where Woolly's entrance is.

24 Those buildings are actually only 20 feet in front of  
25 the taller tower, but it's rendered architecturally

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1 such that they are very compatible.

2 So this is actually generally a 40. Well,  
3 this is more than a 40 foot setback. This is like 60  
4 feet back from here and, obviously, hundreds of feet  
5 back from these. So you're seeing a part of the city  
6 and you're seeing a taller building. A smaller one,  
7 but you're not seeing a party wall as though somebody  
8 will ever build anything there, because the zoning  
9 really won't allow it. Next.

10 MS. BAILEY: Mr. Glasgow, do we have those  
11 photographs in the file, sir?

12 MR. GLASGOW: We can make sure to submit  
13 those for the records. They are in the records of the  
14 Historic Preservation Review Board.

15 MR. ESOCOFF: Anyway, this was sort of a  
16 somewhat amusing way of looking at the site, because  
17 it almost goes back to this issue of sort of  
18 antiquated subdivisions where you are putting together  
19 properties that weren't meant to be, you know, weren't  
20 foreseen as ever being joined. So we have got a  
21 property here that is sort of squeezed in one  
22 direction and then squeezed in another direction by  
23 the easement, and then has the benefit, but also the  
24 impact of two alleys and an easement on its tail end  
25 there, and it has its long exposure going along where

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1 we have the 40 foot setback.

2 So were the property to be divided north-  
3 south, that 40 setback would have a lot less effect on  
4 that lot, were it to be a lot, and were this to be a  
5 lot, our court would be a conforming rear yard. So  
6 some of the issues that are raised are really issues  
7 that sort of present themselves today in the city that  
8 might not have 75 years ago when people were building  
9 smaller buildings on more discrete lots.

10 So the first thing we're asking a variance  
11 from, one of the things, is court width and what this  
12 illustrates is that the court is legal up to about 50  
13 feet. At that point, to be the right ratio, we would  
14 have to taper ourselves back. And as you can see we  
15 have got -- and from the plans, we have a double  
16 loaded corridor up to about the height of the setback  
17 and then we set back, we have to offset our corridor,  
18 which means we have to offset our plumbing.  
19 Everything changes. It always looks very simple in  
20 schematics and then in working drawings it's a total  
21 nightmare.

22 And you can only imagine what the  
23 Jefferson was like, because we have like one typical  
24 floor plan in 11 stories because of the townhouses we  
25 have to go in and around and between. This looked

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1 much simpler when we started, but we would have to  
2 offset our corridor on every single floor and at the  
3 end, our corridor would be servicing an apartment  
4 about twice the width of the corridor. And so that  
5 didn't seem to make much sense and, of course, we  
6 wouldn't be able to provide any recreational open  
7 space on the roof, as you can see from that plan  
8 diagram, because that yellow area would disappear and  
9 we would have very little left, let alone be able to  
10 bring up any kind of feasible stair. I mean, it  
11 becomes a nonsensical thing.

12           And as I said, it would, under certain  
13 circumstances this would, be a reasonable rear yard.  
14 It just happens that because of the way the property  
15 is configured, we have to measure it as a court, but I  
16 think it's providing adequate light and air and it's  
17 not denying any other property nearby any light and  
18 air. I guess next.

19           The Zoning Law we talked about, we're just  
20 trying to simply get that to be nudged another 5 feet  
21 really, so that the building can just be built  
22 straight up. That kind of impact along with all the  
23 others is just one of the things that's making for  
24 difficulty in the project. So while we're asking for  
25 a lot of things, they are all actually rather small in

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1 essence.

2 CHAIRPERSON MILLER: This one's kind of  
3 obvious.

4 MR. ESOCOFF: Yes.

5 CHAIRPERSON MILLER: I mean, where you see  
6 the green and the red. So I just want to ask a kind  
7 of basic question. If you couldn't use that green  
8 area, what would happen to it? It would just be  
9 vacant space?

10 MR. ESOCOFF: If we couldn't use the green  
11 area, it would stop at 50 feet, all the green area,  
12 just the last 5 feet.

13 CHAIRPERSON MILLER: Well, if you couldn't  
14 get the extra 5 feet.

15 MR. ESOCOFF: Well, it would be difficult  
16 to know quite what to do, because then it wouldn't be  
17 a conforming side yard. All of a sudden we would have  
18 to start making it rather large.

19 CHAIRPERSON MILLER: Oh, I see.

20 MR. ESOCOFF: Not just 5 feet.

21 CHAIRPERSON MILLER: You run into other  
22 nonconforming things.

23 MR. ESOCOFF: Yes.

24 CHAIRPERSON MILLER: Okay.

25 MR. ESOCOFF: You can't put a little hole

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1 in a balloon. If you have a hole in a balloon, you  
2 have no balloon, not a balloon with a hole. Did that  
3 make sense?

4 BOARD MEMBER ETHERLY: Maybe for next time  
5 you can draw a little balloon there.

6 MR. ESOCOFF: Right.

7 BOARD MEMBER ETHERLY: Just like you did  
8 with the other illustration.

9 MR. WILLIAMS: Could I just add one thing  
10 though on that point, and that is that there is  
11 another requirement in the DD that requires that a  
12 certain percentage, in this case 75 percent, of the  
13 frontage be developed within 4 feet. And if you begin  
14 to have a conforming side yard on one end and a  
15 conforming side yard on the other, which would be,  
16 approximately, 20 feet each, then you would have more  
17 than 25 percent of the total lineage in side yard use  
18 and you would not meet the 75 percent test. So that's  
19 just another hole that's gotten into the balloon.

20 MR. ESOCOFF: Yes. There's an old joke,  
21 but I'm going to pass on it. Never mind. These were  
22 some of the issues that we thought people would be  
23 concerned about, is how much of the building is seen.

24 I think the perspectives show that while you'll see  
25 the building, you might see one extra floor in this

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1 case then if we were to move the 5 feet or the 35 feet  
2 to begin with, and that's all this is illustrating,  
3 and the ANCs all saw this and thought it was fine. I  
4 don't know if you wanted any more explanation. And  
5 this is just a smaller version of it.

6 CHAIRPERSON MILLER: Well, let me just  
7 clarify. Are all these coming into the record for us  
8 to look at?

9 MR. ESOCOFF: These are actually --

10 CHAIRPERSON MILLER: They are in there?

11 MR. ESOCOFF: They're in there.

12 CHAIRPERSON MILLER: They're in our  
13 package?

14 MR. ESOCOFF: They are in your package.

15 CHAIRPERSON MILLER: Okay. Right, okay.

16 MR. ESOCOFF: Yes, some of these have been  
17 cleaned up a little bit graphically, but there is  
18 nothing essentially different, typeface and things  
19 like that. We thought we would show this one in  
20 context just to illustrate that, you know, these  
21 buildings, it isn't an area of small buildings with  
22 just this. It's actually an area of large buildings.  
23 We thought illustrating the cross section of the  
24 Convention Center would illustrate that about as well  
25 as anything could.

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1           Lot occupancy. One of the problems with  
2 setting the building back above the 60 feet is that  
3 that almost gives us all the required open space this  
4 zone requires, about 20 percent open space. So when  
5 the zoning was written for this site, I don't think it  
6 was taken into account that that same setback wouldn't  
7 coincide with the other open space requirement. So  
8 essentially, above 60 feet you have a site where you  
9 can only cover 60 percent of the site.

10           Yet, there was no reducing of FAR or  
11 anything to acknowledge the fact that it would be  
12 preposterous in a way. So we're just asking not to  
13 cover 100 percent of the site, but to go from 80 to 85  
14 percent, because in aggregate we would only be  
15 covering 73 percent of the site if you thought about  
16 how much we would cover at grade, which would be 85  
17 percent and up here on the upper level, where this  
18 provides almost another 20 percent, it's not really  
19 something that's used much, but I'm just trying to  
20 give sort of a more, I don't know, impression,  
21 impressionistic idea of what's happening here, which  
22 is that we're a site that has street access, 30 foot  
23 alleys and an easement.

24           And to provide then 80 percent lot  
25 occupancy on the lower level and then go to just about

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1 60 percent above has a practical impact of making a  
2 very tiny building that still has to have the same  
3 fire stairs and elevators and, in fact, it makes it  
4 very difficult to do a third fire stair even once we  
5 have set back.

6 We thought that was a small effect and  
7 that it doesn't really affect other property owners,  
8 because once again we're north of any other property  
9 that would be affected by this. We're essentially  
10 casting no shadow north, except onto us ourselves,  
11 plus we have a 30 foot alley for light and air around  
12 here and 20 feet on that side, and 50 foot high  
13 buildings here that are contributing historic  
14 buildings.

15 So we felt that was a reasonable request  
16 and it allows us to take the area that does remain  
17 double loaded above that setback and at least get that  
18 efficiency into the plan, so we pick up about 10 units  
19 by the equivalent of 10 units there while we're losing  
20 the equivalent of about 25 units along the front of  
21 the building. Next.

22 And of course, covering that also then  
23 means that we're asking to be relieved of the  
24 requirement for the rear yard in this portion of the  
25 building, because that's the same area. Next. It's

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1 hard to make this presentation in a linear way,  
2 because so many of these things are so tied into each  
3 other, so I apologize for any confusion.

4 This is the same, the rear yard issue,  
5 it's the 15 feet here and there. Next. That's fine  
6 unless you have any questions. And these were some of  
7 the shadow studies we did. We did them halfway. We  
8 didn't do the shortest day of the year, but we did  
9 halfway to the shortest day of the year and halfway to  
10 the longest day, so we didn't show the best or the  
11 worst case, but we didn't show the equinox and we  
12 didn't show sort of the sunniest day of the year when  
13 nobody gets any shadows and if they do, they are happy  
14 for it, and we did it around 3:30, and it shows that  
15 there is fairly minimal impact for any of our  
16 adjoining neighbors. We're throwing that additional  
17 shadow onto the corner of the intersection,  
18 essentially.

19 CHAIRPERSON MILLER: How do you do a  
20 shadow study?

21 MR. ESOCOFF: We put in the computer. We  
22 can tell the computer where the building is on the  
23 planet earth, and then we can tell it a day and a time  
24 and knowing what the three dimensional volume of our  
25 building is, it will actually generate those shadows.

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1 It used to be you had to open up a very arcane book  
2 and plot angles and think about how a shadow falls.  
3 It's complicated. It's the same way people used to be  
4 able to add and subtract by hand and now they have to  
5 use a calculator for 2 and 2. That was always much  
6 more difficult than that.

7 So this is May 4<sup>th</sup> and you can see we're  
8 throwing -- actually, the additional shadow is  
9 superimposed actually over the other shadows and falls  
10 in the middle of 9<sup>th</sup> Street. Next. That's it.

11 Are there any questions? I would be glad  
12 to answer any of them.

13 CHAIRPERSON MILLER: Does the Board have  
14 any questions?

15 MR. WILLIAMS: Members of the Board, my  
16 name is Lindsley Williams. I am joining this team as  
17 an expert in planning. I have prepared an analysis of  
18 the application and you are now receiving a copy of  
19 that report. There are very few new issues in this  
20 that you haven't already heard from both Mr. Glasgow's  
21 introduction, the prehearing materials and Phil's  
22 discussion of the case.

23 I want to set the context somewhat  
24 differently. You can look through the report. It  
25 contains some additional photographs that serve to

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1 emphasize the characteristic, the number of bays that  
2 are present in both the new and the old development  
3 surrounding the area and I will get to that in due  
4 course, but the context is as follows.

5 This case is set in the Shaw Historic  
6 District. It's set in the DD area of the zoning  
7 overlay, mostly DD/C-2-C with the application here  
8 being to increase the DD/C-2-C portion slightly by the  
9 35 and 40 foot for all the reasons that Phil has  
10 described.

11 What I want to say at the outset that you  
12 can look at Chapter 17 and you will become again  
13 familiar with the fact that DD allows certain  
14 densities as a matter-of-right, and then it provides  
15 incentives or bonuses and then takes off all  
16 restraints for certain type of development and this is  
17 one such development. It's a residential development  
18 and, essentially, there is no cap on FAR and the  
19 height is controlled exclusively by the Height Act of  
20 1910 and the offset rule to the setback rule that  
21 applies particularly to the south side of M Street.

22 But what I want you to understand here,  
23 and this is really critical here, is that the gross  
24 floor area that this project is succeeding in getting  
25 with the assistance of the Board and with the relief

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1 that is being sought allows the development to come up  
2 to the level of FAR that the underlying zone first  
3 states as being allowed in the first place, an FAR of  
4 about 8.

5 This is not something, if you look at the  
6 list of advertisements of the case, it's not something  
7 where we're taking from this and taking from that and  
8 puffing up the balloon so that it's ready to burst at  
9 the zoning limits. Instead, we're trying to explain  
10 to you the difficulties of the lot and to say let us  
11 be able to do the kinds of things that would  
12 ordinarily be allowed, but for the verbs that were  
13 introduced into the zoning lexicon by the diagram,  
14 bam, kapow and the others and another verb, which is  
15 the sucking sound, the requirement that requires the  
16 development to move up to the lot line, imposes yet  
17 another part of the factors that influence why this  
18 lot is just at the intersection of so many things that  
19 are in some degree of conflict with each other.

20 Here we are at the conflict resolution  
21 board explaining our case, which is in the drier terms  
22 of rear yard, courtyard width, how do you measure the  
23 width of a courtyard when it's irregularly shaped.  
24 All of those are the details that are in the legal  
25 analysis. They are in Mr. Esocoff's statement and in

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1 the diagrams and yes, they are in my report.

2 So to flip through the report, what I want  
3 you to see is that I have provided a degree of  
4 introduction. You know what the case is about. I  
5 have located the site. You know by now that it is  
6 located immediately west of the Convention Center.  
7 You see the massing of the Convention Center from the  
8 diagram. That anchors one end of the street massively  
9 comes to mind.

10 To the west of the site you will find the  
11 Potomac Plaza Apartment Building and if you would turn  
12 in my materials to Exhibit B, I want you to notice not  
13 just the bays of the row houses, but also the fire  
14 stair of the Potomac Plaza, which is perhaps the most  
15 prominent feature in the upper levels. This building  
16 was built before. This is Photo No. 1 in Exhibit B.  
17 This building was built, as I understand it, just  
18 before the DD regulations came into effect. I don't  
19 know what other issues they had to face, but this  
20 particular fire stair projects out probably within 5  
21 feet. Are you tracking with me?

22 CHAIRPERSON MILLER: Yes, I'm trying. I'm  
23 trying, but I don't see it. I'm sorry.

24 MR. WILLIAMS: The first page of Exhibit  
25 B, right. The fire stair is this blank wall that

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1 rises up and what you see down at the far end of the  
2 street is the Convention Center, so one of the things  
3 I want you to understand is that the 40 foot line is  
4 behind that fire stair measured from the street and,  
5 of course, the Convention Center shown later in the  
6 picture has no such reference at all.

7 How did the Convention Center get to be  
8 developed in a manner that was not utilizing the rules  
9 of the DD? The answer is it's in the central area.  
10 It's a District-owned building and District buildings  
11 in the central area are not bound by zoning. Rather,  
12 they go to Mr. Mann's organization for a review under  
13 their authorities in lieu of zoning.

14 So what we have is a project that is  
15 coming up, coming back up, with the variances and  
16 special exceptions that we're seeking to the level  
17 that was originally contemplated and in the DD Rules,  
18 and in my view, in a very summary fashion, it is a  
19 situation where each element of the relief that has  
20 been sought is absolutely and totally justified for  
21 reasons that they provided and that I have provided in  
22 a written form in more detail.

23 Now, I can go through each of those if you  
24 would wish. My sense is, with the way the day has  
25 gone, that you may have heard enough and that we can

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1 rest, at this point, on the record.

2 CHAIRPERSON MILLER: Yes, I don't think we  
3 can take the time for you to go through it, but I  
4 think we will go through it. But I just wanted to  
5 clarify. The document you just gave us, was that also  
6 in the application you submitted or is this something  
7 new for us to look at?

8 MR. GLASGOW: This is a summary of the  
9 testimony of the expert witness. Now, it is covered  
10 in this book, all of those points are covered in this  
11 book.

12 CHAIRPERSON MILLER: All the points are  
13 covered, but not in the exact same way?

14 MR. GLASGOW: I would say that it's really  
15 a distillation. This is a distillation of what's in  
16 the book.

17 CHAIRPERSON MILLER: Yes, okay.

18 MR. GLASGOW: As to how it is that we have  
19 met our burden of proof, which is what this is a  
20 longer version of.

21 CHAIRPERSON MILLER: Longer version,  
22 right. Okay. Do you have any other witnesses?

23 MR. GLASGOW: No.

24 CHAIRPERSON MILLER: Okay.

25 MR. GLASGOW: That was our last witness.

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1 CHAIRPERSON MILLER: Okay. Do we have any  
2 questions? Oh, I have just one, Mr. Glasgow. I just  
3 have to ask you this. You make a great statement. I  
4 mean, I think it makes a good point, but it sounds  
5 like it should have some authority following it, and I  
6 doubt there is one, but if there is I would like to  
7 hear it.

8 That was on page 10, you say "Moreover,  
9 both the interpretation of Zoning Regulations and the  
10 applicability of conflicting Zoning Regulations upon a  
11 particular site can also create an extraordinary or  
12 exceptional situation or condition on a site." I  
13 mean, that does seem to be the situation here and it  
14 does seem to make sense, but I'm just wondering if you  
15 have seen that anywhere.

16 MR. GLASGOW: Well, it ended up being in a  
17 summary order. It was in U Street. I was  
18 representing Donatelli and Klein and we had a  
19 situation where we had the front, what's it called,  
20 the Ellington Condominium Building. When we went to  
21 the Board on that and we had the street wall  
22 requirement, which required you to push up, but we  
23 also had a ground level requirement that did something  
24 with respect to how it forced us to be off of the  
25 street and we couldn't do both at the exact same time.

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1           On the east side of the site is like a  
2 restaurant and we were providing a court area in the  
3 restaurant for outdoor seating and it was something  
4 that was desired to be, you know, to have the festive  
5 atmosphere for U Street and whatever, and there were  
6 two regulations that just conflicted and the Board  
7 recognized that in proceeding with granting the relief  
8 in that case.

9           CHAIRPERSON MILLER: Okay. So this was a  
10 BZA decision?

11           MR. GLASGOW: Yes, it was a BZA decision.  
12 All right. And then also we had --

13           CHAIRPERSON MILLER: Could you tell me  
14 again just the name, a name for it?

15           MR. GLASGOW: Well, the applicant was  
16 Donatelli and Klein. It was in Square 236.

17           CHAIRPERSON MILLER: Okay.

18           MR. GLASGOW: And then also in the case  
19 for Desa Carte that we cite in our pleadings, that  
20 case, there was an interpretation of the regulations  
21 dealing with how you measure lot width and it was in a  
22 regularly shaped lot. And the Court of Appeals said  
23 that the interpretation of the regulations as it  
24 affected that particular piece of property was such  
25 that it, in and of itself, created a practical

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1 difficulty. It was a pipe stem lot case.

2 CHAIRPERSON MILLER: Right. I'm familiar  
3 with that case. Okay. Thank you.

4 MR. GLASGOW: All right. Sure.

5 CHAIRPERSON MILLER: Office of Planning?

6 MS. BROWN-ROBERTS: Good afternoon, Madam  
7 Chairman and Members of the Board. I am Maxine Brown-  
8 Roberts from the Office of Planning. I think I will  
9 just give a pretty brief summary also, because as you  
10 have seen in our recommendation, we recommended  
11 approval of both the special exceptions and the  
12 variances.

13 Regarding the special exceptions, we think  
14 that they have met the requirements of section 2514.2  
15 and also the requirements for the roof structure  
16 setbacks and multiple roof structures and the  
17 enclosures. Regarding the variances, we think that  
18 they have proved that the property is unique due to  
19 the shape of the lot, the easement and the split zone,  
20 and we think that they have worked through those  
21 problems in coming up with a pretty unique building.

22 Granting the special exception and the  
23 variances will not be detrimental to the Zoning  
24 Regulations or the Map and the Office of Planning  
25 recommends approval. Thank you.

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1 CHAIRPERSON MILLER: Thank you. Are there  
2 any questions from the Board? I assume you have a  
3 copy of the Office of Planning's report? And does the  
4 applicant have any questions of Office of Planning?  
5 Okay. Is anybody here from ANC-2C or 2F? Okay. So  
6 they won't have any questions. Are there any other  
7 Governmental entities here? Anybody here to testify  
8 in support or in opposition to this application?  
9 Okay. Then we can go to closing arguments.

10 MR. GLASGOW: I would just like to submit  
11 for the record that we have submitted materials in  
12 evidence to meet our burden of proof on this  
13 application and we have worked with the community and  
14 the Advisory Neighborhood Commissions and we would  
15 like to receive a decision today if we could. We have  
16 some constraints with respect to our construction  
17 timing and since there is no opposition, if we have  
18 met our burden of proof and the case being decided on  
19 the record, we think the record is complete for  
20 disposition.

21 CHAIRPERSON MILLER: We're just debating  
22 whether we want to decide it today or not. I mean, I  
23 think it's a pretty convincing case. However, on the  
24 one hand, we have something we haven't read yet from  
25 Mr. Williams though. I know that you say that it,

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1 basically, is a longer version of what we do have.  
2 And I just want to inquire about the constraints  
3 before we make our decision whether to issue a Bench  
4 decision. Otherwise, we would issue a decision no  
5 later than July 6<sup>th</sup>, but possibly earlier.

6 BOARD MEMBER ETHERLY: I'm fine, I'm fine.

7 Madam Chair, if I may, just for the benefit of my  
8 colleagues, I would be comfortable moving forward  
9 today. I agree with you. It will be a fairly complex  
10 motion to work through, but I think we're at a point  
11 with enough information and then, of course, the  
12 extensive discussion that has been undertaken with the  
13 ANC. I'm comfortable moving forward today and I think  
14 I would be willing to offer a motion or at least a  
15 framework for dealing with the motions to move us  
16 through a decision on this case today.

17 CHAIRPERSON MILLER: Okay. Well, given  
18 there is no opposition in this case then, I have a  
19 sense of where the Board is going and you're willing  
20 to undertake trying to articulate all these variances  
21 and special exceptions, then we'll go forward with our  
22 decision.

23 BOARD MEMBER ETHERLY: Before I make the  
24 motion, let me just give my colleagues a sense of what  
25 I'm thinking of here. I think just from a procedural

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1 standpoint, perhaps the first critical step really has  
2 to do with 2514.2, the one variance and the one  
3 special exception separately, because literally if you  
4 don't get through those two first, then you can't go  
5 to the rest of the pieces.

6 So what I would suggest as a starting  
7 point is dealing with 2514.2 under the special  
8 exception, then dealing with the variance under 2514.2  
9 and then I would probably suggest dealing with the,  
10 you know, take your pick, but I would then probably  
11 suggest just moving the remaining special exceptions  
12 separately, but together and then moving the remaining  
13 variances together in a separate motion.

14 So basically, what that boils down to,  
15 what I would be suggesting is four motions. One that  
16 deals with one special exception under 2514.2, one to  
17 deal with the variance under 2514.2, and then dealing  
18 with all of the remaining variances together in one  
19 motion of approval and then all of the remaining  
20 special exceptions together.

21 BOARD MEMBER MANN: The sitting Madam  
22 Chairman this week probably has a better idea than I  
23 do, but is it really necessary to divide everything  
24 into so many different motions?

25 BOARD MEMBER ETHERLY: I would be

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1 comfortable simply moving them en banc and just making  
2 the motion singly, you know, for purposes of the  
3 discussion. The case is so interwoven that as you're  
4 talking about both the variances and the special  
5 exceptions, you're going to be relying on the same key  
6 factors here. So I'm comfortable moving it all en  
7 banc, you know, and not perhaps getting too finessesy,  
8 shall we say, with it. So I'm comfortable with that.

9 BOARD MEMBER MANN: Well, as far as I can  
10 tell, there is not a whole lot to finesse, is there?

11 BOARD MEMBER ETHERLY: Well, I was just  
12 perhaps being a little slavish to the procedure in my  
13 thinking here.

14 BOARD MEMBER MANN: But, I mean, if you  
15 think it's necessary then --

16 BOARD MEMBER ETHERLY: I'm fine, I'm fine.  
17 Well, let me do it this way and then we can have it  
18 in discussion.

19 Madam Chair, it would be my motion to  
20 approve Application No. 17167 of the Welch Family  
21 Limited Partnership Sixteen, on behalf of FCD-  
22 Development LLC, pursuant to 11 DCMR section 3104.1  
23 and 3103.2, for a special exception from the roof  
24 structure requirements, a special exception and  
25 variance to extend the DD/C-2-C Zoning Regs by 40 feet

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1 onto the portion of the premises zoned C-2-A under  
2 2514.2, and for variances from the width of court  
3 requirements, the building setback requirement, the  
4 lot occupancy requirements and the rear yard  
5 requirements to permit the development of an apartment  
6 house at 910 M Street, N.W., and would invite a  
7 second.

8 BOARD MEMBER MANN: Second.

9 BOARD MEMBER ETHERLY: Thank you very  
10 much. I think a case has been more than adequately  
11 made with regard to the grounds for the variance  
12 relief and the special exception relief. I will just  
13 reference in relevant part that, essentially, what  
14 we're talking about here under both the special  
15 exception consideration and the variance consideration  
16 in terms of the context of this building in the  
17 applicant's submission running from page 2, and I'm  
18 talking about the submission, the statement of the  
19 applicant. As you run from page 2 through page 5 of  
20 that submission, the applicant does well to break,  
21 essentially, some of the key constraints down to six  
22 key areas.

23 Clearly, we have talked about, I think,  
24 the constraints that are created by the L shape of  
25 this particular property, but when you combine that

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1 with a second key characteristic, which is one, the  
2 preexisting 20 foot access easement that you cannot  
3 construct on to the west side of the site, and the two  
4 existing 30 foot public alleys followed by the  
5 constraints of the DDD overlay, the street wall that  
6 we talked about and, finally, the split zoning, I  
7 think clearly you're looking at satisfactory grounds  
8 that speak to both the special exception and the  
9 variances as it relates to the unusual nature of this  
10 property. One from a size and shape standpoint  
11 combined with the practical difficulties that would, I  
12 think, ensue if you adhere strictly to the  
13 requirements of the DDD overlay, including the height  
14 and depth issues and also the street wall  
15 ramifications.

16           Clearly, I think there will be some  
17 practical difficulties here towards making full and  
18 complete use of this project and doing it in such a  
19 way that maintains the consistency of the aesthetic of  
20 the immediate neighborhood that we're talking about  
21 which, of course, is the Historic Shaw District.

22           I think the case has been made that in  
23 terms of the variances, we are not seeing any  
24 substantial detriment to the public good but, in fact,  
25 are seeing the proposal of a project that I think

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1 remains very true to the spirit of the Zoning  
2 Regulations.

