

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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This transcript constitutes the minutes from
the hearing held on Tuesday, July 20, 2004.

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The Public Hearing convened in Room 220
South, 441 4th Street, N.W., Washington, D.C. 20001,
pursuant to notice at 9:30 a.m., Geoffrey H. Griffis,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS	Office of Planning
ARTHUR JACKSON	Office of Planning
JOEL LAWSON	Office of Planning
DAVID MCGHETTIGAN	Office of Planning
TRAVIS PARKER	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

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

9:44 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the morning hearing of the 20th of July '04. This is the Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair Ms. Miller. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this morning is Mr. Hood.

Before I go into all of the very important detailed opening statements which I will expect everyone to pay close attention to, and I'll try to make it as amusing as possible, there is a quick announcement in terms of our schedule. We had scheduled to have a Public Meeting at 9:00. As it turns out, we have two Board Members that sat on the case for decision that are in conflict this morning and so we are awaiting either an absentee vote regarding that case or actually the presence of one of the Members.

To that though, I do not want to delay our morning schedule for the hearing, so I'm calling the hearing and we're going to move ahead. I would

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1 anticipate this that if we got a member here that
2 could deliberate on the case, we would call it at the
3 end of our morning session, otherwise we will call --
4 well, that's what we are going to anticipate doing.
5 Otherwise, we may have to reschedule and I will
6 clearly update people for schedule.

7 So I appreciate everyone's patience
8 regarding this, but we're actually unable to proceed
9 with this as we have not even a minimum quorum to
10 deliberate. So I would think it would be no sooner
11 than 12:00 before we got to that, but let me just take
12 quick questions. Mr. Collins?

13 MR. COLLINS: Myself and my client are the
14 only two people here for that case, and do you have
15 any more definite information than that? I cannot
16 personally be here. I've got an 11:30 meeting that
17 will go until 2:30. Obviously, we want the decision
18 today. Any way to do that?

19 CHAIRPERSON GRIFFIS: Right. I have given
20 you all the definitive information that I have. I
21 mean, I am awaiting either a physical presence or an
22 absentee vote and deliberation on the notes that they
23 would submit. Without that, we can't proceed.

24 MR. COLLINS: With all due respect, do you
25 know whether -- you say you're expecting it. Is it --

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1 CHAIRPERSON GRIFFIS: We will get it
2 today. We will absolutely get it today. My
3 anticipation is that it's no later than 1:00. So if
4 it's convenient, I can set a time at which we can pick
5 this up. We have a big afternoon schedule. I don't
6 have any difficulty in, for instance, setting a
7 Special Public Meeting at 1:00 or setting a Special
8 Public Meeting at a break, essentially, after the
9 first application in the morning. I'll leave that
10 open to you.

11 MR. COLLINS: Well, if you know that the
12 votes are going to be in by the end of the first
13 Public Meeting -- first agenda item.

14 CHAIRPERSON GRIFFIS: No, of the
15 afternoon, not this morning.

16 MR. COLLINS: Well, you said the first
17 case this morning.

18 CHAIRPERSON GRIFFIS: I'm sorry. I was
19 already flipping into the afternoon.

20 MR. COLLINS: So either 1:00 or after the
21 first case in the afternoon?

22 CHAIRPERSON GRIFFIS: Right.

23 MR. COLLINS: Well, 1:00 sounds better
24 then. Yes.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. COLLINS: 1:00.

2 CHAIRPERSON GRIFFIS: What we will do is
3 we'll set to call a Special Public Meeting. What I
4 will do is make sure that the people of the Office of
5 Zoning at the front desk know where we are with this,
6 and specifically there is no reason for me to keep any
7 secrets. I mean, as soon as we're ready to go, we're
8 ready to go. So if you want to, before coming down,
9 if you want to be here and present, I would make a
10 call and make sure that we are able to do that.

11 MR. COLLINS: Okay.

12 CHAIRPERSON GRIFFIS: And we'll move that
13 then for 1:00 to call a Special Public Meeting.

14 MR. COLLINS: All right. Great.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. COLLINS: All right. Thank you.

17 CHAIRPERSON GRIFFIS: Thank you very much.

18 Okay. Moving back to the hearing of which I've just
19 called to order, I would let everyone know that, of
20 course, our hearing agenda is available for you. It
21 is located on the wall where you entered into the
22 hearing room. You can, please, pick that up and you
23 can see the case and the chronology of the cases that
24 we will get through this morning.

25 There are several very important aspects

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1 that you need to be aware of in terms of our
2 processing. First of all, all proceedings before the
3 Board of Zoning Adjustment are recorded. They are
4 recorded in two fashions. First of all, they are
5 recorded by the court reporter who sits on my right on
6 the floor. They create the official transcript.
7 Second, it is being or all proceedings are being now
8 broadcast live on the Office of Zoning website. Any
9 other cameras associated in the hearing room are not
10 official recording devices. Those are our two and our
11 only two.

12 So attendant to that, first of all, I ask
13 that people turn off cell phones and beepers, so you
14 don't disrupt any of the proceedings or people giving
15 testimony before the Board. Also, when coming forward
16 to speak to the Board, you will need to fill out two
17 witness cards. Witness cards are available for you at
18 the table where you entered into the hearing room.
19 They are also available where you will give testimony
20 at the table right in front of us. Those two witness
21 cards go to the recorder who sits to my right prior to
22 coming forward.

23 When you do come forward to give testimony
24 before the Board, you should make yourself very
25 comfortable in our plush chairs and I would ask that

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1 you turn on a microphone and state your name and your
2 address for the record. You only need to do that once
3 and that way we can obviously give you all the credit
4 for the important things that you will be saying and
5 then we can move on from there.

6 The order of procedure for special
7 exceptions and variances is: First, we hear from the
8 applicant and any witnesses in the case presentation.

9 Second, we hear all Government reports attendant to
10 the application, that includes Office of Planning,
11 Department of Transportation and any other agencies
12 that have submitted as part of the application.
13 Third, we will hear from the Advisory Neighborhood
14 Commission. Fourth, we will hear persons or parties
15 in support of the application. Fifth, would be
16 persons or parties in opposition to the application.
17 And, sixth, finally, is closing remarks by the
18 applicant or any rebuttal testimony that might be
19 provided.

20 Cross examination of witnesses is
21 permitted by the applicant and parties in the case.
22 The ANC within which the property is located is
23 automatically a party in the case and therefore would
24 be able to conduct cross examination.

25 The record will be closed at the

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1 conclusion of each case, except for any material that
2 is requested by the Board, and we will be very
3 specific as to what is to be submitted into the record
4 and when it is to be submitted into the record. This
5 is an important aspect in two points. First of all,
6 obviously, anything that you want this Board to
7 deliberate on should either have been submitted in
8 writing, should be submitted in writing today or
9 should be told to us orally. That is what we will
10 base our decisions on and that's what we solely base
11 our decisions on, the record that is created before us
12 today.

13 The Sunshine Act requires that this Board
14 conduct all hearings in the open and before the
15 public. This Board may, however, enter into Executive
16 Session both during and/or after a hearing on the case
17 and this would be in compliance with the Sunshine Act
18 and also in accordance with our rules and procedures.

19 The decision of this Board in contested case, as I
20 say, must be based exclusively on the record that is
21 created before us today.

22 The Board will now consider any
23 preliminary matters. Preliminary matters are those
24 which relate to whether the case will or should be
25 heard today, such as requests for postponements,

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1 continuances or withdrawal or whether proper and
2 adequate notice has been provided. If you are not
3 prepared to go forward with a case this morning or you
4 believe the Board should not proceed with a case on
5 its agenda this morning, I would ask that you come
6 forward and have a seat at the table as an indication
7 of having a preliminary matter.

8 I will first say a very good morning to
9 the Office of Zoning Staff that is with us here. On
10 my very far right is Ms. Bailey and Mr. Moy, who is
11 not here, but will be here shortly, will be joining
12 us. I would ask that before Staff goes through any
13 preliminary matters that they might have, that
14 everyone here present today that is going to or
15 thinking about giving testimony, if you could, please,
16 stand and give your attention to Ms. Bailey. She is
17 going to administer the oath.

18 MS. BAILEY: Please, raise your right
19 hand.

20 (Whereupon, the witnesses were sworn.)

21 MS. BAILEY: Thank you.

22 CHAIRPERSON GRIFFIS: Good morning, Ms.
23 Bailey, are there any preliminary matters for the
24 Board?

25 MS. BAILEY: Good morning, Mr. Chairman,

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1 and to everyone. No, sir, Staff has none, at this
2 point.

3 CHAIRPERSON GRIFFIS: Excellent. Then why
4 don't we call the first case of the morning?

5 MS. BAILEY: And that is Application No.
6 17195 of Christina A. and Jon G. Finkelstein, pursuant
7 to 11 DCMR 3104.1, for a special exception to allow a
8 two-story rear addition to an existing single-family
9 semi-detached dwelling under section 223, not meeting
10 the rear yard requirements, that's section 404, the
11 side yard requirements, that's section 405, and the
12 nonconforming structure provisions, subsection 2001.3.

13 The property is zoned R-1-B and it's located at 3300
14 Cleveland Avenue, N.W., Square 2100, Lot 6.

15 Mr. Chairman, there is a request for party
16 status, but, please, note that this request is filed
17 as a proponent of the project.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much, Ms. Bailey. I had seen that. In fact,
20 it is Exhibit No. 23. Is Mr. Skelley here? Mr.
21 Skelley present? Very well. We're going to take that
22 up, but first one technical aspect. For some reason,
23 our high technology microphones give horrible
24 feedback, so what I'm going to ask is you keep them
25 all off and then when you want to address the Board,

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1 of course, you will turn them on and then turn them
2 off, and believe me I will interrupt you to keep them
3 on and off and on and off and on and off.

4 That being said, Mr. Skelley is not here.

5 It does appear from the submission of the application
6 for party status that Mr. Skelley is clearly trying to
7 put in testimony regarding his support for the
8 application, and I think we should, in fact, accept it
9 as that, but deny the party status request, and that
10 would be based on several reasons. One, there would
11 be, for my purposes in looking at it, a little bit
12 more needed to establish the significantly, distinctly
13 and uniquely impacts to Mr. Skelley.

14 I don't think it detracts from any of the
15 testimony that we have been given. Also, as the Board
16 has fairly consistently found part of the granting of
17 party status is the full participation in a case. Not
18 being present, of course, it is difficult to fully
19 participate. But I'll take other opinions or comments
20 on that.

21 BOARD MEMBER MANN: I think you are right.

22 CHAIRPERSON GRIFFIS: Thank you very much,
23 Mr. Mann. Then I can take it there is a consensus of
24 the Board. I'll hear any opposition if need be, but
25 otherwise I'll take it as a consensus of the Board to

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1 deny party status to Mr. Skelley and take it in as
2 written testimony, if there's no opposition. Very
3 well. Let's move ahead then.

4 MS. FINKELSTEIN: Excuse me?

5 BOARD MEMBER MANN: Yes?

6 MS. FINKELSTEIN: This is Christina
7 Finkelstein at 3300 Cleveland Avenue. I don't know
8 how that person is. Are you saying that they are in
9 support of our application as a party?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. FINKELSTEIN: We have never heard that
12 name. I don't recognize it to be any neighbor.

13 CHAIRPERSON GRIFFIS: 3314 Cathedral
14 Avenue, N.W.

15 MS. FINKELSTEIN: Oh, okay. All right.

16 CHAIRPERSON GRIFFIS: Have you seen the
17 application?

18 MS. FINKELSTEIN: No, I haven't.

19 CHAIRPERSON GRIFFIS: Okay. Well, let me
20 give you a little hint to it. Question 4 asks "What
21 are the environmental, economic or social impacts that
22 are likely to affect a person and/or a person's
23 property if the action requested of the Board is
24 approved or denied?" And their response is "all
25 positive." So I don't think you should sweat this

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1 one.

2 MS. FINKELSTEIN: Okay.

3 CHAIRPERSON GRIFFIS: Anything else? Any
4 other questions?

5 MS. FINKELSTEIN: No.

6 CHAIRPERSON GRIFFIS: Ms. Miller?

7 VICE CHAIR MILLER: I just want to share,
8 one, with the applicant as well which says "The
9 proposal would enhance the neighborhood."

10 MS. FINKELSTEIN: Oh, thank you.

11 CHAIRPERSON GRIFFIS: It will be in the
12 record. I think that we probably now have said what
13 we will in terms of the Public Hearing, but you are
14 obviously welcome to make a copy of it as it is -- in
15 fact, one is coming to you right now.

16 MS. FINKELSTEIN: Thank you.

17 CHAIRPERSON GRIFFIS: Very well. If there
18 is nothing further with this application, I want to
19 turn it over to you for your brief summation of your
20 case. You are here for section 223, which actually is
21 one of the best sections in the Zoning Regulations,
22 which does allow, in fact, single-family dwellings
23 that have, in many respects, become nonconforming,
24 because we enacted zoning, but they were in existence
25 often prior to the zoning itself, and so through the

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1 special exception there are certain criteria in 223 of
2 which I will help you and direct you to very quickly
3 get through. But let me stop talking and let you do a
4 little talking.

5 MS. FINKELSTEIN: Oh, okay. Sure. We are
6 proposing a two-story rear addition that would come
7 past, 18 inches past the currently existing rear most
8 portion of the building that was built before 1956, as
9 to extend our currently existing kitchen and currently
10 existing bedroom and expand it approximately double
11 the size.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much. And do you have any evidence or can
14 you tell us about how the light and air available to
15 the neighboring properties might be unduly affected?

16 MS. FINKELSTEIN: I don't think it will be
17 unduly affected. We have letters from our neighbors
18 saying that they don't think it will be unduly
19 affected as well.

20 CHAIRPERSON GRIFFIS: But you don't have
21 any evidence that it would negatively impact the light
22 and the air to the adjacent properties?

23 MS. FINKELSTEIN: No.

24 CHAIRPERSON GRIFFIS: What about the
25 privacy and use and enjoyment of the neighboring

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1 properties? Is there any evidence or can you tell me
2 how it is going to negatively impact that?

3 MS. FINKELSTEIN: It won't negatively
4 unduly affect the privacy.

5 CHAIRPERSON GRIFFIS: And your windows as
6 it is being proposed, what is the impact of the
7 addition on the current fenestration and then the
8 proposed new fenestration in terms of the privacy of
9 the adjacent?

10 MS. FINKELSTEIN: The windows will be in
11 the same direction as they currently exist, in the
12 same place, just 18 inches past.

13 CHAIRPERSON GRIFFIS: Are you removing one
14 window?

15 MS. FINKELSTEIN: We are removing windows
16 that face the party wall.

17 CHAIRPERSON GRIFFIS: So you are actually
18 increasing the privacy of the adjacent property?

19 MS. FINKELSTEIN: Exactly.

20 CHAIRPERSON GRIFFIS: I see. Okay. In
21 addition, the addition together with the original
22 building as viewed from the street, the alley, the
23 neighboring properties, do you find that to be in
24 keeping with the architectural character of the area?

25 MS. FINKELSTEIN: Yes.

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1 CHAIRPERSON GRIFFIS: And has anyone told
2 you differently?

3 MS. FINKELSTEIN: No.

4 CHAIRPERSON GRIFFIS: And can you talk a
5 little bit about what the materials are going to be?

6 MS. FINKELSTEIN: Erica?

7 MS. LING: I'm Erica Ling at 3708
8 Brandywine Street, N.W., an architect for Christina
9 and Jon.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MS. LING: The materials will be stucco on
12 CM, concrete/masonry units and with some brick accents
13 and there are precedence for that in the neighborhood,
14 so that's why we chose that.

15 CHAIRPERSON GRIFFIS: Giving existing
16 brick structure. Is that correct, in the front?

17 MS. LING: That's correct.

18 CHAIRPERSON GRIFFIS: The front porch, I
19 guess, is a wood structure?

20 MS. LING: Pardon me? The side porch is a
21 screened porch.

22 CHAIRPERSON GRIFFIS: Side.

23 MS. LING: It is a wood structure with a
24 brick foundation.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. LING: And brick piers.

2 CHAIRPERSON GRIFFIS: And you have brick
3 banding in the addition?

4 MS. LING: That's correct.

5 CHAIRPERSON GRIFFIS: So you have stucco,
6 you have brick. And what is the material on the
7 transition?

8 MS. LING: In between?

9 CHAIRPERSON GRIFFIS: Yes.

10 MS. LING: It's stucco as well.

11 CHAIRPERSON GRIFFIS: I believe stucco
12 just slams into the existing brick.

13 MS. LING: Well, there's a reveal, yes,
14 yes.

15 CHAIRPERSON GRIFFIS: Okay. Excellent.
16 And the windows that you are showing in the hand
17 sketches, they are also going to be divided? There is
18 going to be --

19 MS. LING: Yes.

20 CHAIRPERSON GRIFFIS: -- lines in them?

21 MS. LING: Yes.

22 CHAIRPERSON GRIFFIS: They are double-
23 hung?

24 MS. LING: The second floor windows are
25 double-hung.

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1 CHAIRPERSON GRIFFIS: The first floor are
2 casement?

3 MS. LING: Are casements, which were the
4 original windows, we understand.

5 CHAIRPERSON GRIFFIS: Okay. But they do
6 have divided lights?

7 MS. LING: Yes, yes.

8 CHAIRPERSON GRIFFIS: Like the others.
9 All right. You know, we had to find something to
10 detail or go into here. Okay. Any other questions?
11 Board Members, questions? Yes, Mr. Mann?

12 BOARD MEMBER MANN: Is this house located
13 in the Historic District?

14 MS. LING: No, it is not.

15 BOARD MEMBER MANN: Okay.

16 CHAIRPERSON GRIFFIS: We're going to hear
17 from the Office of Planning, but have you read the
18 Office of Planning's report?

19 MS. FINKELSTEIN: No, I have not.

20 CHAIRPERSON GRIFFIS: Okay. Well, why
21 don't we get to that then? Unless there are other
22 questions from the Board? They have one issue that I
23 think just needs to have quick attention to. So with
24 that, a very good morning to our Office of Planning
25 representative.

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1 MS. BROWN-ROBERTS: Good morning, Mr.
2 Chairman and Members of the Board. I am Maxine Brown-
3 Roberts representing the Office of Planning. The
4 applicant has requested a special exception under
5 section 223 to allow an addition to their residence
6 that does not meet the rear yard requirements in the
7 R-1-B Zone. I think I'll basically just stand on the
8 record or report, but just to say that going through
9 their application for all the requirements of section
10 223, we think that they meet all those requirements.

11 One of the things that I want to know is
12 that when I visited the site and took a look at the
13 rear yard, that the privacy of the adjacent residents
14 would be retained, because of the shrubbery in the
15 back yard and the view from the adjacent street is
16 going to be pretty minimal, and so we recommend that
17 the special exception be approved. Thank you, Mr.
18 Chairman.

19 CHAIRPERSON GRIFFIS: Thank you very much.
20 I appreciate it. I can't put my finger on it right
21 now, but did you not bring up the issue of maintaining
22 4 feet for access to the rear?

23 MS. BROWN-ROBERTS: No.

24 CHAIRPERSON GRIFFIS: Oh, indeed.
25 Probably another application.

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1 MS. BROWN-ROBERTS: Another application.

2 CHAIRPERSON GRIFFIS: All right then.
3 Very well. Any other questions? Questions of the
4 Board of the Office of Planning?

5 VICE CHAIR MILLER: I just have a
6 clarifying question. The application, Exhibit 1,
7 makes reference to applying an addition to a rear yard
8 for special exceptions, but also not meeting the side
9 yard requirements and the nonconforming structure
10 provisions. Are they at issue in this application?

11 MS. BROWN-ROBERTS: The addition did not
12 affect the side yard, so that was not addressed. It
13 only affected the rear yard, so that is what we
14 addressed.

15 VICE CHAIR MILLER: Okay. Thank you.

16 MS. FINKELSTEIN: Since we are a semi-
17 detached structure, we are supposed to have 8 feet on
18 each side, but since we're attached on one side, we
19 necessarily can't have the 8 feet, and that's why we
20 needed to get a special exception for that. That's
21 how I understood the section 223. And the ANC letter
22 actually addresses, I think, makes note of that that,
23 you know, we are zoned to have 8 feet on either side,
24 but there are many, you know, semi-attached structures
25 throughout the area.

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1 CHAIRPERSON GRIFFIS: Okay. Any questions
2 from the Board? Does the applicant have any cross
3 examination of the Office of Planning? Do you have
4 any questions of their report?

5 MS. FINKELSTEIN: No.

6 CHAIRPERSON GRIFFIS: Do you have a copy
7 of it? You read it?

8 MS. FINKELSTEIN: No.

9 CHAIRPERSON GRIFFIS: Okay. Do you want a
10 minute to read the report?

11 MS. FINKELSTEIN: Sure.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. FINKELSTEIN: Thank you.

14 CHAIRPERSON GRIFFIS: That may take a
15 little bit of time, so I'm going to allow you to read
16 it, because you should have actually read it before if
17 you thought you needed to prepare and address it, but
18 they go through the entire 223 case. They list out
19 all the questions and sections that have to be
20 complied with and they show how your application
21 complies with it and they render, as has now been
22 stated, that they recommend approval.

23 MS. FINKELSTEIN: And we have no
24 questions.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. FINKELSTEIN: Thank you.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 I don't have any other Government reports attendant
4 to the application, unless the Board is aware of any.

5 We can move on to the ANC, ANC-3C, which is Exhibit
6 26. It was filed late. I believe it does require a
7 waiver. Is there any objection to waiving and
8 accepting the ANC report into the record?

9 VICE CHAIR MILLER: No objection.

10 CHAIRPERSON GRIFFIS: Excellent. Not
11 noting any objection, I'll note consensus by the Board
12 and accept the June 29, 2004, which did not comply
13 with the timeliness in submission, and it is from the
14 Chair of ANC-3C and indicated, I believe, that it
15 meets all the other requirements for our giving it
16 great weight and they indicated that the vote was
17 unanimous in support of 8-0. Yes? Nothing? Okay.

18 Is there anyone here attendant to
19 Application 17195 either in support or in opposition
20 that would like to provide testimony today, persons to
21 provide testimony? If you would come forward. Not
22 noting anyone here to give testimony this morning, we
23 will make note of several exhibits of support, letters
24 that were submitted, Exhibit No. 10, Exhibit No. 11.
25 We also have the application for party status, which

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1 we're taking in as written testimony in support.

2 Are you aware of any others? We have
3 Fischer and Herrmann Households in the record. Are
4 you aware of any others that we're missing?

5 MS. FINKELSTEIN: No.

6 CHAIRPERSON GRIFFIS: Okay. Then if there
7 is nothing else, let's go back to you if there is any
8 sort of closing statements or summary that you would
9 like to provide.

10 MS. FINKELSTEIN: No, just thank you for
11 your time and consideration.

12 CHAIRPERSON GRIFFIS: Indeed. Thank you
13 very much. Very well. Board questions,
14 clarifications? Okay. I would move approval of
15 Application 17195 of Finkelstein residents for a
16 special exception to allow a two-story rear addition
17 to the existing single-family semi-detached dwelling
18 under section 223. This, of course, was not meeting
19 the rear yard requirements, side yard requirements and
20 nonconforming structure provisions in 2001.3 and at
21 the premises of 3300 Cleveland Avenue, N.W. I would
22 ask for a second.

23 COMMISSIONER HOOD: Second.

24 CHAIRPERSON GRIFFIS: Thank you very much,
25 Mr. Hood. I think it's pretty clear that the 223 has

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1 been met both in the submissions of the Office of
2 Planning, which was a very detailed and concise layout
3 of the test that was required. The submissions by the
4 applicant were also meeting all of the requirements of
5 223, including the graphic representation of which we
6 were supposed to be viewing in this application.

7 I would note we didn't get into it. It's
8 obviously in the record about the diminished aspect of
9 how it was reducing the rear yard, and actually
10 diminishes the aspect of the addition and how it stays
11 not only in character with the surrounding area, but
12 also it continues the character and perhaps even
13 beneficially continues the character and massing of
14 the existing building, and I think it's a very
15 straightforward case and I would urge the support of
16 the motion.

17 That being said, we have a motion before
18 us that has been seconded. I will take any other
19 deliberation by the Board Members at this time. Not
20 noting any others, I would ask for all those in favor
21 to signify by saying aye.

22 ALL: Aye.

23 CHAIRPERSON GRIFFIS: And opposed? Why
24 don't we record the vote?

25 MS. BAILEY: The vote is recorded as 4-0-1

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1 to approve the application. Mr. Griffis made the
2 motion. Mr. Hood second, Mrs. Miller and Mr. Mann are
3 in agreement. Mr. Etherly is not present.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you very much. I think we ought to waive our
6 requirements and issue a summary order on this date.
7 Very well. Thank you all very much. Appreciate you
8 being with us this morning. Good luck and enjoy that,
9 hopefully, sometime summer or fall.

10 MS. FINKELSTEIN: Thank you very much.

11 CHAIRPERSON GRIFFIS: Okay. Why don't we
12 move on and call the next case?

13 MS. BAILEY: Application No. 17196 of Sam
14 Daley-Harris, pursuant to 11 DCMR section 3104.1, for
15 a special exception to allow a two-story rear addition
16 and porch to an existing flat that is a two-family row
17 dwelling under section 223, not meeting the lot
18 occupancy requirements of section 403, the side yard
19 requirements, section 405, court requirements, section
20 406, and nonconforming structure provisions,
21 subsection 2001.3. The property is located in the R-4
22 District at premises 707 East Capitol Street, S.E.,
23 Square 898, Lot 27.

24 CHAIRPERSON GRIFFIS: Thank you, Ms.
25 Bailey. Good morning. Why don't I have you introduce

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1 yourselves for the record?

2 MR. DALEY-HARRIS: My name is Sam Daley-
3 Harris and with me is my wife, Shannon Daley-Harris,
4 and we live at 707 East Capitol Street, S.E.
5 Actually, our daughter, Sophie, and our son, Mica, who
6 is Burger King royalty is also with us.

7 CHAIRPERSON GRIFFIS: Fabulous. We grant
8 great weight to things of that nature. Okay. Let me
9 turn it over to you just for opening. Of course, we
10 are here on a special exception, also on a 223. There
11 are a couple more detailed aspects, of course, that
12 the Board is going to get into. We'll jump into the
13 questions pretty quickly, but let me have you present
14 the application at this time.

15 MR. DALEY-HARRIS: Okay. My wife and I
16 have owned and lived at 707 East Capitol Street since
17 1995. Our children were born in '98 and 2001. Since
18 '98 our dining room has become a playroom. What we
19 would like to do is there is a shack, I don't know if
20 you all have the photos, on the back of the house. I
21 don't know when it was built, many decades ago.

22 We want to take the shack down and replace
23 it, come out 3 feet and build a playroom there, so we
24 will recover our dining room and then go up a second
25 floor and expand a bedroom that's on the second floor

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1 of the house, and also add a covered porch to the
2 back.

3 We have letters of support from the two
4 neighbors on the left, the two neighbors on the right
5 and the two neighbors behind, and you will get into
6 the other issues as they come.

7 CHAIRPERSON GRIFFIS: Okay. So let's get
8 to the base 223. Of course, then you haven't heard
9 any evidence or you're not aware of anything that
10 would unduly impact the light and air of the adjacent
11 properties?

12 MR. DALEY-HARRIS: No. I mean, we showed
13 the design before they wrote the letters.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. DALEY-HARRIS: The neighbors on the
16 left, right and behind.

17 CHAIRPERSON GRIFFIS: And also in terms of
18 the use and privacy of the adjacent properties, any
19 comments, evidence? Are you aware of any factual
20 information?

21 MR. DALEY-HARRIS: I'm not. I looked at
22 the folder last week and there wasn't then.

23 CHAIRPERSON GRIFFIS: Okay. And your
24 material or the view of the addition from the street
25 or the alley?

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1 MR. DALEY-HARRIS: It's an alley, so it's
2 a very small alley with -- it's a cul-de-sac, small
3 alley, so you can't even drive all the way through it.

4 The neighbor on one side, we're using the same
5 architect as the neighbor on one side and so, frankly,
6 the design is very similar to what they have and the
7 materials, it's kind of an off white wood on one side,
8 an off white siding on the other of the neighbor's and
9 ours will be the same, basically.

10 CHAIRPERSON GRIFFIS: So you're using a
11 cementitious board or a hardy plank siding. Is that
12 correct?

13 MR. DALEY-HARRIS: What?

14 MS. DALEY-HARRIS: Hardy.

15 MR. DALEY-HARRIS: Hardy plank.

16 CHAIRPERSON GRIFFIS: So it's not vinyl
17 siding?

18 MR. DALEY-HARRIS: No, on one side of our
19 neighbor's is, but not us.

20 CHAIRPERSON GRIFFIS: Okay. Very well.
21 Other questions from the Board at this time? Ms.
22 Miller?

23 VICE CHAIR MILLER: Have you seen the
24 Office of Planning report?

25 MR. DALEY-HARRIS: We just got it this

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1 morning and we have skimmed it.

2 VICE CHAIR MILLER: Okay. I just wanted
3 to ask you a couple of questions on it and then I will
4 ask Office of Planning as well.

5 MR. DALEY-HARRIS: All right.

6 VICE CHAIR MILLER: But this is the case
7 in which the 4 foot setback is mentioned. On page 5
8 they say Staff strongly recommends the applicant
9 maintain at least a 4 foot setback from the eastern
10 property line and fence in order to provide sufficient
11 space for maintenance of the porch and addition.

12 Are you familiar with that recommendation?

13 MR. DALEY-HARRIS: Only this morning.

14 MS. DALEY-HARRIS: I would say currently,
15 the shack abuts the fence dividing our two properties,
16 so the current structure doesn't have a 4 foot
17 setback. I think the architect intentionally designed
18 the porch to be narrower than the addition's other --
19 the rest of the addition's structure, so that there
20 would be, you know, some, I guess, type of telescoping
21 kind of setback. But the current structure back there
22 isn't set back 4 feet.

23 Is he saying, is the Office of Planning
24 suggesting that the actual playroom addition be 4 feet
25 in from their property line? Is that the

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1 recommendation or was it the court?

2 VICE CHAIR MILLER: Okay.

3 MS. DALEY-HARRIS: Or do I not understand
4 what he said?

5 VICE CHAIR MILLER: Okay. Yes, the
6 Chairman is suggesting that perhaps Office of Planning
7 will address this, and then we can get back to your
8 response to it.

9 MS. DALEY-HARRIS: Okay.

10 VICE CHAIR MILLER: So I don't have any
11 questions right now further on that, so you can wait.

12 MS. DALEY-HARRIS: Okay.

13 CHAIRPERSON GRIFFIS: Okay. Any other
14 questions from the Board or the applicant at this
15 time? I say we then do proceed, so that we can get
16 the Office of Planning's report in front of us and
17 have the applicant question the Office of Planning and
18 also the Board.

19 So, Mr. Jackson, a very good morning to
20 you.

21 MR. JACKSON: Good morning, Mr. Chairman,
22 Members of the Board. My name is Arthur Jackson, D.C.
23 Office of Planning, and I will briefly summarize the
24 Office of Planning report.

25 Essentially, the Office of Planning will

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1 stand on the record and just highlight a few issues
2 that we raised in the report. The principal issue is
3 that the application, the existing land use on-site as
4 far as the public record is concerned, is a three
5 bedroom apartment unit as per the Certificate of
6 Occupancy. The relief that is being requested is only
7 available if the existing use is a single-family
8 residence or a flat.

9 The applicant has said that the property
10 functions as a flat, so we would recommend a condition
11 that the Certificate of Occupancy for a flat be
12 secured either prior to or along with the proposed
13 construction and that is the only condition that we
14 actually are attaching to this application.

15 We note that there are two types of relief
16 that we think are appropriate. One is from the
17 allowable lot occupancy and the other is from the open
18 court width, because, based on our calculations, the
19 height of the addition will require a court that's
20 wider than will be provided. However, the applicant
21 is simply extending the existing court and, as such,
22 we don't think that triggers any additional
23 requirement.

24 And as per our recommendation on the --
25 anticipating your question, as per our recommendation

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1 on the setback for the porch, we're just referring to
2 the fact that there is no side yard along the eastern
3 property line. The existing addition will be to the
4 property line. What we are suggesting is that the 2
5 foot distance between the fence and the porch would
6 not be enough for a person to stand and do any work on
7 the porch or the addition.

8 Now, we are not suggesting this as a
9 condition of approval, because they aren't requesting
10 any relief from the side yard requirement. We're just
11 suggesting that the applicant consider that they might
12 want to move the edge of the porch in further, so if
13 they needed to get between the porch and the fence and
14 do any maintenance on the porch or the building or,
15 for that matter, the fence, it could be accomplished.

16 I would also note that the fence on the
17 eastern side and the western side are actually on the
18 adjacent property. They are not on the applicant's
19 property, but they belong to the neighbors, so they
20 would have to maintain their own fence. It would just
21 be a case of maintaining their building.

22 So again, the recommendation is for
23 approval of the special exception for relief from the
24 lot occupancy percentage, to increase that to 68
25 percent, and the court width requirement, so that they

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1 can extend the existing open court that is 5 feet wide
2 with a condition that a C of O, a Certificate of
3 Occupancy, for a flat be secured along with the
4 construction. And that concludes our recommendations.

5 That's our brief summary and the Office of Planning
6 Staff remains available to answer questions. Mr.
7 Chairman?

8 CHAIRPERSON GRIFFIS: Thank you very much,
9 Mr. Jackson. Appreciate that, an excellent report as
10 we have come to rely on. You also indicated that the
11 parking was not required based on the fact that this
12 is a contributing building to the Historic District.
13 Is that correct?

14 MR. JACKSON: That is correct.

15 CHAIRPERSON GRIFFIS: Okay. Excellent.
16 And to follow-up just in terms of the court and the
17 open court, which I think you have relied on, but I
18 just want to make it very definitive, the fact that
19 that's also covered under 223 and which is to your
20 statement that no other additional relief is required.
21 Is that correct?

22 MR. JACKSON: Not based on our analysis.

23 CHAIRPERSON GRIFFIS: Right. Okay.
24 Excellent. Questions from the Board?

25 VICE CHAIR MILLER: I just want to comment

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1 since I raised the issue that my understanding is that
2 OP's position with respect to the 4 foot setback is
3 just making a friendly suggestion to the applicant?

4 MR. JACKSON: Correct.

5 VICE CHAIR MILLER: Okay. Thank you.

6 CHAIRPERSON GRIFFIS: Any other questions
7 from the Board? Very well. Does the applicant have
8 any cross examination questions of the Office of
9 Planning?

10 MR. DALEY-HARRIS: No, that was clear.

11 CHAIRPERSON GRIFFIS: Okay. Do you have a
12 thin repairman, getting in 2 feet? Yes, see, the king
13 is going to be painting that porch, I understand.
14 Very well. I think it's an excellent suggestion. The
15 Office of Planning does take a great amount of detail
16 and time even in these small level --

17 MR. DALEY-HARRIS: Right.

18 CHAIRPERSON GRIFFIS: -- quite frankly,
19 small level projects, but I think it's important to
20 understand. It is interesting the design itself is
21 very symmetrical to the back with the overhang, and so
22 you may want to just revisit that to really assess how
23 much 2 feet actually is in terms of getting in and out
24 for your own maintenance and operation.

25 Now, directly to the Certificate of

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1 Occupancy, of which that was one of the major Board
2 concerns, we obviously can't process this and approve
3 it for a three unit building as Mr. Jackson has laid
4 out. So what we need to do is somehow figure out how
5 you're going to do that.

6 MR. DALEY-HARRIS: Yes, it is. We have a
7 tenant in the basement and we live on the second and
8 third floors, so it is a flat, so we need to just get
9 out whatever the specific --

10 CHAIRPERSON GRIFFIS: You said you
11 purchased this in '95?

12 MR. DALEY-HARRIS: That's right.

13 CHAIRPERSON GRIFFIS: Was it ever a three
14 unit building under your purchase?

15 MR. DALEY-HARRIS: It was at first.

16 CHAIRPERSON GRIFFIS: For how long?

17 MR. DALEY-HARRIS: For --

18 CHAIRPERSON GRIFFIS: When did it stop
19 being a three unit?

20 MR. DALEY-HARRIS: Before my 6 year-old
21 was born.

22 CHAIRPERSON GRIFFIS: So over six years
23 ago?

24 MR. DALEY-HARRIS: Yes.

25 CHAIRPERSON GRIFFIS: Mr. Jackson, what

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1 would be your analysis? I would say that that C of O
2 for three units has lapsed.

3 MR. JACKSON: Well, since there is no
4 other C of O on record --

5 CHAIRPERSON GRIFFIS: Gotcha.

6 MR. JACKSON: -- they would need to update
7 the use to what the current use it. From my
8 understanding in talking with the applicant is that
9 they are being assessed as a flat or a two unit.

10 CHAIRPERSON GRIFFIS: You're being tax
11 assessed as a flat?

12 MR. DALEY-HARRIS: Actually, I don't know.

13 MR. JACKSON: Okay. I'm sorry. I may
14 have misunderstood.

15 CHAIRPERSON GRIFFIS: Okay. Here's what
16 we're going to do. It's going to be very simple. I
17 think it's very straightforward. I think the Board
18 right now with the limited questions that we're having
19 is clearly decided. That may not be good. It may be
20 bad, but 223 is very straightforward. I don't mean to
21 be too sarcastic.

22 However, this is a legal aspect of which
23 we obviously couldn't approve it. We're going to keep
24 the record open for submission of the current C of O,
25 a new C of O for a flat, single-family or flat. That

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1 should not be a problem in turning around fairly
2 quickly. I would suggest that we get that in within
3 the next week and a half or whatever it is. We'll set
4 the date on it. We'll put this for decision making on
5 the 3rd of August. That's our Public Meeting in the
6 morning of the 3rd of August.

7 Ms. Bailey, how late can that Certificate
8 of Occupancy come in?

9 MS. BAILEY: Well, as soon as the
10 applicant -- oh, how late?

11 CHAIRPERSON GRIFFIS: Yes, as soon as you
12 get it, put it in. Obviously, that will expedite
13 everything. I mean, we're not going to do it before
14 the 3rd, but clearly it will fill out the record and
15 that would be enforced. If we could have it the
16 Thursday before?

17 MS. BAILEY: The Thursday before the 3rd of
18 August, Thursday before is July 29th. Is that doable
19 for you, sir?

20 MR. DALEY-HARRIS: Yes. Do I need to be
21 here?

22 CHAIRPERSON GRIFFIS: No.

23 MR. DALEY-HARRIS: Or just bring it in
24 before the 29th?

25 CHAIRPERSON GRIFFIS: Yes, you need to put

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1 it into the record before the 29th. If it doesn't come
2 in on the 29th, but you're anticipating it, I would
3 just appreciate if you would update the Office of
4 Zoning Staff and they can update the Board for us.

5 MR. DALEY-HARRIS: Okay.

6 CHAIRPERSON GRIFFIS: And we can go with
7 that. In terms of the Public Meeting on the 3rd, that
8 is our deliberation. There is no additional testimony
9 that's taken.

10 MR. DALEY-HARRIS: Okay.

11 CHAIRPERSON GRIFFIS: No other role for
12 you to play.

13 MR. DALEY-HARRIS: Okay.

14 CHAIRPERSON GRIFFIS: Publicly, you're
15 absolutely welcome to be here in person.

16 MR. DALEY-HARRIS: Okay.

17 CHAIRPERSON GRIFFIS: To hear our
18 deliberation on the application. You can also watch
19 us on the website if you would want or you can call in
20 after and see what we did. Any other questions or
21 procedures I can answer for you?

22 MR. DALEY-HARRIS: That's fine.

23 CHAIRPERSON GRIFFIS: Okay. I would also
24 just question in terms of direction when you go in for
25 a Certificate of Occupancy, I hope you have plans or

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1 at least can show the plans in terms of establishing
2 that it is a flat. So very well. If there is nothing
3 further then, thank you very much. Yes, Ms. Bailey?

4 MS. BAILEY: Sorry, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Yes?

6 MS. BAILEY: Just for clarification's
7 sake, the application was advertised for relief from
8 the lot occupancy, the side yard and 2001.3 and the
9 court. Are we now saying that relief is only needed
10 from the lot occupancy and the court?

11 CHAIRPERSON GRIFFIS: No.

12 MS. BAILEY: You're not?

13 CHAIRPERSON GRIFFIS: I don't think we're
14 changing the advertisement of the application.

15 MS. BAILEY: Okay. So the advertisement
16 stays, the case stays as it was advertised?

17 CHAIRPERSON GRIFFIS: That's correct.

18 MS. BAILEY: Thank you, sir.

19 CHAIRPERSON GRIFFIS: And we're just
20 having them come into compliance with the fact that
21 they are single-family or flat.

22 MS. BAILEY: Thank you, sir.

23 CHAIRPERSON GRIFFIS: Excellent. Okay.
24 If there is nothing further, we'll look for that
25 submission.

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1 MR. DALEY-HARRIS: Okay.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much. In that case, let's call the next and
4 final case for the morning.

5 MS. BAILEY: Application No. 17194 of
6 Monique Greenwood, pursuant to 11 DCMR section 3104.1,
7 for a special exception to establish a bed and
8 breakfast, that's a home occupation, for six sleeping
9 rooms under subsection 203.8 or, in the alternative,
10 pursuant to 11 DCMR section 3103.2, a variance from
11 the use provisions to allow eight sleeping rooms in
12 the Dupont Circle R-5-D District at premises 1708 16th
13 Street, N.W., Square 178, Lot 74.

14 CHAIRPERSON GRIFFIS: Visual aids, we
15 always looks forward to visual aids. Excellent.
16 Thank you, Ms. Bailey. Whenever you're ready, Mr.
17 Gross, you can introduce yourself and the rest.

18 COMMISSIONER HOOD: Mr. Chairman, I just
19 need a clarification.

20 CHAIRPERSON GRIFFIS: Yes.

21 COMMISSIONER HOOD: Are we considering six
22 and, in the alternative, eight? Is that what is being
23 proposed, six sleeping rooms?

24 CHAIRPERSON GRIFFIS: Yes.

25 COMMISSIONER HOOD: Okay.

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1 CHAIRPERSON GRIFFIS: And I think we all
2 need clarification, which is part of what we'll get
3 into fairly quickly.

4 COMMISSIONER HOOD: Right.

5 CHAIRPERSON GRIFFIS: In terms of several
6 aspects.

7 COMMISSIONER HOOD: Okay.

8 CHAIRPERSON GRIFFIS: But there definitely
9 is the discussion of going. What is the vehicle for
10 going from six rooms to eight rooms, but I'm sure Mr.
11 Gross is prepared to discuss that.

12 COMMISSIONER HOOD: Thank you. Wow, I see
13 a couple of oprys we have already approved on the
14 Board. Okay. Let's move forward.

15 MR. GROSS: Good morning, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Good morning.

17 MR. GROSS: I'm Nathan W. Gross, the City
18 Planner at the Law Firm of Arnold and Porter. With me
19 is Monique Greenwood, the property owner and applicant
20 in this case, and also joining us at the table is the
21 Chair of the ANC, Darren Bowie.

22 MR. BOWIE: Good morning, Mr. Chairman,
23 Member of the Board, I'm Darren Bowie representing
24 ANC-2B.

25 CHAIRPERSON GRIFFIS: Okay. Are you part

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1 of their presentation?

2 MR. BOWIE: No.

3 CHAIRPERSON GRIFFIS: Okay. Actually,
4 what I'll do is let's just give them the table, if you
5 don't mind?

6 MR. BOWIE: Okay.

7 CHAIRPERSON GRIFFIS: This is their
8 portion.

9 MR. BOWIE: Sure.

10 CHAIRPERSON GRIFFIS: I will call you up.
11 You're the third on our whole chronology of things.
12 We're going to get through all of the Agency reports
13 and then you get the table to yourself to do the
14 presentation. Thank you. Mr. Gross?

15 MR. GROSS: Ms. Greenwood will begin by
16 describing her background as an innkeeper, her
17 acquisition of the premises and proposed bed and
18 breakfast use and then I will go into the zoning
19 compliance issues.

20 CHAIRPERSON GRIFFIS: Okay. If I could
21 make some recommendations?

22 MR. GROSS: Sure.

23 CHAIRPERSON GRIFFIS: A lot of, if not all
24 of that, has actually been submitted in the file.

25 MR. GROSS: Yes.

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1 CHAIRPERSON GRIFFIS: And I can guarantee
2 you that the Board reads absolutely everything that we
3 get, whether we like it or not. Not that that's an
4 indication of your application.

5 MR. GROSS: Right.

6 CHAIRPERSON GRIFFIS: Absolutely
7 everything. So we have seen and read all of it. So
8 if you want to summarize things or highlight things
9 just to refresh our recollection, that would be
10 appropriate. But I think we really need to move into
11 the substance, because this is going to get a little
12 bit more complex.

13 MR. GROSS: Sure.

14 CHAIRPERSON GRIFFIS: So with that, I'll
15 turn it over to you.

16 MS. GREENWOOD: Thank you. I'll be brief.
17 My name is Monique Greenwood. I'm a native
18 Washingtonian who wanted to relocate back home after
19 living 20 years in New York City operating a bed and
20 breakfast called Akwaaba Mansion in Brooklyn for nine
21 years. My husband and I purchased 1708 16th Street,
22 N.W., in February. It was an existing bed and
23 breakfast called the Brenton. It had a C of O for
24 nine rooms as a rooming and boarding house. It had
25 been in business for 13 years.

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1 We specifically purchased that property
2 because we wanted to have a conforming building
3 already that was a bed and breakfast. We did
4 excessive renovations, went to secure the proper
5 licensing and we were told that we could not use the C
6 of O that the former owners had as a rooming house,
7 that we now needed to apply for a Bed and Breakfast
8 License, that we would, as a matter-of-right, be
9 eligible for six sleeping units, because the building
10 was in a Historic District and has been deemed as a
11 contributing building.

12 We put through that paperwork and then we
13 were later told by the same Zoning Administrator that
14 it is not a matter-of-right for the six sleeping
15 rooms, that we could have two rooms and that we would
16 have to put through a BZA application for the actual
17 six rooms, which, of course, was different from what
18 we had originally been told, but we are now coming
19 forward for the six rooms. We purchased the bed and
20 breakfast because it had eight guest rooms and one
21 guest apartment, and so we're now asking to have the
22 same kind of use.

23 We want the six rooms and the additional
24 two rooms. We live on the lower level of the building
25 and there are three bedrooms on the next level, three

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1 bedrooms on the final level and two bedrooms on the
2 very top floor. To not have the two bedrooms on the
3 top floor would be wasted space and also would be
4 detrimental to our livelihood, because, again, we
5 purchased the building, which was an eight room
6 operating bed and breakfast, with financials that we
7 would be able to do the same. So that's it very
8 briefly.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. GREENWOOD: And Mr. Gross, I'm sure,
11 will answer any issues about the vehicle in which we
12 are going forth trying to secure the licensing for
13 eight rooms.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much. You indicated in your written
16 submission and also now that it was a 13 years of
17 prior use as a bed and breakfast?

18 MS. GREENWOOD: Yes.

19 CHAIRPERSON GRIFFIS: And I missed how
20 many rooms did you say?

21 MS. GREENWOOD: They had a C of O for nine
22 rooms, and they operated eight regular guest rooms and
23 they had like an apartment that has a kitchen and a
24 bath.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. GREENWOOD: So they operated with nine
2 units, eight of them as regular guest rooms.

3 CHAIRPERSON GRIFFIS: Now, how do you know
4 that?

5 MS. GREENWOOD: When I first went to
6 purchase the property, I worked with Tutt, Taylor and
7 Rankin Realty, I told them I was looking for a bed and
8 breakfast to purchase. On the advertising that was
9 listed for the property on the actual Sale of
10 Agreement, it said that it is operating as a nine unit
11 bed and breakfast.

12 CHAIRPERSON GRIFFIS: Okay. So from the
13 real estate broker's outline of the present condition?

14 MS. GREENWOOD: Yes, and also from all of
15 the advertisement and publicity for the Brenton. I
16 did bring with me copies of information about the
17 Brenton that I pulled off the Internet with various
18 travel agencies, like Let's Go and different bed and
19 breakfast guys that list it there as having eight
20 guest rooms.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. GREENWOOD: And I also worked very
23 closely with the former owner and manager and him
24 talking to me about the kind of customers they had,
25 when the hot seasons would be, all of that.

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1 CHAIRPERSON GRIFFIS: Good. And those
2 discussions during the promo, which I can imagine you
3 do a little bit of due diligence for feasibility going
4 to this.

5 MS. GREENWOOD: Absolutely. Absolutely.

6 CHAIRPERSON GRIFFIS: Did you go into the
7 history of it? Did it ever lapse in use as a bed and
8 breakfast?

9 MS. GREENWOOD: Never, never.

10 CHAIRPERSON GRIFFIS: In the past 13
11 years?

12 MS. GREENWOOD: Never.

13 CHAIRPERSON GRIFFIS: Did you in closing
14 happen to get any of the documentation that would
15 substantiate its use as an eight bedroom bed and
16 breakfast?

17 MS. GREENWOOD: In closing?

18 CHAIRPERSON GRIFFIS: Like did you get a
19 pro forma or any sort of business operating from the -

20 - MS. GREENWOOD: No, right. What happened
21 was I had the opportunity to either purchase the real
22 estate and/or purchase the real estate with the
23 business.

24 CHAIRPERSON GRIFFIS: Purchase the
25 business.

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1 MS. GREENWOOD: And because I wanted to
2 use my own brand, I chose not to pay for the good will
3 of their name, since I wasn't intending to use it.

4 CHAIRPERSON GRIFFIS: Did you keep in your
5 own records any of the business?

6 MS. GREENWOOD: They didn't provide the
7 business financials, because I wasn't buying the
8 business.

9 CHAIRPERSON GRIFFIS: Gotcha. Okay.

10 COMMISSIONER HOOD: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes?

12 COMMISSIONER HOOD: Just for
13 clarification. You mentioned that there were nine
14 rooms. Eight rooms were used as the bed and breakfast
15 and the other room was used for a kitchen?

16 MS. GREENWOOD: No. The other room was
17 like an apartment/suite, but we have since taken that
18 space for our private residence.

