

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

FEBRUARY 1, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

|                        |                     |
|------------------------|---------------------|
| GEOFFREY H. GRIFFIS    | Chairperson         |
| RUTHANNE G. MILLER     | Vice Chairperson    |
| CURTIS L. ETHERLY, JR. | Board Member        |
| JOHN A. MANN, II       | Board Member (NCPC) |

ZONING COMMISSION MEMBERS PRESENT:

|                  |              |
|------------------|--------------|
| JOHN G. PARSONS  | Commissioner |
| KEVIN HILDEBRAND | Commissioner |

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

|               |                    |
|---------------|--------------------|
| TRAVIS PARKER | Office of Planning |
| STEVE COCHRAN | Office of Planning |

This transcript constitutes the minutes from the Public Hearing held on February 1, 2005.

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

2 1:26 p.m.

3 CHAIRPERSON GRIFFIS: Good afternoon,  
4 Ladies and Gentlemen. Let me call to order the  
5 afternoon Public Hearing of the Board of Zoning  
6 Adjustment of the District of Columbia. This is the  
7 1<sup>st</sup> of February 2005 and I am Geoff Griffis,  
8 Chairperson.

9 Joining me today is Vice Chair, Ms.  
10 Miller, and also Mr. Etherly, who will join us within  
11 a matter of seconds. Representing the National  
12 Capital Planning Commission with us is Mr. Mann and  
13 representing the Zoning Commission as we start our  
14 afternoon is Mr. Hildebrand.

15 Copies of today's agenda are available  
16 for you. They are located on the wall where you  
17 entered the hearing room. You can see where we are  
18 on the chronology and all that we will accomplish  
19 this afternoon. There are several very important  
20 aspects in my opening remarks. Let me go through  
21 them very quickly.

22 First, we are being recorded, recorded in  
23 two fashions. One, the Court Reporter who is sitting  
24 to my right on the floor. Secondly, we are being

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1 broadcast live on the Office of Zoning's website.  
2 Attendant to both of those, we ask several things.  
3 First of all, I'm going to ask that everyone turn off  
4 cell phones and beepers, so we don't disrupt any of  
5 our transmissions.

6 Secondly, when coming forward to speak to  
7 the Board, you will have needed to have filled out  
8 two witness cards. Witness cards are available at  
9 the table where you entered into, also the table in  
10 front of us where you will provide testimony. Those  
11 two cards go to the recorder prior to coming forward  
12 to speak to the Board.

13 When addressing the Board, we would ask  
14 that you just state your name and your address prior  
15 to speaking. You only need to do that once.  
16 Obviously, we can tie everything that you say on the  
17 record and credit it to you and spell your name  
18 correctly.

19 The order of procedures for special  
20 exceptions and variances is: First, we'll hear from  
21 the applicant and their case presentation. Second,  
22 we will hear any Government reports attendant to the  
23 application, the Office of Planning or DDOT or any  
24 other agency that submitted agency memos. Third, we  
25 will hear from the Advisory Neighborhood Commission.

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1 Fourth, we'll hear from persons or  
2 parties in support of the application. Fifth would  
3 be persons or parties in opposition to the  
4 application and sixth, finally, we will have any  
5 rebuttal testimony or closing remarks by the  
6 applicant. That will be the entire procedure that we  
7 will get through on every case.

8 Cross examination during all those stages  
9 of witnesses is permitted by the applicant and  
10 parties in a case. The ANC within which the property  
11 is located is automatically a party in the case and,  
12 therefore, will be able to conduct cross examination  
13 of witnesses.

14 The record will be closed at the  
15 conclusion of all those steps and the conclusion of  
16 our hearing. We keep the record open only for  
17 specific requests of information from the Board, and  
18 we will be very specific on what is to be submitted  
19 into the record and when it is to be submitted into  
20 the Office of Zoning. After that material is  
21 received, the record would then be finally closed and  
22 no other information would be accepted into the  
23 record.

24 It's important to understand that when we  
25 go through a hearing, we assemble a case record.

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1 That case record is what we make our decisions on,  
2 nothing else. And so anything that you want the  
3 Board to address and deliberate on must be in that  
4 record.

5 Also, accordingly, the Sunshine Act  
6 requires that this Board conduct all its proceedings  
7 in the open and before the public. This Board may  
8 enter into Executive Session both during or after a  
9 hearing on the case, and we utilize Executive  
10 Sessions to review the cases and/or deliberate on  
11 cases. This would be in accordance with our rules  
12 and regulations, and it also is in accordance with  
13 the Sunshine Act.

14 But attendant to deliberating solely on  
15 the record, we ask that people present today not  
16 engage Board Members in private conversations today,  
17 so that we do not give the appearance of receiving  
18 information outside of that that is created in the  
19 public realm.

20 We will make every effort to finish our  
21 schedule by 6:00 tonight. If we get close to that  
22 hour, I will update everybody on what we will proceed  
23 and conclude with today or what we might continue to  
24 another date, but that I will take up when we get  
25 closer to that time.

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1           At this point, I would like to say a very  
2 good afternoon to Ms. Bailey who, is sitting on my  
3 very far right with the Office of Zoning, and also  
4 Mr. Moy with the Office of Zoning on my closer right.

5       Ms. Bailey is going to administer the oath, so I  
6 would ask that anyone that is going to provide  
7 testimony today, if you would, please, stand and give  
8 your attention to Ms. Bailey. She is going to swear  
9 you in.

10           MS. BAILEY: Please, raise your right  
11 hand.

12           (Whereupon, the witnesses were sworn.)

13           MS. BAILEY: Thank you.

14           CHAIRPERSON GRIFFIS: I thank you all  
15 very much. At this time, the Board will consider any  
16 preliminary matters. Preliminary matters are those  
17 which relate to whether a case will or should proceed  
18 today, such as requests for postponements,  
19 withdrawals or whether proper and adequate notice has  
20 been provided. These are preliminary matters.

21           If you have a preliminary matter for the  
22 Board's attention, I would ask that you come forward  
23 and have a seat at the table in front of us. If you  
24 believe, for some reason, you didn't understand all  
25 those things that I said, that you believe that the

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1 Board should not proceed with a case today or you  
2 are, in fact, not able to proceed with a case, I'm  
3 going to ask that you also bring that to our  
4 attention.

5 Prior to going forward with those that  
6 have indicated a preliminary matter, let me ask Ms.  
7 Bailey or Mr. Moy if they are aware of any  
8 preliminary matters, at this time, for the Board.

9 MS. BAILEY: Mr. Chairman and to  
10 everyone, good afternoon.

11 CHAIRPERSON GRIFFIS: Good afternoon.

12 MS. BAILEY: And Staff does not have any,  
13 Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Very well. It  
15 looks like we do have some however. So why don't I  
16 have you introduce yourself, sir?

17 MR. ELLIS: Good afternoon, Mr. Griffis.  
18 My name is Craig Ellis. I am counsel for Dud LLC,  
19 Application 17278. Initially, that application was  
20 for two -- there were two lots and it's a variance  
21 for 5 feet of the minimum lot width. Also,  
22 subsequently to that, that property has a paper  
23 alley, and so there was a need for a parking  
24 variance.

25 It has been advertised. The community

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1 has been notified. It was actually voted on at the  
2 ANC which, unfortunately, I'm being told that you  
3 haven't gotten the ANC's letter yet and I'm calling  
4 the ANC Commissioner to see if we can get it faxed.  
5 But the community has been notified of that. I have  
6 a copy of the notice if the Board wants to put it in  
7 its file, but the community has been notified of that  
8 variance.

9 CHAIRPERSON GRIFFIS: Okay. So the  
10 preliminary matter is just to amend the application?

11 MR. ELLIS: That's correct.

12 CHAIRPERSON GRIFFIS: To include the  
13 parking?

14 MR. ELLIS: That's correct.

15 CHAIRPERSON GRIFFIS: Okay. I see that  
16 as a valuable aspect, obviously, that we're going to  
17 have to do. Why don't we do that when we call the  
18 case?

19 MR. ELLIS: Okay.

20 CHAIRPERSON GRIFFIS: And we can actually  
21 do it with the case in front of us, but I need to  
22 call the case anyway in order to amend its own  
23 application.

24 MR. ELLIS: Okay.

25 CHAIRPERSON GRIFFIS: So we can do that

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1 in the chronology that we're set for. The Board was  
2 aware of this, so this isn't new news, so I think  
3 we'll be able to expedite it.

4 MR. ELLIS: I just wanted to notify. I  
5 didn't know if the Board was aware, but okay.

6 CHAIRPERSON GRIFFIS: Good.

7 MR. ELLIS: If the Board is aware, then  
8 fine.

9 CHAIRPERSON GRIFFIS: Perfect.

10 MR. ELLIS: Thank you.

11 CHAIRPERSON GRIFFIS: Thank you very  
12 much. Yes, sir?

13 MR. RUFFIN: Thank you very much. I'm  
14 Thomas Ruffin for Kelsey Temple Church of God In  
15 Christ, the Temple Church Building and Economic  
16 Development Corporation.

17 CHAIRPERSON GRIFFIS: Are you over the  
18 flu?

19 MR. RUFFIN: I am and I certainly want to  
20 thank the Board for granting the continuance as a  
21 result of the flu that kept me from appearing at the  
22 last hearing. If you remember, I filed a number of  
23 motions that, apparently, the Board decided  
24 beforehand. One motion was to oppose the amendment  
25 of the application.

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1 CHAIRPERSON GRIFFIS: And that was not  
2 decided yet, but go ahead.

3 MR. RUFFIN: Oh, that wasn't decided?

4 CHAIRPERSON GRIFFIS: That's correct.

5 MR. RUFFIN: Okay. No problem. If you  
6 notice, the motion speaks about the application being  
7 amended such that what I had the impression of,  
8 according to the notice sent to me by Holland and  
9 Knight, was that this application would proceed for a  
10 reduction in parking and also for -- that was by way  
11 of exception under section 2108, and then also a  
12 variance for, among other things, the attendant  
13 related management of the parking space.

14 CHAIRPERSON GRIFFIS: Under 2115.9.

15 MR. RUFFIN: Yes, sir. However, the  
16 notice that was sent to me, that is as the lawyer for  
17 Kelsey Temple Church of God In Christ, the Temple  
18 Church Building and Economic Development Corporation,  
19 and that same notice that was sent to all property  
20 owners was different from the notice posted in the  
21 District of Columbia Register and also the notice  
22 that was posted on the property.

23 I didn't know about that until I received  
24 the response. I believe it was two days before the  
25 hearing that I missed. And the opposition or the

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1 applicant, pardon me, the applicant corrected me.  
2 First of all, I complained that there hadn't been a  
3 notice published in the District of Columbia  
4 Register. They made it clear that it had been.

5 CHAIRPERSON GRIFFIS: Good. Let's cut to  
6 the quick. What is the preliminary matter?

7 MR. RUFFIN: And so what happens is the  
8 notice that was sent to the property owners,  
9 including my clients, spoke about two different sorts  
10 of relief. That is it talked about the reduction in  
11 parking spaces and the variance asking for attendants  
12 to deal with the parking.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. RUFFIN: It did not talk about  
15 preserving anything else, and I actually spoke in  
16 those terms. And the notice that was posted both by  
17 way of publication on the property spoke of four  
18 different matters of relief. And just quickly, the  
19 notice sent to the property owners is in the record,  
20 but --

21 CHAIRPERSON GRIFFIS: Okay. This is what  
22 I propose.

23 MR. RUFFIN: Yes, sir.

24 CHAIRPERSON GRIFFIS: Let's take this up  
25 when we call the case, because, in fact, the

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1 instruction as the Board continued this case goes  
2 directly to the heart of this matter.

3 MR. RUFFIN: Okay.

4 CHAIRPERSON GRIFFIS: What is the relief  
5 that is being sought and what regulations does it not  
6 comply with? Therefore, what relief of the specific  
7 regulations is it requiring? So I think we don't  
8 have necessarily the exact questions or concerns that  
9 you do, but we have similar questions and that is, in  
10 fact, what we're going to assess very quickly as we  
11 call the case.

12 MR. RUFFIN: Thank you very much.

13 CHAIRPERSON GRIFFIS: Good. And then I  
14 think I'm going to be very interested to see where  
15 you see the actual difference of the notification as  
16 published and that which was before us as the motion  
17 to amend or however they want to capture it.

18 MR. RUFFIN: Okay.

19 CHAIRPERSON GRIFFIS: So you can kind of  
20 put that together and we'll get that very quickly,  
21 lay it out and then we'll be able to assess it.

22 MR. RUFFIN: Thank you.

23 CHAIRPERSON GRIFFIS: Good. Thank you  
24 very much. With that then, if there's no other  
25 preliminary matters for the Board at this time, let's

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1 call the first case in the afternoon then.

2 MS. BAILEY: Application No. 17277 of  
3 Sabrina G. Wright, pursuant to 11 DCMR section  
4 3104.1, for a special exception to allow a rear  
5 addition to an existing single-family semi-detached  
6 dwelling under section 223, not meeting the side yard  
7 requirements, that's section 405. The property is  
8 located in the R-1-B District at premises 1916 Newton  
9 Street, N.E. The property is also known as Square  
10 4202, Lot 118.

11 CHAIRPERSON GRIFFIS: A very good  
12 afternoon to you both. If you wouldn't mind, just  
13 state your name and address for the record and then I  
14 will turn it over to you. I'm sorry, you're just  
15 going to need to turn on your microphone, which is  
16 what I skipped in my openings. There is just a  
17 button at the base, right in the front of the base on  
18 top. Excellent.

19 MS. WRIGHT: Sabrina Wright, 1422 Duncan  
20 Street, N.E.

21 MR. CHATMAN: Linwood Chatman, 2822  
22 Newton Street, N.E.

23 CHAIRPERSON GRIFFIS: Good. And you're  
24 both the applicants. Is that correct?

25 MR. CHATMAN: Yes.

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1 MS. WRIGHT: Yes.

2 CHAIRPERSON GRIFFIS: Excellent. Okay.  
3 Just to update, we have new filings in this case. In  
4 fact, we were delayed a little bit, so that we could  
5 have them in hand as we came out. Are you aware of  
6 the petitions that have been submitted into the  
7 record?

8 We have now, gosh, how many do we have in  
9 front of us, one, two? We have a letter from ANC-5A.  
10 We have several letters of support that we'll get  
11 to, but we also have a petition in opposition. Are  
12 you aware of this, Ms. Wright?

13 MS. WRIGHT: Yes.

14 CHAIRPERSON GRIFFIS: You have that?  
15 Okay. Then we all have the same thing. Is the ANC  
16 represented today? Is the ANC with us? Nobody from  
17 5 is here, so let's proceed. Of course, this is a  
18 223 application. Ms. Wright, I'm going to turn it  
19 over to you for presentation.

20 MS. WRIGHT: Okay. What I would like to  
21 do is just go over the questions that were asked to  
22 me in the application and just give you an answer to  
23 it. Is that satisfactory?

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. WRIGHT: Okay.

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1 CHAIRPERSON GRIFFIS: Sounds good.

2 MS. WRIGHT: Will the proposed addition  
3 unduly affect light and air available to the  
4 neighboring properties? No, it will not. Will the  
5 proposed addition be unduly compromising the privacy  
6 and use and enjoyment of the neighboring properties?  
7 No, it will not. Will the addition together with  
8 the original building, as viewed from the street  
9 alley and other public ways, substantially visually  
10 intrude upon the character, scale and pattern of  
11 houses along the subject street frontage?

12 You will not be able to see the addition  
13 from the front of the house. The addition will be  
14 viewed from the back. And as far as character goes,  
15 it's exactly like the other additions that are  
16 directly across the alley on Otis Street.

17 CHAIRPERSON GRIFFIS: How is it similar?

18 MS. WRIGHT: They already are joined.  
19 They are already squared off.

20 CHAIRPERSON GRIFFIS: So in terms of the  
21 massing itself, it's similar to what the other  
22 adjacent properties or some of them are?

23 MS. WRIGHT: Yes.

24 CHAIRPERSON GRIFFIS: What about  
25 materials?

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1 MS. WRIGHT: Materials, they are aluminum  
2 siding.

3 MR. CHATMAN: Vinyl siding.

4 MS. WRIGHT: Vinyl siding.

5 CHAIRPERSON GRIFFIS: Is that in  
6 character with the surrounding area?

7 MS. WRIGHT: Yes.

8 CHAIRPERSON GRIFFIS: Really? Oh, well.  
9 Okay. Noting the petition in opposition, of course,  
10 it was just handed to us. Well, let me ask you  
11 another question then. You indicated that it  
12 wouldn't unduly affect the privacy, use, enjoyment or  
13 light and air of the adjacent neighbors and you said  
14 it absolutely wouldn't. How do you know it wouldn't?

15 MS. WRIGHT: Because I'm just squaring it  
16 off. I'm not coming out any further and in between  
17 our houses in the back, we share a space, and I'm  
18 just taking up my area and he still has that space  
19 that's his area.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. WRIGHT: And also, he has windows on  
22 the actual back of his house and on the side of his  
23 house.

24 CHAIRPERSON GRIFFIS: Are you proposing  
25 to put windows on your addition?

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1 MS. WRIGHT: No, I do not propose to put  
2 windows on that side.

3 CHAIRPERSON GRIFFIS: So you're not  
4 looking over into his, which would obviously impact  
5 the privacy?

6 MS. WRIGHT: No, no.

7 CHAIRPERSON GRIFFIS: And you're  
8 indicating he still has open space and is not going  
9 beyond the --

10 MS. WRIGHT: No.

11 CHAIRPERSON GRIFFIS: -- the existing  
12 structure dimension, so it wouldn't impact the light  
13 and air flowing in?

14 MS. WRIGHT: Yes.

15 CHAIRPERSON GRIFFIS: The back yards are  
16 what they are, correct?

17 MS. WRIGHT: Yes.

18 MR. CHATMAN: Yes.

19 CHAIRPERSON GRIFFIS: Okay. It's a  
20 pretty definitive statement, isn't it? They are what  
21 they are. Okay. I think I'm pretty clear on it, but  
22 let's get some questions from the Board.

23 MS. WRIGHT: Sure.

24 CHAIRPERSON GRIFFIS: If you're ready to  
25 proceed in that fashion. Good. Ms. Miller?

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1 VICE CHAIR MILLER: Good afternoon, Ms.  
2 Wright.

3 MS. WRIGHT: Hi.

4 VICE CHAIR MILLER: Hi.

5 MS. WRIGHT: How are you?

6 VICE CHAIR MILLER: I guess the property  
7 we're talking about being possibly affected is 1918  
8 Newton Street?

9 MS. WRIGHT: Yes.

10 VICE CHAIR MILLER: Did you show your  
11 plans to the neighbors at that address?

12 MS. WRIGHT: Yes, I did. I actually went  
13 to the neighbors at that address and I took my plans  
14 and I sat down and I talked with them about it, and  
15 their concerns at the time that we spoke was about  
16 the windows, being able to look right into my place,  
17 and I assured them there would be no windows on that  
18 side.

19 And as instructed by the Board of Zoning,  
20 I was supposed to be on the agenda for the ANC. So  
21 immediately I got in contact with the ANC to let them  
22 know what I was doing and to get on their agenda.  
23 The ANC Commissioner for my section, which is 10 I  
24 believe, he called a committee meeting on the 24<sup>th</sup> of  
25 January and even though I spoke with him on the 3<sup>rd</sup>,

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1 the meeting wasn't until the 24<sup>th</sup>.

2 Only two people showed up. They voiced  
3 their concerns about the windows and the air and  
4 light, and I explained to them that, you know, there  
5 wouldn't be a problem. I wasn't putting any windows  
6 on that side. So we kind of talked about it and when  
7 we left, they were fine with it, you know. And they  
8 even told the ANC Commissioner that they would not  
9 oppose it. You know, they had --

10 VICE CHAIR MILLER: Those two people were  
11 not your neighbors at 1918 or were they?

12 MS. WRIGHT: Yes.

13 VICE CHAIR MILLER: They were?

14 MS. WRIGHT: Yes.

15 VICE CHAIR MILLER: So they came to the  
16 meeting and they talked to the ANC?

17 MS. WRIGHT: They came to the meeting and  
18 they talked to the ANC. They didn't come to the ANC  
19 meeting. They came to the --

20 VICE CHAIR MILLER: Committee meeting.

21 MS. WRIGHT: -- committee meeting on the  
22 24<sup>th</sup>. On the 26<sup>th</sup> at the ANC meeting, no one showed  
23 up.

24 VICE CHAIR MILLER: No one in the  
25 community you mean?

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1 MR. CHATMAN: Right.

2 VICE CHAIR MILLER: Right. Okay.

3 MS. WRIGHT: No one in the community.  
4 Yes, well, no one affiliated with this situation. No  
5 one showed up.

6 VICE CHAIR MILLER: Okay. So your  
7 testimony is that they showed up at the committee  
8 meeting. They expressed some concerns and they were  
9 resolved and they left feeling fine about the  
10 addition?

11 MS. WRIGHT: Yes, I thought we all left  
12 feeling fine about the addition. And then, like I  
13 said, on the 26<sup>th</sup> they weren't there and I spoke with  
14 the Commissioner. He said that he has spoken with  
15 them and they wanted to speak with Mr. Moore in  
16 reference to some taxes going up and they wanted to  
17 get back with him. So at the meeting, I spoke with  
18 him and he said that he did speak with them and they  
19 said they still had some concerns, but they weren't  
20 going to oppose it.

21 VICE CHAIR MILLER: And what are their  
22 names?

23 MS. WRIGHT: I can only look on here and  
24 tell you their names.

25 VICE CHAIR MILLER: The names of your

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1 neighbors.

2 MS. WRIGHT: Oh, I don't know. I'm going  
3 to look on here to tell you their names.

4 MR. CHATMAN: One would be Rogers.

5 MS. WRIGHT: Is that her name?

6 MR. CHATMAN: Yes, I believe.

7 MS. WRIGHT: Rogers.

8 MR. CHATMAN: 18, I see 18.

9 MS. WRIGHT: Daniels. Daniel Runnings.

10 VICE CHAIR MILLER: I'm sorry, what did  
11 you say?

12 MS. WRIGHT: Daniel Running, that's their  
13 name. Mr. and Mrs. Running.

14 VICE CHAIR MILLER: Okay. Thank you.  
15 Ms. Wright, I just wanted to bring to your attention,  
16 we were given a petition today of certain neighbors  
17 that are opposed to your addition. And it appears  
18 that Daniel Running has signed that petition.

19 MS. WRIGHT: Yes.

20 VICE CHAIR MILLER: On January 30<sup>th</sup>.

21 MS. WRIGHT: Yes, January 30<sup>th</sup> and the  
22 meeting was January 24<sup>th</sup> where we were on the same  
23 page and also the ANC meeting was on the 26<sup>th</sup>. And  
24 also, I viewed this petition myself and I noticed  
25 some things on here which were that 1920 Newton

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1 Street was signed twice and there is no 1911 Newton  
2 Street. There are no houses, there are no houses on  
3 the other side of the street. There's a school and a  
4 yard.

5 MR. CHATMAN: Playground.

6 MS. WRIGHT: Playground. I was really,  
7 really very shocked to see this when I came in here.

8 CHAIRPERSON GRIFFIS: Where are you  
9 seeing the address 1911?

10 MS. WRIGHT: 1911 is on the third page,  
11 second from the top.

12 MR. CHATMAN: Right underneath of  
13 Running.

14 CHAIRPERSON GRIFFIS: It looks like 1917.

15 MS. WRIGHT: There is no 1917.

16 MR. CHATMAN: No 17.

17 CHAIRPERSON GRIFFIS: Really?

18 MS. WRIGHT: Yes, I figured it was 17 or  
19 11, and there are no odd numbers.

20 MR. CHATMAN: It's a school.

21 CHAIRPERSON GRIFFIS: Oh, gotcha.

22 MS. WRIGHT: Yes.

23 CHAIRPERSON GRIFFIS: Well, it could be -

24 -

25 MS. WRIGHT: I don't know all of these.

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1 CHAIRPERSON GRIFFIS: Yes, okay.

2 MS. WRIGHT: I don't know all of these  
3 people. Some of them I know by face. Can you  
4 announce if there is anyone here now, can I -- I just  
5 would like to maybe see, because a lot of people I  
6 spoke to, they didn't give me a letter, but they said  
7 they didn't have a problem.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. WRIGHT: You know, that they would  
10 give me a letter.

11 CHAIRPERSON GRIFFIS: Well, there's going  
12 to be opportunity, but it's not a bad idea for me to  
13 assess. Is there anybody here that is going to  
14 provide testimony in 17277 in this case, persons  
15 present? It doesn't look like anyone is here.

16 VICE CHAIR MILLER: Ms. Wright, are you  
17 aware of who circulated this petition?

18 MS. WRIGHT: No, I'm not. I didn't know  
19 this petition was being circulated. I didn't know  
20 this petition existed until I got here and I was  
21 given a copy of it.

22 VICE CHAIR MILLER: Okay. Thank you.

23 MR. CHATMAN: It was given to them just a  
24 second before we got it.

25 MS. WRIGHT: Yes, it was stamped in at

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1 12:40, I notice at the top of here.

2 CHAIRPERSON GRIFFIS: And what are the  
3 addresses or the other properties that you indicate  
4 that have the same sort of massing? You said that  
5 there are several adjacent?

6 MS. WRIGHT: Okay. On Otis Street, all  
7 the houses on Otis Street are already squared off and  
8 there's one house down the street, I think, as a  
9 matter of fact he's on this petition. He did  
10 similar, the same thing, 1906 Newton Street.

11 MR. MOORE: Melvin Thomas.

12 MS. WRIGHT: Yes.

13 CHAIRPERSON GRIFFIS: Okay. Any other  
14 questions from the Board? No? Very well. Is there  
15 anything else, at this time? We obviously have time  
16 for closings, but anything else you want to present?

17 MS. WRIGHT: The only thing I wanted to  
18 present, which you already have, is the fact that I  
19 have the ANC agenda and the letters and the letter  
20 from ANC, but, I guess, no, and hope that you approve  
21 this addition.

22 CHAIRPERSON GRIFFIS: Okay. Well, I'll  
23 let you do your closing remarks.

24 MS. WRIGHT: Okay.

25 CHAIRPERSON GRIFFIS: And you can

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1 indicate that and we'll get to the ANC. Why don't we  
2 move ahead to any Government Agency reports and the  
3 Office of Planning is the only one that I have that  
4 has submitted and a very good afternoon to you, sir.

5 MR. MOORE: Good afternoon, Mr. Chair and  
6 Members of the Board. I'm John Moore of the Office  
7 of Planning.

8 CHAIRPERSON GRIFFIS: And are you raising  
9 taxes in the neighborhood?

10 MR. MOORE: No, I don't think I was.

11 CHAIRPERSON GRIFFIS: Good. I just  
12 wanted to clarify that.

13 MR. MOORE: It must be another Moore that  
14 they are talking about. I'm also not moving the  
15 Capitol Hill Restoration Society into Ward 5, it's an  
16 erroneous report on page 5.

17 CHAIRPERSON GRIFFIS: There is a lot to  
18 be straightened out in this one. Okay.

19 MR. MOORE: The Office of Planning stands  
20 in support of the application and therefore on the  
21 record we have a few clarifications. If you look at  
22 the photograph submitted by the Office of Planning,  
23 the back of the document, there are some small  
24 shadows during the early morning and late afternoon  
25 hours, but that is a condition that exists already.

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1 The shadows are not that great and if you look all  
2 the rear yards are very deep, I think about 125 feet  
3 in depth. And there are not that many trees back  
4 there, so there's not much blockage.

5 As the applicant has already stated,  
6 almost every house on the north side of the alley  
7 from her, that's Otis, have rear additions that are  
8 closed in, in essence, the whole back of the  
9 properties. I thought I would submit some  
10 photographs to show that, if I didn't, I mistakingly  
11 didn't do so. I also interviewed two of the  
12 neighbors. One who lives one house removed from this  
13 house at the alley and that applicant, the resident  
14 there seemed to be in support of the application and  
15 mentioned, by the way, excuse me, I don't know if I  
16 can ask a question of the applicant.

17 1906 is that the stone rear addition?

18 MS. WRIGHT: Yes.

19 MR. MOORE: Okay. I thought it was.

20 MR. CHATMAN: That's it.

21 MR. MOORE: As I was interviewing the  
22 community and I was told then that that house would  
23 probably oppose the application, although they had  
24 done basically the same thing. It's neither here nor  
25 there. And the other side of the block, the in-town

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1 south side of the block, is a school and a  
2 playground. There is no resident units on this south  
3 side at all. With that being said, I'll entertain  
4 any questions you may have.

5 CHAIRPERSON GRIFFIS: Good. If I  
6 understand you correctly in your report, and we  
7 appreciate it, as we have come to expect, that the  
8 rear faces north and your point is that the sun  
9 doesn't reach that portion, so that this would not  
10 end up casting more?

11 MR. MOORE: No, no more than is already  
12 shown as you look at the photograph.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. MOORE: To the left.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. MOORE: That's about max. That was  
17 taken in late afternoon.

18 CHAIRPERSON GRIFFIS: Indeed. Is there  
19 any other questions from the Board? Ms. Miller?

20 VICE CHAIR MILLER: Just looking at the  
21 concerns that were in this petition that we were  
22 handed today, one goes to obstructing the view of  
23 1918 Newton Street. Do you have a comment on that?  
24 I know you already addressed the light.

25 MR. MOORE: The adjacent property owner

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1 could easily say when you filled in your addition,  
2 you've actually created a box on my property. Where  
3 I don't think in terms of our analysis that that's  
4 sufficient to deny the application, especially given  
5 the character of the square where most of the houses  
6 owned in back of it, that is the Otis Street side,  
7 already have their additions. It is my opinion that  
8 this Board made minimal applications on that block.

9 The block is in transition. This  
10 applicant is moving in. I think the house is vacant  
11 right now. And as new residents move into the block  
12 looking at the small size of some of the units, of  
13 the rooms that she indicated, she can't get a bed in  
14 the room that she wants to expand. I believe you're  
15 going to get other applications before this Board on  
16 that block for that very reason.

17 CHAIRPERSON GRIFFIS: Mr. Etherly?

18 BOARD MEMBER ETHERLY: Thank you very  
19 much, Mr. Chair. Just very briefly, Mr. Moore, thank  
20 you very much for your report. With respect to the  
21 petition that we just received today, there was an  
22 indication on the petition expressing concerns  
23 regarding impact of sunlight or the loss of sunlight  
24 of the proposed addition if it were constructed on  
25 what would appear to be, if I'm not mistaken, kitchen

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1 and the rear porch areas. Would you be in a position  
2 to comment to any extent on any concerns regarding  
3 the impact there?

4 MR. MOORE: To some extent. Again, if I  
5 can draw your attention to the photograph in the back  
6 of the OP report? You see where the star is on the  
7 building, that's her property. You see the rear yard  
8 of the adjoining property has a shadow on this  
9 picture.

10 BOARD MEMBER ETHERLY: Yes.

11 MR. MOORE: This is without an addition,  
12 right? So it's not going to hurt it any more.

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

15 CHAIRPERSON GRIFFIS: And we're looking  
16 at a dimension of about 9 feet that is filling in on  
17 that portion?

18 MR. MOORE: Yes.

19 CHAIRPERSON GRIFFIS: And the building  
20 next to it, according to that, it's actually similar  
21 in its recession, in its depth.

22 MR. MOORE: I would imagine they would  
23 build it at some point with the same depth of  
24 addition.

25 CHAIRPERSON GRIFFIS: Right. I see.

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1 Okay. Any other questions from the Board? Thank you  
2 very much, Mr. Moore. Does the applicant have any  
3 cross examination of the Office of Planning? Do you  
4 have any questions of them?

5 MS. WRIGHT: No, no.

6 CHAIRPERSON GRIFFIS: You have their  
7 report?

8 MS. WRIGHT: The Office of Planning?  
9 This one? Yes, I do.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. WRIGHT: Yes.

12 CHAIRPERSON GRIFFIS: Good. Then let's  
13 move ahead. I don't have any other Government  
14 reports attendant to this application. We do have a  
15 filing from ANC-5A. I would ask again if the ANC is  
16 represented today in this application? Not noting  
17 any indication of such, we can take note of Exhibit  
18 23. The last sentence indicates the Commission voted  
19 to support the above-mentioned request for a special  
20 exception to allow the rear addition to an existing  
21 single-family. Yes, Ms. Miller?

22 VICE CHAIR MILLER: Mr. Chairman, I  
23 believe that this report has come in late and we  
24 would need to waive our rules to accept it. And I  
25 would propose that we do that.

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1 CHAIRPERSON GRIFFIS: Good catch.

2 BOARD MEMBER ETHERLY: No objection, Mr.  
3 Chair.

4 CHAIRPERSON GRIFFIS: Any objection to be  
5 voiced from the Board? If there is no objection, I  
6 take it as a consensus to waive our time requirements  
7 for filing and take this into the record. Any other  
8 comments on the ANC? Does the applicant have any  
9 comments on the ANC report, other than what you  
10 already stated?

11 MS. WRIGHT: No.

12 CHAIRPERSON GRIFFIS: Very well. Let's  
13 move ahead then. Is there anyone here either in  
14 support or in opposition? Persons in support or  
15 opposition of Application 17277, 1916 Newton Street,  
16 N.E., to give testimony? Anyone, persons to provide  
17 testimony? Not noting any, I believe that's what we  
18 have. Well, let's take note again as I indicated as  
19 we opened, we do have the petition in opposition.  
20 You've raised some concerns about specific signatures  
21 on that. We do have three sheets involved in that.  
22 It's Exhibit 22.

23 In addition to that, we have the  
24 submissions that also came in moments before we  
25 called the case, which was letters in support. I

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1 believe all these are letters of support. Am I  
2 correct?

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: And that's Exhibit  
5 28, 29, 24, 25 and 26, as I have them. We have  
6 Exhibit 27 also which is a petition with one  
7 signature on it in support. Yes, Mr. Hildebrand?

8 COMMISSIONER HILDEBRAND: Do you need to  
9 waive the filing time for these as well since they  
10 all came in today?

11 CHAIRPERSON GRIFFIS: Technically --

12 MS. BAILEY: No, petitions, letters of  
13 support or opposition can come in at any time. Yes.

14 CHAIRPERSON GRIFFIS: Oh, good. Thank  
15 you.

16 BOARD MEMBER MANN: Ms. Wright, I have  
17 just a brief question regarding one of the names on  
18 the petition for opposition. Do you know if Mr.  
19 Running at 1918 is the owner of that property or is  
20 he a tenant at the property?

21 MS. WRIGHT: He is the owner, as far as I  
22 know. Yes, he is the owner.

23 BOARD MEMBER MANN: As far as you know  
24 he's the owner?

25 MS. WRIGHT: Well, no, he is the owner,

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1 because I remember when he moved in.

2 BOARD MEMBER MANN: Okay.

3 MS. WRIGHT: He's the owner.

4 BOARD MEMBER MANN: Okay. Thank you.

5 CHAIRPERSON GRIFFIS: Good. Hopefully we  
6 got that on the record. Any other questions for the  
7 applicant, at this time? Ms. Wright, do you have any  
8 closing remarks you might have at this time?

9 MS. WRIGHT: Yes, the only closing remark  
10 that I would like to reinforce is that the house was  
11 built a long time ago. The kitchen is small, as Mr.  
12 Moore stated, the third bedroom is very small. I  
13 couldn't get a bed in there if I -- I mean, there is  
14 no way a bed could fit in there. And the whole  
15 purpose for my adding this addition is that so I can  
16 make that bedroom liveable and I can increase the  
17 kitchen to have some cabinet space. And the closet  
18 space, no closet space, you know. Well, you know,  
19 Ms. Miller, you're smiling. You know we need that  
20 closet space.

21 BOARD MEMBER ETHERLY: Let the record  
22 reflect that men sometimes, too, require a little bit  
23 of closet space.

24 MS. WRIGHT: Yes.

25 BOARD MEMBER ETHERLY: But the point is

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1 well-taken.

2 MS. WRIGHT: Yes.

3 MR. CHATMAN: And not to mention when  
4 you're entering the years, you do need a powder room  
5 on the first floor.

6 MS. WRIGHT: Yes, that's the other thing.  
7 There's no powder room on the first floor.

8 CHAIRPERSON GRIFFIS: Very well. Thank  
9 you very much.

10 MS. WRIGHT: Thank you.

11 CHAIRPERSON GRIFFIS: If there's nothing  
12 further from the Board, questions of the applicant, I  
13 open the floor for any actions.

14 BOARD MEMBER ETHERLY: Mr. Chair, it  
15 would be my motion to move approval of Application  
16 No. 17277 of Sabrina G. Wright, pursuant to 11 DCMR  
17 3104.1, for a special exception to allow a rear  
18 addition to an existing single-family semi-detached  
19 dwelling under section 223, premises 1916 Newton  
20 Street, N.E., and I would invite a second.

21 CHAIRPERSON GRIFFIS: Is there a second?

22 VICE CHAIR MILLER: Second.

23 CHAIRPERSON GRIFFIS: Thank you, Ms.  
24 Miller.

25 BOARD MEMBER ETHERLY: Thank you very

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1 much, Mrs. Miller. Thank you very much, Mr. Chair.  
2 I think the record has been adequately laid out and  
3 fleshed out, if you will, with regard to the  
4 requirements of section 223. I would like perhaps to  
5 speak somewhat in a directed fashion to the  
6 discussion that we've had regarding the light and  
7 air, in particular, of course, receipt of the  
8 petition that came into the Office of Zoning this  
9 afternoon.

10 I think the Office of Planning report was  
11 very instructive and, in particular, the aerial  
12 photographs at the rear of that report, along with  
13 the testimony provided by Mr. Moore give me a comfort  
14 level that the impact we are discussing with respect  
15 to light and air of any of the adjacent or  
16 neighboring properties does not rise to the level of  
17 causing an undue impact or effect and I will pause  
18 right there and invite, of course, any comment from  
19 any of my other colleagues.

20 I'll also note, of course, that the ANC  
21 was in support of the application as well, and given  
22 the letters of submission that we have in place, I  
23 think any question of fact that might have been  
24 raised with regard to the impact of air and light, I  
25 think, has been satisfactorily resolved in favor of

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1 not finding an undue impact on the light and air of  
2 the adjacent properties. Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Good. Thank you.  
4 Others, comments?

5 VICE CHAIR MILLER: I would concur with  
6 the comments of Mr. Etherly and also give great  
7 weight to the Office of Planning and, in particular,  
8 Mr. Moore, I think, addressed well the concerns that  
9 were raised by the petition that was submitted just  
10 today. I also would just like to say that I have  
11 some problems with the petition in that there is no  
12 context for it, that we don't even know who submitted  
13 it and no one is here to really describe any adverse  
14 impacts. So that in combination with the very  
15 thorough job done by the Office of Planning, leads me  
16 to support the application.

17 CHAIRPERSON GRIFFIS: Excellent. Well  
18 said by both and I would agree in terms of the Office  
19 of Planning's report, the photographic documentation  
20 really illustrates the sun and the potential for  
21 impact in terms of that. One can obviously assess,  
22 as we're well-aware of looking at these, if not  
23 hundreds of times, even from the aerial photograph,  
24 the availability of light, the extent of the rear  
25 yards are obviously very open, the dimension of 9

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1 feet and not more for the addition. I would agree  
2 with both that have spoken that this wouldn't tend to  
3 or impair the light and air, use or privacy of the  
4 adjacent neighbors.

5 We've got a motion before us. It has  
6 been seconded. I ask for all those in favor to  
7 signify by saying aye.

8 ALL: Aye.

9 CHAIRPERSON GRIFFIS: And opposed? If  
10 there is no objection, I think we can issue a summary  
11 order on this. Not hearing any voiced objection, why  
12 don't we waive our regulations and rules and issue a  
13 summary order on this account and why don't we record  
14 the vote?

15 MS. BAILEY: Mr. Chairman, the vote is  
16 recorded as 5-0-0 to approve the application. Mr.  
17 Etherly made the motion, Mrs. Miller seconded, Mr.  
18 Griffis, Mr. Mann and Mr. Hildebrand are in  
19 agreement.

20 CHAIRPERSON GRIFFIS: Excellent. Thank  
21 you very much, Ms. Bailey. Ms. Wright, enjoy, have  
22 fun building this thing and have coffee with your  
23 neighbors to smooth things out.

24 MS. WRIGHT: That's not a problem.

25 MR. CHATMAN: Will do.

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1 MS. WRIGHT: Thank you very much.

2 MR. CHATMAN: Thank you.

3 CHAIRPERSON GRIFFIS: That's not a  
4 requirement for zoning or anything like that.

5 MS. WRIGHT: Thank you.

6 CHAIRPERSON GRIFFIS: It might be good  
7 advice. Okay. Why don't we move on calling the next  
8 case of the afternoon?

9 MS. BAILEY: Application No. 17278 of Dud  
10 LLC, pursuant to 11 DCMR 3103.2, for a variance from  
11 the lot width requirements under section 401.3, to  
12 allow the construction of two semi-detached single-  
13 family dwellings in the R-2 District at premises 556  
14 and 558 48<sup>th</sup> Place, N.E., Square 5145-S, Lots 17 and  
15 18. And to the Board Members, as Mr. Ellis  
16 indicated, he will also be requesting relief from the  
17 off-street parking requirements under subsection  
18 2101.1.