3           And I will note with interest the  
4 discussion or the point that was raised by the  
5 architectural witness as it related to the treatment  
6 of the penthouses. I think that was, indeed, a very  
7 interesting, if not novel, approach to dealing with  
8 penthouses and offers some interesting thought as we  
9 continue to grapple with penthouses in this setback  
10 requirement. And as was offered by the witness,  
11 perhaps that fallacy of the setback ensuring that  
12 penthouses would not be viewed, but I don't want to  
13 get too far afield here, but I think that's a very  
14 interesting approach and one that is much appreciated  
15 in terms of trying to give some articulation to the  
16 penthouses that acknowledges their visual impact to  
17 the overall project.

18           But then I will note, once again, on the  
19 grounds of the substantial detriment to the public  
20 good, no substantial detriment to the public good I  
21 should say. Clearly, the efforts to articulate that  
22 rear side and give more of a consistent finish to a  
23 side of the -- that alley side of the project, if I'm  
24 not mistaken, also I think is greatly appreciated and  
25 helps to speak to this project not impairing the

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1 intent, integrity and purpose of the Zone Plan with  
2 regard to the variances.

3 With regard to the special exception, I  
4 think the Office of Planning's report, which I will  
5 note for a very complex application was very well  
6 done, because it helped to really break this  
7 application up and give me a framework to work with.

8 With regard to the special exceptions  
9 here, I think, clearly, once again, many of the same  
10 characteristics that I referenced with regard to the  
11 variances here, I think clearly we're seeing, once  
12 again, a uniqueness to the property that creates some  
13 significant consequences that this applicant would be  
14 hard pressed to resolve in a way that did not result  
15 in a building that would -- I mean, I would be hard  
16 pressed to describe what it would look like  
17 architecturally if you had to deal with all of the  
18 requirements of this particular site.

19 And then the absence of any adverse  
20 effect, once again, because of the efforts that are  
21 being made with the penthouse setback and with that  
22 alley portion of the building, I think, speak very  
23 strongly to eliminating any adverse impacts upon the  
24 present character. In fact, I think it preserves the  
25 present character and future development of the

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1 neighborhood by taking us in a direction, taking this  
2 application in a direction that remains true to the  
3 spirit.

4 So that's a very long and winding road  
5 towards saying that I think the grounds for both the  
6 special exceptions and the variances in their entirety  
7 have been met more than satisfactorily here.

8 CHAIRPERSON MILLER: Well,  
9 congratulations. You did a really excellent job at  
10 summarizing that. I would just like to add that  
11 specifically with respect to the variance test that  
12 this building, this property, certainly meets the  
13 uniqueness and excuse me if I say something you have  
14 already said, but it does have an unusual shape and it  
15 has a 20 foot wide easement, and it's subject to  
16 various regulations that, I think this is the  
17 strongest point for me, is that in complying with one  
18 set of regulations, it would violate another set of  
19 regulations and, therefore, that creates a practical  
20 difficulty for there to be anything built, well,  
21 something for a residence, in any event, built at this  
22 site, and that it certainly is in the public interest  
23 to have housing in this area.

24 It's in accordance with the Comprehensive  
25 Plan and there is no detriment to the public. ANC-2C

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1 and ANC-2F both support the application. It's in ANC-  
2 2C and it abuts ANC-2F. OP is in support of the  
3 application and we give great weight to both the ANC  
4 and Office of Planning. And HPRB has already looked  
5 at this with respect to density and massing, and they  
6 have no problem with it.

7 So I think there is a lot more we could  
8 say if we went through each one individually, but oh,  
9 also, with respect to the special exception test about  
10 not adversely affecting light and air, this applicant  
11 has gone to the extent of doing a shadow plan showing  
12 that it won't and has shared that with the ANC, and  
13 the ANC is also satisfied with that. So for those  
14 reasons, I would support the motion.

15 Does anybody else have any comments?

16 BOARD MEMBER MANN: No.

17 CHAIRPERSON MILLER: Okay. Then why don't  
18 we call the vote on this? All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those opposed?  
21 All those abstaining?

22 MS. BAILEY: The Board has voted 3-0-2 to  
23 approve the application. The motion was made by Mr.  
24 Etherly, seconded by Mr. Mann. Mrs. Miller is in  
25 support. A Zoning Commission member and Mr. Griffis

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1 are not here today.

2 CHAIRPERSON MILLER: And would you like a  
3 summary order on this?

4 MR. GLASGOW: Yes, please.

5 CHAIRPERSON MILLER: Okay. Since there is  
6 no opposition in this case, we'll do a summary order.

7 MS. BAILEY: Summary order and a few items  
8 that were not in the file, we ask that Mr. Glasgow  
9 provide that to us.

10 Mr. Glasgow, do we have your witness  
11 cards, sir, your witness cards? Do we have them? He  
12 said he doesn't have them.

13 CHAIRPERSON MILLER: Did you say  
14 something?

15 MS. BAILEY: Madam, just that there are  
16 some people here for the afternoon.

17 CHAIRPERSON MILLER: Okay. The Board got  
18 started late today, unfortunately, because of a delay  
19 in the Metro. So we need to take a lunch break, so I  
20 think that we will reconvene at 2:00.

21 (Whereupon, the hearing was recessed at  
22 1:31 p.m to reconvene at 2:08 p.m. this same day.)

23

24

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

2 2:08 p.m.

3 CHAIRPERSON MILLER: This hearing will,  
4 please, come to order. This is the June 15<sup>th</sup> Public  
5 Hearing of the Board of Zoning Adjustment of the  
6 District of Columbia. My name is Ruthanne Miller. I  
7 am the Vice Chair of the Board of Zoning Adjustment.  
8 The Chair, Mr. Geoffrey Griffis, is out of town, so I  
9 will be presiding over the hearing along with my  
10 colleague to my right, Mr. Curtis Etherly and my  
11 colleague to my left, Mr. John Mann from NCPD. Also  
12 with us is Mr. John Parsons from the Zoning Commission  
13 and Janice Skipper from the Office of Attorney General  
14 and Cliff Moy with Staff and Beverley Bailey with  
15 staff.

16 Copies of today's hearing agenda are  
17 available to you and are located to my left in the  
18 wall near the front door. Please, be advised that  
19 this proceeding is being recorded by a court reporter  
20 and is also webcast live. Accordingly, we must ask  
21 you to refrain from any disruptive noises or actions  
22 in the hearing room. When presenting information to  
23 the Board, please, turn on and speak into the  
24 microphone, first, stating your name and home address.

25 When you are finished speaking, please, turn your

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1 microphone off so that your microphone is no longer  
2 picking up sound or background noise.

3 All persons planning to testify either in  
4 favor or in opposition are to fill out two witness  
5 cards. These cards are located to my left on the  
6 table near the door and on the witness tables. Upon  
7 coming forward to speak to the Board, please, give  
8 both cards to the reporter sitting to my right.

9 The order of procedure for special  
10 exceptions and variances is: (1) Statement and  
11 witnesses of the applicant; (2) Government reports,  
12 including Office of Planning, Department of Public  
13 Works, etcetera; (3) Report of the Advisory  
14 Neighborhood Commission; (4) Parties or persons in  
15 support; (5) Parties or persons in opposition; (6)  
16 Closing remarks by the applicant.

17 Pursuant to Sections 3117.4 and 3117.5,  
18 the following time constraints will be maintained.  
19 The applicant, appellant, persons and parties, except  
20 an ANC in support, including witnesses 60 minutes  
21 collectively. Appellees, persons and parties, except  
22 an ANC in opposition, including witnesses, 60 minutes  
23 collectively. Individuals three minutes. These time  
24 constraints do not include cross examination and/or  
25 questions from the Board.

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1                   Cross examination of witnesses is  
2 permitted by the applicant or parties. The ANC within  
3 which the property is located is automatically a party  
4 in a special exception or variance case. Nothing  
5 prohibits the Board from placing reasonable  
6 restrictions on cross examination, including time  
7 limits and limitations on the scope of cross  
8 examination.

9                   The record will be closed at the  
10 conclusion of each case, except for any materials  
11 specifically requested by the Board. The Board and  
12 the Staff will specify at the end of the hearing  
13 exactly what is expected and the date when the persons  
14 must submit the evidence to the Office of Zoning.  
15 After the record is closed, no other information will  
16 be accepted by the Board.

17                   The Sunshine Act requires that the Public  
18 Hearing on each case be held in the open before the  
19 public. The Board may consistent with its Rules of  
20 Procedure and the Sunshine Act enter executive session  
21 during or after the public hearing on a case for  
22 purposes of reviewing the record or deliberating on  
23 the case. The decision of the Board in these  
24 contested cases must be based exclusively on the  
25 public record. To avoid any appearance to the

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1 contrary, the Board requests that persons present not  
2 engage the Members of the Board in conversation.

3 Please, turn off all beepers and cell  
4 phones, at this time, so not to disrupt these  
5 proceedings. The Board will now consider any  
6 preliminary matters. Preliminary matters are those  
7 which relate to whether a case will or should be heard  
8 today, such as requests for postponement, continuance  
9 or withdrawal or whether proper and adequate notice of  
10 the hearing has been given. If you are not prepared  
11 to go forward with the case today or if you believe  
12 that the Board should not proceed, now is the time to  
13 raise such a matter.

14 Does the Staff have any preliminary  
15 matters?

16 MS. BAILEY: Madam Chair, good afternoon,  
17 also to the Members of the Board. Staff does not have  
18 any, Madam Chair.

19 CHAIRPERSON MILLER: Thank you. Would all  
20 individuals wishing to testify today, please, rise to  
21 take the oath? Ms. Bailey, would you, please,  
22 administer the oath?

23 MS. BAILEY: Sure.

24 (Whereupon, the witnesses were sworn.)

25 MS. BAILEY: Thank you.

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1 CHAIRPERSON MILLER: Okay. I believe  
2 where we left off in this case Mr. Keys was cross  
3 examining Mr. Moore from the Office of Planning. Is  
4 Mr. Moore here?

5 MS. BAILEY: Mr. Keys, just before --  
6 Madam Chair, may I just say that this is Application  
7 No. 17163.

8 CHAIRPERSON MILLER: Oh, I'm sorry.

9 MS. BAILEY: Of Amazing Life Games Pre-  
10 School, Inc. Thanks, Mr. Keys.

11 CHAIRPERSON MILLER: Thank you, Ms.  
12 Bailey. Mr. Keys, before we start with the cross  
13 examination, I know that the Board had requested that  
14 you submit a head of time to the Board and the parties  
15 the documents that you wanted to refer to in your  
16 cross examination of Mr. Moore. The Board did get the  
17 copies. Did the parties also get copies?

18 MR. KEYS: Yes, I mailed copies to both  
19 Farragut Street Block Club and ANC-4C.

20 CHAIRPERSON MILLER: Okay. And I just  
21 want to make a few comments about the documents before  
22 you proceed. One is they can be categorized into  
23 groups and one set, our BZA decisions, and you don't  
24 need to submit those into evidence. They are public  
25 record for everyone. Everyone can access those on the

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1 Internet or get them from the Office of Zoning.

2 I think if you can submit into evidence  
3 the census data, I just want to also say to, you are  
4 an attorney, I know, and also to say to the public  
5 though that with respect to cross examination, I  
6 expect that you won't be grilling Mr. Moore on the  
7 substance of the documents, but I would expect that  
8 you would be asking him if he is familiar with them or  
9 did he look at them when he did his report, questions  
10 to that effect. Is that correct?

11 MR. KEYS: That's correct.

12 CHAIRPERSON MILLER: Okay. And then the  
13 last document that I wanted to refer to deals with  
14 some parking observations. And from what I can tell,  
15 it is hard to tell on the face of that, you know, who  
16 made those observations, when they were made. There  
17 doesn't seem to be a foundation for them. And that  
18 would seem to belong in your rebuttal case perhaps. I  
19 would think you would need your own witness to  
20 authenticate that document.

21 MR. KEYS: Oh, yes, Madam Chair, I have  
22 asked the witness who made the observations and took  
23 the photographs to come today.

24 CHAIRPERSON MILLER: Okay.

25 MR. KEYS: For that purpose.

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1 CHAIRPERSON MILLER: So we'll see that in  
2 your rebuttal, I guess?

3 MR. KEYS: Yes.

4 CHAIRPERSON MILLER: Okay. Thank you.  
5 Then you may proceed.

6 MR. KEYS: Thank you.

7 CROSS EXAMINATION

8 MR. KEYS: Good afternoon, Mr. Moore. Mr.  
9 Moore, I just wanted to return briefly to your  
10 testimony last week, and you indicated that you were  
11 present at the site on two occasions, on a Monday  
12 around noon and on Friday around 2:30 in the  
13 afternoon. Is that correct?

14 MR. MOORE: That is correct.

15 MR. KEYS: How long did you stay at the  
16 site?

17 MR. MOORE: Approximately, 45 minutes to  
18 an hour on Monday and about a half hour on Friday.

19 MR. KEYS: You were not in the Farragut  
20 Street area in the morning between the hours of 8:30  
21 to 9:30 were you?

22 MR. MOORE: I thought this was about my  
23 testimony. I didn't testify I was there at that time.

24 MR. KEYS: Your report doesn't make any  
25 reference to what you saw with respect to traffic or

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1 parking on the times you were there, does it, Mr.  
2 Moore?

3 MR. MOORE: As I stated in the OP report  
4 and I am redundantly restating now, traffic and  
5 parking are issues that we leave to the Department of  
6 Transportation. The Office of Planning simply made  
7 the notation that there seemed to be some impact.  
8 There will be impact by bringing in 24 new kids into  
9 the neighborhood.

10 MR. KEYS: So you made no parking counts  
11 on Farragut Street and you made no observations of  
12 traffic flow on Farragut Street? Is that correct?

13 MR. MOORE: I just told you what I made  
14 notations to.

15 MR. KEYS: Mr. Moore, if you made no  
16 observations, what did you base your conclusion on  
17 that there would be a negative impact on competition  
18 for parking?

19 MR. MOORE: Madam Chair, it is not the  
20 Office of Planning's responsibility to make this case  
21 for the applicant. After having said that, what is in  
22 the OP report is that there are restrictions on  
23 Tuesday and Wednesday mornings when the area is being  
24 cleaned by Public Space, and that there is a  
25 restriction on parking in front of West Elementary

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1 School, because the school is there, and at those  
2 times if you bring in an impact of additional traffic  
3 onto the community, given that the parking areas are  
4 restricted, there could be possible conflict.

5 MR. KEYS: What do you base your  
6 conclusion that there would be an adverse impact due  
7 to traffic?

8 MR. MOORE: I think I just stated that.

9 MR. KEYS: Mr. Moore, I'm reading from  
10 your report. "OP believes the proposed use will have  
11 an adverse impact on neighboring property due to  
12 noise, traffic and parking." What I'm asking you is--

13 MR. MOORE: As I just explained, because  
14 of the permanent restrictions of the area in front of  
15 the school where you can't park and when you can't  
16 park when the streets are being swept on Tuesday and  
17 Wednesday morning, people on the block have a  
18 restricted amount of space to park on. When you bring  
19 on additional cars, there has to be some impact.

20 MR. KEYS: Okay. What did you base your  
21 conclusion about the negative impact of noise with  
22 respect to this application?

23 MR. MOORE: How many times must I answer  
24 the same question?

25 CHAIRPERSON MILLER: I think that's a

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1 reasonable question. Is it in your report?

2 MR. MOORE: What is in my report and the  
3 conclusions drawn I have now expressed two times how I  
4 reached those conclusions. A reduced area of parking  
5 on the public space as a result of the two times the  
6 area is being swept and the restricted area on the  
7 north side of the block in the area of West Elementary  
8 School mean that there is fewer spaces on the block  
9 for anyone. When you impact that now by bringing in  
10 additional cars from another area, that restriction  
11 becomes even greater.

12 CHAIRPERSON MILLER: If I can just  
13 interfere here just a little bit. With respect to  
14 noise, do you mean noise from traffic?

15 MR. MOORE: Traffic only, yes.

16 CHAIRPERSON MILLER: From traffic. Okay.

17 MR. KEYS: Mr. Moore, the census data that  
18 you relied on in your report is from the 2000 Census.  
19 Is that correct?

20 MR. MOORE: That's why it's called census  
21 data.

22 MR. KEYS: The data is from the 2000  
23 Census. Is that correct?

24 MR. MOORE: Yes.

25 MR. KEYS: Do you know how many children

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1 reside in Census Tract 20.01 today?

2 MR. MOORE: Yes, I do.

3 MR. KEYS: How many and what do you base  
4 that on?

5 MR. MOORE: You start off asking me for  
6 census data and then you ask me what I base it on?

7 MR. KEYS: No, Mr. Moore, the data that  
8 you relied on is from the 2000 Census. The school  
9 year that will be applicable for this applicant is  
10 2005. The relevant ages that we are speaking about in  
11 this application are from ages 2 and 1/2 to 4 and 1/2.

12 None of the children referenced in the 2000 Census  
13 are in that age category today or a year from now when  
14 the school might open. I'm asking you if you know how  
15 many children reside in that Census Tract currently?  
16 If you don't know, say you don't know.

17 MR. MOORE: So you're asking how many  
18 children reside in there or how many children with a  
19 certain age reside there?

20 MR. KEYS: Children in the age category  
21 that is relevant to this application.

22 CHAIRPERSON MILLER: Why don't you give  
23 him the ages.

24 MR. KEYS: 2 and 1/2 to 4 and 1/2.

25 MR. MOORE: According to the 2000 Census,

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1 there are 206 children in the Census Tract 2000.1  
2 between the ages of 0 and 5 years of age.

3 MR. KEYS: Thank you. Mr. Moore, you have  
4 no --

5 MR. MOORE: If I may answer the question?

6 CHAIRPERSON MILLER: Yes.

7 MR. MOORE: 2002 is made up of four  
8 different block groups. Okay. In the block group  
9 that this subject facility is in, according to the  
10 2000 Census, there are 32 children. The 206 reflect  
11 the entire four block groups.

12 CHAIRPERSON MILLER: All right. Mr.  
13 Moore, I just want to understand this. Okay. The  
14 block --

15 MR. MOORE: I'll make it easy for you.

16 CHAIRPERSON MILLER: I mean, did you say  
17 it is a four block radius?

18 MR. MOORE: No.

19 CHAIRPERSON MILLER: That there are 32  
20 kids in or there are 32 children in how many --

21 MR. MOORE: I said there are four block  
22 groups. This is one block group within that Census  
23 Tract. This is a second block group that's within the  
24 Census Tract. This is the third one and this is the  
25 fourth one. The block group pertaining to this

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1 application, block group four, has 32 children. So  
2 it's not 206 in that block group. It's 206 in that  
3 2000 Census Tract.

4 CHAIRPERSON MILLER: But can you tell us  
5 does a block represent a certain radius of streets?

6 MR. MOORE: It varies. In this particular  
7 case, it represents an area that is a quarter of a  
8 mile in diameter and it's four square blocks.

9 CHAIRPERSON MILLER: Okay. Thank you.

10 MR. MOORE: Four, I think it is already on  
11 the record.

12 MR. KEYS: Mr. Moore, you have no  
13 information more current than the 2000 Census. Is  
14 that true?

15 MR. MOORE: There is no information more  
16 current than the 2000 Census.

17 MR. KEYS: Thank you. Mr. Moore, you made  
18 reference to information you received or were going to  
19 receive from the Metropolitan Police Department. Did  
20 you receive anything?

21 MR. MOORE: Madam Chair and Members of the  
22 Board, as I mentioned at last week's hearing, I had  
23 Ward 5 statistics from the police department. And I  
24 said I had requested specific data. I did not receive  
25 it yet, but there is a letter that I have sent to them

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1 to say that I did request that information. As of  
2 1:00, I didn't have it.

3 MR. KEYS: Madam Chair, I have no further  
4 questions for Mr. Moore.

5 CHAIRPERSON MILLER: Okay. Thank you.  
6 Does the Board have any questions? Okay. Does the  
7 ANC have any questions of the Office of Planning? Is  
8 anyone here from the ANC? Yes, okay. Do you have any  
9 questions?

10 MS. MITCHELL: No, I don't.

11 CHAIRPERSON MILLER: Okay. Then that  
12 concludes the Office of Planning. Next, we go to --  
13 I'm sorry.

14 MR. MORROW: Charles Morrow representing  
15 the 1300 Block of Farragut Street Block Club. I just  
16 wondered if you could expound a little bit on the  
17 width of the alley that was proposed to be utilized  
18 and what, in your opinion, would occur if a car was  
19 driving down that alley at the same time that maybe 24  
20 kids were being escorted to Hamilton Playground.

21 MR. MOORE: That would be mostly  
22 impossible. The alley is 10 feet in width. And on  
23 the Monday when I visited the site there were two cars  
24 parked in the alley. One at the corner -- I mean, the  
25 alley entrance at Gallatin and a second D.C.

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1 Government vehicle actually on the other side of the  
2 alley closer to Hamilton. As a matter of fact, the  
3 D.C. Government vehicle was exceeding the speed limit  
4 and I did caution him about that. But with the alley  
5 only being 10 feet in width, it's virtually impossible  
6 to have a lot of kids go through at the same time,  
7 unless one were to acquiesce to the other.

8 CHAIRPERSON MILLER: Great.

9 MR. MORROW: In your opinion, if that was  
10 -- let's say for the sake of discussion, that a car  
11 would enter the alley at the same time, in your  
12 opinion, would that create, and kids were being  
13 transported, an unsafe traffic condition?

14 MR. MOORE: In my layman opinion, I leave  
15 that kind of information to the experts, the Traffic  
16 Department.

17 MR. MORROW: Okay. Thank you.

18 CHAIRPERSON MILLER: Okay. We're finished  
19 with Office of Planning, I believe. Okay. Would the  
20 ANC like to come forward? I'm sorry.

21 MR. KEYS: Madam Chair, Mr. Bah from the  
22 Department of Transportation is here.

23 CHAIRPERSON MILLER: He is here?

24 MR. KEYS: He is here.

25 CHAIRPERSON MILLER: Oh, please, come

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1 forward. Thank you. Good afternoon. You're Mr. Bah?

2 MR. BAH: Abdoulaye Bah.

3 CHAIRPERSON MILLER: Is your microphone  
4 on? Okay.

5 MR. BAH: Yes. Yes, my name is Abdoulaye  
6 Bah from DDOT.

7 CHAIRPERSON MILLER: Okay.

8 MR. BAH: Running administration. We have  
9 submit our comment on this case. If you want me to  
10 read it or summarize it?

11 CHAIRPERSON MILLER: Yes, don't read it.  
12 You could summarize it with respect to traffic impacts  
13 and parking.

14 MR. BAH: Yes, madam.

15 CHAIRPERSON MILLER: Okay.

16 MR. BAH: We have some observation. I  
17 have if that is necessary. At least three times and  
18 one of the time we even met with the director of the  
19 school, I believe. Based on our observation, you have  
20 parking on both side of Farragut Place during, I  
21 think, we're saying the school is operating from 8:30  
22 to 6:00 p.m. However, on Tuesday you cannot park on  
23 the north side adjacent to the site from 9:30 to 11:30  
24 due to cleaning of the street during those hours.

25 On Wednesday it's on the opposite side on

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1 the south side, the same thing. But if not, we found  
2 some parking are available. Some parking I would  
3 qualify some during our three visits. The other thing  
4 we have considered also is how many car will be  
5 generated by the proposal. In our estimate during the  
6 morning drop-off, approximately, 20 to 22 cars will be  
7 generated by the proposal. During the afternoon, 13  
8 vehicles, because it's staggered hours, so that's our  
9 finding for this.

10 And if you want me to conclude to the  
11 extent that there will be no off-site facility for  
12 drop-off and pick-up, there is a potential for car  
13 cruising around the block in search of car parking or  
14 at worst double parked to drop-off and pick-up and  
15 could create unsafe condition for the children. So  
16 this proposal may create some problems for the  
17 neighboring community.

18 CHAIRPERSON MILLER: During what times did  
19 you observe the parking?

20 MR. BAH: Parking, parking, yes, I have.  
21 I hope I have that, yes. Nope. If it didn't lose it,  
22 but from 8:30 to 9:30 or 9:40 or 10:00 probably.

23 CHAIRPERSON MILLER: On all three  
24 occasions?

25 MR. BAH: Yes. Our fieldtrip Friday, May

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1 21<sup>st</sup>, from 8:30 to 9:30, Monday the 24<sup>th</sup> from 1:00 to  
2 2:00 p.m., June 15<sup>th</sup>, which is today, I was there also  
3 from 8:45 to 9:40.

4 CHAIRPERSON MILLER: So you were there  
5 today when there was a parking restriction due to  
6 cleaning on one side, right?

7 MR. BAH: Yes.

8 CHAIRPERSON MILLER: And they haven't  
9 started their school yet, but did you observe any  
10 problems with parking today?

11 MR. BAH: Well, there was a few car  
12 parking, yes.

13 CHAIRPERSON MILLER: I mean, were any cars  
14 cruising around the neighborhood because they couldn't  
15 find a parking spot?

16 MR. BAH: No, I'm talking the future  
17 conditions.

18 CHAIRPERSON MILLER: I know, right.

19 MR. BAH: I'm not talking -- I didn't see  
20 many cars there.

21 CHAIRPERSON MILLER: Right. Okay. So we  
22 know, basically, it looks like this is a fairly quiet  
23 street with a lot of spaces right now, except on  
24 Tuesdays and Wednesdays.

25 MR. BAH: Right.

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1 CHAIRPERSON MILLER: Due to cleaning.

2 MR. BAH: That's clear, yes.

3 CHAIRPERSON MILLER: One second. When do  
4 you determine that it's a problem? I mean, is it if  
5 any cars are cruising? If five cars are cruising in a  
6 half an hour? You know, how do you judge whether  
7 there is a problem?

8 MR. BAH: Right, that's a good question.  
9 Depending if you leave there, one or two car will be a  
10 problem, right. It depend on how you perceive it.  
11 You know, you have a lot of perception. You don't  
12 have much traffic on that same part of Farragut Place  
13 from 13<sup>th</sup> to 14<sup>th</sup> while I was there. I have noticed  
14 many car coming there. What we're saying here is  
15 condition may be created when parent comes, if you  
16 don't have any parking available during that period,  
17 they will have to circulate.

18 CHAIRPERSON MILLER: Did you look at the  
19 neighboring streets to see if they had a lot of  
20 parking on those streets?

21 MR. BAH: Yes, I saw which one, Hamilton,  
22 yes. I notice in that area you have some parking.  
23 The simple fact they don't have RPP. They don't see  
24 the need to restrict parking, so you have some  
25 parking.

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1 CHAIRPERSON MILLER: So I don't know  
2 whether DDOT has a standard or not or whether it's  
3 just something subjective that, you know, if you've  
4 had this peace and quiet and then all of a sudden  
5 there are some more cars circulating that that's an  
6 adverse impact.

7 MR. BAH: Well, we don't have criteria to  
8 do that. What we saying here, let me, you know, I  
9 have to be very careful here. We don't have a  
10 standard of determining that, because we don't have  
11 100 vehicles during the a.m. for drop-off or pick-up.  
12 We have at the most 22 vehicles. So in our standard,  
13 22 vehicles could not qualify for saying so many  
14 vehicles during one hour. But if you -- very smart  
15 kids, if you come, you don't have a parking, unless  
16 you double park, which is an unacceptable condition,  
17 and you may create safety for these kids or else you  
18 can circulate.