19 COMMISSIONER HOOD: So you're not asking
20 for it. But previously it was used?

21 MS. GREENWOOD: It was used for nine.

22 COMMISSIONER HOOD: And it had nine rooms?

23 MS. GREENWOOD: Yes.

24 COMMISSIONER HOOD: And you're only asking
25 for eight?

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1 MS. GREENWOOD: I'm asking for eight.
2 And, in fact, what I'm asking for is kind of a lesser
3 use, because they were licensed as a nine room rooming
4 house, and I'm looking to do an eight room upscale bed
5 and breakfast, so it's, I think, less use.

6 COMMISSIONER HOOD: Okay.

7 CHAIRPERSON GRIFFIS: Right.

8 COMMISSIONER HOOD: Thank you. Thank you,
9 Mr. Chair.

10 CHAIRPERSON GRIFFIS: Indeed. So it's
11 your testimony and the evidence that you have in your
12 possession that this was, in fact, a bed and breakfast
13 for at least 13 years, which would bring it to 1989.
14 Is that correct?

15 MS. GREENWOOD: Correct. I have a copy of
16 the C of O that they secured.

17 CHAIRPERSON GRIFFIS: Right.

18 MS. GREENWOOD: In preparation for the bed
19 and breakfast.

20 CHAIRPERSON GRIFFIS: We have a copy of
21 that, also.

22 MS. GREENWOOD: Okay. And yes, they have
23 never lapsed. They have won many awards for their
24 contribution.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. GREENWOOD: Especially, they had a
2 specific target audience that they catered to and so
3 they were a very well-established bed and breakfast.

4 CHAIRPERSON GRIFFIS: Good. Mr. Gross
5 will address this, but I think for our understanding
6 is the Certificate of Occupancy, of course, from 1989
7 is listed as a rooming house. I think the Board is
8 well-aware, having processed cases similar to this,
9 and also knowing the legislative history in the Zoning
10 Commission's Acts and also the regulations themselves,
11 that prior to the text amendment that created the
12 habitation, which started to define the requirements
13 for bed and breakfast, that C of O's were issued
14 whether it was a bed and breakfast or a rooming house,
15 all as rooming houses.

16 MS. GREENWOOD: Yes.

17 CHAIRPERSON GRIFFIS: So it wouldn't be
18 out of the ordinary for a 1989 Certificate of
19 Occupancy to read as such. Okay. Other questions
20 from the Board?

21 VICE CHAIR MILLER: Just with respect to
22 the difference between a rooming house and boarding
23 and bed and breakfast, are you saying that even though
24 the previous owner had a Certificate of Occupancy as a
25 rooming house, it was actually operated as a bed and

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1 breakfast?

2 MS. GREENWOOD: I'm saying that at the
3 time that they went into business, that was the proper
4 licensing for a rooming house, and I thought when I
5 purchased it, I would simply be able to transfer that
6 as a nonconforming use. When I went down, they said
7 no, you need to get a Bed and Breakfast License, and
8 so that's what began this process. So they were
9 operating with what was correct at the time that they
10 went into business.

11 VICE CHAIR MILLER: I guess my question
12 goes to in actuality, your operation as a bed and
13 breakfast is basically the same as their operation
14 was?

15 MS. GREENWOOD: Absolutely.

16 VICE CHAIR MILLER: Okay. Thank you.

17 MS. GREENWOOD: Yes.

18 CHAIRPERSON GRIFFIS: Anything else? Any
19 other questions at this time? Okay. Why don't we let
20 you continue on then.

21 MR. GROSS: Oh, I'm sorry.

22 MS. GREENWOOD: I didn't want to be
23 redundant with what you have already read, so I tried
24 to be brief in my summation, but suffice to say that
25 after learning of the need to come before the BZA for

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1 the six rooms and then for the additional two rooms, I
2 retained Nate Gross to assist me with that process,
3 and I went forward with securing the two room as a
4 matter-of-right license, which I have been operating
5 with since February.

6 It has been a tremendous financial
7 hardship for us, because we did leave our jobs in New
8 York. We sold our businesses there and we moved down
9 here to do this and two rooms has not been able to
10 really sustain us with the kind of mortgage and
11 expenses that we have incurred to introduce this
12 project.

13 CHAIRPERSON GRIFFIS: Good. Thank you for
14 saying that. And you do have that in your written
15 submission and believe me the Board fully understands
16 and no matter what size of project or who is in front
17 of us, we always expedite these things, because they
18 all matter a great deal for every applicant that is
19 before us. Otherwise, why would you put up with such
20 a headache coming here.

21 MS. GREENWOOD: I know.

22 CHAIRPERSON GRIFFIS: A small joke. But
23 nonetheless, I think it is interesting. I mean, there
24 has been some complications in terms of bed and
25 breakfast in the legislation and what the requirements

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1 are. I think that's probably perhaps what you've
2 gotten caught up with.

3 MS. GREENWOOD: Yes.

4 CHAIRPERSON GRIFFIS: I think when you get
5 to this Board, this is the stop.

6 MS. GREENWOOD: Yes.

7 CHAIRPERSON GRIFFIS: I mean, you have had
8 a lot of different opinions. It is all in this
9 application.

10 MS. GREENWOOD: Yes.

11 CHAIRPERSON GRIFFIS: The Board has looked
12 at all of those. We have actually done quite a good
13 amount of research on our own in Executive Session in
14 terms of going back into the history of recent cases
15 that this Board has decided and also into the
16 legislative history to get a full understanding of it.

17 MS. GREENWOOD: Yes.

18 CHAIRPERSON GRIFFIS: Obviously, we're
19 saddled with the fact numerous times of how ambiguous
20 the regulations are written, so it is not so easy
21 often to get straight and definitiveness.

22 MS. GREENWOOD: Yes.

23 CHAIRPERSON GRIFFIS: But you will see, I
24 think, in the expiration of our questions that we will
25 hopefully get to a very decided position and hopefully

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1 very quickly. Ms. Miller?

2 MS. GREENWOOD: May I just make one last
3 comment on this?

4 CHAIRPERSON GRIFFIS: Sure.

5 MS. GREENWOOD: I'm aware as well as to
6 history with B&Bs in the Washington, D.C. area. I
7 know it has been a touchy situation. We successfully
8 operated our bed and breakfast in New York for nine
9 years, and we also have a summer bed and breakfast
10 that we operate in Cape May.

11 CHAIRPERSON GRIFFIS: In Cape May.

12 MS. GREENWOOD: New Jersey. I have found
13 things to be very different here in D.C. in terms of
14 this willingness to embrace the B&B concept. But I
15 will say this, the thing that distinguishes what we
16 want to do from those that have come prior to us,
17 Tutorsky Mansion, even the Swann House, which was
18 approved, is that we do not intend to do any kind of
19 events or social activities or large gatherings,
20 nothing of the sort. We simply want to operate our
21 guest rooms.

22 My husband wouldn't stand for it, if that
23 was -- I had to beg him to do the B&B concept again,
24 so there is no way he is going to have his privacy
25 invaded any more by having large groups of people and

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1 events. So we are not interested in that, which we
2 have made clear to our ANC and you will hear from the
3 chair to that affect that we have signed a voluntary
4 agreement stating that we will not hold social events,
5 that we will not have gatherings, that we will not go
6 for a liquor license, that is not our intent.

7 CHAIRPERSON GRIFFIS: Okay. We appreciate
8 that. Let's get right to that, because that's one of
9 the things we're going to have to figure out here.
10 When you say you won't have gatherings or events, but
11 you have indicated that, obviously, this has a
12 literary theme to it, and you're going to have authors
13 or possibly authors staying there and then authors may
14 be doing little presentations or readings, you would
15 anticipate -- describe to me what that group is going
16 to be that would be listening to that.

17 MS. GREENWOOD: Okay. We have a literary
18 retreat, which is, we're making one of our spaces
19 available to authors, who are working on books, who
20 just need a space where they can get away and focus on
21 the writing. I'm a published author myself and in
22 doing so, I realize the need to have that sacred space
23 to do that. So we make that available to authors
24 absolutely free to work on their books. What they
25 have the option of doing is to share any work in

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1 progress with the guests who are staying there to get
2 any kind of feedback from them.

3 So that's what I mean when I speak in
4 terms of that kind of a reading that would be shared
5 to the guests. It's really a work in progress. Very
6 similar to a writer's group, where they can bounce off
7 on the intended receiver of their work and get
8 feedback from that. We also would like to
9 aggressively market toward book clubs so that, you
10 know, many of the guests who are staying are people
11 who are interested in literature, so they would be
12 interested in hearing from the writer in residence
13 while they are in their presence.

14 CHAIRPERSON GRIFFIS: Okay. But you don't
15 anticipate to have some famous author that is coming
16 in and, of course, they want to kind of get away,
17 write a little bit in the privacy of the bed and
18 breakfast, but not opening up to at least the
19 neighbors or the community, if they were doing a
20 public reading?

21 MS. GREENWOOD: Well, initially, I mean,
22 that would be great. That would be great for the
23 neighbors, but that's not our intent, because we have
24 already, you know, agreed that we wouldn't have that.

25 CHAIRPERSON GRIFFIS: Okay. That's why we

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1 need to be absolutely clear on it. If we process
2 this, you will be -- there won't be any intent.

3 MS. GREENWOOD: I understand. No, no, I
4 said it was our initial.

5 CHAIRPERSON GRIFFIS: In or out.

6 MS. GREENWOOD: That was our initial
7 intent.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. GREENWOOD: But as we understand the
10 concern around people coming that aren't guests, we
11 absolutely will not do that. In fact, I think, the
12 benefit to an author, especially a well-known author
13 is to have that kind of sacred sanctuary not to be,
14 you know, crowded by the public. So no, that is not
15 what we will do.

16 CHAIRPERSON GRIFFIS: But you are an
17 expert in running bed and breakfasts, correct?

18 MS. GREENWOOD: Yes.

19 CHAIRPERSON GRIFFIS: Don't you find that
20 they are somewhat of a hybrid use in a residential
21 area so that they have that private aspect, but they
22 have a public aspect? Isn't that part of their
23 amenity?

24 MS. GREENWOOD: No, I think that depends
25 on the kind of business people want to operate. There

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1 are many B&Bs that have two rooms, three rooms, six
2 rooms, eight rooms. All are very relatively small bed
3 and breakfasts. There are much large B&Bs that have
4 common spaces where they can hold bigger gatherings.
5 We don't have that kind of space. We have a little
6 living room, a little dining room, so we are not even
7 equipped to do that.

8 CHAIRPERSON GRIFFIS: How big is your
9 largest room on the first level, approximately?

10 MS. GREENWOOD: I'm bad with space. I'm
11 really bad with marking off.

12 CHAIRPERSON GRIFFIS: That's all right.
13 Do you have a dining room table in one of the rooms?

14 MS. GREENWOOD: I have a dining room
15 table.

16 CHAIRPERSON GRIFFIS: How many people does
17 it seat?

18 MS. GREENWOOD: Eight people. Eight
19 people.

20 CHAIRPERSON GRIFFIS: Okay. So we have at
21 least, I would say, a 12 x something room, so maybe,
22 let's say, 12 x 10, just to throw it out there. Okay.

23 MR. GROSS: Ms. Greenwood, the thrust of
24 your statement is that the readings and other contacts
25 with the author will not bring in people from the

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1 outside for social events and receptions.

2 MS. GREENWOOD: No. I mean, the point is
3 that if there is a guest who is an author who is in
4 residence working on a book and they would like the
5 opportunity to get feedback on the work that they are
6 working on, then the guests who are staying overnight
7 who join them for breakfast, they would feel honored
8 to have that person, to be a part of that process.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. GREENWOOD: And so that's really what
11 the goal is.

12 CHAIRPERSON GRIFFIS: Right. And I
13 understand that. I fully anticipate that you would
14 maintain control of that. What I'm trying to actually
15 move you towards more is not prohibiting yourself from
16 having two or three people that don't stay there come
17 and be part of any sort of situation with an author.

18 MS. GREENWOOD: Well, I think I have
19 already kind of done that, because I did sign that
20 agreement with the ANC. I don't know how --

21 CHAIRPERSON GRIFFIS: So when the ANC
22 Chair has -- is a big fan of one of the authors that
23 is staying there, he is going to be prohibited from
24 entering in that front door unless he rents a room?

25 MS. GREENWOOD: Well, if he's coming for

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1 an event, that's if he's coming to visit me, I can say
2 hey, you want to meet Toni Morrison? But I would
3 never --

4 CHAIRPERSON GRIFFIS: Toni Morrison, no
5 one can go say hello? Okay.

6 MS. GREENWOOD: I don't know how to get
7 around that.

8 CHAIRPERSON GRIFFIS: Mr. Hood?

9 COMMISSIONER HOOD: Mr. Chair, I just
10 wanted to ask a question about one of the things you
11 are proposing, and I really don't understand how this
12 actually works, but it says "Most guests will arrive
13 by taxi or will use public transportation during their
14 visit." How does that work? You're the expert. Tell
15 me how that works with a B&B.

16 MS. GREENWOOD: Well, most out-of-town
17 guests don't drive in. They fly in. They take the
18 train. So once they arrive, they use taxi cabs or the
19 Metro to get to any kind of D.C. tourist attractions
20 that they are looking to get to. So it has been our
21 experience that even operating with the two rooms, our
22 guests don't tend to drive in. They know they are
23 coming to Washington, D.C., that's a town that's very
24 accessible by public transportation, and they are
25 flying in. They don't rent a car once they get here.

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1 COMMISSIONER HOOD: Is that typical just
2 for the D.C. area or for Washington, D.C.?

3 MS. GREENWOOD: It's typical of most
4 metropolitan areas. We have the same experience in
5 New York. I mean, no one is driving in New York.
6 Cape May is different, which is a resort or vacation
7 town. Our feeder cities would be Washington,
8 Philadelphia, Baltimore, New Jersey, New York and
9 people do drive there, and we do have a parking lot
10 there. We also have parking behind our house at 1708
11 16th Street. We are not required to have parking
12 through the Historic Preservation piece, but we do
13 have a parking pad that typically goes unused. Just
14 yesterday the post office carrier asked if his wife
15 could park there this week as she is taking a class.
16 I said sure.

17 COMMISSIONER HOOD: Yes.

18 MS. GREENWOOD: Because it goes on
19 unoccupied.

20 COMMISSIONER HOOD: Let me just expand on
21 that a little more. I'm sure that is one of the
22 stipulations that the ANC also negotiated with you on,
23 I'm pretty sure, and I also see that you proposed it.
24 But if that doesn't happen, because the key word is
25 "most," if that doesn't happen, then do you have in

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1 your literature that you cannot drive your personal
2 car or rental car or is there some kind of mechanism
3 that triggers whoever your customers are to let them
4 know, hey, look. I know you are saying most of them
5 do typically drive -- I mean, typically take a taxi or
6 use public transportation, but all the time that's not
7 the case. Are there any measures in place to keep
8 that from happening?

9 MS. GREENWOOD: To keep people from
10 driving their cars?

11 COMMISSIONER HOOD: To keep from driving,
12 yes, yes.

13 MS. GREENWOOD: No, there is not. I don't
14 tell them they can't drive their cars.

15 COMMISSIONER HOOD: Just a possibility.

16 MS. GREENWOOD: If they drive, they can
17 park behind the house.

18 COMMISSIONER HOOD: They can park behind
19 the house.

20 CHAIRPERSON GRIFFIS: When you advertise
21 rooms for rent, do you include parking available, no
22 parking available, any statement about parking?

23 MS. GREENWOOD: They will ask me. If they
24 are driving, if they plan to drive, they will say is
25 there any place we can park the car and then we say,

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1 yes, we'll put you down for a parking space behind the
2 house.

3 CHAIRPERSON GRIFFIS: Okay. And that
4 fills up and so what do you tell the person that now
5 doesn't have a parking space on your site?

6 MS. GREENWOOD: It doesn't usually fill
7 up. Most people don't ask me about parking, because
8 most people really do take either a plane or a train
9 in.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. GREENWOOD: And so those who ask about
12 parking, I tell them they can park behind the house.
13 I have not seen that. It's hard for me to say.

14 CHAIRPERSON GRIFFIS: Right. But
15 hypothetically in the worst case scenario, because,
16 you know, it's positive we come across and we always
17 look at the worst case scenario up here. Your parking
18 lot is full. You now have two other residents that
19 are coming in and they have a car. To answer Mr.
20 Hood's question, what do you tell them? What
21 provisions do you know of or do you provide your
22 guests with parking cars?

23 MS. GREENWOOD: I have not told them
24 anything, but what I would tell them if I knew that
25 the four parking spots that I had are already taken

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1 up, I would tell them that this is a very highly
2 concentrated neighborhood, that parking is very tight,
3 that there is a public street that you can park on the
4 street, but that it is very tight. I would seriously
5 advise that if you have another way to get in, other
6 than driving, I would encourage that.

7 MR. GROSS: They could also be directed to
8 a commercial parking lots in the downtown area where
9 it's not that far away. It would be expensive, but
10 this is what people have to do in the real world
11 sometimes.

12 CHAIRPERSON GRIFFIS: There it is. So are
13 you aware of the adjacent parking garages?

14 MS. GREENWOOD: Oh, I have a list of them,
15 but I haven't, as I said, had to refer them.

16 CHAIRPERSON GRIFFIS: Okay. If someone
17 calls in, they are driving in, they can't change that,
18 they don't like Amtrak and they are going to bring
19 their car, your parking lot is full, you're going to
20 tell them where the closest public parking structure
21 is. Is that correct?

22 MS. GREENWOOD: Yes.

23 CHAIRPERSON GRIFFIS: I see. Mr. Hood,
24 other questions?

25 COMMISSIONER HOOD: No, I don't have any

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1 more. That's fine for now. Thank you.

2 CHAIRPERSON GRIFFIS: Ms. Miller?

3 VICE CHAIR MILLER: Do you believe that
4 your use of the building as a bed and breakfast for
5 nine units is a continuation of a nonconforming use
6 and did you raise that with the Zoning Administrator?

7 MS. GREENWOOD: Yes.

8 VICE CHAIR MILLER: And what was the
9 response?

10 MS. GREENWOOD: The response was that I
11 needed to get a Bed and Breakfast License, because a
12 rooming house, they said, was transient and what I
13 want to do is a bed and breakfast and now the law
14 requires me to get a Bed and Breakfast License. And
15 so that is something that we are now trying to see if
16 that would have been an option to continue as a
17 nonconforming use, but that's not the information that
18 I was given when I went to the Zoning Office.

19 MR. GROSS: This goes back several months,
20 Ms. Miller, I was not involved, but it might have been
21 possible for somebody at DCRA to say you can continue
22 the rooming and boarding house use of the bed and
23 breakfast and there is an apartment in the basement, a
24 full dwelling unit, you can get a C of O for that and
25 continue the C of O for the rooming house as a

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1 continuing nonconforming use. That option did not --
2 was not presented to her. It's a thought to explore
3 that if it's not too late. I have some concern and
4 maybe procedures internal to DCRA may have
5 inadvertently had the effect of --

6 CHAIRPERSON GRIFFIS: Okay. Let's put
7 away the fray. Let's get right to the heart of it.

8 MR. GROSS: Sure.

9 CHAIRPERSON GRIFFIS: You're the zoning
10 expert. You're presenting this application. Take the
11 direct question of Ms. Miller as posed. Why should we
12 not be looking at this as a continuation of an
13 existing nonconforming use?

14 MR. GROSS: I think just because of the
15 way Ms. Greenwood was directed to apply.

16 CHAIRPERSON GRIFFIS: Wait a minute. It
17 doesn't matter to us what has happened now.

18 MR. GROSS: Okay.

19 CHAIRPERSON GRIFFIS: Let's look at this
20 on face. You're the zoning expert. Let's look at the
21 regulations. We have got them up here. Tell us why
22 it should be or shouldn't be. Is it your opinion,
23 maybe I should get that directly. Is it your expert
24 opinion that this is a continuation of, essentially, a
25 grandfathered nonconforming use?

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1 MR. GROSS: It should be, because normally
2 when the text of the Zoning Regulations changes and a
3 use is restricted in a different way, a more
4 restrictive way, with a valid C of O, which the
5 rooming and boarding house was for a bed and breakfast
6 at the time, the use is normally allowed to be taken
7 over by a new owner and continued indefinitely.

8 CHAIRPERSON GRIFFIS: Okay. And so let's
9 go directly then to the facts of the matter that are
10 before us. We have Zoning Commission Order No. 614
11 DCR 1103, 1989. The Certificate of Occupancy, which I
12 recently just had, which I can't put my finger on, Mr.
13 Gross, what's the date on the Certificate of
14 Occupancy?

15 MR. GROSS: 1989, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Okay. What's the
17 prevalence of those two dates?

18 MR. GROSS: I'm sorry. What was the date
19 on the Zoning Order that you cited?

20 CHAIRPERSON GRIFFIS: The 3rd of November
21 1989.

22 MR. GROSS: Yes, and this is September 26,
23 1989 on the Certificate of Occupancy.

24 CHAIRPERSON GRIFFIS: Does that come
25 before November '89?

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1 MR. GROSS: Yes.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. GROSS: So the use was lawfully
4 established in advance of the effect of the text
5 amendment.

6 CHAIRPERSON GRIFFIS: Do you have further
7 evidence or facts that would be presented to this
8 Board that would either support the fact that it did
9 not lapse in its use, the viability of a Certificate
10 of Occupancy, since 1989?

11 MR. GROSS: As Ms. Greenwood mentioned,
12 the sequence of advertisements that the Brenton had, I
13 would also mention this is a little bit anecdotal, but
14 the Chair of the ANC can confirm it, at the ANC
15 meeting one of the attendees who lives in the
16 neighborhood said that he was pleased with the
17 upgrading of this to a better quality of B&B, because
18 his parents had stayed at the Brenton. He would look
19 forward to them staying at the Akwaaba Inn. We can
20 probably provide other documentation of advertising.

21 I guess I would also say that, and the
22 Board, I guess, is already aware of this, regarding
23 the rooming and boarding house Certificate of
24 Occupancy, the key issue in that case was triggered by
25 the Kalorama Guest House, which had gradually

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1 accumulated, I believe it was, 11 adjacent townhouses,
2 each with a rooming and boarding house C of O,
3 operating a B&B that kept growing and the neighbors
4 felt that it had effectively become a hotel with tour
5 buses arriving and so on.

6 CHAIRPERSON GRIFFIS: And that's called
7 the Washington Hilton? No, no, no.

8 MR. GROSS: No. But in any case, so the
9 new time limit of 30 days minimum stay was established
10 for the rooming and boarding house. The home
11 occupations bed and breakfast was established, a new
12 definition of an inn as a principal use in other zones
13 and so on. But to go back to your main question, Mr.
14 Chairman, we can provide further documentation about
15 the Brenton.

16 CHAIRPERSON GRIFFIS: Well, let me just
17 see if the Board understand that and I'm sure they do,
18 because that's exactly a lot of what we were looking
19 at, not to mention your submission that I think well
20 outlined that. But the point was the Zoning
21 Commission took it upon themselves to say that we have
22 two different types of products here, both residential
23 in nature, but there are two different operators and
24 two different impacts. The external effect impacts of
25 each of these are different and therefore need to be

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1 decidedly defined and differentiated, and so that's
2 where the text amendment came through and that's where
3 our current regulations are. Okay. Go ahead.

4 MS. GREENWOOD: Let me just add as well
5 that I just recently, like two days ago, got the
6 telephone number of the gentleman, Ed, who was the
7 innkeeper for the Brenton. I believe he was the
8 innkeeper for the full 13 years, and I do have his
9 phone number. I think I would be able to get in touch
10 with him and get him to write a statement if you would
11 like to show that he was employed as the innkeeper for
12 the Brenton for that full duration.

13 VICE CHAIR MILLER: Okay. My
14 understanding is for you to address this nonconforming
15 use question fully, you could get more documentation
16 to submit to the Board, but basically with respect to
17 your application for a special exception here today,
18 you have everything you need to make your case. So we
19 wanted to explore that issue and we'll leave that
20 where it is right now, and then let you proceed with
21 making your case on the special exception, as well as
22 the variance, but I understand that you believe this
23 is a special exception as opposed to a variance.

24 MR. GROSS: Fine. I will go ahead then.
25 Let me first take a moment, if I may, to outline some

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1 of the surrounding uses in the neighborhood very
2 briefly. We are in the R-5-D Zone in this case, a 90
3 foot 3.5 FAR Apartment House Zone and a fairly intense
4 mixed use area. Directly across the street from the
5 property is the Chastleton, a 90 foot apartment house,
6 quite massive, virtually square on this dimension.
7 Adjacent to it to the north is the Scottish Rite
8 Temple, an institution, and further up Sexton Street
9 is another 90 foot apartment house.

10 Looking from across the street in front of
11 the Scottish Rite Temple, this is the corner of Riggs
12 Place and 16th Street, two doors from the subject
13 property, a wonderful photograph taken by a great
14 photographer, a 90 foot apartment house, again two
15 doors within the edge of it. The subject property is
16 the beige building. The townhouse painted violet is
17 an office building, American Geographic, they have
18 submitted a letter of support. And, of course, this
19 building will be vacant evenings through weekends
20 typically and therefore vacant at the time that the
21 bed and breakfast is most active.

22 I would also say that another four and a
23 half story townhouse structure to the south of the
24 subject property is this condominium and several units
25 there have submitted letters of support. So the

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1 immediate neighbors on both sides are in support.
2 Going down to the corner at R Street, and this is the
3 Chastleton in the distance, is a five-story office
4 building. Across the street, also at the corner with
5 R Street, is a new 90 foot apartment house.

6 Proceeding down R Street, and this is a
7 actually nonconforming structure in the R-5-B
8 District, there is another 90 foot apartment house.
9 Going behind the proposed Akwaaba Inn, cars here are
10 in four parking spaces. So as you can see, no one
11 will be adversely affected by minor traffic coming in
12 and out. Again, there is another apartment house, a
13 mid-rise apartment house, diagonally to the rear of
14 the subject property, so we're in a generally high
15 intensive large unit count neighborhood.

16 CHAIRPERSON GRIFFIS: The four parking
17 spaces that are available, they are actually stacked?

18 MR. GROSS: Yes, they are. Technically,
19 they are a pair of 10 spaces, so if there were a
20 parking requirement, there would only be two legal
21 spaces.

22 CHAIRPERSON GRIFFIS: Right. In the
23 picture you are showing the back side of that small
24 car appears to be in the alley. You're saying though
25 that two standard size cars could, essentially, stack

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1 and park and be off the alley?

2 MR. GROSS: The spaces as striped appear
3 to be full size more or less, and I would think also
4 that with a bed and breakfast operation where you have
5 a pretty intimate setting, people are all having
6 breakfast within a certain time range, if there is a
7 need to coordinate on who has to move a car, it's
8 easier in this use than many others might be.

9 CHAIRPERSON GRIFFIS: Right. I'm not so
10 concerned about the guests getting their cars in and
11 out.

12 MR. GROSS: Oh, yes.

13 CHAIRPERSON GRIFFIS: I'm more concerned
14 with the traffic down the alley.

15 MR. GROSS: No, that person -- I just wish
16 we could --

17 MS. GREENWOOD: Let me see that.

18 CHAIRPERSON GRIFFIS: That's right.

19 MR. GROSS: He is asking whether --

20 CHAIRPERSON GRIFFIS: I think you
21 understand what I'm saying.

22 MR. GROSS: 9 x 19 is a normal dimension
23 for parking spaces, whether they are full size cars,
24 that could reasonably use that.

25 CHAIRPERSON GRIFFIS: Let's move on.

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1 We're obviously not granting relief to parking with
2 this.

3 MR. GROSS: Yes.

4 CHAIRPERSON GRIFFIS: Because of the
5 waiver situation, so it's not before us for our
6 jurisdiction, but obviously the photograph shows a
7 concern. Okay. What else?

8 MR. GROSS: Okay. Clearly, the request is
9 for a special exception for six sleeping rooms. We
10 have argued that a special exception can also be
11 granted to go to eight rooms and the Office of Zoning
12 advised us to advertise, to go, in the alternative,
13 for a variance. I would like you to first go through
14 the fourth page on my summary of testimony this
15 morning. This is on the two special exception issues.

16 If we could walk through that very briefly? This
17 just breaks down the applicable use regulation for the
18 bed and breakfast.

19 CHAIRPERSON GRIFFIS: Okay. Starting with
20 203.8(c)?

21 MR. GROSS: Right.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GROSS: The actual number of sleeping
24 rooms two. This is the two as a matter-of-right. UP
25 to six in historic building as a special exception.

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1 That's explicit. We can go to the section with the
2 special exception. And then 203.10(b), and this is
3 the crux of it, is a general relief provision that
4 allows an application for home occupation to apply for
5 a special exception to deviate from any other
6 standards found in 203.4 through 203.8. Of course --

7 CHAIRPERSON GRIFFIS: And where does the
8 rooms come in?

9 MR. GROSS: The rooms are within 203.8.

10 CHAIRPERSON GRIFFIS: Which is covered
11 under the provision of 203.10(b), is your point?

12 MR. GROSS: Yes, and I'm saying also that
13 just because it's a special exception limit, there is
14 nothing explicit in the Zoning Regulations that says
15 that that cannot be one of the standards that
16 deviation can be obtained from. And I'm aware that
17 the Board has probably interpreted a different way
18 before. I'm not real sure if you have specifically
19 addressed that.

20 CHAIRPERSON GRIFFIS: I don't think so.

21 MR. GROSS: But I think the thrust of
22 that, of 203.10(b), is to provide general flexibility.

23 CHAIRPERSON GRIFFIS: And why would you
24 need flexibility in 203?

25 MR. GROSS: To go from the six.

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1 CHAIRPERSON GRIFFIS: I'm sorry. It's a
2 broader question of your understanding of the Zoning
3 Commission's intent of writing in 203.10 for the
4 flexibility.

5 MR. GROSS: Right. Oh, it's --

6 CHAIRPERSON GRIFFIS: Would you agree that
7 it was because this is also the provision that carries
8 out the "all home occupations" and the different
9 nature of the home occupations would obviously need
10 you to have flexibility in what is required?

11 MR. GROSS: Oh, sure, because --

12 CHAIRPERSON GRIFFIS: So the difference
13 between, as your example and your written submission,
14 of a psychiatric office or maybe you said
15 psychologist, but whatever it was and the bed and
16 breakfast have different use requirements and external
17 effects.

18 MR. GROSS: Right.

19 CHAIRPERSON GRIFFIS: Therefore, all of
20 these requirements of the Zoning Regulations need to
21 be a little bit flexible in order to accommodate
22 addressing each of those uses?

23 MR. GROSS: Exactly, Mr. Chairman, yes.

24 CHAIRPERSON GRIFFIS: That said it.

25 MR. GROSS: And I think the whole nature

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1 of, you know, what people are practicing by way of
2 home occupations is kind of wide open. It's worth
3 noting also that there is a provision in the
4 regulation that a home occupation that is not listed
5 in the authorized list of home occupation uses can be
6 allowed as a special exception, kind of an open ended
7 invitation.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. GROSS: You know, if it isn't listed
10 here, it doesn't mean you can't do it. You just have
11 to make a special exception.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. GROSS: Finally, there is also some
14 specifically prohibited uses that are not allowed at
15 all as home occupations, so it all kind of supports
16 the notion that 203.10(b) is supposed to be very
17 broadly flexible. So we believe that -- and of
18 course, the Board's authority includes the authority
19 to decide on a case-by-case base what the nature of a
20 petition will be, whether it's area of variance versus
21 use variance and so on.

22 We believe that since no outside employees
23 are requested, no weddings, receptions, social events,
24 no relief from other standards, whether that's the
25 sign or noise or anything else that you could

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1 determine. In this case, you have a fairly contained
2 small residential type of bed and breakfast or you
3 could make the determination that a special exception
4 is appropriate.

5 CHAIRPERSON GRIFFIS: Okay. What other
6 provisions in this section are you looking for
7 waiving? In terms of 203.10 allowing the flexibility
8 of two of the provisions.

9 MR. GROSS: No other ones, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Well, what about the
11 number of occupants in one hour? I forget how it's
12 written.

13 MR. GROSS: That's fair. We may have to
14 request that. It's an unusual provision that probably
15 should have been excluded in the regulations, but
16 wasn't, but there it is. It's in the regulations, so
17 we would like to make that request actually.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. GROSS: I appreciate you bringing that
20 up.

21 CHAIRPERSON GRIFFIS: And it's actually
22 your analysis that I was looking at, which is actually
23 my statement previously, was your analysis saying that
24 that goes more towards an office use.

25 MR. GROSS: Yes.

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1 CHAIRPERSON GRIFFIS: How many patients
2 you are seeing on-site in an hour, which seems to
3 common sequentially to be apparent that you do it
4 within an hour, because perhaps a patient session
5 would be an hour. Okay. Anything else? Questions,
6 clarification, Mr. Mann?

7 BOARD MEMBER MANN: I just want to address
8 one thing that I think you have already answered.
9 There are no employees that work at the bed and
10 breakfast and there aren't anticipated to be any?

11 MS. GREENWOOD: Just my husband and I.

12 BOARD MEMBER MANN: Okay.

13 MS. GREENWOOD: We're trying to grow our
14 daughter up real quick, too, to help out. She is 12.

15 BOARD MEMBER MANN: That's a lot of
16 laundry.

17 CHAIRPERSON GRIFFIS: You're aware of the
18 requirements or the limitations to staff in the bed
19 and breakfast? Is that correct?

20 MS. GREENWOOD: Yes.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. GREENWOOD: Yes.

23 CHAIRPERSON GRIFFIS: Further questions
24 for the applicant? Okay.

25 MR. GROSS: In my testimony, Mr. Chairman,

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1 the statement itself, of course, addresses in detail,
2 I hope, all the laundry list of special exception
3 criteria. In the outline I handed out just today, I
4 tried to just focus on certain key issues and in the
5 interest of time, if you would like, I can just stand
6 on what I submitted.

7 CHAIRPERSON GRIFFIS: Absolutely.

8 MR. GROSS: If you want to go into any
9 more of it, I would be happy to answer questions or
10 summarize parts of it. However, you want to proceed.

11 CHAIRPERSON GRIFFIS: I think we'll get
12 through it. What I would like to do is get through
13 the rest of the submission and also hear from Mr.
14 McGhettigan who is here to present the Office of
15 Planning which has quite a bit of information in it,
16 and then we will return to anything, obviously, that
17 you think we have not paid close enough attention to
18 you to highlight for us. I think at this point, Board
19 Members, for clarification for us it seems to me and
20 I'll take quick comments on this, that we are looking
21 at this as a special exception, the entire provision.

22 That, in fact, under the special
23 exception, two of the provisions of the bed and
24 breakfast or home occupation section could be waived.

25 We've had the applicant enumerate which two

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1 provisions they are looking at as to -- well, I guess,
2 it is waived. What's the proper legal terminology?

3 VICE CHAIR MILLER: Modified, I believe,
4 is the term.

5 CHAIRPERSON GRIFFIS: Modified. There it
6 is. That's what we have. Okay.

7 MR. GROSS: Lawyers on the Board.

8 CHAIRPERSON GRIFFIS: That's right.
9 That's right. So the two that would be modified. Of
10 course, those modifications have been relayed to us.
11 Most importantly, actually, they are both, you know,
12 tied together in terms of the number of rooms and
13 obviously then the number of people or persons that
14 would be outside or in the second, I would think that
15 we are looking at no relief would actually be
16 required. That would mean based on the Certificate of
17 Occupancy and the existing nonconforming use that was
18 established at least as late as 1989 that was prior to
19 the Zoning Regulations.

20 So with that clarification to keep in
21 mind, why don't we turn to the Office of Planning to
22 present their report?

23 MR. MCGHETTIGAN: Thank you, Mr. Chair.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MR. MCGHETTIGAN: For the record, my name

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1 is David McGhettigan from the Office of Planning. As
2 you can tell from our lengthy report, this is a
3 complex case. I tried to cover all the issues and I
4 don't -- from the questions you have asked and the
5 presentation testimony, I think everything in my
6 report has been discussed in some form or other and
7 would stand on the record and ask for any questions
8 specifically about my report that you might have.

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you, Mr. McGhettigan. It is incredibly comprehensive,
11 so we absolutely appreciate that. It obviously
12 facilities all of our or part of our preparation in
13 looking at the application. Is there any questions
14 from the Board, at this time, for the Office of
15 Planning? Yes, Ms. Miller?

16 VICE CHAIR MILLER: In the Office of
17 Planning's report it appears that Office of Planning
18 is coming to a different conclusion with respect to
19 whether a variance is required and so I'm wondering if
20 you want to elaborate on that?

21 MR. MCGHETTIGAN: Sure. We relied on the
22 Gonzalez Bed and Breakfast referral from the Office of
23 Zoning, which referred that case over as a use
24 variance. The referral in this case refers it for a
25 special exception for a six bedroom bed and breakfast

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1 and does not address the eight rooms that was added by
2 the applicant after the referral letter. So we do not
3 -- absent anything else, we are just relying on the
4 Zoning Administrator's previous referral letter in the
5 previous case.

6 CHAIRPERSON GRIFFIS: So you haven't made
7 an assessment and a judgment in terms of what type of
8 relief is required? Is what you're saying?

9 MR. MCGHETTIGAN: Yes, that's correct.

10 CHAIRPERSON GRIFFIS: Okay. Follow-up?
11 Paying attention to page 7, a small item, of course,
12 but one of the provisions is that a percentage of the
13 dwelling that can be used, square footage or total
14 percentage, and you have indicated in your statement
15 that the requirement for all home occupation regarding
16 the percentage of dwelling units used for home might
17 base this specific waiver for bed and breakfast uses.
18 Just for clarification, where is it waived?

19 MR. MCGHETTIGAN: It is waived in 203.8.

20 CHAIRPERSON GRIFFIS: Okay. Which
21 establishes the number of rooms allowed rather than
22 taking it to a percentage or square footage.

23 MR. MCGHETTIGAN: Right, yes.

24 CHAIRPERSON GRIFFIS: Okay. Thank you.
25 Ms. Miller?

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1 VICE CHAIR MILLER: I just have one more
2 question. I'm wondering if the Office of Planning has
3 a comment with respect to whether this is a
4 continuation of a nonconforming use?

5 MR. MCGHETTIGAN: As the applicant stated,
6 prior to the transient regulations of bed and
7 breakfast was listed on the Certificate of Occupancy
8 as a rooming house, and this had a Certificate of
9 Occupancy for nine bedrooms, so we think that it
10 should be continued as a nonconforming use.

11 VICE CHAIR MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Other questions?
13 Does the applicant have any cross examination of the
14 Office of Planning? Any questions for the Office of
15 Planning?

16 MR. GROSS: No, no, Mr. Chairman. Thank
17 you.

18 CHAIRPERSON GRIFFIS: Okay. Excellent.
19 Thank you, Mr. McGhettigan. Great aerals, too. You
20 have a copy of the report, correct?

21 MR. GROSS: Oh, yes, indeed.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GROSS: Certainly.

24 CHAIRPERSON GRIFFIS: Okay. A little
25 keepsake memorabilia. This could be part of your

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1 literary out there at the bed and breakfast on the
2 front coffee table.

3 MS. GREENWOOD: It might become a book.

4 CHAIRPERSON GRIFFIS: Right. Indeed.

5 MR. GROSS: Mr. McGhettigan writes elegant
6 reports, too.

7 CHAIRPERSON GRIFFIS: Very. Ms. Miller,
8 do you have questions?

9 VICE CHAIR MILLER: Well, this may be
10 premature, as we haven't heard from the ANC yet, but I
11 would like to know if the Office of Planning has any
12 comments on the ANC's proposed conditions?

13 MR. MCGHETTIGAN: I've reviewed the
14 conditions and they seem to be good conditions that
15 will help minimize the impacts of the home occupation
16 on the neighborhood.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. And we do have Exhibit 10, which indicates the
19 State Preservation officer has established this as a
20 contributing building in the Historic District. You
21 are not doing any sort of exterior work that would
22 take you through the Historic Review Board?

23 MS. GREENWOOD: No.

24 CHAIRPERSON GRIFFIS: Is that correct?

25 MS. GREENWOOD: No.

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1 CHAIRPERSON GRIFFIS: Very well. I don't
2 have any other Government Agency reports attendant to
3 this application, unless any of the Board Members are
4 aware of any, in which case we would be ready for the
5 ANC to present their report.

6 MR. BOWIE: Thank you, Mr. Chairman and
7 Members of the Board. The Dupont Circle ANC-2B
8 considered this matter on June 9th. Our letter should
9 be in the record. We voted unanimously to support
10 this application under a special exception analysis
11 with certain conditions related to events that are
12 enumerated in our letter, and I'm happy to answer any
13 questions.

14 CHAIRPERSON GRIFFIS: Excellent. It is
15 Exhibit 28. It is in the file and let me just state
16 the conditions. First of all, as I understand it, the
17 first is "The applicant would not be permitted to host
18 social events at the B&B on behalf of any third
19 party." Is that correct?

20 MR. BOWIE: Correct.

21 CHAIRPERSON GRIFFIS: Third party, so
22 that, I think, is very straightforward. "Guests of
23 the applicant's B&B shall not be permitted to host
24 social events at the B&B." Now, that's their special
25 events. Is that the second condition?

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1 MR. BOWIE: Correct.

2 CHAIRPERSON GRIFFIS: Okay. And then the
3 third was "The applicant, I guess, shall not be
4 permitted to apply for a liquor license." When going
5 through in the ANC and the community events and the
6 comments and all that, how is it established? Was
7 there specific discussion of what an event is? A
8 definition of event? I mean, that may sound like an
9 absurd question, but believe me, we hear so many
10 different types of applications, that I have heard
11 events be defined as so many different things. What
12 is the concern of the community? I think is what
13 we're really searching for.

14 MR. BOWIE: The concern of the community
15 is we don't want bed and breakfast to be sort of
16 venues for large third party events, events hosted on
17 behalf of third parties or in some cases guests having
18 events at the B&B, weddings, other large events.

19 CHAIRPERSON GRIFFIS: I see.

20 MR. BOWIE: Which has come up in the past,
21 particularly in our neighborhood. That was what
22 motivated our concern about putting some restrictions
23 on that, because of the potential impact to the
24 neighborhood on parking, on traffic, on noise, peace,
25 order and quiet, etcetera.

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1 CHAIRPERSON GRIFFIS: Sure. Was there
2 ever discussion about the nature of the office? Of
3 course, that was known to the community at the ANC
4 meetings, correct?

5 MR. BOWIE: Pardon me, the nature of?

6 CHAIRPERSON GRIFFIS: The kind of theme of
7 the bed and breakfast was known?

8 MR. BOWIE: That's correct. The applicant
9 came before the ANC.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BOWIE: And made a presentation and we
12 were aware of that.

13 CHAIRPERSON GRIFFIS: And was there any
14 discussion about, you know, when Toni Morrison comes,
15 don't you want to go see the author and sit and hear
16 some public readings on the private book?

17 MR. BOWIE: Right, right. And I
18 appreciate the discussion of that during the
19 applicant's presentation. I think that under the
20 conditions set forth in our letter, if the applicant
21 who will be living at the premises wanted to have an
22 author over and have friends over, she would be
23 allowed to do that, just as any resident would. Our
24 concern would be using this establishment as a venue
25 for events hosted on behalf of third parties, sort of

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1 using it as a rental hall, so to speak. That's what
2 our concern is.

3 I mean, obviously residents in the
4 neighborhood are free to have authors over. They are
5 free to have fundraisers. They are free to have
6 parties at their house. I mean, this applicant lives
7 there. We're not in objection to that. What we are
8 concerned about is this kind of turning into a
9 catering hall, so to speak, which has come up in the
10 past in other contexts, and that's what we are
11 concerned about.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. BOWIE: But I think our language
14 sufficiently addresses that.

15 CHAIRPERSON GRIFFIS: Okay. Well, it
16 doesn't. Yes, I think we just need to get to the text
17 with it, and again, I'll say it may sound so absurd of
18 how minuet we're getting to this, but, you know, a
19 couple of years from now when they are coming in for
20 noncompliance and everyone is yelling and screaming
21 and they have to read the stuff that we have
22 prohibited or allowed, that is what we're trying to
23 get to the bottom to be absolutely precise, so that
24 there is no question. Ms. Miller?

25 VICE CHAIR MILLER: We heard mention of a

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1 voluntary agreement that has been signed. Are these
2 the same conditions are that in the voluntary
3 agreement?

4 MR. BOWIE: Yes.

5 VICE CHAIR MILLER: Or are they different?

6 MR. BOWIE: The reference to the voluntary
7 agreement is the ANC's letter to which the applicant
8 signed. So that's the only agreement that has been
9 signed by the applicant.

10 VICE CHAIR MILLER: Well, my question is
11 the three enumerated conditions, they are in the
12 voluntary agreement?

13 MR. BOWIE: There is no voluntary
14 agreement. This letter --

15 VICE CHAIR MILLER: Oh, okay.

16 MR. BOWIE: -- that the ANC submitted has
17 been signed by the applicant, and so those are the
18 conditions that we would like the Board to impose if
19 it approves this application. There is no other
20 voluntary agreement related to this.

21 VICE CHAIR MILLER: I see. Okay. This
22 building has been operating as a bed and breakfast or
23 rooming house. Is there a history of problems with
24 respect to large events or social events that these
25 conditions are trying to address?

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1 MR. BOWIE: Not at the prior location.
2 There have been concerns at other B&Bs in the Dupont
3 Circle neighborhood that have come up in the past, so
4 not at this particular location in its past
5 operations, but at other B&Bs.

6 VICE CHAIR MILLER: Okay. So when I read
7 this, some of it is a little bit vague to me, and I
8 think we're trying to really -- we want to address the
9 real concerns. So, for instance, when I heard you
10 responding to the Chairman about well, what do you
11 mean by events, and I heard you say like large events.

12 So in the event that we want to try to fine tune this
13 at all, you know, it may be that you might not want to
14 preclude a dozen people gathering, you know, for a
15 literary event, but you want to preclude 75 people
16 gathering for a big party.

17 MR. BOWIE: Right.

18 VICE CHAIR MILLER: So I'm just wondering,
19 is that your intent and can we be more specific, you
20 know, so that we don't rule out things that you
21 actually would like, you know?

22 MR. BOWIE: Well, that's right. As I
23 testified before, the language in our letter speaks to
24 events held on behalf of a third party. It is my
25 understanding this language would allow the applicant,

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1 herself, to have an event, to have a party on her own
2 behalf, which could include an author. We did not
3 consider any limits on that. It was our understanding
4 that the applicant didn't intend to do that. That
5 wasn't really our primary concern. Perhaps that could
6 be a problem down the road, but we just didn't
7 anticipate that.

8 Our concern again was third parties using
9 this venue for their own events, which, to us, makes
10 it more of a commercial sort of establishment and
11 raises different issues.

12 VICE CHAIR MILLER: Okay.

13 COMMISSIONER HOOD: Mr. Chairman, I don't
14 know where my other Board Members are again with the
15 social event. I do think we need to be more specific.

16 CHAIRPERSON GRIFFIS: Right.

17 COMMISSIONER HOOD: Because I can tell you
18 that having to go back and decipher some things that
19 some people have done in the early '80s and late '70s,
20 I think, will be putting people that are going to come
21 after us in the same predicament at the same time that
22 we are put in.

23 CHAIRPERSON GRIFFIS: Right.

24 COMMISSIONER HOOD: So I think that we
25 really need to be specific on this third party social

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1 event, because I was under the assumption that even
2 the owner wouldn't be able to do anything at first,
3 according to the ANC, so we want to make sure that we
4 are real specific. That was basically directed to my
5 Board Members, not necessarily to the ANC. If you
6 want to comment, you can.

7 MR. BOWIE: Yes, and we can certainly go
8 back and be more specific in terms of defining what
9 limits can be on the applicant, herself, sponsoring
10 events. We would be happy to do that.

11 VICE CHAIR MILLER: My understanding is
12 you weren't limiting the applicant, because it was
13 their residence.

14 MR. BOWIE: Right.

15 VICE CHAIR MILLER: Okay. But when I see,
16 one, "On behalf of any third party."

17 MR. BOWIE: Right.

18 VICE CHAIR MILLER: Does that not include
19 the guests, the author that comes to the bed and
20 breakfast who might have a literary event? Is that a
21 third party? That's what it sounds like to me.

22 MR. BOWIE: If the applicant were
23 sponsoring it, no, it wouldn't be a third party. A
24 third party, in my view, would be X, Y, Z group
25 sponsors an event at this B&B, come to this event, you

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1 know, sponsored by X, Y, Z at the B&B.

2 CHAIRPERSON GRIFFIS: If the bride and
3 groom want to throw a reception.

4 MR. BOWIE: Right.

5 VICE CHAIR MILLER: Right. So you mean
6 other than the guests?

7 MR. BOWIE: Yes, well, there is a sub-
8 provision dealing with guests.

9 VICE CHAIR MILLER: Right.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. BOWIE: But if they are an outside
12 group, not a guest at the party, which is -- or not a
13 guest at the B&B, which has also been a concern in our
14 neighborhood in other establishments, some outside
15 group wanted to basically use the B&B as a venue for
16 guests, that would be prohibited under the language in
17 the ANC's letter.

18 VICE CHAIR MILLER: So basically, you want
19 to preclude the B&B or the applicant from renting the
20 facility to outside parties?

21 MR. BOWIE: Yes, yes, yes.

22 VICE CHAIR MILLER: Okay.

23 CHAIRPERSON GRIFFIS: Whew, the minutia of
24 zoning is fascinating, isn't it? Okay. Any other
25 questions, clarifications?

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1 VICE CHAIR MILLER: I just want to explore
2 number three, just so that I understand the
3 ramifications of that one, also.

4 CHAIRPERSON GRIFFIS: No, let's skip the
5 number three. First of all, I'm not sure that we
6 would have the jurisdiction to prohibit or preclude an
7 applicant to apply for an ABC license.

8 VICE CHAIR MILLER: Okay.

9 CHAIRPERSON GRIFFIS: A liquor license.
10 Essentially, obviously, anything that we do has to run
11 with the land and has to be directly attendant to the
12 zoning. I think it is obvious what the third
13 condition is. It is supporting the fact that you
14 don't want large events to be thrown. So you
15 obviously don't want a liquor license on site so you
16 can open a bar and a dance hall. But we also have to
17 be very clear on where our jurisdiction starts and
18 ends and there is two problems with this. As I said,
19 in terms of the liquor license themselves prohibiting
20 it, but also -- well, I'll leave it at that.

21 So I think the Board could support, you
22 know, the ANC in that, in your agreement with the
23 applicant. I doubt that unless I'm persuaded by the
24 Board Members, I am not of the opinion that we would
25 have the jurisdiction to condition it as one of our

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1 orders.