19 CHAIRPERSON GRIFFIS: Correct, Ms.  
20 Bailey, we appreciate you bringing that up. We did  
21 have the indication of a preliminary notice, so why  
22 don't we get to that? There is a preliminary  
23 question from the Board in terms of the process of  
24 the changing request, so let's go to it. Ms. Miller  
25 has the direct question, at this time.

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1 VICE CHAIR MILLER: I believe when you  
2 started to describe the preliminary matter you said  
3 that you had given notice of the new relief you were  
4 seeking, the new variance?

5 MR. ELLIS: That is correct.

6 VICE CHAIR MILLER: But the Board didn't  
7 have it yet and you could provide a copy to us?

8 MR. ELLIS: Actually, I put it in front  
9 of Ms. Bailey with the exhibits that we would be  
10 offering here. But the original is there and there  
11 are copies.

12 VICE CHAIR MILLER: Okay.

13 MR. ELLIS: But the notice was sent out  
14 and a notice was posted. We came in and got new  
15 postings and so what was posted and what was  
16 presented to the ANC was, indeed, the request for the  
17 variance from the minimum lot width and the parking.

18 CHAIRPERSON GRIFFIS: And when was it  
19 posted?

20 MR. ELLIS: It was posted -- there is an  
21 affidavit that's actually in the file. I don't have  
22 a copy.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. ELLIS: But it's in your file.

25 CHAIRPERSON GRIFFIS: So you knew that

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1 there was additional relief at our required time for  
2 posting, so you were able to amend the posting?

3 MR. ELLIS: Yes, we were able to amend  
4 the posting. And just so the Board understands, if  
5 you go and you look at the map, it shows an alley.  
6 So based on when it first came to me, they showed a  
7 parking pad on the rear of the property. So we  
8 complied with the -- for the Board's edification, the  
9 posting was done on January the 13<sup>th</sup> and the affidavit  
10 is in your file.

11 But anyway, when I saw it, it appeared  
12 that it complied with the parking requirement.  
13 Subsequently, I had learned that the alley was a  
14 paper alley. For those of you who may be familiar,  
15 it shows the alley on the map that the City was going  
16 to put an alley in at some point, but it never got  
17 around to it. And so essentially, there is no access  
18 to the rear of the property.

19 CHAIRPERSON GRIFFIS: Is it utilized for  
20 driving now or it has never been utilized?

21 MR. ELLIS: No, it is not. It's not at  
22 all.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. ELLIS: Actually, the community is  
25 actually one of the -- at the ANC meeting, they want

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1 assistance in working with the City on getting this  
2 alley, because it's a problem for them. I mean,  
3 there's this alley there and nobody owns it, so you  
4 know what happens there. Stuff, since it's not their  
5 property, it's the City's property, stuff sort of  
6 gets there and never goes away until they call the  
7 City out. But there is a paper alley and there is  
8 the right-of-way, but there is nothing on it.

9 VICE CHAIR MILLER: I just want to  
10 understand you. The January 13<sup>th</sup> posting, did that go  
11 to the original case or did that go to the additional  
12 relief?

13 MR. ELLIS: The additional relief.

14 VICE CHAIR MILLER: Okay.

15 CHAIRPERSON GRIFFIS: Very well. Let me  
16 just get an indication. Is there anyone here,  
17 persons here who are attendant to 17278, Application  
18 of Dud LLC, to provide testimony today either in  
19 support or in opposition? Very well. The applicant  
20 has requested that the Board amend the required  
21 relief on this in order to include relief from the  
22 parking, which would be two if I do my calculations  
23 correctly, and it has been properly noticed.

24 Is there any objections or concerns in  
25 that fashion from the Board? Not noting any

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1 objections, I think it's fairly clear and certainly  
2 understandable. In fact, even your plat shows a 15  
3 foot alley.

4 MR. ELLIS: Yes, it does. That's why  
5 when I first saw it and they put the thing on, I had  
6 no reason to believe that there wasn't an alley  
7 there.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. ELLIS: And then when I learned that  
10 there wasn't, I said uh-oh, we got a problem. And so  
11 we went out and came back to the Board, came down and  
12 talked to zoning and we expeditiously put out an  
13 amended notice. We notified the community. We went  
14 to the community and talked to them about it.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. ELLIS: And then they told us what  
17 their desires were.

18 CHAIRPERSON GRIFFIS: Good.

19 MR. ELLIS: And here we are.

20 CHAIRPERSON GRIFFIS: I think this is  
21 perfectly clear. The Board has not indicated any  
22 objections to amending the application to incorporate  
23 that, so why don't we move ahead and have you present  
24 the case, which includes the parking relief  
25 requested?

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1 MR. ELLIS: As a quick overview before I  
2 start with my client -- well, let me just go first.  
3 Here with me today is the president and chief  
4 executive of Dud LLC, Mr. C.C. Dudley, who is  
5 immediately to my right. And next to Mr. Dudley, to  
6 his right, is Mr. Duane Oates. Mr. Oates is the  
7 chief person at GSN Services who would be the builder  
8 of the project and who can tell you more about the  
9 actual mechanics of what's going into it.

10 Now, as you can see, we have over there  
11 in front of you, we have three boards. The center  
12 board is what -- we planned a new duplex housing  
13 unit. Those units are on 25 foot wide lots. Now,  
14 these lots preexisted the Zoning Regulations in the  
15 District of Columbia. As you can see with the  
16 application that we have, we included a copy in our  
17 initial -- your indulgence.

18 We included a copy of the Bates map  
19 that's there. And if you look at that Bates map, you  
20 will see that the majority of the lots in that area  
21 are 25 foot wide lots. So everything there was 25  
22 foot, and then when the Zoning Regulations changed,  
23 these lots would all be substandard.

24 What happened is Mr. Dudley purchased the  
25 property immediately to the left of the property

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1 where you see where we were going to build the two  
2 new housing units. When he purchased that property,  
3 that owner in the estate sold him both lots, 17 and  
4 18. So those lots, this was not where he purchased  
5 one lot and subdivided it. He purchased two separate  
6 lots. Am I confusing anybody?

7 VICE CHAIR MILLER: Yes.

8 MR. ELLIS: Okay, Ms. Miller.

9 CHAIRPERSON GRIFFIS: Just keep going.

10 MR. ELLIS: Those two lots --

11 CHAIRPERSON GRIFFIS: I'm going to show  
12 her exactly what you're talking about right now.

13 MR. ELLIS: Okay. The two lots next to  
14 the subject property are separate lots. Okay.

15 CHAIRPERSON GRIFFIS: So five lots in  
16 ownership right now?

17 MR. ELLIS: No, no, he bought three, the  
18 one house. Those are three separate houses.

19 CHAIRPERSON GRIFFIS: Okay. So he only  
20 bought one of the attached houses?

21 MR. ELLIS: And then the two lots next to  
22 it.

23 CHAIRPERSON GRIFFIS: So.

24 MR. ELLIS: I can't -- speak up, because  
25 you don't have --

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1 VICE CHAIR MILLER: Right.

2 MR. ELLIS: He will point.

3 VICE CHAIR MILLER: Can you point to  
4 which ones he owned when --

5 MR. ELLIS: I will let him point since I  
6 can't.

7 VICE CHAIR MILLER: Okay.

8 MR. ELLIS: No, you can't talk off  
9 speaker. He acquired, show them, that's the house  
10 that he acquired. And then next to that there were  
11 two lots. Okay. If you look at the pictures that  
12 were provided to you, if you look at this picture  
13 that was provided to you, you will see two postings  
14 on there. Those are two lots that are there. Each  
15 of those lots are 25 feet wide. Okay?

16 VICE CHAIR MILLER: So he owns those two  
17 lots since when?

18 MR. ELLIS: He bought them --

19 MR. DUDLEY: In December, I mean, January  
20 of last year.

21 MR. ELLIS: -- January of last year.  
22 Okay? Okay. So with those two lots, again very  
23 briefly, if you look at this picture that we provided  
24 to you that was just passed out, if you look at the  
25 picture, you will see that the way the property goes

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1 is it goes a triplex, then a duplex, then it would  
2 have been a triplex, and then you got these two 25  
3 foot wide lots, which would have been a duplex there.

4 The duplex just never got built, and so all he is  
5 doing is coming in saying I want to build the duplex  
6 that just never got built. Okay?

7 That is what happened. The lots that you  
8 will see with the single-family, again going back to  
9 this picture here, you will see where it has the two  
10 lots. Again, if you go back to the Bates map that I  
11 talked about earlier, if you look at that lot, the  
12 lots next to where the single-family homes are, those  
13 are larger than normal lots that are in that  
14 community.

15 So to be clear, Mr. Dudley did not buy  
16 this property and subdivide it into substandard lots.

17 He bought them and they were already substandard  
18 lots.

19 CHAIRPERSON GRIFFIS: You know, you lay  
20 out the context and, clearly, it looked like this was  
21 supposed to be built on exactly what the character of  
22 the neighborhood is, and our problem is we're  
23 confined to the current Zoning Regulations.

24 MR. ELLIS: That's correct.

25 CHAIRPERSON GRIFFIS: Which often fly in

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1 the face of common sense. But, nonetheless, that's  
2 what we're faced with. So what we need to go to, you  
3 have indicated he has not subdivided.

4 MR. ELLIS: Right.

5 CHAIRPERSON GRIFFIS: Is that something  
6 in the regulations that you find is pertinent to  
7 allowing it?

8 MR. ELLIS: No. To be clear, there is an  
9 old case, which I don't have here, that said if you  
10 subdivide, if you make your need for a variance,  
11 you're not entitled to it. That's not something he  
12 did.

13 CHAIRPERSON GRIFFIS: Okay. So it's not  
14 a self-created hardship. I think that's --

15 MR. ELLIS: It's not a self-created  
16 hardship, correct.

17 CHAIRPERSON GRIFFIS: That's perfectly  
18 clear for the Board.

19 MR. ELLIS: And so the hardship is that  
20 the lots themselves are substandard. So therefore,  
21 we need the variance there.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. ELLIS: And in terms of the parking  
24 in that situation, the parking was as a result of --  
25 again, there is a paper alley. There is no way to

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1 get to the rear of the property.

2 CHAIRPERSON GRIFFIS: Okay. Let's not  
3 worry about parking at this point.

4 MR. ELLIS: Okay.

5 CHAIRPERSON GRIFFIS: Let's get over this  
6 minimum lot dimensions, because I'm having a hard  
7 time seeing how you get out of the requirement of  
8 401.2. 401.2 says "Except as provided in 401.3,"  
9 which I will get to in a minute, "In the case of an  
10 unimproved lot in single ownership on November 1,  
11 1957, it has a lot or width of a lot less than  
12 specified for the District in which it is located and  
13 does not adjoin another unimproved lot of the same  
14 ownership, a structure may be erected on the lot if  
15 both the lot and the width of the lot are at least 80  
16 percent of the lot area and width of the lot  
17 specified under 401.3." There are a lot of lots  
18 there.

19 MR. ELLIS: I understand that.

20 CHAIRPERSON GRIFFIS: But the issue and  
21 the threshold to get over is the regulations are  
22 requiring us to look at this under it's either the  
23 adjoining lots are in separate ownership, which means  
24 you purchased and want to build on an existing  
25 nonconforming single lot, or they are actually in

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1 common ownership, the two of them, and the  
2 regulations, as I'm seeing it and reading it, seem to  
3 be saying well, what is stopping you from building  
4 one conforming structure on the two lots?

5 MR. ELLIS: Well, the problem that I have  
6 with that is I believe the way the regulations were  
7 done was like when an individual -- when the  
8 properties were done and Zoning Regs came in, you  
9 applied that. You looked at who owned the property.

10 Subsequently, Mr. Dudley buys this property in 2004  
11 and he happens to buy the two properties next door.

12 Now, if Mr. Dudley had bought one this  
13 year and then one the next year, that wouldn't be a  
14 problem. He just happened to get them because of the  
15 nature of an estate getting them together and, I  
16 mean, I don't think you're looking at when they --  
17 you look at the time of the Zoning Regs, not as they  
18 acquired them today.

19 So if you look at it that way, it would  
20 make it such that nobody would acquire. If you're  
21 going to have a piece of unimproved property, nobody  
22 would have acquired the piece of unimproved property  
23 next to it.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. ELLIS: Because you are stuck with

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1 that precise situation.

2 CHAIRPERSON GRIFFIS: Right. I may not  
3 disagree with you. However, I still don't see the  
4 relief that the regulations allow you.

5 MR. ELLIS: Okay.

6 CHAIRPERSON GRIFFIS: I mean, this  
7 section may not make sense and we may wonder why it  
8 was ever written, especially the way it was written,  
9 but we won't get into that, but still you have to  
10 show me  
11 how --

12 MR. ELLIS: Well, the section is  
13 interpretation and the Board has the ability to  
14 interpret it, interpret a particular --

15 CHAIRPERSON GRIFFIS: But you're asking  
16 us to say look, it doesn't make sense not to  
17 interpret. I mean, I think, if we go to  
18 interpretation of the regulations, I don't think we  
19 move that far from the letter of its reading.

20 I mean, it's fairly clear. If it was in  
21 single ownership prior to 1957, then you can  
22 construct. If it wasn't after 1957, which obviously  
23 was going to when the regulations were put in, and  
24 it's in single ownership of both of them, that it  
25 actually is not allowed to be. It is not matter-of-

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1 right in terms of its minimum lot dimension.

2 MR. ELLIS: I'm sorry, Mr. Griffis, I  
3 missed you somewhere. If I'm hearing you correct, if  
4 you read that regulation, that regulation bars what  
5 he wants to do, because he is in common ownership of  
6 both lots.

7 CHAIRPERSON GRIFFIS: That's right.

8 MR. ELLIS: That's what you just said.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. ELLIS: As I believe. Okay. What  
11 I'm saying to you, I think, is that reg should apply  
12 if there was single ownership in 1958 when the regs  
13 came in, because, essentially, any time someone comes  
14 into two pieces of unimproved property next door,  
15 that reg says that they literally have to combine  
16 them if the properties are substandard size.

17 CHAIRPERSON GRIFFIS: That's right.

18 MR. ELLIS: And then so it means that,  
19 essentially, anybody who acquires one piece of  
20 property, they must then develop that one and then  
21 wait before they buy the next one and then come to  
22 this Board. I mean, that --

23 CHAIRPERSON GRIFFIS: Conceivably a  
24 process.

25 MR. ELLIS: That sets up a very anomalous

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1 result there. I mean, it says to you okay, you go  
2 out here and you acquire this piece of property.

3 CHAIRPERSON GRIFFIS: I understand.

4 MR. ELLIS: But don't be stupid enough to  
5 buy the next one.

6 CHAIRPERSON GRIFFIS: I understand.

7 MR. ELLIS: Because you go to the Board,  
8 develop it and wait around, have them hold it.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. ELLIS: And then say okay --

11 CHAIRPERSON GRIFFIS: I know and believe  
12 me, I'm not agreeing with you, but I think that's  
13 well-stated. But what you're asking me to do is  
14 because there is an absurdity in your opinion, that  
15 we should grant a variance from it, but I know you  
16 know we don't have the jurisdiction to do it based on  
17 that argument.

18 MR. ELLIS: Well, you're right, but what  
19 I'm saying is, again, it's a reg. 402 is a reg.  
20 Regs are subject to how the Board interprets them and  
21 how they are applied.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ELLIS: It's not as if someone has  
24 given you a dictate and, I mean, I think you and I  
25 can agree on that. That is an interpretation that

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1 has to be made by the Board. A little reading, but  
2 the Board can make an interpretation how its regs are  
3 to be read.

4 CHAIRPERSON GRIFFIS: We can interpret  
5 the intent and the meaning.

6 MR. ELLIS: Yes.

7 CHAIRPERSON GRIFFIS: Of 401.2.

8 MR. ELLIS: That's correct.

9 CHAIRPERSON GRIFFIS: But I'll open it up  
10 to the Board Members. I don't think my reading of  
11 401.2 is incorrect.

12 VICE CHAIR MILLER: I don't think it's  
13 incorrect either, except what I'm hearing or how I  
14 perceive this is the applicant is not saying that  
15 they are entitled to the exception under 401.2 and  
16 they are not, because the property wasn't in common  
17 ownership in 1957 or whatever. What he is saying is  
18 that's why they have to get a variance from us and  
19 now, you have to address why you should get the  
20 variance.

21 CHAIRPERSON GRIFFIS: Okay.

22 VICE CHAIR MILLER: But it also sounds to  
23 me like the applicant bought these two pieces of  
24 property knowing that they were substandard, so you  
25 have to address that hurdle.

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1 MR. ELLIS: Actually, the applicant  
2 bought the properties, because what had happened was  
3 to buy it in an estate, he had to take the whole kit  
4 and caboodle. He had to get the one property that  
5 was already built. He had to take the -- and then he  
6 ended up with the two lots.

7 CHAIRPERSON GRIFFIS: So in fact, that  
8 goes to the first prong of the test of uniqueness or  
9 special circumstance, the fact that this was part of  
10 a purchase of one in an estate to acquire the other  
11 two, which was coming in a bundle. So now, we have a  
12 uniqueness aspect to the case presentation.

13 MR. ELLIS: Right.

14 CHAIRPERSON GRIFFIS: And then the  
15 practical difficulty is?

16 MR. ELLIS: That the lots, they are  
17 separate lots and each of those lots standing alone  
18 need a variance, because they are 25 foot wide lots.

19 CHAIRPERSON GRIFFIS: Okay. Existing  
20 nonconforming. Okay. And then lastly, question?

21 VICE CHAIR MILLER: Yes, I still don't  
22 see what the practical difficulty is.

23 MR. ELLIS: The practical difficulty,  
24 again your indulgence, oh, if it was right in front  
25 of me it would have smacked me. I'll go back to a

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1 case called Russell v. District of Columbia. I only  
2 have three copies up there, but specifically in Item  
3 9, I have outlined, I have underlined it on one.

4 The practical difficulty is when you have  
5 a lot that was made before the Zoning Regulations,  
6 it's automatically -- that's substandard, it's  
7 already a practical difficulty just an inherence of  
8 it being established by that. There is case law to  
9 that effect, you know, in the District of Columbia.

10 CHAIRPERSON GRIFFIS: Good. Yes, I think  
11 that's persuasive. Ms. Miller?

12 VICE CHAIR MILLER: Could we just back up  
13 one more second. The manner in which the lots were  
14 acquired, I mean, no one forced him to acquire both  
15 lots.

16 MR. ELLIS: Yes, it was. He had --

17 VICE CHAIR MILLER: He inherited the lots  
18 or what?

19 MR. ELLIS: No, no, he bought the  
20 property out of an estate.

21 VICE CHAIR MILLER: He chose to buy this  
22 property.

23 MR. ELLIS: Property.

24 VICE CHAIR MILLER: Out of an estate.

25 MR. ELLIS: But he chose to buy one

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1 property and he had to buy the other two.

2 CHAIRPERSON GRIFFIS: Well, let's address  
3 that, because I think Ms. Miller's questioning isn't  
4 a self-created hardship? But the self-creation would  
5 be for this individual or any individual. I mean,  
6 that's what I see, that the estate offered this as a  
7 bundle and that's what was done.

8 Either this group brought it or someone  
9 else would bring the application, so it's not as if a  
10 subdivision or an action by this applicant created  
11 the nonconformity, but the uniqueness, I mean,  
12 whether it's persuasive or not, the uniqueness was  
13 that this came as one element. It was not divided  
14 and marketed as two different --

15 MR. ELLIS: Right.

16 CHAIRPERSON GRIFFIS: -- sites and you  
17 were aggressive enough to get both of them. It came  
18 together.

19 MR. DUDLEY: Exactly.

20 CHAIRPERSON GRIFFIS: Okay? Anything  
21 else?

22 MR. ELLIS: Nothing unless you have any  
23 more questions.

24 CHAIRPERSON GRIFFIS: We might, but  
25 let's --

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1 MR. ELLIS: Oh, I do have.

2 CHAIRPERSON GRIFFIS: Good.

3 MR. ELLIS: I went before the ANC. We  
4 had to go before them twice. The ANC Commissioner  
5 said to me as late as last night at 10:30 that she  
6 had sent to the Board the report, but she sent it  
7 late, she said. You know, and they had agreed when  
8 we met with the ANC. To show you -- oh, we had not  
9 gotten to the parking.

10 They wanted us to, even when we build  
11 because we showed a parking pad there, and they want  
12 us to assist them. They want us to put the parking  
13 pad to the rear of the house even though there is a  
14 paper alley and we agreed to do that, because what  
15 they are trying to do is get that alley put in.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. ELLIS: So they want to make sure  
18 that if the Board approves the houses and they are  
19 built, that if the paper alley ends up no longer  
20 being paper, that there is, indeed, a parking pad  
21 back there and we agreed to put that. And there was  
22 also an agreement with the community that the houses  
23 would be built consistent with the other houses in  
24 that community and you again have the pictures before  
25 you.

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1 We agreed to have three sides, two sides,  
2 because there's -- yes, two sides of the property  
3 brick. In the rear we could have siding or whatever  
4 else that we wanted to put on. So we have agreed to  
5 that and the ANC, they voted to approve it, but  
6 again --

7 CHAIRPERSON GRIFFIS: They haven't.

8 MR. ELLIS: -- it hasn't gotten here.  
9 The Commissioner just called me on the phone. I  
10 didn't take it, but I was going to have her fax it to  
11 the office.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. ELLIS: If she had it.

14 CHAIRPERSON GRIFFIS: Well, if it comes  
15 in, I'm sure it will make it out here.

16 MR. ELLIS: No, I didn't get a chance  
17 since I was before the Board.

18 CHAIRPERSON GRIFFIS: Oh, I see.

19 MR. ELLIS: It was ringing while I was  
20 talking to you.

21 CHAIRPERSON GRIFFIS: Understood. Okay.

22 Before we move on then to the Office of Planning's  
23 report, which I assume you have, is that correct?

24 MR. ELLIS: Actually, the Office of  
25 Planning did not send it to me, but I was made aware

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1 of it by Ms. Bailey and then a copy was sent to my  
2 office, which I don't have. It came into my office  
3 late.

4 CHAIRPERSON GRIFFIS: Do you need one in  
5 front of you right now?

6 MR. ELLIS: If I'm going to speak to Mr.  
7 Parker, if I could.

8 CHAIRPERSON GRIFFIS: Do we have an extra  
9 up here? We'll get you a copy just to have it in  
10 front of you. But you have brought up an interesting  
11 point initially in this and looking at all the other  
12 iterations that might happen or could happen.

13 Am I correct in understanding what you  
14 are saying, that if one of the adjacent lots was  
15 under a separate ownership or a separate entity, that  
16 it would be able to be developed?

17 MR. ELLIS: It would be able to be  
18 developed with zoning relief, with zoning relief. I  
19 mean, it would be able to be developed because,  
20 again, it would be a substandard lot. Going back to  
21 the Russell case, which I sent up to you, it's  
22 already too small.

23 CHAIRPERSON GRIFFIS: So in your  
24 understanding, it would be two variance cases,  
25 because each would need to come in for a variance

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1 from the minimum lot dimensions?

2 MR. ELLIS: Right, and the parking.

3 CHAIRPERSON GRIFFIS: And the parking.  
4 Interesting. Okay.

5 MR. ELLIS: And there would be,  
6 essentially, if you look at the regs on parking and  
7 lot width, there would be no reason for this Board to  
8 deny it. There would be -- I mean, that would be  
9 such an appealable issue, because there would be no  
10 basis for this Board to really deny it, because these  
11 lots were both established prior to 1958 and they  
12 were in the same size as they were developing back  
13 then.

14 And since there would be no alley, there  
15 would be no place for you to put parking in the rear,  
16 because the City hasn't put the alley in, the Board  
17 would be remiss if it didn't grant it or if you just  
18 walk in with two owners.

19 CHAIRPERSON GRIFFIS: Understood. Okay.

20 All right. Ms. Miller?

21 VICE CHAIR MILLER: I mean, I'm looking  
22 at the Russell case. Isn't it true though that the  
23 facts that are here, that there are two substandard  
24 lots that are adjacent to each other, allows you to  
25 develop the property, whereas you might not have been

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1 able to on one substandard lot?

2 MR. ELLIS: If the client goes out -- I  
3 mean, you read as well as I do. My client can go  
4 out, combine those lots and make one lot, but what  
5 was contemplated in that neighborhood, again if you  
6 look at it, was three, two, three, two. They are  
7 trying to keep everything in the consistency with the  
8 community, what's there, and they got the house, the  
9 way they have planned it, to look like the ones that  
10 are next to it.

11 And yes, my client could join it and do  
12 something there and he wouldn't need -- he could put  
13 a curb cut. That was one of the things that the  
14 community thought about. And when we met with the  
15 community, they didn't want a curb cut to put a  
16 garage back behind, because what does that do? That  
17 cuts back on the parking on the street, because the  
18 curb cut comes in and you know you got to be so many  
19 feet off of the driveway.

20 CHAIRPERSON GRIFFIS: Right. It takes  
21 away street parking if they provide rear parking.

22 MR. ELLIS: It takes away street parking.  
23 And so what happens is the community was very --  
24 they didn't want us to do anything that required them  
25 to get a curb cut, you know, not required us, but we

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1 would end up resulting in getting a curb cut in  
2 there.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. ELLIS: So essentially, yes, he could  
5 do that, but what I'm saying is had he gone in and  
6 bought this as one big lot and subdivided it, I would  
7 have told my client don't even come to the Board,  
8 because that is a hardship of your own making. But  
9 in reality, these are just two separate lots that he  
10 picked up and they will be developed separately.

11 And I mean, if somebody did it pre '58,  
12 you know, and they are sitting on that lot, again, I  
13 wouldn't be arguing with you. But he was just sort  
14 of -- he wanted a piece of property. The house  
15 actually is developed that's there, and to get it he  
16 ended up with these two lots.

17 CHAIRPERSON GRIFFIS: But isn't the test  
18 actually to show what the practical difficulty in  
19 complying with the existing zoning is?

20 MR. ELLIS: By lot, lot by lot.

21 CHAIRPERSON GRIFFIS: Right. So in the  
22 sense of if separate entities came in, their  
23 practical difficulty is increased or the argument is,  
24 conceivably, more persuasive, because they don't have  
25 any possibility of expanding to make it a conforming

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1 lot dimension. However, if you had both, you have  
2 the ability of creating a conforming lot.

3 MR. ELLIS: We do have that. Yes, you  
4 do. You're correct, but it's on a lot by lot basis  
5 though. And what you're saying is that by virtue of  
6 him owning that second one, he reaches over and has  
7 to combine that lot and make that. And what it is is  
8 requiring him to make another lot, go down and deal  
9 with the City to make a lot on something that was  
10 already subdivided by the City years and years and  
11 years ago.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. ELLIS: And he's leaving it. He's  
14 not changing and he's not coming in trying to make  
15 anything inconsistent with what's in the community.

16 CHAIRPERSON GRIFFIS: Right. I  
17 understand that.

18 MR. ELLIS: All he's trying to do is  
19 carry out what was planned to be there.

20 CHAIRPERSON GRIFFIS: Right.  
21 Conceivably, you have a strong third prong test that  
22 you're not breaking the character.

23 MR. ELLIS: No.

24 CHAIRPERSON GRIFFIS: But you may not  
25 necessarily be conforming with the Zone Plan or Map.

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1 I mean, I hope you understand. I mean, I think the  
2 Board fully understands and appreciates the situation  
3 here and the difficulty is we keep looking at 401.  
4 Mr. Etherly, did you have a comment?

5 BOARD MEMBER ETHERLY: No.

6 CHAIRPERSON GRIFFIS: Any other comments,  
7 Mr. Mann?

8 BOARD MEMBER MANN: When you're talking  
9 about the three, two, three, two rhythm of the homes  
10 on the street, are you talking about from kind of  
11 architectural and massing perspective or sort of from  
12 a programming perspective of the number of units that  
13 were meant to be available on this street?

14 MR. ELLIS: Architectural, from  
15 stylization. If you look at the picture I have here.

16 BOARD MEMBER MANN: Right.

17 MR. ELLIS: If you go to the complete  
18 left of it, it was a triplex, then a duplex, then a  
19 triplex, a duplex, a triplex and then the next thing  
20 would have been a duplex.

21 BOARD MEMBER MANN: So you're saying that  
22 this three, two, three, two rhythm is an appearance  
23 issue?

24 MR. ELLIS: Yes.

25 BOARD MEMBER MANN: Okay. Is it possible

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1 to build one single building on those two lots that  
2 gives the appearance of a duplex, the architectural  
3 appearance, so that as driving down the street, it  
4 might look similar to the other duplexes on the  
5 block?

6 MR. ELLIS: It would be a house that  
7 would be really out of scale when you do it like  
8 that, when you're building it, because the way those  
9 houses are, it would be a 40 foot wide house, at  
10 least 40 feet. It would be out of scale even with  
11 the single-family houses that are running next to it.

12 The house would be out of scale in that  
13 neighborhood. You would end up with a house that  
14 does not appear even in any way, shape or form like  
15 the other houses. It would be completely out of  
16 scale. As you can see, the duplex that's sitting  
17 there, look at that as one building by itself and  
18 look at it with the house, the single-family detached  
19 house that is to the right.

20 That would be out of scale with the other  
21 house. That would be a house that would be  
22 practically -- it would be very difficult to sell,  
23 because it would be as expensive, it would be more  
24 expensive than any of the single-family detached  
25 houses there in that neighborhood.

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1           And if you scale it down to that size,  
2           that lot is bigger than the other lots, so that  
3           house, whatever you do, even if we comply, you end up  
4           with an ugly situation. To comply with, we end up  
5           with a house that's either small to make it comply  
6           with the single-family and then it's on this wide  
7           lot.

8           We make a big house and then how do you  
9           sell it? It's bigger than any of the other houses to  
10          either side. It's like this behemoth that's sitting  
11          there and everybody is going like what in the heck  
12          were they thinking about? They built this big house  
13          that's there. Nothing looks right.

14          CHAIRPERSON GRIFFIS: Actually, what is  
15          the dimension of the adjacent property, not the  
16          attached, but the detached single-family?

17          MR. ELLIS: I would have to defer to Mr.  
18          Oates.

19          CHAIRPERSON GRIFFIS: If you have it. If  
20          not, I can try and find it.

21          MR. ELLIS: It's on the Bates. I'm  
22          sorry.

23          MR. OATES: It's on the Bates map.

24          MR. ELLIS: I'm informed that it's on the  
25          Bates map.

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1 CHAIRPERSON GRIFFIS: I didn't see it on  
2 the site plans that were in.

3 MR. OATES: Oh, the house.

4 MR. ELLIS: The house.

5 MR. OATES: I thought you were talking  
6 about the lot. I'm not sure what the house  
7 dimensions are.

8 CHAIRPERSON GRIFFIS: It looks to me --

9 MR. ELLIS: No, let me -- that house  
10 there was drawn to scale, correct?

11 CHAIRPERSON GRIFFIS: Well, outside of  
12 the structure, what is the size of the lot?

13 MR. ELLIS: Oh, the lot is on the Bates  
14 map.

15 MR. OATES: It's on the Bates map.

16 CHAIRPERSON GRIFFIS: It is?

17 MR. ELLIS: Yes.

18 CHAIRPERSON GRIFFIS: What is the lot  
19 number?

20 MR. ELLIS: The lot number, if you look  
21 at it, it's next to 17. It looks like it was drawn  
22 through it.

23 CHAIRPERSON GRIFFIS: It appears to me  
24 it's maybe close to 50. Would that make sense?

25 MR. ELLIS: Yes. Well, somewhere in the

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1 rear it's -- yes, because it's 4874 in the rear.

2 CHAIRPERSON GRIFFIS: What are you  
3 looking at?

4 MR. ELLIS: The Bates map.

5 CHAIRPERSON GRIFFIS: Do you have it?

6 MR. ELLIS: Yes, you have it in your  
7 application.

8 CHAIRPERSON GRIFFIS: Yes, I know. I  
9 mean, I should turn my mike off when I say that and  
10 ask them if they have it right in front of them.  
11 Excellent. Thank you. Yes, it's reading 54.2 in the  
12 front. Thank you, Ms. Bailey.

13 MR. ELLIS: Yes, but if you look at the  
14 scale, that house is drawn to scale.

15 CHAIRPERSON GRIFFIS: I understand. I  
16 understand the scale of the houses, but of course we  
17 are here for the lot dimension.

18 MR. ELLIS: Yes.

19 CHAIRPERSON GRIFFIS: Okay. I think I'm  
20 clear. Any other questions from the Board at this  
21 time. Are you ready to proceed with the Office of  
22 Planning's report?

23 MR. PARKER: I am, yes.

24 CHAIRPERSON GRIFFIS: Let's go ahead  
25 then. A very good afternoon to you.

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1 MR. PARKER: Good afternoon, Mr.  
2 Chairman, Members of the Board. My name is Travis  
3 Parker with the Office of Planning. Forgive me if I  
4 cough. I'm coming down with something. Excuse me.

5 CHAIRPERSON GRIFFIS: No need to share.

6 MR. PARKER: Let me preface my remarks by  
7 saying that the Office of Planning believes that this  
8 applicant could meet the third test. We would like  
9 to see something happen on this lot. This is a  
10 vacant lot in an established residential  
11 neighborhood. It would be good for the neighborhood  
12 and the character of the neighborhood to have  
13 something developed.

14 The problem that the Office of Planning  
15 has run into is the same one that has been discussed  
16 here already, is involved with section 401.2. As I  
17 think the Board is aware, but may not have been made  
18 sufficiently clear, if these two lots were in  
19 separate ownership when the Zoning Code went into  
20 effect and had been transferred separately and  
21 remained in separate ownership to today, section  
22 401.2 specifically allows the owners of those  
23 properties to come in, build a detached home without  
24 any zoning relief as a matter-of-right.

25 Since that is not the case and these have

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1 been in common ownership and are still in common  
2 ownership, section 401.2 doesn't apply, which  
3 requires the applicant to seek variance relief from  
4 section 401.3.

5 As of the application that was submitted,  
6 the Office of Planning is not convinced that the  
7 first two tests have been met sufficiently. Some  
8 arguments have been made today that are more  
9 persuasive than the original arguments, and the Board  
10 will have to decide whether those meet the  
11 requirements of the tests.

12 The one question, I think, that is  
13 important to focus on though is the practical  
14 difficulty of following the restrictions of the  
15 Zoning Code and combining these lots into one lot and  
16 building a single-family home to match the ones to  
17 the north. It appears that at least one of those  
18 lots to the north has done that in the past. I think  
19 Lot 41, at the time of the Zoning Ordinance, was two  
20 lots and has been combined to form one.

21 CHAIRPERSON GRIFFIS: And in fact, it  
22 looks right from the Bates map to make your point  
23 that perhaps Lot 17 or the adjacent lot did just  
24 that. Is it 16? I'm sorry.

25 MR. PARKER: I haven't been able to find

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1 any evidence that what I show as Lot 800, the  
2 immediately adjacent lot, has been combined. I think  
3 that that was 54.2 at the time, may have been  
4 combined before 1958.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. PARKER: I cannot prove it either  
7 way.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. PARKER: But I believe Lot 41 next to  
10 that had been combined. Either way, you have one  
11 street characteristic to the north. You have one  
12 street characteristic to the south. This is right in  
13 between and would be in scale and in character with  
14 either one of those, and the Board will have to make  
15 the decision whether the tests have been met.

16 CHAIRPERSON GRIFFIS: Good. We  
17 appreciate that and we appreciate an excellent  
18 report. Just lastly though, you would have found  
19 that it would if approved or it should not be  
20 approved, because it would, in fact, be detrimental  
21 to the Zone Map and Plan. Is that correct?

22 MR. PARKER: If the first two tests are  
23 not met.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. PARKER: Then that would invalidate

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1 401.2, the arguments that have been made today. If  
2 the Board decides that the first two tests have been  
3 met, then there would be no harm to the integrity of  
4 the Zone Plan.

5 CHAIRPERSON GRIFFIS: I see. Okay. Any  
6 questions from the Board? Does the applicant have  
7 any? Oh, Ms. Miller?

8 VICE CHAIR MILLER: I just have one  
9 question based on representations by the applicant  
10 today. Do you have any knowledge or information that  
11 to build a single-family home on the two lots would  
12 be prohibitively expensive to sell that house in the  
13 neighborhood?

14 MR. PARKER: I can't answer that  
15 question. I don't have any information.

16 VICE CHAIR MILLER: Okay. I don't think  
17 we have anything in the record on that. Thank you.

18 CHAIRPERSON GRIFFIS: Good. Does the  
19 applicant have any cross examination of the Office of  
20 Planning?

21 MR. ELLIS: No, I don't.

22 CHAIRPERSON GRIFFIS: Very well. Let's  
23 move ahead and this is not in a historic district.  
24 That's correct?

25 MR. ELLIS: That's correct.

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1 CHAIRPERSON GRIFFIS: Okay. And the ANC-  
2 7C, is the ANC represented today? You had indicated,  
3 obviously, that you did a full presentation. It was  
4 your understanding at the end of that, there was a  
5 motion that was to recommend approval of this  
6 application?

7 MR. ELLIS: That is correct, and it had  
8 required us to do an agreement.

9 CHAIRPERSON GRIFFIS: For the brick  
10 facade?

11 MR. ELLIS: The brick facade, and they  
12 wanted us to -- one part I told them was illegal.  
13 They wanted us to make sure if we could not rent it,  
14 that we wouldn't -- if we couldn't sell it, that we  
15 wouldn't rent it to section 8 and I told them that  
16 was illegal, but that --

17 CHAIRPERSON GRIFFIS: Yes, I don't think  
18 we want to pick that one up today.

19 MR. ELLIS: No, no. But the only thing  
20 was that it would be brick facade on the front and  
21 sides. The rear could be siding. And the other  
22 thing that they wanted was that the parking pad be  
23 built to the rear of the property.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. ELLIS: So when --

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1 CHAIRPERSON GRIFFIS: So you would  
2 actually provide a parking pad.

3 MR. ELLIS: Pad.

4 CHAIRPERSON GRIFFIS: Which actually  
5 forces the City to start looking at actually building  
6 an alley back there, which would be obviously  
7 important to all the other adjacent neighbors.

8 MR. ELLIS: And we also agreed that we  
9 would, in any way that they deemed possible, you  
10 know, necessary, assist them with the City in terms  
11 of helping them get that alley, because this picture  
12 that OP has provided doesn't show, based on what they  
13 are representing to me, that there is a lot of trash  
14 and other things that are behind that area, on the  
15 City right-of-way, in that alley, that they said that  
16 they need to get it moved.

17 CHAIRPERSON GRIFFIS: It seems like there  
18 is a bit of a drive area. Maybe it's just the  
19 photograph and what I'm seeing, but is it absolutely  
20 impossible to drive on that dirt road?

21 MR. DUDLEY: It's not totally impossible  
22 to drive in there, but you can't maneuver back there.

23 CHAIRPERSON GRIFFIS: Right. I see.

24 COMMISSIONER HILDEBRAND: Is it paved in  
25 any way?

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1 MR. ELLIS: No, it's not paved. It is  
2 not paved.

3 COMMISSIONER HILDEBRAND: Because in the  
4 photograph it almost looks like it's a gravel road or  
5 asphalt. It's appearing to be gray.

6 MR. ELLIS: No, it's neither, it's  
7 neither.

8 COMMISSIONER HILDEBRAND: It's neither.

9 CHAIRPERSON GRIFFIS: It's just ground-in  
10 dirt.

11 MR. ELLIS: It's ground. I mean, you  
12 know, if you go back there, you better have a Hummer,  
13 high clearance, that's all.

14 CHAIRPERSON GRIFFIS: Yes. Okay. Let's  
15 move ahead then and I would ask if anyone is present  
16 to give testimony, persons present for Application  
17 17278, either in support or in opposition, you can  
18 come forward at this time. Not noting anyone rushing  
19 to the table, I believe that no one is here to  
20 present testimony as a person. I think we can turn  
21 it to you, Mr. Ellis, to give any closing and  
22 summation remarks at this time.

23 MR. ELLIS: Just briefly. As I said,  
24 this applicant purchased the property at an estate  
25 sale. It was already subdivided in two separate

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1 lots. He is trying to keep the character of the  
2 street in the way it was initially intended. He is  
3 not trying to change it. I believe that the  
4 uniqueness was the way in which -- that he came about  
5 the property, because when he went there, he was only  
6 intending to buy one piece of property and he was  
7 required to buy those two lots.

8 He is trying to develop it in a way that  
9 the community and the ANC -- as I stated to you  
10 before, the community did not want whatever we did.  
11 They did not want us to put a curb cut in there  
12 because, as you can see, right in front of the  
13 property is a school and there is no parking on the  
14 side of the street where the school is.

15 And a curb cut, as what was done at the  
16 far end of the property if you're looking at the ANC  
17 report on page 2, down towards the end of the street  
18 there was a curb cut that was put in there, and that  
19 curb cut in there has caused them some parking  
20 problems in that area. And so the community did not  
21 want any curb cuts in any way, shape or form.

22 So my client is trying to appease the  
23 community in providing them, you know, the  
24 consistency with the houses that are being built in  
25 the community. They want it to look like the other

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1 houses. As you can see, the plan that we presented  
2 to you looks like the other houses. We have exceeded  
3 to their requests and we would just ask that you  
4 approve this application.

