

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,  
NOVEMBER 29, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:29 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	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN

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TRAVIS PARKER  
ARTHUR JACKSON  
MAXINE BROWN-ROBERTS

This transcript constitutes the minutes  
from the Public Hearing held on November 29, 2005.

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

10:29 a.m.

CHAIRPERSON GRIFFIS: Let me call to order our 29 November 2005 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. Again, I am Geoff Griffis, Chairperson. Joining me is the Vice Chair, Ms. Miller, and our esteemed colleague and Board Member, Mr. Etherly. Representing the National Capital Planning Commission with us this morning, we are very happy to see, Mr. Mann and representing the Zoning Commission with us is Mr. Jeffries. No less happy are we to see him.

UNIDENTIFIED SPEAKER: Is he also esteemed?

CHAIRPERSON GRIFFIS: He can be esteemed also for the morning. Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. You can pick it up and see where we are going to get very quickly, and I appreciate everyone's patience with the Board. We have an awful lot every Tuesday, but certainly this we did, so I am going to run through this very quickly.

First of all, I welcome everyone who has now walked into the new hearing room. We are finishing up the renovations and hopefully making it

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1 much more accommodating to the public and its use and  
2 enjoyment of our zoning approval process and other  
3 processes. That being said, it's important to note  
4 that normally we are broadcast live on the Office of  
5 Zoning's website. We have not started that up again.  
6 However, we are being recorded and we're recorded by  
7 the Court Reporter sitting to the right.

8           There are several important things  
9 attendant to that. First, I'm going to have to have  
10 everyone fill out two witness cards prior to coming  
11 forward to speak to the Board. You need to drop the  
12 witness cards to the Court Reporter. Then you can  
13 come and sit down. When you present to the Board  
14 testimony, introductions, preliminary matters,  
15 whatever it is, I'm going to ask that you state your  
16 name and address for the record.

17           You'll only need to do this once,  
18 obviously, that's so we can give you credit on the  
19 transcript, which will be created for all cases in the  
20 Board. The transcript is our official record of all  
21 our proceedings.

22           Our proceedings will be as follows for the  
23 special exception and variances this morning. First,  
24 we hear from the applicant, their case presentation.  
25 Secondly, we will hear from Government agencies

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1 reporting on the application. Third, we will hear  
2 from the Advisory Neighborhood Commission within which  
3 the property is located. Fourth, we are going to hear  
4 from persons or parties in support of an application.  
5 Fifth is going to be persons or parties in opposition  
6 to the application. And, sixth, finally, we will give  
7 an opportunity again to the applicant to present any  
8 rebuttal testimony or summarize and conclude.

9 So I will make sure that that is all  
10 followed, if you didn't catch all that as we ran  
11 through this very quickly. Cross examination of  
12 witnesses is permitted by the applicant, the ANC and  
13 any parties established in the case. We will have to  
14 establish party status in order for everyone to  
15 understand that they are a party and, therefore, they  
16 would be able to conduct cross examination.

17 There is nothing that prohibits this Board  
18 from limiting the time, the substance or the direction  
19 of cross examination and I will get into it as needed,  
20 in terms of giving direction as how we should proceed  
21 or limit the scope of cross examination. All this  
22 will be very case-specific, so I will hurry through  
23 the general aspects of all of this.

24 However, what is critical to all cases is  
25 this. You should know full well that at the end of a

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1 hearing on a case, the record will be closed. It's  
2 important to understand that, because the Board in its  
3 deliberation, you folks saw briefly this morning, only  
4 deliberates on that record that is created before us  
5 today in this hearing room or by written submission.

6 So if you think that there is something  
7 critical for the Board's deliberation, it should be in  
8 the record. It should either be given to us orally in  
9 testimony or it should be put into writing. Because  
10 when the hearing ends, as I said, the record will be  
11 closed, except for any material that we will request.  
12 And we are very specific on what is requested and when  
13 it is to be submitted into the Office of Zoning. So  
14 there won't be any confusion. But we do want  
15 everything in today, if we can.

16 The Sunshine Act requires that this Board  
17 conduct all its hearings in the open and before the  
18 public. This Board does enter into Executive Session,  
19 both during and after hearings on cases. Our  
20 Executive Sessions are used for deliberating on cases,  
21 but mostly just to reviewing the facts and the record  
22 on a case. Our Executive Sessions are in accordance  
23 with the Sunshine Act. They are also in accordance  
24 with our rules, regulations and procedures.

25 Let me state again and I say turn off all

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1 the noise making devices, beepers and cell phones, so  
2 that we don't disrupt our transmission or the  
3 attention of those that are giving testimony before  
4 the Board. And, please, also note that as I have  
5 stated, the record before us is the only and sole  
6 information that we will deliberate on. So we ask  
7 that people present today not engage Board Members in  
8 conversation outside of the hearing room or in the  
9 situation that we have here, so that we don't give the  
10 appearance of gaining information outside of the  
11 record, which, of course, would not be appropriate or  
12 allowed.

13 That being said, let me say a very good  
14 morning again to Ms. Bailey, on my far left, and Mr.  
15 Moy, will be on my right, with the Office of Zoning.  
16 I'm going to ask, at this time, that everyone who is  
17 wishing to testify if you would, please, stand and  
18 give your attention to Ms. Bailey and she is going to  
19 swear you in.

20 MS. BAILEY: Please, raise your right  
21 hand.

22 (Whereupon, the witnesses were sworn.)

23 CHAIRPERSON GRIFFIS: Excellent. Thank  
24 you all very much. With that, I'll also say a very  
25 good morning to Ms. Rose with the Office of Zoning, on

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1 my left, and also the Attorney General with us today  
2 is Ms. Glazer.

3 Ms. Bailey, I'm going to ask if you're  
4 aware of any preliminary matters for the Board's  
5 attention, you could let us know. Preliminary matters  
6 are those which relate to whether a case will or  
7 should be heard today, requests for postponements,  
8 continuance or withdrawals, whether proper and  
9 adequate notice has been provided for this case.  
10 Basically, if you are not ready to go forward with a  
11 case or you believe that a case should not be heard  
12 today, I'm going to ask for those people here today  
13 present if you would come forward and have a seat at  
14 the table in front of us, as an indication of having  
15 a preliminary matter.

16 However, Ms. Bailey, are you aware of any  
17 preliminary matters for the Board's attention?

18 MS. BAILEY: Mr. Chairman and Members of  
19 the Board, good morning. There is, Mr. Chairman, and  
20 it has to do with the first case, but it is case-  
21 specific. It concerns the affidavit of posting and if  
22 you would prefer, I will take that up at the time the  
23 case is called.

24 CHAIRPERSON GRIFFIS: Excellent. Let's do  
25 that in the case. Not seeing any other indication, is

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1 anyone here aware of any preliminary matters for the  
2 Board's attention, at this time? You can come  
3 forward. Not noting anyone, why don't we call the  
4 first case of the morning?

5 MS. BAILEY: Application No. 17396 of Jeff  
6 Howard and Nancy Nickel, pursuant to 11 DCMR 3104.1,  
7 for a special exception to allow a two-story rear  
8 addition to a single-family detached dwelling under  
9 section 223, not meeting the side yard requirements,  
10 that's section 405 of the regulations. The property  
11 is zoned R-1-B and it's located at 5906 32<sup>nd</sup> Street,  
12 N.W., also known as Square 2021, Lot 13.

13 The affidavit of posting in the case to  
14 the property was posted for nine days. As you know,  
15 Mr. Chairman, 15 days are required. So it was not  
16 posted for the requisite number of days and that's the  
17 preliminary matter associated with the application.

18 CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you very much, Ms. Bailey. A very good morning to  
20 you. I'm just going to have you introduce yourself  
21 for the record.

22 MR. HOWARD: Jeff Howard, 5906 32<sup>nd</sup>  
23 Street, owner of the property.

24 MS. NICKEL: Nancy Nickel, 5906 32<sup>nd</sup>  
25 Street, N.W., co-owner of the property.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank  
2 you both much. Who is responsible for the posting and  
3 why wasn't it done in time?

4 MR. HOWARD: This is my mistake. I guess,  
5 I would call attention to the due diligence we gave to  
6 collecting signatures from everybody within 200 -- the  
7 basic radius.

8 CHAIRPERSON GRIFFIS: You weren't aware?

9 MR. HOWARD: Basically, the situation was  
10 we had a six month delay between when we were up in  
11 front of the ANC and when we were able to appear in  
12 front of you and just in the time lapse, it's my  
13 memory that I didn't.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. HOWARD: I thought we would be mailed  
16 this.

17 CHAIRPERSON GRIFFIS: And you indicated  
18 that you did, of course, go to 3/4G ANC. Is that  
19 correct?

20 MR. HOWARD: Yes, we got --

21 CHAIRPERSON GRIFFIS: And they noticed  
22 publicly and that was in a September meeting. You say  
23 you have the address, the signatures of the  
24 surrounding area. And there is nothing in the record  
25 that shows that the mailing was not done properly. Is

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1 that correct? Ms. Bailey, are you aware of that also?

2 MS. BAILEY: That the mailing was not done  
3 properly, Mr. Chairman?

4 CHAIRPERSON GRIFFIS: There's nothing that  
5 shows that the mailing was not done.

6 MS. BAILEY: No, sir. No, sir.

7 CHAIRPERSON GRIFFIS: Or rather, the  
8 mailing was done correctly.

9 MS. BAILEY: It was, as far as I know.

10 CHAIRPERSON GRIFFIS: Excellent. Indeed.  
11 Okay. Anything else on that then?

12 MR. HOWARD: Well, I think the only thing  
13 that we would add is that the only reason we couldn't  
14 get every signature within our 200 foot radius was so  
15 many of the properties were for sale, that certain  
16 people were not available to sign any more, but we did  
17 succeed in getting --

18 CHAIRPERSON GRIFFIS: So it was a good  
19 time or a bad time for the neighborhood. Well, we  
20 don't want to get into that. Okay. There it is.

21 MR. HOWARD: They will sign for you all,  
22 because people are going to be gone, down here to do  
23 what we want to.

24 CHAIRPERSON GRIFFIS: Well, let's not  
25 start off with that. However, let's hear from Board

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1 Members, is there any concern in proceeding with this  
2 today? I think it's been amply advertised. This is  
3 a 223. It's a special exception, although we had nine  
4 days not the full 15. Is there any objection to  
5 continuing with this case?

6 VICE CHAIR MILLER: No objection. I think  
7 there is evidence in the record that there was notice  
8 to the community by the ANC as well and by petition  
9 and it was posted at least for nine days. And there  
10 has been no opposition that's come forward.

11 CHAIRPERSON GRIFFIS: Okay. Very well.  
12 Then let's waive our timeliness posting rules on this  
13 and the consensus of the Board and let's move ahead  
14 into this case. I'm going to turn it over to you just  
15 for brief opening remarks. This, as I have indicated,  
16 is a 223 special exception. There is a very clear and  
17 direct correlation of what you need to present and how  
18 we would proceed with this, so I can get you through  
19 it very quickly.

20 I do want to note that, of course, I'm not  
21 so sure that the for sale buildings on your block mean  
22 that there are special exception or variances coming  
23 to the Board. From the aerial, it looks like these  
24 are substantial houses. But let me turn it over to  
25 you for your opening remarks on this specific case.

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1 MR. HOWARD: Well, we are one of three  
2 carpenter built clapboard farmhouses and there are  
3 four squares on the block, and so we were actually  
4 built in the 1920s and the buildings were built less  
5 than 8 feet apart at the time. The back of our house,  
6 as the other two, has a concrete enclosed garage. In  
7 our case, it has now been enclosed and is a  
8 residential or was a residential apartment. We use it  
9 for storage.

10 Our intent is to use that concrete garage  
11 footing to extend our kitchen out the back of the  
12 house. And so we are going over the original footings  
13 and our only issue is in so doing we're extending the  
14 line of the house along the existing plain on the  
15 north facade.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. HOWARD: What we intend to do is go  
18 essentially 12 feet further west on the first floor  
19 and 9 feet further west on the second floor.

20 CHAIRPERSON GRIFFIS: Good. I think we  
21 get what you are proposing to do. Why don't you tell  
22 me why, especially in your opening statement, you said  
23 that these were built a long time ago and very close.  
24 Is there any evidence that you have seen or why would  
25 we come to the conclusion that the air and light

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1 available of the neighboring properties would not be  
2 unduly affected.

3 MR. HOWARD: Basically, we're maintaining  
4 the privacy of the adjoining neighbors by facing all  
5 of our window to the west, which is the open part of  
6 our deep lot/yard towards the alley. We are feeling  
7 we are not compromising the available light at all to  
8 the south neighbor, because we are holding our  
9 addition back from them and, in fact, may be improving  
10 the situation, because we have a deeply wooded lot and  
11 we are removing two 12 inch caliper trees that  
12 presently shade in the adjoining yard in order to  
13 build the lot, build the addition.

14 CHAIRPERSON GRIFFIS: Okay. But so if I  
15 understand your testimony, your submission, you  
16 haven't seen anything that has come to you as evidence  
17 that this would in its siting or its mass impair the  
18 light and air to the adjacent properties. You're  
19 saying that there is wooded, but they are deep rear  
20 yards, 70 feet or so.

21 MR. HOWARD: Yes.

22 CHAIRPERSON GRIFFIS: Right. So that the  
23 air is able to circulate in the back portion of that.  
24 This would not impact the air and light.

25 MR. HOWARD: There would be no constraint

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1       whatsoever.

2                   CHAIRPERSON GRIFFIS:   Okay.  And you have  
3       skipped up to the next one, which is excellent, and  
4       it's fair persuasive in my mind looking at the  
5       submission, the privacy, use and enjoyment of  
6       neighboring properties wouldn't be unduly compromised.  
7       You're saying the orientation of the windows, which I  
8       thought was well said by you today and also in your  
9       application.  And is it true, it's my understanding,  
10      that the orientation is for the morning sun into that  
11      area also?

12                  MR. HOWARD:  It's for the west sun.

13                  CHAIRPERSON GRIFFIS:  Okay.

14                  MR. HOWARD:  We face basically the sunset.

15                  CHAIRPERSON GRIFFIS:  Right.

16                  MR. HOWARD:  So we have the back of the  
17      house to face the alley, but the sunset.

18                  CHAIRPERSON GRIFFIS:  Fascinating.  Okay.  
19      And you have indicated, and am I correct in this  
20      understanding, in your application that this addition  
21      when viewed from the public way would not go against  
22      the character or visually intrude on the neighborhood?

23                  MR. HOWARD:  Essentially, no one from the  
24      front of the house would be able to see the addition.

25                  CHAIRPERSON GRIFFIS:  Yes.

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1 MR. HOWARD: It's only visible from the  
2 back yard and we're the closest house. Once again,  
3 all deeply wooded, deep lots. It's probably 150 feet  
4 away.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. HOWARD: So I don't think anybody will  
7 be unduly compromised.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. HOWARD: The intent is to be  
10 contextual with the house.

11 CHAIRPERSON GRIFFIS: Okay. That's  
12 somewhat of a contemporary design, is it not?

13 MR. HOWARD: It's somewhat of a  
14 contemporary design, but the spirit of the windows or  
15 whatever is --

16 CHAIRPERSON GRIFFIS: Okay. Don't worry,  
17 we're not a design review board. Wait a minute, we do  
18 have the jurisdiction.

19 MR. HOWARD: It's a handsome design.

20 CHAIRPERSON GRIFFIS: Under the  
21 regulations. What color is this going to be? Okay.  
22 That being said though, my understanding was you said  
23 you were using the existing foundation, a footprint of  
24 the building. Is that correct? So I'm looking at,  
25 you know, whether the massing of this or the addition

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1 would be in character. You're saying that well, at  
2 the beginning, it's actually starting where the  
3 building already was and originally put. Is that  
4 correct?

5 MR. HOWARD: Yes. I mean, we are  
6 operating on a limited budget.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. HOWARD: So the point was to take the  
9 concrete footing of the garage that is basing on by 12  
10 feet and come straight up from that. So we're going  
11 to draw the poster to and enclose the gardening shed  
12 at ground level and then come up from the existing  
13 footing.

14 CHAIRPERSON GRIFFIS: Understood.  
15 Anything else you would like to tell us about this?

16 MR. HOWARD: I think the package speaks  
17 for itself.

18 CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you very much. Any questions from the Board? Any  
20 additional questions, clarifications? Very well.  
21 Let's move ahead to the Office of Planning. Mr.  
22 Parker?

23 MR. PARKER: Good morning to you.

24 CHAIRPERSON GRIFFIS: Actually before  
25 that, I just have to say do you have the Office of

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1 Planning's report, the analysis?

2 MR. HOWARD: No.

3 CHAIRPERSON GRIFFIS: You should get it.  
4 It has a stunning aerial photograph of your house.  
5 Don't leave without it. Okay. Let's go.

6 MR. PARKER: Good morning, Mr. Chairman,  
7 Members of the Board. My name is Travis Parker with  
8 the Office of Planning. As our report states, we have  
9 no reason to believe that the light or air of  
10 neighboring properties will be unduly affected by this  
11 application. The windows are facing to the west and,  
12 therefore, there should be no affect on the privacy or  
13 use of the neighboring properties nor will this  
14 addition be visible from this street in front.

15 For these reasons, we would recommend  
16 approval of section 223. I will be happy to answer  
17 any questions.

18 CHAIRPERSON GRIFFIS: Excellent. Is there  
19 any questions from the Board? Does the applicant have  
20 any cross examination of the Office of Planning? Any  
21 questions of them?

22 MR. HOWARD: We're good with their  
23 testimony.

24 CHAIRPERSON GRIFFIS: Indeed. I thought  
25 you might be. Very well. Thank you very much. And

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1 it is, it's an excellent analysis brief, but that's  
2 appropriate for the 223. And let's move ahead then.  
3 I don't have any other attendant Government agency  
4 reports to this application, unless the applicant or  
5 Board Members are aware, but we can move ahead to the  
6 ANC.

7 Is the ANC represented today, ANC-3/4G?  
8 Not noting any representatives of the ANC, it is  
9 Exhibit No. 20. They had been recommending approval.  
10 I'll allow the applicant to make note of that, if need  
11 be. Is there any additional information you want to  
12 provide in regard to the ANC?

13 MR. HOWARD: Just that it was unanimous  
14 approval to proceed.

15 CHAIRPERSON GRIFFIS: Indeed. Board  
16 Members, any other comments, questions on that? Not  
17 noting any others then, I would, obviously, take that  
18 into the record. It does meet the requirements. It  
19 will be given great weight as its notice and  
20 timeliness into the Board and we will take note of  
21 that in the deliberation. I don't have any other  
22 submissions attendant to that.

23 You have mentioned and we do have in the  
24 exhibits the petition of the adjoining neighbors that  
25 have signed it. Obviously, or one would assume, and

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1 correct me if I'm wrong, you have walked through the  
2 plans and shown them all what you are proposing. Is  
3 that correct?

4 MR. HOWARD: We walked them through the  
5 plans and for anybody who wasn't familiar with us in  
6 terms of if they weren't an immediate neighbor, we  
7 would go to the back of the house and point out where  
8 our house was, so they could see what building we were  
9 talking about, if they, in fact, could see it.

10 CHAIRPERSON GRIFFIS: Excellent. Good.  
11 That's good to do. Therefore, let's move ahead to  
12 anyone here present for Application 17396 to provide  
13 testimony in support or in opposition? Very well.  
14 Not noting anyone here present to provide testimony in  
15 support or in opposition, we can move ahead to the  
16 applicant's closing remarks, if you have any.

17 MR. HOWARD: None at this time.

18 CHAIRPERSON GRIFFIS: Very well. I think  
19 the record is full on this and I think there's no  
20 reason to wait and I would move approval of  
21 Application 17396 of Jeff Howard and Nancy Nickel.  
22 This is according to the 223 special exception for  
23 additions to single-family -- for this specific  
24 single-family detached rear dwelling at premises 5906  
25 32<sup>nd</sup> Street, N.W., and would ask for a second.

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1 VICE CHAIR MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you very much,  
3 Ms. Miller. I think this is again another good  
4 testimony of the importance and the well-written  
5 aspect of our regulations in the provision of section  
6 223 allowing for nonconforming structures to be added  
7 onto in terms of modernization. It has cleared the  
8 special exception test. The 223 has been met in this  
9 case. It wouldn't impair the light and air, use and  
10 enjoyment of the adjoining neighbors and it meets the  
11 overall general special exception test. We can rely  
12 on the Office of Planning's analysis and my own  
13 deliberation on that.

14 I'll open it up to any other comments from  
15 the Board. Not noting any other comments to that, we  
16 do have a motion before us that has been seconded. I  
17 would ask for all those in favor to signify by saying  
18 aye.

19 ALL: Aye.

20 CHAIRPERSON GRIFFIS: Opposed? Very well.

21 Mr. Moy?

22 MS. BAILEY: Mr. Chairman?

23 CHAIRPERSON GRIFFIS: Oh.

24 MS. BAILEY: Can I help you with that?

25 CHAIRPERSON GRIFFIS: I'm sorry, Ms.

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1 Bailey.

2 MS. BAILEY: We're confused. The Board  
3 has voted 5-0-0 to approve the application. The  
4 motion made by Mr. Griffis, seconded by Ms. Miller,  
5 Mr. Mann, Mr. Etherly and Mr. Jeffries are in support.  
6 And are we doing a summary order, Mr. Chairman?

7 CHAIRPERSON GRIFFIS: I see no reason,  
8 unless Board Members have any opposition to that, we  
9 can waive our rules and regulations and issue a  
10 summary order on this case.

11 MS. BAILEY: Thank you, sir.

12 CHAIRPERSON GRIFFIS: Very well. Thank  
13 you. Thank you all very much.

14 MR. HOWARD: Thank you all very much for  
15 your time.

16 MS. NICKEL: Thank you.

17 CHAIRPERSON GRIFFIS: I appreciate your  
18 patience with us. Let's move ahead then and call the  
19 next case in the morning.

20 MS. BAILEY: Application No. 17397 of  
21 David N. Jackson, pursuant to 11 DCMR 3103.2, for  
22 variances from the lot occupancy requirements under  
23 section 403, and nonconforming structure provisions  
24 under subsection 2001.3, to construct an addition to  
25 an existing flat. The property is located in the R-4

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1 District at 1008 South Carolina Avenue, S.E., Square  
2 970, Lot 23.

3 CHAIRPERSON GRIFFIS: Good morning.

4 MR. WALKER: Good morning.

5 MR. DAVID JACKSON: Good morning.

6 MR. WALKER: My name is Henderson Walker,  
7 7600 Georgia Avenue, Washington, D.C.

8 MR. DAVID JACKSON: My name is David  
9 Jackson. I live at 41 13<sup>th</sup> Street. I'm the owner of  
10 the property at 1008 South Carolina Avenue, S.E.

11 CHAIRPERSON GRIFFIS: Excellent. I will  
12 turn it over to you.

13 MR. WALKER: Yes, in reference to this  
14 application, this application started when Mr. Jackson  
15 renovated the property. He had a permit to renovate  
16 his house.

17 CHAIRPERSON GRIFFIS: Good.

18 MR. WALKER: During the renovation, it was  
19 noted that the rear walls of the house were very  
20 deteriorated.

21 CHAIRPERSON GRIFFIS: From?

22 MR. WALKER: From the exterior elements to  
23 the point where it was necessary to get a new permit,  
24 a supplementary permit to renew much of the exterior  
25 wall. In doing so, that sort of fractured and cracked

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1 other portions of the rear wall. Thus, then we pulled  
2 the wall to take the entire wall down to be sure that  
3 you had a good, solid base to finish the house.

4 Now, the owner elected at the time, and if  
5 you'll take notice of the diagram that I put on the  
6 wall over here, the house is on the left hand side.  
7 It has a little court area in the rear wall structure.  
8 Well, when the owner took the entire rear wall down,  
9 instead of putting it back into a doubling position,  
10 he elected to take it straight across for simplicity  
11 and also to give him some additional square footage to  
12 a very small kitchen and small bedroom.

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. WALKER: Well, in the course of this  
15 action, an inspector came past and looked at what he  
16 was doing. It was a deviation from the plans. Thus,  
17 he put a hold on the job and said let's take a look at  
18 it. In doing so, it was found that the lot occupancy  
19 wouldn't be -- would be exceeded substantially by  
20 doing this.

21 First of all, this is a nonconforming lot  
22 to begin with and when the lot occupancy is 66 percent  
23 to begin with, and if you'll take notice also of the  
24 diagram on the right hand side, you will see how the  
25 alley is going in a ring there and digs into our lot.

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1 And if you really see to the living area of this lot,  
2 it's much smaller than any other lot in our own area.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. WALKER: Most of the owners, they  
5 would be able to put an addition on their own property  
6 without having to come to the Board.

7 CHAIRPERSON GRIFFIS: Because they have  
8 the depth.

9 MR. WALKER: Yes, they have the depth.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. WALKER: We have really no depth.

12 CHAIRPERSON GRIFFIS: But you would also  
13 be here because it's nonconforming for lot width,  
14 right? It's 17 feet, which 18 is required.

15 MR. WALKER: Yes, it's existing.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. WALKER: And of course, it's a row  
18 house and we can do nothing about that.

19 CHAIRPERSON GRIFFIS: Right. Okay.

20 MR. WALKER: And, of course, we felt that  
21 by doing this, and when we looked up the alley he sees  
22 other additions and things that he feels this little  
23 area here would be no problem, but since they told us  
24 that he was over the lot occupancy, we proceeded to  
25 file the necessary papers and proceeded to do whatever

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1 is necessary to come before the Board of Adjustment  
2 for zoning.

3 CHAIRPERSON GRIFFIS: Let me just get some  
4 clarification on your last comment, because clearly  
5 you're going to show us how this is unique and how  
6 that uniqueness is a practical difficulty, but you're  
7 looking up the way and saying that there are other  
8 additions. In doing that you're saying that that  
9 hasn't had a negative impact. You don't know how  
10 those other additions were done, but they haven't had  
11 an impact which would lend you to think that yours  
12 would have a negative impact.

13 MR. WALKER: You know, I see how theirs  
14 could have a negative impact because they projected  
15 their addition beyond the rear wall, the rear building  
16 wall.

17 CHAIRPERSON GRIFFIS: I see.

18 MR. WALKER: In our case we're not  
19 projecting it beyond the rear building wall, so we  
20 won't have a negative impact on anyone.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. WALKER: Both owners have elected to  
23 approve such a venture, the addition, so we will not  
24 have any adverse effect on air, light or houses of any  
25 of these folks.

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1 CHAIRPERSON GRIFFIS: Okay. Okay. So if  
2 I understand you correctly on the written submission  
3 and your testimony right now, you have a unique lot  
4 for one. It's nonconforming because it's 17 feet.  
5 It's a unique lot in its shallowness in terms of  
6 depth, so that your area is smaller. The way the  
7 alley cuts it also --

8 MR. WALKER: Yes.

9 CHAIRPERSON GRIFFIS: -- is a unique  
10 aspect to it. There is another confluence of  
11 uniqueness in that it raises a practical difficulty  
12 with the condition of the rear wall.

13 MR. WALKER: Yes.

14 CHAIRPERSON GRIFFIS: That when you  
15 started construction, there were certain parts that  
16 you found in mid construction that needed to be taken  
17 down, and then you have squared off the building of  
18 this, what was kind of an elbow of the row dwelling,  
19 and evened it up with the existing wall. And does  
20 that also even it up with the adjacent property?

21 MR. WALKER: Only on one side.

22 CHAIRPERSON GRIFFIS: Right, but it aligns  
23 with the rear wall of the adjacent property?

24 MR. WALKER: Yes, it does. Yes, it does.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. WALKER: And it is only really 1  
2 percent over the 70 percent that would be allowed for  
3 R-4.

4 CHAIRPERSON GRIFFIS: Right. What the  
5 Office of Planning was saying, which I'm sure Mr.  
6 Jackson will let us know, that is if they had looked  
7 at this earlier on, they would have recommended that  
8 you brought it in under 70 percent for a special  
9 exception like we just had processed, but on a  
10 variance, unlike you are, which is a much higher  
11 threshold.

12 MR. WALKER: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. WALKER: And, of course, we received  
15 the permits from the Office of Zoning and from the  
16 ANC.

17 CHAIRPERSON GRIFFIS: The ANC.

18 MR. WALKER: And the --

19 CHAIRPERSON GRIFFIS: Right, Office of  
20 Planning.

21 MR. WALKER: And the Capitol, also.

22 CHAIRPERSON GRIFFIS: Right. The Capitol  
23 Restoration Society has supported.

24 MR. WALKER: Likewise and permitted.

25 CHAIRPERSON GRIFFIS: Excellent. Anything

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1 else at this time?

2 MR. WALKER: No, I think we have the basis  
3 of our matter before you.

4 CHAIRPERSON GRIFFIS: Good. Ms. Miller,  
5 questions?

6 VICE CHAIR MILLER: I just want to  
7 understand the history a little bit more clearly. The  
8 wall was already built in deviation from the plans.  
9 Is that correct?

10 MR. WALKER: A portion, a portion of the  
11 wall.

12 VICE CHAIR MILLER: A portion of the wall.

13 MR. WALKER: Yes.

14 VICE CHAIR MILLER: It wasn't completed?  
15 It was --

16 MR. WALKER: No, it was not. Yes.

17 VICE CHAIR MILLER: -- stopped in response  
18 to the building inspector?

19 MR. WALKER: Yes, yes.

20 VICE CHAIR MILLER: Okay. Thank you.

21 CHAIRPERSON GRIFFIS: Any other questions  
22 from the Board of the applicant at this time,  
23 clarifications? Mr. Mann?

24 BOARD MEMBER MANN: I'm having a little  
25 trouble understanding the plans versus what I see up

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1 there in the photographs that were submitted into the  
2 record. The area that is shaded pink that you have  
3 posted there, has that area been built yet?

4 MR. WALKER: No.

5 BOARD MEMBER MANN: And so --

6 MR. WALKER: That will be the addition.

7 BOARD MEMBER MANN: So on the --

8 CHAIRPERSON GRIFFIS: But it has been  
9 built. You have enclosed that.

10 MR. WALKER: A portion.

11 CHAIRPERSON GRIFFIS: This is the actual  
12 structure, right?

13 MR. WALKER: Yes, a portion of the wall,  
14 yes.

15 CHAIRPERSON GRIFFIS: Right. So that wall  
16 has come across and closed up that court?

17 MR. WALKER: Yes, yes.

18 CHAIRPERSON GRIFFIS: Mr. Mann's question,  
19 if I understand it correctly, he is saying that this  
20 photograph --

21 MR. WALKER: Yes.

22 CHAIRPERSON GRIFFIS: -- which is attached  
23 to your listing for --

24 MR. WALKER: This is not --

25 CHAIRPERSON GRIFFIS: I'm showing you.

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1 They are not numbered, so the transcript won't show  
2 what I'm showing, but this building here which is pink  
3 in color.

4 MR. WALKER: Yes.

5 CHAIRPERSON GRIFFIS: That is not the  
6 subject property. Is that correct?

7 MR. WALKER: Yes, yes, that's the  
8 neighbor.

9 CHAIRPERSON GRIFFIS: That's the adjacent.

10 MR. WALKER: That's the neighbor.

11 CHAIRPERSON GRIFFIS: Your red brick --

12 MR. WALKER: Yes.

13 CHAIRPERSON GRIFFIS: -- in the larger  
14 opening is the subject property?

15 MR. WALKER: Yes, yes.

16 CHAIRPERSON GRIFFIS: Does that answer  
17 your question, Mr. Mann?

18 BOARD MEMBER MANN: That helps clarify  
19 what I'm looking at.

20 MR. WALKER: Oh, thank you. Very good.

21 CHAIRPERSON GRIFFIS: Anything else?

22 VICE CHAIR MILLER: Well, I just want  
23 another clarification. When you were saying only a  
24 portion has been built, you weren't referring to the  
25 wall. You were referring to -- or were you, because

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1 it looks like a wall has been --

2 MR. WALKER: Well, not all of them. The  
3 flooring and the roofing and nothing has been put on  
4 it.

5 VICE CHAIR MILLER: The addition hasn't  
6 been built.

7 MR. WALKER: No.

8 VICE CHAIR MILLER: But the wall has been?

9 MR. WALKER: Well, the front wall, The  
10 front wall, as you can see on the photograph, most of  
11 that has been put in, yes.

12 VICE CHAIR MILLER: Okay.

13 CHAIRPERSON GRIFFIS: Anything else right  
14 now? Okay. Let's move ahead to Mr. Jackson. A very  
15 good morning to you.

16 MR. ARTHUR JACKSON: Good morning, Mr.  
17 Chairman and Members of the Board. My name is Arthur  
18 Jackson with the Development Review Specialists with  
19 the District of Columbia Office of Planning.  
20 Essentially, the Office of Planning stands on the  
21 record.