2 MR. BOWIE: And if the Board comes to that
3 conclusion, I would certainly appreciate that, perhaps
4 then because the applicant has agreed to that, if the
5 Board could perhaps note that in its order. I mean,
6 we have a signed agreement from the applicant on that.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. BOWIE: Which we could eventually use
9 in any ABC proceeding if we needed to.

10 CHAIRPERSON GRIFFIS: And you could
11 whether it is a condition or not.

12 MR. BOWIE: Well, that's right.

13 CHAIRPERSON GRIFFIS: Yes. I mean, I
14 think, the Board previously in other applications
15 actually much complex than this, and there are
16 agreements between and applicant and a community or an
17 association, they stand on their own.

18 MR. BOWIE: Right.

19 CHAIRPERSON GRIFFIS: And that has nothing
20 to do with whether we add it into or not.

21 MR. BOWIE: Right.

22 CHAIRPERSON GRIFFIS: In fact, it's a lot
23 clearer and it is a lot more jurisdictional or
24 jurisdictionally correct in terms of having the
25 agreements that can cover anything you guys want.

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1 MR. BOWIE: Right.

2 CHAIRPERSON GRIFFIS: And that's the
3 signature of the zoning. Ms. Miller, differing
4 opinion?

5 VICE CHAIR MILLER: No, I don't have a
6 different opinion.

7 CHAIRPERSON GRIFFIS: Good. So let's move
8 on then.

9 VICE CHAIR MILLER: But I have a question.

10 CHAIRPERSON GRIFFIS: Oh, yes. Go ahead.

11 VICE CHAIR MILLER: Yes, two questions.
12 One is you made reference again to an agreement, and
13 so I just want to understand what is out there. I
14 thought you said there were no other agreements now.

15 CHAIRPERSON GRIFFIS: The letter is the
16 agreement.

17 MR. BOWIE: The letter is the agreement,
18 because the applicant signed the letter, so that in
19 addition to the ANC's request that the Board
20 incorporate certain conditions, that letter also
21 constitutes an agreement between the applicant and the
22 ANC.

23 CHAIRPERSON GRIFFIS: Excellent.

24 VICE CHAIR MILLER: Right. Okay.

25 CHAIRPERSON GRIFFIS: It's a strong

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1 letter, playing different roles. Okay. Anything
2 else, clarifications?

3 VICE CHAIR MILLER: Well, number two.

4 CHAIRPERSON GRIFFIS: Sure.

5 VICE CHAIR MILLER: "A guest shall not be
6 permitted to host social events." We've been hearing
7 about this whole, you know, literary gathering. Does
8 that mean that a guest can't have a literary gathering
9 without additional hosting by the applicant or
10 something like that? Is that the point?

11 MR. BOWIE: Yes.

12 VICE CHAIR MILLER: Okay.

13 MR. BOWIE: The point is that guests, from
14 the ANC's perspective, are coming to this B&B to stay
15 at a B&B. They are not coming there to use the venue
16 as a vehicle to host events. That, in our view,
17 changes the nature of the establishment and that's
18 what that provision is designed to address.

19 CHAIRPERSON GRIFFIS: Due to the fact that
20 if the author was there and decided to read in the
21 afternoon, that the owner of the property, this is
22 what I'm hearing you say, could invite their friends,
23 personal friends?

24 MR. BOWIE: Correct.

25 VICE CHAIR MILLER: Okay. This is my last

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1 question for you. This ANC letter is signed by the
2 applicant and it's an agreement to these conditions?

3 MR. BOWIE: Correct.

4 VICE CHAIR MILLER: Why then do you need
5 this Board to impose conditions?

6 MR. BOWIE: For enforcement purposes. In
7 other B&B context, Swann House was one several years
8 ago in which there were conditions negotiated between,
9 I don't think it was our ANC, it was actually another
10 ANC and the applicant. The Board imposed those
11 conditions in the order. Frankly, it makes it easier
12 for us for enforcement purposes if conditions within
13 the Board's purview can be in the order, it enables us
14 to enforce those. Otherwise, it's just a contract and
15 it, frankly, would be very difficult for the
16 neighborhood to enforce that, costly expensive for the
17 neighborhood to do that, so that's why we request that
18 the Board impose those conditions in the order.

19 VICE CHAIR MILLER: Thank you.

20 CHAIRPERSON GRIFFIS: Good. Anything
21 else? Anything else you would like to provide?

22 MR. BOWIE: No, sir.

23 CHAIRPERSON GRIFFIS: Very well. Does the
24 applicant have any cross examination of the ANC? Mr.
25 Gross?

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1 MR. GROSS: No, no.

2 CHAIRPERSON GRIFFIS: They're formatting
3 some hard hitting questions. No questions?

4 MR. GROSS: No.

5 CHAIRPERSON GRIFFIS: Very well. Thank
6 you very much.

7 MR. BOWIE: Thank you.

8 CHAIRPERSON GRIFFIS: We appreciate you
9 coming down here this morning to present that. It was
10 very valuable to have all of that and to have
11 available the discourse to give full understanding to
12 the Board of what happened in crafting these
13 conditions from ANC-2B. I do not have any other
14 Government reports. As I have indicated, the ANC has
15 presented. We will now take any testimony from
16 persons present in regards to Application 17194,
17 whether in support or in opposition. Not noting
18 anyone coming forward to give testimony as persons, we
19 can turn it over to the applicant for any closing
20 remarks they might have.

21 MR. GROSS: No closing remarks, Mr.
22 Chairman. Thank you for your consideration of the
23 application.

24 CHAIRPERSON GRIFFIS: Good. Thank you,
25 Mr. Gross. Mr. Gross, if you wouldn't mind coming

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1 forward just for a quick question?

2 VICE CHAIR MILLER: Mr. Gross, I just want
3 to ask you if you have an opinion on this. It seems
4 that this case can either be analyzed as a
5 continuation of a nonconforming use in which event it
6 appears that you may need to submit more documentation
7 to the Board or the Board can proceed to analyze it as
8 a special exception.

9 MR. GROSS: A very close call, Ms. Miller.
10 I guess, we would like to pursue the first option of
11 continuing the Certificate of Occupancy and I guess if
12 we do that, then we would need to submit additional
13 documentation and you would decide it on August 3rd.
14 Oh, go ahead.

15 VICE CHAIR MILLER: Sorry.

16 MR. GROSS: Yes, this is --

17 VICE CHAIR MILLER: No, let me just --

18 MR. GROSS: This is very important to Ms.
19 Greenwood. Actually, if the Board is ready to decide
20 on the special exception today, because the
21 documentation is not going to be, you know, terrific,
22 we would prefer to go that way actually.

23 CHAIRPERSON GRIFFIS: Very well. I think
24 we ought to proceed today and take this up in a Bench
25 decision format, in which case, I'll take any further

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1 questions or clarifications from the applicant coming
2 from the Board if need be. Oh, Mr. McGhettigan?

3 MR. MCGHETTIGAN: Yes, Mr. Chair.

4 CHAIRPERSON GRIFFIS: How unusual.

5 MR. MCGHETTIGAN: The applicant faxed me
6 an advertisement from the bed and breakfast. I don't
7 know if that is of interest to you. I can put it in
8 the record.

9 CHAIRPERSON GRIFFIS: Well, you know, my
10 experience in this in terms of trying to establish use
11 and whether it started or stopped, it gets very
12 complex, I mean, the amount of documentation to really
13 factually substantiate. I think the hardest evidence
14 is the Certificate of Occupancy. So clearly, it was
15 established and all we need now is kind of a
16 chronology that it never lapsed. That chronology is
17 what becomes problematic and I think it's more of a
18 journey into archives that may not exist or shouldn't
19 exist and it seems to be a fairly cumbersome task to
20 take after.

21 I think that we are so close on -- I don't
22 think the Board would error if it decides today that
23 relief was not required. I think there is enough
24 factual evidence in the record. However, I also think
25 that there is a very strong case for a special

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1 exception. You know, frankly, undue clarity, we might
2 as well proceed in that fashion and I think the Board
3 is together on that knowing full well that the record
4 is complete in order to deliberate on a special
5 exception.

6 Then the reality is we hardly ever find
7 that we have time in the morning sessions and so we
8 might as well get our business done. So with that in
9 mind, I'll hear if others have any differing opinions.

10 I think we can open it up for any discussion or
11 movements to action. Good. While they prepare, I
12 think it is probably most expeditious for the Board to
13 conduct this deliberation under a motion and I would
14 approve or move approval of Application 17194 for a
15 special exception to establish the bed and breakfast
16 as a home occupation for eight bedrooms, sleeping
17 rooms that is, under section 203.8, and this is for
18 the premises of 1708 16th Street, N.W. I would ask for
19 a second.

20 BOARD MEMBER MANN: Second.

21 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

22 The motion before us having been seconded, I'll open
23 it up for discussion and deliberation and I will
24 conclude that.

25 VICE CHAIR MILLER: Mr. Chairman, I would

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1 just like to add a friendly amendment.

2 CHAIRPERSON GRIFFIS: Oh, yes.

3 VICE CHAIR MILLER: Or ask that you accept
4 it as a friendly amendment of the additional special
5 exception to allow more than eight clients on the
6 premises in a one hour period, as set forth in 203.4.

7 CHAIRPERSON GRIFFIS: Excellent. I think
8 it should be enumerated in the motion for sure. It
9 certainly would be in the order. I think that is
10 appropriate. I'm sorry, I should have also added, to
11 the motion, I think it is appropriate to have the
12 deliberation on the first two conditions offered by
13 the ANC. Of course, they are agreed to by the
14 applicant. There has been no disagreement in that
15 aspect, and so I think we could include it for
16 deliberation on the motion, and that is we can spend
17 some time looking at the actual language of how we
18 craft it for our own order, but it essentially is
19 getting to the gist of the applicant would not allow
20 the premises to be rented by an outsider or a third
21 party for events, and that guests at the B&B would not
22 be able to utilize the facility for large events
23 outside of the nature of the bed and breakfast
24 operation.

25 Mr. Mann, as the seconder, if that's

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1 appropriate for you, are you in agreement with that?

2 BOARD MEMBER MANN: Well, I'm essentially
3 in agreement. I have perhaps one minor comment
4 regarding what you just said about Condition 2.

5 CHAIRPERSON GRIFFIS: Excellent.

6 BOARD MEMBER MANN: But that can wait a
7 moment if you would like.

8 CHAIRPERSON GRIFFIS: No, go ahead. Let's
9 jump right into it.

10 BOARD MEMBER MANN: Well, you just said
11 something to the effect that guests would be precluded
12 from holding large events or whatever, but I don't
13 think that we need to stipulate the size of the event,
14 because the guests are going to be prohibited from
15 holding events of any size.

16 CHAIRPERSON GRIFFIS: Right. I did put a
17 strange qualifier on that, didn't I? I didn't mean
18 that to be the actual language. As I say, I think the
19 Board will review the order prior to its going out for
20 the exact wording in order to get the intent, the
21 direct intent of the second condition and that's that
22 the guests would be prohibited from utilizing for
23 social events the premises. Ms. Miller?

24 VICE CHAIR MILLER: Yes, I think that's
25 why we just have to work with the language just a

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1 little bit, because, I mean, my understanding is that
2 if the ANC didn't have a problem with guests having
3 some kind of a small literary event, as long as it was
4 under the auspices of the applicant. So I think we
5 just want to work the language just a little bit. I
6 think we heard the concerns of the ANC and can
7 represent that.

8 CHAIRPERSON GRIFFIS: Okay. Very well.
9 Other deliberation, discussion?

10 COMMISSIONER HOOD: Yes.

11 CHAIRPERSON GRIFFIS: Yes?

12 BOARD MEMBER MANN: I actually don't quite
13 understand why we need to work the language at all
14 when it makes it very clear that it is the guests that
15 can't do these things. The ANC has no objection to
16 the host doing whatever they want to do.

17 CHAIRPERSON GRIFFIS: Excellent. See
18 there's the voice of clarity. We can just take it as
19 written. Any objections?

20 COMMISSIONER HOOD: I just hope the
21 transcript is handy five or six years from now, but I
22 can go with that.

23 VICE CHAIR MILLER: Right.

24 CHAIRPERSON GRIFFIS: Good.

25 VICE CHAIR MILLER: I was just going to

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1 say that I was with Mr. Hood on this when I read the
2 first two. They were not clear to me and I think they
3 need a little bit of refining, so that we don't have
4 problems with people trying to enforce.

5 CHAIRPERSON GRIFFIS: Okay. We don't need
6 to decide that now.

7 VICE CHAIR MILLER: Okay.

8 CHAIRPERSON GRIFFIS: Clearly, the motion
9 before us has included the two conditions that have
10 been agreed upon between the applicant and the ANC.
11 Very well. Anything else?

12 VICE CHAIR MILLER: I just want to say
13 that the basis for granting the special exception
14 would be 203.10(b) which allows for two modifications
15 to the conditions enumerated in 203.4 through 203.8,
16 and the conditions that we are modifying fall within
17 those provisions.

18 CHAIRPERSON GRIFFIS: Good. Thank you.
19 And I think the record is very complete on this
20 application in terms of not creating a sort of
21 detrimental impact to the surrounding area and which
22 is, of course, part of the special exception criteria.

23 It is amazing the differences and it shows the
24 different nature of bed and breakfasts, which goes to,
25 I think, Mr. Gross' oral statement today that the

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1 Board has the provision. In fact, we are asked, we
2 are directed, we are obligated to look at each
3 individual application on its own at the record that
4 is created before us and we deliberate on that.

5 We have been through many different bed
6 and breakfasts, each have, believe me, different types
7 of hearings and different types of issues, some are
8 very contentious and some are not and some are very
9 complex and some are not. The point being that the
10 individual aspect of this bed and breakfast clearly
11 shows that it can come before as a special exception
12 with the modification of those two sections. In
13 addition to the requirements for the special
14 exception, we, obviously, have the ANC in full support
15 and the community in support, and it looks like the
16 operation fits well within the block of which it is
17 located.

18 Frankly, as one of the testimony that came
19 in, there is excitement about continuing this as a bed
20 and breakfast and excitement encouragement as to the
21 upgrades that has taken place on the property. I
22 think that the file is complete without having to
23 restate absolutely all of the evidence that has been
24 submitted regarding the special exception, so I'll let
25 any other Board Members touch on aspects as they feel

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1 need. Very well. If there is nothing further then on
2 deliberation, we have a motion before us that has been
3 seconded.

4 It has two conditions attendant to that,
5 and I would ask for all those in favor to signify by
6 saying aye.

7 ALL: Aye.

8 CHAIRPERSON GRIFFIS: And opposed?
9 Abstaining? Very well. Why don't we record the vote?

10 MS. BAILEY: Mr. Chairman, before
11 recording the vote, just clarification for me because
12 I just need to be absolutely clear.

13 CHAIRPERSON GRIFFIS: Good.

14 MS. BAILEY: This is special exception for
15 six sleeping rooms, sir?

16 CHAIRPERSON GRIFFIS: Eight.

17 MS. BAILEY: Eight. Okay. Thank you.
18 The Board has voted 4-0-1 to approve the application
19 with two conditions and as modified and as stipulated
20 by the Board. The motion was made by Mr. Griffis,
21 seconded by Mr. Mann, Mrs. Miller and Mr. Hood are in
22 agreement and Mr. Etherly is not present today.
23 Summary order, Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes, I don't see any
25 reason why we couldn't waive our regulations and issue

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1 a summary order on this.

2 MS. BAILEY: Thank you, sir.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 Very well. Thank you all very much. We appreciate
5 it and unless there is any other questions of
6 procedure or schedule that I can answer, Ms. Bailey,
7 is there any other business for the Board this
8 morning?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Very well. Then we
11 can adjourn the morning session of the 20th of July,
12 2004. Now, also before we go totally off the record,
13 we will be calling a Special Public Meeting at 1:00
14 this afternoon in order to deliberate and decide on a
15 single case, that is definitive. We do have what we
16 need to process that case and then we'll move on to
17 our afternoon schedule. Thank you all.

18 (Whereupon, the meeting was recessed at
19 11:38 a.m. to reconvene at 1:33 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:33 p.m.

3 CHAIRPERSON GRIFFIS: We can call to order
4 the afternoon session of the 20th of July 2004 Public
5 Hearing of the Board of Zoning Adjustment of the
6 District of Columbia. Once again, I am still Geoff
7 Griffis and Chairman of the Board of Zoning
8 Adjustment. With me today is Ms. Miller, the Vice
9 Chair. Representing the National Capitol Planning
10 Commission is Mr. Mann and representing the Zoning
11 Commission with us this afternoon is Mr. Hood and he
12 will be on his way out before I finish my openings, I
13 guarantee.

14 Copies of today's hearing agenda are
15 available for you. They are located on the wall where
16 you entered into the hearing room. You can pick one
17 up and see where you are on the agenda, what we're
18 going to accomplish this afternoon.

19 Please, be aware of several important
20 things, which I will go through. First, all
21 proceedings before the Board of Zoning Adjustment are
22 recorded. They are recorded in two fashions. One,
23 the court reporter is sitting on my right on the
24 floor. He is creating the official transcript that
25 will go into the record. Second, we are, of course,

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1 being broadcast live on the Office of Zoning's
2 website.

3 Attendant to and most importantly in
4 creating the record, which we will deliberate on, I
5 ask several things of everybody here. First of all,
6 you will need to fill out two witness cards. Witness
7 cards are available where you entered into. They are
8 on the table and they are also on the table where you
9 will give testimony. Two cards are to be filled out
10 and given to the recorder on my right prior to coming
11 forward to speak to the Board. So if you want to pick
12 those up, fill them out, you will be all set and ready
13 to go.

14 I would ask that people when coming
15 forward have a seat, make yourselves comfortable. You
16 will need to state your name and your address for the
17 record only once when you're starting to talk. That
18 way, of course, we can give you all the credit of all
19 the important things you say in the record as a
20 transcript is created. Let me ask that everyone,
21 please, turn off cell phones and beepers, at this
22 time, so that we don't disrupt anybody that is
23 addressing the Board and throw off their cadence as
24 they are giving us this important information.

25 The order of procedures for special

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1 exceptions and variances, as that's what we're going
2 to be hearing today, is, first, we hear from the
3 applicant. They present their case and their
4 witnesses and all of the information that they want
5 the Board to have. Second, we will go through and
6 receive all Government Agency reports attendant to the
7 application, so any agency that has submitted into the
8 application or the Office of Planning's memo will be
9 presented.

10 Third, we will hear from the Advisory
11 Neighborhood Commission. Fourth, we will hear persons
12 or parties in support of the application. Fifth would
13 be persons or parties in opposition to the
14 application. Sixth, and finally, we will hear any
15 rebuttal witnesses by the applicant and closing
16 remarks by the applicant. Cross examination of
17 witnesses is permitted by the applicant and parties in
18 a case. The ANC within which the property is located
19 is automatically a party in the case and, therefore,
20 will be able to conduct cross examination.

21 The record of each case will be closed at
22 the conclusion of the hearing unless or well, the
23 record will be closed except for any material that
24 this Board requires, and we will be very specific on
25 what is to be submitted to be part of the record and

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1 when it is to be submitted into the Office of Zoning.

2 It should be very clear to everybody that
3 once that information is received, that no other
4 information would be accepted into the record. So the
5 important thing to understand there, of course, is to
6 make sure that you get everything in that you want us
7 to understand and get it in today or make sure that we
8 keep the record open to receive it if we do believe
9 that that is appropriate for us to deliberate on.

10 The Sunshine Act requires that this Board
11 hold all proceedings in the open and before the
12 public. This Board may, however, enter into executive
13 session both during or after a hearing on the case,
14 and this would be specifically for reviewing the
15 record or deliberating on a case. This is consistent
16 with the Sunshine Act and it is also consistent with
17 our rules, regulations and procedures.

18 We will make every effort to conclude our
19 afternoon hearing session today by 6:00. As we call
20 the first case in the afternoon, I am allotting two
21 hours for the case, so when we start it I will let you
22 know. We will be pursuing it for two hours and I'm
23 hoping that we can get through the entire case within
24 that two hours. However, if we don't, we will set for
25 a continuance date. We will then call the second case

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1 in the afternoon and proceed with that. I think that
2 will keep everyone on schedule and that will also
3 allow everyone to have a full understanding of how
4 we're going to proceed with the rest of the afternoon.

5 At this time, the Board will consider any
6 preliminary matters. Preliminary matters are those,
7 which relate to whether a case will or should be heard
8 today. Such instances are preliminary matters.
9 Requests for postponements, withdraws, whether proper
10 and adequate notice has been provided.

11 If you are not prepared to go forward with
12 the case today or you believe the Board should not
13 continue with the case today, I would ask that you
14 come forward and have a seat at the table as an
15 indication of having a preliminary matter. I will ask
16 Staff first if they have any preliminary matters, but
17 I will also wish them a very good afternoon, Ms.
18 Bailey and Mr. Moy.

19 And before we get into further preliminary
20 matters, noting that no one is coming forward with an
21 individual one, I would ask that everyone that is
22 planning to testify today or even thinking of
23 testifying, if you would, please, stand and give your
24 attention to Ms. Bailey at the very far right. She is
25 going to administer the oath.

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1 MS. BAILEY: Please, raise your right
2 hand.

3 (Whereupon, the witnesses were sworn.)

4 CHAIRPERSON GRIFFIS: Good. Thank you.
5 And, Ms. Bailey, do you have any preliminary matters
6 that you are aware of?

7 MS. BAILEY: No, Mr. Chairman. There is
8 no preliminary matter that Staff has at this point.

9 CHAIRPERSON GRIFFIS: Excellent. Let's
10 call the first case in the afternoon then.

11 MS. BAILEY: Application No. 17192 of the
12 National Capital Revitalization Corporation, pursuant
13 to 11 DCMR section 3104.1, for special exceptions
14 pursuant to sections 353, new residential development,
15 and 2516, theoretical lots, and pursuant to 11 DCMR
16 section 3103.2, a variance from the floor area ratio
17 requirements under section 401, a variance from the
18 lot occupancy requirements under section 403, a
19 variance from the rear yard requirements under section
20 404 and a variance from the theoretical lot
21 requirements under subsection 2516.5(b), to construct
22 209 single-family row dwellings in the R-5-A District
23 for property bounded by Fort Lincoln Drive, N.E., 31st
24 Place, N.E., South Dakota Avenue, N.E., and 33rd Place,
25 N.E. The property is located in Square 4325 on Lots

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1 38, 39 and 40.

2 CHAIRPERSON GRIFFIS: Good afternoon. I
3 will let you start.

4 MR. DEPUY: Good afternoon, Mr. Griffis,
5 Members of the Board. For the record, I am Jacques
6 DePuy, attorney with Greenstein, DeLorme and Luchs.
7 To my extreme right or left, I'm sorry, is Stephanie
8 Baldwin who is co-counsel also with the firm of
9 Greenstein, DeLorme and Luchs.

10 We have four witnesses today and, if
11 necessary, two additional persons who would be
12 prepared also to be witnesses if necessary. Our
13 witnesses are Mr. Donald Pross, who is to my left. He
14 is the senior development director of the National
15 Capital Revitalization Commission. To my right, my
16 immediate right, is Michele Hagans, well-known to this
17 Board. She is the president of the Fort Lincoln New
18 Town Corporation. To my right, to my far right, is
19 Kyle Oliver, who is with VIKA, and Matthew Tauscher,
20 who is also with VIKA, will be our fourth witness.

21 In addition, if necessary, Jami Milanovich
22 of Wells and Associates Traffic Consultants is here
23 and is available to testify or respond to questions,
24 and Mr. William J. Collins, who is the managing member
25 of Fort Lincoln Pulte Limited Liability Company,

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1 representing the developer is also here to respond to
2 questions, again if necessary.

3 This project before you is 209 townhouses
4 on a 22.5 acre site, which is heavily wooded, steeply
5 sloping and is located, of course, in Fort Lincoln
6 adjacent to South Dakota Avenue, N.E.

7 The relief requested today are two special
8 exceptions and several area variances. The special
9 exceptions are pursuant to section 353, which requires
10 development on R-5-A ground, which is not single-
11 family to be reviewed by this Board pursuant to
12 certain specified special exception standards.

13 In addition, because the site contains
14 dwellings that do not face public streets, the site is
15 developed on theoretical lots. For that reason,
16 theoretical lot development approval is also required
17 from this Board. As a side note, the Board is well-
18 aware that the theoretical lot development
19 requirements generally apply to interior sites where
20 there are unusually shaped pipe stem lots and the
21 like, and the issue is always compatibility of houses
22 on interiors of blocks with houses that face streets.

23 That is not, of course, the case here, because this
24 particular site has no houses on it at all. There are
25 no houses facing public streets and there are,

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1 therefore, no issues of compatibility or conflict
2 between houses on the interior of the site or houses
3 that are on public streets on the perimeter of a
4 particular block.

5 Finally, the relief requested today
6 pertains to several area variances, including from lot
7 occupancy, floor area ratio, rear yards and front
8 yards. As the Board is aware, normally front yards
9 are not required. Only in theoretical lot
10 developments are front yards required at all. There
11 are, as our witnesses will identify, front yards
12 provided. In many instances, however, they do not
13 satisfy the dimensional requirement for the front yard
14 and, therefore, in some instances, variances are
15 necessary.

16 This application, as the Board is aware,
17 has the strong support of ANC-5A and, as Ms. Hagans
18 will indicate, strong support from the Fort Lincoln
19 community. With respect to the conditions recommended
20 by the Office of Planning in its report, I am pleased
21 to say, again as our witnesses will indicate, that the
22 applicant is prepared to accept each and every
23 condition recommended by the Office of Planning in its
24 report as indicated on page 11 and page 14.

25 Finally, with respect to the Office of

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1 Planning's concerns about the applicant's satisfaction
2 of the area variance test, our witnesses will testify
3 that there are four unique conditions to this site,
4 and that at least three of the four apply to each and
5 every site. That is each and every site, as well as
6 the site, obviously, as a whole is steeply sloping.
7 Secondly, it has unstable soil conditions. This is a
8 major condition that affects the development of this
9 site.

10 And third, this site is uniquely affected
11 by the Fort Lincoln development pattern, namely the
12 street development pattern, which has interior streets
13 and structures, be they high-rise or be they
14 townhouses, constructed on interior driveways or
15 private streets, rather than facing the adjacent
16 public streets, so that this particular project like
17 others in Fort Lincoln does not have houses that have
18 curb cuts on streets such as South Dakota Avenue or
19 Fort Lincoln Drive. Those we submit are unique
20 circumstances, unique factors that apply to each and
21 every lot and that justify the variances requested.

22 If there are no questions of me, I would
23 like to call our first witness, Mr. Pross, and ask him
24 to identify himself again and give his statement to
25 the Board. Thank you.

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1 CHAIRPERSON GRIFFIS: Good. One quick
2 question.

3 MR. DEPUY: Please.

4 CHAIRPERSON GRIFFIS: I appreciate that
5 actually, too. First of all, you indicated that one
6 of your witnesses is from VIKA. Are they the
7 engineers or the planners or both?

8 MR. DEPUY: Both, and landscape.

9 CHAIRPERSON GRIFFIS: Oh, good. So
10 basically, everything we're looking at here they have
11 done?

12 MR. DEPUY: That's correct.

13 CHAIRPERSON GRIFFIS: Okay. And the
14 second is you have talked about the numerous aspects
15 of the variances and also the two special exceptions.
16 I understand the two special exceptions. The
17 specific properties of which the variance would be
18 attached, are they ever broken out in the application?

19 I'm having a difficult time, frankly, following.

20 MR. DEPUY: Yes, we submitted Exhibit C to
21 our prehearing statement that shows each and every lot
22 and each and every variance that applies to those
23 lots.

24 CHAIRPERSON GRIFFIS: Okay. And so it
25 looks something like this. Is that correct?

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1 MR. DEPUY: That's correct.

2 CHAIRPERSON GRIFFIS: Okay. So what we
3 would have to do is go through this and assess for
4 ourselves or analyze ourselves whether it was
5 compliant or not. Is that correct?

6 MR. DEPUY: I think the testimony will
7 show that with respect to each and every lot, the
8 variance standards have been met.

9 CHAIRPERSON GRIFFIS: But is the relief
10 requested of all 209?

11 MR. DEPUY: It depends lot by lot.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. DEPUY: As to whether it's rear.

14 CHAIRPERSON GRIFFIS: So there is no --

15 MR. DEPUY: Rear or front or --

16 CHAIRPERSON GRIFFIS: There is no big star
17 noting on Lot 157 that it needs a rear or a front yard
18 or some sort of relief?

19 MR. DEPUY: That's the purpose of the
20 chart. The chart shows where variances are required
21 for each individual lot.

22 CHAIRPERSON GRIFFIS: Okay. Good. I'm
23 glad that does show. Now, you need to show me how it
24 shows, because I'm not reading this. And the other
25 thing is I'm not sure where each of these lots are

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1 attendant to a graphic, which I know it may just be me
2 particularly, but I like seeing where it actually is.

3 MR. DEPUY: I will ask Mr. Oliver who
4 prepared the chart.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. DEPUY: Perhaps to further --

7 CHAIRPERSON GRIFFIS: Okay. I don't want
8 to disrupt.

9 MR. DEPUY: That's okay.

10 CHAIRPERSON GRIFFIS: But that's one thing
11 that we should focus on as we get into it.

12 MR. DEPUY: Let's get this clarified.

13 CHAIRPERSON GRIFFIS: Did I ask two
14 questions or is that just the first one? Okay. Good,
15 because I knew I had two. Okay. Let's move on.

16 MR. DEPUY: I will ask Mr. Oliver to
17 respond to that question.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MR. OLIVER: My name is Kyle Oliver. I am
20 with VIKA, Incorporated, the civil engineer for the
21 site. Do I need to give my address? I'm sorry.

22 CHAIRPERSON GRIFFIS: Yes, go ahead.

23 MR. OLIVER: It's 21579 Goodwin Court in
24 Ashburn, Virginia. The chart you have in front of
25 you, there is an asterisk on each, either a front yard

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1 or rear yard where a variance is requested and we
2 won't go into each of the lots in our testimony.

3 CHAIRPERSON GRIFFIS: Okay. No, I'm
4 sorry, I'm going to clarify.

5 MR. OLIVER: You'll see it when we go
6 through.

7 CHAIRPERSON GRIFFIS: We have two copies
8 in the record, so I want to make sure that the Board
9 actually has it. We need to dispense with Exhibit No.
10 9. And I'm sorry, frankly, in my package your
11 submission kind of fell apart and so Exhibit C, as has
12 been indicated, would be exactly what we need to look
13 at and that's those asterisks that I was looking for.

14 Excellent. There are an awful lot of them.

15 MR. OLIVER: Okay.

16 CHAIRPERSON GRIFFIS: Are there any lots
17 that don't need front yard relief? Yes. Okay. 90
18 through 95. Go ahead. Don't mind me.

19 MR. PROSS: Okay? Good. Good afternoon.

20 My name is Donald Pross. I am senior development
21 director with the National Capital Revitalization
22 Corporation and its subsidiary, the Land Redevelopment
23 Agency Revitalization Corporation, and I am pleased to
24 be here representing NCRC, LRARC before you to request
25 permission to develop this townhouse community in

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1 accordance with the plans as they have been submitted,
2 and to grant those special exceptions and variances as
3 required.

4 The proposed development is consistent
5 with the goals and development objectives outlined in
6 the Urban Renewal Plan for the Fort Lincoln urban
7 renewal area, which was originally adopted by the
8 National Capital Planning Commission in 1972 and
9 readopted in 1990.

10 CHAIRPERSON GRIFFIS: So -- I'm sorry, go
11 ahead.

12 MR. PROSS: Which were approved by the
13 District of Columbia in 1972 and again in 1994.
14 Moreover, the planned development meets the general
15 objective of the housing element of the District of
16 Columbia Comprehensive Plan. And as was noted, after
17 a review by over 300 community residents, the Advisory
18 Neighborhood Council, ANC-5A, strongly endorsed this
19 proposed development.

20 As proposed, the development will be a
21 strong catalyst for the revitalization of the area and
22 provide a significant amount of relatively affordable
23 housing, single-family homes of a size and
24 configuration that will be in harmony with the housing
25 stock in the area and will compliment traditional

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1 development patterns in the city.

2 The property is comprised of 22.6 acres,
3 22.5 acres, if you will, of undeveloped land with a
4 regular topography that, in large part, has dictated
5 the planning and the specific design of the complex,
6 as well as the individual units. Protection of the
7 natural environment and the unique character of the
8 landscape is a primary concern and are in accord with
9 principles expressed in the Urban Renewal Plan.

10 Specific features of the plan, which will
11 be elaborated on, include two public recreational
12 facilities and substantial preserved and wooded open
13 space, which further adds to the character and
14 community amenities. The landscape design screens the
15 community from nearby commercial development across
16 South Dakota Avenue and New York Avenue, one of the
17 most heavily traveled thoroughfares in the city.

18 Ample parking is provided for the
19 residents and guests with garage space in every unit.

20 The developers, Fort Lincoln Pulte, LLC, New Town
21 Corporation have taken every consideration into
22 account to plan and propose an outstanding new
23 community within the District, and I encourage the
24 Board's consideration and approval of the requested
25 special exceptions and variances. Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.

2 MR. DEPUY: Should we proceed with all the
3 witnesses?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. DEPUY: And then we'll ask questions
6 at the appropriate time?

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. DEPUY: Thank you. Ms. Hagans, would
9 you, please, state your name and your address and give
10 your testimony to the Board?

11 MS. HAGANS: Good afternoon. I am Michele
12 Hagans. I live at 1645 Myrtle Street, N.W. I am the
13 manager of Fort Lincoln Pulte, LLC and I would like to
14 thank the Members of the Board for the opportunity to
15 discuss our proposed development.

16 Through a joint venture between Fort
17 Lincoln New Town Corporation, the Concordia Group and
18 Pulte Homes, the proposed development of 309 market
19 rate townhouses within Fort Lincoln will provide a
20 significant opportunity to bring new housing stock
21 targeted towards middle income buyers to the District
22 of Columbia. In addition to offering new homes in a
23 market, which has clearly been underserved, this
24 venture will be Pulte's, the nation's largest
25 homebuilders, first entry into the District of

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1 Columbia.

2 This project is located within the Fort
3 Lincoln Urban Renewal Plan area, which was adopted in
4 1972 and establishes a new town site within the
5 boundaries of the District of Columbia. We have an
6 aerial photo. Do you want to pass it out?

7 The Renewal Plan calls for a development
8 that creates an attractive and racially, socially,
9 economically and functionally inclusive community that
10 serves as a model in-town community that includes a
11 mixed use area with townhomes, high-rise apartment,
12 condominiums, park and recreational areas, retail and
13 office areas, preserved natural areas and historic
14 landmarks.

15 As the Fort Lincoln area is designated as
16 a housing opportunity area, which encourages a
17 significant amount of new housing, this proposed
18 project is both consistent with the underlying Land
19 Plan and will serve as a catalyst to provide middle
20 income housing within the community. Fort Lincoln
21 currently contains, approximately, 1,500 units, 787
22 senior housing units, 158 market rate garden
23 apartments and 543 condominiums.

24 While Fort Lincoln is a well-maintained
25 development, which offers both active and passive

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1 recreation, it currently lacks an ample housing stock
2 geared towards middle income District residents. This
3 development is located on a 22.68 parcel bounded by
4 South Dakota Avenue, 31st Place, Fort Lincoln Drive and
5 33rd Place, N.E., and will provide three-story
6 townhomes containing an average, approximately, 2,300
7 square feet of finished space both with one and two
8 car garages.

9 All of the model types can provide three
10 bedroom, two and a half bathroom homes with features
11 such as gourmet kitchens, morning rooms, walk-in
12 closets and recreation rooms. Each home will offer
13 the purchaser the option of sun rooms, sitting rooms,
14 additional bedrooms and baths, as well as exterior
15 decks.

16 The sales prices for these units will
17 range from \$275,000 to \$295,000 for the individual
18 homes. Our sales efforts will target median income
19 residents who currently reside within a 3 to 5 mile
20 radius of the project. As noted in the staff report,
21 Fort Lincoln rests on the border of Prince George's
22 County and has been developed with a suburban feel
23 with fabulous open spaces and amenities, such as ball
24 fields and pools.

25 Given the existing topography of the site,

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1 as well as our desire to attract buyers in search of a
2 suburban community within the District of Columbia,
3 the architecture of the individual homes has been
4 specifically designed to effectively accommodate the
5 significant slopes of the property while providing new
6 homes, which will appeal to our target market.

7 At our presentation to the ANC Ward 5 in
8 June of this year, this project was supported by,
9 approximately, 300 citizens, many of which have asked
10 to reserve a specific lot for purchase. Their
11 excitement with the project only underscored the fact
12 that this area of the city has a serious shortage of
13 new home housing opportunities.

14 We believe that this project offers the
15 opportunity to mitigate this housing shortage with
16 townhomes, which will be constructed with Pulte's high
17 standards of building. With the development of major
18 retail within Fort Lincoln anticipated to commence
19 within the next 24 months, approval of this
20 application will be a vital step to ensure the
21 community achieves as balanced housing stock, which
22 will sustain the retailers and fulfill the goals and
23 objectives of the Fort Lincoln Renewal Plan.

24 For the past six weeks we have worked
25 closely with the Office of Planning on our project.

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1 We have carefully considered and are in agreement with
2 OP's recommendations set forth on pages 11 and 14 of
3 this report. Specifically, we will place a covenant
4 in the deeds of all the lots that future additions
5 with the exception of rear additions and decks shown
6 on our site plan are prohibited.

7 Within the Homeowners Association
8 documents, there shall be a declaration, which
9 prohibits the gating of the community and the areas
10 currently designated for tree save will be preserved
11 in perpetuity. In addition to proving and maintaining
12 adequate screening along South Dakota Avenue, we will
13 take all efforts to ensure that the tree preservation
14 areas throughout the development will be carefully
15 protected and fenced during the construction phase to
16 minimize potential accidental damage. Once again, I
17 thank you for the opportunity to present this project.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much. Let's see, I'm going to just get a quick
20 clarification question. You went through quite a
21 large project. I just want some clarification. Of
22 course, you said 309 units, over 500 condos. Where
23 are all of those?

24 MS. HAGANS: In Fort Lincoln.

25 CHAIRPERSON GRIFFIS: So we're looking at

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1 all of that?

2 MS. HAGANS: No, you're only looking at
3 the site. Fort Lincoln is --

4 CHAIRPERSON GRIFFIS: Right, we're looking
5 at 209 units now.

6 MS. HAGANS: This is only 209. I was
7 speaking to what has already been developed in Fort
8 Lincoln. Fort Lincoln is a community of 300 acres.

9 CHAIRPERSON GRIFFIS: Right. Okay. Good
10 clarification. Okay.

11 MS. HAGANS: Thank you.

12 MR. DEPUY: Our next witness is Mr. Kyle
13 Oliver. Mr. Oliver, would you give your statement to
14 the Board, please?

15 MR. OLIVER: Good afternoon again. My
16 name is Kyle Oliver. I am a professional engineer
17 with the firm VIKA, Incorporated. I would like to
18 speak to you about the existing and proposed
19 conditions from an engineer and site layout
20 perspective. I will have Matt Tauscher point out some
21 items as I go through.

22 The first thing I would like to speak
23 about, existing conditions, is what a unique site we
24 have. The first thing I would like to get into is the
25 topography. Starting up on Fort Lincoln Drive, at the

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1 end of the site the elevations are, approximately, 152
2 feet in elevation and they rise toward the
3 intersection of Fort Lincoln Drive and 31st Place to an
4 elevation of 182 feet. Therefore, it's a difference
5 of --

6 CHAIRPERSON GRIFFIS: Where is 152?

7 MR. OLIVER: Down here at the end of the
8 property.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. OLIVER: Okay. So it rises 30 feet as
11 you go from right to left.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. OLIVER: As you're looking at it. The
14 elevations at the intersection of 31st and Fort Lincoln
15 Drive is, approximately, like I said, 182 and it goes
16 down to the intersection of South Dakota and 31st Place
17 at an elevation of 112, an elevation change of 70
18 feet.

19 CHAIRPERSON GRIFFIS: Okay. So on the
20 Fort Lincoln where we're doing 30, what is the
21 percentage of change? What is the grade?

22 MR. OLIVER: I don't have the distance
23 right here off the top of my head.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. OLIVER: So it's a substantial

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1 increase in slope up and then, obviously, 70 feet
2 over, approximately, 650 feet, which roughly is 15
3 percent.

4 CHAIRPERSON GRIFFIS: Do you think
5 overall, I mean, obviously, it's not a nice even kind
6 of road grade, but overall is it what, 10 percent
7 grade, is it 12?

8 MR. OLIVER: 15 percent.

9 CHAIRPERSON GRIFFIS: 15?

10 MR. OLIVER: Yes.

11 CHAIRPERSON GRIFFIS: Along Lincoln?

12 MR. OLIVER: Along Fort Lincoln, no.
13 It's, approximately, about 10 percent.

14 CHAIRPERSON GRIFFIS: 10?

15 MR. OLIVER: And then 15 as you come down.

16 CHAIRPERSON GRIFFIS: 10 and 15?

17 MR. OLIVER: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. OLIVER: The existing elevations at
20 the intersection, again at South Dakota Avenue, are,
21 approximately, 112 and go down to 94 down near the end
22 of the property, an elevation change of 18 feet.

23 CHAIRPERSON GRIFFIS: Wow.

24 MR. OLIVER: Therefore, the average
25 elevation change is, approximately, 70 to 75 feet from

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1 Fort Lincoln Drive down to South Dakota Avenue, again,
2 over a distance of about 650 feet. The elevation
3 actually rises a little bit. As you leave Fort
4 Lincoln Drive near the top of the site, then there is
5 a severely sloped area in the middle of the site that
6 runs from 31st Place over to the corner of the existing
7 adjacent high-rise lot, which is located here. This
8 slope there is important with respect to layout of the
9 site and the soils of the site also, which I will get
10 into in just a minute.

11 In summary, the site's topo is
12 characterized by unusual slopes and such slopes
13 contribute to the uniqueness of the site and result in
14 many of the requested variances that we will discuss
15 later. I would like to get into the site soils and
16 regional geology.

17 The site lies within the Atlantic Coastal
18 Plain Physiographic Province, which typically consists
19 of marine deposits of sand, silt and clay. The marine
20 deposits underlying the project are believed to be
21 from the cretaceous age Potomac formation. The
22 Potomac formation typically consists of interbedded,
23 dense sands to very stiff to hard over-consolidated
24 clays. The Potomac formation contains clays that are
25 known landslide hazards with respect to slope

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1 stability.

2 The soil borings performed on the site are
3 consistent with the regional geology found to be
4 ranging from dense silt to clay sand to stiff to hard
5 clays. Because of the underlying Potomac formation,
6 the high amounts of clay found in the borings, great
7 care must be taken in the design and construction of
8 the site. Global stability for the site must be
9 investigated. This means that there is a concern that
10 the entire site could slide down the hill once grading
11 and housing units are placed on top of the site.

12 From a soils and site global stability
13 standpoint, we basically need to shave the grade from
14 the top of the site and actually add it to the bottom
15 of the site. ECS Ltd., the soils consultant for the
16 project, has performed a stability analysis based on
17 the current proposed grading. This analysis shows
18 that the stability of the hills is within the
19 acceptable factor of safety. Nevertheless, we're
20 building with an unusually sloped site. So by adding
21 soil to the bottom of the hill and taking away weight
22 and soil from the top of the hill, you help with the
23 whole global stability from the marine clays that are
24 on-site.

25 The third thing I would like to point out

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1 is the predominantly wooded site we have. I emphasize
2 again that we have 22.6 acres in size. With the final
3 design and grading, we propose to have three large
4 tree preservation areas. They total about 3 acres, so
5 a pretty substantial amount of area we're saving. The
6 amount of existing tree cover and the amount of tree
7 preservation areas are also unique for properties in
8 the District of Columbia.

9 I would like to go into the proposed
10 conditions now and how these unique conditions, as
11 well as the predominant private street patterns of
12 Fort Lincoln results in the proposed layout of the
13 site. The first challenge to designing the layout of
14 the units was to attain appropriate and safe access to
15 the site. It would be impractical to provide direct
16 access to the existing roadway network coming straight
17 into either South Dakota Avenue or Fort Lincoln or 31st
18 Place, again, because South Dakota has a heavy volume
19 of traffic and also because of the predominant street
20 patterns within Fort Lincoln.

21 Because of the severely sloped areas in
22 the center of the site, the layout of the site lends
23 itself to actually separating the site from an access
24 perspective into two sections, an upper section and a
25 lower section. The lower site will have one access

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1 point from 31st Place that lines up with an existing
2 entrance across 31st Place. You will be able to come
3 into the site, there is a cul-de-sac at the end, and
4 go back out. We didn't think it was appropriate to
5 try and tie back into South Dakota Avenue again. We
6 thought we should just have one access point for the
7 lower portion of the site. The upper site will have
8 two access points, a right in/right out situation
9 because of the closeness to the intersection and a
10 full intersection on Fort Lincoln Drive.

11 The second issue we looked at in the
12 design relationship of the sloping site was the layout
13 to the type of townhouse unit. We basically have
14 three units that we are proposing. The Silverbrook
15 Unit is a slab on grade. This means that the front of
16 the unit has the same elevation as the rear of the
17 unit and requires a relatively level site area.

18 The Hathaway Unit, by contrast, has a
19 partially buried rear. This allows us to make up
20 grade from the front of the unit to the rear of the
21 unit or to tuck the unit into the existing hill.

22 The third unit is the Fairlington. With
23 this unit, the front of the unit is higher than the
24 rear of the unit. This unit's original design had to
25 be altered in order to have the grade fall off toward

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1 the rear of the unit. This helps with stair stepping
2 the units to make up the grade as we go down the site.

3 The next issue we looked at were the lot
4 areas of the individual lots in order to meet
5 setbacks, FAR and lot occupancy. In order to meet the
6 challenges for the site topography, the site soils and
7 the lot sizes, we need to look at the site constraints
8 and the overall grading in the front and rear yard
9 variances that we are requesting.

10 At the top, the Silverbrook homes are the
11 first row along Fort Lincoln Drive. These slab on
12 grade units help by cutting into the slight elevation
13 increase as we head south toward South Dakota Avenue.

14 The next row of units are the Fairlington, which cut
15 further into the site and provide an elevation drop as
16 you go toward the rear of the unit. We next have the
17 Hathaways, which by having the rear that is higher
18 than the front, helps us in stair stepping down the
19 hill to make up the 70 feet in elevation change
20 throughout the site.

21 The severely sloped area, again, is in the
22 middle of the site, which helps. Basically, we wanted
23 to look at the site in two separate areas. A row of
24 Fairlington Units is designed in the location in the
25 middle and that completes the upper section.

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1 The bottom section of the site has
2 Hathaways, which are in the middle, and then
3 Silverbrooks, which are actually side to side stepping
4 down in order to get the grade back down to South
5 Dakota Avenue. The Silverbrooks were positioned, so
6 that the rear of the units would not back up to South
7 Dakota Avenue. Because of the extreme elevation
8 change, we are ending up with a retaining wall on
9 South Dakota Avenue.

10 We are providing a 60 foot setback from
11 the side edge of the Silverbrook Units to the right of
12 way line. If we are required to provide the 20 foot
13 front and rear setbacks, the roadway and units will be
14 shifted down the hill and the 60 foot buffer from
15 South Dakota Avenue would be reduced to,
16 approximately, 10 feet. Shuffling of unit locations
17 would occur, thus eliminating the substantial tree
18 preservations along 31st and 33rd Streets.

19 It should be noted that the lots requiring
20 a rear yard variance do not require a front yard
21 variance and vice versa. Furthermore, the rear yard
22 depth requirements assume that all homeowners will
23 request a 10 foot optional deck and optional three-
24 story addition to the back of each townhome. However,
25 if these options are not selected by particular

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1 purchasers, the rear yards of such units will increase
2 by 10 feet, which would result in the required depth
3 of 20 feet.

4 For the analysis of individual lot
5 variances requested, the townhouse project models have
6 been separated into seven typical lot layouts. There
7 are two typical Hathaway layouts, two typical
8 Fairlington layouts and three typical Silverbrook
9 layouts. To facilitate the variance analysis, each
10 typical layout will be addressed separately instead of
11 going through every single lot.

12 The Hathaway 1 Units require FAR, lot
13 occupancy and front yard variances. The Hathaway 1s
14 are on the middle, the upper portion of the lower
15 site. We could have pushed back the unit to create
16 compliance with lot occupancy, FAR and front yard
17 requirements. However, due to the steep grade changes
18 and the soil conditions, we feel this is impractical.

19 The Hathaway 2 Units, which are tucked in
20 the little -- one down from there, right in there.
21 The Hathaway 2 Units require FAR variance, lot
22 occupancy and rear yard variances. We could have
23 pushed these units back also to create the lot
24 occupancy, FAR and front yard requirements. However,
25 again, because of the steep grade changes and soils,

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1 we feel this is also impractical.

2 The Fairlington 1 and 2 Units both require
3 FAR, lot occupancy and front yard variances. The
4 Fairlingtons are the second stick down and the last
5 stick down in the top unit, right. The Silverbrooks,
6 there are three different types of Silverbrooks. The
7 Silverbrook 1 requires a front yard variance. They
8 are up at the top row at the top there. They also
9 require FAR and lot occupancy. The Silverbrook 2s
10 require lot occupancy and FAR variances with no front
11 or rear yard variances requested. And the Silverbrook
12 3s require lot occupancy, FAR variances and require
13 rear variances.

14 With respect to floor area ratio and lot
15 occupancy, we feel the site should be looked at in
16 totality instead of on a lot by lot basis. The total
17 FAR of the site is proposed at .58 and the lot
18 occupancy for the entire site is at 21 percent.

19 In conclusion, based on the severe
20 topography, existing soil conditions, the desire for a
21 large setback along South Dakota Avenue, we wish to
22 avoid curb cuts on Fort Lincoln Drive, 31st Street or
23 South Dakota Avenue, our desire to develop a project
24 that is consistent with the Fort Lincoln Urban Renewal
25 Area and our desire for almost 3 acres of tree

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1 preservation, we feel that the front and rear yard,
2 FAR and lot occupancy variances are justified. Thank
3 you for your time.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much.