5 CHAIRPERSON GRIFFIS: Good. Thank you  
6 very much, and I think you have added an awful lot to  
7 the record in this case, and I think one of the  
8 strong statements that the Office of Planning made a  
9 little bit off the direct subject of the application  
10 is that I don't think that any Board Member thinks  
11 that it's better off to have this as empty lots than  
12 developed lots. And I think what is being proposed  
13 there looks within character and, clearly, in terms  
14 of the materiality with the ANC.

15 However, we do have to go to directly our  
16 regulations and the requirements of the test to be  
17 made for the variance. And so this is what I would  
18 like to propose. One, I would like to keep the  
19 record open for the ANC report and have that put in.

20 I would like to set this for decision making at our  
21 next public meeting, which would be the 1<sup>st</sup> of March.

22 And we would also keep the record open for, Mr.  
23 Ellis, any submissions that you have that reiterates  
24 the test, the uniqueness, the practical difficulty.

25 I think we had limited discussion on the

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1 parking, because the parking seems to be fairly clear  
2 and straightforward, but certainly you can address  
3 that if you feel it's required. We won't take it as  
4 any indication if you don't, one way or the other,  
5 but it really goes to the aspect of having the two in  
6 single ownership lots of nonconforming dimensions.

7 And then is there anything? Is there any  
8 objection from Board Members in doing that? Okay.  
9 Mr. Ellis, questions of process. Is it clear what  
10 we're requesting to be submitted?

11 MR. ELLIS: Yes.

12 CHAIRPERSON GRIFFIS: Okay. And there's  
13 no difficulty in making that time? That seems to be  
14 an ample amount of time?

15 MR. ELLIS: Your March meeting is when?

16 CHAIRPERSON GRIFFIS: It's the 1<sup>st</sup>.

17 MR. ELLIS: It's March 1<sup>st</sup>?

18 CHAIRPERSON GRIFFIS: Yes, exactly.

19 MR. ELLIS: It has to be in when?

20 CHAIRPERSON GRIFFIS: We'll go to the  
21 schedule now in terms of the dates of when that needs  
22 to be submitted by. Ms. Bailey?

23 MS. BAILEY: Would February 15<sup>th</sup> be a  
24 problem for you, Mr. Ellis?

25 MR. ELLIS: No.

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1 MS. BAILEY: Mr. Chairman, sorry. Since  
2 there is no parties to be served, maybe even as far  
3 as the 22<sup>nd</sup> of February.

4 CHAIRPERSON GRIFFIS: Right, I think  
5 that's more appropriate.

6 MS. BAILEY: Okay. So, Mr. Ellis,  
7 February 22<sup>nd</sup> by close of business.

8 MR. ELLIS: 27<sup>th</sup> or 22<sup>nd</sup>?

9 MS. BAILEY: 22<sup>nd</sup>.

10 MR. ELLIS: Okay. That's fine.

11 MS. BAILEY: February 22<sup>nd</sup>.

12 MR. ELLIS: That's fine.

13 CHAIRPERSON GRIFFIS: Just to clarify in  
14 terms of process. Of course, the ANC is a party in  
15 this case, so you just need to serve anything you put  
16 in to the ANC also.

17 MR. ELLIS: Always.

18 CHAIRPERSON GRIFFIS: So you just copy  
19 them.

20 MR. ELLIS: Yes.

21 CHAIRPERSON GRIFFIS: As they didn't come  
22 in opposition, I don't think we would need to keep  
23 the record open for their responses but, obviously,  
24 if they wanted to respond, we would accept it into  
25 the record. But in terms of our schedule, I think

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1 that's plenty enough time. You can, of course, get  
2 it into the record prior to that, but that would be  
3 the deadline of which we have established for  
4 decision on the 1<sup>st</sup>.

5 Good. If there is nothing else attendant  
6 to this application, if there's any other questions I  
7 could answer, Mr. Ellis?

8 MR. ELLIS: No.

9 CHAIRPERSON GRIFFIS: Very well. We  
10 thank you very much for spending the time and effort  
11 in really putting this together before us. Let us  
12 take five. Well, what do we have next? We're going  
13 to just take a five minute recess and we'll return  
14 for 17279.

15 (Whereupon, at 2:51 p.m. a recess until  
16 3:04 p.m.)

17 CHAIRPERSON GRIFFIS: Very well. Let's  
18 reconvene and call the next case in the afternoon.

19 MS. BAILEY: Application No. 17279 of  
20 Stephanie Peters and Charles Fishman, pursuant to 11  
21 DCMR section 3103.2, for a variance from the floor  
22 area ratio requirements under section 402, and  
23 pursuant to 11 DCMR section 3104.1, for a special  
24 exception to allow a two-story rear addition to an  
25 existing single-family row dwelling under section

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1 223, not meeting the lot occupancy requirement,  
2 that's section 403, and rear yard requirements,  
3 section 404. The property is located in the R-5-B  
4 District at premises 2604 Mozart Place, N.W., Square  
5 2579, Lot 19.

6 CHAIRPERSON GRIFFIS: Good. Thank you,  
7 Ms. Bailey. All right. Is the ANC represented today  
8 in this case, ANC-1C? The ANC is not present. Is  
9 there anyone else here to provide testimony, persons,  
10 in 17279, if you could raise your hand? Not noting  
11 anyone else present, let's move ahead. A very good  
12 afternoon to you. If you wouldn't mind introducing  
13 yourself for the record.

14 MR. FISHMAN: Mr. Chairman --

15 CHAIRPERSON GRIFFIS: I'm sorry, you just  
16 need to turn your microphone on. There is a button  
17 on the base in the front.

18 MR. FISHMAN: Here we go.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. FISHMAN: I should know this. I'm in  
21 the music business. Mr. Chairman, Members of the  
22 Commission, first of all, my wife has asked me to  
23 apologize for her inability to be here as she is home  
24 taking care of her 6 week-old son.

25 CHAIRPERSON GRIFFIS: Good.

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1       Congratulations and we don't require the entire  
2       family to be present. So are you ready to proceed?

3               MR. FISHMAN: Yes, but she's much better  
4       at this. I'm in music. She's in law. In any event,  
5       we reside -- I have lived in the Adams Morgan  
6       neighborhood for 20 years and I have owned the  
7       property at 2604 Mozart Place since 1988. It's now  
8       in my wife's name and we have, especially with the  
9       addition of a child, decided that we need to get some  
10      more space.

11              Now, one thing I would like to clarify in  
12      this application, because my wife has really been  
13      doing most of this with Mr. Neyman, who is our  
14      architect, it said to allow a rear addition to an  
15      existing single-family row dwelling. We actually  
16      have a porch. We have two porches on the rear of our  
17      home. They are screened-in porches. There are  
18      porches on the two homes that are adjacent to us.

19              At this time, the porches have sort of  
20      gotten a little weak, let's say, but we feel that for  
21      the child and for family needs, we need to expand.  
22      So rather than build something completely new, you  
23      know, where there was no structure, there actually is  
24      a structure that we're just trying to build upon and  
25      make the necessary expansion.

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1 CHAIRPERSON GRIFFIS: Are you going to be  
2 on the footprint of the existing porches?

3 MR. FISHMAN: Yes.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. FISHMAN: And we have appeared before  
6 the ANC and we have submitted a letter of support  
7 from the ANC. We have also received last week a  
8 letter from Ellen M. McCarthy from the Planning Board  
9 in which she has recommended to the Commission that  
10 this be accepted and anything else other than that, I  
11 have to rely on the expert.

12 CHAIRPERSON GRIFFIS: Good. Then we  
13 don't have to -- go ahead.

14 MR. FISHMAN: Yes. I was just going to  
15 add one thing. Our homes, there are four homes on  
16 this block, and our homes abut in the rear an alley.  
17 And specifically in front of our home is the side  
18 wall of a house and all of that, our houses and the  
19 two houses, are fenced in but on the other side of  
20 the alley is the side of another residence and that's  
21 all brick building, so there is nothing that we're  
22 really looking out on.

23 CHAIRPERSON GRIFFIS: Understood. You do  
24 have alley access in the rear of your property. Is  
25 that correct?

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1 MR. FISHMAN: Yes, sir.

2 CHAIRPERSON GRIFFIS: But what you're  
3 saying is across the alley, there is a portion that  
4 actually fronts on Fuller Street, but the side of  
5 which is aligned with the alley, which is, oh, gosh -  
6 -

7 MR. FISHMAN: Brick.

8 CHAIRPERSON GRIFFIS: I'm getting tired.  
9 Perpendicular to your rear yard.

10 MR. FISHMAN: That's correct, yes.

11 CHAIRPERSON GRIFFIS: Okay. Let's go  
12 through then the 223. Of course, this is an addition  
13 to a one-family dwelling as the Zoning Regulations  
14 looks at it. That's what it's, in fact, classified  
15 as. Of course, in section 223, you are allowed under  
16 a special exception to be afforded relief to allow  
17 this. 223.2 lays out this cannot be done if it  
18 impairs the light and air available to the  
19 neighboring properties. Does this impair the light  
20 and air to the neighboring properties?

21 MR. NEYMAN: No, it does not.

22 CHAIRPERSON GRIFFIS: And why so?

23 MR. NEYMAN: It is much the same. It  
24 occupies much the same mass as the existing two-story  
25 screened porch similar to the neighbors to either

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1 side.

2 CHAIRPERSON GRIFFIS: And in terms of the  
3 light and air available or rather, the use and  
4 privacy of the adjoining properties? This is not  
5 showing any fenestration on the property line or the  
6 --

7 MR. NEYMAN: Correct, no fenestration on  
8 either property line. There will be a fire graded  
9 wall of some sort.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. NEYMAN: On either side.

12 CHAIRPERSON GRIFFIS: And has anything,  
13 in talking to the neighborhood or any sort of  
14 conversations with this, has there been any  
15 indication of issues of concern that the Board should  
16 be made aware of?

17 MR. FISHMAN: No, sir. We have also  
18 submitted, and I believe it's in the record, a letter  
19 of the owner of our -- who lives immediately adjacent  
20 to us at 2602 in support of the variance application.

21 The other two buildings are actually a part of the  
22 Samaritan Inn Organization and they are transition  
23 houses for gentlemen who are getting out of various  
24 programs or out of prison, and they have been my  
25 neighbors ever since. In fact, they were there

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1 before I was there.

2 CHAIRPERSON GRIFFIS: Indeed. And the  
3 letter of support is from Dan and Anna Calhoun. Is  
4 that correct?

5 MR. FISHMAN: Kahoe.

6 CHAIRPERSON GRIFFIS: Kahoe?

7 MR. FISHMAN: Right.

8 CHAIRPERSON GRIFFIS: I'm terrible on  
9 names in the afternoon.

10 MR. FISHMAN: I'm terrible with names.

11 CHAIRPERSON GRIFFIS: It is Exhibit No.  
12 22 in the record.

13 MR. FISHMAN: Right, and we enjoy  
14 excellent relations, you know, with the transient  
15 houses.

16 CHAIRPERSON GRIFFIS: Excellent. I note  
17 that the material in the rear is proposed to be  
18 stucco. Is that correct?

19 MR. NEYMAN: As far as we know, at this  
20 time, yes.

21 CHAIRPERSON GRIFFIS: What might it be  
22 then?

23 MR. NEYMAN: It might be stucco or  
24 masonry.

25 CHAIRPERSON GRIFFIS: Oh, okay.

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1 MR. NEYMAN: Most likely stucco.

2 CHAIRPERSON GRIFFIS: So we're looking at  
3 something that will be of a masonry vernacular, which  
4 is in keeping with the existing structure and the  
5 character around the area?

6 MR. NEYMAN: Masonry or cement.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. NEYMAN: I believe so.

9 CHAIRPERSON GRIFFIS: I don't have any  
10 other questions at this time. Do the Board Members  
11 have any questions?

12 COMMISSIONER HILDEBRAND: Just curious.  
13 You're narrowing in on your courtyard. You're  
14 changing that dimension from 3.9 to 2 feet. Could  
15 you talk a bit more why that's necessary in your  
16 view?

17 MR. NEYMAN: The original idea in  
18 creating the room addition, we were limited to 9 feet  
19 by virtue of the lot occupancy. And of course, the  
20 hope was to make the room as usable as possible,  
21 which meant expanding in that direction. However, we  
22 have reconsidered that and even though that approach  
23 has been recommended by the Office of Planning, we  
24 may not build it that way and just keep it in the  
25 confines of the existing.

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1 MR. FISHMAN: He's talking about the  
2 width?

3 MR. NEYMAN: Yes, yes.

4 CHAIRPERSON GRIFFIS: The existing porch,  
5 does it align or does it --

6 MR. NEYMAN: It is, it aligns.

7 CHAIRPERSON GRIFFIS: So it -- okay.

8 MR. FISHMAN: And will remain that way.

9 CHAIRPERSON GRIFFIS: Well, then I'm  
10 confused. The drawings aren't showing that it's  
11 staying there.

12 MR. NEYMAN: The drawings do not show it  
13 that way.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. NEYMAN: In communication with the  
16 agencies in the City, since then we have gone back  
17 and forth on this issue and had additional time to  
18 discuss it with the family and think it through, and  
19 it is no longer important to extend it into that  
20 area. I think we have had a change of mind about it  
21 overall. Part of the concern is keeping that 3.9  
22 foot courtyard open for access to that area.

23 CHAIRPERSON GRIFFIS: Right. So the  
24 dimension is about --

25 MR. NEYMAN: To clean or for emergency or

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1 whatever.

2 CHAIRPERSON GRIFFIS: -- 3.9 feet?

3 MR. NEYMAN: That's right, yes.

4 CHAIRPERSON GRIFFIS: Okay. And I will  
5 tell you the concern that I have in looking at this  
6 is, of course, the special exception part of the 223  
7 incorporates 2001.3, which is additions to  
8 nonconforming as long it doesn't increase the  
9 nonconformity. And it seems that what you're doing  
10 actually, and proposed in the drawings and the record  
11 that I'm looking at, is increasing the nonconformity.

12 MR. NEYMAN: Yes.

13 CHAIRPERSON GRIFFIS: Meaning moving that  
14 area away, diminishing it from 3.9 to 2 feet.

15 MR. NEYMAN: Oh, what section was that?

16 CHAIRPERSON GRIFFIS: 2001.

17 MR. NEYMAN: Was that the section number  
18 or the date?

19 CHAIRPERSON GRIFFIS: That's the section  
20 number.

21 MR. NEYMAN: Section 2001?

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. NEYMAN: Okay.

24 CHAIRPERSON GRIFFIS: See, I read all  
25 that off with great authority, but now I will check

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1 it for you exactly.

2 MR. FISHMAN: I would like to point out,  
3 too, that both of the porches on the adjoining homes  
4 or on the homes that are adjoining our property  
5 extend out beyond ours.

6 COMMISSIONER HILDEBRAND: Towards the  
7 alley.

8 MR. FISHMAN: Towards the alley. That's  
9 what we're concerned about right now. The initial  
10 thought about widening it has been since dropped even  
11 though it had been recommended or approved for  
12 recommendation. So we're just going back from the  
13 house. It will stay in conformity.

14 CHAIRPERSON GRIFFIS: Right. And I don't  
15 think the Board -- I haven't noted any comments or  
16 concerns in terms of its increased dimension towards  
17 the rear.

18 MR. FISHMAN: Oh.

19 CHAIRPERSON GRIFFIS: It's the increase  
20 in dimension and encroaching on one of the aspects of  
21 the nonconformities, and it is 2001, a section in  
22 2001.3, which I indicated, in which enlargements or  
23 additions may be made to the structure provided,  
24 2001.3(b)(2), neither increase or extend any existing  
25 nonconforming aspects of the structure increase.

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1           And under 223 what we have always looked  
2 at is -- although, I wonder if 223, maybe we can get  
3 the Office of Planning to comment on that when they  
4 go through their report, is this not granting the  
5 relief from that aspect and could it not then  
6 encroach on the 2 feet? But what I understand you  
7 saying is that that additional bump onto the side is  
8 not of concern.

9           MR. FISHMAN: No, we have dropped it. So  
10 it's already dropped. We're not going to do that.

11           CHAIRPERSON GRIFFIS: Then I'm spinning  
12 wheels here. Then all we're going to need is the  
13 documentation into the record. Do you have drawings  
14 that represent that at this time?

15           MR. NEYMAN: No.

16           CHAIRPERSON GRIFFIS: Okay.

17           MR. NEYMAN: But we'll be happy to send  
18 them over.

19           CHAIRPERSON GRIFFIS: Okay. Good.

20           MR. NEYMAN: By whatever --

21           MR. FISHMAN: Did you make it that way?  
22 Did you make it that way?

23           CHAIRPERSON GRIFFIS: Okay.

24           MR. NEYMAN: We have. Yes, yes, we did  
25 originally, part of the original application.

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1 MR. FISHMAN: All right.

2 MR. NEYMAN: We're going to have it, yes.

3 CHAIRPERSON GRIFFIS: And then the  
4 dimension as it extends to the rear is 9 feet, 3 and  
5 a 1/4 inch. Is that correct?

6 MR. NEYMAN: Something like that, right.

7 CHAIRPERSON GRIFFIS: Okay. Well, no, I  
8 mean, I need to be fairly specific.

9 MR. NEYMAN: Okay. Exactly.

10 CHAIRPERSON GRIFFIS: But you tell me. I  
11 mean, that's what's showing on your A1.1.

12 MR. NEYMAN: Well, exactly as it's shown,  
13 in doing that we achieved a 70 percent lot occupancy,  
14 which we are --

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. NEYMAN: -- required to do by 223.

17 CHAIRPERSON GRIFFIS: So, in fact, the  
18 dimension is going to get to 70 percent lot  
19 occupancy?

20 MR. NEYMAN: That's correct.

21 CHAIRPERSON GRIFFIS: So it may not, in  
22 fact, be that accurate to the 1/4 inch?

23 MR. NEYMAN: Well, we can draw very  
24 accurately.

25 CHAIRPERSON GRIFFIS: I understand.

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1 MR. NEYMAN: When we build, it's somewhat  
2 less.

3 CHAIRPERSON GRIFFIS: Indeed. Anything  
4 else at this time? Obviously, we will give you an  
5 opportunity to close.

6 MR. NEYMAN: Well, I presume you are  
7 aware of the revision to this application where we --

8 CHAIRPERSON GRIFFIS: Removed the FAR.

9 MR. NEYMAN: The floor area ratio, yes.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. NEYMAN: And that's why you didn't  
12 bring that up. Right.

13 CHAIRPERSON GRIFFIS: Yes, that's right.

14 Actually, it was announced and we proceeding in the  
15 special exception.

16 MR. NEYMAN: Okay.

17 CHAIRPERSON GRIFFIS: Good. I think  
18 that's excellent then. If there's nothing further,  
19 at this time, why don't we move to the agency reports  
20 and go to the Office of Planning's report?

21 MR. MORDFIN: Good afternoon, Chairman  
22 and Members of the Board. I am Stephen Mordfin with  
23 the Office of Planning, and this application is in  
24 conformance with the provisions of section 223 in  
25 that row dwellings are permitted as a matter-of-right

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1 within the R-5-B Zone District.

2 Light and air will not be unduly affected  
3 as the proposed addition will be located 22 feet from  
4 the property to the rear and it will be located in,  
5 approximately, the same location as an existing two-  
6 story screened-in porch. Privacy of use and  
7 enjoyment of neighboring properties will not be  
8 unduly compromised as there will be no windows on the  
9 sides and the addition will be 22 feet from the  
10 nearest property to the rear.

11 The addition will be visible from the  
12 alley only, will be similar in scale to existing rear  
13 porches and is designed to be residential in  
14 appearance. The proposed lot occupancy is 70 percent  
15 and this application will not introduce the  
16 introduction or expansion of a nonconforming use.  
17 Therefore, the Office of Planning recommends approval  
18 of the application.

19 CHAIRPERSON GRIFFIS: Good. Thank you  
20 very much. And it is a very good report, especially  
21 the site plan which was helpful and the testimony  
22 that was provided today. Do you have an opinion in  
23 terms of the 2 foot dimension extension back? You've  
24 had discussions with that? Is that correct?

25 MR. MORDFIN: I had some discussions with

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1 the applicant regarding narrowing the courtyard to 2  
2 feet. In the end, the Office of Planning determined  
3 that we thought it would be acceptable if they did  
4 that. You brought up another point, I believe, what  
5 section 2001 that we had not considered in our  
6 discussions.

7 CHAIRPERSON GRIFFIS: Yes, although, in  
8 other words, I'm thinking that afterwards very  
9 quickly, of course, 2001 is incorporated in the 222  
10 review. What are you pointing at?

11 MR. FISHMAN: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes? That could be  
13 a part. It's taken, yes.

14 MR. FISHMAN: We have already determined  
15 that we're not doing that.

16 CHAIRPERSON GRIFFIS: I know.

17 MR. FISHMAN: So all we're asking --

18 CHAIRPERSON GRIFFIS: So you wonder why  
19 we're wasting your time talking about it.

20 MR. FISHMAN: No, no, no, no. I just  
21 want to be very clear that we're not planning to do  
22 that at all.

23 CHAIRPERSON GRIFFIS: Maybe it's  
24 appropriate. Exactly.

25 MR. FISHMAN: I'll sign in blood if you

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1 need me to.

2 CHAIRPERSON GRIFFIS: Exactly. Well,  
3 actually, that's kind of where I'm going with it.  
4 How do we document it today if we were to proceed  
5 with a Bench approval on this, which obviously helps  
6 you and it helps our schedule, rather than setting  
7 this off the month for our decision making. So we'll  
8 finish out this case and we'll figure out how we do  
9 that. Okay. Is there any other questions from the  
10 Board of the Office of Planning? Not seeing any  
11 indications, does the applicant have any cross  
12 examination of the Office of Planning? Any questions  
13 of them? That's fine.

14 MR. FISHMAN: If you require something  
15 faxed over to the chamber, in the meantime I can  
16 probably have that done from my office.

17 CHAIRPERSON GRIFFIS: Okay. We may take  
18 you up on that offer. I don't have any other  
19 Government reports attendant to this application.  
20 Again, is the ANC-1C represented today? Not noting  
21 any representative of the ANC, we do have Exhibit 21,  
22 which is, in fact, the letter from the ANC. Does any  
23 Board Member have that in front of them, which we  
24 would like to identify that. If not, of course, it  
25 does recommend approval and I do believe it meets the

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1 great weight requirement afforded or required of the  
2 ANC, unless anyone has any other comments on that.  
3 Excellent.

4 Then let's move ahead and again ask for  
5 anyone present today for application something or  
6 other.

7 MR. FISHMAN: 17279. I'm trying to help  
8 you move it along.

9 CHAIRPERSON GRIFFIS: 17279, Fishman.  
10 Persons present either in support, opposition? Not  
11 noting anyone present to give testimony as persons,  
12 let's move ahead then to any closing remarks that you  
13 might have. Any summations, closings?

14 MR. FISHMAN: Help us out, please. We're  
15 a nice group of people. We got a little baby. No, I  
16 believe we have conformed with everything that has  
17 been expected of us and we just hope that the Board  
18 will approve our application. Thank you.

19 CHAIRPERSON GRIFFIS: Very well. If  
20 there's nothing further, no other questions from the  
21 Board, I think it's proper to proceed under a motion.

22 And I would move approval of Application 17279 for  
23 the special exception under 223 and ask for a second.

24 BOARD MEMBER MANN: Second.

25 CHAIRPERSON GRIFFIS: Thank you, Mr.

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1 Mann. This is, of course, for 2604 Mozart Place. We  
2 have had clear documentation and compliance with all  
3 of the requirements in 223. The Office of Planning,  
4 the ANC is also in support. There has been no voice  
5 of opposition in this case. The clarity of the  
6 hearing today has brought forth the fact that a  
7 courtyard areaway or side yard, as it has been  
8 described in all three iterations in this  
9 application, will not change in its dimension.

10 It has been testified that its a  
11 dimension of about 3.9 feet, that the lot occupancy  
12 would, of course, be designed to bring it in at or  
13 under 70 percent, as has also been documented and  
14 testified to today. And with that, we do have the  
15 note that the final documentation will be submitted  
16 into the office some time today into the record which  
17 will graphically represent that which was testified  
18 to this afternoon.

19 So with that I'll open it up to any other  
20 comments, deliberations from the Board. If there's  
21 no further discussion, then we do have a motion  
22 before us. It has been seconded. I would ask for  
23 all those in favor to signify by saying aye.

24 ALL: Aye.

25 CHAIRPERSON GRIFFIS: Opposed?

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1 Abstaining?

2 UNIDENTIFIED SPEAKER: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Very well. Why  
4 don't we record the vote. Is there any concern or  
5 opposition to waiving our regulations and issuing a  
6 summary order on this case? Not noting, we can waive  
7 our regulations and issue a summary order and we'll  
8 just note the vote for the record.

9 MS. BAILEY: The vote is 5-0-0 to approve  
10 the application. Mr. Griffis made the motion, Mr.  
11 Mann seconded, Mr. Etherly, Mr. Hildebrand and Mrs.  
12 Miller are in support. Mr. Chairman, I just need to  
13 clarify very quickly. We removed the FAR variance  
14 under the 3103.2 and under section 223 relief is  
15 granted from lot occupancy, rear yard and  
16 nonconformity 2001.3?

17 CHAIRPERSON GRIFFIS: That's correct.

18 MS. BAILEY: Okay. Thank you, sir.

19 CHAIRPERSON GRIFFIS: Excellent. Thank  
20 you very much for that clarification. Yes, question?

21 MR. FISHMAN: Yes, sir. If someone can  
22 give me whatever language or tell me what was  
23 required and a fax number, I can have my office fax  
24 something over that either I can sign or my wife can  
25 sign and have it sent over.

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1 CHAIRPERSON GRIFFIS: How about a  
2 drawing?

3 MR. NEYMAN: If it's a drawing, I would  
4 request that we could do this in the morning, because  
5 my office --

6 CHAIRPERSON GRIFFIS: How about you take  
7 the drawing that's in the file, you go next door, you  
8 get a straight edge and a pencil and you draw the  
9 line of the building it's going to be and sign it?

10 MR. NEYMAN: I would be happy to do that.

11 MR. FISHMAN: That's a good idea.

12 CHAIRPERSON GRIFFIS: Put it in the  
13 record.

14 MR. NEYMAN: And bring it back to Ms.  
15 Bailey?

16 CHAIRPERSON GRIFFIS: You can leave it  
17 right in the office next door. They will help you  
18 out.

19 MR. NEYMAN: All right.

20 CHAIRPERSON GRIFFIS: Good?

21 MR. NEYMAN: That would be fine.

22 CHAIRPERSON GRIFFIS: No fax required.

23 MR. FISHMAN: Thank you very much.

24 CHAIRPERSON GRIFFIS: Okay. Thank you  
25 both very much. We appreciate you being down here

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1 and putting the time in to put this application  
2 before us.

3 CHAIRPERSON GRIFFIS: Let's move ahead  
4 then to the next case in the afternoon.

5 Mr. Hildebrand, a very good afternoon to  
6 you and we'll see you shortly.

7 MS. BAILEY: Mr. Chairman, I will be  
8 reading this based on the alternative language.  
9 Okay.

10 CHAIRPERSON GRIFFIS: Let's just read --  
11 to save some time, we'll get these people rolling  
12 here in the afternoon. They've been sitting here  
13 patiently all afternoon. Let's just read it as it  
14 was advertised originally. We all know what we're  
15 here for.

16 MS. BAILEY: Originally?

17 CHAIRPERSON GRIFFIS: Sure.

18 MS. BAILEY: Okay. And that's  
19 Application No. 17232, RLA, Revitalization  
20 Corporation DCUSA, pursuant to 11 DCMR Section  
21 3104.1, for a special exception from the roof  
22 structure requirements under section 411, and  
23 pursuant to 11 DCMR Section 3103.2, for a variance  
24 from the off-street parking requirements under

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1 subsection 2101.1, to permit a multi-use commercial  
2 establishment at premises 1400-1420 Park Road, N.W.,  
3 3100-3220 14th Street, N.W., and 1417-1437 Irving  
4 Street, N.W. The property is located in C-3-A  
5 District and it's also located in Square 2674, Lots  
6 719, 720, 812, 832, 863, 866, 869, 870, 871 and 872.

7 CHAIRPERSON GRIFFIS: Thank you, Ms.  
8 Bailey.

9 For clarification, of course, we had  
10 indicated last when we did set this for continuation  
11 today, we had a motion before us that was moving to  
12 dismiss or not allow an amendment to the existing  
13 application.

14 The Board in its deliberation on that  
15 motion and let me just clarify for the record now  
16 that everybody is here, that the last -- we took up  
17 the motion and dispensed with them noting the fact  
18 that they had both been addressed. They were  
19 submitted and addressed by all those parties or at  
20 least given an opportunity.

21 We were not entertaining any other

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1 additional testimony nor did we, though it was  
2 perfectly appropriate to move ahead and dispense with  
3 the motions that we did.

4 We left one in abeyance, as they say, to  
5 today, which went to whether an application, this  
6 application can be amended or whether it should be --  
7 and again, I'll go to the intent of the Board of this  
8 is just to clarify the aspect. I don't see anything  
9 that was put forth in the motion that would preclude  
10 one from amending or adjusting. There would be  
11 additional requirements, of course, if the substance  
12 or a substantial amount of application change, but I  
13 want to go right into the heart of the matter and get  
14 to, as we had asked for, what was the nature of the  
15 amended relief, what we were actually going to look  
16 at, what were the regulations that the Applicant was  
17 indicating that they weren't complying with, and  
18 whether 2115.9, I believe was the section, whether  
19 that was actually the appropriate section for this  
20 zoned district to be applied for as a variance and  
21 there may be other issues attendant to that.

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1                   Is that clear with everybody? Good. Is  
2 there additional comments on that?

3                   Ms. Ruffin, are you clear on that?

4                   MR. COCHRAN: Chair, not directly related  
5 to this, but I would just note that the ANC Chair has  
6 to leave at 4 o'clock.

7                   CHAIRPERSON GRIFFIS: That's the  
8 reasoning voice from above. It has been noted.  
9 Okay.

10                   We'll take that under consideration.  
11 That's 30 minutes from now. Potentially, what I'm  
12 going to ask everybody is whether they want to take  
13 the ANC's presentation of their case out of order and  
14 go to them directly, but before we go to any of that,  
15 we need to figure out what we're here for.

16                   Mr. Glasgow?

17                   MR. GLASGOW: Thank you, Mr. Chairman.  
18 Just very briefly, we did have a letter that we  
19 submitted that we said that the Board could consider  
20 alternative parking relief, dealing with attended,  
21 assisted parking. And there are two ways that that

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1 can go forward. One just by way of background, we  
2 submitted our case on a 1,000-space parking garage.  
3 We believe it's sufficient size to accommodate the  
4 proposed uses of the facility. OP and DDOT concur  
5 with that and RLARC supports.

6 The Applicant is ready to stand on this  
7 original request. However, some Board Members during  
8 the course of the hearing raised issues concerning  
9 other potential users in the community and the  
10 opposition questioned about potential users in the  
11 community. And also, there were questions raised  
12 about the use of the garage and how it would be  
13 managed.

14 The Applicant, in response, attended to  
15 address that concern. The Applicant states that the  
16 Board could deal with this through alternative relief  
17 to provide 1,244 attended, assisted spaces. The  
18 Board can address the matter of attended, assisted  
19 parking in one of two ways if it so desires.

20 One, the Board could, if the variance is  
21 granted, condition the variance on the provision of

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1 attended, assisted parking for a total of 1,244  
2 spaces, or grant a 25 percent special exception and a  
3 variance from the provisions of Section 2115.9 as was  
4 outlined in Applicant's December 22nd letter. And we  
5 offered that as one way of approaching this because  
6 we thought this may provide some consistency in the  
7 Board's view to Application 16858 which granted a 25  
8 percent special exception reduction for the property.

9 CHAIRPERSON GRIFFIS: Because of its  
10 adjacency to the Metro stop?

11 MR. GLASGOW: That's correct. And so the  
12 Board can handle that in either of two ways. And we  
13 know that both the ANC and the Ward Council Member  
14 have taken positions supportive of the original  
15 variance and the provision of attended, assisted  
16 parking.

17 CHAIRPERSON GRIFFIS: Good. 2115.9, my  
18 reading, starts in the higher zoned districts?

19 MR. GLASGOW: That is correct. That's  
20 where we would need the variance. We would need the  
21 variance that we are not one of those listed in the

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1 higher zoned district.

2 CHAIRPERSON GRIFFIS: And you think we  
3 have the authority to entertain a variance that would  
4 move one district into that which was allowed in a  
5 higher district?

6 MR. GLASGOW: I think you could do it  
7 either that way or there have been cases where the  
8 Board has granted relief to just allow attended,  
9 assisted parking. And we could handle it that way.

10 So the Board has granted variance relief  
11 to have attended, assisted parking or stacked parking  
12 in cases before, without getting into which zoning  
13 district the property was lent into. There was one  
14 at 17th and Rhode Island Avenue for -- my client was  
15 Libnick.

16 CHAIRPERSON GRIFFIS: Okay, if need that.

17 MR. GLASGOW: It's Application 16754.

18 CHAIRPERSON GRIFFIS: Attendant to that  
19 aspect, if we were looking at relief from -- well, in  
20 terms of the amendment that you proposed, is there  
21 additional relief required for the size of parking

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1 for the stacking of the parked cars?

2 MR. GLASGOW: No, there is not because we  
3 have about 380,000 square feet of parking garage and  
4 I think if you do the 285 square feet times the 1,244  
5 square feet, we're a few thousand square feet over  
6 that.

7 CHAIRPERSON GRIFFIS: What about the  
8 conforming parking space size and the drive aisles.  
9 Would that be in conflict with what's being proposed?

10 MR. GLASGOW: Not as I understand the  
11 regulations because there's one way of reading it.  
12 One of the provisions that it talks about where it  
13 talks about the drive aisles have to be provided, you  
14 know, no matter what and I don't know if any kind of  
15 stacked parking arrangement that the Board has -- or  
16 otherwise which has been utilized where you continue  
17 to have the drive aisles.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GLASGOW: Because that's where you  
20 are stack parking the cars.

21 CHAIRPERSON GRIFFIS: What you're saying

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1 is the nature of reviewing for attendant parking or  
2 stacking parking is inclusive of looking at how it's  
3 done, meaning obviously the drive aisles wouldn't be  
4 utilized differently and the parking spaces are going  
5 to be utilized differently?

6 MR. GLASGOW: That's correct.

7 CHAIRPERSON GRIFFIS: Any other questions  
8 or clarification of the Board?

9 MEMBER MILLER: Yes, I have two questions  
10 just for clarification. When you make reference to  
11 Application No. 16754, and the way attendant parking  
12 was used in that case, was that pursuant to your  
13 going forward on your original variance?

14 MR. GLASGOW: Yes, I mean it could be  
15 used that way. We're leaving that up to the Board.  
16 Because we know that the Office of Planning has no  
17 objection to us having as a condition to the variance  
18 request, having the Board, if it so desires, impose a  
19 condition for attended, assisted parking, but the  
20 Office of Planning does have concern with respect to  
21 granting the variance from 2115.9 and then doing the

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1 special exception. And since either way that it's  
2 handled ends up the same result as far as the  
3 Applicant is concerned, we're indifferent as to which  
4 way the Board would proceed.

5 MEMBER MILLER: Okay, my second question  
6 is the 246 spaces that you pick up with the attendant  
7 parking --

8 MR. GLASGOW: I think it's 244.

9 MEMBER MILLER: Two-hundred what?

10 MR. GLASGOW: Two forty four.

11 MEMBER MILLER: Two forty four, okay.  
12 But where are those spaces? Are they in drive  
13 aisles?

14 MR. GLASGOW: Oh yes, well, that's how --  
15 if you do stacked -- if you're doing stacked parking  
16 that's where the spaces go. Any stacked  
17 configuration I've ever seen and if you think about  
18 it that's the only space that's not being already  
19 used for parking.

20 MEMBER MILLER: And the configuration  
21 doesn't change of the garage, doesn't change at all

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1 or the drive aisles regardless of which way --

2 MR. GLASGOW: We have a plan that shows  
3 where those spaces would be.

4 MEMBER MILLER: But as far as the layout  
5 of the garage or the amount of space that's provided  
6 for drive out, that doesn't change depending on which  
7 way we go on this?

8 MR. GLASGOW: That is correct.

9 MEMBER MILLER: Thank you.

10 MR. GLASGOW: We kept it that way on  
11 purpose because we don't think we're going to need  
12 the stacked attendant parking but about 20 hours  
13 during the year. So you keep your configuration the  
14 way that you're going to need it 99.9 percent of the  
15 time.

16 CHAIRPERSON GRIFFIS: You say you have a  
17 plan that shows that. Is that different than what as  
18 submitted?

19 MR. GLASGOW: No, it's the same plan.

20 CHAIRPERSON GRIFFIS: We have that plan.

21 MR. GLASGOW: You have that plan.

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1 CHAIRPERSON GRIFFIS: And it showed  
2 basically a hatch or a colored area that was showing  
3 it.

4 MR. GLASGOW: Yes.

5 CHAIRPERSON GRIFFIS: I just wanted to  
6 bring that to the attention of the Board that we've  
7 looked at that. Okay.

8 Let's hear from Mr. Ruffin.

9 MR. RUFFIN: As I said in my motion, this  
10 has been raised after the Applicant closed its case.

11 This is very much a new idea and it's going to call  
12 for additional testimony, but I want to bring to the  
13 Board, not only that circumstance, but two other  
14 things. And maybe Mr. Glasgow was alluding to one,  
15 so I'll start with the easier one first.

16 That particular regulation, Section 2115,  
17 calls for an Applicant to show not only the need for  
18 the variance, if they can show that, but also to show  
19 how they will revert back to the standard parking  
20 arrangement in situations when they won't use the  
21 parking attendants.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. RUFFIN: I haven't seen that in the  
3 application and then on top of it, when --

4 CHAIRPERSON GRIFFIS: Let me just  
5 interrupt you because Mr. Glasgow just testified --

6 MR. RUFFIN: That's what I'm saying --

7 CHAIRPERSON GRIFFIS: -- The fact that  
8 structurally what they are going to build is going to  
9 be similar, it's more programmatic.

10 Mr. Glasgow, is that correct?

11 MR. GLASGOW: That is correct. I think  
12 the plans that have been in the record for the past  
13 few weeks --

14 CHAIRPERSON GRIFFIS: Mr. Ruffin, do you  
15 have these plans? They were served on you?

16 MR. RUFFIN: I have those plans. And I  
17 think Vice Chair Miller raised a good point that I  
18 would certainly be concerned about and that is --

19 CHAIRPERSON GRIFFIS: She always does.

20 MR. RUFFIN: She certainly does, at least  
21 in my dealing with this Board. Whether the

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1 obstructions in the byway and egress and ingress are  
2 going to be affected.

3 But I want to go to something else and  
4 that is this, if I'm not mistaken, as I was with one  
5 of my motions, it seems to me that in order for the  
6 Applicant to get this relief by way of variance and  
7 also to get the special exception with the reduction  
8 in parking, they have to explain to this Board how  
9 they get around Section 2118.8, because in a prior  
10 application on the same development, they had a  
11 reduction in parking space. And in Section 2118.8,  
12 they're only entitled to one reduction in parking  
13 space under Section 2108. And now they're asking for  
14 a second one. And that seems to be very much tied to  
15 the workability of this parking assistant  
16 arrangement. And if I'm mistaken --

17 CHAIRPERSON GRIFFIS: Before you go too  
18 far on that, I'm not clear on what you've just said.

19 MR. RUFFIN: In other words, if we look  
20 at Section 2118.8, it says in the case of parking  
21 reductions allowed under Sections 2102 through 2105,

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1 2107, 2108 and 2117.9C, no more than one parking  
2 reduction shall be permitted.

3 CHAIRPERSON GRIFFIS: And you take that  
4 as one parking space?

5 MR. RUFFIN: No, no, no, not parking  
6 space. In other words, if --

7 CHAIRPERSON GRIFFIS: You can't add up  
8 all your parking reduction requests. You just take  
9 one.

10 MR. RUFFIN: Yes. And their first  
11 application before the intervention by Kelsey Temple  
12 and Temple Church Building Economic Development  
13 Corporation, they actually obtained the reduction  
14 under Section 2108 to I believe about 1315 parking  
15 spaces.

16 CHAIRPERSON GRIFFIS: Mr. Glasgow?

17 MR. GLASGOW: Sure. That's a very simple  
18 answer. This is a new case, new application. In  
19 fact, what he's arguing about at this point in time  
20 is very interesting because our original case which  
21 we said we're ready to stand on the record on, if

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1 that's where the Board wants to go, is for a parking  
2 variance for 1,000 spaces.

3 This is to address an issue to provide  
4 more parking, not less parking. So I think that the  
5 argument here with respect to 2118.8 is inapposite.

6 CHAIRPERSON GRIFFIS: Okay. Mr. Ruffin?

7 MR. RUFFIN: I don't think it's  
8 inapposite. When I look at the application that the  
9 Applicant pursued before this Board in Application  
10 16858 --

11 CHAIRPERSON GRIFFIS: That's where I  
12 thought you were going.

13 MR. RUFFIN: Right, right.

14 CHAIRPERSON GRIFFIS: Mr. Glasgow, he's  
15 going to the fact that you've already requested and  
16 have been granted a special exception of 25 percent  
17 reduction by the adjacency of the Metro site. How  
18 can you under 2118.8 bring another request of  
19 variance for parking?

20 MR. GLASGOW: It's a brand new case.  
21 It's a new project.

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1 CHAIRPERSON GRIFFIS: You don't see  
2 anything in 2118.8 that goes to you cannot have  
3 multiple cases, but in a case you can have multiple  
4 requests.