22 We would recommend approval of this  
23 proposal noting that, as was stated, if we had been  
24 notified in advance, we would have strongly advised  
25 the applicant to modify their changes such that it

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1 would meet the standards, the criteria for  
2 consideration as a special exception. With the  
3 construction of the site, we talked about various  
4 options with the applicant about how they could reduce  
5 the size of the building to meet the street standard  
6 at this point.

7 But essentially, the footings and the  
8 brickwork for the rear wall has been constructed and  
9 what would be required, essentially, was either to  
10 reduce the size of the addition by a foot or move the  
11 wall 6 inches, which while in accordance with the  
12 letter of regulations would be a significant change  
13 than what already exists.

14 So given the fact that it meets the  
15 uniqueness test as far as the standards for the Zoning  
16 Regulations, it wouldn't affect air and light. It has  
17 been presented to the area ANC and the architectural  
18 review historic, the Capitol Hill Historic  
19 Preservation Society and been approved, and the fact  
20 that we note that there any extenuating circumstances  
21 such that the applicant in error modified the plans,  
22 that resulted in an inconsistency with the Zoning  
23 Regulations.

24 We find it to be a practical difficulty  
25 that we could support and, as a result, we recommend

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1 approval.

2 CHAIRPERSON GRIFFIS: Excellent. Thank  
3 you very much. Any questions from the Board of the  
4 Office of Planning? Does the applicant have any  
5 questions of the Office of Planning?

6 MR. WALKER: I have none.

7 CHAIRPERSON GRIFFIS: Okay. Mr. Jackson,  
8 thank you very much. We appreciate the full analysis  
9 and that summation. I think it's very clear that the  
10 Office of Planning, but I will speak for the Board, is  
11 not saying that one would -- well, let me step back.

12 The Board has, in fact, denied variances  
13 of things that are partially built or fully built so  
14 that in my mind, in looking at this case, has no  
15 bearing in our review of this, whether it should be  
16 granted a variance or not. I think there is some  
17 confluence of elements of fact here in terms of the  
18 condition. Although, we don't have any factual basis  
19 of what the condition of that rear wall was and it's  
20 obviously not there now.

21 I think we can glean from looking at the  
22 interior that is showing of the neighboring properties  
23 that it's probably fairly truthful, the fact of that  
24 there was a condition there. What is more persuasive  
25 to me is actually Mr. Jackson's analysis of looking at

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1 this in terms of the de minimis elements of what would  
2 take this to move it into a special exception.

3 And it's convoluted and perhaps shouldn't  
4 ever be relied on again, but when you look at that,  
5 when you compare a special exception and a variance,  
6 it would mean moving the entire back wall 6 inches.  
7 Well, that doesn't really make a lot of practical  
8 sense in anyone's mind.

9 One, you have part of that wall is  
10 existing or in an existing place. It's lined up with  
11 the rest of them. Just to set it back, what does it  
12 do? In cases that are perhaps similar in scope and  
13 holistic similarities, we have seen that the additions  
14 have risen to impairing light, intent and use and  
15 enjoyment or even character of the neighborhood.

16 I don't see anything that is evidence in  
17 this case so far, in processing it and reviewing it  
18 today, that this rises to that level. So there is  
19 clear differentiations that I find in my mind in terms  
20 of this variance case, but also in lending its  
21 uniqueness to this case. Yes, Ms. Miller?

22 VICE CHAIR MILLER: Well, I appreciate  
23 what you're saying and I just want to raise one  
24 concern just to get it on the table and see if Office  
25 of Planning might have a response. And my only

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1 concern is not wanting to, you know, encourage people  
2 to unilaterally deviate from plans and then be in a  
3 position where they then say well, I have a practical  
4 difficulty and then get a variance.

5 And I'm just wondering if you have a  
6 comment about whether this was a justifiable error or  
7 understandable or de minimis or something that, you  
8 know, puts it in a separate category.

9 MR. ARTHUR JACKSON: I think de minimis is  
10 the operative phrase here. We had a -- when we  
11 visited the site, initially we talked to the applicant  
12 representative and expressed our concerns about the  
13 whole circumstances.

14 But upon further review of the details,  
15 looking at the specifics of the site, just seeing just  
16 how small this lot is and noting its uniqueness, in  
17 that it's the smallest lot on the square, and it  
18 appears to have the most unique rear boundary of any  
19 lot on the square, the fact that the rear yard is not  
20 even large enough for a car to be parked there, much  
21 less to -- and the expansion that they are creating  
22 has no practical impact on the rear yard of this  
23 property or any other properties, because it's  
24 basically an in-fill.

25 We think we would not like to -- we don't

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1 expect that we will be recommending approval on a lot  
2 of situations like this, but we think all the  
3 circumstances surrounding this inadvertent result of  
4 a change and the fact that the change is only 1  
5 percent over what the maximum would be allowed by  
6 regulations that seem to be put in place to deal with  
7 lots like this, we felt we could support it.

8 CHAIRPERSON GRIFFIS: Well said.

9 VICE CHAIR MILLER: And just one other  
10 follow-up question. It may be in your report, but  
11 would you also say is there a practical difficulty  
12 other than the fact that they had already started  
13 construction?

14 MR. ARTHUR JACKSON: No.

15 VICE CHAIR MILLER: Okay. All right.  
16 Thank you.

17 CHAIRPERSON GRIFFIS: Okay. Anything  
18 else? Any other questions, Board Members? Very well.  
19 Let's move ahead then. As indicated, we do have a  
20 letter from the Capitol Hill Restoration Society.  
21 What exhibit number is that? I don't have that. Do  
22 I have that? Oh, here it is. Exhibit No. 25, which  
23 they did see -- which they were supporting the  
24 approval of the application.

25 They had indicated that you had presented

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1 to them the need for the variance for the lot  
2 occupancy and that they did not see anything that  
3 would substantially visually intrude upon the  
4 character, scale or apparent houses along the street  
5 frontage, an interesting burden of the special  
6 exception or 223. However, they are on the record as  
7 supporting the application.

8 Let's move ahead then to ANC-6B. Is the  
9 ANC represented today, 6B? Not noting any  
10 representative from the ANC, we have note of Exhibit  
11 26 which the ANC is recommending approval of the  
12 application. I don't have any other attendant reports  
13 or submissions on this application unless anyone else  
14 is aware of any, if the applicant is aware of any.

15 We can call at this time for any persons  
16 here present for Application 17397 to provide  
17 testimony, persons to provide testimony in support or  
18 in opposition. You can come forward at this time.  
19 Not noting anyone proceeding forward, we will note  
20 Exhibit 11 and Exhibit 10 from adjoining neighbors in  
21 support of the application. I don't have any other  
22 submissions on that unless you are aware of any  
23 others, Mr. Walker.

24 MR. WALKER: No, I'm not aware.

25 CHAIRPERSON GRIFFIS: Okay. Very well.

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1 Board Members, anything further? Let's go to the  
2 applicant for any concluding remarks that you might  
3 have.

4 MR. WALKER: I have none, sir.

5 MR. DAVID JACKSON: I have none also.

6 CHAIRPERSON GRIFFIS: Very well. I think  
7 the record is full on this and I think it is  
8 appropriate for us to move ahead with the deliberation  
9 on this, and I would move approval of Application  
10 17397 of Mr. David N. Jackson for the premises of 1008  
11 South Carolina Avenue, S.E. This is for a variance  
12 from the lot occupancy requirements under 403 for an  
13 addition to a nonconforming structure under 2001.3 and  
14 would ask for a second.

15 BOARD MEMBER ETHERLY: Second, Mr. Chair.

16 CHAIRPERSON GRIFFIS: Thank you very much,  
17 Mr. Etherly. I think that, one, we can begin with the  
18 great reliance on the analysis of the Office of  
19 Planning and their recommendation of approval of this  
20 application. I think Mr. Jackson was very adequate in  
21 laying out the history and why we are where we are  
22 with this.

23 He did talk substantially about the  
24 uniqueness of this and I think the testimony that we  
25 have heard today actually pulls it all together in my

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1 mind from my deliberation, and that is that the de  
2 minimis area of the lot is not the absolute  
3 uniqueness, but with that how it actually is shaped  
4 with the alley, how it cuts in, the nonconforming  
5 aspect of 17 feet width. It is clear that it is  
6 practically difficult to comply fully with the lot  
7 occupancy requirements.

8 As we step into this whole aspect of,  
9 well, why couldn't you bring it in under a special  
10 exception, which is the last threshold, again I think  
11 there is a strong argument for saying why you couldn't  
12 in terms of moving it back a few inches or a foot or  
13 taking a foot out of actually the addition is a  
14 fascinating idea, theoretically, and Mr. Jackson is  
15 right to bring it up.

16 However, when you take a foot out where  
17 does it come out and is that then creating a  
18 nonconformity in terms of a court or something of that  
19 nature? It seems to be, just in my own analysis,  
20 becoming practically difficult to figure it all out.

21 But that being said, in my factoring in  
22 deliberation has nothing to do with the progression of  
23 construction nor do I think that it relies. It is  
24 certainly a factor in this case, but it is not a  
25 persuasive fact in terms of meeting the test for the

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1 variance on this. And it certainly isn't obviously  
2 something that the Board rewards in terms of taking  
3 steps.

4 I think though, however, looking at this,  
5 not knowing full facts but just talking limitedly on  
6 that, that just calculating, for a lot of folks, what  
7 the actual lot occupancy is with this might have been  
8 difficult in terms of the alley and such.

9 So there are some questions and there is  
10 some reality of why it might have come up, and then  
11 with the condition as is testified today and in those  
12 submissions, the conditions of the existing structure  
13 that had to be dealt with as construction was  
14 proceeding.

15 All that being said, clearly I also agree  
16 with the Office of Planning's analysis and  
17 deliberation that this wouldn't impair the intent and  
18 integrity of the Zone Plan or Map. The zone itself  
19 and what is happening here, as you align the building  
20 with the adjacent rear and not extend it further than  
21 the original and the lot occupancy based on the  
22 smallness of this lot, doesn't move out of the  
23 parameters of the R-4 District.

24 And I didn't see any testimony arising  
25 speaking to whether this would impair any aspect of

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1 the public good, and so I think we can rely on the  
2 fact that it would not. And I will leave it at that  
3 and open it up for others.

4 VICE CHAIR MILLER: I just want to comment  
5 just to follow-up. I mean, I don't think this is a  
6 case where the applicant has gone and intentionally  
7 built something in violation of the regulations to  
8 position himself in a better position here. And I  
9 think that there is no substantial detriment at all in  
10 the record on the community, the Zone Plan.

11 And also, the courts have said that we can  
12 consider the severity of the variance requested and  
13 this is de minimis. So I would support granting the  
14 variance in this case.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you. Others? Any other further deliberation? If  
17 not, we have a motion before us that has been  
18 seconded. I would ask for all those in favor to  
19 signify by saying aye.

20 ALL: Aye.

21 CHAIRPERSON GRIFFIS: And opposed? Ms.  
22 Bailey?

23 MS. BAILEY: Mr. Chairman, the vote is 5-  
24 0-0 to approve the application. Mr. Griffis made the  
25 motion, Mr. Etherly second. Mr. Jeffries, also Ms.

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1 Miller and Mr. Mann are in support. And, Mr. Griffis,  
2 are we doing a summary order?

3 CHAIRPERSON GRIFFIS: I see no reason --  
4 unless there is objections from the Board Members or  
5 the applicant, we can issue a summary order on this  
6 and waive our rules and regulations.

7 MS. BAILEY: Thank you, sir.

8 CHAIRPERSON GRIFFIS: Thank you very much.  
9 Thank you both very much.

10 MR. WALKER: Thank you.

11 MR. DAVID JACKSON: Thank you.

12 CHAIRPERSON GRIFFIS: Appreciate it and  
13 good luck with finishing that off. With that let's  
14 move on to the next and last case for the morning.

15 MS. BAILEY: Application 17395 of Jemal's  
16 Citadel LLC, pursuant to 11 DCMR section 3103.2, for  
17 a variance from the rear yard requirements under  
18 section 774, a variance from the nonconforming  
19 structure requirements under subsection 2001.3, a  
20 variance from the requirement to provide a loading  
21 berth that is 55 feet deep under subsections 2201.1  
22 and 2201.6, to allow the establishment of a mixed use  
23 project including a grocery store and general offices.  
24 The property is in the Reed Cooke C-2-B District at  
25 premises 1631 Kalorama Road, N.W., Square 2572, Lot

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1 36. There are nine requests for party status, Mr.  
2 Chairman.

3 CHAIRPERSON GRIFFIS: Indeed. We're going  
4 to take up party status first. We want you to know we  
5 have allotted a full 35 minutes for this entire case,  
6 so that's I guess somewhat of a joke. I'm not really  
7 sure why this got on third case in the morning but it  
8 did. And I will just let everyone know that we're  
9 anticipating proceeding through the entire case here.

10 So if you have 12:00 lunch plans, we'll  
11 give you a moment to make calls, because you're not  
12 going to make it. The Board has already decided that  
13 we will go well into our lunch hour and I will update  
14 you as we get closer. We're not going to run this  
15 until 4:00, but I think we can get through a good,  
16 substantial amount of this, but I don't see us ending  
17 before 1:30. We will lose a Board Member at 2:00 so,  
18 hopefully, we will finalize that.

19 That being said, I'm going to stop and  
20 proceed with some of this stuff. Let me run down. As  
21 a preliminary matter we will take up the request for  
22 party status. I'm going to run through and ask, first  
23 of all, if you are currently with us, present, and  
24 just a show of a hand will be fine, but I'm looking.  
25 Is Ms. Maureen Gallagher? She is present.

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1                   Greenfield, A.W. Greenfield of 2339 17<sup>th</sup>  
2                   Street is not immediately present.   Ms. Heather  
3                   Higginbottom of 1670 Kalorama Road, present?   Not  
4                   present?   Not present.   Okay.   Darrell Allison,  
5                   indeed, is here.   Catherine Pugh, 1650?   Also not with  
6                   us.   Natalie Buda, 1660?   Okay.   Daniel is not  
7                   present, Daniel Sepulveda, Sepulveda, 1660 Kalorama,  
8                   is not currently here.   Sharon Saydah, 1666 Kalorama  
9                   Road?   Not noting a present.   Okay.

10                   And we do have the representative of the  
11                   Reed Cooke Neighborhood Association, Ms. Batra.

12                   MR. BATRA:   Mr. Batra.

13                   CHAIRPERSON GRIFFIS:   I'm sorry, of  
14                   course.   Good.

15                   MR. LYDEN:   And Peter Lyden as well, we  
16                   both represent Reed Cooke.

17                   CHAIRPERSON GRIFFIS:   And Peter Lyden will  
18                   also be present.   Okay.   Board Members, I would like  
19                   to take up the individuals at this point and I'm open  
20                   to -- I'm sorry?

21                   MR. RASMUSSEN:   I also applied for party  
22                   status.

23                   CHAIRPERSON GRIFFIS:   Indeed.   The two  
24                   gentlemen, if you would come up, please.   Let me just  
25                   make a clarification while they are coming up to the

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1 witness table. Of course, anything that happens in  
2 this room creating this record has to be on the record  
3 and the only way you're on the record is if you're  
4 speaking into a microphone. So have a seat. I'm  
5 going to have you state your name and address for the  
6 record and then just bring up your point as you have  
7 just then said it.

8 MR. RASMUSSEN: My name is Mark Rasmussen.  
9 I live at 1654 Kalorama Road, Washington, D.C.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. RASMUSSEN: An opponent of the  
12 proposed supermarket and I have concerns regarding the  
13 -- many of the concerns that my other neighbors share.

14 CHAIRPERSON GRIFFIS: Okay. Without  
15 getting into the substance, you had indicated that you  
16 are requesting party status. Is that correct?

17 MR. RASMUSSEN: Yes, right.

18 CHAIRPERSON GRIFFIS: Okay. I'm going to  
19 say two things. First of all, have you put in an  
20 application for party status?

21 MR. RASMUSSEN: I do. I have it right  
22 here.

23 BOARD MEMBER MANN: Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes?

25 BOARD MEMBER MANN: Exhibit 25.

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1 CHAIRPERSON GRIFFIS: Oh, thank you so  
2 much. How come I don't have it listed? Is it timely?  
3 So there's 10 requests? Is that within our time?  
4 Okay. There it is. Okay.

5 MR. RASMUSSEN: Good, good.

6 CHAIRPERSON GRIFFIS: So we have -- I'm  
7 sorry. State your name again.

8 MR. RASMUSSEN: Mark Rasmussen.

9 CHAIRPERSON GRIFFIS: Good. And?

10 MR. JOHNSON: Campbell Johnson.

11 CHAIRPERSON GRIFFIS: And you also are  
12 requesting party status?

13 MR. JOHNSON: Yes, sir.

14 CHAIRPERSON GRIFFIS: Mr. Mann, what is  
15 the exhibit number on that?

16 BOARD MEMBER MANN: I haven't located that  
17 one yet.

18 CHAIRPERSON GRIFFIS: Did you submit an  
19 application?

20 MR. JOHNSON: I was told when I called the  
21 office that it would just be necessary to come down  
22 with my testimony.

23 CHAIRPERSON GRIFFIS: Okay. Let me go to  
24 just a migrational quip on the difference of  
25 participation in every application. Of course, this

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1 is a Public Hearing. It's a public process. Everyone  
2 and anyone is welcome to participate in this filing  
3 and in all application cases, special exceptions and  
4 variances.

5 However, there are several ways to do  
6 that, two most importantly. As a person, you can come  
7 and at the time where I call provision to provide  
8 testimony, all persons are able to come forward and  
9 provide testimony. Now, the second is a much higher  
10 responsibility and threshold and that is party status  
11 and we will go through and establish parties or not.

12 And as a party you are a full participant,  
13 an equal participant to the applicant, meaning you are  
14 able to conduct cross examination. The  
15 responsibilities that the applicant has, so does a  
16 party. The abilities afforded the applicant, so does  
17 the party get, meaning if the Board has requests for  
18 legal briefings on issues or additional submissions,  
19 the parties will be required to submit those. You are  
20 also required to put together a full case presentation  
21 and, if you're in opposition, in opposition to the  
22 application.

23 Is it your understanding that you would  
24 like to be a party in this case or do you want to  
25 provide testimony?

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1 MR. JOHNSON: Yes. I am president of the  
2 Dorchester Tenants Association, 394 units, apartments  
3 plus offices and stores that are located abutting the  
4 property in question. I am also the chair of the  
5 Urban Housing Alliance which is headquartered in the  
6 Dorchester House.

7 CHAIRPERSON GRIFFIS: But is the  
8 importance to provide the testimony and representation  
9 of the Dorchester?

10 MR. JOHNSON: Yes.

11 CHAIRPERSON GRIFFIS: So it's --

12 MR. JOHNSON: Dorchester and  
13 representation of the Urban Housing Alliance.

14 CHAIRPERSON GRIFFIS: So if we were to  
15 allow you 10 minutes to provide your testimony, would  
16 that suffice or are you actually looking to present a  
17 full case, provide witnesses, brief legal issues on  
18 this?

19 MR. JOHNSON: We have an exhibit  
20 attachment to provide as well that we would like -- we  
21 don't believe, at this point, that we would need to  
22 provide witnesses in addition, but we would be willing  
23 to bring forth witnesses.

24 CHAIRPERSON GRIFFIS: Well, I'm not  
25 advocating it.

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1 MR. JOHNSON: If I have to.

2 CHAIRPERSON GRIFFIS: I'm just trying to  
3 figure out what you really want to do. If it's just  
4 to present -- I just want to be clear. If it's just  
5 to present, you know, exhibits, photographs, whatever  
6 it is, you want to go put it into the record and make  
7 sure we look at it, that's one thing.

8 MR. JOHNSON: And we would be desirous of  
9 the opportunity to question the applicant, because the  
10 applicant is well-known, at least the applicant's  
11 surrogates and partners are rather well-known to us.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. JOHNSON: In terms of persons who were  
14 presenting on behalf of the applicant over more than  
15 a year at meetings that the ANC had held.

16 CHAIRPERSON GRIFFIS: Okay. All right.

17 MR. JOHNSON: And the applicant also chose  
18 not to engage us, 394 units of tenants.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. JOHNSON: That are right abutting the  
21 property.

22 CHAIRPERSON GRIFFIS: Right. And to be  
23 absolutely clear, we have an application before us.  
24 You just sat through a couple of special exceptions  
25 and variances and the jurisdiction of this Board goes

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1 directly to those. We're going to figure out whether  
2 there is a uniqueness to this and the practical  
3 difficulty, whether it impairs the intent and  
4 integrity of the Zone Plan and Map or the public good.

5 I won't allow just because, one, of time  
6 and, two, it's beyond our jurisdiction getting into a  
7 lot of history of representation or false  
8 representation. But we'll need to know the facts of  
9 why we are where we are.

10 MR. JOHNSON: Sure.

11 CHAIRPERSON GRIFFIS: Okay. So you would  
12 like to have cross examination also. Have we found  
13 that application yet? Oh, no, you said you hadn't put  
14 one in. All right. Then okay. It seems to me that  
15 how you would be uniquely or distinctly impacted if  
16 this was approved, you're saying that as  
17 representation of the Dorchester, which is numerous  
18 units adjacent, and also retail establishments in that  
19 you have that aspect.

20 Are there any other aspects that you find  
21 are uniquely or distinctly impacting you?

22 MR. JOHNSON: Certainly, there are also  
23 children in the building that would traverse there  
24 going to H.D. Cooke Elementary School, going to Marie  
25 Reed. And one of the key issues that we are concerned

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1 about along with the traffic congestion and increased  
2 violence and whatnot is the ability of people to carry  
3 on their normal operation.

4 CHAIRPERSON GRIFFIS: Okay. What is the  
5 issue of the retail in the Dorchester now?

6 MR. JOHNSON: The issue with the retail in  
7 the Dorchester now?

8 CHAIRPERSON GRIFFIS: Yes. I understand  
9 the element of okay, so you have the -- how would that  
10 be uniquely or distinctly impacted?

11 MR. JOHNSON: Well, certainly, there is a  
12 market in the Dorchester that is, you know, currently  
13 there. That is a Class B, has a Class B license, and  
14 is very much serving the needs of the community. We  
15 also have two other stores within a block that serve  
16 the, you know, grocery needs of the community. And I  
17 think that these small businesses would certainly be  
18 jeopardized.

19 CHAIRPERSON GRIFFIS: Oh, I see. Okay.  
20 Any other questions from the Board at this time?

21 VICE CHAIR MILLER: Yes. Are you asking  
22 to get party status to represent the Dorchester  
23 Tenants Association and/or the Urban Housing Alliance  
24 and/or yourself in your personal capacity? I'm just  
25 not clear. We don't have an application before us.

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1 MR. JOHNSON: Well, I would certainly be  
2 delighted to submit an application immediately. Yes,  
3 all of the above.

4 VICE CHAIR MILLER: And do you have  
5 authorization from the associations?

6 MR. JOHNSON: Yes, I do. We had a board  
7 meeting that addressed this and I was given  
8 authorization to express its position.

9 VICE CHAIR MILLER: And would you be  
10 representing, for instance, both interests at the same  
11 time?

12 MR. JOHNSON: The Urban Housing Alliance  
13 as well as the Dorchester Tenants Association, yes.  
14 Dorchester Tenants Association is limited to that  
15 building. The Urban Housing Alliance addresses issues  
16 throughout Washington. Primarily, we have been  
17 concerned with Adams Morgan, Columbia Heights and the  
18 Shaw neighborhoods.

19 VICE CHAIR MILLER: But it's located in  
20 that building. Is that --

21 MR. JOHNSON: Yes, that's where our  
22 corporate office is located.

23 VICE CHAIR MILLER: Okay. So you're not  
24 representing them with respect to the impact of this  
25 application on the office and building.

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1 MR. JOHNSON: On the community.

2 VICE CHAIR MILLER: You're --

3 MR. JOHNSON: On our constituents.

4 VICE CHAIR MILLER: On your constituents  
5 city-wide?

6 MR. JOHNSON: Constituents in that area.

7 VICE CHAIR MILLER: Oh, okay.

8 MR. JOHNSON: And, you know, that's the  
9 focus here.

10 VICE CHAIR MILLER: Right. Okay.

11 COMMISSIONER JEFFRIES: Wait. So excuse  
12 me.

13 VICE CHAIR MILLER: Go ahead.

14 COMMISSIONER JEFFRIES: Wait. Mr.  
15 Johnson, so you are representing the Urban Housing  
16 Alliance as well? They have taken a vote?

17 MR. JOHNSON: Yes, sir.

18 COMMISSIONER JEFFRIES: And they have  
19 authorized you to speak on their behalf?

20 MR. JOHNSON: Yes.

21 CHAIRPERSON GRIFFIS: I may have missed  
22 it. Who is the Urban Housing Alliance?

23 MR. JOHNSON: The Urban Housing Alliance  
24 is a nonprofit organization that is community-based  
25 that is concerned with fighting the displacement of

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1 low and moderate income persons.

2 CHAIRPERSON GRIFFIS: So it's a nonprofit?

3 MR. JOHNSON: And businesses in D.C.

4 CHAIRPERSON GRIFFIS: So it's a nonprofit.

5 Does it have membership? Does it have a board?

6 MR. JOHNSON: Yes, it does.

7 CHAIRPERSON GRIFFIS: How many on the  
8 board?

9 MR. JOHNSON: And we're 501-C3.

10 CHAIRPERSON GRIFFIS: Okay. What is the  
11 membership number? How many members do you have?

12 MR. JOHNSON: How many members do we have?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. JOHNSON: I don't have an exact count.  
15 I would say 80.

16 CHAIRPERSON GRIFFIS: And you said that  
17 they are from Adams Morgan and Columbia Heights?

18 MR. JOHNSON: And Shaw.

19 CHAIRPERSON GRIFFIS: And Shaw?

20 MR. JOHNSON: Yes.

21 CHAIRPERSON GRIFFIS: 80 members.

22 COMMISSIONER JEFFRIES: Okay. Excuse me.  
23 So I guess I'm back on to the Urban Housing Alliance.  
24 So this organization is opposed to the variances that  
25 are being applied for?

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1 MR. JOHNSON: Correct, as is Dorchester  
2 Tenants Association.

3 CHAIRPERSON GRIFFIS: And how would the  
4 Urban Housing Alliance nonprofit and board and members  
5 of 80 in three different neighborhoods be uniquely or  
6 distinctly impacted if this was to be approved?

7 MR. JOHNSON: Well, among our constituents  
8 -- we consider the Dorchester Market as among our  
9 constituents. We also have interest and concern about  
10 the residents both across the street and in the  
11 adjoining neighborhood.

12 CHAIRPERSON GRIFFIS: And most of them are  
13 represented.

14 MR. JOHNSON: I understand.

15 CHAIRPERSON GRIFFIS: If not by the ANC or  
16 themselves. And are they members of the Urban Housing  
17 Alliance?

18 MR. JOHNSON: No, they are not objective,  
19 specific members of the Urban Housing Alliance.

20 CHAIRPERSON GRIFFIS: Okay. Just an  
21 abbreviation, maybe for expedition of time, I don't  
22 see how the Urban Housing Alliance would rise to the  
23 level of party status here and I think it actually  
24 deters from your request for party status in terms of  
25 the Dorchester. So I will leave you an opportunity to

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1 clarify that, whether you want to bring separate party  
2 status or you want to remove that.

3 Frankly, I will be direct. I wouldn't  
4 support the establishment of party status for the  
5 Urban Housing Alliance.

6 COMMISSIONER JEFFRIES: And I wouldn't  
7 either, so I don't know if --

8 MR. JOHNSON: You are saying that you  
9 would not support party status, sir?

10 CHAIRPERSON GRIFFIS: That's correct.

11 MR. JOHNSON: Okay.

12 CHAIRPERSON GRIFFIS: Not of the Urban  
13 Housing Alliance.

14 MR. JOHNSON: Okay.

15 CHAIRPERSON GRIFFIS: I think the  
16 Dorchester is really what is critical here and I think  
17 that's the primary issue in terms of the site and how  
18 it would be uniquely or distinctly impacted.

19 Are you amenable to just taking it up as  
20 the Dorchester?

21 MR. JOHNSON: That would be -- I would be  
22 amenable.

23 CHAIRPERSON GRIFFIS: Good. Okay. Any  
24 other questions, clarifications?

25 BOARD MEMBER ETHERLY: If I could, Mr.

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1 Chair, I will just note for the record just for the  
2 sake of process, we would need to waive in the motion  
3 for party status as it would be technically late as  
4 Mr. Johnson is bringing it forward today, which in  
5 advance I would not necessarily be opposed to.

6 I agree with the direction regarding the  
7 Urban Housing Alliance. I want to make sure I'm clear  
8 on a question that Mrs. Miller asked earlier and that  
9 was that you have, in fact, had a vote on the part of  
10 the board --

11 MR. JOHNSON: Yes.

12 BOARD MEMBER ETHERLY: -- of Dorchester  
13 Tenants Association regarding their position on this  
14 application?

15 MR. JOHNSON: Yes.

16 BOARD MEMBER ETHERLY: And that vote has,  
17 in fact, authorized you to serve as their  
18 representative.

19 MR. JOHNSON: Correct.

20 BOARD MEMBER ETHERLY: Okay. Excellent.

21 Thank you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Good. Thank you  
23 very much and that's excellent clarification. And  
24 yes, we are not deliberating. We're gathering the  
25 facts on the application because it's not before us.

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1 That would be our first step in waiving it. We'll  
2 hear from, obviously, the applicant in response to all  
3 of these, but I think we needed to gather the  
4 information.

5 Let me go to then next, if we don't have  
6 any other questions -- does anyone have any other  
7 questions of Mr. Johnson?

8 COMMISSIONER JEFFRIES: I guess I'm still  
9 trying to understand why you weren't able to move  
10 ahead with filing party status for the Dorchester  
11 Tenants Association.

12 MR. JOHNSON: Mr. Jeffries, my situation  
13 in regard to that is that we were not aware of the  
14 requirement to make another filing. I had -- when I  
15 talked with the office, I asked if it would be  
16 necessary for us to send in a letter prior to this  
17 hearing date and I was advised that that would not be  
18 necessary, that it would be satisfactory to come with  
19 the testimony.

20 And perhaps that was my mistake in relying  
21 on this or my misunderstanding of what I was told, but  
22 I am usually very clear on these things because I have  
23 testified before other boards in the District of  
24 Columbia and before City Council. And I'm rather  
25 clear in terms of these kinds of things, and I just

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1 accepted it as a pro forma understanding that, okay,  
2 it would not be essential at this time.

3 I had, at one time, testified before the  
4 other Zoning Board and all that was required was  
5 filling out the cards.

6 CHAIRPERSON GRIFFIS: It's not essential  
7 for you to put an application in if you're wanting to  
8 testify. You're coming for testifying.

9 MR. JOHNSON: And in terms of -- and I  
10 indicated at the time of the conversation that I was  
11 representing the Dorchester Tenants Association and  
12 Urban Housing Alliance. So I would have thought that,  
13 you know, the differential here would have been -- you  
14 know, would have been clear, but I would certainly  
15 accept responsibility for misunderstanding in that  
16 regard.

17 CHAIRPERSON GRIFFIS: Okay. Any other  
18 clarifying aspects or questions at this time? Very  
19 well. There we are. Ms. Gallagher, I would ask you  
20 to come up and also Mr. Allison. I just have a quick  
21 question of you both.

22 Also, we do have timely requests for party  
23 status on these and the Board has looked at each of  
24 them and I am going to ask whether you have thought  
25 about joining together in a single party knowing full

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1 well that, for me, the most important question in  
2 establishing party status is how one would be unique  
3 or distinctly impacted. And when we have 10  
4 individuals saying the exact same thing, one seems to  
5 wonder where is the uniqueness aspect to it.

6 There is also an aspect of efficiency and  
7 also persuasiveness. And what do I mean by that? The  
8 efficiency, obviously, is one strong case presentation  
9 rather than 10 smaller, perhaps weaker presentations.  
10 I have the full jurisdiction and evoke it constantly  
11 of not allowing repetition of information. And so  
12 with that I will turn it over to you if you had  
13 thought about that.

14 I'm sorry. Substantively, in looking at  
15 all these, there are very clear aspects that are  
16 coming to the forefront and I think they are important  
17 to bring to light in this application in the Public  
18 Hearing process. We obviously have children's safety  
19 which was brought up by Mr. Johnson.

20 There are numerous different pieces to  
21 that, the traffic, the loading of course. There is  
22 the car lights that have been talked about. There is  
23 the environment. There is the character of the  
24 neighborhood. All these, we fully understand they are  
25 important issues.