6 MR. DEPUY: Our next witness is Matthew
7 Tauscher also from VIKA.

8 MR. TAUSCHER: Good afternoon. I'm Matt
9 Tauscher with VIKA. My address is 5207 Woodleaf
10 Court, Centerville, Virginia. I am a registered
11 landscape architect and I would just like to continue
12 the discussion briefly on a few topics, mainly general
13 layout of the site, which has been described somewhat,
14 open space, tree preservation and recreation and
15 landscape and lighting.

16 In terms of the general layout, as you
17 have heard, the layout of the plan has evolved from a
18 number of circumstances, including the parcel
19 configuration, the long rectangular orientation of the
20 property, the site topography and the surrounding site
21 conditions.

22 The property configuration being
23 rectangular in shape lends itself to a layout, which
24 is oriented in the north/south direction. The
25 internal streets take advantage of the length of the

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1 property frontage to the east and the west and, most
2 importantly, respond to the steep slope of the site as
3 it falls from Fort Lincoln to South Dakota.

4 From these conditions, the units evolved
5 along those private streets, private internal streets.

6 This orientation of the units onto the internal
7 private streets is in keeping with the surrounding
8 Fort Lincoln area and also complies with the Fort
9 Lincoln Urban Renewal Plan.

10 As stated above in the second circumstance
11 and probably again, the most important influence on
12 the design was the extremely severe topography that
13 occurs across the site. As discussed, this
14 topographical condition has led to the layout of the
15 street network running with the contour of the land.
16 In order to implement the street design, the plan will
17 require extensive use of retaining walls through the
18 midsection behind a number of the lots and then at the
19 lower section along the periphery of South Dakota
20 Avenue.

21 These walls will also be at a significant
22 cost in the overall development as well. These walls,
23 when implemented, will create a terraced effect of
24 buildable lot areas, which the units themselves are
25 placed on. The terraced areas that will be

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1 constructed with the site walls, however, will still
2 require additional architectural relief in order to
3 obtain constructable paths. This required
4 architectural relief has dictated the unit design,
5 which can only be described as atypical in terms of
6 today's architectural standards in townhome
7 communities.

8 As Kyle described, because of the steep
9 slopes, the units will be a series of walkup and
10 walkout units. The walkup units, as I term them, will
11 be of a style where the resident can enter the unit
12 from the lower front street level and exit the rear of
13 the unit at a higher second level similar to the
14 Hathaway design. The walkout unit will be of a style
15 that the resident enters from the street level, the
16 front street level, and exits the rear at a lower
17 grade level requiring a retaining wall situation
18 within the unit itself, an extended foundation plan,
19 which you may see typically in a single-family
20 detached style home where you have a walkout condition
21 where it's higher in the front, lower in the back.
22 But that is certainly atypical of standard townhome
23 architecture.

24 The lot layout of these unit styles, as
25 well as a third style, the Silverbrook, has been

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1 designed to allow for the continued slope of grade
2 through the rear of the lot. This is why we're
3 requesting the variance to the yard distance
4 requirements in order to take advantage of the lot's
5 rear yard green space for additional slope and grade
6 makeup.

7 In conjunction with these architectural
8 designs, the project has concentrated development in
9 the middle of the site, rather than expanded over the
10 entire 22 acres. In review of the plan it may appear
11 the FAR and lot occupancy of some of the lots are
12 atypically high, but in reality the density of the
13 project is lower than most comparable projects due to
14 the significant amounts of open space and tree
15 preservation. Thus, the individual FAR and lot
16 occupancy percentages do not express the true low
17 density numbers of this development.

18 Finally, in order to create a desirable
19 sense of community and to buffer the new residents
20 from the surrounding road impacts and nearby
21 commercial uses on South Dakota, the orientation of
22 the units along the periphery, again, has been
23 directed inward with access to all units being from
24 internal private streets, as previously described.
25 This buffering primarily along South Dakota, it was

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1 described, there is 60 foot buffer between the right
2 of way and the edge of those Silverbrook townhomes
3 will be enhanced by the proposed landscaping.

4 In terms of open space, tree preservation
5 and recreation, open space will abound on the site.
6 Nearly 26 percent of the site will be devoted to
7 common open space areas. This is a significant number
8 in today's standards. Again, the reason we have been
9 able to obtain this amount is the need to respect the
10 topographical constraints of the site, tighten up the
11 individual lot designs and not spread the entire
12 development over the allowable 22 acres. This lot
13 configuration has brought us to the current design,
14 which requires your assistance in the granting of
15 certain special exceptions and variances to the rules.

16 As previously noted, there will be
17 significant tree preservation. Preservation on-site
18 will be, approximately, 3 acres out of 22 or an
19 equivalent of about 12 percent. This preservation has
20 evolved from the severe topographical conditions that
21 have directed the layout inward and condensed it in
22 order to fit within the usable, buildable area.

23 The tree preservation areas will occur
24 primarily on the north and south perimeters with
25 extensive tree preservation located behind and

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1 adjacent to the senior living center at our southern
2 boundary. This particular area of tree preservation
3 will serve as a desirable buffer between the two uses
4 and for the visual enjoyment of both projects.

5 Recreation, as mentioned previously, will
6 be provided on-site in the form of two tot lot
7 facilities, one in the upper section of the project
8 and one in the lower section. As well, there are off-
9 site recreation opportunities, which include an
10 adjacent rec center directly across Fort Lincoln
11 Drive.

12 In terms of the landscaping and lighting,
13 the tree preservation areas, as mentioned, will also
14 be enhanced with landscaping provided on-site. Site
15 access locations off of the road networks will be
16 planted with ornamental trees, including redbuds and
17 cherries up to about an inch and a half in caliber in
18 order to give the sense of arrival to the community.
19 31st Place will be planted with a column of street
20 trees, including willow oaks up to 3 inch caliber in
21 order to define the community from that road view.

22 Internal streets will be planted with a
23 mix of large and medium street trees, including
24 maples, lindens, cherries, redbuds, all trees
25 recommended in the Urban Forester's list of trees in

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1 order to continue the streetscape into the site and
2 soften the area between the roads and the dwelling
3 units.

4 Large open space areas that will need to
5 be cleared will be replanted with similar tree species
6 in order to increase the overall tree canopy and
7 enhance the tree preservation areas. Evergreen
8 plantings used as buffers along both South Dakota
9 Avenue and Fort Lincoln will consist of hemlock and
10 pine species 6 to 8 foot height in order to screen
11 those units from those high traveled roadways.

12 Site lighting in concept may be in the
13 form of victorian style lamps, styled street lamps
14 that convey the feel of the District and those same
15 lamp styles may be continued into the site itself at
16 varying scales depending on their use and location to
17 complete that design feel.

18 And thank you for your consideration. I
19 will be available for questions.

20 CHAIRPERSON GRIFFIS: Good. Thank you.
21 Any other witnesses?

22 MR. DEPUY: That completes our case in
23 chief unless the Board wants to hear from our traffic
24 engineer.

25 CHAIRPERSON GRIFFIS: Oh, yes, that would

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1 top the afternoon off. Let's go through the whole
2 thing. Now, why don't we take questions here if we
3 have questions that actually come up. No offense to
4 traffic engineers, it's fascinating. However,
5 lighting, we just touched on lighting. There was a
6 lot of mays, might and even in the drawings that are
7 submitted it says proposed.

8 What is the lighting fixture that's going
9 in here?

10 MR. TAUSCHER: It hasn't been determined,
11 the specific lighting fixture, at this time.

12 CHAIRPERSON GRIFFIS: What is going to
13 determine it?

14 MR. TAUSCHER: Coordination with Staff and
15 the applicant.

16 CHAIRPERSON GRIFFIS: What goes into that
17 coordination?

18 MR. TAUSCHER: Choosing of different
19 options and then narrowing it down to the specific
20 lamp style.

21 CHAIRPERSON GRIFFIS: Okay. Well, you
22 have one in here. What's wrong with this one? I
23 mean, you have indicated and you have given the
24 direction and one could walk away saying okay, you're
25 going to do something that's of a Washington standard.

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1 It's going to be a lamppost. It may be 8 feet. It
2 may be 10 feet. I don't care the height. What is it
3 going to look like?

4 MR. TAUSCHER: That typical style as
5 indicated in the graphics there.

6 CHAIRPERSON GRIFFIS: Okay. So it's not
7 going to vary much from that?

8 MR. TAUSCHER: No, no, no.

9 CHAIRPERSON GRIFFIS: It may be the
10 Windsor top fixture on the pole. It may be the
11 Washington standard.

12 MR. TAUSCHER: Right.

13 CHAIRPERSON GRIFFIS: It may be something
14 of that, but it's going to have that?

15 MR. TAUSCHER: That feel, that flair.

16 CHAIRPERSON GRIFFIS: Indeed.

17 MR. TAUSCHER: Right.

18 CHAIRPERSON GRIFFIS: Okay. So we'll make
19 note of that. You have talked about buffers and also
20 large green space in terms of landscaping this.

21 Is the large green space on that portion
22 of the lower right, is that buildable?

23 MS. HAGANS: No.

24 MR. TAUSCHER: In this location here?

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. TAUSCHER: It's even more severe
2 slopes than the --

3 CHAIRPERSON GRIFFIS: Okay. So the whole
4 point of a lot of that green area is because the
5 topography drops off so quickly, it makes it very
6 difficult, practically difficult to develop it, is
7 that correct, which is pushing all of these townhouses
8 into the center?

9 MR. TAUSCHER: Correct.

10 CHAIRPERSON GRIFFIS: I see. Okay. And
11 the buffers you said you have to set back and create
12 those buffers off of South Dakota, because of the
13 noise, the impact, the vehicles, the crashing race
14 cars? What is it that happens there?

15 MR. TAUSCHER: All of that. The buffer
16 allows us to alleviate a lot of those issues. As
17 well, the slope, and we continue to go back to the
18 topography, which was one of the driving forces in the
19 layout and the design, but even the retaining wall
20 that was mentioned along the perimeter of South Dakota
21 reaches near 20 feet, you know, so we're already doing
22 somewhat the best we can architecturally along with
23 the grading operations to not just send this whole
24 thing south, you know, in terms of the layout and we
25 wanted to create and utilize more of a buffer along

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1 South Dakota.

2 CHAIRPERSON GRIFFIS: Okay. So you have
3 the green space that has the highest topography, which
4 obviously makes it difficult to build on. You have
5 this buffer that you want, also somewhat based on the
6 topography and other issues. But well, all right.
7 Let me continue on.

8 Oh, the one big question. You say they
9 have options packages. Someone goes in and buys this
10 house and they have an option package for a two-story
11 addition in the back and a deck, and those would
12 actually project into the open space required area?

13 MR. OLIVER: No, the lot configuration
14 accounts for those. If that particular addition
15 that's part of the building is not built --

16 CHAIRPERSON GRIFFIS: So you are selling
17 an option that actually requires a variance?

18 MR. OLIVER: Correct. That's shown on the
19 plans.

20 CHAIRPERSON GRIFFIS: How is that not a
21 self created hardship?

22 MR. DEPUY: That only applies in the case
23 of use variances, Mr. Chairman, not in the case of
24 area variances.

25 CHAIRPERSON GRIFFIS: Yes, that's all well

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1 and good. So what is the uniqueness then if I have
2 100 of these and they are selling options to increase
3 the additions on the structure?

4 MR. DEPUY: Well, we have assumed that,
5 essentially, every purchaser will select every option
6 and, therefore, we're coming to you saying we believe
7 that the worst case is possible and, therefore, we
8 need the following variances from rear yard and lot
9 occupancy and FAR.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. DEPUY: It might get better if some of
12 the purchasers do not select all the options.

13 CHAIRPERSON GRIFFIS: What is the vehicle
14 for us to look at this all assembled, cumulatively?

15 MR. DEPUY: Well, we believe we presented
16 information with respect to individual lots, as well
17 as cumulatively. So we think we have provided
18 information, evidence as to both.

19 CHAIRPERSON GRIFFIS: I guess maybe more
20 directly then, what is the point of you telling us in
21 the written submissions and also in the oral testimony
22 that if you look at this all together, the FAR isn't
23 far off and it's very low density, nine units per acre
24 or whatever the actual calculation is?

25 MR. DEPUY: We have, as you know,

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1 obligations under the special exception standards to
2 prove that this proposed development is consistent
3 with the Fort Lincoln Urban Renewal Plan and with the
4 Comprehensive Plan. So the project as a whole,
5 information primarily deals with consistency with the
6 Fort Lincoln Urban Renewal Plan, compatibility with
7 adjacent properties, compatibility with the
8 neighborhood. So it goes to the special exception
9 requirements rather than the variance standards.

10 CHAIRPERSON GRIFFIS: Excellent. Okay.
11 Now, one quick question. You said there is only one
12 access on the southern road and you said, I forget
13 exactly what it was, but for some good, and you had
14 just talked about the traffic on South Dakota.

15 Is it that you don't want to enter traffic
16 at that point where the cul-de-sac is?

17 MR. OLIVER: Absolutely. We also have a
18 grade change that we need to make up.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. OLIVER: So it's kind of twofold. We
21 don't really want to have that.

22 CHAIRPERSON GRIFFIS: So you would be
23 ramping up and getting some air as you got onto South
24 Dakota if you went off that way?

25 MR. OLIVER: Absolutely.

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1 CHAIRPERSON GRIFFIS: Okay. All right.
2 That's understood. What is unique about this
3 prehistoric soil?

4 MR. OLIVER: Because of the marine clays
5 that are deposited over time, you actually end up with
6 a global stability problem where --

7 CHAIRPERSON GRIFFIS: I understand that.
8 We have an application that follows you and it's on
9 14th Street. Is their soil any different?

10 MR. OLIVER: I don't have a soils map in
11 front of me to determine that, but a lot of areas in
12 the District have marine clays and have problem soil
13 areas.

14 CHAIRPERSON GRIFFIS: Okay. And the
15 grade. Well, let me go. I'll skip that. Ms. Miller?

16 VICE CHAIR MILLER: I would like to pick
17 up on the Chairman's questioning with respect to the
18 variance test. I'm wondering if you can clarify for
19 me or for us how you're asking us to apply this test,
20 because I'm looking at different ways and one is a
21 variance. You may be seeking a variance for the
22 totality of the project or are you asking us for a
23 variance from typical layouts or are you asking us for
24 a variance from clusters? And it sounds like you're
25 not asking us for variance from individual lots, yet

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1 you're saying that the individual lots are identified.

2 So that's where my confusion is. And
3 also, okay, so there are the four different areas that
4 I'm wondering if you're asking for variances, and then
5 when you are talking about the standards like, for
6 instance, uniqueness or whatever, I'm not sure whether
7 you're talking about the uniqueness of the whole site
8 or if you're talking about uniqueness again of, you
9 know, a cluster situation or I don't think you're
10 doing the individual lot or typical layout.

11 So do you understand my question?

12 MR. DEPUY: I believe I do.

13 VICE CHAIR MILLER: Okay.

14 MR. DEPUY: We believe that we have
15 addressed and have an obligation to address the
16 variance standards for each lot. However, given the
17 large number of lots for purposes of explanation of
18 description, we have clustered them in terms of the
19 information presented.

20 And the clusters provide information as to
21 the certain townhouse clusters where the conditions
22 are the same. That is the slope would be the same in
23 that particular cluster. If that particular area is
24 wooded, it would have the same wooded condition. It
25 would have similar conditions with respect, obviously,

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1 to the interior roadway, Fort Lincoln Urban Renewal
2 Plan characteristics. But we have grouped the
3 information presented in what, hopefully, is a
4 manageable fashion.

5 VICE CHAIR MILLER: Well, so if each
6 cluster contains a certain number of lots or units,
7 right, and they are all being treated the same, then
8 how would those -- those units wouldn't be unique from
9 each other, would they?

10 MR. DEPUY: Each of the lots is unique
11 because of the topography of the lots, which is not
12 typical of lots elsewhere in the District, and it's
13 atypical of other lots on the District because of the
14 soils condition. These are not typical conditions
15 that you find throughout the District of Columbia and,
16 therefore, we believe that each and every lot is
17 unique, not necessarily from each other, but from most
18 lots in the District of Columbia.

19 VICE CHAIR MILLER: Okay. About how many
20 lots are in a cluster that we're dealing with then?

21 MR. DEPUY: I believe it's four or five.

22 VICE CHAIR MILLER: Okay. I think part of
23 the variance test is though to show also why they
24 couldn't have been built in accordance with our
25 regulations. And one of my questions is why couldn't

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1 the lots have been built with less lot occupancy?

2 MR. DEPUY: I can have a witness answer
3 that, but our answer is that to do so would,
4 essentially, mean that the tree preservation areas
5 would have to be -- the trees would have to be cut to
6 make larger lots in part.

7 VICE CHAIR MILLER: Why couldn't you have
8 fewer houses or smaller houses?

9 MR. DEPUY: Well, you have to have a house
10 type that is appropriate for the marketplace, so you
11 start with marketable size houses and a marketable
12 number of houses.

13 VICE CHAIR MILLER: So you're saying that
14 no other type of house could have been built in these
15 given the tree situation? Is that what you're saying?

16 MR. DEPUY: I'm not sure that that's
17 exactly what I said. My point was that in order to
18 have these type of townhouse structures, based on the
19 testimony you have heard, the unique conditions of the
20 slope and the soil conditions, the townhouses have to
21 be concentrated towards the middle of the property.
22 And because of that they are, therefore, on lots that
23 make it appear as if they are larger than it might
24 otherwise appear based on the overall density. In
25 other words, the FAR and the lot occupancy of a

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1 particular lot appears to be larger, because they are
2 clustered.

3 CHAIRPERSON GRIFFIS: Right. I think to
4 follow Ms. Miller's question, I think it's a good one
5 and it actually is poised by the Office of Planning,
6 and that is so you have created three models and you
7 are trying to poke them all over the hills. If you
8 didn't have to do such typical models, you could,
9 essentially, uniquely or individually attend to the
10 specific requirements of that specific area. So why
11 do you have to do a typical?

12 MR. DEPUY: Mr. Will Collins who I
13 identified previously as the managing partner for the
14 developer will respond to that question.

15 MR. COLLINS: Yes. My name is William
16 Collins, address, 15713 Sycamore Grove Court,
17 Rockville, Maryland. I am the manager of the
18 Concordia Group, a partner in the Fort Lincoln Pulte,
19 LLC.

20 I think the question really comes to well,
21 why do you have 209 lots and why are they specifically
22 designed the way they are? We started with the basic
23 fact of looking at the market and when we looked at
24 the Fort Lincoln market, and particularly looked at
25 the market within northeast, you can see immediately

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1 that there is a severe shortage of market rate
2 housing. We actually did a great deal of study in
3 terms of the demographics of the area and looked at an
4 affordability package. Okay?

5 We want to target to residents within the
6 District and given the fact that this property is
7 right on the District line, we looked at a 3 mile
8 radius and said, you know, where do we look in terms
9 of finding new homes in this 3 mile radius and what is
10 being built within this 3 mile radius and, you know,
11 who is our buyer and where is the income of our buyer?

12 And when we came right down to the fact,
13 and it was that we really need to keep a house that
14 was under \$300,000 if we were going to appeal to a
15 median income buyer. And if we were going to do that
16 then, obviously, given that the slope of this site and
17 the particular geography of this site, it lends itself
18 to a townhome unit.

19 I guess my argument would be strongly that
20 you're saying there are only three types of townhome
21 units here, and I think it's important that we had to
22 go out, (A), we had to find a builder that was willing
23 to bring this type of presence into the District and
24 we're thrilled that Pulte is interested. Pulte is the
25 largest home builder in America. This will be their

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1 first job in the District. So we had to find a
2 builder that wanted to have a presence in the
3 northeast.

4 We then had to sit down with Pulte and
5 specifically design this product, because I can tell
6 you there are not many townhome projects that we go to
7 in the suburbs that we find grade changes of 75 feet.

8 So we have worked specifically with the site
9 constraints here in developing both uphill and
10 downhill conditions.

11 Now, I think one of the questions that
12 came up, and I think it's an excellent question and I
13 think the Chairman brought it up, are we imposing upon
14 ourselves relief, asking for relief in a situation
15 because of the options that we're offering on this
16 house?

17 One of the things that occurred on this
18 house was that Pulte felt very strongly that, you
19 know, the ability to offer amenities of surrounding
20 communities, that the ability to compete with Prince
21 George's County, the ability to provide housing that
22 is similar to what exists in the suburb was absolutely
23 paramount to bringing them into the city. And they
24 feel very strongly, and we have had this conversation
25 with them, because, obviously, when we knew we were

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1 coming to this Board asking for relief on these
2 conditions, that this issue was going to come up.

3 They feel very strongly that their ability
4 to compete with the other projects that are in close
5 proximity on the other side of the line, they have to
6 offer the same amount of options that their
7 competitors were.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. COLLINS: And that's really where it
10 came down. So I think it was price driven.

11 CHAIRPERSON GRIFFIS: The Board is fully
12 understanding. I don't think we have an application
13 before us that doesn't say we want to make this
14 marketable. It's only maybe one we have had that came
15 in and said I really want to lose my shirt on this,
16 won't you approve the variances?

17 But, you know, one might retort to say
18 well, you are trading a suburban model into an urban
19 area and it doesn't work. I think the answer is
20 understood. There is also a reality. It's not all --

21 MR. COLLINS: Understood.

22 CHAIRPERSON GRIFFIS: You know, it's not
23 all what we want to see or our opinions and, quite
24 frankly, what we're pushing and what you're going to
25 see we push on is we have very strict regulations of

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1 which we have to either show that you comply to or
2 not, the variance test and the special exception. So
3 anyway, I think we can move on, because, clearly, we
4 know that -- well, go ahead. We can't move on. Ms.
5 Miller has further questions.

6 VICE CHAIR MILLER: No, it's the same. I
7 think you started to address it, but I didn't really
8 hear the answer.

9 MR. COLLINS: Okay.

10 VICE CHAIR MILLER: And that is to the
11 question of wouldn't you have greater lot occupancy if
12 you had fewer homes?

13 MR. COLLINS: Well --

14 VICE CHAIR MILLER: It's not an option to
15 comply with our regulations.

16 MR. COLLINS: Well, obviously, any time
17 when you take a look at a site plan and you say can
18 you have fewer homes if you're addressing individual
19 site lots, the question is always there. Sure, you
20 could, but the bottom line is is that we are trying
21 and working with NCRC on this project. We feel it's
22 imperative to try to get an excellent site plan before
23 you that, obviously, that we can optimize the number
24 of units on this project and that we can make it a
25 project that we can have a national home builder who

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1 feels like they can have a critical mass. And I think
2 even, you know, whether it be working with NCRC --

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. COLLINS: -- or Office of Planning.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. COLLINS: I think it was important
7 that we provide a critical mass here and that there is
8 a definite need to have those numbers.

9 CHAIRPERSON GRIFFIS: And we understand
10 the pressures of all the people you have to deal with.

11 It's like designing a town with committees. However,
12 let's go directly or specifically to -- Ms. Miller
13 seems to be focusing quite heavily on the lot
14 occupancy of which quite a few don't meet the lot
15 occupancy. And it would be 40 percent and some of
16 them, the area also might not be compliant.

17 Now, first of all, these are all going to
18 be individually platted. Is that correct?

19 MR. COLLINS: That's correct.

20 CHAIRPERSON GRIFFIS: So these are going
21 to be fee simple sales, all of these townhouses?

22 MR. COLLINS: That's correct.

23 CHAIRPERSON GRIFFIS: All right. All of
24 the lots don't connect. Who owns the common space?

25 MR. COLLINS: It will be owned by a

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1 homeowners association that will be established for
2 this 22.5 acre parcel.

3 CHAIRPERSON GRIFFIS: All right. So maybe
4 directly to answer the lot occupancy question of Ms.
5 Miller is could you not or what is precluding you from
6 expanding some of those lots and see, I can't really
7 tell which ones you focused on that are compliant or
8 not compliant, but is there a way to expand the actual
9 physical lots without diminishing or subtracting the
10 number of townhouse and why not?

11 MR. COLLINS: Well, we certainly perhaps
12 could do that in a number of situations.

13 CHAIRPERSON GRIFFIS: Well, don't say
14 that, because then we're done here, because you ought
15 to go out and do it.

16 MR. COLLINS: No, but you get into --

17 CHAIRPERSON GRIFFIS: Actually, your
18 engineer shook his head, so he may have an engineering
19 answer to it.

20 MR. OLIVER: Yes. If you look at starting
21 at Fort Lincoln Drive at the top and you go all the
22 way down to the Silverbrooks down towards South Dakota
23 Avenue, the lots go straight to the street. You have
24 got the 25 foot street width, which is the minimum
25 private street that the Fire Marshall and those guys

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1 want to have.

2 CHAIRPERSON GRIFFIS: Actually, let me
3 stop you. Where does your counting start?

4 MR. OLIVER: Starting here.

5 CHAIRPERSON GRIFFIS: No, I'm sorry. On
6 your matrix, Lot 1. Show me where Lot 1 is and show
7 me where Lot 209 is. Okay. So 1 is up there. So
8 you're saying most of the ones in the first row of
9 which would probably be 5, 10, 15, 20, 25, 30, let's
10 say up to 35. Yes, most of them bust the lot
11 occupancy, don't they? And you're saying --

12 MR. OLIVER: If I have to provide the
13 front yard or lot occupancy, it basically pushes --

14 CHAIRPERSON GRIFFIS: Well, you have put
15 the road there. Why is the road there?

16 MR. OLIVER: I have got to have this
17 design here because of the soils and the severely
18 sloped side here, and we basically are separating the
19 site into two areas. Are you picking me up all right?

20 CHAIRPERSON GRIFFIS: I don't know. He'll
21 stop if you're not.

22 MR. OLIVER: Okay. So, basically, what
23 that would do would be push the road down, this next
24 lot down, this next lot down.

25 CHAIRPERSON GRIFFIS: So the road can't

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1 because, first of all, the level grade that you're
2 going to have to create that road, the amount of
3 pressure you're going to put on that and then in order
4 to get a platform for the houses themselves.

5 MR. OLIVER: And soil conditions.

6 CHAIRPERSON GRIFFIS: All this you're
7 dropping so fast, that's where the road has to go?

8 MR. OLIVER: Right. You have got to look
9 at the site in totality.

10 CHAIRPERSON GRIFFIS: Okay. What is the
11 lot occupancy up there?

12 MR. OLIVER: You can't look at on an
13 individual lot basis.

14 CHAIRPERSON GRIFFIS: Well, okay. Now,
15 each of these, and this is the complication of looking
16 at it overall as the occupancy of a total site, all as
17 one or individual. What they are talking about with
18 the lot occupancy, and maybe I'm mistaken here, the
19 lot occupancy, we have to look at each individual lot.

20 Lot 2, point to Lot 2, has a lot occupancy of .58,
21 meaning 58 percent lot occupancy. Lot 1 is coming in
22 at 39. That one's doing okay. It's pretty swell.

23 MR. OLIVER: Lot 2 is an interior unit.

24 CHAIRPERSON GRIFFIS: Yes, we're going to
25 move on from that. So the point is is look at that

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1 top row, each individual one of those. Let's just
2 assume they all are busting lot occupancy. It's not
3 the accumulation of them. That house is sitting on
4 more than 40 percent of that specific site, of that
5 specific lot. Do you see those light lines between
6 each of them? You have got to be clear or we're not
7 going on.

8 VICE CHAIR MILLER: All right. I'm going
9 to ask this last question then and then you can
10 educate me. If they are in clusters of, say, five
11 townhouses or so, okay, if you took one townhouse away
12 and you had four townhouses in a cluster and you
13 spread them out over the green space, would you get
14 rid of the lot occupancy problems?

15 MR. OLIVER: No.

16 VICE CHAIR MILLER: No?

17 MR. OLIVER: Again, you want to increase
18 the lot lines this way and even if you take the one
19 lot out, you then go down to sticks of three, which
20 make it even more harder to build. You don't
21 typically build sticks of townhouses in two or three.
22 It's not economical. The other thing you're doing is
23 you really want to increase the lot this way to pick
24 up that area. So basically, you're forcing this whole
25 thing down the hill.

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1 So that's why we want to look at the site
2 in totality from an engineering layout standpoint,
3 because everything affects everything else and you
4 also have this severe topography, and you have got the
5 underlying marine clays and you have got to be able to
6 take the soil off the top and add to the bottom. So
7 you have got to do the whole grading operation of the
8 whole site at once. You're not going to come in and
9 just do a couple of units and build a couple of units.
10 You're going to want to grade this whole thing at
11 once.

12 COMMISSIONER HOOD: Mr. Chairman, if you
13 all are finished, I have a few questions I want to
14 ask. Are you done?

15 CHAIRPERSON GRIFFIS: Yes, go ahead.

16 COMMISSIONER HOOD: Okay. I'm almost
17 ashamed to ask this question. Can you help me with
18 the orientation? And the reason I'm asking is because
19 the Zoning Commission approved two PUDs, and I'm
20 trying to see within relationship to this project
21 where the 92 single-family homes were or are and also
22 where the Premium Distributors are. Just even if it's
23 off the board.

24 MS. HAGANS: Maybe you can get it -- yes,
25 you're not going to get it on this.

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1 UNIDENTIFIED SPEAKER: It should be in
2 your aerial.

3 COMMISSIONER HOOD: When I looked at --

4 MS. HAGANS: In the aerial.

5 COMMISSIONER HOOD: Unfortunately, even
6 though I have orienteering merit badges, just point to
7 me on that. Just show me even though it's off the
8 board. Just show me.

9 MS. HAGANS: This is 33rd.

10 COMMISSIONER HOOD: Okay.

11 MS. HAGANS: You come all the way up here.
12 Premium is way up here, because your ramps are
13 coming. Well, his arms are longer.

14 COMMISSIONER HOOD: I got you.

15 MS. HAGANS: It's way up here.

16 COMMISSIONER HOOD: Okay.

17 MS. HAGANS: And then on the other side of
18 Fort Lincoln Drive, this side, on the other side,
19 single-family.

20 COMMISSIONER HOOD: Single-family. Okay.

21 Let me just say the design as far as the interior,
22 the roads which are within the project, I do like.
23 Mr. Chair, I know there are some other issues, but I
24 do like the way it appears.

25 My other issue is there is a letter in the

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1 packet and I'm going to ask Mr. DePuy. There is a
2 letter in the packet from the Department of Employment
3 Services, which is stating that this applicant has not
4 entered into a DOES agreement, and I thought that was
5 only in a PUD. This is a special exception and a
6 variance. Is that now the case? Do they have to
7 enter into this?

8 MR. DEPUY: The answer to that is there is
9 a paper street that runs through this site that we are
10 in the process of closing and in connection with the
11 closing of that paper street, we need to do that
12 agreement, which we will.

13 COMMISSIONER HOOD: Okay.

14 CHAIRPERSON GRIFFIS: Mr. Mann? He has
15 one follow-up question on that.

16 COMMISSIONER HOOD: Oh, okay.

17 BOARD MEMBER MANN: Regarding that street
18 closure and I think you perhaps answered the first
19 part of my question, you are required to submit that
20 street closure to the city. Is that correct?

21 MR. DEPUY: That's correct and that is in
22 process right now.

23 BOARD MEMBER MANN: Okay. And regarding
24 the proposed streets, are those going to remain
25 privately owned streets?

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1 MR. DEPUY: Yes, but built to D.C.
2 standards.

3 BOARD MEMBER MANN: Okay. Well, I do have
4 some other questions if Mr. Hood is done.

5 CHAIRPERSON GRIFFIS: Okay. Let's go back
6 to Mr. Hood's question.

7 COMMISSIONER HOOD: Actually, I'm hoping
8 that someone can just nod their head if that's
9 permissible for the record. It's a traffic question.
10 I don't think I really need to have the traffic
11 consultant come to the table, but my concern or my
12 question is in the analysis, did they also include,
13 even though I know Premium is way off to the right,
14 but did they include the 92 single-family homes when
15 you did the analysis? And Mr. DePuy, I will look to
16 you, if you can get the answer. That way we won't
17 have to --

18 MR. DEPUY: I can say this, Mr. Hood, that
19 before the traffic study was commissioned, the
20 consultant met with DOT to ask for an appropriate
21 range of intersections and area to be studied. Now,
22 we would have to call the traffic engineer to identify
23 exact ones, but I know that DOT determined,
24 essentially, what that perimeter was.

25 COMMISSIONER HOOD: Okay. That satisfies

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1 my answer. Thank you, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Certainly. Mr.
3 Mann?

4 BOARD MEMBER MANN: As you're quite aware,
5 this project is going to be submitted to the National
6 Capital Planning Commission under section 5 of the
7 National Capital Planning Act.

8 MR. DEPUY: That's correct.

9 BOARD MEMBER MANN: And under section 410
10 of the Fort Lincoln Urban Renewal Plan. So the
11 possibility remains, and I suppose this is perhaps no
12 different than cases, for example, that have to go to,
13 I don't know, the Historic Preservation Review Board.

14 The possibility remains that the plans could change
15 based on the reaction or the action taken by National
16 Capital Planning Commission in which case then the
17 computations could, in theory, change as well,
18 correct?

19 MR. PROSS: Well, I don't believe that
20 would be the case in that the plan was very carefully
21 developed to be in accord with what has been approved
22 for the Urban Renewal Plan for this area by the
23 National Capital Planning Commission. One thing I
24 would point out is that in the new town development,
25 the overall new town development, there is, you could

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1 say, a limited amount of property to achieve a very
2 large goal of creating a new town. And what appears
3 when you look at it on papers is something that's
4 highly dense, I think if you looked at it from the
5 street level standpoint, if you walked, if you could
6 kind of make yourself a quarter of inch and walk the
7 street --

8 CHAIRPERSON GRIFFIS: I think I understand
9 what you're saying, but I think we ought to be very
10 clear. First of all, this isn't a PUD. We don't
11 process PUDs, so we're not really getting into like
12 the design feel of it.

13 MR. PROSS: Yes.

14 CHAIRPERSON GRIFFIS: How is it working
15 with everything else. We're going to the boring
16 technicalities.

17 MR. PROSS: Yes.

18 CHAIRPERSON GRIFFIS: You know, we got 58
19 percent lot occupancy on Lot 27. How come? What is
20 unique? What is the practical difficulty? Well,
21 these are simple things we can move on very quickly.
22 So we're struggling with more technicalities to make
23 sure.

24 First of all, everyone has a full
25 understanding of what we're looking at, because this

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1 is complicated in terms of, you know, how much space
2 and then how many units all at once. Boy, it would be
3 worse, I guess, if they brought individual
4 applications on 208, right?

5 But nonetheless, just trying to get all
6 this together to make sure that the requirements for
7 the test are there. So, you know, from my opinion, I
8 mean, Mr. Hood has given his design opinion, which I
9 think is excellent that he likes the interior roads.
10 I don't, but that's not going to harm you in terms of
11 processing the application and also in terms of I
12 don't feel that any of the comments coming out from
13 the Board are directly saying we don't have a density
14 problem here. In fact, you keep saying suburban,
15 suburban, which is, you know, whether that's positive
16 or negative I'm not clear on yet. The issue is how
17 each of these are setting and what's the actual area
18 variance that's required.

19 So that being said, other questions,
20 clarifications?

21 BOARD MEMBER MANN: If I could just
22 clarify one thing.

23 CHAIRPERSON GRIFFIS: Sure.

24 BOARD MEMBER MANN: The proposal before
25 us, is it more restrictive than section 500 of the

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1 Fort Lincoln Urban Renewal Plan, the requirements of
2 section 500? Section 500 sets things like number of
3 dwelling units or lot occupancy, density and floor
4 area ratio. If it's more restrictive, then that would
5 partially answer the question that I asked before
6 about whether or not you run the risk of meeting the
7 requirements of the Act before it has been approved by
8 NCPC.

9 MR. PROSS: Within those areas designated
10 as residential within the plan it says, approximately,
11 3,000 dwelling units shall be achieved. So I think
12 the numbers were given. You gave the numbers before.
13 Maybe you could --

14 MR. COLLINS: It is in compliance with the
15 plan.

16 BOARD MEMBER MANN: For example, under
17 section -- well, let me rephrase that. I wonder if
18 all of those proposed units meet the lot occupancy
19 requirements of the Urban Renewal Plan, but that's not
20 information that has been entered into the record, so
21 I don't know that we can go to that.

22 UNIDENTIFIED SPEAKER: Frankly, without
23 further review, I can't answer the question. I'm
24 sorry.

25 MR. COLLINS: Mr. Mann, I'm not sure that,

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1 at this point in time talking to Ms. Hagans, that
2 there are those type of individual constraints or
3 restrictions within the plan.

4 BOARD MEMBER MANN: Within the Urban
5 Renewal Plan?

6 MR. COLLINS: Yes.

7 BOARD MEMBER MANN: There are.

8 MR. COLLINS: In terms of when you say lot
9 occupancy, variance? I guess it's a master plan. Is
10 that what you're saying in that regard?

11 BOARD MEMBER MANN: No.

12 MR. COLLINS: No? Okay. Can I see that
13 for a second?

14 CHAIRPERSON GRIFFIS: Okay. In the
15 interest of time, well, also in the fact of what the
16 recorder was shouting at was to turn your microphone
17 on, so he could record what you said and what you said
18 without further review, you couldn't fully answer that
19 question. So we're going to give you time to do a
20 full review of whether this project actually comes in
21 compliance with the Urban Renewal Plan. We can have
22 that submitted in.

23 Let's focus back on what I think Ms.
24 Miller was getting us started on. FAR, the allowable
25 FAR in the R-5 Zone is .9. Going down most of these,

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1 I can't find one yet that's .9. All right. So we
2 have got some .8s the majority of which break FAR.

3 Who wants to answer, essentially, the
4 unique characteristics that go to the reasoning, the
5 practical difficulty of not being able to comply? And
6 then I don't think we need to touch the second and
7 third in terms of does it tend to impair intent and
8 integrity of the Zone Plan or go against the public
9 good, because really, I mean, obviously, we have to
10 get there first, but I think overall in all of these
11 the case has been sufficiently made in the fact that
12 the overall, looking at the overall site, clearly it
13 doesn't impair the intent and integrity of the Zone
14 Plan, because it fits well within what the Zone Plan
15 is and the Comprehensive Plan and all that.

16 So with that, let's start with FAR.

17 MR. DEPUY: With respect to FAR, Mr.
18 Chairman, Members of the Board, the FAR numbers are
19 driven by the topography or the soil condition, by the
20 tree preservation and by the interior street layout,
21 which forces the dwelling units to be located in the
22 center of the site, and that means that the dwelling
23 units occupy a larger percentage of individual sites
24 in some instances than would otherwise be allowed.

25 CHAIRPERSON GRIFFIS: So if I follow you,

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1 based on the topography and the layout and the area of
2 which you can build, it all starts with that. Then
3 that creates a lot, an individual lot that is small
4 and, therefore, the smallness of that lot as it fits
5 into this topography. Then obviously, it goes above
6 the prescribed lot occupancy. Going above the
7 prescribed lot occupancy, the small area, small lot
8 size, is obviously going to increase your FAR.

9 MR. DEPUY: That's correct.

10 CHAIRPERSON GRIFFIS: Okay. So just like
11 this site, all of these are kind of falling downhill
12 together. No, that's a bad analogy, isn't it, because
13 I didn't get a rise out of anybody. But nonetheless,
14 okay, I think, I understand. Ms. Miller, follow-up?

15 VICE CHAIR MILLER: No, it's the same
16 question and I don't think I'll ask it one more time
17 after this, but understand that the conditions of the
18 soil force all these units to be constructed around
19 certain roads, etcetera, and a certain part of the
20 property. My only question is why can't there be
21 fewer bigger lots? What's magic about this 209, you
22 know? Would that get rid of the FAR and the lot
23 occupancy problem?

24 MR. OLIVER: I guess I can't address the
25 number of lots, but I can address the orientation of

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1 the lots. Where, again, as if we increase the lot
2 area in order to meet FAR lot occupancy or variance
3 from the rear, again, it's going to push the lot line,
4 which will push the street, basically, push this whole
5 section down to here. So instead of this lot ending
6 here, it is going to end up down here. It's basically
7 going to push this down the site, and again, you've
8 got to understand that the topography disappears,
9 topography and the soil conditions.

10 If I do that, the regrading of the site
11 will have to be analyzed, the soil conditions, and we
12 have done this layout eight or nine times and we've
13 gone through this site to come up with the layout.
14 Because as soon as you start shifting the units and
15 regrading them, you've got to look at the soils and
16 you've got to do the slope stability analysis again.
17 So we have done that, like I said, seven or eight
18 times to come up with this configuration.

19 And again, because of the lots touching
20 the streets, the streets touch the lot, and the lot
21 touches the back of the lot, all these lots would
22 eventually get pushed down the hill and have to get
23 dispersed out into these tree save areas we would like
24 to do. But really you need to look at the whole site
25 in totality and I realize you guys need to focus on

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1 each individual lot, but from a planning standpoint,
2 you have to look at the whole site together. The
3 topography, the soils, the open space, where the road
4 access points are.

5 You really need to look at the whole
6 picture and not try and -- I understand what you're
7 doing, but you can't really focus on each individual
8 lot.

9 CHAIRPERSON GRIFFIS: Right. Well, we
10 actually look at --

11 MR. OLIVER: Right.

12 CHAIRPERSON GRIFFIS: Okay. While you're
13 there, as you're talking about this whole planning
14 aspect of it, so what's the first step? You set up a
15 prototype of a level lot size, let's say. I'm not
16 saying you did this, but walk through this
17 hypothetically, because that seems to, as you study
18 this site and how it might grade out and all, you
19 start trying to regulate your lots. Is that correct?

20 MR. OLIVER: No, we looked at access to
21 the site first.

22 CHAIRPERSON GRIFFIS: Yes, okay. Right.

23 MR. OLIVER: I mean, you've got to that
24 step first.

25 CHAIRPERSON GRIFFIS: I understand.

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1 MR. OLIVER: You can't just go strictly
2 right to the lots.

3 CHAIRPERSON GRIFFIS: 20 and 22 feet
4 width, these lots.

5 MR. OLIVER: What's the question?

6 CHAIRPERSON GRIFFIS: What's the
7 prescribed lot width and lot area itself? Mr. DePuy?

8 MR. DEPUY: I can answer that question.
9 It's as prescribed by the BZA.

10 CHAIRPERSON GRIFFIS: Indeed. So you have
11 this great flexibility. It's not as if you went to a
12 table and said okay, we have to have 18 feet minimum,
13 1,800 square feet, so let's start with that. Let's
14 lay out these lots. Somehow you picked a regulating
15 standard and you picked 22 all the way through.

16 MR. OLIVER: Correct. That was market
17 rate through them.

18 CHAIRPERSON GRIFFIS: Okay. So you're
19 going on a width of the townhouse product that you're
20 trying to get. So and you start doing that and, you
21 know, so typically what's the dimension, the required
22 dimension in R-4 for a row dwelling? The Board has to
23 answer that, that's our court.

24 MR. OLIVER: Yes.

25 CHAIRPERSON GRIFFIS: 18 feet. So we're

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1 looking at something that is actually above the
2 standard, the minimum or the minimum for an R-4, which
3 is more typical of a row dwelling, right? So you're
4 looking, conceivably, you should have started with 18
5 and truly really try and cram these things in, right?

6 At 18 feet you're picking up 2 feet to 4 feet on
7 every lot as you're going all the way down. I won't
8 tell the developer you didn't do that to get them more
9 townhouses in this whole development. So rather, you
10 picked a larger dimension, but your depth isn't there.

11 Is that correct?

12 MR. OLIVER: Correct.

13 CHAIRPERSON GRIFFIS: I think I'm starting
14 to understand. Ms. Miller, follow-up?

15 VICE CHAIR MILLER: No, thank you.

16 CHAIRPERSON GRIFFIS: Okay. All right.
17 Any other clarifications, questions? Okay. We're
18 going to need to move on. Not that we have dispensed
19 with all the Board questions, because I guarantee you
20 haven't, but let's go to the Office of Planning,
21 unless there is anything else you want to present in
22 the case right now. Obviously, you're going to have
23 time for cross examination and any sort of closings.
24 Nothing further? Excellent. Thank you all very much
25 for entertaining our questions. Let's go to Mr.

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1 Lawson from the Office of Planning to present his
2 report.

3 MR. LAWSON: Thank you, Mr. Chair and
4 Members of the Board. My name is Joel Lawson and I'm
5 here representing the D.C. Office of Planning. This
6 application is for the development of a 22.5 acre
7 parcel of land in Ward 5, close to the border with
8 Prince George's County. The site is undeveloped and
9 heavily wooded with a grade change and it is within
10 the Fort Lincoln Urban Renewal area new town site.

11 The proposal involves a theoretical lot
12 subdivision for 209 townhouse units in clusters of
13 four to six each plus new private roads with land and
14 two tot lots. The property is zoned R-5-A, which
15 permits townhouse use, subject to BZA review. The
16 builder has chosen three housing unit types, each two-
17 story plus basement units with a garage access from
18 the front. Each unit would have a back yard and
19 optional year decks and additions. The market rate
20 units would balance existing subsidized housing in the
21 Fort Lincoln Urban Renewal area.

22 Essentially, the request for BZA review
23 and relief can be grouped into three categories. One
24 is the theoretical lot subdivision. The Zoning
25 Regulations provide that where proposed lots do not

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1 have frontage on a public street, a theoretical lot
2 subdivision is possible subject to BZA review of the
3 number of provisions. OP feels that the application
4 generally conforms to these provisions with the
5 exception of the front and rear yard requirements for
6 which variances are being requested.

7 Two, BZA special exception review of the
8 subdivision and lot creation itself. So any
9 regulations require BZA review of townhouse
10 developments in the R-5-A Zone District and special
11 exception review of any proposal involving more than
12 one principal building per lot as is proposed in this
13 application. OP also believes that a special
14 exception review of proposed lot area and lot width is
15 required as per section 401.3. The proposal generally
16 meets the special exception test related to the
17 creation of the subdivision.

18 DDOT, DCHD, the fire department, the D.C.
19 Public Schools have all indicated that the existing
20 facility's infrastructure in the area are adequate.
21 The proposed subdivision would result in lots that on
22 average are larger and wider than anticipated in this
23 zoned district. The form of development clusters of
24 townhouses facing a local street is common in the area
25 and would compliment surrounding development.

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1 Three, variances for individual lots. The
2 applicant has requested variance relief for a floor
3 area ratio for 193 of the 209 lots, lot occupancy for
4 139 of the 209 lots, rear yard for 53 and front yard
5 for 139 of the lots. It appears to OP that side yard
6 variance relief is also required for one lot. In all
7 development on 202 of the 209 lots requires at least
8 one variance. The applicant has provided variance
9 test analysis based on the proposed dwelling unit
10 types. OP believes, as stated in the report, that the
11 variance test must instead be for each individual lot,
12 although section 410.12 may permit the analysis to be
13 done on a cluster by cluster basis.

14 The applicant's analysis notes that the
15 development as a whole conforms to FAR lot occupancy
16 requirements, irregular topography creates unique
17 circumstances and hardship, although it appears to OP
18 that the amount of site disturbance shown in the site
19 sections also undermines this argument. Unstable soil
20 conditions result in the need for extensive regrading
21 of the site. Tree preservation initiatives limit land
22 available for private lots and the floor plan itself,
23 which restricts development options, is a system of
24 townhouses facing internal streets with private
25 garages is common.

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1 However, the analysis is similar for each
2 unit type and for each variance requested with only
3 minor variation for some unit types. This appears to
4 impede or undermine the uniqueness test. Rather, the
5 variances appear to be more the result of the unit
6 types chosen by the applicant, rather than particular
7 hardships or unique circumstances associated with
8 specific conditions on the individual lots, and that
9 the use of a limited number of standardized dwelling
10 units types results in units with limited adaptability
11 to the train and other constraints.

12 OP believes that the applicant has not
13 shown that there is an absence of a reasonable
14 alternative that conforms to regulations. Although,
15 OP concurs that the chosen form of development, family
16 sized units on lots sized and located to preserve
17 areas of woodland is both desirable and preferable.
18 OP's basic concern with this application is not with
19 the type or the density of development, but with the
20 ability of the variance process to acknowledge the
21 desirable features of the proposed development and the
22 objectives of the applicant.

23 OP is also concerned that without adequate
24 analysis of each individual lot, the review and
25 assessment of any future additions to individual units

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1 within the development would be complicated and costly
2 to homeowners, and that it would appear to require a
3 modification to the order which approved the original
4 development, a detailed analysis of all existing
5 development on the entire site and the approval of all
6 homeowners in the development.

7 In summary, OP supports the intent of this
8 proposal to provide relatively affordable for sale
9 single-family dwellings of the size and configuration
10 that would relate well to area development and
11 compliment current district housing stock. The
12 proposal is not inconsistent with the Comprehensive
13 Plan or the generalized Land Use Map. It generally
14 furthers the objectives of the floor plan, although
15 the OP has some concerns with the level of conformity
16 of the specific layout and design to a more detailed
17 floor regulations, which are largely outside the scope
18 of this BZA review.

19 OP believes that the application generally
20 meets the special exception test for the creation of
21 the theoretical lot subdivision. However, OP does not
22 feel that the applicant has adequately met the
23 necessary variance test. No other District agency has
24 indicated opposition to this proposal. Subsequent to
25 filing this report, OP received comments from the

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1 District Department of Transportation which notes
2 support for the proposed development, noting existing
3 streets can accommodate the increase in traffic and
4 that the parking is more than adequate. We have
5 copies of the DDOT report which I will distribute once
6 I am finished, which is very soon.

7 Should the BZA wish to consider approval
8 of the application as proposed, you may wish to
9 consider a condition requiring that the order be
10 attached to a privately registered covenant for each
11 lot created, so that each future owner is made aware
12 that Zoning Regulation requirements are based on the
13 development as a whole, rather than individual lots.
14 Upon viewing the site section today, the BZA may also
15 wish to add an additional condition, may also wish to
16 request additional information related to retaining
17 wall design, especially the large retaining wall along
18 South Dakota as well as adequate landscape screening
19 along the street side of that wall to soften its
20 proximity or to soften its potentially adverse visual
21 impacts on South Dakota Avenue.

22 This concludes the OP testimony and I'm
23 available for questions. Thank you.

24 CHAIRPERSON GRIFFIS: Great. A quick
25 question in terms of, which the applicant actually

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1 addressed early on, you were not in favor of the
2 potential of gating this community. Why is that?

3 MR. LAWSON: We feel that gating
4 communities in general is not a neighborly action, I
5 guess. It creates an enclave which separates the
6 development from the surrounding community and serves
7 to disjoint the development from the surrounding
8 developments. Generally, the proposal is intended to
9 fit in with surrounding development, rather than be
10 separate from surrounding development.

