

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 8, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 2001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN	Office of Planning
ARTHUR JACKSON	Office of Planning
DAVID McGETTIGAN	Office of Planning
JOHN MOORE	Office of Planning

This transcript contains the complete minutes of the hearing held on Tuesday, February 8, 2005.

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D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

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P R O C E E D I N G S

9:56 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 8th of February 2005 morning public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, Vice Chair; and also our esteemed colleague, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann.

And let me say a couple of very important things in our opening remarks. First of all, today's hearing agenda is available for you. It is located on the wall where you entered into the hearing room. You can pick that up and see where you are in our chronology and all the productive work we will do this morning.

Also, it should be known by everyone here that we are creating a record and we create a record in two fashions. The most important, of course, is the court reporter, who is sitting on the floor to my right. We are also being broadcast live on the Office of Zoning's website. So attendant to both of those, there are several specific things that we ask of you.

First of all, we ask that everyone turn off any cell

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1 phones or beepers at this time so that we don't
2 disrupt the transmission and people giving testimony.

3 Secondly, when coming forward to speak to
4 the Board, you will need to have filled out two
5 witness cards. Witness cards are available at the
6 table where you entered into and also the table in
7 front of us where you will provide testimony. Those
8 two cards, prior to coming forward, should go to the
9 reporter who sits on the floor to my right as I have
10 said.

11 When coming forward to speak to the Board,
12 you will need to initially just state your name and
13 your address for the record and then you can move
14 ahead and give your testimony. That, of course, is
15 important to do so that we can give you credit for all
16 the important facts you will testify to today.

17 The order of procedure for special
18 exceptions and variances is as follows: first, we
19 hear from the Applicant and the presentation of their
20 case. Second, we will hear from any government
21 agencies reporting on the application. Third, we will
22 hear from the Advisory Neighborhood Commission.
23 Fourth, we will hear from persons or parties in
24 support of the application. Fifth, we will hear from
25 persons or parties in opposition to an application.

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1 And sixth, finally, we hear from the Applicant again
2 for any closing remarks that they may have.

3 Cross examination of witnesses is
4 permitted by the Applicant and parties in the case.
5 The ANC within which the property is located is
6 automatically a party in the case and therefore, will
7 of course, be allowed to cross examine any witnesses.

8 The record will be closed at the
9 conclusion of the hearing on the case, except for any
10 material that this Board specifically requests and we
11 will be very specific on what material is to be
12 submitted into the record and when it is to be
13 submitted into the Office of Zoning.

14 It's important to understand what that
15 means when we close the record. Clearly today, we're
16 creating and establishing a record that the Board will
17 deliberate on. The importance of that is the Board
18 cannot consider anything else that's outside of the
19 record. So in fact, we ask you today not engage Board
20 Members in conversation so that we don't appear to be
21 getting information outside of the record. So
22 anything you want us to know and base our decisions on
23 must be brought forward today in the public, in the
24 open and put on the record.

25 The Sunshine Act, of course, requires us

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1 to proceed in a public hearing forum, that is in the
2 open and before the public. This Board may, however,
3 enter into executive sessions both during or after a
4 hearing on a case and that would be for the purposes
5 of reviewing a record and/or deliberating on a case.
6 That would be in accordance with the Sunshine Act. It
7 would also be in accordance with our rules,
8 regulations and procedures.

9 I would ask now anyone that is here for
10 any of the cases this morning, if you are planning to
11 address the Board and provide testimony, I would ask
12 you to please stand and give your attention to Ms.
13 Bailey with the Office of Zoning. She is going to
14 swear you in.

15 MS. BAILEY: Good morning. Please raise
16 your right hand. Do you solemnly swear or affirm that
17 the testimony you will be giving today will be the
18 truth, the whole truth and nothing but the truth?
19 Thank you.

20 (The witnesses were sworn.)

21 CHAIRPERSON GRIFFIS: Good. Thank you all
22 very much and thank you, Ms. Bailey, and a very good
23 morning to you, Ms. Bailey.

24 On my very far right who has just sworn
25 you in is with the Office of Zoning. On my closer

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1 right is Mr. Moy, also with the Office of Zoning. The
2 Office of Attorney General is also on the dais with us
3 and will be present for all the cases as we proceed.

4 Ms. Bailey, let me ask you, is there any
5 preliminary matters for the Board's consideration?
6 Preliminary matters are those which relate to whether
7 a case will or should be heard today. Requests for
8 postponements, withdrawals or whether proper and
9 adequate notice of an application has been provided
10 are elements of preliminary matters.

11 Ms. Bailey?

12 MS. BAILEY: Mr. Chairman and to everyone,
13 good morning. There are, but they are case specific,
14 Mr. Chairman, so staff is recommending that the ones
15 that we have be taken up with the case is called.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you. Is there anyone present that has a preliminary
18 matter for the Board's attention at this time? If you
19 do, you can come forward and have a seat at the table
20 as an indication of any preliminary matter.

21 Not seeing anyone indicating that they
22 have a preliminary matter, why don't we move ahead and
23 call the first case of the morning.

24 MS. BAILEY: Application No. 17283 of
25 Julia Jones and Jason Pugh, pursuant to 11 DCMR 3104.1

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1 for a special exception to allow a rear addition to an
2 existing flat that's a row dwelling. The property is
3 located under Section 223, not meeting the lot
4 occupancy requirements. That's Section 403. The
5 property is located in the CAP/R-4 District at
6 premises 429 1st Street, S.E., Square 694, Lot 831.

7 CHAIRPERSON GRIFFIS: Excellent. Good
8 morning. Let me also, as you're getting ready and
9 having a seat at the table, you will clearly have to
10 address the Board with a microphone on. And it's not
11 the fact that we can't hear you, but rather you're
12 obviously not getting on the transcript if you're not
13 speaking into the microphone.

14 With that, a very good morning to you. If
15 you wouldn't mind stating your name and address for
16 the record?

17 MS. JONES: My name is Julia Jones. I'm
18 at 429 1st Street, S.E.

19 CHAIRPERSON GRIFFIS: Excellent, thank
20 you. And let me ask a Mr. Cormack present today? Mr.
21 and Mrs. Cormack? 416 New Jersey Avenue, Southeast.

22 Why don't we pick this up? Are you aware
23 of a request for party status in this case?

24 MS. JONES: No, I am not.

25 CHAIRPERSON GRIFFIS: Okay. It's Exhibit

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1 25 in our record. Board Members we can look at it.
2 Actually, it doesn't meet the first test of being
3 granted party status, but in answer to one of the
4 questions, of course, of whether there are any
5 relevant matters that demonstrate how a person would
6 likely be affected, they have indicated that they have
7 no objection to the above-numbered Application 17283
8 and they do not plan to appear. So I think we can
9 take this in as written testimony as part of the
10 record and deny party status of the Cormack family or
11 residents. And I'll take any other comments or
12 objections to that.

13 VICE CHAIR MILLER: No objection. I
14 concur with that.

15 CHAIRPERSON GRIFFIS: Excellent, so we'll
16 take it as the consensus of the Board and move ahead
17 and turn it over to you to present the case.

18 MS. JONES: Thank you. Good morning. My
19 name is Julia Jones. I live at 429 1st Street, owner
20 of the property at issue here. We are seeking a
21 special exception which effectively is a special
22 exception solely pertaining to approximately 2 feet to
23 the rear addition we propose to add on to our
24 property. We are exceeding our allowed 60 percent
25 build by right by 9 percent and that equates to about

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1 2 feet.

2 This is a rear addition. It is out the
3 basement and first floor of our home. We have been
4 given consent by all of our neighbors, written and
5 oral. We have been given consent by our Neighborhood
6 Council and the Historic Preservation Board as well.
7 It is effectively a very minor addition, approximately
8 10 feet by 16 feet, 16 feet wide, 10 feet out the
9 back. The purpose of the addition is to add extra
10 space to our home to meet the needs of our growing
11 family.

12 I would like to address any questions you
13 may or may not have.

14 CHAIRPERSON GRIFFIS: Indeed, excellent.
15 Thank you very much. And of course, 223 is very
16 specific and obviously it was written for situations
17 like this that occur.

18 Firstly, has there been any indication or
19 any evidence to you that this would somehow adversely
20 affect the use, enjoyment, privacy, light and air of
21 the adjacent properties?

22 MS. JONES: No sir. It has been discussed
23 with both the neighbors on both adjoining to our
24 property and they both have reviewed the plans, the
25 architectural plans and have both consented by written

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1 record.

2 CHAIRPERSON GRIFFIS: And the materials
3 that are being proposed on the rear?

4 MS. JONES: The building materials, it
5 will be brick exterior to match the current form of
6 the house.

7 CHAIRPERSON GRIFFIS: So it's your opinion
8 in the statement that actually retains the character,
9 the architectural character of the surrounding
10 neighborhood?

11 MS. JONES: Absolutely, yes.

12 CHAIRPERSON GRIFFIS: Okay. Just a quick,
13 I guess somewhat technical question. The addition at
14 some points in the larger scale looks like it's in
15 parallel with the existing, but the direct question is
16 it sits on the property line, is that correct?

17 MS. JONES: Correct. I mean I think it's
18 slightly off the actual property line, but it's within
19 our property boundaries.

20 CHAIRPERSON GRIFFIS: And when you look at
21 the original house and you look at the original wall
22 of it, it looks like it's setting in, but is that
23 because the property line runs down the middle of that
24 wall?

25 MS. JONES: No, I don't believe it runs

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1 down the middle of that wall.

2 CHAIRPERSON GRIFFIS: Then it's set back
3 like 6 inches from the property line?

4 MS. JONES: I believe so. Our architect
5 designed it so that it was wholly within our property
6 boundaries.

7 CHAIRPERSON GRIFFIS: You wouldn't happen
8 to have any documentation that shows your property and
9 a property line?

10 MS. JONES: Not on me. I believe it's
11 within the paperwork submitted.

12 CHAIRPERSON GRIFFIS: You believe what?

13 MS. JONES: I thought it was within the
14 paperwork submitted with our application.

15 CHAIRPERSON GRIFFIS: I mean as required,
16 Exhibit 3 is your plat. As it's shown on the plat,
17 the new brick addition does go from property line to
18 property line.

19 MS. JONES: That may be the case. I mean
20 I think it's -- I know the addition is to encompass as
21 much of our property as we can. Our house is 16 feet
22 wide. I know the addition will be 16 feet wide, so I
23 presume that is probably property line to property
24 line, but there is a fence on each side that separates
25 the house currently.

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1 CHAIRPERSON GRIFFIS: Well, there it is.
2 I mean if we don't have anything else, I would -- I'm
3 assuming that obviously this is a row dwelling and the
4 row dwelling would have a party wall. The party wall
5 property line would be in the center of it and the
6 addition would then come off the center of that, the
7 existing enclosing walls.

8 Okay. Let's move ahead then. Are there
9 any other questions from the Board?

10 Ms. Miller?

11 VICE CHAIR MILLER: Good morning.

12 MS. JONES: Good morning. Do you have a
13 copy of the Office of Planning's report?

14 MS. JONES: Not with me, no, I do not.

15 VICE CHAIR MILLER: They make a
16 recommendation that the open deck area either be
17 eliminated or visually screened.

18 MS. JONES: Okay.

19 VICE CHAIR MILLER: And I was wondering if
20 you've had a chance to consider that, if that was
21 brought to your attention before today or not?

22 MS. JONES: It has not been brought to our
23 attention before today.

24 VICE CHAIR MILLER: Office of Planning
25 will have a chance to explain it, but in essence, it

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1 goes to the privacy of your neighbors and I was
2 wondering is that something that was discussed? I
3 assume it wasn't then between you and your neighbors?

4 MS. JONES: Our neighbors and I we did
5 discuss the deck and they did not view it as a privacy
6 infringement. They were not concerned.

7 VICE CHAIR MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Do you have your
9 plants?

10 MS. JONES: No, I do not.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. JONES: We submitted a copy with our
13 application.

14 CHAIRPERSON GRIFFIS: Exactly. What I
15 want to do is walk through a couple of things just so
16 you know, there are no surprises here. So we want to
17 make sure you're looking at exactly what we're looking
18 at. And it's a little disconcerting that you haven't
19 seen the Office of Planning's report, but they make
20 the clear statement if you open it up to your A03
21 which is the rear elevation sheet, and of course,
22 Office of Planning will bring this up, but I want you
23 to focus on that because we're about to go for the
24 presentation of their report. The comment comes from
25 what's called the roof deck in the Office of

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1 Planning's report, but it services the top floor?

2 MS. JONES: Correct.

3 CHAIRPERSON GRIFFIS: So it's just on the
4 sides, basically on the property line sides of making
5 some visual barrier so perhaps that's a higher, more
6 solid enclosure and it may be five, six feet. Okay?

7 MS. JONES: That's fine. I mean we're
8 flexible. And that --

9 CHAIRPERSON GRIFFIS: Well, don't say that
10 on the record.

11 (Laughter.)

12 That just gets us all in trouble. Okay,
13 if we're ready then if there aren't any other Board
14 questions, why don't we move on specifically to the
15 Office of Planning which brings us some excellent
16 points. And actually, it's well worth getting a copy,
17 if you don't have it, before you leave today, to have
18 it. It's a good record and let's move ahead to the
19 Office of Planning.

20 Good morning, Mr. Jackson.

21 MR. JACKSON: Good morning, Mr. Chairman,
22 Members of the Board. My name is Arthur Jackson. I
23 work with D.C. Office of Planning and I will make a
24 brief summary of the report with regard to this
25 application. Basically, we're standing on the record,

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1 but I will highlight a couple of issues. The
2 Applicant on the site visit, I spoke to Mr. Pugh
3 instead of the person or the co-owner who is here
4 today. And Mr. Pugh and I discussed during the site
5 visit my initial concern about the possibility that
6 this being a problem where the level of the deck would
7 be equal to the second floor windows on both sides and
8 how that might need to be screened.

9 In a telephone conversation again with Mr.
10 Pugh, I indicated that those -- I repeated that
11 concern that I indicated I recommended a screening in
12 my report and I mailed a copy of the report to Mr.
13 Pugh and Ms. Jones, but I'm not sure if it had arrived
14 by this time. I think I mailed it toward the end of
15 last week, but you know how the mail is.

16 But essentially, our only concern was that
17 the -- it is on the same level as those windows and
18 the windows are very close, as you see in the rear
19 elevations. The windows are fairly well distributed
20 along the rear sides of all these townhouses. And as
21 such, we thought that some sort of visual screening
22 would be appropriate because of the ability to just
23 basically look in the rear bedroom of your neighbor.

24 So that's where our recommended came from
25 and essentially I repeated the recommendation that we

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1 made that the Office of Planning recommends approval
2 of the special exception to increase the allowable
3 occupancy to 70 percent and reduce the required side
4 yard setbacks in accordance with the submitted plans.

5 I digress a bit just to explain that we noted on site
6 that the rear wall of the dwelling currently stops.
7 There's an addition to the north that extends out but
8 the addition to the north, also sitting back from the
9 property line. There is a fence that runs up from
10 what will probably be the party wall, past to the rear
11 yard which forms the fence around the rear yard. As
12 such, this addition would also set back from the
13 property, from that fence to the south, so there will
14 be a space between the two additions in the rear of
15 the building.

16 In talking to Mr. Pugh, just as
17 conjecture, I asked whether or not the addition had
18 been set back just to make sure that they didn't cross
19 the property line. He said that's possible, but he
20 didn't have any real facts of that event.

21 In looking at the plans and looking on
22 site, it did appear that the building would have a
23 side yard to the north and south. So we added the
24 provision to reduce the required side yard setbacks
25 just to cover that in case that issue was raised and

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1 through a submission of plans.

2 So we support the Applicant's application.

3 We think their addition in line with the Office of
4 Historic Preservation would be a graceful addition to
5 the neighborhood and the materials that they used and
6 the design are excellent. And I also ask the Historic
7 Preservation Office whether there was any concern
8 about putting up a visual screen such as lattice or
9 slats and they didn't express any concern and thought
10 that whatever was proposed could be worked out with
11 their staff.

12 So again, we support the proposal. We
13 support the 70 percent increase the lot occupancy to
14 70 percent, reducing the side yard setbacks, but we do
15 think that some screening should be provided for that
16 second floor deck.

17 With that that concludes our comments and
18 we're available to answer any questions.

19 CHAIRPERSON GRIFFIS: Excellent, thank you
20 very much, Mr. Jackson. I think that's well said and
21 an excellent report as we have come to expect.

22 Let's clarify this issue in terms of the
23 rear. There's an existing masonry wall on the
24 adjacent property and what you're saying is if they
25 ran their addition just along the property line, there

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1 may well as visually you could see, create a gap and
2 it may be a matter of inches.

3 MR. JACKSON: Yes.

4 CHAIRPERSON GRIFFIS: And so the point is
5 is that if you did that it certainly would be
6 compliant, but it would tend to create a difficult
7 problem because that will obviously fill up with water
8 or debris or anything else and it wouldn't be able to
9 be cleaned. So what you're saying is there should be
10 some sort of construction that either attaches the
11 addition to that wall or some sort of cap on it that
12 would enclose that?

13 MR. JACKSON: No. My comments were
14 primarily about the third floor, only about the third
15 floor deck. As far as the space between the
16 additions, we really didn't answer that question,
17 address that issue. I guess primarily because it was
18 so narrow now that it's not a maintainable space.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. JACKSON: There are no windows in that
21 area so it really doesn't need maintenance. But what
22 happened was when this was closed, because of two rear
23 yards, is the only -- the fence may remain, but other
24 than that, there wouldn't be anything in that space.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. JACKSON: I think if there were
2 windows on the walls --

3 CHAIRPERSON GRIFFIS: Then it would be a
4 bigger issue.

5 MR. JACKSON: Then you'd have to get in
6 there to do something.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. JACKSON: No grass is going to grow in
9 there, so I really had no suggestion about how to --
10 or what to do with the space.

11 On my visit I did note that the space,
12 there was no debris in the space and at this point
13 nothing had -- there wasn't anything in it like trash
14 that had blown into the space around the existing
15 fence. And so it appears that the neighbors have
16 maintained it fairly well. So I wouldn't think that
17 that would be a problem in the long term. And I think
18 if it did turn out to be an issue, there is a space
19 there between the neighbors that's narrow enough that
20 they could take steps to either wall it off, put a
21 fence across that, a fence that would just keep debris
22 out and address it that way.

23 CHAIRPERSON GRIFFIS: Okay, thank you.

24 Mr. Mann?

25 MEMBER MANN: The situation just seems

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1 likely unusual to me, but what's unclear to me, I mean
2 it seems like the zoning solution is available to us,
3 but is this really a building code issue?

4 CHAIRPERSON GRIFFIS: I think we're
5 stepping into a little bit -- not building code, but
6 just proper maintenance.

7 Are you understanding my comments in terms
8 of the adjacent masonry wall and where your addition
9 would come and you may be creating a small gap there
10 that just is going to be problematic for your and your
11 neighbor?

12 MS. JONES: Right. I understand. I see
13 what you're getting at. Yes.

14 CHAIRPERSON GRIFFIS: I think we'll take
15 that obviously as a direction you can look at, I mean
16 in terms of construction. I think what you wouldn't
17 want to have happen is that a two-inch gap that isn't
18 sealed and you have water running down there, you'll
19 find that both walls will start to deteriorate if any
20 water is settling in in that side.

21 MS. JONES: If I may provide some
22 explanation. I think the reason why this situation
23 exists is because the north facing property that we're
24 talking about currently has an addition that is
25 slightly set back from their property line, so there

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1 already is kind of a potential to have a gap. And so
2 I do see what you're saying.

3 CHAIRPERSON GRIFFIS: It's easily remedied
4 if you just put up your addition or some kind of cap
5 flashing that can on it or some kind of flashing that
6 would close that off.

7 MS. JONES: Right.

8 CHAIRPERSON GRIFFIS: So you know of it.
9 We'll let you take that on. Otherwise, I guess you
10 can invent this great scoping pole to clean out that.

11 MEMBER MANN: But what about on the
12 southern side? Are we potentially creating the same
13 situation by allowing the six-inch setback?

14 MS. JONES: The southern side currently
15 has no addition, that their yard is open.

16 CHAIRPERSON GRIFFIS: I don't think so
17 because if it ran to the property line. See, what the
18 problem in this situation is that the adjacent
19 neighbor set it back an inch or so, not right to the
20 property line as I'm reading it from the diagram. So
21 if they set it to the property line, say the neighbors
22 adjacent came and put an addition on they could attach
23 to that wall.

24 Makes sense?

25 MEMBER MANN: It does make sense, except I

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1 guess I don't understand whether or not it is actually
2 running to the property line. If you look at the site
3 diagram, it appears that it goes to the property line,
4 but if you look at the first floor, it does not.

5 CHAIRPERSON GRIFFIS: Except, let me see
6 your thing. What sheet are you looking at?

7 MEMBER MANN: T-0-1 shows the site
8 diagram.

9 CHAIRPERSON GRIFFIS: Right.

10 MEMBER MANN: On the northern end,
11 southern side goes to the edge of the existing
12 building footprint.

13 CHAIRPERSON GRIFFIS: It's kind of an
14 interesting thing, the T-0-2 and A-0-1 are not
15 similar.

16 MEMBER MANN: Right.

17 CHAIRPERSON GRIFFIS: And that's the
18 problem. This is what I think it is. What I'm doing
19 is drawing the property line on A-0-1 which would read
20 like that. The property line runs there. If there
21 was an addition on the adjacent, it would run like
22 that.

23 MEMBER MANN: Okay, I'm willing to accept
24 that interpretation. I just want to make sure that we
25 don't create the same sort of situation in the future

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1 on the southern side.

2 CHAIRPERSON GRIFFIS: Agreed. Okay, any
3 other questions of the Board of the Office of
4 Planning?

5 Does the Applicant have any cross
6 examination of the Office of Planning? Do you have
7 any questions of them, Mr. Jackson?

8 MS. JONES: No, I don't think so. My only
9 request is, if possible, to get a ruling from the
10 bench today.

11 CHAIRPERSON GRIFFIS: Save that for
12 conclusions.

13 MS. JONES: Okay.

14 CHAIRPERSON GRIFFIS: Are you
15 understanding of the comments of the Office of
16 Planning in terms of the screening on the upper most
17 deck, the adjacent --

18 MS. JONES: Yes sir.

19 CHAIRPERSON GRIFFIS: Okay, then let's
20 move ahead for any other additional government
21 reports. Exhibit No. 23 is from the Architect of the
22 Capitol, is that correct? Indicates property would
23 not create adverse impacts in the Capitol complex in
24 its master plan.

25 Are you in receipt of that?

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1 MS. JONES: No, I don't have that either.

2 CHAIRPERSON GRIFFIS: You're going to need
3 to check the file before you leave. There's an awful
4 lot of documentation on this.

5 The site is located in Capitol Hill
6 historic district. Is that correct?

7 MS. JONES: That is correct.

8 CHAIRPERSON GRIFFIS: And you received
9 conceptual approval from HPRB?

10 MS. JONES: Yes, our architect did, yes.

11 CHAIRPERSON GRIFFIS: Good. Is a
12 representative from 6-BA and C6-B here today? Not
13 noting any representative, Exhibit 23, of course, is
14 the ANC's letter in support of the application. Is
15 there any questions or comments from the Board on
16 that?

17 Does it meet our requirements to grant it
18 great weight, Ms. Miller, in your assessment?

19 VICE CHAIR MILLER: Mr. Chairman, great
20 weight really means that we address the issues and
21 concerns of the ANC and this ANC doesn't have any
22 concerns that they've put forward for us to address.

23 Technically, they almost meet it, if they
24 did have concerns. They don't say what a quorum is,
25 which we would need to know even though they said they

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1 had a quorum and they had nine people there, so we can
2 assume that they really did. But a quorum is more
3 than nine.

4 And also, I just, in general, we like to
5 know how they give notice, but they did say that they
6 properly noticed the meeting. In any event, we do
7 take note that they support this application.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much. I don't have any other attendant
10 government reports, unless Board Members or the
11 Applicant is aware of any others, we can move ahead
12 and ask for any persons present today for Application
13 17283 in support of the application to come forward
14 now at this time provide testimony.

15 Any persons in opposition to Application
16 17283 at this time can come forward and give
17 testimony.

18 Not noting anyone storming the table, I
19 don't believe anyone is here to provide further
20 testimony on this.

21 Mr. Jackson, let me ask you just briefly,
22 in terms of the screening, is my assumption correct in
23 your comments that this should be a solid enclosure on
24 the sides perhaps at a minimum of five feet high?

25 MR. JACKSON: We were thinking that they

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1 could be something as porous as lattice or it could be
2 louvers and five feet high would be a good height for
3 such a structure, an enclosure. And we expect that
4 any proposal that they came up with would be reviewed
5 and approved by HPRB by the Historic Preservation
6 staff.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. JACKSON: The staff is delegated the
9 responsibility of final design.

10 CHAIRPERSON GRIFFIS: Indeed. So actually
11 what we're looking at for our purposes is perhaps a --
12 I don't know how we'd say it, semi-solid enclosure of
13 a minimal of five feet that was acceptable to HPRB.

14 MR. JACKSON: That would be acceptable to
15 the Office of Planning.

16 CHAIRPERSON GRIFFIS: Okay. Very well.
17 Let's turn it over to the Applicant to comment on that
18 specific aspect and anything other in their closing
19 remarks?

20 MS. JONES: We're amenable to that
21 proposal. It's fine. I have really no other
22 proposing remarks other than I thank you for your time
23 and consideration.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 MS. JONES: I'm sorry, what? Oh yes, and

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1 I'd like a decision from the bench today.

2 CHAIRPERSON GRIFFIS: Very well, if there
3 are not any further clarification requirements from
4 the Board, I suggest that we move ahead with this
5 under a motion. I would move approval of Application
6 17283 for the special exception of Section 223 which
7 would allow for the addition at premises 429 First
8 Street, Southeast and I have the condition that a
9 minimal of five foot, more solid enclosure that meets
10 the approval of HPRB be added to the structure and I'd
11 ask for a second.

12 MEMBER ETHERLY: Seconded, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Thank you very much,
14 Mr. Etherly.

15 I think it meets the entire criterion as
16 we've walked through. Certainly, there's great
17 reliance on the Office of Planning's analysis in
18 looking at those requirements from 2001.3 in terms of
19 the enlargement of nonconforming structures and also
20 specifically the 223. There's been no evidence in the
21 case that has been brought forth for the Board's
22 deliberation that shows how it might adversely impact
23 light and air, use or enjoyment of the adjacent
24 properties and I think it's appropriate for approval
25 with condition.

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1 I'll open it up to any other comments from
2 the Board at this time, if they have any. Not noting
3 any other comments from the Board, we have a motion
4 before us and it's been seconded.

5 Oh, Mr. Mann, did you have comments? I'm
6 sorry.

7 MEMBER MANN: It's not a comment so much
8 about the project as I just wanted to note that these
9 are some of these easiest plans to read that have been
10 submitted in a long time.

11 CHAIRPERSON GRIFFIS: Yes, very.
12 Excellent. I appreciate that outside of the
13 discrepancy from the site plan to the floor plans, but
14 I absolutely agree with that. And it makes it easy to
15 get through these things.

16 So that being said we have a motion before
17 us and it's been seconded. I ask all those in favor
18 signify by saying aye.

19 (Ayes.)

20 Opposed?

21 (No response.)

22 Ms. Bailey, when you have a moment we can
23 record the vote.

24 MS. BAILEY: The vote is recorded as 4-0-1
25 to approve the application with the condition as

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1 stipulated the Board. Mr. Griffis made the motion.
2 Mr. Etherly seconded. Mr. Mann and Ms. Miller voted
3 in support and Ms. Mitten is not present today and
4 therefore not voting.

5 And we're doing a summary order, Mr.
6 Chairman?

7 CHAIRPERSON GRIFFIS: I believe unless any
8 Board Member has an objection that we would waive our
9 rules and regulations and issue a summary order on
10 this.

11 MS. BAILEY: Thank you, sir.

12 CHAIRPERSON GRIFFIS: Thank you very much,
13 Ms. Bailey.

14 Thank you very much, I appreciate your
15 patience in being down here today and good luck
16 getting that done.

17 MS. JONES: Thank you.

18 CHAIRPERSON GRIFFIS: Let's move ahead to
19 the next case.

20 MS. BAILEY: Application No. 17280 of
21 Newcomb Day Care Center, pursuant to 11 DCMR 3104.1,
22 for a special exception to expand an existing child
23 development center to allow 70 children, and 14 staff,
24 under section 205. The property is located in the R-
25 5-A District at premises 541 Newcomb Street, S.E.,

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1 Square 5985, Lot 818.

2 Mr. Chairman, there is some -- well, the
3 affidavit -- do you have the affidavit now? Okay.
4 We're just receiving the affidavit, Mr. Chairman. I'm
5 assuming that the property was properly posted.

6 CHAIRPERSON GRIFFIS: Thank you for that
7 note.

8 A very good morning to you all. Why don't
9 we do it this way. Why don't I have you just
10 introduce yourselves for the record?

11 Let me also note that if you have three
12 microphones on at one time we're probably going to get
13 feedback, so you may have to maintain turning on and
14 turning off and I will delicately remind you, if you
15 start talking without the microphone on. But with
16 that --

17 MS. CANNON: I'm Andrea Cannon, owner of
18 Newcomb Day Care.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. SPIKES: Harry Spikes, representing
21 Newcomb Day Care.

22 CHAIRPERSON GRIFFIS: Thank you.

23 MS. McLOYD: Patricia McLoyd, I'm the
24 Director of Newcomb Day Care.

25 CHAIRPERSON GRIFFIS: Okay. Right, Ms.

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1 Bailey had brought up, of course, a very important
2 aspect in the application that's the posting and then,
3 of course, we require an affidavit of posting
4 submitted at a certain time before the hearing comes
5 to date. And we are not in receipt of your affidavit
6 which is untimely and also the question was whether
7 there were photographs of the posting.

8 Do you have those?

9 MR. SPIKES: Yes, we do.

10 CHAIRPERSON GRIFFIS: So you'll be able to
11 submit those into the record?

12 MR. SPIKES: Yes.

13 CHAIRPERSON GRIFFIS: Can you just state
14 on the record whether this was timely posted or not as
15 you are not timely in terms of submitting your
16 affidavit?

17 MS. CANNON: Yes, Mr. Chairman, it was
18 posted.

19 CHAIRPERSON GRIFFIS: When?

20 MS. CANNON: It was on the 18th of
21 January.

22 CHAIRPERSON GRIFFIS: Ms. Bailey, is that
23 timely as I don't have a calendar and I hate counting
24 backwards, but we have to be official on this.

25 That's 10 days prior. No, it isn't. I

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1 can't do that math.

2 MS. BAILEY: That's 15 days, that's
3 sufficient.

4 CHAIRPERSON GRIFFIS: Excellent. Okay.
5 So we have this. I'm going to hand this back to Ms.
6 Bailey, this is the original copy, it's been notarized
7 and it's been submitted in. Is there any objection to
8 waiving our regulations in this technicality in terms
9 of the timely submission of the affidavit as it has
10 been testified to as being timely posted? Not noting
11 any objection that we take it from the Board, why
12 don't we move ahead and turn it over to you for the
13 presentation of your case.

14 MR. SPIKES: As we noted we are requesting
15 an increase of children at Newcomb Day Care and the
16 Office of Planning has submitted a report and so has
17 the ANC. We are not in receipt of the report from the
18 ANC, but we did have a meeting and there was a quorum
19 present and it was indicated at the end of the meeting
20 that there were no objections to what we were
21 requesting and in fact the ANC favored our request.

22 So what we would like to do is to answer
23 any questions you may have relative to the Office of
24 Planning's submission. I think the submission is very
25 accurate. It clearly states all the facts and issues

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1 that I think you had a concern with.

2 CHAIRPERSON GRIFFIS: Okay. I think
3 that's fine and actually the Board will go well beyond
4 the Office of Planning's report, perhaps, and our
5 questions will come directly in terms of the
6 requirements for the regulations. The Office of
7 Planning, of course, gives their analysis to us for
8 our consideration and it's an important one.

9 Let me start from the very background, of
10 coursed. You have -- you're operating under previous
11 approval from the Board that of 1992 and also of 1997,
12 if I'm not mistaken on the years. There were
13 conditions on each of those. First, well, the most
14 current 1997 has expired, is that correct?

15 MR. SPIKES: Correct.

16 CHAIRPERSON GRIFFIS: And now you're here
17 before us. One of the conditions of the prior was to
18 provide two parking spaces. Two parking spaces would
19 be maintained. Were those maintained for the fives
20 years of the 1997 order?

21 MR. SPIKES: Yes, they were. They were.
22 The problem that we have now as far as the parking
23 spaces are concerned, that we put on an addition and
24 that eliminated one of the parking spaces.

25 CHAIRPERSON GRIFFIS: Is there any sort of

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1 documentation or a site plan or anything that showed
2 where the parking spaces were and how they have now
3 been removed?

4 MR. SPIKES: Well, to the best of my
5 understanding, the documents that we submitted with
6 our application shows that, but it doesn't necessarily
7 pinpoint the parking spaces with specificity. It just
8 shows the area in which the addition was construction
9 and that area took at least one of the parking spaces.

10 But it's a factual determination in that
11 we had approximately 35 feet in the back of the
12 building and when we constructed the new addition that
13 took up about 22 feet in width and 16 feet in length.

14 CHAIRPERSON GRIFFIS: Was there any sort
15 of question when the new addition was being built that
16 you were actually going to come into noncompliance
17 with a previous condition of parking?

18 MR. SPIKES: No. There were no questions
19 to my understanding or knowledge raised.

20 CHAIRPERSON GRIFFIS: Do you know why that
21 might be?

22 MR. SPIKES: Because of the on-street
23 parking and the fact that most, as stated in the
24 reports and in our submission, that the majority of
25 the children who attend the day care center are

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1 residents of the immediate community and they are in
2 walking distance. So we never had a traffic problem.

3 In fact, if I may --

4 CHAIRPERSON GRIFFIS: -- that you don't,
5 in fact, need the parking because there's enough
6 on-street parking, but what I was just trying to
7 address very quickly, understand is here you had a
8 requirement to provide two parking spaces. You went
9 ahead and constructed something that removed those two
10 parking spaces. Was there any sort of deliberative
11 decision making or was there any sort of approval in
12 your understanding that allowed you to do the addition
13 that removed the condition of the previous order of
14 which you were operating under?

15 MR. SPIKES: Well, I can only say that we
16 submitted our application to the building permit
17 office and it was approved there. There was no intent
18 on our part to eliminate the parking spaces we
19 required, but to the best of my understanding we did
20 everything that we thought that was required of us to
21 construct the addition.

22 CHAIRPERSON GRIFFIS: Let me just go back
23 to that one comment. You just said there was no
24 intent to eliminate the parking that was required.

25 MR. SPIKES: In other words, we did not --

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1 when we put up the addition, we went through the
2 process of acquiring a permit.

3 CHAIRPERSON GRIFFIS: I understand.

4 MR. SPIKES: And we were with the
5 impression that once that permit was issued then all
6 requirements relative to parking and anything else had
7 been satisfied. So therefore, it might have been an
8 oversight on our part, but there was no intent to
9 eliminate the parking. And plus, we could squeeze two
10 cars in the back. It's just that there would be some
11 modification to do so.

12 So we mostly likely have enough space in
13 the back now for two cars or maybe three.

14 CHAIRPERSON GRIFFIS: Okay, but we don't
15 have anything today that shows us how you might
16 accomplish that?

17 MR. SPIKES: No. We feel that that had
18 been completely satisfied because of the map of the
19 area clearly shows that there is space in the back
20 available for parking.

21 CHAIRPERSON GRIFFIS: Which map of the
22 area are you talking about?

23 MR. SPIKES: When we refer to the area in
24 which -- well, let me go to the planning.

25 (Pause.)

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1 I guess it doesn't clearly show here on
2 page 7, but it shows an alley --

3 CHAIRPERSON GRIFFIS: I'm sorry?

4 MR. SPIKES: Page 7 of the --

5 CHAIRPERSON GRIFFIS: This is all so
6 official here, but page 7 of what?

7 MR. SPIKES: Of the planning report.

8 CHAIRPERSON GRIFFIS: Of the Office of
9 Planning report?

10 MR. SPIKES: Office of Planning report.

11 CHAIRPERSON GRIFFIS: Excellent. Page 7
12 and they show -- it's actually copies of the existing
13 floor plan of which you have submitted and also the
14 surveyor's plat which shows the alley.

15 MR. SPIKES: Right.

16 CHAIRPERSON GRIFFIS: The third thing I'll
17 need and I'll open it up to the Board Members. Maybe
18 they don't need it, but I don't know where your
19 building sets on that site. And now you testified to
20 the fact well, sure, you could easily fit three spaces
21 back there.

22 MR. SPIKES: Not easily. You could --

23 CHAIRPERSON GRIFFIS: You could cram three
24 cars back there.

25 MR. SPIKES: You could if there was some

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1 modification, yes.

2 CHAIRPERSON GRIFFIS: Okay. How far back
3 is it? There's a photograph of a wooden picket fence.
4 What's the dimension back from the alley of that
5 fence?

6 MR. SPIKES: Let's see. I would say about
7 16 feet, 16 by 22.

8 CHAIRPERSON GRIFFIS: Okay. Good. I
9 think we'll get back perhaps to that. Let me just get
10 some clarification in terms of as we start and look at
11 this.

12 You're looking to expand this, the child
13 development center to allow 70 children and 14 staff,
14 correct?

15 MR. SPIKES: Correct.

16 CHAIRPERSON GRIFFIS: And 70 children is
17 an enrollment number?

18 MR. SPIKES: Yes, it would be.

19 CHAIRPERSON GRIFFIS: And how many are on
20 site at one time?

21 MR. SPIKES: Well, you ask me to
22 speculate.

23 CHAIRPERSON GRIFFIS: No. I'm asking you
24 to tell me exactly.

25 MR. SPIKES: If we increase it to 70 kids,

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1 how many would be on site at one time?

2 CHAIRPERSON GRIFFIS: Right.

3 MR. SPIKES: Well, at some point 70, but
4 if you count in absentees you will say maybe --

5 CHAIRPERSON GRIFFIS: That's fine. And
6 that's a good point. I mean there will be
7 flexibility, but what we get to and because oftentimes
8 in child development centers we see an enrollment
9 number that may be totally different than an on-site
10 number. And so what I understand you saying is that
11 it's the same number. If there's an enrollment at 70,
12 you're anticipating with out sicknesses and absences,
13 that there are 70 on site at one time. Is that
14 correct?

15 MR. SPIKES: That's correct. There is a
16 great need in the area for day care.

17 CHAIRPERSON GRIFFIS: Understood. And
18 would you just state again the ages of the children
19 that will be served in that 70?

20 MR. SPIKES: Six weeks to five years.

21 CHAIRPERSON GRIFFIS: And my understanding
22 of the submissions it that the age groups are being
23 broken out by four levels in obviously different
24 rooms, is that correct?

25 MR. SPIKES: Correct.

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1 CHAIRPERSON GRIFFIS: And so you
2 anticipate roughly 35 on each floor?

3 MR. SPIKES: Yes.

4 CHAIRPERSON GRIFFIS: Do you know roughly
5 what the square footage is on each of the floor
6 levels?

7 MR. SPIKES: Yes, 1,440.

8 CHAIRPERSON GRIFFIS: Four-hundred and
9 forty square feet?

10 MR. SPIKES: No, 1,440.

11 CHAIRPERSON GRIFFIS: Oh, I'm sorry, I
12 didn't hear you, 1,4440.

13 MR. SPIKES: On each floor.

14 CHAIRPERSON GRIFFIS: Do you know in terms
15 of the licensing requirements how much space
16 allocation, square foot allocation per child is
17 required?

18 MR. SPIKES: Thirty-five feet for each
19 infant and 45 feet for each toddler.

20 CHAIRPERSON GRIFFIS: Excellent. And
21 those numbers, as calculated with a 70 enrollment
22 match what is being provided?

23 MR. SPIKES: Correct.

24 CHAIRPERSON GRIFFIS: Very well. Are you
25 aware of Exhibit 27. It's a handwritten letter into

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1 the record that's objecting to this application? Are
2 you in receipt of that?

3 MR. SPIKES: No, no, I'm not.

4 CHAIRPERSON GRIFFIS: It was submitted on
5 January 26th on this case.

6 Let's get you a copy. Do we have an
7 additional copy? Here, Ms. Bailey, you can take this
8 one if you want.

9 Mr. Etherly is just going to run down a
10 few of the issues that are stated in this letter for
11 your address. A copy is coming around to you.

12 Mr. Etherly?

13 MEMBER ETHERLY: Thank you very much, Mr.
14 Chair. As the copy is being brought to you, it
15 appears the letter is offered by a Ms. Crystal Hill
16 endeavoring to locate our mailing notice, just to
17 determine whether or not she's a resident that might
18 be in the immediate vicinity of the day care center,
19 but the letter indicates that she is a nearby
20 resident, primarily raising concerns regarding garbage
21 removal and disposal based on trash that's generated
22 by the subject property.

23 It appears to be, I believe, a reference
24 also some parking impacts, but primarily it seems to
25 be concerns regarding garbage, trash removal, the

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1 amount of trash that's generated by the property;
2 noise that may arise from play area and activities of
3 the children that are on-site.

4 Once again, I suggest take a moment, if
5 you'd like just to kind of look through it and if you
6 would have any comments or concerns, I think that
7 would be helpful and informative as we take a look at
8 our relevant test, of course.

9 CHAIRPERSON GRIFFIS: One note you might
10 want to look at and Mr. Etherly was probably going to
11 get to this is the photographs that are attached. Can
12 you look at those?

13 MR. SPIKES: Yes.

14 CHAIRPERSON GRIFFIS: Is that your
15 property?

16 MR. SPIKES: No, no, I'm sorry. No, no,
17 this is a totally different situation.

18 That's a residence that is being built.
19 That's not ours.

20 CHAIRPERSON GRIFFIS: In the adjacent
21 area?

22 MR. SPIKES: No, no, that's a residence
23 somewhere else.

24 CHAIRPERSON GRIFFIS: Are you familiar
25 with it?

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1 MR. SPIKES: Yes. It's a house I'm
2 building and what happened, I guess it just got mixed
3 up in these documents.

4 CHAIRPERSON GRIFFIS: How would it get
5 mixed up? She wrote the letter and attached it.

6 MR. SPIKES: She couldn't have. This is
7 not ours. She couldn't have done that.

8 CHAIRPERSON GRIFFIS: It didn't make sense
9 to the Board either.

10 Okay, it may not be photographs evidencing
11 the site specific, but it goes to a point that I
12 believe the letter is trying to make which is perhaps
13 -- well, is not perhaps, is well outside of the
14 jurisdiction of this Board. So we won't bring it up
15 for address.

16 But let's go to because Mr. Etherly I
17 think very well and succinctly summarized the issues.
18 How is your trash picked up and how is it stored on
19 site?

20 MR. SPIKES: I'd like to address that
21 because I think it has some merit. And I'm not
22 speaking against us, there are a lot of houses in the
23 back. There's a narrow alley that goes out towards
24 Martin Luther King Avenue -- Malcolm X Boulevard, but
25 there's another one, there's another alley between our

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1 premise and the rowhouses facing Malcolm X Boulevard.

2 And there's no way that we can prevent those
3 residents from coming down that alley accumulating
4 their garbage in the opening of that particular alley.

5 So what we have done is kind of fenced in
6 our garbage cans and specifically given our staff
7 members instructions to place everything within the
8 can with a top on the can and to make sure that when
9 the private garbage collectors come, that they remove
10 all that.

11 We also have given our people instructions
12 to periodically clean the area of which our garbage is
13 placed. I believe that this person is primarily
14 speaking of garbage in the alley, generally, rather
15 than speaking of garbage reading our establishment
16 specifically.

17 CHAIRPERSON GRIFFIS: Well, let's get into
18 this. How often does your hauler pick up trash?

19 MR. SPIKES: Twice a week and sometimes
20 three times a week.

21 CHAIRPERSON GRIFFIS: So when you call,
22 you can call for an additional pickup and they'll come
23 by.

24 MR. SPIKES: And also too, if he doesn't
25 pick it up we will come by with a truck and have

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1 someone take the garbage. We make special effort to
2 make sure that the garbage does not accumulate in
3 there.

4 CHAIRPERSON GRIFFIS: What do you guys do
5 with it?

6 MR. SPIKES: We take it out to the dump.

7 CHAIRPERSON GRIFFIS: Okay. I'm putting
8 it all on the record here. So in fact, you get an
9 accumulation at some point that a commercial can't
10 deal with, that you actually physically yourselves
11 take it to the dump.

12 MR. SPIKES: Right.

13 CHAIRPERSON GRIFFIS: And this wooden
14 enclosure, is that documented anywhere here,
15 photograph or drawing?

16 MR. SPIKES: It's not photographed here,
17 but part of the reason for the wooden enclosure was to
18 make sure that no garbage was going into the yard and
19 to keep the area that we are responsible for clean.

20 CHAIRPERSON GRIFFIS: Okay. Questions?
21 Ms. Miller?

22 VICE CHAIR MILLER: Good morning. I have
23 a few questions on this topic and then I want to
24 regress a little bit to a previous topic. But did you
25 say that in addition to the pick up twice a week that

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1 some of your staff periodically cleans the area?

2 MR. SPIKES: They go back into the area to
3 make sure that it's clean. They go back into the area
4 to make sure that all the garbage is put in the can
5 and the top is on the can.

6 VICE CHAIR MILLER: They do that every
7 day?

8 MR. SPIKES: Every day, sometimes twice a
9 day because you have kids who -- they need changing
10 and we need to dispose of the diapers and we need to
11 maintain the sanitary premise.

12 VICE CHAIR MILLER: The letter also raised
13 a bit issue about rats. Can you address that? She
14 specifically said that she witnessed rats on the
15 playground, on the fixtures and everything out there.

16 MR. SPIKES: In the back yard, you mean?

17 VICE CHAIR MILLER: Wherever the
18 playground is?

19 MR. SPIKES: No one has ever --

20 VICE CHAIR MILLER: Where is the
21 playground?

22 MR. SPIKES: The playground is in the
23 front.

24 VICE CHAIR MILLER: Okay.

25 MR. SPIKES: And we did have some area for

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1 the playground in the back until we erected the
2 additional. But no, there has never been anyone
3 stated in any way that there were rats in front of the
4 building.

5 We live in a city where rats are a
6 problem. I see them sometimes down at the Department
7 of Justice. I don't know what they're trying to do
8 down there, but they're running around with rats. And
9 the alley is a little different. In the alleys in
10 D.C. you have rats and we have done everything we
11 could to eliminate the rats. The problem is that when
12 you put out poison, the rats die and cause a stink. I
13 think it's a problem that the District will have to
14 address because we've done the best we could dealing
15 with rats.

16 VICE CHAIR MILLER: So you have had some
17 problems?

18 MR. SPIKES: Not out front. In the alley
19 in the back. And all over the place, in the streets.
20 There are rats back there.

21 VICE CHAIR MILLER: And in response,
22 you've called the District authorities, is that it?

23 MR. SPIKES: As a matter of fact, yes. We
24 have met the District authority back there and
25 discussed it with them because we were concerned about

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1 the rats. But as I stated to you before, you have an
2 alley there with multiple row houses and everyone puts
3 their garbage in the alley, further down from the day
4 care, so I think a rat doesn't have sense of
5 territorial rights, he just travels anywhere he wants
6 to, so we can't keep the rat from coming to Newcomb,
7 near our premises.

8 VICE CHAIR MILLER: How often are the
9 residents' garbage picked up?

10 MR. SPIKES: I think twice a week. Once a
11 week. I thought it was twice.

12 VICE CHAIR MILLER: Okay. When you were
13 responding to the question about square footage
14 related to infants and toddlers, I believe, you gave
15 certain figures and I'm wondering is a -- your day
16 care center is going to be also open to 5-year-olds,
17 right? Are they considered toddlers or are they
18 children with a different standard?

19 MR. SPIKES: She can address that.

20 MS. McLOYD: We're licensed from 6 weeks
21 old to 6 year olds is what our license is approved
22 for.

23 VICE CHAIR MILLER: Okay.

24 MS. McLOYD: Our oldest child is 4. And
25 we have some children this year will turn 5, say in

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1 June or July. Those children will be going off to
2 kindergarten. So basically the children in the center
3 are up to age 4 and every once in a while you have one
4 or two children that turn 5 before they go off to
5 school.

6 VICE CHAIR MILLER: Okay, so the oldest
7 child you would have there would be 5?

8 MS. McLOYD: Yes.

9 VICE CHAIR MILLER: My question is when
10 you're calculating square footage for the different
11 types of ages, I think we were given the figures for
12 infants and toddlers. Five years old, is that
13 considered a toddler under D.C. law or is that a
14 child?

15 MS. McLOYD: No, that's a pre-schooler.

16 VICE CHAIR MILLER: That's a pre-schooler,
17 so is there a different amount of square footage
18 that's supposed to be allocated to that child?

19 MR. SPIKES: Thirty-five for infants and
20 45 --

21 MS. CANNON: Excuse me, it's 45 square
22 feet for infants. It's 35 square feet for the older
23 ones.

24 VICE CHAIR MILLER: Toddlers and pre-
25 schoolers are the same?

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1 MS. CANNON: Excuse me?

2 VICE CHAIR MILLER: Are toddlers and pre-
3 schoolers treated the same?

4 MS. CANNON: They're separated.

5 VICE CHAIR MILLER: No, for square footage
6 purposes.

7 MS. McLOYD: There are different
8 categories of children being --

9 MS. CANNON: It requires more space for
10 infants.

11 VICE CHAIR MILLER: For space which was
12 45.

13 MS. CANNON: Forty-five square feet.

14 VICE CHAIR MILLER: For infants.

15 MS. CANNON: Thirty-five for the older
16 children.

17 VICE CHAIR MILLER: My question is older
18 children, are toddlers and pre-schoolers grouped
19 together?

20 MS. CANNON: Toddlers is --

21 MS. McLOYD: It's up to two is toddlers.
22 Once they turn two they are pre-schoolers.

23 VICE CHAIR MILLER: So toddlers are in the
24 same category as infants, is that what you're saying
25 now?

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1 MS. CANNON: Yes.

2 VICE CHAIR MILLER: Infant to two is --

3 MS. CANNON: Yes, but we still call them
4 toddlers.

5 VICE CHAIR MILLER: Okay, so infant to two
6 is 45 feet and above that is the 35?

7 MS. CANNON: No, no.

8 MS. McLOYD: That's correct.

9 VICE CHAIR MILLER: Okay, I have one other
10 very basic question. If my information is correct, it
11 seems like the last order that was granted for the
12 operation of the day care center was BZA Order 1642
13 for a five-year period commencing on August 21, 1997
14 and expiring on August 21, 2002. Is that correct?

15 MR. SPIKES: Yes.

16 VICE CHAIR MILLER: And that you didn't
17 apply for another application until this one which was
18 -- the application date was October 29, 2004?

19 MR. SPIKES: To the best of my
20 understanding, that's correct.

21 VICE CHAIR MILLER: So that would appear
22 that you would have been operating without permission
23 perhaps illegally during that gap between August 21,
24 2002 and October 29, 2004?

25 MR. SPIKES: Well, no. We have a

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1 Certificate of Occupancy for each period which we
2 operated. If your question is whether we came before
3 the Board, I think that would be no, we did not come
4 before the Board.

5 VICE CHAIR MILLER: Do you have an
6 explanation for operating for those two years without
7 permission from the Board?

8 MR. SPIKES: I do not. The only thing I
9 can say is that we followed the direction that was
10 given to us when we went for our C of O and usually
11 when you go for your C of O and you go to the Permit
12 Office, they give you --

13 CHAIRPERSON GRIFFIS: But when did you
14 pull your C of O? Do you have one after 1997?

15 MR. SPIKES: Oh yes, we do.

16 CHAIRPERSON GRIFFIS: And the date on it
17 is?

18 MR. SPIKES: We don't have that with us
19 today.

20 CHAIRPERSON GRIFFIS: Was it before the
21 BZA order expired?

22 MR. SPIKES: I'm not sure. I came on
23 board with Newcomb after that period of time and I'm
24 not --

25 CHAIRPERSON GRIFFIS: When did you come on

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1 board?

2 MR. SPIKES: I came on board in 2002.

3 CHAIRPERSON GRIFFIS: Did they have a C of
4 O then?

5 MR. SPIKES: Yes, they did.

6 CHAIRPERSON GRIFFIS: So it was within the
7 five-year period of the BZA.

8 MR. SPIKES: Yes.

9 CHAIRPERSON GRIFFIS: What Ms. Miller is
10 getting at very directly is your C of O should have
11 been revoked. You cannot have a C of O without an
12 existing order and approval from the Board. It's not
13 like because you had a C of O were you were able to
14 keep going. You just needed to pull an application
15 whenever it was. So she was just directly asking was
16 is there a recordation at the facility that has that
17 on a schedule that you knew or you didn't know or if
18 this was approved for another five years what reliance
19 do we have that you will be aware of when it will
20 expire and the requirements of the order and its
21 expiration?

22 MR. SPIKES: Well, I'm going to make sure
23 of that, that we maintain compliance with all your
24 regulations. I think the problem was that that prior
25 to now Newcomb was operating primarily and relying on

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1 -- not necessarily advice, but the representation of
2 the District of Columbia and I think the District --
3 not that the District was misrepresenting Newcomb, but
4 the District may have omitted explaining the
5 importance of coming to the Board, stating that we
6 need to come to the Board.

7 CHAIRPERSON GRIFFIS: Let's get over this
8 quickly and move on to the actual application. You're
9 mistaken if you're looking for a reliance on the
10 government to tell you your responsibilities.

11 MR. SPIKES: I understand that clearly and
12 that is why I said to you that this will not be a
13 reoccurrence. But the reliance was misplaced. No
14 doubt about that.

15 CHAIRPERSON GRIFFIS: Okay, and I think
16 it's clear and believe me, I know it's confusing, all
17 of these requirements and everybody has got to touch
18 and approve these things, but the bottom line is is
19 that if this is approved and it has a time, you now
20 are stating that you know, you'll be putting it on the
21 schedule and there will be some sort of big bell that
22 rings in four and a half years and you will know it's
23 about to expire and put a new application in.

24 MR. SPIKES: Correct.

25 CHAIRPERSON GRIFFIS: Let's move ahead

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1 then and let's get down to the other specifics of
2 this. The days of operation for the facility is
3 Monday through Friday, is that correct?

4 MR. SPIKES: Correct.

5 CHAIRPERSON GRIFFIS: It's at 7 a.m. to 6
6 p.m.?

7 MR. SPIKES: Correct.

8 CHAIRPERSON GRIFFIS: So nothing else
9 happens on the site after those hours involving the
10 children?

11 MR. SPIKES: No, there is nothing.

12 CHAIRPERSON GRIFFIS: Okay, and the
13 seasons, are there seasonal schedules? Is it year
14 round, 12 months?

15 MR. SPIKES: Year round.

16 CHAIRPERSON GRIFFIS: Is there any
17 difference in the summer schedule or summer
18 programming?

19 MR. SPIKES: Of course, in the winter you
20 have indoor programs.

21 CHAIRPERSON GRIFFIS: I mean just about
22 times.

23 MR. SPIKES: No.

24 CHAIRPERSON GRIFFIS: In summer times they
25 go until 8 o'clock?

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1 MR. SPIKES: No, the time is consistent.

2 CHAIRPERSON GRIFFIS: Times are consistent

3 --

4 MR. SPIKES: Year round.

5 CHAIRPERSON GRIFFIS: Consistent all the
6 way through year round. Okay. Any other issues?

7 Mr. Mann?

8 MEMBER MANN: Yes, I had a question
9 concerning I think there's some place in the
10 application that indicated that you shuttle the
11 children back and forth to a nearby playground, is
12 that correct?

13 MR. SPIKES: Yes, we have a transportation
14 bus and our park is about 500 feet from the center.

15 CHAIRPERSON GRIFFIS: It's around the
16 corner.

17 MR. SPIKES: It's around the corner.

18 MEMBER MANN: I guess I was curious about
19 a couple of things. Since it's so close, why do you
20 shuttle them back and forth in an automobile and if so
21 will that increase with the increase in children?

22 MR. SPIKES: We do that for safety
23 purposes. We don't want to have the kids necessarily
24 crossing the street and plus we don't have to
25 transport all the kids at one time.

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1 And all the kids don't go to the park at
2 the same time because they are separated through
3 categories and age differences.

4 MEMBER MANN: So you're utilizing the
5 alley to shuttle the children back and forth or does
6 the van come around to the front to do that?