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1 I'll turn it over to you.

2 MR. ALLISON: We have. In fact, that's  
3 why just the two of us are here. We do have a unified  
4 voice with just one statement.

5 CHAIRPERSON GRIFFIS: See that? If I  
6 would stop talking for a moment, we would get some  
7 things done. Okay. And in that sense then, who is  
8 the joint party requesting status?

9 MS. GALLAGHER: The joint party would be  
10 the following people, actually everybody from the  
11 Kalorama Road 1600, which is Catherine Pugh, myself,  
12 Darrell Allison. You didn't mention Natalie Buda, but  
13 she had put in one also.

14 CHAIRPERSON GRIFFIS: Oh, I did. Yes,  
15 Exhibit 29.

16 MS. GALLAGHER: Oh, he did. I'm sorry.  
17 I missed that.

18 CHAIRPERSON GRIFFIS: No, thank you.

19 MS. GALLAGHER: Sharon Saydah, Heather  
20 Higginbottom, Daniel Sepulveda and A.W. Greenfield.

21 CHAIRPERSON GRIFFIS: Okay. And, Mr.  
22 Rasmussen, have you thought about joining this panel  
23 of folks?

24 MR. RASMUSSEN: I will join it if the  
25 testimony that I prepared will be considered by the

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1 Board without, you know, any sort of, you know,  
2 discount, I guess, that it would be considered just as  
3 strongly if I were to have presented it here.

4 CHAIRPERSON GRIFFIS: Absolutely. And,  
5 actually, you bring up numerous points but I'm going  
6 to address two very important ones. First of all, you  
7 have a very substantial, and I'm sorry I didn't  
8 recognize it immediately, I actually read it, a very  
9 substantial written document into the record. We will  
10 read all this and reread it as we go into  
11 deliberation. So that is already on the record.

12 MR. RASMUSSEN: I have some additional  
13 information I would like to --

14 CHAIRPERSON GRIFFIS: Good. And so now,  
15 as we put together, as this case presentation is put  
16 together, I'm anticipating there is going to be one or  
17 two leads in the case presentation. For cross  
18 examination there would only be one person that would  
19 do cross, but there is no reason why they wouldn't  
20 call people as their witnesses to present testimony or  
21 put testimony on in that frame. So I think there is  
22 ample opportunity for you to do that.

23 If, in the worst case scenario, you feel  
24 that the case presentation wasn't adequate enough, you  
25 could certainly ask the party that you have joined, if

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1 you decide to do that, to request that the Board  
2 accept additional written information and it has been  
3 a long time since we have refused anything of that  
4 that's germane to the case. So there is those  
5 elements that I think would be adequately addressed if  
6 I have spoken to your points.

7 MR. RASMUSSEN: Right, and then I could  
8 submit that now or later or either time.

9 CHAIRPERSON GRIFFIS: You mean your  
10 exhibits and testimony?

11 MR. RASMUSSEN: Yes.

12 CHAIRPERSON GRIFFIS: You would submit it  
13 and if you join the party and we establish them as a  
14 party, then you would submit it in with their case  
15 presentation.

16 MR. RASMUSSEN: Okay. All right.

17 CHAIRPERSON GRIFFIS: Is that acceptable?

18 MR. RASMUSSEN: Yes, sir, that's  
19 acceptable.

20 CHAIRPERSON GRIFFIS: You guys will accept  
21 him?

22 MS. GALLAGHER: Yes, I think so.

23 CHAIRPERSON GRIFFIS: Okay. And there it  
24 is. So we basically have one, two, three, four, five,  
25 six, seven, eight, nine persons that had put in

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1 applications that have now joined into a single party  
2 in opposition if I understand correctly.

3 MS. GALLAGHER: And we actually have a  
4 statement, you know, for the written testimony for --  
5 with everybody's name at the end of it as well.

6 CHAIRPERSON GRIFFIS: Excellent. We're  
7 going to take this up first then. I'm going to ask  
8 actually, Mr. Johnson, if you could just give a seat  
9 to Mr. Glasgow to give comment on the establishment of  
10 this joint party of residents adjacent to and  
11 including Kalorama, 17<sup>th</sup> Street and I think that's it.  
12 Pardon me.

13 MR. GLASGOW: All right. Just briefly,  
14 Mr. Chairman, in going through the written request for  
15 party status we did not find anything that directly  
16 related to the issues in this case. There were a  
17 number of issues raised with respect to a grocery  
18 store in the neighborhood.

19 The grocery store is permitted as a  
20 matter-of-right. The office use is permitted as a  
21 matter-of-right. We haven't asked anything for FAR or  
22 any of the uses on the property. The location of the  
23 ingress/egress to the garage, the approximately 120  
24 space garage has been there since 1947, used to a  
25 greater or to a lesser extent depending on the uses

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1 that were in the Citadel Building over those decades.

2 The loading berth is exactly where it was  
3 before. The issue there is what is the length of the  
4 loading berth, whether it's going to be 40 feet or 55  
5 feet. And there was nothing in any of the submissions  
6 that had anything to do with any uniqueness in how  
7 these individuals were affected by that location of  
8 the loading berth and, specifically, the size of the  
9 loading berth.

10 And with respect to the year yard, the  
11 variance to locate the cooler that serves the office,  
12 there is no comment on that at all and that is the  
13 piece that affects how many parking spaces we're able  
14 to put in the building. If we move the cooler, there  
15 will be a loss of parking spaces underneath. If we  
16 have the variance to move the cooler to the east end  
17 of the site, there will be more parking in the parking  
18 garage.

19 CHAIRPERSON GRIFFIS: Excellent and well-  
20 said. And the Board isn't lost on the fact and is  
21 very clear, I should say, that this is not a use  
22 variance, that what we're not doing is looking at an  
23 application that is going to either allow or prohibit  
24 the retailer from going in there.

25 However, the area elements are as stated,

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1 the loading requirements for that. I'm not sure how  
2 I separate that element from the surrounding adjacent  
3 neighbors' concerns of the project. I think within  
4 the hearing, without getting too substantive of it,  
5 but within the hearing we will obviously be able to  
6 direct jurisdictionally and appropriate elements that  
7 we will have control over.

8 But how do I separate that out at this  
9 point when I have people coming in in opposition to  
10 the loading aspect of this? And I'm not so sure in  
11 order to establish party status that I would have to  
12 show that some of their other concerns are germane or  
13 not germane, because we haven't heard their case  
14 presentation yet. So how do I separate them out?

15 MR. GLASGOW: Right.

16 CHAIRPERSON GRIFFIS: And say well, you  
17 know, you're not talking about the issues that we'll  
18 actually get to here.

19 MR. GLASGOW: Well, I understand. That is  
20 why you all have to make a decision as to whether to  
21 let them in as a party. With respect to the documents  
22 that they filed to establish party status, I think  
23 that in that application it's incumbent upon them to  
24 make their case, and at least our view is that they  
25 have not made their case with respect to that. They

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1 have not tied in their request to show the uniqueness  
2 and how it relates to the variances that are  
3 requested.

4 CHAIRPERSON GRIFFIS: Okay. Interesting  
5 point. Comments?

6 VICE CHAIR MILLER: I think it's a good  
7 point, but I think just common sense-wise I think  
8 that, you know, we are talking about the loading berth  
9 and the rear yard, but these are individuals whose  
10 homes are in close proximity and I think we can  
11 appreciate that they would be directly affected by  
12 traffic or truck management or whatever, those kind of  
13 issues that I expect to come out in this hearing.

14 But I think your point goes to when they  
15 are presenting their case that they may want to focus  
16 on the specific relief that is requested, as opposed  
17 to having a supermarket there in general.

18 CHAIRPERSON GRIFFIS: I would differ with  
19 you a little bit.

20 VICE CHAIR MILLER: Yes.

21 CHAIRPERSON GRIFFIS: In that I certainly  
22 think the elements are going to come out. However, I  
23 don't think we're going to spend a lot of time. I  
24 mean, if we're talking about traffic counts and, for  
25 instance, even pedestrian traffic, which is one of the

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1 issues, some of it's positive and a lot of it is  
2 negative that is coming up. We're going to have be  
3 shown very clearly and directly how that relates to  
4 the relief that is being sought, right?

5 VICE CHAIR MILLER: Yes.

6 CHAIRPERSON GRIFFIS: Okay. Just to be  
7 clear.

8 COMMISSIONER JEFFRIES: I do feel that the  
9 applicants' comments are compelling as it relates to  
10 the party status and I think, you know, if we're going  
11 to go forward with, you know, granting this party  
12 status, I think that the message should be loud and  
13 clear that, you know, our focus is very narrow and  
14 that, you know, as you approach and make your case  
15 here you really need to be very, very close to or  
16 directly tied to those variances, the relief that is  
17 actually being sought.

18 A lot of other kinds of issues that are  
19 coming up, particularly around use and grocery store  
20 and traffic and those things are really just not part  
21 of this application. This is a very narrow window the  
22 way I read it, unless someone else sees it  
23 differently, but I think the relief that is being  
24 requested is very narrow.

25 CHAIRPERSON GRIFFIS: Right.

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1 COMMISSIONER JEFFRIES: It's not  
2 expansive.

3 CHAIRPERSON GRIFFIS: Yes.

4 COMMISSIONER JEFFRIES: And you head down  
5 that road, that is why, you know, you're going to lose  
6 it, so the issue is made.

7 CHAIRPERSON GRIFFIS: I think your words  
8 were excellently said and the focus is narrow on this,  
9 but we'll get to that. Without getting into the  
10 substance, we still have the party status. We have a  
11 joint party, ones that are adjacent, and oftentimes  
12 that's enough for us to get through the establishment  
13 of party status.

14 There is a high threshold to be  
15 established, but just on adjacency you would obviously  
16 be impacted and affected. Now, the burden goes to  
17 that who is established as a party to be persuasive or  
18 prove whether they are, you know, negatively impacted  
19 to the level that we would deny it.

20 So I think Mr. Glasgow's points are  
21 excellent. I would note that it's in opposition to  
22 the granting of party status?

23 MR. GLASGOW: That is correct.

24 CHAIRPERSON GRIFFIS: Okay. I'm going to  
25 just hear from the ANC on their comment. Mr.

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1 Rasmussen, if I could just have you give up your seat  
2 for a moment for the ANC member. Yes, I'm going to  
3 have you stay if you don't mind, Mr. Glasgow.

4 MR. GLASGOW: Sure.

5 CHAIRPERSON GRIFFIS: Because I'm going to  
6 run down the list. And just to be clear on where I'm  
7 going, I think the Board knows where I am, but we have  
8 the Reed Cooke Neighborhood Association. We have Mr.  
9 Johnson representing Dorchester and now, we have a  
10 joined group of adjacent neighbors as a party. There  
11 are three requests for party status that I'm looking  
12 at at this time unless others see differently.

13 A very good morning to you, sir.

14 MR. ROTH: Good morning, Mr. Chairman,  
15 Members of the Board.

16 CHAIRPERSON GRIFFIS: Name and address?

17 MR. ROTH: Alan Roth, Chairperson, ANC-1C.  
18 My address is 1845 Vernon Street, N.W.

19 CHAIRPERSON GRIFFIS: Excellent. I just  
20 brought you up as you are already established a party  
21 as ANC, whether you had a position, the ANC had a  
22 position on the joint party status of the adjacent  
23 neighbors.

24 MR. ROTH: I have no objection. I don't  
25 think anyone on the ANC would have objection to party

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1 status certainly for the residents of the 1600 block  
2 of Kalorama Road.

3 I assume you'll hear from the Reed Cooke  
4 Neighborhood Association. I'm not entirely sure  
5 whether they requested party status and the case that  
6 they would present is essentially identical to the  
7 case that the residents of Kalorama Road would  
8 present, so I leave that to the Board's discretion as  
9 to whether or not you want to urge them all to join  
10 together.

11 I'm not going to oppose Mr. Johnson's  
12 request for party status, but I do have some concerns  
13 and questions about it. First, there is the obvious  
14 issue of it not having been filed. Second, although  
15 Mr. Johnson is correct in saying that he is currently  
16 the president of the Dorchester Tenants Association,  
17 the status of that association has been the subject of  
18 litigation between different groups of tenants.

19 There was an election held. The election  
20 was vitiated and Mr. Johnson reassumed his previous  
21 position as president. There is supposed to be  
22 another election held.

23 CHAIRPERSON GRIFFIS: Without spending the  
24 whole morning on the rest of that --

25 MR. ROTH: I just have questions about his

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1        bona fides representing the entire group.

2                    CHAIRPERSON GRIFFIS:    Do you think then  
3        the ANC would be opposed to establishing Mr. Johnson  
4        as a party in this case?

5                    MR. ROTH:    Well, as I said, I'm not going  
6        to oppose it, but I think it's important the Board  
7        have that information and you can make your own  
8        decision on that.

9                    VICE CHAIR MILLER:    Excuse me.    I'm sorry  
10       to jump in here, but I don't think Mr. Roth could  
11       represent the ANC's position on that because it didn't  
12       go before the ANC.    They haven't had notice of the  
13       filing.    There was no filing.

14                   MR. ROTH:    I think that's probably a safe  
15       way for me to handle it.

16                   CHAIRPERSON GRIFFIS:    Indeed.    Very well.  
17       And you weren't opposed to the Reed Cooke.    The ANC  
18       doesn't have a position in opposition to the Reed  
19       Cooke Neighborhood Association, but in terms of  
20       efficiency you're saying they might want to join with  
21       the --

22                   MR. ROTH:    You know, subject to the  
23       Board's discretion and the decisions of the parties,  
24       we certainly have no objection to the Reed Cooke  
25       Neighborhood Association being a party.

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1 CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow,  
2 turning to you on the Dorchester, Mr. Johnson's  
3 representation and also on the Reed Cooke Neighborhood  
4 Association. Does the applicant have a position on  
5 those party status requests?

6 MR. GLASGOW: We oppose Mr. Johnson's  
7 request to represent as party status. I was going to  
8 ask for that written -- any written resolutions,  
9 anything else having to do with this would have to be  
10 submitted for the record. Our experience with Board  
11 staff is that they don't tell people not to file a  
12 request for party status, that they are told to file  
13 the documents that are required.

14 We are proceeding with the hearing today.  
15 I don't think that, particularly when you have had  
16 experience coming before administrative agencies, that  
17 you have this type of error. You have the issues that  
18 are outstanding that have been alluded to by  
19 Commissioner Roth and then come in the day of the  
20 hearing and ask for party status. I think that that  
21 should be denied.

22 With respect to the Reed Cooke situation,  
23 that is -- leave that up to the Board as part of the--  
24 because Reed Cooke's request was very similar to the  
25 rest of the parties as to what their issues were, as

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1 to whether there is a joinder of that group.

2 I would separately object to Mr. Batra's  
3 request because he lives up and around the block, he  
4 is more than 200 feet away, his request for party  
5 status which I think the Board Members have not gotten  
6 to yet. He is not across the street. He is up over  
7 on Euclid Street. He is more than 200 feet from the  
8 property. He is about 300 feet.

9 CHAIRPERSON GRIFFIS: I'm sorry. You were  
10 saying that Mr. Batra is putting in an individual  
11 request for party status?

12 MR. GLASGOW: Yes, he had two in there.  
13 At least that's what we have got out of it.

14 CHAIRPERSON GRIFFIS: Is that right?

15 MR. ROTH: Mr. Chairman, if you look at  
16 Exhibit 27 in the file, apparently what happened is  
17 Mr. Batra's No. 27 got filed underneath Ms. Saydah's  
18 No. 27.

19 MR. BATRA: I was going to withdraw that  
20 individual application just as part of the Reed Cooke  
21 Association.

22 CHAIRPERSON GRIFFIS: Excellent. Oh, I  
23 see. Oh, I see. So it was stapled on to another one.  
24 Interesting. And, Mr. Batra, you said off the record  
25 that you were looking to withdraw that individual and

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1 you are representing the Reed Cooke Neighborhood  
2 Association. Okay. Excellent. Well, there we are  
3 then.

4 Let me ask the individuals that are here,  
5 then Mr. Batra will come up. Have you thought about  
6 joining into one group the Reed Cooke Association  
7 party request?

8 MR. ROTH: Is that another chair? Just  
9 grab a chair up here.

10 CHAIRPERSON GRIFFIS: Oh, okay. Good,  
11 good, good. Thank you. Okay.

12 MR. BATRA: Was that directed to --

13 CHAIRPERSON GRIFFIS: We'll start with the  
14 individuals.

15 MS. GALLAGHER: Actually, you know, I  
16 think that we would consider joining as long as all of  
17 our voices could be heard.

18 CHAIRPERSON GRIFFIS: Okay. Let's put  
19 some context to this and I'll get to Mr. Batra before  
20 -- we have all had numerous applications in this, not  
21 always controversial or maybe they are, I don't  
22 remember, but oftentimes the Reed Cooke Neighborhood  
23 Association, as I read the application for party  
24 status, represents a broader view and protection of an  
25 overlay and then individuals often get into more

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1 specific elements of how I am specifically impacted by  
2 this.

3 MS. GALLAGHER: Right.

4 CHAIRPERSON GRIFFIS: I find that those  
5 are two varying levels of interest. However, if they  
6 were to join, I think it would be phenomenal and I  
7 think -- obviously, my personal opinion is that it  
8 oftentimes comes out a more persuasive presentation of  
9 information, but let me see what you have to say about  
10 that.

11 MR. BATRA: Mr. Chairman, we would be  
12 happy to join in. I think, as you said, we do  
13 represent a broader view of the neighborhood as  
14 opposed to the direct immediate impact on the  
15 immediate neighbors, but after they present their  
16 testimony what has not been covered we can kind of  
17 just add on. So I think we would be fine joining  
18 together. I mean, we could just make sure that  
19 everything is covered.

20 CHAIRPERSON GRIFFIS: Okay. It may just  
21 be nomenclature but there is going to be one. If you  
22 were to join, there is going to be one case  
23 presentation, so you would call them up for their  
24 testimony or as witnesses. Is that what you mean?  
25 And after they are done you'll do cleanup and make

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1 sure that they have hit all the points?

2 MR. BATRA: I think mentally we envisioned  
3 that we were taking turns on different portions of the  
4 testimony. If that's not the way it ought to run,  
5 then we should --

6 CHAIRPERSON GRIFFIS: All right. Just for  
7 clarity, it's going to be, I mean, you're going to  
8 have to organize your case presentation as you would  
9 and then, obviously, it's going to be one time to do  
10 a case presentation, we can get that through. The  
11 perhaps more critical semantics is going to be who is  
12 conducting cross examination.

13 MR. BATRA: And I think we discussed it.  
14 If we did come together potentially there could be two  
15 of us up here and one of us would speak per witness.  
16 One of us would cross per witness.

17 CHAIRPERSON GRIFFIS: Okay. So then one  
18 person crossing each witness?

19 MR. BATRA: If that's --

20 CHAIRPERSON GRIFFIS: But you may have two  
21 people doing cross?

22 MR. BATRA: In the rare instance if  
23 something is not covered.

24 CHAIRPERSON GRIFFIS: Okay. We'll get to  
25 it. And I don't want to take a lot more time on all

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1 of this, because I think we're all going in the same  
2 direction. So if it's amenable, then you folks would  
3 join then in one party in opposition. Is that  
4 correct?

5 MR. BATRA: Just a question. Does that  
6 limit our time for presentation? Is that cut in half?

7 CHAIRPERSON GRIFFIS: Nope. Actually, the  
8 time is going to be set by me and it has to be in  
9 charge with the regulations judiciously set.

10 MR. BATRA: Okay.

11 CHAIRPERSON GRIFFIS: But in all reality,  
12 we're going to set a time, a limited -- I will keep  
13 track of the time presentation for the applicant.  
14 Then all the opposition has equal time that the  
15 applicant has. So if the applicant takes an hour or  
16 let's be realistic, 15 minutes, right, then not all  
17 parties in opposition get 15 minutes.

18 Everyone in opposition gets 15 minutes.  
19 So no, the time is -- you don't have more time with 10  
20 parties, less time with one party. It's the same  
21 amount of time. That's why I'm saying for the  
22 efficiency of your own case presentation, if you can  
23 coordinate and collaborate, you're going to use that  
24 all the same time.

25 MR. BATRA: Okay. That sounds --

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1 CHAIRPERSON GRIFFIS: Make sense?

2 MR. BATRA: It makes sense, yes.

3 CHAIRPERSON GRIFFIS: Okay. Good. Then  
4 I think we ought to run with that, at this point,  
5 unless the ANC or the applicant has any objection to  
6 the joining of those, at this time.

7 MR. GLASGOW: No objection to the joined  
8 and you've got my objections of party status on the  
9 record.

10 CHAIRPERSON GRIFFIS: Right. Exactly.  
11 Okay. That being said then, I think -- pardon me?  
12 All right. Unless there are any other comments then,  
13 let's take up the first request for party status that  
14 we have. We're going to call up the Reed Cooke  
15 Neighborhood Association party in opposition, as you  
16 have all joined into it or whatever you want to name  
17 yourselves. But it would, obviously, be that of the  
18 membership of the association and specifically the  
19 individuals which I won't go all the way through,  
20 we're very clear on who those are, at this point.

21 Any comment on that? Let me hear any  
22 opposition to granting the party status of that  
23 request. Not noting any Board Member that has  
24 opposition, is there a consensus of support for  
25 granting of the party status in opposition of the Reed

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1 Cooke Neighborhood Association and assigns?  
2 Consensus? Everyone with me?

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Excellent. Very  
5 well. Then we will take it as a consensus of the  
6 Board we'll establish a single party of the Reed  
7 Neighborhood Association and we'll look forward to  
8 your presentation and representation and also cross as  
9 we proceed through this. Let's take up the next and  
10 the last then request for party status, which is from  
11 the Dorchester, the adjacent apartment building, as  
12 represented by Mr. Johnson.

13 As Mr. Etherly had indicated, aptly, we  
14 will need to waive our exceptions of discussion or  
15 rather deliberation on the party status and I would  
16 ask is there opposition to waiving that requirement of  
17 filing of the party status application in a timely  
18 manner? Ms. Miller?

19 VICE CHAIR MILLER: Yes, I have opposition  
20 to it. I didn't hear a really good enough reason. My  
21 experience with the staff also is that they are quite  
22 helpful in guiding communities in what the  
23 requirements are. And I'm a little bit concerned  
24 about just an allegation that the staff told them  
25 something that wasn't so. But in addition to that,

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1 I'm concerned about what the chair of the ANC has  
2 indicated with respect to the status of that tenant  
3 association.

4 I'm not saying we're making any findings  
5 about it, but it was enough to concern me as to the  
6 representation. We don't have in writing a  
7 resolution. We don't have an authorization. And  
8 finally, I think that there are enough other -- well,  
9 not finally. There are also enough other  
10 organizations and neighbors representing, in party  
11 status, the concerns of the immediate community that  
12 being the Reed Cooke Association, the ANC.

13 And finally, our proceedings allow for  
14 testimony and I think that Mr. Johnson wanted to  
15 submit testimony representing the interests of that  
16 organization and that can come in. So I think that  
17 they can make their case that way.

18 CHAIRPERSON GRIFFIS: Very well. If I  
19 understand you correctly, you don't support waiving  
20 the timeliness submission requirements, because you  
21 haven't seen anything that is persuasive that would be  
22 in itself to waiving that. But even if you did, in  
23 substance, you probably wouldn't support a party  
24 status. Others?

25 COMMISSIONER JEFFRIES: Mr. Chairman?

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1 Again, I do not support a waiver of our rules as  
2 relates to this issue. I did not find Mr. Johnson's  
3 comments particularly persuasive. In fact, he almost,  
4 to me, made the case that he has sufficient experience  
5 in these types of matters and would know that a timely  
6 filing would be required.

7 I don't want to get into any discussions  
8 between the Office of Zoning and him, but I do find it  
9 interesting that we have had such huge numbers of  
10 individuals doing this correctly. I think that would  
11 just send the wrong message and delude our procedural  
12 integrity here. So I would not support a waiver.

13 CHAIRPERSON GRIFFIS: Good. And I tend to  
14 go in the same direction as both of you. But specific  
15 to that is noting how many timely requests for party  
16 status we have, noting the fact that I believe this  
17 has been somewhat publicized certainly in the  
18 neighborhood, the ANC has a long history of meetings  
19 on this, the applicant shows that -- the application  
20 shows that this was a PUD application.

21 It has not come out of nowhere and the  
22 organization behind all of this is substantial to come  
23 in at this late date in our process to say it wasn't  
24 aware of what needed to have happened two weeks ago or  
25 longer ago. I also tend to agree. I wouldn't support

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1 waiving our rules and regulations for a timely filing  
2 of party status application.

3 Are there other comments? Mr. Mann?

4 BOARD MEMBER MANN: I would support the  
5 denial based on timeliness. But I would comment that  
6 Ms. Miller mentioned that the ANC had raised concerns  
7 regarding Mr. Johnson's representation of his  
8 organization. And it is not often that we set the  
9 sort of threshold that we ask for some sort of  
10 definitive proof that somebody is representing a  
11 particular organization in the form of any written  
12 submissions or affidavits or whatnot.

13 We often just take people at their words.  
14 So I wouldn't want to give the impression that that's  
15 some sort of requirement in our regulations.

16 CHAIRPERSON GRIFFIS: Right. Okay. And  
17 I tend to agree. I think Ms. Miller wasn't -- I'll  
18 let her speak for herself. But I absolutely agree  
19 with you, Mr. Mann, that part of my deliberation, I'm  
20 actually not hearing very strong deliberation that  
21 that's the issue and that's not the issue, but I  
22 appreciate you bringing that up. Okay. Ms. Miller,  
23 last?

24 VICE CHAIR MILLER: No, I think there is  
25 a confluence of factors here, but I would say as we

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1 proceed we probably should be asking Reed Cooke  
2 Association, you know, for their authorization to  
3 proceed. We certainly have it with the ANC.

4 CHAIRPERSON GRIFFIS: Indeed, we do.  
5 Okay. Mr. Jeffries?

6 COMMISSIONER JEFFRIES: I would hope,  
7 however, just given the fact that the Dorchester  
8 Tenant Association or the residents that live there  
9 that we would offer a significant amount of time for  
10 testimony to them. And, Chair, I would just sort of  
11 ask that at that time that, you know, they are able  
12 to, you know, have sufficient amount of time to  
13 testify in support. I'm open to that. But clearly  
14 not waiving our rights as relates to a timely filing  
15 for party status.

16 CHAIRPERSON GRIFFIS: Indeed. I'll take  
17 that up after. Is there any others that would like to  
18 comment on that? Very well. Then I would --

19 MR. JOHNSON: Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes, briefly.

21 MR. JOHNSON: Yes, sir.

22 CHAIRPERSON GRIFFIS: Can you turn your  
23 mike on?

24 MR. JOHNSON: There are several things  
25 that I think are very important. Number one, in terms

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1 of any litigations, Dorchester Tenant Association  
2 brought that against other tenants.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. JOHNSON: And that has been resolved  
5 and it is behind us.

6 CHAIRPERSON GRIFFIS: That's fine.

7 MR. JOHNSON: In regard to the right to  
8 cross examine, we have, as I indicated, a number of  
9 children in the building. We also have a number of  
10 elderly that pass back and forth from there and that's  
11 of concern. Additionally, the way that that diagram  
12 is shown, it includes, let me just say that the  
13 parking lot for the Dorchester abuts the backend of  
14 the building. I don't see where any of this  
15 additional land comes from, unless it's an  
16 understanding between the Dorchester and other  
17 parties.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. JOHNSON: But at present, that  
20 certainly abuts there and it's not an issue of just  
21 lengthening something. It's expanding the territory.  
22 Whereas, it's shown to be an addition. There is an  
23 alley, a driveway for the Dorchester to its loading  
24 dock that it appears is also subsumed into the Citadel  
25 that as far as -- you know, in 26 years that I have

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1       been there, it does not exist.

2                   CHAIRPERSON GRIFFIS: Okay. Fascinating.  
3       We haven't even gotten into those elements.

4                   MR. JOHNSON: Right.

5                   CHAIRPERSON GRIFFIS: We're --

6                   MR. JOHNSON: Those are issues of cross  
7       examination.

8                   CHAIRPERSON GRIFFIS: I understand that.  
9       But we're at a basic threshold issue of procedural  
10      requirements.

11                  MR. JOHNSON: Right.

12                  CHAIRPERSON GRIFFIS: And whether we would  
13      accept your oral application for party status and  
14      waive our timeliness regulations. Everyone else was  
15      required to put in a certain amount of documentation.

16                  MR. JOHNSON: I understand.

17                  CHAIRPERSON GRIFFIS: It affords balance  
18      for everyone. One, for us to be prepared, two, for  
19      the applicant to be prepared, three, for you to be --  
20      knowing you were going to present or not present. And  
21      my understanding right now is that the Board is  
22      unanimous in not waiving our rules and regulations.  
23      And therefore would deny the request for party status  
24      on timeliness and I will do a motion to that later.

25                  But let me just say for clarification, Mr.

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1 Johnson, this in no way prohibits you from presenting  
2 all the substantive elements and testimony. And Mr.  
3 Jeffries had made the point, and I would absolutely  
4 agree, that we will provide if -- well, we will  
5 provide an opportunity to give testimony. It may not  
6 be oral testimony, if we finish our proceedings today.  
7 But we can keep the record open for submission of  
8 written testimony by the association that you  
9 represent.

10 That being said, let's get back into our  
11 brief deliberation. And it is my understanding then  
12 that I would move that we deny the waiving of  
13 timeliness for the request for party status of Mr.  
14 Johnson representing the Dorchester and would ask for  
15 a second.

16 COMMISSIONER JEFFRIES: I will second.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.  
18 Jeffries. Is there further deliberation on that?

19 VICE CHAIR MILLER: Yes, I just also want  
20 to note that Mr. Johnson has the opportunity also to  
21 provide his questions to another organization that  
22 should be representing Dorchester Tenants Association,  
23 such as the ANC, so that there are still opportunities  
24 in this for him to make his case.

25 CHAIRPERSON GRIFFIS: Excellent. An

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1 excellent point. And even though the elements that  
2 were brought up in the case, you know, even in the way  
3 and the fact of whether we would somewhat prejudice  
4 somebody or more importantly as I look at it is not  
5 get information that we should, I think it's fairly  
6 clear that the ANC and the Reed Cooke and the other  
7 individuals have brought up the safety of the  
8 children, the elderly. There has been some talk about  
9 the rear adjacent alley. I think there is a perfectly  
10 appropriate time that we will get all that  
11 information.

12 Very well. We do have a motion before us.  
13 It was seconded. Any other comments? Not noting any  
14 other, then I would ask for all those in favor to  
15 signify by saying aye.

16 ALL: Aye.

17 CHAIRPERSON GRIFFIS: Opposed? Very well.  
18 If you wouldn't mind recording that vote, Ms. Bailey?

19 MS. BAILEY: Mr. Chairman, the vote is 5-  
20 0-0 to deny the request to waive the 15 day  
21 requirement for filing of party status application.

22 CHAIRPERSON GRIFFIS: Okay. Good. Thank  
23 you very much, Mr. Johnson. We appreciate and look  
24 forward to your testimony. And with that then, we  
25 have one party in opposition. I think we need to move

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1 ahead with the case. I'm going to have you all take  
2 a very comfortable seat in the back. Do you want?

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Okay. We're going  
5 to just take five minutes and let you get organized,  
6 let us stretch our legs and then we will be back for  
7 the applicant's presentation of the case. Oh, I'm  
8 sorry. If I can get everyone's attention before we  
9 break, we have one more item of business. Mr.  
10 Etherly?

11 BOARD MEMBER ETHERLY: Thank you very  
12 much, Mr. Chair. Now that we have gotten through the  
13 easy part of party status, let me make a disclosure  
14 and I would like to invite comment from our parties as  
15 they have now been determined with regard to this  
16 disclosure. My employer is the Mid-Atlantic Coca-Cola  
17 Bottling Company, which is a customer of Harris Teeter  
18 as well as many other supermarkets and stores here in  
19 the area.

20 This is perhaps a case of first impression  
21 from the standpoint of having such a, shall we say,  
22 well-defined sense of opposition to the application,  
23 so I felt that it would be appropriate to make that  
24 disclosure and to invite any comment from any of our  
25 parties regarding my continuability to serve on the

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1 case. I'll state for the record that in terms of my  
2 day job, I'm employed as Vice President of Public  
3 Affairs, so I do not deal directly with supermarkets  
4 from the same point of decisions around deliveries and  
5 our contractual relationships.

6 That being said, we are, of course, a  
7 significant customer with a large amount of trucks  
8 which conceivably could be part of the dialogue in  
9 this particular case, not our trucks in particular,  
10 but the issue of deliveries and loading. I'll note  
11 for the record, however, that I do feel that I am able  
12 to sit on a case impartially and listen to the facts  
13 and adjudicate on the facts as they are presented and  
14 on the testimony that is put before the Board.