11 CHAIRPERSON GRIFFIS: Okay. And how do
12 you see this fitting in at this point with this
13 design?

14 MR. LAWSON: We feel that the basic
15 layout, the basic form of design, the basic form of
16 the layout of the subdivision itself, the lot layout,
17 the street layout is not contrary to how the rest of
18 the townhouse development in Fort Lincoln has already
19 occurred. There is townhouse development around it
20 and it is in this general pattern.

21 CHAIRPERSON GRIFFIS: And inwardly focused
22 and not adjacent.

23 MR. LAWSON: Exactly. That's correct.

24 CHAIRPERSON GRIFFIS: Interesting. Okay.
25 Other questions of the Office of Planning?

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1 VICE CHAIR MILLER: You state on page 11
2 "Although the application involves numerous variances,
3 these seem to be more the result of the chosen housing
4 types, then the lots they are intended to sit on."
5 Can you elaborate that? I mean, do you think there
6 are different types of houses they can choose that
7 they wouldn't need the variances?

8 MR. LAWSON: Well, it would seem to me
9 that that would be possible, and I'm simply saying
10 that because the lots themselves are relatively
11 regular, they are rectangular, they are of, on average
12 anyway, the size in terms of area, in terms of width
13 which is not particularly restrictive for lots of this
14 type of development, of the townhouse development. At
15 20 to 22 feet, that's not particularly small for a
16 townhouse.

17 At 16,000, too, I think, it's 37,000
18 square feet with an average of about 22. 3,700, not
19 37,000, square feet and an average of 2,200 square
20 feet the lots aren't unreasonably small for a
21 townhouse development. We certainly deal with many
22 areas of the city where the lots are much smaller than
23 that and you are generally required to conform to
24 regulations, particularly when it's a new development,
25 when it is new development on bare land.

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1 So the Office of Planning, while we
2 understand that the train is very difficult, the soils
3 create additional difficulty, the lots that are being
4 created as part of this subdivision themselves don't
5 seem to be particularly difficult. The variances
6 don't seem to result from the lots themselves.

7 VICE CHAIR MILLER: And my last question
8 is basically, am I correct in understanding that OP
9 finds that this is basically a good project, but it is
10 seeking approval in the wrong process, by means of
11 seeking variances instead of seeking a PUD?

12 MR. LAWSON: Well, I think the first thing
13 I would say is that the process that is being
14 established in the Zoning Regs appears to be
15 established specifically to allow this kind of
16 development, to allow this kind of a process for this
17 kind of development. As we mentioned in our report,
18 you know, a PUD like process or a PUD process through
19 the Zoning Commission would probably better be able to
20 take into account some of the desirable features that
21 they are proposing on the site, possibly better than
22 the process they have chosen.

23 Having said that, this process is
24 available and it is intended to address this kind of
25 development in this kind of zone. So it's not that we

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1 feel that the process that was chosen is
2 inappropriate, we just feel that it is difficult to
3 make the variance test through this process.

4 CHAIRPERSON GRIFFIS: Other questions?
5 Well said. Cross?

6 MR. DEPUY: Mr. Lawson, you used the word
7 hardship several times in summarizing the Office of
8 Planning's position. Is it your position that the
9 variance test for an area variance requires the
10 applicant to prove a hardship or a practical
11 difficulty?

12 MR. LAWSON: It's our testimony that the
13 applicant has to meet the three prong test in the
14 Zoning Regulations.

15 MR. DEPUY: And does that include as part
16 of its test hardship or practical difficulty?

17 MR. LAWSON: It includes the variance test
18 as listed in the Zoning Regulations.

19 MR. DEPUY: Okay. Is it the Office of
20 Planning's testimony that this project has proposed
21 too dense?

22 MR. LAWSON: No, we do not say that in our
23 report, and I didn't say that in our testimony. We
24 feel that the overall form of development is an
25 appropriate one.

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1 MR. DEPUY: Thank you. No further
2 questions.

3 CHAIRPERSON GRIFFIS: Very well. Let's go
4 to -- and thank you, Mr. Lawson, for the report.
5 Actually, I know the applicant has seen it and I know
6 the Board has it. It is extensive and the amount of
7 comparison analysis of all this and so it's very
8 useful in looking at the entire application. I'm
9 assuming that nobody else is here from the other
10 Government Agencies, Department of Employment
11 Services, Housing, Water, Schools or Transportation.
12 If I'm mistaken, they can come forward. If not, we're
13 just going to note for the record that all of those
14 have been received, unless the applicant has any
15 specific item that they want to address on any of
16 those reports?

17 MR. DEPUY: None, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Okay. And you have
19 Mr. Layden's report dated July 15? If not, it's
20 coming to you right now. The Board has just been
21 handed that also and so, quite frankly, we haven't
22 reviewed it and we'll put that into the record for
23 review. Okay. If there aren't any other Government
24 reports then to the application outside of those that
25 I have enumerated and that have already been

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1 submitted, let's go to the report of the ANC-5A. Is
2 the ANC representative here?

3 MR. KING: Yes.

4 CHAIRPERSON GRIFFIS: Excellent. If we
5 could give him a chair or some space? Good afternoon.

6 MR. KING: Thank you. Let me say good
7 afternoon, Mr. Chairman and Members of the Commission.

8 For the record my name is Robert King, ANC
9 Commissioner for Single-Member District 5A-12. I
10 believe you have a letter dated July 7, 2004 addressed
11 to Mrs. Kress, I believe, stating the great weight
12 position from ANC-5A.

13 CHAIRPERSON GRIFFIS: Absolutely. It's
14 Exhibit No. 23.

15 MR. KING: Mr. Chairman, do you want me to
16 read that into the record?

17 CHAIRPERSON GRIFFIS: However you want to
18 proceed. You can just take questions from the Board
19 or you can read it in.

20 MR. KING: Okay.

21 CHAIRPERSON GRIFFIS: Go ahead and read
22 it. It's short.

23 MR. KING: I'll just read it into this.
24 In reference to BZA Application No. 17192 at a duly
25 noted regular scheduled meeting of the Advisory

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1 Neighborhood Commission 5A monthly community meeting
2 held on June 23, 2004, eight members were present and
3 seven constituted a quorum. Commissioners present
4 voted unanimously to support the application of the
5 National Capital Revitalization Corporation for a
6 special exemption to construct 209 single-family
7 townhouses at Fort Lincoln.

8 Commissioner Robert King, ANC Commissioner
9 5A-12 be present for the Commission at the hearing on
10 July 20, 2004. If there are any further questions,
11 you may contact Norma Broadnax, Chairperson for ANC-
12 5A. Again, Mr. Chairman, I'm simply delighted to be
13 here this afternoon to bring our enthusiasm and
14 support for this project. I do want to note for the
15 record that in my Single-Member District on 6/16,
16 which was June 16, 2004, something very special
17 happened in Fort Lincoln after giving due notice to
18 all of the residents, including through mail-in or
19 those who were in the impacted area.

20 There were almost over 300 residents
21 responded to the Farragut Marshall Middle School and
22 that was just an awesome display of the community from
23 Fort Lincoln coming from the senior buildings, coming
24 from the 158 rental units up at Overlook, coming from
25 Banneker, coming from Apple Road, Hillside, Summit,

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1 you name it, they came from every part of Fort Lincoln
2 to attend that meeting in which they were presented
3 with these plans by Michele Hagans, a very fine
4 developer for Fort Lincoln, who spent over an hour and
5 a half just going through this presentation, getting
6 questions from the community.

7 It's so special to me because I'm probably
8 one of the longest tenure Commissioners in this city
9 having served for more than 18 years, so I've been
10 here a number of times and, of course, have a lot of
11 meetings in Fort Lincoln, but this was truly a special
12 meeting as we gathered there to vote our support for a
13 project that we've been waiting on for over 10 years.

14 The concept of this project is nothing new to Fort
15 Lincoln. The variance may have brought a different
16 change in, but we voted on this concept more than 10
17 years ago.

18 Fort Lincoln Development will remind this
19 Commission it's about 14 years behind schedule and we
20 are simply delighted to have the number one builder in
21 the country to come in to Fort Lincoln and be treated
22 to 22.6 acres and if we are satisfied with that, we
23 probably got another 14 acres to do on the other side
24 of Fort Lincoln, which will bring in over 400 units of
25 housing into Fort Lincoln, which is very much needed

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1 in the city to bring back this middle class base.

2 So I am just thrilled. I just can't wait,
3 Mr. Chairman, for you to come out and put your hard
4 hat on, for me to put mine on and have the Fort
5 Lincoln families come out and witness this great
6 development that is going to take place in Fort
7 Lincoln probably some time next month, because I'm
8 pretty sure it's not going to take you all long to
9 vote on this project.

10 The other thing I want to note, because I
11 have done all with Premium, who I'm just delighted to
12 have as a partner for Fort Lincoln. I appeared before
13 this Commission some time ago. In the short period,
14 Mr. Chairman and Commissioners, they had been there.
15 They have contributed more than \$30,000 through the
16 community foundation in support of that school. And,
17 of course, I'm asking Pulte Developers, Michele Hagans
18 already over the last 15 years has been gracious with
19 her donations, not just for the senior buildings, but
20 also as well as the school.

21 My position as ANC Commissioner is always
22 I want to start, one, when you come into Fort Lincoln
23 and build something, we're going to start with that
24 Department of Employment Service agreement, that talks
25 about every level from minority participation in this

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1 project, not nobody just sweeping up around the
2 houses. We want to be in on the ground floor starting
3 with Ward 5 and then as we finish solving the
4 unemployment rate in Ward 5, and then we reach around
5 to some of the other wards. That's what I'm charging
6 Pulte with.

7 From every inch of that development has
8 got to be minority participation, there has got to be
9 some training there. I'm also challenging Pulte, and
10 I hope that they will support what Premium is doing,
11 is to adopt that school. What I would like to see
12 Pulte do is to put in there a state of the art
13 computer lab, so that every child in Fort Lincoln
14 School can go into a state of the art lab and do
15 computer work in there. It's much needed not only in
16 Fort Lincoln, but all the schools around the city.

17 I noticed another part of the agreement,
18 but I want to go on record and make it very clear,
19 emphatically clear that I'm asking them to give until
20 it hurts and help this school and be a part of that
21 great effort that has been started by Michele Hagans
22 and also with Premier Development. And having said
23 that, again, I'm just simply delighted. I can't wait,
24 Mr. Chairman. I want all the Commission, I want all
25 of you all to join me. In another 60 days I'll be

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1 back here from the convention and hopefully you all
2 have been voted by the time we get back from the
3 convention in Boston and we can move on with this
4 project. Thank you so much.

5 CHAIRPERSON GRIFFIS: Good. Thank you
6 very much. And once in a while we don't mind offering
7 a platform for certain issues.

8 MR. KING: Thanks, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: I think the Board
10 would certainly be pleased to go down and see the
11 ground breaking on this, but I also know that there
12 are numerous neighborhoods that have been waiting
13 and 20 years for things to happen, mine being one of
14 them. So maybe we can urge up north, too.

15 MR. KING: All right.

16 CHAIRPERSON GRIFFIS: That being said, any
17 questions from the Board for the ANC member? Yes, Mr.
18 Hood?

19 COMMISSIONER HOOD: Mr. King, I want to
20 commend you on all the work that I know that you're
21 doing out in Fort Lincoln. There is one question I
22 want to ask you. If you can explain to me and the
23 Board the process? We know that the ANC took a vote
24 where they got the great weight of supporting the
25 project. But you mentioned a step before that when

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1 you had 300 residents. Were they able to vote? Did
2 you do a mini vote in your SMD?

3 MR. KING: Sure. We videotaped the
4 meeting. That's what is exciting about this, you
5 know, and after we finished with all of the
6 presentations and all of the questions, of course,
7 there were no extensions and no objections to the
8 project.

9 COMMISSIONER HOOD: So you had 300
10 residents?

11 MR. KING: Yes, sir.

12 COMMISSIONER HOOD: Okay. Good work.

13 MR. KING: Thank you.

14 CHAIRPERSON GRIFFIS: That is a monumental
15 day.

16 MR. KING: A great day for me.

17 CHAIRPERSON GRIFFIS: 300 District
18 residents all agreeing.

19 MR. KING: Yes, isn't that something?

20 CHAIRPERSON GRIFFIS: That's a hard
21 endeavor.

22 MR. KING: That's hard to do.

23 CHAIRPERSON GRIFFIS: That's hard to do.
24 That's hard to do in any neighborhood.

25 MR. KING: I had to look around myself,

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1 Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Exactly. Okay.

3 MR. KING: This is great.

4 CHAIRPERSON GRIFFIS: Anything else?

5 Follow-up?

6 COMMISSIONER HOOD: It's noted.

7 CHAIRPERSON GRIFFIS: There's a video.

8 COMMISSIONER HOOD: That should be noted.

9 CHAIRPERSON GRIFFIS: Cross examination of
10 the ANC?

11 MR. DEPUY: None, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Very well. Mr.
13 King, thank you very much.

14 MR. KING: Thank you.

15 CHAIRPERSON GRIFFIS: It's always good to
16 see great enthusiasm when people come down here.

17 MR. KING: Thank you, sir. I appreciate
18 it.

19 CHAIRPERSON GRIFFIS: I think Mr. Hood has
20 touched upon it well that you have done some great
21 organizing and some great support for this particular
22 part of it, but overall in the area.

23 MR. KING: Thank you, sir.

24 CHAIRPERSON GRIFFIS: So we definitely
25 applaud you for that. Okay. Let's move on then. Let

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1 me see just a show of hands of people that are here
2 attendant to this application to give testimony,
3 persons to give testimony? Just one?

4 PARTICIPANT: Two of us.

5 CHAIRPERSON GRIFFIS: Oh, I'm sorry, I
6 couldn't see the other behind that column. We're
7 going to do this. The Board has already had a long
8 day. We're going to just take a 10 minute break, so
9 why don't you come up. We're going to transition in.

10 We're going to set back and then after the person's
11 testimony, we will go to closing remarks and then
12 we'll move on to the next case. We'll be back in just
13 10 minutes.

14 (Whereupon, at 3:24 p.m. a recess until
15 3:40 p.m.)

16 CHAIRPERSON GRIFFIS: Very well. Let's
17 resume. We have two people that are going to give
18 testimony, excellent, this afternoon. Let me just say
19 as you start, I would ask that you state your name and
20 your address and also if you are testifying in support
21 or in opposition of the application. Persons
22 testifying before the Board of Zoning Adjustment are
23 afforded three minutes. We can turn on the timer and
24 it makes this horrible noise at three minutes, so I'm
25 not going to do that. There is a clock right behind

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1 you that I keep an eye on, so when I interrupt you,
2 just note that the three minutes is about up. So with
3 that, you choose whoever would like to start and let's
4 begin.

5 MS. STOKES: I'm Gloria Stokes.

6 CHAIRPERSON GRIFFIS: I just need you to
7 touch the button on the base there and we're all set.

8 MS. STOKES: I'm Gloria Stokes and I'm a
9 resident of Hillside Condominium at Fort Lincoln,
10 which is directly across from the proposed site, and I
11 would like to apologize, because this letter is
12 written to Ms. Mitten and not to you.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MS. STOKES: All right. I am forwarding
15 this correspondence for selected homeowners of the
16 Hillside Condominium located in the Fort Lincoln New
17 Town Development. We are asking your assistance in
18 support to have the developer rectify structural
19 conditions that have plagued residents since the
20 beginning. Hillside Condominium had insufficient
21 drainage installed in both the structures as well as
22 the common area when built. The Condominium Board has
23 been faced with hiring consultants and in caring calls
24 in an attempt to rectify builder related problems.
25 Problems still exist.

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1 To mention a few of the more egregious,
2 the following are: Units with balconies. Units with
3 balconies were enclosed to remedy the drainage of
4 water into units directly under them. This has failed
5 to solve the problem, because water drainage still
6 persists. The specific cause of the problem within
7 appropriate drainage system installed initially,
8 backyards. There was insufficient drainage installed
9 in the backyards and stagnant water remains in the
10 yards of several homeowners of which directly under
11 me.

12 See attached reports from the District of
13 Columbia Department of Health, Watershed, Protection
14 Division. The following homes located on 31st Place
15 did not have sufficient drains installed. 2863, 2865,
16 2885, 2887, 2859 and 2843. The perpetual problem has
17 affected the structure in 2843. Due to the softness
18 of the ground caused by stagnant water, the unit
19 settled and cracked. The foundation was jacked up,
20 but continues to sink. Moreover, a consultant from
21 Fairfax County indicated that if the problem was not
22 resolved, all units, 2843 through 2867, will be
23 affected due to the advanced settling of the
24 structure.

25 He also indicated that units located at

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1 ground level would eventually smell of mildew. Some
2 units are currently experiencing problems directly
3 related to the perpetual water problem of windows not
4 closing, door jams, termites and carpenter mites.
5 Other units affected by insufficient drainage are 2837
6 to 2841 and 2733 to 2737. The site inspection report
7 referenced earlier also indicated that yards do not
8 have a yard drain system to collect all runoff and
9 drain water into the existing drainage system.

10 Moreover, this condition is a health
11 hazard due to mosquitos breeding in the stagnant
12 water. Also, several of our units only have one exit.

13 All top units have only a front door exit an absolute
14 violation of code. This needs to be corrected. We
15 are asking the Zoning Board to deny Fort Lincoln New
16 Town Development permission to build new homes until
17 existing structural problems have been corrected.

18 Our concern is that we are directly across
19 from the proposed site. We have all kind of grading
20 problems that have resulted in the draining problem
21 and appropriate drains have not been installed. Now,
22 we don't want to prevent the development and growth of
23 Fort Lincoln, but we feel that the developers should
24 work with the existing homeowners to rectify the
25 problems, because all of our condominium fees have

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1 gone into building retaining walls. We have already
2 constructed one. We have to construct another one.
3 We cannot afford to put in all of the drainage that we
4 have to do, and if they explain the grading and have
5 the topography of the land here, we can speak from an
6 actual living problem of dealing with water drainage
7 and all that goes along with it.

8 We have retaining walls, we have steps
9 that we go up, some go on ground level, some go up,
10 and our erosion is a problem. It is a serious problem
11 that needs to be addressed.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much. We appreciate that. Of course, you
14 have submitted in your written testimony, so we have
15 it into the record. Attached also to this, I believe,
16 it is on my copy anyway.

17 MS. STOKES: Is the report.

18 CHAIRPERSON GRIFFIS: Is the Government
19 issued Department of Health letter and also the
20 Environmental Health Administrative Bureau and this is
21 the Government reports that you were evidencing. Is
22 that correct?

23 MS. STOKES: And 69 homeowners that signed
24 to show that they want the situations rectified.

25 CHAIRPERSON GRIFFIS: Right. And you say

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1 you are directly across from this. Do you have any
2 concerns about this development in terms of it
3 bringing in storm water management?

4 MS. STOKES: Well, we tried to address
5 this issue at the meeting that was held at the school
6 and we were told that it was not a drainage problem
7 and there was not a water problem, that it was because
8 our condominium management had not maintained the
9 problem. So we were not even allowed to present the
10 letter from the D.C. Government.

11 CHAIRPERSON GRIFFIS: Okay. But your
12 understanding and perhaps just from what you have seen
13 today and the discussion and testimony in terms of the
14 grading, do you see difficulty or do you see any
15 problems that might be associated with this site,
16 based on the knowledge that you have of our site or
17 based on any sort of grading or water runoff that
18 might be associated or might impact your site?

19 MS. STOKES: Oh, yes, that's our concern,
20 because water has no --

21 CHAIRPERSON GRIFFIS: How so? How would
22 the water drainage off of this site?

23 MS. STOKES: Well, appropriate drainages
24 have not been placed in our site.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. STOKES: So as they grade the property
2 and they put in their own drainage, there is no
3 guarantee that any excess water may not come over
4 where we are.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. STOKES: And we tried to express that
7 at the meeting and we were not allowed to really
8 discuss that.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. STOKES: And I feel that to be fair to
11 the existing homeowners that the existing developer
12 and her limited partner should work with the
13 homeowners that are experiencing problems today. And
14 I've lived in Fort Lincoln for --

15 CHAIRPERSON GRIFFIS: And what are the
16 similar partners in this development and in your
17 development?

18 MS. STOKES: I don't know who her
19 developers were.

20 CHAIRPERSON GRIFFIS: Who is her?

21 MS. STOKES: Ms. Hagans. I'm not sure who
22 the developers were. Her limited partners or who
23 actually developed the property. We just merely
24 bought it. And one of the problems that has occurred
25 is that while the meeting had 300 people, there were a

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1 lot of seniors.

2 CHAIRPERSON GRIFFIS: Yes, I know, yes.

3 MS. STOKES: And a lot of renters.

4 CHAIRPERSON GRIFFIS: Right.

5 MS. STOKES: And it's the homeowners that
6 are experiencing the --

7 CHAIRPERSON GRIFFIS: Okay. Let me just
8 interrupt you, because --

9 MS. STOKES: My time is up.

10 CHAIRPERSON GRIFFIS: No, no, no. It's
11 not the time. Your time is up, but now it's my time.

12 The issue, I know meetings, believe me, we've all
13 been to community meetings. And we have no
14 jurisdiction of whether it was done, correctly done,
15 not done. I think we note the point that came out of
16 it and some of the aspects of it. But what we need to
17 do is get directly into it. First of all, let me be
18 straight with you. We have absolutely no jurisdiction
19 over the issues that are attendant to your property.

20 I mean, you just read your letter and I
21 empathize with the fact of your asking our assistance.

22 We have no assistance to give, because we have no
23 power over figuring out what is happening across the
24 street. When an application comes to us, it is
25 exactly that, a snapshot of the application. Our

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1 purview, our jurisdiction is defined within the
2 property lines of what we're showing here.

3 So that being said, I think what I was
4 trying to elicit is more of, from your understanding
5 of your specific property, what can you tell us that
6 we should look at in this property or what kind of
7 impacts might there be from the development of this
8 parcel to yours? And you have given me that in terms
9 of, obviously, there is water management problems that
10 may just be from the roof runoff. It may be storm
11 water.

12 MS. STOKES: No, it's not roof water.

13 CHAIRPERSON GRIFFIS: Well, water is
14 coming from somewhere.

15 MS. STOKES: The water is coming from the
16 lack of drainage. If you read the report from the
17 Department of Human Resources.

18 CHAIRPERSON GRIFFIS: No grade drainage?

19 MS. STOKES: They have -- drainages were
20 not installed in the yard. The topography is very
21 hilly.

22 CHAIRPERSON GRIFFIS: Right. I
23 understand.

24 MS. STOKES: As you come up. There is a
25 park above where we live, so water drains off from the

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1 park.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. STOKES: And then it drains down into
4 our community. Now, I'm not an engineer and I don't
5 know how they are grading theirs, but if it's graded
6 similar to ours, I can project that those homeowners
7 will eventually have the same problem that we have.
8 Our retaining wall never had enough drainage put in
9 it, so as the water ran off, then it corroded the
10 drainage wall, so we've had to replace one and we are
11 in the process of replacing another.

12 But once the homeowners and the management
13 company assumes the responsibility, then it becomes
14 our responsibility.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. STOKES: And it can be very costly and
17 expensive.

18 CHAIRPERSON GRIFFIS: I understand. So
19 clearly, the developers need to look specifically at
20 their Storm Water Management Plan and, one, the grade
21 that they have put in and how they actually deal with
22 the storm water management on this site. I think
23 that's excellently said. Thank you.

24 MS. STOKES: Okay.

25 CHAIRPERSON GRIFFIS: Yes, ma'am?

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1 MS. PIERCE: Hi, my name is Hattie Pierce.
2 I live at 2061 31st Place, N.E., and Ms. Stokes has
3 just explained to you most of the things that I would
4 have said, except for -- well, she did say that I'm
5 happy to see the development coming to our site, and I
6 think it would be an asset to us. But I think the
7 existing problems we have need to be corrected first.
8 So you're saying you don't have the authority to go
9 into it, so can you give us some input on where we do
10 go?

11 CHAIRPERSON GRIFFIS: Anybody? We've got
12 enough lawyers in this room, we ought to get an answer
13 for that.

14 MS. STOKES: And then you are -- that's
15 why we wanted to be a part of this, because you all
16 give the permission and to whatever it is to give the
17 zoning rights for them to do that.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. STOKES: So we need to have it in the
20 record that we came here, even for the future
21 homeowners.

22 CHAIRPERSON GRIFFIS: I think it is DCRA.
23 And I appreciate that and certainly you are on the
24 record in terms of that. I'm a little bit sarcastic,
25 but I do want to give you direction. I don't want to

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1 give you, you know, direction that isn't correct.
2 First of all, some of the things that you brought up
3 are Building Code. How it got through permitting is
4 something that you would have to establish. I'm not
5 familiar at all with the specific issues, but DCRA
6 would probably be the first stop in looking at that
7 and whether they actually have their Storm Water
8 Management Plan approved and built correctly and such.

9 I'm not sure when it was built, how long
10 it has been there. Anybody else?

11 VICE CHAIR MILLER: If we're giving
12 general advice out here, I would just say that --

13 CHAIRPERSON GRIFFIS: Very general.

14 VICE CHAIR MILLER: -- Council Member
15 Carol Schwartz has oversight over Public Works and you
16 might contact her Constituents Services Office.

17 CHAIRPERSON GRIFFIS: Yes. Okay.

18 MS. PIERCE: Thank you.

19 CHAIRPERSON GRIFFIS: Thank you both very
20 much.

21 MS. STOKES: Thank you.

22 CHAIRPERSON GRIFFIS: Before you go, any
23 other questions from the Board?

24 COMMISSIONER HOOD: I would just also say
25 that you want to work with your local -- I'm always a

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1 grass roots person, you want to work with your local
2 ANCs and your civic associations. I would encourage
3 you to do that.

4 MS. PIERCE: Thank you.

5 CHAIRPERSON GRIFFIS: Anything else? Any
6 cross examination by the applicant?

7 MR. DEPUY: None.

8 CHAIRPERSON GRIFFIS: No cross. Thank you
9 very much, appreciate it. Okay. Let's get to last
10 questions of the applicant from the Board and also
11 closing. Good. The first question, of course, is
12 going to be how is your Storm Water Management Plan
13 coming? And while he is coming up here, am I correct
14 in assuming that that is something that would need to
15 be submitted as part of the permitting and review
16 process of DRCA?

17 MR. OLIVER: Again, this Kyle Oliver, I
18 would like to address the Storm Water Management.

19 CHAIRPERSON GRIFFIS: I want an answer to
20 that question first.

21 MR. OLIVER: Excuse me?

22 CHAIRPERSON GRIFFIS: Is this something
23 that would have to be --

24 MR. OLIVER: Absolutely, yes.

25 CHAIRPERSON GRIFFIS: Storm water

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1 management documented and reviewed by DCRA?

2 MR. OLIVER: DCRA.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. OLIVER: Through the Department of
5 Health, through Tim Cary, Cary's Office.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. OLIVER: We have actually done a
8 detailed study of the storm drain, the drainage on
9 this site, and the detailed BZA Site Plan in your
10 package shows the extensive storm drain that will --
11 storm drain system that will need to be implemented in
12 order to route all the water through the site, so we
13 don't have erosion control problems, so we don't have
14 retaining wall failure problems, all that water will
15 be drained down toward the cul-de-sac and treated and
16 detained in an underground storage facility down in
17 this area of the site. It will then drain to an
18 existing 66 inch storm drain that runs down South
19 Dakota Avenue. So we have done -- even though we are
20 in the preliminary stages of the design, you know, we
21 haven't started the final construction documents, we
22 have analyzed significantly the storm drain and the
23 implications that storm water would have on this site.

24 CHAIRPERSON GRIFFIS: Okay. And when you
25 started, I'm sorry, let me just get quick

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1 clarification, your opening statement you said on the
2 plan that was submitted. You are looking at the plan
3 that -- actually, these aren't. Sheet 1?

4 MR. OLIVER: Sheet 2.

5 CHAIRPERSON GRIFFIS: They are all site
6 plans?

7 MR. OLIVER: Sheet 2, detailed BZA Site
8 Plan.

9 CHAIRPERSON GRIFFIS: Okay. And what you
10 are saying is that there is actually the storage tank,
11 meaning you capture all of the water on this site and
12 rather than having it run off into the existing storm
13 water, the piping and all that or run out onto the
14 roads, you actually gather it all up, put it on site
15 and then it goes into that tank and then rationally
16 leaves the site?

17 MR. OLIVER: Absolutely.

18 CHAIRPERSON GRIFFIS: Okay. And it is
19 also filtered in that tank. Is that correct?

20 MR. OLIVER: Correct. So we're treating
21 quality and quantity in that tank.

22 CHAIRPERSON GRIFFIS: Okay. Mr. Hood?

23 COMMISSIONER HOOD: I was just going to
24 ask how often do you have to clean it and whose
25 responsibility is it going to be when it comes time to

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1 be cleaned?

2 MR. OLIVER: The Homeowners Association
3 will be responsible for maintenance of this facility.

4 COMMISSIONER HOOD: And they will know
5 that going in?

6 MR. OLIVER: Correct.

7 COMMISSIONER HOOD: And how often do you
8 have to clean it?

9 MR. OLIVER: It needs to be looked at once
10 a year to meet the requirements from Department of
11 Health, and then maintenance will be needed as needed.

12 COMMISSIONER HOOD: Okay. Thank you.

13 MR. OLIVER: Sure.

14 CHAIRPERSON GRIFFIS: Ms. Miller?

15 VICE CHAIR MILLER: I just have one
16 follow-up question to my dialogue with Office of
17 Planning, and that is can you tell the Board why you
18 are seeking special exception and variance relief as
19 opposed to approval through the PUD process?

20 MR. DEPUY: I think the answer to that is
21 very brief. The PUD process is normally requested by
22 developers when they seek an increase in density or a
23 change in use categories or other benefits that are
24 not allowed under the existing zoning category. In
25 this instance, this development is consistent with the

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1 R-5-A standards and there is no need for additional
2 height or change in use or any other benefits that
3 normally flow from the PUD.

4 In addition, in this instance, because
5 Fort Lincoln has a plan, the Fort Lincoln Urban
6 Renewal Plan, there is a planning context as well
7 which establishes building, parameters and building
8 development guidelines. So we had the requirements,
9 the goals, the objectives of that plan to guide the
10 development.

11 VICE CHAIR MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Any other questions
13 from the Board? Excellent. Mr. DePuy, it's all
14 yours.

15 MR. DEPUY: Thank you. I'll be brief with
16 our closing statement. First, the application is, as
17 the Board is aware, for two special exceptions and
18 area variances. The first special exception for
19 theoretical lots, we believe we have established those
20 standards and met those burdens. This is a
21 development which is, as the Planning Office
22 indicated, not too dense. It is appropriate. In
23 terms of the Comprehensive Plan, it's consistent with
24 the Fort Lincoln Urban Renewal Plan and we believe
25 satisfies the special exception standards.

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1 With respect to the R-5-A development
2 standard, similarly, it is in compliance with those
3 guidelines and requirements, except where the variance
4 is necessary. With respect to the variances, which,
5 of course, generated much of the discussion here
6 today, we believe that the site has very unique
7 conditions. It has an unusually steep topography,
8 steep slope. It has an unstable soil condition. It
9 has a developing pattern of interior streets, which is
10 mandated by the Fort Lincoln Urban Renewal Plan and
11 also consistent with other development within Fort
12 Lincoln.

13 Each of these conditions effects each and
14 every lot and dictates the Site Development Plan. I
15 would like to point out that the Planning Office
16 appears to be applying in its evaluation of the
17 request for variances the wrong standard. I asked the
18 Planning Office representative whether or not we were
19 dealing with hardship or practical difficulty, and I
20 noticed in reviewing the Planning Office report on
21 page 11, there is reference to, and I'll quote, "A
22 first step in any variance test would be the applicant
23 proving that there is an absence of reasonable
24 alternative."

25 That is not an area variance test. We do

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1 not need to prove that. That is a hardship test. We
2 simply need to prove that the unique conditions of the
3 site cause practical difficulty to the owner and that
4 granting of that relief is consistent with the -- not
5 inconsistent with the zone requirements and the Zone
6 Plan. We think we've established that and we have met
7 those burdens. So we would request the approval of
8 the application by the Board.

9 CHAIRPERSON GRIFFIS: Very well. Thank
10 you very much. Unless there is any last questions
11 that just came up in that closing, obviously, we wish
12 to set this for decision making. I think we can set
13 this for the 3rd of August. Now, we had held out for a
14 couple of small submissions, and that was just a quick
15 narrative in terms of the compliance of the Urban
16 Renewal Plan. I also had a note about looking at some
17 sort of plan that indicated the retaining wall
18 placement and perhaps the design and the materials of
19 the retaining wall.

20 I think it might be well worth showing,
21 not just on a two dimensional, but if you can, put it
22 into some sort of a topographical plan that might give
23 an indication of the size of the retaining walls and
24 the drop in grade, would be appropriate. Also, if you
25 want to embellish it further to overlay the drainage

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1 plan on that, obviously, they are going to be
2 coordinated, so that would probably be appropriate.
3 That's what I have in the list of submissions, unless
4 Board Members know of others.

5 Ms. Bailey, you had any other items?

6 MS. BAILEY: Mr. Chairman, I'm not sure if
7 the Board wants this, but there was discussion about
8 showing graphically where each lot is located, such
9 that it is readable.

10 CHAIRPERSON GRIFFIS: Oh, an interesting
11 point. I think we're okay with that, Board Members,
12 unless anyone wants that to be submitted. I think we
13 can kind of logically go through and count them down.

14 I was able to do some of that and I think the
15 absolute specifics wouldn't be needed. So unless
16 anyone would like that, I think we can move on. Did
17 you have anything else, Ms. Bailey?

18 MS. BAILEY: No, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much. Okay. Is that clear? Okay. And
21 that's possible to do before the 3rd? Ms. Bailey, when
22 would that need to be submitted by?

23 MS. BAILEY: Keeping in line with what we
24 did this morning.

25 CHAIRPERSON GRIFFIS: 3:00 on the 28th?

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1 MS. BAILEY: Certainly.

2 CHAIRPERSON GRIFFIS: Is that doable?
3 Okay. Excellent. Okay. So it's 3:00 on the 28th, of
4 course, it can come in any time before that, come into
5 the Office of Zoning and that will give us a
6 substantial amount of time to review it and move this
7 to decision making on the 3rd. Okay. Anything else
8 from the Board? Anything else from the applicant?
9 Questions, schedule, all clear? Very well. Thank you
10 very much.

11 MR. DEPUY: Thank you.

12 CHAIRPERSON GRIFFIS: I appreciate you
13 being down here this afternoon. Let's move on quickly
14 to the next application for the afternoon.

15 MS. BAILEY: Is there anyone who needs to
16 be sworn in for the next case who was not here
17 previously? Anybody else who needs to be sworn in?

18 CHAIRPERSON GRIFFIS: If any --

19 MS. BAILEY: I'm sorry.

20 CHAIRPERSON GRIFFIS: I'm sorry. Go
21 ahead.

22 (Whereupon, the witnesses were sworn.)

23 MS. BAILEY: Thank you. This is
24 Application No. 17197 of 1600 Fourteenth Street
25 Limited Partnership, pursuant to 11 DCMR 3103.2 and

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1 3104.1, for a variance to reduce the requirements to
2 provide residential recreation space under section
3 773, a special exception to reduce the requirement to
4 dedicate at least 50 percent of the ground floor to
5 service or retail uses under subsection 1901.1, and
6 under subsection 1901.6, a special exception from the
7 restrictions allowing more than 25 percent of the
8 retail frontage along 14th Street to be eating or
9 drinking establishments, and the special exception to
10 allow a roof structure whose walls would not be of
11 equal height or have all walls removed from the edge
12 of the building at a distance at least as great as the
13 height of that roof structure under sections 777 and
14 411, and a variance to allow the elevator shaft to
15 exceed the height of roof structures under subsection
16 1902.1(a). The site is located in the Arts/C-3-A
17 District at premises 1401 Q Street, N.W., and 1602
18 through 1604 14th Street, N.W., Square 208, Lots 11,
19 139, 800 and 801.

20 Mr. Chairman, to quick matters. One of
21 which is the applicant has withdrawn the request for
22 special exception for the restrictions allowing more
23 than 25 percent of the retail frontage along 14th
24 Street to be eating or drinking, and then secondly,
25 sir, there is a request for party status in opposition

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1 to the application.

2 CHAIRPERSON GRIFFIS: Indeed. It's the
3 thickest request for party status that I have seen in
4 my short time on the Board. Who is representing the
5 group that is assembling? Excellent. Okay. Good.
6 So you're here. Let me have the panel introduce
7 themselves. Yes, Mr. Patton?

8 MR. PATTON: Thank you, Mr. Chairman. My
9 name is Doug Patton, an attorney with Holland and
10 Knight. We will have three witnesses and perhaps a
11 fourth, Mr. Fred Bahrami, who is the applicant, Bill
12 Bonstra, who is the architect for the project, and Mr.
13 Lindsley Williams, to my immediate right, who is an
14 expert in zoning and land use practice.

15 CHAIRPERSON GRIFFIS: Okay. Before you
16 go --

17 MR. PATTON: We also may have Emily Eig if
18 she is required.

19 CHAIRPERSON GRIFFIS: Okay. Before you go
20 any further, we need to establish whether we have
21 parties in this case or not, of course. So Board
22 Members, actually, let me do this. How about I just
23 ask if you would make one chair available and one
24 mike, so that I can get answers to any questions that
25 the party, the application from the representative for

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1 party status would be, and if you wouldn't mind just
2 introducing yourself for the record.

3 MS. DOUGHTY: Yes, hello. My name is
4 Andrea Doughty and myself and Bonn Macy beside me back
5 here are representing the 20 property owners who filed
6 the request for party status.

7 CHAIRPERSON GRIFFIS: Okay. So everyone
8 listed on here is in opposition to the application.
9 Is that correct?

10 MS. DOUGHTY: Correct.

11 CHAIRPERSON GRIFFIS: And they all live
12 adjacent in the proximity of the property, and they
13 all are, in fact, of the same accord on the issues
14 that are laid out in terms of how properties would be
15 affected?

16 MS. DOUGHTY: Correct.

17 CHAIRPERSON GRIFFIS: Okay. And you will
18 be speaking on behalf of the party?

19 MS. DOUGHTY: Myself and also Mr. Macy
20 briefly. He has one aspect of the application that he
21 will be doing.

22 CHAIRPERSON GRIFFIS: Right. In your case
23 presentation you're going to call him as a witness,
24 but in terms of conducting cross examination, in terms
25 of me addressing the party, it will be to you. Is

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1 that correct?

2 MS. DOUGHTY: Correct.

3 CHAIRPERSON GRIFFIS: Okay. Mr. Patton,
4 any objections to granting party status?

5 MR. PATTON: Mr. Chairman, yes, just some
6 clarification as to the status of the 20 individuals.
7 It has to be an agreed party with a specific problem
8 in regards to both the special exception, as well as
9 the variance, and we would need testimony as to the
10 uniqueness of those particular individuals on the 20,
11 bring it to your attention.

12 CHAIRPERSON GRIFFIS: Okay. If I follow
13 your question, you need clarification on the fact of
14 how can 28 people be significantly, distinctly and
15 uniquely affected?

16 MR. PATTON: Well, in terms of the 20
17 individuals --

18 CHAIRPERSON GRIFFIS: Yes.

19 MR. PATTON: -- that are named as part of
20 the association, what is the uniqueness of all of
21 those 20 individuals, because they live in various
22 parts in proximity to the project. That's all I'm
23 addressing. This is in regards to previous standing
24 in other cases, because it would be very hard for us
25 on secondhand to cross examine these particular 20

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1 individuals.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. PATTON: As to their agreed status as
4 individuals.

5 CHAIRPERSON GRIFFIS: Right. And for
6 clarification, as we're looking at this we're not
7 looking at 28 people that have just decided to copy
8 the same application request and come in. I am
9 looking at one party request. That party, as it might
10 be identified, if we need to put an acronym to it,
11 will be identified, but it's one party request that we
12 have.

13 Now that is supported or joined by 20, 28,
14 however many individuals, they all attest to the fact
15 that these are their issues. If they all came in
16 individually, obviously, it would be very difficult
17 for them to say they were uniquely or distinctly
18 impacted. They would well, but it might be very
19 difficult for them to convince us that all of them
20 were so uniquely and distinctly to have individual
21 party status.

22 So I really look at this as one single
23 entity. So in terms of crossing all of these
24 individuals or not, that clearly will not be the case.

25 It will be one party in opposition presentation,

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1 witnesses of that presentation and then any sort of
2 rebuttal testimony.

3 MR. PATTON: That will be fine, Mr.
4 Chairman. I just want to illustrate or point out it
5 would be to those particular -- this particular
6 special exception, variance that we seek to be granted
7 in terms of how it affects these 20 individuals. Is
8 that correct?

9 CHAIRPERSON GRIFFIS: That's correct,
10 correct. And also for clarification and perhaps the
11 attorneys or the Attorney General will correct me, but
12 let's say in the worst case scenario an appeal was
13 wanted to be brought on this application. If it was,
14 it would have to be from a party in the case and that
15 would have to then have the concurrence of the entire
16 party and the members in order to bring an appeal. So
17 all of these assembled folks need to act as one, and
18 that's the way we're looking at it and that's the way
19 we're processing it. Okay. Very well.

20 Then with that understanding, Mr. Patton,
21 do you want to record your position on the request for
22 party status?

23 MR. PATTON: Some other clarifications
24 particularly in regards to -- there are certainly
25 individuals on that particular group that we just had

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1 questions about, if we could have those clarified.

2 CHAIRPERSON GRIFFIS: Of course.

3 MR. PATTON: One is a Louis Cipro who
4 gives his address as 1420 Q Street and on the records
5 we found him at 1426. So that's one clarification.

6 CHAIRPERSON GRIFFIS: You found him at
7 1426 not 1420 Q Street?

8 MR. PATTON: Right.

9 CHAIRPERSON GRIFFIS: Well, that's a
10 scandal.

11 MR. PATTON: All waiting to happen.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. DOUGHTY: That is a typographical
14 error.

15 CHAIRPERSON GRIFFIS: Too bad, we had the
16 news cameras here earlier. They would have enjoyed
17 that one. Others?

18 MR. PATTON: And then there is a Stephanie
19 Mencimer at 1415 Q Street and we don't have her shown
20 as an owner of record. Maybe that could be clarified.

21 CHAIRPERSON GRIFFIS: Okay.
22 Clarification. Is Ms. Mencimer an owner or a
23 resident?

24 MS. DOUGHTY: Yes, she is. Ms. Mencimer
25 is the owner of record of 1414 Q Street and she is

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1 also an owner of 1415 Q Street.

2 CHAIRPERSON GRIFFIS: Are these condos or
3 these are townhouses?

4 MS. DOUGHTY: These are two townhouses.
5 This is a couple of owners who bought one townhouse.

6 CHAIRPERSON GRIFFIS: Okay, okay. So, Mr.
7 Patton, you indicated that you couldn't find --

8 MR. PATTON: No, she wasn't on the real
9 estate records as an owner. Maybe for a marital
10 accord they should get that clarified.

11 CHAIRPERSON GRIFFIS: Maybe. I'm sorry.
12 I missed that.

13 MS. DOUGHTY: Quite often the tax records
14 mistakenly omit the owner.

15 CHAIRPERSON GRIFFIS: Well, what was
16 listed? Who was the owner listed that you found?

17 MR. PATTON: Eric Wemple, Eric Wemple, W-
18 E-M-P-L-E.

19 CHAIRPERSON GRIFFIS: A somewhat familiar
20 name.

21 MR. PATTON: Yes, I happen to know him.

22 CHAIRPERSON GRIFFIS: Okay. Are they
23 related?

24 MS. DOUGHTY: They are indeed husband and
25 wife.

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1 CHAIRPERSON GRIFFIS: Oh, well, that would
2 clarify it. Okay. Maybe Mr. Wemple wants to be
3 unlisted. Okay. Other things?

4 MR. PATTON: And the last name is Tony
5 Puesan and I think part of this is we withdrew one of
6 the items, and I think this is what he was directly
7 concerned with, was the eating and drinking
8 establishments.

9 CHAIRPERSON GRIFFIS: Okay. And he is the
10 owner of HR-57?

11 MR. PATTON: And I think he would have
12 agreed party status in this.

13 CHAIRPERSON GRIFFIS: Have you had a
14 direct conversation with Mr. Puesan?

15 MR. PATTON: And he is at 1610 14th Street.

16 CHAIRPERSON GRIFFIS: Right. And that's
17 the business establishment address. Is that correct?

18 MS. DOUGHTY: That's correct, but he lives
19 above that site.

20 CHAIRPERSON GRIFFIS: That's okay. Oh,
21 that's fabulous. That's a good urban model. Maybe we
22 should put that in the last application. You have
23 gone through as the application has changed, which,
24 you know, obviously, there were some fundamental
25 concerns about that. You have talked to each of these

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1 individuals and said you are still 100 percent
2 against, let's go for it?

3 MS. DOUGHTY: Yes. In fact, in response
4 to a request from the applicant, I contacted each and
5 every of the 20 property owners on last Thursday and
6 Friday.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. DOUGHTY: And just verified, you know,
9 went over with them the changes that had been made in
10 the application and verified with them that they
11 wished to proceed.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. DOUGHTY: Mr. Cipro, do you wish me to
14 clarify for the record? Mr. Cipro is at 1426 Q
15 Street. That is a typo on page 11.

16 CHAIRPERSON GRIFFIS: Yes, that's fine.
17 Okay. And Mr. Puesan is also staying, maintaining his
18 status as joining under this party? Yes?

19 MR. PATTON: In the final inquiry, Mr.
20 Chairman, in regards to Berret School, I think there
21 are four individuals or four residences named in that
22 as to residents of Berret School. I don't believe
23 there is any residential recreation space even in that
24 particular building, as one point, and also there is
25 no retail services frontage on that building as well.

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1 CHAIRPERSON GRIFFIS: I'm sorry, I didn't
2 follow that.

3 MR. PATTON: You got eight individuals or
4 eight property owners that are objecting to our
5 applicant's case on dealing with the special exception
6 and variance, and on that particular location there is
7 no evidence that they even have any residential
8 recreation space in their building.

9 CHAIRPERSON GRIFFIS: So you are saying
10 they don't have it.

11 MR. PATTON: Right.

12 CHAIRPERSON GRIFFIS: Why are they
13 opposing you from not having it?

14 MR. PATTON: Yes.

15 CHAIRPERSON GRIFFIS: I don't know. Does
16 that really rise to the level of party status?

17 MR. PATTON: I thought you would be
18 interested in noting that.

19 CHAIRPERSON GRIFFIS: It is fascinating,
20 actually. What's the address?

21 MR. PATTON: It's 1408 Q Street.

22 CHAIRPERSON GRIFFIS: 1408? Okay. And
23 that's a condominium building that's supposed to
24 have --

25 MR. PATTON: That may be one that slipped

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1 by the permitting process.

2 CHAIRPERSON GRIFFIS: That's interesting.

3 Did we process that, 1408 Q Street?

4 MS. DOUGHTY: Well, if I can point out,
5 that was a retrofit of a historic building and it
6 occurred back in 1999. There is only 12 units in that
7 building.

8 CHAIRPERSON GRIFFIS: Oh, yes.

9 MS. DOUGHTY: It's a three-story.

10 CHAIRPERSON GRIFFIS: When did the regs go
11 in?

12 MR. PATTON: I think, Mr. Chairman, it's
13 in the required time that they had to --

14 CHAIRPERSON GRIFFIS: Excuse me?

15 MR. PATTON: They had to conform to the
16 Zoning Regulations.

17 CHAIRPERSON GRIFFIS: Oh, yes, yes. '99
18 wouldn't kick them out and 12 units wouldn't kick them
19 out. All right. Well, on our spare time we'll go
20 investigate that one. Okay. Anything else?

21 MR. PATTON: That's it, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much. Board Members, comments? Do I hear
24 any opposition to granting party status? How are we
25 going to refer to the party? You don't want us to

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1 pick an acronym. We're horrible at doing that.

2 MS. DOUGHTY: I was going to say that I
3 will defer to the Board, but you could either refer to
4 the 20 property owners or you could refer to Q Street
5 Association if you wish.

6 CHAIRPERSON GRIFFIS: Okay. For clarity,
7 we'll call it Q Street Association. Of course, that
8 doesn't have any real bearing on whether everyone is
9 on Q Street or not.

10 MS. DOUGHTY: They are all members of Q
11 Street Association.

12 CHAIRPERSON GRIFFIS: Oh, I see.

13 MS. DOUGHTY: Irrespective of whether some
14 of those --

15 CHAIRPERSON GRIFFIS: Well, then that
16 makes sense. Okay. But Q Street Association actually
17 is an established association.

18 MS. DOUGHTY: Q Street Association has
19 been -- it's an unincorporated residents association
20 that has been in operation for seven years.

21 CHAIRPERSON GRIFFIS: Is there any
22 formality to it?

23 MS. DOUGHTY: There is a --

24 CHAIRPERSON GRIFFIS: Is there paperwork
25 or anything like that?

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1 MS. DOUGHTY: Oh, there is.

2 CHAIRPERSON GRIFFIS: Am I going to get
3 sued, because you used Q Street Association?

4 MS. DOUGHTY: No, no, sir, you are not.

5 CHAIRPERSON GRIFFIS: All right. Boy, we
6 could really belabor this for a long time. Ms.
7 Miller?

8 VICE CHAIR MILLER: No, I'm just wondering
9 if it's going to get mixed up with the real
10 association, that somebody's going to think that this
11 association has taken a position.

12 MS. DOUGHTY: This association is taking a
13 position.

14 CHAIRPERSON GRIFFIS: Done.

15 VICE CHAIR MILLER: Did you have a vote on
16 it, your association voted?

17 MS. DOUGHTY: Yes, indeed. You know, we
18 canvassed the members.

19 VICE CHAIR MILLER: Oh, so you are
20 reflecting your association?

21 MS. DOUGHTY: Yes.

22 VICE CHAIR MILLER: Okay.

23 MS. DOUGHTY: And these 20 property owners
24 coming forward are the ones within the 200 feet limit
25 set down under the Zoning Regulations.

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1 CHAIRPERSON GRIFFIS: Right, right, right.
2 Okay. But I don't want to get into this whole did
3 every association member join this and all this kind
4 of thing.