7 MR. SPIKES: They could come out front,
8 but if we need to use the alley, the alley is
9 available.

10 MEMBER MANN: If I could go back just for
11 one moment, there's something that I'm just uncertain
12 about although I'm not certain of its relevance. When
13 did you complete construction on the addition?

14 MR. SPIKES: I think it was around June or
15 July of 2003.

16 MEMBER MANN: So sometime in the summer of
17 2003?

18 MR. SPIKES: Right.

19 MEMBER MANN: I see. Thank you very much.

20 VICE CHAIR MILLER: I just have a couple
21 of follow up questions on that line. When do you use
22 the playground on your property and when do you take
23 the children to the park? I mean under what
24 circumstances?

25 MR. SPIKES: Well, I think Ms. McLoyd

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1 could talk about that.

2 MS. McLOYD: We, like today would be a
3 day, if the weather is below 40 degrees, we don't take
4 them out, but if it's above 40, we take them out every
5 morning. They have playtime.

6 VICE CHAIR MILLER: My question to not
7 when do they go to play outside, but when do you take
8 them to the park that you have to transport them to
9 versus using the play equipment on your property?

10 MS. McLOYD: We usually take them to the
11 park on Thursdays and Fridays.

12 VICE CHAIR MILLER: You take all ages to
13 the park?

14 MS. McLOYD: No. We take two year olds to
15 four year olds.

16 VICE CHAIR MILLER: And why do you go just
17 on Thursdays and Fridays?

18 MS. McLOYD: Fridays is Fun Day. And
19 Monday through Wednesdays, they go out front. And we
20 feel two days a week they need to be able to run
21 around, play in the park.

22 VICE CHAIR MILLER: Okay.

23 MR. SPIKES: We have an academic
24 curriculum too, so that takes up a lot of time as well
25 for the kids.

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1 VICE CHAIR MILLER: What are the safety
2 concerns that you have about going to the park by foot
3 as opposed to going in the van?

4 MR. SPIKES: It's traffic, primarily. I
5 think it's inner city traffic per se. The kids are
6 jewels, so we want to protect our jewels.

7 MEMBER MANN: How many blocks away is the
8 park?

9 MR. SPIKES: It's around the corner.

10 VICE CHAIR MILLER: Around the corner.
11 Okay, thank you.

12 MEMBER ETHERLY: Mr. Chair, just as a
13 follow up on the traffic question because I think it
14 probably would be helpful to get a sense of the
15 vicinity in which the center operates.

16 In terms of some of the adjacent streets,
17 you are to an extent bounded by two major streets,
18 correct?

19 MR. SPIKES: Correct.

20 MEMBER ETHERLY: One being Martin Luther
21 King Avenue and the other being Malcolm X.

22 MR. SPIKES: Correct.

23 MEMBER ETHERLY: And it would be your
24 experience that the level of traffic on both of those
25 streets would suggest, as you indicated clearly, some

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1 precautions with regard to the transit of children
2 from the center to the park.

3 MR. SPIKES: That's correct.

4 MEMBER ETHERLY: Okay. With regard to
5 coming back to one of the components of the special
6 exception test is 205.3 which speaks to traffic
7 concerns and we talked a little bit about parking.

8 What I wanted to explore a little bit as a
9 little further information, just briefly because I
10 think I'm otherwise fairly comfortable with where we
11 are, but with respect to how your pick up and drop off
12 is handled, as you indicated in response to a couple
13 of earlier questions from the Chair, your operation is
14 from 7 a.m. to 6 p.m. Let me focus for just a moment
15 and this might be directed to you, Ms. Cannon,
16 whomever feels most comfortable answering. How is
17 your let's say your drop offs handled in the morning?

18 It's indicated in the Office of Planning
19 report that the vast majority of your children, your
20 young charges, your jewels, are brought to the center
21 on foot. Is that correct?

22 MR. SPIKES: Correct.

23 MEMBER ETHERLY: I think there was an
24 indication in the Office of Planning report that you
25 have perhaps maybe eight children presently who are

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1 dropped off by vehicle?

2 MR. SPIKES: That's correct.

3 MEMBER ETHERLY: Okay, those vehicles, how
4 do they approach the center? They simply idle in
5 front, drop the child off? There's a staff member
6 who's out front to meet that vehicle?

7 MR. SPIKES: Usually, but in the morning
8 there is usually a lot of empty spaces, so they have
9 places to move into a parking space and the child is
10 allowed to get of the vehicle on the sidewalk side.
11 And if the car is coming from Martin Luther King
12 Avenue, the same thing is available on the other side
13 of the street as far as availability of space for the
14 child to get out of the vehicle.

15 And what we did was, I want to submit
16 these photographs into evidence, we took pictures of
17 the street and what the photographs show as to the
18 availability of on-street parking is consistent
19 throughout the weekdays. So you could reply on these
20 photographs as being --

21 MEMBER ETHERLY: And as those were
22 offered, can you speak to what time of day those
23 photographs would reflect? Do you recall if they were
24 taken in the morning or taken in the afternoon or
25 evening?

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1 MR. SPIKES: These photographs were taken
2 in the morning around noon time.

3 MEMBER ETHERLY: Okay.

4 MR. SPIKES: But the vehicle spaces are
5 usually available --

6 MEMBER ETHERLY: Throughout the day.

7 MR. SPIKES: Throughout the day and early
8 morning.

9 MEMBER ETHERLY: Okay, and I believe the
10 Office of Planning report supports that, that there is
11 an abundance of parking inventory on street.

12 Do you know if that's restricted parking,
13 i.e. --

14 MR. SPIKES: Unrestricted.

15 MEMBER ETHERLY: Unrestricted parking.
16 Okay. Let me move a little bit to the play area
17 piece. We've had a little bit of conversation
18 regarding the play area and additionally the use of
19 the park off of Malcolm X.

20 With regard to the play area at the rear,
21 that's the part that I'm somewhat concerned about
22 because clearly as you testified, you are in the midst
23 of a residential area and I think of course with the
24 ANC report there's support there, but what I want to
25 get a sense of is how frequently do you use that rear

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1 play area space? As you indicated, in response to one
2 of Ms. Miller's earlier questions, you used both of
3 those spaces in combination. Some of the students,
4 some of the children are taken to the park, some of
5 the students, it would probably be more appropriate
6 for them to remain on site and perhaps make use of the
7 backyard area.

8 Do you have a firm schedule for how
9 frequently and when you use that rear play space?

10 MR. SPIKES: We don't use it frequently.
11 Very infrequently. Yes, that's it.

12 MEMBER ETHERLY: And I'm not suggesting
13 that to hamstring you in any way. I think the Board
14 is very sensitive, of course, to the need for young
15 people to have that opportunity to let off a little
16 bit of steam, whether they're 2 or whether they're 30.

17 That being said, if you feel there is a need to make
18 sure of that space I think it would be helpful to just
19 map out a little bit of a plan for how you would like
20 to utilize that space so there's a firmer
21 understanding from the Board's standpoint of what your
22 schedule is.

23 Once again, I think it's entirely
24 appropriate as part of a day care center operational
25 program to have that outside time, but given the fact

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1 of your location in the residential area, I think it
2 would be helpful perhaps to schedule that so we have a
3 firm sense of when that's going to happen.

4 I haven't seen anything in the record to
5 indicate a concern about noise, but under 205 that is
6 something that we have to take into consideration.
7 And 70 kids, you know, especially if they're all on
8 site at one time, although we know that won't happen
9 every day, can have an impact if given the
10 opportunity.

11 With respect to also the rear area, one of
12 the pieces of evidence, I believe Exhibit 5 which
13 shows the rear of the property and it's this picture
14 here and I'm interested in the bottom picture, that
15 picture reflects the rear area, correct?

16 MR. SPIKES: Correct.

17 MEMBER ETHERLY: Could you give me an
18 indication of how tall that wood fence is at the rear
19 of the property?

20 MR. SPIKES: About eight feet.

21 MEMBER ETHERLY: It's about eight feet.
22 So in terms of a regular size adult and of course,
23 clearly from the standpoint of your young people, it's
24 at least head level if not a little taller?

25 MR. SPIKES: Yes.

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1 MEMBER ETHERLY: Okay, and that
2 encompasses the full year of the play area?

3 MR. SPIKES: Yes, it does.

4 MEMBER ETHERLY: Okay. Mr. Chair, I think
5 that covers it for all of my questions. Thank you
6 very much. I appreciate your responses.

7 MR. SPIKES: Thank you.

8 CHAIRPERSON GRIFFIS: Thank you, Mr.
9 Etherly.

10 Following up on Mr. Etherly, in your
11 submission, your written case presentation, you
12 indicated at present staff at the center except a few
13 walk are within walking distance of the facility? How
14 many are not at the current time?

15 MR. SPIKES: About eight.

16 CHAIRPERSON GRIFFIS: Eight currently have
17 to get to the facility some other way.

18 MR. SPIKES: Either by bus -- mostly by
19 bus.

20 CHAIRPERSON GRIFFIS: Okay, by public
21 transportation. And has there been any evidence
22 that's come to your attention that that's created an
23 adverse condition in terms of parking or traffic?

24 MR. SPIKES: No.

25 CHAIRPERSON GRIFFIS: Okay, and the other

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1 aspect, you indicate directly reading, it says
2 visitors to the center will be accommodated with
3 existing available parking spaces provided by the
4 center. How many parking spaces are you providing?

5 MR. SPIKES: To be frank, I think we can
6 only safely provide one with some modification.

7 CHAIRPERSON GRIFFIS: One space, at the
8 rear as you indicated before. Okay.

9 Good. Now you starting off your case you
10 stated there was an excellent Office of Planning's
11 report which we also agree and you said you wanted to
12 rely on that essentially with your other submissions.

13 They bring up one point. I'll let them get to their
14 report, but in terms of the screening and the
15 landscaping, evergreen landscaping at the front of the
16 area, are you aware of that and what's your
17 anticipation in dealing with that situation?

18 MR. SPIKES: We maintain the best we can,
19 the area in front of the center. And we plant grass
20 and do everything possible that we can. But you have
21 to understand that that area is a public area and it's
22 subject to individuals walking down the sidewalk,
23 walking on the grass.

24 CHAIRPERSON GRIFFIS: So your
25 understanding of what Office of Planning is proposing

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1 is off your property and in the tree box area?

2 MR. SPIKES: Yes, but also in addition to
3 that we maintain the yard the best we can, but when
4 kids play in the yard, quite naturally that would
5 disturb whatever greenery you have there.

6 CHAIRPERSON GRIFFIS: Possibly. I
7 understand. I don't agree. That's not the way I read
8 it in terms of the tree box area, but with that, if
9 there's no other questions immediately for the Board,
10 why don't we go to the Office of Planning's report and
11 have them present it.

12 A very good morning to you.

13 MR. MOORE: Good morning, Mr. Chair, and
14 Members of the Board. I'm John Moore, Office of
15 Planning and I'm sitting in for Karen Thomas who can't
16 be here today.

17 We, at the Office of Planning generally
18 stand in support of the application and on the record.

19 For clarification purposes I have to ask the
20 Applicant is the play area you use the play area on
21 the west side of Malcolm X at King and Fairlawn?

22 MR. SPIKES: Yes.

23 MR. MOORE: Mr. Chair, Malcolm X Avenue is
24 at least 90 feet in width, it may be 110. I can't
25 imagine with that being a busy road itself and King

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1 Avenue being very busy, small children walking across
2 that intersection.

3 CHAIRPERSON GRIFFIS: Right. I think
4 that's an excellent point and in fact, in your own
5 report or what you're representing you had the area
6 photographed and it's pretty clear that there's not
7 even a cross walk or a striped area at the corner.
8 You have to walk down a full other block to get to a
9 place and it doesn't -- I can't tell from this, but I
10 don't see a signal on that intersection or a stop
11 sign.

12 MR. SPIKES: What you would have to if you
13 walked the kids there, walk down Newcomb Street, walk
14 across Newcomb Street, walk to Martin Luther King,
15 then walk across Malcolm X.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. SPIKES: In order to be in the cross
18 walk and have the protection of the light.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. SPIKES: Traffic light.

21 CHAIRPERSON GRIFFIS: So there is a signal
22 at that intersection. Okay.

23 MR. MOORE: With that clarification, I'd
24 like to remind the Applicant that the public space in
25 front of private property is the owner's

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1 responsibility, so the Office of Planning's report
2 will reflect that some greenery in that space should
3 have come from some dialogue between the Applicant and
4 Karen. But it is your responsibility to maintain that
5 space. You said you were going to put greenery out
6 there.

7 MR. SPIKES: We will, but I'm just simply
8 saying notwithstanding our greatest effort, that
9 effort can be diminished substantially by individuals
10 walking on the grass, but we will do everything we can
11 to make sure that our area is beautiful at all times.

12 MR. MOORE: And that will be the first
13 step in accepting overall beautification that we would
14 appreciate.

15 MR. SPIKES: Thank you.

16 MR. MOORE: Third clarification, Mr.
17 Chair. Ward 8 is the most transit-dependent
18 population in the city and therefore public
19 transportation is the basic means or walking. I know
20 for a fact that most people of the people who go to
21 that center probably live in the Triangle area and
22 will walk to the center. Very few cars will be
23 visible.

24 With that being said, we stand in support
25 of the application and would entertain any questions.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much.

3 Does the Board have any questions of the
4 Office of Planning?

5 MEMBER ETHERLY: Very quickly, Mr.
6 Chairman. I know, of course, Mr. Moore is standing in
7 for another OP staff member who perhaps is more
8 familiar with the application, but it is indicated on
9 I believe it's page 6 of the report with respect to
10 205.8 that there is another center or another -- I
11 should say child development center within 1,000 feet
12 of the subject application here.

13 Do you have any comments? OP, of course,
14 notes that the cumulative effect of these two
15 facilities would not be such that it would raise a
16 question regarding your support of this application,
17 but could you speak a little bit --

18 MR. MOORE: That would generally be my
19 response also on behalf of Ms. Thomas. Again, given
20 the transit dependent population and age profile in
21 Ward 8, the youngest ward in the city, there is enough
22 in this case, there are enough students there for both
23 centers.

24 As a matter of fact, the other one is on
25 the other side of King Avenue.

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1 MEMBER ETHERLY: Okay.

2 MR. MOORE: And they all seem to do pretty
3 well.

4 MEMBER ETHERLY: Thank you. Thank you,
5 Mr. Chair.

6 CHAIRPERSON GRIFFIS: Excellent, thank
7 you. Does the Applicant have any cross examination of
8 Office of Planning?

9 MR. SPIKES: No questions.

10 CHAIRPERSON GRIFFIS: No questions? Ms.
11 Miller, questions?

12 VICE CHAIR MILLER: Mr. Moore, I have some
13 confusion whether or not the Applicant has been
14 acting, whether they have a valid Certificate of
15 Occupancy or not. The Certificate of Occupancies that
16 are in the record are at Exhibit 9. I don't know if
17 you got a chance to look at them, but whether you can
18 verify that, in fact, they have a valid C of O.

19 MR. MOORE: I don't like surprises, but
20 that was sort of surprising to me. The question of if
21 the C of O that they're operating under now is valid,
22 I have to talk to Karen about that. It would be an
23 issue.

24 VICE CHAIR MILLER: I'm just not sure what
25 C of O are they operating under, do we have that in

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1 the record?

2 MR. MOORE: That is a concern of mine of
3 what's in the record.

4 VICE CHAIR MILLER: Okay. So maybe that's
5 something we can get in the record.

6 Thank you. I'll ask you again, but I
7 think that your response was and I'm addressing this
8 to the Applicant that you believed you were operating
9 in accordance with your C of O, but you didn't have it
10 with you.

11 MR. SPIKES: We don't have the C of O with
12 us today.

13 VICE CHAIR MILLER: Right, okay. Let me
14 ask you this. We have in our record Exhibit 9. Do
15 you have that?

16 MR. SPIKES: No, but explain to me what it
17 is.

18 VICE CHAIR MILLER: Okay, there are two
19 Certificates of Occupancy on this one page and --

20 CHAIRPERSON GRIFFIS: A copy of which is
21 coming to you now.

22 VICE CHAIR MILLER: That makes it easier,
23 okay.

24 CHAIRPERSON GRIFFIS: Sure does.

25 MR. SPIKES: Yes, we have this.

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1 VICE CHAIR MILLER: Okay, the bottom one
2 seems to -- it references the BZA order and seems to
3 go along with that one, supposedly. But the one on
4 top which is dated 10/25/00 has no expiration date and
5 I'm wondering is that the Certificate of Occupancy
6 that you're operating under or is there another one?

7 MR. SPIKES: This is it.

8 VICE CHAIR MILLER: This is it. Okay.

9 CHAIRPERSON GRIFFIS: So you're operating
10 under the top one which has no expiration date, was
11 issued on 10/25 2000 which is a day care for 15
12 infants to two years old and three staff. Is that how
13 you're operating currently? Fifteen infants with
14 three staff?

15 MR. SPIKES: Correct.

16 CHAIRPERSON GRIFFIS: You only have 15?

17 MR. SPIKES: No, no. You can address that
18 better than I can.

19 MS. McLOYD: Currently, we have 15
20 infants. We have 9 staff. We have six two-year-olds.
21 We have 10 three or four-year-olds.

22 CHAIRPERSON GRIFFIS: So you're actually
23 under the description of the one below that which is
24 29 kids, 6 staff?

25 MR. SPIKES: What happened is -- I'm

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1 sorry.

2 MS. CANNON: There is another C of O after
3 this one here which says expired, there has to be.

4 MR. SPIKES: And what transpired here, I
5 think, if you look at this closely --

6 CHAIRPERSON GRIFFIS: Okay, we're not
7 going to take your time on this. What we're going to
8 do is keep the record open and you can submit the
9 current C of O.

10 MR. SPIKES: Okay.

11 CHAIRPERSON GRIFFIS: And we'll get this
12 all cleaned up. I think we're going to have a couple
13 of other things that we'll have submitted into the
14 record, but let's move ahead and if there's nothing
15 further for the Office of Planning, we do have the
16 DDOT report, Department of Transportation which is
17 Exhibit 30 and 31. They were indicating that -- I
18 don't know what they were indicating. Did we get a
19 new submission on this?

20 Did you see the DDOT reports? Department
21 of Transportation reports?

22 MR. SPIKES: I don't think we have.

23 CHAIRPERSON GRIFFIS: No. There may be
24 duplicates. Okay. If approved by the Board, this is
25 the last paragraph that DDOT recommends the time

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1 period not exceed five years allowing the community to
2 observe the operation of the center and impact on the
3 parking supply with an increase in enrollment level.
4 Accordingly, DDOT has no objection to the application.

5 Of course, they're asking for a condition of five-
6 year term on this.

7 Excellent. Let's move on to the ANC. I
8 don't have any other -- of course, you'll note Exhibit
9 26 which is Department of Health. And ANC-8C, is ANC-
10 8 represented today? Very good. How are you?

11 Would you like to present your report at
12 this time?

13 MS. CUTHBERT: Good morning, Mr. Chair and
14 Members of the Board, John Moore and the other
15 Members. I'm Mary Cuthbert. I'm the chair for
16 Advisory Neighborhood Commission 8C. I'll read my
17 statement and then I'll make comments.

18 According to the DCMR 3115 and 3115.1,
19 Advisory Neighborhood Commission held a community
20 meeting on January 26, 2005. Notification to the
21 Applicant was by phone. The Commissioners present
22 were R. Calvin Lockwich, Dororthy Ferrell, Barbara
23 Hodge and Mary Cuthbert which constituted a quorum.
24 Ms. Cannon, the Applicant child development center at
25 Newcomb Street, S.E. requested an increase in the

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1 amount of children at her facility. Commissioner
2 Cuthbert visited the child development center in
3 December. Presently there are 31 children and 6
4 employees. The location of the center is a benefit to
5 the residents in the area. Most people can walk to
6 the facility which alleviates parking and traffic
7 problems. Ms. Cuthbert made a few interior repair
8 recommendations. The quality of service that is given
9 to the children is superb by the workers. I was there
10 for two hours to observe. I went to the facility and
11 observed for two hours.

12 A motion was made by Commissioner Lochwich
13 to support the request of having additional children
14 at the center and seconded by Commissioner Hodge with
15 a vote. The vote was unanimous.

16 I want to say when I visited the center in
17 December, I got a call from them that they anticipated
18 increasing the number of children and I am very much
19 so. I know most of you don't know me. I'm a real
20 stickler when it comes to children and the quality of
21 service and the location of the facility that our
22 children are in.

23 I went there with another Commissioner.
24 In fact, she's here today, Commissioner Seegars. We
25 stayed there for about two hours. The workers were

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1 extremely caring for the children, but there were some
2 repairs that I felt that was needed. I'm not an
3 inspector. I don't know what they call for, but there
4 were some things that I felt that was needed.

5 I brought that to the attention of the
6 Applicant and I will be checking on it because they
7 made it very clear that they will be making that
8 repair.

9 But I want to say that they have a little
10 child thing in the front of their facility, in the
11 front, not the back. It seemed like there was some
12 confusion with the play area. There's one in the
13 front of the building.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. CUTHBERT: Now the park that they're
16 taking the kids to is called Shepherd part on the
17 other side of Malcolm X which that street is
18 impossible for even you to cross. So I can understand
19 them taking them.

20 My other concern was the space that
21 they're going to add these children. I'm very
22 concerned about the space. I don't know what the
23 criteria is, but I was very concerned about when you
24 add children, is it going to be -- are they going to
25 be just so tight and clustered in there that the

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1 children really don't feel free, you know? When you
2 have little children, they're moving all the time so
3 they have to have space to move around. That was a
4 big concern of mind. There were some other repairs
5 that I'm asking them to please do on their own.

6 And Ms. Cannon gave me her word that she
7 will be doing it and I have a certain time in mind, I
8 didn't tell her that I will be going by to check and
9 if I can't take off from my day job, I will ask
10 Commissioner Seegars who went with me originally and
11 we discussed it to go and check for me because I like
12 two people because I look at things one way. Another
13 person looking at it another way. None of us are
14 really qualified to inspect the place. Let me come to
15 a conclusion.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. It's a very thorough report and we
18 certainly appreciate and understand the dedication you
19 put into your role and also the dedication to the
20 children in this neighborhood.

21 Let me quickly ask you in terms of your
22 concern for the space for the children when you were
23 there currently. Did you find that there was ample
24 space and could you picture, I know you're not an
25 expert or able to analyze the facility, but could you

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1 picture an increase in children in the current
2 facility?

3 MS. CUTHBERT: I can picture the increase
4 especially, what they call them, toddlers, the little
5 under two-year-olds. There's space for more of those
6 little ones. They had enough cribs and they were
7 changing the children. They fed them well and the way
8 of getting potty trained, they had the little potties
9 and everything and they were working on that.

10 I can see an increase for that.

11 Upstairs where there were the school age,
12 not school age, three to two or two to four, whatever,
13 the little ones who can walk well, they can use some
14 more, but they have to get more help which I know they
15 will be getting.

16 CHAIRPERSON GRIFFIS: Right.

17 MS. CUTHBERT: But they were very well
18 trained children. I was very pleased at the care that
19 the staff and if it was me I would ask for an increase
20 for the staff pay.

21 (Laughter.)

22 I mean the attention that they were giving
23 these little ones, you know, who can barely walk and
24 they follow behind them and calling them. You know,
25 you got one on this leg and they're walking, they're

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1 going to the bathroom. When children cling to you,
2 they care about you.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. CUTHBERT: So I was very pleased.

5 CHAIRPERSON GRIFFIS: Excellent
6 observation. Thank you.

7 Are there any questions from the Board?
8 Let me ask you to turn that microphone off on the
9 corner there.

10 MEMBER ETHERLY: Yes, Mr. Chair, just very
11 briefly.

12 Ms. Cuthbert, thank you very much for your
13 personal time and attention and also that of Ms.
14 Seegars with regard to your site visit.

15 You heard a little bit of the conversation
16 that I had with the Applicant regarding just concerns,
17 not that we've gotten any indication of any concerns
18 about noise and just the impact on adjacent
19 residential properties with regard to the operation of
20 the center. Can you speak to based on the opportunity
21 that you had to do a site visit, would you suspect
22 that there would be any concerns about noise or just
23 impacts of an increased number of children at the
24 property with respect to any of the adjacent homes or
25 adjacent apartment buildings?

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1 MS. CUTHBERT: Let me say this on that 500
2 block of Newcomb. As you walk from Martin Luther
3 King, on the right hand side, across from this
4 facility there is a couple of vacant houses. We do
5 have. And as you walk next to this facility it's
6 rental units. And as I can recall those rented units,
7 the tenants are not the best of tenants, let me say
8 that. The owner, you would have to probably beat the
9 owner to get what you want him to do.

10 So as far as noise coming from the child
11 care facility, you might have the little ones laughing
12 and whatever, but not the type of noise that whoever
13 is explaining. But you have -- when you come to
14 southeast, you have to look at the individual
15 building, although you're going to look at the
16 facilities on each side, but you have to make a
17 decision on that.

18 MEMBER ETHERLY: So it would be your sense
19 that the day care center would be the least of your
20 concern?

21 MS. CUTHBERT: That is correct. That's
22 what the neighbors told me. I talked with several of
23 the home owners. I talked with several of the home
24 owners. It's not the day care, it's the other
25 building.

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1 MEMBER ETHERLY: I appreciate that. Let
2 me also follow up, very briefly, and I appreciate that
3 having some familiarity with that particular part of
4 our fair city, as always, my colleagues know I don't
5 hesitate to do a chance of boosterism for my alma
6 mater, Ballou Senior High School, so there is some
7 familiarity with that area on this part.

8 Let me also ask you, perhaps you heard
9 some of the comment that we have regarding trash and
10 concerns around refuse in the alley. Do you have any
11 observations or additional testimony that you might
12 want to provide regarding that? We had gotten a
13 letter in evidence which suggested some concern about
14 the center's generation of trash and refuse. I think
15 we've dealt with those concerns fairly well, but any
16 additional comment that you might want to provide with
17 respect to the alley, at the rear of the property?

18 MS. CUTHBERT: I'm concerned about your
19 letter because I did walk, put notification in the
20 doors. I personally have done that. And she did not
21 attend the meeting, whoever she is. I think I know
22 who it is, but I'm not sure. The alleys are not in
23 the best of keep, but as far as trash in the alley, I
24 have to say there's a possibility there's trash
25 because when you come down Malcolm X, you have -- the

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1 ways the buildings are situated, you got Newcomb. You
2 got Malcolm X. It's a possibility there's some trash
3 in the alley.

4 MEMBER ETHERLY: But it would be your
5 testimony or your sense that there's nothing that the
6 center is doing that is contributing in any higher or
7 greater way to trash in the alley?

8 MS. CUTHBERT: Between the both of us, I
9 don't think so.

10 MEMBER ETHERLY: Thank you. I appreciate
11 that.

12 Thank you, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Good. Thank you,
14 Mr. Etherly.

15 Ms. Miller?

16 VICE CHAIR MILLER: Good morning. I want
17 to thank you for taking time out from work and for
18 doing your site visits. It's really helpful to have
19 your observations and I think Mr. Etherly asked most
20 of the questions that I would ask, but I just want to
21 make one point with respect to your report which is
22 excellent, but in there you say that you notified the
23 Applicant by phone.

24 MS. CUTHBERT: Yes.

25 VICE CHAIR MILLER: And it just appeared

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1 to me that I was reviewing the criteria we have to
2 give great weight, you meet the certain requirements
3 in 3115.1 and one was whether proper notice of the
4 meeting was given by the ANC. And we usually
5 interpret that to mean also to the public and I just
6 heard you say that you put notices in people's doors,
7 around there and that's really what I wanted to just
8 explore from you, who got noticed and then in the
9 future, in your report if you could make sure that you
10 identify that you also notified the public because
11 that's really important.

12 MS. CUTHBERT: I know that I must when
13 it's a zoning, notify within a 200-foot radius of
14 whatever property is being zoned and I did knock on
15 doors and talk with people who live -- homeowners,
16 now, because they're the ones who have a stake in that
17 community. How did they feel about this facility?
18 About the addition of more kids, because sometimes
19 they're up there every day. They're retired and they
20 observe more than what I do on one visit or two
21 visits.

22 VICE CHAIR MILLER: Right.

23 MS. CUTHBERT: And they had no problems.
24 They had a problem with the apartment building next
25 door that we had to work on. But they were able to

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1 come out. We had a few neighbors, so I'm concerned.

2 CHAIRPERSON GRIFFIS: Good.

3 MS. CUTHBERT: About Ms. Hill.

4 CHAIRPERSON GRIFFIS: Thank you. And I
5 think Ms. Miller's comments is just that all that
6 effort, it's best to put it in your letter and put it
7 in the record and then we know it and it's official
8 and it's in that. It's a valuable piece of
9 information and gosh, I wish we had the time to take
10 on the apartment building this morning.

11 MS. CUTHBERT: No, we're handling that.

12 CHAIRPERSON GRIFFIS: Not seeing any
13 jurisdiction to bring that up, let's move ahead, if
14 there's nothing further from the Board, does the
15 Applicant have any cross examination of the ANC
16 member?

17 MR. SPIKES: No.

18 CHAIRPERSON GRIFFIS: Very well. Thank
19 you very much. And again, thank you both for taking
20 the time to be down here and actually taking the time
21 to look at this application which is valuable
22 information that's been put into the record for us.

23 That is all of the government reporting
24 agencies and the ANC that I have. Let me ask if
25 anyone is present, either in support or in opposition

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1 to the application to come forward now to provide
2 testimony.

3 Ms. Seegars would like to address the
4 Board. Excellent.

5 MS. SEEGARS: I too came out of Ballou
6 High School in 1968.

7 CHAIRPERSON GRIFFIS: If you wouldn't
8 mind, just state your name and address.

9 MS. SEEGARS: I'm Sandra Seegars,
10 Chairperson of ANC-8E. Yes, I went with Ms. Cuthbert
11 to look at the place and from what I could see in the
12 backyard, there was trash in the alley. I would say
13 it's not coming from the day care because of the way
14 the gate and the yard is. It may be trash blown down
15 the alley or thrown by other people. It's not like
16 diapers and bottles and baby food, cans, whatever.

17 My mother used to take care of children in
18 the home and I used to assist her and I'm for anyone
19 who has the care for a child. I'm for anyone who
20 would do that, to take time to deal with toddlers and
21 infants. I watched too, when I helped my mother. I
22 can see they have the type of caring for the children.

23 The ladies who were there and like Ms. Cuthbert said
24 they were hanging on to them and everything was in
25 order. And Ms. Cuthbert had a concern about some of

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1 the repairs, which I can agree with that, minor
2 repairs.

3 But I think the day care should be open.
4 Whenever we have someone open a day care in Ward 8, we
5 need it and I hope they can get it opened and get the
6 zoning for the addition. Very good. As a matter of
7 fact, I used to date someone who lived in that
8 building. It looks better now than it did when he was
9 there.

10 (Laughter.)

11 So the building is pretty well kept.

12 CHAIRPERSON GRIFFIS: Excellent. And I
13 think that meets the requirements of 205.17. Any
14 personal contact with the building and does it look
15 better? That's actually not serious.

16 But we appreciate that and good comments
17 and obviously it shows there's a direct knowledge and
18 that's exactly what your role in the ANC and
19 representing the community is.

20 Ms. Miller?

21 VICE CHAIR MILLER: I just wanted to ask
22 you, if you didn't mind, saying what repairs you
23 thought they needed?

24 (Pause.)

25 Would you say that in general the facility

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1 was in good condition and these are just very minor
2 repairs that aren't worth bringing to our attention?

3 MS. SEEGARS: It's basically cosmetic.
4 It's not like they need a tub and toilet. It's
5 something like a little carpet here or there, new
6 carpet, maybe a coat of paint here and there. That's
7 what I can say. That's all I can say.

8 VICE CHAIR MILLER: Okay.

9 CHAIRPERSON GRIFFIS: Excellent. I think
10 it's pretty clear that they don't rise to the zoning
11 issues and obviously would be beyond our jurisdiction,
12 although we're very concerned about it, but there
13 would be the applicable building code which would have
14 a review of that and enforcement of it, not to mention
15 I think it would be stronger to have the ANC members
16 who testified today to enforce it. And that has been
17 given to us as evidence.

18 Let's move ahead. Any other persons
19 present today to give testimony and evidence in
20 Application 17280, either in support or in opposition?

21 Not noting any other individuals that are
22 present today, why don't we turn it over to the
23 Applicant for any closing remarks they might have.

24 MR. SPIKES: In closing, we would like to
25 make sure that these exhibits get into the record,

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1 however you might want to mark them. They're
2 photographs.

3 CHAIRPERSON GRIFFIS: Excellent. Right,
4 of the affidavit posting. Perfect.

5 Did you provide Ms. Bailey with copies of
6 that?

7 MR. SPIKES: I can now.

8 CHAIRPERSON GRIFFIS: Why don't you do
9 your closing and then we'll get to that.

10 MR. SPIKES: The closing is I appreciate
11 being here, I appreciate your concern. I appreciate
12 the questions you asked. I think those questions are
13 good to make us better child care providers and I
14 appreciate this whole process because it makes me feel
15 comfortable that things are done correctly and eyes
16 are watching and vigilance is the best policy for
17 assurance of quality. So thank you very much.

18 CHAIRPERSON GRIFFIS: Good, thank you very
19 much. And I think those are excellent remarks.

20 What I'd like to do, Board Members, is set
21 this for decision making on our first public meeting
22 in March which is the first of March, Tuesday.
23 That's, of course, when we have our public meetings
24 for any applications that we've heard and the Board
25 deliberates on.

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1 I'd like to keep the record open for
2 several things. And that is, first of all, if you
3 could just provide a scaled, a simple drawing of the
4 site plan that shows the building and where you're
5 proposing to put a parking space. On that same
6 drawing you could indicate where the trash area is and
7 where your enclosure is and you could be as simple as
8 just a written note on the drawing of what that
9 enclosure is. So for instance, as you said, it's a
10 wooden enclosure, if it's a couple of lines that show
11 a wooden enclosure, five feet high. That way when it
12 has to be here, you testified to it and that would
13 make it very clear. And then on that drawing also I
14 think it would be appropriate for any proposed
15 landscaping that you are going to provide, in response
16 to the condition that the Office of Planning is
17 recommending to be attached to this order.

18 Likewise, the Certificate of Occupancy,
19 you were going to put in. The record will stay open
20 for that.

21 I will keep the record open, if you want
22 to respond to any proposed conditions or provide
23 proposed conditions. At this point, I would set a
24 level of understanding and I think the Board is
25 looking an approval of five years, the number of staff

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1 and teachers would be as advertised would be 14.
2 Children's ages would also be as advertised which is
3 six weeks to five years. There would be no more than
4 70 children on site at one time and enrollment would
5 be up to 70 children. Operation, would also be as
6 indicated.

7 I think that the center would provide
8 trash removal, a minimum of two per week. It would
9 also be a proposed condition that we'll deliberate on.

10 And that's -- I think those are pretty much the big
11 highlights. So my point is, if you take that as a
12 benchmark, you can either comment on that you're not
13 proposing that and the reasons why it wouldn't be
14 appropriate or vice versa.

15 Ms. Miller?

16 VICE CHAIR MILLER: You may have just said
17 this, but I just also want to explain that when we're
18 considering conditions, it would be helpful to us if
19 there's a rationale for the condition. For instance,
20 if we're considering 70 children, then the rationale
21 that you could provide is to why the space is big
22 enough to accommodate 70 children, just as an example.

23 So that we're not just picking -- it's not an
24 arbitrary thing that we're doing.

25 MEMBER MANN: Mr. Chairman, one other

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1 thing I would request subject to your concurrence is
2 some clarification on the level at which they're
3 operating right now. The application has several
4 different numbers ranging from 29 children to 44
5 children, that they're currently operating with. And
6 I'd appreciate some clarification on what true number
7 is and how it breaks down currently versus the
8 proposal.

9 CHAIRPERSON GRIFFIS: Excellent. I think
10 that's very clear what Mr. Mann is asking, just
11 succinctly say how many students are currently
12 enrolled and how many students or children are on site
13 at one time.

14 You can just put that in the record, but
15 go ahead.

16 MS. McLOYD: Currently, we have enrolled
17 31 children at the site, 541 Newcomb Street. We have
18 31.

19 CHAIRPERSON GRIFFIS: Okay. Mr. Mann,
20 follow up?

21 You pulled the number of 44 and I remember
22 seeing that also. Where was that from?

23 MEMBER MANN: Forty-four is a number that
24 I've seen in the District Department of Transportation
25 report, but I don't know if it's referenced anywhere

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1 else. One of the Applicant's submissions indicated
2 that there were 39 --

3 CHAIRPERSON GRIFFIS: I thought it was 31.

4 MS. McLOYD: We're licensed for 39. We
5 currently have enrolled 31.

6 MS. CANNON: I don't want to speculate.
7 You said 42?

8 MEMBER MANN: The DDOT report indicates
9 that there's a current level of 44 children.

10 MS. CANNON: That may be the C of O that
11 we don't have in our file that they're going from. It
12 may be somewhere else.

13 CHAIRPERSON GRIFFIS: Let's go right to
14 Mr. Mann's original question because obviously that's
15 our whole point. We've got so many different numbers.
16 Where is DDOT getting this number. So give us
17 current operating conditions and address any other
18 numbers that we may have.

19 Anything else, Board Members? Very well,
20 we'll step through the schedule of when those need to
21 be submitted, what we're doing, and then I'll ask you
22 if there's any questions I can answer to clarify the
23 muddleness that we've provided.

24 Ms. Bailey?

25 MS. BAILEY: Mr. Chairman, February 21st

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1 -- that's a holiday. February 22nd -- the 21st, if
2 I'm not mistaken, is a holiday. So the 22nd of
3 February.

4 CHAIRPERSON GRIFFIS: Excellent. Any
5 difficulties in meeting that date for submission of
6 that documentation?

7 MR. SPIKES: None whatsoever.

8 CHAIRPERSON GRIFFIS: Any clarification I
9 can provide in terms of what the record is open for?

10 MR. SPIKES: I think you've been very
11 clear.

12 CHAIRPERSON GRIFFIS: Good. I'm not
13 always, so it wouldn't be surprising if you said that
14 otherwise. Very well, and that's a case we'll look
15 for those submissions. In February, we'll set this
16 for the morning session and you, of course, are
17 welcome to be here. You're not required. There
18 wouldn't be any other additional information that the
19 Board would hear, any other testimony. It will be the
20 time when the Board deliberates and makes its
21 decision.

22 So if there's nothing else I can answer,
23 thank you very much. Appreciate you coming down and
24 spending all this time with us and let's -- we're just
25 going to take a very brief break, five minutes and

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1 then we'll get to the last case in the morning and
2 we'll get through that very quickly.

3 Thank you.

4 MR. SPIKES: Thank you.

5 (Off the record.)

6 CHAIRPERSON GRIFFIS: Very well, let's
7 resume and move on to the next case.

8 MS. BAILEY: That is Application No.
9 17281, of Power Fuel and Transport LLC, pursuant to 11
10 DCMR 3104.1, for a special exception to re-establish a
11 gasoline service station under subsections 743.1 and
12 2302.1. The property is located in the C-3-A District
13 at premises 4675 South Capitol Street, Southwest,
14 Square 6274, Lots 1 and 4.

15 Mr. Chairman, there seems to be some
16 confusion with the address of the property, so perhaps
17 that needs to be clarified at some point.

18 CHAIRPERSON GRIFFIS: Excellent, thank
19 you. Very well. Let me ask, are there people that
20 have shown up that have not been previously sworn in?

21 You just raised your hand. Excellent. If you
22 wouldn't mind, if you could stand and give your
23 attention to Ms. Bailey and she's going to swear you
24 in.

25 MS. BAILEY: Please raise your right hand.

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1 Do you solemnly swear or affirm that the testimony
2 you will be giving today will be the truth, the whole
3 truth and nothing but the truth?

4 (The witnesses were sworn.)

5 MS. BAILEY: Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. And is
7 there Mr. Rashid and associates?

8 Sir, if you wouldn't mind coming forward
9 and having a seat at the table in front of us and the
10 representative and the Applicant, they're present,
11 correct? If they wouldn't mind coming forward and
12 having a seat.

13 Yes, you can put your witness cards to the
14 reporter.

15 (Pause.)

16 Are you submitting into the record?
17 Anything submitted into the record will go to Ms.
18 Bailey at the far right. She'll put an exhibit number
19 on it and then it will be distributed. You'll need to
20 give her enough copies to be distributed.

21 (Pause.)

22 Okay, gentlemen, pull up extra chairs if
23 you need. I imagine I'm going to free up the table
24 for all of you, but have a seat now.

25 MR. YUEN: I'm Koo Yuen. I'm the one at

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1 issue in this application. We, the Applicant, we just
2 wonder what Mr. Rashid --

3 CHAIRPERSON GRIFFIS: Indeed, and that's
4 going to become evidence in a matter of moments. Have
5 a seat and make yourself comfortable. You can be
6 right at the table, please.

7 MR. YUEN: Thank you.

8 CHAIRPERSON GRIFFIS: Mr. Rashid has
9 requested party status in this case. Are you aware of
10 that?

11 MR. YUEN: No, we have not been served
12 with notice.

13 CHAIRPERSON GRIFFIS: Excellent. What
14 we're going to do is have you introduce yourself, your
15 name and address for the record.

16 MR. YUEN: My name is Koo Yuen. I'm the
17 co-manager of Power Fuel and Transport LLC.

18 CHAIRPERSON GRIFFIS: And your address.

19 MR. YUEN: Address is 4650 South Capitol
20 Street, S.W. Mailing address is P.O. Box 9492,
21 Washington, D.C. 20016.

22 CHAIRPERSON GRIFFIS: Excellent. Mr.
23 Rashid, would you mind introducing yourself for the
24 record?

25 MR. RASHID: My name is Fred Rashid. I'm

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1 the owner.

2 CHAIRPERSON GRIFFIS: And your address?

3 MR. RASHID: 321 Indian Head Highway, Oxen
4 Hill, Maryland.

5 CHAIRPERSON GRIFFIS: Is that your
6 residence or is that your business address?

7 MR. RASHID: Business address.

8 CHAIRPERSON GRIFFIS: That's your
9 business. And with you, you're represented today?

10 MR. DEVER: My name is Jerry Dever. I'm a
11 consultant for Mr. Rashid. I reside at 121 Blackfoot
12 Drive in Arnold, Maryland.

13 CHAIRPERSON GRIFFIS: Okay. Two things,
14 could you turn off your microphones, not yours, I'm
15 talking to you.

16 You get to keep yours on.

17 MR. DEVER: Thank you, sir.

18 CHAIRPERSON GRIFFIS: You indicated you're
19 a consultant?

20 MR. DEVER: Yes sir.

21 CHAIRPERSON GRIFFIS: Are you representing
22 him today?

23 MR. DEVER: Yes, sir. I'm speaking on his
24 behalf.

25 CHAIRPERSON GRIFFIS: Okay. Let's go

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1 through this. Board Members, do we have initial
2 questions, first of all?

3 Let me take it up, one of the critical
4 aspects of an application for party status, clearly,
5 there's two ways to be involved in an application. Of
6 course, these are public hearings. Any one, any
7 person, no matter who they are are able to come and
8 give testimony into any case that's before us. Of
9 course, I will direct whether it's germane to the case
10 presentation and a person is allowed three minutes in
11 every application and they provide testimony.

12 If you are a party, of which Mr. Rashid
13 has indicated that he is interested in becoming, a
14 party is a full participant in the case before us.
15 That means that they are asked to present any sort of
16 filings, additional information that we might ask the
17 Applicant. They are also able to conduct cross
18 examination. There's a time period in our hearing, as
19 you recall, in my opening, where you will do a full
20 presentation of a case. It's a much higher threshold,
21 it's a much higher responsibility involved in being a
22 party.

23 One of the critical aspects of
24 establishing party status, of course, are laid out in
25 our regulations and for me it is how you would be

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1 significantly, distinctly or uniquely affected as
2 opposed to that of the general public.

3 Can you indicate to me in your written
4 submission, it was not clear, how you would be
5 uniquely or significantly distinctly impacted or
6 affected if this was to be approved?

7 MR. DEVER: Mr. Rashid, he has the
8 existing Crown station which is within probably a
9 1,000 to 1,500 feet of the proposed Applicant's site.

10 CHAIRPERSON GRIFFIS: And why is that of
11 import to us?

12 MR. DEVER: We feel there's already
13 congestion along South Capitol, but we also feel as
14 though the Applicant has circumvented the BZA Board
15 insomuch as he has already constructed certain
16 improvements on the site without BZA Board approval
17 and --

18 CHAIRPERSON GRIFFIS: Isn't that impacting
19 the entire city and our entire process?

20 MR. DEVER: That's exactly right.

21 CHAIRPERSON GRIFFIS: So that wouldn't
22 necessarily rise to the level of you being distinctly
23 or significantly uniquely impacted by whether they're
24 appropriately going about or not, but I understand
25 your concern and we share that concern.

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1 You bring up initially though being in
2 close proximity. Am I to understand that you're
3 saying that with the -- if this was approved, Mr.
4 Rashid would be distinctly impacted because there
5 would be a rise in traffic difficulties that may
6 impact his business?

7 MR. DEVER: I don't believe so.

8 CHAIRPERSON GRIFFIS: How is he impacted?

9 MR. DEVER: Well, I mean we don't feel
10 there's an additional need for -- for an additional
11 gasoline service station in that particular market.

12 CHAIRPERSON GRIFFIS: Why? What do you
13 mean there's no need. You mean it will negatively
14 impact him if there's more gasoline offered in the
15 area and he will be uniquely impacted that way?

16 MR. DEVER: He will be uniquely and I
17 think there will be some other testimony to the effect
18 that other gasoline users within the market will be
19 adversely impacted also.

20 CHAIRPERSON GRIFFIS: That's what I'm
21 trying to get to. What's the adverse impact? Not
22 being an oil man myself, help me understand this.

23 MR. DEVER: Adding an additional
24 competitor to the marketplace --

25 CHAIRPERSON GRIFFIS: So there is a

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1 business aspect.

2 MR. DEVER: No question. No question.
3 But we just ask that he have to meet the same witness
4 test that any other Applicant would have to meet.

5 CHAIRPERSON GRIFFIS: Agreed. And there
6 is no contention there.

7 MR. DEVER: He seems to feel as though he
8 can just get these things approved with a rubber stamp
9 --

10 CHAIRPERSON GRIFFIS: Okay, without
11 getting too far into testimony, let's keep it -- I
12 still don't see even at that and very serious level,
13 and it's a huge concern for this Board in every
14 application, even child development centers.

15 MR. DEVER: Yes sir.

16 CHAIRPERSON GRIFFIS: I don't see how Mr.
17 Rashid rises to the level of being able to be granted
18 party status yet. I need something that there is a
19 unique and distinct aspect to how it would impact him.

20 MR. YUEN: May I have the indulgence of
21 the Board for a minute? May I ask a question at this
22 moment?

23 CHAIRPERSON GRIFFIS: No, but I'm going to
24 give you a full opportunity to respond, but I need to
25 clarify exactly what we're talking about first.

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1 MR. YUEN: Thank you very much, Mr.
2 Chairman.

3 CHAIRPERSON GRIFFIS: Certainly.

4 MR. DEVER: Maybe that was our
5 misunderstanding. We really just wanted the
6 opportunity to speak before the Board, address our
7 concerns.

8 CHAIRPERSON GRIFFIS: Okay, so you want to
9 provide testimony, not necessarily a full-blown case
10 with cross examination.

11 MR. DEVER: That's exactly right.

12 CHAIRPERSON GRIFFIS: Absolutely perfect,
13 there's no problem with that. We will obviously call
14 you fifth in our chronology for persons in opposition
15 to the application and we'll afford you some time at
16 that point.

17 MR. DEVER: Very good.

18 CHAIRPERSON GRIFFIS: Thank you very much.

19 MR. DEVER: Thank you.

20 CHAIRPERSON GRIFFIS: In that case you can
21 make yourselves more comfortable in seats that you can
22 pick yourselves.

23 To that, let's go to the Applicant.
24 There's no need to respond, of course, because the
25 application for party status has been withdrawn,

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1 unless you feel that there's a need to address the
2 Board on that issue.

3 MR. YUEN: Just to clear the record at
4 this moment, contrary to what the Applicant tried to
5 establish here, we do have a valid building permit
6 that was issued --

7 CHAIRPERSON GRIFFIS: Okay, and we'll get
8 to that because I think it's an important point --

9 MR. YUEN: And also, the party of
10 interest, their location is not within the
11 jurisdiction of District of Columbia, it's in P.G.
12 County or Maryland, so therefore --

13 CHAIRPERSON GRIFFIS: You find that
14 precludes us from granting a party status?

15 MR. YUEN: We believe that this is a
16 District of Columbia matter at this moment, Mr.
17 Chairman. We are serving the interest and the welfare
18 of the citizens of the District of Columbia.

19 CHAIRPERSON GRIFFIS: You're close to the
20 border, aren't you?

21 MR. YUEN: No question about that, Mr.
22 Chairman.

23 CHAIRPERSON GRIFFIS: It's a moot issue
24 because of party application.

25 MR. YUEN: Thank you very much. I just

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1 wanted to let my position be known.

2 CHAIRPERSON GRIFFIS: Good. I'm going to
3 turn it over to you for the beginning of the
4 presentation of the case, but I need two things
5 answered first. What is the exact address of this
6 site?

7 MR. YUEN: The exact address in our
8 opinion is 4675 South Capitol Street, Southwest, which
9 conjoined with another address on the site in the
10 square, number is 6274.

11 VICE CHAIR MILLER: I'm sorry, 6274?

12 MR. YUEN: Square 6274.

13 VICE CHAIR MILLER: Oh, Square 6274.
14 Thank you.

15 CHAIRPERSON GRIFFIS: And you say in your
16 opinion, what's your opinion based on?

17 MR. YUEN: My opinion is based on that the
18 record shows that the premise was used for service
19 station and that's a lot that --

20 CHAIRPERSON GRIFFIS: But specifically,
21 where do you get that address you said?

22 MR. YUEN: That address is based on our
23 Certificate of Occupancy.

24 CHAIRPERSON GRIFFIS: Tax records?

25 MR. YUEN: Absolutely tax records.

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1 CHAIRPERSON GRIFFIS: So we'll move ahead.
2 Also, I want to get this cleared up and you can
3 present it, if you have, but the Office of Planning's
4 report indicated that they were unable to render a
5 recommendation because they needed a plan that showed
6 dimensions of the parking spaces, lighting, signage,
7 traffic movement, circulation, landscaping. Are you
8 prepared to present that today?

9 MR. YUEN: Yes, I will reserve my
10 statement. I'd like to yield this to our architect,
11 Jeffrey Way.

12 CHAIRPERSON GRIFFIS: That's fine. You're
13 prepared to go through all of this today?

14 MR. YUEN: Yes, absolutely.

15 CHAIRPERSON GRIFFIS: Excellent, let's
16 begin.

17 MR. WAY: Good morning, for the record,
18 Jeffrey Way, principal architect of A Plus
19 Architecture located at 2137 Espey Court, Suite 4,
20 Crofton, Maryland 21114. Telephone number being
21 301/261-3121.

22 Good morning, Mr. Chairman, Members of the
23 Board, the public, in general. In 2004, I believe in
24 spring of 2004, I was hired by my client, Power Fuels
25 and Transport to prepare plans for the installation of

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1 new tanks and new pumps for a gas station at 4675
2 South Capitol Street. My client provided me with a
3 Certificate of Occupancy, dated 1976 which I submitted
4 as part of my application materials, Certificate of
5 Occupancy No. B100638, dated December 7, 1976 for a
6 gas station at 4675 South Capitol Street, Southwest.

7 I was also provided with another
8 Certificate of Occupancy, vis-a-vis, I guess the
9 change of ownership to Power Fuels and Transfer, Mr.
10 Koo Yuen and that was dated 9/29 2003. So I had two
11 pieces of background documentation prior to that
12 appeared to have been valid prior to my having been
13 hired to put together plans showing new tanks and new
14 pumps at this location.

15 I prepared plans showing new tanks and
16 pumps at this location, submitted the plans to DCRA at
17 the Building Permit Center at 941 North Capitol.
18 Having gone through that process of application and
19 having the plans reviewed at every known level at that
20 time we were issued a building permit, Building Permit
21 Number B463152 for 4675 South Capitol Street, the
22 address being consistent with the 1976 C of O and the
23 2003 chain of ownership C of O and this permit was
24 issued to Power Fuels and Transport, LLC.

25 The scope of the work was new pumps and

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1 tanks at gas station per plans. And the zoning was C-
2 3-A. We were issued a building permit and to the best
3 of my knowledge, after I turned the plans and permit
4 over to the client, work was commenced.

5 That concludes my initial testimony.
6 Thank you very much.

7 CHAIRPERSON GRIFFIS: Thank you.

8 MR. WAY: May I add sort of a --

9 CHAIRPERSON GRIFFIS: It's your case.

10 MR. WAY: In response to -- Mr. Chairman,
11 in response to your mentioning that the Office of
12 Planning was unable to issue a report or referral,
13 whatever, at this time, I did receive a communique
14 from Mr. John Moore, a very fine gentleman. We had a
15 great meeting. His communique came to me by way of
16 fax on January 26, 2005. There were about seven or
17 eight bullet points that he highlighted. Subsequent
18 to my receipt of this, I did miss a couple of phone
19 calls, I apologize for that, a logistical problem, but
20 I did prepare a site plan which I felt addressed all
21 of the relevant points and I transmitted that
22 personally to the Office of Planning last Thursday or
23 Friday. So that I trust did reach him. I left it
24 with the receptionist on the third floor of 801 North
25 Capitol.

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1 CHAIRPERSON GRIFFIS: And we care a little
2 bit about OP, but more about us. Do we have that site
3 plan?

4 Did you submit it into the record?

5 MR. WAY: It was actually requested after
6 our application materials were submitted.

7 CHAIRPERSON GRIFFIS: So it's not in the
8 record at this point. Do you have copies of it?

9 MR. WAY: I don't think I have a copy with
10 me today, unless -- I presume that Mr. Moore might
11 have that. I perhaps made a bad presumption.

12 The bullet points that Mr. Moore
13 mentioned, "Dear Mr. Way, I received your site and
14 landscaping plan at approximately 2 p.m. which I
15 requested Friday, January 21, 2005. The requested
16 materials were to demonstrate the following: (1) the
17 dimensions and location of the 12 parking spaces; (2)
18 the location and type of lighting; (3) the location
19 and type of signage; (4) traffic movement plan for the
20 property; (5) the type of trees, shrubs and other
21 planting to be on the site; (6) any screening
22 materials that may be used; (7) the location of the
23 dumpster and any other relevant information regarding
24 the proposed gasoline service station."

25 Now back to today, the plan that I issued

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1 and left at the office at 801 North Capitol, Third
2 Floor, which visually Mr. Moore just provided to the
3 Chairman, I presume, depicted parking spaces, 12 of
4 which are -- and the dimensions are noted thereon. A
5 note was added to the plan to indicate that the
6 location of the lighting was to be the underside of
7 the proposed overhead canopy. Number three, I did not
8 make a notation of signage. There's already signed
9 pylon out front. It was not under my task order from
10 my client to put a price sign on that existing pylon,
11 but I presume that could be a separate task order.

12 I did not provide a traffic movement plan
13 for the property. There is an existing code
14 conforming driveway and curb cut which I presume, if
15 it's adequate for present use, ideally it's adequate
16 for the proposed use of the gas station.

17 In terms of landscaping, there was a
18 number of areas on the site which are already green
19 space and so I did not show any additional or any
20 intensification of green space on my plan.

21 On my plan, however, I did show a dumpster
22 behind the building and have indicated a site type
23 fence and gate assembly should be erected around it.
24 And so I do feel that although it may not have come
25 within the time frame, it was sort of back and forth,

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1 just sort of making sure we had it just right. I do
2 feel that it has been provided. Thank you.

3 CHAIRPERSON GRIFFIS: Good. Are you aware
4 of what is being proposed as the traffic flow? I mean
5 one would assume -- let me just start our discussion
6 here, that the automobiles are coming off of South
7 Capitol Street and entering the site. Is that
8 correct? Are they then directed to exit the same way
9 or are they continuing through the site and on this
10 site plan that's been submitted continuing down an
11 asphalt drive and if so, then where does that asphalt
12 drive go to and how does it exit back out?