15 But I felt that it would be appropriate to  
16 make that disclosure and invite comment from our  
17 parties regarding any concerns that you may have  
18 regarding my continued participation in the case.

19 CHAIRPERSON GRIFFIS: Excellent. Thank  
20 you very much, Mr. Etherly. Are there quick questions  
21 from the Board, first? Any questions? Not noting  
22 any, Mr. Glasgow?

23 MR. GLASGOW: No opposition, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Mr. Roth?

25 MR. ROTH: Mr. Etherly, we spent many

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1 hours together in this room, most especially on the  
2 Dumont Tower case, and whether we have agreed or  
3 disagreed on the final outcome, I've always found you  
4 to be extremely fair and thoughtful and I have no  
5 objection to your sitting on this case today. Thank  
6 you, Mr. Roth. Mr. Batra, any opposition to Mr.  
7 Etherly or questions, first?

8 MR. BATRA: We have no formal opposition  
9 to this. This is a case of first impression for us  
10 definitely. You know, I know his focus is on two  
11 particular variances. If someone said that Harris  
12 Teeters, 35 percent of their profit came from Coca-  
13 Cola products, that would be another issue. I don't  
14 know. You know, I don't know what kind of liquor  
15 business Coca-Cola is in and that's a key portion of  
16 Harris Teeter's business. As a matter of fact, he  
17 will only open if they can sell that kind of thing.

18 So presuming that's not the case, it's  
19 just negligible, which is what I'm assuming it is, we  
20 have no opposition.

21 CHAIRPERSON GRIFFIS: Is Coca-Cola in the  
22 liquor business?

23 BOARD MEMBER ETHERLY: No.

24 MR. BATRA: No, I didn't think so. I  
25 don't know how big this company is.

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1 BOARD MEMBER ETHERLY: Non-alcoholic  
2 beverages. Non-alcoholic beverages.

3 CHAIRPERSON GRIFFIS: Just routine, right?

4 MR. BATRA: Right. I don't know what they  
5 own and what other distributors they have, at this  
6 point.

7 CHAIRPERSON GRIFFIS: Sometimes I'm funny  
8 when I don't even try to be. Okay. So we have no  
9 opposition. Okay.

10 MR. LYDEN: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes?

12 MR. LYDEN: I'm Peter Lyden. I live at  
13 1726 Euclid Street and I'm the President of the Reed  
14 Cooke Neighborhood Association.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. LYDEN: And I support Mr. Etherly's  
17 continuing on the Board. And I believe his position  
18 in public affairs with Coca-Cola probably will bring  
19 some added value to this hearing and to our case,  
20 because he no doubt has heard about truck problems  
21 from one end of this city to the other and probably  
22 out of the region. And I think having his in depth  
23 knowledge will be valuable for us.

24 CHAIRPERSON GRIFFIS: Interesting  
25 position. Thank you very much. Anyone change their

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1 position hearing that? Oh, okay.

2 BOARD MEMBER ETHERLY: I'll note for the  
3 record, Mr. Chair, that while it is definitely not  
4 required of any of the parties to be supportive of my  
5 continued service, I appreciate your comments. I will  
6 note and I don't take Mr. Lyden's remarks to suggest  
7 this, but I will note that as a Board Member I am  
8 required to simply adjudicate based on the record that  
9 is presented before the Board and testimony and I will  
10 most certainly do that and I appreciate your comments.

11 MR. LYDEN: Some words in my testimony,  
12 the written testimony, which having had truck  
13 experience here.

14 BOARD MEMBER ETHERLY: Understood.

15 CHAIRPERSON GRIFFIS: Excellent.

16 BOARD MEMBER ETHERLY: Thank you, Mr.  
17 Chair.

18 CHAIRPERSON GRIFFIS: So you don't get a  
19 lunch recess, Mr. Etherly. We'll see you in five  
20 minutes. We'll see you all in five minutes.

21 (Whereupon, at 12:06 p.m. a recess until  
22 12:18 p.m.)

23 CHAIRPERSON GRIFFIS: Very well. Let's  
24 resume. First, I'm going to ask Mr. Glasgow if you  
25 would estimate the time you are going to need for

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1 presentation of your case?

2 MR. GLASGOW: Approximately, half an hour.

3 CHAIRPERSON GRIFFIS: Okay. So we'll get  
4 30 minutes on that. Of course, that would not include  
5 any cross examination or questions of the Board.  
6 Let's go right to it.

7 MR. GLASGOW: Good afternoon, Members of  
8 the Board, for the record my name is Norman M.  
9 Glasgow, Jr. of the Law Firm of Holland and Knight  
10 representing the applicant. Here with me today to my  
11 immediate right are Mr. Don Deutsch of Faison,  
12 representative of the owner and developer of the  
13 project, and then Mr. Phil Esocoff and Karen Burdit of  
14 Esocoff and Associates, they are architects for the  
15 project, Mr. Fred Gorove, the traffic engineer, at the  
16 end of the table and Mr. Lindsley Williams, the land  
17 planner, seated in the first row.

18 All of these witnesses have been  
19 previously accepted by the Board as experts in  
20 previous cases. Mr. Deutsch for urban infill  
21 development and residential development and he is the  
22 developer of the condominium project across the street  
23 at 1701 Kalorama Road, which entailed the adaptive  
24 reuse of the site that was used as a warehouse into  
25 condominiums and parking and residential projects with

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1 ground floor retail at 400 Massachusetts Avenue and  
2 residential projects at 910 M Street and 1010  
3 Massachusetts Avenue.

4 And I have a copy of his resume for the  
5 Board and also have the copies of the resumes for Mr.  
6 Fred Gorove and Mr. Dan VanPelt. I know Fred has  
7 appeared in a number of Zoning Commission cases and  
8 BZA cases, I guess what, over the past 15 or 20 years,  
9 some of them a longer period of time ago. I know he  
10 was one of the expert witnesses when I first started  
11 practicing and was qualified many times, but I don't  
12 know whether this Board has seen him recently.

13 So I will offer them all as expert  
14 witnesses in their various expert -- areas of  
15 expertise. Mr. Esocoff in architecture and Mr.  
16 Williams in land planning. And so I will submit those  
17 resumes for Mr. Deutsch and Mr. Gorove and Mr.  
18 VanPelt. Mr. VanPelt is associated with Mr. Gorove.  
19 That's that. We also would like to give a brief  
20 opening statement before proceeding to the merits of  
21 the case. I assume the Board Members have a copy of  
22 the statement of applicant that was filed in this  
23 application.

24 CHAIRPERSON GRIFFIS: Actually, we do, we  
25 have got it. However, let us proceed with the actual

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1 witnesses first, if you don't mind giving us a second  
2 to get that in front of us.

3 MR. GLASGOW: Sure.

4 CHAIRPERSON GRIFFIS: And take any  
5 questions. And my understanding is we are being asked  
6 for establishing four expert witnesses. Is that  
7 correct?

8 MR. GLASGOW: That is correct.

9 CHAIRPERSON GRIFFIS: Okay. Does the ANC  
10 have any objection or position on the expert  
11 witnesses?

12 MR. ROTH: No, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Thank you. No, we  
14 will put it into the record, but we will pass it  
15 around to the Board if they have any questions of it.  
16 Does the Reed Cooke have any position? No position.  
17 Board Members, any questions, clarifications? Very  
18 well. We'll take it as a consensus of the Board in  
19 advising me, we will establish the expert witnesses  
20 and move ahead, at this time.

21 MR. GLASGOW: All right. Thank you. With  
22 the permission of the Board, I would like to give a  
23 brief opening statement. This case involves a request  
24 for two specific area variances in connection with the  
25 rehabilitation and adaptive reuse of the Citadel

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1 structure located at 17<sup>th</sup> and Kalorama Roads, N.W.,  
2 into a 35,000 square foot grocery store,  
3 approximately, 13,000 square feet of office space and  
4 an additional 7,500 square feet of additional retail  
5 space. And there will be, approximately, 120 parking  
6 spaces provided, all within the existing structure.

7 There is a very minor addition on the east  
8 end of the site for the elevator for the core of the  
9 building that leads to the office building and Mr,  
10 Esocoff will describe that. The variance relief  
11 requested is from the size requirement for a 12 x 55  
12 foot berth required for a grocery store. The  
13 applicant has submitted to the Office of Planning and  
14 DDOT that it will limit the size of trucks making  
15 deliveries to the store to elate the 40 feet due to  
16 the width of the street system angles of the turning  
17 radiuses of those streets nearest the site and  
18 constraints of the existing building on the site.

19 It is submitted that it is not feasible to  
20 get a 55 foot truck into a loading berth on the site.  
21 There is an inherent practical difficulty in a  
22 requirement to provide a loading berth for a truck  
23 size which cannot use it and the agreement of the  
24 applicant to limit the size of trucks making  
25 deliveries to the site to 40 feet, which would

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1 preclude its use for 55 foot trucks in any event.

2 So what the applicant is trying to do  
3 because of a confluence of situations with respect to  
4 the existing Citadel building, the street network  
5 system and our agreement with the Office of Planning  
6 and DDOT and the representation that we have made to  
7 the ANC that we will not have trucks longer than 40  
8 feet come to the site. And that is reflected in the  
9 Office of Planning report.

10 We did have a caveat that had been  
11 discussed in the Office of Planning report, that in  
12 emergencies there would be trucks greater than -- that  
13 there may be on occasion trucks greater than 40 feet.  
14 We have reconfirmed with Harris Teeter that it just  
15 would be a limitation, no trucks longer than 40 feet.  
16 So when you see the Office of Planning report, you can  
17 strike the part about except in emergencies.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. GLASGOW: We are willing to live with  
20 the condition of 40 foot trucks, that's it. With  
21 respect to the variance request for the rear yard in  
22 order to allow the core for the office entrance would  
23 be located at the east end of the site along the east  
24 property line for a building that is already  
25 nonconforming as to rear yard. Due to the layout and

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1 configuration of the existing structure, the  
2 requirement to move the roof structure out of the rear  
3 yard, which is already occupied by building, and Mr.  
4 Esocoff will go through that, along with the loading  
5 berth variance, that relief saves about eight parking  
6 spaces in the garage.

7           The relief for the loading berth saves  
8 about two. Mr. Esocoff will describe that. If you  
9 move the core into 15 feet off that east property  
10 line, you will lose about eight parking spaces in the  
11 garage below. And we can show that there is -- in our  
12 view, there is no adverse impact. There is no reason  
13 not to grant that type of variance. It is caused by  
14 virtue of the existing building and the site.

15           And that is all set forth in our  
16 statement, in the statement of the Office of Planning  
17 with respect to that area. And what this case, just  
18 very briefly and I think the Board is focusing in on,  
19 is not about is it's not about the uses within the  
20 building. All the uses are permitted as a matter-of-  
21 right. All the FARs that are requested are a matter-  
22 of-right. And it's not about the location of the  
23 parking garage entrance. The parking garage entrance  
24 is not an area of relief that has been requested by  
25 the applicant. The parking garage entrance has been

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1 in the same location since the building was built in,  
2 approximately, 1947.

3 So any issues with respect to the ingress  
4 and the egress with respect to the parking garage and  
5 the number of cars, the parking garage is not being  
6 expanded as a part of this application. There is no  
7 request for relief there. We are going in and out of  
8 that garage the same place that it has always been  
9 going in and out of with respect to the parking  
10 garage.

11 The loading berth area is requested to be  
12 reconfigured as a part of this application. We think  
13 it is a better use of the area and it is not including  
14 -- it does not include the sales floor space for the  
15 Harris Teeter. It is how that loading berth area and  
16 sort of back of house operations for the Harris Teeter  
17 function with respect to having a loading berth  
18 diminished in size from 55 feet to 41 feet for the  
19 grocery store. As previous discussed, since we can't  
20 get a 55 foot truck in there anyway, there is no  
21 rationale for making an applicant provide a truck size  
22 that cannot use the berth.

23 And so that is certainly a practical  
24 difficulty and that will be discussed in more detail  
25 by the architect and the traffic engineer. And with

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1 that, I would like to turn it over to Mr. Deutsch.

2 MR. DEUTSCH: Thank you. My name is Don  
3 Deutsch and I'm the senior managing director for  
4 Faison Enterprises in the District of Columbia. We  
5 have a number of projects in the District from 400  
6 Mass, 9<sup>th</sup> and M, 9<sup>th</sup> and F, 1010 Mass and most recently  
7 1701 Kalorama. Our involvement with this project --  
8 the project is actually owned by Doug Jemal. Our  
9 involvement with the project became through our  
10 development of 1701.

11 Harris Teeter and Doug had been speaking  
12 about this project for a number of years. It is a  
13 very difficult rehab project. Our expertise in urban  
14 infill, difficult rehab projects as well as our  
15 experience in retail and grocery stores through our  
16 retail division have made us kind of an ideal  
17 candidate to help the two parties come together to  
18 actively develop this project and to get it going.  
19 This is some of the things that Phil will show.

20 This is an old building, but it is in some  
21 ways ideally suited for this use, but grocery stores  
22 have a lot of specific issues with respect to loading,  
23 with respect to MEP systems and things like that that  
24 make them difficult. And our role in this project has  
25 been to evaluate those difficulties and to guide the

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1 architectural team along with Harris Teeter to  
2 actively engage this or reengage this building into  
3 the fabric of the neighborhood.

4 We at 1701 just as an aside in some  
5 respects are the most impacted. The loading dock is  
6 right across from our project and yet we feel as if  
7 this usage, though the usage is not really in  
8 question, is extremely important for our project and  
9 for the neighborhood. I'll start -- I'll just be very  
10 brief. You know, we have had a number of meetings  
11 with the neighborhood, with the ANC regarding this BZA  
12 case and as well through a PUD process that we started  
13 a long time ago.

14 It was unfortunate that we were not able  
15 to come together in the PUD process. We just were  
16 never really able to separate the rehab issues from  
17 the usage issue and we have always -- we tried to make  
18 clear the usage issue, this is a matter-of-right.  
19 Harris Teeter can be here. Let's focus on the rehab  
20 issues and the impacts. We were really never able to  
21 come together to focus on that in a satisfactory way.  
22 And so now we are here with the BZA case focusing  
23 really just on the two exceptions.

24 In conclusion, we believe that the  
25 variances are needed to allow the Citadel to once

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1 again become a building in active use providing a full  
2 service grocery store needed in the community as well  
3 as office area that will bring some daytime population  
4 to the Adams Morgan area. Thank you.

5 CHAIRPERSON GRIFFIS: Thank you.

6 MR. ESOCOFF: Good afternoon. I'm Phil  
7 Esocoff, Esocoff and Associates. I have to say it's  
8 a little unnerving to think that historic buildings  
9 are only two years older than yourself. I hope I'm in  
10 a little better shape, but hopefully we'll get this  
11 one into shape. I've worked on two other historic art  
12 deco buildings in the District area. The Greyhound  
13 Bus Terminal, which is about the same age, in my  
14 former life, another firm, and also the Greenbelt  
15 Center School, which is also a great WPA project, part  
16 of Greenbelt, Maryland planned communities.

17 So I have a great affection for art deco  
18 buildings and it was actually exciting to be involved  
19 in this and hopefully I'll be involved in the other  
20 building that has the same structural system, which is  
21 the Uni Line Arena, at some point in the future. It's  
22 an excellent skeletal building with a thin concrete  
23 shell between them, but no chocolate inside.

24 The project is located at Kalorama Road at  
25 17<sup>th</sup> Street. This is 1701 being turned into lots by

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1 Faison. Our office was involved in 1700 Kalorama,  
2 that's the copper clad building that is condominiums  
3 on that side of the street. There is the Dorchester.  
4 The parking lot that was described earlier on, parking  
5 lot or empty loading area, next to Dorchester is  
6 depicted right here.

7 We, obviously, are building only within  
8 the footprint of our building. You can see the dome  
9 with our building. It takes up -- reaches to the  
10 property line along 17<sup>th</sup> Street and along Kalorama  
11 Road. And the structural system that holds up these  
12 massive arches obviously is a major imposition on how  
13 we can lay out the building.

14 What is very lucky about having this use  
15 come to this building is that we are not only able to  
16 really keep the building's architectural integrity  
17 from the outside, but also we're able to reutilize the  
18 internal elements of the building, the ramping system  
19 that was well thought out in 1947, seems to still be  
20 a well thought out system in 2005. That's a, you  
21 know, one-way ramping system, not unlike the P Street  
22 building on -- the Whole Foods Building on P Street.

23 Next, so these two drawings which I have  
24 sort of scribbled larger titles on, you start from  
25 underground. There are two levels of existing

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1 parking. This is our proposed scheme. This is the  
2 matter-of-right scheme. The only thing we are talking  
3 about in the proposed scheme is moving this stairway  
4 and elevator, which would be conforming here, up  
5 against the edge of the building, so that we conclude  
6 this is a drive aisle and make the circulation here  
7 much more rational and access to space is better and  
8 the count of spaces are better.

9 It allows us about eight more spaces by  
10 shifting this rectangle over to the east up against  
11 the property line. The matter-of-right, it would be  
12 right here and you can see it's a little awkward to  
13 get into a few spaces here and there is a deadend  
14 situation there. We would like to avoid that. We  
15 think an extra 10 spaces, 8 to 10 spaces would be  
16 beneficial.

17 Next, we're trying to cut down on our use  
18 of phone core by exploring other means for these  
19 presentations. This is the -- because of the sloping  
20 site, the entry level is also the P1 level. You come  
21 in here and you would be above grade on that end. You  
22 come down the one-way ramp, so you are actually  
23 driving inward here and down on this and here is where  
24 the stair and elevator would be as a matter-of-right.  
25 Here is where we would like to put it. You can see

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1 once again this impacts the amount of parking we can  
2 develop, which is greater in this situation.

3 There is where the core will be if we are  
4 not granted some relief. And you can see we're able  
5 to get a few more spaces on this floor. Likewise,  
6 these two spaces here will be affected if we have to  
7 lengthen our truck dock to 55 feet. So it's a 15 foot  
8 difference. We have got to have a larger platform for  
9 the actual trucks that will come there, rather than  
10 larger berth for trucks that won't be showing up  
11 making it more difficult to load and unload.

12 CHAIRPERSON GRIFFIS: And is that a  
13 loading dock or some sort of loading on the bottom  
14 right side? There.

15 MR. ESOCOFF: No, actually, that's where  
16 the old entrance was. That's sort of a space  
17 underneath the steps as you come in. If you look  
18 there, you come in here and there is a stairway up.

19 CHAIRPERSON GRIFFIS: Okay. So there's no  
20 service on that side? It's all over on the 17<sup>th</sup>  
21 Street side?

22 MR. ESOCOFF: Yes, right.

23 CHAIRPERSON GRIFFIS: Except for that,  
24 which is servicing the parking, which is on Kalorama.

25 MR. ESOCOFF: Right.

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1 CHAIRPERSON GRIFFIS: So that's separated  
2 loading service, loading the trucks and the vehicles,  
3 pedestrian vehicles that are going into the building.

4 MR. ESOCOFF: Right.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. ESOCOFF: The cars would be coming and  
7 going from -- here is the little pickup area possibly.  
8 This is the existing entrance. The glass box, bump on  
9 the front will be sort of an area where people can  
10 come and go up the stairs, take these elevators, these  
11 same elevators serve the lower levels. Because of the  
12 changing rate you see here, this is rising. This is  
13 an area sort of an interstitial space beneath the  
14 loading dock. Next.

15 COMMISSIONER JEFFRIES: Excuse me. Can  
16 you go back?

17 MR. ESOCOFF: Sure.

18 COMMISSIONER JEFFRIES: I just want to  
19 look at by shortening the loading berth, that space  
20 that's left over that's in yellow will be used -- yes,  
21 right there.

22 MR. ESOCOFF: Yes, those are two parking  
23 spaces.

24 COMMISSIONER JEFFRIES: That's two parking  
25 spaces?

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1 MR. ESOCOFF: Right.

2 CHAIRPERSON GRIFFIS: You said shortening  
3 it. Is that correct? Just not lengthening.

4 MR. ESOCOFF: It's just not lengthening  
5 it. The existing one is not 55 feet.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ESOCOFF: It's 35 feet.

8 COMMISSIONER JEFFRIES: Okay.

9 MR. ESOCOFF: We are lengthening it, but  
10 only by 5 feet instead of 20.

11 COMMISSIONER JEFFRIES: Okay. Okay.

12 CHAIRPERSON GRIFFIS: And there is a  
13 diagram actually on applicant's Exhibit B, I think,  
14 that shows it.

15 MR. ESOCOFF: Right.

16 CHAIRPERSON GRIFFIS: That's hard to see  
17 from here, but it shows it as proposed with a 55 foot,  
18 if I'm not mistaken.

19 MR. ESOCOFF: The next drawing actually  
20 will show the area that we are talking about. So our  
21 proposal is for these two 40 foot spaces, plus an area  
22 for a dumpster and an off-loading area, and you see  
23 these trucks can maneuver a street just by visual  
24 inspection. And by creating the deeper dock if we  
25 were to take this yellow area and chop it away, we

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1 would lose the two spaces below, because of the floor  
2 below. And we really would have excess space in  
3 there. I think we would be better off having this  
4 extra off-loading area. It's about 180 feet extra  
5 off-loading area.

6 Over on this side of the building, the  
7 east side, you can see once again the area -- the back  
8 half for the supermarket is less impacted if we can  
9 move the stair and elevator from this location, which  
10 is the matter-of-right, over to the side wall. There  
11 is a matter-of-right situation. So it is just a more  
12 efficient plan.

13 Next. Once we get a mezzanine here, this  
14 is the area of relief. This is -- there already is a  
15 roof above grade and already in what would be the  
16 required rear yard if we were in conformance, but  
17 we're trying to just extend that up a bit. I'll show  
18 you a section of that. We could, however, move  
19 elevator core over and then it sort of kisses the dome  
20 and we wanted to make it a better architectural  
21 connection there.

22 So this would be matter-of-right. We  
23 would have that, that roof would, you know, provide a  
24 little bit of an offset along what is really just a  
25 service yard for the Dorchester or not in this case

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1 where we build out there and can have a little cleaner  
2 way to put bathrooms and stuff into the core area  
3 here. It is hidden. Actually, this extra is also  
4 hidden by a screened wall as part of the original  
5 architecture.

6 Next. This elevation on the right shows  
7 the concrete screen wall that comes up and hides some  
8 of the flat roof. Setback actually, you can see about  
9 what 12 feet?

10 MS. BURDIT: 15 feet.

11 MR. ESOCOFF: 15 feet. If you could get  
12 far enough back, you would see this extra about 5 feet  
13 where the new construction that isn't in total  
14 conformance would be behind this sort of art deco  
15 concrete screen wall.

16 Next. Oh, that's not pertinent really.  
17 I think that's -- yes, this section. So if you were  
18 to take a section through the service yard, Dorchester  
19 would be here. We either are in this configuration,  
20 matter-of-right, or in this configuration, which is  
21 what we're asking for. It's just that amount, a small  
22 amount of relief which we think will help  
23 architecturally and help the planning of the building  
24 and provide most accordingly eight additional parking  
25 spaces on the lower level, because these elevator

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1 cores are like spikes. They go right down through a  
2 building.

3 You can't drive through them. And if any  
4 of you have been in parking lots where there are  
5 deadend situations, it can be a real pain. So it  
6 would be nice to have extra parking and also have a  
7 better circulation system for the parking. That  
8 really ends my testimony. Thank you.

9 MR. GLASGOW: Next, I would like to call  
10 Mr. Gorove.

11 MR. GOROVE: Thank you. My name is Fred  
12 Gorove, principle of Gorove/Slade Associates,  
13 Washington, D.C. My introduction is going to be  
14 longer than my testimony, contrary to most traffic  
15 testimony. I'm here today with Dan VanPelt, who was  
16 the engineer responsible for pulling together a lot of  
17 our studies. Our role has been -- oh, by the way,  
18 Gorove/Slade Associates, was introduced as Mr. Glasgow  
19 introduced, has been providing professional traffic,  
20 transportation, parking services in Washington for  
21 more than 26 years nationally and internationally.

22 And just by comment, I just returned from  
23 the onerous task of visiting five European cities,  
24 eating my way through five cities, to look at  
25 automated parking garages. So if I look a little

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1 tired and hungry, that's the reason. But our role has  
2 been, with regards to his, traffic, transportation and  
3 parking again to prepare the reports that were  
4 necessary for forecasted traffic, forecasted what the  
5 parking needs are, survey comparables, counted  
6 pedestrians, observed on-street parking conditions and  
7 met long hours with the residents to hear what the  
8 issues were to make sure what we were doing in design  
9 addressed the issues as much as they could be  
10 addressed.

11 I'm here to speak to the two variances  
12 that were mentioned. I concur with the statements  
13 that were made. It's really part of our testimony  
14 that the rear yard setback issue has to do with the  
15 loading dock and the size of the trucks. We went long  
16 periods attesting the maneuvering of trucks going in  
17 and out and we determined that if we were to use the  
18 55 foot dock and allow a 55 foot truck, it wasn't  
19 practical. It would take a lot of maneuvering. He  
20 could get in there, but a lot of up and backing up and  
21 backing up and backing up and so that didn't work  
22 well.

23 So the Harris Teeter commitment to the 40  
24 foot trucks would allow these trucks to be parked in  
25 the loading dock and close the loading doors, which

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1 are quiet loading doors, so all the loading could take  
2 place behind these doors. So there was a great  
3 advantage to the 40 foot trucks, the variance that is  
4 being requested. As has been testified, this reduces  
5 the number of parking spaces that are impacted within  
6 the garage.

7 Parking is a very important commodity in  
8 this neighborhood. The parking that is being provided  
9 some 126, 128 parking spaces exceeds the requirement  
10 of 58 to 60, which is the zoning requirement, so there  
11 is parking in excess of the parking requirements. In  
12 fact, based on our calculations and observation, it  
13 meets the needs and exceeds the needs of this store  
14 and the uses that are being proposed within the  
15 building.

16 In terms of the other rear yard setback  
17 issue, that was with regards to the loading dock, with  
18 regard to the rear yard setback and the placement of  
19 the elevator and the need to adjust that, again as was  
20 testified, the required -- the requested variance  
21 allows the garage to operate more efficiently. We  
22 worked closely with Esocoff on planning the garage, so  
23 that we did determine that this would make a more  
24 efficient, logical system that somebody could pull in  
25 there and not have to duck columns and so on, as you

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1 have seen in some buildings.

2 And they will be able to move smoothly  
3 within this garage and find parking spaces and it's a  
4 much better parking garage and it reduces the impact  
5 on the number of parking spaces allowing the elevator  
6 to be moved as proposed. And that is my testimony.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 MR. GLASGOW: Mr. Esocoff wants to add one  
9 thing and then we'll call Mr. Williams.

10 MR. ESOCOFF: I just wanted to point out  
11 that the side yard relief or rear yard relief we're  
12 asking for for the elevator core, with this empty  
13 site, someone could develop a property matter-of-right  
14 and have a wall that same height along that property  
15 line. There is no reason to believe that would be  
16 designated as a yard space and wouldn't be a built  
17 mass. And it does overlook, of course, a truck court  
18 for the Dorchester as it is. That's all I wanted to  
19 mention.

20 CHAIRPERSON GRIFFIS: So you're saying  
21 that the height that it is set to now would conform to  
22 a lot line wall on the C-2-B and the height would be  
23 allowable?

24 MR. ESOCOFF: Right. There is no reason  
25 to believe that if it were an empty site that that

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1 same building mass might not occur at that location.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. ESOCOFF: So there could be no -- no  
4 one could expect that that might be open space  
5 overlooking somebody else's back yard. It could very  
6 well be built up that high.

7 CHAIRPERSON GRIFFIS: I see.

8 MR. ESOCOFF: Thank you.

9 CHAIRPERSON GRIFFIS: Okay.

10 BOARD MEMBER MANN: Is that because in the  
11 alternative the rear yard would be located in a  
12 different place?

13 MR. ESOCOFF: Yes, it could be.

14 BOARD MEMBER MANN: Because the frontage  
15 of the building would be --

16 MR. ESOCOFF: Right.

17 BOARD MEMBER MANN: I see.

18 MR. ESOCOFF: It could be a series of  
19 townhouses that are 40 feet high going back some  
20 distance.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. GLASGOW: I would like to call the  
23 next witness, Mr. Williams. Fred, let him sit there.

24 MR. WILLIAMS: Good afternoon, ladies and  
25 gentlemen. My name is Lindsley Williams. I provide

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1 land use planning and zoning consultative services to  
2 the Law Firm of Holland and Knight and through them to  
3 this particular case. Let me start by following up on  
4 what Phil just remarked about in terms of the  
5 hypothetical rear yard.

6 One other thing that could go on in the  
7 rear yard, and often does or in a side yard where it  
8 is provided in open area, it becomes the loading zone.  
9 It typically has the depth and width that is required  
10 and there is no reason why the two use -- the yard and  
11 the loading berth requirement can't occur together.  
12 Here, in this case, all of the sort of utilitarian  
13 functions are being absorbed within the overall zoning  
14 envelope, the overall building envelope, everything in  
15 this case that is going on in this project is enclosed  
16 within its walls and under its dome.

17 Now, to my prepared remarks. This project  
18 is being built on an existing site. It is an existing  
19 building. The land area is, approximately, 42,400  
20 square feet. There is -- private properties  
21 immediately abut on the east and on the north side and  
22 there is no further development proposed by the  
23 applicant that encroaches into that whatsoever. On  
24 the south and west side, you have the frontages of  
25 Kalorama Road to the south and 17<sup>th</sup> Street to the

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1 east.

2 The variances that are being sought here  
3 are two very, very, very specific things and they run  
4 not to what is the purpose of the C-2-B Zone or what  
5 is the purpose of the RC Overlay, but rather they run  
6 to the question of can we meet a technical  
7 requirement? Well, maybe we can, but what is the  
8 impact of doing so?

9 And our argument here is that there is a  
10 higher public good by maximizing the provision of  
11 parking within the available resource that is there.  
12 Right now, there is essentially two levels that have  
13 historically been used off and on for parking. Right  
14 now, only the lower level is configured for parking  
15 and that means that there is kind of a difficult  
16 relationship with cars getting in and out of the  
17 parking garage, because they have to share a narrow  
18 ramp to get both up and down.

19 We may hear more about that later. What  
20 you're getting is a rational plan that will involve an  
21 opportunity to dip down to the lower level or to make  
22 a right turn and sweep through in a series of one-way  
23 flows that simply makes sense and with that, with the  
24 relief that we're seeking, will maximize the number of  
25 spaces that is provided with the simple flow

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1 throughout the entire process.

2 The building is a unique building. It is  
3 one of the only two in the entire city that has this  
4 type of construction. The columns, and perhaps I can  
5 ask Karen if she would simply point them out, that are  
6 holding up this domed arch are of an extraordinary  
7 size and they are not things that can be lightly moved  
8 around.

9 I mention that because in the hearing book  
10 that you got, you will notice that part of the  
11 question is can we -- what can we do to change the  
12 size of the loading berth? And what we're finding is  
13 that it is constrained by those very pillars, those  
14 columns simply are in the way. You cannot move them  
15 out of the way and keep the building standing. And  
16 you're limited on other size, of course, by the  
17 property line. That's what the example in B is all  
18 about.

19 The Citadel is situated in the middle of  
20 an area that had a varied zoning history and it is  
21 relevant to everybody here to know that when the  
22 building was built in 1947, it was built according to  
23 the Zone Plan then in effect, which was in the second  
24 so-called second Commercial District. It was a  
25 district that permitted many, many uses, including

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1 light industrial, warehouse type things. And, indeed,  
2 I think it is another point to look at here, what is  
3 happening in this building is to allow it to come into  
4 a series of uses that are now favored and permitted  
5 under the Zoning Regulations.

6 You look at our first application where we  
7 have the older C of Os and you will see things like  
8 roller skating rink, assembly hall, warehouse. Prior  
9 to that was a gasoline service station. I want you to  
10 keep that list of things in mind when you turn to the  
11 regulations of what the Reed Cooke Overlay is all  
12 about. The Reed Cooke Overlay is a companion to the  
13 underlying C-2-B Zone. The C-2-B Zone is a zone  
14 that's designed to provide mixed use, mixed use on  
15 sight and mixed use within the communities in which it  
16 is mapped.

17 But the Reed Cooke Overlay says we're not  
18 happy just to have the C-2-B provisions, which would  
19 allow 65 foot height. Reed Cooke is special and in  
20 order to protect Reed Cooke, we need to keep the  
21 heights down. And so Reed Cooke says keep it down to  
22 40 feet. Mr. Esocoff's plans, Don's plans, they keep  
23 it down to 40 feet in terms of anything that is being  
24 added. The uses, we see going away the gasoline  
25 station. We see going away the public assembly hall.