5 VICE CHAIR MILLER: No, I just --

6 MS. GLAZER: Mr. Chair?

7 CHAIRPERSON GRIFFIS: Yes?

8 VICE CHAIR MILLER: How many members in
9 the association?

10 MS. GLAZER: I'm sorry to interrupt, Mr.
11 Chair, but I think there needs to be some
12 clarification, because the written submission
13 requesting party status did not refer to an
14 association. It referred to individuals, so the Board
15 needs to clarify this issue before resolution.

16 MS. DOUGHTY: That's correct, and that was
17 in order to make this a simple matter of 20 property
18 owners stepping forward, requesting party status as a
19 group to say that they were affected and concerned by
20 this application. When the Chairman asked me what you
21 want to call us --

22 CHAIRPERSON GRIFFIS: Right, yes.

23 MS. DOUGHTY: It was simply just --

24 CHAIRPERSON GRIFFIS: Okay. We're going
25 to give you time. We don't need to name it right now.

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1 Right now you're the party in opposition. I don't
2 hear any objection. Mr. Patton, you haven't
3 registered a full objection. Is that correct?

4 MR. PATTON: Well, I'm just taking note of
5 it, because you have had many recent cases where you
6 get into confusing, as the corp counsel has pointed
7 out, on the status of associations, and I respectfully
8 say that you have to have some evidence of showing
9 that you are truly an association.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. PATTON: And thus an agreed party.

12 CHAIRPERSON GRIFFIS: Right. And we're
13 not accepting the Q Street Association as the party in
14 opposition. It's obviously those listed here and I'm
15 just trying to get a name, so we can do it.

16 MS. DOUGHTY: I suggest an alternative,
17 the Q Street Group.

18 CHAIRPERSON GRIFFIS: Q Group now
19 established. Excellent. Better get that copyright in
20 your email address. Okay. Comments, any opposition
21 from the Board? Very well. We'll take it as the
22 consensus of the Board that we can grant party status
23 to the Q Group in opposition. So thank you very much.

24 Have a seat and make yourself comfortable. Let's get
25 to the case presentation.

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1 MS. DOUGHTY: May I just bring one --

2 CHAIRPERSON GRIFFIS: Of course.

3 MS. DOUGHTY: -- matter to the attention
4 of the Board?

5 CHAIRPERSON GRIFFIS: Sure.

6 MS. DOUGHTY: Through circumstances that
7 we could not help, we have one of -- Mr. Macy has a
8 scheduling conflict at 5:00 p.m. I realize that this
9 is difficult, because we are already at 4:25. I don't
10 know what --

11 CHAIRPERSON GRIFFIS: Excellent. Let's
12 take an assessment, not a bad thing to do before we
13 jump right into it.

14 Mr. Patton, how much time do you need to
15 present your case?

16 MR. PATTON: Probably an hour.

17 CHAIRPERSON GRIFFIS: Really?

18 MR. PATTON: 45 minutes to an hour.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. PATTON: With questions.

21 CHAIRPERSON GRIFFIS: We're pretty smart.
22 We won't have a lot of questions.

23 MR. PATTON: I mean, I will try to speak
24 fast.

25 CHAIRPERSON GRIFFIS: Okay. All right.

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1 MR. PATTON: But I'm not going to be doing
2 the speaking.

3 CHAIRPERSON GRIFFIS: Right. No, no, no,
4 we're going to go. I'm sorry, 5:00?

5 MS. DOUGHTY: Right, but, you know, we
6 could -- after the applicant's hour, I could go on to
7 make my part of the presentation and then, you know,
8 perhaps we could pick up with Mr. Macy when we resume
9 this.

10 CHAIRPERSON GRIFFIS: We are going to try
11 our darn best not to resume this.

12 MS. DOUGHTY: I realize.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. DOUGHTY: But I think we have a good
15 45 minutes as well.

16 CHAIRPERSON GRIFFIS: Let's get into the
17 case presentation. Let's see how fast this goes.

18 MS. DOUGHTY: Yes.

19 CHAIRPERSON GRIFFIS: What I suggest is
20 you guys think of an alternative. If we finish this
21 today by 6:00, how are you going to get in everything
22 that you need to get in.

23 MS. DOUGHTY: Yes.

24 CHAIRPERSON GRIFFIS: If the record needs
25 to stay open.

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1 MS. DOUGHTY: Okay.

2 CHAIRPERSON GRIFFIS: We have got a lot of
3 people down here this afternoon. I know what an
4 inconvenience it is to come back one or two times.

5 MS. DOUGHTY: Right.

6 CHAIRPERSON GRIFFIS: And I think you just
7 lived through something of that nature.

8 MS. DOUGHTY: Yes.

9 CHAIRPERSON GRIFFIS: So we certainly
10 wouldn't want you to go through that again. So let's
11 move ahead and utilize the time that we have. I will
12 assess. I'm sorry, 5:00?

13 MS. DOUGHTY: Yes.

14 CHAIRPERSON GRIFFIS: Okay. I will try
15 and take a quick break and just assess where we are in
16 the afternoon and see what we're going to do with it,
17 but right now we're plowing through until we,
18 basically, finish this today. There is no reason why
19 we couldn't finish it and set this for a decision or,
20 for that matter, something else.

21 MS. DOUGHTY: Well, I think that Mr.
22 Patton just indicated that he was 45 minutes to an
23 hour in his presentation. I think we have a
24 presentation of about 40 minutes, so then there are
25 questions and also, the Office of Planning, I guess,

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1 so I was just -- you know, there is a little bit of a
2 question mark in my mind as to whether or not we would
3 get finished by 6:00 p.m.

4 CHAIRPERSON GRIFFIS: Probably not 6:00.
5 Okay. Thank you.

6 MR. PATTON: Thank you, Mr. Chairman. Not
7 to unduly part, but there are two other minor
8 preliminary typos I want to point out to the Board.
9 One is the Office of Zoning notice text was not
10 complete, but it was sufficient. It appears to have
11 omitted -- we're handing those up now. It appears to
12 have omitted Condition H for the third and fourth
13 areas of relief that would not have been needed, a
14 full approval of the first two is forthcoming.

15 Quoting from the notice, but breaking it
16 up in a separate paragraph to ease reading is
17 Application 17197. And the second one, so they have
18 this in order to save time. The second one is the
19 address of the property would be 1401 Q Street. It
20 inadvertently states the address as 1601 Q Street
21 application.

22 CHAIRPERSON GRIFFIS: Oh.

23 MR. PATTON: And those are the two
24 preliminary matters, minor ones.

25 CHAIRPERSON GRIFFIS: Well, on the

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1 announcement it listed 1401 Q Street and 16 or what
2 did it list?

3 MR. PATTON: The public hearing notice was
4 correctly addressed. It dropped some text in the
5 middle of the advertisement that left out the "in the
6 event that" language, which is inherent in the way it
7 was structured, Mr. Chairman. So what Ms. Bailey read
8 was accurate to the letter of what was actually sent
9 out as public notice, but it left out some clauses
10 that established what the third and fourth test were
11 triggered by. "In the event that full relief is not
12 forthcoming" under the first two bullet points here,
13 then we would need to go to something else. That text
14 got dropped. We advised Mr. Nero of it and he
15 indicated it wouldn't be a big problem.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PATTON: So we just want to make sure
18 that --

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. PATTON: Yes.

21 CHAIRPERSON GRIFFIS: I think we're all
22 technically correct at this point. Good. What else?

23 MR. PATTON: That's it.

24 CHAIRPERSON GRIFFIS: Is that it? Okay.

25 MR. PATTON: I'll just proceed with the

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1 case?

2 CHAIRPERSON GRIFFIS: Absolutely.

3 MR. PATTON: All right. Thank you, Mr.
4 Chairman, Members of the Board. My name is Douglas
5 Patton, as I mentioned, from Holland and Knight, LLP.

6 I am here today on behalf of the 1600 Fourteenth
7 Street Limited Partnership who is the owner of the
8 property located within Square 208, Lot 139.

9 This lot was known as 1600, 1602 and 1604
10 to 05 14th Street, N.W. The applicant proposes on this
11 site to develop a seven-story apartment building with
12 up to 30 units and along its 14th frontage would
13 contain retail/service uses. The address the building
14 will be addressed is 1401 Q Street, N.W. The entire
15 site is zoned Arts/C-3-A. We're requesting from the
16 Board relief from the zoning regulations, is a
17 variance from 773.3, the provision of residential
18 recreation space, which requires 15 percent of which
19 we are providing 6 percent.

20 In addition, we are seeking a special
21 exception under 1901.1, the percentage listed in
22 section 1907 or arts related uses listed in section
23 1908 where 50 percent is required. Applicant declared
24 37 percent when initially filed and now, we're
25 measuring 46.9 percent is hereby filed, which would be

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1 3.1 percent less of the 50 percent requirement.

2 Also, as I mentioned in the preliminary
3 matters, when originally filed applicant asked for
4 additional relief. Should the Board determine that
5 you will not be able to grant relief or as much relief
6 under section 773.3, as set out above, namely a
7 variance or a possible special exception from
8 1902.1(a) with the maximum height of the roof
9 structure, which is limited to 83.6. We need as much
10 as 89 feet, if needed. And also, a special exception
11 under 770.6, 771, 777.1 and 411 that roof requirements
12 be of equal height, of which two are being sought, and
13 be set back from exterior walls by at least the height
14 of the roof structure from building's edge.

15 We would also like to have you note that
16 withdrawn interpretation or a special exception from
17 section 1901.6 concerning linear frontage limitations.

18 Today I will present three witnesses with a possible
19 fourth. The three witnesses are Fred Bahrami, who is
20 the owner of the Fourteenth Street or is the manager
21 partner of the Fourteenth Street Limited Partnership,
22 LLP, Bill Bonstra, architect and principal of Bonstra
23 Architects and Lindsley Williams, land use planning
24 and zoning consultant.

25 In addition, if necessary, Ms. Emily Eig,

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1 a historic preservation consultant, is available and
2 can answer question if any are posed by the Board.
3 First, I would initially like to have Mr. Williams
4 address the Uptown Arts Mixed Use Overlay District
5 briefly in regards to this case to be followed by Mr.
6 Bahrami as an expert.

7 And one other thing, we have all the
8 expert resumes, which we will provide to the Board for
9 our witnesses, too.

10 CHAIRPERSON GRIFFIS: So you're asking for
11 expert status on all your witnesses?

12 MR. PATTON: Yes.

13 CHAIRPERSON GRIFFIS: Okay. And we have
14 all that in or it's coming in now?

15 MR. PATTON: Well, it has got to come in.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PATTON: He may have already put it
18 in. I didn't mention it verbally and I wanted to do
19 that.

20 CHAIRPERSON GRIFFIS: And Mr. Williams is
21 being proffered as an expert in zoning?

22 MR. PATTON: Land use and zoning.

23 CHAIRPERSON GRIFFIS: Mr. Bonstra is an
24 expert in architecture?

25 MR. PATTON: Yes.

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1 CHAIRPERSON GRIFFIS: And I'm sorry, your
2 other expert?

3 MR. PATTON: Emily Eig.

4 CHAIRPERSON GRIFFIS: Oh, Emily.

5 MR. PATTON: If we need her.

6 CHAIRPERSON GRIFFIS: Historic
7 Preservation?

8 MR. PATTON: Yes.

9 CHAIRPERSON GRIFFIS: Okay. As soon as we
10 get that paperwork, the Board Members will look at it.

11 In the meantime, is there an ANC representative here?

12 The ANC is not represented? Okay. Does the Q Group
13 have any comment on the expert status of the three
14 witnesses?

15 MS. DOUGHTY: No.

16 CHAIRPERSON GRIFFIS: Thank you. Board
17 Members, questions, clarifications? Mr. Bonstra, have
18 you ever been qualified as an expert before this
19 Board?

20 MR. BONSTRA: I believe so.

21 CHAIRPERSON GRIFFIS: I thought so, too.

22 MR. WILLIAMS: The Studio Theater case.

23 MR. BONSTRA: Studio Theater.

24 CHAIRPERSON GRIFFIS: Right, indeed.

25 Okay.

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1 MR. BONSTRA: It doesn't happen every day
2 for us.

3 COURT REPORTER: Please, use your
4 microphone.

5 CHAIRPERSON GRIFFIS: Right. Mr. Bonstra?

6 MR. BONSTRA: I answered yes, I have, the
7 Studio Theater Project.

8 CHAIRPERSON GRIFFIS: In the Studio
9 Theater, which is on the 14th Street corridor, is it
10 not?

11 MR. BONSTRA: Yes, it is.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. BONSTRA: 14th and P Street, N.W.

14 CHAIRPERSON GRIFFIS: Very well. I have
15 no difficulty granting expert status to all three of
16 the witnesses. Mr. Williams and Ms. Eig, obviously,
17 have been before and have been registered. Mr.
18 Bonstra has also and I think they all come without
19 question in terms of their expertise and how it
20 relates directly to this application. So let's move
21 ahead.

22 MR. WILLIAMS: Good afternoon, Members of
23 the Board and Mr. Chairman. My name is Lindsley
24 Williams, affiliated with the Law Firm of Holland and
25 Knight as a planning consultant. I want to make some

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1 opening remarks today about the site and its zoning
2 and the relief that is being sought. The site is, as
3 you know, located in --

4 CHAIRPERSON GRIFFIS: Good. And Mr.
5 Patton promised to be brief, right?

6 MR. WILLIAMS: Yes, sir.

7 CHAIRPERSON GRIFFIS: Okay. Let's go.

8 MR. WILLIAMS: As always.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. WILLIAMS: It's located in the
11 northwest corner of 14th and Q Streets and it is zoned
12 Arts/C-3-A. That zoning is what I want to talk about
13 right now. That zoning became so zoned in the early
14 1990s by Order No. 632 adopted by the Zoning
15 Commission following hearings that took place through
16 the '80s with some subsequent amendments in the form
17 of Order Nos. 632A, B and C.

18 CHAIRPERSON GRIFFIS: Excellent. Let's be
19 direct and get to 2004.

20 MR. WILLIAMS: Yes. The important thing
21 for you to know here is that the previous zoning that
22 was in place on the site was CM-3. It became Zone C-
23 3-A and on page 6, the Zoning Commission went to
24 particular pains in Order 632 to say that C-3-A zoning
25 with arts is appropriate for the southern portion of

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1 14th Street.

2 Second, they specifically rezoned Square
3 208 as part of this process on page 8 and they then
4 established the rules for this zone, which are set
5 forth in part on page 2 of the prehearing submission
6 that we did for you.

7 CHAIRPERSON GRIFFIS: Sorry, let me
8 interrupt you one more time. Is part of the case
9 presentation going to be based on the practical
10 difficulty of the legislative history or are you just
11 trying to give us a firm understanding of how we're
12 going to go about that?

13 MR. WILLIAMS: A firm understanding,
14 because what we --

15 CHAIRPERSON GRIFFIS: Okay. I think we
16 can really move ahead. Quite frankly, I think this
17 Board in the last 45 days has processed four
18 applications in the 14th Street corridor, three of
19 which had residential rec relief requirements or
20 requests and also for rooftop structures.

21 MR. WILLIAMS: I'm only trying to make
22 sure there is a sufficient record within this case.

23 CHAIRPERSON GRIFFIS: Submit it in writing
24 and it will be in the record.

25 MR. WILLIAMS: It's there.

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1 CHAIRPERSON GRIFFIS: Is it submitted?
2 Where is it?

3 MR. WILLIAMS: It is submitted. The part
4 that I was going to have you focus on is on page 2 of
5 the prehearing submission. All the purposes of C-3-A
6 with the Arts Overlay, particularly the Arts Overlay,
7 are laid out on page 2.

8 CHAIRPERSON GRIFFIS: Okay. And this is
9 excellent. And, in fact, the Board has had this
10 specific discussion.

11 MR. WILLIAMS: And we are not going about
12 in this application anything that comes close to being
13 what is a rezoning. We're not asking for more
14 density, more height of the building itself.

15 CHAIRPERSON GRIFFIS: Who said you're
16 doing a rezoning?

17 MR. WILLIAMS: Sometimes people come in
18 and they look for FAR relief or percentage of lot
19 occupancy.

20 CHAIRPERSON GRIFFIS: Okay. Let's address
21 the issues that may come in then.

22 MR. WILLIAMS: We have two very narrow
23 issues here having to do with residential rec space
24 and the percentage of the ground floor, and that is
25 the context that we have for the case. And now with

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1 that introduction, I'm through.

2 CHAIRPERSON GRIFFIS: Thank you.

3 MR. PATTON: Mr. Bahrami?

4 CHAIRPERSON GRIFFIS: Very brief.

5 MR. PATTON: State your name and
6 background for the Board.

7 MR. BAHRAMI: My name is Fred Bahrami.
8 Good afternoon, Members of the Board and Mr. Chairman.

9 I am currently, as we speak, in the process of moving
10 to 3611 R Street, N.W. I am a general partner of the
11 applicant, 1600 Fourteenth Street, LLP. I am a
12 principal of my own firm, Commercial Real Estate
13 Services.

14 I have been a builder for 20 years having
15 built over 5 million square feet. I have been
16 developing in Washington, D.C. since 1999 and the
17 greater metro area since 1994. I built 1406 Corcoran
18 Street, a five unit, 7,000 square foot condominium
19 building for which I received a Logan Circle Community
20 Association Award for the most historically
21 appropriate new building for the year 2000. I also
22 developed 1324 Q Street, which is a two unit, 5,000
23 square foot rehabilitation project. I recently also
24 completed 1213 N Street, a six unit, 8,000 square foot
25 building rehab also in the neighborhood.

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1 I have a bachelor's degree from Tufts
2 University in Civil Engineering and a masters of
3 science, construction engineering and management from
4 the University of Michigan.

5 This site, 1600 14th Street, was acquired
6 through a partnership with the John Wesley AME Zion
7 Church located across the street. Our goal is develop
8 this site into a high end condominium project with
9 retail on the ground floor. There will be,
10 approximately, 30 residential units facing on Q Street
11 and two retail spaces on the ground floor facing 14th
12 Street.

13 We began this project first by going to
14 the residents of Q Street, some of which you have seen
15 here today, and the general community at large and
16 asked what they wanted to see on this site. There was
17 unanimous sentiment on the behalf of the community to
18 develop a high end condominium building on this site.

19 There was a whole host of issues and
20 recommendations that came from the community that we
21 tried to listen to and adhere to, amongst which are
22 having historical compatibility, having ongoing input
23 into the design and development process, having no
24 retail frontage on Q Street, having exciting retail
25 opportunities, having the residential entrance facing

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1 Q Street and retail access and interaction limited to
2 14th Street, having ample green space on Q Street,
3 having two floors of underground parking, having
4 garage access in the alley and as far away from Q
5 Street as possible, lowering the overall height of the
6 building, lowering the leading edge on Q Street,
7 lowering the corner tower and stepping it back,
8 providing a one to one setback on the upper floor, red
9 brick on Q Street facade consistent with the victorian
10 character, limestone on 14th Street facade consistent
11 with the automotive motifs, a more traditional and
12 symmetrical Q Street entrance, recognizing the strong
13 presence of the Berret School across the street,
14 establishing a strong cornice line relating to the
15 Berret School, breaking up the massing on Q Street,
16 grounding the bay on Q Street, creating a water table
17 line relating to the Q Street row houses adjacent,
18 removal of all balconies overlooking Q Street, turning
19 balconies into bays on 14th Street, narrowing bays on
20 14th Street, removal of fifth floor trellises with
21 alley exposure, narrowing the gap on the alley in the
22 rear of the building and removal of the rear loading
23 dock in the alley and outdoor parking spaces.

24 These are among some of the
25 recommendations and input that over the last 10 to 12

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1 months that we have gotten from the community, a lot
2 of which came from the group in opposition.

3 CHAIRPERSON GRIFFIS: That's a big laundry
4 list.

5 MR. BAHRAMI: This is the short list.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. BAHRAMI: We then hired Bonstra
8 Architects and Emily Eig, who is well-known as a
9 highly acclaimed architectural historian to design, to
10 help us design the building. Over the next nine
11 months meeting on numerous occasions with the
12 community, the ANC-2F, the Logan Circle Community
13 Association, the Office of Historic Preservation staff
14 and the Historic Preservation Board, we achieved
15 finally a building that everyone was supportive of,
16 including the group behind me.

17 We then retained the Law Firm of Holland
18 and Knight to assist us in seeking zoning adjustment
19 on two specific issues. We are seeking relief from
20 the strict enforcement of the 50 percent retail use on
21 the ground floor providing about 47 percent. We are
22 also seeking a variance from the strict enforcement of
23 the percentage of recreation space from 15 to 6
24 percent.

25 We met with the Office of Planning, with

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1 the community at the CDC meeting, again with the
2 community at the ANC-2F where we received a unanimous
3 vote in support and with the Logan Circle community
4 who is what we also got. We feel that we have met all
5 the requirements under the laws of District of
6 Columbia, as well as support of the majority of the
7 community at large, the Office of Planning, the ANC-2F
8 and the Logan Circle Community Association.

9 Thank you very much for this opportunity.

10 I am available for questioning.

11 CHAIRPERSON GRIFFIS: Good. Thank you
12 very much. And you have taken this to HPRB you said.
13 Is that correct?

14 MR. BAHRAMI: Yes, it took us about nine
15 months of back and forth.

16 CHAIRPERSON GRIFFIS: So five times?

17 MR. BAHRAMI: Four times.

18 CHAIRPERSON GRIFFIS: Four times?

19 MR. BAHRAMI: Yes.

20 CHAIRPERSON GRIFFIS: Wow. Now, some of
21 the aspects that you brought up came out of HPRB
22 comments or the Preservation staff and the Board
23 staff, correct?

24 MR. BAHRAMI: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And some of

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1 the critical ones that I think are attendant to the
2 application, as I understand it, you can tell me if
3 I'm incorrect, is that residential nature on Q Street.

4 MR. BAHRAMI: Exactly.

5 CHAIRPERSON GRIFFIS: Maintaining a
6 residential facade. So really what you have here is
7 this corner building is asking to be two buildings in
8 one.

9 MR. BAHRAMI: Exactly.

10 CHAIRPERSON GRIFFIS: Okay. And then the
11 zoning requires you to have retail on 14th Street.

12 MR. BAHRAMI: Exactly.

13 CHAIRPERSON GRIFFIS: Okay. And you also
14 mentioned green space on Q Street. Is that correct?

15 MR. BAHRAMI: Yes, that --

16 CHAIRPERSON GRIFFIS: So that's showing in
17 the landscaping and such.

18 MR. BAHRAMI: You can see that.

19 CHAIRPERSON GRIFFIS: And that's on the
20 property line. Is that correct?

21 MR. BAHRAMI: Right.

22 CHAIRPERSON GRIFFIS: Is that within the
23 property?

24 MR. BAHRAMI: That actually falls outside
25 of the property.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. BAHRAMI: So that's in the parking
3 zone.

4 CHAIRPERSON GRIFFIS: Understood. Okay.

5 MR. BAHRAMI: That request actually
6 specifically came from the group on Q Street.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. BAHRAMI: Known as the Association.

9 CHAIRPERSON GRIFFIS: Sure. Formally
10 known as.

11 MR. BAHRAMI: Known outside of this body.

12 CHAIRPERSON GRIFFIS: Oh, it's a bad joke.
13 Come on, we got to move on with this. Okay. Other
14 questions from the Board? What was I doing here?
15 Okay. Good. Let's move on.

16 MR. PATTON: Mr. Bonstra?

17 MR. BONSTRA: My name is Bill Bonstra, I
18 am principal with Bonstra Architects. We are
19 responsible for the drawing submission that you have
20 in your packet, the ASK drawings that I will make
21 reference to in my presentation here. I have been
22 asked to discuss some of the constraints and some of
23 the ideas that we grappled with in laying out this
24 building, which has physical impact on the project and
25 the reasons why we're here today to discuss.

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1 Is that working? Just to kind of step
2 back to Mr. Griffis' question about the character of
3 the building. Yes, we have two responsibilities. I
4 think if everyone --

5 CHAIRPERSON GRIFFIS: Oh, brother.

6 MR. BONSTRA: Can we see that?

7 CHAIRPERSON GRIFFIS: No.

8 MR. BONSTRA: No?

9 CHAIRPERSON GRIFFIS: Oh, there are some
10 nice pictures.

11 MR. BONSTRA: These are the elevations.
12 This is the 14th Street elevation.

13 CHAIRPERSON GRIFFIS: How about that? Why
14 don't we put them up on the easel?

15 MR. BONSTRA: That would be fine. I have
16 limited easel space, but I'm happy to do that if you
17 like.

18 CHAIRPERSON GRIFFIS: Move them around if
19 you don't mind.

20 MR. BONSTRA: Sure, sure.

21 CHAIRPERSON GRIFFIS: Okay. Great.

22 MR. BONSTRA: So this gives you an idea of
23 the physical nature of what we're talking about. This
24 is the Q Street facade. It does, in fact, have a
25 residential reference aesthetically, as well as being

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1 the main entry of the building. The 14th Street facade
2 is referential to the 20th century 14th Street
3 architecture. It is more of a limestone color. It is
4 a bit taller in massing than the Q Street facade
5 referential to its wider street, 14th being 110 feet
6 and Q Street being 90 feet.

7 I should make note of a few things that we
8 have done. Besides eliminating any parking off the
9 alley, as part of the project we're also eliminating
10 three curb cuts and we felt like entry to the parking
11 garage was something we wanted to avoid in this
12 building due to neighborhood concerns, due to just a
13 philosophy of trying to keep that off the alleys where
14 the automobiles belong. We have located the entry to
15 the parking garage to the northwest corner of the
16 building.

17 CHAIRPERSON GRIFFIS: Okay. How does that
18 impact retail percentage?

19 MR. BONSTRA: Well, I'm going to get to
20 that.

21 CHAIRPERSON GRIFFIS: Okay. Sorry.

22 MR. BONSTRA: The parking entry here, this
23 is in ASK-2 of your package, the parking level plan.
24 What is significant about this is that although one
25 would say 79 feet would seem to be a wide building, by

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1 today's standards that's actually not the case and, in
2 fact, there are practical difficulties with the
3 narrowness of the site, mainly by the fact that we
4 have a parking entry. We also need a drive and
5 parking in order to allow us to get our zoning spaces
6 within the site.

7 That severely limits where we located the
8 core of our building. That fell literally within a 20
9 x 40 foot location on this building. We have two fire
10 stairs as any building can have, is required to have,
11 here and here and, in fact, the Building Code wants us
12 to push those out as far as they can away from each
13 other. In this case, we're trying to pinch that in.

14 The significance of this is with a
15 residential entry along Q Street and maximizing our
16 exposure of residential, which we feel very strongly
17 about, we have limitations on the size of our
18 commercial area. We feel very strongly that we want a
19 residential component at this level on this purely
20 residential courtyard.

21 This is the lower level of the unit above.

22 It has some minimum dimensions in order to make it
23 work and that limits the location of this wall. At
24 46.9 percent, if one adds in storefront bays, which
25 are certainly a positive aspect of a retail space,

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1 although not counting in the zoning requirement for
2 retail, we reach our 50 percent on our retail space.

3 CHAIRPERSON GRIFFIS: Okay. Let's get
4 that math straight. So what you're saying is in terms
5 of your application, what you have submitted for the
6 relief, you are -- aren't those Orioles Windows or
7 whatever they are called? Anyway, those retail bays.

8 MR. BONSTRA: Storefront bays.

9 CHAIRPERSON GRIFFIS: Good. I like it
10 better. It's easier to say. Those do not count in
11 your total square footage.

12 MR. BONSTRA: That's correct.

13 CHAIRPERSON GRIFFIS: However, if you put
14 those in, because they can't count towards zoning,
15 because they are off your property.

16 MR. BONSTRA: They are over the property.

17 CHAIRPERSON GRIFFIS: It would be above
18 the 50 percent?

19 MR. BONSTRA: Yes.

20 CHAIRPERSON GRIFFIS: So we're looking at
21 a small percentage and, clearly, 3 percent of the 50
22 percent required is probably a small percentage of
23 square footage.

24 How does that impact in your
25 understanding? Well, first of all, what is the

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1 footprint of the retail area, approximately? Like are
2 those 2,000 square foot retail spaces?

3 MR. BONSTRA: Mr. Williams, I think you
4 have the exact numbers.

5 MR. WILLIAMS: The number is just over
6 3,000 feet counting the 200 feet or so that are in the
7 bay windows or storefront window areas.

8 CHAIRPERSON GRIFFIS: Okay. But the total
9 thing is how much? I'm sorry. Rather than giving me
10 number one tenant, number two tenant, which is what
11 the drawings are showing --

12 MR. WILLIAMS: Right.

13 CHAIRPERSON GRIFFIS: Just show me. What,
14 you're giving me a total square footage,
15 approximately, of what's available for retail?

16 MR. WILLIAMS: Let me come find it for you
17 exactly, sir.

18 CHAIRPERSON GRIFFIS: No, all I'm trying
19 to do is get scale. Is it 2,000? Is it 10,000?

20 MR. WILLIAMS: It's very close to 3,000.

21 CHAIRPERSON GRIFFIS: Right. Okay. So
22 3,000. We're looking at really small kind of retails
23 if you split it at 1,500 square feet.

24 MR. WILLIAMS: 1,500 each.

25 CHAIRPERSON GRIFFIS: Okay. I understand.

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1 MR. WILLIAMS: Yes, yes.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BONSTRA: Some other significant
4 physical aspects of the projects is that we are
5 greatly modeling the upper floors of the building in
6 order to allow for some relief at the building face
7 and setbacks, some required by Historic, some
8 suggested by community groups and what have you. So
9 that reduces the actual final roof area significantly
10 above if a building were built to its face all the way
11 up, as you can imagine. So the roof has limited size
12 because of the articulation of the building facades.

13 CHAIRPERSON GRIFFIS: And what do you mean
14 articulation of facades, you mean the stepping back,
15 the massing?

16 MR. BONSTRA: Because of the setbacks, the
17 massing.

18 CHAIRPERSON GRIFFIS: Because Historic
19 wanted you to move it off a little bit?

20 MR. BONSTRA: Correct, correct.

21 CHAIRPERSON GRIFFIS: Not have one big --

22 MR. BONSTRA: We feel very strongly and
23 everybody has been very supportive of the
24 architecture, the interlocking forms breaking this
25 into three pieces.

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1 CHAIRPERSON GRIFFIS: Okay. So if we look
2 at --

3 MR. BONSTRA: And ultimately, that affects
4 our roof area.

5 CHAIRPERSON GRIFFIS: If we look at ASK-9.

6 MR. BONSTRA: ASK-9, yes.

7 CHAIRPERSON GRIFFIS: It's showing the
8 double line, which is the current parapet and the roof
9 outline, and what you're telling us now is that, in
10 fact, if you spread it out fully, that it would go to
11 a larger dimension.

12 MR. BONSTRA: It would be all this.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. BONSTRA: But what you're seeing as
15 the recessive zones below.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. BONSTRA: And the ultimate roof is
18 actually much smaller.

19 CHAIRPERSON GRIFFIS: And your penthouse
20 structure has to set back one to one from that smaller
21 dimension?

22 MR. BONSTRA: One to one off the ultimate
23 roof of the building, yes.

24 CHAIRPERSON GRIFFIS: I see.

25 MR. BONSTRA: Another significant feature,

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1 which we feel very strongly about, is that we have
2 duplex units at the top two floors of the building.
3 Those are clearly articulated here on the facades.
4 What that allows us to do is have, barring any need
5 for elevator access to the roof, it allows us to stop
6 our elevator at the upper most level being the sixth
7 floor, which is here, and allows us to contain our
8 elevator equipment in the zone above that.

9 So we actually look to compress the
10 penthouse of the building by the nature of the
11 physical conditions of duplex units at the top two
12 floors. And you can see in your package on ASK-7
13 where we actually do not have a core at the seventh
14 floor, a public corridor core. We have the elevator
15 overhead with the machine room, but we do not have the
16 same corridor that we have on the typical floors.

17 CHAIRPERSON GRIFFIS: And why is that
18 important to the Board?

19 MR. BONSTRA: It's important, because we
20 have compressed the machines in our attempts to keep
21 the penthouses as low as possible to satisfy Historic,
22 to satisfy our own ideas about what's appropriate.

23 CHAIRPERSON GRIFFIS: So you're pushing
24 this so much you can't do it anymore?

25 MR. BONSTRA: Well, we have done a lot.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BONSTRA: What this also shows, and
3 maybe that's the last thing I'll mention, is the
4 distribution of space, of residential space. And the
5 orange is our residential recreation space outdoors.
6 That is we have a party room, which is actually -- I'm
7 sorry, indoors. We have a party room at the lower
8 level, which spills out into an areaway. We also have
9 a residential courtyard here. Those are contiguous.
10 So we are providing a major component of our
11 residential recreation indoors in spaces that are
12 large enough to contain all the residents for special
13 meetings and what have you inside. We also have other
14 areas of residential recreation.

15 CHAIRPERSON GRIFFIS: Wow.

16 MR. BONSTRA: Again, trying to maintain
17 the residential exposure here and not having our
18 commercial encroach into our residential area.

19 What we also have, which is significant,
20 but not counted towards residential recreation area,
21 are numerous areas of private balconies and roof
22 decks. Two thirds of the units have private roof
23 deck, private balconies and those are shown here.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. BONSTRA: In terraces on top of the

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1 masses of the building, and those are shown here on
2 your ASK-5.

3 MR. PATTON: Bill, for clarity, having sat
4 on the other side of this, when you say here it's
5 important for the record --

6 MR. BONSTRA: I'm sorry.

7 MR. PATTON: -- to say precisely where
8 here is.

9 MR. BONSTRA: Okay.

10 MR. PATTON: Because it won't show up on
11 the transcript.

12 MR. BONSTRA: Thank you. For instance, on
13 the fifth floor plan located at the tops of the
14 projecting bays along 14th Street as shown here, at the
15 top of the bay along Q Street, along the alley and
16 then, of course, along the 100 percent residential
17 courtyard here. We also have a large amount of green
18 area, parking, which is outside the property line and,
19 as well, does not count towards the required
20 residential recreation area.

21 On the roof we have shown two plans. One
22 is option 1 should you allow relief from needing an
23 elevator accessing the roof. In either case, we will
24 have a roof deck, which will be for the residents and
25 will be served by two stairs, which are required by

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1 code. The only difference is under the residential
2 recreation requirements, it's required to be
3 accessible and that's when this happens should you not
4 grant relief from the first two.

5 MR. PATTON: Could you clarify for the
6 Board?

7 COURT REPORTER: Excuse me. Turn your
8 microphone on, please.

9 MR. PATTON: Mr. Bonstra, could you
10 clarify for the Board what the yellow boxes are in
11 part of the elevator?

12 MR. BONSTRA: Yes.

13 MR. PATTON: You started to say, but here
14 for --

15 MR. BONSTRA: Yes.

16 MR. PATTON: And also for the record. I'm
17 sorry. I'm so used to just being a visual person.
18 These yellow areas with the black lines around it,
19 that represents the overhead for an elevator shaft
20 should the elevator be required to come to the roof
21 and serve the residential recreation area. Without
22 that in our first case, we have an elevator, we have a
23 penthouse, I believe, of 10 feet. So that is what is
24 represented on the two elevation drawings.

25 CHAIRPERSON GRIFFIS: So what is going to

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1 compel you to put an elevator? First of all, the roof
2 deck is compliant with a 25 foot dimension? Okay. So
3 it doesn't even count.

4 MR. BONSTRA: No.

5 CHAIRPERSON GRIFFIS: So what is the
6 decision that we need to make, whether we require you
7 to put an elevator on the roof?

8 MR. WILLIAMS: Mr. Williams. If you were
9 to require us to add the square footage that is
10 available to that, which would raise the percentage of
11 rec space from 6 to, approximately, 7 percent, but if
12 we were required to meet a 7 percent standard, the
13 only place we can find to do it is through the roof
14 deck. We would need relief from the dimensional
15 requirements. One dimension is 25 feet.

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. WILLIAMS: But the regs imply that it
18 has to be all dimensions 25. Interpretations vary and
19 it's really marginal space.

20 CHAIRPERSON GRIFFIS: But it's pretty
21 clear.

22 MR. PATTON: The other one is 17, I
23 believe.

24 CHAIRPERSON GRIFFIS: Right. We'll look
25 at the regulations, but I'm not going to banter about.

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1 So all I want to know is what are we looking at? So
2 none of that complies with the square footage. We
3 could require you to put it on there and would have to
4 give you relief for it.

5 How can you put that residential deck up
6 there without an elevator? Can you put it up there?

7 MR. PATTON: It would purely be a roof
8 deck. It would just not be conforming to the
9 residential recreation area.

10 CHAIRPERSON GRIFFIS: But you're going to
11 have a roof deck of that --

12 MR. PATTON: With two means of egress.

13 CHAIRPERSON GRIFFIS: With no elevator?

14 MR. PATTON: That is correct.

15 CHAIRPERSON GRIFFIS: What is the total
16 square footage?

17 MR. WILLIAMS: 675 square feet, sir.

18 CHAIRPERSON GRIFFIS: Okay. This is
19 totally off our jurisdictional subject, but how do you
20 do that without accessibility?

21 MR. BONSTRA: This project is subject to
22 the Fair Housing Act. As long as outdoor spaces are
23 available to disabled people in other areas, then you
24 do not have to have every area in compliance.

25 CHAIRPERSON GRIFFIS: Okay. So it

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1 wouldn't be all areas accessible, but, obviously,
2 numerous at different areas.

3 MR. BONSTRA: Represent.

4 CHAIRPERSON GRIFFIS: Would be accessible.

5 MR. BONSTRA: Correct.

6 CHAIRPERSON GRIFFIS: All right. We're
7 not going to argue with that. Oh, gosh.

8 MR. PATTON: Mr. Bonstra, would you also
9 say the dimensions of this particular site in
10 question? I think it's important for the Board to
11 know the size of this.

12 MR. BONSTRA: The overall dimensions of
13 the site are 79 feet along 14th Street by 120 feet
14 along Q Street.

15 CHAIRPERSON GRIFFIS: Okay. Let's start
16 at the bottom and make sure I understand all this. We
17 have about a 3 percent request for relief from the
18 retail, which is, approximately, 80 square feet or
19 less, which is -- what is 80 square feet? I don't
20 know, a pretty nice walk-in shower. Okay.

21 So what we're looking at here, and you
22 have created two marketable retail bays, I would
23 imagine, right? You wouldn't lay them out, obviously,
24 and they are on the frontage. You are trying to move
25 it off of Q Street, focus it on 14th. Of course, it

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1 has to be the frontage on 14th and that's primarily
2 where you want your retail anyway. And the reason why
3 you can't, there is a little bump out at the first
4 level that shows on ASK-2. What is that?

5 MR. BONSTRA: That area is --

6 CHAIRPERSON GRIFFIS: Or a bump in I
7 should say.

8 MR. BONSTRA: We're showing that as a
9 little meeting space. It is residential recreation
10 area.

11 CHAIRPERSON GRIFFIS: Okay. Maybe I'm not
12 clear.

13 MR. BONSTRA: It is part of the residences
14 and part of the experience of coming to this building.

15 CHAIRPERSON GRIFFIS: Right. Just
16 adjacent to that area you're describing, there is the
17 other one that's actually in the shaded green. It
18 looks really small like you would fit a chimney in it.

19 MR. BONSTRA: In shaded green here?

20 CHAIRPERSON GRIFFIS: Yes, that piece.

21 MR. BONSTRA: Oh, this is an exterior
22 niche. It's a break between the masses of the
23 building.

24 CHAIRPERSON GRIFFIS: Okay. And that's
25 part of what has been worked on through Historic

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1 Preservation and the community. Is that correct?

2 MR. BONSTRA: And our design for the
3 building. It actually --

4 CHAIRPERSON GRIFFIS: Right, right.

5 MR. BONSTRA: -- will be some garage
6 intake.

7 CHAIRPERSON GRIFFIS: Oh, so it's actually
8 a design that has function?

9 MR. BONSTRA: It is functioning.

10 CHAIRPERSON GRIFFIS: See, that is a great
11 thing, isn't it?

12 MR. BONSTRA: We like to do that.

13 CHAIRPERSON GRIFFIS: Exactly. Okay. But
14 the point is you have maximized. I mean, there is no
15 space left over to fit in that retail requirement.
16 Okay. Let's continue going over it and see if my
17 understanding is correct. We have got this
18 residential rec thing that's required. Based on the
19 fact of one, you said that the 79 foot dimension is
20 not an extreme dimension for a building that is being
21 asked to do so many different functions.

22 One, underground below grade parking, and
23 you have indicated that, why you have moved that
24 access there, which actually creates some difficulty
25 in how it kind of squeezes everything on the first

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1 level, which will transmit all the way up through the
2 building. Is that correct? And it's actually
3 interesting, you have a raised deck, which I wasn't
4 really reading, that's over the parking ingress, the
5 parking ramp.

6 MR. BONSTRA: Yes.

7 CHAIRPERSON GRIFFIS: So the residential
8 unit that you were talking about that you wanted to
9 put into the first level has an all private balcony.
10 And then above that actually is another one that's
11 public.

12 MR. BONSTRA: Actually, that's the lower
13 level of a duplex. We originally had its own unit
14 there and that's what was part of the increase in the
15 retail from our original submission.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. BONSTRA: We actually pushed that
18 around, but we did feel very -- that it was important
19 for us to maintain a residential exposure, to not have
20 the commercial bleed into the residential courtyard.
21 That's going to be an area for meeting.

22 CHAIRPERSON GRIFFIS: Gotcha.

23 MR. BONSTRA: For sitting, reading,
24 smoking, whatever you want to do.

25 CHAIRPERSON GRIFFIS: So that's an

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1 interesting piece. So you have the public residential
2 rec deck or balcony or whatever it is.

3 MR. BONSTRA: And a connection.

4 CHAIRPERSON GRIFFIS: And the point is,
5 what you're saying, if I understand you, is you wanted
6 to surround that with residential.

7 MR. BONSTRA: Correct.

8 CHAIRPERSON GRIFFIS: And not have the
9 back, which will probably be more of storage, retail
10 on the back there.

11 MR. BONSTRA: Correct.

12 CHAIRPERSON GRIFFIS: Okay. So there is
13 space utilization and there is the reality of the
14 design configuration on all of that. Okay. And then,
15 of course, the Board is very familiar with the
16 separation of the stairs and how it then gets to the
17 roof, how it divides the roof up and the different
18 levels of the penthouse structures and then what do
19 you have left over, and here we have nothing that can
20 get into the requirement for the public or the
21 residential rec space on the roof.

22 Is this a visible roof deck, if it's seen?

23 I mean, is there a guard rail and all of that?

24 MR. BONSTRA: I would assume that we would
25 have a rail set back off the edge of the building. It

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1 would be a light rail to contain people.

2 CHAIRPERSON GRIFFIS: Okay. Okay. The
3 total -- all right. Go ahead. Ms. Miller, questions?

4 VICE CHAIR MILLER: Where else is the
5 outdoor residential recreation space other than the
6 roof deck?

7 CHAIRPERSON GRIFFIS: It's in the red on
8 these. If you look at all the red. So basically, on
9 each of the floors, which correspond to the
10 submissions that we have in here.

11 MR. BONSTRA: It's the areaway outside the
12 party room at the lower level. I should clarify.
13 This is an areaway that is actually dropped down below
14 the level of the alley, so there is a direct access to
15 the outside and a connection up to the terrace level,
16 the courtyard level. So these are contiguous to the
17 party room and these are the outdoor residential
18 recreation areas.

19 CHAIRPERSON GRIFFIS: Wow.

20 MR. BONSTRA: Quite considerable.

21 VICE CHAIR MILLER: So are they both
22 accessible? Are they both ground floor, because I'm
23 just interested?

24 MR. BONSTRA: They are both accessible.

25 VICE CHAIR MILLER: They are both

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1 accessible?

2 MR. BONSTRA: Yes, yes.

3 VICE CHAIR MILLER: Okay.

4 MR. BONSTRA: They will have accessibility
5 to the party room and then to the outside and, as
6 well, we have a rear load on the elevator here where
7 you could come in low and exit high and come into the
8 courtyard, so those would be accessible.

9 VICE CHAIR MILLER: Okay. And how does
10 the size of those compare to the size of the roof deck
11 without the elevator?

12 MR. BONSTRA: Not knowing the exact
13 numbers, which Mr. Williams has, these are to scale
14 and this area would be a little bit smaller than the
15 courtyard area at the ground floor level.

16 VICE CHAIR MILLER: Okay. And you said
17 that the Fair Housing Act reads in terms of percentage
18 or what does it read as far as -- this is the first I
19 have seen where, at least in my experience, there
20 didn't have to be access required for the roof deck.

21 MR. BONSTRA: Access?

22 VICE CHAIR MILLER: In accordance with the
23 Fair Housing Act, so I'm just --

24 MR. BONSTRA: Well, it's my experience,
25 and we have done at least 15 multi-family buildings,

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1 that as long as it's provided in a comparable
2 situation outside, that it would not be required to
3 be --

4 VICE CHAIR MILLER: So your understanding
5 is comparable. Is that it? You don't know?

6 MR. BONSTRA: I'm not an expert on Fair
7 Housing.

8 VICE CHAIR MILLER: Okay.

9 MR. BONSTRA: But that's, you know, my
10 understanding of the situation.

11 VICE CHAIR MILLER: Okay.

12 MR. PATTON: Ms. Miller, we can provide
13 that site if you so desire at the close in our
14 submission.

15 VICE CHAIR MILLER: That would be great.
16 Thank you.

17 CHAIRPERSON GRIFFIS: Okay. Other
18 questions?

19 MR. WILLIAMS: Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. WILLIAMS: If I might request the
22 Board to open their drawing set to Sheet ASK-19.
23 There are a large -- there is an array of figures
24 there that I believe answers a lot of the questions
25 Ms. Miller was asking about how much does this area

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1 amount to, how much does the other area amount to and
2 so on and so forth. We show how we arrive at 6
3 percent and it also shows how much other area is
4 added, even though it doesn't count, but it's kind of
5 a mitigation issue or it's an offsetting figure for
6 you to look at.

7 When you finally get through it all,
8 particularly if you count the green area known as the
9 parking, we come up with a total that is on the order
10 of 20 percent based on the 39,000 square feet of
11 residential space in the building itself. So there is
12 the equivalent space of approaching 20 percent, but
13 only 6 percent of it would count under Option 1,
14 somewhat more if you count the 675 square feet of that
15 roof deck, which produces that pop-up that you saw
16 that mars the skyline, but that's the summary table
17 for you to look at.

18 CHAIRPERSON GRIFFIS: Other questions?

19 BOARD MEMBER MANN: Do the building codes
20 or any other Zoning Regulations require you to do
21 anything else on the parking? Is your obligation on
22 the parking just to pave it as a sidewalk and leave
23 it?

24 MR. WILLIAMS: The rules on the parking
25 are governed, as I remember it, by 10 CFR 24. Perhaps

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1 the Attorney General will come in and tell me there is
2 another cite to it, but it basically says that it is
3 the area that is between the backside of the sidewalk,
4 the part of the sidewalk closest to the property and
5 the property line, and it is to be kept and maintained
6 by the owner of the property even though it is in
7 public ownership.

8 So he gets to mow the grass and cut the
9 shrubs and so on and so forth, and what the applicant
10 has done here in response to some requests from the
11 community is to propose putting it in as park benches
12 and tables for the areas that are large enough to
13 accommodate them. The square footage that you see on
14 that table for the landscaped area, 1,398 square feet,
15 represents only the green areas that are showing the
16 benches and tables. There are some other spots that
17 just have a shrub or something like that. They were
18 not actually included.

19 I might finally note for your completeness
20 that when Mr. Bonstra referred, as he did, to various
21 colors on this diagram, the record set in this
22 material does not use colors. It uses various forms
23 of cross hatching, but they do coincide completely
24 with what Mr. Bonstra was speaking about.

25 BOARD MEMBER MANN: Is there a legal

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1 obligation to maintain the parking as a landscaped
2 area? You indicated that it might otherwise be sodded
3 or have shrubbery.

4 MR. WILLIAMS: It can be a number of
5 things. People can actually park with the permission
6 of the DPW and the Public Space Committee, can park
7 cars there. It is also an area that can be encroached
8 on up to 4 feet for bays as this applicant is
9 proposing to do. But in the main, it has to be
10 landscaped in some form.

11 BOARD MEMBER MANN: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Tables and chairs,
13 the neighborhood asked for tables and chairs?

14 MR. WILLIAMS: Go ahead.

15 MR. BAHRAMI: To be more accurate, benches
16 and landscaping is what was requested.

17 CHAIRPERSON GRIFFIS: Yes. Anyway, it's a
18 smart crew that lives on that block.

19 MR. BONSTRA: If I could just jump in one
20 second? Will that be all right?

21 CHAIRPERSON GRIFFIS: Sure.

22 MR. BONSTRA: One of the features of this
23 street is that many of the houses actually do set back
24 from the property lines and there are a lot of public
25 areas or I should say private areas that people have

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1 put tables and chairs and have dinner and that sort of
2 thing.

3 CHAIRPERSON GRIFFIS: For themselves to go
4 out and sit on.

5 MR. BONSTRA: For themselves and to bring
6 the neighborhood and that sort of that thing.

7 CHAIRPERSON GRIFFIS: I understand.

8 MR. BONSTRA: So we see it in much the
9 same way.

10 CHAIRPERSON GRIFFIS: But here's my
11 concern just to be direct and we'll move on with this,
12 this is in public space. If you put it out in front
13 of a condo building, there is no control. Basically,
14 those are uncontrolled spaces. You're going to have
15 tables and chairs out there. Anyone can come up and
16 it looks like a nice cafe. If it works, have fun, but
17 I wouldn't think -- and my silly opinion would be that
18 would be kind of hard.

19 MR. WILLIAMS: I'm sure my client would be
20 happy with putting some benches there.

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. WILLIAMS: Where people can sit and
23 read their comic books.

24 CHAIRPERSON GRIFFIS: Look, and we're not
25 going to tell you what to do. It's public space.

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1 Okay. What else? Any other questions, clarifications
2 from the Board? We're all clear on what we have to
3 do? I'm a little lost on what we're doing on the roof
4 here, but I think I'll catch up quickly enough. Any
5 other questions? Good. Let's move on then.

6 MR. WILLIAMS: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MR. WILLIAMS: We were supposed to also
9 talk about the area conditions, the site and all the
10 zoning around it as part of a longer statement. It is
11 on file. I'm perfectly prepared to rest with it. I
12 think you do understand the case, the location very
13 well. You have heard a lot of cases. I would simply
14 like to bring to your attention that the property is
15 located in a situation where there is one case you
16 heard, decided last week, to the immediate north of
17 this involving the same issues and immediately south
18 of it there are six more cases all granted by the
19 Board for residential recreation space. Some of it
20 was Historic.