19 I have small kids. I know this is a  
20 problem. They can, you know, when you don't have the  
21 upside facility where you can drop or pick-up, you  
22 have to use the street. The street belongs to  
23 everybody. It's public space. You cannot tell them  
24 you cannot park if you have parking. Right?

25 CHAIRPERSON MILLER: I have just one other

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1 question on that. They have a staggered drop-off and  
2 pick-up in the afternoon. Is that it?

3 MR. BAH: Yes.

4 CHAIRPERSON MILLER: And that cuts down  
5 greatly on the traffic?

6 MR. BAH: The traffic, yes. Yes, madam.

7 CHAIRPERSON MILLER: So if they have a  
8 staggered drop-off in the morning, would you expect it  
9 to have a similar impact?

10 MR. BAH: Probably, yes, if they have  
11 staggered, but I don't know. They didn't state in  
12 that application that we are going to have that.

13 CHAIRPERSON MILLER: Yes.

14 MR. BAH: And the condition of today may  
15 not be true in two, three or four years, because this  
16 school is not there yet. But that's what could happen  
17 if after one year of operation, we could come back to  
18 see or go and check what is happening.

19 CHAIRPERSON MILLER: Okay. Do my Board  
20 Members have any questions? Mr. Keys?

21 MR. KEYS: Yes, thank you, Madam Chair.  
22 Mr. Bah, I want to focus you on Tuesdays and  
23 Wednesdays, because I think it's important in this  
24 case to understand what happens on the street. I  
25 think there has been testimony that on Tuesday the

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1 north side is restricted between the hours of 9:30 in  
2 the morning and 11:30 in the morning.

3 MR. BAH: Yes, it is.

4 MR. KEYS: And isn't it the case that what  
5 would happen, what you would expect to happen is that  
6 people would vacate that side of the street?

7 MR. BAH: Yes.

8 MR. KEYS: And they would vacate that side  
9 of the street at times before 9:30 in the morning?

10 MR. BAH: If they don't want to have a  
11 ticket, they better do that, yes.

12 MR. KEYS: Now, on Tuesdays, that would  
13 mean that the entire north side of Farragut Street is  
14 empty of cars. Would it be permissible if a car  
15 arrived at 8:45 for the purposes of dropping off the  
16 child to park on the north side of Farragut Street on  
17 Tuesdays? I'm sorry, on the south side of Farragut  
18 Street on Tuesdays?

19 MR. BAH: On the south, on the other side?

20 MR. KEYS: Yes.

21 MR. BAH: It's up to you if you -- up to  
22 you, you know.

23 MR. KEYS: They could park on the north  
24 side, couldn't they at 8:45?

25 MR. BAH: If they are parked on the south

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1 side, they have to cross the street.

2 MR. KEYS: Right.

3 MR. BAH: With kids.

4 MR. KEYS: And if they park on the north  
5 side for the purposes of dropping off, isn't there  
6 space? Isn't that space that could be used for that  
7 purpose if it's before 9:30?

8 MR. BAH: It's not for that purpose. What  
9 it is is you have parking available if there is nobody  
10 parked there. They have the same right to park.

11 MR. KEYS: Yes, well, I'm talking about  
12 the side of the street, Mr. Bah, that is restricted.

13 MR. BAH: Yes.

14 MR. KEYS: If a parent arrives on Farragut  
15 Street and sees the restricted side is empty and it is  
16 before 9:30, they could use that for drop-off, could  
17 they not?

18 MR. BAH: Of course.

19 MR. KEYS: And wouldn't the opposite be  
20 true on Wednesdays? They could use the other side of  
21 the street for drop-off?

22 MR. BAH: Sure, if they come before  
23 restriction.

24 MR. KEYS: Okay. Now, I'm not going to  
25 ask you how you arrived at 22 as the number of

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1 vehicles and I'm not going to concede that 22 is the  
2 correct number, but for the purposes of the question,  
3 let's assume 22 vehicles. Could you tell the Board,  
4 given your observations of the flow of traffic on  
5 Farragut Street between the hours of 8:30 and 9:30,  
6 would adding 22 vehicles to the street from the period  
7 8:45 to 9:30 impact the level of service that Farragut  
8 Street carries?

9 MR. BAH: Number one, we calculate the  
10 level of service after we enter section of 13<sup>th</sup> and  
11 Farragut and we enter section 14<sup>th</sup> and Farragut. We  
12 didn't go through the calculation, but when I drive  
13 there, I am on 13<sup>th</sup> Street. I have -- it's not seen a  
14 lot, it's stop, okay, on Farragut. I have enough gut  
15 to make my left turn. So I don't think 22 car will do  
16 anything to existing level of service.

17 MR. KEYS: Mr. Bah, I want to show you an  
18 exhibit that was submitted with this application and  
19 this is the plat showing the lots on Farragut Street.  
20 It's in the applicant's first statement dated March  
21 4<sup>th</sup>.

22 MR. BAH: I see it.

23 MR. KEYS: And I also want to show you one  
24 of the public records that we extracted from the  
25 Department of Assessment and Taxation. This is the

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1 list of lots on the block. What I want to try and do  
2 with this, I have annotated this list identifying the  
3 number of lots that exist on the south side of  
4 Farragut Street. For the Board, this is the three  
5 page printout from the real estate assessment records.

6 And on the second and third pages, I have identified  
7 every property on the south side of Farragut Street in  
8 the 1300 block.

9 And, Mr. Bah, I would ask you, the lots on  
10 the south side of Farragut Street from the plat appear  
11 to be 50 feet wide. Is that correct?

12 MR. BAH: I don't know. I can't read what  
13 is written. If you want me to tell you the length of  
14 that block, I can give you the length of that block.

15 MR. KEYS: Could you tell me the length of  
16 Farragut Street?

17 MR. BAH: 13<sup>th</sup> Street to 14<sup>th</sup> Street?

18 MR. KEYS: If you know it, yes, please.

19 MR. BAH: 1,018 feet.

20 MR. KEYS: 1,018 feet. Now, there are  
21 certainly alleys in that block.

22 MR. BAH: Yes.

23 MR. KEYS: And there are certainly  
24 restrictions at the end of the block in terms of  
25 restricted parking for the intersection. But how much

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1 of the street would you estimate the linear distance  
2 is available for parking in that 1300 Block of  
3 Farragut Street?

4 MR. BAH: To tell you the truth, I didn't  
5 calculate how much. All I can give you is the total  
6 length of the block. If you can take -- I didn't look  
7 at that specific question. If you go there, you  
8 calculate whatever we would as you said, you have -- I  
9 know you have one 10 feet public alley. You have  
10 access to, I think, D.C. School have a parking lot  
11 there in the north side.

12 MR. KEYS: We're speaking of the south  
13 side.

14 MR. BAH: Oh, the south side. I don't  
15 know.

16 MR. KEYS: Mr. Bah, how far from the  
17 intersections do the parking restrictions run on 13<sup>th</sup>  
18 Street and 14<sup>th</sup> Street?

19 MR. BAH: Usually, you have to take 15  
20 feet from the intersection.

21 MR. KEYS: All right. So Mr. Moore -- Mr.  
22 Bah, if the block is 1,000 feet long, let's say, and  
23 we're going to subtract 15 feet on each end of the  
24 block, and let's say generously that we are going to  
25 subtract another 30 feet for alleys, if I do the math

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1 correctly, I'm still over 900 feet available for  
2 street parking. Is that correct?

3 MR. BAH: It could be.

4 MR. KEYS: Mr. Bah, how many cars can you  
5 park in 900 feet of linear street?

6 MR. BAH: If you have your calculation,  
7 your machine, take 22 or 23 -- divide 900 by 22 or 23  
8 feet.

9 MR. KEYS: All right. I don't have a  
10 calculator with me, but I'll say it is 25. That  
11 sounds like 36 cars.

12 MR. BAH: I don't know. That's your  
13 calculation.

14 CHAIRPERSON MILLER: Do you have a  
15 question for him, Mr. Keys? Because he didn't testify  
16 to this.

17 MR. KEYS: Mr. Bah, I would like to show  
18 you a photograph that was taken last Wednesday, and I  
19 think that your testimony was that on Wednesday it is  
20 the south side of Farragut Street that is restricted  
21 for parking between the hours of 9:30 of 11:30. Is  
22 that correct?

23 MR. BAH: Yes.

24 MR. KEYS: So you would expect the  
25 traffic, the parking on Farragut Street to flow to the

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1 north side of the street during those hours, would you  
2 not?

3 MR. BAH: What you mean when you say flow?  
4 You mean moving?

5 MR. KEYS: Well, if people can't park on  
6 the south side, chances are they are going to move  
7 their car to the north side to avoid the parking  
8 restriction.

9 MR. BAH: Sure.

10 MR. KEYS: So you would expect the north  
11 side on a Wednesday to be -- to represent a crowded  
12 condition. Is that correct?

13 MR. BAH: It could be if the other side  
14 come and park on that side of the neighborhood, they  
15 can park there.

16 MR. KEYS: I would like to show Mr. Bah  
17 the photo array that we submitted with the materials  
18 last week. And I have the person who made the  
19 photographs here to affirm that she took them and she  
20 took them at the time she did. If the Board would  
21 like me to, I would have her authenticate these  
22 photographs.

23 CHAIRPERSON MILLER: You know what, let's  
24 assume that that's true for now and when you -- do you  
25 intend to call her as a witness?

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1 MR. KEYS: If necessary.

2 CHAIRPERSON MILLER: All right. In your  
3 rebuttal you can authenticate it. So let's just --  
4 you can just ask him that assuming that was the case.

5 MR. KEYS: All right.

6 BOARD MEMBER ETHERLY: Well, Madam Chair,  
7 I would actually -- I thought you were heading in a  
8 slightly different direction.

9 CHAIRPERSON MILLER: Okay.

10 BOARD MEMBER ETHERLY: I would almost be  
11 inclined to encourage Mr. Keys to leave that for his  
12 rebuttal case. I understand the direction in which  
13 you want to head, but Mr. Bah hasn't testified. I  
14 understand where you are going, Mr. Keys, but I think  
15 it is perhaps better placed --

16 MR. KEYS: I understand.

17 BOARD MEMBER ETHERLY: -- because he is  
18 going to try to walk Mr. Bah through his pictures and  
19 have Mr. Bah draw some conclusions or make some  
20 statements regarding those pictures, and I think it is  
21 better placed for that in your rebuttal case.

22 MR. KEYS: Then I have no further  
23 questions for Mr. Bah.

24 CHAIRPERSON MILLER: Okay. Does the Board  
25 have any questions? Does the ANC have any questions?

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1 MS. MITCHELL: Thank you. Mr. Bah?

2 MR. BAH: Yes?

3 MS. MITCHELL: I would like --

4 CHAIRPERSON MILLER: Could you identify  
5 yourself for the record? Thanks.

6 MS. MITCHELL: Jackie Mitchell ANC-4C02.  
7 Mr. Bah, I would like to know have you had the  
8 opportunity to do your inspections during the evening  
9 hours dismissal time?

10 MR. BAH: During -- let me answer about  
11 what I did.

12 CHAIRPERSON MILLER: Well, can I make a  
13 suggestion? After you ask your question, shut your  
14 mike off and after you answer the question, Mr. Bah,  
15 shut your mike off.

16 MR. BAH: Yes.

17 CHAIRPERSON MILLER: Because when both of  
18 them are on at the same time, we get that sound.  
19 Thank you.

20 MR. BAH: I said I testified that I was in  
21 the afternoon Monday the 24<sup>th</sup> from 1:00 to 2:00 p.m. in  
22 the evening.

23 MS. MITCHELL: Okay. Thank you. You were  
24 not in the evening past 2:00 p.m.?

25 MR. BAH: Past 2:00 p.m. I wasn't there.

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1 MS. MITCHELL: Okay. Thank you, Mr. Bah.

2 CHAIRPERSON MILLER: Are you finished with  
3 your questions? How about Mr. Morrow from Farragut  
4 Street Block Club, do you have any cross?

5 MR. MORROW: Just a few questions.  
6 Charles Morrow, Farragut Street Block Club. Mr. Bah,  
7 for purposes of my inquiry, I'm going to focus you on  
8 the other three days. The applicant's attorney  
9 focused you on the two days when there were  
10 restrictions.

11 MR. BAH: Yes.

12 MR. MORROW: So the question becomes could  
13 you explain essentially what the restrictions are on  
14 the north side of the street and then, I believe, you  
15 started out talking about that it could potentially be  
16 a problem because of people double parking.

17 MR. BAH: If it's happening. Parking  
18 restriction except adjacent to the school where you  
19 cannot park during school hours.

20 MR. MORROW: Yes.

21 MR. BAH: I think, I don't know if it's  
22 from 8:30 or 9:30.

23 CHAIRPERSON MILLER: At 8:30?

24 MR. BAH: Yes, that's the only restriction  
25 I know on the north side.

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1 MR. MORROW: One correction. It starts at  
2 8:00, just so you know.

3 MR. BAH: Yes, I'm not sure exactly, but I  
4 know there are some restrictions there.

5 MR. MORROW: Yes. The second part had to  
6 do with the potential for double parking. And if you  
7 will, it seemed to me that you were more focusing on  
8 the days when it doesn't involve a situation where  
9 cars are restricted on both sides, but you would,  
10 essentially, have cars parked, if you will, in the  
11 ordinary course on the south side, but partially  
12 restricted, so therefore the cars that didn't have to  
13 move would then be left with, let's say if you will  
14 for the sake of fractions, a fourth or a third of the  
15 street to park. And I guess what I'm getting at is do  
16 you think, in your opinion, that could create a  
17 situation for double parking?

18 MR. BAH: Well, the scenario I'm talking  
19 about is if the parents came and don't find a parking  
20 where we said they are going to park on the north  
21 side, either they're going to go around the block or  
22 some parent decide, okay, I want to double park quick  
23 and take my kids. That's the scenario it may happen,  
24 it may not happen. I'm just stating.

25 MR. MORROW: Okay. In your opinion, do

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1 you think double parking creates and unsafe traffic  
2 condition?

3 MR. BAH: Oh, yes, of course. Every time  
4 you do that, you create unsafe conditions,  
5 specifically with kids. You're going to take your kid  
6 and walk away, you know. These are very small kids  
7 we're talking about. You're not talking about high  
8 school where we can walk by theirself. That's what  
9 I've been talking about, safety aspect of this  
10 proposal. Can you do that?

11 MR. MORROW: Okay. And is that potential  
12 increased because there is no off-site parking and  
13 essentially what you are talking about is spaces that  
14 if there is any special event or if there is any  
15 reason why people want to park, they can park, so  
16 those spaces aren't reserved for the applicant. Is  
17 that correct?

18 MR. BAH: You're talking about required  
19 parking? Those are public. You cannot reserve it for  
20 yourself, for the applicant, if I understood your  
21 question.

22 MR. MORROW: That's correct. What I was  
23 getting at is that there is the increased potential  
24 for double parking, because those spaces are -- the  
25 spaces that are available are not reserved for

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1 anybody. They are not reserved for anybody on the  
2 block. So anybody can come in on those three days and  
3 park anywhere with the exception of where the  
4 restriction is in front of West Elementary School and,  
5 in fact, people do.

6 MR. BAH: That's what we --

7 CHAIRPERSON MILLER: Mr. Morrow, are you  
8 testifying here?

9 MR. BAH: That's what I referred to. In  
10 my testimony and in our report that's what we said.  
11 If this condition happened, yes, then have kind of --

12 MR. MORROW: No further questions.

13 CHAIRPERSON MILLER: I have one follow-up  
14 question. I think there was a reference to off-site  
15 parking or something, there being no off-site parking  
16 that is more likely to be a problem. Where would  
17 there be off-site parking?

18 MR. BAH: No, I'm not talking about off-  
19 site parking. I said off-site pick-up and drop-off.  
20 You see, some -- they get -- we have off-site, not  
21 just on the street. Even though we know we could park  
22 and do these things, but some schools, many day care  
23 do have off-site drop-off, pick-up.

24 CHAIRPERSON MILLER: But is that like a  
25 lot somewhere where they go and drop-off the kids?

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1 MR. BAH: You have to have parking. Take  
2 many church, they have their own parking. They have a  
3 day care center. You go there and, you know, drop --  
4 you park for the meantime and you do it. You're not  
5 on the street. That's what we are talking here. Not  
6 parking. They have parking for two staff, for full  
7 staff, I believe. We have for -- two space to  
8 accommodate two cars, so that will meet their Zoning  
9 Regulation with regard to parking. But we're talking  
10 about pick-up, drop-off.

11 CHAIRPERSON MILLER: Okay. Thank you.  
12 Any other questions from the Board?

13 MR. BAH: Thank you.

14 CHAIRPERSON MILLER: Okay. Thank you.

15 MR. BAH: Okay.

16 CHAIRPERSON MILLER: Are there any other  
17 Governmental entities here? Okay. For the record,  
18 the Department of Health, Health Regulation  
19 Administration, Child and Residential Care Facilities  
20 Division, that's a long one, okay, anyway they  
21 submitted a brief memorandum, in essence, saying that  
22 additional child development centers are greatly  
23 needed to meet the cities growing demand for licensed  
24 child care services for infants, pre-school and school  
25 age children and they support the application.

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1           We also have a letter from Council Member  
2 Adrian Fenty, which basically says that he is in  
3 support of the residents and the ANC Commissioners and  
4 requests that this Board take the residents concerns  
5 into consideration.

6           Okay. I don't believe we have any parties  
7 in support of this case. Oh, I'm sorry, we're going  
8 to go back to the ANC. It's your turn to present your  
9 case.

10           MS. MITCHELL: Good afternoon. Again, I'm  
11 Jackie Mitchell, ANC-4C02. In about January of 2004,  
12 I get a call from one of the constituents informing me  
13 that there was a welcoming party or welcoming  
14 gathering for an Amazing Life Games School and asked  
15 had I heard about it and, of course, my response was  
16 no. In February, I meet with the community and the  
17 CBENA Block Club, Carter Barron East, at that  
18 particular meeting, the community, Farragut Street  
19 Club and Farragut Street Club and some advocates from  
20 the Amazing Life Games were there.

21           That meeting was very heated and there was  
22 a request that we take it to the ANC. At that  
23 particular meeting, the community, Farragut Street  
24 community, that is, said that they would be at the ANC  
25 meeting, which would be held in March, and someone was

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1 to notify whomever at Amazing Life Games that they  
2 would need to be there as well. Both parties did  
3 attend the meeting. Both parties were given full  
4 adequate time to present their case, Amazing Life  
5 Games and the community, which was, of course, in  
6 opposition.

7 The ANC Commissioners took a vote that  
8 night at the hearing, fully both parties, Amazing Life  
9 Games and their advocates or their parents, as well as  
10 the community.

11 CHAIRPERSON MILLER: Ms. Mitchell?

12 MS. MITCHELL: Yes? I would like to --

13 CHAIRPERSON MILLER: Okay. I just want to  
14 clarify. When you say the community, who do you mean?

15 MS. MITCHELL: The community meeting, the  
16 Farragut Street community.

17 CHAIRPERSON MILLER: That's an  
18 organization or is that just people who live on  
19 Farragut Street?

20 MS. MITCHELL: Well, it's the Farragut  
21 Street community members, as well as CBENA community  
22 members. And I would say the community, the ANC-4C  
23 community I would like to clarify.

24 CHAIRPERSON MILLER: And how many people  
25 were participating in this meeting?

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1 MS. MITCHELL: How many people at that  
2 meeting?

3 CHAIRPERSON MILLER: In the community.

4 MS. MITCHELL: That particular night?  
5 From the community?

6 CHAIRPERSON MILLER: Yes.

7 MS. MITCHELL: From the community as a  
8 whole, I think we had approximately 40 people.

9 CHAIRPERSON MILLER: Okay. Thank you.

10 MS. MITCHELL: Okay. And I have a copy  
11 that I would like to share with the Commission, the  
12 minutes of that night. At that meeting there was a  
13 vote taken by ANC-4C and the vote was to deny any  
14 variances or any approval of Amazing Life Games School  
15 based solely on proliferation and safety. There are  
16 now four facilities in that community directly and  
17 that community is also impacted by the school that is  
18 on 14<sup>th</sup> Street, which is about 1,000 students.

19 Now, for the record, I am or I was a  
20 parent at West Elementary School this winter, and when  
21 I heard the parking situation, I know for a fact that  
22 I have gone to West and I have had to either park on  
23 Your Community Center lot or on 14<sup>th</sup> Street. I could  
24 not get a parking on Farragut Street. Also, there are  
25 teachers from West School --

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1 CHAIRPERSON MILLER: Excuse me, what time  
2 of day are you talking about?

3 MS. MITCHELL: In the morning.

4 CHAIRPERSON MILLER: The morning? Okay.

5 MS. MITCHELL: Yes, when I dropped the  
6 child off. Also, teachers park and use that street  
7 for parking. I don't think there are enough parking,  
8 there is enough parking facility for the teachers at  
9 the school. So the other concern, grave concern of  
10 mine, as a child advocate, the only reason that I  
11 would go on record opposing this facility is because  
12 of proliferation and safety. The alleys are very  
13 overgrown and it's very difficult getting them cut. I  
14 understand there is a tree list of approximately two  
15 years.

16 There is drug activity on Farragut. I  
17 have gotten complaints and I've also got full  
18 complaints that there is drug activity in the alley on  
19 Farragut. There is a house where on the south side  
20 where the policeman is called frequently and in  
21 meeting the policeman frequently talk about that  
22 particular drug activity. Basically, for Amazing Life  
23 Games, I received a call from Amazing Life Games about  
24 the last of February and a message was left on my  
25 answering machine simply pretty much demanding that I

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1 give a letter of support for this facility.

2 At no time did anyone from Amazing Life  
3 Games call to discuss the matter or to inform me of  
4 what was going on. And I've heard over and over that  
5 Amazing Life Games did not know the process. I have  
6 concerns about that, since my colleagues on the night  
7 that we took the vote were all informed. They were  
8 all informed about Amazing Life Games and it's my  
9 understanding that there were people from the  
10 community in which Amazing Life Games School left that  
11 called the Commissioners, in fact, my chair, I say  
12 specifically, he got a call from the old community of  
13 Amazing Life Games.

14 However, this would never, never have  
15 swayed my decision one way or another, because I've  
16 worked with children all my life. My first thought is  
17 that if there were a space on my block, Amazing Life  
18 Games could have it. But the proliferation and the  
19 safety of the kids in this facility would not -- it  
20 just wouldn't be fair to the children nor the  
21 community.

22 CHAIRPERSON MILLER: And what concerns you  
23 about the safety?

24 MS. MITCHELL: Well, you know, if they are  
25 going to travel from Farragut to Hamilton, first of

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1 all, that's a little distance for a 2.5 year- old. I  
2 have had many 2.5 year-olds and to walk from Farragut  
3 to Hamilton to use the playground could be a bit much.

4 Secondly, Gallatin Street, which is the first street  
5 that they would have to cross, is always packed with  
6 cars. To have a 2.5 year-old not to be seen, I mean,  
7 of course, I know they are going to have escorts, but  
8 it's almost that you would need an escort per child to  
9 cross that first street, and then you've got to cross  
10 a second street.

11 The other thing is that Hamilton  
12 Playground is not the handsome sight or the great  
13 sight that I think has been pictured to be. One, I've  
14 had to -- I've gone out there personally to have  
15 constituents not have their dogs actually poop on the  
16 grounds. Secondly, there are young people who may --  
17 who are not in school hang around that particular  
18 school ground. Thirdly, tree lines, yes, the tree  
19 line, it is lined on the outside of the trees, and I  
20 don't know that I would have my 2.5 year-old go to  
21 Hamilton to play everyday.

22 I wouldn't have my 2.5 year-old cross a  
23 street or go through an alley and people tend to use  
24 alleys for many reasons that are not safe. People  
25 tend to speed through alleys, etcetera. So I think

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1 the situation there it's going to be pretty unsafe.

2 CHAIRPERSON MILLER: Thank you.

3 MS. MITCHELL: You're welcome.

4 CHAIRPERSON MILLER: Are there any  
5 questions from the Board? Mr. Keys, cross?

6 MR. KEYS: Yes, just a couple of  
7 questions. Ms. Mitchell, I just want to get the  
8 record straight. You've passed out minutes of the  
9 March 9<sup>th</sup> meeting of the ANC.

10 MS. MITCHELL: Yes.

11 MR. KEYS: But I'm looking at the record  
12 and the ANC resolution was adopted on February 10<sup>th</sup>.  
13 Is that right?

14 MS. MITCHELL: Exactly. Exactly.

15 MR. KEYS: All right. And February 10<sup>th</sup>  
16 was actually before the application was filed with the  
17 Board?

18 MS. MITCHELL: Exactly.

19 MR. KEYS: Okay. Now, I want to know if  
20 you misspoke or not, but I'm looking at the resolution  
21 and you mentioned that the concerns of the ANC were  
22 proliferation of schools and other facilities and  
23 safety. I don't see safety in this resolution.

24 MS. MITCHELL: No, there are not, but that  
25 was one of the concerns. In fact, as the

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1 Commissioner, it's not in the resolution, but that is  
2 one of the concerns.

3 MR. KEYS: Okay. Thank you.

4 MS. MITCHELL: You're welcome.

5 CHAIRPERSON MILLER: Ms. Mitchell, then  
6 since it's not in the resolution, we take that as  
7 being reflective of your testimony personally.

8 MS. MITCHELL: Exactly.

9 CHAIRPERSON MILLER: As opposed to the ANC  
10 officially.

11 MS. MITCHELL: Thank you.

12 CHAIRPERSON MILLER: Okay.

13 MS. MITCHELL: Thank you very much.

14 CHAIRPERSON MILLER: Okay. Mr. Morrow, do  
15 you have any cross?

16 MR. MORROW: No.

17 CHAIRPERSON MILLER: No cross. Okay.  
18 Thank you very much. So that brings us, at this  
19 point, to parties in support, which I don't believe we  
20 have in this case. But are there any persons in  
21 support who wish to come forward to testify?

22 MR. KEYS: I'm sorry, Farragut Street  
23 Block Club is a party to the case. I wondered if they  
24 had a presentation to make.

25 CHAIRPERSON MILLER: I'm sorry. You're

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1 right. You're right. No, wait, no, you're not right.

2 I'm going in support first and then we go to  
3 opposition. I believe they are in opposition. The  
4 way the rules read, we do parties or persons in  
5 support. Okay. So are there any persons in support  
6 who wish to come forward to testify? Okay. Not  
7 seeing any, that brings us to Mr. Morrow, parties in  
8 opposition.

9 MR. MORROW: Madam Chair?

10 CHAIRPERSON MILLER: I'm sorry. We were  
11 just trying to look at the record. I wanted to at  
12 least say that we do have a petition in support of the  
13 application. I didn't want it to be left on the  
14 record as if there wasn't any support. There is a  
15 petition in support and we were just looking to see I  
16 believe, we probably have some letters as well. Okay.  
17 Now, you can proceed.