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1 We see going away the restaurant uses. And we have  
2 coming in uses that are among the ones that survived  
3 the long list of things that are excluded by the Reed  
4 Cooke Overlay.

5 The final point that I wanted to make on  
6 this is that there is further practical consideration  
7 in terms of the loading berths themselves. Right now,  
8 but for their own operational reasons and commitments,  
9 Harris Teeter is committing and the applicant is  
10 committing to live with the 40 foot truck length. If  
11 there is a 55 foot loading berth, the 40 foot truck  
12 would have to go there, because that's where it is.

13 The fact is that Teeter, even if it had a  
14 55 foot berth, wouldn't want to allow deliveries from  
15 a 55 foot truck, because at any given point in time,  
16 the way the dynamics of loading work, you don't know  
17 which loading berth is going to be free. And if you  
18 had a 55 foot truck and a single 55 foot berth, there  
19 would only be one place for it to go. So they are  
20 committing in their -- in this application, the  
21 applicant is committing to having a truck length limit  
22 of exactly 40, nothing larger than 40 feet. And to be  
23 able to use either dock. They are both the same  
24 depth, have all the other requirements, and to have it  
25 work.

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1           So what we have is a grocery store that's  
2 coming in that is consistent with the uses of the RC  
3 Overlay. Another retail service use that will be  
4 consistent. It isn't further specified. And a small  
5 area of general office eliminating uses that formerly  
6 were there that are no longer allowed. We have an  
7 application that proposes a density floor area ratio  
8 that does not exceed 1.5. That's exactly the limit  
9 that is allowed that's being respective in this  
10 application.

11           Every aspect of height that is being added  
12 to in terms of being the feather in the dome to create  
13 the windows, the office lobby, all of them are  
14 consistent with the height regulations. The loading  
15 requirements are being met in terms of number of  
16 spaces, given the grandfather provisions that apply  
17 here. We are proposing to have an outside loading  
18 zone. We have been working with DDOT. DDOT is  
19 preparing to allow that zone to be established with  
20 further special restrictions.

21           This is my conversation with Ken Laden.  
22 OP will add something more here. But to the effect of  
23 limiting that zone so that even though the zoning  
24 would be on the order of 60 feet long, that it would  
25 have special rules that says don't park here if you

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1 are over 40 feet. And unlike any other loading zone  
2 in the city, you will only be able to stay for an  
3 hour, so that the utility craftsman's truck that  
4 wants to work in the neighborhood, this is not the  
5 loading zone for them.

6 We want to make this work. We believe we  
7 have a plan that will. We have uses that are entirely  
8 consistent. And so I'm pleased to associate myself  
9 with the granting of this relief. It is a unique  
10 situation. The practical difficulties which have been  
11 explained in the previous remarks and there is a total  
12 absence of any adverse affect on any of the  
13 individuals in the community that have now risen to  
14 the level of party status, in the sense that none of  
15 them, not one of the named persons can see the loading  
16 berth from where they live or can see the proposed  
17 addition at the office level, because it is fully  
18 screened by a parapet wall.

19 The shadow issues, there is nothing that  
20 they are deprived of right now with the granting of  
21 the relief that is being sought. Ladies and  
22 gentlemen, that's my testimony.

23 CHAIRPERSON GRIFFIS: Thank you very much.

24 MR. GLASGOW: That completes the  
25 applicant's direct presentation. We do note that

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1 there is a report from the Office of Planning in  
2 support of the application. We've got an ANC report  
3 in support with conditions, most of which we are in  
4 agreement with. And there is a letter in support from  
5 the Ward Council Member. Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. Thank  
7 you very much. Let's take Board questions at this  
8 time. Mr. Williams, you indicated the loading zones  
9 and that's outside of what we're looking at, but it's  
10 part and parcel to the facts in this case. Do you  
11 want to just point out on those where they are?

12 MR. WILLIAMS: Yes, I'll be happy to, Mr.  
13 Chair. There will be two loading zones established in  
14 the process of implementing this case. Right now,  
15 there is an existing loading zone that is,  
16 approximately, 70 feet long which is located at the  
17 southern end of the -- considered as 17<sup>th</sup> Street, face  
18 on 17<sup>th</sup> Street. We are proposing to move that to the  
19 north, so that it would flow immediately south of the  
20 loading dock and to be a 60 foot length, build by  
21 allowing slightly more space.

22 It's about four cars that can get in there  
23 right now, but it will become four parking spaces for  
24 the residential people in the neighborhood.

25 CHAIRPERSON GRIFFIS: And what's the

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1 proposed posting on that if it would be approved by  
2 DDOT right now? Would it be posted that it would be  
3 commercial loading from 8:00 to 8:00?

4 MR. WILLIAMS: From 7:00 a.m. to 4:00  
5 p.m., Monday through Saturday, is our request. We  
6 believe that would be honored. After that, it might  
7 become residential permit parking or it might just be  
8 unrestricted.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. WILLIAMS: The second loading zone  
11 that we are proposing is a sort of a combination of a  
12 loading zone and entrance zone, but directly in front  
13 of the office, we're proposing a loading zone of,  
14 approximately, 35 feet in length. Where it would be  
15 in from 7:00 a.m. to 6:30 p.m., so a little later than  
16 the grocery loading zone, Monday through Friday, and  
17 up until about -- I need to be corrected here. 7:00  
18 a.m. to noon or 7:00 a.m. to 2:00 on Saturday. I'm  
19 forgetting which one. It's one of those two figures.

20 Finally, the fact that there is this major  
21 pedestrian entranceway over at the western end on  
22 Kalorama Road will lead to the Fire Marshall's  
23 requiring a "no parking" entrance zone in that area  
24 during hours of significant people present, being  
25 present. Whether that would be 7:00 a.m. to 8:00

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1 p.m., I just -- that's something the Fire Marshall  
2 will have to determine.

3 CHAIRPERSON GRIFFIS: Okay. Thank you.  
4 Mr. Esocoff, maybe you can answer this. What would be  
5 the need for those on-street loading zones if we're  
6 understanding that the loading bays will serve as  
7 adequately in a 40 foot or 45 foot dimension?

8 MR. ESOCOFF: I actually would like to ask  
9 the traffic.

10 CHAIRPERSON GRIFFIS: Okay. And I thought  
11 so, but I wanted to get him back up then. Then let me  
12 ask you, there has been some question in terms of  
13 right now that what is proposed is the matter-of-right  
14 FAR. Everyone said it was 1.5. There is no request  
15 for relief of the FAR. But just for clarity of the  
16 application and the facts that are in it, you're  
17 creating a partial new level that maximizes the FAR to  
18 be allowable. Is that correct?

19 MR. ESOCOFF: We are creating an area  
20 where the vault springs. We're creating a partial  
21 level of office space.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ESOCOFF: With a hole in it. We're  
24 leaving out the excess FAR that was part of the PUD.

25 CHAIRPERSON GRIFFIS: And the window line

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1 that goes in, again not for relief here, but the new  
2 window line that is being set in right, is set into  
3 that massing, which is that kind of --

4 MR. ESOCOFF: Right.

5 CHAIRPERSON GRIFFIS: I could anticipate  
6 having that at some point.

7 MR. ESOCOFF: Right.

8 CHAIRPERSON GRIFFIS: Does that go around  
9 the entire perimeter of that?

10 MS. BURDIT: No, it's -- Karen Burdit with  
11 Esocoff and Associates.

12 CHAIRPERSON GRIFFIS: You've got to be on  
13 a mike.

14 MS. BURDIT: Karen Burdit with Esocoff and  
15 Associates. I'm the project architect. Currently,  
16 because we are only occupying a portion of that upper  
17 floor, we're only doing the windows on the south and  
18 west facing facades.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. BURDIT: We won't be installing north  
21 and east facing until some later date, if ever.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ESOCOFF: So it would be windowless  
24 space under the dome, making it not very attractive.  
25 But it would present an attractive consistent window

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1 line wrapping around the public exposures of the  
2 building where the office space would be located.

3 CHAIRPERSON GRIFFIS: Excellent. If you  
4 went and continued all the way around, not in the  
5 office space, basically that natural light would drape  
6 into the retail below?

7 MR. ESOCOFF: Yes, I suppose it could.

8 CHAIRPERSON GRIFFIS: I see. And you  
9 don't have -- I mean, it's not similar all the way  
10 around, as we can see in the photographs, or isn't  
11 that -- there isn't that area for that kind of clear  
12 story or whatever we want to call that then. Okay.  
13 That's clear.

14 MR. ESOCOFF: Okay.

15 CHAIRPERSON GRIFFIS: Is there any  
16 relation to servicing that area, the office with the  
17 movement of the core?

18 MR. ESOCOFF: No, we can service that area  
19 with the core in either place. Really, the --

20 CHAIRPERSON GRIFFIS: So there is an  
21 existing mezzanine level already. Is that correct?

22 MR. ESOCOFF: No, the core we're having is  
23 a new elevator. And there is a mezzanine level, but  
24 really what we're -- we're just actually half way  
25 between the new office level.

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1 CHAIRPERSON GRIFFIS: I see.

2 MR. ESOCOFF: Because it's 17 feet height,  
3 so you would get under the curved part of the dome.

4 CHAIRPERSON GRIFFIS: I see.

5 MR. ESOCOFF: So now really, this is about  
6 providing better circulation and more parking spaces.

7 CHAIRPERSON GRIFFIS: I see.

8 MR. ESOCOFF: So that the elevator is out  
9 of the way.

10 CHAIRPERSON GRIFFIS: Understood. Okay.  
11 Other questions for Mr. Williams or Mr. Esocoff?

12 VICE CHAIR MILLER: Well, this might be  
13 for Mr. Gorove, but since Mr. Esocoff just referred to  
14 this also, the question about parking, providing more  
15 parking spaces. I also heard that you're providing  
16 more parking spaces than are required and more parking  
17 spaces than are needed. And I'm wondering how many  
18 parking spaces are needed.

19 MR. ESOCOFF: Yes, I would refer that to  
20 Mr. --

21 VICE CHAIR MILLER: Okay. I'll wait for  
22 him.

23 CHAIRPERSON GRIFFIS: Well, actually, it's  
24 a zoning issue. They have it in there. I forget what  
25 it is, but they are required for our calculations and

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1 that is required --

2 VICE CHAIR MILLER: No, I meant -- I know  
3 that.

4 CHAIRPERSON GRIFFIS: Oh, I'm sorry.

5 VICE CHAIR MILLER: He didn't have the  
6 demands of the store.

7 CHAIRPERSON GRIFFIS: I see. I see. All  
8 right. Excellent point. Okay. Any other questions?

9 BOARD MEMBER MANN: Yes.

10 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

11 BOARD MEMBER MANN: Is this building a  
12 historic designated building?

13 MR. ESOCOFF: No, it's not designated.

14 BOARD MEMBER MANN: Okay. But you had  
15 mentioned something about some analogy to, I guess,  
16 that it's approaching the age that it --

17 MR. ESOCOFF: Oh it's actually over the  
18 age. It's simply not a designated building.

19 BOARD MEMBER MANN: Okay. And there's no  
20 plans for that to occur?

21 MR. ESOCOFF: Not that I know of.

22 BOARD MEMBER MANN: Okay.

23 MR. GLASGOW: Mr. Mann, from some of the  
24 contact that we had had with the Ward Council Member  
25 and others, there are no plans to designate it,

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1 because we committed that we would retain the  
2 building.

3 BOARD MEMBER MANN: And what is an MEP  
4 system?

5 MR. DEUTSCH: Mechanical electric  
6 plumbing. Just plumbing.

7 BOARD MEMBER MANN: Thank you.

8 VICE CHAIR MILLER: I have a couple of  
9 questions for Mr. Williams, if this is the time. It's  
10 pretty clear to me what is unique about this site.  
11 But I was wondering if you could just articulate a  
12 little more what the practical difficulty is with  
13 respect to the loading berth?

14 MR. WILLIAMS: Absolutely. What I suggest  
15 is that you turn to Tab B of applicant's prehearing  
16 submission. Tab B consists of a single diagram with  
17 two parts to it. One lays out the loading berth  
18 proposed with variance and the other is the by right  
19 alternative. What I have tried to show in that  
20 diagram, Members of the Board, is the placement of the  
21 major structural columns, which Mr Esocoff referred  
22 to. These are the things that hold the dome up. And  
23 if you try to move them, this concrete -- this  
24 creature is threatened fundamentally.

25 So we operated with the assumption that we

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1 could not do anything but to live within the columnar  
2 spacing and the limits of the lot line. The practical  
3 difficulty here is that as you -- if you try to take  
4 longer trucks or make for even a bigger loading dock  
5 area, there is simply not space in which to do it.  
6 There is an existing fire stair that comes up from the  
7 lower level that is showing in the upper drawing,  
8 that's the stairway that's emerging right below the  
9 third dashed line.

10           There is in addition the fire stair that  
11 exits. There is an existing stairway out of the  
12 existing main floor of the building. That serves to  
13 define the total area that is available for all the  
14 utility functions. It is where those utility  
15 functions have been all along. And then they need to  
16 match up and marry into the back room, back storage  
17 areas for Harris Teeter, which is the area with  
18 relatively low ceilings. It is outside the great  
19 vaulted area of the store.

20           As you begin to have something, the full  
21 depth that's shown in the lower diagram, it takes the  
22 truck way back into the thing. Not only does it  
23 adversely affect two parking spaces below, it  
24 eliminates space that is needed behind it creating  
25 greater difficulties for the handling of the

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1 considerable volume of goods that need to flow in and  
2 out of this store. This store will not have a huge  
3 warehouse associated with it. It has a small area  
4 that is available in comparison to the normal new  
5 grocery stores.

6 And so they are going to need to have  
7 deliveries coming in to basically keep the shelves  
8 full and the needs of the residents met. These are  
9 the limits of what we can do.

10 VICE CHAIR MILLER: I just wanted to  
11 clarify. I understood that the streets are wide  
12 enough for the trucks and you don't need the trucks of  
13 that size coming in and that's why you don't need a  
14 berth that size. But I also wanted to understand what  
15 you were saying also because of the columns you  
16 couldn't fit in a berth that size?

17 MR. WILLIAMS: We can fit it in, but it  
18 has certain consequences. But we cannot, for example,  
19 put in three loading berths or four. You asked about  
20 -- the question to Mr. Esocoff, the question was asked  
21 by the Board about why the outside loading zone area,  
22 because there will be a number of deliveries that are  
23 coming that are light goods, bakery products or things  
24 like that which can be satisfactorily handled by  
25 simply pulling up to the curb, putting the materials

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1 onto a wheeled dolly, taking it in through a door and  
2 getting it up on what I think is called a scissor jack  
3 or a scissor elevator that basically converts the  
4 goods from the level of the berth up to the level of  
5 the loading platform itself, which is approximately 4  
6 feet above the grade of the berth. And we will need  
7 to have -- they will need to have that in order to  
8 keep the shelves stocked and full.

9 CHAIRPERSON GRIFFIS: Anything else? Any  
10 other questions? Excellent. We're going to have  
11 questions for Mr. Gorove from the Board and then we'll  
12 go to cross examination. Will you just give him a  
13 chair? That would be grand. The first question just  
14 for clarification, you mentioned in your testimony  
15 that you had studied truck turning radiuses and  
16 maneuverability and it was your testimony that it  
17 would be difficult for a 55 foot or full size truck to  
18 actually maneuver into this loading dock. Did I  
19 understand that correctly?

20 MR. GOROVE: That is correct.

21 CHAIRPERSON GRIFFIS: And is that based on  
22 what, the street width that is there?

23 MR. GOROVE: It's a street width and, as  
24 you can imagine, a truck driver that -- the truck  
25 drivers in Washington, in any city, get to be very

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1       clever, because they learn how to get around. But  
2       there is a practical limit to what they could do.  
3       That truck would just have vast difficulty getting in.  
4       We tested it. We couldn't do it without removing the  
5       parking on the street just to give him enough room to  
6       maneuver to get in.

7                 As it is, the 40 foot truck can move in.  
8       We are suggesting that two parking spaces on the other  
9       side of the street be removed, so there wouldn't be a  
10       difficulty, but that 40 foot truck can get in to the  
11       parking space. And that is really the practical  
12       limit. It's not only getting in to the loading dock,  
13       but it is maneuvering on the streets.

14                CHAIRPERSON GRIFFIS: Right.

15                MR. GOROVE: We don't even want to see  
16       them. Every once in a while you do see a bigger truck  
17       come down the street, but you see the difficulty when  
18       they do come down the street.

19                CHAIRPERSON GRIFFIS: Okay. So from my  
20       understanding of it, I think I have all that, but just  
21       for absolute clarity, you have this open bay and if  
22       you brought a full size truck, in order for it to turn  
23       back in, because it's going to back into that, 17<sup>th</sup>  
24       Street isn't wide enough. It would start scraping the  
25       cars on the other side?

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1 MR. GOROVE: Well, that's why we're  
2 suggesting two parking spaces be removed to be able to  
3 pull in and do what's called the K-turn.

4 CHAIRPERSON GRIFFIS: Sure. And that's  
5 with the 40 foot. But I'm trying to understand the  
6 full size.

7 MR. GOROVE: Oh, the full size?

8 CHAIRPERSON GRIFFIS: A big Mack truck  
9 coming out there.

10 MR. GOROVE: Could he get in there?

11 MR. VANPELT: Let me help. This is Dan  
12 VanPelt. Dan VanPelt, Gorove/Slade. We did look at  
13 larger size trucks and it just means -- the  
14 implication of that means more loss of parking on-  
15 street to make the -- to swing that turn and to back  
16 up a 55 foot truck in there would have more  
17 implications to the on-street parking, I mean.

18 CHAIRPERSON GRIFFIS: Okay. So the bigger  
19 the truck is, the more clear area you need, which  
20 removes, as you're saying, on-street parking?

21 MR. GOROVE: It removes on-street parking  
22 and I think more importantly, we don't know where the  
23 cars are going to be parked coming around the corner  
24 and the like. If somebody is improperly parked, a  
25 larger truck would just have difficulty getting around

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1 the corner.

2 CHAIRPERSON GRIFFIS: Sure. Okay.  
3 Excellent. Did you want to follow-up on meeting and  
4 exceeding the going uses of parking?

5 MR. ESOCOFF: Could I just offer one other  
6 comment of practical difficulty, because we do have an  
7 existing building. Extending a loading dock to be 55  
8 feet when you can't maneuver that truck means we have  
9 to rip up an existing building. It's not as practical  
10 as if you're starting with empty site and you're just  
11 configuring the building to work with that.

12 VICE CHAIR MILLER: Why would you have to  
13 rip it up?

14 MR. ESOCOFF: Well, because right now  
15 there is a loading dock there that is shorter, so we  
16 have to cut into the existing -- there is an existing  
17 berth that is shorter. We would have to cut the  
18 existing dock, jackhammer all of that out and rebuild  
19 it at a lower level, so the truck could come in  
20 further and establish a dock somewhere else. In other  
21 words, that area is not just something we plan on  
22 paper. That is existing concrete that has to be at  
23 great expense removed and then we lose the two parking  
24 spaces beneath it. It's at two levels, right? There  
25 is a dock.

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1 VICE CHAIR MILLER: Right. Yes. But you  
2 are extending it to a certain extent, right?

3 MR. ESOCOFF: We are.

4 VICE CHAIR MILLER: It's just --

5 MR. ESOCOFF: But the more --

6 VICE CHAIR MILLER: -- the more you have,  
7 the more --

8 MR. ESOCOFF: The more money it costs.

9 VICE CHAIR MILLER: -- difficult it is.  
10 Okay.

11 MR. ESOCOFF: And then we lose two parking  
12 spaces.

13 CHAIRPERSON GRIFFIS: Good.

14 VICE CHAIR MILLER: I had asked about the  
15 parking. I think you all said you're providing like 128  
16 spaces and you're only required under the regulations  
17 58 to 60, and that it's more than what the demand is  
18 for the store and I was just wondering what the demand  
19 is for the store.

20 MR. GOROVE: Well, the ultimate test on  
21 the demand for the store is the merchant's survival.  
22 I mean, if they accept a parking level, then they are  
23 comfortable. But what we did is we went out to look  
24 at comparables just to see, you know, other stores and  
25 what they provided.

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1           There is not real good comparables in  
2 Washington and the P Street situation, Whole Foods  
3 comes to mind immediately, and we looked at that but  
4 the problem is there is a number of other uses that  
5 also use that store. So it's hard to sort out the  
6 grocery store parking from the others.

7           I will just give you a table of numbers,  
8 the ones we looked at, the Safeway. There is a  
9 Safeway at Dupont with zero parking spaces and that  
10 operates. I mean, I go there myself once in awhile.  
11 The Safeway, the Adams Morgan, that has 32 parking  
12 spaces. The Whole Foods has 185 but, as we mentioned,  
13 there is a hardware store, there's restaurants,  
14 there's a number of other uses that are in there.

15           CHAIRPERSON GRIFFIS: What is the square  
16 footage of the Whole Foods?

17           MR. GOROVE: 40,000 square feet and this  
18 store we're talking about is 35, so it's smaller.  
19 Glover Park, that one has 192 parking spaces. But,  
20 again, that is a neighborhood parking location. You  
21 know, it serves the whole neighborhood.

22           CHAIRPERSON GRIFFIS: And is there some  
23 industry standard? You made the statement this meets  
24 or exceeds the building --

25           MR. GOROVE: The industry standard is --

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1 I don't have it at my fingertips. Do you happen to  
2 have it, the IT standard?

3 MR. VANPELT: No. Well, the IT standard  
4 really doesn't -- the IT model really is more for  
5 suburban grocery stores.

6 CHAIRPERSON GRIFFIS: Right, yes.

7 MR. VANPELT: So when it comes to looking  
8 at the database of urban grocery stores, we really  
9 have to look at comparables. IT really doesn't give  
10 us a good industry standard.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. VANPELT: It's just transportation  
13 standard.

14 CHAIRPERSON GRIFFIS: And that's helpful  
15 to know that that was the base point at which you  
16 looked at it and then went to the comparables, but now  
17 you're saying that there is nothing really exactly  
18 comparable but it's what, it's within the realm of  
19 the --

20 MR. GOROVE: It's within the realm of  
21 reasonableness. And then the ultimate test again, my  
22 work has been shopping centers. I have been involved  
23 in over 400 shopping centers nationally and  
24 internationally, and the ultimate test is well, the  
25 merchant accepted this as an acceptable level for

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1 their business.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. GOROVE: And that was the conclusion.

4 CHAIRPERSON GRIFFIS: Okay. And then we  
5 have another threshold as we need to make sure that it  
6 meets the parking requirements for the regulations,  
7 but we're just trying to get clarity here.

8 MR. GOROVE: Which you will see, right.

9 VICE CHAIR MILLER: But also because it's  
10 only connected because the loading berth -- like  
11 you're making these changes. By getting the variance  
12 you're creating more parking spaces. That's one of  
13 your arguments and I was wondering, you know, how much  
14 of a need for these parking spaces is there.

15 MR. GOROVE: Well, here is the real need,  
16 and you will hear from the residents on this, there is  
17 a real need for parking in the neighborhood and what  
18 we wanted to do is lessen the impact as much as can  
19 be. And there is going to be provisions in the  
20 operation that will encourage people to park in the  
21 garage. They won't really find a parking space in the  
22 street. We have surveyed the street all hours and  
23 it's very hard for anybody to find a parking space if  
24 they are going to go grocery shopping.

25 And then also, there's going to be

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1 provisions that you can't take a cart out of the  
2 building once you have shopped or there are devices.  
3 Either there is locks on wheels as you cross a plane  
4 and the like, so people will be encouraged to come  
5 into the garage.

6 It will be the simplest way and then there  
7 is not going to be gates or what have you, so you will  
8 be able to pull in or there may be some control. But  
9 it's going to be such that there will be ease of  
10 access so every step, measure that can be made to  
11 encourage people to come in there, they will be  
12 encouraged to park in the store.

13 BOARD MEMBER MANN: Are there any other  
14 laws or regulations that limit the type or length of  
15 trucks that can travel on these streets?

16 MR. VANPELT: No. As far as the -- there  
17 is no maximum that we're aware of. I think, Lindsley,  
18 you might be able to speak to that a little more.

19 MR. WILLIAMS: Dan is correct in terms of  
20 the general rules in the District of Columbia. There  
21 are no extant provisions right now that limit the  
22 length of trucks. There is one limitation that does  
23 exist and that is that something that you see out on  
24 the highway, which are commonly called highway  
25 doubles, those are not permitted on D.C.'s local

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1 streets. The only street that they would be permitted  
2 on are the interstates that are flowing through the  
3 District.

4 So what Harris Teeter is doing is,  
5 basically, proposing to have the doubles come up from  
6 North Carolina, separate elsewhere and then come in as  
7 something that totals less than 40 feet, which is a  
8 doable arrangement in terms of today's product in the  
9 truck marketing area.

10 CHAIRPERSON GRIFFIS: Anything else? Any  
11 other questions from the Board?

12 VICE CHAIR MILLER: No.

13 CHAIRPERSON GRIFFIS: Very well. Let's  
14 move ahead to cross examination. We have the ANC  
15 cross first. Why don't we get another chair on the  
16 edge and give him a mike? When our complete  
17 renovation is done, you will note that we will have  
18 several tables and ample chairs for panels such as  
19 this.

20 MR. ROTH: I just have one question or  
21 several questions for Mr. Gorove and Mr. VanPelt just  
22 to try to get some clarity on the number of on-street  
23 parking spaces that would have to be removed as you  
24 went beyond 40 foot trucks.

25 Do you have an estimate or a calculation

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1 of the number of on-street spaces that would have to  
2 be removed under your current plan for 40 foot trucks?

3 MR. GOROVE: Well, with the 40 foot  
4 trucks, as I recall, there's three parking spaces that  
5 are impacted by that loading dock just to have a level  
6 of comfort that there won't be any incident of anybody  
7 scraping anybody. So we'll be conservative in the  
8 adjustments so there is only three impacted. If there  
9 was larger trucks, it would probably be that whole  
10 curb face along 17<sup>th</sup> Street there on the other side.

11 MR. VANPELT: We did analyze that at one  
12 time and, off the top of my head, I don't have the  
13 information right in front of me how much it was, but  
14 it was a significant impact to the amount of parking  
15 particularly on the west side of 17<sup>th</sup> Street because  
16 a much longer vehicle with a longer wheel base needed  
17 more room to swing the turn and get into the dock. So  
18 it is several more spaces. I'm not exactly sure how  
19 many.

20 MR. ROTH: Is there a differential  
21 between, say, a 45 foot truck and a 55 foot truck?

22 MR. VANPELT: There is. It starts to get  
23 -- there is kind of this fine line in there where  
24 there is a little bit of a differential in there.

25 MR. ROTH: Okay. Thank you.

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1           MR. GOROVE: There is another impact that  
2 we always worry about. It's not only the parking  
3 spaces that are impacted, but it's the curbs  
4 themselves that get impacted. As you know, the truck  
5 drivers will make pathways wherever they have to, so  
6 the 40 foot truck practically will stay within the  
7 confines of the curb.

8           CHAIRPERSON GRIFFIS: Excellent. Any  
9 follow-up? Is that it? Excellent. Thank you very  
10 much. Reed Cooke?

11           MR. GOROVE: Just before they talk, I just  
12 want to interject one other thing about the trucks.  
13 We're talking a lot about the big trucks. As it is,  
14 most of the trucks, most of the deliveries are the  
15 small vehicles. Those that we're talking about are  
16 the hardest ones to deal with. The other ones are no  
17 more difficult than regular passenger cars, and so  
18 we're focusing a lot on really the smallest number.

19           CHAIRPERSON GRIFFIS: Good, good  
20 clarification.

21           BOARD MEMBER ETHERLY: If I could, Mr.  
22 Chair, just to follow-up on that because that is  
23 perhaps kind of the pin of the issue here. Can you  
24 give a percentage or can you kind of quantify when you  
25 say most of the deliveries are in the nature of the

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1 smaller trucks for this particular -- and perhaps  
2 maybe the question is just relative to this particular  
3 type of store.

4 MR. GOROVE: Yes. It might be Harris  
5 Teeter that can best answer that.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. GOROVE: But I would give you my best  
8 guess. It's in a single digit percentage of the  
9 vehicles that come here.

10 BOARD MEMBER ETHERLY: That are larger?

11 MR. GOROVE: The larger trucks.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. GOROVE: Okay.

14 BOARD MEMBER ETHERLY: Okay. And I take  
15 it we don't have a representative from HT here today.  
16 Are you aware if anyone has taken a look at other HT  
17 locations or other comparable locations to kind of get  
18 a more finely developed sense of that?

19 MR. WILLIAMS: We have talked with Harris  
20 Teeter over the course of this study that has been  
21 going on for so long. What they have concluded is  
22 that they will shift the nature of the trucks that  
23 deliver to the D.C. stores to fit the realities of  
24 D.C. Streets. The number of -- and I don't know what  
25 their inventory of trucks will be, but they will have

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1 to get up here and service it with a total truck  
2 length, truck tractor that is 40 feet or less.

3 If you look at what is coming to the  
4 grocery stores by most of the direct service, the  
5 direct vendor deliveries, they tend to be step van  
6 type vehicles not exclusively or short bed single unit  
7 trucks that are less than 35 feet in length.

8 BOARD MEMBER ETHERLY: Okay.

9 MR. WILLIAMS: That is what I can say from  
10 a lot of hours that has been billed to Don from my  
11 study and I believe some of the others that have been  
12 involved in this project.

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

15 MS. GALLAGHER: I have a couple questions  
16 and I think it's for Mr. Gorove. The one thing that  
17 you did say was that, you know, for these 40 foot  
18 trucks that you're going to have to service the store  
19 and you had also said that this 40 foot bay would  
20 cause all of the trucks to come in close, is that all  
21 of the trucks or how many per day are we talking  
22 about? Because it seems to me that if you have a  
23 truck that is not 55 feet in length, which is the  
24 normal, but you're going to need more of those trucks  
25 which directly impacts the residents and neighbors,

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1 because they are coming down Kalorama Road.

2 CHAIRPERSON GRIFFIS: Let's take the first  
3 part of questions in cross examination.

4 MS. GALLAGHER: Okay. Sorry.

5 CHAIRPERSON GRIFFIS: And then we get to  
6 the testimony. Good. Are you clear on the question?

7 MR. GOROVE: Again, that is a question to  
8 Harris Teeter, but one of the things that we talked at  
9 length and they responded in detail on, they are going  
10 to have a truck management system so that they don't  
11 have more than what they have capacity for. And so  
12 they are going to manage the sequence of trucks and  
13 the like when they come into there.

14 You see a lot of grocery stores where they  
15 just have a constant 55 foot truck just parked there.  
16 They come there and they seem to unload for days.  
17 They should talk to that, as to how they operate that.  
18 But, again, the truck loading dock is going to be  
19 managed. There is going to be a number of factors to  
20 this and, again, they need to speak to that.

21 Instead of having a truck pull up and the  
22 driver come in and unload the goods and put them in  
23 place, which keeps the truck parking there longer,  
24 they are going to have a separate vendor or operator  
25 that will come into their stores. They will take the

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1 goods. They will load the goods on the shelves so the  
2 trucks won't have to stay there.

3 So the trucks will simply pull in, unload  
4 the goods and leave and then the shelves will be  
5 stocked by another set of people. I forget what it's  
6 call, RMS, if I'm right.

7 MR. WILLIAMS: That's under consideration.

8 MR. GOROVE: Right. Okay. So that is  
9 part of the management program that is being looked at  
10 and devised so that this will have a lesser impact.  
11 And, as you know, we have been to a lot of meetings  
12 with you. This is an issue.

13 MS. GALLAGHER: Right.

14 MR. GOROVE: And everybody has been  
15 listening to it and there has been meetings as to how  
16 do we least impact the neighborhood. They are  
17 concerned. I mean, the people that live there are  
18 their customers so it all has to work for everybody.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. GALLAGHER: So how many would you  
21 estimate are going to actually be behind the  
22 soundproofing door per day of those trucks that come  
23 down?

24 MR. GOROVE: I don't know the number.  
25 There can't be more than two at one time, and so --

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1 MR. WILLIAMS: But the answer is for every  
2 truck that comes --

3 MS. GALLAGHER: Including the bread  
4 trucks, including --

5 MR. WILLIAMS: Every truck that comes that  
6 goes into the loading dock, when it goes in the gate  
7 will rise to permit entrance and come down once the  
8 truck is in there.

9 MS. GALLAGHER: That is not my question.  
10 My question is how many trucks per day are going to be  
11 behind the loading dock, including delivery trucks,  
12 bread trucks, you-name-it trucks there?