5 MR. GLASGOW: Right, and we have not  
6 asked for multiple --

7 CHAIRPERSON GRIFFIS: Mr. Ruffin?

8 MR. RUFFIN: That undermines the whole  
9 meaning of the rule. First of all, it doesn't say it  
10 applies per application. It says there can be no  
11 reduction except one and to the degree that would get  
12 an application, file an application, get a reduction  
13 and then later say well, we want another reduction  
14 and then they depart and then they come back again,  
15 they actually turned this rule upside down. And it's  
16 the rule that is consistent on the property and on  
17 the Applicant, not its failure to notice how much of  
18 a reduction in parking spaces they need to ask of the  
19 Board in the first instance.

20 If they should have asked for a variance  
21 the first time, they should have asked.

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1 CHAIRPERSON GRIFFIS: Is Mr. Glasgow  
2 prohibited from bringing multiple cases in parking  
3 relief?

4 MR. GLASGOW: I know. He's saying that  
5 if you have a project where there is relief granted  
6 by the Board and you don't go forward with that  
7 project, that project is dead. Let's say that you  
8 completely change the pro forma of the project and we  
9 have changed our pro forma.

10 CHAIRPERSON GRIFFIS: Well, let's not  
11 talk hypothetically. Is that the case here?

12 MR. GLASGOW: No, that's what's happened  
13 here.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GLASGOW: That's what's happened  
16 here. We had a project that was 570,000 square feet,  
17 something along those lines. Now the project is  
18 about 500,000 square feet.

19 CHAIRPERSON GRIFFIS: But aren't you  
20 counting on the 25 percent reduction of the special  
21 exception for this application?

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1 MR. GLASGOW: No. We asked for a parking  
2 variance.

3 CHAIRPERSON GRIFFIS: So all the way down  
4 a 1,000. So actually, the special exception is null  
5 and void at this point, based on if this proceeds  
6 through or you go back to the other plants.

7 MR. GLASGOW: Right, and I think that you  
8 had asked that early on in the original proceeding.  
9 You asked isn't that case essentially a dead case.  
10 Isn't that over? And the answer is yes.

11 CHAIRPERSON GRIFFIS: Good. Nothing  
12 wrong with reiterating points.

13 Mr. Ruffin?

14 MR. RUFFIN: I disagree with the analysis  
15 made by Mr. Glasgow. And I add on to this analysis.

16 When I made the motion saying that this is a wholly  
17 new application by way of amendment, I think I'm  
18 having that borne out by the arguments made by Mr.  
19 Glasgow. He's actually saying all he needs is the  
20 variance now to 1,000 parking space.

21 CHAIRPERSON GRIFFIS: Right.

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1 MR. RUFFIN: Yet, he's also asking for a  
2 reduction down to 1250. Two different forms of  
3 relief for two different purposes. And the second  
4 exception, the second form of relief which is an  
5 exception is tied to a second variance.

6 Now forgive me for being a little  
7 confused. But what I'm trying to say is that when  
8 the application is this variegated, it arises two  
9 different applications. It seeks in essence has been  
10 five different forms of relief at the least. There  
11 has been --

12 CHAIRPERSON GRIFFIS: Okay, but I think  
13 the end of the regulations, especially in 2118.8,  
14 which you've addressed, and my reading of that and  
15 understanding of this, is that it would be -- it may  
16 be in contradiction of 2118.8 if we granted all of  
17 the relief that's before us. But it's not in  
18 contradiction of 2118.8 in my reading of it that  
19 would have the variance brought forth or alternatives  
20 to the application as long as they weren't all  
21 granted. Does that make sense?

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1 MR. RUFFIN: No, it doesn't. Because --

2 CHAIRPERSON GRIFFIS: Shoot.

3 MR. RUFFIN: It's not to say that you  
4 weren't trying heroically to be clear, Chairperson  
5 Griffis.

6 CHAIRPERSON GRIFFIS: I appreciate that.

7 MR. RUFFIN: What I'm trying to say is  
8 what is the difference between asking for the  
9 reduction under 16858, asking for it now, or in the  
10 alternative saying just under the analysis that Mr.  
11 Glasgow has provided to you that what we'll do is  
12 we'll ask for two different reduction numbers.

13 CHAIRPERSON GRIFFIS: See, now you're  
14 going back. You're going back to something I thought  
15 we already resolved. 16858 is a case, BZA case that  
16 you're citing, is that correct?

17 MR. RUFFIN: Right.

18 CHAIRPERSON GRIFFIS: That was for the  
19 special exception for the adjacency to the Metro  
20 site. Is that correct?

21 MR. RUFFIN: Yes sir.

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1 CHAIRPERSON GRIFFIS: And that reduced  
2 the parking requirement by 25 percent.

3 MR. RUFFIN: Yes sir.

4 CHAIRPERSON GRIFFIS: It's been stated  
5 now today that that, in fact, that application is  
6 moot before us because this project is substantially  
7 different and therefore needs differing relief.

8 Mr. Glasgow, is that correct?

9 MR. GLASGOW: Yes sir. And also, I don't  
10 know how he reads the meaning of the word  
11 "reduction". Reduction means to add on, pile on how  
12 you compute your parking and say I get a reduction  
13 for this, a reduction for that. That is not what is  
14 happening here at all.

15 CHAIRPERSON GRIFFIS: Is your reading of  
16 2118.8 in your legal opinion of the regulations, does  
17 it preclude somewhat of where you were going, as I  
18 understand it, that you wouldn't pick different parts  
19 of the total regulations in order to try and  
20 accumulate a parking reduction which you need to get  
21 to, so it wouldn't be pieces of reduction.

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1 MR. GLASGOW: That's right. They're  
2 telling you you can't pile on and I'll take a  
3 reduction from here, I'll take a reduction from  
4 there. Because if you go through and start reading  
5 all those sections there are different reductions for  
6 different things.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. GLASGOW: And essentially the  
9 regulations are telling you you can go ahead and pick  
10 one, one of those reductions to get your parking  
11 requirement. And in fact, our alternative request,  
12 should the Board wish to go that way is not a  
13 reduction. It permits an additional 244 parking  
14 spaces to be provided on the site. So from that  
15 standpoint, the argument just is wrong. It goes in  
16 the wrong direction because that's not what's  
17 happening.

18 We've asked for a parking -- we've asked  
19 from day one for a variance for a parking requirement  
20 to be reduced from 1599 spaces to 1000. We have said  
21 to the Board if it so desires, the Applicant

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1 essentially is an accommodation to provide more  
2 parking on the site, we'll implement a stacked,  
3 attended, assisted parking arrangement to provide an  
4 additional 244 spaces. It's not a reduction.

5 CHAIRPERSON GRIFFIS: Indeed. I'm sorry  
6 to interrupt. Is the Board clear on this? Are there  
7 any questions?

8 MEMBER MILLER: I'm just not clear on one  
9 thing. It's a basic question and you can clear it up  
10 for me. The 1699 number is that without the 25  
11 percent reduction for Metro?

12 MR. GLASGOW: That's correct. Yes. We  
13 are not allowed to take the 25 percent reduction from  
14 Metro because we're within 800 feet of an R-4 zone or  
15 one of those zones that stops you from taking that.

16 MR. COCHRAN: Mr. Chair, that's important  
17 to note because you've been referring regularly to  
18 this as a 25 percent exception for being near Metro  
19 when it was 2108, not the Metro proximity.

20 CHAIRPERSON GRIFFIS: Good clarification.  
21 We'll correct the record for that. I am absolutely

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1 mistaken.

2 It's the adjacency to a residential zone.

3 MR. GLASGOW: That's right. That knocked  
4 us out from using that reduction.

5 CHAIRPERSON GRIFFIS: Okay.

6 MEMBER MILLER: So there's no reduction  
7 that's been calculated in yet, is that correct?

8 MR. GLASGOW: That's correct.

9 CHAIRPERSON GRIFFIS: For this  
10 application.

11 MEMBER MILLER: For this application.

12 MR. GLASGOW: For this application.

13 CHAIRPERSON GRIFFIS: Right, based on the  
14 square footage which is square footage has changed  
15 from the other application.

16 MR. GLASGOW: That's right.

17 CHAIRPERSON GRIFFIS: And the calculation  
18 of this parking requirement is 1599 or so has been  
19 stated.

20 Okay. Any other clarifications from the  
21 Board? Good. We've got two minutes left on this.

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Mr. Ruffin, I'm going to let you speak and I'm going to let me Glasgow address and you get the last word. It's your motion.

MR. RUFFIN: I think three very important points come clear. Mr. Glasgow speaks as though the variance down to 1,000 has been granted. And it has not been. In other words, that all they have to do is provide 1,000 parking spaces. His arguments presuppose that the variance has been granted. I'm not saying you granted it or anything. Part of his argument was that we're adding on 254 parking spaces. You don't add it on when you're still at the obligation of providing nearly 2,000 parking spaces. That's where he is and that's where his client is.

Second thing, second thing. The statute, the section says no more than one reduction shall be permitted under any of these sections. It didn't say well, we're -- it didn't say what Mr. Glasgow suggested, that is, don't try to employ 2102 and 2108 to get something that you couldn't get under one, but if you used them together, you might get what you

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1 want indirectly. It didn't say that. It said even  
2 if you used the same section twice that's  
3 illegitimate.

4           Number three, there is nothing in the  
5 order from the Board on Application 16858 saying that  
6 the reduction down to the 1350 or so parking spaces  
7 has lapsed. In other words, that order is still  
8 binding on the development project. If they decide  
9 that they do not want to bring in a movie theater.  
10 If they decide that they do not have the funding to  
11 build the underground parking space as they  
12 originally conceived of it in the late 1990s, that's  
13 them. They still have before them your order and  
14 that is what is part of the project. They speak as  
15 though they can discard this and your work any time  
16 they want. That's rather capricious, I think.

17           So what I'm saying is that however in  
18 earnest Mr. Glasgow may be pressing for his client's  
19 interest, he cannot get around Section 2118.8 which  
20 doesn't offer an exception and which doesn't offer  
21 the loose language that Mr. Glasgow offers in his

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1 interpretation.

2 As a matter of fact, this rule is an  
3 interpretation of the broader regulatory mandate by  
4 which this Board governs zoning in the city. So he's  
5 loosely interpreting the language that interprets the  
6 basic rule. And I think that's inappropriate.

7 CHAIRPERSON GRIFFIS: Very well said and  
8 excellent points. I do conflict with one of your  
9 assertions, however, and I'll just address that now.

10 The fact that our orders are requirements, the  
11 requirement and jurisdiction of any orders that we  
12 have is one that would that, if built, if permits  
13 were pulled would have to be built in accordance with  
14 those orders, but it is not, in fact, a direct  
15 obligation that the Applicant go out and build it.  
16 It does seem to be a waste of time if you came  
17 through and then you don't build it, but there's  
18 nothing that, in terms of enforcement, that we would  
19 go out and make sure that everyone builds everything  
20 that ever comes through here.

21 So holding it to that standard, I think,

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1 is a little difficult. In fact, well, our order may  
2 have lapsed already, based on the 1600 number, the  
3 time may have already expired, so that there's  
4 actually a time involvement if no action happens,  
5 that that will, on its own expire and have, in fact,  
6 no longer have any enforceability bearing or relief.

7 But let's move ahead then, Mr. Glasgow,  
8 addressing those three points.

9 MR. GLASGOW: Sure, just very briefly.  
10 One, we haven't asked for a parking reduction allowed  
11 under any of those sections. I mean that just puts a  
12 full stop to the argument. You go through Sections  
13 2102 through 2105, 2107, 2108 and 21.9C, we haven't  
14 asked for any of those reductions. We've come in for  
15 a parking variance to reduce the parking down to a  
16 thousand spaces.

17 Secondly, the order of the Board, the  
18 stamped copy I have for 16858-A is dated May 16,  
19 2002. I believe on the provisions of the order of  
20 the Board it says that it is -- you have two years to  
21 apply for a building permit, as I recall.

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1 CHAIRPERSON GRIFFIS: So it's expired.

2 MR. GLASGOW: Yes.

3 CHAIRPERSON GRIFFIS: It expired in May  
4 2004.

5 MR. GLASGOW: Right.

6 CHAIRPERSON GRIFFIS: So in fact, even if  
7 you wanted that relief, you'd have to bring that  
8 exact application back.

9 MR. GLASGOW: I'd have to bring that case  
10 again before the Board. That is correct.

11 CHAIRPERSON GRIFFIS: All right.

12 MR. GLASGOW: So I think that those two  
13 points are dispositive of the motion.

14 CHAIRPERSON GRIFFIS: Indeed, last brief  
15 word, Mr. Ruffin?

16 MR. RUFFIN: I think that while the order  
17 may well have lapsed, and hence my characterization  
18 of its application not having lapsed is incorrect. I  
19 think that to the degree the Applicant has been  
20 dilatory in pursuing this and also to the degree that  
21 on the posed application, it obtained this relief. I

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1 think that it still applies. It's still talking  
2 about the same development. You're talking about the  
3 same Applicant. As a matter of fact, I wouldn't be  
4 surprised if you're talking about the same  
5 representative.

6 The circumstances are largely the same  
7 except that the Applicant chose on its own to make  
8 the project smaller and for that reason, on its own,  
9 it asks for fewer parking spaces and so it changed  
10 its parking space request. And it's actually using  
11 to Section 2108 not only this time, but it used it in  
12 Application 16858. And so I disagree with Mr.  
13 Glasgow that it's never been used before.

14 CHAIRPERSON GRIFFIS: Okay, Board  
15 questions?

16 Mr. Glasgow, you made the statement that  
17 it's dispositive 2118.8 is not applicable because  
18 you're not applying for any relief under 05070817 and  
19 21 --

20 MR. GLASGOW: We've asked for a variance.  
21 We haven't asked for multiple reductions in our

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1 required parking.

2 CHAIRPERSON GRIFFIS: And that's the  
3 differentiation of the text in that section is that  
4 this is talking about reduction, taking reductions,  
5 not whether you're requesting relief from Section --

6 MR. GLASGOW: That's right. You can  
7 always come into the Board and make any kind of  
8 request for either variances or special exceptions as  
9 many as you want.

10 This is a rule of interpretation for the  
11 Zoning Administrator when you come in and say I only  
12 need to provide 1,000 parking spaces and I've taken  
13 reductions from five different sections of the  
14 regulations to get there.

15 CHAIRPERSON GRIFFIS: Good. Anything  
16 else?

17 Is everyone following that? Good. I  
18 think it's best in terms of our procedure at this  
19 point to take up the motion that's before us, Board  
20 Members.

21 We do have a motion from the party in

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1 opposition and it reads as opposition to amend the  
2 RLA Revitalization Corporation application. We have  
3 obviously addressed that in written form and also now  
4 in oral testimony before the Board in terms of  
5 clarification in the citing and I think it is  
6 appropriate, based on what we've heard today and also  
7 in written form indicate that -- or rather I would  
8 move denial of the motion to amend and ask for a  
9 second.

10 VICE CHAIR ETHERLY: Second, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Thank you, Mr.  
12 Etherly. I don't see anything that has been -- that  
13 has arisen in terms of the written documentation and  
14 the oral testimony today, although persuasive in many  
15 different directions, I don't think ever hit home to  
16 the definitive question of whether an Applicant was,  
17 in fact, precluded or prohibited under the  
18 regulations from amending an application.

19 We obviously have taken up amendments in  
20 process. It is not always the best of cases. There  
21 would be an issue if it was amended and additional

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1 relief or different types of relief was required,  
2 that perhaps -- not perhaps, but then definitively  
3 posting a notice would be required. That, I don't  
4 think, is being decided in this motion as it may  
5 occur as we continue on and really establish directly  
6 what the relief is being sought, but at this point, I  
7 don't see anything that would move the Board to deny  
8 taking up the discussion of alternatives or  
9 amendments to the application.

10 Ms. Miller?

11 MEMBER MILLER: Sorry, Mr. Chairman, I'm  
12 a little bit confused at what documents we're  
13 addressing because there wasn't exactly a motion to  
14 amend. But there was an opposition to -- what they  
15 characterize as a motion to amend.

16 CHAIRPERSON GRIFFIS: And that's an  
17 excellent point. All I'm trying to do is  
18 procedurally, as we do have a motion in, it was  
19 staged as an opposition to the motion to amend. So I  
20 think the Board needs to take that up as this  
21 alternative as a motion to amend in order to dispense

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1 with a motion in opposition that's before the Board.

2 And I think it's just a cleaner way to do it, unless  
3 you have an alternative in which to process this.

4 MEMBER MILLER: Well, I just want to make  
5 sure I know what we are saying. Were you saying that  
6 the --

7 CHAIRPERSON GRIFFIS: What we're saying  
8 is there's nothing wrong with us having discussions  
9 right now in a form very quickly on the alternative  
10 that's been proposed by the Applicant.

11 MEMBER MILLER: I would agree with that.

12 CHAIRPERSON GRIFFIS: Phew. And I didn't  
13 even go to law school.

14 (Laughter.)

15 CHAIRPERSON GRIFFIS: Well, then there it  
16 is. We have a motion and it's been seconded.

17 MEMBER MILLER: But I'm not sure what the  
18 motion says. Are we saying that they can amend or  
19 they can't amend?

20 CHAIRPERSON GRIFFIS: It's all this  
21 opposition to --

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1 MEMBER MILLER: Are we denying the  
2 opposition?

3 CHAIRPERSON GRIFFIS: Yes.

4 (Laughter.)

5 CHAIRPERSON GRIFFIS: Yes, we are denying  
6 the opposition.

7 MEMBER MILLER: Okay --

8 CHAIRPERSON GRIFFIS: To the alternative  
9 or the discussion of the alternative. It's properly  
10 before the Board to discuss and amend the application  
11 unless we've seen anything that is, in fact --

12 MEMBER MILLER: Okay. Well, I guess what  
13 I would -- I don't have this before me, but I guess -  
14 - what is it that the Applicant calls their  
15 submission that the opposition wants to disallow?

16 CHAIRPERSON GRIFFIS: We can phrase it  
17 another way, if you want. We can grant the motion to  
18 amend, but I don't -- we're not amending the  
19 application. We have a -- we've got 30 seconds on  
20 this. We can take this off the table. We have  
21 really, in terms of our direct procedure, we have no

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1 motion before us. But the fact that the  
2 representative of the party in opposition wrote his  
3 submission as a motion, I figured it would be best to  
4 dispense with it as a motion.

5 We have a letter from the Applicant that  
6 was indicating here's another alternative relief to  
7 look at for the Board's edification. They say the  
8 letter and the calculations are based on what they  
9 perceived as a direction from the Board.

10 Is that clear?

11 MEMBER MILLER: Yes, well now I have the  
12 letter before me from the Applicant which makes it  
13 much clearer. They state that they are amending  
14 their application request that the Board consider --

15 CHAIRPERSON GRIFFIS: I know what they  
16 state.

17 MEMBER MILLER: So I think we should  
18 decide whether we want to grant their amendment to  
19 request that the Board consider ultimately.

20 CHAIRPERSON GRIFFIS: Excellent. Let's  
21 go.

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1 MEMBER MILLER: That's what I was --

2 CHAIRPERSON GRIFFIS: What? That we're  
3 going to decide whether they can amend? The  
4 alternative?

5 We either have a motion to deny the  
6 motion in opposition or let's just go to the  
7 discussion which I want to get to now anyway. Is  
8 this alternative what the Board wants to hear and is  
9 this the way the Applicant should actually proceed?

10 That's the substance of it. I mean let's  
11 dispense with all this legalese stuff. It's always  
12 good to take a breath before you say that one word.  
13 But let's move on then. I have no difficulty. We're  
14 all here for the substance of this and the facts of  
15 this case and I think that's where we should go to it  
16 then.

17 Mr. Glasgow, you've said you are  
18 proposing an alternative for special exception to the  
19 roof structure which wouldn't change, of course. And  
20 then we're talking about under 2108 to reduce the  
21 amount of required parking and a variance from 2115.9

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1 to permit the attended, assisted parking in a C-3-8  
2 District. That's an alternative to a straight  
3 reduction under 2101.1. Is that correct?

4 MR. GLASGOW: Yes sir and we're saying  
5 there are two ways that you can deal with the  
6 attended, assisted parking. Either make it a  
7 condition of approving the variance and saying we're  
8 approving the variance that you asked for originally  
9 to a 1,000 spaces, but as a condition to that, you  
10 need to have the ability to provide attended,  
11 assisted parking to 1244 spaces.

12 CHAIRPERSON GRIFFIS: Right. We can get  
13 it either way we want is what you're saying?

14 MR. GLASGOW: Yes sir.

15 CHAIRPERSON GRIFFIS: You can stay with a  
16 straight variance reduction and we condition -- and  
17 then -- or we look at your alternative and actually  
18 implement it as the relief sought.

19 Here's my opinion on this. There's an  
20 awful lot of information on this already. I mean our  
21 files are reaching close to the 8-inch stack. I

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1 think it is actually more clear to go to the heart of  
2 the matter and keep the application as originally  
3 advertised as a reduction of 2101.1 to a 1,000 spaces  
4 and I think all the issues are before us and they're  
5 very clear on what we're assessing and what we have  
6 to look at and decide on in terms of the variance  
7 case. If it does arise to the level that we see, as  
8 hopefully it will be addressed today, the outside  
9 demand on this public parking garage moves this to  
10 the Board's understanding that it might be overly  
11 used and we can start to condition anything that  
12 might mitigate that, if it's needed.

13 Board Members, comments on that?  
14 Questions to the straight variance under 2101.1?

15 MEMBER MANN: I think that's fine  
16 provided that we can -- if that's the course of  
17 action we choose to take and we ultimately have to  
18 condition it, that we're able to craft to conditions  
19 that achieve the objectives.

20 CHAIRPERSON GRIFFIS: Right. I think  
21 that's an excellent point.

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1                   Mr.     Glasgow,     it's     your     legal  
2 understanding that if it was granted a variance that  
3 attendant or valet parking would be prohibited on  
4 this parking structure?

5                   MR.   GLASGOW:     No, not if the Board  
6 conditioned its order.

7                   CHAIRPERSON GRIFFIS: But it would take a  
8 condition from the Board to allow it?

9                   MR.   GLASGOW:     Yes sir.

10                  CHAIRPERSON GRIFFIS: And did?

11                  MR.   GLASGOW:     Yes.

12                  CHAIRPERSON     GRIFFIS:           Any     other  
13 questions, comments?

14                  Mr. Ruffin?

15                  MR.   RUFFIN:     It seems to me that there's  
16 a problem with that. While the Board probably could  
17 condition the grant of the first variance --

18                  CHAIRPERSON GRIFFIS: Lawyers tell us we  
19 can do anything we want.

20                  MR.   RUFFIN:     I'm with you, I'm with you.  
21 Unless the Court of Appeals says no, I'm really with

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1 you. But I think what we have to be mindful of is  
2 that the condition in this case is one that can only  
3 be obtained by variance. So the same difficult  
4 measure of proof to obtain the first variance would  
5 have to be met to obtain the condition. In other  
6 words, it's not that the Board would say you know, we  
7 wouldn't grant that first variance unless you accept  
8 this condition. And it's oh, we'll accept the  
9 condition and then we're out of here.

10 So in other words, that could actually  
11 have a doubly complicated hearing.

12 CHAIRPERSON GRIFFIS: That's an excellent  
13 point and let me just address that briefly. The  
14 Board would condition an order in order to mitigate  
15 or to ensure that an adverse impact might not happen.

16 So an adverse impact would have to be raised during  
17 the application hearing. The Board would look at it  
18 and would say well, clearly this may be a problem,  
19 but this condition will mitigate the potential of  
20 that adverse impact. So I think if we start talking  
21 about allowing or requiring any sort of valet or

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1 stacked parking, the evidence has to be very clear  
2 and direct for us that that is an adverse impact that  
3 we're trying to mitigate.

4 And secondly, if we do craft this and Mr.  
5 Mann was really going directly to that, the condition  
6 is going to be read so it's clearly understood,  
7 measurable, enforceable and does mitigate that  
8 adverse impact.

9 Anything else?

10 MEMBER MILLER: I just want to add my two  
11 cents. I think that the first route is less  
12 complicated and covers all the bases and I think that  
13 we might as well stick with that. It avoids some of  
14 the uncertainties that arise when we look at that  
15 other provision that's not applicable to this zone.

16 And as far as a motion goes, I think that  
17 we have actually, we have granted the Applicant's  
18 request to consider the alternative parking relief.  
19 And we can leave it at that and we've dealt with it.

20 CHAIRPERSON GRIFFIS: Let's leave it at  
21 that.

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1 Mr. Glasgow, last words? Anything else?

2 MR. GLASGOW: No sir.

3 CHAIRPERSON GRIFFIS: Good, let's move  
4 ahead.

5 Mr. Ruffin, as I understand, unless --  
6 Mr. Glasgow, let's get this process --

7 MR. GLASGOW: We would like to have the  
8 ANC Commissioner to be able to testify, if that's all  
9 right at about the 4 o'clock time that Mr. Cochran  
10 had talked about.

11 CHAIRPERSON GRIFFIS: It's 4:05.

12 MR. GLASGOW: Yes sir.

13 CHAIRPERSON GRIFFIS: Let's look at the  
14 entire afternoon and what we have left then.

15 Mr. Glasgow, are you presenting any new  
16 testimony today?

17 MR. GLASGOW: We will certainly be  
18 submitting rebuttal testimony.

19 CHAIRPERSON GRIFFIS: Indeed, and we'll  
20 give you that opportunity, obviously, as you well  
21 know.

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1                   Mr. Ruffin, are you prepared to move  
2 forward with your case?

3                   MR. RUFFIN: Yes sir.

4                   CHAIRPERSON GRIFFIS: Good. Do you have  
5 any opposition or concern about taking out of order  
6 the ANC?

7                   MR. RUFFIN: No, I think it would be a  
8 good idea to hear from the ANC.

9                   CHAIRPERSON GRIFFIS: Good.

10                  MR. RUFFIN: Because afterwards, I just  
11 want to put on the record something with regard to an  
12 earlier motion.

13                  CHAIRPERSON GRIFFIS: Put it on the  
14 record then.

15                  MR. RUFFIN: Afterwards, yes.

16                  CHAIRPERSON GRIFFIS: So we're going to  
17 hear from the ANC. From the ANC, we're going to go  
18 to the Agency reports. We're obviously going to hear  
19 from Office of Planning and Department of  
20 Transportation. And then we will go to the rest of  
21 the order.

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So if the ANC is ready to go, let's move ahead.

MR. JAMES: Good evening, Chair, Board Members. My name is Mack James. I'm the Chair of ANC-1A. I'm happy to be here today before you all to testify or to speak on this issue of this case 17232.

If I may, I'd like to read the resolution from the ANC first.

CHAIRPERSON GRIFFIS: Good.

MR. JAMES: Whereas, DCUSA presented its case to the ANC-1A community on attended, assisted parking, what it means and how it would benefit the public parking and whereas, the attended, assisted parking will increase the availability number of parking spaces from 1,000 on self-park basis to 1244 and that attended would be available in garage as needed to serve the demand for parking spaces for retail commercial project to be developed by DCUSA and whereas, questions were asked the developer by the Commissioners, the community and the response met with approval.

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1                   And whereas, the Commissioners agree that  
2                   having additional parking spaces available through  
3                   attendant is reasonable and satisfactory way to  
4                   ensure that sufficient parking spaces were available  
5                   in the garage to serve peak demand for the business  
6                   located on the site and while still being available -  
7                   - I'm sorry, able to accommodate parking demand for  
8                   outside persons and whereas, the Commissioners are  
9                   amenable to the Board granting either the variance  
10                  with conditions or alternative relief request of a  
11                  special exception for the reduction in parking with  
12                  the variance to allow attended, assisted parking.  
13                  Also whereas, comments from the community and the  
14                  Commissioners expressed that the development be put  
15                  on a fast track. So let it be resolved on January  
16                  13, 2005 for which proper notice was given and at  
17                  which a quorum was present, Advisory Neighborhood  
18                  Commission 1A voted 10 in favor, 0 opposed, with no  
19                  abstention in support in support of the motion to  
20                  recommend that the Board of Zoning Adjustment grant  
21                  the above-referenced application.

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1 CHAIRPERSON GRIFFIS: Good. Thank you  
2 very much and I would note for the record it is  
3 Exhibit No. 60.

4 You've heard discussion today, Mr. James  
5 and we appreciate you being down here in person to  
6 present this. You've heard discussions today about  
7 whether the alternative or an amendment or change  
8 would be pursued by the Board in terms of its review.

9 And it looks like the Board has decided or it has  
10 decided that we're going with the original  
11 application.

12 I'd note that your original motion for  
13 approval of that was Exhibit No. 33, dated 10  
14 November 2004.

15 MR. JAMES: Right.

16 CHAIRPERSON GRIFFIS: Is there anything  
17 that has changed then in terms of this application  
18 that would nullify the approval or support of the  
19 past application?

20 MR. JAMES: No. There's no change. As a  
21 member of this community, Mr. Chair, we would like to

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1 see this project move forward. We understand the  
2 parking. We've met with and we've heard from both  
3 sides, and even the government. Unfortunately, we  
4 never heard from the church. I was really surprised  
5 to hear that there was opposition from the church  
6 because we have been holding meetings for quite a few  
7 years now on this project and this is the first time  
8 I heard that there was opposition from the church  
9 concerning any type of parking and there's always  
10 been notice given and we've always held ANC meetings.

11 CHAIRPERSON GRIFFIS: But isn't the  
12 church part of the community?

13 MR. JAMES: It's a part of our community,  
14 but they never came to the ANC with any type of  
15 opposition.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. JAMES: Of any type. Again, the  
18 sentiment from the community has been to move the  
19 project forward in support of the project. As far as  
20 any variances or anything was submitted, always came  
21 to the ANC. The government always presented his

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1 side, their side or any other opposition that we ever  
2 had and we've always dealt with that accordingly.

3 So I wanted to make sure we go on the  
4 record and say that right now as far as the ANC has  
5 always been in support and wish to move this project  
6 expeditiously, as quick as possible and get it going.

7 As you know, the community is fastly  
8 changing and I can just tell you, everyone is moving  
9 in and I know on my block it's changing and people  
10 are moving in, always asking me, when are the  
11 developments going to occur and when it's going to  
12 happen. They keep hearing about it, but nothing has  
13 happened yet. So it's been like over four or five  
14 years and we're still waiting.

15 CHAIRPERSON GRIFFIS: Indeed. Any other  
16 questions from the Board?

17 Mr. Glasgow, any cross?

18 MR. GLASGOW: No sir.

19 CHAIRPERSON GRIFFIS: Mr. Ruffin, any  
20 cross?

21 MR. RUFFIN: Just a couple of questions.

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CHAIRPERSON GRIFFIS: Indeed.

MR. RUFFIN: Sir, when was the meeting of the Advisory Neighborhood Commission held?

MR. JAMES: Which one?

MR. RUFFIN: This one where this was a--

MR. JAMES: This one was held January 13th.

MR. RUFFIN: And where was it held?

MR. JAMES: Where was it held?

MR. RUFFIN: Yes sir.

MR. JAMES: It was held at the NTBA State. That's on 14th Street, 2800 14th Street, N.W.

MR. RUFFIN: Why didn't the Advisory Neighborhood Commission give the church notice of the meeting?

MR. JAMES: The notices are posted. Each Commissioner is responsible for each notice.

CHAIRPERSON GRIFFIS: How are the notices posted?

MR. JAMES: Excuse me?

CHAIRPERSON GRIFFIS: How are the notices

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1 posted?

2 MR. JAMES: The notices are posted, each  
3 Commissioner in each SMD has two conspicuous places  
4 to post. We also post on the Columbia Heights  
5 website and there's also -- that's basically the  
6 postings.

7 MR. RUFFIN: Who is the Single Member  
8 District representative for 1400 block of Park Road  
9 where the church is located?

10 MR. JAMES: It used to be Elizabeth  
11 MacIntyre, as a matter of fact, who lives across the  
12 street from the church. She's always attended every  
13 meeting.

14 MR. RUFFIN: No, I'm saying who is the  
15 Single Member Representative right now?

16 MR. JAMES: Right now, it's Anne Theisen.  
17 She's here today.

18 MR. RUFFIN: Why didn't she give us  
19 notice?

20 MR. JAMES: I can't answer that question.

21 CHAIRPERSON GRIFFIS: You're saying that

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1 ANC's process is not to give individual notice, is  
2 that what I understand? You post --

3 MR. JAMES: By the regulation, even D.C.  
4 regulation, we have two locations at each SMD to be  
5 posted. Also our meetings, our basic regular  
6 meetings are posted. I'm not sure why the church  
7 didn't know, but as far as I know the church always  
8 know when the ANC have met. We have met even at the  
9 church on occasion on this particular issue. We have  
10 had hearings.

11 MR. RUFFIN: Two or three more questions,  
12 very quickly.

13 When is your regular meeting, sir?

14 MR. JAMES: My regular meetings are the  
15 second Wednesday of each month.

16 MR. RUFFIN: And where would the notice  
17 for the meetings be posted in the Park Road area?

18 MR. JAMES: I'm not sure. Again, each  
19 Commissioner for each SMD has its location and they  
20 make the postings. That's the regs.

21 MR. RUFFIN: You say that you've had --

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1 if you've had meetings at the church in the past,  
2 would it be -- would the Commission be interested in  
3 holding their meetings at the church or at least on a  
4 regular basis?

5 CHAIRPERSON GRIFFIS: We're getting a  
6 little off.

7 MR. RUFFIN: That's the last question.  
8 So that we can stay informed about future meetings of  
9 this nature?

10 CHAIRPERSON GRIFFIS: You can make all  
11 those arrangements.

12 MR. RUFFIN: Okay.

13 CHAIRPERSON GRIFFIS: Good any other  
14 cross on the testimony?

15 MR. RUFFIN: No, I don't have anything  
16 else.

17 CHAIRPERSON GRIFFIS: Ms. Miller?

18 MEMBER MILLER: Good afternoon, I'm just  
19 wondering about how many people would you say  
20 attended the meeting at which this vote was taken?

21 MR. JAMES: Oh, we had -- I would say, I

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1 don't have the stats for me. We had at least 50  
2 people at that meeting this past meeting that we had.

3 MEMBER MILLER: And how many meetings  
4 have you had on this issue?

5 CHAIRPERSON GRIFFIS: You mean how many  
6 times it's been on the ANC's agenda?

7 MEMBER MILLER: Yes.

8 MR. JAMES: I couldn't tell you.

9 MEMBER MILLER: Many?

10 MR. JAMES: I would say many. We have  
11 had many meetings concerning this development, yes.

12 MEMBER MILLER: And you've gotten lots of  
13 comments from the community?

14 MR. JAMES: A lot of comments from the  
15 community and basically I think we are on record as  
16 continuing this project and try to get it through and  
17 get it started and this community has been suffering  
18 for many, many years. This project was long overdue.

19 The Mayor even himself campaigned two years ago on  
20 this site that this site would be basically up by  
21 now.

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1                   MEMBER MILLER:    Is there any division  
2 within the community on this issue?

3                   MR. JAMES:    Not that I know.  There's no  
4 division, no.  All the battles have been fought in  
5 the trenches that need to be fought and as far as we  
6 know right now and the Council Members, every one is  
7 on board in moving the project forward.

8                   Again, I say --

9                   MEMBER MILLER:    Except for the church.

10                  MR. JAMES:    This is the first I'm hearing  
11 that the church was in opposition in any way of any  
12 kind.  Before, when the project first came and it was  
13 in the debate stages and what not, the church was  
14 always wanting parking for the church services and  
15 that was, as far as I know, always amenable and  
16 discussed it would happen and what have you.  Other  
17 than that, that was it.

18                  It was, like I say, it's been now three  
19 years later and this is the first I'm hearing any  
20 opposition.

21                  MEMBER MILLER:    Okay, so the ANC doesn't

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1 have concern that there won't be enough parking with  
2 this project?

3 MR. JAMES: No.

4 MEMBER MILLER: Okay, thank you.

5 MR. JAMES: All the information that was  
6 given to us and the questions, no, we didn't find  
7 any.

8 MR. RUFFIN: Chairperson, let me just ask  
9 one more question, just one last question.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. RUFFIN: Sir, have you received  
12 information that the church is going to have parking  
13 at this development?

14 MR. JAMES: Have I received any  
15 information? No, there was nothing definitive about  
16 --

17 MR. RUFFIN: I'm talking about right now.  
18 I'm talking about definitive.

19 MR. JAMES: No. There's nothing been  
20 definitive. Nothing is definitive as far as we know.  
21 That's why we're constantly trying to get something

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1 definitive because nothing is right now.

2 MR. RUFFIN: So you don't know the church  
3 doesn't have any parking as a result of this  
4 development project, won't have any as a result of  
5 this development project?

6 CHAIRPERSON GRIFFIS: Maybe the question  
7 is is that an issue that came up for the ANC?

8 MR. JAMES: No, that's never an issue  
9 that came up for the ANC. Like I said, the church  
10 never came to the ANC. This issue always came up at  
11 the hearings.

12 CHAIRPERSON GRIFFIS: What hearings?

13 MR. JAMES: At the hearings at the --  
14 during the development.

15 CHAIRPERSON GRIFFIS: In front of the  
16 RLA?

17 MR. JAMES: In front of the RLA.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. JAMES: Those issues came up then.  
20 But never before the ANC as far as parking issues.

21 CHAIRPERSON GRIFFIS: I see. Good.

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1 Thank you very much. We appreciate it. And thanks.

2 I'm sorry we delayed you past 4 o'clock. Hopefully,  
3 you're not too late to your next engagement.

4 If there's nothing else regarding the  
5 ANC, let's get back into our order then and go to the  
6 --

7 MR. COCHRAN: Excuse me, Mr. Chair.  
8 Before Mr. James leaves, I just realized he may not  
9 have sworn an oath.

10 CHAIRPERSON GRIFFIS: Well, we're not  
11 going through all that again.

12 MR. COCHRAN: I don't know whether you  
13 have to. Can you make it retroactive?

14 CHAIRPERSON GRIFFIS: Mr. James, you told  
15 the truth, didn't you? Were you sworn in before you  
16 came in and gave testimony?

17 MR. JAMES: No.

18 CHAIRPERSON GRIFFIS: He wasn't sworn in.  
19 Next time, of course, we'll make note of that and  
20 I'm sorry I didn't realize that, but you've got to  
21 go. And the other point is is the fact of the

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1 testimony, the official ANC which will be given great  
2 weight is the resolution and that's what's before us  
3 now. Any additional piece that you put in, of  
4 course, needs to be substantiated by the ANC. I  
5 didn't see anything very substantive in terms of  
6 additional information outside of that resolution.  
7 So I think we're okay on that, but it's an excellent  
8 point, Mr. Cochran. Let's move ahead. We're really  
9 going by all the legal procedures in this one.

10 Let's do that then. I'm sorry, I did  
11 swear people in at the beginning of the afternoon  
12 case. So in order to make sure if anyone is going to  
13 testify this afternoon that has not been sworn, if  
14 you will please stand at this point.

15 Has anyone not been sworn in yet this  
16 afternoon? Anyone who just hasn't been sworn in yet  
17 this afternoon?

18 Okay, and you're going to give your  
19 attention to Ms. Bailey on my very far right and she  
20 is going to administer the oath.

21 MS. BAILEY: Please raise your right

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1 hand. Do you solemnly swear or affirm that the  
2 testimony that you will be giving this afternoon will  
3 be the truth, the whole truth and nothing but the  
4 truth?

5 (The witnesses were sworn.)

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much.

8 Mr. Cochran, thank you for bringing that  
9 to the Board's attention. Let's move ahead then to  
10 your presentation.

11 MR. COCHRAN: Mr. Chairman, the record  
12 will reflect that Mr. James took the oath.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. RUFFIN: Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. RUFFIN: Very quickly, the record  
17 should reflect that with the motion that asks for  
18 your recusal because of a letter from Mr. Noble of  
19 the District Department of Transportation, there  
20 wasn't a first page, but the first page actually does  
21 address a letter to Mr. Griffis and Mr. Greenwald and

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1 it talks about a conversation between you. Actually,  
2 Exhibit 40. And that's where I obtained it from. I  
3 obtained this from the file. So --

4 CHAIRPERSON GRIFFIS: Do we have that  
5 now, the full letter in?

6 MR. RUFFIN: And my objection,  
7 technically speaking would be from what I understood,  
8 it was decided a week ago while I was absent and you  
9 participated in the discussion, but once there's a  
10 question about whether you have been involved in an  
11 ex parte proceeding, you would have a conflict in the  
12 decision about whether you should recuse yourself.  
13 So you should have actually recused yourself from  
14 those decisions.

15 CHAIRPERSON GRIFFIS: An interesting  
16 point, however, as I was the person that was directly  
17 being accused of having ex parte, I clearly have to  
18 discuss the motion and address it. I would tend to  
19 agree with you that I probably should not have voted  
20 on the motion itself to dismiss and I don't know --

21 MR. GLASGOW: Mr. Chairman, I would

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1 suggest then that the Board take up the motion again  
2 and act on it with the Chair absent.

3 CHAIRPERSON GRIFFIS: Sounds good to me.

4 ACTING CHAIRPERSON MILLER:  
5 Alternatively, I would think we could just remove you  
6 from the vote. I think it was a unanimous vote.