13 MR. WAY: Okay, there are a couple of --
14 there are two distinct means of ingress and egress,
15 vehicular ingress and egress to the site. Again,
16 there's an existing conforming paved apron and
17 driveway which exceeds the 20 foot or the 22 foot
18 minimum requirement for two-way traffic. I think it's
19 around 25 feet. That is adequate for ingress and
20 egress as a two-way driveway. So we believe --

21 CHAIRPERSON GRIFFIS: That's the one off
22 of South Capitol?

23 MR. WAY: That is correct, sir.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. WAY: And then the property sort of

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1 has what we would call maybe a dog leg which
2 protrudes, if you're looking at the site plan, as
3 we've oriented it, it protrudes and goes behind with
4 what is now known to be the bank property and then
5 terminates at sort of a projection, if you will, of I
6 believe Southern Avenue. So that also presents
7 another opportunity for ingress or egress. And that
8 alignment actually brings the vehicular traffic to the
9 control for the traffic light intersection of Southern
10 Avenue and South Capitol Street.

11 CHAIRPERSON GRIFFIS: Getting to that
12 intersection, is that -- it looks like it's a proposed
13 street, but it isn't a street yet?

14 MR. WAY: It is a street. Like many
15 streets in Washington, D.C. if they're in sort of
16 areas or corridors where it's sort of a forgotten
17 section of the city, it's not as improved as it needs
18 to be in other areas. My own experience anectdotally
19 tells -- I can share with you. I did a project on
20 Michigan Avenue many years ago and as much traffic as
21 there is on Michigan Avenue, there was actually no
22 curb, no gutter, the asphalt just rolled right into
23 grass.

24 CHAIRPERSON GRIFFIS: Right, right.

25 MR. WAY: And you had not even a public

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1 sidewalk. So it's along that level of improvement.

2 MEMBER ETHERLY: Is it technically a
3 continuation of Southern Avenue?

4 MR. WAY: It absolutely is.

5 MEMBER ETHERLY: Okay.

6 MR. WAY: It's just not kept up very well.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. WAY: By the city, I might add.

9 CHAIRPERSON GRIFFIS: Indeed, so at this
10 point, there is no proposed landscaping on the
11 property?

12 MR. WAY: Other than the existing green
13 space areas which are raised and curbed.

14 CHAIRPERSON GRIFFIS: Okay. And the green
15 space is some of which are off the property, but would
16 be maintained and some of which are on. When you say
17 the green space, what's being proposed for those, just
18 grass?

19 MR. WAY: In my mind just in terms of
20 discussion, the green spaces can be augmented with
21 conifers or deciduous trees or shrubs of any type.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MR. WAY: Just to add to the
24 beautification.

25 CHAIRPERSON GRIFFIS: We're going to cut

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1 to the chase because discussions are nice, but what we
2 need is definitiveness and obviously under 706.5 we'd
3 love to see it, but the Board is given full
4 jurisdiction of design to review. So obviously it's
5 better for us to understand what you're proposing,
6 what you think you can do.

7 MR. WAY: Let me answer, Mr. Chairman, by
8 saying that it was our thought initially that what we
9 were coming in here to do was to satisfy an
10 administrative procedure. We were advised by the
11 Zoning Administrator whose position is now filled in
12 DCRA by Mr. Bellow that we should go to BZA for the
13 administrative reasons and etcetera, etcetera.

14 My thought initially is that the plans
15 that serve as an exhibit for our presentation should
16 be relegated to simply the building permit set of
17 plans which is why we've submitted 20 sets of that
18 along with our application.

19 CHAIRPERSON GRIFFIS: What you're saying
20 is what the Board should look at is just the permits?

21 MR. WAY: Well, just by virtue of Mr.
22 Moore and his excellent consultation, letting us know
23 as to whether you should show this or that, that's the
24 only reason we've even created an additional document.

25 CHAIRPERSON GRIFFIS: I see.

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1 MR. WAY: We thought this was basically an
2 administrative procedure, yes.

3 CHAIRPERSON GRIFFIS: Well, let me clarify
4 because this is more than an administrative procedure.

5 And secondly, going straight to the regulations, the
6 regulations stipulate requirements for us to grant
7 relief for you to have this expansion. And as I said,
8 one of them is the Board may impose requirements
9 pertaining to design, appearance, screening or
10 lighting or any other requirements it deems necessary
11 to protect the adjacent and nearby properties.

12 There is additional pieces that go through
13 the entire regulations of 706 which we're going to
14 walk down. But quite directly, so we don't waste a
15 lot of time we'll just ask you for a definitiveness of
16 what you're proposing, we'll address that and whether
17 we find it sufficient or not and we'll require either
18 additional documentation or we'll require additional
19 aspects to be added to this application in order to
20 make it successful or quite frankly it would be
21 denied.

22 Let's open it up to any of the other quick
23 questions at this point, otherwise, we'll get you --
24 why don't we let you proceed for your full case
25 presentation.

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1 MR. WAY: We believe that the
2 reestablishment and again, please pardon me if there
3 are any terminology or any semantics that don't jive
4 in with what actually --

5 CHAIRPERSON GRIFFIS: We're not big on
6 formalities, just regulations.

7 MR. WAY: Well, the Chairman took issue
8 with my term "administrative proceeding" so that's why
9 I want to throw that out there.

10 Be that as it may, we fine, we believe
11 that the reestablishment of this gasoline station is
12 provided for in the zoning code in DCMR 11. I have
13 had for my purposes the background documentation that
14 I needed to proceed on the basis that I'm just
15 designing new tanks and new pumps at the site of an
16 existing gasoline station or previous or former or
17 whatever is the right term.

18 We believe that the property met the
19 burden of proof. It's not within 25 feet of a
20 residence. It's separated by a street, publicly-owned
21 land surrounds the property on a side or two. We
22 don't believe that it adds to the impact of traffic.
23 So we really feel that it was relatively straight
24 forward insofar as the technical matters were
25 concerned.

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1 Excellent. Anything else?

2 MR. YUEN: Yes, I'd like to --

3 CHAIRPERSON GRIFFIS: Turn on your
4 microphone.

5 MR. YUEN: Thank you, Chairman.

6 CHAIRPERSON GRIFFIS: Sure.

7 MR. YUEN: I'd like to yield my time at
8 this moment to Mr. Ted Beck who is my construction
9 manager and he has a lot of input in this matter
10 because of his knowledge of the entire project from
11 the beginning to the end.

12 MR. BECK: The application, I met with Mr.
13 Bellows during the initial questions and as was said
14 earlier, the permits on this project are still active.

15 I just want to let you know up front. The basis of
16 the reestablishing existing use, I think was because
17 the use under 7431, special exception for a 3-C
18 District, a gas station established in a C-3 before
19 1985 was not required, unless it was enlarged. The
20 building has not been enlarged. The six fueling
21 points have been put into the plans and new
22 underground tanks have been installed for this
23 project.

24 7431 reflects back to 3104 zoning, under
25 3104 and provisions under 706 in Chapter 23 which we

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1 meet all, everything falls back to based on what the
2 zoning regulations say, back to 706 which meet these
3 standards and you shall proceed to C2, C3. They all
4 reflect back to 706. The station as the C of Os
5 demonstrate is that the station was established prior
6 to 1985 so the conformity rights for the station in
7 that district through zoning did conform and do to
8 today.

9 As a matter of fact, the lot, the plats
10 for 6274 for that go back to 1958 which falls back to
11 the C1 establishment. On the 1958 map that 6274 was
12 conformed as a gas station for the use in this
13 district.

14 CHAIRPERSON GRIFFIS: So you're saying, if
15 I understand you correctly under 743.1, that you're
16 neither establishing or enlarging an existing gas
17 station that would be established or enlarged after
18 20th December 1985.

19 MR. BECK: 1985, that's correct.

20 CHAIRPERSON GRIFFIS: So there's an
21 existing C of O for a gas station continuance?

22 MR. BECK: Yes.

23 CHAIRPERSON GRIFFIS: It's always been a
24 gas station. It's never been anything else.

25 MR. BECK: The lots -- the building has

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1 been used for other things, but the lots have never
2 been used for anything, the two lots, 1 and 4, which
3 were subdivided or partial still owned under 6274 by
4 the same owners.

5 CHAIRPERSON GRIFFIS: Was it a functioning
6 gas station for the past 10 years? Past three years?

7 MR. BECK: No. No.

8 CHAIRPERSON GRIFFIS: So it wasn't.

9 MR. BECK: It wasn't a functioning gas
10 station, but it was a conforming site for the use of a
11 gas station.

12 CHAIRPERSON GRIFFIS: We understand that.
13 So the reason why perhaps you've been referred by the
14 Zoning Administrator is the fact that that
15 establishment lapsed, I can only assume, but why would
16 he send you here? He's a knowledgeable person of the
17 regulation.

18 MR. BECK: Right.

19 CHAIRPERSON GRIFFIS: So even if you look
20 at 843.1 and then you're referred back to 706 of which
21 that section refers to and it goes to establishment or
22 enlargement after May 1958, but even those dates, the
23 most current dates are what's most critical. When was
24 the last time it operated as a gas station, what was
25 the year?

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1 MR. BECK: I think the way it was
2 understood, it was the late 1990s when it was last.

3 CHAIRPERSON GRIFFIS: Are you making the
4 case that you shouldn't be here?

5 MR. BECK: Yes.

6 CHAIRPERSON GRIFFIS: That's all right.
7 It's worth pursuing.

8 MR. BECK: If I can say, Mr. Chairman, if
9 the lots for the zoning requirement, based on all
10 their investigations, based on the 1958 map which
11 refers back to a gasoline establishment after May 12,
12 1958 shall be permitted in a C-1 District as a special
13 exception if approved by the Board. But prior to --
14 on the '58 map, I think the permit was issued based on
15 the fact that this site was a conforming site. It was
16 never a nonconforming so it wouldn't -- its
17 discontinuous as would not apply.

18 CHAIRPERSON GRIFFIS: Why?

19 MR. BECK: For three years, because it was
20 never nonconforming. It was always been conforming in
21 that District to have that C-3-A, to have that gas
22 station here on that 6274 parcel.

23 CHAIRPERSON GRIFFIS: You're saying it's
24 always been a matter of right use on that site?

25 MR. BECK: Yes.

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1 CHAIRPERSON GRIFFIS: Do you have a C of O
2 that's been submitted into the record?

3 MR. BECK: Yes sir.

4 CHAIRPERSON GRIFFIS: Let's get that in
5 front of us, shall we?

6 And what's the last one? This one was
7 issued on 2003, correct?

8 MR. WAY: It was the prior one. The prior
9 C of O, Mr. Chairman, was 1976.

10 CHAIRPERSON GRIFFIS: They're all in front
11 of me here.

12 MR. BECK: Then there was none on record
13 for anything prior to that other than the zoning map
14 establishing that 6274, 1958 actually is written on
15 the zoning map a gasoline service station for that
16 district.

17 Under 2005.1 for discontinuation, it says
18 that -- you have that? Okay.

19 VICE CHAIR MILLER: I might have missed
20 your point about why it was a conforming use.

21 MR. BECK: It was always conforming use
22 for C-3-A in that district from 1958 forward and it
23 would only fall as a nonconforming and fall under the
24 discontinuation if it became a nonconforming property
25 which means that after 1958, if it was not approved in

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1 the C-3-A district the way it was -- I was to
2 understand it, that it would not be able to be re-
3 established unless it came before the BZA. But in a
4 C-3-A, under the guidelines for zoning, and C-1, C-2
5 and C-3, they're all permitted, based on certain
6 criterias. A C-3-A, being before 1985, if it was
7 established in a C-3-A, but it refers back to 706
8 which sort of gives it a criteria to meet these, not
9 within 25 feet, not within certain impacts to the
10 community or based on what's read in 706.

11 If it's required that it come before the
12 Board, these criterias would be met. We're trying to
13 establish that this property has always been
14 conforming since 1958. It's always been an approved
15 lot to establish a gas station, the property has
16 always been since 1958.

17 The Shell station across the street in
18 1958 was not approved. The Exxon up the street was
19 not approved in 1958. This lot has always had a gas
20 station on this parcel.

21 VICE CHAIR MILLER: Was this lot subject
22 to a BZA order ever?

23 MR. BECK: No.

24 VICE CHAIR MILLER: Could you also bring
25 to our attention which regulation it falls under as

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1 being conforming in the district that it's in.

2 CHAIRPERSON GRIFFIS: 743.1 goes to uses
3 in the C-3 and a gas station/service station
4 established after 20 December 1985, a repair garage in
5 C-3 or mechanical would be subject to a special
6 exception under the provisions of 706. 706 goes to
7 the fact that would it actually -- goes all the back
8 to 1958, the point being you're saying is that this
9 has always been as your description, this has always a
10 lot conforming based on the District's --

11 MR. BECK: Regulations.

12 CHAIRPERSON GRIFFIS: Regulations.

13 MR. WAY: And what their records show.

14 CHAIRPERSON GRIFFIS: But their records of
15 a Certificate of Occupancy.

16 MR. BECK: For '58, there's nothing.

17 CHAIRPERSON GRIFFIS: Right. We know
18 that.

19 MR. WAY: It's also substantiated by its
20 presence on the Bates survey map that shows it as a
21 gas station back in the mid-20th century.

22 MR. BECK: In '58 --

23 MR. WAY: It's enjoyed a history of being
24 a gas station.

25 MR. BECK: The May 1958 map that the

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1 Zoning Department uses to issue based on criteria.

2 CHAIRPERSON GRIFFIS: We've got a long
3 history.

4 MR. BECK: Yes.

5 CHAIRPERSON GRIFFIS: But the current
6 history then goes to 2005.1 and although there may be
7 a Certificate of Occupancy . Once the
8 nonconforming use of the structure land, except for
9 government action impedes access to the premises for a
10 period of more than three years, shall be construed as
11 a prima facie evidence of no intention to resume
12 active operation as a nonconforming use, meaning it
13 lapses.

14 MR. BECK: If it became a nonconforming
15 use. If after 1958 --

16 CHAIRPERSON GRIFFIS: It would be a
17 nonconforming use if you had to have a special
18 exception for it.

19 MR. BECK: That's what I'm saying. If it
20 was established in 1958, it wasn't required to have a
21 special exception.

22 CHAIRPERSON GRIFFIS: Yes, but now it is.

23 MR. BECK: Only if it's established after
24 1958.

25 CHAIRPERSON GRIFFIS: Right, and if it

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1 hasn't been used in the past three years, it has
2 discontinued its existing nonconforming use.

3 MR. BECK: Well, in 1976, it was
4 conforming.

5 CHAIRPERSON GRIFFIS: But in the past
6 three years, it hasn't been in operation.

7 MR. BECK: But the discontinuation refers
8 to nonconforming.

9 CHAIRPERSON GRIFFIS: It is nonconforming.

10 MR. BECK: In 1976, it wasn't
11 nonconforming.

12 CHAIRPERSON GRIFFIS: Yes, but now, it's
13 nonconforming.

14 MR. BECK: Because of --

15 CHAIRPERSON GRIFFIS: Because of our
16 regulations.

17 MR. YUEN: Mr. Chairman, may I address
18 this, just shortly?

19 CHAIRPERSON GRIFFIS: Sure.

20 MR. YUEN: The way we read the
21 nonconforming would be something like a grandfather
22 which like an R-4 used to be a gas station there
23 before zoning, however, that use is continuous until
24 somebody either stops using it or it burns down or
25 whatever the case may be. And therefore forever will

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1 be gone.

2 But our case here before the Board is that
3 we maintain that the use has been established and
4 we're not enlarging it. We're not doing any changes
5 other than --

6 CHAIRPERSON GRIFFIS: What does it mean to
7 be established?

8 MR. YUEN: I beg your pardon?

9 CHAIRPERSON GRIFFIS: What does it mean?
10 You said the use has been established.

11 MR. YUEN: We have been asked by the
12 Zoning Administrator to come to this because of --

13 CHAIRPERSON GRIFFIS: I know, but you say
14 that the use has been established. What do you mean
15 by it's been established. It's been in operation or
16 --

17 MR. YUEN: It's been established
18 continuously from the record which is 1958, 1976 and
19 before 1985 and --

20 CHAIRPERSON GRIFFIS: How was the business
21 established then?

22 MR. BECK: Established in being that the
23 property has always been a conforming use, without
24 falling outside of regulatory after 1958 and any
25 amendment therefore.

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1 CHAIRPERSON GRIFFIS: This is what I see.
2 I see the fact that there may have been before zoning
3 regulations this was allowable use.

4 MR. BECK: Right.

5 CHAIRPERSON GRIFFIS: But then again
6 everything was because we didn't have any regulations
7 that precluded defined uses.

8 Clearly it went through any other
9 iterations, in fact, as you're saying it went from a
10 different zone. It was rezoned. There was a map
11 amendment. All those pieces of which there would be,
12 have been changes to our regulations would have
13 grandfathered any existing condition. That existing
14 condition does carry through all the way up to the
15 date that that operation stops, meaning it no longer
16 is in operation. You can't go in there and buy gas.
17 That day starts a clock. That clock ran and if three
18 years pass, that existing now nonconforming use is
19 discontinued. It is no longer an existing
20 nonconforming use. It's a nonconforming use under
21 special exception.

22 MR. BECK: I guess the Zoning, the way we
23 interpreted it and based on the way it was written
24 because it doesn't specifically give that type of
25 guideline other than the phrase of discontinuation

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1 because of nonconforming. Nonconforming, we were told
2 that if it was grandfathered in, it was grandfathered,
3 but it could have been nonconforming, but
4 grandfathered.

5 CHAIRPERSON GRIFFIS: That's true. Your
6 grandfathering aspects lapsed.

7 MR. BECK: I know, but nonconforming being
8 the station was sold to us as a conforming site.

9 MEMBER ETHERLY: It's not the site. It's
10 the use.

11 MR. BECK: I meant the use. We bought as
12 a conforming use. They pulled their stuff out. We
13 had the option to put ours in. So you're saying that
14 because they pulled the tank -- I think we had this
15 discussion with Mr. Moore, if you pull the tanks out,
16 you lose your right after three years? It becomes a
17 nonconforming. That's not the way Zoning sees it or
18 they would restricted this.

19 CHAIRPERSON GRIFFIS: That's all we're
20 looking at is Zoning.

21 MR. BECK: I know, but do you understand
22 what I'm saying?

23 CHAIRPERSON GRIFFIS: I do. I totally
24 understand, but my problem is --

25 MR. BECK: I'm trying to get the

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1 definition of a physical, nonconforming, nonconforming
2 being that the site and the property is nonconforming.

3 Nonconforming being any use of the land or structure,
4 land or combination, lawfully existing at the time
5 that the title or any amendment to this became
6 effective.

7 CHAIRPERSON GRIFFIS: So you purchased
8 this site. The last people, in order to probably deal
9 with other laws and regulations pulled the tanks out.
10 There was a permit to pull those tanks out. Is that
11 correct?

12 MR. BECK: Yes.

13 CHAIRPERSON GRIFFIS: Was there continuous
14 work for the past three or four years on the site?

15 MR. BECK: We needed to get money
16 together, the customer had to get finances together in
17 order to reestablish the use, to put the fuel facility
18 back into place. And being that the property was
19 always zoned for a gas station under C-3-A --

20 CHAIRPERSON GRIFFIS: I understand your
21 argument.

22 MR. BECK: The conforming, I think that's
23 just --

24 CHAIRPERSON GRIFFIS: I'm trying to figure
25 this out for your benefit because I'm happy to break

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1 for lunch.

2 MR. BECK: Right, right.

3 CHAIRPERSON GRIFFIS: But nonetheless, I
4 don't see it yet. I'm reading very specifically
5 2005.1 and there's nothing else that's been provided
6 that seems to be sufficient to move beyond that.

7 Mr. Etherly?

8 MEMBER ETHERLY: Just to be very clear, if
9 I could. What was on the site for the three years
10 while it was down?

11 MR. YUEN: We used the building to be a
12 bank and the existing lot we kind of reserved that for
13 the gas station. But let me clarify a little bit more
14 on this nonconforming use of definition. Use lawfully
15 in existing at the time of adaptation or amendment of
16 this title that would thereafter request approval from
17 the Board of Zoning Adjustment shall not be deemed as
18 a nonconforming use.

19 CHAIRPERSON GRIFFIS: What are you
20 reading?

21 MR. YUEN: I'm reading nonconforming use
22 of the District of Columbia Code.

23 VICE CHAIR MILLER: What cite?

24 CHAIRPERSON GRIFFIS: Which regulations?
25 Have a seat. We've got them all in front of us. What

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1 are you reading?

2 MR. YUEN: 3104.

3 MR. BECK: It's not 3104. It's under
4 definitions.

5 CHAIRPERSON GRIFFIS: 199.

6 MR. BECK: Yes, under definitions for
7 nonconforming use. And nonconforming use shall be
8 considered not conforming deemed and not conforming
9 use shall be considered a conforming use subject to
10 the provisions of 3104.2 and 3104.3. And then it
11 refers to 3104.2 and 342 for clerical provisions.

12 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
13 do you have definitive or do you have questions?

14 VICE CHAIR MILLER: No, I don't have
15 definitive, but I would really like it if we could get
16 the dates down so we know what we're talking about.

17 CHAIRPERSON GRIFFIS: This is the
18 situation. We don't have any more time to spend on
19 this. You've actually been referred to, this is not a
20 self-certification your coming in and then you're
21 telling us we don't think -- you've been referred by
22 the Zoning Administrator here, so we have two options.
23 Either you withdraw this application, actually appeal
24 the Zoning Administrator's case in which you'll be
25 bringing an appeal before us and we'll decide it which

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1 is exactly where Ms. Miller is going is present your
2 case of why you can't be here which is putting it into
3 the form of an appeal, or we move forward with the
4 application that we have today or you don't open a gas
5 station. I mean I guess that's the third one.

6 MR. BECK: We've already got it built.

7 CHAIRPERSON GRIFFIS: Good, it's good to
8 get options of the table. So now we're down to two
9 options. So I put it to you again, do you want to
10 bring an appeal of the Zoning Administrator's decision
11 or do you want to present the application?

12 MR. WAY: Mr. Chairman, thank you very
13 much. With all due respect, you made a statement
14 earlier that your position or basically you saw this
15 as a nonconforming use. Now Mr. Beck has now read
16 into the record out of a District of Columbia
17 document, DCMR 11 that the nonconforming use
18 definition, with all due respect, we'd like to know
19 the Board's position on whether it accepts and
20 acknowledges DCMR 11's definition of nonconforming use
21 because that serves as the predicate, if you will, the
22 basis for what we're going to do at this point, at
23 this juncture.

24 Unless we missed, it no disrespect
25 intended, but we haven't heard that the Board's

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1 statement regarding --

2 MS. GLAZER: Mr. Chair, I'm sorry to
3 interject --

4 CHAIRPERSON GRIFFIS: Actually, I'm going
5 to clarify that very quickly and then we'll hear from
6 the Office of Attorney General.

7 Let me be totally direct here. We've
8 given a lot more latitude than we should have in terms
9 of answering questions about whether you should be
10 here or not here. That's not our decision, nor does
11 it have to be even our jurisdiction at today's point.

12 Our Board, we can easily step in and say you
13 shouldn't be here. We don't have to. The point is
14 that the Zoning Administrator sent you here. That's
15 enough for us. We need to ask no more.

16 But we've given enough time to really
17 investigate this because there was some critical
18 aspects to it.

19 I'm going to reread and I'll answer
20 directly your question after I hear from the Office of
21 Attorney General.

22 MR. WAY: Thank you.

23 MS. GLAZER: Mr. Chair, I'm sorry to
24 interrupt before, but I thought it was important to
25 point out that this application apparently was self-

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1 certified. If you go to Exhibit 4, self-certified for
2 special exception relief under Section 743.1.

3 MR. BECK: We were advised to do that from
4 Zoning.

5 MR. WAY: We were instructed by the Zoning
6 Administrator of DCRA to proceed on this level and on
7 this basis and on this path.

8 (Pause.)

9 CHAIRPERSON GRIFFIS: Okay, let's go
10 directly to your question. In looking at the
11 definition of nonconforming use in 199 which refers
12 you to 3104.2. 3104.2, I don't think there's any new
13 information here in reading it. I think 3104.2 goes
14 to an extension. It's the extension of the use,
15 right? And in fact, then you go to the other
16 regulations that actually talk about enlargements and
17 this one does also talk about enlargement, an
18 extension. What we still have to go back to is
19 whether it was continuous. That's really what we're
20 trying to find out. Is there a continuous use which
21 didn't lapse.

22 What I've heard today is that there was
23 always a provision and/or an existence of a gas
24 station on this site. There was a period of which
25 there was not a gas station in operation and that's

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1 its current history.

2 I don't think I see anything definitively
3 and I can hear from the rest of the Board that goes to
4 any of the regulations that say once it was there, it
5 can always be there. I think it's very specific as to
6 what starts and what stops it.

7 So here's what I'm laying out again, as
8 this is a self-certified now, my understanding. You
9 presented that case that you should be here. Your
10 option now is to continue and present the application
11 for it, your application for relief. Or you can rest
12 on this case, that you shouldn't be here and we'll
13 tell you more documentation that we might need and
14 then we'll set this for decision.

15 So it's up to you. Do you want to rest on
16 this?

17 MR. BECK: I think you stated earlier in
18 the previous ones that all the decisions made are
19 based on public record for any information that's
20 aroused by the meeting today, everything is based off
21 of information that the D.C. government has.

22 CHAIRPERSON GRIFFIS: No, no, no. Let me
23 be absolutely clear. That is absolutely not correct.

24 MR. BECK: Okay.

25 CHAIRPERSON GRIFFIS: Our decision will be

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1 based on the record that's created before us today.
2 It is a public record.

3 Now we could conceivably look at anything
4 else in the universe that's on public record, but if
5 you think we're relying on something that's out there,
6 you will be mistaken because I can tell you we all
7 have full-time jobs. We do this as volunteer basis.

8 MR. BECK: Right.

9 CHAIRPERSON GRIFFIS: We're not going and
10 investigating our own stuff.

11 MR. BECK: Well, that's why we're here.

12 CHAIRPERSON GRIFFIS: So anything you want
13 us to know, you make sure you point to it or put it
14 into the record now. Okay, go ahead.

15 MR. BECK: We're not enlarging based on
16 3104.2 or extending, so we still are under the pretext
17 that we shouldn't be here.

18 CHAIRPERSON GRIFFIS: Are you an extension
19 of a gas station use? Are you extending the use?

20 MR. BECK: Were under the pretext that we
21 have a C of O for an established use, conforming use.

22 MR. WAY: Mr. Chairman, by extending do
23 you mean with regard to time or do you mean
24 geometrically? Could you clarify what you mean by
25 extending?

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1 CHAIRPERSON GRIFFIS: What I mean is
2 reading 3104.2 which is any extension or enlargement.

3 MR. WAY: We're not doing any physical
4 enlargement.

5 MR. YUEN: Or extension --

6 CHAIRPERSON GRIFFIS: But you're extending
7 the use.

8 MR. WAY: Well again, as long as we narrow
9 the definition of extending to whether you mean
10 geometrically or whether you mean on the calendar,
11 there's a big difference. I contend that we applied
12 for and the plans that we prepared be picked
13 underground work, tanks and pumps. The only vertical
14 projection is the pump itself and the canopy which is
15 an accessory as a permitted use.

16 CHAIRPERSON GRIFFIS: Good and believe me
17 we hear everything you've said already. So we don't
18 need to say it again.

19 So again, what do we want to do today? Do
20 you want to rest on this and we'll go through the rest
21 of all the submissions into this record because we
22 have to, it's our requirement and then we'll set this
23 for decision making and what we're being asked to
24 decide is whether you actually are required for relief
25 or not or do you want to continue and actually present

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1 a full-blown case.

2 MR. YUEN: Mr. Chair, I can only go back
3 to the record of 1976 occupancy permit which requires
4 six pumps --

5 CHAIRPERSON GRIFFIS: I understand.

6 MR. YUEN: And now we're doing six pumps.
7 We're not enlarging or extending the use of the
8 operation.

9 CHAIRPERSON GRIFFIS: Believe me, I fully
10 understand, heard it.

11 MR. YUEN: Thank you very much.

12 CHAIRPERSON GRIFFIS: Well, what are you
13 doing then? What are we doing?

14 MR. YUEN: What is our option again so we
15 can clearly --

16 CHAIRPERSON GRIFFIS: The option is you
17 rest right now and what you put before the Board is it
18 is our decision whether you should be here or not or
19 you continue and actually present a case for the
20 relief, the special exception.

21 MR. YUEN: Can you indulge us a minute?

22 CHAIRPERSON GRIFFIS: Take two minutes.
23 It's an important decision.

24 (Pause.)

25 MR. YUEN: Mr. Chair, we're ready for a

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1 response and --

2 CHAIRPERSON GRIFFIS: I'm ready.

3 MR. YUEN: We're ready for a response and
4 I yield the response to our architect, Mr. Jeffrey
5 Way.

6 MR. WAY: Unfortunately, Mr. Chairman --

7 CHAIRPERSON GRIFFIS: Man, they put the
8 heat on you, don't they?

9 MR. WAY: Yeah, I need to raise my rates.
10 My response comes with just a little tad of a
11 question. What is the outcome if it's determined that
12 we really shouldn't be here today?

13 CHAIRPERSON GRIFFIS: What's the outcome?

14 MR. WAY: Yes.

15 MR. BECK: We shouldn't be here.

16 CHAIRPERSON GRIFFIS: I understand what
17 you're saying. The Board has the discretion -- I'm
18 going to say two things on this. The Board has
19 jurisdiction, discretion to review an application,
20 especially self-certified, but even with the Zoning
21 Administrator and say there's additional relief
22 required here or there's not the relief that's
23 actually been requested.

24 Now I can tell you honestly on the record
25 that my attorney, the Board's attorney, the Office of

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1 Attorney General is saying that we actually are going
2 into territory we shouldn't being an advisory board,
3 that you're asking for us to review your case when
4 it's actually you self-certified it. You basically
5 looked at your site plans and your documents and said
6 we need this relief. That's what self-certification
7 is. Actually, you signed it, didn't you?

8 MR. WAY: Probably.

9 CHAIRPERSON GRIFFIS: I would not say
10 probably. And your seal is on it. So in one sense,
11 you know, listening to our attorney, we shouldn't
12 waste our time with this.

13 So again, it's -- I'm a fair guy and want
14 to do things straight forwardly and if we shouldn't be
15 hearing an application, let's figure that out. But
16 that's where I want to go because we actually have an
17 afternoon session that's starting in 10 minutes and
18 I'm going to need something to eat, otherwise I get
19 cranky with everybody.

20 So that being said, where are we?

21 MR. YUEN: Mr. Chairman, we appreciate the
22 Board's time and indulging in our presentation and it
23 is our preference in the interest of time and
24 everybody's welfare and whatever, the situation that
25 have brought to light of our situation and do our

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1 research. We'd like to rest at this moment.

2 So our decision is to rest.

3 CHAIRPERSON GRIFFIS: They're not
4 withdrawing the application. They're making --
5 they've self-certified for a special exception and
6 they've brought a case that they, in fact, are not
7 required to have the special exception. I'll tell you
8 what's going to move forward then. We will walk
9 through the special exception case. We're going to
10 hear from Office of Planning. We're going to hear
11 from persons in opposition and in support. And also
12 the ANC and then we'll go to conclusions. This should
13 go pretty rapidly, obviously, but that's what we're
14 going to pursue.

15 Worse case, we decide that you should be
16 here and you haven't presented a case. Okay. Boy, is
17 this going to be so confusing to everyone, here and
18 watching.

19 MR. WAY: We believe we have presented a
20 case. We believe that we stand on the regs and that's
21 our case. We believe that we have no fancy footwork,
22 no manipulations of the law or the text as it reads.
23 We believe we're actually standing on the regulations.

24 We applied for a building permit. We were issued a
25 building permit. We feel that we were issued a

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1 building permit correctly and we stand on the regs.

2 So we believe our case, in fact, has been
3 made.

4 CHAIRPERSON GRIFFIS: That doesn't --

5 MEMBER ETHERLY: The concern here, Mr.
6 Chair, if you're wrong, if you're wrong on that, then
7 you're gambling that you're going to have another shot
8 to bite the apple so to speak.

9 MR. WAY: The owner is willing to stand in
10 that position. The truth is very easy. It's the
11 other stuff that's complicated. The truth is very
12 easy.

13 MR. YUEN: I believe, Mr. Chair, you gave
14 us an option of either rest or withdraw the -- I mean
15 your statement is simply -- said that we shouldn't be
16 here. I mean --

17 CHAIRPERSON GRIFFIS: No, my statement
18 never said that. My statement said -- I gave you an
19 option. You could present a case almost in the
20 embodiment of an appeal, present a case that you are
21 required no relief or you present a case that
22 addresses the relief that's required.

23 MR. YUEN: Maybe we totally -- I'm sorry,
24 we may have totally misplaced the context of your
25 remark when you directed us to consider the rest the

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1 case otherwise. So we need to discuss this one more
2 time, since we did not really know where we were
3 going.

4 CHAIRPERSON GRIFFIS: Why don't you take
5 two minutes.

6 Is the ANC here today? Indeed. Come on
7 forward.

8 If you wouldn't mind, I just need you --
9 if you could pull up a chair? Actually, come on this
10 side. Excellent, thank you very much.

11 It's Mr. Jordan?

12 MR. JORDAN: Yes.

13 CHAIRPERSON GRIFFIS: Good, if you
14 wouldn't mind turning your microphone on, just give me
15 your name and address for the record?

16 MR. JORDAN: My name is Absalon Jordan. I
17 live at 4635 4th Street, Southeast, Apartment 2,
18 Washington, D.C. Zip Code is 20032.

19 CHAIRPERSON GRIFFIS: And you wanted to
20 address the Board?

21 MR. JORDAN: Yes. The question is do we
22 have an opportunity to cross examine them in terms of
23 what they stated up to this point? And I don't know
24 where they're proceeding, but if they've finished what
25 they were going to do, then we have some questions to

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1 pose to them.

2 CHAIRPERSON GRIFFIS: Excellent. I didn't
3 skip over that. I was waiting for the same answer to
4 that question.

5 What are we doing? Don't go too far.
6 They're going to give us that now and then we can go
7 to cross.

8 (Pause.)

9 MR. YUEN: Mr. Chair, I have a question.
10 Do the proponents on this matter get a chance to speak
11 also? If we rest, they will not be able to speak?

12 CHAIRPERSON GRIFFIS: No, we have a
13 special exception before us. So we're following that
14 entire procedure. It's just how much you want to
15 present.

16 MR. YUEN: So therefore, the proponents
17 will be able to --

18 CHAIRPERSON GRIFFIS: Everybody.

19 MR. YUEN: Everybody opposed and not
20 opposed.

21 CHAIRPERSON GRIFFIS: In fact, you're
22 about to get cross examined on your testimony in your
23 written submissions. And to be absolutely fair, this
24 is what I would suggest you do, is put together a
25 special exception case. You have it prepared in

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1 written form. If there's anything else you want to
2 highlight on it, put it in there. As a preliminary
3 matter you've raised an issue of jurisdiction, whether
4 this Board has jurisdiction to require you to seek
5 relief.

6 We can address that either today or we can
7 address that, I think, with time constraints we'd
8 address that in our decision making on this. And then
9 we'll move through and we'll get to this very quickly.

10 We have the Agency reports. We have the ANC, then
11 we'll go to persons to testify and then we'll go to
12 conclusions.

13 MR. YUEN: One more question, proceeding
14 to we continue to present our case, it is my
15 understanding that the Board Members that are here
16 today, will you rule on the -- whether we should be
17 here or not, as our entire case, including our
18 presentation?

19 CHAIRPERSON GRIFFIS: Yes. I'm prepared
20 to take that up as an item in our decision making.

21 MR. YUEN: Okay, very well.

22 CHAIRPERSON GRIFFIS: We'll address it. I
23 don't guarantee we're addressing it today.

24 MR. YUEN: Very well, Mr. Griffis, then I
25 would like the choice -- I don't want to forfeit any

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1 right that is being offered to our company at this
2 moment. So I appreciate your wisdom behind this
3 matter.

4 Thank you very much. We shall continue.

5 CHAIRPERSON GRIFFIS: Good, let's get to
6 it then.

7 I think it's probably optimal in your
8 presentation is to walk through 706 then and take each
9 of the issues directly. I'll give some direction in
10 terms of the time that I've taken of everybody here,
11 but 706.3 indicates that the station would not be
12 located within 25 foot of a residential district
13 unless separated by a street or alley and that is the
14 case of the documentation that's been submitted. Is
15 that true?

16 Who is going to be answering these
17 questions?

18 MR. BECK: Yes, that's true.

19 CHAIRPERSON GRIFFIS: Okay. So it is
20 separated by an alley, is that correct?

21 MR. BECK: Street, there's no alley.

22 CHAIRPERSON GRIFFIS: It's not within 25
23 feet of a residential district?

24 MR. BECK: It's not within 25 feet of any
25 residential district.

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1 CHAIRPERSON GRIFFIS: Okay. And 706.4
2 indicates that the operation or the use shall not
3 create a dangerous or objectional traffic condition.
4 Is there factual evidence that you're providing that
5 indicates that it would not create dangerous or
6 objectional traffic conditions?

7 MR. BECK: I think that the layout pretty
8 much is self-recognized you enter in one and you exit
9 at the light and it relieves a lot of the traffic at
10 South Capitol from crossing the street to the Shell
11 station to -- all the gas stations are on the
12 northbound side.

13 CHAIRPERSON GRIFFIS: It's right near a
14 big intersection.

15 MR. BECK: Yes, it's at Southern and South
16 Capitol and all the service stations are on the
17 northbound side. So anybody from the south would have
18 to go --

19 CHAIRPERSON GRIFFIS: Hold on, Mr. Etherly
20 has a question.

21 MEMBER ETHERLY: Well, let's just continue
22 with that because I think this is a piece that bears a
23 little bit of exploration. It is your -- let's deal
24 with what would be, I believe, eastbound traffic
25 coming down South Capitol from the District of

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1 Columbia, so heading into the direction of Eastover,
2 you will use that as an landmark. It would be your
3 intent that vehicles traveling eastbound on South
4 Capitol Street would enter the subject property by or
5 via that first curb cut, that first driveway, correct?

6 MR. BECK: The second curb cut.

7 MEMBER ETHERLY: Which would be at
8 Southern and South Capitol?

9 MR. BECK: You're coming towards the
10 District?

11 MEMBER ETHERLY: If I'm leaving the
12 District --

13 MR. BECK: Oh, leaving the District, yes,
14 it's the first one.

15 MEMBER ETHERLY: It would be the first
16 curb cut.

17 MR. BECK: First curb cut --

18 MEMBER ETHERLY: And you would allow
19 motorists to also, if they so chose, exit that same
20 curb cut as well?

21 MR. BECK: Yes.

22 MEMBER ETHERLY: Okay, so I can enter and
23 exit out of that same curb cut.

24 MR. BECK: Yes.

25 MEMBER ETHERLY: Additionally, I would

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1 also be able to enter or exit off of that little
2 roadway we talked about, Southern Avenue.

3 MR. BECK: Southern Avenue.

4 MEMBER ETHERLY: At the light controlled
5 intersection. Come through the rear behind what is I
6 believe currently the Bank of America branch.

7 MR. BECK: Yes sir.

8 MEMBER ETHERLY: Okay. Are you
9 anticipating any signage, small or otherwise, to
10 direct the flow of traffic?

11 MR. BECK: Yes.

12 MEMBER ETHERLY: So motorists can make the
13 determination as to what's most appropriate?

14 MR. BECK: In or out, yes.

15 MEMBER ETHERLY: Okay. It is also -- it
16 would also be your sense then that if I'm a motorist
17 traveling on South Capitol Street heading westward,
18 i.e., I'm coming from the direction of Eastover,
19 heading back towards the District, you would also be
20 able to make a left turn from what is the left most
21 lane heading west to come into that curb cut.

22 MR. BECK: Yes.

23 MEMBER ETHERLY: Let's say I decide, I've
24 already come through the light at Southern Avenue and
25 South Capitol, and all of a sudden I decide gosh, I

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1 need to stop and get a stick of gum or I need to stop
2 and fill up, motorists can make a left turn there?

3 MR. BECK: Right, make a left there, yes.

4 MEMBER ETHERLY: Now, of course, I
5 understand there's no light. Once you pass that
6 light, there's nothing there, it's just you're going
7 to have to wait, traffic is going to back up behind
8 you, but you are saying you are okay with that?

9 MR. BECK: Yes.

10 MEMBER ETHERLY: If motorists make that
11 left turn?

12 MR. BECK: Yes. I mean we wouldn't have
13 any objection to it, because the same criteria applies
14 except for those two entrances to the station across
15 the street. So coming southbound, they would have the
16 same --

17 MEMBER ETHERLY: Now, from the standpoint
18 of once again we're talking about 706.4, dangerous or
19 objectional traffic conditions, would you have any
20 concerns regarding the fact that as you mentioned
21 there is another establishment across the street from
22 the subject property. Is there any concern or do you
23 think there would be any objectional traffic condition
24 created by the fact that you now have conceivably
25 motorists who could be turning either way?

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1 MR. BECK: No, because our standpoint is
2 that it's going to relieve that everybody trying to
3 make a left coming towards Maryland to be able to
4 relieve the crossing and the backing of the traffic in
5 the afternoon. Most of your southbound traffic is
6 backed up all the way up. This is going to relieve
7 the left hand turn which is no left hand turn lane
8 between the Exxon, what is that side street -- there's
9 a light prior to the entrance to that.

10 MEMBER ETHERLY: Part of what I'm getting
11 at is have you thought about simply making the --
12 actually, you can't do it, but my concern would
13 probably be a left turn coming off of South Capitol as
14 you're heading back towards the District because there
15 seems to be a very short distance in terms of vehicle
16 lengths, a short distance between the South
17 Capitol/Southern Avenue intersection.

18 MR. BECK: And the light --

19 MEMBER ETHERLY: And where it would be a
20 left turn into your establishment. I would just as
21 soon wonder whether or not it's just appropriate to
22 have, if traffic is coming what would be westbound,
23 just have them at Southern Avenue --

24 MR. BECK: Right.

25 MEMBER ETHERLY: And prevent any entrances

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1 there. That's all I have.

2 MR. BECK: Yes, we wouldn't expect any
3 more than there is now, other than the fact that it
4 may relieve a little bit from across the street or any
5 of the other. It is the lowest priced --

6 MEMBER ETHERLY: But it would be your
7 testimony that you would not anticipate that creating
8 an objectional condition.

9 MR. BECK: No.

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

12 CHAIRPERSON GRIFFIS: Excellent. Any
13 other questions from the Board at this time?

14 Good, is there anything else in terms of
15 706, special exception or even 2302 from the
16 Applicant's perspective and presentation?

17 MR. BECK: No.

18 CHAIRPERSON GRIFFIS: I'll note my reading
19 of 2302, I didn't walk through all of it, it's fairly
20 redundant in the aspects that are covered in 706 and
21 it even goes more to the adjacency of the residential
22 district and I think we're there.

23 MR. BECK: Right.

24 CHAIRPERSON GRIFFIS: Very well, is there
25 anything else then for the case presentation?

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1 MR. BECK: No, that should be it.

2 CHAIRPERSON GRIFFIS: Excellent, thank you
3 very much. Let's move ahead then to any cross
4 examination of the ANC. As Mr. Jordan has indicated
5 he has cross questions.

6 Let's move right to it, Mr. Jordan, if you
7 wouldn't mind. Of course, your cross examination will
8 go directly to the testimony you've either heard or is
9 in the record at this point. Make your questions very
10 succinct and direct to the person you want to answer.

11 Answers should be very succinct and direct back,
12 directly answering the question.

13 Mr. Jordan, all yours.

14 MR. JORDAN: Thank you very much, Mr.
15 Chairman. The first question is the Certificate of
16 Occupancy is a part of the record, 62730 lists the
17 sole proprietor of the property as Mr. Yuen. Is that
18 correct?

19 CHAIRPERSON GRIFFIS: Turn your microphone
20 on.

21 MR. YUEN: Yes, I am the one who made the
22 application back in September of 2003.

23 CHAIRPERSON GRIFFIS: He's talking about
24 the Certificate of Occupancy.

25 MR. YUEN: Yes, that's correct.

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1 MR. JORDAN: But I said it lists him as
2 the sole proprietor of the property?

3 MR. YUEN: Yes, I took the permit out with
4 the intention that I will occupy the premises.

5 MR. JORDAN: But there's no reference to
6 the Power Fuel and Transport, they don't have a
7 Certificate of Occupancy, so I'm trying to find out
8 for that site, so what is your relationship with Power
9 Fuel and Transport?

10 CHAIRPERSON GRIFFIS: Okay, let me ask Mr.
11 Jordan, why is that pertinent to the Board's
12 consideration?

13 MR. JORDAN: Because he has a Certificate
14 of Occupancy, but not the company. And I'm just
15 saying if he's going to operate it, then he should
16 have been making the application, not the company.

17 CHAIRPERSON GRIFFIS: You mean the zoning
18 application?

19 MR. JORDAN: Yes sir.

20 MR. YUEN: Do you want me to respond, Mr.
21 Chairman?

22 CHAIRPERSON GRIFFIS: No. Okay, go ahead.

23 MR. YUEN: Okay, Power Fuel and Transport,
24 LLC, I'm a co-manager of that company. They are the
25 supplier of motor fuel to many stations in the

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1 District of Columbia. And the company consists of
2 minority stockholders including the operator.

3 CHAIRPERSON GRIFFIS: So directly, you
4 have proper authorization to bring an application
5 before this Board?

6 MR. YUEN: Absolutely, I -- in fact, I
7 retained Mr. Jeff Way.

8 CHAIRPERSON GRIFFIS: Mr. Jordan?

9 MR. JORDAN: Okay, you list the address
10 for this site at 4675 South Capitol Street, Southwest.
11 Will any of the operations for this gas station
12 concur at 4675?

13 MR. YUEN: Absolutely.

14 MR. JORDAN: Mr. Chairman, can I refer to
15 the plat that he has submitted as a part of his
16 application?

17 CHAIRPERSON GRIFFIS: Sure, let's look at
18 the plat.

19 MR. JORDAN: Mr. Yuen, I would like for
20 you to look at your plat and look at Lot 4 and the
21 address that's associated with that. Is that where
22 the operations will concur, the address at 4675 is on
23 the plat is Lot 4. Is that where the operations for
24 the gas station will occur?

25 MR. YUEN: The gas station stands by

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1 itself, okay, which is part of --

2 CHAIRPERSON GRIFFIS: Let's just go
3 directly to it. Are you looking at the plat that he
4 put in front of you?

5 MR. YUEN: Yes.

6 CHAIRPERSON GRIFFIS: Okay. The Board has
7 the same question. If you look at Lot 4, Number 4675,
8 is that the gas station?

9 MR. YUEN: We consider 4675 as considered
10 all the way up to --

11 CHAIRPERSON GRIFFIS: Yes, but the direct
12 question is --

13 MR. YUEN: Yes.

14 CHAIRPERSON GRIFFIS: Your plat is showing
15 4675.

16 MR. YUEN: 4675.

17 CHAIRPERSON GRIFFIS: Is that the gas
18 station?

19 MR. YUEN: That is a former gas station
20 building that is a bank now.

21 CHAIRPERSON GRIFFIS: But that's not your
22 -- that's not what we're talking about today, right?

23 MR. YUEN: Also, we are talking about 4675
24 also comprised of lot area which goes behind 4675.

25 CHAIRPERSON GRIFFIS: On your plat that

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1 you submitted, the plat is actually listing as 4665.
2 Is that correct?

3 MR. YUEN: No, the 4665 is the building
4 itself on South Capitol Street. We considered Lot 1
5 and 4 as part of 4675 and that's how the station was
6 established from the past.

7 MR. JORDAN: Do you currently have a lease
8 for the address 4675 South Capitol Street, Southwest?

9 MR. YUEN: Yes.

10 MR. JORDAN: And who is that property
11 leased to?

12 MR. YUEN: The property, if you look at
13 the property --

14 CHAIRPERSON GRIFFIS: Why do we need to
15 know that, Mr. Jordan?

16 MR. JORDAN: The reason I'm raising the
17 question is because the Bank of America has the
18 address 4675 exclusively and in all of his submissions
19 he uses the address 4675.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. JORDAN: And the next question is will
22 any of the operations for the gas station occur at
23 4675?

24 CHAIRPERSON GRIFFIS: There's two aspects
25 to this. One, he can say whatever he wants, if it's

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1 4675 and we grant an order for 4675, that's not the
2 address, well, then they've got to bring another
3 application with the correct address or something
4 correct it. But it goes to a more critical aspect.
5 Let's just look at the site plan you submitted.

6 Show us where your gas station is and what
7 the building and the convenience store and all those
8 aspects that are in there. Let's just be clear. The
9 number 4665, on this site plan, that's part of your
10 gas station operation, isn't it?

11 MR. YUEN: That's only accessory. We
12 maintain that the gas station is an accessory lot that
13 is part of 4675 location because of the rear lot of
14 4675 is part of the gas station lot. You see the part
15 that goes behind 4675, I mean that is how we
16 approached this permit process and based on historic
17 records in 1958, 1975, that was the lot, it was one
18 lot which is comprised of the entire square. We have
19 gas station in that entire square, historically shown.

20 And I was given --

21 CHAIRPERSON GRIFFIS: So you think it's
22 one single lot?

23 MR. YUEN: No, I was given occupancy
24 permit to include Lot 1 and 4 for 4675 and our permit
25 for the construction specifically says we can build on

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1 Lot 1.

2 So the address is really --

3 CHAIRPERSON GRIFFIS: This is all very
4 confusing, Mr. Jordan.

5 MR. JORDAN: Yes, it is.

6 CHAIRPERSON GRIFFIS: Do you own Lot 4?

7 MR. YUEN: Yes. We own all the lot all
8 the way to --

9 CHAIRPERSON GRIFFIS: There it is. Mr.
10 Jordan, they're going to have to get this cleared up.

11 This isn't going to be the proper forum for us to
12 decipher all of that. Even if we got to the full
13 understanding, I'm not sure there's a decision or any
14 jurisdiction we would actually have in regards to
15 that.

16 Next question.

17 MR. JORDAN: Well, the C of O that was
18 listed for 1967 as B100638 as part of your submission,
19 if you'll look at that C of O, it has Square --

20 CHAIRPERSON GRIFFIS: But Mr. Jordan, you
21 get my point, right? I see where they're proposing
22 the operation. I see their site plan. I think you
23 have a legitimate concern. I'm just not sure we can
24 do anything.

25 MR. JORDAN: Let me just ask one other

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1 question, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Sure.

3 MR. JORDAN: The question was raised about
4 them having an extension or a continuation of a gas
5 station at a particular site.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. JORDAN: The site that they listed was
8 Lot 6274.

9 CHAIRPERSON GRIFFIS: 6274.

10 MR. JORDAN: But on the Certificate of
11 Occupancy for the gas station for 1976, the square is
12 6275. My question is how can they prove that the gas
13 station that they're talking about operating was on
14 the -- is the same gas station that they have the
15 Certificate of Occupancy for from 1976? Their whole
16 case is predicated upon having a gas station at this
17 operation in 1976.

18 CHAIRPERSON GRIFFIS: Excellent. It's an
19 excellent point. The record is going to stay open for
20 you guys to respond to that in written form. That's
21 all. We're going to leave it at that because it goes
22 to the point of whether you should be here or not
23 here. It doesn't go to the special exception case.

24 So the record stays open for that. Of
25 course, you'll put it into the record on the date that

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1 we're going to require. You're also going to serve it
2 on the ANC as they are a party in this case.

3 Mr. Jordan, next question.

4 MR. JORDAN: Yes, the next question has to
5 do with traffic flow.

6 CHAIRPERSON GRIFFIS: Good.

7 MR. JORDAN: What evidence have you
8 gathered in terms of surveys or studies to indicate
9 that the traffic flow at that site will not be
10 objectionable?

11 Let me just stress this point. Have you
12 shown that you have data or what have you on an hourly
13 basis to show that you will not create objectionable
14 or dangerous traffic conditions during the operation
15 of this gas station?

16 MR. BECK: Again, it falls back to the
17 fact that this ward is one of the highest transient
18 districts in the District of Columbia as stated by Mr.
19 Moore, so the majority of the traffic is transient
20 traffic with the bus stops there and we felt that the
21 relief that we give from South Capitol Street for
22 people to come in to get gas is going to take 10 to 15
23 minutes, six cars out of the equation, so traffic is
24 not going to be an issue.

25 MEMBER ETHERLY: But Mr. Beck, if I could,

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1 just to follow up on that question. You would agree
2 that this corridor is a significant commuter artery?

3 MR. BECK: Yes, I do.

4 MEMBER ETHERLY: For egress entrance,
5 egress into the District.

6 MR. BECK: Yes. Into the lot should not
7 be an obstacle, exit is at a light, is at a D.C. light
8 so it's a timed equation and I think the egress to the
9 property to retain a southward towards Maryland or
10 Southern Avenue direction is going to be minimal, very
11 minimal.

12 MEMBER ETHERLY: Have you or the Applicant
13 done any traffic studies or any analysis of the
14 vehicle volumes?

15 MR. BECK: No, we had no reason to do it.
16 We haven't had any reason.

17 MEMBER ETHERLY: Thank you.

18 CHAIRPERSON GRIFFIS: Mr. Jordan?

19 MR. JORDAN: Mr. Chairman, I have an
20 exhibit I'd like to be made part of the record to
21 submit.

22 CHAIRPERSON GRIFFIS: Why don't you make
23 it in your case.

24 MR. JORDAN: I want them to respond to it.

25 CHAIRPERSON GRIFFIS: What's the

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1 documentation?

2 MR. JORDAN: It is a picture of Southern
3 Avenue, everybody is talking about them having traffic
4 exit from the back of their lot and coming up Southern
5 Avenue.

6 CHAIRPERSON GRIFFIS: So the question is,
7 this is a picture of Southern Avenue. Is this where
8 you're proposing vehicles will exit your facility?

9 MR. BECK: Yes, this is Southern Avenue.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BECK: As discussed with Mr. Moore.
12 This is the same road.

13 CHAIRPERSON GRIFFIS: Enough. Next
14 question?

15 MR. JORDAN: That's it.

16 CHAIRPERSON GRIFFIS: Very well, any other
17 cross?

18 No other cross, Mr. Jordan?

19 MR. JORDAN: I'm finished now.

20 CHAIRPERSON GRIFFIS: Good. Thank you
21 very much.

22 MR. YUEN: Mr. Chair, I just want to --

23 CHAIRPERSON GRIFFIS: Not now. Let's move
24 ahead. Let's go to if there's no other cross
25 examination of the ANC, let's move ahead to the Office

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1 of Planning's report.

2 See, we lost him. We've got to throw the
3 whole thing out. No, we'll get him back here.

4 Mr. Moore, how are you? We're ready for
5 you.

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

8 CHAIRPERSON GRIFFIS: It is afternoon.
9 Let's go ahead.

10 MR. MOORE: As indicated in our report, we
11 didn't have enough information to analyze the
12 application and therefore make a recommendation.
13 After the information Mr. Way did provide me on Friday
14 of last week, we still are not in the position to
15 offer a recommendation. There are a lot of questions
16 we have on the information that was submitted.

17 CHAIRPERSON GRIFFIS: Okay, and the
18 similar questions that were provided the Applicant in
19 terms of the bullet points and that go to the parking
20 spaces. Are those adequately addressed from the site
21 plan?

22 MR. MOORE: No. For example, if you look
23 at the document that I provided you, when I spoke to
24 Mr. Beck to get the location of the parking spaces
25 prior to submitted our application, I was given that

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1 there would be four spaces on the north side of the
2 building, four on the east side and four slanted on
3 the south side, that is the front of the building.
4 What Mr. Way provided me is quite different.

5 As you can see, there are four handicap
6 spaces. I don't know why -- you only need one at
7 best. But if you look at the location of those
8 handicap spaces and proximity to the entrance and exit
9 to the site, it's a problem as far as I'm concerned.

10 They mentioned that there would be lights
11 under the canopy. If you theoretically have four
12 handicap spaces, you have no light source at all in
13 that area and a major question that we have is how is
14 the tanker truck service the station because given the
15 sidewalk in front of the store, the convenience store
16 and the location of the aisles for gasoline, it looks
17 a little tight for me to get a truck through there to
18 service.

19 The parking spaces shown on the east side
20 of it, that's five through nine -- I'm sorry -- do you
21 have copies of this?

22 CHAIRPERSON GRIFFIS: We memorized it.

23 MR. MOORE: With a 9 by 9 parking space
24 being required under 22 foot lane, there's only, in
25 our estimation, about 35 feet from the public space,

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1 that is the property line to the nearest pump and when
2 you deduct 19 and add 22 to that from -- there's
3 simply not enough space for cars to use the islands.

4 CHAIRPERSON GRIFFIS: So you're saying 5
5 through 9 poses a problem in terms of circulation,
6 cars coming in, those cars pulling in and backing out.