18 BOARD MEMBER ETHERLY: Yes, just to close  
19 off that point.

20 CHAIRPERSON MILLER: Okay.

21 BOARD MEMBER ETHERLY: To round out the  
22 portion of our submissions that are in support, there  
23 was, of course, the petition that was submitted as  
24 part of the supplemental information on behalf of the  
25 applicant and then also at Exhibit 30, also from

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1 counsel for the applicant, we are in receipt of what  
2 amounts to three letters of support and those are  
3 contained at Exhibit 30, Madam Chair.

4 CHAIRPERSON MILLER: Thank you very much,  
5 Mr. Etherly. Okay. Mr. Morrow?

6 MR. MORROW: Okay, Madam Chair. When we  
7 left off last --

8 CHAIRPERSON MILLER: Oh, excuse me.  
9 Perhaps we should -- I'm not sure whether you intend  
10 to take an hour, but I think given our time  
11 constraints, we might want to start the clock. Is  
12 that okay, Mr. Moy? Thank you. Do you intend to take  
13 an hour?

14 MR. MORROW: I can't speculate. That was  
15 one of the things I wanted to do is we generally  
16 discuss some of the ground rules, given that I am the  
17 representative and I'm not sure it was clarified for  
18 the sake of the record, but I believe there was some  
19 discussion as to how we would present our opposition  
20 and essentially I believe it was contemplated that the  
21 Block Club would provide members on the block and that  
22 live on Farragut Street the opportunity to participate  
23 as witnesses via the representation of the Block Club.

24 And so if that's, indeed, the case, then I  
25 was -- had planned that I would just sort of kind of

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1 generally summarize what we're going to discuss in  
2 terms of what the conditions are for -- that the Board  
3 should consider in terms of granting an exception.  
4 And then I had anticipated that I would call at least  
5 in the first instance a couple of witnesses and then  
6 to the extent that conditions that weren't -- to the  
7 extent that factors weren't addressed that relate to  
8 the conditions, then other members of the club would  
9 participate as witnesses. And so it may take an hour.

10 CHAIRPERSON MILLER: Okay.

11 MR. MORROW: But it may not.

12 CHAIRPERSON MILLER: Okay. I just --

13 MR. MORROW: And if that's okay, we can  
14 proceed.

15 CHAIRPERSON MILLER: All right. You know  
16 what they are going to say and I don't. But  
17 basically, okay. There are two different types of  
18 testimony that we will hear and can hear, and they are  
19 both going to be in opposition. If they are a witness  
20 for you, they are going to be addressing, you know,  
21 one of the elements of the case.

22 MR. MORROW: Correct.

23 CHAIRPERSON MILLER: And you will be using  
24 them to make your point. Otherwise, if they are just  
25 going to be testifying as to why they are opposed and,

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1 you know, how it is going to affect them or whatever,  
2 then they would be testifying as a person, in which  
3 case it would be a little bit separate from you. They  
4 would have three minutes to say their thing. So I  
5 think you need to just figure out who is going to --  
6 who you are going to use to make your, you know,  
7 specific case.

8 MR. MORROW: Okay. I'm going to make the  
9 specific case and that's what I was alluding to.

10 CHAIRPERSON MILLER: Okay.

11 MR. MORROW: Is that then others would  
12 come on and testify as witnesses in their own right.

13 CHAIRPERSON MILLER: Okay.

14 MR. MORROW: If that's okay.

15 CHAIRPERSON MILLER: So we'll stop with  
16 you when we get to that line that they are going to be  
17 testifying for themselves. Because you are going to  
18 present your witnesses, they are going to be subject  
19 to cross examination by Mr. Keys and by the ANC, and  
20 then you'll rest your opposition and then we'll call  
21 the other ones individually. That's the way our  
22 process works.

23 MR. MORROW: Okay. So I anticipate  
24 calling two.

25 CHAIRPERSON MILLER: Okay.

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1 BOARD MEMBER ETHERLY: So you will have  
2 two witnesses that you will lead with examination  
3 questions.

4 MR. MORROW: Right.

5 BOARD MEMBER ETHERLY: Those two  
6 individuals --

7 MR. MORROW: Well, I actually hadn't  
8 planned to examine them per se.

9 BOARD MEMBER ETHERLY: Yes.

10 MR. MORROW: And maybe that's -- the point  
11 is that, obviously, this is just a club and I was just  
12 asked to sit in this seat, and so I have really not  
13 prepared them for necessarily any direct examination.

14 BOARD MEMBER ETHERLY: Okay.

15 MR. MORROW: However, the members of the  
16 block felt driven to come testify and so -- and that's  
17 all I'm allowing and certainly would hope that we're  
18 allowing them to do.

19 CHAIRPERSON MILLER: Okay.

20 MR. MORROW: And that's it.

21 CHAIRPERSON MILLER: Okay.

22 MR. MORROW: Although, I live on the block  
23 as well, so I just wanted to kind of say that I  
24 believe in my opinion. These are the factors that the  
25 Board should consider critical in this case.

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1 BOARD MEMBER ETHERLY: Well, what I might  
2 suggest then, Madam Chair, is, for Mr. Morrow's  
3 benefit, clearly we have section 205 that outlines  
4 what we need to look at from the standpoint of the  
5 analysis of this application. You have one of two  
6 courses. You could gear your remarks and just make  
7 your case presentation according to the requirements  
8 that we have to look at in section 205, and clearly  
9 we're talking about traffic, clearly we're talking  
10 about adverse impacts on the community. And then  
11 members of the Farragut Street Block Club could, of  
12 course, then testify simply as individuals in  
13 opposition, whereby they would, each individual would  
14 have up to three minutes to provide some testimony.

15 In either case, those individuals would  
16 have to be available for cross examination by the  
17 applicant.

18 MR. MORROW: Yes.

19 BOARD MEMBER ETHERLY: So you can make  
20 your comments and then we could proceed then with the  
21 testimony in opposition. But I think that might  
22 perhaps be the best way to proceed. But your remarks  
23 should be, you know, geared towards section 205 and,  
24 in particular, you know, the key components of that  
25 section.

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1 MR. MORROW: Okay.

2 CHAIRPERSON MILLER: Let me just say, I  
3 might have a little bit of disagreement.

4 MR. MORROW: Yes, actually, I do, too.

5 CHAIRPERSON MILLER: Okay. And it is your  
6 case.

7 MR. MORROW: Right, absolutely.

8 CHAIRPERSON MILLER: So you can just hear  
9 these ideas.

10 MR. MORROW: Right, yes.

11 CHAIRPERSON MILLER: And then make your  
12 case. But it seems to me like you might want to make  
13 a proffer as to, you know, addressing, you know, the  
14 tests or whatever it is, if this fits, and if you have  
15 specific witnesses that are going to testify to those  
16 points that you want to make sure, you know, fill your  
17 case, then you should do that.

18 MR. MORROW: Right.

19 CHAIRPERSON MILLER: And then if there are  
20 other individuals who would just want to testify  
21 personally, then they can.

22 MR. MORROW: Yes.

23 CHAIRPERSON MILLER: So, you know, it's up  
24 to you, basically.

25 MR. MORROW: Yes, no, actually, I was

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1 planning to do that, because I do believe that the  
2 general provisions are appropriate in this situation  
3 as well. Because one of the concerns is, as you heard  
4 the ANC Commissioner testify to, the proliferation of  
5 nonresidential, nonprofit, other facilities other than  
6 residential homes. And if you go down through the  
7 provisions, one of the things that it recognizes is  
8 that only a few additional compatible uses shall be  
9 permitted.

10 And if you will, and this is just my own  
11 personal opinion, this is me testifying now, I believe  
12 that we've already exceeded that, and I think the  
13 record would clearly reflect that with the Kingsbury  
14 Center being sort of at the focal point of the start  
15 of the block going down 14<sup>th</sup> Street, Your Community  
16 Center that's there, West Elementary School that's  
17 there, in the middle of the block there is a church,  
18 Macedonia, I believe. At the end of the block is  
19 Maranatha Hall. And so therefore, I think, it is  
20 important that the Board consider that in terms of  
21 issuing zoning, that it does so in marking residential  
22 use, it does so for a reason.

23 And it points it out that when you apply  
24 for an exception, that one of the considerations would  
25 be to what extent there are other exceptions in the

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1 area. So I think that is something that is an  
2 overriding concern. All I wanted to do was just point  
3 it out, and I think you have to look through that  
4 prism when you go to 205. You just can't ignore it  
5 and certainly we will hear testimony from the other  
6 witnesses that reflect that.

7 Okay. Now, I don't need to go through  
8 that part of it. Okay. Actually, we heard, I think,  
9 everybody knows what this is about. It really is  
10 going to -- I believe, I think it's important,  
11 although I think there are other issues that are  
12 important as I mentioned previously. But I think one  
13 of the things that is concerning people quite frankly  
14 is what impact the facility is going to have on  
15 parking. And if you go down and look through what is  
16 considered is the -- whether there is an unsafe  
17 condition and it says no unsafe condition.

18 And so, in this instance, what we have is  
19 we have a facility that has, if you will, on-site  
20 parking and we heard Ms. Craddock, I apologize if I  
21 don't have her name correctly, but we heard her  
22 testify that there would be at least three people  
23 driving. So we know for a fact that the two slots  
24 that are available for off-site parking will be  
25 filled, presumably, and that's a presumption on my

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1 part, but I would assume that to be the case.

2 So then what you have is you have the  
3 parents that have their kids enrolled having to park  
4 on Farragut Street. And so, in my opinion, what that  
5 does is it creates a parking problem because of the  
6 other activities that occur on Farragut Street. And  
7 one of thing this is, of course, we can recognize that  
8 at that same general time, certainly, West Elementary  
9 School drops off students.

10 The second thing that I think is important  
11 here is that there are always special events that are  
12 being put on by West Elementary School and, indeed, at  
13 West Elementary School there is a voting precinct.  
14 Everybody knows that on the day that there is voting,  
15 people just come out and park. You have precinct  
16 workers that actually park on the street that actually  
17 don't comply with those restrictions and sometimes,  
18 you know, the authorities look the other way on that  
19 day, because it's an important event that is taking  
20 place.

21 So it's not just what takes place on the  
22 limited days that they have gone out and observed, but  
23 it's what takes place on an ongoing basis on Farragut  
24 Street. And it is our contention that we would  
25 support the United Planning Commission's conclusions

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1 as well as the Department of Transportation's  
2 conclusions that this would create an unsafe  
3 condition, primarily because there is no crosswalk.  
4 Typically, if anybody is familiar with parking, what  
5 happens is people tend to park wherever they can and  
6 sometimes double park.

7 And what happens in our area, one of the  
8 things you've heard the Planning Commission report  
9 indicate was that this is an elderly population and so  
10 what it does is it increases the probability that  
11 you're placing kids in a circumstance where  
12 individuals may not necessarily have the same motor  
13 skills as maybe younger individuals. And certainly we  
14 heard on the news just this week about in Mount Vernon  
15 where a kid darted out and I think that's a reasonably  
16 foreseeable opportunity, and particularly increased  
17 when there is no off-site parking.

18 And so that would be the first thing that  
19 it is an unsafe condition. And then, of course, the  
20 other thing would be that in their application they  
21 proposed to transport the children through the alley,  
22 and for purposes of illustration, if you will, I went  
23 out and took a picture. I have several copies and I  
24 can make that available to everybody concerned. I  
25 took that this morning, but it shows you the

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1 circumstance when there is a car in that alley.

2 There is just no possible way that any  
3 children can be transported there if they are there at  
4 the same time. And anybody knows how alleys generally  
5 work. People just barrel through and so that's why we  
6 believe that it is an unsafe condition as well. So  
7 you have, one, the double parking issue, the potential  
8 that children could dart out between cars, and then,  
9 two, you have the unsafe condition in terms of  
10 transporting children through the alley.

11 Notwithstanding the other problems that  
12 may occur in the alley which you have heard testified  
13 to today.

14 BOARD MEMBER ETHERLY: Mr. Morrow, could I  
15 interrupt for a minute? Could you speak to, you noted  
16 that you are also, of course, a resident in the  
17 community.

18 MR. MORROW: That's correct.

19 BOARD MEMBER ETHERLY: Could you speak a  
20 little bit to what your experience has been in terms  
21 of the level of traffic use of that alley? I'm just  
22 interested in how frequently, you know, just once  
23 again just based on your own perhaps experience, do  
24 you see vehicular traffic in the alley?

25 MR. MORROW: Okay. I cannot speak to

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1 vehicular traffic in the alley, but there will be some  
2 people that may be able to speak to it today. But one  
3 thing I think we can take, you know, sort of notice of  
4 is that the trash trucks have to use that alley at  
5 least once a week. And I know it is pick-up on  
6 Thursday for me, so you're talking about there's no  
7 real set time. Sometimes they come at 8:00, sometimes  
8 they come at 9:30.

9 BOARD MEMBER ETHERLY: Okay. Thank you.

10 MR. MORROW: All right.

11 BOARD MEMBER ETHERLY: Thank you, Madam  
12 Chair.

13 MR. MORROW: Okay. Now, lastly, and then  
14 we're going to bring on the witnesses.

15 CHAIRPERSON MILLER: Now, you're basically  
16 giving testimony. Is that correct?

17 MR. MORROW: Right. That's correct.

18 CHAIRPERSON MILLER: Okay. Okay. Just so  
19 we know whether to treat it as evidence or a legal  
20 argument.

21 MR. MORROW: Okay. Okay. I am  
22 testifying. Okay. Lastly is, and this is a little  
23 bit of both, because I've really done what I believe  
24 are the conditions, which I don't think have been met,  
25 but anyway, in my opinion, but when you go through the

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1 application and you're going to hear testimony on all  
2 of this today, the neighbors have concerns about what  
3 they have already seen. For example, it says  
4 Licensing Code requirements, the neighbors observed  
5 that there was contractual activity in terms of  
6 construction taking place at 1309 Farragut Street.

7 One of the residents went to see if any  
8 permits were pulled and could find no evidence of  
9 that. So that's one thing. The other thing is the  
10 traffic conditions, which we discussed, and we also  
11 discussed staff and visitor parking. We also  
12 discussed convenient outdoor play space, because they  
13 propose to transport down the alley. And then we also  
14 discussed other facilities, but not necessarily child  
15 development center facilities, and which we think is  
16 not necessarily the only concern in this particular  
17 case.

18 You know, in addition to the fact that  
19 there are -- well, let me step back from that. You  
20 probably will hear some testimony, but one thing that  
21 we did do is we did do a search of facilities that  
22 provide similar services within the area and within a  
23 three mile radius and we've gotten different figures.

24 Some people say 22, some people say 28, but certainly  
25 we can agree that it is over 20 within a three mile

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1 radius. And so having said all of that --

2 CHAIRPERSON MILLER: I'm sorry, over 20  
3 what?

4 MR. MORROW: Facilities that provide  
5 similar services.

6 CHAIRPERSON MILLER: That provide similar  
7 services, but aren't necessarily child development?

8 MR. MORROW: I didn't actually do the  
9 search, so you could ask the person that actually did  
10 the search.

11 CHAIRPERSON MILLER: Okay. Good.

12 MR. MORROW: Who is going to testify.

13 MS. MOORE: I actually have the stats from  
14 the D.C. website.

15 CHAIRPERSON MILLER: Are you planning on  
16 testifying, too?

17 MR. MORROW: Yes.

18 MS. MOORE: I'm actually a member of the  
19 group and I'm going to be a witness as well.

20 MR. MORROW: Right.

21 CHAIRPERSON MILLER: Okay. So that's  
22 fine.

23 MR. MORROW: She is the next witness.

24 CHAIRPERSON MILLER: That's fine. When we  
25 get to you, you can address that. Great.

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1 MR. MORROW: So that has to do with other  
2 facilities, so that is what I anticipate that the  
3 witnesses will amplify. They will amplify that it is  
4 an unsafe condition. They will amplify the  
5 proliferation.

6 CHAIRPERSON MILLER: Can I ask you whether  
7 your points that you plan to make are about the  
8 proliferation of other institutions in the area or  
9 facilities that aren't necessarily child development?

10 MR. MORROW: Yes, yes, yes.

11 CHAIRPERSON MILLER: They don't fall  
12 squarely within 205, if I'm correct, right?

13 MR. MORROW: That's correct.

14 CHAIRPERSON MILLER: Now, are you drawing  
15 on any other regulation or are you just saying that we  
16 ought to consider them with respect to adverse impact  
17 or something to that affect?

18 MR. MORROW: I have to -- if you will, I'm  
19 not really an expert in zoning.

20 CHAIRPERSON MILLER: Yes.

21 MR. MORROW: But it would be my  
22 presumption that if you are operating a church, you  
23 have to get some kind of special exception for that  
24 use. I don't know that for a fact, but that would be  
25 my assumption. If you are operating a community

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1 center, which is on the block, then you would have to  
2 get a special exception. I was a little bit involved  
3 in Kingsbury, so I know that required a special  
4 exception. So then there's another church at the end  
5 of the block, again another special exception.

6 I don't know that you need one for West  
7 Elementary School, but even just if you go outside of  
8 that block, still in the unit block on the south side  
9 at the other end of the block is Saint Paul's AME  
10 Church. If you go to the north side on the other end  
11 of the block, is, forgive me, but I think is, but  
12 there are at least two churches on the other side. So  
13 what you begin to see is that you begin to start  
14 frustrating the general provisions, because you start  
15 at some point changing the general character of a  
16 residential zone.

17 And quite frankly, I believe that we went  
18 past that a long time ago. So with having said all of  
19 that, I'll bring on the next witness.

20 CHAIRPERSON MILLER: No, because you  
21 testified --

22 MR. MORROW: Yes, certainly. I'm  
23 perfectly --

24 CHAIRPERSON MILLER: -- just so much, I  
25 mean, I don't know that we're going to have, you know,

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1 each witness.

2 MR. MORROW: Sure.

3 CHAIRPERSON MILLER: Each cross for each  
4 witness. We may bring up witnesses in groups. But  
5 since you're such a big part of your case, Mr. Keys,  
6 do you want to cross examine him now?

7 MR. KEYS: Yes, please.

8 CHAIRPERSON MILLER: Okay.

9 CROSS EXAMINATION

10 MR. KEYS: I just want to show him and I  
11 think he has already seen this, these are the four  
12 zoning BZA decisions that were included in the packet  
13 of information that you got. And you mentioned  
14 Kingsbury. Kingsbury was approved in April 2000, and  
15 I wanted to ask you, and that was for 400 students and  
16 200 staff, did Farragut Street Block Club oppose that?

17 MR. MORROW: One of the things I want to  
18 say is that --

19 MR. KEYS: That's a yes or no question.

20 MR. MORROW: What happened with Kingsbury  
21 is that they have off-street parking. They  
22 essentially came to the neighborhood and expressed  
23 what their proposed use for the facility would be.  
24 They brought everybody on board. They agreed to meet  
25 with the community on an ongoing basis, so it really

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1 is not pertinent to this particular situation.

2 CHAIRPERSON MILLER: I think it is  
3 relevant, but I think what you are saying is yes, and  
4 this is why and this is why it's different.

5 MR. MORROW: That's correct.

6 CHAIRPERSON MILLER: Okay.

7 MR. KEYS: Now, prior to Kingsbury, the  
8 school, there was an application approved in February  
9 of 1997 when they proposed to locate a health care  
10 facility for 200 patients and 180 staff at that same  
11 location. Did Farragut Street Block Club oppose that  
12 application?

13 MR. MORROW: Again, it's -- there is off-  
14 street parking and each plan included off-street  
15 parking.

16 CHAIRPERSON MILLER: So is the answer no  
17 and that's why?

18 MR. MORROW: No, it was not opposed.

19 MR. KEYS: And the Your Community Center  
20 was January 2000, did Farragut Street Block Club  
21 oppose that application to take a residential house  
22 and put it to a nonresidential use?

23 MR. MORROW: Again, while it might be  
24 pertinent, I think it's a different circumstance.  
25 There is off-street parking as well. The other thing,

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1 too, is that that previously had a prior use as a  
2 church and it was basically very run down and in  
3 disrepair. Essentially, so it already was a nonprofit  
4 and already probably had a special exception. And  
5 then what was proposed was that a community center  
6 would come in and what they did is they renovated and  
7 they actually added value.

8 Of course, that's not the case here where  
9 there is any renovation that's necessary like that.  
10 But then the other thing is that the head of that  
11 facility actually lives on the block, so you do  
12 actually have a tie to the neighborhood and I believe  
13 Ms. Craddock lives in Arlington, if I'm not mistaken.

14 Although some people have heard her indicate that she  
15 lived other places.

16 MS. CRADDOCK: Springs, Virginia.

17 CHAIRPERSON MILLER: Okay. I just want to  
18 ask a question. The off-street parking at these  
19 facilities provided, was it substantial? Do they have  
20 lots or what?

21 MR. MORROW: Yes.

22 CHAIRPERSON MILLER: Okay.

23 MR. MORROW: There is substantial off-  
24 street parking.

25 CHAIRPERSON MILLER: Thank you.

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1 MR. KEYS: When did you move to the  
2 neighborhood, Mr. Morrow?

3 MR. MORROW: Approximately, 1991.

4 MR. KEYS: Then there was an application  
5 for, and this is the last one I'll mention, this is a  
6 BZA application for 1321 Emerson Street, which I  
7 believe is directly sort of across the alley from  
8 where you live, and this was a child development  
9 center. They wanted to increase the center from 30 to  
10 52 children in 1992. I don't know if Farragut Street  
11 Block Club existed or not, but did you oppose that  
12 child development center?

13 MR. MORROW: I think it is interesting  
14 that you raised that point. That's Emerson Street and  
15 I believe the concern with parking has to do with  
16 Farragut Street and the residents there. And what  
17 you're going to find is that most people are concerned  
18 about what happens close to home. And first of all,  
19 when I first moved there and I probably didn't know  
20 much about it at the time, but it would be my  
21 inclination that, at this point, I certainly would be  
22 opposed to it, again because of proliferation.

23 But people tend to be more concerned about  
24 what is going to happen to them specifically, because  
25 they know about what takes place on their street.

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1 And, for example, what tends to happen is Farragut  
2 Street because it's just before the lower S curve  
3 there where Emerson Street is located seems to be used  
4 as a cross street. So what happens is people that are  
5 driving in, if there is a backup or because they don't  
6 want to take that S curve, they will turn right down  
7 Farragut Street, barrel down Farragut and then go to  
8 13<sup>th</sup> Street or Georgia Avenue, because it's a cross  
9 street.

10 MR. KEYS: Mr. Morrow, can I take it then  
11 that the answer to the question is no?

12 MR. MORROW: Could you repeat the  
13 question?

14 MR. KEYS: Did you oppose or did Farragut  
15 Street Block Club oppose the application in 1992 for  
16 1321 Emerson to increase the child development center  
17 to 52 children?

18 MR. MORROW: I don't have any knowledge of  
19 that.

20 MR. KEYS: Let me ask you one more  
21 question. Do either one of the churches provide  
22 parking? Either one of the churches on Farragut  
23 Street, Maranatha or the Macedonia.

24 MR. MORROW: No, that's one of the  
25 problems.

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1 MR. KEYS: Are you aware that churches are  
2 required to provide parking?

3 MR. MORROW: No, I'm not.

4 CHAIRPERSON MILLER: Okay. Do you want to  
5 all -- oh, wait a second. Does the ANC have any  
6 cross? Where is the ANC? Okay. All right. Do you  
7 want to call your -- how many witnesses? Do you have  
8 two witnesses?

9 MR. MORROW: Yes.

10 CHAIRPERSON MILLER: Now, can they both  
11 fit at the same time? Okay. They could both come up  
12 then.

13 MS. MOORE: Hi.

14 CHAIRPERSON MILLER: Hi. Could you  
15 identify yourself for the record, please?

16 MS. MOORE: I'm Angie Moore, 1314 Farragut  
17 Street.

18 CHAIRPERSON MILLER: Okay. You may start  
19 with her.

20 MR. MORROW: Okay. What I anticipated is  
21 Angie Moore would speak first and then Ms. Sondel will  
22 speak next.

23 CHAIRPERSON MILLER: Okay. I'm sorry.  
24 Well, you can introduce yourself when we get to you  
25 then. Okay. Ms. Moore?

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1 MS. MOORE: Hi. I actually think you have  
2 a letter from me on file. According to the record,  
3 you have the very first letter that was filed from me.

4 I am directly impacted not only by this facility, but  
5 by a vacant church property that is next door to me,  
6 West Elementary that is across the street from me and  
7 churches that are on each end of Farragut Street, on  
8 13<sup>th</sup> and on 14<sup>th</sup>. It sounds like no big deal, because  
9 it's 1,000 square feet and it sounds just like a city  
10 block. But we've been inundated with not only child  
11 care facilities, which this happens to sound like a  
12 lovely facility, it's just enough is enough, but  
13 major, major nonprofits.

14 So on top of the influx of traffic, it's  
15 taking away the neighborhood environment. No longer  
16 do you have what you call a neighbor that is there.  
17 You are taking away also a valuable tax base, which  
18 everyone that is part of Farragut Street Block Club  
19 was directly impacted with the new assessments.  
20 Unfortunately, most of these facilities, and I don't  
21 know how I need to bring in my little map, because  
22 I've never done this before either. Sorry.

23 CHAIRPERSON MILLER: Are you just going to  
24 use it right now with your testimony or do you want to  
25 submit it as evidence?

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1 MS. MOORE: Okay. I'll show you. You  
2 tell me if I need to present it.

3 CHAIRPERSON MILLER: You have shown the  
4 applicant. Okay.

5 MS. MOORE: Yes, what this is is a list  
6 and, basically, in our little square block of all the  
7 nonprofits and facilities that are bringing an influx  
8 of residents into our neighborhood on a daily basis.  
9 The parking lot that's across the street from my  
10 house, because there physically is a parking lot that  
11 is used for West Elementary School is not enough space  
12 for the school itself. They used spaces on the  
13 street. Adding to that we have -- yes, there is a  
14 parking lot. The reason it wasn't there is because  
15 there is a big sign on the parking lot saying that  
16 there is no parking allowed during the business hours  
17 other than for the school, which means anyone that  
18 comes there that's not a resident, I mean, that's not  
19 directly connected to the school has to park on our  
20 street. They take away our spots. Do you want to  
21 question me on that, because I see you're just  
22 breathing on my shoulder. Sorry. And West has a lot  
23 of --

24 CHAIRPERSON MILLER: He'll question on it  
25 probably when you're finished.

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1 MS. MOORE: In addition to that, I was the  
2 person who did the research about the facilities in  
3 our neighborhood. I did not do facilities, all the,  
4 facilities even though I can tell you there's quite a  
5 few. I did child care and I just went to D.C.  
6 websites and I pulled off everything that was in Ward  
7 4 that provided the same services that this group  
8 provides.

9 I didn't know about the 20.02 or the  
10 Census Tract or anything of the sort, but I did my  
11 neighborhood or less than three miles from my  
12 neighborhood and I came up with 3,207 that were  
13 available for child care facilities. These are off a  
14 D.C. website. There you go. And I do have to tell  
15 you 1,000 of them of Kingsbury, because that's what  
16 Kingsbury's count is. It's 1,000 and that's at the  
17 top of our street.

18 CHAIRPERSON MILLER: What do you mean,  
19 1,000 what?

20 MS. MOORE: 1,000 people.

21 CHAIRPERSON MILLER: Oh, people?

22 UNIDENTIFIED SPEAKER: Students.

23 MS. MOORE: Students.

24 CHAIRPERSON MILLER: Students.

25 MS. MOORE: I'm sorry, children, 1,000

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1 children.