7 So I don't see any reason to discuss it  
8 again.

9 MR. GLASGOW: Ms. Miller, I'm very  
10 concerned about how we're getting set up for an  
11 appeal here by the opposition. I think it's just  
12 safer.

13 ACTING CHAIRPERSON MILLER: Out of an  
14 abundance of caution, why don't we take a look at it  
15 again.

16 (Pause.)

17 ACTING CHAIRPERSON MILLER: Okay, we've  
18 been asked to take up again a motion to dismiss RLA  
19 application because of ex parte communication in  
20 violation of law which is Exhibit 50. And then we  
21 have Applicant's response to motion to dismiss RLA

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1 application because of ex parte communications in  
2 violation of law.

3 We're asked to pick this up again because  
4 we discussed this last week and Chairman Griffis  
5 participated in the discussion and voted on it. And  
6 he's the subject of the ex parte communication  
7 allegation.

8 The basis for the motion is a letter  
9 dated December 20, 2004 that's addressed to Mr. Geoff  
10 Griffis, Chairman and to Drew Greenwald Grid  
11 Properties from Douglas Noble. Basically, the  
12 allegation is that Chairman Griffis was privy to  
13 discussions, conversations that are referenced in  
14 this letter. That's my understanding of it. And  
15 last week, Chairman Griffis put on the record that he  
16 did not take part in any of these conversations and  
17 that his name is on this letter just -- sometimes  
18 people address letters to him personally when they're  
19 really going to the Office of Zoning or the BZA and  
20 he has absolutely no knowledge of any of the  
21 conversations.

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1 I understand that there's a  
2 representative from DDOT here. I don't know that  
3 whether -- are you familiar with this letter and  
4 perhaps you can address it. I think that would be  
5 appropriate at this time since we don't have Mr.  
6 Griffis here.

7 MR. NOBLE: I believe it would be as  
8 well. Actually, my name is Douglas Noble. I'm the  
9 individual who wrote the letter. The letter was  
10 written in the manner that you described to Mr.  
11 Greenwald and being forwarded to Mr. Griffis. I have  
12 never met Mr. Griffis before. And in fact, he was  
13 not involved in any of the conversations. The  
14 references in effect of our conversations were in  
15 reference to conversations between DDOT, Office of  
16 Planning staff and representatives of DC Grid and  
17 Drew Properties and I testify under oath that Mr.  
18 Griffis was not involved in any manner with those  
19 conversations.

20 ACTING CHAIRPERSON MILLER: Thank you.  
21 Mr. Cochran, you want to add to that?

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1 MR. COCHRAN: For the record, my name is  
2 Steven Cochran, Office of Planning. I can probably  
3 help to explain, clear up some of the confusion.

4 When I saw a draft of this letter from  
5 Mr. Noble, I told him that it needed to be addressed  
6 to the BZA, that that substance needed to go to the  
7 BZA, not to Mr. Greenwald. It looks like what Mr.  
8 Noble did was simply put Mr. Griffis' name on top of  
9 that without changing the content of the letter so  
10 that -- the letterhead that I had seen clearly  
11 referred to conversations that he had had with Mr.  
12 Greenwald and for me. Perhaps I should have been  
13 more explicit and say put a cover letter on top of  
14 your letter to Drew Greenwald so that it goes to the  
15 BZA, but that's what happened.

16 ACTING CHAIRPERSON MILLER: Thank you.  
17 Do my Board Members have any comments, questions?

18 At this point then I would move to deny  
19 the motion to dismiss RLA application because of ex  
20 parte communications in violation of law and ask for  
21 a second.

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1                   VICE CHAIR ETHERLY:  Madame Chair, if I  
2                   could perhaps, once again, I'm going to use your word  
3                   overabundance of caution.  Perhaps just to make it  
4                   clean because we did have a motion and that stood on  
5                   the record and in our prior hearing I would perhaps  
6                   want to suggest that we move to reconsider that  
7                   motion which would be appropriate by any one of us as  
8                   we were voting in the majority on that original  
9                   motion, essentially reopen it and then we undertake  
10                  it without Mr. Griffis' participation.  And that way  
11                  it would be cleanest.

12                  ACTING CHAIRPERSON MILLER:  Okay, I'll  
13                  table my motion.

14                  VICE CHAIR ETHERLY:  I would move to  
15                  reconsider the motion to deny the motion of the party  
16                  in opposition to dismiss the RLA application because  
17                  of ex parte communications in violation of law and I  
18                  invite a second.

19                  MEMBER MANN:  Second.

20                  VICE CHAIR ETHERLY:  Thank you.  I think  
21                  it's been adequately discussed, so I don't think

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1 there's any need to further discuss it why we are  
2 reconsidering the motion.

3 ACTING CHAIRPERSON MILLER: Okay.

4 VICE CHAIR ETHERLY: So we would need a  
5 vote at this point.

6 ACTING CHAIRPERSON MILLER: To be  
7 absolutely clear, this motion is just to reconsider?

8 VICE CHAIR ETHERLY: Just to reconsider.

9 ACTING CHAIRPERSON MILLER: And then  
10 we'll have a subsequent motion?

11 VICE CHAIR ETHERLY: That is correct.

12 ACTING CHAIRPERSON MILLER: Okay. Then  
13 we have a motion, we have a second. All those in  
14 favor say aye.

15 (Ayes.)

16 ACTING CHAIRPERSON MILLER: All those  
17 opposed?

18 (No response.)

19 ACTING CHAIRPERSON MILLER: All those  
20 abstained?

21 (No response.)

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MR. RUFFIN: Madame Chair?

ACTING CHAIRPERSON MILLER: Do you want to call the vote?

MS. BAILEY: The vote is recorded as 3:0:2. Mr. Etherly made the motion. Mr. Mann seconded. Ms. Miller is in agreement. Mr. Griffis is recused, not being present. And Mr. Hood is not present today.

ACTING CHAIRPERSON MILLER: Thank you.

VICE CHAIR ETHERLY: Thank you, Madame Chair.

ACTING CHAIRPERSON MILLER: At this point then I would like to move to deny the motion to dismiss RLA application because of ex parte communication in violation of law and I ask for a second.

VICE CHAIR ETHERLY: Second.

MEMBER MANN: Second.

VICE CHAIR ETHERLY: I'll defer to Mr. Mann.

MEMBER MANN: Seconded.

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1                   ACTING CHAIRPERSON MILLER: I would just  
2 like to say that the reason I am moving to deny is  
3 because I find no basis at all that there were an ex  
4 parte communications, no basis in fact, whatsoever,  
5 based on the representation of Mr. Noble and from  
6 DDOt and Mr. Cochran from Office of Planning.

7                   Of course, we have the record from last  
8 week, but just even based on these representations, i  
9 find there's no basis.

10                   MEMBER MANN: I agree. I think the  
11 letter came in just as so many do and it was  
12 addressed to Mr. Griffis purely because it was  
13 following some administrative practice of submissions  
14 in cases, not because there had been any  
15 communication with him personally.

16                   ACTING CHAIRPERSON MILLER: Okay, then  
17 we're ready to vote. All those in favor say aye.

18                   (Ayes.)

19                   ACTING CHAIRPERSON MILLER: All those  
20 opposed?

21                   (No response.)

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1                   ACTING CHAIRPERSON MILLER:     All those  
2     abstaining?

3                   (No response.)

4                   ACTING CHAIRPERSON MILLER:     Would you  
5     like to call the vote, Ms. Bailey?

6                   MS. BAILEY:     The vote is recorded as  
7     3:0:2 to deny the motion of Kelsey Temple to dismiss  
8     the application based on ex parte communication. Ms.  
9     Miller made the motion; Mr. Mann, seconded. Mr.  
10    Etherly is in agreement. Mr. Griffis is recused, not  
11    participating in the vote. And Mr. Hood is not  
12    present today.

13                  ACTING CHAIRPERSON MILLER:     Thank you.

14                  MR. RUFFIN:     Madame Chair, before Mr.  
15    Griffis comes back, I didn't know all this history,  
16    so I had some additional information and now that I  
17    have the information -- I have this history. I have  
18    still some additional information. I just want to  
19    put it before the Board. I would expect that my next  
20    motion asking for recusal will be denied, but I had  
21    it in light without all this additional information,

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1 but I still have some substantial information and I  
2 think it's best that I put on the record so that I  
3 protect my client's interest and move on.

4 There's a document that's dated March 17,  
5 1998 that shows that Mr. Griffis was on the  
6 organizing committee and also the volunteer design  
7 working group.

8 ACTING CHAIRPERSON MILLER: Mr. Ruffin,  
9 I'm not sure where you're going. Are you going to  
10 file another motion?

11 MR. RUFFIN: I would like to do it  
12 orally, rather than hold up the Board and if I can  
13 just put it on the record and move on, I think that  
14 we can handle it very quickly.

15 ACTING CHAIRPERSON MILLER: Just a  
16 minute.

17 (Pause.)

18 ACTING CHAIRPERSON MILLER: Mr. Glasgow,  
19 I was wondering if you have an opinion on this?

20 MR. GLASGOW: I just saw the information  
21 just a minute ago. I think that if there is an issue

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1 that's being raised with respect to some type of ex  
2 parte issue, then it ought -- he should go ahead and  
3 make his motion, introduce what it is that he has to  
4 introduce and the Board act on it.

5 VICE CHAIR ETHERLY: Madame Chair, are  
6 you entering any questions at this time?

7 ACTING CHAIRPERSON MILLER: You're saying  
8 that you don't have any objection to addressing that  
9 issue right now?

10 MR. GLASGOW: Well, the Board addressing  
11 the issue right now, right.

12 ACTING CHAIRPERSON MILLER: We'll hear it  
13 right now.

14 MR. GLASGOW: We'll hear it. I saw one  
15 piece of paper for a second.

16 ACTING CHAIRPERSON MILLER: How much time  
17 do you need to look at this piece of paper?

18 MR. GLASGOW: I've looked at it.

19 ACTING CHAIRPERSON MILLER: Okay.

20 MR. GLASGOW: And I've never seen it  
21 before. I think that Mr. Ruffin can explain what it

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1 is that he's dealing with and the Board may be able  
2 to deal with it fairly promptly.

3 ACTING CHAIRPERSON MILLER: Do you have  
4 copies for the Board of this piece of paper that's  
5 being referred to?

6 MR. RUFFIN: No ma'am. I prefer to share  
7 my copy with the Board.

8 And I should have had copies. I  
9 apologize for that because actually I thought that  
10 the motion for recusal was more substantial. I had  
11 no idea about the background information. That is  
12 the mistake on the District Department of  
13 Transportation and Mr. Noble. I can understand that.

14 In light of my understanding of that  
15 first letter, I thought that this additional document  
16 which is almost seven years old showed that Mr.  
17 Griffis had been involved in the project before and  
18 should have recused himself.

19 I expect, having heard, what I've heard  
20 from Mr. Noble, there's probably some innocent  
21 explanation that would detach this.

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ACTING CHAIRPERSON MILLER: Okay.

MR. RUFFIN: But I have the document. I came here thinking it was far more substantial and I think the best thing for my client's interest is to put it on the record, share it with the Board, just orally make the motion and move on.

ACTING CHAIRPERSON MILLER: Let me just say this.

MR. RUFFIN: Yes ma'am.

ACTING CHAIRPERSON MILLER: Number one, I think the Board should see whatever document you're talking about. Number two, if this involves a factual allegation regarding Mr. Griffis, then he should hear it because he would be the one who would be able to know whether it was true or not.

I'm going to take a few minutes break and just see if I can find him and in the meantime maybe you can ask Office of Zoning to make a copy of that piece of paper?

MR. RUFFIN: That would be fine. As a matter of fact, I can make a copy and it can be

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1 shared with Mr. Griffis. Do you see what I'm saying?  
2 All I have is the document, so I never had Mr.  
3 Griffis' explanations and it basically just shows  
4 that he was involved in the early planning on the  
5 part of the community of this project. So it might  
6 be some substantial detachment, I don't know, but I  
7 didn't -- I had a different picture of the extent to  
8 which Mr. Griffis may or may not have been involved  
9 in the project.

10 VICE CHAIR ETHERLY: Madame Chair, here's  
11 where I'm at. I'm comfortable with the recess,  
12 because I think that would be helpful in terms of  
13 sorting out some issues here.

14 I am highly agitated to say the least,  
15 that if you had this bullet -- I won't use that word,  
16 if you had this arrow in your quiver why didn't you  
17 bring it earlier? It's somewhat distressing that  
18 this wasn't put in the basket with the original  
19 motion itself. Be that as it may, I can understand  
20 the introduction of additional information, perhaps  
21 changes the strategic thinking that you might have

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1 had with regard to whether or not you want to go down  
2 this route.

3 Don't get me wrong, this Board and I'm  
4 sure I speak for my colleagues when I say we take any  
5 allegation regarding conflict of interest, ex parte,  
6 what have you, we take it very seriously and so I  
7 think this is going to be dealt with in a very  
8 serious way, but I would have preferred it to have  
9 been offered earlier.

10 That being said, Madame, Chair, I'm  
11 comfortable with a recess so that we can perhaps  
12 think about how we want to approach this. And if it  
13 is the decision that we deal with it orally, I would  
14 prefer, most certainly, a very clear, very focused,  
15 very to the point discussion of what your concern is.

16 I don't want us to get caught in a side  
17 show. I don't want us to get caught in a circus here  
18 and I'm not suggesting that that's where you're going  
19 to take us, Mr. Ruffin, but of course, we take it  
20 very seriously and I wish it would have come earlier.

21 I don't need you to respond to that. I'm

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1 not saying that to in any way come down on you, but  
2 it's a very serious allegation. So I'm comfortable  
3 with a recess, Madame Chair.

4 ACTING CHAIRPERSON MILLER: Okay, so  
5 we're going to take a recess right now. Mr. Ruffin  
6 is going to give the document to Office of Zoning  
7 we'll take a look at it and share it with Mr.  
8 Griffis.

9 (Whereupon, the proceedings in the  
10 foregoing matter went off the record at 4:42 p.m. and  
11 went back on the record at 4:57 p.m.)

12 MEMBER MILLER: Mr. Ruffin, are you ready  
13 to proceed?

14 MR. RUFFIN: Yes, ma'am. During this  
15 brief recess on the part of the Board, one of the  
16 Advisory Neighborhood Commissioners, Ms. Anne Tyson,  
17 was speaking to me about the matter. She is a long-  
18 time resident of the community, and she was giving me  
19 information about the case, but she also recalled Mr.  
20 Griffis' long-time residence in the community, long  
21 enough anyway.

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1                   And also, that a considerable period ago,  
2 a long -- he served as a neutral conduit, more as a  
3 professional for the community to come together to  
4 bring -- bring together information to share with the  
5 government, and with any prospective developers about  
6 all of this. And she described Mr. Griffis as  
7 absolutely neutral in the whole process.

8                   And as I was explaining to the Board in  
9 Mr. Griffis' absence, when I obtained the letter from  
10 the file I looked at what appeared to me to be  
11 ex parte communications. While I was sick, I --  
12 during the time just -- while I was sick, I was  
13 unable to supplement the file with this new document.

14                   And so only until now -- probably I  
15 should have filed it yesterday. I should have given  
16 everybody notice yesterday, but I was really tied up  
17 trying to prepare for the case.

18                   Anyway, I had no idea that the ex parte  
19 communications could be explained as Mr. Noble did,  
20 and also as Mr. Cochran did. In light of their  
21 explanations, I suspected that there was probably

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1 some innocent explanation for this document that's  
2 dated March 17, 1998.

3 In light of what Ms. Tyson told me, I am  
4 satisfied that there is an explanation, but I  
5 obtained it from her because I had nothing other than  
6 the document itself, and that's what my motion was  
7 about. In other words, it appeared that Mr. Griffis  
8 was involved in early efforts to promote the  
9 development, and she said he was not promoting it at  
10 all.

11 So in light of what she said, being  
12 involved in this, I -- and also, in light of her  
13 offering additional information, I find her  
14 trustworthy, and I don't really want to pursue this.

15 MEMBER MILLER: Okay. So my  
16 understanding is you're not going to be making a  
17 motion at this point, is that correct?

18 MR. RUFFIN: Not to recuse Mr. Griffis on  
19 -- on this document that I just shared with the  
20 Board. No, ma'am.

21 MEMBER MILLER: Okay. Then, at this

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1 point, I'm going to give Mr. Griffis chairmanship of  
2 this proceeding back and let him address whatever he  
3 chooses to.

4 CHAIRPERSON GRIFFIS: Good. Thank you  
5 very much, Ms. Miller. It actually is informative.  
6 It's a little throwback to history. But what I do  
7 want to do is make absolutely clear that I -- I have  
8 no prejudice on either side in looking at this case,  
9 and I can fairly and judiciously decide this case.

10 But I want to be absolutely clear, so  
11 that we don't run into this again. I do live in the  
12 neighborhood. I don't live in the 200-foot radius of  
13 where I would have been notified of this application.

14 I have not had any direct involvement with this  
15 applicant in terms of putting it together.

16 I live in the community. I have known of  
17 meetings. I have been at meetings that I've had to  
18 actually leave because certain things have been  
19 talked about. For the past four years it has been  
20 difficult. I have lived in the community for over 14  
21 years. It has been difficult, as my role on this

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1 Board, not being able to be a full participant as I  
2 would like to be in my own community affairs.

3 But, again, going directly to this  
4 aspect, I certainly have opinions, as we all do. But  
5 my opinions are in no way vested in some sort of bias  
6 that might preclude me from being judicial on this  
7 specific application, or, in fact, others.

8 The documents that you've given in, I'll  
9 address it very quickly. It actually was bringing  
10 together the community for a master plan for all of  
11 the RLA acreage up there. This was prior to the  
12 issuance of an RFP or a request for proposals from  
13 the RLA. It was what all of the developers responded  
14 to. My involvement did go to support a specific  
15 developer that responded to this proposal, but that  
16 was, again, years ago.

17 As this has been put together, I have had  
18 opinions, but certainly have had no official capacity  
19 or taken any sort of position on this, and, again,  
20 have kept far away from being in any sort of  
21 environment that it would, in fact, be.

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1                   You made an interesting point, and I -- I  
2 want to address that -- that I was neutral on the  
3 development of this area. And that is not correct.  
4 I was not neutral. In fact, I led this. I organized  
5 it. I was part of the volunteer design team. But I  
6 expressed my individual opinions on having  
7 development in this area. It did not go directly to  
8 what we have before us, and I hold those opinions.

9                   In fact, I stated on the record in this  
10 case specifically that I think it would be great, and  
11 actually was dismayed that from the prior application  
12 that the square footage was reduced. But I don't  
13 think that goes to any substantive bias of whether  
14 I'm pushing for this or not for this.

15                   And I think my -- my actions on previous  
16 -- on all cases would show that I can have personal  
17 opinions and they don't always parallel that which I  
18 have to decide with the applications that are in  
19 front of us. This morning brings rise to that  
20 specifically.

21                   But I open myself to any sort of

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1 questions that you might have -- Mr. Ruffin or Mr.  
2 Glasgow -- in this manner, or anybody else, frankly,  
3 that's here.

4 MR. RUFFIN: Both of my motions -- the  
5 first one that I don't waive that was ruled against  
6 me, ruled against my client, and the second one that  
7 we've withdrawn, were based on the documents, solely  
8 on the documents.

9 The only question I would have of you,  
10 Mr. Griffis, is whether you had any dealings either  
11 on this development project as we know it or with  
12 Greer Properties or any of its partners. Other than  
13 that, I know of no basis other than what I've brought  
14 to the Board's attention for thinking that you would  
15 be partial in your dealings.

16 In other words, I've never met you  
17 before, so I can only go on the documents.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MR. RUFFIN: So unless you tell me that  
20 you've had dealings with --

21 CHAIRPERSON GRIFFIS: Right.

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1 MR. RUFFIN: -- these developers or with  
2 this particular phase of the project, my --

3 CHAIRPERSON GRIFFIS: Well, I can tell  
4 you --

5 MR. RUFFIN: -- my concerns --

6 CHAIRPERSON GRIFFIS: -- from this  
7 application --

8 MR. RUFFIN: -- are withdrawn.

9 CHAIRPERSON GRIFFIS: -- the past  
10 application, from putting it together -- the RFP -- I  
11 did not have any conversations or coordinations with  
12 this application or this development team.

13 MR. RUFFIN: Okay.

14 CHAIRPERSON GRIFFIS: But I want to  
15 underscore -- and I'll take any other questions that  
16 we have -- I didn't go into depth of a lot of my  
17 involvement in this entire community, as I don't  
18 think we have time for all of us to talk about it.  
19 We're all District residents.

20 But I want to be absolutely clear. You  
21 could do an internet search on just my name, and

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1 there are numerous amounts of public articles and  
2 documents that will come up. So I don't want to act  
3 as if I'm hiding that from anybody. My involvement  
4 was very substantial in the '90s, and since this has  
5 been reality of development it has not been.

6 MR. RUFFIN: When you were working before  
7 the requests for proposals were initiated, did you  
8 have any dealings with Greer or its current partners?

9 CHAIRPERSON GRIFFIS: Any dealings?

10 MR. RUFFIN: On this project.

11 CHAIRPERSON GRIFFIS: No.

12 MR. RUFFIN: Okay.

13 CHAIRPERSON GRIFFIS: In fact, for the  
14 record, I supported another developer in the request  
15 for proposals, of which your own documentation  
16 setting forth here -- well, I don't know if it is  
17 actually. Anyway, so no, I --

18 MR. RUFFIN: Okay.

19 CHAIRPERSON GRIFFIS: Mr. Glasgow?

20 MR. GLASGOW: I have no questions.

21 CHAIRPERSON GRIFFIS: Do you have any

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1 difficulty with me continuing to serve on this case?

2 MR. GLASGOW: No, sir.

3 CHAIRPERSON GRIFFIS: It's okay if you  
4 don't. You can say it.

5 (Laughter.)

6 Did you want to address the Board?

7 MR. GLASGOW: Mr. Jasso was going to be  
8 the next governmental witness.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. RUFFIN: If Mr. Glasgow and the Board  
11 would not mind, maybe we could take a lay witness out  
12 of turn. I don't know, but I would ask.

13 CHAIRPERSON GRIFFIS: Are we finished  
14 with this issue? Are you finished with this issue?

15 MR. RUFFIN: I think we are finished.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. RUFFIN: You haven't indicated that  
18 you had --

19 CHAIRPERSON GRIFFIS: I'm going to ask --

20 MR. RUFFIN: -- any dealings with these  
21 people.

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1 CHAIRPERSON GRIFFIS: And I appreciate  
2 that.

3 MR. RUFFIN: Yes, sir.

4 CHAIRPERSON GRIFFIS: But I'm going to  
5 ask for undue caution here.

6 MR. RUFFIN: Yes.

7 CHAIRPERSON GRIFFIS: Is anyone present  
8 in the room, or maybe watching us upstairs that can  
9 make it down here in 30 seconds, does anyone have any  
10 questions about this issue in terms of my involvement  
11 in this community? Any questions or any opposition  
12 for me continuing on this case? And if it -- okay.

13 Then, I'm ready to proceed, if the Board  
14 is. Ready to go? Let's do it.

15 Mr. Ruffin, you were bringing up an issue  
16 of out of order.

17 MR. RUFFIN: If the Board would be so  
18 kind, and also if Mr. Glasgow and his client would be  
19 so kind, perhaps we could get out of turn the  
20 testimony of Anne Tyson, an Advisory Neighborhood  
21 Commissioner, whose -- who would like to testify as a

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1 resident, who is a member of the Commission but as a  
2 resident who opposed this, and also that there was  
3 some disagreement just about the process, and also  
4 what the actual community concerns are.

5 So that by -- by the time our case would  
6 be presented, she might be absent. I'd just like to  
7 get her on the record.

8 MR. GLASGOW: Mr. Chairman, we've had one  
9 of the -- you know, one of the city officials here  
10 from the Office of Deputy Mayor for Economic  
11 Development, has been waiting a period of time in  
12 order to testify in this case.

13 So I -- what I would like to do is have  
14 Mr. Jasso testify, and then, if the Board wants to go  
15 out of order with this other witness, fine. But I'm  
16 trying to understand, and I'll reserve any judgment  
17 with respect to how an ANC Commissioner, who was at  
18 the meeting I guess, and who would have voted for  
19 this project, now has an issue. That's --

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GLASGOW: -- going to be interesting,

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1 but --

2 CHAIRPERSON GRIFFIS: Well, individuals  
3 can have issues, I'm sure. It's just how long do we  
4 have on your presentation?

5 MR. JASSO: I have relatively brief  
6 remarks, and then I'm available for questions.

7 CHAIRPERSON GRIFFIS: Excellent. Let's  
8 do that. Let's take that, and then we'll go through  
9 that. And, actually, I'm going to poll if there's  
10 any other persons present, and perhaps we just get  
11 through the person's testimony, and then we have  
12 government agencies. So let's move ahead.

13 MR. JASSO: Thank you. Members of the  
14 Board, Chairman, for the record, my name is Michael  
15 Jasso, Special Assistant in the Office of the Deputy  
16 Mayor for Planning and Economic Development. With  
17 respect to this project, I specifically oversee TIF  
18 financing for District-sponsored projects. I will  
19 try to keep my comments relatively short and remain  
20 available for questions.

21 Very quickly, by way of background, in

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1 late 2001 the developer submitted to the District  
2 government an initial request for TIF financing in  
3 the amount of approximately \$51 million. This  
4 subsidy was -- \$51 million net into the project.  
5 This subsidy was intended largely to cover the  
6 capital cost of providing the off-street parking.

7 An analysis of the project was undertaken  
8 by the Chief Financial Officer of the District. This  
9 analysis reviewed the likely revenues that would be  
10 generated by the project, and the ability to finance  
11 the total project costs through conventional debt and  
12 equity.

13 Although the CFO could not certify the  
14 project at that time as eligible for the level of  
15 subsidy required, due to insufficient tax revenue  
16 generated to finance the proposed District  
17 contribution, i.e. the gross proceeds of the TIF,  
18 which was estimated by the CFO's office at about  
19 \$74 million in order to net the \$51 million  
20 necessary.

21 That analysis subsequently verified the

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1 need for gap financing to cover the costs associated  
2 with the project, i.e. notwithstanding the fact that  
3 there weren't sufficient revenues, the analysis  
4 undertaken independently by the CFO did, in fact,  
5 verify the economics of the project were such to  
6 require TIF financing, gap financing, in order to  
7 provide the parking structure.

8 Therefore, in order to keep the project  
9 viable, District officials met with representatives  
10 of the developer to reconfigure the project to  
11 include a garage on two levels only containing 1,000  
12 spaces. The use of up to \$40 million of TIF for this  
13 project was certified by the CFO and approved by the  
14 District Council in July 2004.

15 With the District and NCRC continuing  
16 participation, two levels would be feasible, and the  
17 project can move forward. The square footage of the  
18 project before you today has, therefore, been reduced  
19 in size from the previously approved project to a  
20 size that can be adequately accommodated by the 1,000  
21 car garage.

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The requirement to provide an extra 600 parking spaces, which are not needed by the modified project, at a cost which renders the project infeasible by all our analysis, is certainly a practical difficulty to NCRC, DC USA, and the District of Columbia.

The DOT analysis and the reports submitted by the applicant's experts -- expert travel consultants support the proposition that sufficient parking is being provided for the proposed project. The Office of the Deputy Mayor is enthusiastically behind the development of this site as an urban retail center for the Columbia Heights neighborhood and the District of Columbia in general, because of the substantial positive impact that it will have in reducing sales tax revenue, presently lost to suburban jurisdictions and being paid by D.C. residents.

The Deputy Mayor's office only sees benefit through the approval of the proposed project and does not see any substantial detriment.

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1                   In view of the foregoing, the Deputy  
2 Mayor's office respectfully requests the Board of  
3 Zoning Adjustment approve the application, so that  
4 this important project, which is on the only site in  
5 Columbia Heights, arguably one of the only sites  
6 within the District of Columbia, where such a major  
7 retail center can be sized and configured can be  
8 located and moved forward.

9                   I'm available for questions. And thank  
10 you.

11                   CHAIRPERSON GRIFFIS: Good. Thank you  
12 very much. Are there any questions from the Board?  
13 Ms. Miller?

14                   MEMBER MILLER: Explain what gap  
15 financing is.

16                   MR. JASSO: Sure. On all the TIF  
17 analysis -- TIF financing is not a by-right subsidy.  
18 It's a need-based analysis. So typically what we  
19 require of developers is that they provide for us the  
20 economics of the project, the cost of the project,  
21 the sources, the likely revenue, based on some

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1 reasonable return to the developer at a given site  
2 for what that project is.

3 We look at the economics -- in this case,  
4 the lease income, various other things -- that would  
5 be reasonably achieved, and based on that look at the  
6 need for public subsidy to make up that difference.

7 In the case here, the project was  
8 analyzed from the perspective of, given its location,  
9 given the history of retail, looking at comparative  
10 markets, etcetera, what could be the reasonable  
11 rents, etcetera, to be generated by the project.  
12 Based on that, and based on the fact that in order  
13 for parking to work, it's no surprise that most major  
14 shopping centers will need only look at -- at  
15 competition shopping centers such as Potomac Yard.  
16 Parking is either free or greatly reduced.

17 The economics of the garage would not be  
18 supported by the use of the garage for retail  
19 parking. Clearly, a garage could be built, which  
20 might be market-based for housing for instance as an  
21 example in the neighborhood, and produce

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1 substantially different economics.

2 But for the function of providing for the  
3 retail, which was deemed to be necessary by all the  
4 retailers, in fact, the economics of the garage would  
5 not support the capital cost of building that garage,  
6 i.e., the need for the TIF financing into the  
7 project.

8 This was reviewed independently by the  
9 CFO. We also reviewed it independently with  
10 consultants, and all consultant analysis -- third  
11 party analysis that we've done, whether it's been  
12 through the CFO independently or through the Office  
13 of the Mayor, have come to the conclusion that there  
14 is, in fact, a reasonable, argued, demonstrated need  
15 for gap financing on the project.

16 The question has always been: would the  
17 tax revenues that would be generated by the project  
18 be sufficient to support what level of debt in this  
19 public financing? That, in turn, determined the  
20 capital cost that -- the capital that would be  
21 available for the parking, and driving the amount of

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1 parking structure that could be built; hence, driving  
2 the amount of retail that could be reasonably  
3 accommodated by that parking.

4 MEMBER MILLER: And what happens if the  
5 cost exceeds the TIF?

6 MR. JASSO: On the garage. Well, a  
7 couple of things. As part of the TIF process, what  
8 we do is we enter into a developer agreement with  
9 respect -- with the developer as to the capital  
10 contribution by the District, how overruns will be  
11 handled, will those be a responsibility of the  
12 developer or the District or some combination?

13 Right now, it would be such that it would  
14 be the responsibility of the developer, but we're  
15 currently in those negotiations as to how those will  
16 be happening, what performance measures such as  
17 completion guarantees will be put on the project.

18 Obviously, in this particular case where  
19 you do not have a separate parking structure, but, in  
20 fact, this parking structure forms the basis of the  
21 foundation of the retail center, without the parking

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1 structure you're not going to have a retail center,  
2 since they are one contiguous structure.

3 MEMBER MILLER: Okay. I'm going to be  
4 really direct. What if you didn't get the variance  
5 for the 1,000 spaces, and you had to go down to a  
6 third floor, which generates all these additional  
7 costs? What would happen?

8 MR. JASSO: I'll be real direct and short  
9 right now. Right now, all our analysis to date, and  
10 the analysis that the CFO of the city independently  
11 was willing to certify per statute and council apply  
12 says that we can't afford more than two levels.

13 MEMBER MILLER: So you're saying the  
14 District can't afford more than two levels.

15 MR. JASSO: The District cannot afford a  
16 contribution that would -- would be able to build  
17 anything more than the two structures, the two  
18 levels.

19 MEMBER MILLER: And what about the  
20 developer?

21 MR. JASSO: Well, the economics are such

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1 that, in fact, the developer came to us for gap  
2 financing basically to -- and the analysis that was  
3 done was looked -- was based on the returns that the  
4 developer could reasonably expect or should expect,  
5 based on the capital cost of the structure and based  
6 on the leases that the developer was putting in  
7 place. There was, in fact, this gap for the parking.

8 I mean, you could look at it a lot of  
9 different ways, but at the end of the day it came out  
10 that there was an economic gap on the structure, on  
11 the entire center, which equated to the provision of  
12 the parking. The parking doesn't pay for itself,  
13 long and short. It's kind of --

14 MEMBER MILLER: But it's the obligation  
15 of the District to pay for that gap?

16 MR. JASSO: Well, if the District wants a  
17 retail center there, it's the obligation of the  
18 District to pay for the gap. We could clearly get  
19 development there, but the development would not be  
20 the retail as -- as configured because that retail  
21 requires, both by market realities, a certain amount

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1 of parking, and that parking doesn't pay for itself.

2 MEMBER MILLER: Thank you.

3 MEMBER MANN: There's something that you  
4 said twice that I just -- I just don't understand.  
5 It's kind of a tough thing here. The number of  
6 parking spaces that's proposed is determined by the  
7 amount of financing that's available. Is that  
8 correct?

9 MR. JASSO: That's correct. I mean, as a  
10 broader measure, we first looked at the amount of  
11 taxes that are being generated, how much debt can  
12 that support.

13 MEMBER MANN: Okay. So that was part  
14 one. And then, part two, you said, therefore, you're  
15 scaling the size of the development based on the  
16 availability of parking spaces.

17 MR. JASSO: That's right, in the sense  
18 that parking -- we looked at how much parking the  
19 taxes generated, how much basically capital costs for  
20 a parking structure could support.

21 MEMBER MANN: Okay. So what I don't

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1 understand is: if you're basing the development --  
2 if you're scaling the development to the availability  
3 of the parking spaces that the financing supports,  
4 why are you asking for a variance? Because it  
5 shouldn't -- shouldn't, in fact, then the development  
6 have been either scaled down even more, so that it's  
7 only for -- so that it equates to 1,000 parking  
8 spaces? Or, conversely --

9 MR. JASSO: The development did come down  
10 as a review. The development shrunk in size. Now,  
11 one of the reasons -- but I guess your basic question  
12 might be: why did the development not shrink  
13 proportionally to the shrinkage in the parking?

14 MEMBER MANN: Yes, given what you just  
15 said, that the development was based -- was scaled to  
16 the availability.

17 MR. JASSO: That's correct. It's because  
18 when you shrink the retail -- and the developer can  
19 speak more succinctly to this than I can -- when we  
20 looked at what the reduction -- if we reduced the  
21 parking, and we looked at and said -- and we

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1 basically did the analysis and said, "Okay. If you  
2 reduce the parking from what it was looking at to  
3 what we can afford, the issue is, okay, how much does  
4 that relate to in terms of the amount of retail that  
5 has to come down?"

6 One of the things it looks at is not all  
7 retail is equal. So the question is: what retail do  
8 you lose as part of this? And the reality is is what  
9 -- the retail you tend to lose tends to be on a per  
10 square foot basis, the less financially performing  
11 retail, simply because of the nature of the center.

12 So that the economics are such, in fact,  
13 that from a -- if I'm just looking at it from a  
14 financing perspective, this -- this program, from a  
15 financing perspective, is -- is actually more  
16 attractive because, in fact, the retailers that get  
17 kept are those retailers that gross on a per square  
18 foot basis at a higher level.

19 So that's why you don't have to  
20 necessarily in terms -- it's not necessarily a one  
21 dollar per one parking kind of -- but there is a

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1 direct correlation between the two.

2 MEMBER MANN: Then, doesn't the fact that  
3 you're also perhaps seeking a condition that allows  
4 1,244 parking spaces mean that the size of the  
5 development again would change?

6 MR. JASSO: The 1,240 --

7 MEMBER MANN: If you're scaling the  
8 parking back up, then doesn't the size of the  
9 development, therefore, scale back up?

10 MR. GLASGOW: Mr. Mann?

11 MR. RUFFIN: Objection. I don't think  
12 Mr. Glasgow should testify.

13 CHAIRPERSON GRIFFIS: You can't object.

14 MR. RUFFIN: But can he testify for Mr.  
15 Jasso?

16 CHAIRPERSON GRIFFIS: I don't think he's  
17 going to testify.

18 MR. GLASGOW: I wasn't going to testify.

19 I mean, we can put a witness on to address that. If  
20 the Board remembers from the last hearings, we were  
21 -- we were put forward this alternative to address

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1 the issues that Board members had, and the  
2 questioning that came -- this didn't come from Deputy  
3 Mayor's office to have the alternative.

4 That was -- if the Board felt that there  
5 were outside demands that necessitated the ability --  
6 the necessity to put more parking in the structure,  
7 then we were offering an option as to how to do that.

8 MEMBER MANN: Okay. That's a good point  
9 regarding the potential outside demands. I still  
10 don't know if I fully understand the explanation that  
11 was given regarding how the 1,000 spaces were  
12 derived, how the size of the development was derived  
13 based on the 1,000 spaces that are available.

14 MR. GLASGOW: Mr. Slade can answer that.  
15 That was done -- those were negotiations between the  
16 applicant and DDOT as to demand.

17 CHAIRPERSON GRIFFIS: This is what I  
18 understand Mr. Mann is going to is we've been -- now  
19 been told by Mr. Jasso that there's this economic  
20 model that's actually sizing this project. And it's  
21 not necessarily correlational to if you lose 100

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1 square foot of retail you can reduce two parking  
2 spaces is what I'm hearing in the testimony.

3 Mr. Mann is pushing the level of, okay,  
4 this economic model that you generate that shows how  
5 much this can support in terms of financing doesn't  
6 -- the 1,224 spaces, whatever it is, what is the  
7 threshold at which you start increasing and  
8 decreasing? Is that correct?

9 MEMBER MANN: That's absolutely correct.

10 MR. JASSO: Let me speak a little bit  
11 first -- and I'm not quite entirely sure I understand  
12 the question, but let me speak -- try to address it.

13 First of all, the sizing of the garage from the  
14 financing perspective really comes in one, twos, or  
15 threes. It really comes on issues of levels of the  
16 garage, because those are pretty much set costs at --  
17 per level.

18 What we looked at was simply based on the  
19 cost of providing the garage. The revenues were only  
20 sufficient to support two levels of parking. Now,  
21 the question of: how do you maximize those two

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1 levels of parking? Can you squeeze in more? Can you  
2 squeeze in less? Is functioned because basically the  
3 revenue stream generated by the parking, based on the  
4 pricing structure that both we and NCRC anticipate is  
5 going to need to be in place to support the parking  
6 is de minimis.

7 So we're not looking at the revenue  
8 stream. It's really a -- at least initially through  
9 stabilization, through some period of time. So we  
10 know, you know, many of the parking structures in the  
11 District, with respect to retail, some of them do  
12 provide parking. And some of them have -- in terms  
13 of price parking, some of them have changed. Some of  
14 them have gone from free to charging, back to free.  
15 That's also true kind of in the suburban  
16 jurisdictions.

17 So we've simply looked at, from the  
18 physical cost of providing the garage, based on the  
19 revenue stream coming in, how many levels of parking  
20 could we reasonably provide. And that, in turn --  
21 now, if we can squeeze out, you know, 1,300 spaces

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1 rather than 1,000, you know, we're -- I don't think  
2 that's really an issue.

3 I think the traffic consultants, and so  
4 on, can speak better than I can as to whether we need  
5 those 1,300 versus 1,000 kind of issue. For us, it  
6 was simply the cost of delivering the structure.

7 MEMBER MANN: I think that's probably a  
8 sufficient explanation for now, though I'm going to  
9 have to think about this for a little bit.

10 CHAIRPERSON GRIFFIS: Ms. Miller?

11 MEMBER MILLER: I just was wondering if  
12 you could elaborate on something you made reference  
13 to that I didn't totally get, which is something like  
14 retailers gross, on a square foot basis, on a higher  
15 level as a result of -- I don't know, as the project  
16 gets smaller, you said it was somewhat to the benefit  
17 because of that. Do you know what I'm referring to?

18 I'm just --

19 MR. JASSO: Yes. I'll take a stab at it.

20 MEMBER MILLER: Okay.

21 MR. JASSO: And the developer can

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1 probably add a little bit more clarity, given that  
2 it's really much more specifically in an area that he  
3 can respond to. But in shrinking the center, the  
4 retailers that tended to fall out simply because we  
5 couldn't accommodate those were, in fact, the  
6 retailers, simply because of where they were located,  
7 etcetera, were, in fact, the retailers that were  
8 anticipated to be generating a smaller sales volume  
9 per square foot.

10 Hence, so you've skimmed away those that  
11 were generating less revenue from a District  
12 perspective, the tax perspective, and kept the better  
13 -- kind of the ones that -- but at the same time,  
14 since the spaces are really a function of the levels,  
15 kind of -- you are able to, from a -- strictly a tax  
16 revenue per space and cost be -- it actually --  
17 basically, our debt service coverage ratio improved  
18 kind of through that exercise. That's all I was  
19 getting at.

20 CHAIRPERSON GRIFFIS: Anything else?

21 Is this current TIF financing, the

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1 financing in your model, based on the current square  
2 footage that's being proposed here, or previous  
3 square footage? Or what square footage is it based  
4 on?

5 MR. JASSO: This TIF -- the TIF financing  
6 that was approved by -- by council, which was the  
7 \$40 million -- it was actually slightly more than  
8 that, because there was \$2 million for community, and  
9 so on, but the \$42 million was based on I believe the  
10 project model that's in front of us right now, which  
11 anticipated just short of 500, I believe, square feet  
12 of retail.