13 MR. WILLIAMS: I didn't testify to that.  
14 I can't testify to that. I did not testify to that.  
15 I cannot answer that.

16 MR. GLASGOW: Mr. Chairman, part of that  
17 is going into why we dropped the PUD. There was an  
18 issue with respect to numbers of deliveries per day  
19 and we said the grocery store is a matter-of-right.  
20 The numbers of deliveries are what they are. We best  
21 accommodate them as we can with the loading berth  
22 requirements within the Zoning Regulations.

23 CHAIRPERSON GRIFFIS: Well, let's put it  
24 another way then, I think that's where her question  
25 was going to. If you reduced this size of the loading

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1 bay, which wouldn't allow a big truck to come in, how  
2 many small trucks would then be generated?

3 How many small trucks does it take to make  
4 a big truck? Was there a study, whether it would be  
5 Mr. Gorove or whether it would be Mr. Williams that  
6 were working with the potential retailer, was there --  
7 there are two questions here. Was there any sort of  
8 analysis done for potentially increasing the number of  
9 trips generated by these service trucks and if so, you  
10 know, how many more were there?

11 MR. WILLIAMS: A typical Harris Teeter  
12 store of the size and expected sales volume of this  
13 would be served daily by something on the order of  
14 four trips by a 53 foot long trailer hauled by a  
15 typical highway tractor. When you're dealing with --  
16 the trailers that are involved here are as wide and as  
17 high and 28 feet long so they are, approximately, 50  
18 percent of the capacity.

19 Not every 53 footer is going to be filled  
20 to the gills, but you can bet the 28 footers that are  
21 going to be coming into this are going to be filled.  
22 So it's basically going to be --

23 CHAIRPERSON GRIFFIS: Is there a number?

24 MR. WILLIAMS: -- twice as many trips here  
25 to serve this as it would a normal store. The total

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1 volume will be a function of the amount of sales that  
2 are in the store.

3 CHAIRPERSON GRIFFIS: Did you say twice as  
4 many? Is that what you said?

5 MR. WILLIAMS: That's what I said.  
6 Compared to a normal, large, successful store which  
7 would have upwards of three or four per day, this will  
8 require more trips than that because you can't fit --

9 CHAIRPERSON GRIFFIS: What is the basis of  
10 saying twice as many?

11 MR. WILLIAMS: I'm doing the length of the  
12 trailer, Mr. Griffis.

13 MR. GOROVE: I think we need Harris  
14 Teeter's help, but the length of the trailer is not 50  
15 percent longer, not to differ, and also we know if you  
16 open the back of a truck, they are not full, chuck to  
17 the gills.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GOROVE: Because often, that large  
20 truck is not just going to that one store. It's going  
21 to multiple locations. And so we need a Harris Teeter  
22 answer and I don't want to speculate and sound like  
23 I'm -- you know, I can imagine there is not going to  
24 be a whole lot more, but I need their answer to be  
25 able to answer that.

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1                   CHAIRPERSON GRIFFIS:  So do we.  It has  
2                   come down to the mere fact of what is the impact of  
3                   not having a larger bay?

4                   MR. GLASGOW:  We do have somebody from  
5                   Harris Teeter here.  We can call them up to respond to  
6                   that if they have the expertise to answer that  
7                   question.  One thing that we wanted to keep in mind,  
8                   because we have been -- with respect to this project,  
9                   there are those that want us to make sure that we have  
10                  minimal impact on the street system with respect to so  
11                  you have smaller trucks, so that you're not clogging  
12                  up the whole street system while this truck comes in  
13                  and out of the neighborhood, this 55 foot truck.

14                  And then what wants to have happen is so  
15                  that that truck is the smaller truck as it comes there  
16                  and then, well, we don't want the number of deliveries  
17                  so suddenly this truck grows and has the capacity of  
18                  the 55 foot truck.

19                  CHAIRPERSON GRIFFIS:  Right?

20                  MR. GLASGOW:  You know?

21                  CHAIRPERSON GRIFFIS:  Yes.  I don't think  
22                  it's lost on us.  I mean, I think we have been through  
23                  a couple of grocery stores, but also servicing.  I  
24                  don't think it's lost on us on how it works.  I mean,  
25                  there may be lesser impact if you have panel vans

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1 coming in 50 times a day than one Mack truck coming  
2 in, you know? I understand that. What we need to  
3 know is just what we're talking about. That's all.

4 COMMISSIONER JEFFRIES: And it sounds to  
5 me that no one here really does. At this point, you  
6 really need Harris Teeter or someone unless I'm  
7 missing something.

8 MR. GLASGOW: We're going to check and see  
9 whether the -- because we have two people from Harris  
10 Teeter here today.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. GLASGOW: Who wanted to monitor the  
13 procedure. We want to make sure that they are -- Don  
14 is going to check and see whether they are the right  
15 people to answer that question so that we know the  
16 numbers.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. GLASGOW: Because we understand.

19 CHAIRPERSON GRIFFIS: Let's go onto the  
20 next question then.

21 MR. GLASGOW: I think we all understand  
22 what the dynamic is with respect to the size of the  
23 trucks, on an overall basis how they impact.

24 CHAIRPERSON GRIFFIS: Excellent.

25 COMMISSIONER JEFFRIES: I mean, that's

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1 fine. I just wanted to move on. It just seemed like  
2 we were going in circles and you had another question.

3 MS. GALLAGHER: Actually, it's on the need  
4 for the office location and, also, you did testify  
5 that there will be loading from the street and you're  
6 taking out some spaces to load from the street on the  
7 Kalorama side for the office.

8 Do you have any estimation of how many  
9 trucks and how come they can't use the loading bay and  
10 why they need to use the street entrance?

11 MR. WILLIAMS: If you will refer to the  
12 architect's diagrams, you will see that the entrance  
13 to the office is at the eastern end of the Kalorama  
14 Road frontage. It goes into a lobby stairs, up to the  
15 new lobby, whether it is 15 feet back or not, and then  
16 in under the dome to the office area.

17 There is an emergency exit only at the far  
18 end to meet Fire Code requirements for safety for the  
19 occupants. The space that is available inside of the  
20 loading dock is dedicated to servicing the needs of  
21 the grocer and will be fully utilized. The estimate  
22 that we have developed for deliveries to the office is  
23 basically to look at numbers of things that are  
24 basically delivery service things, sort of FedEx, UPS,  
25 Postal Service and the like.

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1           And since we don't know who the office  
2           tenant is we can't say exactly what it would be, but  
3           we estimate around six or eight a day and we believe  
4           that they should be located where the stairs are,  
5           where the entrances are, where basically they would  
6           get their business accomplished.

7           And, at the same time, in terms of  
8           doubling up, we believe that that space and those same  
9           drivers and same trucks in a single trip would also be  
10          doing their minimal amount of delivery for the  
11          unknown, so it's unknown, requirements of the other  
12          retail area located at the corner of 17<sup>th</sup> and Kalorama  
13          Road.

14          MS. GALLAGHER: Is this also going to be  
15          managed by the truck management plan as well or the  
16          only thing that's going to be managed is the Harris  
17          Teeter?

18          MR. WILLIAMS: Harris Teeter is the only  
19          thing that is being managed by the scheduled  
20          arrangements that were spoken of earlier. The other  
21          is a projection that is done based on our best  
22          understanding of the uses.

23          CHAIRPERSON GRIFFIS: Okay. Just answer.  
24          What is the next question?

25          MR. BATRA: Does your truck needs, your

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1 assessment of the needs for Harris, the truck loading  
2 berth for Harris Teeter, take into account service  
3 vehicles, repair vehicles?

4 MR. GOROVE: That again would be -- that's  
5 a function of the loading dock. You know, in fact,  
6 many repair vehicles wouldn't really be noticed. They  
7 are small cars.

8 CHAIRPERSON GRIFFIS: Yes. Let's see  
9 where we're going with that question. Are you trying  
10 to establish what number of trips or whether they fit  
11 in the loading dock?

12 MR. BATRA: I'm trying to establish that.  
13 I'm wondering if the loading berths are going to be  
14 clogged up all the time. The trucks will be on the  
15 street pretty much all day long with the number of  
16 trucks required. I'm trying to get that assessment.  
17 Is two berths enough for this location?

18 MR. GLASGOW: Mr. Chairman, we're  
19 providing the required number of berths.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. GLASGOW: That's a whole different  
22 issue. We haven't asked for relief from the loading  
23 berth.

24 CHAIRPERSON GRIFFIS: Right. Nothing else  
25 in the regulations would have them or, frankly for our

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1 jurisdiction, would have us move beyond the number.  
2 What we're looking at is the dimension.

3 MR. BATRA: Just to pick up on another  
4 question. Mr. Gorove, you testified that 126 spaces  
5 are adequate for the use and you spoke something about  
6 Whole Foods and we couldn't hear your answer.

7 What is the size of Whole Foods compared  
8 to this store and how many spots do they have?

9 MR. GOROVE: Well, Whole Foods is 40,000  
10 and their grocery store, there is 185 parking spaces  
11 in the parking garage, except there are multiple land  
12 uses also associated with that development. I mean,  
13 there is at least -- I don't know the number, but  
14 there is more than five approaching seven restaurants,  
15 hardware stores and cleaners and others that are there  
16 that are using those parking spaces.

17 MR. BATRA: And they are permitted to park  
18 there during the day?

19 MR. GOROVE: Right.

20 MR. BATRA: Have you taken into account --  
21 you're aware that there are three elementary schools,  
22 two elementary schools and one child center  
23 immediately across the street from this location.  
24 Have you taken into account truck deliveries in the  
25 morning while the kids are walking to school while the

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1 trucks are backing up across the street?

2 MR. GLASGOW: Mr. Chairman, I'm going to  
3 object to the question.

4 CHAIRPERSON GRIFFIS: Right. The critical  
5 question that is going to be in cross is the testimony  
6 then how would an impact of a smaller truck maybe  
7 coming down impact the students in the area or the  
8 number?

9 There has to be a nexus of what they are  
10 coming for relief and their testimony before we walk  
11 right into having them answer all those other  
12 questions because, quite frankly, it's going to raise  
13 expectations of you that we can do something with it.  
14 Do you know what I mean?

15 MR. BATRA: All right. To kind of  
16 rephrase the question, if your trucks were smaller and  
17 benefit -- if your trucks were smaller, would they be  
18 more easily backed up across the sidewalk to better  
19 accommodate pedestrian traffic in backing in to the  
20 loading docks?

21 MR. GOROVE: But they are not using the  
22 loading dock. I don't get your question.

23 MR. BATRA: The loading berths for the  
24 trucks, you are using those for Harris Teeter  
25 deliveries?

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1 MR. GOROVE: Right.

2 MR. BATRA: If those trucks were somewhat  
3 smaller, would they be more easily maneuverable on  
4 that street?

5 MR. GOROVE: Sure.

6 MR. BATRA: Okay. And right now, what if  
7 somebody were to -- in your estimate and you have been  
8 to this neighborhood many times. People illegally  
9 park. If someone were to just park for a minute in  
10 that no parking zone on 17<sup>th</sup> just to run in and grab  
11 a gallon of milk and a delivery truck came, what would  
12 be the impact of that?

13 MR. GOROVE: Well, that's a matter of  
14 truck dock management. I mean, you know, I --

15 CHAIRPERSON GRIFFIS: Right. I'm not sure  
16 how that goes to the size of the -- that's just  
17 uncivil behavior. But the size of the dock itself,  
18 where does it -- that wouldn't change whether it was  
19 100 feet deep or 30 feet deep, someone parking in  
20 front.

21 MR. BATRA: Okay. Just one more question,  
22 I believe, for Mr. Williams. Mr. Glasgow earlier  
23 stated that the use of the property under the Reed  
24 Cooke Overlay is not relevant, but then you stated  
25 that this property does meet the intended use of the

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1 Reed Cooke Overlay. It's for a higher public good, I  
2 think you said.

3 Which one is it? Is the use irrelevant  
4 or, as you said, the use is relevant?

5 MR. WILLIAMS: The use is not relevant to  
6 the variances being sought. It is part of the context  
7 of this whole discussion.

8 MR. BATRA: Okay. And you also indicated  
9 that there would be no impact on the immediate  
10 neighbors if this operation were to continue.

11 MR. GLASGOW: I never heard Mr. Williams  
12 testify as to that.

13 CHAIRPERSON GRIFFIS: Right. I didn't  
14 hear that. Is that your statement, Mr. Williams?

15 MR. WILLIAMS: I didn't say something as  
16 sweeping as that to my recall, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Okay. Clarify?

18 MR. BATRA: Okay. I apologize and I  
19 misquoted you on this on my notes. You said that at  
20 least the impacts wouldn't be very -- they wouldn't be  
21 noticeable to some of the residents.

22 MR. WILLIAMS: I said that none of the  
23 named parties is located in a position where they  
24 would be able to see either the office lobby level,  
25 whether it is by right or by extension, because either

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1 way it is hidden by a parapet wall. And I said that  
2 you would not be able to see the loading dock, so its  
3 depth is not a matter that is something that is in the  
4 face of the individuals.

5 All of the individuals' homes face either  
6 onto Kalorama Road or the side of 17<sup>th</sup> Street from  
7 which it is impossible to see any part of the interior  
8 of the area under which relief is being sought in  
9 these cases.

10 MS. GALLAGHER: Granted, but your argument  
11 is that in order for you to do the 40 foot loading  
12 berth that you are, therefore, giving the neighborhood  
13 and giving the use of the Harris Teeter more parking  
14 spaces which directly affect us, because those are  
15 actually coming out.

16 So our question is that if we lose the  
17 parking spaces, we lose some impact to us. So you're  
18 saying that, you know, we can't see it. We see the  
19 effects of it. So what is the difference?

20 CHAIRPERSON GRIFFIS: So is your question  
21 of Mr. Williams in other form of Mr. Gorove's,  
22 decreasing this loading bay, the dimension of the  
23 site, is that causing this on-street loading area?

24 MS. GALLAGHER: Well, is it causing the  
25 on-street loading area and is it going to increase the

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1 amount of traffic that is actually using the parking  
2 spaces, which also affect us as well?

3 CHAIRPERSON GRIFFIS: Okay. And that's an  
4 interesting point. Your expert opinion? Can you just  
5 pull the mike over towards you?

6 MR. GOROVE: Yes. If I understand the  
7 question, will the size of the trucks cause more use  
8 of the critical parking spaces on the street because  
9 of --

10 MS. GALLAGHER: No.

11 MR. GOROVE: Okay.

12 MR. BATRA: No, the two more parking  
13 spaces.

14 MS. GALLAGHER: The parking spaces inside,  
15 you said that by taking the loading bay back to the 55  
16 feet that is required, and you're asking for the  
17 variance to the 41 feet to accommodate several more  
18 parking spaces, which the entrance to the parking  
19 garage itself is on Kalorama Road, the entrance and  
20 the exit, the only one that exists.

21 Therefore, we're impacted and you also  
22 said that anything over there that you do over here is  
23 not impacting us here.

24 CHAIRPERSON GRIFFIS: Right. I see two  
25 questions to it and tell me if I'm doing this

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1       incorrectly, but the first one goes to the dimension.  
2       And, again, it has been asked a couple of times but  
3       for the last time if you reduce, if it was granted and  
4       you reduce the dimension of the loading bay, right?

5               MR. GOROVE: Right, right.

6               CHAIRPERSON GRIFFIS: Does that correlate  
7       to how much you're going to have to do on-street  
8       because they can't go in there? The volume, the size,  
9       whatever it is, is that what is moving you to take  
10      parking spaces and also create the loading area?

11              The second is if you're granted that, one  
12      comment and the testimony has been well, you know, the  
13      bonus to that if you don't continue it on outside of  
14      the practical difficulty of taking down what is there,  
15      you get to provide two additional parking spaces.  
16      That's just the loading dock.

17              So the question is, well, doesn't that  
18      create an adverse impact on Kalorama because you have  
19      got more volume of traffic, pedestrian traffic now  
20      going in? So there's two aspects as I understand it.

21              MR. GOROVE: Well, with regards to the --

22              CHAIRPERSON GRIFFIS: Did I say  
23      pedestrian?

24              MS. GALLAGHER: Yes.

25              CHAIRPERSON GRIFFIS: I mean --

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1 MS. GALLAGHER: Vehicular.

2 CHAIRPERSON GRIFFIS: -- shoppers that are  
3 driving their cars.

4 MS. GALLAGHER: Yes.

5 CHAIRPERSON GRIFFIS: Not commercial  
6 vehicles.

7 MS. GALLAGHER: The cars.

8 MR. GOROVE: With regards to the -- we  
9 want to maximize the number of parking spaces in the  
10 garage to prevent an overflow from that. The  
11 difference in the traffic volume is really so  
12 negligible that you won't notice it. I mean, if we --

13 CHAIRPERSON GRIFFIS: Okay. So that's  
14 shopper travel. Your testimony as the expert witness  
15 that you are is saying the two spaces, how many more  
16 turnarounds you have, it's negligible in terms of the  
17 impact on Kalorama to the spaces.

18 MR. GOROVE: Absolutely. It would have to  
19 be a vast number to have an impact on the traffic  
20 because, if you remember, I don't have the exact items  
21 but there we're talking about hundreds and hundreds of  
22 cars on the street. We're talking about a couple  
23 cars, two or three.

24 CHAIRPERSON GRIFFIS: I understand.

25 MR. GOROVE: You wouldn't notice it.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GOROVE: In terms of the actual impact  
3 on the parking on the street, and Dan check me on  
4 this, I think in total there are three parking spaces  
5 lost.

6 MR. VANPELT: Well, we met with DDOT early  
7 on in the process and looked at what they would want  
8 us to have on-street and the loading zone and the  
9 entrance zone on Kalorama are both the desire of DDOT  
10 that we have to service, and then they also want a  
11 loading zone on 17<sup>th</sup> Street to service the store. So  
12 those would be required of us and, you know, that is  
13 something that DDOT has already told us that they  
14 would want to have.

15 CHAIRPERSON GRIFFIS: But is there any  
16 correlation to the dimension of the loading dock?

17 MR. GOROVE: No, it has no relationship.

18 CHAIRPERSON GRIFFIS: Okay. That's the  
19 answer to the question.

20 MR. GOROVE: Okay.

21 CHAIRPERSON GRIFFIS: What is the next  
22 question?

23 MS. GALLAGHER: I guess it's a  
24 clarification because in correlation to the loading  
25 dock, they do have to take out a couple of parking

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1 spaces across the street on 17<sup>th</sup> Street not --

2 CHAIRPERSON GRIFFIS: Right.

3 MR. GLASGOW: Mr. Chairman, I think to  
4 clarify that, the way that I heard the testimony that  
5 Mr. Gorove had was that if you -- if the length of the  
6 loading berth variance is denied, you lose three  
7 parking spaces, three additional parking space in the  
8 exterior of the building along 17<sup>th</sup> Street because the  
9 bigger truck has a wider swing, so it takes out more  
10 spaces on the street and you lose two parking spaces  
11 in the garage. Okay. So you net lose --

12 CHAIRPERSON GRIFFIS: That's matter-of-  
13 right.

14 MR. GLASGOW: Right.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. GLASGOW: That's right.

17 BOARD MEMBER ETHERLY: And there would  
18 otherwise still be no change to the loading zones that  
19 are going to be required by DDOT?

20 MR. GLASGOW: That is correct.

21 BOARD MEMBER ETHERLY: Okay.

22 MR. GLASGOW: The loading zones, that is  
23 a separate discussion we have had with DDOT from day  
24 one.

25 CHAIRPERSON GRIFFIS: Okay. Is that

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1 clear?

2 VICE CHAIR MILLER: I just have one  
3 question about this outside loading zone. Who is that  
4 servicing? I mean, you said it was UPS trucks, FedEx.

5 MR. GLASGOW: Right. It's those types of  
6 trucks for the office because in commercial zones, as  
7 you walk around the city, you know, you will see no  
8 parking loading zone.

9 VICE CHAIR MILLER: Okay.

10 MR. GLASGOW: When you have a commercial  
11 designation, you essentially have a right and go and  
12 say to DDOT I want to have a loading zone in this  
13 area.

14 VICE CHAIR MILLER: Okay.

15 MR. GLASGOW: And because of other things  
16 that we have been doing over a period of time with  
17 this project and having lengthy discussions with them  
18 for months, they said we want you to have a loading  
19 zone this length here. We want you to have a loading  
20 zone over here for your office, instead of having  
21 people come up and use either the loading zone on 17<sup>th</sup>  
22 Street or try to get into the loading berths, which  
23 they are not going to be allowed to use, and then  
24 trucking whatever it is that they are bringing around  
25 the block.

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1 VICE CHAIR MILLER: Right. Okay.

2 MR. WILLIAMS: If I could pick up for a  
3 second?

4 CHAIRPERSON GRIFFIS: No. Next question?

5 MR. BATRA: Thank you. Both the ANC and  
6 the Office of Planning have approved this  
7 conditionally. Do you accept all those conditions?

8 MR. GLASGOW: We will be discussing that  
9 when the ANC makes their testimony and the conditions  
10 that the Office of Planning has requested are  
11 acceptable to the applicant. We have accepted most of  
12 the conditions of the ANC and I have discussed that  
13 with Mr. Roth.

14 CHAIRPERSON GRIFFIS: Anything else?

15 MS. GALLAGHER: No.

16 MR. BATRA: That's it.

17 CHAIRPERSON GRIFFIS: Excellent. Just one  
18 follow-up then on that. When is the anticipated  
19 finalization of the traffic management plan?

20 MR. GLASGOW: At this point in time, it's  
21 very close.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GLASGOW: We are in dialogue with  
24 DDOT. Most of the parameters have been set.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. GLASGOW: And, in fact, with respect  
2 to the -- DDOT has been involved in saying they don't  
3 want us to have 55 foot trucks at this location.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. GLASGOW: Because of what they do to  
6 the overall street system and getting them in and out  
7 of there almost on top of what happens when we're  
8 trying to get in and out of that one berth.

9 CHAIRPERSON GRIFFIS: Indeed. Okay.  
10 Excellent. Very well. Thank you very much. That  
11 would then conclude the main case presentation of the  
12 applicant in our third case in the morning. Now,  
13 we're going to move on.

14 However, this is what I propose. We have  
15 an afternoon case that was to start at 1:00. What I  
16 would like to do is take a break for you folks and  
17 have you go have lunch and then come back. I would  
18 say we would have 60 minutes.

19 I will call to order our afternoon  
20 hearing. We have a preliminary matter in that case  
21 and we'll take up the preliminary matter. Then when  
22 you resume and come back, we'll have an understanding  
23 of where we go for the rest of the afternoon and you  
24 can also pull together your schedules. I can't say  
25 much more than that actually, I don't think, because

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1 I don't know much more. Yes?

2 MR. BATRA: Sir, when you said you, you  
3 mean the folks for the Citadel hearing?

4 CHAIRPERSON GRIFFIS: I'm sorry. Yes.

5 MR. BATRA: 60 minutes?

6 CHAIRPERSON GRIFFIS: Right. What I would  
7 -- yes. What I'm going to do is reconvene the morning  
8 session in 60 minutes.

9 MR. BATRA: Right.

10 CHAIRPERSON GRIFFIS: And it may -- in  
11 fact, there's going to be two options. We have a  
12 motion to continue the afternoon appeal. I'm not sure  
13 where that's going. So in 60 minutes I may have you  
14 back and say thanks very much, we need to set a date  
15 for the continuance and finishing this or I'm going to  
16 say let's continue and finish this today.

17 That is where I am and I haven't let  
18 anyone else know we're doing that, but that's where I  
19 am at this point. Okay? Good. Thank you all very  
20 much. So we'll see you back at about 1:45. Board  
21 Members, as you have heard, I think we should -- very  
22 well.

23 As that group, the morning session, leaves  
24 I will informally call the afternoon session to order.  
25 I'm going to ask that those people that are here

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1 present for that, if you could make your way up front.  
2 We do have a preliminary matter. We're going to take  
3 two minutes while the Board grabs all their files and  
4 gets prepared for the afternoon preliminary matter.

5 (Whereupon, at 1:46 p.m. a recess until  
6 1:52 p.m.)

7 CHAIRPERSON GRIFFIS: Very well. I'm  
8 going to dispense with all my big openings but call to  
9 order our afternoon session of 29 November 2005 and  
10 ask if you would introduce yourself, please.

11 MR. GOTTLIEB: Mr. Chairman, my name is  
12 Jonathan Gottlieb.

13 CHAIRPERSON GRIFFIS: You just need to  
14 touch the mike on the bottom there with the --

15 MR. GOTTLIEB: Mr. Chairman, Members of  
16 the Board, my name is Jonathan Gottlieb. I am the  
17 appellant in this matter.

18 CHAIRPERSON GRIFFIS: Excellent. And?

19 MS. GATES: Alma Gates, ANC-3D.

20 CHAIRPERSON GRIFFIS: A very good  
21 afternoon to you.

22 MS. GATES: Thank you.

23 CHAIRPERSON GRIFFIS: Good to see you here  
24 as we missed you last time.

25 MS. GATES: I'll bet.

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1                   CHAIRPERSON GRIFFIS:    Do we have the  
2   appellees' representative here, DCRA as a property  
3   owner, Mr. Collins present?  Has anyone seen these  
4   folks?  I quite frankly didn't take notice whether  
5   they were in the hearing room when we just took that  
6   quick break.  I don't know if any of you did.

7                   MR. GOTTLIEB:    I didn't see them and I  
8   have been here for about an hour.

9                   CHAIRPERSON GRIFFIS:  Okay.  Okay.  Well,  
10  there it is then.  I don't really know how we proceed  
11  with this one, but let's move ahead.  You have put in  
12  a handwritten request this morning, it was delivered  
13  to the Board on the 28<sup>th</sup>, indicating that you are  
14  requesting a rescheduling of the hearing.  I will let  
15  you speak to that.

16                  MR. GOTTLIEB:    Thank you.  There were  
17  several reasons why I am requesting a rescheduling.  
18  The first is, without getting too much into the facts  
19  of our case, it is a very similar fact pattern to the  
20  Economides case which, as I'm sure you'll recall, was  
21  a quite lengthy proceeding on the Board's part.

22                  And, as I understand it, an opinion still  
23  has not been issued on that case.  And for me it would  
24  be -- I understand that the opinion is imminent and it  
25  would be extremely useful for me to understand the

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1 Board's thinking in that case so that I can frame my  
2 case accordingly.

3 Secondly, I was served with a motion to  
4 dismiss last week right before Thanksgiving and have  
5 not had time to respond to it. I don't have a legion  
6 of lawyers who I can tell them, you know, draw papers  
7 up over Thanksgiving. In addition, in part because of  
8 my desire to see the Economides case, I have not had  
9 the benefit of working with the ANC and getting their  
10 input into our case.

11 And lastly, and this speaks also to the  
12 absence of the other side in this case, they have  
13 basically completed their construction on their home.  
14 There is no prejudice to them by rescheduling this  
15 case. Unfortunately, for me a lot of the damage has  
16 been done. So they won't suffer any prejudice as a  
17 result of rescheduling. Thank you.

18 CHAIRPERSON GRIFFIS: Okay. Thank you  
19 very much. Ms. Gates?

20 MS. GATES: I was contacted or, rather, I  
21 contacted Mr. Gottlieb to inform him that he was on  
22 our agenda for November and was asked if we would  
23 consider a continuance, and we did vote unanimously to  
24 do that. So the ANC would agree to grant the  
25 continuance.

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1 CHAIRPERSON GRIFFIS: Okay. And you have  
2 that. Is there something submitted into the record on  
3 that?

4 MS. GATES: No. If you want me to, I  
5 will.

6 CHAIRPERSON GRIFFIS: Yes. We'll put that  
7 into the record just to complete it. And for my  
8 clarification, you put the appeal, the substance of  
9 the appeal, on the November agenda for the ANC?

10 MS. GATES: Yes. We advertised in the  
11 Northwest Current an on the Palisades Listserv.

12 CHAIRPERSON GRIFFIS: Okay. And so the  
13 ANC doesn't have an official position of support or in  
14 opposition to these appeals?

15 MS. GATES: Correct.

16 CHAIRPERSON GRIFFIS: Because they haven't  
17 heard anything.

18 MS. GATES: Because we haven't heard  
19 anything.

20 CHAIRPERSON GRIFFIS: I see. And that is  
21 another basis then for your support of rescheduling  
22 this?

23 MS. GATES: Yes.

24 CHAIRPERSON GRIFFIS: Is there a reason  
25 why it wasn't put on the schedule a month ago or two

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1 months or five months ago?

2 MR. GOTTLIEB: I think the notice only  
3 went out from the Board in September.

4 CHAIRPERSON GRIFFIS: Okay. So there  
5 wasn't time to get an ANC meeting scheduled to present  
6 that.

7 MS. GATES: This is dated September 2<sup>nd</sup>.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. GATES: So we could have put it on in  
10 October. However, I will say we have had horrible  
11 agendas, very heavy agendas often running 11:30,  
12 12:00, midnight.

13 CHAIRPERSON GRIFFIS: Do you get lunch  
14 breaks? Oh, no, no.

15 MS. GATES: It would be dinner.

16 CHAIRPERSON GRIFFIS: Heavy schedules,  
17 okay. Good. So even if it conceivably was aware of  
18 it, September was not an appropriate time to put it on  
19 the schedule?

20 MS. GATES: Right.

21 CHAIRPERSON GRIFFIS: I see. Okay.

22 VICE CHAIR MILLER: Is it on the schedule?  
23 I don't understand. It sounded like you voted on the  
24 continuance but you didn't hear the substance.

25 MS. GATES: Correct. We put it on the

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1 schedule. I called Mr. Gottlieb to notify him that he  
2 was on the schedule and we would like to hear his  
3 case.

4 VICE CHAIR MILLER: When are you going to  
5 hear the case at the ANC?

6 MS. GATES: When we get a date from you,  
7 hopefully, if we get a continuance.

8 MR. GOTTLIEB: I would like the benefit of  
9 the Economides opinion before I move forward.

10 MS. GATES: Did we do this backwards? I  
11 mean, I thought by getting concurrence from the ANC on  
12 the continuance for the case, then when it gets  
13 rescheduled we would move forward with it.

14 CHAIRPERSON GRIFFIS: It's not necessarily  
15 backwards. I would put it on as quickly as possible.  
16 I mean, we don't extend these things out for months  
17 and months. Your schedule, I mean we have four times  
18 the hearings in a month. You have one so I would  
19 imagine that we may take several steps in this, too,  
20 based on the amount of motions that are coming in.

21 MS. GATES: Okay.

22 CHAIRPERSON GRIFFIS: I mean, I'm familiar  
23 with an appeal to have most of it in motions and then  
24 the substance be very quick and easy or easy, well, I  
25 don't know, or shortened. So not backwards, but I

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1 think what Ms. Miller was moving to is that you might  
2 want to put it on very quickly.

3 VICE CHAIR MILLER: No, I was just --

4 CHAIRPERSON GRIFFIS: Or as soon as you  
5 can accommodate it.

6 VICE CHAIR MILLER: -- wanted to  
7 understand what you had done. I mean, you're notified  
8 that there is an appeal, I gather, in the D.C.  
9 Register and stuff. I mean, you know, if this didn't  
10 go, if this wasn't continued, you would have  
11 difficulty.

12 MR. GOTTLIEB: Right. It was my doing.  
13 It wasn't --

14 VICE CHAIR MILLER: It's okay. I don't  
15 want to dwell on that.

16 MR. GOTTLIEB: Okay.

17 VICE CHAIR MILLER: I also wanted to just  
18 ask you, Mr. Gottlieb, did you call DCRA or the  
19 intervenor and ask if they had any objection to your  
20 request for postponement? No? Okay.

21 MR. GOTTLIEB: Sorry.

22 CHAIRPERSON GRIFFIS: All right. Just for  
23 clarity because sometimes perhaps communication, we go  
24 through an awful lot of these. Just for clarity, I  
25 think what Ms. Miller was getting to was notice of

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1 this appeal went out to the ANC in July.

2 Ours is dated, the exhibit, the 7<sup>th</sup> or 6<sup>th</sup>  
3 of July and that is what we were just trying to -- I  
4 think that's where the point was, that where are we in  
5 the process of getting this scheduled or heard.  
6 There's several actually. And then 3D-01 was served  
7 at the same time. That's all. I think that was just  
8 to kind of getting back to --

9 MR. GOTTLIEB: The schedule is --

10 CHAIRPERSON GRIFFIS: You know, it's not  
11 revolving around that, but I think that was more the  
12 issue of where are we.