2 CHAIRPERSON MILLER: So when you say 3,207  
3 slots, you mean?

4 MS. MOORE: 3,207 children being serviced  
5 in our neighborhood for child care.

6 CHAIRPERSON MILLER: Okay.

7 MS. MOORE: I didn't say that. I'm sorry.

8 CHAIRPERSON MILLER: And Kingsbury is  
9 1,000?

10 MS. MOORE: Kingsbury is 1,000 of that  
11 3,200.

12 CHAIRPERSON MILLER: Within three miles  
13 radius?

14 MS. MOORE: Within three miles of my  
15 doorstep.

16 CHAIRPERSON MILLER: Okay.

17 MS. MOORE: In addition, my street has a  
18 problem with traffic and the traffic is the speed  
19 issue as much as the vehicles themselves. It is a  
20 decline coming from 14<sup>th</sup> going to 13<sup>th</sup> and not only do  
21 we have cars that go at excessive speeds, we have  
22 buses that go at excessive speeds that are leaving the  
23 British School, that are leaving Kingsbury and  
24 multiple other ones, not to mention West that is in  
25 our very block that has 100 and some odd students that

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1 are out of bounds, they are from outside the  
2 neighborhood.

3 CHAIRPERSON MILLER: And, Ms. Moore, can I  
4 just ask you a question on this 3,207?

5 MS. MOORE: Okay.

6 CHAIRPERSON MILLER: Did you put in the  
7 age, 2.5 to 4?

8 MS. MOORE: Actually, I excluded.

9 CHAIRPERSON MILLER: What did you put in?

10 MS. MOORE: I excluded anyone that was not  
11 within their range. I didn't make copies, but you're  
12 welcome to look at what I did. This is D.C.

13 CHAIRPERSON MILLER: I just want to make  
14 sure when we're evaluating this that we understand  
15 exactly what your search was.

16 MS. MOORE: What I did was I went to  
17 D.C.'s website for D.C. school search and I looked at  
18 facilities that were licensed in Ward 4 to provide  
19 early childhood care and it covered actually children  
20 younger and some children older.

21 CHAIRPERSON MILLER: So your 3,207  
22 includes children that are younger and older?

23 MS. MOORE: Yes, infants as well.

24 CHAIRPERSON MILLER: So what is the range?

25 MS. MOORE: Infants up to the end of

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1 elementary.

2 CHAIRPERSON MILLER: So it's a little  
3 broader than what this is?

4 MS. MOORE: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MS. MOORE: That's it, because I --

7 CHAIRPERSON MILLER: Do you have a  
8 question?

9 BOARD MEMBER ETHERLY: Madam Chair, just a  
10 quick question for Ms. Moore. You're doing fine.  
11 You're doing fine. You heard me inquire of Mr. Morrow  
12 about his experience with alley traffic and, in  
13 particular, vehicular traffic, not so much the crime  
14 piece. I think I understand the arguments there, but  
15 could you speak a little bit to any observations you  
16 might have about vehicular traffic in the alley?

17 MS. MOORE: Actually, I can. Mr. Morrow  
18 lives on the south side of the street, which is the  
19 same side that I live on. The facility in question is  
20 on the north side. I can tell you that the alley that  
21 runs behind our house, which would be the south side,  
22 we have had a problem not only with vehicle traffic,  
23 but cars being left, crime areas, issues, police  
24 coming out, etcetera. The alley that's across the  
25 street, which is the one that is actually down a few

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1 houses from where they are located, there has been  
2 problems with cars being dumped, drug activity and  
3 traffic going, a cut-through from Farragut to Gallatin  
4 and yes, I have witnessed it.

5 BOARD MEMBER ETHERLY: Okay. Thank you.  
6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Any other Board  
8 questions? Mr. Keys, do you have some cross?

9 MR. KEYS: No, no, I don't. There was  
10 another list that was produced. Could I --

11 MS. MOORE: That's these numbers right  
12 there? I just put it in alphabetical order.

13 MR. KEYS: I see. Okay. No questions.

14 CHAIRPERSON MILLER: Does the ANC? No.  
15 Okay. Mr. Morrow, I just want to clarify that you  
16 don't want these submitted into evidence, because if  
17 you do -- do you want to?

18 MR. MORROW: It's already been taken care  
19 of.

20 CHAIRPERSON MILLER: It has been taken  
21 care of in your case? Okay.

22 MR. MORROW: Well, the copies have been  
23 taken care of.

24 CHAIRPERSON MILLER: Okay. You're going  
25 to move to submit them at some point?

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1 MR. MORROW: Yes.

2 CHAIRPERSON MILLER: Now or later?

3 MR. MORROW: Okay. I would move to submit  
4 the list of facilities that provide similar services  
5 into the record.

6 CHAIRPERSON MILLER: Just the list?

7 MR. MORROW: Well, we can move the --

8 CHAIRPERSON MILLER: No, I'm not  
9 suggesting. I just want you to -- I want to know what  
10 we're dealing with. While you're looking at that, Mr.  
11 Keys, do you have an objection to the list being  
12 submitted?

13 MR. KEYS: I don't. I wish it would be  
14 labeled as to what it -- right now it's just a list  
15 and if it's a list of facilities within three miles  
16 that have services for children 0 to 12, then I would  
17 like it labeled as such.

18 CHAIRPERSON MILLER: I think that's  
19 reasonable. Would you label exactly what that list  
20 represents?

21 MR. MORROW: Yes.

22 CHAIRPERSON MILLER: Okay. And then are  
23 we going to need 20 copies or what? How many do we  
24 need at this point?

25 MS. BAILEY: We can make the copies, Madam

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1 Chair.

2 CHAIRPERSON MILLER: Okay.

3 MS. BAILEY: When we get it here.

4 CHAIRPERSON MILLER: Okay. Thank you.

5 Now, okay. You can give that to Staff when you're  
6 ready. What I would advise is to make sure that Mr.  
7 Keys gets a look at it and make sure he is satisfied  
8 also as to what it represents. Okay? Okay. Do you  
9 want to call your next witness? Do you want to call  
10 your next witness?

11 MR. MORROW: Yes.

12 CHAIRPERSON MILLER: Are you ready? Okay.

13 COMMISSIONER PARSONS: Madam Chairman,  
14 excuse me.

15 CHAIRPERSON MILLER: I'm sorry.

16 COMMISSIONER PARSONS: I unfortunately  
17 have to leave for another commitment, but I will read  
18 the transcript of the remainder of the proceedings  
19 today and look forward to participating in the case.

20 CHAIRPERSON MILLER: Okay. Thank you.

21 MR. MORROW: All right. This time I would  
22 call Ms. Sondel. She also lives in close proximity,  
23 extreme close proximity to where the facility is going  
24 to be located.

25 CHAIRPERSON MILLER: Okay. And could you

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1 give your name and address? I know he just gave your  
2 name, but if you can do it again.

3 MS. BRANDON SONDEL: Thank you, Mr.  
4 Morrow. Heather Brandon Sondel, 1311 Farragut Street.

5 CHAIRPERSON MILLER: Okay.

6 MS. BRANDON SONDEL: And next door to 1309  
7 Farragut Street, and I have a prepared statement. Is  
8 that appropriate at this time?

9 CHAIRPERSON MILLER: That's fine.

10 MS. BRANDON SONDEL: Okay. And I will be  
11 addressing the issues of the numbers of organizations  
12 that are in this area and the number of students that  
13 are being serviced, and it also impacts the traffic,  
14 so it is part of my statement. Thank you.

15 The current situation has caused me, as a  
16 resident of the 1300 block of Farragut, to question  
17 the purpose of zoning. What is the purpose of a  
18 Zoning Regulation? According to DCMR Title 11,  
19 section 200.1, R-1 Districts are designed "to protect  
20 quiet residential areas now developed with one-family  
21 detached dwellings," whose provisions are, "intended  
22 to stabilize the residential areas where only a few  
23 additional and compatible uses shall be permitted."

24 Well, for whom are our zoning provisions  
25 created? What is the neighborhood that will be

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1 "protected?" Also, according to DCMR, it is for the  
2 "one-family detached dwellings" and "few additional  
3 and compatible uses" already established. ALG, the  
4 petitioners, can move anywhere in the city and,  
5 indeed, they do not need to move.

6 There are plenty of properties available  
7 in the hot market. Zoning provisions serve and  
8 protect the residents of the 1300 block of Farragut  
9 Street and those of us searching to ensure a "quiet  
10 residential street" for the taxpaying residents. Make  
11 no mistake, ALG is a business looking to take  
12 advantage of the blooming market in the 16<sup>th</sup> Street  
13 Heights area.

14 The director is currently a business owner  
15 of a bed and breakfast in Virginia, and this is  
16 operating as a co-op not as a nonprofit. They are a  
17 business searching to establish a business on a  
18 residential street when there are plenty of  
19 residential zones located one half mile from this  
20 location.

21 When the residential house at 1309  
22 Farragut Street was for sale in 2003, the sellers,  
23 previous residential owners, specified in writing that  
24 "no co-ops were allowed to purchase the property."  
25 The sellers respected the zoning provisions. How was

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1 this purchase allowed to go through? Clearly, the  
2 purchasers, ALG, knew there would be issues related to  
3 the creation of a co-op on a residential street.

4 I would like to paint a picture for you of  
5 what our neighborhood is like. The 1300 block of  
6 Farragut is populated with neighbors who care about  
7 their street, their homes and the quality of life of  
8 the whole block. Our neighbors are not the selfish,  
9 unwelcoming nimbies "not in my backyard" that counsel  
10 would portray. Let me tell you about the neighbors.

11 When we moved into the residential home at  
12 1311 Farragut Street in August of 2001, one neighbor  
13 came over to our house, introduced herself and  
14 welcomed us to the neighborhood with a bottle of wine.

15 That day two other neighbors driving down the street  
16 welcomed us to the block and offered to help us move  
17 our furniture and goods into our home. Within a week  
18 another neighbor gave us a flyer and invited us to  
19 join the neighborhood association stating that we have  
20 the best holiday parties around.

21 These are the neighbors. The neighbors  
22 are welcoming to outsiders. This is our neighborhood  
23 where 93 percent of the homes signed a petition  
24 against the special exemption for Amazing Life Games,  
25 including the two homes adjacent to the property and

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1 every other home, but one. This is the neighborhood  
2 that we live in. These are the neighbors whose  
3 opinions and rights should be respected and protected  
4 under the guarantees of R-1 zoning requirements for "a  
5 quiet residential area whose provisions are intended  
6 to stabilize the residential area."

7 This is also the neighborhood where the  
8 parents of ALG work on the house at 11:15 p.m. on a  
9 Monday night irrespective of the concerns of the  
10 neighbors. But this is not the complete picture of  
11 the neighborhood. The 1300 block of Farragut Street,  
12 N.W. Please, refer to the color maps that were  
13 submitted previously and again are present today. It  
14 will give you a visual representation of the geography  
15 of our block, of our neighborhood.

16 On these maps you can clearly see that our  
17 one block is already saturated with six current R-1  
18 zoning exemptions. I am here to testify that the  
19 "quiet residential area" of 1300 Farragut Street  
20 currently has more than a few additional compatible  
21 zoning exemptions permitted under 200.1. In fact, 23  
22 percent of the residences and 42 percent of the real  
23 estate of this single block of 1300 Farragut Street,  
24 N.W. is already permitted as a special exemption.  
25 There are only 26 homes on the block as you can see

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1 from the map.

2 It seems to me that the voices and the  
3 rights of the 93 percent of the residents, the ANC,  
4 the neighborhood association, Councilman Fenty should  
5 have a greater voice in the future of their block than  
6 the few families who may potentially live close enough  
7 to walk to Amazing Life Games.

8 On any given weekend there are at least  
9 five properties for sale in our neighborhood,  
10 including properties zoned for commercial  
11 nonresidential use less than a half mile away on 14<sup>th</sup>  
12 Street and one block away on Georgia Avenue. ALG has  
13 zoning options. ALG is choosing not to look at  
14 available nearby commercial properties. The residents  
15 have no options. In fact, we have fewer and fewer  
16 options.

17 In the 1970s when West Elementary School  
18 was expanded, nine houses were torn down. One house  
19 was torn down a few years ago when the Maranatha  
20 Church on 13<sup>th</sup> Street was expanded. How many houses  
21 will be torn down when Amazing Life Games wishes to  
22 expand beyond its 28 student capacity?

23 As a member of the 14<sup>th</sup> Street Heights  
24 Economic Revitalization Committee, we could  
25 accommodate, I testified, that we could accommodate

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1 them there in the 36 nonresidential zoned properties  
2 one half of a mile away, clearly serving the needs of  
3 the potential four families who would be walking to  
4 ALG.

5 Of the 307 students currently enrolled at  
6 West Elementary School where there is no parking on  
7 Farragut Street, 53 percent of its population or 162  
8 students are out of boundary students, meaning that  
9 they do not live in the neighborhood or within walking  
10 distance. D.C. Public Schools does not provide  
11 transportation for these students. Therefore, these  
12 162 students must get transported to school each  
13 morning by car and get picked up each afternoon or  
14 evening from the aftercare program by car.

15 West Elementary also has eight special  
16 education students who require daily busing. Add in  
17 the monthly PTA meetings, the professional development  
18 courses, the biennial holiday concerts, open houses,  
19 graduation ceremonies, field trips with chartered  
20 buses and four annual parent teacher evening meetings,  
21 this already amounts to "an adverse impact on the  
22 neighborhood due to traffic, noise and operations"  
23 according to section 205.8 of DCMR. As a result,  
24 there is a lot of daily traffic on the west end of  
25 Farragut Street, N.W., on a daily basis. By the way,

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1 this street does not go through to 16<sup>th</sup> Street causing  
2 more traffic on the corner of 14<sup>th</sup> and Farragut Street,  
3 N.W.

4 Across 14<sup>th</sup> Street from West Elementary  
5 School, there are 1,000 students and 100 staff members  
6 at the Kingsbury School daily. 137 of these students  
7 are special education students bused by D.C. Public  
8 Schools, therefore, about 137 D.C. Public School  
9 buses. Of the 60 documented cars from previous  
10 testimony that go up and down Farragut Street in the  
11 mornings, many of them have out of state plates since  
12 Kingsbury is a private school that serves the  
13 District, Maryland and Virginia.

14 Virginia and Maryland are not within  
15 walking distance to Kingsbury and, therefore, the  
16 students must be dropped off having an adverse impact  
17 on the traffic on 13<sup>th</sup> Street, on Farragut Street and  
18 on the intersection of Farragut Street and 14<sup>th</sup> Street,  
19 the entrance to the school.

20 But there is more to our neighborhood.  
21 There are also two churches, a property donated to a  
22 church and a community education center. According to  
23 the testimony already submitted, there are,  
24 approximately, 28 licensed day care centers within  
25 miles of the block. ALG is arguing that their

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1 services will not create "objectionable traffic or  
2 conditions," but the residents well know the current  
3 situation replete with traffic, noise, variances and  
4 child day care centers.

5 And finally, let me tell you about the  
6 needs of our larger neighborhood, the District of  
7 Columbia. The Mayor, the State Education Office, the  
8 District of Columbia Public Schools and the Office of  
9 Citywide Early Childhood Initiatives have committed  
10 themselves to expanding programs for 3 and 4 year-olds  
11 in the schools. To this end, the Mayor of the  
12 District of Columbia in his Fiscal Year 2005 Budget  
13 demonstrates this commitment to early childhood  
14 education in the public schools by appropriating \$2  
15 million in new monies to "develop and implement an  
16 early childhood education program within the District  
17 of Columbia Public Schools for 3 and 4 year-old  
18 children."

19 With this additional funding, schools who  
20 currently do not have a 3 year-old program due to  
21 funding constraints, such as West Elementary, they  
22 will be allowed to add a 3 year-old program for  
23 students aged 2.5 in September. Mary H. Gill, Chief  
24 of Citywide Early Childhood Initiatives, supports the  
25 city's increased funding and early childhood programs

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1 at the public elementary schools and as such,  
2 encourages schools to add these programs and staffing  
3 in an effort to increase overall school performance.

4 The city and its public schools and  
5 numerous partnerships with the office of Citywide  
6 Early Education Initiatives, the State Education  
7 Office, SPARK, the National Black Child Development  
8 Fund, D.C. Department of Childhood Development, the  
9 Kellogg Foundation, Head Start and the Mayor's  
10 Advisory Council on Early Childhood development to  
11 "renew their commitment with continued investment in  
12 high quality early education to maximize the resources  
13 that support the needs of young children and their  
14 families in schools."

15 Even without the new additional funding  
16 any elementary school, including West Elementary, can  
17 begin a program for 3 year-olds with as few as 18  
18 children. Clearly, the 28 children at Amazing Life  
19 Games could be served at a 3 and 4 year-old program at  
20 West Elementary benefitting not just the four parents  
21 who may live within walking distance to 1309 Farragut,  
22 but the entire community.

23 School based early childhood programs,  
24 such as Head Start, have been proven to increase  
25 school readiness, program alignment and community

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1 support according to the Department of Education. Mr.  
2 Bachman, the principal of West Elementary and D.C.  
3 Public Schools and the community have a vested  
4 interest in expanding a 3 year-old program. They will  
5 get additional funding from the city. They will be  
6 able to bring in the younger siblings of current  
7 students. They will increase staffing and they will  
8 be able to strengthen their academic program.

9 As a certified educator and educational  
10 administrator, I understand and recommend the benefits  
11 of expanding early childhood programs within public  
12 schools. Superintendent of Schools, Robert C. Rice,  
13 agrees with me. At the annual Citywide Universal  
14 School Readiness Conference in April and May of 2004,  
15 he recognized "with great pride, efforts to establish  
16 public support for early childhood education included  
17 in the District of Columbia Public Schools  
18 partnerships."

19 This is the larger neighborhood of 1309  
20 Farragut Street. The District of Columbia's  
21 initiatives to expand 3 and 4 year-old programs in the  
22 schools. As it is this will be difficult given a glut  
23 in child care in Ward 4. According to public data  
24 provided by the Office of Early Childhood Development,  
25 the District of Columbia Department of Public Health,

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1 the available child care slots in Ward 4 exceeds the  
2 number of youngsters. The licensed child care supply  
3 is 2,935 slots with only 1,713 children aged 3 to 4  
4 according to 2000 Census figures.

5 Zoning Board Members, I urge you to  
6 consider not just the impact of ALG on the 1300 block  
7 of Farragut, but the provisions of the law leading to  
8 the "cumulative effect of the six facilities and its  
9 adverse impact on the neighborhood due to traffic,  
10 noise and operations," as defined under 205.8 of DCMR.

11 The street is already saturated, because the zoning  
12 laws have rules in favor of outsiders in the  
13 neighborhood.

14 I urge you to consider the conditions that  
15 we already live with, two churches, two large schools,  
16 a community center and a future church all within one  
17 block of 26 residential homes. 23 percent of the  
18 current property is zoned for nonresidential purposes  
19 already. 42 percent of the street's real estate,  
20 excuse me, is nonresidential. No other block within  
21 10 blocks is so saturated.

22 Please, recognize the wishes, expressed  
23 opinions and sworn testimony of municipal experts who  
24 all paint a picture of our neighborhood that is not in  
25 favor nor in need of another cooperative business

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1 child care center. Please, do not exacerbate the  
2 current conditions and do not further contribute to  
3 the noise, traffic and saturation of services by  
4 granting ALG a special exemption. Please, respect the  
5 rights of current residents over the rights of a few  
6 potential residents. Thank you.

7 CHAIRPERSON MILLER: Thank you. I have  
8 just one question and maybe other people who are going  
9 to come forward and give testimony might address this.

10 You are painting a picture for us. We don't know  
11 your street. We don't know your neighborhood. We  
12 only know, you know, what you tell us in this public  
13 record.

14 And speaking as one Board Member, when I  
15 began this case, I had the impression this was a quiet  
16 residential street and that this facility was going to  
17 add traffic to it. Now, based on what you just said,  
18 I get the impression that it's not such a quiet  
19 residential street, that there's a lot of traffic, but  
20 what your point is is that enough is enough for the  
21 homes that are left on the street. Is that correct?  
22 I just want to get the right picture from you.

23 MS. BRANDON SONDEL: That is correct.

24 CHAIRPERSON MILLER: Okay.

25 MS. BRANDON SONDEL: And they do not need

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1 to go there. I have met with several of the parents.  
2 They seem like nice people. The director seems nice.  
3 There are plenty of nonresidential places in the same  
4 area around Hamilton Park or around other parks. They  
5 do not need to be there.

6 CHAIRPERSON MILLER: Okay. I hear what  
7 you're saying. Okay. Mr. Keys, would you like to  
8 cross?

9 MR. KEYS: Yes.

10 CHAIRPERSON MILLER: No, I'm sorry. I  
11 have to ask my Board Members first if they have any  
12 questions. No. Okay, Mr. Keys.

13 MR. KEYS: Ms. Brandon Sondel, what do you  
14 understand a co-op is or what did you understand from  
15 the testimony that Ms. Craddock gave?

16 MS. BRANDON SONDEL: I understand that the  
17 money from the parents, they will use it to further go  
18 into the school or for other needs that they may have,  
19 and I don't know what those unspecified needs are. It  
20 could go back into their pockets. I don't know.

21 MR. KEYS: And last question, where is the  
22 front of West Elementary School?

23 MS. BRANDON SONDEL: It's address is on  
24 Farragut Street. I believe it's 1334 Farragut Street,  
25 but that may be wrong.

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1 MR. KEYS: Where is the front of the  
2 school, the main entrance to the school?

3 MS. BRANDON SONDEL: The main, the address  
4 is 1334 Farragut Street and that is where the teachers  
5 go, can go in and that is where most people get  
6 dropped off. There is also an entrance on Gallatin,  
7 but the Farragut Street entrance is far more used.

8 MR. KEYS: Thank you.

9 MR. MORROW: I want to correct. You said  
10 1333?

11 MS. BRANDON SONDEL: Is it? I don't know  
12 the address.

13 MR. MORROW: It's 1333 Farragut.

14 MS. BRANDON SONDEL: Thank you.

15 MR. MORROW: Actually, 1334 is my house.

16 MS. BRANDON SONDEL: Sorry.

17 CHAIRPERSON MILLER: Okay. Thank you.  
18 Does the ANC have any cross? Ms. Mitchell, do you  
19 have any cross? If you have cross, you need to come  
20 up. No, you have to come up and speak into the  
21 microphone.

22 MS. MITCHELL: Hi, Jackie Mitchell, ANC-  
23 4C02. Just for the record, I would like Ms. Sondel to  
24 state exactly where she lives.

25 MS. BRANDON SONDEL: I live at 1311

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1 Farragut Street, next door to the proposed site for  
2 Amazing Life Games.

3 CHAIRPERSON MILLER: Thank you. Does that  
4 conclude your case?

5 MR. MORROW: I had something that was sort  
6 of -- some research that was done by Ms. Moore that  
7 she wanted to bring to the attention of the Board and  
8 if you will, could we give her the opportunity to do  
9 that?

10 CHAIRPERSON MILLER: Is that a document  
11 she is going to be submitting or what?

12 MR. MORROW: She doesn't really --

13 CHAIRPERSON MILLER: Something she just  
14 wants to say quickly?

15 MR. MORROW: I withdraw the first request,  
16 but I do have a document that lists the nonprofit  
17 organizations that are within the area that I would  
18 like to submit for the record.

19 CHAIRPERSON MILLER: Mr. Keys, do you have  
20 an objection to that? Have you seen it? I mean, I'm  
21 sure he's going to say that you at least have to say  
22 who made this list and, you know, where it came from.  
23 We haven't seen this, so I don't know what we're  
24 dealing with.

25 MR. KEYS: I know. Well, it's a list. My

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1 concern with it is that it runs in areas that I think  
2 are fairly far from this area. It runs from the 4700  
3 block of 16<sup>th</sup> Street to the 5400 block of 16<sup>th</sup> Street.  
4 I'm just not sure of its relevance. I mean, I will  
5 submit, I mean, that there are other uses in the area  
6 and I think that the map, which is consistent with the  
7 information that the applicant submitted, demonstrates  
8 that. It's cumulative, but I have no objection to it.

9 CHAIRPERSON MILLER: Okay. As long as it  
10 identifies the radius and all that, we can then give  
11 it the appropriate weight.

12 MR. KEYS: That it doesn't.

13 CHAIRPERSON MILLER: It doesn't?

14 MR. KEYS: It doesn't.

15 MR. MORROW: Actually, it does have the  
16 addresses.

17 CHAIRPERSON MILLER: You said you could  
18 tell how far away they are.

19 MR. KEYS: Well, I could tell from the  
20 4700 block of 16<sup>th</sup> Street to the 5400 block is seven  
21 blocks. Well, seven blocks is far more than the  
22 radius that's relevant to the 205 section, so I'm not  
23 sure where it goes. There are churches all up and  
24 down 16<sup>th</sup> Street. I mean, we all know that. This is  
25 not 16<sup>th</sup> Street.

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1 CHAIRPERSON MILLER: Do you have something  
2 to say to that, Mr. Morrow?

3 MR. MORROW: We can withdraw it, but one  
4 of the things, he didn't have any objections to it and  
5 it does specify the address. So, I mean, with some  
6 degree of specificity, as he pointed out, he was able  
7 to tell this seven blocks from where a particular  
8 facility is located, and I think anybody looking  
9 through the information also could do the same, but we  
10 certainly would withdraw submitting that.

11 CHAIRPERSON MILLER: You're withdrawing  
12 it? It's up to you. I mean, we haven't decided yet.

13 MR. MORROW: Okay. No, we want to  
14 continue to submit it.

15 CHAIRPERSON MILLER: Okay.

16 BOARD MEMBER ETHERLY: Madam Chair, just  
17 to help facilitate us on that.

18 CHAIRPERSON MILLER: Okay.

19 BOARD MEMBER ETHERLY: I have no  
20 objection. I think, clearly, the argument that's  
21 being made here, and I believe the Office of Planning  
22 report kind of takes us at least in that direction, is  
23 with regard to 205.8. Clearly, the argument is or the  
24 argument that's being offered is that while you might  
25 not necessarily have a number of child care facilities

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1 within that 1,000 square foot area that 205.8 speaks  
2 to, the argument is the spirit of 205.8 is, what the  
3 community is concerned about, and the spirit is while  
4 we might not have a relevant concentration within  
5 1,000 square feet, as you go beyond that radius you're  
6 talking about a significant number. Clearly, that's  
7 going to be, you know, for this Board to sort out and  
8 accept or not accept or Mr. Keys will speak to it in  
9 rebuttal, however he deems appropriate. But I would  
10 have no objection to it.

11 CHAIRPERSON MILLER: Okay. I would be  
12 inclined to let it in as well, but definitely take  
13 note of Mr. Keys' comments about how far away many of  
14 these may be.

15 MR. KEYS: I think they are far away and I  
16 don't think they are relevant, because the majority of  
17 these are churches. The Liberian Embassy is included.  
18 The Metro Bus Garage is included.