13 CHAIRPERSON GRIFFIS: Okay. Let's move  
14 ahead, then. Is there any cross? Mr. Ruffin, any  
15 questions for Mr. Jasso?

16 MR. RUFFIN: The Mayor's office  
17 determined that the economics weren't sufficient for  
18 the construction of this garage?

19 MR. JASSO: To be exact, it's the Office  
20 of the Chief Financial Officer that under the statute  
21 does the analysis and makes the determination in a

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1 certification for council.

2 MR. RUFFIN: Okay. So she certified that  
3 to the Council of the District of Columbia?

4 MR. JASSO: He certified -- the CFO  
5 certified that there were sufficient tax revenues  
6 anticipated to be generated by the project to support  
7 this level of debt.

8 MR. RUFFIN: And the Mayor's office or  
9 the Chief Financial Officer took into consideration  
10 that this whole project would be, in total, for about  
11 \$150 million in development. Am I about right?

12 MR. JASSO: It takes into account the  
13 whole analysis of the project costs. That's correct.

14 MR. RUFFIN: Okay. And so the Chief  
15 Financial Officer for the Mayor took into  
16 consideration that the government could undertake  
17 this \$42 million cost for the garage, and that that  
18 would be -- that would be a good investment in terms  
19 of the tax revenue that the government could expect.

20 Is that what you're saying? Is that what you're  
21 saying?

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1 MR. JASSO: The analysis -- the way the  
2 analysis works is that we -- we take a look at, one,  
3 based on the project as presented, X amount of  
4 retail, anchors, jobs, taxes, etcetera, because jobs  
5 and other things taken into account -- is the --  
6 there's a couple of questions.

7 One is a finding of special merit, is  
8 there merit in the sense of jobs, economic benefit to  
9 the District. The second is an analysis of the gap  
10 financing. Is there, in fact, a need for a subsidy,  
11 looking at the economics of the project.

12 Then, the third, regardless of the need  
13 for the subsidy, is there sufficient revenue?  
14 Because the way TIF works is essentially it's a --  
15 it's essentially using the taxes that the project  
16 generates. So the question is: if a project doesn't  
17 generate taxes, regardless of what the gap may be,  
18 there's no ability to finance it.

19 So it looks at the question of how much  
20 is needed, and then how much can the project support  
21 in -- kind of from a self-sufficiency basis.

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1 CHAIRPERSON GRIFFIS: If I understand  
2 you, it's like taking a loan on the project.

3 MR. JASSO: Essentially.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. JASSO: From the District's  
6 perspective, which is looking at tax revenues.

7 CHAIRPERSON GRIFFIS: Okay. Let's get  
8 refocused. I think the Board's question was going  
9 much more to why are you telling this, and how does  
10 it impact the garage and the variance. So let's have  
11 cross questions that get us to the heart of that.

12 MR. RUFFIN: Doesn't seem like that that  
13 was a consideration. Is there any documentation that  
14 what Mr. -- what the Chairperson just said was  
15 explicitly considered by the Chief Financial Officer?

16 MR. JASSO: There's a full record of  
17 certification that was submitted to council as part  
18 of the council approval. Those are both in public  
19 records as well as in the respective offices of the  
20 CEO and the Deputy Mayor. But that includes the  
21 economic analysis, the certification of that

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1 analysis.

2 MR. RUFFIN: But, Mr. Jasso, what I'm  
3 saying is the parking garage as currently envisioned  
4 would cost \$42 million or so, am I right?

5 MR. JASSO: The estimate that was looked  
6 at for the parking garage as currently configured is  
7 about \$40 million. That's correct.

8 MR. RUFFIN: If the government, for -- if  
9 the government, like me, just for some reason right  
10 now could not come up with \$42 million to pay for the  
11 parking garage, it could pay -- it could only provide  
12 what it had available, am I right? Yes or no. For  
13 the parking garage.

14 CHAIRPERSON GRIFFIS: I don't understand  
15 the question.

16 MR. GLASGOW: Mr. Chairman, can we ask  
17 the relevance of that question?

18 MR. JASSO: In other -- the relevance is  
19 I think rather apparent. In other words, the  
20 government provided the money for its parking garage  
21 to the degree it could afford it. Is that -- that's

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1 what you're saying, right?

2 MR. JASSO: Yes.

3 MR. GLASGOW: The government doesn't  
4 provide any money in a TIF.

5 MR. RUFFIN: By way of the tax increment  
6 financing revenue bonds, and by way of all of the  
7 bonds, in other words, the government measured --  
8 according to your testimony -- what it could afford  
9 and thought it would be a feasible investment for  
10 this investment.

11 CHAIRPERSON GRIFFIS: The question goes  
12 to what the "it" is. That's kind of interesting,  
13 isn't it? It's not what government can afford. As I  
14 understand your testimony, it's what the project  
15 actually can finance.

16 MR. JASSO: That's absolutely correct.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. JASSO: And, secondly, I would also  
19 stress that when we look at the economic feasibility  
20 of the project --

21 CHAIRPERSON GRIFFIS: That's it. Next

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1 question?

2 MR. RUFFIN: So, in other words, the  
3 developer said it didn't have enough money to build a  
4 garage. That's what it told you, right?

5 MR. JASSO: The request was it did not  
6 have enough -- there was not sufficient revenue in  
7 the project to build the garage with the project that  
8 was configured as a retail, anchored center.

9 MR. RUFFIN: So they asked the government  
10 to provide this TIF funding to help pay for the  
11 garage. Is that right?

12 MR. JASSO: That's correct.

13 MR. RUFFIN: Okay. And just, lastly, if  
14 -- if hypothetically this same garage -- this same  
15 garage would cost \$42 million, but -- and the  
16 developer could not pay for it, but the development  
17 would be entirely above ground, these same  
18 considerations that you raise would apply. Isn't  
19 that true?

20 MR. JASSO: I'm sorry. Restate your  
21 question.

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1 MR. RUFFIN: Let me put it this way. If  
2 the whole project involved the development of parking  
3 above ground, and the developer came to the  
4 government and said, "We needed \$50 million for the  
5 development of parking above ground on this wonderful  
6 site, on this wonderful idea," the government would  
7 basically say, "We can't afford \$50 million. We  
8 don't think that this project would generate \$50  
9 million. What would be -- a suitable investment  
10 would be no more than \$42 million."

11 Is that what -- it would have applied the  
12 same way, whether it was above ground or below  
13 ground. Isn't that right?

14 MR. JASSO: Whether it's above ground or  
15 below ground, we would go through the same analysis  
16 to see, one, what was the need, what was the amount  
17 of revenue to be generated, and what could be  
18 supported by the government.

19 MR. RUFFIN: That's all I have to say.  
20 Thank you very much.

21 CHAIRPERSON GRIFFIS: Thank you.

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Redirect?

MR. GLASGOW: No redirect.

CHAIRPERSON GRIFFIS: The agency has already left, is that correct? So they don't have any cross?

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: Any final questions? Clarifications? Very well. Thank you very much. We appreciate you being here.

Have we lost the witness that was going to speak?

MR. RUFFIN: Yes. So we can go on with the applicant's other witnesses, so we can finish this matter, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay. Are you anticipating any other witnesses at this time?

MR. GLASGOW: Yes. Only to the extent that the Board wants to hear at this point anything further about the stacked -- attendant, stacked parking. But that's going to be --

CHAIRPERSON GRIFFIS: Wants to? That

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1 really puts it open there. No, I'm kidding. Of  
2 course, that's humor at 5:30 in the evening. Whether  
3 we want to or not, if we need to -- is there  
4 clarification or questions in terms of the  
5 documentation and the graphics that were submitted,  
6 understanding of how this is going to function?

7 Is everyone clear on the fact that if  
8 this was, as has been talked about, is attendant  
9 parking that -- and Mr. Glasgow is going to correct  
10 me if my understanding is not correct -- that you  
11 would pull up in front -- I'm going to embellish to  
12 make this a little amusing while we go ahead here --  
13 and the folks in the long red coats and the top hats  
14 would take your car and drive it around to the -- to  
15 the parking garage.

16 Anyway, what you do is you would check  
17 your car in as you went down the driveway, and an  
18 attendant would take it into the structure yourself.

19 You would not drive it down to the individual  
20 parking space, is that right?

21 MR. GLASGOW: It would be one of two

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1 ways, Mr. Chairman. I could be the way that you're  
2 describing, or it could be the way that the garage in  
3 this building operates, where there are people --

4 CHAIRPERSON GRIFFIS: Where you just cram  
5 them in whenever you can find space?

6 MR. GLASGOW: Where you have attendants  
7 throughout the garage and sort of say --

8 CHAIRPERSON GRIFFIS: And they direct the  
9 car.

10 MR. GLASGOW: They direct the car and  
11 they tell you --

12 CHAIRPERSON GRIFFIS: But they also move  
13 them.

14 MR. GLASGOW: They also move them, they  
15 tell you to -- like I parked here this afternoon.  
16 They said, "Leave your key here from where you are."

17 CHAIRPERSON GRIFFIS: Back them up.

18 MR. GLASGOW: Yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. GLASGOW: So it could go -- it could  
21 go either way.

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1                   MEMBER MILLER:    Is the attendant -- I  
2                   don't know if there's a firm plan yet.    It sounds  
3                   like there is, and it sounds kind of iffy.    But do  
4                   you anticipate that there would only be attendant  
5                   parking when it got to close to capacity?

6                   MR. GLASGOW:    We believe that at least  
7                   our initial studies that Grove Slade did and they  
8                   testified to -- Lou Slade did the last time, we've  
9                   got about 20 hours during the year where we'll need  
10                  the attendant-assisted parking, or where it would be  
11                  utilized.

12                  CHAIRPERSON GRIFFIS:    But I think the  
13                  question is a good one.    It goes directly to what --  
14                  what's being proposed at this point?    So, clearly,  
15                  there would be two points in the year that you would  
16                  have it available or --

17                  MR. GLASGOW:    Right.

18                  CHAIRPERSON GRIFFIS:    Or is it on demand  
19                  or --

20                  MR. GLASGOW:    Or if it ends up being  
21                  needed more frequently than that --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GLASGOW: -- and the Board has  
3 indicated that, you know, through the approval that  
4 we would utilize it, then we would have --

5 CHAIRPERSON GRIFFIS: Right.

6 MR. GLASGOW: -- it available.

7 CHAIRPERSON GRIFFIS: Right. And, of  
8 course, we're not going to know unless it comes up in  
9 the case. But obviously we have the UI study -- I  
10 think that's what it was -- and some of the other  
11 studies that were submitted into the record  
12 indicating the demand and times of the year and all  
13 of that.

14 MR. GLASGOW: Right.

15 CHAIRPERSON GRIFFIS: We can obviously  
16 base any conditions on that, or our understanding of  
17 it.

18 MR. GLASGOW: Okay.

19 CHAIRPERSON GRIFFIS: I don't see any  
20 need to go further into this, unless you guys do.  
21 Okay.

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1                   What we're going to do, obviously, you  
2 have these documents also, Mr. Ruffin. It should be  
3 part of your case presentation, if you find it  
4 valuable to do so and address this particular issue,  
5 and all of the other ones.

6                   I think we should move on to some of the  
7 substance and get into the Office of Planning's  
8 report, and also DDOT's report. Any difficulty with  
9 that at this time?

10                   Good. Let's move ahead, then. Let's go.

11                   MR. COCHRAN: For the record, my name is  
12 Steven Cochran, District of Columbia Office of  
13 Planning. Thank you.

14                   This oral testimony, which is now being  
15 distributed to you in written form, supplements our  
16 written reports dated November 9, 2004, and  
17 December 20, 2004. The project -- the applicant has  
18 an exclusive rights agreement to build approximately  
19 486,789 square feet -- square feet of a retail  
20 complex with a Target department store occupying  
21 approximately a third of the net retail space.

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1           There will be additional retailers,  
2 smaller-scaled ones, fronting onto 14th Street or  
3 Irving Street, and larger national chains being  
4 entered from the atrium off 14th Street.

5           The applicant is seeking two forms of  
6 zoning relief. The first is a special exception to  
7 have multiple roof structures with three enclosures.

8           The second is a variance, or at least before today,  
9 and/or a special exception variance combination of  
10 relief from its parking requirements.

11           I'd like to address the roof structure  
12 first. OP has reviewed the Section 411.11 tests for  
13 the roof structure special exception on pages 9 and  
14 10 of its November 9, 2004, report. We believe the  
15 applicant has demonstrated that the exceptionally  
16 large footprint and unique HVAC requirements of the  
17 tenants require multiple mechanical units.

18           OP also believes that the applicant has  
19 demonstrated that having multiple structures with the  
20 indicated setbacks and distances from neighboring  
21 properties would actually be less intrusive than one

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1 large roof structure.

2           Parking. The evaluation of the parking  
3 relief is not quite as straightforward as that for  
4 the roof structure. The retail spaces require 1,612  
5 parking spaces. The applicant is requesting relief  
6 to provide 1,000 self-park spaces.

7           And, Mr. Chairman, I would like your  
8 guidance on whether you would like OP to address the  
9 option that the applicant had brought up earlier, but  
10 that it now appears that we're not considering, which  
11 was the combination of the special exception  
12 variance.

13           The written version of the testimony  
14 addresses it. I can skip that if you'd like.

15           CHAIRPERSON GRIFFIS: I think that it  
16 would be appropriate to skip it, as we have it in two  
17 written forms now.

18           MR. COCHRAN: Okay. So we will just be  
19 looking at the 1,000 self-park spaces, in which case  
20 we can skip over to pretty much page 4 of the written  
21 statement.

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In its supplemental report of December 20, 2004, OP recommended that the Board approve the requested variance from Section 2101.1 based on supplemental information submitted by the applicant on December 7, 2004. OP continues to recommend in favor of this option.

With respect to uniqueness and practical difficulties, the Columbia Heights Urban Renewal Plan and RLA's RFP require that this site be developed as a major uptown retail center, thereby not permitting the applicant to shift its development toward office or retail uses if it appeared infeasible to provide the full amount of required retail parking.

The site has been slated as a major retail center for over 20 years. Retail uses, as you know, have a higher ratio of parking per square foot than do general office or residential uses.

As OP summarizes on page 2 of its December 20th report, the applicant's contractor and consultant, with its engineering consultant, has determined that because of the groundwater level and

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1 the adjacency to the Metro tunnel constructing a  
2 third level of parking would present a practical  
3 difficulty to the applicant. It would not be  
4 possible to have more than 1,000 parking spaces  
5 without constructing at least a partial third level  
6 of parking, with respect to any detriment to the  
7 public good, or to the zone plan.

8           Between early November and late December  
9 of 2004, the applicant worked closely with OP and  
10 DDOT to address the added public realm needs that  
11 stem from the project's projected multi-modal split.

12       That projection indicates a higher than average  
13 number of patrons using alternative transportation  
14 modes, which is -- in plain English is walking or  
15 taking transit.

16           While such a modal split implies a  
17 reduction in the parking needed, it also implies the  
18 need for generous sidewalks, plantings, and street  
19 furniture, to enhance the public realm and to provide  
20 for public safety in an area where there will be so  
21 many pedestrians, cyclists, and arrivals for the

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1 transit station to the south and west of the project.

2 This is discussed in more detail on  
3 page 7 of OP's November 9th report.

4 The design changes to which the  
5 applicant, DDOT, and OP have agreed are summarized on  
6 page 3 of OP's December 20th report, and described in  
7 more detail in DDOT's letter dated December 20th.  
8 I'd be happy to review them if the Board wishes, but  
9 I note that Doug Noble, Associate Director of  
10 Transportation Services at DDOT is here to testify on  
11 that agency's behalf today.

12 As had been established when this Board  
13 approved a 25 percent special exception parking  
14 reduction for an earlier version of the project, in  
15 Case Number 16858, and as has been further documented  
16 in studies by Grove Slade for the present  
17 application, DC USA is a transit-oriented development  
18 project where at least 50 percent of the patrons will  
19 not be arriving by automobile. OP discusses this in  
20 some detail on page 7 of our November 9 report.

21 This project would provide 2.2 parking

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1 spaces per 1,000 square feet of net retail space.  
2 This is comparable to the 2.3 parking spaces per  
3 1,000 square feet of retail space provided by the new  
4 Gallery Place complex at Metro -- at Gallery Place  
5 Metro.

6 In its November 9th report on page 9, OP  
7 had noted three conditions that would bring the  
8 application into harmony with the zoning regulations,  
9 the zoning map, and the intent of the zoning  
10 regulations.

11 These were to demonstrate the uniqueness  
12 of the site, which OP believes the applicant has now  
13 done; to demonstrate the practical difficulty that  
14 would result from subsurface water conditions in  
15 proximity to Metro facilities, which OP believes the  
16 applicant has also now done; and to work with DDOT to  
17 ensure that the sidewalk and other public realm  
18 elements accommodate the higher than typical  
19 alternative modal split.

20 The applicant has now done this to both  
21 DDOT's and OP's satisfaction, as DDOT will later

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1 testify. And, again, since we're not looking at this  
2 other option, you can skip over page -- the rest of  
3 page 7 and page 8, and move on to new matters, which  
4 is at the top of page 9.

5 The optional attendant parking. OP  
6 believes the applicant has demonstrated that it --  
7 that the applicant meets the tests needed for the  
8 Board to grant the relief that would enable the  
9 applicant to construct only 1,000 parking spaces.  
10 DDOT has based its analysis on 1,000 self-park  
11 spaces.

12 If the Board, however, wishes to require  
13 the applicant to provide parking on certain days, OP  
14 would have no objection, provided DDOT determines  
15 that the additional parking would not have a negative  
16 impact on the public good.

17 The nature of the parking structure  
18 itself. Again, since the last hearing, several  
19 questions have arisen about the accessory nature of  
20 the parking structure and spaces. OP has asked the  
21 applicant to provide additional information or

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1 highlight previously submitted material to help the  
2 Board and the Board's legal counsel in consideration  
3 of this matter.

4 The applicant has highlighted the City  
5 Council's TIF resolution, referring to the garage as  
6 a parking facility for the DC USA project, and has  
7 sent a letter to the BZA from the RLA RC dated  
8 January 31, 2005, that describes the nature of the  
9 garage and how RLA RC intends to manage it so that  
10 its primary users will be the customers of the DC USA  
11 retail project.

12 With respect to community comments, ANC-  
13 1A supported by a split decision the original  
14 application for the 38 to 39 percent reduction in  
15 parking to allow for the 1,000-space parking lot.  
16 The ANC has also given unanimous support to the other  
17 option, one version or another, that would increase  
18 the available -- "increase the available number of  
19 parking spaces from 1,000" -- that's not 10,000,  
20 that's 1,000 -- on a self-park basis to 1,244, and  
21 that attendants would be available in the garage as

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1 needed to serve the demand for parking spaces for a  
2 retail commercial project to be developed by DC USA.

3 And I'd note that it doesn't actually  
4 refer to a special exception and variance. It simply  
5 refers to an option that would increase the available  
6 parking spaces to 1,244.

7 The councilperson for Ward 1 has also  
8 expressed strong support for the project and for the  
9 requested zoning relief.

10 In short, OP recommends the Board approve  
11 the special exception relief for roof structures, and  
12 we further recommend that the Board approve the  
13 variance relief for the parking requirements of  
14 Section 2101.1, as requested by the applicant in its  
15 prehearing statement dated November 2, 2004, with the  
16 following conditions.

17 The garage owner, successors, and assigns  
18 should structure the fee schedule and operate the  
19 garage in a manner that gives first priority to  
20 meeting the needs of the building's owners, tenants,  
21 and retail patrons; that discourages long-term and

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1 essentially all-day commuter parking; and that  
2 precludes non-hourly leasing of individual spaces or  
3 blocks of spaces.

4 OP recommends the language for this  
5 condition be based on the following, which is  
6 excerpted from the land disposition agreement dated  
7 January 17, 2003. Quoting from that, "Retailers and  
8 the project's lender will require covenants that  
9 ensure that parking will always be available for  
10 customers of the project's tenants when they want  
11 it."

12 The parking facility will be open to the  
13 public, but its pricing structure will be used to  
14 encourage retail customers to use the garage while  
15 discouraging non-retail customers during peak retail  
16 demand periods. During the week day, commuters will  
17 be encouraged to park in the facility, and the  
18 pricing will be set to discourage commuters from  
19 staying into the later afternoon or evening hours, if  
20 there are insufficient spaces available to satisfy  
21 retail customers.

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1                   Weeknights, overnight parking will be  
2                   made available to community residents, to the extent  
3                   there is no interference with the parking demand for  
4                   the retail customers.

5                   Then, the next condition. If the Board  
6                   wishes to require the applicant to provide tenant  
7                   parking on certain days in order to increase the  
8                   garage's capacity, OP would have no objection,  
9                   provided that DDOT determines that the additional  
10                  parking and the attendant queuing would not have a  
11                  negative impact on the public good.

12                  That concludes our testimony for today.  
13                  I'm certainly happy to answer any questions.

14                  CHAIRPERSON GRIFFIS: Good. Thank you  
15                  very much.

16                  Any questions from the Board? Ms.  
17                  Miller?

18                  MEMBER MILLER: What is the land  
19                  disposition agreement?

20                  MR. COCHRAN: This is a document that was  
21                  signed between the RLA RC and the developer.

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1 MEMBER MILLER: Okay. Is that in our  
2 record or not?

3 MR. COCHRAN: I think it's 130 pages  
4 long. I don't believe it's in your record.

5 MEMBER MILLER: Okay.

6 CHAIRPERSON GRIFFIS: Is it my  
7 understanding -- it's like the contract, right? If  
8 you were going to buy a piece of land and develop it,  
9 it's the contract that's signed between the two?  
10 We've heard testimony that there's an ERA and there's  
11 an LDA as part of this process. Is that the last  
12 piece of agreement between the organizations?

13 MR. COCHRAN: I believe that had the --  
14 that that -- the LDA would have been the last -- one  
15 of the last agreements.

16 CHAIRPERSON GRIFFIS: Right. I'm sure  
17 they're small.

18 MR. COCHRAN: I guarantee there's got to  
19 be other --

20 CHAIRPERSON GRIFFIS: The point is is --

21 MR. COCHRAN: -- had the project not been

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1 reconfigured.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. COCHRAN: I believe that the  
4 applicant and the --

5 CHAIRPERSON GRIFFIS: Let me --

6 MR. COCHRAN: -- RLA RC are going to have  
7 to renegotiate the --

8 CHAIRPERSON GRIFFIS: In your  
9 understanding/analysis of this for the parking  
10 variance, parking space variance, is there any need  
11 for the Board to fully understand the LDA?

12 MR. COCHRAN: I don't think the Office of  
13 Planning would ever say that you shouldn't be  
14 understanding something. I don't know whether you  
15 need to or not.

16 CHAIRPERSON GRIFFIS: Okay. You pulled  
17 the pertinent part that you think should be part of  
18 our view of this.

19 MR. COCHRAN: That's right. I thought  
20 that -- that took from their own document the kind of  
21 language that we would like to see to see that the

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1 parking serves whom we think the parking needs to  
2 serve.

3 CHAIRPERSON GRIFFIS: Excellent. Okay.

4 I'm sorry, Ms. Miller. You had other  
5 questions?

6 MEMBER MILLER: Well, I don't know if Mr.  
7 Noble is going to testify or whether I should address  
8 my transportation questions, parking questions, to  
9 him now.

10 CHAIRPERSON GRIFFIS: Well, I think he is  
11 going to present his letter, right?

12 MR. COCHRAN: He's not just here to be a  
13 pretty face.

14 MEMBER MILLER: Okay. Then I'll hold all  
15 my other questions.

16 CHAIRPERSON GRIFFIS: Okay. Any other  
17 questions of the Board for Mr. Cochran?

18 Mr. Glasgow, any cross?

19 MR. GLASGOW: No cross.

20 CHAIRPERSON GRIFFIS: Mr. Ruffin?

21 MR. RUFFIN: No, sir.

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1 CHAIRPERSON GRIFFIS: Indeed. Okay.  
2 Let's move ahead, then. Thank you very much, Mr.  
3 Cochran. We do have -- as indicated, we have two  
4 reports, and then we also have now the actual written  
5 testimony. And I'm assuming that's been passed out  
6 to everybody, is that correct? Good. Okay. Let's  
7 move ahead.

8 MR. NOBLE: Okay. Testimony from the  
9 Department -- District Department of Transportation.  
10 For the record, my name is Douglas Noble. I'm the  
11 Chief Traffic Engineer, Associate Director of the  
12 Traffic Services Administration of the Department.

13 The majority of my testimony is in  
14 concurrence with the Office of Planning and is based  
15 on the December 20th letter and subsequent  
16 information in regards to the additional 244 spaces  
17 that the applicant has proposed.

18 This may go into some esoteric detail in  
19 terms of the use of public space around the facility,  
20 so bear with me, please.

21 Okay. Thank you.

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Basically, the discussions between Office of Planning, DDOT, and the applicant were in regard to the specific areas of public space fronting the building to provide for pedestrian safety, pedestrian access, and appropriate traffic flow around the site.

This involved specifically that the developer would provide a six-car length of area in front of the main entrance that would be available for parking, with a minimum 14-foot, 11-inch sidewalk in front of that area from the farthest edge of the atrium structure to the curb. You know, DDOT's standard and preference is 16 feet, but we have agreed to the 14'11" in this location.

For the balance of 14th Street, the developer would provide a minimum 16-foot sidewalk -- again, as measured from the face of the building, the furthest edge of the face of the structure to the street, and, also, further north on 16th Street would agree to provide 14th Street an additional three-car area for parking north of the main entrance.

In between these areas, the curb line

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1 would be extended to the nearest travel lane, and the  
2 exact location of this parking area would be  
3 determined between DDOT, the developer, and the  
4 existing public realm -- work that's going on in the  
5 area.

6 Basically, the parties agreed that  
7 parking/loading in these two locations, and  
8 potentially customer-assisted loading in the parking  
9 garage, is sufficient to allow the removal of the  
10 parking area/lay-by on the park road side of the  
11 facility, as long as, you know, a sidewalk in that  
12 area is 15 foot, 8 inches. In addition, the  
13 appropriate turning radii in and out of the parking  
14 garage entrance would be provided.

15 On Irving Street, a 160-foot, 8-car-long  
16 left turn lane would be provided on approach of the  
17 intersection eastbound to 14th Street. And we've  
18 agreed to provide bump-outs from the sidewalk area to  
19 extend that area around the entrance to focus on  
20 historic facades, provide an 18-foot sidewalk in  
21 those areas.

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1                   An intermediate area along the left turn  
2 lane -- the sidewalk would be 13'6" from the face --  
3 furthest edge of the structure to --

4                   CHAIRPERSON GRIFFIS: Before we continue  
5 on with --

6                   MR. NOBLE: Sorry. This is like --

7                   CHAIRPERSON GRIFFIS: -- the esoteric, as  
8 you've described --

9                   MR. NOBLE: Yes.

10                  CHAIRPERSON GRIFFIS: -- help the Board  
11 understand how this directly relates to the reduction  
12 of parking request that we have. It would be my --

13                  MR. NOBLE: Okay.

14                  CHAIRPERSON GRIFFIS: -- understanding  
15 that, as Mr. Cochran laid out, this is a transit-  
16 oriented development.

17                  MR. NOBLE: Right. Okay.

18                  CHAIRPERSON GRIFFIS: So all these  
19 aspects are going to facilitate that type of --

20                  MR. NOBLE: Exactly. All of these  
21 aspects are -- specific aspects are going to the

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1 focus on those people who are walking either to and  
2 from where they live, or are walking to and from the  
3 existing Metro station and the transit service  
4 provided along 14th Street and along Irving Street.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. NOBLE: The idea is, you know, our  
7 standards in this area are roughly 16-foot to 20-foot  
8 sidewalks to provide the safe walkways. In  
9 conversation with the developer, the specifics of  
10 this we comfortably, with some minor reductions in  
11 these widths to allow for the building footprint,  
12 we're comfortable that safety is served and that the  
13 pedestrian and transit traffic operations will be  
14 protected.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. NOBLE: So that's a general summary  
17 of that.

18 CHAIRPERSON GRIFFIS: Good.

19 MR. NOBLE: In regard to the second  
20 matter in terms of the -- you know, the additional  
21 stacked parking that had been brought up, you know,

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1 DDOT has no particular objections if you wish to  
2 pursue that. The earlier variance or request back --  
3 I don't remember the exact date -- had it down to  
4 1,300 spaces, and at that time DDOT had said 1,300  
5 spaces and the associated traffic with the mode  
6 splits was sufficient, you know, to provide an  
7 adequate level of service around the site.

8 So, you know, our testimony is consistent  
9 with Office of Planning's in terms of what the  
10 request is. You know, it would be appropriate,  
11 however, that, you know, in the interest of reducing  
12 the amount of vehicle traffic that -- that the  
13 applicant not immediately introduce stacked parking.

14 It's an expense, and, you know, it -- it generates  
15 additional vehicle trips, which we'd rather have  
16 people walking and using transit to do. So, but we  
17 have no particular objection one way or the other.

18 And that's the conclusion of my  
19 testimony.

20 CHAIRPERSON GRIFFIS: Good. Thank you  
21 very much. You made a statement that I may have

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1 missed. You said that 1,300 spaces was adequate to  
2 deal with the demand?

3 MR. NOBLE: That was -- in an earlier  
4 application on this project there was a reduction  
5 down to 1,300 spaces which we had analyzed, and at  
6 that time the -- again, they're not a function of the  
7 demand of the trips generated by the facility, but a  
8 function of what the impact of those trips would be  
9 on the surrounding street grid.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. NOBLE: And we're okay with that.

12 CHAIRPERSON GRIFFIS: You studied this  
13 area for that type of trip generation.

14 MR. NOBLE: Yes.

15 CHAIRPERSON GRIFFIS: Do you have any  
16 comments on the applicant's traffic engineer study in  
17 terms of the demand of parking or in terms of --  
18 because we're not going to impact necessarily on  
19 intersections all around this thing, but we're going  
20 to -- but indirectly it is based on I guess the  
21 parking.

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1 MR. NOBLE: Yes.

2 CHAIRPERSON GRIFFIS: Do you have  
3 comments on that, in terms of the serviceability of  
4 this area, this retail, in terms of the parking  
5 that's being requested of 1,000?

6 MR. NOBLE: Yes. I did do a review of  
7 their traffic study. I found that the parking demand  
8 analysis that they did was appropriate with the  
9 assumed mode split for the transit and walking, which  
10 is what the focus of this project is. I'm  
11 comfortable with that.

12 You know, that study recommended a number  
13 of proposed recommendations in terms of modifying  
14 some signal timing and things like that, which  
15 overlaid with the existing Mount Pleasant/Columbia  
16 Heights transportation study and the public realm  
17 study, we can get to the same place in terms of  
18 providing the level of service and the walkability  
19 and the transit access. So --

20 CHAIRPERSON GRIFFIS: Okay. Excellent.  
21 Anything else?

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Any questions from the Board?

MEMBER MILLER: Yes.

CHAIRPERSON GRIFFIS: Indeed.

MEMBER MILLER: I'm really interested in your opinion on this, because it seems like it's a big drop from 1,612 to 1,000. And I'm wondering, is there something wrong with our regulations, or is this facility so unique and so wrapped up with -- I don't know -- its unique qualities that -- that it -- that that's why there's such a difference here in numbers.

MR. NOBLE: I thought you were going to ask me for an opinion on how we deal with transit-oriented development in our zoning regs. But the -- the way the existing rules are explicitly written, we do not have the ability in terms of those rules to adequately address those developments which are focused on transit-oriented development, to take the most advantage out of those trips that would be made outside of the regular automobile -- driving to shop or driving to work.

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1                   And I think until we take an opportunity  
2 to take a look at that we'll have variances like this  
3 coming in.

4                   MEMBER MILLER:   Okay.   And I think you  
5 also said you basically looked at their analysis and  
6 were comfortable with them.   I think I saw in OP's  
7 report or somewhere that there is an assumption that  
8 50 percent will come by means other than automobile.

9                   How do you rely on that number?   Why is  
10 that a good number?

11                  MR. NOBLE:   I rely on that number because  
12 I mentioned earlier the Columbia Heights/Mount  
13 Pleasant transportation study, and that number is  
14 consistent with the existing survey data in terms of  
15 the types of trips that people make that that study  
16 had done.   So you could quibble that it will vary  
17 five percent plus or minus that.

18                  The thing that we have found historically  
19 in terms of the different types of activity centers  
20 built around the Metro station, that the transit and  
21 the bicycle or walk to work or walk to the activity

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1 centers, many times we have underestimated that  
2 number in both mixed use development and  
3 entertainment type developments.

4 My favorite example is the MCI Center.  
5 The most generous transit split for that was 60  
6 percent. They're running around 75 percent in terms  
7 of transit usage to MCI, because people take the  
8 train or drive in, park in their garage, and they  
9 walk to the events at the arena.

10 And while that's an entertainment  
11 sporting destination, I would expect that you would  
12 wind up with a similar thing with Gallery Place and  
13 some of the other stuff where people are coming  
14 either by transit or by coming and -- already in the  
15 neighborhood and have parked their cars and then  
16 accessing the facility.

17 You have the Giant and the Tivoli  
18 Theater, and it's a great opportunity to multi-task  
19 your trip and your parking. You park once; you walk  
20 around to the other sites.

21 MEMBER MILLER: How do we know they won't

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1 park here in this lot? Because of the pricing?

2 MR. NOBLE: Pricing. It is a public lot,  
3 so, you know, anyone can walk, you know, and park  
4 here. But pricing will help dictate how the supply  
5 is utilized based on the demand that's supplied. You  
6 can get pretty creative with parking pricing, as  
7 we're working on in some of our public stuff.

8 MEMBER MILLER: And can you articulate  
9 why you're comfortable with the 1,000 number?

10 MR. NOBLE: I mean, it -- it's consistent  
11 with the mode split, the trips, and discounting it  
12 based on that mode split versus what the parking  
13 generation number is that's generated out of the  
14 standard accepted professional manuals that we use.

15 MEMBER MILLER: Okay. And then, I think  
16 when you look at this you look at traffic and parking  
17 basically.

18 MR. NOBLE: You look at traffic, parking,  
19 transit, pedestrians.

20 MEMBER MILLER: Okay.

21 MR. NOBLE: Bicycles.

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1                   MEMBER MILLER: So from a traffic point  
2 of view, are fewer parking spaces better because  
3 that's less cars coming to the parking lot?

4                   MR. NOBLE: Well, it's a parking supply,  
5 not an actual people -- number of people parking.  
6 But in terms of the impacts on the intersections, it  
7 would be less impact with fewer single -- you know,  
8 fewer cars that are going through the area.

9                   MEMBER MILLER: You don't find that there  
10 is a repercussion in that they are circling the block  
11 because they can't get into the parking lot?

12                  MR. NOBLE: We haven't seen that.  
13 Typically, the idea of parking -- applying parking  
14 spaces -- you know, enough parking supply for the  
15 development, and the type of trip-making that is  
16 happening, and that's part of the reason why if they  
17 get to that point that stacked parking is an option  
18 that they can even go to.

19                  So, and I would only suggest that stacked  
20 parking in the times of year that they end up with  
21 more parking demand than their current structure

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1 allows. Not doing it all the time, like the highest  
2 20 hours of the year, 20 days of the year that they  
3 may need to do that. I don't anticipate them needing  
4 to do that in the short term.

5 MEMBER MILLER: I got the impression you  
6 almost were not that favorable to stacked parking  
7 because you didn't want more cars coming. Is that --

8 MR. NOBLE: Well, I -- I mean, I'm always  
9 interested in protecting the level of service at my  
10 intersections, you know, the city's intersections  
11 around, you know, heavily congested areas. The more  
12 cars we have on the street, the less easy it is for  
13 transit buses and other -- and pedestrians to cross  
14 the street and get through the traffic stream. So  
15 it's a balancing act.

16 MEMBER MILLER: Right. Okay. Thank you.

17 CHAIRPERSON GRIFFIS: Anything else from  
18 the Board?

19 Cross, Mr. Glasgow?

20 MR. GLASGOW: No, sir.

21 CHAIRPERSON GRIFFIS: Mr. Ruffin?

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1 MR. RUFFIN: Yes, sir, briefly.

2 CHAIRPERSON GRIFFIS: Good.

3 MR. RUFFIN: Mr. Noble, you indicated  
4 that you operated on the assumption that 50 percent  
5 of the people who would visit this mall would get  
6 there by transit, rather than by automobile.

7 MR. NOBLE: Actually, the assumption is  
8 35 percent transit, 15 percent walking.

9 MR. RUFFIN: And you --

10 MR. NOBLE: Not automobile uses.

11 MR. RUFFIN: -- said 35 percent transit,  
12 and what?

13 MR. NOBLE: And 15 percent walk and bike.  
14 I believe that's in the reported documents.

15 MR. RUFFIN: And if I'm not mistaken, you  
16 cited the Columbia Heights/Mount Pleasant  
17 transportation study. Did you say that?

18 MR. NOBLE: I did say that.

19 MR. RUFFIN: You're talking about the  
20 Cambridge Systematics?

21 MR. NOBLE: Sir, yes. You have it in

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1 front of you. I do see it.

2 CHAIRPERSON GRIFFIS: We need to  
3 understand. Is it the Cambridge study, or is there  
4 another study that --

5 MR. NOBLE: There was a study done under  
6 contract to DDOT by Cambridge Systematics.

7 CHAIRPERSON GRIFFIS: All right. So  
8 that's -- what you called the Columbia Heights/Mount  
9 Pleasant study --

10 MR. NOBLE: Yes.

11 CHAIRPERSON GRIFFIS: -- is actually the  
12 Cambridge --

13 MR. NOBLE: Now, for example, the -- now,  
14 just as a note, the 35 and 15 percent was projected  
15 in Grove Slade's study, specifically. That specific  
16 number is in that study -- the 35 and the 15.

17 MR. RUFFIN: You're relying on Mr. Slade,  
18 not the Cambridge Systematics --

19 MR. NOBLE: I'm relying on Mr. Slade  
20 and --

21 CHAIRPERSON GRIFFIS: I'm going to set up

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1 a little rhythm here. Mr. Ruffin is going to ask  
2 full questions.

3 MR. NOBLE: Yes.

4 CHAIRPERSON GRIFFIS: Sit for a moment.

5 MR. NOBLE: Okay.

6 CHAIRPERSON GRIFFIS: And think about  
7 what he asked, and then you're going to answer  
8 directly back to specifically what he said.

9 MR. NOBLE: Okay.

10 CHAIRPERSON GRIFFIS: We've got to slow  
11 it down a little bit, because I can't get all this.

12 MR. NOBLE: Okay.

13 CHAIRPERSON GRIFFIS: And more  
14 importantly, the transcript can't get it. So, Mr.  
15 Ruffin, state your question again. Did we resolve  
16 the first question of what report he was referring to  
17 in the Columbia Heights/Mount Pleasant realm?

18 MR. RUFFIN: I thought so.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. NOBLE: I think so.

21 CHAIRPERSON GRIFFIS: Good. Then, you

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1 guys are clear. Let's move on.

2 MR. RUFFIN: Okay. So what I'm -- I was  
3 asking you, though, Mr. Noble was, is it true that  
4 you're relying in your testimony on Mr. Slade's  
5 study?

6 MR. NOBLE: I'm relying on a set of  
7 different items -- Mr. Slade's study, our study that  
8 was done under contract by Cambridge Systematics, my  
9 professional experience, and other traffic  
10 information that I'm aware of that has been prepared  
11 for that area.

12 MR. RUFFIN: Very briefly, Mr. Noble,  
13 isn't it true that on page 1-9 of the Cambridge  
14 Systematics studies it reads, "Traffic volumes on  
15 14th Street are highest during the evening peak."  
16 Over the course of a typical week day, approximately  
17 24,500 vehicles use this portion of 15th Street --  
18 14th Street.

19 It adds, "Irving Street carries  
20 approximately 10,300 vehicles -- vehicular trips on  
21 an average week day, and traffic volumes are highest

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1 during the evening peak period."

2 Are you familiar with that?

3 MR. NOBLE: I am familiar with it. I  
4 don't have that study in front of me to refer to. I  
5 mean, it might be -- does anyone else have an extra  
6 copy of it? I don't happen to have my copy with me.

7 CHAIRPERSON GRIFFIS: Right. We'll get  
8 you a copy. Do you have specific questions on those  
9 figures? Excellent.

10 MR. RUFFIN: Just very --

11 CHAIRPERSON GRIFFIS: Let's let him  
12 review it first.

13 MR. NOBLE: Pardon me while I get this  
14 one in front of me. I don't happen to have the  
15 transportation study. Oh, okay. Which page are you  
16 referring to?

17 MR. RUFFIN: 1-9, sir.

18 MR. NOBLE: 1-9?

19 MR. RUFFIN: Yes, sir.

20 MR. NOBLE: Okay. Okay. That's -- yes.

21 What you stated was what it says in the study.

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1 MR. RUFFIN: Okay. On the next page,  
2 1-10, please -- please tell me, am I reading  
3 correctly, doesn't that study also say Columbia  
4 Heights and Mount Pleasant are challenged by the  
5 large numbers of commuters that travel through the  
6 neighborhoods? Am I reading that correctly?

7 MR. NOBLE: That's verbatim what that  
8 sentence says.

9 MR. RUFFIN: It reads further, "Although  
10 the neighborhoods develop historically around transit  
11 and the pedestrian, they are now facing a tremendous  
12 influx of vehicles on a daily basis." Did I read  
13 that correctly?