7 MR. MOORE: Yes. And those are the
8 reasons we asked for a circulation plan that shows how
9 the tanker is going to service, how the cars are going
10 to enter and exit.

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. MOORE: And I agree that Southern
13 Avenue is in disrepair. It's paper at best. It's
14 just a surface down there and we, of course, referred
15 this application to DDOT, the experts on traffic for
16 its recommendation. I think it's part of your record.

17 CHAIRPERSON GRIFFIS: Good. Of course, in
18 your understanding, even a paper street doesn't
19 prohibit them from using it.

20 MR. MOORE: No.

21 CHAIRPERSON GRIFFIS: Okay, but the other
22 issues are there. Are there questions from the Board
23 Members to the Office of Planning? Not noting any
24 questions of the Office of Planning from the Board,
25 let's turn it over to the Applicant for cross

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1 examination of the Office of Planning, any cross?

2 MR. WAY: Good afternoon, Board, good
3 afternoon, Mr. Moore. It's a pleasure to speak to you
4 again.

5 In terms of Mr. Beck's statement regarding
6 the location and configuration of the spaces, I think
7 it was probably we didn't have a plan in front of us.

8 CHAIRPERSON GRIFFIS: Actually, this is an
9 excellent opportunity for you to ask questions of the
10 Office of Planning and actually no opportunity to do
11 anything else. Do you have a question of Office of
12 Planning?

13 MR. YUEN: Mr. Moore, based on your
14 analysis of the parking space, do you have any
15 recommendation, I mean so that we can make it right?

16 CHAIRPERSON GRIFFIS: I think his
17 recommendation would be make it appropriate so that
18 all the utilizations of the site can be properly
19 circulated, meaning any of the customer parking that
20 were going to park in 5 through 9 and that be even 1
21 through 4 and the tanker truck that would service the
22 pumps. They could all be utilized. If the tanker
23 service is at 2 in the morning when the thing is not
24 open, well, then we need to know that, otherwise, we
25 don't know it, so we're not making a decision on it.

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1 At this point, what we have is Mr. Moore's
2 astute observations of the circulation pattern not
3 being efficient or even effective. Your curb pulls
4 out in front of one of the pumps at the back end that
5 seems to really bottle neck the circulation, you know,
6 what is that? Does that also preclude proper
7 circulation through?

8 MR. YUEN: My question to Mr. Moore is
9 that I believe 12 parking spaces is more than is
10 required for parking spaces for our operation. But we
11 are amenable to work with the Office of Planning to
12 accomplish the type of parking space that will work.

13 MR. BECK: Based on our history of
14 delivery trucks, we build a lot of stations --

15 CHAIRPERSON GRIFFIS: Is this a question
16 for Office of Planning?

17 MR. BECK: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. BECK: Based on our business of
20 delivery and fuel to these gas stations, this is a
21 very big site compared to some of the sites that we
22 deliver to on a regular basis in the District. And we
23 don't think there would be any problem with the
24 delivery trucks getting in. There's approximately 28
25 feet between dispensers, between the columns, between

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1 the dispensers themselves and with the entrance from
2 the rear and the location of the fills on the tanks
3 which determine where the truck comes in and how it
4 drops fuel, so that's how the determination on how
5 fuel is delivered to the site based on the engineering
6 and where the fills are --

7 CHAIRPERSON GRIFFIS: Where is the
8 question mark coming in this? I'll give you ample
9 time in your conclusions to address this and the
10 record is staying open for you to submit something.
11 This is cross examination. This is the time where you
12 really give Mr. Moore a hard time. Mr. Moore, did you
13 visit the site? When did you visit the site? How do
14 you assess there isn't proper circulation? I don't
15 hear any of that.

16 Any questions of Office of Planning at
17 this time?

18 MR. BECK: That basically was what I was
19 getting at.

20 CHAIRPERSON GRIFFIS: Oh no, I doubt it.

21 MR. BECK: I'm sorry, are you familiar
22 with the site? How did you evaluate --

23 CHAIRPERSON GRIFFIS: Those are so boiler
24 plate that I didn't even want to hear, believe me,
25 otherwise I wouldn't have put them out there.

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1 I think I understand where you're going.
2 You're going to assess. Mr. Moore has given you his
3 analysis.

4 MR. BECK: We'll sit down with him.

5 CHAIRPERSON GRIFFIS: The Department of
6 Transportation is somewhere along in here. We do have
7 it. That will also go in the circulation. So again,
8 we'll give you time, but is there anything directly in
9 terms of Mr. Moore's testimony in there?

10 MR. BECK: No.

11 CHAIRPERSON GRIFFIS: Excellent, let's
12 move ahead then.

13 Does the ANC --

14 MR. WAY: I did have a question. Can Mr.
15 Moore refer to a section or chapter in any D.C.
16 regulation that outlines the specific landscape or
17 horticultural requirements, for example, such as
18 Prince George's County has what they call the
19 landscape manual, that MNCPCB publishes. Can you
20 refer to me chapter or section wherein I can
21 proactively design a station and put in exactly the
22 right type and number of horticultural features, site
23 type fencing.

24 I'm very familiar with the code, not as
25 familiar as the Board and as you are, but can you

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1 direct me to chapter, verse or volume where there is
2 prescriptive method such that I can design this in the
3 future to mitigate the need for the questions to be
4 asked?

5 CHAIRPERSON GRIFFIS: Mr. Moore, might I?

6 MR. MOORE: Please.

7 CHAIRPERSON GRIFFIS: Thank you. Yes, I'm
8 going to refer you to 706.5. 706 of DCMR 11. It
9 reads "the Board may impose requirements pertaining to
10 design, appearance, screening, lighting or other
11 requirements it deems necessary to protect the
12 adjacent nearby property." That section gives us full
13 jurisdiction to require you to do anything.

14 Now, we don't go make this stuff up. We
15 rely on the recommendations of Office of Planning in
16 their analysis and the full staffing of all of Office
17 of Planning, their experience has indicated that there
18 are requirements for landscaping here. If you want
19 specific breeds and trees and heights and all that, I
20 suppose Mr. Moore you may get to that specificity.
21 It's certainly not a requirement, but I would take
22 with great care and listening the recommendations of
23 Office of Planning is making.

24 Other than that --

25 MR. WAY: Mr. Chairman, that was my point

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1 exactly, that there is a give and take, sort of a
2 bilateral process.

3 CHAIRPERSON GRIFFIS: Absolutely so.

4 MR. WAY: There are no prescriptions such
5 that we can automatically get it right the first time.

6 We expect it to be a matter where we take counsel
7 advice, react to what we do so that we can then redo
8 it.

9 CHAIRPERSON GRIFFIS: That's fine.

10 MR. WAY: That's my point.

11 CHAIRPERSON GRIFFIS: And don't ever lose
12 the fact that it ends here. We're going to look at
13 their recommendations. We're going to look at your
14 proposal --

15 MR. WAY: Prince George's wouldn't have
16 it, a manual that I could go to?

17 CHAIRPERSON GRIFFIS: We don't need
18 another manual. Okay, let's move ahead. Anything
19 else from the Office of Planning cross?

20 Mr. Jordan, do you have any cross
21 questions of Office of Planning?

22 MR. JORDAN: Yes. Mr. Moore, you made
23 reference to the fact that you had referred to DDOT
24 for their recommendation. Could you please summarize
25 what the DDOT recommendation was?

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1 MR. MOORE: The DDOT report indicated that
2 it too didn't have enough information to provide an
3 analysis.

4 MR. JORDAN: And the recommendation?

5 MR. MOORE: The recommendation was not to
6 support the application.

7 MR. JORDAN: Thank you.

8 MR. WAY: Question?

9 CHAIRPERSON GRIFFIS: Of who?

10 MR. WAY: Well, there's nobody from DDOT
11 here, but may I ask a question?

12 CHAIRPERSON GRIFFIS: You want to recross
13 OP?

14 MR. WAY: Well, there's an issue thrown
15 out with regard to DDOT --

16 CHAIRPERSON GRIFFIS: Let's go to it.
17 Let's go the Department of Transportation because
18 that's where you're going and do you have the Exhibit
19 No. 26, the DDOT report?

20 MR. BECK: We don't have anything from
21 them?

22 CHAIRPERSON GRIFFIS: You do know it's
23 your responsibility to check your public file in
24 preparation for this public hearing. Be that as it
25 may, let's get you a copy of the DDOT report. I'm

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1 sorry, Mr. Moore, we really have you jumping over the
2 dais today.

3 Mr. Moore indicated correctly, the last
4 paragraph in DDOT's report says DDOT requests the
5 Board review the project address provided by the
6 Applicant and determine if the Applicant has provided
7 accurate information on the zoning self-certification
8 form. Accordingly, DDOT does not support the
9 application. They cannot accurately analyze the
10 transportation impact of the site because of the lack
11 of information provided by the Applicant.

12 DDOT staff conducted a site visit and
13 observed a number of items and raised concern. Those
14 are listed. The project consists of reinstalling new
15 gas storage tanks, six service islands to service
16 patrons.

17 That's pretty much my summation of it. I
18 know there's a lot more than that, but -- DDOT has
19 concerns that the Applicant continues construction
20 activity on the site without BZA approval or proper
21 construction permits and has been reluctant to
22 coordinate with OP and DDOT staff willing to address
23 agency concerns prior to the hearing date. I didn't
24 really want to get into that.

25 Vice Chairman Miller has highlighted that

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1 aspect.

2 MR. BECK: We do have a valid permit. The
3 permit has not been revoked. Construction has been
4 approved by Zoning --

5 CHAIRPERSON GRIFFIS: As you stated.
6 Indeed.

7 MR. BECK: I just wanted to put that on
8 the record with reference to that.

9 CHAIRPERSON GRIFFIS: And let me clear the
10 whole aspect of the permits and all that. It's always
11 and it's a very important and critical issue, but
12 unless this is an appeal of a permit, it's not within
13 our jurisdiction -- it's not worth us taking
14 everyone's time to deal with it today.

15 MR. BECK: Right.

16 CHAIRPERSON GRIFFIS: You had cross of
17 DDOT?

18 MR. WAY: Yes, thank you, Mr. Chairman.
19 Again, where in chapter, verse or regulation or in
20 volume is DDOT, due diligence through a DDOT review
21 process part of DCRA's permit process? For example,
22 the issues that have been brought up, there are
23 questions regarding the site location of gas pump
24 islands, access point parking spaces. If you can just
25 refer me to where in the DCMR 11 or other code or

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1 other statute, DCRA works with --

2 CHAIRPERSON GRIFFIS: You're saying you're
3 not required to deal with DDOT or any of the
4 recommendations?

5 MR. WAY: I just want to know if we're
6 being asked to respond to their allegations or their
7 requirements my simple question as a matter of process
8 is where in the process, where under our due diligence
9 by virtue of going for a building permit, is there a
10 checkoff list or a process to which we should respond
11 to these issues.

12 My question, for example, would be --

13 CHAIRPERSON GRIFFIS: Under the special
14 exception requirements for the Board of Zoning
15 Adjustment to either grant or deny your application.

16 MR. WAY: I still don't know where a
17 document or an application to DDOT or something
18 exists. I've not seen it. I've not seen. That's my
19 question. So the issue is why wouldn't DDOT ask of
20 themselves of their fiscal management, how come we
21 haven't appropriated funds to reimprove this street
22 which is more than a paper street. It's not a paper
23 street by virtue of the fact that public traffic --

24 CHAIRPERSON GRIFFIS: We're at 1:30. I
25 can't take anything else.

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1 MR. WAY: That's my question. If they
2 want to look at our on-site issues, why haven't they
3 talked up the chain to find out why have we --

4 CHAIRPERSON GRIFFIS: Let me ask you
5 something. Does that really make sense?

6 MR. WAY: Yes, it does.

7 CHAIRPERSON GRIFFIS: You mean DDOT should
8 have paved the street before they came in to review
9 your BZA application?

10 MR. WAY: The street is already paved.
11 The photograph illustrates that the street is paved.

12 MR. JORDAN: No, it doesn't.

13 CHAIRPERSON GRIFFIS: We're spiralling
14 into the abyss here.

15 Go ahead. I've got a Caesar Salad on my
16 mind.

17 What's next? We'll give you a chance to
18 respond -- we'll leave the record open for DDOT, you
19 can respond as you have the chance to read their
20 analysis, and yes, all these applications are referred
21 to controlling agencies, DDOT being one.

22 You keep wanting to speak, but you're part
23 of them, right, the application? Are they going to
24 present you or not? Let's move ahead.

25 Do you have any comments, Mr. Jordan on

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1 the DDOT report?

2 MR. JORDAN: No sir.

3 CHAIRPERSON GRIFFIS: Excellent. Let's
4 move ahead then. I don't have any other agency
5 reporting on this.

6 Mr. Jordan, we're ready for your case
7 presentation.

8 While Mr. Jordan gets ready, I'm sorry to
9 interrupt you, how many people are here for this case
10 today to present testimony, 17281? Mr. Rashid, I know
11 is here. We have one, two -- we've got to get going
12 here. Let's go.

13 Mr. Jordan, how long do you need?
14 Excellent, take it. You want the table? Turn your
15 microphone on. Does it bother you to have them
16 sitting here?

17 MR. JORDAN: No.

18 CHAIRPERSON GRIFFIS: Actually, gentlemen,
19 in time efficiency, why don't you have seats, because
20 I'm going to fill this with persons to give testimony.
21 And then we're going to call you back for any cross of
22 ANC and then closing remarks, any cross of any of the
23 witnesses.

24 Whenever you're ready, Mr. Jordan.

25 MR. JORDAN: Mr. Chairman, the Commission

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1 has submitted its resolution and part of the
2 resolution was the attachment of our issues. As I
3 understand it, there are some concerns regarding
4 whether or not the issues that we're presenting are
5 going to be considered by the Commission, I mean the
6 Board of Zoning Adjustment, but I'm going to present
7 them anyway and you can deal with them however you
8 want to.

9 CHAIRPERSON GRIFFIS: Absolutely.

10 MR. JORDAN: The first concern we have,
11 sir, is -- and I don't mean this in a flippant -- wait
12 a minute --

13 CHAIRPERSON GRIFFIS: Go ahead, Mr.
14 Jordan.

15 Let's go. Present the report to the
16 Commission which I am assuming is Mr. Jordan and Mr.
17 O.B. Johnson.

18 MR. JORDAN: Mr. Chairman, let me suggest
19 one thing. He is a member --

20 CHAIRPERSON GRIFFIS: I don't really care.

21 MR. JORDAN: I'm just saying I hope they
22 don't disrupt our meetings any more.

23 CHAIRPERSON GRIFFIS: I'm moving ahead.
24 Mr. Jordan, you've got a letter in here that
25 authorizes you to represent the ANC's position?

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1 You're presenting their resolution?

2 MR. JORDAN: Yes sir.

3 CHAIRPERSON GRIFFIS: Let's go.

4 MR. JORDAN: The thing that concerns me,
5 first of all, is it looks like the Board of Zoning
6 Adjustment is in the hip pocket of the City
7 Administrator, I mean the Zoning Administrator, so to
8 speak, because I don't understand the process. Our
9 Commission is concerned about this. If something has
10 to come before the Board of Zoning Adjustment for a
11 special exception, then why was the permit issued?
12 Why were they allowed to proceed with the permit?
13 What is the role of the Board of Zoning Adjustment if
14 it says no? Or if it says yes, they proceed with it.

15 So the first thing is that we have a
16 concern about allowing the permit to function as a
17 permit given the fact that there was a need to come
18 before the Board of Zoning Adjustment.

19 The second one is a notification to the
20 Advisory Neighborhood Commission. The Board of Zoning
21 Adjustment is arduous in its adherence to the law.
22 The ANC laws says that we are to get notice, 30 days
23 notice prior. The ANC also says that the Department
24 of Consumer Regulatory Affairs is going to give us all
25 notice of all building permits.

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1 CHAIRPERSON GRIFFIS: Okay, before we go
2 too far, Mr. Jordan, you bring up an excellent point,
3 us being in the hip pocket of the BZA. That's an
4 interesting comment, but you do know that we are
5 totally and distinct from DCRA. So any sort of
6 notification of permits or anything DCRA, we have no
7 jurisdiction over. We're not a part of that.

8 MR. JORDAN: Mr. Chair, I understand that.
9 What I'm saying though is they made a decision
10 predicated upon you already agreeing with what they
11 were going to say.

12 CHAIRPERSON GRIFFIS: And that's
13 incorrect.

14 MR. JORDAN: But I'm just saying they
15 shouldn't have moved forward.

16 CHAIRPERSON GRIFFIS: I understand. You
17 have one recourse to that. Bring an appeal to this
18 Board of the permit that was issued.

19 MR. JORDAN: Yes sir. And we appreciate
20 that.

21 The second thing we say though is that
22 they didn't give us notice, again, we will deal with
23 that.

24 CHAIRPERSON GRIFFIS: Who, DCRA?

25 MR. JORDAN: DCRA.

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1 CHAIRPERSON GRIFFIS: Let's get to our
2 issues.

3 MR. JORDAN: And what I would like to do,
4 Mr. Chairman, is submit for the record that the
5 building permit notice -- I mean a letter from the --
6 and I don't have it before me right now, but two
7 letters from the Department of Consumer Regulatory
8 Affairs in which they acknowledge that they do not
9 send notices to ANC. On one they say they send
10 notice, but the other they didn't send us notice on
11 this one. They issued it in one day.

12 CHAIRPERSON GRIFFIS: I think that's
13 critical, but what do you expect we do with that?

14 MR. JORDAN: I'm just saying I'm making it
15 a part of the record.

16 CHAIRPERSON GRIFFIS: But why? I mean we
17 have to have some sort of pertinence to make it part
18 of the record. Certainly, you're asking us to do
19 something. It would make your day if this Board did
20 what?

21 MR. JORDAN: I'm just suggesting --

22 CHAIRPERSON GRIFFIS: We don't need extra
23 paper on that.

24 MR. JORDAN: Let me say it this way. All
25 the arguments that are being made up to this point is

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1 that we have a legitimate permit before you.

2 CHAIRPERSON GRIFFIS: Good.

3 MR. JORDAN: Our argument is they don't
4 have a legitimate building permit.

5 CHAIRPERSON GRIFFIS: It's actually an
6 existing nonconforming use. It doesn't necessarily
7 have to do with anything with the permit.

8 MR. JORDAN: You're missing my point.

9 CHAIRPERSON GRIFFIS: Not necessarily, but
10 go ahead.

11 MR. JORDAN: What I'm saying is the
12 proponents of this application have said all of our
13 permits were validly issued. There's an assumption
14 that there are valid permits. They state it in their
15 application.

16 CHAIRPERSON GRIFFIS: Right, so you're
17 asking us to either decide or to determine whether the
18 permits are valid or not.

19 MR. JORDAN: We're saying the permits were
20 not valid.

21 CHAIRPERSON GRIFFIS: I know.

22 MR. JORDAN: And we're asking you to make
23 a determination based on that.

24 CHAIRPERSON GRIFFIS: Excellent. I fully
25 understood your point. Let me tell you very directly,

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1 that's not happening.

2 MR. JORDAN: Okay.

3 CHAIRPERSON GRIFFIS: Before us is not the
4 question of whether these permits are valid or not
5 valid. If you want to bring that question before this
6 Board, I suggest you go to the office next door, file
7 an appeal.

8 MR. JORDAN: We'll do that.

9 CHAIRPERSON GRIFFIS: Absolutely.

10 MR. JORDAN: Now the next one has the
11 Applicant has the burden of proof showing that they
12 will not create either dangerous or objectionable
13 traffic conditions at this particular site and we
14 don't think the Applicant has met their burden in
15 doing that.

16 None of the documents that they have
17 submitted up to this point show that and when we deal
18 with the question of objectionable, I think that would
19 be subjective. This Board will take it and make a
20 determination about that.

21 But we're talking about a major
22 thoroughfare in the District of Columbia. In the
23 evening time traffic is backed up there from 3 o'clock
24 to 7 o'clock from people leaving the city. In the
25 morning it's the same situation. And they want to

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1 propose putting a gas station right there at a point
2 where people have to come in and go out. But they
3 don't offer any evidence that this won't have any
4 objectionable impact on the traffic flow.

5 They also say -- you made the point, Mr.
6 Chairman, about a paper street. They can deal with
7 that. Well, let's deal with reality. The reality is
8 that this is not really a paved street and I'd like to
9 submit as part of the record a photograph of that
10 street that shows that it is not really paved. It's
11 full of potholes. It was paved in a sense so that the
12 Recreation Department could get back to its site. But
13 it's not a site that could be used, I mean could be
14 used for the gas station, people entering and then
15 leaving.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. JORDAN: So again, we raised the
18 question about them having meeting their requirement
19 for the traffic. From our position, the ANC's
20 position, it will be an inconvenience -- what is the
21 term specifically? Objectionable. It will create
22 objectionable and they have an obligation to show that
23 it won't.

24 The next one is the discontinuance
25 question. And we share your concerns, Mr. Chairman,

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1 and the Board's concerns that it is very clear that
2 first thing we note is that that particular site, that
3 square has not always been there as a gas station.
4 We've noticed that the C of O for 1976 shows where the
5 gas station was listed, shows a different square. As
6 I understand it from the Surveyor's Office, squares
7 don't change in the District of Columbia. So we've
8 got a problem.

9 They're indicating that the gas station
10 was on one square. Their plat shows that they're
11 proposing a gas station on another square so the
12 evidence would appear right now that they're trying to
13 put a new gas station in some place where it never
14 was.

15 The question of the addresses is confusing
16 and we believe that the whole idea in using 4675 as
17 opposed to 4665 because all the operations for the gas
18 station will occur at 4665 South Capitol Street. That
19 address currently has a C of O for a convenience
20 store. It doesn't have a C of O for a gas station.
21 And so what they are attempting to do is play a little
22 shell game here and that is to say we'll use the gas
23 station address, but we're really going to operate out
24 of the convenience store. If they're doing that, then
25 that's an expansion of the gas station use. So the

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1 use legitimately should be before the Board of Zoning
2 Adjustment. But they tried to play games with that.

3 And that's why when they went before the
4 Department of Consumer and Regulatory Affairs and
5 filled out the applications and everything, they could
6 do it because they already have a C of O for a
7 convenience store. And they tried to deal with that.

8 So those are the concerns that we have,
9 the discontinuance of use. They haven't operated a
10 gas station out of there for three years. In fact,
11 the tanks were taken out of the ground in 1995. And
12 it hasn't served as a gas station since then or it
13 hadn't served before that. So there's been more than
14 three years of discontinuance of use. Those are the
15 issues that we are raising as an ANC and those are the
16 issues we'd like to --

17 CHAIRPERSON GRIFFIS: Thank you very much,
18 Mr. Jordan.

19 MR. JORDAN: Can I submit this?

20 CHAIRPERSON GRIFFIS: Yes, you're going to
21 submit that into the record. We do require copies of
22 it. But in this case we're going to have that in, but
23 we have to give the Applicant copies before they leave
24 today.

25 Also, the record will be left open for

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1 addressing the discontinuance as the Applicant is
2 going to file that and also serve you.

3 Let's go to questions from the Board?

4 MEMBER ETHERLY: Very quickly, Mr. Chair,
5 if I may.

6 Mr. Jordan, two quick questions for you.
7 One, do you know if the intersection at South Capitol
8 Street and Livingston Road is a signal, a signalized
9 intersection? Is there a light at that intersection
10 as well?

11 MR. JORDAN: Yes, there is, Mr. Etherly.

12 MEMBER ETHERLY: Okay, so you have a light
13 at South Capitol and Livingston and then one at
14 Southern Avenue?

15 MR. JORDAN: Yes.

16 MEMBER ETHERLY: Second question, with
17 respect to the objectionable traffic conditions, based
18 on your familiarity with the subject area, could you
19 give a sense of what the pedestrian foot traffic is
20 light in this area? I believe it was indicated in the
21 Office of Planning report or might not have been,
22 there is a school in the immediate vicinity of this
23 intersection, correct?

24 MR. JORDAN: Yes, the Patricia Roberts
25 Harris School is within the vicinity, yes.

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1 MEMBER ETHERLY: Yes sir. So from a
2 pedestrian standpoint in terms of any concerns, was
3 there discussion at the ANC meeting about concerns
4 regarding pedestrian traffic?

5 MR. JORDAN: No, there wasn't any
6 discussion about pedestrian traffic, but we've never
7 been able to get all the information we wanted in
8 terms of traffic flow or the traffic conditions.

9 You do know there's Eastover Shopping
10 Center, so there's a considerable amount of traffic,
11 pedestrian traffic because the bus lets them off on
12 Southern Avenue and there's a considerable amount of
13 traffic, of pedestrian traffic flow at that
14 intersection.

15 MEMBER ETHERLY: Okay, thank you. Thank
16 you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Good, thank you.

18 Ms. Miller?

19 VICE CHAIR MILLER: I just have a quick
20 question. Did the Applicant present their application
21 at your public meeting?

22 MR. JORDAN: The Applicant was available
23 at our public -- at our ANC meeting. They had an
24 opportunity, five minutes to present their case. And
25 they did.

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1 CHAIRPERSON GRIFFIS: Okay.

2 VICE CHAIR MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: Anything else?
4 Excellent.

5 Applicant have recross of the ANC?

6 MR. BECK: In reference to the traffic
7 study, there's a light as the drawing shows, the plats
8 --

9 CHAIRPERSON GRIFFIS: You're asking him,
10 right?

11 MR. BECK: There's a light at the
12 intersection of Southern Avenue for the side street
13 continuation up towards to the dead end, it actually
14 dead ends there at the fence for the maintenance
15 facility. There's a light there.

16 CHAIRPERSON GRIFFIS: This is getting to a
17 question of the ANC, right?

18 MR. BECK: Yes. This is in reference to a
19 question, a concern that he had.

20 CHAIRPERSON GRIFFIS: We don't need a big
21 set up.

22 MR. BECK: Okay. There's a light at --

23 CHAIRPERSON GRIFFIS: Give me the
24 question.

25 MR. BECK: There's a light at the

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1 intersection there. If there was no road there, there
2 wouldn't be a light facing the exit for that street.

3 CHAIRPERSON GRIFFIS: Is that correct, Mr.
4 Jordan? Just to help you along with the question
5 there.

6 MR. JORDAN: I need your help too. What
7 was the question?

8 MR. BECK: You said the traffic flow was
9 an issue at the facility. You were convinced that
10 there was study based on the egress from the property.

11 MR. JORDAN: No, my statement was is that
12 have you done a study?

13 MR. BECK: Yes.

14 MR. JORDAN: To show that it won't have --
15 where is the study?

16 MR. BECK: The study wasn't required for
17 us to submit to before -- for the application. It was
18 not required for us --

19 MR. JORDAN: He's testifying now.

20 MR. BECK: -- to submit

21 MR. JORDAN: Mr. Chairman, he's testifying
22 now.

23 CHAIRPERSON GRIFFIS: There was a direct
24 question from the Board whether you had done a traffic
25 study and you said no.

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1 So now through cross examination,
2 evidenced that you actually did, but you're not
3 required to show us?

4 MR. BECK: We did a physical study
5 ourselves, after were required to do a study.

6 CHAIRPERSON GRIFFIS: Okay, so what's your
7 question of Mr. Jordan?

8 MR. BECK: For the application, there was
9 no requirement.

10 CHAIRPERSON GRIFFIS: I understand that.
11 If you don't want to show us it, you don't have to
12 show us it. What is your question of Mr. Jordan?

13 MR. BECK: So many questions, I'm trying
14 to figure out how --

15 CHAIRPERSON GRIFFIS: As long as they're
16 short. That's the way it should be. Really, cut to
17 the chase. Poke holes in his case. He just presented
18 a powerful case, Mr. Jordan did. You're about to poke
19 holes in his case through your penetrating cross
20 examination questions. I'm riveted.

21 MR. BECK: Have you made a study?

22 CHAIRPERSON GRIFFIS: Mr. Jordan, have you
23 made a traffic engineering study?

24 MR. JORDAN: No.

25 CHAIRPERSON GRIFFIS: Good, next question.

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1 If you have a question, give it to him. We don't
2 need 50 people asking questions. Get your whole
3 situation together here.

4 MR. BECK: Has the immediate community
5 been informed of all the issues presented and as I
6 think at the ANC meeting, we asked you --

7 CHAIRPERSON GRIFFIS: No, no. That's
8 enough.

9 Has the whole community been apprised of
10 this application, Mr. Jordan? Are they well aware,
11 anyone that wanted to know?

12 MR. JORDAN: I don't know about the whole
13 community.

14 CHAIRPERSON GRIFFIS: Good question and
15 answer. Next question.

16 MR. BECK: Has anyone objected to the
17 service station through the community?

18 MR. JORDAN: Let me suggest one thing. In
19 our hearing, I mean in our ANC meeting, we had people
20 who were there in support of the application. I don't
21 remember anyone being opposed to it, but the
22 responsibility was on the Commission to take and make
23 a decision about it. And the Commission's decision
24 was that based on the fact that we had not been able
25 to get information and the fact that DCRA had done

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1 what they did, we were opposed to it.

2 CHAIRPERSON GRIFFIS: I think your
3 position is very clear. Before we go much further
4 into this, I'm going to ask your faith in the common
5 sense and intelligence of the Board. We have a lot of
6 information up here. We have the ANC. We have DDOT.
7 We have OP. We have the entire regulations. We have
8 your filing. We're going to get through all of that.

9 If you're concerned with the ANC taking a
10 position that doesn't represent 100 percent of the
11 community, let me say for the record, I don't know
12 anybody that represents 100 percent of anything.

13 MR. BECK: Right, we don't expect that.

14 CHAIRPERSON GRIFFIS: What we're looking
15 for are the facts. Tell us what it is. Is there
16 objectionable traffic conditions? Yes. No. Why?
17 We're going to make the decision. Let's move ahead.

18 MR. BECK: I don't have any further
19 questions.

20 CHAIRPERSON GRIFFIS: Good. I'll tell you
21 what a good cross examination question would have
22 been. Mr. Jordan, you indicate that this, if a gas
23 station was in existence would actually create
24 objectionable traffic conditions. Is that correct?

25 MR. JORDAN: No, our question -- what

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1 we're saying is we don't know. We have not been able
2 to get --

3 CHAIRPERSON GRIFFIS: So you can't assess
4 whether it would or it wouldn't?

5 MR. JORDAN: No, and our question --

6 CHAIRPERSON GRIFFIS: That's fine. These
7 are my questions.

8 MR. JORDAN: Okay, the question we're
9 proposing is --

10 CHAIRPERSON GRIFFIS: I know, I know.

11 MR. JORDAN: It's not on us.

12 CHAIRPERSON GRIFFIS: These are my
13 questions.

14 Mr. Jordan, sit back and relax.

15 MR. JORDAN: If you ask me personally, I
16 think --

17 CHAIRPERSON GRIFFIS: You have, Mr. Jordan
18 and we ask you to turn your microphone off. Sit back
19 and relax. I'm going to go through these very fast.
20 If you can answer yes or no, that's fine. That's the
21 way it should be.

22 Has this been a commercial establishment
23 prior to this? You can turn your microphone on now.

24 MR. JORDAN: Thank you very much. Yes, it
25 was a commercial establishment.

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1 CHAIRPERSON GRIFFIS: And it's been
2 retail, it's been commercial, it's been a gas station.
3 Is that correct?

4 MR. JORDAN: Yes.

5 CHAIRPERSON GRIFFIS: It's on a fairly
6 large thoroughfare, is that correct?

7 MR. JORDAN: Yes.

8 CHAIRPERSON GRIFFIS: What would give an
9 indication to you that this would create an
10 objectionable traffic condition, if it continued in
11 that type of use?

12 MR. JORDAN: Because we're looking now at
13 the traffic conditions on South Capitol and Southern
14 Avenue in the evening. Personal observation and that
15 is to say that people are coming in and out of the
16 city who are suburbanites using that area and that
17 creates very --

18 CHAIRPERSON GRIFFIS: So let me ask you
19 this then, have conditions changed in terms of traffic
20 volume at this intersection from five years ago, 10
21 years ago? Is today a different scene?

22 MR. JORDAN: I think the construction on
23 the Woodrow Wilson Bridge has an impact on it. I
24 think there is increased traffic flow in the area
25 because more people have cars.

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1 CHAIRPERSON GRIFFIS: I see, so your
2 direct answer is yes.

3 MR. JORDAN: Yes.

4 CHAIRPERSON GRIFFIS: The conditions have
5 changed.

6 MR. JORDAN: I think so, yes.

7 CHAIRPERSON GRIFFIS: Excellent.

8 MR. BECK: But the bridge will relieve
9 that.

10 CHAIRPERSON GRIFFIS: I know. Thank you.
11 Mr. Jordan, thank you very much. It kind of gets the
12 blood flowing, doesn't it?

13 Anything else? Any other cross questions
14 of the ANC?

15 MR. TERREFE: Yes, my name is Berhanu
16 Terrefe. I am the owner of LP Mart. My address is
17 4665 South Capitol Street.

18 My question is when I started this
19 construction, after I get all the permits, I tried to
20 communicate with ANC members for six months.

21 CHAIRPERSON GRIFFIS: This is a question,
22 right?

23 MR. TERREFE: Yes.

24 CHAIRPERSON GRIFFIS: I don't need a lot
25 of background.

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1 MR. TERREFE: Nobody came in here, but my
2 question here is is this establishment going to bring
3 jobs and wealth to the community or do you think that
4 this establishment is going to bring --

5 CHAIRPERSON GRIFFIS: Mr. Jordan, do you
6 think this is going to be bring and wealth to the
7 community?

8 MR. JORDAN: Mr. Chairman, I don't know.
9 We've never actually asked that question.

10 CHAIRPERSON GRIFFIS: That's an excellent
11 answer. Good, any other questions?

12 Anything else? Okay. See what happens
13 when I get hungry? I get very direct.

14 MR. TERREFE: Okay.

15 CHAIRPERSON GRIFFIS: We're done. Thank
16 you. Mr. Jordan, we do appreciate it.

17 Let's move ahead. We have persons to give
18 testimony. I'm going to start with those in support.

19 Can I see a raise of hands of persons in
20 support of the application, if you would come forward
21 at this time. We're going to fill up the table here
22 to give testimony. After they're finished, we're
23 going to have the next panel. If you're here to give
24 testimony you can prepare yourself. We're going to
25 put five in a row and we're going to start and go

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1 right down.

2 Before we start, I'm going to say a couple
3 of things. First of all, if you weren't here before,
4 you will need to state your name and address for the
5 record. Secondly, persons are provided three minutes
6 to give testimony. We're going to let that clock run
7 and then it will buzz. I'm going to ask you to really
8 be considerate and we're moving on. I will interject
9 and not let you go beyond three minutes. If there are
10 things that somebody said prior to you that you
11 absolutely agree with, there's no harm in saying I
12 absolutely agree with what was stated by that person
13 and we move on.

14 That being said you also will be cross
15 examined at the completion of your testimony. You
16 also will take questions from the Board.

17 So which side do we want to start with?
18 Aha, the fingers are pointing, sir. You're up.

19 REV. MOTLEY: Good afternoon, Members of
20 the Board, Mr. Chair. My name is Reverend Anthony
21 Motley. I live at 3839 Halley Terrace, Southeast,
22 Washington, D.C. Ward 8. My business operation is at
23 4415 South Capitol Street, Southwest, Washington, D.C.
24 20032.

25 I'm here testifying in support of the

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1 operation of the low price gas station at 4865 South
2 Capitol Street. 4675. As a long-term resident, all
3 of my life I've been Ward 8, except for when I went
4 into the Army and went away to school. I've seen the
5 neighborhood change over the years. I've also been a
6 part of community planning over the years, back in the
7 early 1980s, was part of the planning process when the
8 zoning was changed in that area and one of the things
9 that we were attempting to do was to make sure that we
10 capture some of those dollars that were going from
11 D.C. over into Maryland. We abide D.C. campaign,
12 that's what we want. We want our people to buy in
13 D.C. I for one believe that economic development is
14 something that has not occurred, like it should in our
15 neighborhoods and especially east of the river.

16 I see the opportunity for businesses
17 coming in to provide jobs and opportunity for our
18 people. The area in question, I remember when it was
19 a car lot down there and a gas station. I remember
20 when the area didn't have anything operating at all,
21 even before the bank was built. I remember the Rite-
22 Aid, when that Rite-Aid was built and it was just
23 empty land.

24 Now we have an opportunity to do some
25 building in that area. I support it. And if we're

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1 going to be able to capture some of the dollars before
2 they go over into Maryland, I mean we get the traffic
3 anyway and the traffic that comes in, coming down
4 South Capitol from -- at 3:30, 4 o'clock in the
5 afternoon going into Maryland. They need to stop and
6 put some of their dollars into our coffers because
7 they're using our streets. And they're using our
8 services. And so if this is one way to capture those
9 dollars and generate a tax base, which is what
10 everybody is talking about these days, then I support
11 that. And that's pretty much what I have to say.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much. So you clearly see this as a
14 commercial revitalization and offering services for
15 those in the adjacent neighborhood?

16 REV. MOTLEY: Yes sir.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. Yes?

19 MR. ANDERSON: My name is Charles
20 Anderson. I've been a resident in Ward 8 for over 40
21 years. I've also been named ANC -- one of the very
22 first ANCs from preparing the map for ANCs to actually
23 putting the legislation together. I've been an
24 advocate for political and economic development during
25 the course of my tenure here.

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1 I'm familiar with a lot of the procedures
2 that have brought us to this table. And I see some --
3 maybe some blatant overstatements and views that have
4 been presented. I'll start first with the ANC 8D, of
5 which I am a resident. And I have been a resident
6 there for the last two, three years. I have yet to
7 have gotten any information from the ANC regarding
8 this issue.

9 The way I got involved in this issue was I
10 had the proprietor come to me as someone had told him
11 I had been involved in the community for some time and
12 he said I tried to do everything I could do to do it
13 right. I've been told I did something wrong. Can you
14 help me, please, make it right?

15 So I went to the ANC and come to find out
16 my Single Member District representative, Mr. Jordan,
17 was one of the proponents that -- opponents that was
18 gathering information against this particular
19 establishment.

20 Me, looking at the establishing, seeing
21 the advantages that it gave everybody in the
22 community, I was totally flabbergasted that a person
23 that I respected, my representative would even be
24 speaking against this issue. Come to find out he's
25 not speaking against the establishment. He's not

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1 speaking against this proprietor. He's not speaking
2 against this owner. He's speaking against the
3 procedure of which paperwork --

4 CHAIRPERSON GRIFFIS: Ten seconds, Mr.
5 Anderson.

6 MR. ANDERSON: A mismatch on an
7 application, something that doesn't impact for me as a
8 representative, a resident of that community as a
9 reason to stop this process.

10 CHAIRPERSON GRIFFIS: Thank you very much.
11 Mr. Anderson, I understand you see an awful lot of
12 advantages that this was actually granted and this was
13 established and you have concern that the ANC, in
14 fact, is more procedurally concerned than
15 substantively and factually concerned in this
16 application. Thank you very much.

17 Yes?

18 MS. SEEGARS: Sandra Seegers, Chairperson,
19 ANC 8E. At that location on South Capitol and
20 Southern Avenue, there's a traffic light at Southern
21 and South Capitol. No traffic light directly in front
22 of this establishment. When the Hostess Cupcake
23 business, record shop -- I used to go there. I had no
24 problem with the traffic. I go to the bank there.
25 There's really no problem with the traffic to me and

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1 I'm doing it from -- saying from experience.

2 The other gas station, the size of this
3 particular gas station here, one is that Naylor Road
4 and Good Hope Road and there's one on Sherman and I
5 think it's Irving Northwest, they have no problem
6 getting gas delivered there. If they deliver gas
7 during the working hours, they stop the cars from in.

8 If they do it at night, there's no problem, so as far
9 as a truck delivering gas, it should be no problem.

10 The back entrance, once the street is
11 paved, would be great to take the traffic away from
12 the main street there whereby going around the back up
13 to the light.

14 Mr. Berhanu spoke with me back in
15 September, trying to find the ANC Commissioner. He
16 had tried to reach Robin Imes. Sometimes these
17 Commissions are dysfunctional and there aren't any
18 Commissioners there. He called for Robin Imes several
19 times. I told him let me find out who his
20 Commissioner was. I called Absalon Jordan several,
21 several, several times in order to get in touch with
22 him, leaving him messages. Then he finally grasped
23 hold to what was going on and he came in, like he said
24 and did the process then.

25 This business should not be punished

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1 because the government's neglect as far as building
2 permits, without telling him to contact the specific
3 ANC Commissioner and now that the ANC Commissioner
4 knows who he is and that he represents them, I think
5 you all should not let that interfere with this
6 process.

7 Let me see what else, I think that's it.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much, very well said.

10 You've indicated, of course, that you have
11 personal knowledge and you don't see any traffic
12 problem and there are a lot of other very substantive
13 things which we'll take into account in our
14 deliberation. One of the things that I caught on
15 though is you said "when the street gets paved". Are
16 you aware of a schedule?

17 MS. SEEGARS: No, I wish it was my
18 district, then I could tell you.

19 CHAIRPERSON GRIFFIS: But it's your
20 understanding that that is scheduled at some point to
21 be paved.

22 MS. SEEGARS: They had spoke of it before,
23 but they didn't know how far to go back because
24 federal land, District land --

25 CHAIRPERSON GRIFFIS: Indeed. Okay, at

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1 some point it's probably going to get done, we
2 certainly hope, maybe this will bring some light and
3 pressure to getting it done no matter what happens
4 with this.

5 MS. SEEGARS: Right, exactly.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 Yes sir?

8 MR. SUTER: Good afternoon, my name is
9 Bill Suter.

10 CHAIRPERSON GRIFFIS: Right on the base,
11 there's a button there.

12 MR. SUTER: Thank you, Chairman. Good
13 afternoon, my name is Bill Suter and I am a former
14 business person in the area, a laundromat at 4409
15 South Capitol Street, a convenience store at 4031
16 South Capitol Street. In the years that we've been
17 involved out there, the traffic is pretty much the
18 same as it always has been, when Hostess was there,
19 the gas station was there and also Rite-Aid.

20 The thing that seems to appear to us is
21 that the jobs and the opportunities and the value of
22 the properties and things around there is going to
23 greatly increase with another business coming and a
24 lot of services that are going to be put out there.
25 Why? Because of a mistake that was made by the

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1 government downtown or something, by the permit not
2 being issued and it was issued, however this thing was
3 happening.

4 I just can't understand why that would
5 happen and that's my biggest concern.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you. Clear procedure, obviously a concern for
8 everybody, certainly those in this room. We
9 appreciate that, Mr. Suter, and we also appreciate
10 having, as you've said, you own businesses and operate
11 businesses in the area, is that correct? So you have
12 that base of knowledge and understanding and obviously
13 your testimony goes directly to that. Thank
14 you very much.

15 Yes sir.

16 MR. QUEEN: Good afternoon, Mr. Chairman.
17 My name is Perry Queen. I live at 828 Taylor Street,
18 Northeast, Washington, D.C. 20017.

19 I'm here to support Mr. Yuen who I think
20 is one of the finest citizens that Washington ever
21 had, always there to help others, always got his hands
22 out to help others.

23 He's committed to help the ANC
24 Commissioners whenever they want him. He's even
25 committed to help any community citizen's organization

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1 that want help and I think you couldn't ask for a
2 finer citizen than Mr. Yuen.

3 Mr. Yuen also spoke to me about having a
4 little league football team and baseball team. He's
5 willing to support them. You couldn't ask for anybody
6 better than that. And I think it's regrettable that
7 he didn't notify the ANC Commissioner when he first
8 made out the application, but he was not aware of it
9 so let's not lynch him to that. We're not here to
10 stop business. Every time a business come up,
11 somebody always want to kill it. We're not here to
12 kill business. We're here to enhance and I think this
13 Board and Mr. Chairman, I think you should give a
14 stamp of approval to his application.

15 CHAIRPERSON GRIFFIS: Good, thank you very
16 much. Very powerful. Let me be absolutely clear, of
17 course, we're not getting involved in issues of
18 whether the proper permit or not and I have no
19 question that all our Applicants are some of the best
20 citizens in this city and if it was that the basis
21 which we approve or deny applications our job would be
22 very simple because there would be no time to take.

23 But we have very specific regulations and
24 requirements, no matter how great the citizens are and
25 other aspects that they're doing and that's -- the

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1 process that we have before us today is very straight
2 forward in terms of the sections and requirements,
3 we're going to take all that information in and we're
4 going to make the best judgment possible. But we
5 absolutely appreciate your support of the application
6 and we certainly take that under advisement.

7 Very well, anything else from -- let's go
8 to cross then. The Applicant -- we're going to have
9 one person cross the witnesses, is that correct?

10 Who is doing the cross? Is there any
11 cross?

12 I'm sorry, Mr. Etherly.

13 MEMBER ETHERLY: Just a very quick
14 question. Ms. Seegars mentioned in her testimony and
15 the Office of Planning mentioned in their report that
16 there had been other uses that have been on the
17 subject site, whether a store or restaurant. You
18 indicated a Hostess bakery at one point in time and
19 perhaps Reverend Motley, you might be familiar with
20 those prior uses before.

21 I just wanted to be sure I understood
22 correctly and I think I heard it clearly that in the
23 history of those uses, as far as you are familiar
24 with, there were no traffic concerns or any types of
25 conditions that were created that lent themselves to

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1 any jam ups on South Capitol Street?

2 MS. SEEGARS: No, especially with the
3 Hostess Cupcake place and I never even have seen an
4 accident.

5 MEMBER ETHERLY: Okay, thank you.
6 Appreciate.

7 Reverend Motley, same question.

8 REV. MOTLEY: No problems that I've ever
9 seen and I travel -- I'm like Sandra. I bank at the
10 Bank of America right there next door. I go to the
11 Rite-Aid now. When it was Hostess and even when it
12 was a used car lot, back in the day, we've never had
13 any problems.

14 MEMBER ETHERLY: And there would be no
15 concerns about any crazy or hectic movements of
16 motorists and they would try to get into any of those
17 driveways coming in either direction?

18 REV. MOTLEY: Not --

19 MEMBER ETHERLY: Not that you've
20 experienced?

21 REV. MOTLEY: I've never experienced that.

22 MEMBER ETHERLY: Thank you. Thank you,
23 Mr. Chair.

24 CHAIRPERSON GRIFFIS: Any questions by the
25 Board of the witnesses who we have heard?

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1 Very well. Cross? Any cross questions?

2 Very well.

3 Thank you all. I appreciate your patience
4 and being down here today.

5 Let's go to the panel again then. Those -
6 - are there any others in support or --

7 MR. ANDERSON: My hat is off to you, Mr.
8 Chair.

9 CHAIRPERSON GRIFFIS: Thank you very much.
10 I can't do it without these guys though. Okay. The
11 next five. Can we have the next five people?

12 (Pause.)

13 REV. HINES: My name is Booker T. Hines,
14 Sr. I'm 75 years old. I lived at 721 Congress Street
15 ever since 1963.

16 I know the area real good. I had a little
17 business on Lavonne Street, Southeast. And I deal
18 with ex-offenders and substance abuse people. I am
19 glad that somebody thought enough of the community to
20 try to bring in something to help them. This service
21 that is being brought here on South Capitol Street
22 would help the unfortunate people to find jobs. Over
23 50 years I have been dealing with those type people,
24 minorities and I search for jobs for them. Some of
25 them have little children that are hungry, nowhere to

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1 live and at this day and time you've got to have a job
2 to get an apartment. You have to have a job to buy
3 food. And you're being turned down.

4 I had referred them to drug treatment
5 centers but after they go to the drug treatment
6 centers and come out, you have to find a job. I train
7 them, but sometimes jobs are hard to find and when a
8 person comes in off of drugs they need somebody to
9 give them attention. They need somebody that they can
10 lean on, somebody that they can trust to heal the
11 wounds that the drugs had damaged in their minds.
12 Although they may have gone to school and have got an
13 education, but they need somebody to understand their
14 problems and this is what I do.

15 I thank God for this service that is being
16 brought in because his heart is open to the public, of
17 those that are in need.

18 Now if you all let this go through, I have
19 another place that I can refer somebody that can
20 deeply need to a job.

21 CHAIRPERSON GRIFFIS: Good, thank you very
22 much. So you clearly see this as a job opportunity
23 for those in the immediate area and those perhaps of
24 the greatest need. Thank you.

25 Yes sir.

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1 MR. HARLEY: Good morning. My name is
2 Duane Harley. I live at 1454 Bangor Street. I was
3 the electrician on that job.

4 CHAIRPERSON GRIFFIS: On this specific
5 job?

6 MR. HARLEY: On this specific job.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. HARLEY: I kind of lost of what was
9 going on and I mean we followed the proper channels so
10 I was -- why are we here?

11 CHAIRPERSON GRIFFIS: Good question.
12 Okay? Anything else. Do you support the application?

13 MR. HARLEY: I support him. He's been
14 very helpful to me and a lot of my friends and gave us
15 jobs. So he's been very helpful.

16 CHAIRPERSON GRIFFIS: Excellent. That's
17 an excellent point. I think this has been a bit of a
18 regulatory confusion in terms of our regulations and
19 all and hopefully we're going to bring some clarity to
20 that when we make our decision on this. But the most
21 important aspect of the public hearing is gathering
22 all the information, so we have it before us and we
23 can make a proper and judicious decision. I
24 appreciate your patience and I appreciate your showing
25 up.

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1 Yes?

2 MS. HODGINS: My name is Toi Hodgins and
3 I'm a resident of 4632 Livingston Road for the last 20
4 years and I'm also working at LP Mart and I also on my
5 free time I go to the school and the other stores
6 around, the liquor store, the bank, the schools, the
7 community. I know a lot of people and get people to
8 understand that I feel like if you have one store
9 here, why limit the community to have to pay one price
10 if someone's willing to come in the community to help
11 the community with lower prices. And I have a lot of
12 support for the community as far as bringing the low
13 price store into the community.

14 And as far as the traffic going into the
15 store, I live around there and it's been stuff built
16 there. It's been Hostess. It's been a Willies. It's
17 been a Rite Aid. The traffic is the same regardless.

18 It's going to be the same if you put something else.

19 It's still going the same way. And I'm just here to
20 support the store.

21 Thank you.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much. Obviously, that's good testimony to
24 understand what was there prior and whether there
25 would be any anticipated impact, especially with

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1 traffic.

2 Yes sir.

3 MR. EGEZABHER: Good afternoon. My name
4 is Lulu Egezabher. I work for Lowest Price for four
5 years right now. And then I'm a manager of Lowest
6 Price gas stations. I am work with Mr. Yuen for
7 almost four years. And then we are working with the
8 community always. We help the community. We hire
9 from the community people. That's how we do our job.

10 One day we asked Mr. Berhanu and we asked him what is
11 the meeting, the person it is and they give the wrong
12 address. And then we not be at the meeting because
13 the person right here, he give out the wrong address
14 and then we find out the right address and then we
15 were in the meeting.

16 CHAIRPERSON GRIFFIS: Okay, excellent. So
17 you clearly are open to working with the community and
18 listening to their concerns. I appreciate that,
19 although you would rather get the right address for
20 meetings that you're required to be at. Okay.

21 Good afternoon.

22 MR. HINES: Good afternoon. My name is
23 Donald Hines. I'm Reverend Hines' son.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MR. HINES: I've been living in Washington

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1 at 721 -- couple of places.

2 CHAIRPERSON GRIFFIS: Sure.

3 MR. HINES: For about 45 years. You know
4 I've worked with him up there at Booker T. Hines Human
5 Resource Center which is an ex-offenders' program. We
6 help young men and the biggest problem that we have
7 and I feel that this business can help us create jobs.

8 The location where it's at is not a bad location.
9 You know I hear talk about traffic, but it's a
10 business community down there. You know, it's all
11 type of stores down there. So if -- and it's been
12 that way for years. So I don't feel that one more is
13 going to make the traffic any worse.

14 The biggest problem that we have, that
15 this business can help us do is find ex-offenders jobs
16 because a lot of the guys don't have a work history,
17 so we have to get them the low grade jobs to start off
18 to create a work history. And this is the type of job
19 where they can start off because once you get out of
20 prison, you're not going to go straight to work on a
21 \$50,000 a year job. It takes time for you to create a
22 résumé and you have to start somewhere.

23 And I think this business here is a good
24 place for a lot of our clients to learn the
25 responsibility of holding down a job. If he's willing

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1 to hire ex-offenders, which a lot of other businesses
2 have a problem with, we need him in our community
3 because as long as an ex-offender is working, he won't
4 go back to what he used to do and that's robbing you,
5 you and you. You know? So they need jobs.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. HINES: Or out on the street selling
8 drugs.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 MR. HINES: Thank you.

11 CHAIRPERSON GRIFFIS: We appreciate that
12 testimony. You've indicated at the end that if this
13 Applicant was willing to hire ex-offenders, do you
14 have any assurance that they actually will?

15 MR. HINES: I say if he is willing.

16 CHAIRPERSON GRIFFIS: I know, have you had
17 conversations? There's now two, three testimonies --

18 MR. HINES: Yes, yes, yes.

19 CHAIRPERSON GRIFFIS: So you have
20 assurance that they will?

21 MR. HINES: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
23 did you have a question?

24 VICE CHAIR MILLER: That was my question.

25 CHAIRPERSON GRIFFIS: Indeed. I know this

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1 Board too well.

2 Thank you all very much. Let's go to any
3 cross?

4 MR. JORDAN: Cross, yes sir.

5 CHAIRPERSON GRIFFIS: Does the Applicant
6 have any cross first, just to keep our procedures in
7 order.

8 Applicant, any cross of the witnesses?
9 Good.

10 Mr. Jordan, cross?

11 MR. JORDAN: Yes sir. The individual who
12 has identified himself here, I can't remember his
13 name, sir, if he could --

14 MR. EGEZABHER: My name is Lulu Egezabher.

15 MR. JORDAN: Mr. Egezabher, just a couple
16 of questions. You raised the question about getting
17 notice of the meeting, but you did receive copies of
18 the flyers prior to the meeting, is that correct?

19 MR. EGEZABHER: Yes.

20 MR. JORDAN: And you did attend the
21 meeting, is that correct?

22 MR. EGEZABHER: Yes.

23 MR. JORDAN: Okay, now the next thing is
24 you keep talking, you are a manager with the Lowest
25 Price Gas, is that correct?

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1 MR. EGEZABHER: Yes.

2 MR. JORDAN: How many stations do you
3 currently manage?

4 MR. EGEZABHER: Thirty-eight stations.

5 MR. JORDAN: You manage yourself?

6 MR. EGEZABHER: Yes.

7 MR. JORDAN: How many employees are there
8 currently at these Lowest Price Gas Stations?

9 MR. EGEZABHER: All of them?

10 MR. JORDAN: Yes.

11 MR. EGEZABHER: Let me see. Each one has
12 six people. Six times 38.

13 MR. JORDAN: Is that an average six or --

14 MR. EGEZABHER: Six.

15 MR. JORDAN: How many of these are
16 residents of the District of Columbia?

17 MR. EGEZABHER: All of them. Most of
18 them.

19 MR. JORDAN: Most of them.

20 MR. EGEZABHER: Yes. She is one of them.
21 She works for our Lowest Price.

22 MR. JORDAN: As I understand it, she works
23 for the convenience store.

24 MR. EGEZABHER: Yes.

25 MR. JORDAN: There's a difference between

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1 the convenience store and the Lowest Price Gas
2 Station.

3 MR. EGEZABHER: It's all the same.

4 MR. JORDAN: Now how many jobs will be
5 created when the gas station, if the gas station is
6 approved, at 4665 South Capitol Street, how many new
7 jobs will be created there?

8 MR. EGEZABHER: Around 15.

9 MR. JORDAN: Fifteen new jobs, but all
10 your other stations just have six?

11 CHAIRPERSON GRIFFIS: Easy guys, you're
12 not on the record, so it's not worth saying.

13 It's a good follow-up question, Mr.
14 Jordan. Don't be frustrated.

15 Ask him. You indicated that your other
16 stores have six employees, but this one is going be
17 twice as big as the rest and have 15?

18 MR. EGEZABHER: This one we have the
19 carryout, what they call the chicken place, gas
20 station, plus we cash checks, check cashing.

21 CHAIRPERSON GRIFFIS: I see. So you have
22 more services so you'll be having more employees?

23 MR. EGEZABHER: Yes.

24 MR. JORDAN: How many employees --

25 MR. EGEZABHER: And D.C. Lottery.

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1 MR. JORDAN: How many employees do you
2 have there now?