19 CHAIRPERSON MILLER: You know, Mr. Keys --

20 MR. KEYS: On Iowa Avenue. I would have  
21 to object to its relevance to a case involving CDCs.

22 CHAIRPERSON MILLER: Mr. Keys, let me say  
23 this. We're going to give you a chance to submit  
24 proposed findings and conclusions of law anyway and if  
25 you would like to address this particular document,

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1 you know, specifically, you will have that  
2 opportunity. Okay.

3 So I think that brings us now to persons  
4 in opposition, right? You have completed your case?  
5 Okay. At this point in the proceedings, that means  
6 that individuals who want to come forward and just  
7 speak on their own behalf against the application will  
8 have up to three minutes to do so. If you have  
9 something in writing, you can also submit it to us as  
10 well. If you agree with what has just been said by  
11 someone before you, you're welcome to say that I agree  
12 and not read your whole statement and submit your  
13 statement. So anyway, you have those options. Okay.

14 So how many witnesses can we take at a  
15 time, just two? Okay. So someone else can come  
16 forward as well. Would you, please, raise your hands  
17 as to who may be wanting to speak on this. Okay. We  
18 don't have that many anyway. Okay. Do you want to  
19 come forward and fill this empty seat? Okay. Why  
20 don't we start on our left since you were here first,  
21 and identify yourself for the record, please.

22 MS. THOMPSON: I'm trying not to run out,  
23 because time is of the essence. My name is Doreen  
24 Thompson and I am Vice President of the Carter Barron  
25 East Neighborhood Association, and I have written

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1 testimony from the neighborhood association. And I  
2 will start by saying that the reference to that  
3 survey, that was a survey that actually I had a hand  
4 in preparing, and what it reflects are the boundaries  
5 of the Carter Barron East Neighborhood Association.  
6 Our boundaries are 16<sup>th</sup> Street from Decatur to Kennedy  
7 and we also -- that goes down to 13<sup>th</sup> Street again from  
8 Decatur to Kennedy. And I would like to quickly read  
9 the statement by the CBENA, the Carter Barron East  
10 Neighborhood Association.

11 And it says briefly, "This is to express  
12 the position adopted by the Carter Barron East  
13 Neighborhood Association, CBENA, in which the school  
14 is to be located. At our regular membership meeting  
15 where the community was alerted that the decision  
16 would be made whether to support the location of the  
17 school in the community, the decision was made by  
18 CBENA to not support the Amazing Life Games Pre-School  
19 application for the following reasons:

20 There are now four nonprofit facilities  
21 located on the 1300 block of Farragut and one located  
22 on 14<sup>th</sup> Street immediately facing Farragut Street,  
23 which substantially impacts the residents of that  
24 street. These facilities include two large schools,  
25 an after school care facility and two churches.

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1           There has been a significant increase in  
2 through traffic on Farragut and adjacent streets as a  
3 result of commuters and other types of traffic,  
4 including school buses accessing the major arterial  
5 streets, 14<sup>th</sup> and 13<sup>th</sup> Streets. There is also  
6 significant speeding along 13<sup>th</sup> and Farragut Streets.  
7 Accordingly, CBENA requests that the Board deny the  
8 application for a zoning variance."

9           I also submitted a witness application for  
10 myself personally, so at this point I want to put on  
11 my other hat as Doreen Thompson, the resident, and I  
12 have a brief statement here also.

13           I am Doreen Thompson. Again, I reside at  
14 1510 Emerson Street, approximately, three blocks away  
15 from the address, which is being considered for the  
16 Amazing Life Games School. I have lived in this  
17 community for, approximately, 28 years and I have  
18 watched and experienced the evolution of this  
19 community in terms of increased traffic and the  
20 numerous requests for zoning variances and the  
21 granting of such variances by this body.

22           This is a community of relatively large  
23 homes, which are also relatively less expensive than  
24 other parts of the city with comparable homes. The  
25 result has been a significant conversion to schools,

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1 churches and not-for-profit institutions. Ironically,  
2 I suspect the neighborhood is also attractive, because  
3 it is located between three major arteries for  
4 commuters, that is 16<sup>th</sup>, 14<sup>th</sup> and 13<sup>th</sup> Streets.

5 This has reached a critical mass and, in  
6 my opinion, there needs to be a moratorium on further  
7 conversions or variances. There are a number of  
8 questions or points, which I would like to place  
9 before this Board to bring a big picture perspective  
10 on this community and the proliferation of not-for-  
11 profits in this community and the adverse impact on  
12 this community as a result of these decisions by this  
13 Board.

14 And one question is at what point is a  
15 neighborhood transformed from a residential or R-1 to  
16 light commercial through the granting of variances. I  
17 would like to share with you a survey, which we  
18 attempted to put into evidence, something that I did  
19 one summer where I went around and just looked at all  
20 the not-for-profits, whether they were impacting, they  
21 were sitting on the edge of the community, and I will  
22 give an example, for example is the Carter Barron  
23 facility, which is certainly on the opposite side of  
24 the street. I get my directions a little mixed up,  
25 but what happens when they have the tennis tournament?

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1           So when these operations, these large  
2 operations, these facilities, even though they may  
3 border our community, they have significant impacts on  
4 the community. As unbelievable as this may seem,  
5 there is only one street, Jefferson Street, which does  
6 not have a not-for-profit on it. As I mentioned, the  
7 community runs from Decatur, so alphabetically we go  
8 up to Kennedy, and Jefferson is the only street that I  
9 could identify that did not have a not-for-profit and  
10 it's probably just because maybe I couldn't figure it  
11 out from just looking at it. I would suspect there is  
12 something there hidden. Okay?

13           There are some blocks, there are a few  
14 blocks where there aren't community -- not-for-profit,  
15 I'm sorry. You know, you could have, for example, my  
16 block, I'm on the 1500 block of Emerson, there is one  
17 across the street. The 1400 block, there isn't one.  
18 It's kind of a short block, but we have got the church  
19 at the other end of the block, and then we have got  
20 Kingsbury in the back of that block, and then we have  
21 got some private club on Delafield. So whether you're  
22 -- even when it's not on your block, it's around the  
23 corner from you. Okay?

24           According to the survey, which I conducted  
25 some years ago, and I attempted to update, and where I

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1 wasn't clear on whether a facility was still in  
2 existence, I did put a question mark behind it. There  
3 are, approximately, 55 to 60 not-for-profits located  
4 in that area.

5 CHAIRPERSON MILLER: Okay. I have been  
6 told you are over your three minutes.

7 MS. THOMPSON: Oh.

8 CHAIRPERSON MILLER: But I think you are  
9 making some very significant points. I don't know.

10 MS. THOMPSON: Well, I would certainly,  
11 quickly, I won't repeat anything that I have already  
12 stressed here.

13 CHAIRPERSON MILLER: Okay, okay.

14 MS. THOMPSON: There is also another huge  
15 facility in the Metro Bus Garage, which was  
16 transformed from a bus turnaround, from 50 buses that  
17 turned around to 300 plus buses and these buses, I  
18 mean, we have had to put up signs, no buses through  
19 here, the traffic impacts, environmental impacts, this  
20 community is burdened.

21 I also would like to just quickly stress  
22 that what concerns me and the reason I wanted to speak  
23 as a citizen was what happens when these variances are  
24 granted with these conditions and the applicants do  
25 not comply with these variances over the years, they

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1 expand their facility like the British school that  
2 started operating virtually a moving classroom between  
3 locations, and a Board that says you can only travel  
4 along certain streets. You will only have these many  
5 students and they are increased.

6 The burden has been placed on the  
7 community to be the watchdog. I have got to watch the  
8 Kingsbury School. I have got to watch the Parkmont  
9 School.

10 CHAIRPERSON MILLER: Right.

11 MS. THOMPSON: Ideal School. And it's  
12 just more than enough.

13 CHAIRPERSON MILLER: Now, is your survey  
14 in the record?

15 MS. THOMPSON: That's the one that I  
16 thought we were attempting to put in.

17 CHAIRPERSON MILLER: That's coming in the  
18 record? That's what you were discussing?

19 MS. THOMPSON: Yes.

20 CHAIRPERSON MILLER: Okay. Now, also,  
21 because these haven't come in the record yet, it's  
22 hard for me to know what they represent, but I think  
23 there were diagrams as well. I mean, I'm wondering do  
24 we have what you're describing, which would show, you  
25 know, the nonprofits and other facilities on the

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1 blocks with the residences?

2 MS. THOMPSON: Yes.

3 CHAIRPERSON MILLER: Okay.

4 MS. THOMPSON: That's the survey.

5 CHAIRPERSON MILLER: That's the survey.

6 Okay.

7 MS. THOMPSON: That we're attempting to  
8 put in, into the record.

9 CHAIRPERSON MILLER: All right. Well, I  
10 think that will be valuable. Thank you.

11 MS. THOMPSON: And one last point. I  
12 understand you can only deal with what's provided to  
13 you, but to the extent the school, the applicant,  
14 comes in and says listen, you know, the neighborhoods  
15 are changing, we anticipate this demand for our  
16 services. But at the same time, the traffic patterns  
17 are also changing and no one is addressing that. If  
18 the seniors are dying out and are being replaced by  
19 younger families who will have the need for these  
20 services, these people are coming in with two cars. I  
21 have watched this transformation next door to me and I  
22 think that happens throughout the neighborhood. You  
23 go from a car or no car to two cars and three cars as  
24 we get to teenagers and four cars as the -- you know,  
25 so I just think there is some point, that the Board

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1 has to look at a community and say this community has  
2 a lot of not-for-profits already, you know, whatever  
3 that critical mass is.

4 CHAIRPERSON MILLER: Okay.

5 MS. THOMPSON: Thank you so very much.

6 CHAIRPERSON MILLER: Thank you. Any  
7 questions by the Board? Mr. Keys? Okay. Next  
8 witness, not witness, next person?

9 MS. GILL: Hello. My name is Katherine  
10 Gill and I would just like to comment.

11 CHAIRPERSON MILLER: Ms. Gill, could you  
12 state your address as well?

13 MS. GILL: Oh, my address?

14 CHAIRPERSON MILLER: Yes.

15 MS. GILL: Yes.

16 CHAIRPERSON MILLER: Thank you.

17 MS. GILL: My address is 1305 Farragut  
18 Street, N.W., and I am on the north side where ALG  
19 will be, well, would like to be. And when you were  
20 asking questions about the traffic in the alley, I can  
21 comment on that. There has been several police cars  
22 that go through the alley and on a couple occasions  
23 when they have been chasing people, they have hit my  
24 gate. So I have had some property damage with that.

25 And on the front of my house, there has

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1 been damage also on my brick wall. So there is a lot  
2 of traffic that goes through that alley, be it people  
3 walking, via cars, so I don't think that it is safe.  
4 And I sometimes just drive through just to see what I  
5 can see to make sure that it's clear. And that's all  
6 I have to say.

7 CHAIRPERSON MILLER: Thank you. Any  
8 questions?

9 UNIDENTIFIED SPEAKER: No questions.

10 CHAIRPERSON MILLER: Okay. Thank you very  
11 much. Yes, please, come forward. Any other witnesses  
12 or any other persons who wish to testify?

13 MR. SONDEL: Hi. My name is James Sondel.

14 I live at 1311 Farragut Street directly next door to  
15 1309 on the west side of that residence. And I just  
16 wanted to go on the record as being opposed. There  
17 has been a lot of testimony here already, which I  
18 wanted to reiterate, but I feel, you know, I see the  
19 need that it doesn't need to be restated.

20 Just a couple of observations that I  
21 wanted to get on the record. My wife and I purchased  
22 our house a few years ago and we purchased the house  
23 under the understanding that this was going to be a  
24 residential only neighborhood knowing that there were  
25 some other schools in the area.

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1           And I think what is happening here is  
2 that, you know, even though Amazing Life Games is  
3 probably a great facility, we are opposed to the fact  
4 that they would be taking away a residential house in  
5 our residential neighborhood that is already  
6 overburdened with many schools, churches that you have  
7 already been -- that have already been stated.

8           So I just wanted to say that in the spirit  
9 of the community, there are plenty of other areas of  
10 the city, especially on Georgia Avenue, which we all  
11 know could use some facilities like this that are  
12 available to this kind of place. Thank you very much.

13           CHAIRPERSON MILLER: Thank you. Any  
14 questions by the Board? Mr. Keys? Ms. Mitchell?  
15 Okay. Mr. Keys, do you have any rebuttal?

16           MR. KEYS: Yes, I would like to ask Meade  
17 Hanna to come forward. Would you just state your name  
18 and address, home address, for the record?

19           MS. HANNA: My name is Meade Hanna. I  
20 live at 3228 South 5<sup>th</sup> Street.

21           MR. KEYS: Ms. Hanna, I'm going to show  
22 you some photographs of Farragut Street and I would  
23 like you just to identify them as to whether you took  
24 them, what day you took them, the time and just  
25 describe what they show, please.

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1 MS. HANNA: I took these photographs the  
2 Wednesday after last Tuesday, June 9<sup>th</sup>, at 9:26 in the  
3 morning. Wednesday is the day that the north side is  
4 most crowded because of the street cleaning on the  
5 south side. So I took them from the point where the  
6 restrictions end at West Elementary to the point where  
7 there is available parking all the way on the corner.

8 There are two series of pictures, one  
9 showing -- I mean, it took two series of pictures to  
10 show the number of cars here available on the north  
11 side during the cleaning time. Does that make sense?

12 MR. KEYS: All right. Is the subject  
13 property shown in the picture?

14 MS. HANNA: 1309 Farragut is right in the  
15 middle of the -- let's see, are you there? It's in  
16 the middle of the first set and on the far left of the  
17 second set.

18 MR. KEYS: Do you want to estimate how  
19 many parking spaces there are just shown in that  
20 picture?

21 MS. HANNA: A conservative estimate of  
22 parking spaces is seven, maybe eight parking spaces.  
23 At 9:20 when everybody has vacated the south side.

24 MR. KEYS: I'm going to show you another  
25 set of pictures. Could you identify them and describe

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1 what they show?

2 MS. HANNA: The last set of pictures is  
3 13<sup>th</sup> Street at 9:20 on Wednesday, again, the day that  
4 it's most burdensome for parking for ALG, and it shows  
5 from Farragut, the corner of Farragut and 13<sup>th</sup> looking  
6 north on the side where we would be parking to bring  
7 children. It shows two spaces, in my estimate, on the  
8 left side, which is going north and across the street  
9 you will see also a crosswalk there.

10 There are in front of Maranatha Gospel  
11 Hall, not in front of it, there are at least four  
12 spaces, three maybe conservatively if you want to say  
13 that. This is also on a day when there is street  
14 cleaning on 13<sup>th</sup> Street on the other side, so that  
15 cumulatively is 13 parking spaces on the worst day of  
16 parking.

17 MR. KEYS: I'm going to show you another  
18 exhibit that was submitted and it, again, relates to  
19 Wednesday, June the 9<sup>th</sup>. Could you identify it and  
20 briefly summarize what it shows?

21 MS. HANNA: Does everybody have this?  
22 Yes. This is a parking count of the number of cars  
23 parked between the hours of 8:30 and 9:30 on  
24 Wednesday, June 9<sup>th</sup>, Thursday, June 10<sup>th</sup> and I didn't do  
25 Friday, so Wednesday, June 9<sup>th</sup> and Thursday, June 10<sup>th</sup>.

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1 I personally took the 9:00 to 9:30 and 8:30 to 9:30  
2 on Wednesday and Thursday. Again, these are the two  
3 days of last week.

4 MR. KEYS: Now, I'm particularly  
5 interested in Wednesday and I --

6 CHAIRPERSON MILLER: I just want to  
7 clarify on this document.

8 MR. KEYS: Yes.

9 CHAIRPERSON MILLER: Because I'm going to  
10 add it to mine, because that was, you know, some of  
11 our questions like who did this. So, Ms. Hanna, you  
12 said that you did, what, Wednesday 8:30 to 9:30?

13 MS. HANNA: No.

14 CHAIRPERSON MILLER: Oh, okay.

15 MS. HANNA: I did Wednesday 9:00 to 9:30.  
16 Actually, my signature is by the ones that I did.  
17 The traffic count during 9:00 to 9:30 on Wednesday was  
18 mine. I have my signature there notarized. And then  
19 traffic count 8:30 to 9:00 and 9:00 to 9:30 on  
20 Thursday is all mine.

21 MR. KEYS: I'm particularly interested in  
22 what happens on Wednesday on the north side of the  
23 street from 8:30 to 9:30. Could you just -- you know,  
24 we have talked about there being 36 spaces on that  
25 side of the street, but can you tell me what happens

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1 during that time?

2 MS. HANNA: On Wednesday, June 9<sup>th</sup>, again,  
3 the day that is the most adverse for the north side,  
4 our side of parking, I observed, you know, anywhere  
5 from 9 to 11 people parking, cars actually there  
6 parked between the hours of 8:30 and 9:30, which is a  
7 critical time for our drop-off, leaving a lot of  
8 space, at least seven to eight, maybe liberally, seven  
9 conservatively, available for us to use and this does  
10 not include the restricted area. You know, I don't  
11 think we're going to use that. This is all available  
12 parking.

13 MR. KEYS: That's fine. I think the  
14 exhibit, I'm not going to have her go through it, you  
15 know, tediously item by item, but I think it's self  
16 explanatory in showing the enumeration of cars on the  
17 street. Thank you, Ms. Hanna.

18 MS. HANNA: Thank you.

19 MR. KEYS: Do you have any questions for  
20 her?

21 CHAIRPERSON MILLER: Any questions? Oh,  
22 yes, the ANC has a question for you.

23 MS. MITCHELL: Jackie Mitchell, 4C02. Ms.  
24 Meade, did you do a traffic study from the hour of  
25 3:00 to 3:15?

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1 MS. HANNA: I did not, Ms. Mitchell.

2 MS. MITCHELL: Did anyone do that study?

3 MS. HANNA: We did do a count. We did do  
4 traffic counts, at that time, and they are submitted  
5 in the record, part of the application earlier. We  
6 just addressed these, because the Board wanted to know  
7 more information about traffic and parking.

8 MR. KEYS: I think the supplemental  
9 information contains the counts that we submitted at  
10 different times in the day. I can provide you a copy  
11 if you --

12 MS. MITCHELL: I would like that.  
13 Unfortunately, someone has the key to the mailbox and  
14 we haven't been able to get it, our ANC, so anything  
15 that went to the ANC mailbox I wasn't able to get.

16 MR. KEYS: I'm sorry for that, Ms.  
17 Mitchell, but I assure you that I did routinely mail  
18 things to the ANC.

19 MS. MITCHELL: Again, Ms. Meade, could you  
20 kind of give us a little information on what happened  
21 between 3:00 and 3:15 p.m.?

22 CHAIRPERSON MILLER: Ms. Mitchell, will  
23 you get access to those documents?

24 MS. MITCHELL: I will eventually. I will  
25 eventually, but we just have not been able to get the

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1 key.

2 CHAIRPERSON MILLER: Okay.

3 MS. MITCHELL: Unfortunately.

4 CHAIRPERSON MILLER: Because cross is  
5 really subject to the testimony that was presented and  
6 it is already 4:30 and we have another case waiting.

7 MS. MITCHELL: Okay.

8 CHAIRPERSON MILLER: So I think that you  
9 will get your answer, if I understand Mr. Keys  
10 correctly, in the documentation.

11 MS. MITCHELL: Okay.

12 CHAIRPERSON MILLER: Okay.

13 MS. MITCHELL: Then I can do a written  
14 response.

15 CHAIRPERSON MILLER: Yes.

16 MS. MITCHELL: After I get it?

17 CHAIRPERSON MILLER: You will, yes.

18 MS. MITCHELL: Thank you very much.

19 CHAIRPERSON MILLER: Yes. Okay. Mr.

20 Morrow, do you have any questions?

21 MR. MORROW: Yes, I do. I would like to  
22 ask, Ms. Meade, do you live in the neighborhood?

23 MS. HANNA: I don't.

24 MR. MORROW: So how do you know that what  
25 you recorded on -- is that July the 9<sup>th</sup>? Is that

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1 correct?

2 MS. HANNA: June.

3 MR. MORROW: June 9<sup>th</sup>, I apologize.

4 MS. HANNA: I saw you. I saw you there.  
5 We took the same pictures.

6 MR. MORROW: Well, I was just wondering  
7 how you know that that's representative of a typical  
8 day. It seems to me that's representative of July the  
9 9<sup>th</sup>.

10 MS. HANNA: June the 9<sup>th</sup>, yes, yes, yes.  
11 Okay. You're right and I have been to -- I will just  
12 tell you my experience at 1309 Farragut. I have been  
13 there about a dozen times for various sundry reasons  
14 from January to June 9<sup>th</sup> or, I guess, my last day there  
15 was June 10<sup>th</sup>, no, I think June 11<sup>th</sup> actually. And my  
16 experience has been that it's pretty consistent in  
17 those dozen times that I have been there, but that's  
18 all.

19 CHAIRPERSON MILLER: Okay. Mr. Keys, I  
20 believe that brings us to closing argument. Do you  
21 have a closing argument?

22 MR. KEYS: Yes, I do. I simply would like  
23 to recapitulate what you have heard and to tie it  
24 right to the standards. I open this thing, this case,  
25 by saying that there was a lot of heat generated, but

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1 very little light, and the thing that I want the Board  
2 to note is the lack of information that is submitted  
3 in opposition.

4 Section 205.2 deals with licensing  
5 requirements, and I think that it is in the record  
6 that Ms. Craddock had the Department of Health  
7 licensing officials accompany her to the site, that  
8 with minor modifications, which are enumerated in the  
9 application that don't change the building envelope,  
10 that don't change the facade of the building, the  
11 building can be adapted for the purpose intended.

12 Section 205.3 relates to objectionable  
13 traffic conditions and unsafe conditions for drop-off  
14 and pickup. Now, we have submitted for the record  
15 pictures taken at various times of day showing the  
16 1300 block of Farragut Street. We have made traffic  
17 counts enumerating the cars moving on Farragut Street  
18 at the critical times of day and, if you recall the  
19 testimony, the testimony covered the period 8:45 or  
20 8:30 to 9:30, 12:45 to 1:15, 2:45 to 3:15 and 6:00.

21 And if you examine the record what comes  
22 out, and this is corroborated by Mr. Bah's  
23 observation, Farragut Street is a lightly traveled  
24 street. The peak utilization that we found during the  
25 periods that are critical to our operation, and that

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1 is that morning hour, 8:30 to 9:30, there are 60 cars  
2 moving in both directions. Put another way, that's  
3 one car a minute.

4 The testimony of Ms. Craddock, the  
5 executive director, was that typical for her school,  
6 there are staggered arrivals. Parents bring children  
7 at times varying between 8:45 to 9:30. They are not  
8 all arriving at once. Mr. Bah, again, when asked the  
9 question how does that traffic flow, his estimate was  
10 22 vehicles. How does that fit within the traffic  
11 stream? He saw it having no discernable impact.

12 Again, the operations of the center, the  
13 very nature of it, further reduces its contribution to  
14 the traffic stream as the day goes on. A good portion  
15 of the children leave at 1:00. Others leave from 2:45  
16 to 3:15. The very smallest number are those who  
17 remain until 6:00. Ms. Craddock testified that that's  
18 a fairly stable pattern in the distribution of  
19 children.

20 And finally, in terms of the conditions,  
21 we have shown on March 17<sup>th</sup>, March 29<sup>th</sup>, April 19<sup>th</sup>, June  
22 9<sup>th</sup>, June 10<sup>th</sup> consistently if you look at the street,  
23 there are spaces on both sides proximate to the  
24 subject property. There has been no evidence, no  
25 pictures, no numbers, no counts by the people who live

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1 on that street that contradicts anything that was  
2 submitted by the applicant, and I think the only  
3 conclusion you can draw from that is that that  
4 evidence didn't go their way. It was easy to obtain  
5 if there was evidence to the contrary. It was not  
6 submitted.

7 The only information in the record that  
8 enumerates parking, that enumerates traffic volumes  
9 suggests that the applicant's operation can easily be  
10 accommodated on Farragut Street both in terms of  
11 parking and both in terms of traffic flows during the  
12 times of the day that are critical to its operations.

13 Off-street parking, Ms. Craddock  
14 testified, this is section 205.4, testified that the  
15 property can meet the requirements. The zoning  
16 requirements are in 2101.1 that we provide one parking  
17 space off-street for every four teachers. We have two  
18 spaces in the rear of the property that can be used  
19 for teachers and, as she testified, she has two  
20 teachers who drive, one who is dropped off and one who  
21 walks to work and will continue to walk to work. In  
22 any event, there is plentiful parking on the street.

23 Section 205.5, and we didn't speak to  
24 this, because we recognize the nature of the house and  
25 we want to keep it as residential as possible. We

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1 don't intend to use the backyard for anything other  
2 than supervised activities for small groups of  
3 children. If necessary, ALG indicated it's willing to  
4 install a privacy fence for neighbors' convenience,  
5 but no one has requested that. It's something the  
6 Board may wish to consider.

7 And I also think it's interesting that the  
8 neighborhood objection, if you can look at it, and I  
9 think you have to look at it, the focus is on the  
10 proliferation of facilities in the neighborhood. It's  
11 not the presence of children. It's not the noise  
12 children make. Some people actually find that cheery.

13 It's another generalized perception and I will come  
14 back to that.

15 Section 205.6, again, relates to the  
16 outdoors and the impact and no one has alleged that  
17 the center itself, its operation, the education of  
18 children adversely impacts. The focus is on traffic  
19 and parking.

20 Section 205.7 talks about the off-site  
21 play area. Now, this is the biggest red herring in  
22 it. Ms. Craddock is an experienced educator. She has  
23 been working with kids for over 30 years. She has  
24 moved kids, as she indicated, for a distance up to a  
25 mile without difficulty. There is a methodology to

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1 that. I think that her testimony is credible.

2 I think she understands what safety for  
3 children is. I think if she understands that the  
4 alley is not a safe route, then she goes on Hamilton  
5 Street through another route on the sidewalks. It  
6 doesn't add that much to the distance. We're talking  
7 two blocks to the rear of the Hamilton Street  
8 playground.

9 And it's interesting, the playground was  
10 itself the focus for how she wanted to locate her  
11 facility. She found Hamilton Street playground  
12 because of its tree shade, because of its new  
13 equipment, because of its well-maintained state to be  
14 an ideal place for her children. Now, the other thing  
15 that's interesting, and I think it's also submitted in  
16 our application, is children in a playground making it  
17 active, making it used are a beneficial impact to the  
18 community. It tends to drive out other uses.

19 And finally, the last standard is 205.8,  
20 which has to do with the Board's charge to look at the  
21 cumulative impact of other child development centers  
22 or elderly centers, that is those facilities that are  
23 licensed under section 205 of the regulations. We  
24 have done a thorough examination. We have gotten a  
25 list from the Health Administration that maintains all

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1 licensed facilities, and there are no licensed  
2 facilities under section 205 within 1,000 feet.

3 Now, I'm not going to argue with you that  
4 there aren't other facilities that have been  
5 sanctioned by the Board as special exceptions. Of  
6 course, it doesn't include the churches, because  
7 churches are matter-of-right in a residential  
8 neighborhood. But for special exceptions, you have  
9 got a number of schools. You have got a community  
10 center. There was a defunct day care center on  
11 Emerson Street that we referred to, but the thing I  
12 want to focus you on is the absence of community  
13 objection.