14 MR. NOBLE: Yes. You're -- go on ahead.

15 MR. RUFFIN: Okay. And it reads that  
16 much of this commuter traffic, the vehicular traffic,  
17 is on 16th Street, Georgia Avenue, and also on 14th  
18 Street, Sherman Avenue, and several of the east/west  
19 roadways, such as Columbia Road and Irving Street, on  
20 a regular basis, am I right?

21 MR. NOBLE: Yes.

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1 MR. RUFFIN: The study that you referred  
2 to, it also says, "The challenges to accommodate  
3 these commuters, while addressing neighborhood  
4 concerns regarding high speeds, pedestrian safety,  
5 and heavy traffic volumes," am I right?

6 MR. NOBLE: That's what it says.

7 MR. RUFFIN: Now, this study was designed  
8 to examine -- actually it was published in January  
9 2004, am I correct?

10 MR. NOBLE: Whatever the study date is.  
11 Yes, that's what -- that is the date on the cover.

12 MR. RUFFIN: And on page 1-9, it  
13 indicates that the study took place over a two-week  
14 period in the spring of 2003, am I right?

15 MR. NOBLE: Yes.

16 MR. RUFFIN: And then, further, on page  
17 1-11, it talks about the large amount of computer --  
18 pardon me, commuter vehicular travel that goes right  
19 through this community. Isn't this right?

20 MR. NOBLE: Yes. That's what it talks  
21 about is one of the surrounding issues that is a

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1 concern.

2 MR. RUFFIN: And I'm about to close, but  
3 I just wanted to be clear. On page 1-11, it mentions  
4 that a general assessment was made of the magnitude  
5 of commuter traffic during peak hours. Do you see  
6 that at the beginning of the first full paragraph?

7 MR. NOBLE: Yes.

8 MR. RUFFIN: Further down it reads,  
9 "Maryland and Virginia plates likely represent  
10 commuters. In addition, a number of the District of  
11 Columbia registered vehicles also are likely  
12 commuters living in other neighborhoods either  
13 adjacent to or some distance from Columbia Heights  
14 and Mount Pleasant." Did I read that correctly?

15 MR. NOBLE: You read that correctly.

16 MR. RUFFIN: Then it talks about 58  
17 percent of the -- you know, it talks about the large  
18 number of vehicles --

19 MR. NOBLE: Yes.

20 MR. RUFFIN: -- traveling through the  
21 area, right?

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1 MR. NOBLE: Yes.

2 CHAIRPERSON GRIFFIS: And now the zinger  
3 question?

4 MR. RUFFIN: And so --

5 MR. NOBLE: Yes. Where is this going?

6 MR. RUFFIN: And so the basic thing is  
7 that --

8 CHAIRPERSON GRIFFIS: Pardon me. It's  
9 really inappropriate, but I want to get to the heart  
10 of the question in terms of where you're going. We  
11 -- actually, the Board has had this, and we've  
12 actually all read it, believe it or not. And he  
13 doesn't need to introduce it into evidence.

14 I appreciate the pointing of the specific  
15 parts, but let's get to any direct questions of the  
16 interpretation or his analysis of this information,  
17 and then how it --

18 MR. RUFFIN: Yes.

19 CHAIRPERSON GRIFFIS: -- led to his  
20 conclusions.

21 MR. RUFFIN: Yes, sir.

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1                   If I'm not mistaken, Mr. Noble, there's  
2 no place in -- in the Cambridge Systematics report  
3 that indicates that there is going to be 35 percent  
4 Metro, subway, bus, or other travel to this proposed  
5 mall, or anything like that. Is that right?

6                   MR. NOBLE: Let me take the opportunity  
7 to look through other sections of this report that  
8 relate to transit walking and bicycle --

9                   MR. RUFFIN: Please take your time.

10                  MR. NOBLE: -- things that I don't happen  
11 to know off the top of my head.

12                  CHAIRPERSON GRIFFIS: And while he's  
13 doing that, because he understood the question, could  
14 you just repeat it for me?

15                  MR. RUFFIN: I asked whether I was  
16 correct in my understanding that there's no portion  
17 of the Cambridge Systematics report that indicates 35  
18 percent of the people traveling to this proposed mall  
19 would be by -- would arrive there by transit.

20                  CHAIRPERSON GRIFFIS: Okay. Excellent.  
21 So what you're saying is, based on all of this

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1 analysis that -- and what you've pointed it to -- is  
2 look at all of the problems. They have documented  
3 the problems. And now you're saying, so where in  
4 this study is the analysis that -- that we can count  
5 on 35, 15, total 50 percent using public  
6 transportation or walking?

7 MR. RUFFIN: Yes, sir.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. NOBLE: Quick question. Chip, does  
10 your copy of this have page 1-36 in it at the tail  
11 end? This copy appears to be missing some pages.

12 CHAIRPERSON GRIFFIS: Well, here's the  
13 heart of the question, I think, as I understand what  
14 Mr. Ruffin is actually putting it to. The heart of  
15 the question is where he began. Where did you come  
16 up with, and why do you have reliance on, the fact  
17 that this project will be able to count on having  
18 that type of modal split? Meaning the percentages of  
19 people. What gives you the confidence that 50  
20 percent are walking or taking public transportation?  
21 Is that a fair question?

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1 MR. RUFFIN: Yes, sir.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. NOBLE: Well, actually, what I would  
4 suggest is we look at a number of things in the  
5 report, and actually probably the first thing to look  
6 at is the demographics that are on page 1-4 of the  
7 report. And it shows how different people get to  
8 work by the mode of transportation that they use in  
9 the report.

10 And you'll see items for -- this is for  
11 work trips, but, you know, walking or bicycling and  
12 transit to work are very high percentages on that  
13 page.

14 Now, this is talking about people who  
15 live in this area. There is also some information,  
16 though I don't have the page number specifically,  
17 about auto ownership in the immediate area. If this  
18 set of people who are walking and bicycling to work,  
19 or taking transit to work, that means that they are  
20 not using the other mode of transportation that they  
21 may not have.

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1                   We have also found in the Parking Task  
2 Force study that this portion of Columbia Heights has  
3 one of the lower auto ownership rates in the city;  
4 therefore, implying heavier transit use, implying  
5 heavier walking than other locations. So the  
6 demographic background of the area, and these  
7 percentages -- well, divvied up across the area --  
8 lead one to believe that the need and the usage by  
9 modes other than a car is going to be very high, on  
10 the order of what --

11                   CHAIRPERSON GRIFFIS: Isn't that on the  
12 assumption that this development serves directly that  
13 -- that population that surrounds this parcel?

14                   MR. NOBLE: Exactly.

15                   CHAIRPERSON GRIFFIS: Is that what you're  
16 -- that's what your reliance or confidence in that  
17 percentage of --

18                   MR. NOBLE: Yes.

19                   CHAIRPERSON GRIFFIS: -- public  
20 transportation?

21                   MR. NOBLE: Yes.

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1 CHAIRPERSON GRIFFIS: So we've talked  
2 about the retail tenant that is proposed or is part  
3 of this when it goes through. You're saying that  
4 that is just going to be utilized by those people  
5 that live a walkable distance from this?

6 MR. NOBLE: Those people -- that portion  
7 of the people. You know, it's all -- there are going  
8 to be people coming from further away as well. There  
9 is a catchment area for the people who want to come  
10 shop at this location.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. NOBLE: Especially for the larger  
13 retailers. But there are also a lot of neighborhood  
14 retailers associated with all the different trips on  
15 the ground floor surrounding the site.

16 CHAIRPERSON GRIFFIS: Okay. So we have,  
17 as I understand the question being asked of you for  
18 this percentage, that we have -- let's call it the  
19 neighborhood serving population. And out of that  
20 maybe it's higher than 50 percent. You're saying  
21 it's low car ownership.

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1 MR. NOBLE: Right.

2 CHAIRPERSON GRIFFIS: It's a high  
3 pedestrian. So if you look at them as 100 percent,  
4 let's call them -- they definitely make the 50  
5 percent, right?

6 MR. NOBLE: Right.

7 CHAIRPERSON GRIFFIS: Fifty percent --  
8 half drive, half don't. Okay. Now, where is your  
9 analysis of those that aren't within the  
10 neighborhood, those that are -- that have to get  
11 there from outside? Where was the breakdown or your  
12 analysis of -- and confidence in that percentage of  
13 usage of non-driving transportation?

14 MR. NOBLE: Okay. Well, actually, you  
15 know, in some ways it ends up being a -- you know,  
16 you've got the whole population. You subtract the  
17 part that you know what they're doing, and you have  
18 the remaining population of people in terms of what  
19 they're doing. That's part of the equation.

20 CHAIRPERSON GRIFFIS: We've got no  
21 problem with that.

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1 MR. NOBLE: Okay. We know what people  
2 within the study area are doing.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. NOBLE: It's been fairly well  
5 documented, both the socioeconomic data, the  
6 transportation data. We know what the people are  
7 doing, who are driving through, and who are  
8 commuting, as this gentleman pointed out. And we're  
9 looking at --

10 CHAIRPERSON GRIFFIS: They're speeding.  
11 Oh, no, that wasn't in the study. Okay. Go ahead.

12 MR. NOBLE: Well, not during rushhour.  
13 It's congested. But the thing is is by no -- by  
14 taking a look at what we do specifically know, and  
15 for those areas -- which, you know, accounts for that  
16 mode split, that we can look at going back the other  
17 direction, saying, "Okay. For those populations we  
18 don't explicitly have the information for, how much  
19 detail do we need?" You know, we have a very good  
20 detail in one area.

21 The other thing is is it -- even if we're

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1 talking about the mode split shifting, say to 40  
2 percent, you're still not shifting the amount of  
3 demand for the parking spaces a significant amount  
4 relative to the supply of the parking spaces that's  
5 being proposed under either of these two scenarios.

6 CHAIRPERSON GRIFFIS: Okay. Any follow  
7 up?

8 MR. RUFFIN: No. I think your follow up  
9 was good enough, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

11 MEMBER MILLER: Since we're looking at  
12 this Cambridge parking study -- I mean, Cambridge  
13 transportation study, I just want to get a  
14 clarification from you. On page 2-33 --

15 MR. NOBLE: Excuse me. Steve borrowed  
16 this. 2-33, yes.

17 MEMBER MILLER: Okay. I think parcel 27  
18 grid properties is -- that's this development that  
19 we're talking about?

20 MR. NOBLE: Yes.

21 MEMBER MILLER: Okay. And it has a

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1 calculated parking demand of 1,139 spaces, and was  
2 that based on the old plan? Or is this based -- is  
3 that based on this plan?

4 MR. NOBLE: I would -- I do not know for  
5 sure. But based on the date of this report, this was  
6 based on the information that was available at the  
7 time they did the data collection to prepare these  
8 reports. So likely it was based on the earlier  
9 information based on the dates that I have heard in  
10 terms of what -- this information that has been  
11 provided. I can get -- provide you a specific answer  
12 confirming back with staff.

13 MEMBER MILLER: Okay. Because, I mean,  
14 it would say that they would need 139 more spaces  
15 based on this plan --

16 MR. NOBLE: Yes.

17 MEMBER MILLER: -- here. The applicant  
18 may know as well, I don't know.

19 MR. GLASGOW: This was the old plan.

20 MR. NOBLE: I said it was based on the  
21 larger older one, so --

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1 MEMBER MILLER: Okay. I just wanted to  
2 get that for the record. Thank you.

3 MR. NOBLE: Okay. Thank you.

4 CHAIRPERSON GRIFFIS: Very well. Lastly,  
5 looking at the applicant's submission on their  
6 revised traffic impact analysis, they make several  
7 conclusions at the end, page 21. It's attached as  
8 Exhibit G, I believe it is. Did you do an assessment  
9 for -- or did you rely -- do you have confidence in  
10 the numbers of the statement that the DC USA site  
11 would generate approximately 190 and 839 vehicle  
12 trips in the a.m. and p.m. peak hours, respectively?

13 I'll give you a moment to get to that, but it's  
14 basically going to --

15 MR. COCHRAN: What page are we on, Mr.  
16 Chair?

17 CHAIRPERSON GRIFFIS: Page 21.

18 MR. COCHRAN: Thank you.

19 CHAIRPERSON GRIFFIS: Of the October 4,  
20 2004. It's the sixth bullet point down there.

21 MR. NOBLE: Yes. It's the third from the

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1 bottom up?

2 CHAIRPERSON GRIFFIS: That's correct.

3 MR. NOBLE: Okay. Hold on a second,  
4 please. I did have an opportunity to review -- just  
5 refreshing my memory, I did have an opportunity to  
6 review this versus, you know, the directions of  
7 approach and the trip generation rates that they use  
8 for these developments, and they are appropriate.

9 CHAIRPERSON GRIFFIS: Okay. So you can  
10 -- you have reliance on the -- knowing this size  
11 facility, that it would -- it could be projected.  
12 Obviously, it's not 100 percent scientific, but it is  
13 somewhat scientific in your formula.

14 MR. NOBLE: Yes.

15 CHAIRPERSON GRIFFIS: Do you have  
16 confidence in the fact of the trip generations and  
17 the difference between the morning and the evening?

18 MR. NOBLE: Yes.

19 CHAIRPERSON GRIFFIS: Okay. And then  
20 going up to the bold statement and its conclusions --  
21 go ahead.

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1 MR. NOBLE: I just want to make a point  
2 of clarification. These trip rates are based on the  
3 peak hour of the adjacent street traffic, so it's  
4 going to be a lot lower in the morning, because many  
5 of the stores aren't going to be open at that hour,  
6 just -- that's why the difference in the number.

7 CHAIRPERSON GRIFFIS: Right. I'm pretty  
8 clear on that.

9 MR. NOBLE: Okay.

10 CHAIRPERSON GRIFFIS: But it's an  
11 excellent point to bring out, because one might  
12 question it. How do you have 190 in the morning and  
13 839 in the evening? But, obviously, it's when  
14 they're being utilized.

15 The fourth assertion in their conclusion  
16 is that the proposed DC USA plan is consistent with  
17 the Cambridge Systematics report, except for on-  
18 street parking in front of 14th Street main entrance  
19 has been limited to reduce the potential for street  
20 and sidewalk congestion. Are you also in agreement  
21 of that statement?

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1 MR. NOBLE: I would suggest that this  
2 statement has been superseded by the negotiations  
3 between DC USA, Office of Planning, and DDOT, as it  
4 relates to the public realm project that resulted in  
5 the narrowing of -- you know, the adjustments to the  
6 sidewalk widths and the parking areas.

7 CHAIRPERSON GRIFFIS: And that's covered  
8 in your letter.

9 MR. NOBLE: That's covered in my letter.

10 CHAIRPERSON GRIFFIS: Okay. So it  
11 actually -- you could -- this is obviously a very  
12 general statement and conclusion. One could say, "As  
13 noted in your letter," and it would make that a  
14 statement --

15 MR. NOBLE: Yes.

16 CHAIRPERSON GRIFFIS: -- that you agree  
17 with.

18 MR. NOBLE: Yes.

19 CHAIRPERSON GRIFFIS: Okay. Good. I  
20 don't have anything further. Any other Board members  
21 have anything further?

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1 Follow up questions, Mr. Glasgow? Any --

2 MR. GLASGOW: Just with respect to  
3 Exhibit H, on page 66, Mr. Noble, Table 24, Summary  
4 of Transit Mode Share for Retail --

5 MR. NOBLE: This is the WMATA ridership  
6 survey study?

7 MR. GLASGOW: The WMATA December '89  
8 study, that's correct.

9 MR. NOBLE: Which page are you referring  
10 to?

11 MR. GLASGOW: 66.

12 MR. NOBLE: 66.

13 MR. GLASGOW: Has a summary of transit  
14 mode share for retail.

15 MR. NOBLE: Yes.

16 MR. GLASGOW: And you'll see the  
17 percentages used there.

18 MR. NOBLE: Yes.

19 MR. GLASGOW: And those are consistent  
20 with your findings in this project?

21 MR. NOBLE: Yes, they are. Just for

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1 summary purposes for the Board, it indicates --  
2 Table 24 indicates that the transit percentage for  
3 CBD locations is between 45 and 50 percent, and for  
4 suburban locations inside the beltway between 34 and  
5 40.7 percent.

6 So the target that they're talking about  
7 is -- for the transit is, you know, they're saying 35  
8 percent, which is for transit specifically, and 15  
9 percent for walking. So it is consistent and  
10 actually lower than the two percentages cited here.

11 CHAIRPERSON GRIFFIS: That's clear. Yes.  
12 We'll point it out to you in a moment.

13 Okay. Anything else? Excellent. Thank  
14 you very much.

15 Oh, yes. Mr. Ruffin? Last question, or  
16 last questions. I'm not going to let the Board speak  
17 anymore. It's all you.

18 (Laughter.)

19 MR. RUFFIN: You're so kind. You're so  
20 kind.

21 On the last point that was brought up by

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1 Mr. Noble -- Mr. Noble, you're citing to a 1989 study  
2 that was performed or commissioned by the Washington  
3 Metropolitan Area Transit Authority, am I right?

4 MR. NOBLE: That is the study listed  
5 under Exhibit H.

6 MR. RUFFIN: Okay. And --

7 MR. NOBLE: Yes.

8 MR. RUFFIN: -- are you aware that that  
9 Table 24 that you just referred to, when it talks  
10 about CBD locations, it's talking about the central  
11 business district or downtown locations?

12 MR. NOBLE: Yes.

13 MR. RUFFIN: Okay. In other words,  
14 downtown locations such as Union Station, the shops,  
15 you know, where the parking requirements are vastly  
16 different from the C-3-A District where the proposed  
17 mall would be constructed. You are aware of that,  
18 right?

19 MR. NOBLE: Yes.

20 MR. RUFFIN: Also, are you aware that it  
21 says "all retail locations"?

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1 MR. NOBLE: Yes.

2 MR. RUFFIN: Okay. And it talks in terms  
3 of all retail locations having -- well, you mentioned  
4 the CBD, the downtown locations, having, for example,  
5 the percentage of subway/bus traffic to downtown  
6 locations. That would be from 45.3 percent to 55.3  
7 percent. Am I right?

8 MR. NOBLE: Yes.

9 MR. RUFFIN: Okay. In other words, this  
10 is the amount of travel by individuals traveling to  
11 certain locations in downtown D.C., right?

12 MR. NOBLE: For the purpose of retail.

13 MR. RUFFIN: That's what this survey  
14 covers, right?

15 MR. NOBLE: Right. For the purpose of  
16 retail.

17 MR. RUFFIN: For purposes of retail. And  
18 also, when you look at that, it also talks about just  
19 -- I had to get that background. It talks about all  
20 retail locations as the last category, right?

21 MR. NOBLE: That number there would be

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1 all retail locations in the entire Metropolitan  
2 Washington region.

3 MR. RUFFIN: Well --

4 MR. NOBLE: As areas served by transit.

5 MR. RUFFIN: As areas examined by the  
6 survey, isn't that right?

7 MR. NOBLE: Exactly.

8 MR. RUFFIN: Okay. For example, the  
9 downtown locations or central business district  
10 locations only examined four particular sites, am I  
11 right?

12 MR. NOBLE: During this --

13 MR. RUFFIN: That's what the survey says,  
14 right?

15 MR. NOBLE: Right.

16 MR. RUFFIN: And then, it says for  
17 suburban locations inside beltway. It has four  
18 additional sites.

19 MR. NOBLE: Yes.

20 MR. RUFFIN: Isn't that right? Then, it  
21 has suburban locations outside of the beltway. It

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1 has zero sites, right?

2 MR. NOBLE: Yes.

3 MR. RUFFIN: And so all retail locations  
4 examined in this survey for people traveling for  
5 retail purposes included eight locations, right?

6 MR. NOBLE: Correct.

7 MR. RUFFIN: In other words, this survey  
8 examined travel by people either to suburban malls or  
9 shops or to downtown shops, am I right, for retail  
10 purposes?

11 MR. NOBLE: I don't think I would  
12 characterize the locations in that manner for the  
13 suburban locations without knowing what the specific  
14 list of those locations is.

15 MR. RUFFIN: Well, the --

16 MR. NOBLE: My understanding of this  
17 study, having known a number of the individuals who  
18 are involved with it, the suburban locations inside  
19 the beltway were locations like Ballston, for  
20 example, in Arlington, which has -- and Rosslyn in  
21 Arlington, which I would not -- certainly, Rosslyn I

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1 would not qualify as "a suburban mall."

2 MR. NOBLE: Well, if you look on Table 23  
3 on pages 64 and 65, it lists the actual locations,  
4 doesn't it, sir?

5 MR. NOBLE: Yes.

6 MR. RUFFIN: Okay. The Underground at  
7 Crystal City is one location, am I right?

8 MR. NOBLE: Yes.

9 MR. RUFFIN: That's certainly suburban  
10 when you're talking about D.C., am I right? Yes or  
11 no.

12 MR. NOBLE: I would say if you qualify  
13 suburban as anything outside the central business  
14 district of the District of Columbia, yes.

15 CHAIRPERSON GRIFFIS: I'm sorry. Let me  
16 interrupt you, because that's actually near and dear  
17 to my heart, defining what is suburban and what's  
18 urban. But isn't your direct question: where does  
19 this fit in?

20 MR. RUFFIN: That's exactly what --

21 CHAIRPERSON GRIFFIS: This parcel -- this

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1 project, is it downtown, or is it suburban? Or how  
2 does it fit in in terms of your calculation and  
3 confidence in the percentage breakdown?

4 MR. NOBLE: Well, if you look at -- well,  
5 if you look at the number for the suburban locations  
6 they're talking about in the list, the percentage  
7 assumed by the study report is actually less than  
8 that average. It's 35 percent for transit, and this  
9 study report shows 38 percent, a more generous  
10 percentage than what the applicant is assuming.

11 MR. RUFFIN: But, Mr. Noble, the point is  
12 that this survey doesn't examine the sort of mall  
13 that would operate at 14th and Park Road, am I right?

14 It doesn't talk about a neighborhood mall at 14th  
15 and Park Road.

16 MR. NOBLE: No, it does not talk  
17 specifically about that site.

18 MR. RUFFIN: Instead, it talks about  
19 either downtown or big mall shops in places like  
20 Crystal City, Rosslyn, or Bethesda. Am I right?  
21 That's -- if you look at the Table 23, that's exactly

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1 what's listed.

2 MR. NOBLE: That is the table of  
3 locations that were listed that were surveyed. Each  
4 of these locations is, on its own, unique in terms of  
5 the shops, the businesses, the square footages, that  
6 exist at those locations. This site in Columbia  
7 Heights is unique in terms of the shops, businesses,  
8 etcetera, in that location especially taken in total  
9 with the entire development that's going on in  
10 Columbia Heights.

11 When one does analysis like this, and  
12 reviews analysis like this, one needs to take  
13 examples and other proximate, if not -- if not  
14 identical locations, and draw the appropriate  
15 analogies in terms of the statistical information  
16 that's provided, and perform the analysis  
17 accordingly.

18 MR. RUFFIN: The basic thing, though, Mr.  
19 Noble is that the DC USA Mall, as it's supposed to be  
20 called if constructed, is not either in downtown or  
21 in Ballston, Crystal City, or any location like that.

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1       Instead, it's in Columbia Heights, a distinct  
2 community in upper northwest.

3               MR. NOBLE:       Yes.       That's a true  
4 statement.

5               MR. RUFFIN:   And, moreover, this study,  
6 which was conducted --

7               CHAIRPERSON   GRIFFIS:       These are  
8 questions, right?

9               MR. RUFFIN:   Yes.

10              CHAIRPERSON GRIFFIS:   Okay.

11              MR. RUFFIN:       This study which was  
12 conducted almost 16 years ago examined travel to  
13 either downtown locations or huge malls, which are  
14 vastly distinct from, as you said, this project on  
15 14th Street. Am I right?

16              MR. NOBLE:   I would not characterize the  
17 suburban locations inside the beltway as huge malls.

18              MR. RUFFIN:       Well, they're vast  
19 locations --

20              MR. NOBLE:       The locations that are  
21 characterized in here, the shops at Crystal City,

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1 Bethesda, Metro Center, and Ballston Commons, at the  
2 time this study was conducted I would not  
3 characterize in that manner.

4 MR. RUFFIN: Last point, though, Mr.  
5 Noble, even in this Washington Metropolitan Area  
6 Transit Authority study, dated 1989, there is nowhere  
7 in the study where it says that you should, or anyone  
8 else should, assume that there would be 50 percent  
9 travel from outside of the Columbia Heights area to  
10 the Columbia Heights area by people intending to  
11 patronize this proposed mall. Isn't that true?  
12 There's no place --

13 MR. NOBLE: That is not true. You're  
14 confusing two statistics.

15 MR. RUFFIN: No, I'm just saying --

16 MR. NOBLE: Let me finish.

17 MR. RUFFIN: I'm just --

18 MR. NOBLE: Let me make my clarification.

19 MR. RUFFIN: My question, though, is  
20 this, Mr. Noble. There is no place in this  
21 Washington Metropolitan Area Transit Authority study

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1 that says 50 percent of the people who will visit  
2 this proposed mall for purposes of retail will arrive  
3 there by way of public transportation. Isn't that  
4 true? Or bicycle or -- nothing like that.

5 MR. NOBLE: I would like to make a  
6 clarification to the question as asked, and then  
7 answer the question. The split that is described in  
8 the Grove Slade study is 35 percent for transit, not  
9 50 percent. So in that context, if you reask the  
10 question, I will answer it.

11 MR. RUFFIN: There is no -- first of all,  
12 my question is -- the answer to my question is no.  
13 But even no your -- your question that you asked me  
14 to ask --

15 MR. GLASGOW: Mr. Chairman, I'd like to  
16 make sure that I object to that statement. He  
17 answered the question for the witness. So I would  
18 object to that.

19 CHAIRPERSON GRIFFIS: Okay. I thought it  
20 was a question back. But thanks for the  
21 clarification. Okay. Right. Let's not answer our

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1 own questions, but have --

2 MR. GLASGOW: As you were asking --

3 MR. RUFFIN: I was asking, in the  
4 Washington Area -- Metropolitan Area Transit  
5 Authority study dated 1989. There is nothing in that  
6 study that says 35 percent of the people who will  
7 travel to the proposed mall at 14th and Park Road  
8 will do so either by subway, bus, bicycle, or any  
9 other means, isn't that true? It doesn't say  
10 anything about that, does it?

11 CHAIRPERSON GRIFFIS: Okay. Let him  
12 answer the question.

13 MR. NOBLE: The answer is yes to that  
14 question. There's nothing explicitly in this study  
15 that says anything about that project.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. RUFFIN: Thank you. Thank you.

18 CHAIRPERSON GRIFFIS: Good. Whew.

19 MEMBER MILLER: I don't know if you've  
20 answered this, because it's getting late, but I -- I  
21 think it's a really interesting table, Table 23, that

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1 lists the other types of facilities, etcetera, and  
2 the percentages of how people get there.

3 And I'm sure there are similarities and  
4 differences between each of these facilities. I'm  
5 just wondering, how do you use this kind of chart in  
6 determining numbers for like this specific  
7 development?

8 MR. NOBLE: What we typically do is take  
9 a look at the transit usage percentage, take a look  
10 at the type of retail that's in this associated  
11 development, and true it up with what is proximate to  
12 the development that we're looking at and see what's  
13 the most appropriate thing.

14 This is very similar to the type of  
15 analysis that was done that supported the  
16 environmental documentation to build the New York  
17 Avenue Metro station. It is accepted practice in the  
18 field, and this document -- this WMATA document is an  
19 accepted document for using for this type of  
20 application for development around Metro stations.  
21 So it's a common accepted practice in this area for

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1 development studies.

2 MEMBER MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: Very well. Let's  
4 move on. I don't have any other questions. The  
5 Board doesn't have any questions. You're not  
6 prepared to do anything more?

7 Okay. Let's assess where we are. It's  
8 6:30. That would finish the government reports. As  
9 I have indicated, all of those are submitted into the  
10 record.

11 Oh, yes, I guess we can take up the issue  
12 -- of course, it's in the record, it has been talked  
13 about, but let's just make note -- we have an  
14 additional letter from a councilmember in Ward 1.  
15 Actually, it was addressing the new application  
16 iteration. We also had an original letter, which was  
17 Exhibit Number 22 in the record -- Exhibit Number 58,  
18 and 22 now, from the Councilmember of Ward 1, Jim  
19 Graham.

20 At this point, Mr. Ruffin, we'd be  
21 prepared to move forward on your case presentation.

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1 Let me ask you, first of all, how long you would need  
2 to present your case, and how many witnesses you'll  
3 have, and whether you want to proceed tonight.

4 MR. RUFFIN: I would -- I plan to present  
5 three witnesses. Two of them would actually come  
6 from the applicant, just very brief testimony, and my  
7 whole case I imagine would take about -- would take  
8 about a half hour to 45 minutes.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. RUFFIN: If the Board would want to  
11 continue to another day, I can make myself available.

12 But I would imagine that, assuming that the cross  
13 examination would not be exceedingly long, that at  
14 the most it would take 45 minutes.

15 CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow,  
16 any difficulty in continuing for the opposition's  
17 case presentation tonight? Time-wise.

18 MR. GLASGOW: Moving forward on that?  
19 No, that's fine. Mr. Greenwald did have to leave to  
20 catch a flight.

21 CHAIRPERSON GRIFFIS: Okay. All right.

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1 Let's get to the point now. Mr. Ruffin, you made a  
2 question -- a statement that you're going to call  
3 some of the applicant's witnesses?

4 MR. RUFFIN: Actually, I wanted to call  
5 Mr. Greenwald for about three questions.

6 CHAIRPERSON GRIFFIS: But -- I'm sorry.  
7 But is this part of a cross examination? I don't  
8 understand.

9 MR. RUFFIN: It would be to put into  
10 evidence something that Mr. Greenwald would be privy  
11 to.

12 CHAIRPERSON GRIFFIS: Oh. You just need  
13 him to document the authenticity of --

14 MR. RUFFIN: The document -- yes, right.

15 CHAIRPERSON GRIFFIS: I don't think we  
16 need to rise to that standard of legal procedure in  
17 this. You should present your case. If the  
18 witnesses from the applicant actually are the ones  
19 that could refute it, well, frankly, it's going to be  
20 to their detriment that they can't stay.

21 But I don't think I'm having you call

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1 their witnesses, because conceivably all they need to  
2 say is they don't want to be your witness. We can't  
3 subpoena them to come and testify. So it's a  
4 difficult thing to call them as witnesses, unless  
5 they are absolutely voluntary. But I think we ought  
6 to get that together. Did that make sense?

7 MR. RUFFIN: I'm surprised by that rule,  
8 but I'm not familiar with the Board as much as I am  
9 with some other -- the other -- some other forms.  
10 So --

11 CHAIRPERSON GRIFFIS: Which rule? That I  
12 can't --

13 MR. RUFFIN: No. I thought that I could  
14 actually call --

15 CHAIRPERSON GRIFFIS: Right.

16 MR. RUFFIN: -- them to testify, but no.  
17 Mr. Greenwald is here. If he has to go, or if he  
18 won't submit to testimony --

19 CHAIRPERSON GRIFFIS: What is the  
20 documentation you're putting in?

21 MR. RUFFIN: It is the land disposition

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1 and development agreement between Mr. Greenwald's  
2 company and RLA revitalization company.

3 CHAIRPERSON GRIFFIS: What did OP say?  
4 All 130 pages of it? You just want him to  
5 authenticate the fact that that's the agreement?

6 MR. RUFFIN: Basically, yes, authenticate  
7 that as the agreement.

8 CHAIRPERSON GRIFFIS: That's fine.

9 MR. RUFFIN: And cite -- there's about  
10 two sentences, and that's it.

11 CHAIRPERSON GRIFFIS: He doesn't need to  
12 read them in. You're going to read them in.

13 MR. RUFFIN: I'll read them to --

14 CHAIRPERSON GRIFFIS: No, no, no. I  
15 don't need -- I don't think we need him, but here is  
16 the other piece. What other documentations are you  
17 proposing to put in that you wanted --

18 MR. RUFFIN: That's the only document. I  
19 received it from the government by way of request.

20 CHAIRPERSON GRIFFIS: Yes. I don't think  
21 anyone is going to refute its authenticity.

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1 MR. RUFFIN: Okay. Well --

2 CHAIRPERSON GRIFFIS: You said several  
3 witnesses. What others?

4 MR. RUFFIN: I was going to actually put  
5 on Mr. Slade, and also our Chair of the Trustees  
6 Board. That would be it.

7 CHAIRPERSON GRIFFIS: Okay. That's good.  
8 You're going to put on -- I would suggest that you  
9 have one of your witnesses give rebuttal testimony to  
10 Mr. Slade's report as part of your case presentation.

11 But I don't think you can call him, as in a cross  
12 examination posture, as a witness. Does that make  
13 sense?

14 MR. RUFFIN: I didn't know that rule. I  
15 didn't know about that rule before the Board. I have  
16 to admit that since that happens in court, and since  
17 that happens in the few -- in the Boards that I've  
18 been to, I thought -- I assumed that it was  
19 appropriate here. My mistake.

20 CHAIRPERSON GRIFFIS: Exactly. No --

21 MR. RUFFIN: I stand corrected.

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1 CHAIRPERSON GRIFFIS: It's totally  
2 understandable.

3 MR. RUFFIN: Okay.

4 CHAIRPERSON GRIFFIS: And, you know,  
5 we'll work hard to get me those powers, but --

6 (Laughter.)

7 -- for the -- for this evening's  
8 procedure, I don't have them.

9 Do you have a question?

10 MR. GLASGOW: No, not at this point.  
11 We'll see how it unfolds.

12 MR. COCHRAN: Mr. Chairman, I just wanted  
13 to clarify one thing. Office of Planning testified  
14 that that was the LDA that was applicable during the  
15 -- for the --

16 CHAIRPERSON GRIFFIS: Okay. We don't  
17 need to --

18 MR. COCHRAN: -- before it was reduced in  
19 size.

20 CHAIRPERSON GRIFFIS: I'm not going to  
21 hold you to -- the point is it's a huge document.

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1 Okay. We're going to take a recess. We're going to  
2 take 10 minutes.

3 MR. RUFFIN: Okay.

4 CHAIRPERSON GRIFFIS: You're going to get  
5 together your thoughts, and then we're going right  
6 into your case presentation. I would anticipate that  
7 we'll close out this evening with your conclusion.

8 MR. RUFFIN: Okay.

9 CHAIRPERSON GRIFFIS: Which would leave  
10 left only rebuttal witnesses and closings, which I  
11 think we can squeeze in anywhere. I'm going to check  
12 the schedule and --

13 MR. RUFFIN: We're going to take the  
14 rebuttal tonight?

15 CHAIRPERSON GRIFFIS: No. No. What I  
16 anticipate is just getting through the -- your case  
17 this evening.

18 MR. RUFFIN: Okay.

19 CHAIRPERSON GRIFFIS: Because, quite  
20 frankly, the Board has been here since 8:00 this  
21 morning.

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MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: So in an hour we will have been here 12 hours.

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: And our attention span is going to diminish. So in order to give you full focus on this, I think that's as far as we'd be able to go this evening. But everyone is here.

But I want to give you time to put together your case presentation now knowing that you aren't calling other witnesses.

And when we get to the fact of the LDA, this is what I'm going to specifically request -- anything you submit into this record the Board reads. Not only do we have to, we do read it. So I don't want 130 pages to have to read if it's not pertinent to your case presentation. So all you're going to need to do is highlight for us those absolute pertinent parts, and then tell us the conclusions which you are drawing based on those documents.

MR. RUFFIN: Oh, I see.

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1 CHAIRPERSON GRIFFIS: The world is open  
2 to you at this point, only confined by the variance  
3 in parking that we're looking at. So make your  
4 assertions, have your witnesses testify to that  
5 aspect, and we can get through this very quickly.

6 MR. RUFFIN: Mr. Griffis?

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. RUFFIN: Just for purposes of the  
9 contract between Greer Properties and RLA  
10 Revitalization Corporation, since the document is to  
11 be presented in evidence, and also since I was  
12 mistaken in thinking that I could have Mr. Greenwald  
13 testify under cross examination to focus my inquiry,  
14 can I, after sharing them with Mr. Glasgow, just read  
15 the pertinent provision which is two sentences long?

16 CHAIRPERSON GRIFFIS: Oh no, absolutely.

17 MR. RUFFIN: And it's already  
18 highlighted, and so --

19 CHAIRPERSON GRIFFIS: All I'm saying is  
20 what you're going to give us in hard copy and into  
21 evidence is those pieces that you want us to look at,

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1 because I don't want -- unless you want me to read  
2 the entire document --

3 MR. RUFFIN: Okay, fine.

4 CHAIRPERSON GRIFFIS: That's all. All  
5 I'm saying is we're going to focus this straight  
6 down.

7 MR. RUFFIN: No problem.

8 CHAIRPERSON GRIFFIS: We don't need the  
9 whole document. And, obviously, we'll -- we'll know  
10 what it is because you're going to tell us what it  
11 is.

12 Okay. Everyone clear on where we're  
13 going? 10 minutes? Do you need more? 15 minutes?  
14 All right.

15 MR. RUFFIN: No problem.

16 CHAIRPERSON GRIFFIS: It'll be in that  
17 timeframe.

18 MR. RUFFIN: That's probably enough.  
19 Thank you, sir.

20 CHAIRPERSON GRIFFIS: Excellent.

21 (Whereupon, the proceedings in the foregoing matter

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went off the record at 6:42 p.m. and went back on the record at 7:05 p.m.)

CHAIRPERSON GRIFFIS: Let's resume.

MR. RUFFIN: I don't know whether it's marked as an exhibit or whatever, but what I shared with the board was a copy of exhibit C, which is part of the land disposition and development agreement between RLA Revitalization Corporation and DCUSA Operating Company and the Greer Group for the sale and development of parcel 27, which we know of as the DCUSA mall project.

The whole contract; that is, the land disposition and development agreement; that is, the main portion of the agreement, is about 77 pages. That is not pertinent for the board's review.

This exhibit C that is a part of the contract is titled "Parcel 27, DCUSA Development Plan Summary." That is important. And the only part that I bring to the board's attention is on the first page, the beginning of the fourth paragraph. It reads, "There will be enclosed parking for

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1 approximately 1,364 cars and 3 below-grade levels.  
2 The amount of parking spaces was approved by Zoning  
3 Board of Adjustment action, application number 16858,  
4 decision dated April 23, 2002."

5 It reads further, "The test borings  
6 indicate that soil conditions will enable the site to  
7 be excavated to this level without groundwater  
8 problems." This is the operative statement in the  
9 agreement between the parties.

10 And I bring that to the attention of the  
11 board because this would operate as an admission by  
12 the applicant as well as by Greer Properties,  
13 Incorporated.

14 Now, I let that document serve as  
15 information in and of itself. I bring a witness for  
16 our case-in-chief, the Chair of the Board of Trustees  
17 for Kelsey Temple Church of God in Christ, Ms.  
18 Dolores Ruffin.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MS. RUFFIN: Good Afternoon. My name is  
21 Dolores Ruffin. I am Chair of the Trustee Board for

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1 the Kelsey Temple Church of God in Christ. I have a  
2 statement that I will read for the record.

3 The Kelsey Temple Church of God in Christ  
4 is located at 1435 Park Road, Northwest. It's  
5 directly across the street from the site of the  
6 proposed DCUSA mall.

7 Kelsey Temple Church has existed since --  
8 well, it's been in existence since 1923, when our  
9 former pastor and bishop started it in this area, but  
10 it's been, I guess, formed as an organization since  
11 1926 and has been located at 1435 Park Road since  
12 1958.

13 At present, Kelsey Temple Church leases  
14 the parking lot in the parcel where RLA  
15 Revitalization Corporation hopes to construct the  
16 DCUSA mall and its underground parking lot.

17 The church manages the parking lot as a  
18 publicly available facility where residents, business  
19 owners, local area employees, business travelers, and  
20 others may use the parking lot for an affordable  
21 daily or monthly fee. As for Kelsey Temple Church

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1 itself, it uses the parking lot in order to provide  
2 off-street parking for its parishioners and its  
3 visitors.

4           Depending on the worship service or other  
5 public gathering at the church, parishioners and  
6 other visitors at the church may use from 75 to 350  
7 parking spaces on any day of the week, including  
8 Sunday.

9           Also, Kelsey Temple makes the parking lot  
10 available for employees and managers working for the  
11 Temple Building and Economic Development Corporation.

12           The parking lot needs for this part of  
13 Columbia Heights must be examined in much broader  
14 terms than may be the needs of Kelsey Temple Church  
15 of God in Christ and its parishioners.

16           The Columbia Heights community has about  
17 50,210 residents, or about 9 percent of the total  
18 District of Columbia population according to the 2000  
19 U.S. census.

20           Indeed, according to a study performed by  
21 the Kelsey Temple Church parishioners, who examined

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1 the parking needs in this community, the following  
2 information appears to be important.

3 The following residential premises  
4 provide the following amounts of living space and  
5 off-site street parking. Next door to the church are  
6 the Samuel Kelsey Apartments at 3322 14th Street, has  
7 150 apartment units but 28 off-street parking spaces.

8 Across the street from the church at 1448  
9 Park Road, there are 45 apartment units but no  
10 off-street parking. Up the street from the church,  
11 the Tiveley Apartments at 3237 Hyatt Place has 30  
12 apartment units but no off-street parking.