13 MR. GOTTLIEB: On the other hand, it would  
14 be helpful to me to have the Economides guidance --

15 CHAIRPERSON GRIFFIS: Right.

16 MR. GOTTLIEB: -- from you before I went  
17 to the ANC.

18 CHAIRPERSON GRIFFIS: Right. Yes?

19 VICE CHAIR MILLER: Okay. I would like to  
20 make a suggestion here now that we have heard from you  
21 all. I understand that you would like to have  
22 Economides case first, but I think this motion to  
23 dismiss raises a jurisdictional question whereby if it  
24 were granted, we would never get to the merits. You  
25 don't need the Economides decision for jurisdiction.

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1 We can't hear a case if we don't have jurisdiction.

2 And looking at the date that the motion  
3 was filed, it looks to me like there wasn't sufficient  
4 time for you to file a written opposition. So I would  
5 suggest -- nor for DCRA to weigh in, nor for the ANC  
6 to weigh in. So I guess I would suggest that we deal  
7 with that issue first since it's jurisdictional and  
8 maybe set a briefing schedule for ANC, DCRA,  
9 especially you, to respond to the motion to dismiss  
10 and perhaps the intervenor to reply.

11 MR. GOTTLIEB: Okay.

12 VICE CHAIR MILLER: Do you have any  
13 reaction to that? Okay.

14 MR. GOTTLIEB: I mean, you know, I assumed  
15 that once we dealt with the motion to dismiss, if you  
16 didn't dismiss, you would --

17 CHAIRPERSON GRIFFIS: Right. I'm sorry.  
18 I'm going to interrupt.

19 MR. GOTTLIEB: -- you would go immediately  
20 to the merits of the case.

21 CHAIRPERSON GRIFFIS: We're going to  
22 dispense of this for now. It turns out there was some  
23 miscommunication with the property owner's attorney  
24 thinking that we were coming back in 60 minutes and he  
25 was going to be here at that -- Mr. Nyarku just

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1 informed me he was just calling in. And we're not  
2 being, you know, transmitted so he is not watching  
3 these proceedings.

4 So we're going to do that as soon as -- if  
5 you would not mind not going too far, we're going to  
6 gather everyone back in and I think this is -- I think  
7 it's pretty clear. We understand what you have said  
8 and the points in support of it. We will get to that  
9 and we'll note to what Ms. Miller was going to and I  
10 think we'll give you the opportunity to think about  
11 this, is we may have several steps in this.

12 And I think, as I was saying, with all  
13 these motions it may be more advantageous for everyone  
14 to set a date of which we take up the motion to  
15 dismiss based on jurisdictional elements. And that  
16 way we could have them all briefed. Am I repeating  
17 things that you have already said?

18 VICE CHAIR MILLER: No, that's what I  
19 said.

20 MR. GOTTLIEB: Right. But the  
21 jurisdictional is --

22 CHAIRPERSON GRIFFIS: No, I did hear.

23 MR. GOTTLIEB: -- complying with the  
24 merits of the case?

25 CHAIRPERSON GRIFFIS: Right. I just want

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1 them to be thinking about -- yes, there is always a  
2 little bit of meshing, but I think we can keep it  
3 fairly clear. But I want you to be thinking about  
4 that in terms of scheduling and because it will impact  
5 where the ANC also can weigh in on that and how they  
6 weigh in on it. Right. We're going to have to repeat  
7 all this in a bit anyway. So here we are. We're  
8 getting full.

9           What I just said is Mr. Collins, the  
10 representative of the property owner, is on his way  
11 and so we are going to wait for Mr. Collins. We are  
12 then just proceeding with the first preliminary matter  
13 and that is the request to reschedule this. And so we  
14 will hand you that item and digest that a little bit.  
15 You can talk to staff about that. I will revisit all  
16 of the issues that we have just gone through, which  
17 are not that many, to get to it.

18           And then let me just ask. DCRA is here  
19 and we'll state rather and not ask you are in receipt  
20 of the motion to dismiss. Is that correct?

21           MS. BELL: That is correct.

22           CHAIRPERSON GRIFFIS: Okay. So we have  
23 that in front of us. Okay.

24           MS. BELL: But we didn't know that there  
25 was a motion to -- we didn't know that there was a

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1 motion to reschedule.

2 CHAIRPERSON GRIFFIS: Did not know?

3 MS. BELL: We did not know and we would be  
4 objecting to that.

5 CHAIRPERSON GRIFFIS: Okay. Take a moment  
6 and gather your thoughts. We'll wait for Mr. Collins  
7 to show up.

8 MS. BELL: Okay.

9 CHAIRPERSON GRIFFIS: And then we'll hear  
10 on all of that. Thanks.

11 (Whereupon, the Public Hearing was  
12 recessed at 2:04 p.m. to reconvene at 2:54 p.m. this  
13 same day.)

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

2 2:54 p.m.

3 CHAIRPERSON GRIFFIS: Very well. Let's  
4 resume for all those. We had great plans and  
5 intentions. We didn't have everyone in attendance  
6 that we needed to to have our business done, but I  
7 think we have now, do we not, in terms of the  
8 afternoon case, the appeal of 17391? We were waiting  
9 on DCRA which was here and also Mr. Collins. They saw  
10 us coming.

11 MR. KIERNAN: Good afternoon. Paul  
12 Kiernan and Chris Collins on behalf of the intervenor.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you. And DCRA?

15 UNIDENTIFIED SPEAKER: I'm just going to  
16 call.

17 CHAIRPERSON GRIFFIS: Okay. Somebody will  
18 give a holler on that and okay. We're full. Why  
19 don't you have a seat at the table? Let me just  
20 review a little bit what we had come in today and I'm  
21 sure you now all are very well-aware there is a motion  
22 to reschedule the hearing. We have the basis of two  
23 elements of that request for a postponement.

24 The first one was wanting to wait for an  
25 order to be issued by the Board regarding a case of

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1 which Mr. Gottlieb has indicated might be similar or  
2 of value in his assessment in putting forth the  
3 appeal. The second was to have additional time to  
4 deal with the motion to dismiss which came in, on my  
5 calculations, I believe it was eight days ago, which  
6 was also around the Thanksgiving time.

7 Am I correct in assessing it that way?

8 MR. GOTTLIEB: And, thirdly, the  
9 opportunity to work with the ANC and get their input.

10 CHAIRPERSON GRIFFIS: Right. Okay. Mr.  
11 Collins, we have asked you to travel a great long  
12 distance today to respond to that.

13 MR. COLLINS: I just want to make sure,  
14 Mr. Chair, that it's clear on the record. What is the  
15 order that is being awaited and what is the issue that  
16 is going to be dispositive of this case?

17 CHAIRPERSON GRIFFIS: Okay. The order  
18 that is waiting is for the appeal in the Economides  
19 case. That's all I know. Do you want an element that  
20 would be dispositive for this appeal?

21 MR. COLLINS: Yes, please.

22 CHAIRPERSON GRIFFIS: Did you want to  
23 speak to that, Mr. Gottlieb, if needed?

24 MR. GOTTLIEB: Sure. The Economides case  
25 is based in large part on a structure composed of

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1 imported fill and other materials that were used to  
2 raise the property. In fact, Mr. Ludwig has done the  
3 same thing, in my opinion on a far grander scale, to  
4 raise not just one portion of his property but to  
5 raise almost the entire property. And on top of that  
6 he has put a number of structures on top of that  
7 structure, including fences and walls and other  
8 structures.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. GOTTLIEB: So I think the facts are  
11 similar. I'm not saying that they are identical. I'm  
12 not saying if you rule one way in Economides, you will  
13 automatically rule in my case the same way. I'm just  
14 saying the Board's thoughts on the Economides case I  
15 think are directly on point and it would be very  
16 helpful to me, not necessarily dispositive, but  
17 helpful to me in framing my legal arguments to the  
18 Board.

19 CHAIRPERSON GRIFFIS: Clear?

20 MR. COLLINS: Thank you. The Economides  
21 case does not apply to this situation for the very  
22 simple reason that this property that is subject to  
23 this appeal is not in the Wesley Heights Overlay Zone.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. COLLINS: The Economides case, I do

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1 have the transcript here and I'm sure Mr. Etherly  
2 would recall his --

3 CHAIRPERSON GRIFFIS: You carried it on  
4 your own?

5 MR. COLLINS: I have it right here, the  
6 extensive discussion about isolating out and looking  
7 at the specific, particular language of the Wesley  
8 Heights Overlay Zone and how it is different than the  
9 general Zoning Regulation with regard to lot  
10 occupancy.

11 CHAIRPERSON GRIFFIS: Okay. So,  
12 basically, you object to any basis of rescheduling  
13 this if it is critical that the order be issued. You  
14 don't find that has any relevance?

15 MR. COLLINS: It does not and we have --  
16 in our motion to dismiss we have shown by both a  
17 zoning certification from the Office of Zoning, as  
18 well as the zoning order itself and tracing the line,  
19 matching up the line, the zoning line on the base map  
20 with the language in the text, I will highlight it so  
21 you can see clearly where the zoning line is, and the  
22 north boundary of this property is the zoning line  
23 between the Wesley Heights Overlay and the --

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GOTTLIEB: Mr. Chairman, if I could

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1 just --

2 MR. COLLINS: Item number 1, I think, is  
3 a statement for postponement.

4 CHAIRPERSON GRIFFIS: Right. And I don't  
5 want to go too far into the substance of all these  
6 elements, but rather talk about -- because we're only  
7 dealing with whether we reschedule this based on those  
8 elements and then we can obviously get well deep into  
9 the whole point.

10 But, actually, Mr. Collins, you invoking  
11 your own motion to dismiss is the second reason why  
12 they are actually asking for a continuance, because  
13 they haven't had time to brief the Board in  
14 submissions but also had time to adequately address  
15 all the elements of the motion to dismiss.

16 MR. COLLINS: Well, okay. The second  
17 point, the Board, and this Board has in the past,  
18 allowed 10 days for response to a motion to dismiss.  
19 This was served on the Monday before Thanksgiving at  
20 4:30 at the home of the appellants and also by email  
21 at the same time that day. And so if that -- by  
22 calculation that is eight days, then they should have  
23 two more days to respond.

24 Now, you can set certain additional days  
25 for that, but I would suggest that if you are going to

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1 postpone the case, which we strongly request that you  
2 do not, but if you're going to postpone, that you give  
3 a certain specific additional amount of time for a  
4 written submission in response to the motion to  
5 dismiss.

6 MR. GOTTLIEB: If I may just say --

7 CHAIRPERSON GRIFFIS: I'm sorry. Just to  
8 clarify, you're saying allow them the two days,  
9 conceivably, or maybe four days, whatever it is.

10 MR. COLLINS: Yes, that's right.

11 CHAIRPERSON GRIFFIS: Set that schedule  
12 and would you be utilizing a time to respond or to do  
13 a final submission based on their response to the  
14 motion?

15 MR. COLLINS: We could do that and then we  
16 would ask that the Board simply rule.

17 CHAIRPERSON GRIFFIS: Right. Can I hear  
18 from DCRA also, the appellee in this case?

19 MS. BELL: Good afternoon. Actually, DCRA  
20 has a similar position. We believe actually eight  
21 days was an appropriate time for the appellant to have  
22 an opportunity to take a look at the motion to  
23 dismiss. Initially, we were told that it was a little  
24 less time, but when we checked the service process, it  
25 was actually the Monday before.

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1           So we would be in agreement to having a  
2           few additional days and we think 10 days is typically  
3           an adequate amount of time to respond to a motion to  
4           dismiss. And we would also like an opportunity to  
5           file a response, and we believe that the Board could  
6           rule on those papers in the absence of a hearing. But  
7           more importantly, we don't --

8                   CHAIRPERSON GRIFFIS: A response to the  
9           appellant's response to the motion to dismiss?

10                   MS. BELL: That's correct.

11                   CHAIRPERSON GRIFFIS: Okay.

12                   MS. BELL: Yes, our reply, you know, on  
13           behalf of --

14                   CHAIRPERSON GRIFFIS: Right.

15                   MS. BELL: But, more importantly, we don't  
16           think the Economides order or that case is relevant to  
17           the facts in this case. As you probably have had an  
18           opportunity to take a look at the motion to dismiss,  
19           we don't think the fence and particularly the height  
20           of the fence post design are issues that have any  
21           bearing on the zoning review process.

22                   CHAIRPERSON GRIFFIS: Okay.

23                   MS. BELL: So we believe that the Board  
24           can dispose of this on paper, but we would be firmly  
25           against an enlargement of time or a continuance that

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1 would encompass the Economides order, you know, being  
2 drafted and a decision being issued.

3 CHAIRPERSON GRIFFIS: Good.

4 MR. GOTTLIEB: Mr. Chairman, if I could  
5 just respond?

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. GOTTLIEB: As a taxpayer and a  
8 resident of this city, I would expect -- and I work  
9 for the Federal Government. I would expect that  
10 attorneys who represent the city would promote  
11 procedural fairness. The city is entitled to differ  
12 from my legal arguments, but I would expect the city  
13 would support procedural fairness.

14 To serve -- Mr. Ludwig's army of lawyers  
15 had my papers, I believe it was in July you said.  
16 They had it for months. They waited until the very  
17 last second before Thanksgiving. I got my copy, the  
18 first one, at 5:17 on Monday night and the second one  
19 at 6:29, I'm sorry, 5:52 on Monday night. They  
20 waited. I mean, this is a litigation strategy.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. GOTTLIEB: But I really don't think  
23 the city ought to be endorsing such strategies.

24 CHAIRPERSON GRIFFIS: Okay. I'll note the  
25 opinion and it's fair to you to state it. I don't

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1 think that would be necessarily the basis of which  
2 we'll decide our motion but without further musical  
3 accompaniment, I will just state that --

4 MR. GOTTLIEB: If I can just say on the  
5 Economides case, as you know better than I, there were  
6 a lot of differences of opinion on how that case came  
7 down and the basis on which that case came down.

8 CHAIRPERSON GRIFFIS: Yes, yes.

9 MR. GOTTLIEB: Some were interested in  
10 whether it was in the Wesley Heights Overlay, some  
11 were not.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GOTTLIEB: And, you know, until I see  
14 the opinion I can't really -- you know, the transcript  
15 is all very nice, but that has really no legal  
16 bearing.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. GOTTLIEB: It's the opinion and that's  
19 why the opinion is not released yet.

20 CHAIRPERSON GRIFFIS: Let me just address  
21 that issue, because that may take us into a long road  
22 and this is my understanding and opinion on this in  
23 terms of holding back an appeal waiting for an order  
24 to be issued that is of maybe some similarity. I  
25 don't know. I haven't been put that in front to make

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1 that decision.

2 I find it very difficult to do that.  
3 Frankly, the appeal is set up procedurally that you  
4 would become aware of an error that was committed by  
5 the DCRA in issuing a permit or whatever the iteration  
6 is. That will have to have its basis on its own. How  
7 the Board interpreted it is more of a case strategy in  
8 presentation of the elements as far as I'm  
9 understanding.

10 So it would be very difficult for me to  
11 say we need to postpone this then until an order of  
12 similar variety and flavor is issued, not to mention  
13 I'm not sure when that is ever going to happen. I  
14 mean, it will happen. I'm not saying -- but I'm not  
15 sure when that is going to --

16 MR. GOTTLIEB: How can the public proceed  
17 without a determination when you hold it in abeyance?  
18 You have made a determination, obviously, and  
19 obviously that is going to affect how you deal with  
20 similar cases. If the public doesn't know what your  
21 views are, you all know how you decided and exactly  
22 why you decided it, how is the public supposed to gear  
23 its behavior accordingly if it's this black box and  
24 we're just arguing in the dark?

25 We don't know what you're receptive to,

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1 what your views are. You all know it. You have made  
2 up your mind. We just don't know what your thoughts  
3 were.

4 CHAIRPERSON GRIFFIS: That's an  
5 interesting point but I think, one, the transcript  
6 does serve as the official Board's opinion on that and  
7 if you wanted to see how each of the Board Members or  
8 how the Board concluded, that would be the source of  
9 finding that out.

10 MR. GOTTLIEB: But if that were true, the  
11 opinion would be released. Obviously, there is  
12 something holding it up.

13 CHAIRPERSON GRIFFIS: No, that's where the  
14 lawyers get involved and that's what takes the time.

15 MR. GOTTLIEB: But it's a legal document,  
16 I mean, and that's what I have to use to base my  
17 arguments on.

18 CHAIRPERSON GRIFFIS: But the basis of our  
19 decision in Economides, I'm not sure. Maybe I'm not  
20 understanding your point. I am not sure how that goes  
21 to whether an error was committed in this appeal.

22 MR. GOTTLIEB: Because the structures are  
23 -- similar structures were used in this case to the  
24 Economides' structure.

25 CHAIRPERSON GRIFFIS: I see. Okay.

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1 MR. COLLINS: May I respond to the third  
2 question that you had?

3 CHAIRPERSON GRIFFIS: Yes.

4 MR. COLLINS: And also --

5 CHAIRPERSON GRIFFIS: Yes. Let's just go  
6 ahead with that.

7 MR. COLLINS: The third issue, the reason  
8 for the postponement was so that the appellants could  
9 work with the ANC and get their input. The issue  
10 squarely before the Board is a motion to dismiss.  
11 It's a jurisdictional issue. It's a threshold  
12 jurisdictional issue.

13 The ANC's views on the particular case, on  
14 this particular case, would really have no bearing on  
15 the jurisdictional threshold issue. It either is  
16 within your jurisdiction or it's not.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. COLLINS: And the ANC's weighing in on  
19 that issue would really be of no substance. Getting  
20 back to a comment that was just stated about waiting  
21 until the last minute, I thought it was comical when  
22 I was listening to it because this appeal has been  
23 filed five months ago and the postponement request  
24 came in at 3:00 p.m. the day before and was not served  
25 on anyone.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. COLLINS: We found out by happenstance  
3 when our paralegal this morning was checking the file  
4 for the last time to see if there was anything else  
5 that came in.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. COLLINS: We filed it when we did  
8 because, getting to another point, the requirements  
9 are that any material that is intended to be used at  
10 the Public Hearing must be filed 14 days in advance,  
11 no less than 14 days in advance.

12 It wasn't until after that 14 day period  
13 had expired with nothing being filed by the appellants  
14 that we then figured out that they weren't going to be  
15 filing anything more. It's at that point that we  
16 prepared a motion to dismiss.

17 And with that, if this Board is inclined  
18 to postpone this case, it is our view that the period  
19 for filing prehearing submissions has passed and there  
20 should be no more prehearing submissions on the  
21 substance, and they should be only limited to the  
22 motion to dismiss if the Board is so inclined to add  
23 an additional two or three days for that purpose.

24 MR. GOTTLIEB: So you would propose that  
25 I have no right to respond to your papers? That is

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1 certainly fair.

2 MR. COLLINS: Well, if you look at the  
3 rules.

4 CHAIRPERSON GRIFFIS: Okay. We're staying  
5 on point though. I mean, believe me, the Board hears  
6 it all and we'll figure it all out. Ms. Miller?

7 VICE CHAIR MILLER: I think with respect  
8 to procedural fairness, we should look at and deal  
9 with the motion to dismiss. I don't think eight days  
10 is sufficient time. I think in court there's 10 days  
11 not including holidays and weekends.

12 So I think that we ought to set briefing  
13 schedule on the motion to dismiss which is a  
14 jurisdictional question we can't even get to, whether  
15 or not there is going to be a hearing on the merits,  
16 until we get to deciding the motion to dismiss. So  
17 that's what I would recommend, a briefing schedule on  
18 that and the Board decides that and then we see  
19 whether there is anything left in the case.

20 MR. GOTTLIEB: And I would request, as I  
21 think is common in these cases, that I have the right  
22 to a hearing on that motion.

23 VICE CHAIR MILLER: You would like to  
24 have more argument on that?

25 MR. GOTTLIEB: On the motion to dismiss,

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1 yes.

2 CHAIRPERSON GRIFFIS: I think that is the  
3 proper way to go and I think what we can do is set  
4 that briefing period and then set a time limit in  
5 which we would have the motion to dismiss addressed.  
6 Let me just hear comment on that and make sure  
7 everyone is of the understanding and is in somewhat of  
8 support or full support of doing that.

9 Essentially, it would mean we would  
10 essentially move the motion to reschedule aside, but  
11 set a briefing schedule and oral arguments on the  
12 motions to dismiss, because even if we allow just two  
13 more days, let's be absolutely technical in terms of  
14 our past procedure, two more days puts us at what,  
15 tomorrow?

16 Well, our next hearing is then Tuesday.  
17 We could conceivably do that. Well, now that we're on  
18 next Tuesday, do we allow for responses to the  
19 submission, to the motion to dismiss?

20 MS. BELL: The Government doesn't object  
21 to a hearing on the motion to dismiss.

22 MR. COLLINS: The additional time, if you  
23 add two days I suppose that would be tomorrow, but if  
24 you want to do it, have a response on the motion by  
25 Thursday close of business?

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1 MR. GOTTLIEB: Oh, come on. That's  
2 ridiculous. I mean, come on. They have an army of  
3 lawyers here.

4 CHAIRPERSON GRIFFIS: I understand.

5 MR. GOTTLIEB: I mean, how many people are  
6 here --

7 CHAIRPERSON GRIFFIS: Mr. Gottlieb?

8 MR. GOTTLIEB: -- on behalf of Holland and  
9 Knight? I mean, they must have 10 lawyers here.

10 CHAIRPERSON GRIFFIS: Mr. Gottlieb?

11 MR. GOTTLIEB: I'm a homeowner acting on  
12 my pro se.

13 CHAIRPERSON GRIFFIS: We're not going to  
14 get to the --

15 MR. GOTTLIEB: It's ridiculous.

16 CHAIRPERSON GRIFFIS: We're not going to  
17 get to the decision if we don't hear it all and then  
18 decide it. So let's move ahead and all these people  
19 actually are here still from the morning. Talk about  
20 schedule and backing up but so let's get to that.

21 I don't think -- we're going to need I  
22 think, first of all, in terms of the -- let's move  
23 backwards in terms of the time that we'll need for  
24 oral arguments or addressing this motion to dismiss.  
25 I don't see any reason that we would, because we will

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1 allow for written submissions, anything more than 10  
2 minutes a piece.

3 Is that accommodating? I'm going to throw  
4 a lot of things out here. We'll get comments back and  
5 then we'll make decisions. Mr. Gottlieb?

6 MR. GOTTLIEB: I'm sorry?

7 CHAIRPERSON GRIFFIS: 10 minutes to orally  
8 brief the motion to dismiss on a date uncertain at  
9 this point? That will be with written submissions in  
10 the record already. You would come in. You would  
11 highlight. You would be abbreviated and precise and  
12 then we would decide.

13 MR. GOTTLIEB: I guess that's -- so we  
14 would submit papers. Let me understand the process.

15 CHAIRPERSON GRIFFIS: Sure.

16 MR. GOTTLIEB: We would submit papers to  
17 you in advance of the meeting?

18 CHAIRPERSON GRIFFIS: That's right. Maybe  
19 I should start from the beginning then. We're going  
20 to set a schedule for you to submit your response to  
21 the motion to dismiss. We will then have time for the  
22 submission of responses to that and, actually, the  
23 same schedule DCRA is on also. Once the responses to  
24 the motion to dismiss are in and then the final  
25 responses to those responses, the reply to the

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1 responses.

2 MR. COLLINS: Reply, that's right.

3 CHAIRPERSON GRIFFIS: Got to get these  
4 legal terms down. Then we would set -- after those  
5 times, then we would set for oral argument on the  
6 motion to dismiss.

7 MR. GOTTLIEB: All right. My response to  
8 that motion, does that include my right to amend my  
9 appeal?

10 CHAIRPERSON GRIFFIS: I would think, based  
11 on the issues and the new issues raised in terms of  
12 jurisdiction, that the record would be open to hear  
13 those elements that are going to that motion. So yes,  
14 going to the elements that are raised, you're going to  
15 have to have the record open in order to address those  
16 unless there's other opinions.

17 MR. COLLINS: To amend an appeal?

18 VICE CHAIR MILLER: Yes. I don't  
19 understand.

20 CHAIRPERSON GRIFFIS: Well, it's not  
21 amending an appeal. I'm sorry, because I didn't -- I  
22 heard that but I'm not sure that's what you meant.

23 MR. GOTTLIEB: Yes, it is.

24 CHAIRPERSON GRIFFIS: You're going to  
25 amend the appeal based on? Well, that's -- maybe I

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1 don't understand that then. I'm not sure how an  
2 appeal -- what would be the substantive matter of  
3 which you would be amending the appeal?

4 MR. GOTTLIEB: That would be the statement  
5 that is attached to the appeal. I would be amending  
6 that.

7 CHAIRPERSON GRIFFIS: Okay. Then that's  
8 different. You're adding to your narrative or your  
9 case presentation.

10 MR. GOTTLIEB: Right.

11 CHAIRPERSON GRIFFIS: Under the appeal,  
12 but you're not amending the appeal.

13 MR. GOTTLIEB: Okay.

14 CHAIRPERSON GRIFFIS: Amending the appeal  
15 means you want to appeal a whole different element.  
16 Now, you find that the chimney doesn't comply with  
17 zoning and that is based on a motion that didn't bring  
18 up that element.

19 MR. GOTTLIEB: Right.

20 CHAIRPERSON GRIFFIS: We're not amending  
21 the motion. You're adding to the record of your case.

22 MR. GOTTLIEB: Well, I'm amending it in  
23 that I am adding more detail.

24 CHAIRPERSON GRIFFIS: Right.

25 VICE CHAIR MILLER: You mean clarify or

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1 something like that?

2 MR. GOTTLIEB: I am adding more detail as  
3 to the code violations that I think are underlying the  
4 case.

5 VICE CHAIR MILLER: Oh, you're amending  
6 your legal theory but you're not adding a new --

7 MR. GOTTLIEB: The same facts.

8 VICE CHAIR MILLER: Okay.

9 CHAIRPERSON GRIFFIS: Right. The same  
10 elements are under appeal. I don't see any difficulty  
11 with that. Is there a comment on that? And I think  
12 Mr. Collins brings up an excellent point, that the  
13 regulations do say, you know, 14 days prior all  
14 submissions are to be in the record. But, frankly,  
15 the way I view that also is it doesn't mean that  
16 you're just coming in and then reading the text in  
17 here.

18 I mean, you're bringing in some  
19 highlights. You're adding information but the  
20 substance, the core substance of that of which  
21 everyone will be able to understand and then address,  
22 are in the record. So you're not bringing a whole  
23 different element of appeal or anything outside of  
24 that. Whew. No, it didn't make sense. All right.  
25 Okay. So let's have dates.

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1 Oh, did you want to address this?

2 MS. GATES: We could not address the  
3 motion to dismiss. The ANC could not.

4 CHAIRPERSON GRIFFIS: No.

5 MR. GOTTLIEB: I guess my only question  
6 with regard to the ANC is typically when you get these  
7 motions to dismiss, you hear them after the ANC has  
8 addressed the merits.

9 CHAIRPERSON GRIFFIS: I don't know if  
10 that's so.

11 MS. GATES: I don't think that's  
12 necessarily true. I think it would be a grave  
13 disservice to Mr. Gottlieb to dismiss this case if, in  
14 fact, there are merits to the case. And I think  
15 having read it, having been involved in the Economides  
16 case, I do think there are some parallels. I also  
17 believe that there may be Zoning Code violations and  
18 we should hear it. So that's my opinion.

19 MR. GOTTLIEB: So I guess my only question  
20 is, typically, you would have had the ANC review the  
21 substance and given you a recommendation.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. GOTTLIEB: Before you would address  
24 any motions such as the one that they have presented  
25 before the meeting.

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1                   CHAIRPERSON GRIFFIS: Yes, but that is not  
2                   -- but that didn't happen.

3                   MR. GOTTLIEB: I understand that. I'm  
4                   just pointing out that that's typically the order in  
5                   which things happen. The ANC passes on the merits.

6                   CHAIRPERSON GRIFFIS: Right.

7                   MR. GOTTLIEB: And then if there are  
8                   jurisdictional issues --

9                   CHAIRPERSON GRIFFIS: I understand.

10                  MR. GOTTLIEB: -- and procedural issues,  
11                  they are raised after the ANC has agreed on the  
12                  merits. And to the extent that you look at that in  
13                  making your jurisdictional --

14                  CHAIRPERSON GRIFFIS: But the ANC has to  
15                  be timely also. But they have to be timely in  
16                  processing. We went through that already. I mean, in  
17                  July they knew. Whatever it is, it didn't proceed in  
18                  that fashion. So that's not really a very solid  
19                  foundation in terms of what I'm looking at in  
20                  establishing this schedule.

21                  But I think we just need to get to the  
22                  schedule because the sooner we let you go and do what  
23                  you need to do -- I don't see and I'm not hearing from  
24                  the Board great opposition in setting this briefing  
25                  schedule and I think that's what we need to do to

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1 allow time to address this motion to dismiss the  
2 appeal. It is very substantial and full.

3 So that being said, Mr. Gottlieb, the  
4 Board has set up a briefing schedule to begin and also  
5 with DCRA that that submission would be within seven  
6 days, so it will be Tuesday next, 3:00, in the Office  
7 of Zoning.

8 MR. GOTTLIEB: If I could just beg the  
9 Board's indulgence. I have a job. This is their job.  
10 They have got an army of lawyers that are paid to do  
11 this all day.

12 CHAIRPERSON GRIFFIS: Well, I see that.

13 MR. GOTTLIEB: I have another job. I am  
14 doing this pro se. I don't have an army of lawyers  
15 that I can just say draw this up and submit it in  
16 seven days. I have a regular job. I work for the  
17 Federal Government and I have got to do this in my  
18 spare time. This is their full time job. You know,  
19 I just would hope the Board would give some amount of  
20 latitude to homeowners who are acting on their own  
21 behalf.

22 CHAIRPERSON GRIFFIS: Okay. A couple of  
23 things. Of course, to preempt major discussion on  
24 this, let me ask you how much time you do need noting  
25 this is the appeal that you have brought. So how much

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1 time would you think is fair based on our schedule  
2 also and how much time that you need to put together  
3 a submission to the motion to dismiss?

4 MR. GOTTLIEB: I would say 30 days.

5 CHAIRPERSON GRIFFIS: Wow.

6 MR. COLLINS: 30 days?

7 MR. GOTTLIEB: They had months to draw up  
8 their motion.

9 MR. COLLINS: You, the appellant, filed  
10 this five months ago, five months ago, and invoked  
11 this process that is very time consuming and expensive  
12 for the property owner. It's a process that they  
13 brought. They need to bear responsibility for all the  
14 effects of the appeal that they brought. In fact, if  
15 this Board allows --

16 VICE CHAIR MILLER: Mr. Collins, excuse  
17 me, is there a prejudice in delaying it 30 days?

18 MR. COLLINS: 30 days?

19 VICE CHAIR MILLER: Yes.

20 MR. COLLINS: The property owner has  
21 undergone a lot of expense to get a number of people  
22 here today to be prepared to move forward based on  
23 this appeal that was filed five months ago. To have  
24 us wait around more, it's more time, more cloud on the  
25 property. They moved in in the late spring, early

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1 summer. They are there. They just want to get this  
2 issue resolved one way or the other.

3 I think that 30 days is unprecedented.  
4 Other appeals have been 10 days to respond. If we  
5 want to give some additional days, you know, here, if  
6 the Board proposed 15 days, I think 15 days is  
7 sufficient.

8 MR. GOTTLIEB: If I may just point out two  
9 things. First of all, the property owner,  
10 construction is complete. There is no prejudice to  
11 the other side. They have moved in. Everything is  
12 done so there is no interference. And they live  
13 there. They are not intending on selling it. There  
14 is no cloud on the title.

15 Secondly, I would just point out one of  
16 the exhibits that they have in their motion that they  
17 got from the city is dated July 29. So, obviously, in  
18 July they were preparing this motion and they sat on  
19 it until the very last minute. That is bad faith.  
20 They also served it right before Thanksgiving. That's  
21 another indication of bad faith. So I just would like  
22 to be given, you know, some opportunity to respond.

23 CHAIRPERSON GRIFFIS: And we fully  
24 understand that and, actually, we appreciate that and  
25 there's a lot of other aspects, that being the most

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1 important, but there's others then to balance also.  
2 I mean, we need to fit this in sometime in the  
3 millennium and what we're trying to do is actually  
4 break this down a little bit so that we can fit this  
5 in.

6 Quite honestly, if we don't hear it today,  
7 you know, we're not seeing it until next summer. I  
8 mean, that's where our schedule is. So we need to  
9 figure out what is the best. And, yes, I'm kind of  
10 stressing it hurts you more than anybody to continue  
11 this for another year or so, so let's get down to  
12 business and let's get it done.