21 CHAIRPERSON GRIFFIS: See that, we're
22 experts by now.

23 MR. WILLIAMS: Yes, you are, but I want to
24 make sure that your expertise is reflected in this
25 record, so that it's there. I would just like to give

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1 you the citations on those cases, 16841, 16848, Church
2 Street and P Street respectively were decided March
3 19, 2002, 16914, the PN Hoffman application on P
4 Street, 16999, U.S. Property Development, which was a
5 case heard just at the same time as Studio Theater,
6 essentially.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. WILLIAMS: Across the street from
9 Studio Theater.

10 CHAIRPERSON GRIFFIS: 1515 15th Street?
11 That's my favorite. How can you forget that?

12 MR. WILLIAMS: 16907, as well, another
13 U.S. property case. So we have a lot of information
14 where the Board has taken these, and some with
15 historic buildings, all of them within the same
16 Historic District. They have not been opposed and
17 they have not been granted with particular conditions.

18 The ANC has been broadly supportive of all
19 of these. The ANC has consistently uttered something
20 about we need more parking. We are providing more
21 parking as best as we can, and I think that rather
22 than trying to take you through my formal and prepared
23 remarks, I will leave it go at that unless you have
24 any further questions.

25 CHAIRPERSON GRIFFIS: I think we

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1 understand. Any questions? Okay. What else?

2 MR. PATTON: Mr. Chairman, I think Mr.
3 Williams or Mr. Bonstra should address the parking
4 that is going to be provided on this particular site
5 as to the options just for the record.

6 CHAIRPERSON GRIFFIS: The parking as in
7 parking vehicles and not public safe parking.

8 MR. WILLIAMS: This is vehicular parking.

9 MR. PATTON: This is private parking.

10 MR. WILLIAMS: Your plan sheets show on
11 Sheets ASK-1 and 2 two levels of parking and if you
12 count up the spaces that we are providing across those
13 two, they now total 35. The concept here is that Mr.
14 Bahrami will state to you that he fully intends to
15 develop both levels. The ANC support is clear, that
16 they want -- that they are supportive of the project,
17 but they suggested two levels will be provided unless
18 the applicant finds unforeseen extraordinary conditions
19 in the ground. Essentially, too many boulders, shale
20 pops up early, there is running sand, the usual kinds
21 of stuff.

22 CHAIRPERSON GRIFFIS: Okay. What's the
23 pertinence to us right now?

24 MR. WILLIAMS: Well, the pertinence is
25 that the ANC report, which you have in the record,

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1 puts in a condition on this and, basically, Mr.
2 Bahrami is here to clarify with Mr. Bonstra that their
3 plan is to proceed to develop two levels. All the
4 zoning required spaces could be provided on level one
5 if it were to come to that, but the plan that was --

6 CHAIRPERSON GRIFFIS: Doesn't that begin
7 and end our jurisdiction?

8 MR. WILLIAMS: Pardon?

9 CHAIRPERSON GRIFFIS: That begins and ends
10 our jurisdiction.

11 MR. WILLIAMS: So be it.

12 CHAIRPERSON GRIFFIS: Okay. And I
13 understand the ANC is very concerned about parking. I
14 can imagine they are, especially with the retail, but
15 if this compliance -- we're getting into more of a
16 hypothetical situation. If you guys want to come back
17 for a modification to the application, because you hit
18 gold, God bless and we'll see you when you come back,
19 but at this point if we can find --

20 MR. PATTON: Mr. Chair, if we hit gold, we
21 won't be back.

22 CHAIRPERSON GRIFFIS: Right, exactly.
23 Right. Actually, that's pretty soft, too, so you
24 could probably get through it. But you know what I
25 mean? I don't know what we would do with it at this

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1 point. I think we can address the ANC and note their
2 concern. I don't think it detracts. Do we have the
3 ANC here, ANC members? Okay.

4 MR. PATTON: Mr. Chairman?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. PATTON: For clarification, we want to
7 show the seriousness of the applicant willing to
8 conform to allow the community's desire on parking.
9 We all know we can take judicial notice that parking
10 is getting to be a problem on 14th Street because of
11 increased building structures.

12 CHAIRPERSON GRIFFIS: Right. Indeed. I
13 appreciate that. And although it may come across
14 sarcastically or with great humor, I might say for the
15 record, where I need to be very careful is where is
16 our jurisdiction and whether we're walking down a path
17 of which we're setting up ourselves for hypotheticals
18 and alternatives and we'll get to a decision. We'll
19 say well, yes, we can decide this unless in case it's
20 Option 2 with Condition B and then, you know, it just
21 gets to be too much. Okay.

22 Sir, you keep raising your hand, so let me
23 see if I can answer a procedural question for you.

24 MR. SHANNON: Well, I --

25 COURT REPORTER: Could you speak into a

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1 microphone?

2 CHAIRPERSON GRIFFIS: Yes, I need you just
3 to state your name and address. This is a little out
4 of ordinary, but you seem so concerned.

5 MR. SHANNON: Well, I don't want to be out
6 of ordinary, sir. Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MR. SHANNON: And Members of the Board, I
9 am Vernon Shannon, S-H-A-N-N-O-N. I am the pastor of
10 the church, which is right across the street from the
11 property of which we speak.

12 CHAIRPERSON GRIFFIS: Excellent.

13 MR. SHANNON: And we are partners in this
14 project.

15 CHAIRPERSON GRIFFIS: And that's why
16 you're so enthusiastic.

17 MR. SHANNON: And I just want you to know.
18 I just want you to know. Yes, I want you to know
19 that this project has our endorsement, our support.

20 CHAIRPERSON GRIFFIS: Good.

21 MR. SHANNON: And while there are some
22 members of the community who object, there are many
23 others who approve of this project.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. SHANNON: Mr. Chairman, let's go with

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1 it.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. SHANNON: All right. Thank you.

4 CHAIRPERSON GRIFFIS: Good point. And to
5 that, of course, it's also very important to
6 understand as much as we try and move this along, one,
7 this isn't a popularity contest. We don't count up
8 the votes of how many people are for it, how many are
9 against it. In fact, even the five of us don't put
10 our personal opinions into, you know, I like this
11 building, I don't like this, I really don't like the
12 guy that presented it or not. It really comes down to
13 a much more legal matter, which is why you're hearing
14 such kind of mundane and boring perhaps questions
15 going into the minutia of square footage, but we have
16 a special exception and a variance case. We need to
17 show that this property is unique. Out of that
18 uniqueness comes a practical difficulty and that that
19 practical difficulty, with compliance with the Zoning
20 Regulations, if granted, wouldn't impair the intent
21 and integrity of the Zone Plan and Map and would not
22 be against the public good.

23 All those are the steps that we walk
24 through. We try and do it with great acceleration and
25 good humor. So I think we can take the words just

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1 spoken to us and let's get on with it, but, of course
2 -- and I know Mr. Patton, as he is putting his case
3 together, knows full well what we need to see and what
4 it will take for us to decide this.

5 So with that, at this point, we have taken
6 judicial notice that there is an increasing demand for
7 parking on 14th and in this area. One is because of
8 the success of that commercial quarter now coming back
9 to perhaps the glory that it once used to be and maybe
10 even creating its own new era. With that comes its
11 own responsibilities and burdens and that will be
12 traffic, and so we certainly don't give direction and
13 support for reducing in some cases, but this is fully
14 compliant with the regulations in providing parking.
15 Is that correct? Okay.

16 Then let's move on. Is there anything
17 else you need to present in your case?

18 MR. PATTON: I don't believe so unless Mr.
19 Bonstra or --

20 MR. WILLIAMS: The book that we provided
21 in the prehearing contains all the arguments for the
22 meeting of this test you just identified, consistency.

23 CHAIRPERSON GRIFFIS: Oh, we know.

24 MR. WILLIAMS: Okay.

25 CHAIRPERSON GRIFFIS: Believe it or not,

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1 we do read it on every single application before we
2 come in. Cross examination by the party in
3 opposition, the Q Group? No cross questions? Indeed.

4 Okay. We're going to get to the Government reports.

5 Well, let's assess. We had a 5:00 situation here.

6 Do you want to --

7 MS. DOUGHTY: Mr. Macy finally managed to
8 get hold of his party and cancel that, so we are here.

9 CHAIRPERSON GRIFFIS: Oh, fabulous. Okay.

10 Then let's move ahead. The Board will be taking a
11 short recess at 6:00. I will assess it as we get
12 close to that, because what I want to do is figure out
13 whether we can just finish this up tonight or not or
14 whether we just break at 6:00 and then we can move on.

15 So I'm not going to delay anymore. Let's go to the
16 Office of Planning and have them present their report.

17 Good afternoon.

18 MR. PARKER: Thank you, Mr. Chairman,
19 Members of the Board. Good afternoon. My name is
20 Travis Parker with the Office of Planning. I will try
21 to be brief. As I hope has become clear, this
22 application basically boils down to two variances. We
23 have got a variance from the 50 percent ground floor
24 retail requirement to 47 percent and from the 15
25 percent residential rec requirement to 6 percent.

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1 In regards to the retail requirement, we
2 have discussed most of the prevalent issues. We have
3 got the requirement to have retail on 14th, the desire
4 by all parties to have a residential frontage on Q,
5 the architectural constraints on the building that
6 create a unique situation and a difficulty in
7 providing the full 50 percent.

8 The fact that the applicant has managed to
9 fit 47 percent and provide two serviceable retail
10 bays, OP feels meets the third test in that it
11 satisfies the intent of the ordinance and provides the
12 retail requirement on 14th Street that this requirement
13 is intending to provide.

14 In regards to the residential rec space,
15 we have many of the same issues in terms of
16 architectural constraints. The retail requirement
17 itself is a constraint on providing residential
18 recreation space on the ground floor. The height of
19 the building prevents residential rec space being
20 provided on the roof or at least being counted on the
21 roof. And all of these issues, as well as the context
22 of the street and other similar cases that have been
23 looked at in the 14th Street corridor, OP believes that
24 that variance, as well, meets the variance test and we
25 would recommend approval of these two variances. I

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1 would be happy to discuss further any of these
2 particular issues.

3 CHAIRPERSON GRIFFIS: Good. Thank you
4 very much. Questions from the Board? Ms. Miller?

5 VICE CHAIR MILLER: I have a question. I
6 just want to confirm my understanding. With respect
7 to the height in this case preventing the elevator, is
8 it that the height needs to go as high as it is
9 because of the architectural constrains, which limit
10 the area for the retail requirement and other
11 requirements within the building?

12 MR. PARKER: I'm not sure I understand.

13 VICE CHAIR MILLER: Well, height isn't
14 always a factor with respect to an elevator.

15 MR. PARKER: Well, the Arts District has a
16 requirement that other Districts don't have in that
17 roof structures are limited to 83.5 square feet and
18 that is what is applying to this particular case. Is
19 that your --

20 VICE CHAIR MILLER: Okay. Then my
21 question is would that apply to all buildings like
22 this in the Arts District or does that apply to this
23 building in particular?

24 MR. PARKER: The 83.5 applies to all.

25 VICE CHAIR MILLER: Now, I understand

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1 that. The problem in --

2 MR. PARKER: You're saying a shorter
3 building would have an easier time putting --

4 VICE CHAIR MILLER: Right. Couldn't it be
5 a little shorter, so that you would make room for the
6 elevator?

7 MR. PARKER: It certainly could.

8 VICE CHAIR MILLER: It could.

9 MR. PARKER: The building could be
10 shorter, but --

11 VICE CHAIR MILLER: It could be, but is it
12 a problem in this case because of the specific
13 architectural constraints?

14 MR. PARKER: Correct.

15 VICE CHAIR MILLER: Okay. Thank you.

16 MR. PARKER: Sorry for the confusion.

17 CHAIRPERSON GRIFFIS: Any other questions?
18 Does the applicant have any cross examination of the
19 Office of Planning?

20 MR. PATTON: No, just one thing.

21 CHAIRPERSON GRIFFIS: Your mike.

22 MR. PATTON: I'm sorry. One thing I wish
23 to point out, on 16914, as a preliminary matter, the
24 BZA upon a recommendation from the Office of Planning,
25 this answers some of the questions, with the

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1 concurrence of the applicant, amended that the
2 application request a special exception from the
3 maximum permitted height of roof structures in the
4 Uptown Arts Mixed Use Overlay District as specified in
5 11 DCMR 1906.

6 MR. WILLIAMS: That case is found at Tab D
7 of our prehearing submission and there is another case
8 involving rec space and an elevator that couldn't fit
9 within the limit.

10 CHAIRPERSON GRIFFIS: What? That may have
11 gone great for the attorneys, but so what? What does
12 that mean?

13 MR. PATTON: We're trying to help Ms.
14 Miller.

15 MR. WILLIAMS: Ms. Miller asked us a
16 question about --

17 CHAIRPERSON GRIFFIS: All right. Then
18 we'll let it go.

19 VICE CHAIR MILLER: You don't want that.

20 CHAIRPERSON GRIFFIS: That's right. I
21 don't need any case cites. Okay.

22 VICE CHAIR MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Any other questions,
24 clarifications? Okay. Do the parties have any cross
25 examination of the Office of Planning? Any cross?

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1 MS. DOUGHTY: No.

2 CHAIRPERSON GRIFFIS: No cross? Okay.
3 What's OP's opinion about the roof deck?

4 MR. PARKER: In what?

5 CHAIRPERSON GRIFFIS: In your analysis, is
6 it -- I mean, obviously, your analysis is in support
7 of the application, but in your analysis in looking at
8 this. I mean, you have a better perspective than the
9 rest of us. It's because we look at these
10 individually and don't really know what's going on
11 around the area.

12 MR. PARKER: Yes.

13 CHAIRPERSON GRIFFIS: Is this an amenity?
14 Is this an aspect that really ought to be utilized?
15 Is this where residential rec should be? And there is
16 a diminished return or a negative impact, you know,
17 just not so big boned negative impact, but a small
18 negative impact in not requiring this to be on the
19 roof?

20 MR. PARKER: Are you asking me would OP
21 prefer the not counting this recreation space to
22 providing an elevator, to providing a height variance?

23 CHAIRPERSON GRIFFIS: I just want your
24 limited opinion about, not limited but, what's your
25 unofficial opinion about having to provide the roof

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1 deck or not? Forget the elevator.

2 MR. PARKER: I think the roof deck is a
3 bonus feature that is a good place to have residential
4 rec space, a good place to meet that requirement, but
5 I don't believe it should be an excuse to approve
6 other variances, such as height. I don't think it is
7 that important, especially when it only would add one
8 or two percent of the required 15 percent. I mean,
9 even providing the roof deck wouldn't get them that
10 much nearer to their 15 percent requirement.

11 CHAIRPERSON GRIFFIS: How many units in
12 this? 30 units? Is that correct? What's the total
13 square footage of the residential rec? Now, that I've
14 folded up the ASK-15 or whatever it is.

15 MR. PARKER: 19, I believe.

16 MR. WILLIAMS: The total residential area
17 in the building is just under 40,000 square feet of
18 the overall gross floor area. The residential rec
19 space under our process would total to 2,373 square
20 feet.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. WILLIAMS: Of which 1139 would be
23 indoors and slightly more than half outdoors.

24 CHAIRPERSON GRIFFIS: Yes, okay, 6
25 percent. 2,300 square feet residential rec for 30

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1 units. Okay. Gotcha. Any other questions, any other
2 cross? Very well. We have any other Government
3 reports attendant to this? We, of course, have the
4 Historic Preservation, wow, a lot of staff reports in
5 there, Tab E, Exhibit 23, 2F. We do have the Exhibit
6 24, the ANC which voted to support. I ask again if
7 the ANC representative is here to present? Not noting
8 any ANC representative here, let's go to, if there's
9 nothing else missing in terms of Government or ANC
10 reports, let's go to the party in opposition case
11 presentation. Very well.

12 MS. DOUGHTY: Okay. For the record, my
13 name is Andrea Doughty. First of all, perhaps we can
14 get one thing straight off the table. Q Group does
15 not oppose the special exception requested from the
16 retail requirement under section 1901.1.

17 CHAIRPERSON GRIFFIS: Okay. So the
18 reduction of the retail square footage requirement of
19 14th Street not on issue.

20 MS. DOUGHTY: Now that they have increased
21 that by 10 percent, we have no problem with this 3
22 percent discrepancy between the rule and what is being
23 provided.

24 CHAIRPERSON GRIFFIS: Excellent. Okay.

25 MS. DOUGHTY: So our only objection is to

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1 the relief sought under section 773, the recreation
2 space requirement, and also to the option two
3 presented by the developer of the alternate to the
4 variance under the rec space of going up higher with
5 this building and requiring a special exception to the
6 height limits on roof structures in the Arts Overlay
7 District. As you know, from the request for party
8 status, which as you mentioned when into this issue in
9 some detail, there was an extensive HPRB process with
10 this building and it was focused on height.

11 So there is -- I full agree with Mr.
12 Parker from the Office of Planning that we would not
13 want to go there in terms of giving a variance on
14 height, at this stage, after having -- or a special
15 exception, after having gone through such an extensive
16 design process. We just think that that's -- and
17 because it wouldn't anyway solve the problem with the
18 recreation space. So having said that, let's now turn
19 to the recreation space and I'll try to be as quick as
20 I can, but we've got some issues we want to discuss
21 with you about this that perhaps go a little wider in
22 this case. I'm going to try and make them as pointed
23 as I can to this case.

24 CHAIRPERSON GRIFFIS: I'm going to help
25 you.

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1 MS. DOUGHTY: Good. And I'm going to
2 focus, you know, on the three prong test for the
3 variance.

4 CHAIRPERSON GRIFFIS: Excellent.

5 MS. DOUGHTY: So we are not going to --
6 we're going to try not to waste your time here. One
7 thing I would like to say is the laundry list on page
8 3 of the applicant's prehearing statement, which was
9 to some extent repeated by Mr. Bahrami in his
10 presentation of items that apparently the HPRB or the
11 community, I'm not quite sure whom, have required,
12 have imposed or burdened on him in all of these
13 different areas.

14 We respectfully differ. You know, we
15 don't believe that that is the case. Many of these
16 items going down the list are -- you know, they
17 perhaps have been comments that have been made by one,
18 you know, community group or another, the ANC-2F or
19 LCCA Historic Committee or indeed just by, you know, I
20 don't know who else comments to Mr. Bahrami and Mr.
21 Bonstra on these things. But they are certainly -- I
22 want to be clear, Q Group or Q Street Association in
23 its wider form did not ever make demands or demand all
24 of these items. That's just simply not the case.

25 CHAIRPERSON GRIFFIS: Okay. But you,

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1 yourself are indicating how many other groups are
2 talking about all the aspects of this.

3 MS. DOUGHTY: Indeed.

4 CHAIRPERSON GRIFFIS: And clearly they may
5 have, if not directly, or would have made a
6 recommendation.

7 MS. DOUGHTY: Of course, people make
8 recommendations all the time. There is a difference
9 between people making recommendations and somebody
10 saying I have had requirements, burdens placed on me
11 and requirements made of me.

12 CHAIRPERSON GRIFFIS: Yes.

13 MS. DOUGHTY: That's not the case.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. DOUGHTY: In many cases, some of these
16 changes have come from within the design team
17 themselves. They have brought forward a new vision
18 that has changed things in various ways.

19 CHAIRPERSON GRIFFIS: Sure, sure.

20 MS. DOUGHTY: Including before the HPRB,
21 so anyway, the one thing that we were not able to do
22 prior to today's hearing was we wished to provide you
23 with excerpts from the HPRB transcripts in order to
24 just, you know, show you that some of these things
25 were not imposed by the HPRB. The applicant makes a

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1 big play in his prehearing statement about the burden
2 imposed by the Historic Preservation Review Board
3 process and we fundamentally disagree with them on
4 that. Unfortunately, we could not gain access to
5 that.

6 CHAIRPERSON GRIFFIS: Well, what are the
7 elements that you disagree on? I don't need to read
8 the transcript. What did HPRB do that you think did
9 not create any sort of particularities with this
10 project?

11 MS. DOUGHTY: Well, for a start, you know,
12 perhaps the most important thing here is that
13 originally the applicant was talking to our group and
14 this goes back over a year. Originally, the applicant
15 was talking to our group about a five-story building.
16 He then went and got a geotechnical report on the
17 site for a five-story building. Then a proposal for a
18 seven-story building was made to the HPRB and the
19 HPRB's initial reaction was take a story off this
20 building.

21 After, you know, an agonizing series of
22 hearings, at which the Board was very reluctant to
23 agree to a seven-story building in this location
24 surrounded as it is by three scale properties --

25 CHAIRPERSON GRIFFIS: All right. Let's

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1 just cut to the chase.

2 MS. DOUGHTY: Okay.

3 CHAIRPERSON GRIFFIS: Did the HPRB set the
4 building back? Do you see how the roof plan actually
5 creates a --

6 MS. DOUGHTY: The HPRB allowed --

7 CHAIRPERSON GRIFFIS: Just let me finish.

8 MS. DOUGHTY: Yes.

9 CHAIRPERSON GRIFFIS: Did setting the
10 roof, the actual footprint of the roof, do you see how
11 that compounds the setback in any sort of penthouse or
12 limiting the residential rec space that would be
13 utilized up there?

14 MS. DOUGHTY: What the HPRB did in this
15 case was it very generously agreed to a seven-story
16 building in a location where it was --

17 CHAIRPERSON GRIFFIS: Okay. But to answer
18 my question.

19 MS. DOUGHTY: Yes.

20 CHAIRPERSON GRIFFIS: Do you understand
21 that setting that back changed the dimension of the
22 upper roof?

23 MS. DOUGHTY: Of the roof? Indeed.

24 CHAIRPERSON GRIFFIS: Okay. So that's
25 something that was presented today as a direct impact

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1 of HPRB's decision to set back the mast and how it
2 impacted, therefore, the relief that is before us.

3 MS. DOUGHTY: That's true on the northern
4 side of the building.

5 CHAIRPERSON GRIFFIS: What is the other
6 things that you see that --

7 MS. DOUGHTY: That's true only on the
8 northern side of the building where the HPRB added in
9 a setback.

10 CHAIRPERSON GRIFFIS: Okay. All right.

11 MS. DOUGHTY: The other setback was
12 presented by the applicant.

13 CHAIRPERSON GRIFFIS: We're done with that
14 one.

15 MS. DOUGHTY: Okay.

16 CHAIRPERSON GRIFFIS: The next one. So
17 you tell me now what is one of the pieces that the --
18 because I really want to follow in step.

19 MS. DOUGHTY: Yes.

20 CHAIRPERSON GRIFFIS: You laid it out
21 here. This is a minus.

22 MS. DOUGHTY: Yes.

23 CHAIRPERSON GRIFFIS: You laid a very
24 strong statement out that said HPRB didn't do anything
25 and they are saying they did.

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1 MS. DOUGHTY: Right.

2 CHAIRPERSON GRIFFIS: So show me, tell me
3 the next element that you say that the applicant has
4 stated that HPRB forced them to do that impacted as
5 basing their variance request, but actually did not
6 do.

7 MS. DOUGHTY: Well, As I said, I mean, you
8 know, perhaps we can, you know, go through this list
9 on page 3 if you wish.

10 CHAIRPERSON GRIFFIS: No, that's not what
11 I said. I'm just trying to help you.

12 MS. DOUGHTY: Yes, okay.

13 CHAIRPERSON GRIFFIS: Just making
14 statements, believe me, it's, you know, 5:30 in the
15 afternoon.

16 MS. DOUGHTY: Yes, yes.

17 CHAIRPERSON GRIFFIS: No matter what. The
18 statements don't go for substantive deliberation.
19 Show us actual elements, specific things that are in
20 this application that you want -- if HPRB isn't the
21 issue, that's fine. Let's move on. I know, and I
22 think the Board follows you on your points. This
23 laundry list, okay, these weren't the demands of the
24 neighbors.

25 MS. DOUGHTY: No.

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1 CHAIRPERSON GRIFFIS: And everyone pricked
2 their finger and signed in blood and they can and have
3 to do this. But I think it starts to inform the
4 design of the building and how and how many steps it
5 is going through and the iterations it is going
6 through.

7 MS. DOUGHTY: Yes.

8 CHAIRPERSON GRIFFIS: Okay. So this isn't
9 the practical difficulty, this list.

10 MS. DOUGHTY: Right.

11 CHAIRPERSON GRIFFIS: I'll grant you that.
12 That's pretty understandable.

13 MS. DOUGHTY: Yes.

14 CHAIRPERSON GRIFFIS: Okay. What else do
15 you want us to understand in terms of this?

16 MS. DOUGHTY: I think the main point is
17 that fundamentally overall Historic Preservation
18 design review process on this building has resulted in
19 a seven-story building on this site.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. DOUGHTY: Now, it's very close to the
22 zoning envelope in terms of the height. We just don't
23 see this in general as a case where Historic
24 Preservation has really imposed some burdensome
25 elements on the architect and the developer.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 Excellent point.

3 MS. DOUGHTY: That's the point made.

4 CHAIRPERSON GRIFFIS: HPRB didn't knock
5 off 10 stories like they usually do. They allowed
6 them seven stories. Okay.

7 MS. DOUGHTY: Okay. Again, I wouldn't
8 want to belabor this point and I totally understand
9 that this is not a beauty contest, but we do feel that
10 the applicant's prehearing statement is misleading and
11 the picture that it paints of solid community support
12 behind this project. There have been a divided
13 community over this project since day one.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. DOUGHTY: And it has been very finely
16 balanced all the way through.

17 CHAIRPERSON GRIFFIS: Good.

18 MS. DOUGHTY: I have a petition here in my
19 bag which I'm not sure whether you want to see.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. DOUGHTY: But containing --

22 CHAIRPERSON GRIFFIS: Let me let you in on
23 a little secret.

24 MS. DOUGHTY: Yes.

25 CHAIRPERSON GRIFFIS: We'll turn off the

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1 cameras and the recorder and I'll tell you this. I
2 don't know an applicant that doesn't come in and say
3 we have overall community support. And what I ask you
4 to do is trust the Board's intuitive nature in reading
5 these and understanding and actually getting to the
6 substance. I think the most important thing and the
7 most important aspect when the community comes out to
8 give testimony is not, you know, like I said before, I
9 really don't like these guys or these guys lied to me
10 or these guys did this.

11 Get us to the direct impact or the aspect
12 of which the relief that is being sought is before us,
13 so the variance test. It's just really going to crush
14 the public good. Let's start talking about that. So
15 believe me, we read everything and we also think
16 strongly on all of it. Okay.

17 MS. DOUGHTY: Thank you.

18 CHAIRPERSON GRIFFIS: So let's continue.

19 MS. DOUGHTY: All right. I have just one
20 more point that I want to make before I get to this
21 public --

22 CHAIRPERSON GRIFFIS: And I was kidding
23 about turning the cameras off. I think they were
24 running.

25 MS. DOUGHTY: Irrespective of what the

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1 developer, you know, may believe in this, there is a
2 very real feeling among the neighboring community that
3 a bait and switch operation took place in respect to
4 this project. In other words, in hearings before the
5 HPRB and other community meetings, the developer
6 represented that this would be a matter-of-right
7 development and that for which no variances or special
8 exceptions would be being sought.

9 If the HPRB had known that it was
10 reviewing a building, a design for which, in fact, a
11 height variance would be required, you know, in order
12 to meet the residential recreation space requirement,
13 then that very finely balanced review process with
14 HPRB would not -- we believe it would have tipped the
15 balance towards actually removing the one floor that
16 the HPRB had originally.

17 CHAIRPERSON GRIFFIS: Okay. And I think
18 that's an opinion you can have.

19 MS. DOUGHTY: Yes.

20 CHAIRPERSON GRIFFIS: I mean, here is my
21 experience. We get applications in here that clearly
22 indicate that HPRB does not take zoning under
23 consideration or impact to the zoning, whether it is
24 allowable or not, whether they are reducing what is
25 matter-of-right or whether they are increasing beyond

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1 and creating variances and special exceptions. So I'm
2 not sure it would have the greatest impact.

3 Let me ask you this though, in terms of
4 the opposition, and believe me I think every Board
5 member up here has been involved in some sort of
6 community aspect related to development at one time in
7 our lives. The straightforwardness and the honesty is
8 an important aspect. Is that fundamentally the
9 difficulty of which you are here in opposition? I
10 mean, you have made a statement now twice and you have
11 just characterized it as a bait and switch. Is there
12 a large concern that you just don't know what they are
13 going to do or is there a large resentment for not
14 knowing or for not being a part or feeling clear in
15 terms of the presentation?

16 MS. DOUGHTY: The former is true and the
17 latter is not. There is no resentment. What there is
18 is let's -- we want to be clear. The community wants
19 to be clear exactly what is going to be voted this
20 side and there are --

21 CHAIRPERSON GRIFFIS: Okay. And I think
22 that's an excellent point. Let me tell you this. If
23 this is approved from this Board, the drawings that
24 are presented to us, are what is going to be built.

25 MS. DOUGHTY: Yes. Okay.

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1 CHAIRPERSON GRIFFIS: So let's talk. I
2 would suggest we get right into you've indicated that
3 the retail, the small diminishment in the retail
4 requirement isn't at issue in terms of the opposition.

5 But residential recreation is. Frankly, I'm quite
6 interested to hear why there is an opposition creating
7 contained residential rec space.

8 MS. DOUGHTY: Okay. For the record, you
9 know, can I indicate that we do not think, you know,
10 at some point we need to go through the three prongs
11 of the variance test.

12 CHAIRPERSON GRIFFIS: Oh, sure.

13 MS. DOUGHTY: And then we can come to
14 perhaps the more wider issue behind the community's
15 view on the resident -- the recreation space in this
16 case.

17 CHAIRPERSON GRIFFIS: No.

18 MS. DOUGHTY: Or we can do it the other
19 way around.

20 CHAIRPERSON GRIFFIS: Perhaps I wasn't
21 clear. Go right to the test of why you think they
22 haven't made it for residential rec and that is why
23 you are here and opposing it.

24 MS. DOUGHTY: Okay. Well, first of all,
25 we believe that there is nothing exceptional

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1 whatsoever about this particular property, unless you
2 would count as exceptional the fact that this
3 particular property does not have an existing historic
4 structure on it. So the developer in this case is not
5 facing the massive expenditures involved in
6 underpinning and supporting an existing historic
7 structure. So the property is exceptional in that
8 regard that it is a clean site.

9 CHAIRPERSON GRIFFIS: Unencumbered by a
10 historic structure.

11 MS. DOUGHTY: Right. Exactly, and that's
12 unusual in our District.

13 CHAIRPERSON GRIFFIS: Yes, it is.

14 MS. DOUGHTY: The property is a plain
15 vanilla rectangle, approximately, 80 feet by 120 feet,
16 virtually no gradient on the site. It's an
17 amalgamation of three lots each of which on their own
18 one could build on, and other sites like the
19 individual lots that go to make up these three lots
20 have been built on in our neighborhood without
21 difficulty. In fact, they have been built on with
22 plenty more difficulties than this site has,
23 difficulties of access. This site has access on three
24 sides. Difficulties of existing historic structures
25 that need to be supported, this site has none of those

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1 problems. We find that it is just, you know, a
2 completely standard site for development. In fact, it
3 was created by this development partnership. They
4 amalgamated the three lots together. There are no
5 practical conditions here. We believe that part of
6 the variance test simply is not met.

7 Second and, you know, by definition, since
8 there is no exceptional condition at the property, we
9 believe that there is no exceptional practical
10 difficulty placed on the property owner. We went
11 through why we believe that the HPRB -- we have
12 discussed why we believe the HPRB did not impose a
13 burden on the property owner.

14 I mean, there are other things in the
15 prehearing statement where the developer has pointed
16 to this particular difficulty or that particular
17 difficulty, for example, that it's a burden on the
18 property owner to maintain the so-called parking
19 space, the green space running along Q Street in front
20 of the building.

21 I mean, other property owners on Q Street
22 find a statement like that, frankly, pretty laughable.

23 That 16 strip of green running along the properties
24 up and down Q Street is a huge boon to us as property
25 owners. Instead of our front door steps opening onto

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1 the sidewalk, we have this lovely stretch of green
2 space and, of course, that will affect the marketing
3 of this building and he will benefit from that.

4 So in terms of, you know, so-called
5 practical difficulties that have been discussed by the
6 developer's team, yes, sure, the site does need to be
7 accessed. You know, you need to have a vehicle ramp
8 going into the site. It's manageable. It has been
9 done. They have fitted it in on their plans. Same
10 with the mechanical core of the building, same with
11 the retail. They have met the retail requirement on
12 the ground floor on 14th Street.

13 None of those factors do we see as there
14 haven't -- you know, there haven't really been any
15 practical difficulties associated with them. They
16 have worked around them. And indeed, when you compare
17 this and the work around that they have made to those
18 on other sites and even in our neighborhood, we have
19 seen much, much greater difficulties that have been
20 worked around, really exceptional conditions and
21 really where strict application of the Zoning
22 Regulations would have resulted in a huge burden on
23 the property owner. We just simply don't see this as
24 being a case like that.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. DOUGHTY: We believe that there is
2 substantial public detriment or substantial detriment
3 to the public good, the third prong of the test, if
4 the recreation space is not provided, and there are
5 several levels on which we believe that that
6 substantial public detriment operates.

7 Firstly, if the recreation space is not
8 provided, the applicants own prehearing statement
9 talks about this use of the so-called parking space in
10 front of the building, the green space, and you raised
11 it yourself, Mr. Chairman, this notion of benches and
12 tables and, frankly, you know, I have no idea what
13 they have in mind. It certainly didn't come from the
14 neighborhood. The rest would be totally out of
15 character with the rest of the parking space on Q
16 Street, which is made up of, basically, elaborate
17 gardens. There is the occasional seat here and there.
18 There is a fence always running between the sidewalk.

19 CHAIRPERSON GRIFFIS: Okay. So no
20 landscape furniture. That's a public detriment.

21 MS. DOUGHTY: Well, if it attracts
22 homelessness.

23 CHAIRPERSON GRIFFIS: Yes, exactly.

24 MS. DOUGHTY: Vagrants.

25 CHAIRPERSON GRIFFIS: I totally agree.

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1 Let's move on.

2 MS. DOUGHTY: Okay.

3 CHAIRPERSON GRIFFIS: In terms of
4 providing -- I thought you were really going where I
5 thought was going to be fascinating here, is the
6 public detriment of not providing the residential rec.

7 MS. DOUGHTY: Yes. Well, one element of
8 that would be overly intensive use of this green
9 space. One element of -- you know, if they have
10 residential recreation space inside the building,
11 wherever, or in private areas of the building and then
12 the occupants of that building are not relying on
13 intensive use of a public space area, then there is no
14 public detriment. If they are relying intensively on
15 that public space area at the front of the building,
16 then there is a public detriment in terms of -- I'm
17 seeing confusion.

18 VICE CHAIR MILLER: Let me just focus in
19 on this.

20 MS. DOUGHTY: Yes.

21 VICE CHAIR MILLER: I mean, it sounds like
22 you're trying to make an argument that if they don't
23 have this residential recreation space on the roof
24 they are going to overly use this public space in
25 front of the building. I don't necessarily follow you

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1 there, but I do want to ask you. They are not under
2 necessarily an obligation to develop or use that
3 public space in the way that they are presenting. My
4 impression is they are doing that as a type of
5 mitigation, because they are not providing all the
6 required residential recreation space.

7 So my question would be is there another
8 way that you would like them to use that space? You
9 know, if you're saying that chairs would attract
10 homeless or whatever, would you like to see it
11 landscaped or, you know, some other type of amenity in
12 that spot instead? Would that help?

13 MS. DOUGHTY: Well, it's simple, you know,
14 it's not the matter at the subject of the variance
15 here, but sure, your basic landscaping of that space
16 would be just fine with the neighboring property
17 owners. I mean, landscaping is what everybody else
18 has. It doesn't have to be complex or expensive. The
19 landscaping immediately opposite is very simple, but
20 I'm not too concerned about the landscape.

21 I'm concerned about the notion in the
22 applicant's prehearing statement that the residential
23 recreation space is not needed inside the building,
24 because it can be provided elsewhere. And I agree,
25 they are presenting a number of mitigating factors.

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1 They present in mitigation that the green space in
2 front of the building could be used. We believe, in
3 fact, that's a public detriment for a lot of reasons.
4 It's totally out of character with the neighborhood.

5 They present that there are a number of
6 recreational facilities in the immediately surrounding
7 area that the residents of this building can recreate
8 at, and so they don't need recreation space in this
9 building. Mr. Macy has some photographs here for you
10 of those recreation spaces. We have very few.

11 CHAIRPERSON GRIFFIS: Okay. So let's go
12 right to that. So you're saying that the photographs
13 you're going to show, that they actually can't
14 recreate in these spaces?

15 MS. DOUGHTY: Well --

16 MR. MACY: Or can't or won't.

17 MS. DOUGHTY: Or that they are not
18 adequate spaces.

19 CHAIRPERSON GRIFFIS: Okay. What are the
20 spaces you're showing us in terms of the photographs?
21 What are you photographing?

22 MR. MACY: Sorry. These are the spaces
23 that are quoted in the applicant's statement.

24 CHAIRPERSON GRIFFIS: Oh, so you're
25 showing photographs of what they have put in?

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1 MR. MACY: What they have put in.

2 CHAIRPERSON GRIFFIS: Okay. Are you going
3 to give them a copy?

4 MR. MACY: Yes, I'm going to give them a
5 copy.

6 CHAIRPERSON GRIFFIS: And then put one up
7 to Staff and then let's move on. So tell me this. Do
8 you know what he's showing or he'll sit down in a
9 second. That's okay. Thank you. So the first one is
10 Shaw Basketball/Skateboard Park. How far away is that
11 at 10th and Rhode Island?

12 MR. MACY: Four blocks, four or five.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. MACY: Five or six blocks.

15 CHAIRPERSON GRIFFIS: And this photograph
16 shows me why they wouldn't use it?

17 MR. MACY: This photograph shows what it
18 actually is. It's a skateboard park.

19 CHAIRPERSON GRIFFIS: Is it always a
20 skateboard park?

21 MR. MACY: It's almost always a skateboard
22 park and a basketball court.

23 CHAIRPERSON GRIFFIS: Is it currently
24 today a skateboard park?

25 MR. MACY: Yes, it is currently today a

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1 skateboard park.

2 CHAIRPERSON GRIFFIS: Interesting. So
3 people wouldn't go recreate there, because it's a
4 skateboard park?

5 MR. MACY: Well, let's see who the
6 potential residents of the unit is. I mean, in their
7 statement --

8 CHAIRPERSON GRIFFIS: But wait, wait,
9 let's be very specific about this. Oh, boy.

10 MR. MACY: Could I --

11 COMMISSIONER HOOD: I'm not following
12 this.

13 MR. MACY: Let me start from the beginning
14 then.

15 COMMISSIONER HOOD: I hope you're not
16 going this --

17 CHAIRPERSON GRIFFIS: No.

18 MR. MACY: No, we're not.

19 COMMISSIONER HOOD: Okay.

20 MR. MACY: Okay? What --

21 CHAIRPERSON GRIFFIS: There are going to
22 be no skateboarders that buy in this place.

23 MR. MACY: Well, first of all --

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. MACY: I mean, I think that's more the

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1 point. The applicant has offered these places up as
2 the places where the public, the residents, would go
3 to recreate, okay, and we're suggesting that those
4 places are probably not where the residents would go
5 recreate.

6 CHAIRPERSON GRIFFIS: Okay. Let's leave
7 it at that. That's Shaw.

8 MR. MACY: I mean, what they have
9 identified is there is, you know, Shaw Skateboard
10 Park, there is an elementary school, there is a junior
11 high school and the Stead Park.

12 CHAIRPERSON GRIFFIS: Stead Park.

13 MR. MACY: All these spaces -- right.

14 CHAIRPERSON GRIFFIS: 16th and B. Why
15 aren't they going there?

16 MR. MACY: Well, first of all, all those
17 spaces are designed for children.

18 CHAIRPERSON GRIFFIS: Those are big kids
19 in that park you photographed.

20 MR. MACY: Well, yes, but they are there
21 for the intent. I mean, certainly, Stead Park is
22 there for the express purpose of providing space for
23 children. The schools are there for children.

24 CHAIRPERSON GRIFFIS: Okay. Now, I can
25 see that and it makes a point. In Stead Park, I mean,

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1 let's be honest --

2 MR. MACY: And Stead Park may not be there
3 later.

4 CHAIRPERSON GRIFFIS: Well, if it was set
5 up with like jungle gyms and kid play equipment,
6 that's fine.

7 MR. MACY: There is some of that.

8 CHAIRPERSON GRIFFIS: Indeed, which you
9 didn't photograph, which is fine.

10 MR. MACY: I know.

11 CHAIRPERSON GRIFFIS: It makes your point
12 though.

13 MR. MACY: Right.

14 CHAIRPERSON GRIFFIS: But this is one, an
15 open field. I don't see how it follows that this is
16 made for kids and two, a basketball court of which
17 those are some big kids playing basketball.

18 MR. MACY: Right, and I will get to that
19 point as well.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. MACY: Now, that big field is always
22 locked. You can't get in there.

23 CHAIRPERSON GRIFFIS: That's why no one's
24 on it.

25 MR. MACY: Right.

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1 CHAIRPERSON GRIFFIS: It's a nice field,
2 too.

3 MR. MACY: Okay. Now, the basketball
4 court and you see people playing.

5 CHAIRPERSON GRIFFIS: Okay. Go ahead.

6 MR. MACY: The basketball court, you see
7 people playing. That is a very intensively used
8 court.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. MACY: I mean, even in the recent
11 issue of the InTowner they talk about Stead Park,
12 because there is this controversy about that site
13 being redeveloped, and they talked about how this
14 court and the basketball area is in continuous and
15 strenuous use.

16 Now, take that under extensive use, you
17 are adding how many new apartments, condominiums in
18 the area just on the 1400 block of P and Church alone,
19 there is at least 1,000 new units. Add, you know, the
20 property at 1600 14th Street. If you expect people to
21 recreate there, which is already at capacity, you are
22 going to exceed the capacity. You're going to
23 displace people who normally recreate there. Someone
24 is going to get caught out. There is just not
25 sufficient public space here to accommodate the influx

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1 of residents coming into the area.

2 CHAIRPERSON GRIFFIS: Okay. I understand
3 that.

4 MR. MACY: The public spaces that are
5 usable are at capacity.

6 CHAIRPERSON GRIFFIS: Good point. Okay.
7 Logan Circle.

8 MR. MACY: And they are going to displace
9 people.

10 CHAIRPERSON GRIFFIS: Yes. Question?
11 Seven minutes.

12 MR. MACY: Logan Circle.

13 CHAIRPERSON GRIFFIS: Logan Circle.

14 MR. MACY: I mean, Logan Circle is
15 basically not well-maintained. It is usually
16 inhabited by homeless people. There is lots of trash.
17 I can point to the statement in the applicant's
18 statement that says that what the people are looking
19 for are quality recreational spaces.

20 CHAIRPERSON GRIFFIS: Okay. But the --

21 MR. MACY: Logan Circle is not a quality
22 recreational space.

23 CHAIRPERSON GRIFFIS: They could go and
24 passively or actively recreate in Logan Circle,
25 correct?

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1 MR. MACY: It's unlikely that they would
2 do so.

3 CHAIRPERSON GRIFFIS: Is it landscaped?
4 Is it open? Could they active and passively recreate?

5 MR. MACY: It's not inviting. They would
6 not go.

7 MS. DOUGHTY: Excuse me, Mr. Chairman.
8 It's a circle and there is no barrier between the
9 traffic and the recreation area, so you are at the
10 mercy literally of traffic. You couldn't like kick a
11 ball around there or something is what I'm saying.

12 CHAIRPERSON GRIFFIS: Could you sit and
13 read a book on those benches?

14 MR. MACY: I wouldn't.

15 CHAIRPERSON GRIFFIS: I know you wouldn't.
16 Answer the question.

17 MR. MACY: Well, I am answering the
18 question.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MACY: I think you could visit.

21 CHAIRPERSON GRIFFIS: Could someone sit on
22 those benches and read a book?

23 MS. DOUGHTY: Let me answer that.

24 CHAIRPERSON GRIFFIS: Can you sit and
25 draw?

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1 MS. DOUGHTY: Absolutely, specifically,
2 because when we took that picture, that photograph,
3 and you can't see it quite clearly from there from the
4 photograph, it was difficult to get it all in, but on
5 every single bench, on every single bench surrounding
6 that circle there was either a homeless person.

7 CHAIRPERSON GRIFFIS: I understand.

8 MS. DOUGHTY: Or their belongings.

9 CHAIRPERSON GRIFFIS: I understand.

10 MS. DOUGHTY: Or trash, seriously.

11 CHAIRPERSON GRIFFIS: If they were
12 building Logan Circle in their building in order to
13 comply with residential rec, we would have an
14 interesting conversation whether it was passive or
15 active.

16 MR. MACY: Yes, that would be interesting.

17 MS. DOUGHTY: Yes, it would be.

18 CHAIRPERSON GRIFFIS: You know, I remember
19 Logan Circle 14 years ago. But let's go to Fusebox,
20 14th and Transformer P Street Galleries. What is this?

21 MR. MACY: I think, for some reason, they
22 have included in their statement that these two little
23 galleries, one extremely small, right, constitute
24 recreational space. Last time I checked a gallery was
25 a place where things are sold. It's a commercial

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1 retail establishment. I can't in any way see that as
2 recreational space. And if you look closely at
3 Transformer, if they have 200 square feet in that
4 building, that's a lot.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. MACY: I mean, I can't understand
7 where they even come out.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MR. MACY: And say that's recreational
10 space.

11 CHAIRPERSON GRIFFIS: What is your
12 understanding of the fundamental aspects of what
13 residential recreation is for? I mean, why is it in
14 our regs? You don't have to. If you don't have a
15 notion, I mean, believe me, I ask every applicant that
16 comes in here, because I struggle with it. Why do we
17 have it? What's it for?

18 MS. DOUGHTY: I'll take a shot if you
19 like.

20 CHAIRPERSON GRIFFIS: Sure, absolutely,
21 four minutes.

22 MS. DOUGHTY: Every property owner on Q
23 Street has recreation space on their properties,
24 recreation space that is used intensively, whether it
25 might be some gym equipment inside their homes or a

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1 little back garden or a roof deck. We all have
2 recreation space that we use, family rooms or multi-
3 purpose rooms. We all have those spaces in our
4 properties.

5 CHAIRPERSON GRIFFIS: Okay. All of these
6 have living rooms, right?

7 MS. DOUGHTY: All of which?

8 CHAIRPERSON GRIFFIS: All of these units.

9 MS. DOUGHTY: All of the condominiums, I'm
10 sure that they do.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. DOUGHTY: The zoning, I believe, and,
13 you know, I may be wrong, but I believe that the --

14 CHAIRPERSON GRIFFIS: How could you be?
15 No one knows. No one is wrong on this one.

16 MS. DOUGHTY: The Zoning Commission set
17 down this requirement for 15 percent recreation space
18 believing that buildings should not be so densely
19 developed without any common areas that the community
20 of residents in that building could not get together
21 in various ways or could not recreate within those
22 buildings.

23 CHAIRPERSON GRIFFIS: Is it important to
24 you that the residential rec only kicks in in
25 commercial zones where you are building residential?

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1 MS. DOUGHTY: Yes, I believe that is
2 important.

3 CHAIRPERSON GRIFFIS: Why?

4 MS. DOUGHTY: Because as I just discussed,
5 in residential areas the recreation space is already
6 taken care of.

7 CHAIRPERSON GRIFFIS: You mean within the
8 development itself?

9 MS. DOUGHTY: Yes.

10 CHAIRPERSON GRIFFIS: But if you build a
11 residential building like this in a residential zone
12 and not in a commercial, you wouldn't have to provide
13 residential recreation space.

14 MS. DOUGHTY: No, but when you get into
15 those commercial zones, I believe part of the
16 rationale here is exactly what we're describing to
17 you. Once you move into a commercial zone --

18 CHAIRPERSON GRIFFIS: Right.

19 MS. DOUGHTY: There is less sidewalk.
20 There is less green space. There is less, you know,
21 parks.

22 CHAIRPERSON GRIFFIS: Excellent point.
23 What is the surrounding zoning in this area?

24 MS. DOUGHTY: The surrounding zoning is C-
25 3-A, Arts Overlay.

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1 CHAIRPERSON GRIFFIS: What happens when
2 you go off 14th Street? What is the surrounding zoning
3 in Logan Circle?

4 MS. DOUGHTY: I think Logan Circle is R-5-
5 B.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. DOUGHTY: Or when you get --

8 CHAIRPERSON GRIFFIS: Didn't we just see
9 in the attendant application that the commercial zone
10 abutted the residential zone?

11 MS. DOUGHTY: Sorry, I didn't --

12 MR. MACY: Excuse me? Oh, yes, yes, point
13 taken.

14 CHAIRPERSON GRIFFIS: So I guess what I'm
15 struggling with is it seems to be that residential rec
16 is often required in a commercial zone where you're
17 building residential, because, you know, the grand
18 poobahs that wrote the regulations sat in a dark room
19 and said oh, how horrid it would be if we built all
20 this residential in these dark, dank, over-dense
21 commercial zones. We have got to provide somehow some
22 residential recreating for residential folks. I don't
23 know. That's my thought.

24 MR. MACY: I mean, it's inherently less
25 private, because you have a lot of commercial traffic

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1 on the street, a lot of commercial foot traffic. You
2 can't just sit out on your front porch.

3 CHAIRPERSON GRIFFIS: Yes, but you have
4 got two parks in walkable distance.

5 MR. MACY: Yes, but, you know, once you
6 start, everyone starts going to those parks from all
7 these new developments, there is a burden. I mean,
8 you know, recreational space is a public good and it's
9 in limited supply.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. MACY: And once it's in limited
12 supply, you need to provide that space elsewhere.

13 CHAIRPERSON GRIFFIS: Okay. Good.

14 MS. DOUGHTY: Have you got anything else?
15 Maybe I could finish off with some points that I
16 think do go to this and if Mr. Macy has anything else
17 to add, he'll just speak up.