14 The Board needs to take note that these  
15 were summary orders and you know what that means.  
16 There is no opposition. Suddenly, the opposition is  
17 galvanized for this. I can't explain it. I can  
18 explain it on the basis of data. I can explain it on  
19 the basis of emotion. I can explain it on the basis  
20 of the repetition of the fact that the executive  
21 director is from Virginia, although the children are  
22 from Mount Pleasant, but I can't explain it on the  
23 basis of data, data that relate to the standards in  
24 the regulations.

25 Finally, we have maintained that this

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1 application not only has a light foot in this  
2 neighborhood in terms of traffic, but this application  
3 is also consistent with the plan. And I want to  
4 mention that the city has recognized or long  
5 recognized that there is a need for child development  
6 centers dispersed throughout the city.

7 The Comprehensive Plan, and I'm just going  
8 to refer briefly. This argument is made on pages 7  
9 and 8 in the applicant's statement. The Comprehensive  
10 Plan specifically acknowledges that we have got to  
11 achieve adequate child care facilities by allowing the  
12 establishment of new or the expansion of existing  
13 child care facilities in residential and in mixed use  
14 neighborhoods.

15 The Ward 4 Plan says the same thing, but  
16 the Ward 4 Plan goes on to say we're concerned about  
17 the adverse impacts on settled residential communities  
18 from growing nonresidential uses, such as churches,  
19 day care centers and other institutional uses. The  
20 Office of Planning's recommendation in response in the  
21 Comprehensive Plan is to ensure that such  
22 institutional uses meet and adhere to all applicable  
23 regulations regarding traffic, parking, safety, bulk,  
24 density, height and other code and enforcement issues.

25 The concern is with the loss of

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1 residential character, which can be and should be  
2 mitigated. And I think this is an application that  
3 meets the criteria that the Office of Planning  
4 outlined as for how it was going to harmonize  
5 residential neighborhoods and uses, which are  
6 essential to residential neighborhoods that are  
7 institutional, and that is by requiring that they  
8 adhere to regulations and efforts made to preserve  
9 residential character.

10 I think this application does it, and I  
11 think if the Board looks at the data, looks at the  
12 data of parking, traffic, you will see that these  
13 aren't the issues. We're going to rely on section 205  
14 as the standard by which this facility should be  
15 judged, and I don't think that there has been any  
16 probative evidence offered to suggest that this  
17 facility cannot function in this neighborhood without  
18 having an adverse impact on the use of adjacent  
19 property and in a way that's consistent with a  
20 residential R-1-B Zone. That concludes my statement.

21 Thank you.

22 CHAIRPERSON MILLER: Thank you. I think,  
23 at this point, perhaps we can set some dates for  
24 proposed findings and conclusions of law and the  
25 decision in this case. I sense that the school or

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1 that the child development center would like a  
2 decision sooner rather than later, because -- well,  
3 and you can tell me or you can take more time for your  
4 proposed findings. I understand people are going on  
5 vacation and what I was going to suggest, and then you  
6 can respond, would be our next decision making is July  
7 6<sup>th</sup>.

8 That would require the proposed findings  
9 and conclusions of law to be submitted when, Ms.  
10 Bailey, the 29<sup>th</sup> of June?

11 MS. BAILEY: Yes, Madam Chair.

12 CHAIRPERSON MILLER: Now, is that a  
13 schedule that you all can meet or would like to meet?

14 MR. KEYS: I can meet that.

15 CHAIRPERSON MILLER: Mr. Morrow, is that  
16 okay with you, July 29<sup>th</sup>, proposed findings and  
17 conclusions of law would be due.

18 MR. KEYS: I'm sorry, June 29<sup>th</sup>.

19 CHAIRPERSON MILLER: June 29<sup>th</sup>, I'm sorry.

20 MR. MORROW: June 29<sup>th</sup>.

21 CHAIRPERSON MILLER: And July 6<sup>th</sup>.

22 MR. MORROW: I think my mind is in July.  
23 That's my vacation period.

24 CHAIRPERSON MILLER: Right, July 6<sup>th</sup> would  
25 be our decision.

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1 MR. MORROW: June 29<sup>th</sup>, okay, yes.

2 CHAIRPERSON MILLER: Okay. Then we'll do  
3 that. And I just want to see what other documents  
4 might be coming in. Mr. Morrow, at some point, you  
5 had stated that you were trying to get crime  
6 statistics.

7 Do you think that we might have those  
8 within the week?

9 MR. MOORE: I would think so, yes.

10 CHAIRPERSON MILLER: Okay. And they could  
11 be served on all the parties?

12 MR. MOORE: Yes, I will.

13 CHAIRPERSON MILLER: Okay. So that you  
14 would have them within a week, so that would be a week  
15 in advance of your proposed findings, so you could  
16 address them if you choose to. Okay. Were there  
17 other documents? Did you submit the documents with  
18 the survey?

19 MS. BAILEY: Yes, Madam Chair.

20 CHAIRPERSON MILLER: They are in the  
21 record? Okay.

22 MS. BAILEY: I have them.

23 CHAIRPERSON MILLER: Okay. Are there any  
24 other documents, Ms. Bailey?

25 MS. BAILEY: The only other thing, the

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1 lady from the ANC had indicated that she wanted to  
2 file a response to -- not necessary?

3 CHAIRPERSON MILLER: Okay.

4 MS. BAILEY: Ms. Mitchell, did you ask to  
5 file something?

6 CHAIRPERSON MILLER: Okay. You will have  
7 that opportunity. If you file proposed findings and  
8 conclusions of law, you can address those traffic  
9 counts in yours. And does anybody have any questions?  
10 Okay. Then, Ms. Bailey?

11 MR. KEYS: Madam Chair, I think it might  
12 be helpful if you could briefly state what proposed  
13 findings and facts are intended to do. It has to rely  
14 on the record created at the hearing and not on  
15 information that comes in outside.

16 MS. BAILEY: Madam Chair, we can discuss  
17 that with whomever needs to know in the office,  
18 because there is, as you indicated, another case  
19 waiting, so that can always be taken care of by Staff.

20 CHAIRPERSON MILLER: Okay. Ms. Bailey, do  
21 you want to reiterate the dates?

22 MS. BAILEY: The decision is scheduled for  
23 July the 6<sup>th</sup>. The findings of fact are due on June  
24 29<sup>th</sup>.

25 CHAIRPERSON MILLER: Okay. And so the

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1 record will be closed, except for the crime statistics  
2 and the documents that we're receiving today. Okay.  
3 Then that concludes this case. Thank you very much.

4 At this point, I would like to apologize  
5 to the persons who are here on the Sidwell Friends  
6 case. I just want to explain that your delay is due  
7 to a couple of circumstances beyond our control. One  
8 was last week we moved your hearing to 3:00, because  
9 we had to end early because of a memorial service for  
10 someone, for a death in the family of our director of  
11 the office.

12 And then this morning there was a  
13 breakdown on the Metro and two Board Members,  
14 including myself, were stuck on the train. So that is  
15 why we're now having your case begin at -- and it  
16 won't actually begin at 4:45. I think it will  
17 probably begin at 5:00, because we need to take a 15  
18 minute break. So you can use this time to set up and  
19 we'll see you in 15 minutes.

20 MR. FEOLA: Madam Chair, may I approach  
21 before the break?

22 CHAIRPERSON MILLER: All right. We  
23 haven't even called the case yet though. Okay.

24 MR. FEOLA: Thank you, Madam Chair. For  
25 the record, Phil Feola of Shaw Pittman. Given the

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1 time of day and not knowing how late the Board intends  
2 to stay, and I know we're not going to have a five  
3 person Board today to address the case, I was  
4 wondering whether the Board would consider in the  
5 recess whether or not it could have a special hearing  
6 on a non-BZA day, a Wednesday two weeks from tomorrow  
7 or something, so that we can get through the Sidwell  
8 case start to finish.

9 I think one of the problems we're going to  
10 have is that some community members and the ANCs are  
11 going to have to leave at about 6:00, so even if you  
12 were going to go late today, so I just ask the Board  
13 to consider that.

14 CHAIRPERSON MILLER: Well, okay.

15 MR. FEOLA: In the recess while we set up.

16 CHAIRPERSON MILLER: Right. Let me just  
17 make sure we understand you before we go into our  
18 recess. Are you suggesting that -- certainly, if we  
19 look for another date, it's anticipated that this is  
20 not going to conclude today, but would you still  
21 prefer that we begin the case today with whatever time  
22 we have or you're not saying that we just have a whole  
23 different day?

24 MR. FEOLA: I'm sorry. In conversations  
25 with your Staff while this previous case was going on,

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1 it appears that the next available large block of time  
2 is September 28<sup>th</sup>, and that's a long way down the road.

3 And so I guess we were hoping that in lieu of  
4 September 28<sup>th</sup>, we could come here on June 23<sup>rd</sup> or June  
5 16<sup>th</sup> or June 30<sup>th</sup> or some day that is not a typical day.

6 Now, I know it's an extraordinary request, but I ask  
7 you to consider it.

8 BOARD MEMBER ETHERLY: Here's what I  
9 suggest, Madam Chair. I would suggest that we go into  
10 recess, talk it through. The longer we talk out here  
11 the less time we have to work with what we have today.

12 So I would suggest that we just go into recess.

13 MR. FEOLA: And in the meantime we'll set  
14 up as if we're going today.

15 CHAIRPERSON MILLER: Okay. I just want to  
16 clarify though, I mean, if you're going to start at  
17 5:00, would you still want to do an hour's worth of  
18 something? Are you proposing that instead of or in  
19 addition to today is my question?

20 MR. FEOLA: If we could have an  
21 alternative date, as I just described, I think we  
22 would suggest doing that instead of starting today.  
23 If we don't have an alternative date, we would rather  
24 at least get going.

25 CHAIRPERSON MILLER: Okay. Got it. Thank

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1 you.

2 (Whereupon, at 4:51 p.m. a recess until  
3 5:04 p.m.)

4 CHAIRPERSON MILLER: Are you ready to call  
5 the last case of the afternoon?

6 MS. BAILEY: I am, Madam Chair, and that  
7 is Application No. 17149 of Sidwell Friends School,  
8 pursuant to 11 DCMR section 3104.1, for a special  
9 exception allowing additions and enhancements to an  
10 existing private school and to increase enrollment  
11 from 780 to 825 students under section 206. The  
12 property is located in the R-1-B and C-2-A Districts  
13 at premises 3825 Wisconsin Avenue, N.W., Square 1825,  
14 Lot 816.

15 All those persons wishing to testify in  
16 this case, would you, please, stand to take the oath?

17 Please, raise your right hand.

18 (Whereupon, the witnesses were sworn.)

19 MS. BAILEY: Thank you. Madam Chair,  
20 Staff is of the understanding that there are three  
21 preliminary matters associated with this case. The  
22 schedule, the Board does have a preliminary matter and  
23 there are requests for party status.

24 CHAIRPERSON MILLER: Thank you, Ms.  
25 Bailey. I'm going to start with the Board's

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1 preliminary matter, which is that I have decided to  
2 recuse myself in this case. This is a decision that I  
3 have made on my own accord. There is no motion for my  
4 recusal. The basis for my recusal stems from section  
5 3(e) of the Code of Judicial Conduct adopted by the  
6 District of Columbia Courts in 1995 that states in  
7 relevant part as follows with respect to the recusal  
8 of a judge: "A Judge shall disqualify himself or  
9 herself in a proceeding in which the Judge's  
10 impartiality might reasonably be questioned including,  
11 but not limited to instances where (A) the Judge has a  
12 personal bias or prejudice concerning a party." The  
13 D.C. Court of Appeals has held that these same rules  
14 governing the recusal of judicial officers apply to  
15 agency decision makers acting in a quasi judicial or  
16 adjudicative capacity.

17 I am recusing myself, because I have quite  
18 extensive contacts with the applicant in this case and  
19 I believe that my impartiality may reasonably be  
20 questioned, and I am going to highlight some of those  
21 contacts, so that the record is clear.

22 I have a daughter who is currently  
23 enrolled at Sidwell Friends School as a junior in the  
24 upper school. I have another daughter who graduated  
25 from Sidwell Friends two years ago and I have a

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1 husband who graduated from Sidwell Friends. I have  
2 been a Sidwell Friends parent for 12 years and I am  
3 also active in the Parents Association.

4 With respect to those contacts, I do also  
5 want to put on the record that I have had absolutely  
6 no discussion with the school regarding this  
7 application. I have neither attended school meetings  
8 with respect to the application nor community  
9 meetings. Strictly speaking, there may not be a  
10 conflict of interest in this case. From what I know  
11 about the application, my belief is that most likely  
12 my daughter will graduate before the buildings are  
13 completed and, therefore, I do not expect to benefit  
14 in any way from the application. I expect that I may  
15 be personally inconvenienced by the construction if  
16 the application is approved as I drive to the campus  
17 frequently.

18 Finally, there is a good possibility that  
19 I might be subject to some of the conditions that this  
20 Board may adopt in connection with the application.  
21 Therefore, in light of all those contacts, which do  
22 indicate to me a close and extensive relationship with  
23 the school, I am hereby recusing myself. Thank you.

24 BOARD MEMBER ETHERLY: Thank you very  
25 much, Madam Chair. I believe it went unspoken, but in

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1 terms of seniority, that would leave me in the lucky  
2 and enviable position of at least, as a starting  
3 point, shepherding us through the start of this  
4 particular case. We will be joined by our Chairman,  
5 Mr. Griffis, in subsequent hearing dates and we will  
6 resume with his leadership of the case. For today,  
7 however, I will move forward with this and my two  
8 colleagues, but I do thank Mrs. Miller for her  
9 statement and comments.

10 What I think I would like to do today is,  
11 given where we are and given what we have already had  
12 indicated in terms of some scheduling issues beginning  
13 at 6:00 p.m., some of which will be on the parts of  
14 parties here and then also some of which will be on  
15 the Board's side, I would like to have counsel come up  
16 for the applicant, please. I would also like to have  
17 the relevant ANC come forward, which would be ANC-3C,  
18 and I would also like to have a representative from  
19 ANC-3F to step forward.

20 And I do believe that we do have one, as  
21 far as I'm aware, party status application on the part  
22 of an individual and, please, pardon me if I  
23 mispronounce the individual's name, but I believe we  
24 have a party status application from Milos Betchetik,  
25 if that is correct. Okay. I think I got an

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1 indication from the audience that that individual is  
2 not here.

3 What I would like to do as a starting  
4 point is deal with the question of party status,  
5 because we do have a party status request from that  
6 one individual and then also from ANC-3F as an  
7 affected ANC and also as the adjacent ANC. Of course,  
8 the ANC of record here, ANC-3C, is already a party and  
9 so I have asked them at the table. I would like to  
10 deal, for the benefit of my colleagues, with the party  
11 status request and then move into scheduling, and what  
12 we're going to suggest as we proceed for the next  
13 couple of sessions together.

14 Finally then, I do not anticipate that  
15 we're going to be in a position to get into the  
16 substance of the case today given that we,  
17 essentially, will have about 50 minutes to work with,  
18 but there will be some guidance or a little bit of  
19 discussion I would like to have around the relief that  
20 is being sought here, because we do have some  
21 questions regarding clarification on the relief, so I  
22 would like to perhaps talk a little bit about that.

23 That's our game plan for the next 50  
24 minutes. So with that, please, let me first have  
25 introductions of the people that we have here at the

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1 table, some familiar faces by the way, but, please,  
2 just for the benefit of the record, introductions.

3 MR. FEOLA: Thank you, Mr. Chairman. For  
4 the record, Phil Feola of Shaw Pittman on behalf of  
5 the applicant, Sidwell Friends School.

6 MS. MCWOOD: Nancy McWood, Chair of  
7 Advisory Neighborhood Commission 3C.

8 MS. PERRY: Karen Perry, Chair of ANC-3F.

9 BOARD MEMBER ETHERLY: Okay. Excellent.  
10 Thank you all very much. I believe perhaps just as a  
11 matter of process we should perhaps deal with the  
12 individual party status requests first as that  
13 individual is not here, and I think we can perhaps  
14 deal with that relatively quickly. That party status  
15 request, for the benefit of my colleagues, is at  
16 Exhibit No. 33 and it is a party status request of,  
17 once again, one Mr. Milos Betchetik.

18 Mr. Betchetik, in relevant portion, notes  
19 that he is a co-owner of a property together with his  
20 wife. That house is located across the street from  
21 the Sidwell Friends School. Mr. Betchetik notes, in  
22 relevant portion, that we have more than an interest  
23 than a person in the general public, because our  
24 property is across the street from Sidwell Friends.

25 As many of our audience members are aware,

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1 and as my colleagues are aware, party status is,  
2 indeed, a very high bar, sets a very high bar of  
3 participation. First and foremost, of course, is  
4 presence at the particular case. Further, when I did  
5 take a look at the party status application prior to  
6 our proceeding today, I did think to myself whether or  
7 not the interest of this particular individual and  
8 resident could not be perhaps better represented or  
9 represented within the ambit of the ANC's case as that  
10 person is, indeed, a resident within the ANC, within  
11 one of the ANCs that may be represented here at the  
12 table. But that I would open up first to comments  
13 from my colleagues on that party status application.

14 BOARD MEMBER MANN: I agree with your  
15 comments, Mr. Chairman. I think it's relevant that  
16 he's not here, and I think given the information that  
17 he provided in his application, I think his interests  
18 are going to be represented by the ANC.

19 BOARD MEMBER ETHERLY: Okay. Mr.  
20 Hildebrand?

21 COMMISSIONER HILDEBRAND: Yes, I would  
22 agree with that as well.

23 BOARD MEMBER ETHERLY: Okay. Thank you.  
24 Any comment from -- let me first begin with Mr. Feola  
25 on behalf of the applicant, any response?

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1 MR. FEOLA: No, sir.

2 BOARD MEMBER ETHERLY: Okay. Ms. McWood?

3 MS. MCWOOD: Well, I guess I have to ask  
4 another question first. This individual is within the  
5 boundaries of ANC-3F. Has ANC-3F been given party  
6 status?

7 BOARD MEMBER ETHERLY: Not as of yet.

8 MS. MCWOOD: So perhaps, I mean, either I  
9 think this individual needs to receive party status  
10 now or perhaps we need to determine whether ANC-3F is  
11 going to receive party status, because while we're  
12 very happy to represent this individual, he may not be  
13 happy to have us represent him, because he is not  
14 within our boundaries.

15 BOARD MEMBER ETHERLY: Okay, okay. Let's  
16 hold that particular application in abeyance just  
17 momentarily then and then I agree with you. Perhaps  
18 just from a protocol standpoint, we'll deal with the  
19 3F situation first and then come back to Mr.  
20 Betchetik's application.

21 My colleagues should be in receipt of what  
22 I believe is two exhibits. One would be Exhibit No.  
23 31 and then Exhibit No. 35. Exhibit No. 31 is a  
24 motion to establish the party status of ANC-3F, North  
25 Cleveland Park, Forest Hills and Tenleytown and

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1 Exhibit No. 35 is a copy of the ANC-3F resolution  
2 regarding this particular application.

3 (Whereupon, the documents were  
4 marked as ANC Exhibits 31 and  
5 35 for identification.)

6 BOARD MEMBER ETHERLY: We are, of course,  
7 once again joined by Mrs. Perry at the table on behalf  
8 of ANC-3F. My colleagues, I want to make sure first  
9 that you are in receipt of both of those exhibits,  
10 Exhibit No. 31 and Exhibit No. 35.

11 BOARD MEMBER MANN: Yes.

12 COMMISSIONER HILDEBRAND: Yes.

13 BOARD MEMBER ETHERLY: Okay. Then I would  
14 suggest perhaps a little bit of discussion from Mrs.  
15 Perry is support of the motion. My colleagues can  
16 perhaps put some questions forth if there are some,  
17 and then we can hear from ANC-3C and, of course, the  
18 applicant, Mr. Feola. So, Ms. Perry, if you would  
19 perhaps like to speak somewhat to the motion to  
20 establish party status?

21 MS. PERRY: Our ANC borders the project.  
22 We represent most of the citizens affected by the  
23 project by Sidwell Friends and we also represent the  
24 Washington Home, which is right next door to the  
25 property, and I think in our motion we're fairly clear

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1 as to why we want party status in this case.

2 BOARD MEMBER ETHERLY: Okay. As a  
3 preliminary question, Mrs. Perry, do you see the  
4 interest or impact of the proposed application being  
5 distinct in demonstrable ways from the interests that  
6 will be argued by ANC-3C here?

7 MS. PERRY: I think we do have a different  
8 perspective on the case, and a lot of our residents  
9 live off of 37<sup>th</sup> Street or, you know, will see the  
10 property from their homes.

11 BOARD MEMBER ETHERLY: Okay.

12 MS. PERRY: So I think it is a little  
13 different.

14 BOARD MEMBER ETHERLY: Okay, okay.

15 MS. PERRY: And the Washington Home would  
16 be one of those properties, which, as you know, is a  
17 senior citizens facility and the gym to this project,  
18 they will be very visible from their property and from  
19 their windows of the residents at the Washington Home.

20 BOARD MEMBER ETHERLY: Okay. So in one  
21 instance, you could foresee some very different visual  
22 impacts.

23 MS. PERRY: Yes.

24 BOARD MEMBER ETHERLY: And it relates to  
25 the proposed application for your members.

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1 MS. PERRY: And traffic patterns.

2 BOARD MEMBER ETHERLY: And traffic  
3 patterns as well. Okay. Questions from my  
4 colleagues?

5 BOARD MEMBER MANN: I think it's entirely  
6 appropriate that they be granted party status  
7 personally.

8 BOARD MEMBER ETHERLY: Okay. Thank you,  
9 Mr. Mann. Mr. Hildebrand?

10 COMMISSIONER HILDEBRAND: I think  
11 particularly since the Washington Home side is  
12 directly abutting the property line, there is no  
13 separation, I think it's completely reasonable as  
14 well.

15 BOARD MEMBER ETHERLY: Okay, okay. Having  
16 heard from my colleagues, let me now turn to Mr. Feola  
17 on behalf of the applicant.

18 MR. FEOLA: The applicant has no  
19 objection.

20 BOARD MEMBER ETHERLY: Okay. Thank you  
21 very much, sir. Ms. McWood?

22 MS. MCWOOD: We have no objection. We  
23 actually welcome them.

24 BOARD MEMBER ETHERLY: Okay, okay. I  
25 would then take it as consensus of the Board that we

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1 will grant party status to ANC-3F here. I would  
2 simply, for the benefit of the record, invite close  
3 and ample cooperation and coordination across the two  
4 ANCs, but of course with the understanding that there  
5 are going to be some distinct issues here that may be  
6 handled differently by both ANCs and spoken to  
7 separately.

8 With that, I think then we can now turn  
9 back to the party status application of Mr. Betchetik  
10 and perhaps look with interest towards Ms. Perry as  
11 Mr. Betchetik's application is on behalf of a  
12 residence that falls within the boundaries of your  
13 ANC. Ms. McWood, did you have anything there?

14 MS. MCWOOD: I have to make a correction.

15 I just received a note informing me that this  
16 individual actually does reside within the ANC-3C,  
17 which may decide you that he should receive party  
18 status right off the bat.

19 BOARD MEMBER ETHERLY: Well, no, we  
20 appreciate that clarification and it raises -- you  
21 know, the issue here with regard to the ANC-3F party  
22 status is that this is a boundary location such that  
23 you're going to have those issues arise.

24 Well, let me return to my colleagues. I  
25 would tend to align myself with, I believe, the

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1 comment that was made by my colleague, Mr. Mann, with  
2 regard to Mr. Betchetik's residence and interest  
3 being, I think, adequately, more than adequately  
4 represented by ANC-3F or ANC-3C, I apologize, or 3F  
5 depending on where the residence may fall. But I  
6 think we're going to capture his interest and the  
7 interest of that residence in that. And so I would  
8 suggest, if it's the consensus of the Board, that that  
9 party status application be denied.

10 COMMISSIONER HILDEBRAND: I would agree  
11 with that.

12 BOARD MEMBER MANN: Yes.

13 BOARD MEMBER ETHERLY: Well, okay. Thank  
14 you. Thank you very much to my colleagues. What I  
15 would like to suggest is once again looking at our  
16 timing. We're at about 5:20. I think it might be  
17 appropriate, at this time, with a little bit of  
18 discussion from Corporation Counsel to perhaps walk  
19 the Board through two particular issues that we wanted  
20 to flag for the applicant as it relates to the relief  
21 that's sought in the application.

22 Once again, I don't anticipate really that  
23 we're going to venture at all into the substance of  
24 the case today, so this discussion I want to keep a  
25 real close lid on, but I want to highlight that there

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1 were some concerns raised or I should say questions  
2 about whether or not we're looking at the correct  
3 relief.

4 And I'm not necessarily talking about what  
5 you're already asking for, but whether or not there is  
6 some additional pieces of relief that may need to be  
7 sought. One with respect to the issue of, if I  
8 understand it correctly and I will look to Corporation  
9 Counsel to correct me if I speak inappropriately, but  
10 one, the issue of this being of this being one record  
11 lot and the fact that we're looking at multiple  
12 structures on this lot. So I will have Corporation  
13 Counsel speak a little bit to that and then, if I  
14 recall correctly again, there is a question related to  
15 relief pursuant to the garage?

16 UNIDENTIFIED SPEAKER: The phasing.

17 BOARD MEMBER ETHERLY: The phasing, thank  
18 you very much, relief as it's currently envisioned.  
19 And of course, there is discussion or the intention on  
20 the part of the applicant for a phased in approach to  
21 construction here. And given our rules, we're not  
22 certain if our rules contemplate that type of phasing  
23 in given the fact that we're looking at a special  
24 exception.

25 We may ultimately just simply have to

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1 waive our rules to account for that phasing in, but we  
2 wanted to flag those two issues for the applicant's  
3 counsel as we move forward. So perhaps let me look  
4 towards Corporation Counsel with respect to that first  
5 issue regarding the multiple structures on the record  
6 lot.

7 MS. NAGELHOUT: Well, in case my boss is  
8 watching, we're the Office of the Attorney General  
9 now, so I have to --

10 BOARD MEMBER ETHERLY: Thank you very much  
11 for that correction. Let me look to the Office of the  
12 Attorney General now.

13 MS. NAGELHOUT: Yes. With respect to the  
14 phasing, I was looking at section 3130 of the regs,  
15 which is time limits on Board action. A Board's order  
16 is valid for two years in the case of new construction  
17 and this obviously would be a phased project, so  
18 you're not planning on doing everything in the next  
19 two years. There is a provision for waiving that rule  
20 though also in Chapter 31 for good cause shown, so if  
21 that could be addressed by the applicant.

22 The other issue is it looked to me like  
23 there is one record lot here and you're planning at  
24 least two new buildings on one lot. This is an issue  
25 that has come up before the Board several times

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1 recently, a couple of years ago National Cathedral  
2 School, more recently in NCRC, the issue of whether  
3 it's an accessory structure or multiple principal  
4 buildings on the same lot. I think the relevant  
5 sections there are 2516, which is a special exception  
6 provision, or 3202.3, which is a variance. It's a  
7 requirement that every building has to be on a single  
8 lot of record.