3 MR. EGEZABHER: Right now?

4 MR. JORDAN: Yes.

5 MR. EGEZABHER: How many do we have right
6 now?

7 MS. HODGINS: In my store or all of them.

8 MR. EGEZABHER: In your store.

9 MS. HODGINS: From the community, one.

10 MR. JORDAN: But how many employees
11 totally at the store?

12 CHAIRPERSON GRIFFIS: How many employees
13 do you have at the store now?

14 MS. HODGINS: We have five now.

15 MR. JORDAN: Five employees.

16 MS. HODGINS: Including myself.

17 MR. JORDAN: And only one of them from the
18 community. So how many will be hired if the gas
19 station is approved?

20 MR. EGEZABHER: You can ask Mr. --

21 MR. JORDAN: Thank you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: I get your point,
23 Mr. Jordan. Good questions. Thank you all. Thank
24 you all very much. Appreciate you being down here
25 today.

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1 Are there other persons to give testimony
2 in opposition? In support? That's fine.

3 I just want to fill the chairs. They're
4 free and they're hard to fill. Anybody else to give
5 testimony, either neutral, support, opposition?
6 Opposition.

7 You're going to testify as a person in
8 support and you were part of the case presentation?
9 Let's hold it together, guys. Let's give some people
10 that haven't spoken an opportunity.

11 Mr. Rashid, are you going to testify?
12 You're not required. Now would be a good time though
13 as opposed to you'll have no other time.

14 Let's move ahead, starting on my left. A
15 very good afternoon to you, sir.

16 MR. RAY: Good afternoon, Mr. Chairman and
17 Members of the Board. My name is John Ray and I
18 reside at 4310 20th Street, Northwest, Washington,
19 D.C. I'm a lawyer with Manatt, Phelps and Phillips
20 and we represent DAG Petroleum. DAG Petroleum is a
21 jobber that owns all the Shell Stations in the
22 District of Columbia and some stations in Maryland.

23 We do not oppose this station being at
24 this location. We don't oppose stations at all. What
25 we do oppose is not applying to the rules and it's

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1 been very revealing here today and I understand why we
2 have so many of these stations that are now up and
3 operating that did not come before BZA, because it's
4 clear that the developer of the stations feel that
5 because a station was there before they don't have to
6 come to BZA. The discontinued use is very clear.

7 There hasn't been a station at this
8 address since 1987. 1987, where the previous station
9 was located at 4675, a bank received the Certificate
10 of Occupancy there and a bank has been there every
11 since up to the present Bank of America. And keep in
12 mind this Lot 1 and Lot 4 has not been consolidated.
13 These are separate lots as well.

14 And part of the reason that we're here
15 today, Mr. Chairman, is not because out of the blue
16 this came before you. It's here because we filed a
17 complaint about four other stations that are already
18 in operation that did not come before BZA.

19 CHAIRPERSON GRIFFIS: And you put that
20 letter into the record?

21 MR. RAY: And this station.

22 CHAIRPERSON GRIFFIS: Good. Did you
23 provide the Applicant this submission?

24 Let's get a distribution as we're getting
25 stuff. We can give it to them. Sorry to interrupt.

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1 MR. RAY: Yes, and when we went to see Mr.
2 Denzel Noble at the time, we went because we couldn't
3 understand how this station was being constructed and
4 going up when we can never get a permit to do anything
5 until we come through you. I mean even in situations
6 which we will be talking about later today, where we
7 have an existing building that we're simply renovating
8 on the same footprint, we were told even if you put an
9 additional pump, if you put a new canopy, if you do
10 any of those things, you've got to go to BZA.

11 And let me give you one of the most
12 chilling examples. Chevron and General Motors is
13 doing this hydro station. We wanted to put up a
14 canopy there, an additional canopy. They said no,
15 you've got to go to BZA. And if you go by that
16 station now, we don't have a canopy there because we
17 haven't had a chance to come here yet to get that.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MR. RAY: So we just want to make sure
20 that the rules and regulations are followed and we
21 realize that some aspect of this we still have to deal
22 with DCRA, but when we read the application, it was
23 clear that they felt that they were not coming here.
24 It was demonstrated for you to approve this, but it
25 was just sort of some administrative process. Because

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1 they said finally in their application to you that
2 they characterize this not as a BZA proceeding, but
3 sort of as the Board's recommended outcome that we're
4 filing this application to get the Board's recommended
5 outcome.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. RAY: I couldn't understand what that
8 was all about. So I'm here today. This should be
9 before the BZA. It's a proper matter before the BZA
10 and that you have jurisdiction over this and that this
11 exception cannot take place unless approved by the
12 BZA.

13 CHAIRPERSON GRIFFIS: Understood. Thank
14 you very much, Mr. Ray, we appreciate it. You've also
15 submitted a lengthy written testimony which we have in
16 the record. The Board will obviously clearly read all
17 of that. You've also submitted into the record what
18 is -- as I haven't had a second to read it, but a
19 letter that's signed by Mr. Bell, Zoning
20 Administrator, perhaps as you've indicated a response
21 to your letter which is attached behind it. The Board
22 obviously will look at that. The Applicant has been
23 provided a copy and I'm assuming also, Mr. Jordan,
24 representing the ANC, is also going to provide us as a
25 party in the case.

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1 Thank you very much and we do appreciate
2 your reiteration of following the correct rules and
3 procedures. Obviously, this Board has a full intent
4 to do that.

5 Any questions from the Board at this time?

6 Let's move ahead then, Mr. Rashid?

7 MR. DEVER: Thank you, sir. My name is
8 Jerry Dever, as stated before. I represent Mr.
9 Rashid. He's the current crown dealer at 5321 Indian
10 Head Highway.

11 For the record, I wish I would have had a
12 griller chicken salad for you to make things a little
13 bit better, but unfortunately, I don't.

14 Again, as stated, I believe this Applicant
15 -- we oppose this BZA case as the Applicant, we
16 believe, has circumvented the approval process and
17 expects this Board which appears as though they're not
18 going to rubber stamp this application. We don't feel
19 he meets the basic requirements.

20 I've been involved and developed and been
21 involved in several special exception hearings in
22 cases throughout Maryland and Virginia and redeveloped
23 several properties within the District of Columbia and
24 any time we require a special exception in the oil
25 industry, we always -- if we had traffic issues, we

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1 were always submitting a traffic analysis. And I
2 contend that the reason they have not submitted one in
3 this particular case, is they're afraid of what
4 they're going to find out.

5 There appears to be just a total lack of
6 information. We believe that this application should
7 comply with Section 706.4 that requires that a gas
8 station not create a dangerous or other objectionable
9 traffic conditions. We think they're cramming too
10 much into this paperbag. It's a 2,000 pound paper bag
11 and they're trying to put in 10,000 pounds.

12 We haven't even seen their site plan?
13 Okay? But it's my opinion they've got stacking
14 problems. They have delivery problems. They've got a
15 site that serves breakfast, lunch and dinner. They've
16 got lottery and they've got check cashing. And when
17 you add gasoline with six dispensers on a tiny site
18 like this, and this site is probably bigger than most
19 in the District, but there's very, very few sites that
20 have six dispensers, 12 fueling positions sitting on
21 25,000 square feet with these other uses on the
22 property really anywhere that I know of.

23 Typically, you putting six dispensers with a
24 canopy, you're looking at at least an acre to an acre
25 and a half, when you throw in a 3,000 square foot

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1 building. It's going to create a very chaotic
2 situation.

3 I think the site is traffic bound. It's
4 very, very difficult to get in and out of during peak
5 periods and I think in my opinion the signal -- it may
6 be a failing intersection. I'm not a traffic expert.

7 CHAIRPERSON GRIFFIS: Ten seconds.

8 MR. DEVER: And the history speaks for
9 itself. When this gasoline use was established in the
10 early 1950s it was a different area, different car
11 usage, less traffic, less cars, different driving
12 patterns and the other point I want to make is --

13 CHAIRPERSON GRIFFIS: Last point.

14 MR. DEVER: The building permit and I'm
15 not sure the building permit is even valid, if it was
16 properly issued, without coming before this BZA
17 approval board. Thank you.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. We obviously agree with the fact that
20 the permit is invalid unless they have a special
21 exception and obviously they can't construct it. So
22 to allay everyone's fears in that matter, they have
23 taken the correct route in terms of bringing an
24 application before the Board and that's what we do.

25 I appreciate your assessment and also in

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1 terms of the background of other situations and the
2 traffic analysis that might be needed in order to even
3 put together the study as the Applicant would look at
4 this sight and also the comparativeness of the square
5 footage that might be appropriate for six pumps or
6 more.

7 The intersection you mentioned is in your
8 estimation might be failing. I think it's a good
9 qualifier. You did say you're not a traffic engineer,
10 so we don't know what grade it actually has, but I
11 think we have ample personal testimony on that to
12 assess unless we're given other definitive factual
13 information to deliberate on.

14 Very well. Oh, I'm sorry, yes sir.

15 MR. AMEFILIN: My name is Peter Amefilin.

16 CHAIRPERSON GRIFFIS: I'm sorry, can you
17 just state that again?

18 MR. AMEFILIN: My name is Peter, Peter
19 Amefilin. I am a business man. I own an Exxon
20 station next to this location.

21 CHAIRPERSON GRIFFIS: We're bringing out
22 all the oil men.

23 MR. AMEFILIN: This location in question
24 and I've been there since 1990.

25 CHAIRPERSON GRIFFIS: Indeed.

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1 MR. AMEFILIN: So I have ample knowledge
2 of the area. The address that I saw on this
3 application is wrong address. And when they are
4 talking about reestablishing a gas station, there
5 hasn't been any gas station at that location unless
6 someone tells me there has been one before 1990. Now
7 there was a gas station, Sunoco gas station that was
8 right where the Rite-Aid is now. I have it in a
9 picture here. My work, as we are playing around, I am
10 taking pictures. 1995.

11 After that, there used to be a Hostess --
12 no, no, before that, sorry, used to be a used car
13 sales lot between this Sunoco gas station and the
14 Hostess Cupcake. We are located on the east.

15 Now the Rite-Aid is using that location as
16 their parking lot. Now this location in question for
17 this new gas station they're talking about used to be
18 a Hostess and they changed to Willie's. They all
19 closed out. And then he opened it up as part
20 restaurant and part shop. I've gone to that shop.
21 Some of them who work there know me very well. I go
22 there and buy my food. So I like to welcome them as
23 business.

24 Next to that building has been a small
25 parking lot, a very small parking lot. The previous

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1 business used to use as their parking lot and the bank
2 also.

3 My concern here is the size of the
4 location where they're putting the gas tanks. I feel
5 it's so small to fit this large, this much underground
6 hazardous materials is what we're talking about here.

7 I don't know how well the people concerned have, I
8 didn't look into that, but from my understanding the
9 Department of the EPA, how they come to us and they
10 filed Department, I don't see how the fire truck can
11 get in there. This is hazardous material handling.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. AMEFILIN: And I would like to know if
14 those processes were taken and if those gave the
15 approvals.

16 CHAIRPERSON GRIFFIS: Good, thank you very
17 much. I think I understand, in terms of the size of
18 the site, you think just the access in based on the
19 fact that there may well need to be fire trucks
20 getting in and out, that you don't think on the
21 documentation that you've seen that there's adequate
22 space involved. Again, you've supported a lot of the
23 testimony in terms of prior use on this site.

24 Thank you very much. I appreciate your
25 being down here.

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1 MR. AMEFILIN: I'm not finished.

2 CHAIRPERSON GRIFFIS: I know you're not,
3 actually, you are.

4 (Laughter.)

5 Last statement. Last quick statement,
6 very briefly, please.

7 MR. AMEFILIN: On the traffic pattern, I
8 heard the people talk about traffic pattern. I
9 understand that a traffic pattern of a gas station is
10 quite different from the traffic pattern to a grocery
11 store or the kind of store he has. I feel if he wants
12 to put a gas station there, they will have to demolish
13 the building for them to fit a gas station for the
14 purpose of access.

15 CHAIRPERSON GRIFFIS: Do you think it
16 can't handle all the cars coming and going or why
17 would they have a demolish the building?

18 MR. AMEFILIN: We're all drivers --

19 CHAIRPERSON GRIFFIS: I know, but why
20 demolish the building?

21 MR. AMEFILIN: We have to have an entrance
22 and exit.

23 CHAIRPERSON GRIFFIS: Okay, so there's not
24 enough room to move around.

25 MR. AMEFILIN: Exactly.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much. I think it's very clear. Let's go to any
3 cross examination of the witnesses you just heard?

4 Excellent.

5 MR. BECK: The locations of the dispensers
6 and the layout --

7 CHAIRPERSON GRIFFIS: Who is this a
8 question to?

9 MR. BECK: Yes, it's to this gentleman
10 right here.

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. BECK: The application was submitted
13 to the Board of Zoning and the Zoning Department and
14 everyone and if it didn't fit it wouldn't have been
15 approved. I just want to make that point.

16 CHAIRPERSON GRIFFIS: No point is made.
17 Quick question, quick answer.

18 Let's go.

19 MR. BECK: I'd like to address a question
20 to the Crown owners here. Are you guys residents of
21 the District of Columbia?

22 MR. DEVER: No sir.

23 MR. BECK: Is your station in the District
24 of Columbia?

25 MR. DEVER: No sir. We already stated

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1 that.

2 MR. BECK: That's all I wanted to ask
3 them.

4 The question that I want to ask to the
5 attorney is in the testimony --

6 CHAIRPERSON GRIFFIS: I'm sorry, hold on
7 just a second. I have a legal question, not being an
8 attorney myself.

9 Mr. Ray, you have put yourself in an
10 interesting position as providing testimony as a
11 person. So I'm going to allow the cross examination.

12 MR. BECK: It's going to be brief.

13 CHAIRPERSON GRIFFIS: I know. You just
14 have to clear it with the attorneys before you go at
15 them, you know what I mean?

16 MR. BECK: Because I haven't had a lot of
17 time -- this is the first I've this letter.

18 CHAIRPERSON GRIFFIS: Indeed, first we
19 have.

20 MR. BECK: And are you aware of accessory
21 uses for addresses for gas stations, the zoning
22 requirements? Are you aware that 4675, the gas
23 station is capable of using 4655 as accessory use?

24 MR. RAY: That's not the issue.

25 MR. BECK: The issue is the zoning

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1 requirement.

2 CHAIRPERSON GRIFFIS: Turn your mic on,
3 Mr. Ray. I'm sorry to interrupt you. Can you turn
4 your mic on in front of you? You've asked a question,
5 let him answer it.

6 MR. RAY: At the end of the day, the issue
7 is really this, is that even if you were building the
8 station on the site, I'll take your argument of
9 accessory use. The regulations and the code is very
10 clear. You can continue to use a nonconforming use as
11 long as you continue, but once it stops for a period
12 of three years --

13 MR. BECK: Only if it becomes a
14 nonconforming property --

15 MR. RAY: No, no, no, no, no. You don't
16 understand the law.

17 CHAIRPERSON GRIFFIS: Question answered.
18 Excellent answer to the question. Next question.

19 MR. BECK: That's all I have.

20 CHAIRPERSON GRIFFIS: Good, thank you both
21 very much.

22 No other cross. Does the ANC have any
23 cross?

24 ANC? Okay.

25 MR. YUEN: I have cross.

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1 CHAIRPERSON GRIFFIS: This is it. Just
2 give it to one person. We'll have one person cross by
3 the Applicant.

4 Let's go.

5 MR. YUEN: Thanks for your indulgence.
6 Mr. Dever, how long have you been familiar with this
7 project from what day forward?

8 MR. DEVER: Off and on for the last two,
9 two and a half months.

10 MR. YUEN: Okay. You only came aware at
11 the time we tried to retain you, is that how it goes?

12 MR. DEVER: Yes sir.

13 MR. YUEN: You've given this testimony
14 strictly as an expert or as your personal opinion?

15 CHAIRPERSON GRIFFIS: He's got to be
16 personal. We haven't qualified him as an expert
17 witness. Next question.

18 MR. YUEN: He just stated that he was the
19 Shell oil man for many, many years. I'd like to know
20 his occupational background that gives him the ability
21 to talk about traffic.

22 CHAIRPERSON GRIFFIS: He's representing a
23 person. I would allow that if he was actually an
24 expert witness brought before the Board, but in terms
25 of his background, it's no different than anyone else

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1 in the public that's coming forward to provide
2 testimony.

3 MR. YUEN: It's all a conclusion that you
4 stated here before the Board, require you to do due
5 diligence on your own? I mean visit the site, talk to
6 the engineer, traffic engineer or anything regarding
7 that?

8 MR. DEVER: I visited the site. And I
9 stated that I have not done a traffic impact study.

10 MR. YUEN: How many time you visit the
11 site before you come to this conclusion?

12 MR. DEVER: Probably four or five times.

13 MR. YUEN: How many hours did you spend on
14 my site?

15 MR. DEVER: Every time I was there I went
16 in the market and spent probably on average an hour.

17 MR. YUEN: Okay, do you -- can you give me
18 an account how many stations are in that general area
19 between your client's location and the Eastover
20 location in the District of Columbia?

21 MR. DEVER: You have the Chevron. You
22 have his Crown. You've got the Shell and you also
23 have the Exxon and if you go up further along
24 Livingston Road, you have some additional competition.

25 MR. YUEN: Do any of those other sites

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1 caused a similar problem like the proposed site that
2 you believe that it will?

3 MR. DEVER: I don't think so because a lot
4 of them are located, other than the Shell on service
5 roads. That impacts those sites in terms of getting
6 people off the major thoroughfares and back on a lot
7 easier. My only opinion is based on several years in
8 this business and as a former real estate manager of
9 Shell Oil Company.

10 MR. YUEN: How long have you been with
11 Shell?

12 MR. DEVER: I was with Shell for 20 years.

13 MR. YUEN: When did you leave Shell?

14 CHAIRPERSON GRIFFIS: Let's move on.

15 MR. YUEN: Okay, related to -- so you
16 agree that that's ample competition in the area
17 because you just recited about six locations on the
18 Maryland side as well as inclusive of the D.C. side,
19 is that correct?

20 MR. DEVER: There's competition in the
21 area.

22 MR. YUEN: Is it your belief that our site
23 will dilute the business to your client?

24 CHAIRPERSON GRIFFIS: I'm not sure why
25 it's germane to us. Let me put it in a hungry tone,

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1 why do we care? Next question.

2 MR. YUEN: This question is for our
3 neighbor here who operates the Exxon station since
4 1990. Your name again, sir? Peter. How do you
5 compare the lot size, the size of our lot to your
6 Exxon station? Is it much bigger?

7 CHAIRPERSON GRIFFIS: I'm going to need a
8 mic in front of him. He's very soft spoken for an oil
9 man. Can you move your mic over to him?

10 MR. YUEN: My question is the site at
11 4675, where the station has been built now, how does
12 that compare to the size of your particular gas
13 station across the street where the Exxon is, is it
14 about two times bigger?

15 MR. AMEFILIN: The size where they want to
16 put the station now is about one quarter or less than
17 my gas station.

18 MR. YUEN: Do you know the exact square
19 feet of your gas station, sir?

20 MR. AMEFILIN: We have that on paper, but
21 I don't have it right in front of me now.

22 CHAIRPERSON GRIFFIS: The answer is no.
23 Next question.

24 MR. YUEN: So if I said that our lot size
25 are twice as big as the Exxon, would you have any

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1 reason to doubt that?

2 MR. AMEFILIN: Definitely.

3 MR. YUEN: What basis do you have on that?
4 Measurement, did you take tape measure or you had a
5 survey?

6 MR. AMEFILIN: I can see.

7 MR. YUEN: So that's strictly your own
8 perception?

9 MR. AMEFILIN: Yes.

10 MR. YUEN: Okay. Mr. Ray, my question to
11 you is that in your research how many stations
12 previously or currently, located in Square 6274, that
13 means inclusive of the Rite-Aid lot, of the bank lot
14 and the Hostess lot. We only have three lots there.

15 CHAIRPERSON GRIFFIS: I wasn't aware,
16 unless you read his statement, I wasn't aware that Mr.
17 Ray testified to the previous gas station uses on the
18 site.

19 MR. YUEN: He did mention about a historic
20 background.

21 CHAIRPERSON GRIFFIS: Mr. Ray?

22 MR. RAY: Well, what I indicated was that
23 4675, which you indicate is where a gas station is
24 going to be, that our research indicated that there
25 was a gas station on that site at one time. In 1987,

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1 a bank got a C of O for that site and that a bank has
2 been there ever since.

3 And the point that I wanted to make as to
4 4675, where you say you're going to build the station
5 and you're re-establishing the station, that there has
6 not been the use of a station there since 1987 that's
7 been used for another use. And under the code and the
8 regulation, discontinuance of use after three years,
9 there's a presumption that it's not going to be
10 continued to be used as that and you have to come
11 through BZA to establish the use again.

12 In fact, I would argue that you are
13 building a new station, that you're not re-
14 establishing a station.

15 CHAIRPERSON GRIFFIS: Indeed, but no need
16 for new argument. We're full up already.

17 Next question.

18 MR. YUEN: One follow up question for my
19 neighbor here. Are you aware of the gas station was
20 at the Rite-Aid site at one time, since you have
21 history of going back to 1990?

22 MR. AMEFILIN: I'm sorry, am I aware?

23 MR. YUEN: Yes. Are you aware that
24 there's a gas station on the Square 6274 as recently
25 as you occupy the Exxon location since 1990?

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1 MR. AMEFILIN: Yes, that's what I said in
2 my testimony. Sunoco gas station.

3 MR. YUEN: How would our station make any
4 difference than a Sunoco station that was there one
5 time?

6 MR. AMEFILIN: That's exactly my point.
7 This picture here shows the space that's all around
8 it. The south side of it is all wood space. There are
9 no two buildings beside this station. That's exactly
10 my point.

11 MR. YUEN: If I would give you a survey
12 map on the Sunoco site and a survey map on our site,
13 if they are equal in size would you have any
14 disagreement among that or do you know?

15 MR. AMEFILIN: I know quite well that
16 there Sunoco gas station used to sit, I have it here
17 in picture. It's very spacious. I reiterate that I
18 know two buildings squeezing it in.

19 MR. YUEN: You did not answer my question,
20 sir.

21 CHAIRPERSON GRIFFIS: Okay, but you're
22 also asking him to do a lot of speculation.

23 MR. YUEN: I understand. Thank you.

24 CHAIRPERSON GRIFFIS: Anything else?

25 MR. YUEN: That concludes my cross.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 Okay, yes, Ms. Miller?

3 VICE CHAIR MILLER: I want to ask Mr. Ray
4 a couple of questions. I just want to make sure that
5 I understand your testimony and are you saying that
6 the gas station that they want to establish now is
7 going to be established in a different location than
8 the previous gas station that existed before?

9 MR. RAY: Yes.

10 VICE CHAIR MILLER: And is that on a
11 different lot or a different square?

12 MR. RAY: Different lot.

13 VICE CHAIR MILLER: It's on a different
14 lot. Okay. And then I know the parties are going to
15 address this jurisdiction question anyway. You're not
16 necessarily a party, but I would think that you could
17 be free to address in writing anyway. But one
18 question I would, will have is --

19 CHAIRPERSON GRIFFIS: Not a great
20 assumption right off, but go ahead.

21 VICE CHAIR MILLER: Okay. We don't
22 usually turn, well, never mind. Okay. Then I want,
23 that's what I want to ask you right now. Your
24 opinions, since you're right here and have studied
25 this issue. The Applicant's relying on 199.1,

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1 definition of nonconforming use. And that, in the
2 beginning, it talks of use of land.

3 And I'm wondering if you have looked at
4 whether use of land means use of a lot, use of a site,
5 use of property as a whole, use of, you know, give an
6 opinion on that.

7 MR. RAY: I interpret it that in all my
8 experience that that term refers to the actual
9 location where that use is taking place.

10 VICE CHAIR MILLER: The exact location, no
11 matter --

12 MR. RAY: Yes, absolutely.

13 VICE CHAIR MILLER: -- it's limited to the
14 size of the space it's taking up .

15 MR. RAY: It doesn't mean down street, it
16 doesn't mean next to it, it doesn't mean all over the
17 block . And I think that's supported in law. It's --

18 VICE CHAIR MILLER: Yes.

19 MR. RAY: -- that location.

20 VICE CHAIR MILLER: Do you have, do you
21 happen to know where that's supported in the law?

22 MR. RAY: I can find it for you, I think.

23 VICE CHAIR MILLER: Okay. Thank you.

24 MR. BECK: Can I speak to that? Just
25 briefly. An accessory use under 2500. A gas station

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1 can be located in any partial of the lot. Under 2500,
2 under accessory uses, the gasoline dispensers, kiosks
3 and canopy can be located on any portion of the lot or
4 the partial. You just asked him a question in
5 reference to where the location can be in reference to
6 lot or plat or what it be. The 2500, accessory use,
7 says that at a gasoline station, the pumps,
8 dispensers, the activities, can be located anywhere on
9 the lot or adjoining the lot, adjoining the lot.

10 CHAIRPERSON GRIFFIS: Right. Which
11 wouldn't establish them as a separate structure which
12 would require further relief in terms of constructing
13 --

14 MR. BECK: Right

15 CHAIRPERSON GRIFFIS: -- two different,
16 independent structures.

17 MR. BECK: I just wanted to clear that up.

18 CHAIRPERSON GRIFFIS: And that's your
19 first answer about it --

20 MR. RAY: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: No. I'm not going
22 to get into a lot of legal argument on this. It's an
23 interesting thing that Ms. Miller has brought up.
24 It's the Applicant's burden obviously to address it.
25 I think you understand exactly where she's going on

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1 that.

2 Mr. Ray?

3 MR. RAY: Mr. Chairman, I just wanted to
4 point out that I pointed out that there's two lots
5 here.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. RAY: And that's what I'm talking
8 about.

9 CHAIRPERSON GRIFFIS: Look. I'm very
10 clear on all the issues. I think the entire Board is
11 clear. So we have it all before us. The Applicant
12 has Mr. Ray's written submission, of which you've had
13 more time than we have to look at it. Obviously, the
14 record's open for you to respond to that that and
15 there are some particularly interesting pieces that
16 are brought up. Its fundamental point I think is well
17 taken and obviously understood by the Board.

18 Let's move ahead. If there's no other
19 persons present, thank you all very much. I
20 appreciate your being here.

21 Any other person present in this morning
22 Application 17281 to give testimony? Support or
23 opposition? We wore them out. It only took until
24 2:30 to do it. Then let's go ahead. We'll give the
25 Applicant closing remarks. This is your time to give

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1 rebuttal testimony in closing. However, the record is
2 remaining substantially open for you to address all
3 these things. So if your time is better served --
4 I'll wait until you guys pay attention to me to
5 through this, but --

6 (Pause.)

7 Mr. Jordan, I don't think there's going to
8 be an opportunity for you.

9 MR. JORDAN: In closing, sir?

10 CHAIRPERSON GRIFFIS: No. You presented
11 your case. This is the closing of the Applicant and
12 rebuttals.

13 Okay. Let me state again as you were
14 coming forward and not listening to me, which is okay.

15 But nonetheless, it is obviously your opportunity to
16 present rebuttal testimony and closings. But, let me
17 underscore the fact that, one, it's ten of three, but
18 that doesn't mean anything to us, we've got to finish
19 your case.

20 The record is being widely opened for your
21 submissions. So, you don't need to feel like you're
22 covering absolutely everything right now after four or
23 five hours on this case. A written submission will be
24 very sufficient. In fact, maybe, maybe, in fact,
25 you're much more hitting it home, but there it is.

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1 I'll turn it over to you.

2 MR. YUEN: Mr. Chairman, I have a couple
3 of housekeeping questions.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. YUEN: How long will the record be
6 open?

7 CHAIRPERSON GRIFFIS: I'll set a schedule
8 at the end.

9 MR. YUEN: Fine.

10 CHAIRPERSON GRIFFIS: It will be based on
11 the decision making --

12 MR. YUEN: And the follow up question is
13 do I have the opportunity to yield to Mr. Way for
14 closing?

15 CHAIRPERSON GRIFFIS: This is all your
16 case. You don't yield time. This is your case.

17 MR. YUEN: So I can do my closing as well
18 as Mr. Way can say a few words on the closing, is that
19 okay?

20 CHAIRPERSON GRIFFIS: Several words, of
21 course.

22 MR. YUEN: May I stand to present this. I
23 feel more comfortable if I stand, is that okay?

24 CHAIRPERSON GRIFFIS: Whatever you're
25 comfortable with. You just need to be near a mic.

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1 MR. YUEN: I want to thank the BZA panel,
2 the ladies and gentlemen who took the time to hear our
3 case this morning and this afternoon.

4 I state my name again. I'm Mr. Koo Yuen.
5 I am the co-manager of the Power Fuel, the Applicant.
6 It came a time back in Year 2003 we had the
7 opportunity to acquire the Rite-Aid, the Willy Record
8 Shop and the Bank of America, the underlying real
9 estate as one complete package.

10 Through my diligent research and through
11 the help of Mr. Way, we were able to establish that
12 the gas station is being routinely or historically on
13 the site. I use my diligent effort with good faith
14 effort, I secured an occupancy permit shortly after we
15 have entered into the contract of purchasing the
16 entire square, one from the Rite-Aid to Bank of
17 America where the subject gas station is going to be
18 built at 4675 which is right where Bank of America --
19 between Bank of America and 4665, the convenience
20 store.

21 Subsequently, Mr. Berhanu Terrefe who is
22 the owner of the operation, so we released this site
23 to Mr. Berhanu who has given a brief testimony about
24 his involvement with the property. He routinely
25 secured all his permits, secured all his interior

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1 construction without any interference from the ANC and
2 from the --

3 CHAIRPERSON GRIFFIS: We don't need to
4 spend a lot of closing time on process.

5 MR. YUEN: I understand that. Thank you.
6 And there is no interference from anyone regarding
7 his portion of the work. We got our permit to
8 construct the gas station. We followed properly. We
9 have completed disclosure on the site plan on where
10 everything goes. We went through many, many
11 departments before we could secure this. Department
12 of Transportation looked at it. Zoning looked at it.
13 Department of Health looked at it. Electrical looked
14 at it. Fire looked at it. Everything, you name it,
15 District of Columbia has scrutinized this application.

16 Mr. Way was able to secure this permit of
17 June of 1994. We did not begin -- I'm sorry, 2004. I
18 backtracked my chronological.

19 CHAIRPERSON GRIFFIS: That's okay.

20 MR. YUEN: Mr. Way has delivered the
21 permit to me in June of 2004 and we did not begin
22 construction until about September of 2004, about
23 middle of September. We have posted permit, the plan,
24 everything was properly posted.

25 We have allocated over half a million of

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1 capital to construct this site and many lost hours
2 because of the interference from the ANC and whatever
3 body that we have heard from people today that have
4 testified.

5 So we have yield to come to this forum so
6 that we can cooperate with the Administrator or
7 whatever mistake one have done or not have done. If I
8 had known about that every process has to go to the
9 ANC or at least we give them a courtesy call, I would
10 have done so. Obviously, that's water over the bridge
11 or spilled milk already. It's nothing I can do to
12 correct a wrong.

13 And my statement is simply that we've been
14 alleged by the District Government or being alluded by
15 the District Government with valid permit in hand, pay
16 fee and many hours of architectural drawings with many
17 hours spent during the permit office.

18 We began our construction between
19 September 15 until about October somewhere in the
20 early part of October. We were given a stop work
21 order. And Mr. Bellow, who took over the
22 Administrator's position in the Zoning Department has
23 lifted that stop work order based on his
24 recommendation that we come before BZA, which we yield
25 to his wish and to make it right.

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1 All I can say to this Board is that my
2 company is strictly a distributor. My interest there
3 is for the community to have independent business men
4 like Mr. Berhanu Terrefe there to be able to operate
5 successfully. They are local businessmen and we fund
6 them the capital to build a station in hope that they
7 will do enough business to repay us.

8 So therefore, it's the local businessmen
9 like Mr. Berhanu Terrefe who are being put into the
10 burden and hardship at this moment because of the
11 sense of security really is really not a sense of
12 security because of the whoever have challenged our
13 permit before this Board.

14 I am doing what I believe is a responsible
15 citizen to come before the Board to give you the fact,
16 give you the history. The history of the site, no
17 question has been gas station, not one, but two; and
18 not two, even three. Yes, there might be some
19 question about whether the continuation was there or
20 not, but as we're reading the law, with the
21 nonconforming use, I believe we fit into the
22 conforming use and we are not asking for enlargement.

23 Before it was a six pump operation. We have a six
24 pump operation today. We are not asking for any
25 enlargement of the building. We are not asking for

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1 any extension of any part of the lot or use of the
2 structure and as my construction manager who spent
3 many work hours to look through the regulation and so
4 on. He even cited accessory use, about the right
5 under normal procedure.

6 So I'd like to just express my gratitude
7 to each one of you to be able to collect all this data
8 and I hope that each one of you to know where my
9 hardship is and where Mr. Berhanu's hardship. Not
10 only that, Mr. Berhanu was given a letter from Mr.
11 Marian Barry yesterday and that letter is on the
12 record and Mr. Barry who is our Ward 8 Council Person,
13 just newly elected, "Dear Mr. Berhanu, I am in full
14 support of your opening the Lowest Price Gas Station
15 on South Capitol Street. First of all, your business
16 is a minority-owned business. Secondly, you will
17 provide jobs and provide a product for area residents
18 at not only competitive prices, but also lower price
19 and stimulating economic growth where it is so
20 desperately needed."

21 New paragraph, "please note that I am
22 looking forward to the completion of the project as
23 well as the official grand opening. I congratulate
24 you and thank you for your business endeavor in Ward
25 8. Sincerely, Marian Barry, Council Member, Ward 8,

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1 dated February 7, 2005" addressed to Mr. Berhanu
2 Terrefe, Lowest Priced Gas and LP Mart, South Capitol
3 Street, Washington, D.C. 20032.

4 CHAIRPERSON GRIFFIS: Indeed, thank you
5 for making a point to put that into the record. It is
6 Exhibit 29.

7 MR. YUEN: I know this is a confusing
8 matter for all concerned. Certainly it's confusing to
9 me when the situation comes to me about the record,
10 but I hired the very best in the business. Mr. Way
11 has done many years of business, architectural
12 rendering for his clients and I entrust that he
13 followed every procedure that ever can be followed and
14 that the permit was given to us in good faith.

15 Thank you very much for listening to my
16 closing statement.

17 Mr. Way, I'd like to turn the time over to
18 you.

19 MR. WAY: Thank you very much, Mr. Yuen,
20 and to the Board, to the Chairman and to all present.
21 Thank you for your time.

22 I somewhat am in a sticky situation. I
23 contemplated recusal on the grounds that the next case
24 before the Board, the next scheduled case before the
25 Board of Zoning Adjustment today I am also involved

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1 in. Mr. Ray and I have had the pleasure of being on
2 the same side of --

3 CHAIRPERSON GRIFFIS: Is this part of the
4 closing? Do you want to recuse yourself from this
5 case --

6 MR. WAY: No, no --

7 CHAIRPERSON GRIFFIS: -- or the next case?

8 MR. WAY: -- I'm making a statement. I'm
9 putting my activity day in context. I contemplated --

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. WAY: -- recusal on the grounds that
12 the next case before the Board I am also involved in.

13 CHAIRPERSON GRIFFIS: That's fine.

14 MR. WAY: And so I didn't want to have any
15 difficulties in --

16 CHAIRPERSON GRIFFIS: Nothing precludes
17 you from doing that.

18 MR. WAY: With, with that being said, my
19 hearing of the testimony seems to come down to a
20 couple of things. Again, no disrespect. Good to see
21 you again, John. Mr. Way is not offering any
22 opposition to the station. The ANC, the quorum from
23 the neighborhood, there's no real opposition to the
24 station. What there seems to be going on is basically
25 a cry of a foul ball or something, you know, a matter

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1 of "Whoa, was that ball inside. Did the guy's foot
2 touch the out of bounds line?", or whatever.

3 We went through every process that we knew
4 to exist when we created these plans and submitted
5 them to DCRA. And I could sleep at night because I
6 know that we went through the known processes.

7 Now, with regard to some the rationales,
8 unfortunately, again, Mr. Ray, that you put forth that
9 on a number of stations that I've designed in both
10 this jurisdiction and in other jurisdictions,
11 especially replacement work or restoration work, I've
12 not had to go before a zoning body, a special zoning
13 body. No variances, no special exceptions, no Board
14 of Zoning Adjustment, bench decisions or anything.
15 It's just been a matter of put together my plans, go
16 through the permit, permit process, and submit the
17 plans. So, under that rationale, then there are a lot
18 of permits that, that I and my clients have procured,
19 then which somehow would be invalid. And I don't
20 think Mr. Ray would want that. And I don't think
21 that, because we actually share some clients. I just
22 don't think that --

23 CHAIRPERSON GRIFFIS: Okay. We'll keep
24 the record open for you to provide those permits and
25 addresses and applications.

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1 MR. WAY: And so, as I conclude my
2 statement, I think that this station has gone through
3 the approval process. It's regrettable that there's
4 been a cry of foul, but I can assure you that we went
5 through every process that we knew to exist when we
6 took on these projects.

7 CHAIRPERSON GRIFFIS: And our decision has
8 nothing to do with the process. You're here for a
9 special exception, or --

10 MR. WAY: I understand that, but I can't
11 ignore what brought us here today sir.

12 Thank you very much.

13 CHAIRPERSON GRIFFIS: Well, it's an
14 interesting statement that both of you are making.
15 It's as if you've been forced to come here. There it
16 is.

17 Ms. Miller, any other questions?

18 Board?

19 (Pause.)

20 What?

21 Let's go. We're going to set this for a
22 decision making on the first of March. There's
23 several things we'll assess.

24 Let's go down, and we can assess whether
25 that's enough time for you to get all the information

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1 in. I can't imagine it isn't, but we're going to keep
2 the record open for any written submissions that you
3 have in terms of the preliminary matter of whether
4 there is actual relief required in the jurisdiction of
5 the Board. To that, Ms. Miller, do you have specific
6 questions --

7 VICE CHAIR MILLER: Look --

8 CHAIRPERSON GRIFFIS: -- that you would
9 like to be addressed?

10 VICE CHAIR MILLER: From what I've heard
11 today, I mean I have certain questions that I would
12 appreciate if you would address that I think would be
13 helpful for the Board to decide this question.

14 The first is we've heard that the, there
15 were gas stations at the, there was a gas station
16 prior to May 1958, but we don't have any evidence on
17 it. I mean, if we're going to rule we need evidence
18 on it.

19 Then, when exactly, the use lapsed. And
20 I'm confused whether it lapsed, and then there was
21 another gas station, or if there was only, you know,
22 for one period of time and then it lapsed. And, so a
23 chronology of use would be terrific, including other
24 uses. But at least when it lapsed and when the final
25 lapse was and confirmation. Has it moved, has the

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1 location of the gas tanks moved from one lot to
2 another lot and, if so, when did that happen?

3 And then, the question was raised with
4 respect to 2500. Is this an accessory use? And how
5 is this an accessory use? If that's what you're, if
6 that's what Applicant is saying. And if it is, and
7 how does that fall into the analysis of 199.1 or
8 whatever point you were making?

9 CHAIRPERSON GRIFFIS: All right. The
10 clear aspect of that is that if it's an accessory use,
11 what's it an accessory to? So, what's the principal
12 use? The principal use in the --

13 MR. RAY: Gas station.

14 CHAIRPERSON GRIFFIS: -- in the sense of,
15 right, but we're not asking for questions now. Or
16 answers now.

17 Okay. Ms. Miller, other?

18 VICE CHAIR MILLER: I think that basically
19 covers it --

20 CHAIRPERSON GRIFFIS: But --

21 VICE CHAIR MILLER: I mean, unless you --

22 CHAIRPERSON GRIFFIS: -- there it is.

23 VICE CHAIR MILLER: -- it falls under the
24 general 199.1, you know, that you're relying on.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Anything else?

2 MEMBER ETHERLY: Mr. Chair, very briefly.

3 Mr. Beck mentioned in testimony that there was indeed
4 some type of traffic look that had been conducted. If
5 that could be offered into evidence, into the record,
6 I think that would be very, very helpful.

7 To the extent that --

8 CHAIRPERSON GRIFFIS: To keep the record
9 open for it, but not require it?

10 MEMBER ETHERLY: No. Actually, I would --

11 CHAIRPERSON GRIFFIS: You would like to
12 require it?

13 MEMBER ETHERLY: I would require it.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MEMBER ETHERLY: I think there's enough of
16 a question regarding the traffic impact that I would
17 be comfortable seeing a little more detail from the
18 Applicant, specifically as it relates to traffic
19 movements into and out of the subject property. So,
20 if that document covers that, that would be helpful.
21 If not, I'm not suggesting a full-blown traffic study.

22 I'd leave that up to the Applicant to make a
23 determination. But, some type of

24 MR. YUEN: No problem.

25 MEMBER ETHERLY: Thank you. Thank you Mr.

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1 Chair.

2 CHAIRPERSON GRIFFIS: Excellent point Mr.
3 Etherly. And again, also, the record's open for any
4 sort of representation, graphic or narrative
5 addressing the Office of Planning's concerns as part
6 of the application. And they're all listed there. Mr
7 Moore actually gave further information on that today.

8 Of course, all that needs to be put into
9 and served on the ANC. Let's run through schedule and
10 see if we can actually make our March 1 date on this.

11 Ms. Bailey, what do you think?

12 MS. BAILEY: February 22nd, Mr. Chairman,
13 would be the time that we would need to have things in
14 to get it in sufficient time to the Board. Is that
15 doable for the Applicant, February 22nd, that's about
16 two weeks from today?

17 CHAIRPERSON GRIFFIS: Does that give ANC
18 ample time to respond?

19 MS. BAILEY: Actually, it does not. I
20 mean, unless the ANC can get a turn-around response by
21 that Friday. The 22nd is a Tuesday. I don't think
22 so.

23 CHAIRPERSON GRIFFIS: Are you going to
24 need more time?

25 MR. BECK: Yes. We can't, I don't think

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1 --

2 CHAIRPERSON GRIFFIS: There's no problem
3 with that.

4 MR. BECK: -- we'll be able to get a good
5 traffic study. We want to be thorough when we come
6 back here.

7 CHAIRPERSON GRIFFIS: Good. Let's do it.
8 We'll give you as much time as you need. I wanted to
9 get this through quickly, but I think you're right.
10 Probably, ample time is needed.

11 Let's set this for our public meeting in
12 April, which is, what date, Ms. Bailey?

13 MS. BAILEY: The first meeting in April of
14 the Board is April the 5th, Mr. Chairman.

15 MR. BECK: Can we do it in May?

16 CHAIRPERSON GRIFFIS: May?

17 MR. BECK: The Chairman will be out of
18 town.

19 MR. YUEN: I will not be available, so I
20 would very much --

21 CHAIRPERSON GRIFFIS: Oh yes. Pushing it
22 out further is easy. It's getting it closer which is
23 hard for me. You should see the schedule. We haven't
24 ended our morning yet.

25 MR. YUEN: I'll tell you. If we can a

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1 revisit on this.

2 CHAIRPERSON GRIFFIS: Good. We're going
3 to do May. So, let's get the schedule together.
4 Obviously, you can put it in wherever it's ready --

5 MR. YUEN: May, May 20th or after would
6 be better. Okay?

7 CHAIRPERSON GRIFFIS: First, first of the
8 month, first Tuesday of every month is our decision-
9 making, our public meeting. So, it's either, we'll do
10 it the first Tuesday in May. Is that appropriate or
11 no? You need it further?

12 MR. YUEN: Yes. I won't return until May
13 20th.

14 CHAIRPERSON GRIFFIS: Okay. So we're
15 doing the first of June?

16 MR. YUEN: Okay. That would be fine, sir.

17 CHAIRPERSON GRIFFIS: Excellent. The
18 first meeting in June is?

19 MS. BAILEY: June, June 7th.

20 CHAIRPERSON GRIFFIS: Nice date. Okay.
21 That gives us ample time.

22 MR. YUEN: June 7th?

23 CHAIRPERSON GRIFFIS: No. Yes, the
24 decision-making is on June 7th. We're going to back
25 off four weeks from there where the Applicant's

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1 submissions are due.

2 MS. BAILEY: And we can go up to May 2nd,
3 Mr. Chairman?

4 CHAIRPERSON GRIFFIS: May 2nd, you can
5 have your information in? That's going to be served
6 on the ANC. We'll allow two weeks for the responses
7 to the ANC?

8 MS. BAILEY: And, May 16th.

9 CHAIRPERSON GRIFFIS: And then, we'll
10 allow you to the last minute to --

11 MR. YUEN: May 16.

12 MS. BAILEY: So that's May 2nd for the
13 submissions, May 16th for the ANC to respond.

14 CHAIRPERSON GRIFFIS: And then a week
15 before for the Applicant to do final submissions in
16 response to the ANC and any sort of findings and
17 conclusions.

18 MR. BECK: A week prior to June 7th?

19 CHAIRPERSON GRIFFIS: She's going to give
20 it to you.

21 MR. BECK: Oh.

22 CHAIRPERSON GRIFFIS: Great. Very well.
23 Ms. Bailey, when she's ready, is going to read through
24 the schedule again so we're all clear.

25 MS. BAILEY: One more time. Decision

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1 would be June 7th. Submission from the Applicant,
2 submissions from the Applicant would be May 2nd. The
3 ANC's is to respond by May 16th. And then, the
4 Applicant has a final opportunity to respond to the
5 ANC on May 23rd.

6 CHAIRPERSON GRIFFIS: Everybody clear on
7 that? Any problems with those dates?

8 MR. YUEN: Mr. Chairman, is June 7 a
9 public forum in here?

10 CHAIRPERSON GRIFFIS: It's a public
11 meeting. You're certainly welcome to be here. There
12 won't be any additional time for testimony or
13 evidence. It's just the deliberation of the Board.
14 The record will be full and closed a week before that.

15 MR. YUEN: Thank you.

16 CHAIRPERSON GRIFFIS: And we've left open,
17 specifically what the record will accept and so
18 outside of that we won't accept any other additional
19 information.

20 Okay, if everyone is clear on that
21 schedule? Thank you very much, gentlemen. I
22 appreciate your morning with us.

23 That being said, I don't believe we have
24 any other issues for the morning, Mr. Moy? Concerns?

25 MR. MOY: No sir, just for the Staff's

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1 clarification, early on in the testimony there were
2 issues of site plan, things like that. Is that still
3 asked of the Applicant to submit?

4 CHAIRPERSON GRIFFIS: Yes. We asked that
5 of in terms of responses to all of the points that the
6 Office of Planning has listed.

7 MR. MOY: I just wanted to make sure.

8 CHAIRPERSON GRIFFIS: Good. Excellent
9 point to bring up. Okay, if there's no other further
10 business for the morning session, it's 10 after 3, the
11 Board has to take a break for some business and also
12 for some lunch. We're going to take 40 minutes.
13 We're going to try our best to be back here at 10 of
14 4. We have rebuttal witnesses and conclusions is
15 going first as we had established last week. We had
16 always hoped to be closer to 1 o'clock, closer than we
17 are now, but we're going to make every effort to get
18 through that, obviously and then we'll call the next
19 cases advertised in the afternoon.

20 If there's nothing further for the morning
21 session, we'll adjourn. Thank you all.

22 (Whereupon, at 3:13 p.m., the public
23 hearing was recessed, to reconvene at 4:09 p.m.)

24

25

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

4:09 P.M.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 8th of February 2005 afternoon session of the District of Columbia. My name is Geoff Griffis, Chairperson.

Joining me today is Vice Chair Ms. Miller and also our important colleague and Member of the Board, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann.

Copies of today's hearing agenda are available for you. I imagine you all have had ample time to read that and reread it and look for more reading material. However, let's get right into it. We have several important aspects for all hearings before the Board of Zoning Adjustment. We are being recorded in two fashions. One is the court reporter sitting to my right on the floor. He's creating the official transcript. Secondly, we are being broadcast live on the Office of Zoning's website.

Attendant to both of those, we ask several things. First of all, I would ask people to turn off all their cell phones and beepers at this time so that you don't disrupt the transmission of these proceedings.

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1 Secondly, when coming forward to speak to
2 the Board, I would ask that everyone fill out two
3 witness cards. Witness cards are available for you at
4 the table you entered into the Hearing Room. They
5 would also be available for you at the witness table
6 in front of us.

7 You need to give those to the court
8 reporter prior to coming forward to speak to the
9 Board. When you're ready to address the Board, I ask
10 that you come forward, have a seat, make yourself
11 comfortable and you will need to state your name and
12 address for the record prior to speaking. You only
13 need to do that once, obviously, so we have your name
14 on the record for all the important things that you
15 will be providing the Board.

16 The order of procedure for special
17 exception and variances is first we hear from the
18 Applicant, the presentation of their case. Secondly,
19 we hear from any government agencies responding to the
20 application. Third, we hear from the Advisory
21 Neighborhood Commission. Fourth would be persons or
22 parties in support of the application. Fifth would be
23 persons or parties in opposition. Sixth, finally, we
24 will have closing remarks by the Applicant.

25 Cross examination of witnesses is

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1 permitted by the Applicant or parties in a case. The
2 ANC within which the property is located is
3 automatically a party in the case and therefore will
4 be able to conduct cross examination. Nothing
5 prohibits this Board from limiting cross examination,
6 both in time and in content. We obviously look for
7 cross examination and its scope to be on point to
8 those aspects before us in a specific application.

9 The record will be closed at the
10 conclusion of the hearing on a case, except for any
11 material that we specifically keep the record open
12 for. And I will go through that in detail if that is
13 the case with which application.

14 The Sunshine Act requires that this Board
15 conduct its proceedings in the open and before the
16 public. This Board may enter into executive session
17 both during or after a hearing on a case for purposes
18 of reviewing a record and/or deliberating on a case.
19 That would be in accordance with the Sunshine Act and
20 it also would be in accordance with our rules of
21 procedure and regulations.

22 Let me say a very good afternoon to Ms.
23 Bailey who is sitting on my very far right with the
24 Office of Zoning. Mr. Moy will be joining us shortly
25 and the representative from the Office of Attorney

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1 General is with.

2 Ms. Bailey, actually before we go to that
3 I would ask that anyone planning to give testimony
4 before the Board today to please stand and give your
5 attention to Ms. Bailey. She's going to swear you in
6 and anyone that hasn't been sworn in on the
7 continuation of the case, can also stand and give your
8 attorney to Ms. Bailey as she swears you in.

9 Anyone contemplating giving testimony,
10 excellent.

11 Ms. Bailey?

12 MS. BAILEY: Please raise your right hand?
13 Do you solemnly swear or affirm that the testimony
14 you will be giving today will be the truth, the whole
15 truth and nothing but the truth?

16 (The witnesses were sworn.)

17 CHAIRPERSON GRIFFIS: Excellent at this
18 time the Board would consider any preliminary matters
19 that we need to take up immediately. Preliminary
20 matters are those which related to whether a case will
21 or should be heard today. Request for a postponement,
22 withdrawal or whether proper and adequate has been
23 provided might be a preliminary matter that we need to
24 look at at this time.

25 Ms. Bailey, are you aware of any

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1 preliminary matters?

2 MS. BAILEY: Very quickly, Mr. Chairman,
3 and that has to do with DAG Real Estate Holding
4 Application 17282. Initially, we did receive a
5 request from the ANC to postpone, however, we have
6 since received another letter from the ANC indicating
7 that they want to go forward today so I just wanted to
8 clarify that at the top for the record, sir.

9 CHAIRPERSON GRIFFIS: Excellent, thank
10 you. Is that correct understanding? Does anyone have
11 a different understanding of Application 17282, you
12 can bring that to the Board's attention now by coming
13 forward.

14 Not noting any indication, let's move
15 ahead then. We do have a continuation for rebuttal
16 testimony and closing in our first case and Ms.
17 Bailey, if you're ready, why don't we call that case?

18 MS. BAILEY: Application No. 17232 of RLA
19 Revitalization Corporation, pursuant to 11 DCMR 3104.1
20 for a special exception from the roof structure
21 requirements under Section 411 and pursuant to 11 DCMR
22 3103.2 for a variance from the off-street parking
23 requirements under subsection 2101.1 to permit a
24 multi-use commercial establishment at premises 1400
25 through 1420 Park Road, N.W.; 3100 through 3220 14th

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1 Street, N.W.; and 1417 through 1437 Irving Street,
2 N.W. The property is located in Square 2674, Lots
3 719, 820, 812, 832, 863, 866, 869, 870, 871 and 872.

4 CHAIRPERSON GRIFFIS: Thank you very much.

5 Mr. Glasgow, are you ready?

6 MR. GLASGOW: Yes sir. Mr. Ruffin has one
7 brief preliminary matter he wanted to bring to the
8 Board's attention.

9 CHAIRPERSON GRIFFIS: Excellent. Mr.
10 Ruffin?

11 MR. RUFFIN: Thank you, Mr. Glasgow, and
12 certainly thank you, Mr. Chair. For Kelsey Temple
13 Church of God in Christ and the Temple Church Building
14 and Economic Development Corporation, we would like to
15 offer a declaration under penalty of perjury that
16 offers a correction of mistaken testimony by the Board
17 of Trustees Chairperson, Ms. Delores Ruffin. She
18 testified last week at the hearing, she gave an
19 inaccurate estimate of the size of the parking lot and
20 in light of the questions -- since she was under oath
21 and she really felt that she needed to double check
22 and it really came to her after she was listening to
23 the questions from the Board. She double checked it
24 and she came in with what she believes are certainly
25 more accurate estimates, both the size of the lot for

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1 purposes of amount of cars that can be parked there
2 and also a more accurate statement of the amount of
3 cars that typically park there.

4 Yes, I have copies.

5 CHAIRPERSON GRIFFIS: So it's all in the
6 written submission?

7 MR. RUFFIN: It's all in the written
8 submission.

9 CHAIRPERSON GRIFFIS: Perfect. We
10 appreciate that correction. I think that's an
11 excellent thing to bring to the attention.

12 MR. RUFFIN: As for the rest of her
13 testimony, she still stands by it, but she needed to
14 correct that. Thank you very much.

15 I assume the Applicant has a copy of that?

16 MR. GLASGOW: Yes sir. We reviewed it.
17 We'll be responding to that briefly because I think,
18 as I had mentioned, that our estimates as to the
19 utilization size of the lot were just so vastly
20 different than what we heard in the testimony we were
21 just going to handle it in rebuttal.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GLASGOW: This gets the numbers more
24 in line, not quite where we are, but at least a lot
25 closer than where we were before.

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1 CHAIRPERSON GRIFFIS: Good.

2 MR. GLASGOW: Mr. Chairman, I'd just like
3 to quickly proceed then to our three rebuttal
4 witnesses, Mr. Drew Greenwald, Mr. Lou Slade and Mr.
5 Steven Sher.

6 Mr. Greenwald will you please identify
7 yourself for the record and proceed with your rebuttal
8 testimony.

9 MR. GREENWALD: My name is Drew Greenwald.
10 I want to address several questions that have been
11 raised since my previous testimony.

12 The first question is the parking
13 adequately sized to meet the demand generated by the
14 proposed development? The project, as originally
15 planned more than five years ago, contained
16 approximately 540,000 square feet of retail and
17 entertainment space with two levels of parking. The
18 original size of the parking facility, approximately
19 1,000 spaces, was based on discussions with retailers
20 and an examination by Grove Slade of comparable D.C.
21 projects including Georgetown Park with 1.5 spaces
22 were 1,000 square feet and Gallery Place which had not
23 yet been built, with 1.3 spaces planned per 1,000
24 square feet.

25 Both of these projects have significantly

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1 less than the two spaces per 1,000 square feet at
2 DCUSA. It is important to point out that both
3 developers and tenants of retail projects have a
4 vested interest in providing the appropriate amount of
5 parking for the retail patrons. Happy customers
6 translate into higher sales volumes and stronger
7 rental values.

8 From the first zoning analyses and traffic
9 studies, it was quite obvious that more spaces were
10 required than actually needed. A decision was made to
11 seek a special exception to reduce the parking by 25
12 percent from the 1810 spaces required to 1364 spaces.

13 At this number of spaces, a third parking level was
14 required to be added to the project. Grove Slade
15 studies indicated that although there would be 1364
16 spaces, the recommended parking supply with theaters
17 and the tenant mix at the time would be 1243 spaces
18 and the recommended parking supply without theaters in
19 the mix and with a big box tenant such as Target would
20 be reduced to 1,071 spaces.

21 It became clear once additional subsurface
22 information was obtained the design concept was
23 developed further and the public financing process was
24 advanced that unique site conditions were making the
25 project impracticable. At the time of the signing of

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1 the LDA, as the party in opposition pointed out in
2 their presentation, "the test borings indicate that
3 soil conditions won't enable the site to be excavated
4 to this level without ground water problems"
5 referencing the third level. End of quotes. That
6 statement was based on three test borings taken by Geo
7 Concepts in November 2000, indicating ground water
8 would be found at elevations ranging from 162 feet to
9 166 feet. It was anticipated at the time that the
10 final slab on grade elevation would be at 166 feet.