13 Nearby, 3228 Hyatt Place has 21 apartment  
14 units but no off-street parking. Next door to that  
15 building is 3240 Hyatt Place, which will accommodate  
16 6 condominium apartments and 6 off-street parking  
17 spaces underground.

18 On the west side of the church, 1445 Park  
19 Road has 54 apartment units but no off-street  
20 parking. Next to that building, 1451 Park Road has  
21 80 apartment units but only 18 off-street parking

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1 spaces. And the next building, which is at 1457 Park  
2 Road, has 45 apartment units but merely one  
3 off-street parking space.

4 On the same side of Park Road as Kelsey  
5 Temple Church from 1471 Park Road to 1531 Park Road,  
6 there are 11 apartment buildings with a total of 83  
7 apartment units but only 27 off-street parking  
8 spaces. On the opposite side of Park Road, from 1502  
9 Park Road through 1512 Park Road, there are 6  
10 residential buildings with 8 dwelling units and one  
11 off-street parking space.

12 At Sacred Heart Catholic Church, the  
13 parish has a three-car garage. At 1450 Irving  
14 Street, 1454 Irving Street, and 1460 Irving Street,  
15 these three residential buildings have a total of 93  
16 apartment units but no more than 25 off-street  
17 parking spaces.

18 In other words, the residential community  
19 immediately surrounding the site of the proposed  
20 DCUSA mall has a total of about 613 individual  
21 dwelling units but only 109 off-street parking

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1 spaces.

2 Under 11 DCMR 2101.1, there should be one  
3 off-street parking space for each of two dwelling  
4 units in the area. Hence, the area should have at  
5 least 370 off-street parking spaces for residents.  
6 The community is shortchanged by 198 off-street  
7 parking spaces for residential dwelling spaces.

8 Moreover, according to our survey, this  
9 community includes 20 stores, including pharmacies,  
10 beauty shops, and restaurants on 14th Street from  
11 Irving Street to Monroe Street and on Park Road from  
12 14th Street to Hyatt Place.

13 In addition, this business trip includes  
14 one health clinic, the Unity Health Clinic; and one  
15 bank, Riggs National Bank. This business trip  
16 includes one small church, Iglesia Apostolic  
17 Pentcostial; and two large churches, Sacred Heart  
18 Catholic Church and Kelsey Temple Church of God in  
19 Christ, which both hold about 1,200 seats apiece in  
20 their separate sanctuaries.

21 Under 11 DCMR 2101.1, the two churches

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1 would have an obligation to provide about 120  
2 off-street parking spaces at each church. As for  
3 this entire business community, including the bank,  
4 the health clinic, and 3 churches, they have a total  
5 of about 20 off-street parking spaces in this entire  
6 community; that is, unless we include the off-street  
7 parking presently available at the 1400 Park Road  
8 parcel proposed for development by DCUSA mall. That  
9 address is 1420 Park Road, Northwest.

10 Our study also included a look at the  
11 traffic backup on Park Road from 14th Street to 16th  
12 Street in the evenings and on weekends. And I have  
13 pictures here to enter into the record that will show  
14 that there is a constant -- oh, okay. I know what  
15 they say. There is a constant stream of traffic.  
16 You can see the cars that are just bumper to bumper  
17 like rush hour traffic in that area and on that  
18 particular block.

19 While I don't have it from personal  
20 knowledge, I know that the traffic backs up around  
21 14th Street and across the street onto Kenyon, but

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1 that particular block of 14th and 15th Streets, it's  
2 bumper to bumper in the afternoons, in particular, on  
3 Sundays.

4 The other thing I'd like to --

5 MR. GLASGOW: Did you want to introduce  
6 these into the record?

7 MS. RUFFIN: Yes, yes.

8 MR. RUFFIN: Yes.

9 MR. GLASGOW: All right. Mr. Chairman, I  
10 don't have any objection to them taken into the  
11 record. They're not dated, and there is no time  
12 shown on them or any of that information.

13 MS. RUFFIN: I'm sorry. I'm sorry.

14 MR. GLASGOW: And it will be taken in for  
15 what they're worth with respect to photograph showing  
16 cars on certain streets.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. RUFFIN: They were taken on December  
19 the 18th. And the development date is on the back of  
20 December 20th, 2004. I'm sorry. I did miss that  
21 piece of information.

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1                   It's the 1400 block of Park Road. It's  
2 the block between 14th Street and 16th Street on Park  
3 Road, Northwest.

4                   CHAIRPERSON GRIFFIS: Are you clear on  
5 the fact that these are now in the record? You're  
6 not getting these back.

7                   MS. RUFFIN: Yes.

8                   CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow,  
9 are you requiring copies of these?

10                  MR. GLASGOW: No, sir.

11                  CHAIRPERSON GRIFFIS: Obviously we'll put  
12 them into the record. We'll probably put them on  
13 sheets, and they can be made into copies as required.

14                  Okay. Please continue.

15                  MS. RUFFIN: Okay. I wanted to also  
16 refer to the Urban Land Institute report. Oh, he  
17 tells me I have to read the parking requirement for  
18 shopping centers, summary recommendations and  
19 research study report, the second edition, Urban Land  
20 Institute. And this date is 2000, the second  
21 printing in 2000. And I'm looking at section 2, page

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1 3. And it says -- are you all with me?

2 CHAIRPERSON GRIFFIS: Section 2, page 3.

3 MS. RUFFIN: Yes.

4 CHAIRPERSON GRIFFIS: Go ahead.

5 MS. RUFFIN: Okay. It says, "On the  
6 other hand" -- and it's talking about I guess  
7 analyzing the traffic and the need. "On the other  
8 hand, the amount of parking needed at a shopping  
9 center is increased by." There are two variables  
10 here that should be pointed out: proportion of  
11 restaurant, cinema, and entertainment land use,  
12 treatment of employee parking during shopping peaks.

13 And also, if you go down further, it  
14 says, "The parking ratio recommendations, table 1  
15 shows the recommended number of spaces for 1,000  
16 square feet of gross leasable area. And it's  
17 recommending 4 spaces for every 1,000 square feet.  
18 That's from" --

19 CHAIRPERSON GRIFFIS: Is that attendant  
20 to the restaurant, entertainment, employee parking, 4  
21 per 1,000?

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1 MS. RUFFIN: That's correct, yes. Yes,  
2 it would be for that, but then it could go up from  
3 there, yes. Okay.

4 Did I answer his question? Oh, yes, it  
5 says that it increases because of that.

6 CHAIRPERSON GRIFFIS: My question only  
7 is, you indicated it's a 4 per 1,000 square feet  
8 ratio --

9 MS. RUFFIN: Right.

10 CHAIRPERSON GRIFFIS: -- that the ULI is  
11 concluding is required. And you started out saying  
12 in that portion of restaurant entertainment and how  
13 employee parking is dealt with. Is that 4 per 1,000  
14 for the restaurant intertwinement? No. It's just  
15 for a base level of retail.

16 MS. RUFFIN: Yes. It's the -- right.  
17 It's the base level.

18 CHAIRPERSON GRIFFIS: Your point is, if I  
19 understand you correctly, if you add restaurant and  
20 entertainment, it may increase from --

21 MS. RUFFIN: It may go up from there,

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1 yes.

2 CHAIRPERSON GRIFFIS: And obviously,  
3 depending on how you deal with employee parking, it  
4 could also increase that ratio?

5 MS. RUFFIN: That's my understanding,  
6 yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. RUFFIN: Okay. Indeed, this is a  
9 grave situation that we have before us. In fact,  
10 what I understand, the newly proposed DCUSA mall  
11 would add to this community 26 new businesses,  
12 including at least 2 large big box commercial  
13 establishments, a new Target department store, and a  
14 Washington health club.

15 In other words, this project seems to be  
16 designed to change our quaint neighborhood into a  
17 mini downtown with densely situated commercial  
18 establishments that would very likely displace the  
19 residents, the churches, and the small businesses  
20 presently in the neighborhood. In fact, this new  
21 project will take away our valuable off-street

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1 parking. This would severely harm our neighborhood.

2 For that reason and for the purpose of  
3 saving the parking so desperately needed by our  
4 neighborhood, Kelsey Temple Church of God in Christ  
5 and the Temple Church Building Economic Development  
6 Corporation oppose this application.

7 Thank you very much.

8 CHAIRPERSON GRIFFIS: Thank you.

9 Shall we interrupt with questions on this  
10 witness, Mr. Ruffin, now and then go to  
11 cross-examination? And then we'll go to the --

12 MR. RUFFIN: I have no questions. So if  
13 either Mr. Glasgow or the Board have questions to ask  
14 of the witnesses --

15 CHAIRPERSON GRIFFIS: That's what I mean.

16 MR. RUFFIN: Go right ahead.

17 CHAIRPERSON GRIFFIS: Do you mind if we  
18 go into questions at this point?

19 MR. RUFFIN: Go.

20 CHAIRPERSON GRIFFIS: Okay. Let's do so.

21 Let's start with the last piece that you made a

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1 statement in terms of for the community, you want to  
2 save the parking.

3 MS. RUFFIN: Yes.

4 CHAIRPERSON GRIFFIS: And, therefore, the  
5 assumption in my understanding of your testimony is  
6 that if this is built, you're not saving that  
7 parking.

8 So help me understand. If you have, as  
9 you would describe this, a public parking surface  
10 parking lot now, which is utilized, how is what is  
11 being proposed different, although it's underground?

12 My understanding of the testimony provided is that  
13 it also is a public parking structure.

14 MS. RUFFIN: It is a public parking  
15 structure, but in previous testimony, it has been  
16 made very clear that the parking would be for the  
17 people that are utilizing the mall. And that's not  
18 -- the church would not be utilizing the mall, not to  
19 say that some of our parishioners wouldn't, but that  
20 wouldn't be the purpose for people coming who are  
21 attending the church services.

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1                   Likewise, the other obstinacies in the  
2 community would be coming in to open their shops or  
3 the beauty salon, people going to that shop. And  
4 that's not in the mall. That's currently in the  
5 community.

6                   And currently the parking that we provide  
7 is affordable to people coming into the community for  
8 those reasons. And it's been made abundantly clear  
9 here that the pricing will be set such that others  
10 will not use it.

11                   CHAIRPERSON GRIFFIS:       Okay.       That's  
12 well-stated, and I think I perfectly understand your  
13 position. Based on the programming of what has been  
14 described here, you think it would, in fact, not be  
15 available for the uses you've needed to use the  
16 surface parking?

17                   MS. RUFFIN:   That's correct.

18                   CHAIRPERSON GRIFFIS:       You made a  
19 statement that this would displace residents. I  
20 think I understand you said and churches and retail.

21                   MS. RUFFIN:   And businesses, yes.

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1 CHAIRPERSON GRIFFIS: How does this  
2 directly go to displace residents?

3 MS. RUFFIN: Well, if things developed  
4 such that people can't continue their normal daily  
5 activities or daily lives the way they are used to  
6 them, they would find themselves having to move out  
7 of the area.

8 CHAIRPERSON GRIFFIS: So it goes to your  
9 last statement of the fundamental change --

10 MS. RUFFIN: Right, right.

11 CHAIRPERSON GRIFFIS: -- in the entire  
12 area?

13 MS. RUFFIN: Right.

14 CHAIRPERSON GRIFFIS: Okay. I understand  
15 that. In your calculation back on this 4 per 1,000,  
16 did you have an opportunity to put that ratio in the  
17 square footage of what is being proposed? I guess  
18 directly saying, am I supposed to understand that,  
19 even based on -- are you making the statement, even  
20 based on the ULI study, this doesn't meet that  
21 requirement of projected retail demand for parking?

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1 MS. RUFFIN: As I recall from the people  
2 who have been looking at this report, their  
3 conclusion was that it does not.

4 CHAIRPERSON GRIFFIS: And who are the  
5 people?

6 MS. RUFFIN: It was a group of folk that  
7 were working with our attorney and briefing us on  
8 what they were finding.

9 CHAIRPERSON GRIFFIS: Okay. And that is  
10 important information. Who are these people? I  
11 don't want to know their names. Are they  
12 transportation engineers or are they people that can  
13 read these documents, which are good reading late at  
14 night, when you can't fall asleep, or --

15 MS. RUFFIN: There was an architect  
16 working with him and also a law student.

17 CHAIRPERSON GRIFFIS: Okay. Actually, an  
18 assessment, to put it into perspective of what we're  
19 looking at around the area in classification, I just  
20 want to make sure because I was writing it diligently  
21 down. You indicated that there are approximately 613

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1 residential units in the surrounding area existing.

2 MS. RUFFIN: Right.

3 CHAIRPERSON GRIFFIS: I'm assuming that's  
4 not what's proposed or under development. Is that  
5 correct?

6 MS. RUFFIN: That's correct.

7 CHAIRPERSON GRIFFIS: And the provision  
8 of only 109 off-street dedicated parking spots for  
9 those units?

10 MS. RUFFIN: I think, yes.

11 CHAIRPERSON GRIFFIS: And out of all the  
12 stores that you listed, --

13 MS. RUFFIN: Yes.

14 CHAIRPERSON GRIFFIS: -- including the  
15 two churches that --

16 MS. RUFFIN: Three churches.

17 CHAIRPERSON GRIFFIS: Right. I know you  
18 mentioned three. And 2 of them, you indicated that  
19 there were upwards of 2,400 total seats.

20 MS. RUFFIN: Yes, that's correct.

21 CHAIRPERSON GRIFFIS: The total parking

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1 for those was actually 20. Was I correct?

2 MS. RUFFIN: That's correct, yes.

3 CHAIRPERSON GRIFFIS: Twenty total  
4 off-street parking. Is that for the retail  
5 establishments?

6 MS. RUFFIN: No, no, no. The 20 -- let  
7 me see. Where am I?

8 CHAIRPERSON GRIFFIS: You made a  
9 statement that --

10 MS. RUFFIN: Yes.

11 CHAIRPERSON GRIFFIS: Let me see if it's  
12 correct.

13 -- 20 off-street --

14 MS. RUFFIN: Twenty off-street parking  
15 spaces in --

16 CHAIRPERSON GRIFFIS: -- available for  
17 all of the retail and church existing.

18 MS. RUFFIN: Right, but -- that's  
19 correct. And that's basically looking at the space  
20 that would be available between those two churches,  
21 yes.

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1 CHAIRPERSON GRIFFIS: Okay. How did you  
2 arrive at all of these numbers?

3 MS. RUFFIN: We walked around the  
4 neighborhood, went into the buildings, and saw what  
5 was there.

6 CHAIRPERSON GRIFFIS: So you've  
7 physically walked all of these and counted?

8 MS. RUFFIN: Yes, along with -- not me  
9 alone but --

10 CHAIRPERSON GRIFFIS: Right. Understood.

11 MS. RUFFIN: Yes.

12 CHAIRPERSON GRIFFIS: Get into the  
13 process of it. Lastly, you made a statement in your  
14 opening that the church utilizes anywhere from 75 to  
15 350 spaces --

16 MS. RUFFIN: That's correct.

17 CHAIRPERSON GRIFFIS: -- during the week  
18 and Sunday.

19 MS. RUFFIN: That's correct.

20 CHAIRPERSON GRIFFIS: Talk a little bit  
21 more about the actual times and demand. Is that

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1 weekday evenings? And then would you for activities  
2 that are happening within the church have roughly 75  
3 or 100? And then Sundays, you would anticipate  
4 that's your big parking demand day, I would assume.

5 MS. RUFFIN: Well, it really depends.  
6 Sundays we probably will go anywhere normally 75 to  
7 100 spaces normally on a Sunday. But if there is  
8 some type of service, special service, it could very  
9 well go up.

10 The timing could be we start our morning  
11 prayer at 9:00 o'clock. If we have an afternoon  
12 service, it generally starts around 3:00 or 4:00  
13 o'clock. And so the need for the church on Sunday is  
14 all day. And it could vary.

15 Also, any time you have a funeral, we  
16 don't know whether that is going to be Monday. It's  
17 generally not on a Sunday.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. RUFFIN: Well, it's not on a Sunday  
20 in the District.

21 CHAIRPERSON GRIFFIS: I understand.

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1 MS. RUFFIN: But it could be Monday  
2 through Saturday depending upon the family size and  
3 what have you.

4 CHAIRPERSON GRIFFIS: But in terms of  
5 regular activities during the week?

6 MS. RUFFIN: During regular activities  
7 during the week, for our normal -- and I hesitate to  
8 do this --

9 CHAIRPERSON GRIFFIS: Yes.

10 MS. RUFFIN: -- because this church is  
11 what we call the mother church in the District of  
12 Columbia for the Church of God in Christ. And  
13 oftentimes we have our district as well as  
14 jurisdictional functions there. So I hesitate to do  
15 this, but if it's no one but us, normally during the  
16 week, it might be 50 parking spaces and then up on  
17 Sunday.

18 CHAIRPERSON GRIFFIS: And that's evening  
19 times?

20 MS. RUFFIN: That's evening time, yes.

21 CHAIRPERSON GRIFFIS: Okay. Other

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1 questions?

2 MEMBER MILLER: I just want to make sure  
3 I have your numbers right, too.

4 MS. RUFFIN: Yes.

5 MEMBER MILLER: I mean, basically there  
6 are 350 spaces in the parking lot right now; is that  
7 right, available? Is that wrong? I want to get it  
8 right.

9 MS. RUFFIN: Yes. Yes, yes. It's about  
10 400 there now that we use.

11 CHAIRPERSON GRIFFIS: I'm sorry. To  
12 clarify, because I recall from earlier testimony in  
13 this application that it was substantially less than  
14 that, --

15 MS. RUFFIN: That's right.

16 CHAIRPERSON GRIFFIS: -- we're talking  
17 about in this site --

18 MS. RUFFIN: That's correct.

19 CHAIRPERSON GRIFFIS: -- and the paved  
20 area.

21 MS. RUFFIN: That's correct.

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1 CHAIRPERSON GRIFFIS: And you think  
2 there's upwards of 400 parking spaces?

3 MS. RUFFIN: Yes, sir. The space that's  
4 in the lease from RLA is one number, but then there's  
5 actually more space than that that we have been  
6 parking on.

7 CHAIRPERSON GRIFFIS: I see.

8 MEMBER MILLER: So I guess there are two  
9 numbers. How many spaces are there in this lot?

10 MS. RUFFIN: It's about --

11 MEMBER MILLER: How many spaces do you  
12 lease?

13 MS. RUFFIN: I guess we lease about  
14 around 200, yes, according to the lease, yes.

15 MEMBER MILLER: Okay. Because today I  
16 wrote down 350 spaces any day, including Sunday. Is  
17 that wrong?

18 MS. RUFFIN: Let me clarify something on  
19 the lease. Okay. All I can tell you is I know what  
20 we can get on there. And we can get that many cars  
21 on there.

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1 CHAIRPERSON GRIFFIS: "That many" being  
2 400?

3 MS. RUFFIN: Yes, roughly 400.

4 MEMBER MILLER: You can get 400 cars on  
5 that lot?

6 MS. RUFFIN: Right. Roughly, yes.

7 MEMBER MILLER: And how many do you use?

8 MS. RUFFIN: How many do we use  
9 ordinarily? I think I said earlier that on a Sunday,  
10 we use anywhere from 75 to 100 spaces normally.

11 MEMBER MILLER: So who uses the other  
12 spaces?

13 MS. RUFFIN: The Hispanic church uses  
14 some of them, and the businesses in the community  
15 that are open on Sunday also --

16 CHAIRPERSON GRIFFIS: Do they utilize  
17 spaces that you have leased?

18 MS. RUFFIN: Yes.

19 CHAIRPERSON GRIFFIS: Okay. So there are  
20 others outside of the church that utilize those lease  
21 spaces?

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1 MS. RUFFIN: Oh, yes. Yes, yes.

2 MEMBER MILLER: How many spaces do you  
3 have leased?

4 MS. RUFFIN: Well, that's where --

5 CHAIRPERSON GRIFFIS: She said  
6 approximately 200.

7 MS. RUFFIN: The area we are parking now,  
8 I know that RLA testified earlier that it was  
9 something like 200 spaces. And I know what our lease  
10 says. But we actually park more cars than what they  
11 say and what the lease says. I can't explain it.

12 CHAIRPERSON GRIFFIS: If this is a  
13 footprint of the site which is showing in the parking  
14 garage, which, look, it's not the entire site, but  
15 clearly we're looking at a fairly substantial portion  
16 of the site, do you park all across? Oh, there we  
17 are. Good site plan. Thank you very much. Do you  
18 park across that entire site?

19 MS. RUFFIN: Point it out to me which one  
20 it is.

21 CHAIRPERSON GRIFFIS: He is giving some

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1 directions. That's Park on the top.

2 MS. RUFFIN: Yes. We park from starting  
3 at Park Road going back to the alley.

4 CHAIRPERSON GRIFFIS: Okay. So there are  
5 existing buildings on the site.

6 MS. RUFFIN: Yes.

7 CHAIRPERSON GRIFFIS: So you park, let's  
8 just say for clarity and graphics, you park on the  
9 top half of that portion of the parcel, subtracting  
10 where the existing buildings are.

11 MS. RUFFIN: Yes.

12 CHAIRPERSON GRIFFIS: Okay. How many  
13 cars do you have on a deck?

14 MR. PRIFTI: Five hundred.

15 CHAIRPERSON GRIFFIS: Five hundred cars  
16 on a deck. Okay. I'm having a little trouble just  
17 figuring 400 in that space, but let's move ahead.

18 MS. RUFFIN: Okay.

19 CHAIRPERSON GRIFFIS: Go ahead.

20 MEMBER MILLER: Okay. Well, let me try  
21 to confirm another number. I think you said that you

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1 went around the community and you saw what type of  
2 buildings were different places.

3 MS. RUFFIN: Right.

4 MEMBER MILLER: And each of those types  
5 of uses have parking spaces under the regs that they  
6 are supposed to have basically. And then I think you  
7 said the community was 198 short.

8 MS. RUFFIN: Right.

9 MEMBER MILLER: Okay. Now, that 198  
10 number, does that take into account this parking lot  
11 or not? I mean, after all the cars that can fit in  
12 this parking lot, say it's 400, are you still 198  
13 short or are you 198 short not including this  
14 parking?

15 MS. RUFFIN: Not including the parking  
16 lot. The parking lot makes up the difference.

17 MEMBER MILLER: Well, it sounds like the  
18 parking lot has more spaces, then, because if it has  
19 400 spaces and the shortage was 198, not including  
20 the parking lot, there would be a 202 surplus.

21 MS. RUFFIN: Yes, but, you know, I don't

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1 know. It accommodates the church, and it  
2 accommodates the community on Sundays. And it  
3 accommodates the community during the week. I don't  
4 know. It might be that, you know, some people are  
5 not utilizing that at the same time or that it could  
6 be others that don't own cars, you know.

7 MEMBER MILLER: Is the parking lot at  
8 capacity most of the time? Is it full or is it not?

9 MS. RUFFIN: On Sundays, it's pretty much  
10 at capacity, yes. And then there is parking on both  
11 sides of the street on Sunday.

12 MEMBER MILLER: Okay. Thank you.

13 CHAIRPERSON GRIFFIS: So you control that  
14 site? Is there an attendant that controls who  
15 utilizes it?

16 MS. RUFFIN: During the week, yes, we  
17 have an attendant out there. On Sundays, no.  
18 There's a gentleman who volunteers from church that's  
19 out there most of the time to make sure people park  
20 appropriately and what have you but not a paid  
21 attendant.

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1 CHAIRPERSON GRIFFIS: So he can pack them  
2 in. In terms of program, if someone was just driving  
3 through the neighborhood and saw that parking lot,  
4 they pulled in?

5 MS. RUFFIN: They would pull in.

6 CHAIRPERSON GRIFFIS: What would happen?  
7 Could they park there?

8 MS. RUFFIN: Yes, yes. As long as there  
9 was available space, they park.

10 MEMBER MILLER: How long are your  
11 services on Sunday?

12 MS. RUFFIN: On Sunday, like I say, we  
13 start with prayer at 9:00 o'clock. And we end with  
14 evening service about 9:00 o'clock in the evening.

15 MEMBER MILLER: But your 9:00 o'clock  
16 prayer, does it have an ending in the morning?

17 MS. RUFFIN: Oh, yes. It goes from 9:00  
18 to 9:30. And then Sunday school starts at 9:30 and  
19 goes until 11:00 o'clock. Morning service starts at  
20 11:00 and generally goes until about 2:00.

21 If we have an afternoon service, that

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1 will start around 3:00 and will go until after 4:00  
2 or 5:00, depending. And then we have Bible study  
3 starting at 5:30. And that generally goes until  
4 7:00. And then at 7:00, we have the evening service,  
5 Sunday evening service. So it's all day on Sunday.

6 MEMBER MILLER: Do you have any other  
7 structured, scheduled events during the week,  
8 classes?

9 MS. RUFFIN: Yes. On Tuesday evenings,  
10 starting at 7:00, prayer and Bible study again and on  
11 Friday evenings, starting at 7:00, Friday night  
12 service and pastoral teaching.

13 MEMBER MILLER: When do these end, 7:00  
14 to what?

15 MS. RUFFIN: On Tuesday night, it  
16 generally ends around 8:30-9:00 o'clock. On Friday  
17 night, it's more like 9:30-10:00.

18 MEMBER MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: There's nothing  
20 further from the board. Mr. Glasgow, cross?

21 MR. GLASGOW: Mr. Chairman, I think what

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1 we're going to do is just put on rebuttal testimony  
2 because the evidence that our traffic consultants  
3 have and their studies are just so vastly different  
4 than what this testimony is that I don't know that  
5 it's going to be productive to get into a whole  
6 series of questions. We'll just put on our witnesses  
7 and let them deal with that.

8 CHAIRPERSON GRIFFIS: Excellent. Okay.  
9 Very well. Mr. Ruffin?

10 MR. RUFFIN: We're finished. We close.

11 CHAIRPERSON GRIFFIS: Okay. Good. Thank  
12 you very much.

13 At this point, then, we're at 20 of 8:00.

14 I think it's appropriate that we end for the day.  
15 However, before we let everyone go, let's figure out.

16 Mr. Glasgow, you indicated that you are going to  
17 bring rebuttal witnesses. How many are you proposing  
18 at this time?

19 MR. GLASGOW: It will probably be two to  
20 three.

21 CHAIRPERSON GRIFFIS: Two to three is

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1 what you have indicated.

2 MR. GLASGOW: Two to three witnesses, Mr.  
3 Chairman.

4 CHAIRPERSON GRIFFIS: I'm obviously  
5 asking these questions in order to establish the time  
6 requirement that we're going to need. Two to 3, I  
7 would imagine you need about 10 to 15 minutes, not  
8 counting cross-examination. Is that correct?

9 MR. GLASGOW: That's right. It is going  
10 to be very short because we just want to address this  
11 issue with respect to the development summary with  
12 the old plan and the new plan. We're going to take a  
13 minute to deal with that with the engineers and the  
14 construction people and then to the extent that the  
15 Board deems relevant, parking essentially outside the  
16 site because if this project were to be developed,  
17 let's say, with some mixed-use residential  
18 development, there would be no on-site parking  
19 probably for anyone out in the community. And that  
20 could just proceed forward as a matter of right. But  
21 we will deal with that to the extent that the Board

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1 wishes to.

2 I guess that goes to the issue of whether  
3 or not the 1,244 spaces because there was nothing in  
4 that testimony that dealt with whether the 1,000  
5 spaces for our use on our site doesn't meet the  
6 requirements. The only testimony -- or does not meet  
7 the demand.

8 The only testimony that we have had,  
9 direct testimony, has been from DDOT, Office of  
10 Planning, and our traffic consultant on that dealing  
11 with our use, our generation of traffic.

12 CHAIRPERSON GRIFFIS: Right. That's  
13 understood.

14 MR. GLASGOW: So I guess that we will  
15 want to have some direction as to the relevance that  
16 the Board places on parking within the community and  
17 whatever its demands are.

18 CHAIRPERSON GRIFFIS: Good. And I think  
19 the relevance goes to the issue brought up that if  
20 this is a public parking structure --

21 MR. GLASGOW: Right.

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1 CHAIRPERSON GRIFFIS: -- and, therefore,  
2 cannot be -- and that's fully understood by the Board  
3 -- cannot be totally controlled as to who utilizes it  
4 as a private development of a residential building  
5 might be and based on the fact that part of your case  
6 presentation is the need and requirement for anything  
7 above 1,000 is not there, then the relevancy goes to  
8 the fact of how do you assess what the actual demand  
9 is.

10 I think it's pretty clear what the retail  
11 square footage and use demands this size to be, but  
12 if we go back to what this actually is is a program  
13 but public parking structure. How do we put that all  
14 into the picture of our deliberation of your argument  
15 of no demand is needed for the additional spaces.

16 MR. GLASGOW: Right. I think there are  
17 two things there. One is the letter from RLARC to  
18 clarify the issue that this is not a public parking  
19 garage for general use. Rather, it is being built as  
20 a garage for patrons of DCUSA.

21 That was to clarify the point on that

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1 issue, as I think the Council members' letter alluded  
2 to it also, that I believe that what that testimony  
3 was going through -- and we can have Ms. Budoff  
4 clarify that.

5 I think there was a misreading of a  
6 question from the Chairman at the last hearing that  
7 she was thinking that that was not something where  
8 like Target would be allocated 800 parking spaces and  
9 someone else would be allocated a number of parking  
10 spaces.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GLASGOW: To the extent that the  
13 Board wants us to, we can drill this down as tight as  
14 we want to keep others out. And that's what the  
15 condition that has been consented to with the Office  
16 of Planning gets to.

17 If the Board wants to make sure that no  
18 one other than the users of this parking facility go  
19 in there, that can be pretty well-handled between  
20 what RLARC has written and the condition that the  
21 Office of Planning has proposed.

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1 To the extent that the Board wishes to --  
2 which the applicant is amenable to and that's why we  
3 came up with the alternative with the stacked valet.

4 I mean, the stacked attendant, the  
5 attendant-assisted parking, was to address if the  
6 Board wanted the structure to be able to have more  
7 flexibility to deal with outside demand. So we were  
8 doing this as --

9 CHAIRPERSON GRIFFIS: I think it's  
10 pertinent evidence, but let me clarify because it's  
11 not my opinion that the Board is setting up,  
12 essentially what we want, but, rather, our trying to  
13 investigate the full picture of what this is.

14 And I know I understand what you're  
15 saying, but at the end of the day, it's going to be  
16 based on our assessment and judgment of obviously the  
17 variance request that is here.

18 But even that letter, which you say  
19 definitively addresses this issue, still rises to the  
20 level of this will be a programmed but public parking  
21 garage.

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1                   And so think maybe I'm making is a bigger  
2 issue than it actually is.    It's just a quick  
3 assessment of 1,000 spaces certainly satisfies the  
4 retail above.   This isn't going to be built if the  
5 retail above isn't built.   They're joined somehow.

6                   MR. GLASGOW:   Yes.

7                   CHAIRPERSON GRIFFIS:   The connection is  
8 what I think we were struggling with previously.   I  
9 think it's come clear with what is happening today in  
10 the additional submissions.   But still and all, if  
11 we're relying on a very strong presentation of an  
12 argument that this satisfies the demand, shouldn't we  
13 have a bigger picture of the overall demand that it  
14 might actually be asked to satisfy.

15                   MR. GLASGOW:   Yes.   If it is determined  
16 as a matter of policy -- and that's what the Board  
17 has to do is weigh the policy here as to what  
18 flexibility to build into the operation of this  
19 garage, whether there's increased flexibility or  
20 whether it's this garage is sized to deal with the  
21 retail structure above, because that's how it is

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1 sized at this point in time.

2 If the policy decision is made to be able  
3 to deal with some other potential demands on the  
4 garage, then the attendant-assisted parking is  
5 available to do that.

6 CHAIRPERSON GRIFFIS: Okay. So your  
7 beginning questions were trying to probe how you're  
8 staging your rebuttal witnesses.

9 MR. GLASGOW: Right.

10 CHAIRPERSON GRIFFIS: Has that been  
11 clarified?

12 MR. GLASGOW: I believe so because what  
13 we'll do is I was thinking we can have a quick  
14 rebuttal witness to deal with the statement that was  
15 read into the record by counsel with respect to this  
16 parcel 27 development.

17 And also if we need to, we can have our  
18 RLARC representative deal with that also.

19 CHAIRPERSON GRIFFIS: The LDA exhibit --

20 MR. GLASGOW: That's correct. Yes.

21 That's five minutes.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GLASGOW: The other really depends  
3 more upon how the Board as a Board wants to approach  
4 it with respect to the demand off site, what off-site  
5 demands there are, what off-site demands may or may  
6 not be factored into the size of this --

7 CHAIRPERSON GRIFFIS: I would say for my  
8 purposes in looking at it, you have figures that have  
9 been presented as part of the testimony today and in  
10 terms of the demand in the surrounding area.

11 I'd put it to you to say whether you  
12 think that that is going to be of pertinence for this  
13 case application and make that point or, you know,  
14 rebut that, those numbers and details.

15 I mean, obviously we just want to  
16 clarify. We have these now in front of the Board.  
17 So what is the Board to do with them --

18 MR. GLASGOW: Right.

19 CHAIRPERSON GRIFFIS: -- in your  
20 presentation? I'm clear on what the party in  
21 opposition wants us to do with it.

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1 MR. GLASGOW: We have information on  
2 that. I will submit that. I would say that that's  
3 what, probably ten minutes?

4 CHAIRPERSON GRIFFIS: Okay. Okay. Did  
5 you have a question?

6 MEMBER MILLER: Well, kind of. One of  
7 the issues I think that you should be addressing is  
8 any adverse impact since it's a variance test to the  
9 public and that the displacement of parking, which is  
10 what was raised today, would be an issue that I would  
11 think I would like to see addressed because it  
12 sounded like from your presentation before that this  
13 garage is going to have more than enough spaces so  
14 that it wouldn't have to just serve the retail and  
15 could serve the public as well and it was a general  
16 parking lot.

17 So I find this letter a little bit  
18 confusing. Maybe they're trying to change for this  
19 proceeding.

20 MR. GLASGOW: I think that they're  
21 indicating that if the Board was concerned, that

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1 commuters and others would overrun this garage and  
2 that parking wouldn't be available for the retail  
3 users or the community or anybody else. RLARC is  
4 letting you know that they can deal with that issue  
5 as any other user.

6 I think we are in some ways almost being  
7 held to a different type of standard that anyone else  
8 that would be developing this type of property.

9 If we were coming in and just building a  
10 facility, like this retail facility, and let's say  
11 we're providing the 1,600 spaces or whatever that's  
12 required, I mean, no one ever asks, "Well, what  
13 happens to any parking that's on the surface right  
14 now?" or whatever.

15 Normally, at least historically, the  
16 Board has sort of taken the position that whatever  
17 surface parking there was, everybody always knows  
18 that's a temporary use. The site is going to be  
19 redeveloped.

20 What is on the surface parking needs to  
21 fend for itself in some other fashion because

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1 development is going to occur, either this project or  
2 some other project, or in some fashion.

3           And there is going to be no requirement  
4 if there is some other matter-of-right solution. I  
5 don't know what it is at this point in time since the  
6 city has indicated that for the last 20 years, they  
7 have wanted to have some high-density retail here,  
8 that there is going to be some type of parking  
9 relief.

10           And then the question is going to be what  
11 -- and I guess what is being said is what flexibility  
12 is there on behalf of utilization of this garage to  
13 address existing parking demand in the neighborhood.

14           CHAIRPERSON GRIFFIS: Right. Is your  
15 question answered? There it is. I think we're going  
16 to get to where we need. It just struck me maybe  
17 this is some of the problem. When we're asked to  
18 look at parking and calculations, we go to this the  
19 strict regulations would lay out use, the zone  
20 district, and the square footage depending. But  
21 let's take it at that aspect.

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1           So for a certain amount of square  
2 footage, you are required to provide one parking  
3 space. And that is dimensioned on how it is and how  
4 you get to it.

5           In this case, I think we're struggling  
6 with we have that in this application of what we are  
7 being asked to look at, this very strict formulaic  
8 calculation. But there is an aspect to this garage  
9 that is different than that of a full private  
10 development.

11           To utilize the last application, we have  
12 had projects that have changed in their square  
13 footage utilization, where the retail expands at a  
14 certain level in a residential building and they have  
15 to provide the increase of parking that's directly  
16 attendant to that retail square footage. And they  
17 have to show exactly how they put it there.

18           They cannot say, "Well, you know, across  
19 the street is a public parking garage or surface."  
20 We're going to satisfy our parking requirement across  
21 the street because everyone is going to utilize that

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1 and that counts towards, you know, what we need. Is  
2 that clear?

3 So all we're trying to do is connect back  
4 into how the actual demand realized and regulatorily  
5 required, how that retail is satisfied within this  
6 garage with the balance of others that will be able  
7 to utilize it.

8 MR. GLASGOW: I understand, Mr. Chairman.  
9 We also will provide testimony because we have  
10 looked at four other major mixed-use retail parking  
11 garages, such as the ones up at Chevy Chase Pavilion  
12 and Mazza Gallerie and all of those and Georgetown  
13 Park and 4000 Wisconsin.

14 And when you go into any of those  
15 garages, no one asks you, "Are you shopping at the  
16 retail upstairs?"

17 CHAIRPERSON GRIFFIS: "Where are you  
18 going?"

19 MR. GLASGOW: "Where are you going?"

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GLASGOW: You go in. You either --

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1 CHAIRPERSON GRIFFIS: So you're going to  
2 have a witness that is going to go through those  
3 cases?

4 MR. GLASGOW: That's correct. What we're  
5 saying is what is normal, customary, incidental, and  
6 everything else in the District of Columbia for a  
7 project of this size with this type parking is just  
8 what is happening here.

9 CHAIRPERSON GRIFFIS: Okay. I think that  
10 would be productive in terms of this case  
11 presentation, which is obviously what we are having  
12 to base our decision on and solely.

13 Okay. Any other clarifications from the  
14 Board or questions? Yes, Mr. Cochran, did you have  
15 --

16 MR. COCHRAN: Neither DDOT or ROP feel a  
17 need to clarify anything that they have commented on.  
18 I just wanted to be sure that you don't feel the  
19 need for us to clarify something.

20 CHAIRPERSON GRIFFIS: Right. I didn't  
21 see anything arising today that would require any

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1 sort of supplemental reports or additional testimony.  
2 I'm assuming -- of course, you are welcome to be  
3 here when we set this date, but we're hearing  
4 rebuttal testimony that will be crossed by the  
5 parties in opposition.

6 Are either the applicant or the party in  
7 opposition needing to have Office of Planning or DDOT  
8 here at the next hearing anticipated? Okay. So  
9 there it is in terms of our attendance.

10 Mr. Ruffin, do you have questions on  
11 process or any other clarifications of what we're  
12 doing?

13 MR. RUFFIN: I don't think so.

14 CHAIRPERSON GRIFFIS: Okay. Good. This  
15 is what I would like to do. I want to establish what  
16 day it is. It's still the 1st, right? Okay. So at  
17 February 1st, let me tell you we've got one heck of a  
18 schedule through February. This looks like it may be  
19 our shortest session in February.

20 However, what I want to do is complete  
21 this. This is an awful lot of documentation. The

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1 longer we drag this out for the Board, the harder it  
2 is and, actually, the more time it takes because we  
3 have to go back and reread everything. It's better  
4 to have it fresh in mind.

5 I'm going to put this first in the  
6 afternoon next week. We have, as I say, one stacked  
7 morning. And we have one case in the afternoon  
8 because we have anticipated it is going to be quite  
9 lengthy. So I'm not going to put you after that. I  
10 want to get you on before. So let me hear any  
11 difficulties in making that date. That's next week.

12 MR. RUFFIN: The 8th, 1:00 o'clock.

13 CHAIRPERSON GRIFFIS: Yes, the 8th at  
14 1:00 o'clock, the beginning of our afternoon session.

15 MR. RUFFIN: I'm available right now.

16 CHAIRPERSON GRIFFIS: We can take a  
17 dinner break, but we want to see our families,  
18 friends, and homes tonight.

19 MR. RUFFIN: Well, if you want to put it  
20 into March, that's fine, but February is clear  
21 because I have some trial work set for the 23rd. So

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1 that's the reason why the 8th is clear.

2 CHAIRPERSON GRIFFIS: So the closer in,  
3 the better?

4 MR. RUFFIN: Closer is better.

5 CHAIRPERSON GRIFFIS: Okay. We don't  
6 want to get close to the 23rd?

7 MR. RUFFIN: Right.

8 CHAIRPERSON GRIFFIS: Mr. Glasgow?

9 MR. GLASGOW: We'll be here.

10 CHAIRPERSON GRIFFIS: Excellent. I'm not  
11 going to push the issue, then. Then we'll do it  
12 first in the afternoon on the 8th of February. Well,  
13 there it is. It's the first case in the afternoon.

14 CHAIRPERSON GRIFFIS: Okay. Anything  
15 else? Anything else I can answer at this time?

16 (No response.)

17 CHAIRPERSON GRIFFIS: I do appreciate  
18 everyone's patience with us this afternoon in getting  
19 this all done. Ms. Bailey, Mr. Moyer, are you aware  
20 of any other business for the Board in the afternoon  
21 session the 1st of February?

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MS. BAILEY: No, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent, in which case let's adjourn.

(Whereupon, at 7:56 p.m., the foregoing matter was adjourned.)

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