9 BOARD MEMBER ETHERLY: Thank you very  
10 much. What I think I would like to do really, and let  
11 me get some comment from my colleagues once again, is  
12 really just flag those two issues for benefit of  
13 counsel rather than venture into the substance of  
14 them, but perhaps let me first ask if there are any  
15 questions from my colleagues on those two issues that  
16 had been identified by the Attorney General's Office?  
17 Mr. Hildebrand?

18 COMMISSIONER HILDEBRAND: I guess my  
19 question would fall back to the split zoning of the  
20 property and the fact that one of the new structures  
21 crosses that boundary line from C-2-B to R-1-B and in  
22 one case, it's a matter-of-right use and in another  
23 case, it would only be allowed as an accessory  
24 structure. And do we need to have any more  
25 clarification on whether or not that requires a

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1 special exception or a variance.

2 MS. NAGELHOUT: You're asking me or  
3 telling the applicant?

4 COMMISSIONER HILDEBRAND: Both probably.

5 MS. NAGELHOUT: Yes.

6 BOARD MEMBER ETHERLY: Mr. Mann, any  
7 additional comments? Let me first look to the  
8 applicant just to see if there are any additional, if  
9 there are any just off the cuff reactions to those two  
10 items and then, of course, I will turn to both ANCs to  
11 see if there have been any considerations on their  
12 front. Mr. Feola?

13 MR. FEOLA: Thank you, Mr. Chairman.  
14 Let's take the multiple structures first, because this  
15 issue, as the Assistant Attorney General indicated,  
16 has come up many times in the past and the 50 some  
17 years that zoning has been interpreted in the District  
18 of Columbia, I'm not aware of any particular school  
19 campus, whether it's Saint John's or Gonzaga or Moray  
20 or this campus, which has been built over time since  
21 1950 something, has required separate lots of record  
22 for individual buildings on that facility.

23 Another example is Sibley Hospital. There  
24 are at least four, maybe five separate buildings on  
25 Sibley Hospital campus, but because it has been

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1 treated as an entity that's come before this Board,  
2 the Zoning Administrator has never required a record  
3 lot. And I thought with the accessory building that  
4 was approved, I believe it was approved at least  
5 orally by this Board for NCRC, that that issue has  
6 been put to rest.

7 Basically, if it's a school use on a  
8 school property, you can have it whether it's a gym or  
9 an academic building or some -- now, you couldn't put  
10 an apartment building on this property without doing  
11 that, but as long as it's academic in nature, which  
12 these buildings are, I don't believe the theoretical  
13 section applies.

14 With regard to the phasing, without having  
15 the benefit of that particular language in front of  
16 me, I don't think there is anything in the Board's  
17 requirement that prohibits you from allowing projects  
18 to start outside that window. I am aware of at least  
19 two cases, the most recent is the Moray School, which  
20 went through this BZA, which granted permission to  
21 build in two phases, the first phase and then within,  
22 I think, seven years they had to start phase two.  
23 They didn't take the full seven years, but they  
24 certainly took more than the two years required by the  
25 section that Assistant Attorney General, I have to get

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1 used to not Corporation Counsel, has suggested.

2 And Gonzaga is another case where the  
3 Board approved the phasing. In neither of those  
4 cases, which I handled, was there a specific waiver of  
5 the rules. If it takes a waiver of the rules, I  
6 certainly would make a motion to do that if we get to  
7 that point in the case.

8 BOARD MEMBER ETHERLY: Okay.

9 MR. FEOLA: But there is precedent of  
10 record by this Board in those two private school cases  
11 under section 206.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. FEOLA: To allow projects to be  
14 started, finished, wait an amount of time, whether  
15 it's to raise funds or to have a school year completed  
16 or whatever it takes before you start the second or  
17 third or fourth project.

18 BOARD MEMBER ETHERLY: Okay, okay. As I  
19 look to our two ANC reps, I'm not necessarily  
20 expecting you to speak, you know, at length and in  
21 detail on these two items, but I want to give you an  
22 opportunity just to comment if either of these issues  
23 perhaps came up in the course of your ANC  
24 deliberations.

25 MS. MCWOOD: Nancy McWood for ANC-3C. It

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1 did not come up in the course of our deliberations,  
2 although the phasing aspect did come up after we had  
3 already passed our resolutions, when we realized that  
4 really is a two year limit on the zoning order. Our  
5 ANC was involved in both of the other cases that you  
6 raised about the variance issue, most recently the  
7 NCRC case, and I would hope that we would tread very  
8 carefully on both of these issues.

9 The phasing issue speaks of a campus plan,  
10 which this isn't. They almost seem to be  
11 contradictory, the record lot versus the phasing, and  
12 I would suggest that maybe you would want to have, I  
13 hate to suggest briefs, but that you might want to  
14 have both of those issues briefed. But certainly in  
15 the case of NCRC, I think we don't have a zoning order  
16 as yet on that case, and I'm not sure that the  
17 variance issue there won't be revisited either by  
18 reconsideration or by some sort of court action. So I  
19 don't think it's a settled issue.

20 BOARD MEMBER ETHERLY: Okay. Thank you.  
21 Ms. Perry?

22 MS. PERRY: Neither one of these issues  
23 came up in our ANC deliberations either. I know we  
24 did raise the phasing issue with Mr. Moy, but today is  
25 the first day that we're hearing an answer as to

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1 whether this is possible, and I think we would need to  
2 go back to the drawing board and look at it a little  
3 more closely in each case and read the language.

4 BOARD MEMBER ETHERLY: Okay, okay. Here's  
5 what I --

6 MR. FEOLA: I'm sorry, Mr. Chair, in  
7 follow-up to Ms. McWood's suggestion, we would be  
8 happy to provide a very short paper brief that lists  
9 at least the precedents that the Board has looked at  
10 with regard to phasing and then the requirement for a  
11 subdivision on campuses if that's necessary.

12 BOARD MEMBER ETHERLY: Just to indicate to  
13 my colleagues kind of where my thinking is, I think  
14 the phasing piece perhaps bears just, I think, an  
15 internal look and we can sort it out. I do not think  
16 if it's necessary that a waiver is required, I don't  
17 think that that will be a problem. If the Attorney  
18 General's Office feels very strongly that we need to  
19 at least have some discussion regarding good cause for  
20 such a waiver, I think we can do that in relatively  
21 short order and dispose of that.

22 I do recall case references that were  
23 provided by Mr. Feola with regard to that issue of  
24 accessory structures versus principal structures,  
25 especially in the context of school property and I

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1 think we have, in extensive fashion, in other cases  
2 dealt with that issue, so I am perhaps not necessarily  
3 convinced that we need an additional or, I should say,  
4 we need a round of briefing here, but I would open  
5 that up to response from my colleagues on whether or  
6 not it might be useful to have some briefing on that  
7 issue.

8 COMMISSIONER HILDEBRAND: I would only  
9 suggest that since I wasn't involved in those previous  
10 cases, it might be beneficial to me to have access to  
11 either the briefs that were prepared in another case  
12 or a fresh brief that's focused on this particular  
13 case.

14 BOARD MEMBER ETHERLY: Okay. Mr. Mann?

15 BOARD MEMBER MANN: Well, I wasn't  
16 involved in those cases either, so, I mean, this is  
17 all kind of new information for me also. By the same  
18 token, had these issues not been raised, then I never  
19 would have known that there was anything to be  
20 addressed. I think that it is important that we  
21 identify those issues. As to whether or not it's  
22 necessary to prepare briefs, at this point, I would  
23 just as soon hold off until --

24 BOARD MEMBER ETHERLY: We get into the  
25 immediate case.

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1 BOARD MEMBER MANN: Yes, until we actually  
2 start the case.

3 BOARD MEMBER ETHERLY: Okay. I think  
4 perhaps splitting the baby between the two comments  
5 here of my colleagues, I think with guidance from the  
6 Attorney General's Office, taking a look at that issue  
7 in greater detail internally will be a good place to  
8 start. Flagging the issue for the benefit of the  
9 applicant and for our ANC party representatives, I  
10 think, was a good starting point today, but I would  
11 not suggest at this point, I will align myself with  
12 Mr. Mann's suggestion, that we look at briefing the  
13 issue, but we'll flag it. We'll take a look  
14 internally and make a determination, I think, as to  
15 how to best proceed moving forward.

16 Ms. Nagelhout, if I understand correctly,  
17 that concludes the items that the Attorney General's  
18 Office wanted to flag for us?

19 MS. NAGELHOUT: Yes.

20 BOARD MEMBER ETHERLY: Okay. If there  
21 aren't any further questions on -- we have resolved  
22 party status, hip, hip, hurray. We have kind of  
23 flagged a couple of issues just as, shall we say, food  
24 for thought moving forward. What I would like to do  
25 is speak a little bit to scheduling for the next few

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1 rounds of our session and then get us out of here.

2 Here is what I think we are suggesting  
3 preliminarily as a starting point. The wonderful  
4 thing about where we are, and I think it perhaps  
5 cannot be stated enough, that the parties and the  
6 applicant are, of course, to be commended for the  
7 tremendous amount of work that has been done outside  
8 of this venue already. Clearly, there has been a lot  
9 of back and forth between the ANCs affected, as well  
10 as the ANC of record here, and clearly there has been  
11 some significant effort on the part of the applicant  
12 to be responsive.

13 Clearly, there might still be some  
14 additional questions that are outstanding, but that  
15 work is to be commended. I think I speak for my  
16 colleagues and Staff when we say it's good to see that  
17 done wherever possible. Sometimes it can't be, but  
18 we're happy to see that, so our applause for that.

19 What we're suggesting is, and I will look  
20 to Mr. Moy to give me guidance in case I speak  
21 incorrectly, is looking at the first case in the  
22 afternoon next week, which would be the 22<sup>nd</sup>, followed  
23 by the full afternoon for the 29<sup>th</sup>.

24 MR. MOY: We could do next week, June 22<sup>nd</sup>,  
25 which would make it the third case in the afternoon,

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1 okay, and the availability of the afternoon on June  
2 29<sup>th</sup>.

3 BOARD MEMBER ETHERLY: And June 29<sup>th</sup> would  
4 be --

5 MR. MOY: June 29<sup>th</sup>.

6 BOARD MEMBER ETHERLY: -- the entire  
7 afternoon or what would be the starting point?

8 MR. MOY: No, we have three other cases,  
9 it could be four, but I think those three cases, I  
10 think, I don't expect a great deal of time on. They  
11 are 223s.

12 BOARD MEMBER ETHERLY: They are 223s.  
13 Okay.

14 MR. MOY: So it's possible to continue.  
15 I'm assuming the Board will make major progress at the  
16 June 22<sup>nd</sup> meeting.

17 BOARD MEMBER ETHERLY: Okay. So the June  
18 29<sup>th</sup> meeting, it would be the fourth case in the  
19 afternoon?

20 MR. MOY: That's correct.

21 BOARD MEMBER ETHERLY: Following three  
22 223s?

23 MR. MOY: That's correct.

24 BOARD MEMBER ETHERLY: Okay. And third in  
25 the afternoon. What's leading into the afternoon of

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1 the 22<sup>nd</sup>? What are those three cases looking like  
2 without getting into a lot of detail?

3 MR. MOY: We have actually four cases on  
4 June 29<sup>th</sup>. Oh, I'm sorry, June 22<sup>nd</sup>.

5 BOARD MEMBER ETHERLY: 22<sup>nd</sup>.

6 MR. MOY: My mistake. We have an appeal  
7 case, which is connected to an application case that  
8 the Board had previously dealt with on Folger Park.

9 BOARD MEMBER ETHERLY: Yes.

10 MR. MOY: So the issue has already been  
11 identified, and the second case being Georgetown Day  
12 School.

13 BOARD MEMBER ETHERLY: So this case would  
14 be third in the afternoon?

15 MR. MOY: That's correct.

16 BOARD MEMBER ETHERLY: Okay. So two cases  
17 prior. Clearly, the challenge here is finding a  
18 workable enough block of time that we can get a good  
19 bite out of this. It was my hope, had we been able to  
20 start today, to get through at least the applicant's  
21 case. Clearly, that's not going to happen. However,  
22 given where we are in the course of the summer and  
23 with already a heavy decision making day scheduled for  
24 the 1<sup>st</sup> of July and August on the horizon, which is  
25 typically a recess month for the Board, we have some

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1 constraints. But let me first get some response from  
2 our applicant and then the two party ANCs.

3 Mr. Feola, what we're talking about is  
4 June 22<sup>nd</sup>, third case in the afternoon, June 29<sup>th</sup>,  
5 fourth case in the afternoon after three section 223s  
6 and, of course, this is all under the specter of  
7 dealing with what we dealt with today, which was  
8 obviously a late start that had us about two hours  
9 behind schedule. Mr. Feola?

10 MR. FEOLA: Thank you, Mr. Chairman. Yes,  
11 I think it's acceptable to the applicant to try to  
12 begin next Wednesday or next Tuesday and continue on  
13 then to the following Tuesday. The Georgetown Day  
14 School case, which we are also representing, has no  
15 party signed up to be heard, but the ANC has voted  
16 unanimously to endorse the application subject to some  
17 conditions that the school has accepted. I would  
18 anticipate that case should be fairly short, probably  
19 no more than an hour.

20 BOARD MEMBER ETHERLY: Okay.

21 MR. FEOLA: Including OP testimony and the  
22 ANC is going to testify, but I don't think it's going  
23 to be a controversial case. I don't know about the  
24 appeal. So if we could start Sidwell 3:30-ish, if  
25 that's doable, we can get a good chunk of it done and

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1 then finish up the following Tuesday. That certainly  
2 works for the applicant.

3 BOARD MEMBER ETHERLY: Ms. McWood?

4 MS. MCWOOD: ANC-3C would not have any  
5 objection to beginning next week. It's a little more  
6 problematic, the continuation on the 29<sup>th</sup>, because  
7 that's most likely when the ANC would be testifying.  
8 It's unlikely that you would get to us on the 22<sup>nd</sup>.  
9 And what I am raising is that the Commissioner for the  
10 Single Member District who would like to testify on  
11 behalf of the ANC is not going to be in town on that  
12 day, but if that's the only time that it can be done,  
13 I'm sure the Commissioner could prepare the testimony  
14 and I could deliver it. It gets much worse for us  
15 once you get into July.

16 BOARD MEMBER ETHERLY: Okay. And then I  
17 want to hear from Ms. Perry, of course, on this  
18 question, but let me note that we could, of course,  
19 with some forethought look at a significant amount of  
20 time. Typically, we try to conclude our proceedings  
21 by 6:00 p.m., but there may be some willingness to  
22 look towards a somewhat later finish time on that  
23 Tuesday the 22<sup>nd</sup>, so we get through as much as we can.

24 And if that then gets us to the ANC at that  
25 particular time, that could perhaps help mitigate the

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1 issue of the scheduling issue on the 29<sup>th</sup>.

2 Let me turn to Ms. Perry for comments on  
3 that proposed schedule as we see it right now.

4 MS. PERRY: I'm sitting with Carl Kessler  
5 who is the Single Member District Commissioner for  
6 this area, and it looks like we do the 22<sup>nd</sup>. Carl will  
7 also be gone on the 29<sup>th</sup>, so we might run into that  
8 same issue, but we could have somebody available to  
9 testify.

10 BOARD MEMBER ETHERLY: Okay.

11 MS. PERRY: If we had to.

12 BOARD MEMBER ETHERLY: Okay. And I  
13 appreciate the flexibility. For those of you who are  
14 familiar with how we operate here, flexibility is  
15 greatly encouraged. Let me turn back to Mr. Feola for  
16 a moment. Mr. Feola, how much time do you anticipate  
17 for the presentation of your case and, of course, that  
18 is always going to be a very fluid estimation?

19 MR. FEOLA: Well, we had anticipated the  
20 full hour, but we will work very hard between now and  
21 next Tuesday to shrink that. I don't know if I have a  
22 time now. I know we could do it within 60 minutes,  
23 because we have practiced it and got it down to 50  
24 some minutes.

25 BOARD MEMBER ETHERLY: Okay.

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1 MR. FEOLA: We will take the time and try  
2 to squeeze it more.

3 BOARD MEMBER ETHERLY: Okay. And, of  
4 course, our ANCs typically are not limited in any  
5 fashion, but I would look to you to kind of get a  
6 little bit of a ballpark figure for what you  
7 anticipate your time needs to be.

8 MS. MCWOOD: I don't imagine it would go  
9 beyond 15 minutes, maybe 20.

10 BOARD MEMBER ETHERLY: And Mrs. Perry?

11 MS. PERRY: We would estimate about the  
12 same thing.

13 BOARD MEMBER ETHERLY: Okay, okay. I'll  
14 look to my colleagues one final time. I think that's  
15 probably a workable schedule for us over the next two  
16 weeks. Let me also, of course, I neglected to look  
17 way down at the end of the day to our esteemed  
18 colleague from the Office of Planning just to make  
19 sure there is not a conflict with the Office of  
20 Planning in terms of that schedule for the 22<sup>nd</sup> and the  
21 29<sup>th</sup> in the afternoon.

22 MS. THOMAS: No, it seems fine if GDS is  
23 okay.

24 BOARD MEMBER ETHERLY: Okay. Excellent,  
25 excellent. With that, I'm going to take one more

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1 glance at Staff and my colleagues to make sure we  
2 haven't missed any other preliminary matters. Once  
3 again, we will be joined again by our Chairman, Mr.  
4 Griffis, next week, so I will be relegated back to my  
5 small seat on the end of the dias here, but I'll look  
6 to staff now perhaps to just summarize where we are.  
7 But just once again on the substantive issues, we're  
8 not going to invite any briefing at this particular  
9 point in time. We just wanted to flag the issues.  
10 We'll continue to do a little bit of an internal  
11 discussion and see where we are as we get into the  
12 substance of the case.

13 MR. FEOLA: Sure. Mr. Chairman, there is  
14 one additional little matter we could probably wrap up  
15 today and that is we are going to offer two witnesses  
16 to give expert testimony. If it pleases the Board, we  
17 can dispense with that today or we can wait since we  
18 have --

19 BOARD MEMBER ETHERLY: Any objection from  
20 the Board Members? I am always a fan of getting as  
21 much done as possible. Do you have resumes or  
22 curriculum vitae?

23 MR. FEOLA: Yes, attached in our  
24 prehearing statement behind tab L are the resumes of  
25 Steven Kieran of Kieran Timberlake Associates who is

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1 the architect who will testify with regard to the  
2 planning process. I would like to have him identified  
3 and qualified as an expert. As you can see from his  
4 resume -- if you would like to talk to him, he is  
5 here, but he is registered in the District of Columbia  
6 among a number of other states and his vitae speaks  
7 for itself.

8 BOARD MEMBER ETHERLY: And, of course, I  
9 would be remiss if I didn't know him having been a  
10 graduate of the esteemed University of Yale, that any  
11 Yale graduate automatically gets expert status right  
12 off the bat.

13 MR. FEOLA: Oh, please, don't recuse  
14 yourself, please.

15 BOARD MEMBER ETHERLY: I mean, I would not  
16 do that.

17 MR. FEOLA: That's big trouble.

18 BOARD MEMBER ETHERLY: Let me just confirm  
19 that both of our ANCs 3C and 3F are in receipt of the  
20 applicant's submission, so you have record of the two  
21 resumes, so that would be Mr. Kieran in the area of  
22 architecture?

23 MR. FEOLA: Yes.

24 BOARD MEMBER ETHERLY: As an expert.

25 MR. FEOLA: An expert.

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1 BOARD MEMBER ETHERLY: And then Marty  
2 Wells.

3 MR. FEOLA: That's correct.

4 BOARD MEMBER ETHERLY: As a traffic  
5 expert.

6 MR. FEOLA: That's correct.

7 BOARD MEMBER ETHERLY: And that would be  
8 the extent of your expert witnesses, at this point?

9 MR. FEOLA: That is correct, sir.

10 BOARD MEMBER ETHERLY: Okay. My Board  
11 Members, do you have those two resumes in front of  
12 you? Mr. Mann?

13 BOARD MEMBER MANN: I was just going to  
14 say that as an alumni of this little school in  
15 Cambridge, Massachusetts, I might be a little  
16 hesitant, but I think it will be okay.

17 BOARD MEMBER ETHERLY: Okay.

18 MR. FEOLA: Thanks.

19 BOARD MEMBER ETHERLY: Thank you. Mr.  
20 Hildebrand, any objection?

21 MR. HILDEBRAND: Well, unfortunately, I  
22 went to school closer to home. I went to the  
23 University of Virginia and I take exception to other  
24 schools, but I have no problem with these two.

25 BOARD MEMBER ETHERLY: Thank you. See it

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1 has been a long day, ladies and gentlemen, so I make  
2 apology for the boisterism. I'll take it as a  
3 consensus of the Board. Let me pause, let me look  
4 first to ANC-3C. Any objection?

5 MS. MCWOOD: No objections.

6 BOARD MEMBER ETHERLY: Okay. Thank you  
7 very much. Ms. Perry?

8 MS. PERRY: No objection.

9 BOARD MEMBER ETHERLY: Excellent. I'll  
10 take it as a consensus of the Board then to grant  
11 expert status to Mr. Kieran in architecture and Mr.  
12 Wells in the area of traffic. So we will have  
13 dispensed with that matter now. Any other suggestions  
14 for preliminary matters on the part of any of our  
15 parties perhaps before we close?

16 MR. FEOLA: No, sir, not from the  
17 applicant.

18 BOARD MEMBER ETHERLY: Okay. Okay. Ms.  
19 McWood, Ms. Perry?

20 MS. MCWOOD: No, I can't think of anything  
21 now, no.

22 BOARD MEMBER ETHERLY: Okay.

23 MS. PERRY: No.

24 BOARD MEMBER ETHERLY: Excellent. Staff,  
25 would you perhaps summarize where we are in terms of

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1 the schedule?

2 MS. BAILEY: I would be glad to, Mr.  
3 Chairman.

4 BOARD MEMBER ETHERLY: Thank you. Thank  
5 you very much, Ms. Bailey.

6 MS. BAILEY: The hearing will be continued  
7 next week, that's June 22<sup>nd</sup>, third case in the  
8 afternoon, and also on June 29<sup>th</sup>, the last case of the  
9 day, the fourth case in the afternoon. Ms. Mary  
10 Nagelhout is to brief the Board on the issues that  
11 were discussed. And expert status was granted to the  
12 architect and Mr. Marty Wells. Approximate time limit  
13 one hour for the applicant, 15 to 20 minutes for ANC-  
14 3C and 3F.

15 BOARD MEMBER ETHERLY: Okay. Excellent.  
16 I think that gets us where we need to be. Of course,  
17 the time restrictions we're just getting a ballpark  
18 figure, but we will afford the ANCs and the applicant,  
19 I think, the bottom line is I think we will be able to  
20 make some significant progress next week and hopefully  
21 close this case out on the 29<sup>th</sup> barring any unforeseen  
22 issues.

23 With that, I think it would be appropriate  
24 for us to adjourn our afternoon session. Let me thank  
25 the applicant and the ANCs for their participation.

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1 And once again, our apologies for the delay in getting  
2 us started this afternoon. We are going to try to get  
3 started on time. I'm just going to hesitate on  
4 issuing a time suggestion, at this point, in terms of  
5 when to be on hand, but we're looking once again at  
6 the third case in the afternoon on the 22<sup>nd</sup> and the  
7 fourth case in the afternoon on the 29<sup>th</sup>. So we may  
8 very well be still in that 3:00 to 3:30 time frame, if  
9 not perhaps a little earlier.

10 MS. PERRY: Mr. Etherly, could I just  
11 raise one procedure question?

12 BOARD MEMBER ETHERLY: Ms. Perry?

13 MS. PERRY: Can we get a copy of what Ms.  
14 Nagelhout is going to provide to the Board? If there  
15 is a question and if we're going to need to bring it  
16 in to the case at some point, our ANC's meet on --  
17 both of our ANCs meet on Monday, June 21<sup>st</sup> where we  
18 could do a resolution. If not, we don't meet until  
19 the third Monday in July.

20 BOARD MEMBER ETHERLY: Okay.

21 MS. PERRY: And I'm just not sure how to  
22 go with it.

23 BOARD MEMBER ETHERLY: Got you. I'll look  
24 to the Attorney General's Office for a little bit of  
25 guidance, but it's my thinking that that is typically

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1 treated as legal opinion for the Board, for the  
2 Board's consideration solely.

3 MS. NAGELHOUT: That's right, yes.

4 BOARD MEMBER ETHERLY: Okay. And so I am  
5 to understand that would be a correct interpretation  
6 and as such it would not typically be made available  
7 to the parties.

8 MS. NAGELHOUT: Right. It would not be  
9 put in the record.

10 BOARD MEMBER ETHERLY: Okay. Okay. So  
11 that would be a polite probably not in this instance.

12 Once again, I do recall that we have dealt with that  
13 issue in a number of our recent big cases, some of  
14 which have had some familiar faces here in the  
15 audience and at the table involved. I don't think  
16 it's going to happen. Yes, let me just leave it at  
17 that for the moment. But if it looks like it needs to  
18 get resolved in a straightforward way, we will make  
19 certain that there is an opportunity for the  
20 appropriate responses from the parties involved.  
21 We'll leave it like that. But there will be some  
22 indication from the Board as to how we're probably  
23 going to deal with those two issues. Okay.

24 MS. MCWOOD: Just to follow-up on that.  
25 Does that mean that more than likely you will leave

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1 those two issues until the end of the case and make a  
2 decision on them?

3 BOARD MEMBER ETHERLY: Oh, no.

4 MS. MCWOOD: Rather than making -- you  
5 will make a decision on them next week?

6 BOARD MEMBER ETHERLY: Yes, I would  
7 suspect that depending on how our internal discussion  
8 goes, we'll probably have some guidance next week as  
9 to how we are going to either deal with that issue or  
10 how we suggest the parties help us to deal with that  
11 issue. But the important thing was to flag it early  
12 so at least you have it on your plate as food for  
13 thought and we'll probably have some guidance next  
14 week. Mr. Moy?

15 MR. MOY: Mr. Chairman, for the Staff's  
16 understanding, so next week June 22<sup>nd</sup> is the  
17 understanding that we may go -- the Board may go a  
18 little longer than usual to try and finish as much as  
19 we can, right?

20 BOARD MEMBER ETHERLY: I would hope and  
21 once again we will look to Chairman Griffis to guide  
22 us through that, but I would hope at least that we can  
23 get through the applicant's presentation, if not even  
24 Government reports, and then perhaps either pick up  
25 with cross examination or if we get through enough of

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1 the applicant's case and Government reports, you know,  
2 we can make significant progress into the ANC cases by  
3 that point in time.

4 Okay. With that then, I am happy to  
5 adjourn the June 15<sup>th</sup> afternoon session of the Board of  
6 Zoning Adjustment. Please, everyone have a safe and  
7 prosperous evening. Thank you very much.

8 MR. FEOLA: Thanks.

9 (Whereupon, the Public Hearing was  
10 concluded at 5:48 p.m.)  
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