11 More detailed architectural drawings were
12 subsequently developed, placing the slab on grade at
13 an elevation of 160 feet. Mueser Rutledge performed
14 an extensive geotechnical analysis and their reported
15 dated in April of 2004 indicated ground water was
16 found at an elevation of 166 to 168. So in other
17 words, you went from the basement being above water to
18 being about eight feet below water.

19 The District and the developer then
20 examined various alternatives and determined that the
21 project could be reduced in size to slightly less than
22 500,000 square feet of retail with 1,000 parking
23 spaces on two levels. Grove Slade has shown that the
24 demand for parking would only be 983 spaces for that
25 reduced half a million square foot project. Grove

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1 Slade's analyses have been supported by OP and DDOT.

2 The second question I'd like to respond
3 to, is the garage intended to serve the retail
4 customers or the general public? The zoning
5 regulations require that the parking be accessory to
6 the retail use. The LDA, Land Disposition Agreement,
7 requires the parking to be available for the retail
8 customers. And recent letters submitted by RLARC and
9 Councilman Graham also support the position that the
10 parking will primarily serve the retailer and will be
11 managed and operated that way.

12 It's also important to point out that the
13 parking for all new developments in the area will be
14 sized to meet the needs of that particular project.

15 Thank you.

16 MR. GLASGOW: I'd like to now proceed with
17 the testimony of the next rebuttal witness, Mr. Lou
18 Slade.

19 MR. SLADE: Good afternoon, Mr. Chairman
20 and Members of the Board. For the record, my name is
21 Lou Slade. I'm going to recap some of the demand
22 numbers that have been discussed in prior testimony.

23 We used industry standards, particularly
24 the Urban Land Institute research and documentation
25 and references on parking for retail to establish that

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1 983 parking spaces, the demand on the twentieth
2 highest hour at this retail facility. The twentieth
3 highest hour is another standard within the retail
4 industry. That's the design target for which parking
5 is most economical.

6 This means that out of about 3700
7 operating hours of the year, 99 percent of the time
8 we're going to have more parking than the retail
9 requires and in fact, according to the Urban Land
10 Institute's research, 40 percent of those operating
11 ours, half the spaces or more will be vacant. So
12 about 500 vacant spaces, about 40 percent of the time
13 during the operating hours of the retail center.

14 As prior testimony just indicated, that
15 information will be provided and documented, was
16 reviewed by OP and DDOT and they concurred with us.

17 There's been another issue about parking
18 demand raised by the opposition and this is the demand
19 for parking that exists today on the property on
20 leased land area to the church. I have scanned the
21 document that Mr. Ruffin just submitted to you and
22 it's very consistent with our findings on how that
23 leased parking area is utilized and how much capacity
24 it has.

25 There is 40,000 square feet leased with

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1 access from Park Road across from the church and we
2 did a -- the parking area isn't laid out with stripes
3 so you can't count the spaces, but we did a
4 hypothetical layout which we thought was the most
5 efficient way, if it were self-parked, and we got 106
6 spaces.

7 If there was attendant assisted parking,
8 the kind of parking we've talked about potentially,
9 there you could get another 24, 25 spaces and bring it
10 up to about 130 spaces. And if you jammed cars into
11 the parking facility, you could go above 130. Of
12 course, retrieving cars would be difficult by the
13 owners of those cars. There would be some management
14 that would have to take place.

15 So the capacity of that 40,000 square feet
16 that's leased by the church from RLARC is on a day to
17 day basis around 100 cars. We went and surveyed how
18 that parking is used. We visited the property in
19 January and early February on three weekdays, two
20 Saturdays and three Sundays, including the day before
21 yesterday. And we found that the parking is used --
22 the most use that we observed was on a Sunday, each of
23 the three Sundays. The highest accumulation that we
24 observed during the 12-hour period from 8 a.m to 8
25 p.m. on those Sundays was 40 to 46 cars on those three

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1 particular Sundays.

2 On the weekdays, we observed significantly
3 less parking on that 40,000 square feet. The most
4 active day that we observed was 10 cars on a weekday
5 and again on weekdays we were there for 16 hours of
6 the day.

7 CHAIRPERSON GRIFFIS: Those are total
8 counts?

9 MR. SLADE: No, this is the maximum number
10 of cars that we observed on our visits. I'm glad you
11 asked that. This past Sunday we visited the parking
12 facility once every hour. We have a trained field
13 crew. They visit, they count the number of cars in
14 the lot. They take a picture that's time stamped and
15 dated so we know they were there.

16 CHAIRPERSON GRIFFIS: So the period on a
17 Sunday, just to clarify from 8 a.m. to 8 p.m., you
18 would make spot checks and do a count and the maximum
19 you found was 46 spaces on the site?

20 MR. SLADE: Yes.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. SLADE: And on weekdays, the maximum
23 we found on one particular day was about 10 cars, as I
24 recall.

25 I went by there myself the other morning

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1 and there were a number of cars parked on the
2 property. It wasn't by any means full. It was a
3 weekday morning and I am guessing there was maybe 12
4 cars. I didn't really count them.

5 The next thing I want to talk about is the
6 operations of the proposed garage at DCUSA and this a
7 very straightforward point I want to make that you
8 will have observed from your own use of parking
9 facilities such as the ones that my colleague here
10 cited in his testimony. Two new garages, Gallery
11 Place is now open to the public; 4500 Wisconsin Avenue
12 has been open for a year or two. As a motorist when
13 you drive to those garages, even though the purpose of
14 those garages is to serve the retail there, there's no
15 indication that would restrict you in any way from
16 using the garage if you had business in the
17 neighborhood or wanted to use it for anything. So
18 that is at this moment how we intend that this garage
19 at DCUSA would also be operated.

20 Finally, we talked about attendant
21 assisted parking. I just wanted to clarify that the
22 architects in my firm worked on laying out a layout of
23 attendant assisted parking where cars would be parked
24 in the aisles. This is a standard operating procedure
25 in a lot of garages in D.C. I've never parked in this

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1 building, but I understand it's done here. And we
2 found that we could increase the capacity of a garage
3 by approximately 244 spaces from a 1,000 to about 1244
4 spaces.

5 So if you think about those 40 percent of
6 the year where we would have 500 vacant spaces in a
7 garage of a 1,000, it could be even significantly more
8 than that, as many as 744 spaces. And on days when
9 the retail portion of the project, the retail portion
10 of the project is very busy, it would be utilizing
11 most of the spaces, most of the 1,000 spaces and we
12 could still have another 244 spaces.

13 So there's ample capacity on most days and
14 potentially even on peak days to handle the kind of
15 demand that's being parked on the property right now,
16 if the Board chooses to establish that as a condition.

17 Thank you.

18 CHAIRPERSON GRIFFIS: Thank you.

19 MR. GLASGOW: For the last witness, I'd
20 like to call Mr. Steven Sher.

21 MR. SHER: Good afternoon, Mr. Chairman
22 and Members of the Board. For the record, my name is
23 Steven E. Sher, the Director of Zoning and Land Use
24 Services with the law firm of Holland & Knight. And
25 what I want to focus on is back to the beginning of

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1 what we're here for which is a variance from the
2 parking requirements.

3 The Board is familiar with the standards
4 for a variance. It's a three-part test. We have to
5 show that there's some exceptional or extraordinary
6 situation or condition of the property. We have to
7 show that the strict application of the regulations
8 causes a practical difficulty for the owner. And we
9 have to show that the relief can be granted without
10 substantial detriment to the public good and without
11 substantially impairing the intent and purpose and
12 integrity of the zone plan.

13 Have we done that? In my humble opinion
14 we have. We have been through many hours over several
15 days now discussing the attributes of this property,
16 the exceptional or extraordinary situation or
17 condition, its size, its shape, the water table, the
18 presence of the Metro rail tunnel, the planning and
19 zoning history of the site, all combined in my opinion
20 to create that exceptional situation or condition.

21 The practical difficulty, have we
22 demonstrated this practical difficulty? I believe we
23 have. The cost premium which you've heard discussion
24 of in the previous sessions with testimony from the
25 representative of RLARC concerning what it would take

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1 to put two levels of parking underground, what it
2 costs, what those premiums are, we have basically
3 demonstrated that that's all the parking we can get on
4 the site and create a feasible project that can be
5 built.

6 Detriment to the public good. Have we
7 addressed the question of detriment to the public
8 good? Well, in reviewing the transcript from last
9 week's hearing because I was not present at that time,
10 the opponent, the Kelsey Temple Church and the
11 Economic Development Corporation and the testimony of
12 Ms. Ruffin argued that the application should be
13 denied because there are other uses in the
14 neighborhood that have insufficient parking and the
15 present parking lot on this site helps to offset that
16 deficit.

17 Well, if that's the basis for denying the
18 application, that's a total misreading of the variance
19 provisions of the regulations and the statute. This
20 Applicant is not required to provide parking for the
21 neighborhood. It is required to provide parking to
22 satisfy the regulations based on the square footage of
23 the development proposed on this lot. At the size of
24 the building we have, we are required to have 1600
25 spaces. We're proposing 1000. We need the variance

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1 for approximately 600 spaces.

2 I assume that the existing buildings in
3 the area which were discussed lacked parking because
4 they were built prior to the time that parking was
5 required. I went through the list that was cited in
6 the transcript and most of those buildings were built
7 in the 1920s, 1930s, some of them back as far as 1900.

8 Parking was not required in the regulations until
9 1958. So any of those buildings that were built
10 before that time didn't have parking because they
11 weren't required to have parking.

12 Any development of this site with or
13 without a variance would result in the loss of the
14 existing parking lot on the site. So that parking lot
15 is not going to necessarily remain whether the Board
16 grants this variance or not. When the regulations and
17 the statute talk about the Board having to find that
18 the relief can be granted without substantial
19 detriment, another way of looking at that perhaps
20 would be to say does approving the reduction in the
21 number of parking spaces for this project cause any
22 detriment to the public good. It's not asking if you
23 take away a use that's on this site that happens to be
24 providing parking for the neighborhood for buildings
25 which weren't required to have parking when they were

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1 built because they weren't required to, that's not the
2 test here. The test here is does this reduction for
3 the proposed building cause any substantial detriment?

4 And I believe we've demonstrated that it doesn't.

5 The size of the development is slightly
6 less than 500,000 square feet was calculated related
7 to the number of parking spaces which could feasibly
8 be provided on site. You heard Mr. Greenwald's
9 testimony a few minutes ago. The number of self-
10 parked spaces that we're providing meets the expected
11 site-related demand for all but those 20 peak hours of
12 the day.

13 The additional 244 -- peak hours of the
14 year -- not of the day. Additional 244 spaces that we
15 can provide through attendant assisted parking
16 provides for a margin of error if we got it wrong, if
17 it turns out to be that there's a slightly greater
18 demand than we thought there was, we've got extra
19 parking spaces that we can provide and it also
20 accounts for whatever residual neighborhood demand
21 there may be that doesn't derive out of this property,
22 as we've indicated before, if you want to come in and
23 pay the freight, you can park in that site.

24 We've accounted for that level of demand
25 plus any potential miscalculation that we may have

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1 made about how many parking spaces there are, by being
2 able to give you a 25 percent increment over the 1,000
3 self-parked spaces that we have.

4 I think it's been pretty clear from the
5 testimony that we've given that new retail development
6 on this site is consistent with planning objectives
7 for Columbia Heights. It's long been part of the
8 plans for this area going back as far as the 14th
9 Street urban renewal plan done in the late 1970s, I
10 guess.

11 As the Board focuses on its decision on
12 this matter, you must remember that you can impose
13 conditions reasonably necessary to protect surrounding
14 properties and to ensure that the intent of your
15 approval is carried out and we would suggest that if
16 you are inclined to grant the application, which I
17 believe you should, that there are at last two
18 conditions you may want to consider. One, to say that
19 we would provide the 244 additional spaces through
20 attendant assisted parking at such time or any such
21 time as the 1,000 self-park spaces are filled. And as
22 RLARC has committed in its letter to you that we
23 establish pricing and validation mechanisms to ensure
24 that the primary users of the garage are customers of
25 the retail project.

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1 Taking all those things into account, I
2 believe that this application meets the requirements
3 of the regulations and the statute for the granting of
4 a variance and the Board should do so.

5 MR. GLASGOW: That concludes our rebuttal
6 testimony.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much.

9 Mr. Sher, you mentioned, of course, the
10 variance test starting with the uniqueness. I have
11 one quick question. The opposition raises the point
12 of size and shape. It may well be unique, but it's
13 large, it's big and you're saying it's not big enough
14 to handle the parking.

15 How do you briefly respond to that?

16 MR. SHER: Well, that's part of it. The
17 size and the shape, the presence of the water, the
18 presence of the Metro and so forth.

19 CHAIRPERSON GRIFFIS: I'm talking about
20 size and shape. Why is that part of your discussion
21 of uniqueness? What practical difficulty arises out
22 of it is the direct question.

23 MR. SHER: I believe that if this were not
24 shaped in the way that it is with the various pieces
25 that -- let me put it a different way. If this were a

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1 rectangular site and you could lay out a parking
2 garage that was exactly orthogonal and get the number
3 of spaces in there, I think we could get more than 500
4 parking spaces were level. So the fact that it's not,
5 the fact that you've got a site that goes off in this
6 direction, goes off in that direction, you lose
7 efficiency in the garage and therefore that's part of
8 the reason why we can't get as many spaces per level
9 as we could if it weren't affected by that size and
10 shape.

11 CHAIRPERSON GRIFFIS: I see. You're
12 saying and obviously that falls into the practical
13 difficulty also of the cost premium. I guess I'm
14 wondering if that is a successful argument in this,
15 how is cost premium of anything of any variance not
16 looked at favorably by the Board. If you just come in
17 and say after all, I can't afford to put two units in
18 this R-4 building. I need to put six to make it cost
19 efficient.

20 MR. SHER: Let me put my glasses on so I
21 can think better.

22 I think the Board has recognized before
23 that the question of cost and economics is a part of
24 any application before the Board.

25 CHAIRPERSON GRIFFIS: I don't disagree.

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1 MR. SHER: If cost were never an issue,
2 then there probably would never be a basis for getting
3 a variance because if you could spend an unlimited
4 amount of money, there's always a way to accomplish
5 something.

6 CHAIRPERSON GRIFFIS: And everyone would
7 be in development.

8 MR. SHER: Right, and we'd all be making
9 -- we'd all be on the other side of the table or
10 whatever.

11 What happens here is that the conditions
12 that we've described of the site lead you to the
13 conclusion that two levels of underground parking is
14 all you can get here. If you start to go down to that
15 third level, you begin to really increase the cost of
16 providing that additional parking and given the fact
17 that as Mr. Slade just testified, 40 percent of the
18 time, half of those spaces aren't going to be used
19 anyhow. Why would you require somebody to go through
20 that additional expense to provide parking that you
21 don't need?

22 CHAIRPERSON GRIFFIS: Is that a practical
23 difficulty that's actually viable for us? If anyone
24 comes in and says our regulations require this aspect,
25 but you know, we're never going to need it. Is that

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1 the basis to grant a variance?

2 MR. SHER: I think that's part of the
3 basis, yes. I mean just to take it into a different
4 context, the Board has had any number of cases
5 involving variances from residential recreation space.

6 I'm just going to pick on it because it's a topic,
7 where the regulations require a level of space to be
8 provided that in most circumstances where we've come
9 to you the Board has said that's excessive, you don't
10 need to have that, there are other ways to offset that
11 space and to require somebody to provide it, you're
12 either eating up program space in the building, taking
13 out uses on the ground floor that you otherwise would
14 want to have on the ground floor and so forth. I want
15 to take it out of the context of parking for a moment.

16 You could come back to the same situation
17 here. Is there a way to provide parking on the upper
18 floors of this building? Sure. I mean there's a way
19 to do it, but what you're doing then is going right at
20 the nature of what this building is supposed to be.

21 CHAIRPERSON GRIFFIS: When you say upper
22 floor, that's parking on the roof?

23 MR. SLADE: Or take one floor of retail
24 out of the building and make it parking.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. SLADE: But that's not what this is
2 about. And so again, if those type issues are never
3 to be considered, if the feasibility and desirability
4 of the development and what this is all about is not
5 of interest here, there's always a way to accomplish
6 it. But I'm saying that's not what the Board's task
7 is in addressing this question for a variance.

8 CHAIRPERSON GRIFFIS: Indeed, thank you.
9 Well said.

10 Mr. Slade, you indicate the 20th highest
11 hour. We've had a lot of discussion on that. Can you
12 reiterate again the two days that you're assuming that
13 the 99 percent -- let me see if I'm correct. In the
14 20th hour, it was basically the high peak shopping
15 days, is that correct?

16 MR. SLADE: That's correct.

17 CHAIRPERSON GRIFFIS: And those were which
18 days?

19 MR. SLADE: Well, the most notorious,
20 historically, has been the Friday after Thanksgiving.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. SLADE: Okay, but of course, those 20
23 hours are typically spread over anywhere from four to
24 nine days or something like that. It just varies from
25 center to center and the calendar each year.

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1 CHAIRPERSON GRIFFIS: Okay, so if I
2 understand what you're saying is actually although you
3 could use a formulaic aspect of a 20th hour in
4 calculating and making the statement that 99 percent
5 of the time you'll have parking available, you won't
6 max out the parking there, but in each individual
7 retail establishment it may change when that 20th hour
8 happens?

9 MR. SLADE: Yes, yes.

10 CHAIRPERSON GRIFFIS: Well, correct me if
11 I'm not absolutely right.

12 MR. SLADE: I think though that first of
13 all the ULI data was collected over many, many years
14 by flying aerial photographs over shopping centers
15 across the country.

16 And the pattern, you know, I don't know
17 that there was any rigorous statistical analysis of
18 all those sets of data, but the pattern was consistent
19 across the country in all settings.

20 CHAIRPERSON GRIFFIS: I understand that,
21 but didn't you just make the statement but each retail
22 establishment might vary a little bit?

23 MR. SLADE: All I'm saying is that those
24 19 hours of the year that are greater than the --
25 where the parking demand is greater than the 20th

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1 highest hour of the year.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. SLADE: Those hours can fall all on
4 only three days of the year or as many as nine days of
5 the year. That's a variable.

6 But --

7 CHAIRPERSON GRIFFIS: What do you think
8 it's going to be here?

9 MR. SLADE: I don't have any idea.

10 CHAIRPERSON GRIFFIS: How would we get an
11 idea?

12 MR. SLADE: Well, you could look at
13 Target-anchored centers.

14 CHAIRPERSON GRIFFIS: To see when the high
15 peak shopping is there? So for instance, it could
16 happen for whatever reason Saturday afternoons at 4
17 o'clock could be the highest peak time?

18 MR. SLADE: Sure, but it relates to
19 traditional sales days.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. SLADE: And seasonal holidays where
22 gifts are given, so that whatever you discover if you
23 did that kind of research this year might be different
24 next year because sales days will fall on different
25 days.

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1 CHAIRPERSON GRIFFIS: Right. We may
2 establish the Hallmark Toaster Day where everybody is
3 buying toasters.

4 Okay. Mr. Greenwald, you ended your
5 statement saying that, in fact, our regulations
6 required that parking be accessory to the retail. Is
7 that a correct hearing of what you said?

8 MR. GREENWALD: Yes.

9 CHAIRPERSON GRIFFIS: And just for
10 clarification, were you meaning in terms of how
11 accessory is used in our regulations or were you
12 meaning that it is obviously there to serve the retail
13 establishment of which has been built?

14 MR. GREENWALD: I meant that the retail
15 usage is what generates the required amount of the
16 parking and it is there to be accessory and to serve
17 the retail. You can look at it two ways.

18 CHAIRPERSON GRIFFIS: Okay. I'm not
19 pushing this, but I just want clarification. Are
20 there specific regulations you're actually looking at
21 that wanted us to view in terms of that statement?

22 MR. GREENWALD: No. It's just that it was
23 a retail accessory parking, that's okay.

24 CHAIRPERSON GRIFFIS: Understood. Now
25 specifically, you mentioned and we had it in the other

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1 testimony, this is a reiteration of the past
2 testimony. At one point, five spaces that went to, I
3 believe, it was the Georgetown Park, we had 1.3 per
4 1,000 for the Gallery Place. Are those figures based
5 on 1,000 square feet of retail as most of those, if my
6 understanding is correct, are mixed use, actually have
7 residential and commercial office space.

8 MR. GREENWALD: I would direct that to Lou
9 Slade as it appeared in his report.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. SLADE: In each of those cases, we
12 separated out the parking that was available for
13 retail use from the parking that was available for the
14 other use.

15 CHAIRPERSON GRIFFIS: That's an excellent
16 clarification as would be the requirements in the
17 regulations themselves to be calculated differently.
18 So to reiterate then, the 1.5 spaces for the
19 Georgetown Park, I believe it was what you cited per
20 1,000, is 1,000 square foot of the retail.

21 MR. SLADE: That's correct.

22 CHAIRPERSON GRIFFIS: Excellent. That's
23 all the questions I have.

24 Others?

25 MEMBER ETHERLY: Yes, Mr. Chair. Just

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1 very briefly. I wanted to kind of pursue with Mr.
2 Sher, a little bit of the conversation around parking.

3 We perhaps have had some discussion at
4 prior hearings around this issue of relying on what is
5 essentially public parking for purposes of satisfying
6 a variance test or variance requirement.

7 I guess the starting point of my question
8 is does this -- if this decision, if this application
9 were to be viewed favorably by this Board, would that,
10 in your mind, establish a precedent for variance
11 applicants to rely on public parking as a rationale
12 for not satisfying, otherwise satisfying a parking
13 requirement? By that I mean if you have an instance
14 where let's say we're talking about a property and
15 granted the circumstances are going to change in a
16 little bit from our present case, but let's say we
17 have a property downtown which has a parking
18 requirement that can't be met because of some
19 practical difficulty or uniqueness or what have you,
20 does your argument support or suggest that this Board
21 should accept the argument that because of the public
22 parking stock that we have in the immediate vicinity
23 of a particular property downtown, i.e., public
24 parking garages or on-street parking, that a parking
25 requirement shouldn't be adhered to that would

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1 otherwise be required?

2 It's a little bit of a convoluted
3 question, but what I'm trying to massage a little bit
4 is does this, in your mind, open up a slippery slope
5 whereby if I can rely on a public parking in the
6 vicinity or adjacent or in the neighborhood of a
7 subject property, should I ever be required to include
8 parking on my own property?

9 MR. SHER: I would say that goes to the
10 third part of the variance test. In other words, if I
11 can get past the proposition that I -- well, let me
12 put it differently.

13 If I demonstrate that there is an
14 exceptional situation that causes a practical
15 difficulty, then the Board can look at the adequacy of
16 parking or other -- of satisfying the demand for
17 persons who would be going to that particular
18 establishment, whether it's retail, office,
19 residential or what have you. How do you accommodate
20 the demand if you can't provide the parking?

21 You accommodate it either because you have
22 mass transit. You accommodate it because you have
23 mixed use. You accommodate it because there may be on
24 street parking. You accommodate it because there may
25 be other off-street available parking. But if you can

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1 demonstrate through whatever that combination of
2 factors is, that by not providing the parking on-site,
3 you are not contradicting the intent, purpose and
4 integrity of the zone plan, then I think that's a
5 factor the Board takes into account.

6 I don't think that's a slippery slope at
7 all. In fact, I think it's the kind of things that
8 the Board looks at now in granting variance
9 applications. But you don't get there until after
10 you've gotten past parts 1 and 2, in my opinion.

11 MEMBER ETHERLY: In your experience, are
12 you aware of other cases or instances where this Board
13 has indeed looked at such a set of circumstances?

14 MR. SHER: Well, I'd have to think about
15 the parking thing for a while, but at the risk of
16 having the Chairman roll his eyes again, if you talk
17 about residential recreation space the question has
18 always been are there other recreational opportunities
19 in the neighborhood? We've looked at availability of
20 nearby parks which are public parks, but provide the
21 recreational opportunity for not providing it on site.

22 MEMBER ETHERLY: So in the same way that
23 we looked at efforts to satisfy or otherwise address
24 residential rec requirements, you're suggestion that
25 this is essentially a very similar vehicle for which

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1 to look at parking?

2 MR. SHER: Yes, I believe it is.

3 MEMBER ETHERLY: Thank you. Thank you,
4 Mr. Chair.

5 CHAIRPERSON GRIFFIS: Ms. Miller?

6 VICE CHAIR MILLER: I'm not sure who wants
7 to answer this one, but basically what I've heard in
8 this case is a lot of the uniqueness or exceptional
9 circumstances and practical difficulty go towards
10 building a third level underground of parking. And
11 you touched upon this slightly, I guess, Mr. Sher, and
12 maybe I think it was -- about well, you could go to
13 the roof, but that defeats the project or something.
14 And we really didn't hear that much about parking on
15 the roof and I'm wondering what is the case with that.

16 Why would that not be feasible or why would that be
17 costly or how did the Applicant look at that?

18 MR. GLASGOW: Mr. Greenwald can address
19 that and a lot of it has to do with the structures
20 that are already on the roof and the placing of
21 Target.

22 MR. GREENWALD: Part of the application
23 we're asking you for the multiple roof structures
24 because we have large retail tenants and the roof is
25 quite filled with structures. It also would require

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1 you to ramp up 65 feet from grade, take a significant
2 amount of space out to actually get up.

3 We looked at this at one point. We have
4 to have sort of intermediate levels to get you up
5 which would mean we'd be losing 80,000 or 100,000
6 square feet of retail to be providing more parking and
7 then you get into the issue of the project changing
8 significantly from the concept for Columbia Heights in
9 terms of the development of this site.

10 So that was never an approach that was
11 popular in all the original discussions with RLA and
12 with NCRC.

13 CHAIRPERSON GRIFFIS: It seems like a
14 lifetime ago we were talking about roof structures.

15 (Laughter.)

16 CHAIRPERSON GRIFFIS: To reiterate that,
17 sometimes it's important for everyone's understanding,
18 when you say you have to ramp up 65 feet, it sounds to
19 me like that's no big deal. How long of a ramp. I'm
20 not asking for the exact 12 percent slope, but what
21 are you talking to get up 65 feet?

22 MR. GREENWALD: You're talking about a
23 ramp that would be 750 feet long.

24 CHAIRPERSON GRIFFIS: And the site is
25 about 410 feet long.

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1 And so you're actually ramping around
2 twice?

3 MR. GREENWALD: Yes, and also because of
4 the fact that it's an L-shape, it's very complicated
5 because you can't get up more than a certain amount.
6 You have to head the other way. You have to come back
7 and you wind up eroding an amount of the number of
8 retail square footage and Target had sort of a
9 required footprint.

10 CHAIRPERSON GRIFFIS: Couldn't you have
11 like kiosks on the ramp, kind of like a market plaza?

12 MR. GREENWALD: Maybe like the Guggenheim
13 Museum, we could run through that.

14 CHAIRPERSON GRIFFIS: Ms. Miller, follow
15 up questions?

16 VICE CHAIR MILLER: Just a couple. One is
17 kind of a comment and a question just to confirm, but
18 on that discussion of how does cost factor in. I
19 think this was brought up before with respect to I
20 think I asked you, Mr. Greenwald, I'm not sure like if
21 we denied the variance, what would happen and I think
22 the response was the project couldn't go forward.

23 And however, back to this question of
24 cost, is that the cost is so prohibitive to do a third
25 level of parking that if you had to do it, the cost

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1 would be prohibitive and the project wouldn't go
2 forward. Is that correct?

3 MR. GREENWALD: Not in its current form.
4 It would have to be a very significantly different
5 project. One story of retail with parking on the roof
6 which is not the plan for the area.

7 VICE CHAIR MILLER: Okay.

8 MR. GLASGOW: Ms. Miller, that tied in
9 with when we talked about as part of the uniqueness
10 and the zoning history of the area. That's been
11 stated in Court cases that the zoning history is
12 important with respect to uniqueness. That's in the
13 Monaco case versus DC BZA, 407 Atlantic 2.d 1091.

14 VICE CHAIR MILLER: So what zoning history
15 are you referring to?

16 MR. GLASGOW: What the Court says --

17 VICE CHAIR MILLER: I know the case. I
18 mean in this case what zoning history?

19 MR. GLASGOW: Well, the zoning history
20 that was testified by the Office of Planning alluded
21 to by Mr. Jasso and Mr. Sher --

22 VICE CHAIR MILLER: You mean the TIF and
23 all that kind of stuff?

24 MR. GLASGOW: Not only that, that would be
25 part of it, but also the planning history in this area

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1 that this site was going to be the site of the major
2 retail development in the Columbia Heights area.

3 VICE CHAIR MILLER: Right, okay, thank
4 you. My last question, Mr. Sher, I didn't quite get,
5 maybe you can do this one more time, with respect to
6 the third prong, the public detriment, why we won't
7 weigh the displacement of parking?

8 MR. SHER: Well, the literal language of
9 the variance statute is after exceptional situation
10 and practical difficulty, provided that the relief can
11 be granted without substantial detriment to the public
12 good and without and substantially impairing the
13 intent, purpose and integrity of the zone plan, as
14 embodied in the zoning regulations in map.

15 It is that the relief can be granted.
16 It's not that the displacement of an existing use is
17 going to be affected because whether this relief is
18 granted or not, if this site is developed in some
19 other fashion, that parking goes away. The relief
20 being sought here is a reduction in the number of
21 parking spaces. And it is not -- that relief doesn't
22 result in the displacement of those existing parking
23 spaces.

24 The number of parking spaces that the
25 regulations require is calibrated based on one per

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1 every 300 square feet of gross floor area and solid
2 floor area and excess of 3,000. Yes.

3 It doesn't take into account and one for
4 every parking space that's not in the apartment house
5 across the street and one for every space that the
6 Riggs Bank on the other side of Park Road doesn't
7 have. It's one for every 300 for this particular
8 project. And so it would be granting that relief to
9 reduce that requirement is what you have to consider.

10 VICE CHAIR MILLER: Thank you.

11 MEMBER MANN: Mr. Sher had mentioned that
12 the trigger for attendant parking would be when the
13 1,000 space garage fills up.

14 I was wondering if there had been any
15 discussions regarding national implementation of
16 attendant parking?

17 MR. GLASGOW: Just briefly, Mr. Mann.
18 That we were planning on doing on an operational basis
19 with the parking lot operator. We represent some of
20 the parking lot operators in the city and we know what
21 they do with their tenants and with their landlords,
22 if you will, and they coordinate.

23 If Target is having a big sale and a
24 couple of other people are having a big sale, then
25 they're saying we're going to have a lot of people

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1 that day. It's like a lot of other type of events and
2 you plan toward that and marshal your forces toward
3 that.

4 MEMBER MANN: So you'd be able to do it
5 based on the projected demand, just based on
6 historical data that you know about, the parking lot
7 demand in shopping, I guess.

8 MR. GREENWALD: We'll also have as we open
9 for operations we'll get a feel of the utilization of
10 a facility and if you know on X day you have this many
11 people it's likely that on whatever the big shopping
12 Friday you're going to have three times that or
13 whatever it is. So I think we'll be able to get a
14 gauge for it.

15 MEMBER MANN: Thank you.

16 VICE CHAIR MILLER: Mr. Slade, you made a
17 statement that about 40 percent of the time there
18 should be 500 vacant spaces based on the ULI studies?

19 Okay. Do you have any other figures like 50 percent
20 of the time there would be 400 spaces available or
21 anything else?

22 MR. SLADE: I don't have it with me, but
23 the ULI research reference documents goes into that in
24 great detail.

25 VICE CHAIR MILLER: We can find it in what

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1 was submitted to us in the record, is that what you're
2 saying?

3 MR. SLADE: Yes, yes, yes.

4 VICE CHAIR MILLER: And one other
5 question. Did you observe how long the cars were
6 parked in that lot that you observed that there are
7 now?

8 MR. SLADE: Well, yes, in that we didn't
9 track individual cars and say that the green car with
10 the D.C. tag arrived at a certain time and left at a
11 certain time.

12 But by being there this past Sunday every
13 hour and on the other Sundays by the way it was every
14 other hour, we saw that -- we saw the pictures and we
15 had a profile through the day and on the Sundays
16 parking began to accumulate, as you would imagine,
17 since it was church parking an hour before probably
18 the service started and lasted three or four hours.
19 In other words, there were cars parked there for three
20 or four hours, but the peak period -- at the peak time
21 of our observation, the busiest Sunday was 46 cars.
22 So the hour before may have been 35 cars and an hour
23 before that might have 15 cars.

24 VICE CHAIR MILLER: Did you catch the
25 hours that were the busiest?

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1 MR. SLADE: This past Sunday, the hour at
2 1 p.m. The Sunday prior to that it was at noon. And
3 the Sunday prior to that was it was at noon. I'm
4 sorry, I misspoke about the dates. The dates were
5 starting with the earliest date January 9th, Sunday,
6 January 9th and it was noon on that day. That was 40
7 cars.

8 Sunday, January 16th, there were about 45
9 cars at noon. And Sunday, February 6, there were 46
10 cars at 1 p.m., give or take a few minutes.

11 VICE CHAIR MILLER: Okay. This is really
12 my last question on this, but how about, could you say
13 like from 10 to 1 was the peak use time --

14 MR. SLADE: Yes. This past Sunday there
15 were 40 cars at 11 a.m. There were 42 cars, 43 cars
16 at noon. And there were 46 cars at 1 p.m. Then it
17 dropped down to about 30 and then to about 10.

18 VICE CHAIR MILLER: Where my question was
19 going is just that we heard that there's a church
20 that's interested in this case and that there's a
21 demand for parking for them. To whatever extent we
22 consider it, I just wanted to know what are those
23 hours that there's a -- there could be a conflict with
24 the target interest or there might not be. Is there
25 an overlap, you know.

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1 I guess we would just find out when the
2 services are, but unless you saw that from 11 to 1
3 that was the most busy hour, I mean you just noticed
4 certain hours. You didn't notice a range of time?

5 MR. SLADE: As I said, we were there every
6 other hour for the first two Sundays and every hour
7 for this past Sunday. And our observation is in the
8 form of how many cars were there when our surveyor
9 walked through the lot and counted the cars.

10 CHAIRPERSON GRIFFIS: Are you submitting
11 that date? Or is it just your testimony?

12 MR. GLASGOW: It's just his testimony.
13 This is rebuttal testimony.

14 MR. SLADE: So the pattern confirmed that
15 it was church-related. We didn't check what time the
16 services were. It was church-related.

17 VICE CHAIR MILLER: Okay.

18 MR. SLADE: There was a little bit of
19 demand a little later in the evening which may have
20 been a meeting or dinner.

21 VICE CHAIR MILLER: Okay, thank you.

22 CHAIRPERSON GRIFFIS: Anything else?

23 (Pause.)

24 Very well, Mr Ruffin, are you ready?

25 MR. RUFFIN: Mr. Slade, if you don't mind

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1 would you just help me to understand what exactly were
2 the Sundays that you went to Kelsey Temple Church of
3 God in Christ to monitor the parking?

4 MR. SLADE: Sunday, January 9th of 2005;
5 Sunday, January 16th and Sunday, February 6th.

6 MR. RUFFIN: You didn't go on January 23rd
7 or the 30th when there was a heavy snow, did you?

8 MR. SLADE: No.

9 MR. RUFFIN: Have you ever done this
10 during the summer?

11 MR. SLADE: At Kelsey?

12 MR. RUFFIN: Yes sir.

13 MR. SLADE: No.

14 MR. RUFFIN: So these are the only Sundays
15 that you've ever done this?

16 MR. SLADE: Yes.

17 MR. GLASGOW: Mr. Chairman, that was his
18 testimony.

19 MR. RUFFIN: I'm just trying to be clear.
20 I'm just trying to be clear.

21 Now if I'm not mistaken, although you've
22 taken this very careful study of the parking
23 requirements on these three Sundays --

24 CHAIRPERSON GRIFFIS: Can you ask your
25 question without the embellishments?

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1 MR. RUFFIN: Yes sir. If I'm not
2 mistaken, you have never ever determined the tenants
3 who would be at the DCUSA mall, am I right?

4 MR. SLADE: I don't understand the
5 question.

6 MR. GLASGOW: Mr. Chairman, that wasn't
7 part of this rebuttal testimony. His cross is
8 supposed to be on the rebuttal.

9 CHAIRPERSON GRIFFIS: Indeed, and that's
10 understood, I know, by Mr. Ruffin that he's crossing
11 the exact testimony, but let me understand where
12 you're going with this.

13 MR. RUFFIN: Okay, Mr. Slade indicated
14 that half the parking will be vacant most of the year.
15 And that he also indicated that in relation to that
16 in prior testimony he gave testimony about what
17 actually affects parking at a retail establishment.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. RUFFIN: And insofar as --

20 CHAIRPERSON GRIFFIS: If I understand what
21 you're saying, Mr. Slade, correct me if I'm wrong,
22 your question to him is okay, you've talked about this
23 20th hour, this peak, 500 extra spaces, but do you
24 know who the actual tenants to calculate that kind of
25 demand? Is that your question?

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1 MR. RUFFIN: That's another way of putting
2 it, yes sir.

3 CHAIRPERSON GRIFFIS: Okay, Mr. Slade?

4 MR. SLADE: Do I know who the actual
5 tenants are, no.

6 CHAIRPERSON GRIFFIS: Is it accurate for
7 you to throw around these 500 spaces that would be
8 empty?

9 MR. SLADE: I wouldn't characterize it as
10 throwing it around. I was simply reporting the
11 results of decades, decades of research by the Urban
12 Land Institute.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. SLADE: In conjunction with the retail
15 industry.

16 CHAIRPERSON GRIFFIS: Your response is all
17 those things are done on a formulaic basis on the
18 studies, years, you're saying decades of ULI?

19 MR. SLADE: Yes, and the industry who does
20 that research has determined that rather than looking
21 at parking demand and traffic demand and a tenant by
22 tenant basis, when you have a mix of tenants in a --

23 CHAIRPERSON GRIFFIS: Okay, I understand
24 that.

25 MR. SLADE: -- shopping center, it is

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1 better to approach it that way.

2 CHAIRPERSON GRIFFIS: But Mr. Ruffin was
3 about to say, if I can assume --

4 MR. RUFFIN: That isn't it true that the
5 mix of retail tenants in the mall such as this is very
6 much determinative of the sort of -- the amount of
7 patronage that would be at the mall, yes or no?

8 MR. SLADE: Yes.

9 MR. RUFFIN: In fact, the Urban Land
10 Institute in its January 2004 study indicated in
11 Chapter 2 that, for example, restaurants being part of
12 a mall such as this, would be a factor that would
13 increase the patronage at the mall. Isn't that true?

14 MR. SLADE: Correct.

15 MR. RUFFIN: Also indicated that
16 entertainment establishments or retail entertainment
17 facilities are determinative in the fashion that it
18 would increase the patronage in a mall like this,
19 isn't that true?

20 MR. SLADE: I believe that specific
21 reference was to movie theaters which we don't have in
22 DCUSA.

23 MR. RUFFIN: But isn't it --

24 MR. SLADE: If you had movie theaters,
25 then the parking demand would be higher.

26

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (5:00 p.m.)

3 MR. RUFFIN: If I'm not mistaken, just so
4 that we can save some time, the Urban Land Institute
5 in Chapter 2 has a Table 1 which indicates that
6 restaurants, entertainment and cinema space are
7 factors that could increase the patronage for malls
8 such as this. Am I right?

9 MR. SLADE: Correct.

10 MR. RUFFIN: So in other words, when I use
11 entertainment, now you understand that I'm talking
12 about it distinct from theaters, you see that?

13 MR. SLADE: Yes, I understand that.

14 MR. GLASGOW: Mr. Chairman, I'd like, in a
15 sense, interpose an objection as to the scope of this,
16 but also the Board dealt with this issue in the prior
17 case with a condition. Because I don't know how long
18 this cross examination is going to go on on this line.

19

20 MR. RUFFIN: Really short.

21 MR. GLASGOW: What the Board did in that
22 case was say you can change around the mix of uses
23 essentially however you want in that project, as long
24 as your parking requirement does not go above 1810
25 spaces and then from that you took the 25 percent

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1 reduction. Because everyone knows that we don't know
2 all the users that are going to be in the facility.
3 So the Board had a mechanism for dealing with that and
4 dealt with it through a very -- essentially a one
5 sentence condition that said if your parking
6 requirement goes above 1810 in that particular case, I
7 think I'm using the precise number, then you're going
8 to need to come back or adjust your uses so that your
9 parking requirement does not go above that.

10 We have the same thing here with the 1600,
11 1612 spaces that the Board can impose a condition on
12 that and deal with that issue.

13 MR. RUFFIN: The problem I have is that
14 Mr. Glasgow and his witnesses opened the door by
15 talking about that half the parking space won't be
16 used for most of the year, and I'm just setting the
17 groundwork to show that Mr. Slade in providing that
18 opinion made what I think were faulty assumptions and
19 hence, his advice, however well learned, in most
20 instances is bad advice in this instance, insofar as
21 the fact that the Board must consider. I'm almost
22 finished, actually.

23 CHAIRPERSON GRIFFIS: Let's take a
24 question or more because we have gone kind of
25 encapsulating the entire ULI study for recross.

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1 MR. RUFFIN: Thank you, sir. With regard
2 to this information, isn't it true that in light of
3 the fact that the mixture of retail establishments
4 within a mall like this is a factor that determines
5 whether or not the patronage would be increased, your
6 estimate of the amount of parking space is one that
7 you came to without considering what establishments
8 would be there as a draw in the patronage, isn't that
9 true?

10 MR. SLADE: Mr. Ruffin, the method of
11 computing the number of spaces required for a shopping
12 center, following industry standards, does not take
13 into account specific tenants, but utilizes the gross
14 square footage as we did because while you may have a
15 tenant that generates a little more than the average
16 demand, you'll also have a mix of tenants that
17 generate a little less than the average demand and the
18 industry research has shown that the approach that we
19 used is advisable because it takes into account those
20 variations.

21 MR. RUFFIN: But Mr. Slade, at the least,
22 if we can close out very shortly, this mall, as at
23 last presently configured, would include a Target, a
24 Bed, Bath and Beyond and a Washington Health Club as
25 three major magnets in this mall, am I right?

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1 Do you at least know about those three?

2 MR. GLASGOW: Mr. Chairman, he didn't
3 testify as to that under rebuttal.

4 CHAIRPERSON GRIFFIS: Right, I understand
5 that.

6
7 MR. RUFFIN: But insofar as that's the
8 case though, Mr. Slade, how about this, if I can
9 close, in your testimony on December 21 of last year
10 --

11 CHAIRPERSON GRIFFIS: We can't go back to
12 his testimony then.

13 MR. RUFFIN: Insofar as it would
14 contradict what he said today?

15 CHAIRPERSON GRIFFIS: That's fine, let's
16 see if we can do that.

17 MR. RUFFIN: Isn't it true that you
18 testified that part of the unknown in this is who are
19 the other tenants going to be? The shopping center
20 industry has been building shopping centers for years
21 and the idea is that there is something in the
22 shopping center that is a magnet, that draws people to
23 the shopping center. Sometimes there are multiple
24 magnets. Here, it's going to be Target and perhaps a
25 grocery store and so forth. I mean there will be

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1 things that people will know are there and they'll
2 come there.

3 I can show you the testimony. If you
4 remember giving that testimony -- I'll leave with
5 that. Thank you very much.

6 CHAIRPERSON GRIFFIS: That was hardly a
7 cross.

8 MR. RUFFIN: What's that?

9 CHAIRPERSON GRIFFIS: That was hardly a
10 cross.

11 MR. RUFFIN: That was hardly a cross?

12 CHAIRPERSON GRIFFIS: You just read his
13 testimony. You made a great statement.

14 MR. RUFFIN: Insofar as I made a great
15 statement, Mr. Slade, and I didn't make a complete
16 cross, doesn't that indicate that the nature of the
17 businesses must be calculated before you can estimate
18 how many parking spaces will be absent or not?

19 MR. SLADE: It's never done in the
20 industry because we don't know who the tenants are
21 before we build the project.

22 MR. RUFFIN: When you look at the Urban
23 Land Institute's studies, it actually examined malls
24 that are constructed with fixed patronage. Isn't that
25 true?

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1 MR. SLADE: Yes.

2 MR. RUFFIN: In this particular mall
3 proposal, the mall hasn't been constructed, has it?

4 MR. SLADE: Correct.

5 MR. GLASGOW: Mr. Chairman, we'll
6 stipulate that we haven't built this project and no
7 case essentially that comes before this Board is the
8 project constructed.

9 MR. RUFFIN: What I'm asking is I need Mr.
10 Slade to stipulate to is that he has not surveyed any
11 proposed patrons to indicate whether they would travel
12 to this mall either by car, Metro, foot or by plane.

13 Isn't that true, Mr. Slade?

14 MR. SLADE: That's correct.

15 MR. RUFFIN: Thank you very much.

16 CHAIRPERSON GRIFFIS: Okay, thank you.
17 Any other cross of the other witnesses?

18 MR. RUFFIN: I wanted to cross examine
19 briefly Mr. Sher.

20 CHAIRPERSON GRIFFIS: Sure.

21 MR. RUFFIN: Just a second, Mr. Sher, I'll
22 be right with you.

23 (Pause.)

24 MR. RUFFIN: Mr. Sher, in your testimony,
25 if I'm not mistaken, you gave all of us an analysis of

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1 the factors that are important for a variance in this
2 case. Am I correct?

3 MR. SHER: Yes.

4 CHAIRPERSON GRIFFIS: Quickly to the
5 question.

6 MR. RUFFIN: And insofar as you made that
7 analysis, you talked about how that analysis bears
8 upon the practical barriers against the developer
9 building more than two levels of underground parking,
10 am I right?

11 MR. SHER: Yes.

12 MR. RUFFIN: However, in your testimony,
13 you acknowledge, if I'm not mistaken, two things.
14 First of all, that with all the barriers that you
15 testified as being in place for the construction of
16 underground parking, there could be a construction of
17 above ground parking without these barriers. Am I
18 right?

19 MR. SHER: The same factors that affect
20 going down are not the -- would not be the same
21 factors that would affect going up. It's not to say
22 that there aren't factors that would affect going up.

23 MR. RUFFIN: But you indicated that this
24 particular project, at the proposed DCUSA mall, had
25 not been designed with the consideration of above-

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1 ground parking, is that true?

2 MR. SHER: I don't think I testified to
3 that, no.

4 MR. RUFFIN: If I'm not mistaken, do you
5 remember testifying that the purpose of this
6 particular big box construction using all of the area
7 in the parcel is one wherein a construction above
8 ground would be totally against what had been
9 negotiated between the developer and the RLA
10 Revitalization Corporation?

11 MR. SHER: I think it was Mr. Greenwald
12 who said that, but I would agree with the statement.

13 MR. RUFFIN: Do you remember testifying
14 that there are a number of ways of accomplishing a
15 construction of this parking, the parking requirements
16 as set out in the regulations without having to deal
17 with underground parking?

18 MR. SHER: Something like that, yeah.

19 MR. RUFFIN: In the course of your
20 testimony, you did add one other thing and that is
21 that there were in this construction of a mall, with
22 this unique size and shape, the water in the Metro
23 construction issues, that there were, in your opinion,
24 some problems that may be impracticable for the
25 developer to comply with the zoning regulations. Did

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1 you say that?

2 MR. SHER: It's a combination of two parts
3 of what I said, but in essence, yes, that the first
4 two parts of the variance test are demonstrate an
5 exceptional or extraordinary situation or condition
6 and to show how that situation or condition causes a
7 practical difficulty for the owner, and the
8 combination of things that you just recited is what I
9 said.

10 MR. RUFFIN: However, in your opinion, if
11 this whole construction site was rectangular, purely
12 rectangular, these problems wouldn't exist, do you
13 remember saying that?

14 CHAIRPERSON GRIFFIS: Mr. Ruffin, are we
15 just recounting his testimony? Frankly, at this point
16 I remember very clearly.

17 MR. RUFFIN: Okay. I'm almost finished,
18 but --

19 CHAIRPERSON GRIFFIS: Take your time. I
20 just don't need to have him restate his entire
21 rebuttal testimony.

22 MR. RUFFIN: That's a good point, okay.
23 Mr. Sher, then I'll put it to you in the most blunt
24 way possible, insofar as you've prepared for this
25 testimony, but you had to miss the last instance where

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1 we were in these hearings, you indicated that you had
2 to review prior testimony to prepare for today's
3 testimony. Do you remember that?

4 MR. SHER: Yes.

5 MR. RUFFIN: In your review, have you
6 noticed in the testimony where Mr. Greenwald and also
7 Ms. Budoff and moreover, Mr. Jasso, indicated that
8 cost in terms of the government procured financing by
9 way of the tax-incentive financing was such that it
10 made the construction of underground parking
11 unaffordable in this case because the tax revenue
12 expected would not be sufficient to match -- to
13 justify the tax incentive financing package in this
14 case. Did you read that on the part of Mr. Jasso, for
15 example?

16 MR. SHER: Yes, I read Mr. Jasso's
17 testimony.

18 MR. RUFFIN: And in your discussions about
19 the unique size and shape and what you call the
20 impracticabilities, if I'm not mistaken, you don't get
21 into that economic or financial problem which Mr.
22 Jasso indicated as an impracticability that stopped
23 this project from being able to construct underground
24 parking down to the third or fourth level. You seemed
25 not to talk about that, is that true?

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1 MR. GLASGOW: Mr. Chairman, I'm going to
2 object to the question. There was a lot of testimony
3 by Mr. Jasso and others including the structural
4 engineer as to --

5 CHAIRPERSON GRIFFIS: Actually, I'm going
6 to go faster to that.

7 Mr. Ruffin, it's hard to cross Mr. Sher
8 based on the fact that he stated he reviewed the past
9 testimony and now you're asking him to answer his
10 opinion or analysis of those that gave other
11 testimony. It's an interesting strategy. I just
12 don't think Mr. Sher actually would be capable of
13 assessing what their testimony actually was or meant.

14 But let's ask him directly on what he
15 presented today and move on from there.

16 MR. RUFFIN: Assuming that, I'll try this,
17 Mr. Sher. Assuming that the tax revenue to be
18 obtained from this project is not sufficient to
19 justify more than the \$42 million that the government
20 has set aside for the tax increment financing in this
21 case, for the underground parking, wouldn't that be
22 the barrier that you describe as an impractical one
23 for the construction of the underground parking to the
24 third or fourth level?

25 MR. GLASGOW: Mr. Chairman, I'm going to

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1 raise the same objection.

2 CHAIRPERSON GRIFFIS: What, that he didn't
3 testify to the financing available?

4 MR. GLASGOW: Right, Mr. Sher didn't
5 testify today as to that.

6 MR. RUFFIN: I just asked if he assumed
7 that information, wouldn't that be the
8 impracticability?

9 CHAIRPERSON GRIFFIS: That seems to be a
10 very direct question in terms of Mr. Sher, you laid
11 out the test uniqueness -- so is the TIF and it's
12 important and a serious point. We had a lot of
13 testimony. Isn't the financing from the District of
14 the \$40 million, \$2 million is going somewhere else?
15 Isn't the \$40 million part of the practical
16 difficulty?

17 MR. SHER: I'll turn it around and answer
18 it a little differently. The ability to construction
19 more than two levels of below-grade parking because
20 the money isn't available to do it is the practical
21 difficulty.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. SHER: Whether that money comes from
24 whose pocket, I don't care.

25 CHAIRPERSON GRIFFIS: Mr. Ruffin, any

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1 follow-up?

2 Well, why is that a practical difficulty
3 just because someone is not giving you more than \$40
4 million?

5 MEMBER ETHERLY: Or another way to ask it
6 is is it a self-created hardship? Because in
7 actuality would you necessarily be here if the mix of
8 stores that you have in mind weren't the mix of
9 stores?

10 MR. SHER: The self-created hardship test
11 by law applies to use variances and not area
12 variances. So I would sort of like to put that one
13 aside and not answer that beyond that statement.

14 As to whether or not there is any self-
15 imposed condition here, I guess I'd say two or three
16 things about that. Number one, the nature of a
17 project always has to be considered by the Board in
18 determining the matter that's before it. I'll jump
19 away from this particular case and talk about the
20 Newseum.

21 CHAIRPERSON GRIFFIS: That's too far.

22 MR. SHER: No, not too far. It was a
23 special purpose building that was designed in a way to
24 accommodate a particular set of users and a particular
25 design configuration. If that building had been an

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1 office building or an apartment house and not a
2 Newseum with its combination of uses, we probably
3 would have had the need for the variance relief that
4 was granted.

5 In this case, if this were not a major
6 retail mall designed in accordance with city planning
7 and zoning policies for this neighborhood, you
8 probably wouldn't -- if you were going to build one
9 level of retail shops on the ground floor with parking
10 in the back, we wouldn't need a variance. So the
11 nature of what is in front of you obviously is a key
12 part of what it is that you have to decide in granting
13 a variance application.

14 In other properties with similar -- maybe
15 not the same zoning, but with commercial zoning in
16 Columbia Heights, where the buildings were proposed to
17 be apartment houses with ground floor retail on parcel
18 26 to the south across Irving Street, on parcel 15 to
19 the east across 14th Street, there were other areas of
20 relief that were required because of the nature of
21 those buildings. If they had been major retail
22 buildings, maybe we would have had a parking variance
23 there too. But in this particular situation for this
24 project on this site with all the things we've
25 described, and because the Board has to determine the

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1 reasonableness of proceeding and not just if money
2 were no object we could do anything, I think we've
3 demonstrated that we've met the test for a variance.

4 CHAIRPERSON GRIFFIS: Mr. Ruffin?

5 MR. RUFFIN: But Mr. Sher, isn't it true
6 that the developer and all of its partners have chosen
7 to build a mall that would occupy the whole site
8 without providing, without even thinking of providing
9 any above-ground parking. Isn't that the case here?

10 CHAIRPERSON GRIFFIS: It's clear in the
11 documents that are submitted.

12 Would you agree, Mr. Sher?

13 MR. SHER: I know that the project as
14 proposed occupies pretty much 100 percent of the site
15 and doesn't have any above-ground parking. I'm not
16 privy to what schemes the developer may have
17 considered before at arriving at that particular
18 scheme.

19 CHAIRPERSON GRIFFIS: Oh, I see. Okay.

20 Mr. Ruffin?

21 MR. RUFFIN: That's enough. No thank you.

22 I don't have any other questions.

23 I want to question Mr. Carlson, no, pardon
24 me, Mr. Greenwald, pardon me, Mr. Greenwald. Very
25 briefly.

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1 Mr. Greenwald, in your testimony, you made
2 a comparison between this proposed construction of the
3 DCUSA mall with Gallery Place, am I right?

4 MR. GREENWALD: Could you repeat the
5 question? I wasn't fully paying attention, I'm sorry.

6 MR. RUFFIN: Sure. Mr. Greenwald,
7 when you were testifying, if I'm not mistaken, you
8 compared the proposed DCUSA mall with two different
9 projects. One was the Gallery Place and the other was
10 what?

11 MR. GREENWALD: I didn't compare the
12 project. I indicated that in Grove Slade's analysis
13 they looked at the parking per 1,000 square feet for
14 Gallery Place and the Shops at Georgetown.

15 MR. RUFFIN: Insofar as you mentioned that
16 -- you said Mr. Slade?

17 MR. GREENWALD: I said it was mentioned in
18 the Grove Slade analysis.

19 MR. RUFFIN: Right, in the Grove Slade
20 analysis. Insofar as they cited Gallery Place and
21 Shops, how does that make this particular project one
22 wherein -- let me take that back.

23 Insofar as this project once had 540,000
24 square feet and it's now been reduced in terms of
25 square feet for retail, isn't it true that that was

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1 based on the amount of parking that would be required
2 for the site?

3 MR. GREENWALD: No.

4 MR. RUFFIN: What was the basis for that
5 reduction?

6 MR. GREENWALD: The project was originally
7 540,000 square feet as I testified previously. A
8 1,000 spaces was believed to be the appropriate number
9 from the retailers' perspective, as well as from
10 discussions with Grove Slade. That was on a very
11 preliminary basis six years ago. When we got into the
12 issue of the impracticability of doing three levels,
13 we looked at reducing the size of the project.

14 A decision was made that it could be
15 reduced to two levels of parking, a 1,000 spaces which
16 would support 500,000 square feet of retail and that's
17 what the Grove Slade analysis indicated that 983
18 spaces would support the 500,000 square feet of retail
19 on the site.

20 MR. RUFFIN: But Mr. Greenwald, did you in
21 earlier testimony on December 21 say that this project
22 was designed to provide the amount of parking that the
23 developer thought the retailers would want?