18 CHAIRPERSON GRIFFIS: I'm sorry. We're
19 going to go. The Board has business actually at 6:00.

20 MS. DOUGHTY: Okay.

21 CHAIRPERSON GRIFFIS: And so we're going
22 to have to break. How much longer do you require to
23 get to finish?

24 MS. DOUGHTY: I think really only another
25 10 minutes, perhaps 12 minutes, you know.

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1 CHAIRPERSON GRIFFIS: Okay. And how many
2 people are here to give testimony today, persons in
3 opposition, support? Excellent. Okay. And then
4 we'll do closings. Everyone is okay to stay for a
5 little bit?

6 MS. DOUGHTY: That's good.

7 CHAIRPERSON GRIFFIS: Good. I'm going to
8 get into this meeting. I will update you in 15
9 minutes if we're --

10 MR. PATTON: The rebuttal won't take long.

11 CHAIRPERSON GRIFFIS: Right, yes. So
12 we're going to finish this evening then. Okay. So if
13 we're not back in 15, I'll update you. It won't be I
14 don't think any later than 20 minutes or so.

15 MS. DOUGHTY: Okay.

16 (Whereupon, at 6:00 p.m. a recess until
17 6:17 p.m.)

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 CHAIRPERSON GRIFFIS: Very well. We
4 appreciate people's patience for that. Let's resume
5 and we are at the last case presentation. Go ahead.

6 MR. MACY: I'm just going to summarize
7 some points I was making.

8 CHAIRPERSON GRIFFIS: Sure, whatever you
9 need to do.

10 MR. MACY: I think it's important to
11 realize that, you know, public recreational space in
12 our neighborhood is limited and insufficient in terms
13 of both quality and quantity. You know, most of the
14 spaces identified by the applicant are intended for
15 children. Not only are they, for the most part, not
16 appropriate for adults, but they are locked, closed
17 and unavailable after dark, you know, generally when
18 the adults come home from work. So they are just not
19 available to them.

20 You know, the remaining limited spaces
21 that can be used are very intensively used as
22 evidenced by the basketball court in Stead Park. You
23 know, the influx of new residents, there are thousands
24 and thousands of new units coming on, will increase
25 the usage of these straining their capacity, you know,

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1 and really what you are resulting with is a diminished
2 public good.

3 Existing uses will be displaced and,
4 basically, there is an undue burden placed on the
5 residents and the existing spaces. And that, I think,
6 is about as simply as I think you could put it.

7 CHAIRPERSON GRIFFIS: Very well put. Ms.
8 Miller?

9 MS. DOUGHTY: I have also something.

10 CHAIRPERSON GRIFFIS: Oh, I'm sorry. Go
11 ahead.

12 MS. DOUGHTY: That was the conclusion of
13 Mr. Macy's presentation.

14 CHAIRPERSON GRIFFIS: Sure.

15 MS. DOUGHTY: On the recreation spaces. I
16 have a few more points that I want to make that I
17 think the Board will be very interested in. As we
18 said, we don't believe any of these three prongs are
19 met including the absence of public detriment.

20 We do believe that if the second level of
21 car parking that is planned for the site is built,
22 that that would go some way towards mitigating public
23 detriment involved with the lack of recreation space.

24 And I understand that if that is not built, that will
25 require a plan modification that will have to come

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1 back before the BZA, at least that is, I believe, what
2 the Chairman was saying to me earlier.

3 CHAIRPERSON GRIFFIS: Which specific
4 aspect if it wasn't built?

5 MS. DOUGHTY: If the building is not
6 constructed according to the plans that you have in
7 front of you.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. DOUGHTY: Then a plan modification has
10 to come back before the Board, and the Board has to
11 agree or not agree on that plan modification.

12 CHAIRPERSON GRIFFIS: And your concern is
13 on the public, the green public space?

14 MS. DOUGHTY: My concern is on the second,
15 the community's concern is on the second level of car
16 parking at the site that is being, as previous
17 speakers have mentioned --

18 CHAIRPERSON GRIFFIS: Oh, I see. Okay.

19 MS. DOUGHTY: The ANC has been very, very
20 concerned and conditioned its support for the rec
21 space variance on the second level of car parking
22 being built. We also believe that the second level of
23 car parking would go a long way toward mitigating the
24 public detriment.

25 What we are concerned about is that in the

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1 applicant's prehearing statement, considerable
2 uncertainty is thrown on the issue of whether or not
3 that second level of car parking will be built. There
4 is talk of geotechnical conditions that might prevent
5 that from being built and there is also talk if
6 preconstruction sales of that space were unfavorable,
7 they wouldn't go ahead with it.

8 That would greatly concern us. We don't
9 understand it, because other developers in our area
10 haven't found the need to caveat their plans to
11 provide parking space with these kinds of conditions.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. DOUGHTY: So we have some difficulty
14 with that and, you know, I can give you -- you are all
15 too aware of the specific examples nearby where two,
16 three and four levels of underground car parking are
17 being built underneath existing historic buildings not
18 on a site like this.

19 So despite the arguments that we have
20 presented about the lack of exceptional conditions or
21 practical difficulties, should the Board wish to grant
22 the relief to section 773 in this case, we would urge
23 the Board to make that variance conditional on the
24 second level of car parking being constructed as ANC-
25 2F recommends.

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1 We also believe that should the developer
2 decide not to go ahead and build that second level of
3 car parking because of, you know, some kind of
4 extraordinary circumstances in the ground, then either
5 the variance should cease to apply or some alternative
6 countervailing benefit that goes some way to
7 offsetting the public detriment should be proffered by
8 the applicant in which case the variance, we believe
9 the variance could, you know, continue to be an active
10 variance, a granted variance.

11 There are a number of precedents in terms
12 of providing some countervailing benefit to offset the
13 loss of rec space, and previous speakers referred to
14 BZA Case No. 16841 and 16848. That is the Hoffman
15 Development on P Street, Hudson and Saxon Court, where
16 there was a direct tradeoff in that case, a very
17 direct tradeoff. Space allocated to rec space was --
18 that space was directly taken and allocated to parking
19 on the grounds that it's an enormous benefit to the
20 community to remove cars from the neighboring streets.
21 We completely agree with that kind of balance.

22 There are also other cases, BZA 16892, BZA
23 17009, which involved provision of something in
24 exchange for the recreational space variance,
25 including in one instance a school was located in part

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1 of what would otherwise have been a recreational area.

2 And another case that would be relevant if
3 the second level of car parking is not forthcoming,
4 this is a case that was heard by the Zoning Commission
5 on May the 10th this year, Case No. 03-27, and it was
6 approved by the Commission to be set down, in this
7 case, that a development site on the corner of
8 Brandywine Street and Wisconsin Avenue, a conversion
9 of an existing building to 42 condos. The developer
10 has provided in exchange for a 3 percent variance from
11 the rec space requirement the following things. Some
12 \$75,000 to the local school PTA for the replacement of
13 play equipment.

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. DOUGHTY: Some \$25,000 to the local
16 library, \$20,000 to the Wilson Senior High School for
17 repairs, \$15,000 to a local park to help fund a
18 renovation and some \$42,000 to the local fire
19 department plus the provision of one affordable
20 housing unit in the building.

21 We would also point out that the Office of
22 Planning has, at various times and in various
23 contexts, given consideration to the notion of
24 imposing a per square footage charge on developers in
25 lieu of recreation space, and in particular this came

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1 up in 2001 with the Downtown Development Overlay
2 District.

3 The funds, the notion was that the charge
4 would be not on the square feet not being provided in
5 recreation space. The charge would be on the gross
6 residential square footage at the site, and then the
7 funds raised by that charge would be used by the city
8 to improve and maintain green spaces in the downtown
9 area. This notion has not yet progressed very far at
10 the Office of Planning and the D.C. Government level,
11 but nonetheless it's out there and it's something that
12 we believe the city really needs to give serious,
13 greater serious consideration to in the future.

14 There is also, as can be seen from the
15 Zoning Commission case that I mentioned, there are a
16 number of forms in which this countervailing benefit
17 could take. I mean, there are as many forms possible
18 as there are creative minds. You know, for example,
19 in this case that we have before us, the funds could
20 be made available for much needed improvements and
21 enhancements and rehabilitation of the existing kind
22 of hard scrabble minimal green spaces and recreation
23 spaces that we have in our neighborhood, especially
24 since the applicant is arguing that the residents of
25 this building should use these spaces.

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1 As a matter of principal, we would also
2 believe that the community should be involved in the
3 design of any form of -- the design and allocation of
4 any, you know, there should be a dialogue as to
5 countervailing benefits.

6 I mean, in terms of the level of such
7 countervailing benefits, I mean, again, we believe
8 that that's something that should be discussed. In
9 the Zoning Commission case that I quoted, the amounts
10 to be provided by the developer totaled some \$180,000
11 or \$30 per square foot of the recreation space that he
12 was not providing, some 6,000 square feet. And in
13 addition, of course, there was on affordable housing
14 unit also provided in that case.

15 In the proposal back in 2001 from the
16 Office of Planning, there was consideration of
17 imposing a charge of \$2.25 per square foot of gross
18 residential space downtown. Of course, that was in
19 the context of an exceptional --

20 CHAIRPERSON GRIFFIS: Do you have an
21 objection?

22 MR. PATTON: Yes, Mr. Chair. I believe
23 she is talking about PUDs.

24 CHAIRPERSON GRIFFIS: We'll get to that.

25 COURT REPORTER: Please, put on your mike.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. PATTON: It doesn't pertain to this
3 case unless she can explain it otherwise.

4 CHAIRPERSON GRIFFIS: All right. I can
5 restate. Mr. Patton has noted an objection that you
6 are going through a PUD application, the number of the
7 PUD.

8 MR. PATTON: On countervailing arguments.

9 CHAIRPERSON GRIFFIS: And he is
10 questioning the relevancy in processing this and I
11 think we're going to address that. So I would just
12 kind of summarize and move on with it.

13 MS. DOUGHTY: Okay.

14 CHAIRPERSON GRIFFIS: Because it is two
15 different animals really.

16 MS. DOUGHTY: Agreed, agreed.

17 CHAIRPERSON GRIFFIS: I mean, PUD does go
18 to what amenities are being provided.

19 MS. DOUGHTY: Yes.

20 CHAIRPERSON GRIFFIS: It's part of the
21 package of a PUD application and, more importantly,
22 the Zoning Commission basically looks at the zoning
23 that's allowed on the site, and then manipulates it,
24 oftentimes gives great variance to what is allowed.
25 So you may get an incredible increase of height and

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1 then be able to offset any sort of detriment of that
2 increase with amenities.

3 MR. MACY: Right, but I think what it does
4 show at the most basic level --

5 CHAIRPERSON GRIFFIS: Right.

6 MR. MACY: -- is that there is a value
7 there.

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. MACY: And there is a detriment.

10 CHAIRPERSON GRIFFIS: Sure.

11 MR. MACY: And that needs to be
12 compensated in some way, and I think that principle is
13 at play here.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. DOUGHTY: I would agree with that
16 entirely. You know, what many of the -- all of the
17 cases that I have cited are not PUDs.

18 CHAIRPERSON GRIFFIS: I didn't say that.

19 MS. DOUGHTY: And I'm not talking about
20 the PUD process. I'm talking about a place where --

21 CHAIRPERSON GRIFFIS: Good.

22 MS. DOUGHTY: A direction where --

23 CHAIRPERSON GRIFFIS: I think the point
24 has been made.

25 MS. DOUGHTY: Okay. We believe that a

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1 provision of countervailing benefits in lieu of
2 recreation space is a direction that already has
3 considerable informal standing and should be further
4 advanced by the Board. The broader issue here is
5 investment in recreation areas in our neighborhoods.

6 The Zoning Commission specified private
7 investment of 15 percent in recreation space for
8 certain developments and commercial areas. If we are
9 instead to rely on public investment and public
10 investment in and maintenance of public recreation
11 facilities while at the same time reducing private
12 investment, then we are going to have great problems.

13 The city, while wanting to encourage
14 another 100,000 residents to D.C., which is a
15 worthwhile policy goal, simply does not have the funds
16 to provide even the necessary upgrading of public
17 education facilities let alone to fully fund the kinds
18 of downtown green spaces and recreation spaces that
19 would be desirable.

20 CHAIRPERSON GRIFFIS: Unless the taxes on
21 retail go skyrocketing and they actually have more
22 money than they can handle. Okay.

23 MS. DOUGHTY: Yes, that would be desirable
24 or necessary given that expansion in population in
25 D.C. In principal, one can agree that it does not

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1 matter whether the rec space is provided in-house or
2 beyond the site. There may even be vibrancy
3 advantages in the provision of rec spaces out in the
4 community, but nonetheless the private sector is
5 responsible, as set down by the Zoning Commission, for
6 some capital investment in recreation space.

7 That responsibility should not, in our
8 view, simply be handed off to the public sector with
9 all of the burden being transferred to the D.C.
10 Government to maintain these spaces that we are all
11 now meant to recreate in.

12 To wrap up, I would like to say that this
13 is a question of overall balance and that is what is
14 missing, in the community's view, from this project.
15 You know, the Zoning Regulations taken overall, the
16 height limits, the FAR limits, etcetera, are intended
17 to govern the intensity of use of a property, the
18 density with which a building is occupied by
19 residents.

20 This particular project is going to be a
21 seven-story building not a five-story building. The
22 bulk of the mass will be on a quiet residential
23 street. Unlike other developments, this developer has
24 not strictly committed himself as yet, if you read the
25 prehearing statement, to the second level of car

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1 parking at the site.

2 Now, the developer wishes to also provide
3 less recreation space. We would like to see some form
4 of countervailing benefit committed to by the
5 developer at the site, committed to by the developer
6 of this site, whether that countervailing benefit be
7 of whatever form it may take. Strict commitment to
8 the second level of car parking or whether it is sums
9 provided by the developer to neighborhood
10 organizations for upgrading of these spaces that he is
11 suggesting are adequate.

12 In our view it's not sustainable. Over
13 the medium and long-term it is simply not sustainable
14 to give these recreation spaces variances without
15 receiving some kind of countervailing benefit that
16 goes to creating recreation spaces outside of the
17 building. That's not the balance of private
18 investment and public investment that the Zoning
19 Commission set down in the regulations, and it's not
20 one that is practically feasible in D.C. today given
21 its state of finances.

22 Finally, as I said, we believe that the
23 three prong test for the variance have not been met.
24 There is no exceptional conditions at the site. There
25 are no practical difficulties and there is public

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1 detriment. There is real public detriment if
2 recreation space continues to be given away, when
3 there is no excess capacity. In fact, there is under-
4 capacity in the recreation space that is available
5 right now in the surrounding community. Thank you.

6 CHAIRPERSON GRIFFIS: Good. Thank you
7 very much. Let me ask you this. You brought up some
8 interesting cases of which I am familiar with a lot of
9 them and you have talked about in terms of like the
10 tradeoff. You certainly have sites that are unique.
11 There is a practical difficulty and then you had to
12 make a decision, for instance, the reason one where
13 they said, you know, we have this recreation space.
14 We could provide it or we could provide parking, and
15 the community urged them to provide parking and they
16 did. And that to you was an excellent balance, a
17 tradeoff as you say.

18 Looking at this, where is the tradeoff
19 here? Would it make sense in your mind and the people
20 part of the party in opposition to lose all the retail
21 on 14th Street and put the residential rec there?

22 MS. DOUGHTY: That is not -- you know,
23 well, perhaps that is an option. It's certainly not
24 an option that we have considered. That's not the
25 kind of tradeoff that I think --

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1 CHAIRPERSON GRIFFIS: No, I know it's not
2 the one you were --

3 MS. DOUGHTY: Yes.

4 CHAIRPERSON GRIFFIS: What I'm asking more
5 directly is what would you start trading off? What is
6 there? Where do you create space in this building
7 that would comply with the residential rec
8 requirements?

9 MS. DOUGHTY: Well, for example, I mean,
10 we're talking about a total of 3,700 square feet. In
11 this particular building, that's a couple of condos.
12 It's a couple of condominiums.

13 CHAIRPERSON GRIFFIS: So you would lose.

14 MS. DOUGHTY: You might not meet the
15 outdoor space requirement, but you can meet the total
16 recreation space requirement very simply by not having
17 the condominium density at the site that you currently
18 have.

19 CHAIRPERSON GRIFFIS: Okay. And in
20 putting this together and your case presentation,
21 which has been excellent, how do you balance the
22 purpose of the Arts Overlay with not allowing a
23 reduction in residential rec space or even in
24 providing 100 percent of rec space. And I'm thinking
25 mostly about 1900.2, I think it's (b) and (h), and (b)

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1 talks about required uses that encourage pedestrian
2 activities, especially retail, entertainment and
3 residential uses. So it's talking about the purpose
4 of the Arts Overlay to say we want all these things.
5 And so why do you want those things? Well, we're
6 trying to animate a whole area.

7 And it goes further on to say (h) ends
8 that provision of the overall intent of the overlay,
9 and it says "foster 18 hour activity and increase
10 public safety, 18 hours." That means people don't
11 sleep much on 14th Street, but it means there are
12 people out there all the time. It means about getting
13 people out of buildings.

14 MS. DOUGHTY: Yes.

15 CHAIRPERSON GRIFFIS: How do you balance
16 that with saying yes, but we want to make sure that
17 there is all the residential rec placed in the
18 building, keep the folks in there?

19 MS. DOUGHTY: We are totally supportive of
20 the Arts Overlay and totally supportive of its
21 objective and goals and making the streetscape along
22 14th Street much more vibrant in both daytime and
23 nighttime activity. For that reason we would not,
24 your previous question, consider it an appropriate
25 tradeoff to be the loss of commercial or retail space

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1 on 14th Street in exchange for the recreation space.
2 You know, that is creating a worse, you know, role.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. DOUGHTY: Trying to create something
5 and you're creating an even worse situation.

6 CHAIRPERSON GRIFFIS: Okay. Yes.

7 MS. DOUGHTY: We are not saying that
8 necessarily. As I said, you know, one can agree that
9 it doesn't matter whether this recreation space is
10 provided in-house or beyond the property lines.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. DOUGHTY: What the issue here is is
13 investment and who is going to pay for it, and right
14 now the Zoning Commission has set down a particular
15 balance of private and public investment, the 15
16 percent recreation requirement being a requirement for
17 private investment.

18 CHAIRPERSON GRIFFIS: Do you, would you
19 think if more people went to Logan Circle to read "The
20 Da Vinci Code" and sat and wanted to put their feet
21 up, that it would be a cleaner park?

22 MS. DOUGHTY: I totally believe that.

23 CHAIRPERSON GRIFFIS: Do you think it
24 would be a safer park?

25 MS. DOUGHTY: I believe that if Logan

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1 Circle underwent -- really needs, you know, a total
2 rehabilitation.

3 CHAIRPERSON GRIFFIS: No, I know, but if
4 people were sitting in the park reading books and
5 having picnics with their kids, would it be eventually
6 a cleaner, safer park?

7 MS. DOUGHTY: Absolutely, it would be.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. DOUGHTY: And if people felt like they
10 could do that now, they would be doing it. Now,
11 people do go there and walk their dogs. You can't
12 really go there and play with your kids or kick a
13 ball, as I said, because of the structure of it.

14 CHAIRPERSON GRIFFIS: Don't dare me. I
15 used to love that park. Okay.

16 MR. MACY: But, I mean --

17 CHAIRPERSON GRIFFIS: Go ahead.

18 MR. MACY: Logan Circle, I think it needs
19 some investment before being more inviting to people.

20 MS. DOUGHTY: Right.

21 CHAIRPERSON GRIFFIS: I get that point. I
22 understand that fully, and the investment comes from
23 public funds. Public comes from taxes and people pay
24 taxes, right?

25 MS. DOUGHTY: Right.

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1 MR. MACY: Yes, and, you know, tax is a
2 hard thing to get a handle on.

3 CHAIRPERSON GRIFFIS: I understand. It's
4 a tough balance. It's not an easy formula.

5 MR. MACY: No.

6 CHAIRPERSON GRIFFIS: And it's not
7 something that comes overnight.

8 MR. MACY: I agree.

9 CHAIRPERSON GRIFFIS: Ms. Miller? I'm
10 sorry, she's dying to ask a question.

11 VICE CHAIR MILLER: Okay.

12 MR. MACY: Well, I did want to make a
13 response to your question though.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. MACY: About the Arts Overlay and the
16 recreational requirement.

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. MACY: Because I don't necessarily see
19 them as linked or inconsistent.

20 CHAIRPERSON GRIFFIS: You don't?

21 MR. MACY: No.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. MACY: I mean, these are two
24 completely different functions. Recreation space has
25 one set of uses. You know, 18 hours walking on the

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1 streets doing shopping is another use.

2 CHAIRPERSON GRIFFIS: Quickly define for
3 me for the regulations what passive recreating is.

4 MR. MACY: Passive recreating?

5 CHAIRPERSON GRIFFIS: Yes. Residential
6 recreation, 15 percent is to be provided.

7 MR. MACY: Sitting.

8 CHAIRPERSON GRIFFIS: It should be
9 outfitted or landscaped for passive or active
10 recreating.

11 MR. MACY: Yes.

12 CHAIRPERSON GRIFFIS: What does that mean?

13 MR. MACY: Passive, sitting down and just
14 relaxing, enjoying the fresh air.

15 CHAIRPERSON GRIFFIS: Good. What's
16 active?

17 MR. MACY: Exercising, playing basketball.

18 CHAIRPERSON GRIFFIS: Okay. So both of
19 these comply. In fact, you don't need a workout room.
20 You don't need equipment. You don't need anything.
21 It could all just be outside sitting and taking space.

22 MR. MACY: Sure, but everyone has
23 different ideas of what recreating actually is and
24 will look for different things to do.

25 CHAIRPERSON GRIFFIS: I mean, that's my

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1 point, is, frankly, I'll be blunt because it's after
2 6:00, I don't care what everybody thinks. I care what
3 the regulations tell me and that's my problem, the
4 regulations. That's all they tell me, is they say
5 it's passive or active recreating. And so then you
6 overlay the overlay into that and you say well, we
7 want people out. We want the streets safe. We want
8 the park safe, but we also require you to spend 3,000
9 to 6,000 to 10,000 square feet to make sure that
10 everyone doesn't have to leave their buildings.
11 That's where I see the juxtaposition. Ms. Miller?
12 She's really going to kick me even harder than she is
13 doing.

14 VICE CHAIR MILLER: No.

15 CHAIRPERSON GRIFFIS: If I don't let her
16 ask a question.

17 VICE CHAIR MILLER: I just want to say to
18 you that I am totally supportive of where you're
19 coming from, that in these cases where we consider
20 whether or not they require a variance in the
21 residential recreation requirement, but there isn't
22 any provision, as far as I can see, that says this 15
23 percent is a general investment that if they have to
24 cut back by 7 percent, then we have the authority to
25 say okay, well, go invest in the park down the street.

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1 I mean, I think that would be great and I think, you
2 know, that should probably come before the Zoning
3 Commission as a text amendment or go somewhere else as
4 a policy. But in our role we are confined by our
5 regulations.

6 MS. DOUGHTY: Right. Okay.

7 VICE CHAIR MILLER: And if you can tell
8 us, you know, where it is that we have the authority
9 to require them to, you know, invest outside of the
10 building, that, you know, would be great.

11 MS. DOUGHTY: I wouldn't put it that way.

12 I believe that you have the power to grant variances
13 provided there are exceptional conditions at the
14 property, which create great peculiar practical
15 difficulties for the property owner and provided that
16 those variances can be granted without substantial
17 detriment to the public good.

18 I mean, I think, you know, to oversimplify
19 this, we are stating that simply granting recreation
20 space variances when we believe there is a substantial
21 detriment to the public good, the way in which one can
22 overcome that difficulty, is where the developer is
23 providing some other element of his development
24 proposal that then cancels out that public detriment,
25 so you can go ahead and issue the variance. You don't

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1 need to require that of the developer, but if those
2 elements are there, those public good elements are
3 there in his proposal --

4 MR. MACY: Right.

5 MS. DOUGHTY: -- there is no net public
6 detriment.

7 MR. MACY: Right, he establishes a public
8 detriment, so the variance can't go forward, but he
9 could make -- there could be an offer made to
10 compensate for that public variance on a balance rate.

11 VICE CHAIR MILLER: There certainly could
12 be offers made and I'm sure we would welcome them, and
13 I think that the applicant in this case has made some
14 effort to mitigate in the sense that they have offered
15 to enhance the public space in front of the building.

16 MS. DOUGHTY: Well, the maintenance of the
17 public space is a requirement on the property owner.

18 VICE CHAIR MILLER: Right.

19 MS. DOUGHTY: Maintenance.

20 VICE CHAIR MILLER: Not the maintenance,
21 the enhancement is what I understand.

22 MR. MACY: Enhancement.

23 VICE CHAIR MILLER: Maybe I'm incorrect on
24 this, but that's what I understand, that they were
25 going to be enhancing the public space.

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1 MR. MACY: Well, one would assume that in
2 order to actually sell the condos in there, they would
3 want to make that public space as nice and enhance it
4 as much as they can.

5 MS. DOUGHTY: But sure, the general point
6 is taken.

7 MR. MACY: I mean, that's trying to make
8 it an attractive place.

9 CHAIRPERSON GRIFFIS: It can be both,
10 can't it?

11 MR. MACY: I mean, enhance.

12 CHAIRPERSON GRIFFIS: I mean, if it
13 enhances the sale of their building, it enhances the
14 block, doesn't it?

15 MS. DOUGHTY: Right, right. No, no, I
16 wouldn't disagree.

17 MR. MACY: I meant --

18 MS. DOUGHTY: If they are planning to --

19 MR. MACY: But I don't expect them not to
20 do that under normal circumstances.

21 MS. DOUGHTY: But I think the point
22 remains that we believe that we're not asking you to
23 go beyond your powers.

24 CHAIRPERSON GRIFFIS: Good. Okay.
25 Anything else? Anything else, Board Members? Okay.

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1 Thank you.

2 MS. DOUGHTY: Thank you very much.

3 CHAIRPERSON GRIFFIS: Hold on. I think I
4 had one more question. No. Okay. Excellent. We
5 appreciate it. This has been quite enlightening in
6 terms of the discussion of the residential rec. No, I
7 mean that in all sincerity. I don't think we do it
8 enough and we ask the same thing every application.
9 Okay.

10 Then let's move on. We do have some
11 rebuttal witnesses, I believe.

12 MR. PATTON: Cross, cross exam.

13 CHAIRPERSON GRIFFIS: Oh, I'm sorry, yes,
14 cross. Have a seat, folks.

15 MR. PATTON: Mr. Chair, this won't take
16 too long.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. PATTON: I have about four of Ms.
19 Doughty and a couple of Mr. Macy.

20 I'm curious, Ms. Doughty, why did you not
21 oppose 17191, which was at 14th and R Street, which is
22 close?

23 MS. DOUGHTY: Like everybody in this room,
24 we have full-time jobs. We do what we can do. As
25 this Board is aware, we have recently been involved in

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1 a very intensive effort on another front and we have
2 limited resources. We are a community. We are
3 neighbors. We cannot fix all the problems in the
4 city.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. MACY: I frankly didn't know about it
7 until it was done.

8 MS. DOUGHTY: I did, I did.

9 MR. PATTON: So this is a pick and choose?

10 MR. MACY: Oh, no.

11 MS. DOUGHTY: We have limited --

12 MR. PATTON: I'm asking a question of Ms.
13 Doughty. I'll get to you.

14 MR. MACY: All right.

15 MS. DOUGHTY: We have limited resources.
16 I mean, resource scarcity is an issue we all have to
17 deal with in time management every day.

18 MR. PATTON: That's fine, that's fine.

19 CHAIRPERSON GRIFFIS: Indeed.

20 MR. PATTON: Did you attend the other
21 public meetings, ANC, CDC, Logan Circle, etcetera?

22 MS. DOUGHTY: I have attended every public
23 meeting on this project with the exception of one
24 meeting that was by invitation only from the developer
25 to which I was not invited.

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1 MR. PATTON: Did you meet privately with
2 the applicant as well?

3 MS. DOUGHTY: On one occasion, on November
4 17, 2003. We subsequently invited the applicant back
5 to a second meeting and he declined.

6 MR. PATTON: Okay. Thank you. I'm a
7 little curious on your nexus between parking, required
8 parking or providing parking, as opposed to
9 residential recreation space. How do you determine
10 the nexus between those two, which are obviously
11 different parts of the Zoning Regulations?

12 MS. DOUGHTY: Well, I am not determining
13 anything here. I believe that --

14 MR. PATTON: Just your opinion.

15 MS. DOUGHTY: Okay. The reason that we
16 are discussing this is because the Board in many
17 instances has accepted the arguments put forward by
18 developers that recreation space be directly allocated
19 to parking, and I quoted the two Hoffman Development
20 BZA cases. So I'm not inventing this. I'm simply
21 bringing it to the Board's attention that this is a
22 direct tradeoff that has been made before in a number
23 of cases.

24 MR. PATTON: The last question, Mr. Chair.
25 What would you call Q Street? Is that an arterial

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1 street, as well as R Street, or do you know?

2 MS. DOUGHTY: Q Street is zoned R-5-B,
3 except for the strip on the end that abuts the 14th
4 Street corridor where the zoning changes to C-3-A. It
5 is --

6 MR. PATTON: But I'm talking more of a
7 highway classification.

8 MS. DOUGHTY: Right. Traffic, there is --
9 it is a no trucks street. There are no trucks allowed
10 on Q Street. It is a one way single direction, single
11 lane street with parking on two sides. I would call
12 it, you know, a classic residential street.

13 MR. PATTON: Thank you. Mr. Macy, how
14 long have you lived at your residence?

15 MR. MACY: Sorry, 14 years.

16 MR. PATTON: 14 years? Do you use the
17 other recreational facilities? I know you mentioned
18 Logan Circle.

19 MR. MACY: Yes.

20 MR. PATTON: Do you use that?

21 MR. MACY: Occasionally.

22 MR. PATTON: Occasionally? Do you use the
23 other ones, which we should, for the point of the
24 record, it's really 10th, Rhode Island, that park is
25 between 10th and 11th Streets.

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1 MR. MACY: Okay.

2 MR. PATTON: As opposed to just being on
3 10th Street, which actually makes it a block closer.
4 Do you use that as well?

5 MR. MACY: Certainly, I don't use the
6 elementary school and junior high parks or facilities,
7 basically, because there is nothing for me as an adult
8 there.

9 MR. PATTON: Okay.

10 MR. MACY: I have been there. I have seen
11 them.

12 MR. PATTON: So different residents --

13 MR. MACY: You know, I pass them by all
14 the time.

15 MR. PATTON: Is it fair to say different
16 residents have different hobbies and different uses of
17 their recreational time?

18 MR. MACY: Clearly, clearly.

19 MR. PATTON: Okay. Thank you. No further
20 questions.

21 CHAIRPERSON GRIFFIS: Okay. Thank you
22 very much. Thank you both very much. We appreciate
23 you spending so much time on this and today down here.

24 Let's go on then. When you're ready, you're going to
25 call rebuttal.

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1 MR. PATTON: Mr. Chair, this won't take
2 too long, a couple questions of rebuttal.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. PATTON: From Mr. Williams as well as
5 Mr. Bahrami. And first, let's address Mr. Bahrami.

6 You mentioned early on in your
7 presentation a list of factors that went into
8 modifying your particular site. Would you go through
9 those again, please, and was it not true that you
10 presented these to the members of the Q Street Group
11 and when was that meeting and where was it held?

12 MR. BAHRAMI: Yes. The so-called group
13 leader, who is not present today, Joan Ferraris,
14 typically holds neighborhood meetings and before we
15 even had any concept of what we were going to do on
16 this property, we were aware of their activism and
17 concerns, and we asked them if they could invite us to
18 their regular meetings at 1441, I believe, Q Street
19 and give us a list of their, you know, wish list, you
20 know, what they want.

21 As Ms. Doughty just indicated, that none
22 of their input was in this project. I would strongly
23 disagree with that assertion. They have been involved
24 from the very, very -- even before we even knew what
25 number of stories or brick or what we were going to do

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1 there, and they started out by telling us before you
2 even go to the design of the building, we want you to
3 do a whole bunch of things on this site, take down the
4 fence, which we did, do landscaping temporarily, which
5 we did.

6 Then we got onto design. They started by
7 saying that they didn't want any loading or unloading
8 in the alley because of the traffic jams, so let's
9 limit the retail. And that was one of the bases of
10 why we limited the retail, so that it did not bleed
11 into the alley directly coming out of the concerns of
12 this group that was just testifying here. That was
13 one thing.

14 Height issues were another. All along for
15 the last 12 months, Ms. Doughty and her group has been
16 putting burdens on us of this is what they want to see
17 here, this is what they want to see there with respect
18 to Historic Review Board and height had been their
19 main issue. And we had to lower height by X amount of
20 feet in different locations due to their concern and
21 the concern of the HPRB, and they indicated that no
22 burden was placed on us by the HPRB and them and that
23 is a falsehood.

24 Furthermore, a lot of setbacks were placed
25 due to the concerns they had that the height was too

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1 high on the Q Street side, so we had setbacks placed,
2 which reduced the roof structure's square footage due
3 to that immediate concern raised by this Q Group.

4 Furthermore, I mean, I could go on for
5 hours. I have sat with them for over 12 months almost
6 and for her to state under oath that they did not
7 place any requirements or burdens or anything that
8 would change our design or they had no input into the
9 design, I would like to know what I did for the last
10 12 months. Why did it take me 12 months to get
11 through my HPRB case where it could have been a lot
12 quicker?

13 Other issues such as the entrance being on
14 Q Street just came directly from them. Creating
15 beautiful green space in front came directly from
16 them. Grounding the bay on the Q Street side came
17 from that group. Not letting the retail bleed into
18 the Q Street side came from that group. I mean, I
19 could go on. I mean, I don't have every single one
20 memorized.

21 CHAIRPERSON GRIFFIS: I think we get the
22 point.

23 MR. BAHRAMI: But this is a typical
24 example of --

25 MR. PATTON: Mr. Bahrami, that's

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1 sufficient I think for the Board. Do you have any
2 questions of Mr. Bahrami on cross?

3 VICE CHAIR MILLER: I just would ask you.

4 Is there a connection between greater roof space that
5 could be devoted to residential recreation and the
6 elevator or what is preventing a greater use of the
7 roof?

8 MR. BAHRAMI: I think I will defer to my
9 architect on that if I could.

10 MR. PATTON: Yes. Mr. Bonstra, can you
11 answer that for Ms. Miller?

12 MR. BONSTRA: Besides the penthouse
13 itself, which we know contains electrical and
14 mechanical equipment and what have you, two stairs,
15 the rooftop will have mechanical ventilation, fans,
16 condenser units, and we have shown that in your
17 exhibit on the roof plans. We have tried to
18 accurately represent the numbers of rooftop equipment.

19 I don't need to go through it all, but toilet exhaust
20 fans, you know, everything that goes into a modern
21 building that needs to be ventilated, and those pieces
22 will be on the roof of this building as in any
23 building, vent stacks. I think everyone is aware of
24 those types of features. So those are, you know,
25 beyond the limitations of the actual area of the roof.

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1 The roof of the building will have mechanical
2 equipment on it.

3 MR. BAHRAMI: May I just add to that the
4 setbacks that were fought for by the same group to
5 create lower illusions of height, also reduced the
6 amount of square footage.

7 VICE CHAIR MILLER: I just want to make
8 sure there is no connection with some kind of a
9 tradeoff between the elevator and more space on the
10 roof that would be devoted to residential rec. No,
11 they are not connected. Okay. Thank you.

12 CHAIRPERSON GRIFFIS: There was questions
13 from the Board about what is the threshold that would
14 kick in the requirement for the elevator. So what we
15 would like to do is just be clear on the fact that any
16 sort of square footage or maybe not square footage, is
17 there a threshold of what you're looking at in terms
18 of providing, if you provided residential rec, is
19 there a threshold of which the elevator would be there
20 or not there, based on the square footage?

21 MR. WILLIAMS: Yes, if you'll turn to
22 sheet ASK-19, the column 1 on that sheet identifies
23 the square footage that we can provide that does not
24 require or treat the roof deck as residential
25 recreation space. That results in a 6 percent

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1 determination under zoning math for what would be
2 provided. If we have to provide the additional 675
3 feet to count to sort of improve the rec space
4 numbers, then the percentage would go up to about 7.5
5 or 7.8 percent. And because it would be counted in
6 the enumerator as true residential recreation space
7 under that math, it would have to become accessible
8 triggering the need for the pop-up, the relief from
9 side yard, the relief from equal height rules,
10 everything else that is listed in the rest.

11 CHAIRPERSON GRIFFIS: But so that's the
12 question, I think, the Board is wrestling with is if
13 you put a deck there and it's accessible, publicly
14 accessible to the units in the building, than an
15 elevator is required.

16 MR. WILLIAMS: If you determine that we
17 must provide rec space to that extent, then it is
18 residential recreation space. When it is merely
19 provided as a roof deck, not as a residential
20 recreation space roof deck --

21 CHAIRPERSON GRIFFIS: What's the
22 difference?

23 MR. WILLIAMS: The difference is whether
24 or not it is required to satisfy the Zoning
25 Regulations and we are suggesting, Mr. Griffis, that

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1 that space not be counted to the Zoning Regulations.
2 It fails the second 25 foot dimension in any event.

3 CHAIRPERSON GRIFFIS: I understand all
4 that.

5 MR. WILLIAMS: And we do not feel that it
6 is needed to meet the needs generated by the building.

7 VICE CHAIR MILLER: I know it's late, but,
8 okay, if it is counted towards the residential rec
9 space requirements, why does that trigger something?

10 MR. WILLIAMS: The regulations require
11 under the residential rec space that all of it be
12 fully accessible, that's one of the provisions under
13 the residential rec space.

14 VICE CHAIR MILLER: Okay. It's our
15 requirement. It's not the SHA. It's our requirement.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. WILLIAMS: Yes. That part of it is
18 zoning.

19 VICE CHAIR MILLER: Okay.

20 PARTICIPANT: That's the difference.

21 CHAIRPERSON GRIFFIS: A long time to get
22 there.

23 MR. WILLIAMS: I'm sorry.

24 CHAIRPERSON GRIFFIS: Okay. Any other
25 questions?

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1 MR. PATTON: I have a couple of questions
2 of Mr. Williams.

3 CHAIRPERSON GRIFFIS: Okay. Indeed. Go
4 ahead.

5 MR. PATTON: And that will be the final
6 ones, Mr. Chair. It's a question and Mr. Bonstra may
7 want to come in on part of it if he wants to. Could
8 you -- Ms. Doughty suggested on across three separate
9 lots, could you develop 42,000 square foot? Could you
10 expound on that? She brought it up, the issue of the
11 three lots.

12 MR. WILLIAMS: If we were challenged to
13 develop the three lots that had previously existed,
14 each a separate record lot, each would require a
15 separate entrance, a separate building core and the
16 amount of square footage that you could achieve out of
17 those lots that would be -- would be very difficult to
18 get to the total that we have identified. You get
19 certain efficiencies by using an overall large lot.
20 It would also triple the cost, because you would have
21 three cores.

22 For the core section, you would have
23 triple the cost. You would also have great difficulty
24 on the three lots in providing the kind of parking
25 that we're doing. It would just take the situation

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1 and be -- you would not achieve the quality product
2 you have and it would be, I believe, more detrimental
3 to the city than having the single large consolidated
4 plan that we have provided you.

5 MR. PATTON: Bill, do you have anything to
6 add to that?

7 CHAIRPERSON GRIFFIS: Oh, I don't think we
8 need to go further.

9 MR. BONSTRA: No, it's the redundancy of
10 the core. You would need two stairs as well.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. BONSTRA: In every one of those
13 buildings. It would be --

14 MR. PATTON: The last question is, to Mr.
15 Williams, what percent of the units and buildings have
16 their own private space? Could you expound on this?

17 MR. WILLIAMS: Yes. The numbers here are
18 as follows. There are 30 apartments, up to 30 that
19 are planned, all but 10 of them already have some form
20 of private recreation space in the form of areaways,
21 terraces and/or balconies.

22 CHAIRPERSON GRIFFIS: 20 units have
23 private space?

24 MR. WILLIAMS: 20 of them do. It's an
25 interesting fraction. We're providing at 6 percent

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1 one-third of the requirement of the Zoning
2 Regulations. As it turns out, one-third of the units
3 of the building are the ones that don't have that
4 feature.

5 CHAIRPERSON GRIFFIS: Good.

6 MR. WILLIAMS: It's about 10 units.

7 CHAIRPERSON GRIFFIS: 6 percent of the
8 one-third of the one-third units. Okay. We got that
9 down. Okay. Those don't make sense to me. The point
10 is though that 20 of the 30 units have space they can
11 utilize privately.

12 MR. WILLIAMS: Absolutely.

13 CHAIRPERSON GRIFFIS: Okay. And then the
14 other 10 conceivably have been cut out. Can use the
15 2,300 square feet of the residential rec or those
16 others can associate in as your statement.

17 MR. WILLIAMS: Right.

18 CHAIRPERSON GRIFFIS: Okay. What else?

19 MR. PATTON: Thank you. I would like to
20 do a concluding statement.

21 CHAIRPERSON GRIFFIS: Excellent. Let's
22 see if there's any cross questions. Any cross of the
23 new testimony that you've heard?

24 MR. PATTON: Any cross?

25 MR. BAHRAMI: I just want to add the one

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1 item that some of the units that do not have outside
2 balconies were taken away by the historic process.
3 They had initially some outdoor space in the historic
4 process asked us to remove those balconies.

5 CHAIRPERSON GRIFFIS: Okay. Define
6 balance because they set it back, which gives you
7 terraces on top of the setback, so, you know, it's
8 good and bad all over.

9 MR. PATTON: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes?

11 MR. PATTON: One minor question for Mr.
12 Williams on rebuttal. It's just a minor one. Did the
13 HPRB know about the needed variance and special
14 exceptions on this?

15 MR. WILLIAMS: Yes, they did. In the
16 course of getting ready for the last HPRB meeting, I
17 met with Mr. Steven Calcott's staff to HPRB in May
18 along with the applicant in Mr. Bonstra's office. I
19 explained to Mr. Calcott that in the course of the
20 Holland and Knight review of the materials that relief
21 would be needed along the lines that was filed for
22 earlier that month.

23 Mr. Calcott indicated to me that when HPRB
24 asked the question, as they do, are you contemplating
25 any variance or other zoning relief, they are

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1 interested in what I'll call the "big ticket items,"
2 changes in the height of the building, changes in the
3 FAR of the building, changes in the zoning, they are
4 not -- and when we say -- and we don't have to worry
5 about this residential rec space or the elevator
6 issues and Mr. Calcott's response was "No, those are
7 minor. They will not be of interest to the Board." I
8 believe OP can confirm the nature of this discussion
9 having cross checked with Mr. Calcott, if you wish.

10 CHAIRPERSON GRIFFIS: All right. Okay.

11 MR. PATTON: Thank you, Mr. Williams.
12 Now, for concluding. This should conclude the
13 applicant's presentation. In summary, I wish to point
14 out the applicant has proven that the site fits the
15 purpose of the Uptown Arts Mixed Use Overlay District.

16 It has passed HPRB conceptual review. It has the
17 support of the D.C. Office of Planning. It has
18 conditional support of ANC-2F. The applicant, as you
19 can see, has worked tirelessly to accommodate many of
20 the surrounding homeowners.

21 It has also satisfied the three basic
22 conditions for granting area variances in regard to
23 the residential recreation variance and has satisfied
24 the three conditions for special exception for
25 percentage of ground floor use for retail/service and

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1 arts related purposes. And both of these, I would
2 emphasize are very minor relief. We also presented
3 previous BZA cases which you all are familiar with and
4 two of those actually are for vacant lots as well,
5 because they are relevant and they are located in a
6 similar area, and I wish to thank you all for your
7 time and attention. Thank you.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much. I suggest at this late hour, rather
10 than sit in here and talk for another two, we set this
11 for the 3rd of August, which seems to be a popular date
12 with me these days. And let's go to any sort of
13 filings that we would require. I don't have a list of
14 anything that we were holding the record open for.
15 Ms. Bailey, are you aware of anything that we
16 discussed?

17 MS. BAILEY: Mr. Chairman, I'm not sure if
18 you want this.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. BAILEY: But there was a discussion
21 about the applicant providing documentation indicating
22 that the project does comply with the requirements for
23 persons with physical disabilities, if that makes any
24 sense.

25 CHAIRPERSON GRIFFIS: Oh, I see.

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1 VICE CHAIR MILLER: It goes to the Fair
2 Housing Act.

3 MR. PATTON: Mr. Chairman, this is the
4 Fair Housing. We will provide that for the record,
5 the site.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. PATTON: That's a very simple site.

8 CHAIRPERSON GRIFFIS: That's true. We'll
9 do our little Fair Housing seminar again. We'll do it
10 in Executive Session. Okay. We don't have anything
11 else? Then I think we could have proposed findings
12 and facts conclusions if needed. We'll keep the
13 record open for that for the party in opposition, also
14 for the applicant, draft orders. Yes?

15 MR. PATTON: That's what I was going to
16 ask about findings and facts, conclusions of law. Do
17 you want that provided prior to August 3rd?

18 CHAIRPERSON GRIFFIS: The record is open
19 for it on both cases. They would need to be
20 submitted, if they are going to be in, by?

21 MS. BAILEY: July 27th, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: July 27th.

23 Excellent. 3:00?

24 MS. BAILEY: Yes, sir.

25 MR. WILLIAMS: That's impossible.

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1 CHAIRPERSON GRIFFIS: Possible?

2 MR. WILLIAMS: That's going to be very
3 difficult inasmuch as the transcript --

4 CHAIRPERSON GRIFFIS: You're not going to
5 have the transcript if you want a decision in August.
6 It's two weeks away. You can try and expedite the
7 transcript, which I would guarantee would be about
8 three weeks. We'll decide this probably October, the
9 first week of October. I'm flexible. We've got too
10 much to do on August 3rd if you want to put it off that
11 far.

12 MR. WILLIAMS: October?

13 CHAIRPERSON GRIFFIS: October.

14 MR. PATTON: Are you filled up on
15 September, Mr. Chair?

16 CHAIRPERSON GRIFFIS: Yes, I can't fit any
17 more decisions in the September meeting.

18 MR. PATTON: We could do this in August.

19 MR. WILLIAMS: Could you fit it into a
20 non-regular, in other words, a special meeting during
21 the September period, but not the first meeting?

22 CHAIRPERSON GRIFFIS: Okay. But you are
23 required to be here and it's going to be at 3:00 in
24 the morning on Saturday.

25 MR. WILLIAMS: I'll be here.

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1 MR. PATTON: We'll be here.

2 CHAIRPERSON GRIFFIS: No, we can't.

3 MR. WILLIAMS: You can't. All right.

4 CHAIRPERSON GRIFFIS: One, that opens the
5 flood gates if I start setting special dates for it or
6 special meetings. Well, you're saying special public
7 meeting in September? Let's take two more minutes and
8 bat this a little bit. What is the great urgency for
9 a draft order? Well, I shouldn't go into that.

10 VICE CHAIR MILLER: Well, I just want to
11 comment, because I think that applicant's application
12 is very comprehensive.

13 CHAIRPERSON GRIFFIS: I do, too.

14 VICE CHAIR MILLER: So I'm not sure what
15 it is that you're going to need all this time to do.

16 MR. WILLIAMS: Ordinarily, I would agree
17 with you, Ms. Miller. My wife has some other ideas
18 about what she would like me to do during the period
19 that I would be --

20 VICE CHAIR MILLER: My question doesn't
21 really go to your time. My question really goes to
22 how much more is going to be added to your
23 application? I just think it is fairly exhaustive,
24 personally.

25 MR. WILLIAMS: Nothing will be added to

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1 the application.

2 CHAIRPERSON GRIFFIS: No, it wouldn't be
3 added.

4 MR. WILLIAMS: The record was closed. It
5 would simply be a recitation of the pertinent facts
6 and conclusions of law as we would see it.

7 CHAIRPERSON GRIFFIS: Right. Yes?

8 MS. DOUGHTY: You know, life would
9 certainly be easier for us, as well, if we had a
10 little more time to put these findings of fact and
11 conclusions of law in, too.

12 CHAIRPERSON GRIFFIS: Okay. That's
13 persuasive. Let's take this then and go to?

14 PARTICIPANT: Three months.

15 MS. BAILEY: September 28th, Mr. Chairman?

16 PARTICIPANT: How long do you need to
17 decide this case? I have to spend \$400,000 in
18 developing plans if I don't get a decision early.

19 PARTICIPANT: Let's go for a special
20 meeting.

21 MR. PATTON: Mr. Chair?

22 CHAIRPERSON GRIFFIS: Yes?

23 MR. PATTON: We've had discussions. We
24 can meet with a lot of late nights, we could make
25 August 3rd.

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1 CHAIRPERSON GRIFFIS: Okay. Well, we've
2 already moved on. It is a little expeditious and if
3 the party in opposition is actually thinking of
4 submitting, you're going to submit something. Is that
5 correct?

6 MS. DOUGHTY: (No audible answer.)

7 CHAIRPERSON GRIFFIS: Okay. We're going
8 to do it on the 14th of September. We're going to
9 squeeze it in. That gives us enough time to get
10 through it.

11 MR. PATTON: Thank you, Mr. Chairman,
12 that's better.

13 CHAIRPERSON GRIFFIS: Yes, yes.

14 MR. PATTON: Much better.

15 MR. WILLIAMS: Thank you.

16 CHAIRPERSON GRIFFIS: I don't know where
17 it is going to fall. I can pretty much guarantee just
18 for all of your interest that we probably won't start
19 that afternoon session until about 5:00. But
20 nonetheless, we will get to it on that day. Ms.
21 Bailey, then let's back up. In terms of submissions,
22 we can do it, I would suggest, two weeks before hand.

23 MS. BAILEY: Two weeks. Two weeks before
24 then, Mr. Chairman, would be August 31st.

25 CHAIRPERSON GRIFFIS: Okay. August 31st.

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1 Does that work? Okay. Excellent.

2 PARTICIPANT: Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: All right. Anything
4 else? Any other questions for procedure, schedule?
5 Everyone understands what we're doing then? 31st,
6 we'll decide on the 14th. Ms. Bailey, anything else
7 for us, business?

8 MS. BAILEY: No, sir.

9 CHAIRPERSON GRIFFIS: Excellent. Then
10 let's adjourn the afternoon session. Thank you all
11 very much. Have a great night.

12 (Whereupon, the Public Hearing was
13 concluded at 7:10 p.m.)

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