24 MR. GREENWALD: I don't recall my
25 testimony without having a transcript in front of me,

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1 but I did say today and what you just indicated you
2 think I said before, appear to be consistent. We
3 decided that 1,000 parking spaces would work for
4 540,000 square feet. When we embarked on the zoning
5 process, we chose a special exception which wound up
6 requiring more than that. We then cut back when it
7 turned out to be impracticable to do the three levels
8 below grade. We sized the project to match up the
9 square footage with the amount of parking spaces that
10 Grove Slade thought would work with the reduced square
11 footage of the project.

12 MR. RUFFIN: But Mr. Greenwald, my
13 original question was whether the reduction in the
14 square footage for retail purposes, was based on
15 parking and you said no. Am I right? Yes or no?

16 MR. GREENWALD: The reduction in the --

17 MR. RUFFIN: Didn't you just say no?

18 MR. GLASGOW: Mr. Chairman?

19 MR. GREENWALD: You're confusing me.

20 CHAIRPERSON GRIFFIS: Ask the question
21 again.

22 MR. GREENWALD: Can you restate it clearly
23 enough because you're confusing me. You've asked it
24 three different ways.

25 MR. RUFFIN: I'm simply saying that you

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1 just testified in response to my question that my
2 question being wasn't it that the reduction of the
3 retail square footage from 540,000 square feet to what
4 it is now based on parking, you simply said no. Isn't
5 that true?

6 MR. GLASGOW: Mr. Chairman, the record
7 would reflect he said no and then went on to explain
8 his answer.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. GLASGOW: He has explained his answer
11 I think twice since then.

12 CHAIRPERSON GRIFFIS: Right. We're going
13 to get to the basis of the answer, so for
14 clarification, Mr. Greenwald, the question is was this
15 size based on the parking?

16 MR. GREENWALD: The project was resized in
17 order to work with the resized parking garage.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. RUFFIN: I don't understand what you
20 just -- it was resized for the resized parking garage?

21 MR. GREENWALD: Would you like me to read
22 my testimony again? I'm being asked the same question
23 over and over again.

24 The project went from 540,000 square feet
25 to 500,000 square feet. The project was reduced in

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1 size because in order to have a project that worked
2 with a parking facility that was reduced to two levels
3 and a 1,000 square feet.

4 MR. GLASGOW: A thousand spaces.

5 MR. GREENWALD: A thousand spaces, I'm
6 sorry.

7 CHAIRPERSON GRIFFIS: Let's move on.

8 MR. RUFFIN: And it was reduced to 1,000
9 spaces because there was not enough financing to
10 provide more than 1,000 spaces. Isn't that true, Mr.
11 Greenwald?

12 MR. GREENWALD: As I stated before, there
13 were a number of reasons for the reduction. It was
14 impracticable because of the unique situation and
15 obviously the cost incumbent upon the unique site
16 situation that that would not be feasible to do the
17 three levels. So in that sense, yes.

18 MR. RUFFIN: So the answer to the question
19 is yes.

20 MR. GLASGOW: Mr. Chairman, he has to
21 answer the question, not the person examining him.

22 MR. RUFFIN: I'm just trying to understand
23 the question. The answer to the question is yes, that
24 the inability to get enough funding for more than
25 1,000 parking spaced led to the reduction of this

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1 parking space.

2 MR. GLASGOW: Mr. Chairman, that was not
3 his answer. I mean if we want to start going back and
4 listening to the tape and have the witness --

5 CHAIRPERSON GRIFFIS: Follow up with
6 questions if you don't think he's gotten clear
7 answers, but let's not keep reiterating or restating
8 the answer. Ask a new question. I'm pretty clear on
9 what his answers are.

10 As I say, reinvestigate the question and
11 keep going. Let's move it in a direction.

12 MR. RUFFIN: When you testified that
13 parking will be sized for the particular need of the
14 project, does that mean that this mall in its parking
15 requirements for -- pardon me, that the DCUSA mall
16 requirements for square footage is based and driven by
17 the amount of parking that you could get at this site?

18 MR. GLASGOW: Mr. Chairman, he's answered
19 the question.

20 CHAIRPERSON GRIFFIS: Right. Haven't we
21 asked that?

22 That's been answered three times from my
23 understanding.

24 MR. RUFFIN: It's just that -- it seemed
25 to me that he didn't answer it directly except that he

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1 actually gave a lot of introductory remarks and so he
2 didn't respond to the question.

3 CHAIRPERSON GRIFFIS: So you're not sure
4 how they sized the project for the parking?

5 MR. RUFFIN: I wasn't sure how he answered
6 the question. That's simply it. And insofar as he
7 was giving an answer, he was actually, in my view,
8 talking in a fashion that was nonresponsive and then
9 he said yes. So it wasn't clear what he was actually
10 saying yes to. That's where my problem arose.

11 CHAIRPERSON GRIFFIS: Okay. I would say
12 you've done a valiant effort to get the answer. I
13 don't see it coming to your satisfaction. Let's move
14 on to your new line of questioning.

15 (Pause.)

16 MR. RUFFIN: Mr. Greenwald, why were
17 there never discussions between the developer and RLA
18 about a ramp for above-ground parking?

19 CHAIRPERSON GRIFFIS: Where are we going?
20 What's the purpose of the ramp for the above-ground?

21 MR. RUFFIN: This is what he testified to
22 on direct.

23 CHAIRPERSON GRIFFIS: I know, what was
24 your specific question?

25 MR. RUFFIN: I simply asked --

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1 CHAIRPERSON GRIFFIS: I'm sorry, I didn't
2 hear.

3 MR. RUFFIN: I'm sorry, I'm sorry. I
4 asked Mr. Greenwald why there were no discussions
5 between the developer and RLA about the construction
6 of a ramp and above-ground parking?

7 CHAIRPERSON GRIFFIS: Let's start it off.
8 Were there discussions of parking above?

9 MR. GREENWALD: The only discussions about
10 parking above grade occurred back at the time of the
11 RFP and the RLA at the time preferred, its
12 predecessor, preferred our scheme because it solved
13 the parking problem at the time, two below grade
14 levels.

15 MR. RUFFIN: The original proposal from
16 the developer was for two below-grade levels?

17 MR. GREENWALD: Yes.

18 MR. RUFFIN: It wasn't for four below-
19 grade levels?

20 MR. GREENWALD: No.

21 MR. RUFFIN: So after the original
22 proposal, the proposal expanded to one that would
23 provide for more than 1600 parking spaces at four
24 levels, is that correct?

25 MR. GREENWALD: No, not more than 1600. I

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1 explained in my testimony today the chronology, the
2 sequence of the project going from two levels for
3 540,000 square feet to a three-level facility in order
4 to make the application for the special exception, it
5 was 1364 spaces on three levels.

6 MR. RUFFIN: When the project was
7 originally slated for 540,000 square feet of retail
8 space, it was only slated at most for 1,364 parking
9 spaces? Is that what you're saying, sir?

10 MR. GREENWALD: When you say "originally",
11 there are many different schemes and many different
12 dates of schemes. You'd have to reference the
13 specific date and the document for me to tell you
14 whether that was accurate for that particular moment.

15 MR. RUFFIN: I'm trying to really
16 understand this and that is there has never been on
17 the table a construction of underground parking for
18 more than 1364 off-street parking spaces. Is that
19 right?

20 MR. GREENWALD: I would have to go back
21 and look through all the various drawings. I don't
22 recollect at this moment. I don't believe so, but I
23 don't fully recollect.

24 MR. GLASGOW: Mr. Chairman, the record
25 will reflect that with respect to the Board's history

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1 with this property, there was the three-level parking
2 garage with 1364 spaces.

3 CHAIRPERSON GRIFFIS: Right, which I think
4 is the only pertinent, jurisdictional aspect that we
5 have. Okay, let's move on.

6 MR. RUFFIN: Mr. Greenwald, insofar as you
7 testified about Attachment C to the final contract
8 between the developer and RLA Revitalization Company
9 --

10 CHAIRPERSON GRIFFIS: Did I miss that
11 today?

12 MR. RUFFIN: He testified about it.

13 CHAIRPERSON GRIFFIS: Today?

14 MR. RUFFIN: Yes.

15 CHAIRPERSON GRIFFIS: Exhibit C? I could
16 have missed it.

17 MR. GREENWALD: I didn't reference Exhibit
18 C. I made reference to the party in opposition's case
19 that they presented last time they referenced a
20 sentence in the development plan summary of the LDA.

21 CHAIRPERSON GRIFFIS: Oh, okay. Mr.
22 Ruffin, a question?

23 MR. RUFFIN: Pardon me, just quickly and
24 I'll be about finished.

25 (Pause.)

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1 MR. RUFFIN: The Land Disposition and
2 Redevelopment Agreement was signed by the parties on
3 what date, if you remember, Mr. Greenwald?

4 MR. GREENWALD: If you have it --

5 CHAIRPERSON GRIFFIS: Let's get to the
6 heart of the matter.

7 MR. GREENWALD: I would say if you have it
8 in front of you, I would check the date, because I
9 don't know off the top of my head.

10 CHAIRPERSON GRIFFIS: I don't know him to
11 establish a fact. I mean if you want to just present
12 it, the date, if it's not already in the record.

13 MR. RUFFIN: It's not in the record.
14 Wasn't the Land Disposition and Development Agreement
15 finally signed by the parties in about 2004?

16 MR. GREENWALD: You'd have to show me the
17 signature page. I think it was signed before then.

18 CHAIRPERSON GRIFFIS: Where are you going
19 with this? I really want to get to the substance
20 here. I don't think I really care when it was signed,
21 yet. But you're going to show me the way why I care.

22 MR. RUFFIN: With regard to the Land
23 Disposition and Development Agreement, it did include
24 Attachment C which was parcel 27 DCUSA Development
25 Plan Summary. Am I right, Mr. Greenwald?

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1 MR. GREENWALD: Yes, there is a Land
2 Development Plan Summary attached to the LDA.

3 MR. RUFFIN: And to the degree that it
4 included that document, it included the document that
5 was shared with the Board last week, which I'm going
6 to share with you and I also share with Mr. Glasgow,
7 if you would look at it.

8 CHAIRPERSON GRIFFIS: What's the question?

9 MR. RUFFIN: Just making sure -- I'm just
10 cross examining him on a point that was made earlier.

11 MR. GREENWALD: Do you want me to look at
12 the green piece?

13 MR. RUFFIN: The green piece?

14 MR. GREENWALD: There's green
15 highlighting.

16 MR. RUFFIN: I'm talking about -- is
17 what's before you, is that not an accurate, a fair and
18 accurate copy of Attachment C to the Land Disposition
19 and Development Agreement.

20 CHAIRPERSON GRIFFIS: Next question.
21 What's the next question? Where are we going?

22 Do you want him to answer something about
23 something in that?

24 MR. RUFFIN: Yes sir.

25 CHAIRPERSON GRIFFIS: Let's get to it.

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1 Ask it. He doesn't need to put that into evidence.

2 Let's go.

3 MR. RUFFIN: No, I'm not trying to put it
4 into evidence. It's already before the Board. I just
5 want him to testify that this is part of -- this is
6 the attachment.

7 CHAIRPERSON GRIFFIS: I don't care.
8 What's the question based on the document that you
9 want him to answer?

10 MR. RUFFIN: Mr. Greenwald, when your
11 company Grid Properties, Incorporated negotiated and
12 signed the Land Disposition and Development Agreement
13 with RLA Revitalization Company and it included with
14 it Attachment C which is parcel 27, DCUSA Development
15 Plan Summary --

16 CHAIRPERSON GRIFFIS: We got that already.

17 MR. RUFFIN: Did it not include in that
18 Attachment C the statement that the test borings
19 indicate that soil conditions will enable the site to
20 be excavated to this level, that is three below-grade
21 levels without ground water problems?

22 CHAIRPERSON GRIFFIS: Good question.

23 MR. RUFFIN: Isn't that true, sir?

24 MR. GREENWALD: I already testified today

25 --

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1 MR. RUFFIN: No, but my question is --

2 MR. GREENWALD: That that is in that --

3 CHAIRPERSON GRIFFIS: Let him answer.

4 MR. GREENWALD: That is in Exhibit C and I
5 then explained, I spent the portion of my testimony
6 explaining that sentence.

7 MR. RUFFIN: So I just want to be clear.
8 In the Land Disposition and Development Agreement
9 where your company actually acquired a promise from
10 RLA Revitalization Company to acquire fee simple
11 ownership of -- to acquire control and ownership of
12 the mall property, and also you and your partners
13 would actually be allowed to develop the site, it
14 included this statement which you are now disowning,
15 is that true?

16 CHAIRPERSON GRIFFIS: Already asked.
17 Let's go. Next question. It's the same question
18 you're asking him to say yes to.

19 MR. RUFFIN: But --

20 CHAIRPERSON GRIFFIS: We got it. LDA
21 states that borings would allow three levels. Exhibit
22 C.

23 MR. RUFFIN: There was no amendment to
24 this provision, attached to the Land Disposition and
25 Development Agreement, is that true, sir?

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1 MR. GREENWALD: There is in current works
2 an amended development plan summary because the
3 project has changed significantly since that time as
4 we've discussed here and as I described today, the
5 conditions of subsurface information that was
6 available at that time is different than the
7 information that was acquired when more detailed
8 analysis was done on the site. So that sentence is no
9 longer applicable today.

10 MR. RUFFIN: The agreement called for you
11 to take the property as is, isn't that true? Isn't
12 that true?

13 MR. GREENWALD: I cannot respond to that
14 question without going through detailed analysis of
15 every aspect of the LDA. There are aspects to it that
16 are as is. There's other aspects that are the
17 responsibility of RLARC.

18 MR. RUFFIN: You're saying you actually
19 engaged your company in this agreement without knowing
20 the details --

21 MR. GLASGOW: Mr. Chairman, I object to
22 that question.

23 CHAIRPERSON GRIFFIS: We're going to move
24 off the agreement because frankly, Mr. Ruffin, the
25 agreement speaks for itself. You have it put into the

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1 record. The Board's reading it and has read most of
2 it already. We don't need to rehash what's actually
3 in it. We're going to read it. And you've brought up
4 an excellent point. Let's move on and make another
5 zing point or let's move off it.

6 MR. RUFFIN: Last point, on this
7 particular provision, is that as of today there has
8 been no amendment to the statement that the test
9 borings indicate that there will be no problem with
10 ground water problems, that excavation of this level
11 will not -- pardon me --

12 MR. GLASGOW: Mr. Chairman, I'm going to
13 object to the characterization. There is nothing in
14 the record or nothing that Mr. Greenwald testified to
15 as to what the status of negotiations are with respect
16 to revisions to the LDA, other than what he just said.
17 That is in process.

18 CHAIRPERSON GRIFFIS: Agreed.

19 MR. GLASGOW: So to continue to ask
20 questions on the old LDA, I don't know that that's
21 particularly helpful and I object to that.

22 MR. RUFFIN: The point, though, Mr.
23 Greenwald is you're now bringing to the Board's
24 attention that there is some negotiation to make
25 changes and this is after you heard about this.

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1 CHAIRPERSON GRIFFIS: You brought that up.

2 MR. GLASGOW: Mr. Chairman.

3 CHAIRPERSON GRIFFIS: On a cross. I'm
4 letting it -- we need to let it go. I don't see where
5 we're going. There's no need to talk about what other
6 negotiations are going. We've got an application
7 before us. It is what it is. It's been presented.
8 It's been documented. We need to poke holes in it,
9 poke holes in the case, but let's move on beyond this
10 stuff that's happening outside of this case.

11 MR. RUFFIN: I'm finished with my cross
12 examination, Mr. Griffis. Thank you very much.

13 CHAIRPERSON GRIFFIS: Thank you very much.
14 Let's move ahead then.

15 Ms. Miller, follow-up questions?

16 VICE CHAIR MILLER: I have one clarifying
17 question I think. There was some discussion about how
18 you don't know for sure who the tenants of the project
19 are going to be and that that may affect the validity
20 of the parking demand estimate. And my question is
21 well, one is the factual and we know that Target is a
22 tenant for sure, I've been told that. Do we know that
23 Bed, Bath and Beyond and Washington Sports are
24 definite tenants or we don't?

25 MR. SLADE: I don't know how definite any

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1 of that is.

2 VICE CHAIR MILLER: Okay, my question is
3 when I as a lay person or whatever look at the ULI
4 study, there's a sentence in there that says the
5 recommended parking ratios are applicable for centers
6 in which retail shops occupy at least 80 percent of
7 the GLA.

8 If I'm looking at the right part, and my
9 question is do we know that? That 80 percent of the
10 project is going to be retail, of the GLA?

11 CHAIRPERSON GRIFFIS: That's for Mr.
12 Greenwald.

13 MR. GREENWALD: Well, the 100 percent of
14 the project is going to be retail, so it's not -- I
15 think that might have been referencing a project that
16 had residential or office, but this is solely a retail
17 project.

18 CHAIRPERSON GRIFFIS: That's a statement
19 for clarification. It's a statement that says look,
20 our formulas are only applicable to those centers that
21 have at least 80 percent of the gross leasable area as
22 retail. So if you had 20 percent leasable to retail,
23 this wouldn't fit. So she's asking you is this 80
24 percent?

25 MR. GREENWALD: One hundred percent of the

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1 leasable area is for retail use.

2 VICE CHAIR MILLER: Fine, so even if we
3 don't know what type of retail, we know it's retail
4 and that we can use this formula. Okay.

5 MR. GREENWALD: Yes.

6 VICE CHAIR MILLER: Okay, thank you.

7 CHAIRPERSON GRIFFIS: Good. Excellent
8 question.

9 Anything else from the Board?

10 Very well, Mr. Glasgow, I turn it over to
11 you for closing remarks.

12 MR. GLASGOW: Yes sir, just very briefly
13 with respect to the closing. As the Board is aware
14 that we do need a decision in this application in the
15 near future. That has been the Deputy Mayor for
16 Economic Development had alluded to that previously
17 with respect to the time frames that we have given the
18 TIF legislation, the alley closing legislation. We do
19 have the letter from the Ward Council Member also
20 discussing the need for decision and the ANC testimony
21 on this and the request of RLARC.

22 We do believe that we have met our burden
23 of proof and the case is ready for disposition. I
24 know that the Board has a large record in front of it.

25 So I'm not necessarily saying whether the Board is

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1 able to dispose of this application and we believe
2 with conditions today, but we do need a decision in
3 the near future and that's what we are particularly
4 asking for. I'm not going to go back over the burden
5 of proof and everything else. That's been covered.

6 So that is really where we are ending up
7 at this point in time. There are about three
8 conditions that were discussed. Two of them were
9 discussed with Mr. Sher. There was a third one that I
10 alluded to, following up on the order of the Board
11 previously, if there was a concern about what the mix
12 of uses would be, that if the parking requirements
13 exceeded 1600, 1612, whatever number you want to use
14 on that, that so long as our uses within the facility
15 equal that or are lower, then those are the mix of
16 uses in the project. If they're above that, then we
17 would have to come back to this Board for a
18 modification or other issue or other disposition of
19 that issue. And that is no different than the
20 condition that we had last time where this same
21 question came up before the Board as to what mix of
22 uses would be in a project to be constructed.

23 CHAIRPERSON GRIFFIS: What if this was
24 actually timed? The condition of approval for a set
25 amount of years in order to assess how it was working?

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1 MR. GLASGOW: I don't think we would be
2 able to finance the project. The project would be
3 built, so that would -- I don't see that that would
4 work for us. And plus, we do have the condition where
5 if our numbers are off, where you would have the
6 ability to attendant park and have 1244 spaces, I
7 think if you were to look at the ratios between what
8 was provided last time and what was provided this
9 time, they're within an eyelash of each other, you
10 know, reducing from 1810 spaces to 1364, call that
11 about 464 space reduction as opposed to 1600 spaces to
12 1244, which is a 350 space reduction.

13 CHAIRPERSON GRIFFIS: So you're saying a
14 similarity to what was previously approved?

15 MR. GLASGOW: Yes. We wanted to get them
16 as close as we could together with the attendant
17 parking so that the Board would have a basis upon
18 which to say all right, we're reducing this almost pro
19 rata. It's not quite, but it's almost.

20 CHAIRPERSON GRIFFIS: Okay. Anything
21 else?

22 MR. GLASGOW: That's it.

23 CHAIRPERSON GRIFFIS: Thank you very much,
24 Mr. Glasgow.

25 MR. GLASGOW: Thank you.

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1 CHAIRPERSON GRIFFIS: Good, thank you all
2 very much. This has been a lengthy process and Mr.
3 Glasgow has made a point in which he's saying he wants
4 to expedite this and I think the Board does also. It
5 is a lengthy record. However, we've kept up with our
6 reading.

7 So what I want to do is set this for
8 decision making -- let's see if this works -- for the
9 first of March. That's our next public meeting. What
10 I'm going to require and keep the record open for, Mr.
11 Ruffin and Mr. Glasgow, is proposed findings of fact
12 and conclusions of law, draft orders, gentlemen.
13 There is no response time for that as this is based
14 exclusively on the record, the establishment and then
15 any conclusions that you could draw.

16 Right now, it looks like we're viewing
17 three proposed conditions. I would imagine the party
18 in opposition proposed draft order would be different
19 than that of the Applicant's, but take that into
20 account, the conditions that have been suggested for
21 the Board's review at this time and those reiterated
22 again would be setting a maximum amount of parking of
23 which this variance would be a reduction from. If
24 that maximum amount had to be recalculated based on
25 the regulations, then a new application would be

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1 required. Pricing program in order to set up the
2 aspect of temporary nature of the parking service, the
3 retail above it and also whether attendant assisted
4 parking would be provided, whether it would be
5 provided on a needs basis or whether it would be
6 provided in a required time during the year. That
7 obviously hasn't been decided or deliberated by this
8 Board. But those are out there. Anything else I'm
9 missing, Board Members?

10 Very well, Mr. Glasgow, any difficulty in
11 having a proposed findings of fact and conclusions
12 submitted by end of business day on the 23rd of
13 February?

14 MR. GLASGOW: No sir.

15 CHAIRPERSON GRIFFIS: We'll call it 3
16 o'clock.

17 Ms. Bailey, does that work with your
18 schedule?

19 MS. BAILEY: With our schedule, sir, yes.

20 (Laughter.)

21 CHAIRPERSON GRIFFIS: Yours is mine and
22 mine is yours. We're all in it together.

23 The 23rd, 3 o'clock?

24 MS. BAILEY: Yes sir.

25 CHAIRPERSON GRIFFIS: Excellent. Mr.

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1 Ruffin, any difficulty in meeting that schedule?

2 MR. RUFFIN: I would prefer that it would
3 have fallen at the end of the month because I'm
4 actually going to have a --

5 CHAIRPERSON GRIFFIS: That's right, you
6 indicated prior --

7 MR. RUFFIN: On the 23rd, I have a matter
8 in trial that I have to prepare for.

9 CHAIRPERSON GRIFFIS: Obligation.

10 MR. RUFFIN: Yes.

11 CHAIRPERSON GRIFFIS: We need it in by the
12 Monday before March 1st. Is that the 28th?

13 MR. GLASGOW: That's the 28th.

14 CHAIRPERSON GRIFFIS: Is the 28th doable,
15 Mr. Ruffin? That can't be done.

16 MR. RUFFIN: Is that enough time for you?

17 CHAIRPERSON GRIFFIS: I just got two kicks
18 in my chin from the Board Members on that one.

19 (Laughter.)

20 Friday. That would be the absolute
21 latest.

22 MR. RUFFIN: Friday, the 25th?

23 CHAIRPERSON GRIFFIS: Yes, does that help
24 you out a little bit?

25 MR. RUFFIN: It helps me out a little bit.

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1 I hope that it's adequate. I'll do my best.

2 If I may, Chairman Griffis, the first
3 proposed condition, I didn't understand it when you
4 said that I didn't understand what Mr. Glasgow said
5 and that's on me, I apologize.

6 CHAIRPERSON GRIFFIS: That's okay.

7 MR. RUFFIN: Would the two of you please
8 explain that first, setting the max parking.

9 CHAIRPERSON GRIFFIS: It's a complicated
10 condition. The whole point is that we're being asked
11 to grant a variance and the variance is usually when
12 they walk away we granted variance relief and it's a
13 stated parking that has to be provided, right? So if
14 we were to grant this, it would be for 1,000 spaces
15 must be provided. And what Mr. Glasgow is saying is
16 look, if we're concerned that this is kind of a moving
17 target and that requirement of parking might go up or
18 down, these are my thoughts, based on the tenant in
19 this proposal, well the safety valve for that is if it
20 was recalculated as the tenants were put together or
21 anything else that changed it, didn't impact anything
22 else in the zoning, but the calculation of the parking
23 requirement went above the 1612, that would trigger a
24 reapplication because it would be different and they
25 couldn't rely just on the variance of the parking that

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1 they received.

2 Mr. Glasgow, is that adequate?

3 MR. GLASGOW: Yes sir.

4 CHAIRPERSON GRIFFIS: Okay, is that clear?

5 MR. RUFFIN: It's clear, but it seems to
6 me, if I'm understanding Mr. Glasgow's proposal, that
7 we're talking about circumstances not only at the time
8 of the ruling but at any time before, as Mr. Glasgow
9 alluded to, the construction begins.

10 CHAIRPERSON GRIFFIS: I'd say this is
11 where I see it triggered. The request for the
12 Certificate of Occupancy. When they walk down to DCRA
13 and they start saying well, we've got 62,000 movie
14 theaters in here. We've got an amusement park up top
15 and I don't know what else, what else is a big parking
16 demand and draw? You know, some of the most severe
17 pieces to it, DCRA would say well, we can't grant a C
18 of O. You've got a restriction of a calculated max of
19 1600. This would calculate it out to 50,000 parking
20 spaces required and then coming back here, all of
21 which are a little extreme in the ends of numbers.
22 Does that make sense?

23 MR. RUFFIN: Setting a maximum parking
24 requirement, short of having to seek another
25 application for it?

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1 CHAIRPERSON GRIFFIS: Yes. Kind of.

2 MR. RUFFIN: Variance or exception, okay.
3 I think I understand.

4 CHAIRPERSON GRIFFIS: If not, you need to
5 have clarification before you write this, Ms. Bailey,
6 Mr. Moy, they've sat through this along with all of
7 us. They're the Office of Zoning staff. They can
8 answer technical questions. Mr. Glasgow has indicated
9 in the past review of this there's something similar
10 to it. It's obviously worth looking at that. There
11 is ample place for you to get these answers outside of
12 the four Members that are presently here. Obviously,
13 we can't answer those.

14 Anything else? Anything else on the
15 dates?

16 MR. RUFFIN: No sir.

17 CHAIRPERSON GRIFFIS: We're clear on
18 process?

19 MR. GLASGOW: The 25th?

20 CHAIRPERSON GRIFFIS: The 25th. You
21 didn't get the extension for the 25th. Okay, you can
22 have it. 25th. We need those. If they're done
23 beforehand it would absolutely facilitate the Board.
24 We're going to be reading it as soon as we get them,
25 so you want us to be clear on exactly what we have.

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1 There is no responses to these submissions, but they
2 are submitted into the record, obviously, and served
3 on everyone else. But that's what it is.

4 Okay, nothing else, great. Thank you very
5 much and thank everyone that is still here for our
6 afternoon case. I'm going to have everyone stand up
7 and walk around and get the blood flow. We're going
8 to take five minutes and then we're going to get right
9 to this thing and get through it.

10 (Off the record.)

11 CHAIRPERSON GRIFFIS: Very well, let's
12 resume calling this case today.

13 MS. BAILEY: Application Number 17282 of
14 DAG Real Estate Holding Company LLC, pursuant to 11
15 DCMR 3104.1, for a special exception to enlarge a
16 gasoline service station/mini-mart store under
17 sections 726.1 and 2302, and a special exception to
18 establish a fast-food restaurant in an adjoining
19 structure under subsection 733.1, in the C-2-A
20 District at premises 3101-3103 Rhode Island Avenue,
21 N.E., Square 4308, Lot 45.

22 CHAIRPERSON GRIFFIS: Are we ready?

23 MR. RAY: Good afternoon, Mr. Chairman,
24 and Members of the Commission. I'm John Ray, an
25 attorney from Manatt, Phelps and Phillips. I'm

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1 appearing before you as legal counsel to the
2 Applicant.

3 The Applicant, DAG Real Estate Holding
4 Company LLC, whose managing members, Mr. Joe Mamo, who
5 is with me here today, Mr. Mamo and his architect,
6 Jeff Way, are here today. Mr. Way is prepared to walk
7 you through the details of revising the site and
8 landscaping plan and other matters.

9 Mr. Mamo is a resident of the District of
10 Columbia and has been doing business in the District
11 for more than 20 years. He presently owns all 16 of
12 the Shell brand of service stations in the District
13 and several in Maryland.

14 As noted earlier today, Mr. Mamo's station
15 at 335 Benning Road, Northeast, was selected by Shell
16 Oil last November for its first introduction and
17 demonstration of hydrogen fuel for motor vehicles.
18 Shell and General Motors have cooperated in installing
19 a hydrogen fuel pump and a Visitor's Center at the
20 Benning Road site to help educate the public about
21 safe, clean, hydrogen fuel as an alternative to
22 foreign oil.

23 We request approval of two special
24 exceptions. One to permit enlargement of Mr. Mamo's
25 Shell station at 3101 through 3103 Rhode Island

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1 Avenue, Northeast and the other permit and to permit
2 use of the proposed addition as a fast food
3 restaurant. The property is in ANC-5A-11 in Ward 5
4 and it is zoned C-2-A.

5 The proposed addition is 2,325 square feet
6 in size and it's connected to the service station's
7 structure by a common party wall. It is designed to
8 accommodate one to two retail establishments. Mr.
9 Mamo has made no final decision about the type of
10 retail establishment to be located in the proposed
11 addition. He has invited in C-5-A and especially the
12 Commissioner who represents Single Member District 5-
13 A-11 to make recommendations about the type of retail
14 businesses community residents would like to see
15 brought into that space. He has pledged to do
16 everything possible to secure the type of retail
17 tenants the community prefers.

18 The 3100 block of Rhode Island Avenue
19 Northeast and the nearby area provide very little in
20 way of retail services for neighborhood residents and
21 visitors. We are confident that we would be able to
22 bring in new retail services that will benefit the
23 neighborhood.

24 One option Mr. Mamo is considering and has
25 discussed with the ANC and other community leaders is

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1 a sandwich and salad shop such as a Blimpie's
2 or Subway. This type of shop most likely would use
3 both of the potential retail spaces in proposed
4 addition and would include significant space for sit
5 down service as well as carryout service.

6 Upon reviewing the Board's discussion of
7 the fast food restaurant definition in his decision
8 November 2, 2004, in a case involving a Blimpie's
9 shop, we determined that even with substantial space
10 for sit down service, we would need a fast food
11 restaurant special exception to locate this type of
12 establishment in the proposed addition. We included
13 this in our application so that Mr. Mamo could proceed
14 with this type of establishment, if that is the
15 ultimate decision in collaboration with the community.

16 If some other type of retail service is
17 selected for this space, it would come under the
18 matter of right provision of the zoning regulation
19 applicable to C-2-A zoned districts.

20 In April of 1999, this Board approved Mr.
21 Mamo's application to re-establish gasoline service
22 station use at 3101 through 3103 Rhode Island Avenue,
23 Northeast location. The Board's order in Application
24 No. 16439 is in your case file for today's hearing.
25 The Board's 1999 order incorporated the voluntary

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1 agreement entered into at that time by Mr. Mamo and by
2 the ANC Commissioner who then represented SMD 5A-11.

3 As Mr. Mamo proceeded to develop the gas
4 station and food mini-mart authorized by the 1999 BZA
5 order, he realized the site was sufficiently large to
6 accommodate additional retail uses. In December 2003,
7 he submitted an application to the Department of
8 Consumer and Regulatory Affairs for a building permit
9 to construct the proposed addition. The building
10 permit was approved and was issued on February 4,
11 2004. And Mr. Mamo proceeded with the authorized
12 construction.

13 Six months later, by letter dated August
14 20, 2004, DCRA issued a stop work order blocking off
15 the work on the proposed addition. The letter from
16 DCRA Building Inspector Division said the building
17 permit was issued in error. And Mr. Mamo seeks
18 approval of the proposed addition as an enlargement of
19 the previously approved gasoline service station. Mr.
20 Mamo immediately stopped work on the proposed
21 addition. As you see, in the photographs attached to
22 our application documents, the proposed addition
23 remains substantially unfinished.

24 Compliance with the zoning regulations,
25 our revocation is subject to C-2 zoning special

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1 exception provision applicable to enlargements of
2 gasoline service stations and the location of fast
3 food restaurant establishments as Section 726.1 and
4 733.1 of the zoning regulations; the gasoline service
5 station enlargement provisions at 2302 and other
6 overall C-2 zoned rules regarding height, density,
7 floor/air ratio, lot occupancy and parking.

8 Our application documents and also the
9 Office of Planning report describes our compliance
10 with each of the applicable regulations, so I will not
11 take time to elaborate in details on that aspect.

12 Throughout the application process, we
13 have worked closely with Office of Planning staff and
14 I believe they will attest to our efforts to cooperate
15 and provide timely responses to their questions and
16 concerns.

17 We reviewed the OP report dated January
18 31st, initiated a meeting with OP staff to discuss
19 matters addressed in the report and filed our response
20 document with the Office of Zoning on Friday, February
21 4th and delivered copies to the Office of Planning and
22 also to Mr. Kenneth Layton of the District Department
23 of Transportation. In our February 4th written
24 response to OP report, I believe we have essentially
25 and successfully addressed and remedied most of OP's

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1 concerns.

2 My colleagues and I are prepared to
3 further elaborate on any of these matters in response
4 to your questions.

5 In preparation for this hearing, I
6 reviewed the transcript of the Board's meeting and
7 discussion on April 7, 1999 leading to the Board's
8 vote to rule Mr. Mamo's 1999 application. Then
9 Chairperson Sheila Cross Reid commented that the
10 Applicant seemed to be extremely cooperative in
11 meeting all of the requests that the ANC had made.

12 Mr. Mamo continues to be extremely
13 cooperative with the residents and the ANC and civic
14 leaders of the neighborhood where he does business.
15 This spirit of cooperation is underscored by the fact
16 that ANC-5A has voted unanimously in support of the
17 proposed edition.

18 As you will hear later, Mr. Mamo has
19 worked closely and cooperatively with ANC-5A,
20 particularly ANC-5A-11 Commissioner Franklin Malone to
21 revise and update the 1999 voluntary agreement
22 addressing community concerns regarding the Rhode
23 Island Avenue gas station and the proposed addition.

24 At the appropriate time during today's
25 hearing, the ANC-5A representative is prepared to

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1 provide the Board with amended voluntary agreement
2 that Mr. Mamo and the ANC representative have signed.

3 Mr. Mamo will look forward to forge a
4 continuous, cooperative and mutual working
5 relationship with ANC-5A, the SMDA 5A-11 Commission
6 and other civic leaders in the neighborhood.

7 This concludes my opening remarks. With
8 the Board's permission I would like to ask Mr. Way to
9 present and describe revised and extended site plans
10 including landscaping.

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. WAY: Good evening. For the record,
13 Jeffrey Way, principal architect of A Plus
14 Architecture doing business at 2137 Espey Court, Suite
15 No. 4 in Crofton, Maryland 21114. Telephone number
16 301/262-3121.

17 I believe the Board has been issued a site
18 plan.

19 CHAIRPERSON GRIFFIS: Right. It had been
20 submitted in today, is that correct?

21 MR. WAY: Yes. I believe so. Dated
22 February the 4th, 2005.

23 This is an updated iteration of the site
24 plan that was earlier provided. And I think, I
25 possibly recall, it was reviewed by the Office of

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1 Planning. But this is, again, an updated iteration.
2 We took some comments that we have received from Mr.
3 Mamo and Mr. Ray and other staff and have embellished
4 this plan to indicate certain features.

5 I should like to call your attention to
6 the sort of middle of the page where you see the
7 existing building and then in larger lettering it says
8 "15-foot public alley". So the upper right-hand
9 corner of that is the addition, the subject of this
10 case.

11 The addition is roughly the same square-
12 footage as the footprint of the existing building. A
13 number of things are indicated hereon. Some things in
14 public space, such as the public sidewalks, the Pepco
15 power poles, are indicated in open circles. The
16 existing tree boxes, as it were, are indicated with
17 the tree form. The driveways, which were many, have
18 been designated as whether they're closed or whether
19 it should not be used.

20 I'm calling your attention to the lower
21 middle of the page. There was an existing driveway
22 apron which this plan now shows as being removed. And
23 public sidewalk shall continue, and a brick wall
24 indicated by angled hatching in the wall will be
25 constructed to close in that area and create a

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1 retaining wall that runs northerly on this page. I'm
2 sorry, rather, easterly on this, westerly on the page
3 and then runs into the corner of the existing
4 building.

5 The existing building is somewhat raised
6 from the public alley grade and there's a retaining
7 wall there. This new retaining wall would effectively
8 terminate and run flush into the existing retaining
9 wall. The material and character of the new retaining
10 wall would be brick or masonry material, approximately
11 six feet in height.

12 The other features on this plan include a
13 designation of the parking spaces with stop blocks, as
14 we call them, tire blocks at the head of each parking
15 space. We've indicated a space for the dumpster, and
16 alongside of that we've created, we propose to create
17 a curbed landscaping area which is indicated with a
18 little deciduous tree. And the character of the
19 dumpster enclosure would be a 6-foot high brick wall
20 with a site-type gate.

21 That pretty much describes the basic
22 features and the improvements on-site. Again, all the
23 driveways are existing. To the very left extreme,
24 sort of on the left triangle of the site, we have two
25 driveways, existing driveway apron, not to be used for

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1 public; for fuel delivery only. That's to the
2 extreme left on your page, in the very triangular
3 portion. There's one that faces Rhode Island Avenue,
4 in the very apex of the triangle. And one that faces
5 Newton Street, existing driveway apron not to be used
6 for public, for fuel delivery only.

7 The canopy will contain lighting
8 underneath, and there are also proposed 13-foot high
9 light masts, seven to be exact, spread around the
10 site, mostly in perimeter locations. And there are
11 lights mounted high up on the fascia of the building
12 and there are six of those which provide again some
13 beneficial perimeter lighting.

14 The canopy is a raised canopy of posts.
15 It's largely of a cantilever-type structure which
16 allows for good flexibility of vehicular movement
17 around the site including that of delivery trucks as
18 the height of the canopy would be conforming to the
19 Federal Highway Administration clearance of roughly
20 15, 16 feet or so.

21 The character of the addition. What's
22 unique about this building and I forget the exact
23 history, whether it was built as an Amoco or
24 something, but it's a very unique gas station building
25 in that it has a very nice residential scale to it.

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1 It has around a 6 to 12 roof pitch and a very deep
2 overhang. It looks almost like a ski chalet. It's
3 roughly a two-foot overhang on the eaves.

4 The addition is designed exactly in that
5 same character with a very nice domestic scale roof,
6 shingled roofing, nice fascia and overhang and eave
7 overhang to match.

8 And finally, the building walkway apron
9 which extends from the existing building to the entire
10 frontage of the addition is intended to be handicap
11 accessible, so it will meet the parking lot grade, if
12 you will, flush at one or more locations for ease of
13 access.

14 Thank you very much.

15 CHAIRPERSON GRIFFIS: Thank you. Sorry,
16 there was a big of confusion. The issue, the
17 submission that we got actually today had the old site
18 plan which is why we had a lot of paper ruffling up
19 here. We now have the current one in front of us
20 which makes a lot more sense.

21 Going back to the closest existing drive
22 apron toward the corner, towards that triangle shape,
23 you've indicated it is an existing and you're
24 anticipating would just be for service for the trucks
25 that would come in.

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1 MR. WAY: That's correct.

2 CHAIRPERSON GRIFFIS: Who is that actually
3 programmed? What would preclude a care from pulling
4 right in there.

5 MR. WAY: In fact, it's the drive which to
6 the every extreme faces Rhode Island. The other faces
7 Newton, so it's a very extreme left-most driveways.

8 I suppose that that can be regulated with
9 perhaps little ballards or pipes or cones or any
10 number of things that could be architectotically very
11 nice or they can be simply as utilitarian as orange
12 cones.

13 CHAIRPERSON GRIFFIS: Let me get to an
14 understanding then of why are you trying to preclude
15 those uses. Putting ballards in there would be a nice
16 idea unless a car was actually in traffic and pulled
17 in and then would have to back out because it wouldn't
18 be able to get in, but why preclude circulation
19 through those?

20 MR. WAY: We just believe that the
21 driveways further north represented greater proximity
22 to the actual fueling function.

23 CHAIRPERSON GRIFFIS: I see.

24 MR. WAY: And further north even to access
25 to the existing building, C store, and then further

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1 north to the very extreme northerly driveway, all of
2 them are wide enough for legitimate two-way ingress
3 and egress. They're just proximity-related issues.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. WAY: We thought it afforded a
6 tremendous lack of conflict, if you will, with any
7 fuel deliveries versus vehicular.

8 CHAIRPERSON GRIFFIS: Okay, are you
9 proposing this sort of signage on property that
10 indicates or even arrow painting on the roadway
11 showing direction of vehicles.

12 MR. WAY: That is appropriate, yes. In
13 fact, I think although this plan, I regret, doesn't
14 indicate it, a sign at each of the entrances of each
15 of those driveways which is the subject of our current
16 discussion, we would have a sign "fuel deliveries
17 only."

18 My opinion is that given where the Newton
19 Street driveway is located, the ones we enclose, of
20 course, adjacent to the alley, the further one is -- I
21 think folks tend to -- patrons tend to go to where the
22 activity seems to be occurring and given the upgraded
23 appearance of the canopy and the nice graphics, it's
24 pretty likely that someone would choose that driveway.

25 CHAIRPERSON GRIFFIS: I see. Unless they

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1 were on Newton, in which case they'd pick that one.

2 MR. WAY: Possibly, yes. They could make
3 that acute right hand turn and enter from Rhode
4 Island.

5 CHAIRPERSON GRIFFIS: Okay, I think that's
6 pretty clear.

7 Any other questions of the Board?

8 Very well, Mr. Ray, anything else?

9 VICE CHAIR MILLER: I just have a
10 clarification question. If you look back at the order
11 that was issued on April 7, 1999, it says it's to
12 establish a gas station, gas service station. And in
13 your testimony you say it's to re-establish. Was that
14 the first time it was established?

15 MR. RAY: No, actually, this is a very
16 interesting application and frankly it's very
17 interesting in terms of the discussion we had this
18 morning, is that as Mr. Way pointed out, there's a gas
19 station there for a very long time and it was closed
20 down.

21 Mr. Mamo actually is re-opening the gas
22 station in the same building that always existed there,
23 same footprint. He simply renovated the building. It
24 was always there.

25 However, we were required to come to BZA

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1 because one, he's putting up a much larger canopy
2 there. Back in those days many of these gas stations
3 didn't even have a canopy. You're out in the rain.
4 So there's a huge canopy there now. And he's also
5 increased in number of outlets. Sometimes folks say
6 well, we're going to put six pumps, well, if you're
7 talking about six pumps 20 years ago, six pumps and
8 now you may be talking about 12 outlets because these
9 pumps didn't have outlets on both sides which they
10 didn't have years ago.

11 So because of those things that's why we
12 had to go come to BZA. But this was an existing gas
13 station that had been there. It was the same building
14 that was always there for the gas station. He just
15 renovated that.

16 Now the addition which we're talking about
17 was not there.

18 CHAIRPERSON GRIFFIS: Mr. Ray, you said in
19 your opening remarks that certain sections of 726 and
20 733, are you also in agreement that you are under 706?
21 Right, so it goes to the C-2 zoned special exception
22 provision is applicable. Okay.

23 MR. RAY: Yes, absolutely.

24 CHAIRPERSON GRIFFIS: So I think it is
25 fairly straightforward in your submission as you

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1 indicated. Also, your submission, the Office of
2 Planning, goes into a very detailed report on it. I'm
3 not going to go down all the sections of it. If there
4 aren't any other Board questions at this time we can
5 go to the ANC.

6 Is the ANC present today? Excellent. Do
7 you have any cross examination of the testimony that
8 you've heard today?

9 Okay, thank you.

10 At this time I'm going to go to the Office
11 of Planning and then we'll get to the presentation by
12 the ANC.

13 Mr. McGettigan, a very good evening to
14 you.

15 MR. McGETTIGAN: Good evening, Mr. Chair,
16 Members of the Board. For the record, my name is
17 David McGettigan from the Office of Planning.

18 This application was a little light on
19 information when we received it and I'm glad that the
20 Applicant has been so indulgent in trying to provide
21 additional information for us to actually see what
22 they're proposing there.

23 I'll just briefly go through the concerns
24 that I outlined in my report and not through each
25 individual test as they're already outlined.

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1 On the first, the reason I thought they
2 were going to close this entrance is one, they had
3 indicated on the plan that I had at the time that
4 those entrances were not to be used, so I took that to
5 mean that they were closing them. Later talking with
6 the Applicant, they said that they didn't need those
7 for fuel delivery.

8 Although the closest one to the
9 intersection on Rhode Island on their initial
10 submission was not shown at all, so I don't know
11 whether they had initially planned to close that one
12 completely or not.

13 If it's truly necessary for the fuel truck
14 to get out, then those entrances should remain. I
15 think by virtue of the angle of this particular
16 intersection, they are not within 40 feet but that
17 both entrances are still very close to the
18 intersection, functionally, even though they might not
19 meet the letter of law. So it's of concern to me
20 whether they close those or not and that's why I
21 brought up that situation to their attention.

22 Of course, the Applicant has agreed to
23 close the entrance on Newton Street and I'm glad to
24 see this plan shows the apron being removed and the
25 sidewalk being restored and green space being restored

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1 in that area. That's what I was looking for there.
2 Their previous plan did not show that.

3 The brick wall was not shown and now it's
4 there. That's required by section 733.3 and also they
5 now show the enclosure for the dumpster which is
6 required by 733.4.

7 I was concerned -- if you look at the
8 picture of the back of that building, it's untreated
9 cinder block, obviously in a state of -- unfinished
10 state. The Applicant said that he would paint that to
11 make it more attractive.

12 Parking lot spaces, we've seen some added
13 now. There's 23 spaces. The stops are shown which
14 was a concern that there's be overhang into public
15 space or other properties, but with the bumper, the
16 wheel stops, that alleviated some concerns in that
17 regard. So I'm glad to see those on the plan.

18 And also the addition of some planting
19 areas and three trees. I think the site initially was
20 all completely paved so that's a welcome addition to
21 the site and will help alleviate the starkness of the
22 site.

23 Also, the presentation of the lighting is
24 an addition. Unfortunately, the Department of
25 Transportation didn't -- wouldn't comment without a

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1 traffic study on this application and I requested --
2 it's a little bit late for them in the process to
3 prepare a study. I assume that there had been one for
4 the previous special exception that they could just
5 update, but evidently there was never a traffic study
6 done for that.

7 I am familiar with the gas station though
8 and I talked with the Department of Transportation, if
9 they had any particular concerns that they thought
10 they might have. Most of the traffic will be pass-by
11 traffic. This is not a destination, traffic
12 generator. So generally, these applications,
13 especially on major roads like that, the traffic
14 impact is not -- is negligible. So I would be
15 satisfied with recommending approval of this with the
16 new plans that have been presented. But I can't speak
17 for DDOT.

18 CHAIRPERSON GRIFFIS: Indeed. Good.
19 Thank you very much, Mr. McGettigan.

20 So am I to take it with your comments in
21 terms of the address of your concerns that you have a
22 position now?

23 MR. McGETTIGAN: Yes. I recommend
24 approval.

25 CHAIRPERSON GRIFFIS: No difficulty in

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1 recommending approval of this?

2 MR. McGETTIGAN: That's correct.

3 CHAIRPERSON GRIFFIS: Okay, very well.
4 Questions from the Board?

5 Ms. Miller?

6 VICE CHAIR MILLER: Do you recommend
7 approval with any conditions or just plain approval?

8 MR. McGETTIGAN: Well, yeah, I did mention
9 in my report that the existing conditions from the
10 1999 special exception should remain. They mitigate a
11 lot of some of the operational concerns that the
12 neighborhood might have with the use, particularly
13 regarding keeping the site clean and lighting of the
14 site and so forth. So yes, I think those conditions
15 should remain in place as partially modified, perhaps,
16 with the submission from the ANC.

17 VICE CHAIR MILLER: And was there one
18 related to the cinder block of the proposed addition?

19 CHAIRPERSON GRIFFIS: Right, they would be
20 painted to match the brick veneer?

21 MR. McGETTIGAN: Yes.

22 CHAIRPERSON GRIFFIS: I think we can adopt
23 and take Mr. McGettigan, if you don't disagree, as
24 proposed conditions any of those that are listed of
25 concerns that haven't actually been addressed or

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1 completed to date.

2 MR. McGETTIGAN: That's right, they're not
3 shown on the plan, but the Board can incorporate those
4 issues as well.

5 CHAIRPERSON GRIFFIS: Excellent. Okay,
6 anything further?

7 Mr. Ray, any cross examination of the
8 Office of Planning?

9 Very well. Let's move on. As Mr.
10 McGettigan indicated, DDOT had not responded to the
11 application based on the fact of not having a traffic
12 study to respond to which would have been informative
13 in their respects.

14 Does the ANC have any cross examination of
15 the Office of Planning?

16 Very well, let's move ahead to you, in any
17 case. We do have Exhibit 30 and we'll hear the
18 presentation of your case at this point.

19 MR. BOWSER: I did want to address one of
20 the concerns that the Office of Planning did have. We
21 did do --

22 CHAIRPERSON GRIFFIS: Before you go much
23 further, if you wouldn't mind just stating your name
24 and address for the record?

25 MR. BOWSER: My name is Commissioner

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1 Joseph Bowser. I'm Chairperson of ANC-5A.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. BOWSER: One of the concerns the
4 Office of Planning had, we had an amended voluntary
5 agreement. He talked about a voluntary agreement and
6 the major changes in that is in the wording. The old
7 agreement talked about the agreement between Mr. Mamo
8 and Karen Lancaster who was a former ANC Commissioner
9 and changing the wording is that the agreement was
10 between ANC-5A, rather than a particular Commissioner.

11 So we want to -- I don't know whether you have a copy
12 of that. If you don't, I do have some extra copies.
13 And the reason why we didn't ask -- we did originally
14 ask for an extension for this so we could have all the
15 documents in order, but however, we decided to move
16 forward and I can submit some copies.

17 CHAIRPERSON GRIFFIS: Yes, we need copies
18 of it, if you want us to look at it.

19 MR. BOWSER: Okay.

20 CHAIRPERSON GRIFFIS: I'm sorry, if you
21 could just hand those to Ms. Bailey at the very far --
22 while he's doing that and submitting it in, Board
23 Members, Ms. Bailey has also brought to my attention,
24 Exhibit 30, of course, which I've indicated is the
25 ANC's report. It was not timely filed and therefore,

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1 would require a waiving of our regulations on
2 timeliness in order to accept it into the record. Let
3 me hear any objection from the Board.

4 MEMBER ETHERLY: No objections, Mr.
5 Chairman.

6 CHAIRPERSON GRIFFIS: Very well, any other
7 comments? If there's no objection, we'll waive our
8 requirements. It's obvious that we had this earlier
9 submission, actually, requesting a postponement of
10 this in order for the ANC to take this up. That has
11 been met and I think it's appropriate to waive our
12 requirements for submission.

13 MR. BOWSER: And the other half of that
14 agreement is that the agreement talks about a police
15 work station which we support for that facility in
16 some way, but after careful deliberation of the ANC,
17 we decided we would go for a police substation, rather
18 than a work station because the PSA could work out of
19 the substation.

20 And secondly, as part of the cross border
21 initiative, you know, that the station is on the
22 corridor next to -- let me get this off for a minute.

23 Next to the Prince George's County line, so I also
24 have that resolution that we have put in that we are
25 working toward with the Police Department and the

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1 Mayor and the Council Member to see if we can't work
2 on a police substation.

3 And I have a copy of those -- of that
4 resolution. Other than that ANC 5A to support the
5 use of the station, that's my testimony.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much. Don't go too far.

8 VICE CHAIR MILLER: I need to ask you a
9 question.

10 MR. BOWSER: That's okay.

11 VICE CHAIR MILLER: I'm looking at Exhibit
12 30. It's a letter dated February 4, 2005 from ANC 5A
13 saying that the Commissioners present vote of 11 to 0
14 to support the request to build additional retail
15 space at the gas station, is there something else that
16 goes with this? I mean you've been referring to an
17 agreement or whatever?

18 MR. BOWSER: Yes.

19 VICE CHAIR MILLER: Is it separate from
20 this document or was it supposed to be attached?

21 MR. BOWSER: The agreement should have
22 been attached to the original document. The Office of
23 Planning talked about the 1999 agreement, so all this
24 agreement does is amend the agreement that I just
25 submitted. It just merely changed some wording in it.

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1 And you would have had this timely if we
2 had gotten the extension, but since we didn't get the
3 extension, we fast tracked everything.

4 VICE CHAIR MILLER: Okay.

5 CHAIRPERSON GRIFFIS: And a darn good job
6 doing it.

7 VICE CHAIR MILLER: So I just got handed
8 to me, there's a resolution?

9 MR. BOWSER: Yes.

10 VICE CHAIR MILLER: And there's an amended
11 agreement --

12 MR. BOWSER: Yes, there is, yes.

13 VICE CHAIR MILLER: -- is that it?

14 MR. BOWSER: Yes.

15 VICE CHAIR MILLER: Okay. Thank you.

16 CHAIRPERSON GRIFFIS: Good. And I note in
17 here an amended voluntary agreement which you
18 submitted today which is dated February 3, 2005 has
19 been signed --

20 MR. BOWSER: Yes.

21 CHAIRPERSON GRIFFIS: -- by the ANC and
22 also by the owner. Obviously, this is an independent
23 and enforceable document on its own.

24 MR. BOWSER: Right.

25 CHAIRPERSON GRIFFIS: Very good. I say

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1 that in order to be absolutely clear because I think
2 there's an awful lot that the Board supports, but
3 there's also an awful lot that goes beyond the
4 jurisdiction of the Board to condition. Even though,
5 perhaps in prior orders, things were conditioned
6 within the BZA approval. I think that this Board has
7 taken an awful lot of look, initiative in crafting
8 conditions that actually fall within a measureability,
9 an accountability, an enforceability and within our
10 jurisdiction. So, with that, I think we can review
11 that but note that it is a binding document on its
12 own.

13 Okay, is there any other question from the
14 Board regarding the ANC?

15 Does the Applicant have any cross-
16 examination of the ANC member?

17 How come this one's no fun? Okay, come
18 on, let's go.

19 VICE CHAIR MILLER: Just because I --

20 CHAIRPERSON GRIFFIS: I should turn my mic
21 off when I say those things, don't I? Okay, let's go.

22 VICE CHAIR MILLER: You may have been
23 addressing this while I was, before I had this
24 resolution, but the police substation that, that is
25 going to be in one of the building --

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1 MR. BOWSER: Yes, yes.

2 VICE CHAIR MILLER: -- new buildings

3 MR. BOWSER: Yes, yes.

4 VICE CHAIR MILLER: Okay. And this just
5 shows that you support that?

6 CHAIRPERSON GRIFFIS: Is that for certain,
7 Mr. Ray?

8 MR. RAY: Well, what I wanted to say is
9 that Mr. Mamo supports having a substation there.

10 VICE CHAIR MILLER: Okay.

11 MR. RAY: However, Chief Ramsey is in
12 opposition to the station.

13 CHAIRPERSON GRIFFIS: That's correct.

14 VICE CHAIR MILLER: Okay, that's right.

15 CHAIRPERSON GRIFFIS: There's an e-mail
16 attendant to that issue --

17 MR. RAY: Yes.

18 CHAIRPERSON GRIFFIS: -- submitted. And
19 the point being you talked about it. You had a
20 conversation with either a substation or warming
21 station or any of that and that e-mail, if I can
22 summarize, says that the Police Chief wants his
23 policemen and women out on the street. Certainly, you
24 wouldn't preclude selling coffee or a hot dog or
25 warming an officer that might stop by and we can make

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1 that on the public record for all to know. But,
2 clearly they're not trying to establish those type of
3 institutions.

4 And actually, we're fairly aware of that
5 as we have oftentimes, even in corner stores and such,
6 that that is something that the community would really
7 like to see. And we've seen it not be able to come to
8 fruition, based on the policing --

9 MEMBER ETHERLY: Theory, is it is a
10 theory?

11 CHAIRPERSON GRIFFIS: No, policing
12 practice. Go ahead.

13 MR. BOWSER: A year from now that will
14 happen.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. BOWSER: That will happen, a year from
17 now. Because part of the cross border initiative and
18 we follow this through with the Chief and all the way
19 down the line. It will happen.

20 CHAIRPERSON GRIFFIS: Excellent. We're
21 going to mark your words at 6:44 of the evening of the
22 8th.

23 MR. BOWSER: It will happen.

24 CHAIRPERSON GRIFFIS: We'll come back in a
25 year. You know, we're going to be here.

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1 MR. BOWSER: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Any other
3 questions for the ANC, then? Very well, if there's
4 nothing further, we thank you very much for being so
5 patient today in sticking with us in order to be able
6 to present this report and actually the excellent
7 amended voluntary agreement. And I think everyone
8 should be complimented on getting to the resolution on
9 that and having this crafted.

10 Let me go to, I don't have any other
11 attendant government reports, unless the applicant is
12 aware of anything else submitted into the record,
13 Board members we can go to testimony. Persons in
14 support of the Application, we could hear from now.
15 Any persons present to give testimony in support? Any
16 persons present to give testimony in opposition to the
17 Application? Yes, let's give them some space.

18 Good afternoon.

19 MR. POLES: Good afternoon.

20 CHAIRPERSON GRIFFIS: Who is going to
21 start? Okay. I'm just going to need you to touch
22 that button on the base of the microphone. There it
23 is.

24 MR. POLES: Good afternoon. My name is
25 Raymond Poles. I am a resident. I live at the 3100

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1 block of Newton Street, 3143 Newton Street to be
2 exact. I am, of course, one of the members of the
3 community on an immediate street in opposition, not
4 to, let me just be clear, not the complete project,
5 but the expansion. More in less in terms of this fast
6 food restaurant. And it has been so noted in some of
7 the information that you already have. I won't go
8 into all of that. With respect to prostitution,
9 drugs, and so forth. It's of great concern in our
10 immediate community. And when I say that, I am
11 talking specifically about those who reside on Newton
12 Street.

13 With all due respect to the ANC
14 Commissioner, Mr. Bowser, and so forth, I still
15 contend that that, I guess you could say, agreement
16 among the ANC Commissioners does not represent the
17 block. And I say that in respect that we, meaning
18 Newton Street, the 3100 block, will be greatly
19 impacted by the opening of that entity.

20 I noted that, for example, they were given
21 information to the extent that work was supposed to
22 have stopped, i.e., August the 20th, I believe, to
23 that extent I'm here just to say for the record: no
24 it did not happen like that. Work continued. I have
25 others who are sitting at the table to support that.

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1 I also had this concern with the manner in which parts
2 of the project was implemented, if you will. And that
3 is, i.e., the posting of permits and so forth. For
4 example, in the month of August at or around the 25th,
5 the only permits which I observed of course were those
6 coming from 1999. Nothing that was current.

7 So I'm just putting these things out
8 before you expressing my dismay in one respect. I am
9 not against economic development by no stretch of the
10 imagination. I think it's good for all communities.
11 But with respect to the restaurant piece, the fast
12 foods piece, I have big concerns with it.

13 CHAIRPERSON GRIFFIS: Go ahead. Thank you
14 very much. Let me go through a couple of things,
15 because you started out saying you're very concerned
16 about the prostitution, I'll take loitering --

17 MR. POLES: Yes sir.

18 CHAIRPERSON GRIFFIS: -- aspect also with
19 that. How do you see that if a fast-food
20 establishment or other sort of retail is provided
21 that that would support that unseemly behavior? And
22 why would you think that it would not tend to limit
23 that behavior, or at least move it into another area?

24 MR. POLES: Well, when I look at fast
25 foods in general, and what they bring to a community,

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1 they're not, i.e., Blimpie's, Subways, in my judgment,
2 are not conducive to what it is that we would like to
3 see.

4 For example, I would prefer, if at all, a
5 Starbucks.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. POLES: When you bring in something
8 like a Blimpies as a fast-food type, it too is a, if
9 you will, an attraction for those entities that really
10 like to hang. And in the cases of prostitutes,
11 unfortunately, you know, do their business. You know,
12 because you have Johns who will drive up into those
13 particular areas, to those stores, if you will, and
14 while they're getting their sandwich, they get the
15 other sandwiches. And I just don't want it in my
16 community. It's just that simple.

17 And we have a big problem with that as we
18 speak, without the fast-food restaurant being located
19 in that area. We have a little, if you will, a
20 Chinese restaurant there. Next to the, you know,
21 proposed gas station and fast-food place. It is one
22 example of where we see this going on as we speak.

23 CHAIRPERSON GRIFFIS: Right. Yes. And
24 it's a very serious concern. One I know we've dealt
25 and perhaps, without getting into too much detail --

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1 MR. POLES: Sure.

2 CHAIRPERSON GRIFFIS: -- perhaps we deal
3 with it in our own neighborhoods.

4 MR. POLES: Yes.

5 CHAIRPERSON GRIFFIS: But, let me ask you
6 directly. For this application, do you see that this,
7 if you removed for instance all the restaurants in the
8 entire area would the prostitution issue leave?

9 MR. POLES: Yes and no. And I'm giving
10 you a very honest answer --

11 CHAIRPERSON GRIFFIS: Right, and it's --

12 MR. POLES: -- in my opinion, and the
13 reason why I'm saying that if I may add as a caveat is
14 simply because within let's see two blocks at the max
15 there is a guest house at the corner of South Dakota
16 and Rhode Island Avenue which the prostitutes use --

17 CHAIRPERSON GRIFFIS: Right.

18 MR. POLES: -- it doesn't have a name up
19 there or anything. It's just a big standing house
20 where, if you have a piece, you can swing on up in
21 there, have it, lay it and get on out.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. POLES: Then go on down the street and
24 get your sandwich. Okay? And a cup of coffee.

25 CHAIRPERSON GRIFFIS: But if you didn't

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1 feed them, would they still do it?

2 MR. POLES: Yes and no. And I'm being
3 very --

4 CHAIRPERSON GRIFFIS: No, I understand,

5 MR. POLES: -- honest with you.

6 CHAIRPERSON GRIFFIS: So let me put it
7 another way --

8 MR. POLES: Excuse me.

9 CHAIRPERSON GRIFFIS: -- if this wasn't
10 there or wasn't even in operation. Well, let's put it
11 this way. If, as proposed --

12 MR. POLES: Yes sir.

13 CHAIRPERSON GRIFFIS: -- this is going to
14 be a well-lit, cleaned every day, area that will not
15 tend to accept loitering and certainly were to prevent
16 loitering, would you think that that wouldn't create a
17 more receptive environment --

18 MR. POLES: I have a response for you,
19 which is one that I gave at one of our community
20 meetings.

21 CHAIRPERSON GRIFFIS: Good.

22 MR. POLES: In the absence of MPD, as we
23 now know that they will not be forthcoming in terms of
24 the substation, I recommended, and this is without
25 even the food piece, but I still recommended that we

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1 have a security person there twenty four hours a day.

2 And one who had a gun, and not just a damn stick. I
3 was quite, whatever you want to call about it, I was
4 quite adamant.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. POLES: But I believe if you are going
7 to put something there, minimally we need that
8 security person with the gun twenty four hours a day.

9 Someone who sees if and when, you know, persons of
10 poor character, I'll just say it for a light term,
11 come onto the premises and want to hang and so forth,
12 they can make them move. Literally, make them move.

13 CHAIRPERSON GRIFFIS: Right, right,
14 agreed. Okay. Very good. Thank you very much.

15 MR. POLES: Thank you.

16 CHAIRPERSON GRIFFIS: Good evening to you.

17 MR. JONES: Good evening. My name is
18 Arthur J. Jones. I live at 3110 Newton Street,
19 Northeast.

20 I'm going to come with a different caveat
21 than Mr. Poles here. I was here yesterday and I went
22 through the exhibit log. And all the documents,
23 except for one which was the stop work order, I didn't
24 see a reply to anything that Mr. Ray sent out to the
25 District government. He never got a reply back from

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1 anybody that I saw in that log.

2 I looked through it last night and this
3 morning and I still didn't see any reply from anyone.

4 This is the only reply I got right here from the
5 young man right there. This is the only one I saw on
6 the stop work order in there. I never saw any reply
7 from anything that he sent out to come back to him
8 through this office.

9 CHAIRPERSON GRIFFIS: I'm not sure I'm
10 following.

11 Who are you thinking would reply to his
12 application submission?

13 MR. JONES: I'm talking about Ms. Kress.
14 I didn't see any replies from Ms. Kress. She's the
15 Acting BZA Commissioner, right?

16 CHAIRPERSON GRIFFIS: No. She's the
17 Director of the Office of Zoning, but okay.

18 MR. JONES: I didn't see anything from
19 her.

20 CHAIRPERSON GRIFFIS: What were you
21 expecting to see?

22 MR. JONES: I wanted to see what kind of
23 reply she would send back to him. I don't know how it
24 was done. I didn't see any replies.

25 CHAIRPERSON GRIFFIS: Let me run through

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1 because this isn't and I know your very sincere
2 question and it raises some concern in my mind of the
3 understanding of our process.

4 First of all, also, Mr. Poles brought up
5 the aspect of the permit and stop work order. Of
6 course, that goes beyond our jurisdiction in looking
7 at the application that we before us which is of a
8 specific relief to the zoning requirements. That's an
9 enforcement of DCRA and the permit or the stop work
10 order. It's DCRA does the enforcement of that.

11 So what the situation is here is that the
12 -- well, let me make it as simple as possible. The
13 Applicant has been required or has decided to bring an
14 application for relief from the zoning regulations and
15 our zoning regulations say it has to be a special
16 exception. Don't worry about that.

17 So we're here before us just to look at
18 this application. Mr. Ray, in representing the owner,
19 puts in all the required documentation. But there's
20 no response to any of this.

21 MR. JONES: I didn't see that.

22 CHAIRPERSON GRIFFIS: No, no. There is no
23 response.

24 MR. JONES: There's no response?

25 CHAIRPERSON GRIFFIS: There is no vehicle

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1 for response. There's no one waiting for response.
2 Everything else just fills the record. The Office of
3 Planning picks up the application, looks at it, does
4 their analysis. And they put it all into the record.

5 And then late on Wednesday night, there's a knock at
6 our door and we're delivered the entire record. We're
7 locked down in our houses and we read it until we show
8 up Tuesday morning and we review it and we have a
9 public hearing.

10 There's no -- I'm not sure where you're
11 looking for, but there's no give and take, there's no
12 --

13 MR. JONES: Let me give you a chance to
14 understand where I'm going at.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. JONES: Exhibit 10, last page, a
17 letter from DCRA, that document? There is the
18 document? I'd like to see the document.

19 CHAIRPERSON GRIFFIS: Exhibit 10?

20 MR. JONES: It said that the person did
21 not sign the document. The last paragraph here.

22 CHAIRPERSON GRIFFIS: The last paragraph.

23 MR. JONES: It's called Exhibit A,
24 attachments.

25 Summary and background, DCRA referral

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1 letter.

2 CHAIRPERSON GRIFFIS: Oh my gosh.

3 MR. JONES: See it?

4 CHAIRPERSON GRIFFIS: Do you have Exhibit
5 9? Can you tell me what it is?

6 Mr. Ray, you submitted Exhibit A, is that
7 correct, in your original submission in your bound
8 copy which is titled -- how did that get stapled to
9 the back of the mailing address.

10 Thank you. It's not stapled on mine. It
11 was stapled on --

12 MEMBER ETHERLY: You're right, Mr. Chair,
13 both Exhibit 9 and Exhibit 8 appear to be separate
14 copies of what are essentially exhibits that were back
15 of the Applicant's submission in our file, so for some
16 reason they were just broken up separately. But what
17 the gentleman has identified are, in fact, attachments
18 to the Applicant's submitted statement. They're just
19 filed separately for some reason.

20 MR. JONES: So do I get a chance to view
21 that letter, the signing of that document? Or do I
22 have to go to DCR to find that document?

23 CHAIRPERSON GRIFFIS: Well, the actual
24 document is in the public record. It's in this filing
25 by the Applicant. It's in the same place you found

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1 that.

2 MR. JONES: Okay, all right, so it must
3 have been miss-crossed.

4 Okay, I've got a number of concerns too.
5 I was listening to the architect talk about this last
6 exit here on Newton Street.

7 CHAIRPERSON GRIFFIS: Right, closest to
8 the corner?

9 MR. JONES: Yes.

10 CHAIRPERSON GRIFFIS: Good.

11 MR. JONES: In front of the liquor store,
12 which is the Stop and Shop, there's a sign that says
13 no trucks.

14 CHAIRPERSON GRIFFIS: Where is the liquor
15 store?

16 MR. JONES: Right across the street.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. JONES: It says no trucks.

19 CHAIRPERSON GRIFFIS: We have to put it
20 all on the record here.

21 MR. JONES: It says no trucks.

22 CHAIRPERSON GRIFFIS: No trucks.

23 MR. JONES: That means no trucks can come
24 down and go up Newton Street.

25 CHAIRPERSON GRIFFIS: Oh, on the street,

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1 on Newton.

2 MR. JONES: You can't come up.

3 CHAIRPERSON GRIFFIS: No trucks.

4 MR. JONES: At all.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. JONES: And right here where this last
7 opening is for this filling station, adjacent across
8 the street from that is another opening at the liquor
9 store and the way the cars go up and down Newton
10 Street at 100 miles an hour, we're looking for a big
11 accident, a very big accident.

12 So I'd like to request that that exit be
13 closed off too on Newton Street.

14 CHAIRPERSON GRIFFIS: So having no access
15 from Newton Street.

16 MR. JONES: Whatsoever.

17 CHAIRPERSON GRIFFIS: Doesn't that put
18 anybody that wants to get into their garage coming
19 down Newton Street back on Rhode Island into that
20 traffic and then back into the station?

21 MR. JONES: Well, they should come into
22 the station from Rhode Island Avenue and exit to Rhode
23 Island Avenue.

24 CHAIRPERSON GRIFFIS: Okay, that's an
25 interesting concern.

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1 Okay, good point.

2 MR. JONES: Also, on that same document,
3 where you have this right here? I know you got it on
4 there?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. JONES: That's my house right behind
7 that filling station.

8 CHAIRPERSON GRIFFIS: Let me ask you this,
9 just to interrupt you, on Newton Street, talking about
10 Newton Street, right across the street on Newton, not
11 across Rhode Island --

12 MR. JONES: Not across Rhode Island.

13 CHAIRPERSON GRIFFIS: Right across, those
14 are residential buildings?

15 MR. JONES: Yes, you have an apartment
16 building right across, as well as houses going down --
17 what would that be -- going south.

18 CHAIRPERSON GRIFFIS: Down towards Clinton
19 Street. Okay.

20 MR. JONES: There's houses up in there.
21 One other thing that I found, just where this dumpster
22 is proposed to be put at?

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. JONES: On the original drawing it's
25 supposed to be out on the Rhode Island Avenue side. I

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1 don't know how it got over there on my side. I don't
2 know how it got over there, but on the original
3 drawings from 1999, I think it was supposed to be out
4 on the Rhode Island Avenue side.

5 (Pause.)

6 CHAIRPERSON GRIFFIS: Is this the
7 photograph of the current condition? I'm pointing to
8 the photograph that was submitted? Okay.

9 Okay, so the question is wasn't this up on
10 Rhode Island Avenue side?

11 MR. JONES: Yes, in 1999, it was supposed
12 to be out on Rhode Island Avenue, not on Newton
13 Street.

14 CHAIRPERSON GRIFFIS: And you see
15 currently, as it's being proposed that that's a
16 difficulty?

17 MR. JONES: That's going to be a problem.

18 CHAIRPERSON GRIFFIS: What's the problem?

19 MR. JONES: As far as the odor and the
20 rats. It would be better placed out on Rhode Island
21 Avenue.

22 MEMBER ETHERLY: Is it your sense that
23 based on that placement that puts it closer to what
24 would be the rear of properties that are on Newton
25 Street, near the residences?

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1 MR. POLES: Within 25 feet, literally.

2 MR. JONES: Sixteen feet.

3 CHAIRPERSON GRIFFIS: Those rats are going
4 to be hopping a brand new 6-foot brick wall.

5 MR. JONES: Well, we have raccoons. We
6 have everything there.

7 CHAIRPERSON GRIFFIS: In all seriousness,
8 do you see that they actually have it with a brick
9 surround and actual enclosing --

10 MR. JONES: It's existing now.

11 CHAIRPERSON GRIFFIS: It looks like that's
12 going to be modified.

13 MR. JONES: They will have to take the
14 signs down because it has to be a masonry unit.
15 That's what it says on this -- what's his name's
16 drawings.

17 CHAIRPERSON GRIFFIS: Right. On SP-1.
18 That's a good point we'll bring up for the Applicant
19 again as they come forward.

20 Okay. Anything else?

21 MR. JONES: No, that's the end of my
22 testimony.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much. Good testimony.

25 Any questions of the Board?

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1 Very well, yes sir.

2 MR. BLAKE: Good evening, my name is
3 Raymond Blake. I'm a little tired now. I've been out
4 here all day long.

5 CHAIRPERSON GRIFFIS: Me too.

6 MR. BLAKE: And I live on Newton Street,
7 3116, two doors from Mr. Jones. Been on the block
8 since 1956, so there's nobody here right now that can
9 tell me other than the ex-ANC lady anything about that
10 block. I came in there when I was a kid going to
11 junior high school and I've been there ever since.
12 I've seen them come and I've seen them go. Third
13 longest living on that block.

14 But I hear nobody talking about the
15 residents on the block. Nobody says anything about
16 the residents. All I hear is the filling station, the
17 canopy, the opening on the corner, what about the
18 residents? What about the people right across the
19 street while the light is going to be shining in their
20 house? Nobody said anything about that and I'm glad
21 you're going to try to get that last opening closed on
22 Newton Street because that would present a problem.

23 But I don't have anything against Mr. Mamo
24 opening a filling station. I would like to know what
25 he's going to put in the other two buildings. I don't

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1 know who is going to make the decision. Not that I
2 want to make it because if I had my way, he wouldn't
3 have put the building up. Being honest about it.
4 Because they worked on a Sunday and they worked on
5 Saturday and I hated it, six o'clock in the morning,
6 all day, cutting cinder block and putting them up. I
7 didn't like that. I said why on a Sunday? All I hear
8 is you got to do what you got to do when you can do
9 it.

10 I mean I'm retired. When do I get my
11 break? Thirty-two years in this government and 12 in
12 private industry, but I mean what about the neighbors?

13 Nobody said anything. I don't want it to be another
14 Fort Davis up on Alabama Avenue and Massachusetts
15 which I think you all know about that. Don't need to
16 be another Chillum. You all know about Chillum,
17 there's a leak under the ground.

18 I told them do a study, do something so we
19 don't have to worry about that. We have older people
20 on the block, people that really don't get -- if they
21 could get around good, they would be down here. But
22 as you see, just the three of us.

23 And I just retired a year and a half ago.

24 Just let me live it out in peace. That's all I want
25 to do. I'm not here forever, just passing through,

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1 but let me do mine in peace. We have drugs. We have
2 guns. We have the whole nine yards. My next door
3 neighbor, they found a pump shotgun in her yard,
4 loaded. If it weren't for her son, the policeman
5 would have shot his leg off because he didn't know how
6 to eject the shell. Another pistol in her flower pot.

7 I mean this is what we have to put up with. And
8 she's up in her 70s.

9 And we've been fighting with the drug boys
10 for I don't know how long. Not that we're scared of
11 them because as you all know, it's somebody's son I
12 know or somebody's daughter, hey, you need to tell you
13 kid to get off the block, it's the wrong place to be,
14 they're doing the wrong things out here. A lot of
15 them don't pay attention. But we have it in the
16 neighborhood and we've been fighting it for the last
17 couple of years now.

18 And we have our little street coalition, a
19 lot of people want to jump on the bandwagon, but we're
20 not following the steps of anybody else. We're doing
21 it the way we need to do it because we live there. We
22 have a lot of insight for seniors. Every meeting we
23 have there's somebody there, police department, fire
24 department, EMS, people from Vincent Orange's office.

25 We have somebody there to give you information that

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1 you will need down the line. But still, I hear nobody
2 talking about the neighborhood. And they're seniors.

3 I'm up there too. I got a little age on
4 me, but they're older than I am.

5 CHAIRPERSON GRIFFIS: It doesn't show.

6 MR. BLAKE: I feel it. I've been out here
7 all day long. My back is killing me right along in
8 there. But you know, I don't have any problem -- I
9 know we're going to get the filling station. I know
10 the filling station is going to come in here.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BLAKE: But then we need a little
13 consideration down on that block.

14 CHAIRPERSON GRIFFIS: Clear. Good. And
15 excellent testimony and say you know, you're going
16 about it, as far as I know, the right way. You've got
17 to organize locally, everyone that cares about the
18 block is going to put the right effort in. You've got
19 a lot of obviously big issues as a lot of
20 neighborhoods do from drug activity to prostitution to
21 crime.

22 And your comment is very important to the
23 Board. Where are the residents, neighbors? Where do
24 they play a part in this? And let me tell you, that's
25 exactly what you're doing in terms of coming down here

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1 and providing the testimony.

2 We can't go out to the neighborhood. We
3 can't go visit this spot. We are actually prohibited
4 from doing that. We can only look at what's presented
5 before us. So we need to hear from residents and
6 community members that come in.

7 Now the testimony begins and ends with the
8 application and the regulations of which we have to
9 look at.

10 We are told very specifically the test of
11 which we need to see whether they meet it or they
12 don't meet it. And so what I'd like to do is just
13 revisit some of the bigger issues that you've brought
14 forward.

15 You mentioned one thing about where is the
16 lighting and who's looking at the lighting and how it
17 impacts the residents, but then you follow up by
18 saying but I'm not opposed to the gas station.

19 If this is a critical issue, that's
20 actually one of the most important things we do is
21 look at that aspect. I can also tell you that most
22 gas stations that we've reviewed and gone to the
23 specificity, the engineering of that lighting is
24 fairly well done in terms of directing the light on to
25 the site.

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1 But go ahead, let me --

2 MR. BLAKE: Okay, you have a good point.
3 But this canopy the young man talked about so much?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. BLAKE: How pretty it was? It's nice,
6 but you got inside lights and then on the outside
7 you've got outside fluorescents. They shine straight
8 across the street, right on every house from Mr.
9 Johnson's up past Ms. Strickland's house there.
10 Everything is lit up up there.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. BLAKE: I don't think they really need
13 that in there, right in the windows.

14 CHAIRPERSON GRIFFIS: Okay. Okay. And
15 what other aspects, you mentioned in terms of the
16 construction. As far as I know in terms of the
17 construction regulations and codes, there are certain
18 times that construction can happen and is supposed to
19 happen. I don't know the specifics in this case, but
20 it's also something that even if we found out what it
21 was we couldn't do anything about it at this point
22 except commiserate with you that Sunday mornings are
23 interrupted by probably one of the loudest things you
24 hear cutting up cinder blocks. But with that, what
25 are the other issues in terms that you find might

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1 create detrimental impacts, negative impacts, if this
2 is able to go forward in terms of the retail
3 establishment?

4 MR. JONES: One of the things that's going
5 to impact this filling station and whatever else it's
6 going to be, it's going to be the prostitution and the
7 drugs from the Maryland side and further up Rhode
8 Island Avenue. It's all going to congregate right
9 there at Rhode Island and Eastern. It's all going to
10 congregate there. I can tell you that now.

11 CHAIRPERSON GRIFFIS: Why? Why do you
12 think that?

13 MR. JONES: Because it's something new.
14 It's something new and they're going to try it out.

15 CHAIRPERSON GRIFFIS: You find they're
16 attracted to clean, well lit and populated places?

17 MR. JONES: It won't be that way long.

18 CHAIRPERSON GRIFFIS: It's going to be
19 desolate and dark and dirty?

20 MR. JONES: Like everything else around.

21 MR. POLES: It will be desolate and dirty.

22 MR. JONES: Like everything else around
23 here.

24 MR. POLES: If you put the fast-food place
25 up, very serious. If you put the fast-food place

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1 there, it's going to be desolate and dirty. The
2 bottom line is even with the one eatery that we have
3 in that block which I referred to earlier in my
4 testimony, it precipitates a lot of traffic,
5 literally, where you have -- even if they don't stay
6 there for long periods of time, it's almost like a
7 drive up, drive out kind of place where I can go up,
8 get my drugs, get in my car and go. Shop and go, shop
9 and go.

10 And the only reason it's like that is
11 because that's if and when MPD is actually out there,
12 all right? They'll make a subtle move to do the drug
13 thing and get on out of there. Otherwise, it's park,
14 go and sometimes park and shop, get your sandwich, get
15 the drugs, smoke their joint and then leave.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. POLES: Whatever it is they sell out
18 there.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. BLAKE: I live right behind that
21 restaurant that Mr. Poles is talking about, directly
22 behind it. I remember when they got busted for taking
23 stolen food from the schools. I sat right there and
24 watched the whole thing unfold. But the restaurant
25 itself, I've seen some mean stuff out the back door.

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1 I can sit at the dining room table and
2 look right straight at the back door of the restaurant
3 and the traffic that goes around behind that place and
4 the things that go on back there, you wouldn't
5 believe, you wouldn't believe.

6 CHAIRPERSON GRIFFIS: Actually, I probably
7 would. But okay, let's move ahead.

8 Gentlemen, thank you very much. I think
9 it's very informative.

10 Ms. Miller, do you have a question?

11 VICE CHAIR MILLER: We were handed today
12 an amended voluntary agreement between the Applicant
13 and the ANC and I'm wonder if it reflects any of your
14 concerns or addresses any of your concerns?

15 You don't have a copy of it?

16 MR. POLES: Not the amended one. I don't
17 have access to that.

18 VICE CHAIR MILLER: Were you at the ANC
19 meeting?

20 MR. JONES: Which one?

21 VICE CHAIR MILLER: Which one? I don't
22 know. The one that considered, I assume they
23 considered the application before us.

24 MR. BLAKE: That was for ANC officials
25 only, I think. ANC Commissioners only, I think. Not

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1 that we couldn't sit in, but I didn't know anything
2 about it.

3 CHAIRPERSON GRIFFIS: What, the meeting?
4 Or the agreement?

5 VICE CHAIR MILLER: You need to identify
6 yourself.

7 MS. THOMPSON: I'm Margaret Thompson. I
8 was former ANC-511. And I would have to say that the
9 meeting that the gentleman is speaking of was last
10 Thursday. It's the meeting of the whole -- that only
11 the Commissioners can attend. Now you can -- the
12 community can attend, but they cannot speak. And
13 generally, they wait for a community meeting at the
14 end of the month when the entire area that is served
15 attends the meeting and if something comes up, then
16 they can voice their opinion.

17 Now with myself, I know nothing of this
18 agreement. I haven't seen it. And I don't know who
19 made it. I don't know if just the Commissioners got
20 together and the only thing that I know of is the 1999
21 agreement which they also put in this new hearing
22 number that they -- that should be before you now.

23 And I really would like to see the
24 agreement and I really don't know if there has been a
25 community meeting since the 24th of January, I

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1 believe, so I'm not really sure if the community knows
2 about the new agreements.

3 CHAIRPERSON GRIFFIS: Okay, were you part
4 of the last agreement as an ANC member?

5 MS. THOMPSON: No.

6 CHAIRPERSON GRIFFIS: Why is that?

7 MS. THOMPSON: That was back in 1999.

8 CHAIRPERSON GRIFFIS: So you weren't an
9 ANC member?

10 MS. THOMPSON: Not at that time.

11 CHAIRPERSON GRIFFIS: Okay. I'm sure Mr.
12 Bowser will provide a copy for you.

13 MS. THOMPSON: I'd appreciate it.

14 CHAIRPERSON GRIFFIS: Okay. Do you have
15 any additional testimony specifically on the
16 application that's before us?

17 MS. THOMPSON: The letter that was written
18 that the Commissioners voted 11 to 0, that was done at
19 that meeting of the whole. It was the snowy night. I
20 didn't go to it because I was afraid I'd fall. And no
21 one that I know of attended the meeting and that is
22 when the Commissioners passed the ANC approval of this
23 application.

24 And one other thing I would like to ask
25 about, take my glasses off so I can read, in this new

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1 application 17282, it appears that it's very similar,
2 if not almost exactly the same as the April 7, 1999
3 where they wanted to enlarge the filling station and
4 establish a food store, convenience store with a deli
5 counter was contemplated.

6 And that was also under the 726.12302.

7 CHAIRPERSON GRIFFIS: Why is that a
8 concern?

9 MS. THOMPSON: Well, I was just wondering
10 why they asked for the same identical thing again when
11 they already had it in 1999.

12 CHAIRPERSON GRIFFIS: That's a good point.
13 They'd probably bring it up and agree with you, but
14 then they'd blame it on us for having these crazy,
15 cumbersome regulations that seem to require everyone
16 to show up before us.

17 But I think they're properly before us in
18 terms of the -- even though it may be similar or
19 identical, it's something that they had before, it may
20 have expired or, in fact, this is an addition to, it's
21 an enlargement of an existing condition which means
22 they have to come back here. Every time a gas
23 station, not every gas station, but in certain zoned
24 districts, wants to add something else on, they're
25 going to come back for special exception.

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1 MS. THOMPSON: Now this is strictly for
2 the additional, the new addition where they have the
3 two stores going in?

4 CHAIRPERSON GRIFFIS: And the gas station.

5 MS. THOMPSON: But the gas station no
6 larger now than it was in the 1999 request.

7 CHAIRPERSON GRIFFIS: Okay.

8 VICE CHAIR MILLER: I don't want to
9 belabor this too much, but I'm just wondering, did you
10 all have an opportunity to give input to the ANC.

11 MS. THOMPSON: No.

12 MR. POLES: No.

13 VICE CHAIR MILLER: You didn't get any
14 notice of an opportunity?

15 MR. POLES: No ma'am.

16 MR. BLAKE: Cut and dry.

17 MEMBER ETHERLY: Mr. Chair, if I may, just
18 very briefly because I think it was Mr. Blake who hit
19 it right on the head that we all have indeed been here
20 for a very long time today, waiting for the
21 opportunity to share comments and I appreciate your
22 comments as I'm sure my colleagues do.

23 What I wanted to explore just real
24 briefly, but I think it's a very important point
25 because you do raise it and that is concerns about

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1 some of the ancillary impacts that expansion of the
2 gas station function and addition of a fast food
3 component could bring and I think it's very important
4 under the test to talk about that.

5 But what I want to clarify is in my mind,
6 there are two ways this could work. I think my
7 colleagues and I, we all deal with the realities of
8 living in an urban environment. I myself am a
9 resident in Ward 6 on Capitol Hill and I deal as well
10 with the proximity of convenience stores, small corner
11 stores to my residence and the activity that they
12 bring along, so there's clearly, I think, a
13 sensitivity that --

14 MR. POLES: You have better police
15 protection, I might also pursue. I'm up there on the
16 Hill all the time and I know what's going on up there.

17 MEMBER ETHERLY: I won't belabor the point
18 too far, I'll take issue in that regard.

19 MR. POLES: That's okay.

20 MEMBER ETHERLY: I'm on Capitol Hill
21 extended. That's what the real estate agents will
22 refer to it as, but I think you and I can understand
23 what that would mean in terms of actual parlance.

24 It might still take a little longer to get
25 police coverage to my residence. I'll bet you on that

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1 too, but anyway, that's beside the point.

2 What I want to explore from zoning
3 standpoint is with respect to the current operations
4 there, because understand there is a commercial zone
5 that as residential homeowners you are butting up
6 against and we, as Board Members, hear that tension
7 all the time. And it's a valid concern for those of
8 us who are close to those commercial corridors and
9 those commercial areas. We have to deal most
10 difficultly with the impacts of that commercial
11 activity.

12 As you noted, Mr. Blake, you're right
13 there on that boundary, so you're getting the benefits
14 of that light, you're getting the benefit of the
15 noise, all of that traffic that's coming off Rhode
16 Island Avenue in terms of the sights and sounds. But
17 what I'm interested -- part of this is is there a
18 sense on your part that with the addition of some of
19 the items that are discussed in the agreement and your
20 feedback as well, Ms. Thompson, is appreciated. With
21 the addition of some of those items that are discussed
22 in the agreement, the lighting and of course, we can
23 talk about that in terms of how that lighting is going
24 to impact surrounding residences, is it your sense
25 that perhaps, possibly the additional presence or the

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1 expanded presence could, in a way, serve as a
2 deterrent to some of the effects you're talking about?

3 And it's a complicated question, so I
4 don't want us to get too deeply into it, but I just
5 wanted to explore that a little bit. Part of my
6 concern is there's -- clearly it's appropriate in its
7 matter of right to have some commercial activity on
8 this location because it's already zoned in that
9 regard. With the activity that's already underway,
10 part of what I'm hearing from you is your concern that
11 if you allow it to grow or expand, you're going to
12 attract more trouble, okay?

13 So maybe part of what I'm asking you is do
14 you think there's trouble there already because of the
15 operation of the gas station now and do you think
16 there's going to be more trouble because of the
17 addition of a fast food component and a larger gas
18 station.

19 Mr. Blake?

20 MR. BLAKE: Let me answer that. You know,
21 any time you have something new --

22 MEMBER ETHERLY: It's going to attract
23 attention.

24 MR. BLAKE: But even though it is a
25 commercial area, we have a crowd out there anyway.

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1 See, like I said, you got Mount Rainier right here at
2 the corner and it's like maybe half a block and you
3 have Mount Rainier. You have Bass Liquor Store. You
4 got Party Time Liquor Store, which they're trying to
5 shorten their hours to 12 o'clock.

6 And this quote unquote cross border
7 initiative, we've been working on this thing for
8 almost a year and a half, but from what I can
9 understand there's a hold up in the U.S. Marshall's
10 Office on the paperwork. But everybody wants to jump
11 on the bandwagon now because it's cross border. But
12 we knew what it was because we're right there on the
13 block. We had a kid get killed right next door to my
14 house. Another one got shot on the corner. They drug
15 him all the way off the block and put him in another
16 lady's yard across the street. See, we've had it with
17 this drug thing. But a lot of people that live over
18 in northeast, they don't get that. They don't get
19 that.

20 Talking about Orange Hats, well, the
21 Orange Hats ran them out of their neighborhood to our
22 neighborhood. And I'm saying okay, you all are a
23 block away. You only come up here and ask us to walk
24 with you. You did everything down there to ship them
25 up here.

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1 Okay, we got the fight and we did a pretty
2 good job. We did a pretty good job with them.

3 MR. JONES: Can I give you an example of
4 what's getting ready to happen? Are you familiar with
5 18th and Rhode Island Avenue, Northeast?

6 MEMBER ETHERLY: Somewhat, sir.

7 MR. JONES: With 7-11 and where the Shell
8 is?

9 MEMBER ETHERLY: Yes.

10 MR. JONES: You got all that activity
11 there, right? From that point all the way down to our
12 end, we're going to get that crowd because this is
13 something new and we're going to get the crowd down
14 here in Mount Rainier too, like you said, from the
15 liquor stores because it's something new.

16 MR. BLAKE: I'm going to call this quits
17 in a minute. In Mount Rainier, I don't know if you
18 know from 34th Street, they're starting the art
19 galleries down there and they're going to have lofts
20 over top. That's going to bring in new people. What
21 you have in that area, they're going to eventually
22 cross the line.

23 The 7-11 he's telling you about is
24 actually at 20th and Rhode Island Avenue. A friend of
25 mine son took two in the head right there in the 7-11.

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1 They got a substation. I'm telling you a substation
2 is not the answer. See, took two in the head right at
3 the door.

4 CHAIRPERSON GRIFFIS: What's the answer?

5 MR. BLAKE: That's a good question.

6 CHAIRPERSON GRIFFIS: Is an empty lot,
7 undeveloped on the corner the answer?

8 MR. BLAKE: No. We're not worried about
9 the empty lot. I know something will come to the lot,
10 but we need something --

11 CHAIRPERSON GRIFFIS: Here's what I don't
12 want to do. I don't want to raise expectations of you
13 folks that are here with a huge issue. And as Mr.
14 Etherly said, he's well aware of it. I've lived in a
15 neighborhood for 13 years where we've dealt with it on
16 the corners and the corner stores. We all know how it
17 is, but I tell you, oftentimes communities that get
18 together, they organize, the neighbors take care of
19 neighbors, that's the important thing. But then to
20 galvanize a round of folks on one thing as if this is
21 either going create or this will impact or even
22 escalate the problem, I think is not a fair
23 assessment.

24 I don't see, so far, how providing
25 something that would not be an empty lot but something

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1 that would be a lit, and as it's being proposed,
2 cleaned every day, monitored, not allowing loitering,
3 as creating a detriment.

4 MR. BLAKE: I didn't mean to cut you off.
5 I have no problem with that, but you don't live over
6 there.

7 CHAIRPERSON GRIFFIS: I know.

8 MR. BLAKE: I've been there 48 years.

9 CHAIRPERSON GRIFFIS: But unfortunately,
10 I'm being asked to decide in your neighborhood.

11 MR. BLAKE: I don't have a problem with
12 it. I'll tell you, I didn't have a problem with the
13 filling station, but I'm saying, whatever else come,
14 we have to deal with it. See, nobody else in here has
15 to deal with it but us and I'm not mad because you all
16 got to make a decision. That's your job.

17 MR. JONES: Can I ask a question? You
18 were out there at the site, right?

19 CHAIRPERSON GRIFFIS: Mr. McGettigan?

20 MR. JONES: You were out at the site,
21 right?

22 MR. McGETTIGAN: No, I didn't make it to
23 the site. Our neighborhood planner did. I was going
24 to go on the day that we got this snowstorm, so I had
25 to cancel it and I was unable to reschedule a visit to

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1 get out there.

2 MR. JONES: So you were the only one to
3 come close to it.

4 MR. McGETTIGAN: Ms. Crane made it out
5 there, yes.

6 And I spoke with her about the site.

7 MR. JONES: Well, is it possible you can
8 go look at the site?

9 MR. McGETTIGAN: Yes.

10 MR. JONES: I'd like not to put you in
11 harm's way, but I'd like you to come out there early
12 in the morning and see all that trash that's out there
13 on Rhode Island Avenue at Sunny's Restaurant. That
14 trash is going to be at this new filling station. I'm
15 telling you. And I normally clean up Newton Street.
16 They call me the trash man around there because I'm
17 community-oriented. But right now I haven't cleaned
18 in front of this filling station in over two months
19 and you should see the trash that's accumulated there.
20 That's why those rats are attracted to that trash and
21 that's why we've got them in the community.

22 If you don't clean it up, we have the
23 rats.

24 MR. McGETTIGAN: But this way there's a
25 commitment on the owner's behalf to keep the site

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1 clean and you know, perhaps you can recommend to the
2 Board that they put a time limit on it and say three
3 or five years to come back to the Board and get this
4 renewed and then you can tell them what's happened in
5 that three to five years and whether they've been
6 keeping the site clean. That might be an
7 acceptable solution.

8 CHAIRPERSON GRIFFIS: I think that brings
9 up two interesting points and that's what we need to
10 get to and that is where we have direct jurisdiction
11 and control.

12 We have jurisdiction and control when you
13 enter that property, that's where it is. Where it
14 goes off the property, for simplicity, we don't have
15 any control. So what we can control is the
16 cleanliness. We can condition that they are required
17 for -- however we want to do it -- it needs to be
18 swept in the morning, swept in the evening, trash pick
19 up three times a day, whatever it is. I'm just saying
20 hypothetically.

21 Lighting, should lighting be in the rear
22 or the alley side of that restaurant area?

23 MR. BLAKE: You got lights back -- you
24 have lights back there, but lights are not going to be
25 the answer. It's not going to be the answer, I'm

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1 telling you.

2 CHAIRPERSON GRIFFIS: Okay --

3 MR. BLAKE: The Chinese restaurant --

4 CHAIRPERSON GRIFFIS: Work with me with
5 what we can control and maybe we will make small steps
6 and get to where it will be. These are the kind of
7 things that I think are important to do that we could
8 condition in terms of anything else you can think of.
9 Obviously, a simple thing to post signs, no
10 loitering. They don't do anything, right?

11 MR. BLAKE: No.

12 CHAIRPERSON GRIFFIS: So we want to think
13 about creatively how we would work. You've got an
14 amenable owner who wants to work with the situation.
15 Think of ways that we can facilitate and conditions
16 directly related to the application in order to
17 implement strategies, as you guys might come up with.
18 Does that make sense?

19 MR. BLAKE: Part of it, part of it.

20 MR. POLES: Chair Griffis, how long will
21 the record remain open for input concerning this?
22 Does it close tonight?

23 CHAIRPERSON GRIFFIS: As we're at 7:30,
24 it's probably not necessarily going to close tonight.
25 What are you proposing to put in the record, this

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1 kind of aspect?

2 MR. POLES: Just, I guess you could say a
3 summation of -- basically a summation of what you've
4 heard from us for the record for consideration.

5 CHAIRPERSON GRIFFIS: I think that would
6 be good. What I'd like to do is ask you to go
7 further. What I'd like for you to do is put together
8 proposed conditions. That means -- a good way to look
9 at it is to look at past orders and past orders of
10 this Board is probably of critical importance and see
11 what we've done in terms of gas station or other
12 aspects.

13 Some of the ones that are proposed in the
14 previous application and I'm going to go through these
15 before we close tonight, but some of them might be
16 applicable and actually might be of interest for you
17 and support for you. Condition 10 included so the
18 exterior premises shall be cleaned daily, trash will
19 be hauled away from the property --

20 MR. POLES: Yes, we've got all of that.
21 We have all of that.

22 CHAIRPERSON GRIFFIS: If that needs to be
23 strengthened, the wording needs to be changed or
24 something else needs to be -- that's the kind of stuff
25 we can use and we can actually --

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1 MR. POLES: You would need this in the
2 turnaround of what time frame, if I may ask, so that
3 we can be timely?

4 CHAIRPERSON GRIFFIS: Unless you gentleman
5 absolutely have to roll out of here now, all we have
6 left is the closing remarks by the Applicant.

7 MR. POLES: Sure.

8 CHAIRPERSON GRIFFIS: And any sort of
9 rebuttal witnesses. If you want to sit through that,
10 then I'm going to set a schedule for decision. It's
11 going to be pretty fast. I don't think you have more
12 than a week to get this done.

13 MR. POLES: It shouldn't take us that long
14 to move on it.

15 CHAIRPERSON GRIFFIS: Good. Why don't we
16 do that then? Let's hear from the Applicant. We'll
17 have their little closings and then we'll get to
18 dinner, actually, hopefully, maybe see our families.

19 MR. POLES: All right, thank you.

20 MEMBER ETHERLY: And Mr. Chair, as the
21 witnesses are stepping away from the table, thank you
22 very much for your patience today and your time.

23 CHAIRPERSON GRIFFIS: Good, actually,
24 before you go too far, I didn't obviously allow
25 Applicant, if they had any cross examination, unless I

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1 did ask that already or forgot, but no cross? Okay.

2 Did the ANC have any cross?

3 If you want us to hear it, you've got to
4 be up here.

5 Are we going to the process, the ANC
6 process, is that what you're going to cross on? Then
7 let's let it be. There's not much I can do about
8 that. The ANC has to function as it will.

9 Are we ready? Mr. Ray, excellent.

10 MR. RAY: Mr. Chairman, and Members of the
11 Commission, I'd just like to make several
12 observations.

13 In terms of the lighting, I would just
14 remind the Commission that the lighting is actually
15 embodied and memorialized in the BZA order, so it was
16 part of the order that was issued by the BZA.

17 CHAIRPERSON GRIFFIS: The previous order?

18 MR. RAY: Yes, the lighting came about
19 because the ANC in our agreement, it was part of the
20 agreement and the BZA actually memorialized that in
21 their order.

22 CHAIRPERSON GRIFFIS: Let's go to the two
23 asterisks for clarity. Wasn't that -- as my reading
24 of that condition is for more of the total site
25 lighting. What you've now shown us on the post, on

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1 the poles, that lighting, is that correct?

2 Or are you saying that actually the canopy
3 and the downlighting of the pump stations were, in
4 fact, a requirement of the Board?

5 MR. RAY: Mr. Chairman, the lighting is
6 actually really set out in the order. So it's in the
7 BZA order and it reads as follows: the exterior
8 premises shall be fully lighted and a sufficient foot
9 cantilever to assure proper operation of the
10 electronic surveillance system, six lights -- it
11 specifically states -- six lights shall be mounted on
12 exterior surface of the buildings and additional
13 lights shall be mounted on seven poles, each
14 approximately 13 feet in height along the perimeter of
15 the property.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. RAY: That's right in the order.

18 CHAIRPERSON GRIFFIS: I didn't hear any
19 objection to that. I heard objection to the canopy
20 neon lighting and the canopy lighting of the pump
21 stations.

22 MR. RAY: Okay. In terms of the
23 suggestion that there be a time limit placed on this
24 to come back to the Commission, in terms of the gas
25 station and the mini-mart, I think we're probably okay

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1 there. But in terms of this addition, the financing
2 of this was based on that not being there. This issue
3 came up last time. When you go to borrow money, very
4 few institutions are going to lend you some money long
5 term, realizing that five years from now it may not be
6 there. So we will -- we are opposed to that because I
7 don't know if Mr. Mamo can keep his financing in place
8 for the rest of this based on a change in the
9 conditions that we have.

10 We are supportive of any additional things
11 that you want to add that will ensure the cleanliness
12 of this site. We have no objections to that.

13 I would note that it is our view that
14 rather than having a boarded-up building there, having
15 a site that's in operation with lights should improve,
16 rather than hurt this operation.

17 In terms of having a Starbucks there, Mr.
18 Mamo would be glad to have one there if he could one
19 there. Starbucks doesn't seem to be quite interested
20 in coming to that area right now.

21 CHAIRPERSON GRIFFIS: How about a local
22 coffee owner? I don't like Starbucks.

23 MR. RAY: He's willing to consider that as
24 well, but I also want to say because it's on the
25 record, the idea that this place will increase

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1 prostitution, my law office for many years was at 15
2 and M Street and there's a Starbucks at K and 15th and
3 I think all of us who watch the Metropolitan Police
4 Department realize that's one of the largest
5 prostitution areas in Washington, D.C., right at 15th
6 and K, right near where that Starbucks is. In the
7 summer time, you come out around 12 o'clock at night
8 from your office there and so -- I don't think that
9 this station is going to attract any more prostitution
10 than a Starbucks would.

11 Mr. Chairman and Members of the
12 Commission, we believe we have met our burden of proof
13 here. We think that this is an improvement to the
14 community. We've worked with the ANC. We've worked
15 with the community there. In fact, we had three
16 meetings. We had the Single Member District -- he had
17 a meeting. We were there. I note this gentleman here
18 was there. The ANC had a meeting and I know Ms.
19 Margaret Thompson was there and we also had a
20 Coalition of Concerned Citizens. We had a community
21 meeting. This gentleman was there as well for that.

22 So the community has had a very good
23 airing of this and there were large turnouts at all of
24 these meetings that we were at.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Good, thank you very
2 much.

3 Ms. Miller?

4 VICE CHAIR MILLER: A few questions. With
5 respect to the time restriction that Office of
6 Planning was suggesting and you were responding to, I
7 understand there's something about you know you
8 wouldn't want to have a restriction on how long the
9 building could be there so that it could be subject to
10 being torn down.

11 Do you have a problem with a restriction
12 that goes to the use of that building to see how well
13 that's working? For instance, if it's being used for
14 fast food and then there seem to be problems with that
15 use.

16 MR. RAY: I'll let Mr. Mamo speak to that.
17 I would just say initially that when you seek
18 financing, you have to indicate what you're going to
19 have there and there's no secret that that area is not
20 going to attract a Starbucks or a white cloth type sit
21 down restaurant. We approach this by saying we'd like
22 to get something that the community would like, but if
23 we can't get that there, then we have the option of
24 having a fast food there.

25 If you're saying am I concerned that you

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1 say three years and after three years you can't have a
2 fast food there, then yes, I would have objection to
3 that because I'm not sure we could get financing folks
4 knowing that we cannot have that kind of operation
5 there because that's not an area that you're going to
6 get an downtown K Street restaurant.

7 VICE CHAIR MILLER: But the use that
8 you're asking for right now is only fast food or is it
9 fast food or something else?

10 MR. RAY: What Mr. Mamo has agreed to do
11 is to really work with the community and try to find
12 something that's acceptable to the community. I mean
13 we have no commitment from anything.

14 CHAIRPERSON GRIFFIS: I think a direct
15 answer to Ms. Miller's question, in your written
16 response you said you're coming in for fast food
17 special exception so that you can link to that, but
18 anything else in terms of the retail establishment
19 would be the matter of right in the C District that
20 it's allowed in.

21 MR. RAY: Yes.

22 CHAIRPERSON GRIFFIS: So clearly we're
23 looking at a retail and you're saying, you know, worse
24 case in terms of relief, this is what it would be.

25 MR. RAY: Yes.

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1 CHAIRPERSON GRIFFIS: Follow up?

2 VICE CHAIR MILLER: Also, there is this
3 other order that's been in effect with various
4 conditions and the Board is going to be considering
5 new conditions and I was wondering if you might take a
6 look at them and see during the next few weeks or
7 whatever period we're going to give, which ones may
8 be, aren't effective or which can be improved?

9 CHAIRPERSON GRIFFIS: Good, but we're
10 going to ask you to put it in proposed conclusions.

11 MR. RAY: Okay.

12 CHAIRPERSON GRIFFIS: I'm not sure we're
13 going to ask for full findings and conclusions of law,
14 but just proposed conditions. What did I say?
15 Proposed conditions.

16 MR. RAY: Mr. Chairman, are you saying --
17 we had anticipated since you offered the various
18 witnesses to submit to you any other conditions they
19 wanted that we would then get a chance to take a look
20 at those?

21 CHAIRPERSON GRIFFIS: Absolutely and this
22 whole response and I'll get to it all quickly, but
23 what we're doing is inviting this -- just the written
24 testimony that was in and any sort of proposed
25 conditions they thought might mitigate their concerns.

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1 Those would be submitted to you. You're going to get
2 an ample chance to respond to those and also to
3 propose any conditions that you might think
4 applicable.

5 Is there any other questions for the
6 Applicant?

7 VICE CHAIR MILLER: Not for the Applicant.

8 I wanted to make a general statement to the neighbors
9 about -- because I think that the neighbors who are
10 here aren't that familiar with our process and the
11 more familiar you are, the better.

12 I would just like to say that Office of
13 Planning does a very good job of laying out the
14 context and what issues we need to be considering and
15 you need to be addressing so I would suggest if you
16 don't have a copy of the Office of Planning's report,
17 that you get one either from Office of Planning or
18 Office of Zoning next door.

19 And the other thing I want to say is there
20 are a lot of things that aren't within our
21 jurisdiction. We can't do that much about
22 prostitution or whatever, but we can do conditions
23 that affect lighting and trash and things like that
24 and they do have teeth, if they're violated, penalties
25 can be assessed. They can be enforced.

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1 CHAIRPERSON GRIFFIS: Their Certificate of
2 Occupancy could be revoked in the worse case and
3 they'd be shut down if they weren't compliant with our
4 orders and conditions in that order.

5 Excellently said and I think it's very
6 important to pick up before you leave today a copy.

7 The office is closed next door, but I'm
8 certain we can dig up a copy before you go.

9 Any other questions? Very well. Mr. Ray,
10 thank you very much. Before you go, let me run
11 through it because we're asking you and everyone to
12 put in proposed conditions.

13 I want to run down the last conditions in
14 Application 16439 and I want to give you some
15 direction on that.

16 First of all, condition 1, the Applicant
17 shall comply with the agreement. We have found in
18 this Board that, in fact, that's not an enforceable
19 condition for us. As you have in a signed and a
20 stand-alone agreement, I think it does just that,
21 stand on its own. In consultation with the Police
22 Department, suitable space shall be made available.
23 We have obviously information on that and what the
24 viability is. Certainly, we would support and applaud
25 if you could do that, but I don't believe that that

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1 would rise to a condition in our order.

2 The other noted concerns in terms of
3 conditions, just to give you an understanding of where
4 we are, I think it's an excellent direction to go that
5 you would give preference to neighborhood or
6 surrounding persons for the positions and employment.

7 I'm not sure that's in the jurisdiction of this Board
8 to actually go measure and enforce. And I'm not sure
9 that that actually has -- unless you have an
10 established program. I mean it's again an applaudable
11 situation, but I'm not sure it rises to a condition.

12 Most concern of mind is condition 9 and
13 that goes to the establishment will comply with all
14 environmental protection requirements of the federal
15 and Department Counsel. That's absolutely something
16 you should do and it absolutely has nothing to do with
17 our jurisdiction.

18 We can't enforce it. We can't condition
19 it. In fact, if it was to be brought, as we have, in
20 fact, and you wouldn't believe, but we were asked to
21 remove a Certificate of Occupancy for one of the
22 largest institutions in this city based on the fact
23 that they had not complied with the EPA. We were to
24 enforce a federal law, obviously, it steps beyond our
25 bounds and jurisdiction and runs into a little bit of

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1 problem.

2 Lastly, condition 11, the owner-operator
3 of the establishment shall provide financial
4 contributions in support of four to six community
5 activities. I think that's also an applaudable effort
6 and a direction that we would support, not something
7 that rises to a condition that this Board would, in
8 fact, look to measure, control or in any way
9 implement.

10 That being said, I think that's fair
11 enough direction in terms of that. We do have
12 obviously, the concerns of the neighbors. I think we
13 ought to be really creative and put it into mind. We
14 see a lot of these in gas stations, corner stores,
15 retail establishments, new residential buildings,
16 issues of similar concern. They're not identical.
17 It's not the exact same spot, but issues of similar
18 concern. We all put our heads together and get
19 something that works, maybe we'll copyright it and all
20 get into the Hall of Fame.

21 But in all seriousness, let's work
22 together and see if we can't mitigate at least the
23 current situation and have this as the step to the
24 future of real change that will happen on that corner
25 and up the block to all the folks that are there now

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1 and for the new folks that are going to be moving in.

2 Okay, let's set schedule. I think we can
3 get this done on the 1st, if I'm not mistaken, of
4 March.

5 And that would back us off -- we need two
6 weeks. Do we have that much time for submission, Ms.
7 Bailey, and a response?

8 MS. BAILEY: We can have the submissions
9 next week and the following week, the responses, if
10 that's appropriate, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Okay. And I
12 believe, Mr. Poles, you indicated that you could do
13 this in a week, so this could be in by next Wednesday,
14 3 o'clock, your submission?

15 MR. POLES: Yes, no problem. No problem
16 at all. Where do I bring them.

17 CHAIRPERSON GRIFFIS: Good, we're going to
18 give that to you. It all goes to the Office of Zoning
19 and it's also served on the Applicant. So before you
20 leave tonight, you're going to talk to the Applicant,
21 Mr. Ray and ask them how they want to be served. I'm
22 sure they're going to give you a fax number which you
23 can get it to or maybe they'll come by and pick it up.

24 Okay, so your submissions is on what did
25 we say, 16th, 3 o'clock?

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1 MS. BAILEY: The submissions, February
2 15th from Mr. Poles and then the Applicant's response
3 will be February 22nd.

4 CHAIRPERSON GRIFFIS: Good, Mr. Ray, any
5 difficulty in meeting those? Excellent. Then we're
6 all set.

7 Of course on the first of March that will
8 be our public meeting. We'll pick this up. There's
9 no additional time for testimony. It's the time where
10 the Board has the entire record closed and we will
11 deliberate and make a decision from the dais on this
12 application.

13 Excellent.

14 MS. BAILEY: Mr. Chairman, can I ask a
15 quick question?

16 CHAIRPERSON GRIFFIS: Of course.

17 MS. BAILEY: Did the Board amend the
18 application to include relief from Section 706, I
19 think I understand the discussion to say that the
20 gasoline service station was not being enlarged, but
21 was approved previously, so is the application being
22 amended to include relief from Section 706?

23 CHAIRPERSON GRIFFIS: Mr. Ray? It is not.

24 MS. BAILEY: Thank you.

25 VICE CHAIR MILLER: Mr. Chairman, I would

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1 want to make one more comment about the conditions.

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE CHAIR MILLER: It might be obvious,
4 but just in case, we're looking for not only proposed
5 conditions, but the rationale for them, what they're
6 supposed to mitigate. Okay, thank you.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you all very much. Thank you extremely much for your
9 patience and sitting around. I can't really talk to
10 you while I'm sitting up here, but nonetheless it's
11 already done.

12 With that, let's adjourn the afternoon
13 session, Ms. Bailey, unless there's anything further
14 for us? Excellent. We adjourned.

15 (Whereupon, at 7:49 p.m., the public
16 hearing was concluded.)

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