13 I would say let's look at 14 days, Mr.  
14 Gottlieb. That would be two weeks from today at 3:00  
15 in the Office of Zoning. Then we would have a seven  
16 day -- these are calendar days, not business days.  
17 We'll go one week, seven days, for the reply and then  
18 a week hence we'll have oral arguments. Is that not  
19 right?

20 MR. GOTTLIEB: What was that date, the  
21 oral again?

22 CHAIRPERSON GRIFFIS: That may be the 3<sup>rd</sup>.  
23 So now we'll put it on the real calendar, because we  
24 may end up with more time and I think that is the  
25 first Tuesday of January, right, and we wouldn't be

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1 meeting on it. As soon as Ms. Bailey catches up with  
2 us, she's going to go through the calendar.

3 MS. BAILEY: Mr. Chairman, the dates that  
4 I have are December 13<sup>th</sup> for the appellant's response  
5 and also DCRA's. The reply to that response from the  
6 property owner is December 20<sup>th</sup> and the Board will  
7 hear oral arguments on the motion to dismiss at its  
8 first hearing in January of 2006, and that is January  
9 10<sup>th</sup>.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MS. BAILEY: That's in the afternoon, Mr.  
12 Chairman?

13 CHAIRPERSON GRIFFIS: That's correct.  
14 Okay. And, therefore, I'm going to ask. We have  
15 added a week because we're not meeting on the 3<sup>rd</sup>. Do  
16 we want an extra week up front, Mr. Gottlieb, or do  
17 you want an extra week at the end?

18 MR. GOTTLIEB: I will take the extra week  
19 up front.

20 CHAIRPERSON GRIFFIS: Good. So we have  
21 got three weeks, which means we're shifting all those  
22 dates. Your filing and DCRA's is on the 20<sup>th</sup>, 3:00 in  
23 the Office of Zoning. The replies to that are then  
24 due on -- we'll put that on the -- Mr. Collins, I will  
25 give you an opportunity. We can put that on the 3<sup>rd</sup>,

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1 the 4<sup>th</sup>?

2 MR. COLLINS: The Tuesday the 3<sup>rd</sup> or  
3 Wednesday? The 1<sup>st</sup> is a holiday, I think.

4 CHAIRPERSON GRIFFIS: Yes. The 26<sup>th</sup>?

5 MR. COLLINS: The 4<sup>th</sup>. So our reply will  
6 be due January 4<sup>th</sup>?

7 CHAIRPERSON GRIFFIS: We could do the 4<sup>th</sup>  
8 or we could do that week of the 25<sup>th</sup>, so we could do  
9 the 26<sup>th</sup>, 27<sup>th</sup> or that following week.

10 MR. COLLINS: Well, so those -- I will be  
11 out of town during the week between Christmas and New  
12 Years, you know, and the 1<sup>st</sup> is a holiday. So January  
13 4<sup>th</sup>, a reply?

14 MR. GOTTLIEB: Then that gives as much  
15 time as needed for me to get -- to do my original.

16 MR. COLLINS: It's kind of  
17 disproportionate. Why should we have less time?

18 MR. GOTTLIEB: Because you are just  
19 responding to my response.

20 MR. COLLINS: Actually, you said 14 and 7,  
21 so I would like to keep those proportions, so if you  
22 increase me by half and increase him by half?

23 MR. GOTTLIEB: So if you give me seven  
24 extra days, give him four extra days.

25 MR. COLLINS: I'm not following.

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1 CHAIRPERSON GRIFFIS: Ms. Bailey, I'm  
2 sorry, I have our schedule, so I don't have an actual  
3 calendar, so that's where I am a bit hindered. So my  
4 world happens Tuesday to Tuesday. Three weeks would  
5 be as submission on the 20<sup>th</sup>. Is that correct, Ms.  
6 Bailey, on that Tuesday?

7 MS. BAILEY: Tuesday, would that be  
8 January the 10<sup>th</sup>, Mr. Chairman?

9 CHAIRPERSON GRIFFIS: I'm sorry, the first  
10 submission.

11 MS. BAILEY: The first submission is  
12 December 20<sup>th</sup>. Is that the date we're working with?

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. BAILEY: Three weeks from December  
15 20<sup>th</sup> would be --

16 CHAIRPERSON GRIFFIS: No, no, no. And  
17 then a week from the 20<sup>th</sup>.

18 MS. BAILEY: A week from the 20<sup>th</sup> is the  
19 27<sup>th</sup> of December.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. BAILEY: Is that the date you would  
22 like for the property owner to respond by?

23 CHAIRPERSON GRIFFIS: No. It's just what  
24 I'm trying to get -- what about -- oh, so you are away  
25 that Monday through that Monday, the 25<sup>th</sup> to the 2<sup>nd</sup>.

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1 So it's either coming in before that or --

2 MR. GOTTLIEB: Well, you've got a whole  
3 panel of people on this.

4 CHAIRPERSON GRIFFIS: -- on the 3<sup>rd</sup>. It's  
5 hard to make procedure decisions on that basis.

6 MR. GOTTLIEB: Well, Mr. Chairman, he was  
7 actually opposing my motion to reschedule, because he  
8 said I should have worked on this over the  
9 Thanksgiving holiday.

10 CHAIRPERSON GRIFFIS: No.

11 MR. GOTTLIEB: So I'm asking him to do the  
12 same thing, work over your Christmas holiday. If it's  
13 good for you, it's good for me.

14 CHAIRPERSON GRIFFIS: Right, right, right.

15 MR. GOTTLIEB: I mean, come on.

16 CHAIRPERSON GRIFFIS: Let's see, okay.  
17 We're going to do the first submission on the 20<sup>th</sup>,  
18 which would be, and then the second, Mr. Collins, your  
19 reply is going to come in at 3:00 Tuesday, the 3<sup>rd</sup>,  
20 that will give ample time to get it to the Board for  
21 our review and also time for preparation of oral  
22 arguments on the 10<sup>th</sup>.

23 MS. BAILEY: You need for me to repeat  
24 those dates, Mr. Chairman?

25 CHAIRPERSON GRIFFIS: That would be great.

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1 MS. BAILEY: So we're all on the same  
2 page.

3 CHAIRPERSON GRIFFIS: Sure.

4 MS. BAILEY: Okay. December 20<sup>th</sup> the  
5 appellant and DCRA is to file their response to the  
6 motion to dismiss the application. January 3<sup>rd</sup> the  
7 property owner may respond to that submission. And on  
8 January 10<sup>th</sup> the Board will entertain the motion to  
9 dismiss at its Public Hearing. And that will be in  
10 the afternoon, Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes. We better put  
12 that first in the afternoon. Okay. Good. Questions,  
13 procedural clarifications? Yes?

14 MR. GOTTLIEB: Mr. Chairman, it's my  
15 understanding that if you rule to proceed on the  
16 underlying appeal, you will reschedule a hearing at  
17 that time?

18 CHAIRPERSON GRIFFIS: On the 10<sup>th</sup>.

19 MR. GOTTLIEB: On the 10<sup>th</sup>?

20 CHAIRPERSON GRIFFIS: Yes, exactly.

21 MR. GOTTLIEB: And, obviously, if you  
22 would decide to dismiss, that's the end of the story?

23 CHAIRPERSON GRIFFIS: Right.

24 MR. GOTTLIEB: Okay.

25 CHAIRPERSON GRIFFIS: Right. I think,

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1 yes, we're going to be better off and we're going to  
2 be clearer on the 10<sup>th</sup>, rather than taking the time  
3 now to try and schedule a way out.

4 MR. GOTTLIEB: That's fine.

5 CHAIRPERSON GRIFFIS: So we'll get to  
6 that. Excellent. Very well. Anything else?

7 MS. BELL: Thank you.

8 MR. GOTTLIEB: Thank you very much.

9 CHAIRPERSON GRIFFIS: Good. Thank you all  
10 very much.

11 MS. GATES: I do have one small question.

12 CHAIRPERSON GRIFFIS: Yes, Ms. Gates?

13 MS. GATES: Given the fact, if you grant  
14 the hearing, the calendar now extends out some time.  
15 Are you still as eager for the ANC to hear this in  
16 February?

17 CHAIRPERSON GRIFFIS: It's really up to  
18 you. Are you weighing in on this or not? I would be  
19 expeditious with your schedule if you want to be a  
20 part of this. This you see can be changed and go in  
21 every different direction. So I'm not sure I would  
22 answer that, unless others want to.

23 MS. GATES: Okay.

24 MR. GOTTLIEB: Thank you.

25 CHAIRPERSON GRIFFIS: I mean, here's one

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1 option. Yes, I would say take it up. If the ANC  
2 wants to take it up, I would do it as quickly as  
3 possible. Okay. Anything else? Good. Thank you all  
4 very much. If there's nothing for us left in the  
5 afternoon, why don't we resume the morning and see  
6 where that takes us.

7 We'll make a great note in the transcript  
8 that we are calling back to order our morning session  
9 and getting back into the Case No. 17395. Before our  
10 luxurious lunch break, we had processed through the  
11 applicant's full hearing, witnesses and cross  
12 examination. As we resume now, we will go into the  
13 Government reports, agency reports. We will start  
14 with, of course, the Office of Planning.

15 MR. GLASGOW: Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes?

17 MR. GLASGOW: We had one -- we had said  
18 that we had a representative of Harris Teeter here.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. GLASGOW: To answer --

21 CHAIRPERSON GRIFFIS: Do you want to take  
22 that up now?

23 MR. GLASGOW: Yes, I thought that would be  
24 fastest.

25 CHAIRPERSON GRIFFIS: Perfect opportunity.

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1 MR. GLASGOW: Okay. This is to the  
2 specific question is the number of deliveries of 40 --  
3 55 foot truck versus 40 foot truck that would be  
4 anticipated. Yes, John, you're the only one up here.  
5 Would you, please, identify yourself for the record?

6 MR. HUTCHENS: My name is John Hutchens.  
7 I'm with Harris Teeter. I'm Vice President of  
8 Operations. I would be happy to answer any questions.

9 MR. GLASGOW: Mr. Hutchens, we're here  
10 with the exchange with a couple of the Board Members  
11 concerning the numbers of deliveries that would be  
12 anticipated to this store with the 55 foot trucks  
13 versus the 40 foot trucks.

14 MR. HUTCHENS: This is Harris Teeter  
15 deliveries, right?

16 MR. GLASGOW: Yes, Harris Teeter  
17 deliveries.

18 MR. HUTCHENS: A normal store would  
19 normally get three large truck deliveries a day and we  
20 anticipate that the Citadel location will get,  
21 approximately, five small truck deliveries a day.

22 MR. GLASGOW: That would be five of the 40  
23 foot trucks? Three 55 foot trucks, five 40 foot  
24 trucks.

25 CHAIRPERSON GRIFFIS: Excellent. Any

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1 follow-up from the Board?

2 BOARD MEMBER ETHERLY: Yes, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Yes.

4 BOARD MEMBER ETHERLY: If I could, thank  
5 you very much, Mr. Hutchens, for the clarification.  
6 Perhaps anticipating some additional questions that  
7 may come up, I wanted to just kind of massage a couple  
8 of other items around this particular question of  
9 deliveries. Is it based on your experience and your  
10 familiarity with operational aspects of your business,  
11 is it your experience that you have a fair amount of  
12 control over your ability to program deliveries, when  
13 they arrive at your various facilities?

14 MR. HUTCHENS: Yes, with the Citadel  
15 location, we will be able to essentially schedule all  
16 vendors, not only our own deliveries, but all of our  
17 DSD, Direct Store Delivery, vendors throughout the  
18 allotted window of delivery time.

19 BOARD MEMBER ETHERLY: And would you  
20 anticipate or let me phrase it this way, is it your  
21 experience that with respect to non-goods specific  
22 deliveries, products that are coming to your store for  
23 sale, other types of deliveries, whether it is FedEx  
24 or office materials related to administrative  
25 functions at the site, do they also make use of the

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1 loading dock as well?

2 MR. HUTCHENS: Yes, they do.

3 BOARD MEMBER ETHERLY: Okay. If you had  
4 to factor in those types of deliveries or that type of  
5 traffic, how would that change the number of or the  
6 amount of traffic? I think perhaps what some of the  
7 parties in opposition will want to get a sense of and  
8 what might be helpful for my colleagues and I is if  
9 you had to assess what the overall traffic would be.  
10 So we're hearing five small truck deliveries per day  
11 for the 40 foot trucks.

12 MR. HUTCHENS: Yes.

13 BOARD MEMBER ETHERLY: If you had to also  
14 factor in other traffic of any type, how many trips do  
15 you think that would be?

16 MR. HUTCHENS: Including goods and service  
17 vehicles and all that?

18 BOARD MEMBER ETHERLY: Yes.

19 MR. HUTCHENS: Probably, approximately, 30  
20 to 35 a day of non-Harris Teeter deliveries.

21 BOARD MEMBER ETHERLY: Plus the five?

22 MR. HUTCHENS: Plus the five, yes.

23 BOARD MEMBER ETHERLY: Okay. Okay. So 30  
24 to 35 of non-Harris Teeter related traffic.

25 MR. HUTCHENS: Yes.

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1 BOARD MEMBER ETHERLY: Into the loading  
2 dock.

3 MR. HUTCHENS: Right, right.

4 BOARD MEMBER ETHERLY: Those would be  
5 vehicles of various types, but primarily smaller  
6 vehicles, small vans, that type of thing?

7 MR. HUTCHENS: Right, right.

8 BOARD MEMBER ETHERLY: Okay. Again, based  
9 on your experience and your expertise, do you have an  
10 ability to forecast how frequently you may end up with  
11 a scenario where you have two vehicles in your dock at  
12 any given time, such that you would have to make use  
13 of some of that loading area space that we spoke about  
14 with respect to what the District Department of  
15 Transportation was concerned about?

16 MR. HUTCHENS: The curbside loading?

17 BOARD MEMBER ETHERLY: Yes, sir.

18 MR. HUTCHENS: Yes, we don't actually have  
19 a schedule for every vendor.

20 BOARD MEMBER ETHERLY: Okay.

21 MR. HUTCHENS: And that schedule will be  
22 set out and communicated to all the vendors, in  
23 writing, and our loading dock manager will manage that  
24 schedule. And we also will have a third party that  
25 will, essentially, serve as a go-between for us to

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1 make sure that all the DSD vendors adhere to those  
2 schedules.

3 BOARD MEMBER ETHERLY: Okay. With respect  
4 to the issue, what happens in the event that you have  
5 two vehicles, of whatever type, in your loading dock  
6 and you have a particular vendor come out of schedule?  
7 What do you do with a truck in that particular  
8 instance?

9 MR. HUTCHENS: Yes, at Citadel, we  
10 wouldn't receive that.

11 BOARD MEMBER ETHERLY: Okay.

12 MR. HUTCHENS: And they would not only --  
13 they would know that. The other thing with this third  
14 party that we will be utilizing, we will also document  
15 that fact. And so any time anybody comes, probably  
16 15, prior to 15 minutes before a schedule time or  
17 after 15 minutes to schedule time, those things will  
18 be documented. We actually have an on-line site where  
19 our loading dock manager or DSD receiver will log  
20 those incidents in.

21 BOARD MEMBER ETHERLY: Okay.

22 MR. HUTCHENS: And that's necessary for us  
23 to be able to manage our whole DSD vendor operation.

24 BOARD MEMBER ETHERLY: Okay. And two  
25 final questions that I think will be helpful to kind

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1 of just round out, based on your expertise as vice  
2 president of operations, how many stores on behalf of  
3 Harris Teeter do you oversee or deal with on a daily  
4 basis?

5 MR. HUTCHENS: I'm responsible for all the  
6 daily operation support and labor methods and expense  
7 management for all the stores.

8 BOARD MEMBER ETHERLY: And in terms of a  
9 geographic area, is that limited to a regional, on a  
10 regional basis or is that nationally?

11 MR. HUTCHENS: Well, it's far, north,  
12 south, east and west as we go.

13 BOARD MEMBER ETHERLY: Got you. So with  
14 respect to your experience and expertise in this area,  
15 can you characterize the percentage of your stores  
16 that meet this type of profile, this type of kind of  
17 urban store location, if you would?

18 MR. HUTCHENS: We don't have a lot of  
19 experience with it, but we have two or three other  
20 sites that are very similar with delivery  
21 restrictions, especially, frequency of delivery and  
22 delivery window restrictions. And so we are used to  
23 dealing with that.

24 BOARD MEMBER ETHERLY: Okay. Excellent.

25 MR. HUTCHENS: Yes.

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1 BOARD MEMBER ETHERLY: Thank you. Thank  
2 you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Questions?

4 VICE CHAIR MILLER: I just have a few  
5 follow-up. Where are those other two or three that  
6 are similar?

7 MR. HUTCHENS: Well, one is Glebe Road.  
8 The other one is Pentagon City. And we have, I think,  
9 one is in Hilton Head.

10 VICE CHAIR MILLER: And they have been  
11 operating for a while, so you know how it is working  
12 out?

13 MR. HUTCHENS: Yes.

14 VICE CHAIR MILLER: I didn't catch  
15 something you said about 30 or 35 vans or smaller  
16 trucks or something. Could you just clarify for me  
17 the loading berth is being used by the five 40 foot  
18 trucks and these others?

19 MR. HUTCHENS: With a delivery window of  
20 7:00 to 4:00. With the loading dock door being able  
21 to be open, I think, from 8:00 to 3:00. With the  
22 curbside, the 60 foot curbside, we would probably  
23 start the smaller truck, lighter deliveries by 7:00 in  
24 the morning, load it, you know, delivering through the  
25 smaller door. And so during that window, we would

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1 normally have probably seven to eight deliveries per  
2 hour and by scheduling those throughout that window.

3 VICE CHAIR MILLER: These are all Harris  
4 Teeter deliveries?

5 MR. HUTCHENS: No, no.

6 VICE CHAIR MILLER: They're not?

7 MR. HUTCHENS: Only five a day are going  
8 to be Harris Teeter deliveries.

9 VICE CHAIR MILLER: So who are these for?

10 MR. HUTCHENS: They are Pepsi, Frito-Lay,  
11 Dee Dee's Ice Cream. We have probably 40 to 50 other  
12 vendors that deliver, since we don't have a warehouse,  
13 are actually delivered right to the store. That's the  
14 vast majority of the deliveries to a grocery store.

15 VICE CHAIR MILLER: Okay. But it doesn't  
16 matter whether the berth is for 40 foot trucks or 55  
17 foot trucks, with respect to these vans that are  
18 coming. They are coming in any event. Is that  
19 correct?

20 MR. HUTCHENS: Well, they are all going to  
21 be less than 40 feet. 40 or less.

22 VICE CHAIR MILLER: Okay. And is there  
23 any difference in the noise or the pollution between  
24 the bigger trucks and the smaller trucks?

25 MR. HUTCHENS: I don't know. I don't

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1 know.

2 VICE CHAIR MILLER: Okay. Thank you.

3 MR. HUTCHENS: Yes.

4 CHAIRPERSON GRIFFIS: Cross from the ANC?  
5 No cross? Do you have questions?

6 MR. BATRA: A quick question just to  
7 verify, what is Harris Teeter's legal interest in this  
8 property right now, while you're sitting before us  
9 today?

10 MR. HUTCHENS: We are --

11 MR. GLASGOW: Mr. Chairman, I'm going to  
12 object to that.

13 CHAIRPERSON GRIFFIS: Yes, cross has to go  
14 on the testimony that was actually presented. So you  
15 are crossing --

16 MR. BATRA: I can't bring up why he is  
17 even testifying? He is not a party for this case.

18 CHAIRPERSON GRIFFIS: What do you mean?

19 MR. BATRA: Harris Teeter is not one of  
20 the parties, I believe, or Harris Teeter is --

21 CHAIRPERSON GRIFFIS: You mean whether he  
22 can actually be here?

23 MR. BATRA: Well, I just want to try to  
24 get to the conditionality of the lease actually, if  
25 there is a lease between Harris Teeter and the

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1 developer.

2 MR. HUTCHENS: We didn't testify as to a  
3 lease.

4 CHAIRPERSON GRIFFIS: Right. I'm not sure  
5 where we are going. I mean, bottom line, we asked him  
6 to answer our questions from the Board, so that's why  
7 he is here.

8 MR. BATRA: Okay. So you indicated there  
9 will be a third party that will be serving as a  
10 liaison between your DSD vendors and the store, I  
11 guess. Are they going to be physically out there? Is  
12 this the loading dock manager or is this another  
13 entity you're talking about?

14 MR. HUTCHENS: It's another entity. The  
15 loading dock manager will be a Harris Teeter  
16 associate.

17 MR. BATRA: Okay. And in terms of say  
18 upwards of 40 deliveries per day, Harris Teeter and  
19 non-Harris Teeter.

20 MR. HUTCHENS: Yes.

21 MR. BATRA: Is that approximate?

22 MR. HUTCHENS: Right, 30 to 40, yes.

23 MR. BATRA: How much do you anticipate  
24 will be in the first couple of hours in the morning?

25 MR. HUTCHENS: It's going to have to be

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1 pretty much a portion throughout the day, because of  
2 the window, which is 7:00 to 4:00. Probably 80  
3 percent of it will be between 7:00 and 2:00.

4 MR. BATRA: Okay. And you did mention  
5 that you had two other -- I'm not sure if this went to  
6 the urban stores or other local stores, in the urban  
7 stores that you noted were Glebe Road, Pentagon City  
8 and, I believe, Hilton Head.

9 MR. HUTCHENS: Yes.

10 MR. BATRA: Are those the most urban  
11 stores that Harris Teeter has thus far done?

12 MR. HUTCHENS: Glebe Road, I would say  
13 those two are two of the more urban stores that we  
14 have done, yes.

15 MR. BATRA: Okay. And that's my last  
16 question.

17 CHAIRPERSON GRIFFIS: Thank you.

18 MR. GLASGOW: Mr. Chairman, on redirect I  
19 just wanted the witness to clarify that there would be  
20 30 to 40 deliveries a day to this store of all types  
21 of trucks, approximately, whether or not there was a  
22 40 foot berth or a 55 foot berth.

23 MR. HUTCHENS: Correct.

24 MR. GLASGOW: Thank you.

25 BOARD MEMBER ETHERLY: And, Mr. Chair,

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1 just one quick follow-up not on the obvious issue.  
2 With respect to urban stores, I just want to make sure  
3 I, everyone understands. My nomenclature there, when  
4 we speak of urban stores, does the other locations  
5 that you identified would be stores that are kind of  
6 inside of a city or municipality proper and what you  
7 described Glebe Road, Pentagon City and the Hilton  
8 Head locations as also being in somewhat close  
9 proximity to a residential neighborhoods or  
10 environments?

11 MR. HUTCHENS: Exactly.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. HUTCHENS: Urban or -- with urban type  
14 restrictions.

15 BOARD MEMBER ETHERLY: Okay. And from a  
16 store size or capacity standpoint, are those three  
17 locations about a similar size to what is contemplated  
18 at this location?

19 MR. HUTCHENS: The --

20 BOARD MEMBER ETHERLY: Or bigger, smaller.

21 MR. HUTCHENS: The Glebe Road and Pentagon  
22 City probably similar.

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

25 CHAIRPERSON GRIFFIS: Anything else? Very

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1 well. Thank you very much. Excellent. Let's move  
2 ahead then and hear the Office of Planning's report.

3 MS. BROWN-ROBERTS: Good afternoon, Mr.  
4 Chairman and Member of the Board. I am Maxine Brown-  
5 Roberts from the Office of Planning. The site is  
6 zoned RC/C-2-B. The Reed Cooke area was designated as  
7 special treatment primarily to protect the housing in  
8 the area, but also to provide for commercial uses to  
9 support housings that are not detrimental to the area.

10 The applicant is seeking variances from  
11 the requirements for the loading berth and rear yard  
12 requirements. The property is unique as it is an  
13 irregularly shaped lot that was developed with the  
14 original design as an armory. The building has many  
15 internal structures that do not readily accommodate  
16 the proposed uses. The existing building busts are  
17 not built to accommodate a side structure that will be  
18 coming to the site and the existing nonconforming rear  
19 yard limits any addition in that area. The property  
20 is also located within a predominant residential area  
21 and surrounding streets are residential width.

22 Regarding the practical difficulty for the  
23 loading berth, if the applicant were to meet the  
24 loading berth requirements in the existing space, the  
25 deep base would conflict with the needed storage area.

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1 Even though a number of vendors will generally use  
2 trucks of different sizes, the applicant has committed  
3 to limit the size of the truck services size to 40  
4 feet or less. These trucks will be easily  
5 accommodated in the loading area and therefore lessen  
6 the need for on-street loading. Additionally, the  
7 smaller trucks can be accommodated on neighborhood  
8 streets and easily navigate the loading area.

9 In relation to the rear yard, the  
10 applicant is proposing some office space that includes  
11 space inserted between the main floor and the dome  
12 shaped roof. The existing building is nonconforming  
13 to its rear yard and in order to access the new floor,  
14 an elevator has to be installed and the applicant  
15 proposes to place the elevator core along the west  
16 wall of the building.

17 Also a number of parking spaces that can  
18 be accommodated inside the building is important,  
19 because of the lack of on-street parking in the area.  
20 The grocery store is the only proposed use that will  
21 require loading facilities. The limitation on the  
22 length of the trucks is important to minimize traffic  
23 impacts on the surrounding community.

24 The rear yard variance will allow for more  
25 parking spaces in the garage and will allow on-street

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1 parking spaces to be used by the residents of the  
2 neighborhood. The proposed variances will be  
3 consistent with the intent and purposes of the Zoning  
4 Regulations and, in particular, with the Reed Cooke  
5 Overlay.

6 The subject property is within the Reed  
7 Cooke Overlay District and states that small scale  
8 building -- small scale business development that will  
9 not adversely affect the residential community should  
10 be encouraged and adjacent and nearby residents should  
11 be protected from damaging traffic, parking,  
12 environmental, social and aesthetic impacts. The  
13 applicant will provide on-site parking to serve its  
14 needs and DDOT is working with the applicant in ways  
15 to mitigate any damaging traffic and parking impacts  
16 that may result.

17 DDOT is also studying the effects of  
18 installing signage on residential street, north and  
19 south of the site, to prohibit any traffic in  
20 designated loading zones along the east side of 17<sup>th</sup>  
21 Street and along the north side of Kalorama Road.  
22 These issues will be further expanded on in the Truck  
23 Management Plan.

24 The proposed office space will be  
25 continued within a portion of the current barrel

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1 shaped roof. OP has concerns that remaining area  
2 could be easily converted to office space and thereby  
3 increasing the FAR of the building without permit. To  
4 minimize the probability of this taking place, the  
5 applicant has proposed that the remaining area will be  
6 separated from the office space by a partition wall  
7 constructed of 8 inch steel studs and two layers of  
8 drywall on either side of the studs.

9 The Office of Planning feels the use of  
10 the property will not negatively impact the  
11 neighborhood if the proposed solution proposed by the  
12 Office of Planning, DDOT and the ANC are incorporated  
13 into the project. The Office of Planning, therefore,  
14 recommends approval with the following conditions:

15 I would also like to amend our Condition  
16 No. 1 from what we had in our report to read that "The  
17 applicant will work with DDOT to finalize a Truck  
18 Management Plan prior to the issuance of a Certificate  
19 of Occupancy."

20 No. 2, "The remainder of the space in the  
21 dome should not be converted to use of a space." No.  
22 3, which also will be amended, "The grocery store will  
23 refuse deliveries and trucks exceeding 40 feet in  
24 length." No. 4, "The overhead loading dock doors  
25 shall be equipped with soundproofing and sound-

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1 dampening technologies." 5, "The overhead door will  
2 be closed except when vehicles enter or exit and  
3 exterior signs denoting such shall be provided." And  
4 No. 6, "Deliveries in the loading dock side door will  
5 be limited to hand carts." Thank you, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Thank you very much.  
7 Are there any questions from the Board? Does the  
8 applicant have any cross examination of the Office of  
9 Planning?

10 MR. GLASGOW: No cross.

11 CHAIRPERSON GRIFFIS: Does the ANC? He  
12 seems to have stepped out. Reed Cooke, do you have  
13 cross?

14 MR. BATRA: I had a general quick question  
15 about the Truck Management Plan. Does the Office of  
16 Planning want to see that plan to make sure it kind of  
17 takes into account what you have in mind prior to it  
18 being approved by DDOT?

19 MS. BROWN-ROBERTS: We work closely with  
20 DDOT, so we will be seeing it. We will be seeing it  
21 and we will make any changes that we think that's  
22 appropriate to DDOT. That's something that we work up  
23 between the two offices.

24 MR. BATRA: Okay. And I'm not sure this  
25 is a question for the Chairman, if it is, I will

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1 defer, how does that conditional approval take effect  
2 if it still has to be worked out with the Office of  
3 Planning, the ANC's unconditional public input, how is  
4 it in terms of process with the OP weighing back in,  
5 etcetera?

6 CHAIRPERSON GRIFFIS: Well, if the Board  
7 would hear so that the conditions that was written in  
8 the report has changed, then I think appropriately so,  
9 because I don't think we would wait for a management  
10 plan that wasn't ready yet for an approval. If we  
11 did, it would set it way out. But that is tied to a  
12 Certificate of Occupancy, it takes it out of our  
13 hands. We could condition this that that would be  
14 provided under the condition of the issuance of a  
15 Certificate of Occupancy and therefore compliance with  
16 our order would be compliance with that condition.

17 MR. BATRA: One last question for OP. In  
18 terms of the Reed Cooke Overlay, how much of the  
19 overlay is conditioned upon the use of a property? If  
20 you read the overlay, a lot of the sections they focus  
21 on housing and densities and words like appropriate,  
22 small scale. There are kind of generic, but  
23 definitely go into a spirit of the overlay. How much  
24 of that language impacts your decision in an  
25 application like this, rather than just the specific

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1 sizes and variances?

2 MS. BROWN-ROBERTS: I think the overlay  
3 specifically talks about commercial uses and this  
4 definitely falls under that. It talks about uses that  
5 will, as I explained, not impact the traffic and  
6 parking, environmental, social and aesthetic impacts.  
7 And I think from that, we look at okay, how is, you  
8 know, this application or the use, which is a  
9 commercial use, which they encourage, how is that  
10 going to impact in traffic?

11 And I think there was other things that  
12 are relevant to this and we have taken those into  
13 consideration, because, you know, the traffic and the  
14 parking is all part of what we have been talking  
15 about, the loading and, you know, whether DDOT is  
16 going to do it right now or what sort of things will  
17 come in within the Traffic Management Plan. So I  
18 think we feel confident that those things are  
19 addressed.

20 MR. BATRA: So as a follow-up question  
21 then, once the overlay is invoked as it is here, the  
22 social impacts, the traffic impacts and those other  
23 impacts caused by this project are relevant in this  
24 proceeding.

25 MS. BROWN-ROBERTS: I would say yes,

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1 because the overlay is there to look at all  
2 development that's going to come in. And I think it  
3 is fair game for anything that the Board is going to  
4 look at that we look at this. I mean, we look at the  
5 Comprehensive Plan, you know, for certain things, good  
6 or bad, whether this was supporting or going against  
7 it. So I think that the relevant portions of the Reed  
8 Cooke Overlay that I looked at were appropriate.

9 BOARD MEMBER MANN: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

11 BOARD MEMBER MANN: Could I ask a follow-  
12 up question? In your proposed Condition No. 5, you  
13 stipulated that exterior signs denoting that the door  
14 will be closed on the exterior of the building, what's  
15 the purpose of a sign on the exterior of the building?

16 MS. BROWN-ROBERTS: I think the whole  
17 discussion of it was sort of notifying vendors when  
18 they came that, you know, when the times were going to  
19 be closed. I think we got more. It may not be  
20 needed, but I think it was important to have, because  
21 since we're going to have the dock manager, which was  
22 sort of a later thing that came up, you know, maybe  
23 it's not needed then, but --

24 BOARD MEMBER MANN: Okay.

25 MS. BROWN-ROBERTS: -- I think it's sort

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1 of -- it's just to notify people.

2 BOARD MEMBER MANN: Okay. The purpose of  
3 the sign was for the vendors. It wasn't like so the  
4 public would know.

5 MS. BROWN-ROBERTS: No, no, no. It was  
6 basically for the vendors.

7 BOARD MEMBER MANN: Thank you.

8 CHAIRPERSON GRIFFIS: Good. Anything  
9 else? Any follow-ups from the Board? Thank you very  
10 much.

11 MS. BROWN-ROBERTS: You're welcome.

12 CHAIRPERSON GRIFFIS: We do appreciate it.  
13 Let's move ahead then and let's go to the ANC.

14 MR. ROTH: Thank you, Mr. Chairman,  
15 Members of the Board. My name again is Alan Roth,  
16 Chairperson of ANC-1C. I can't help but observe  
17 listening to the last case I thought I was  
18 experiencing a deja vu, but the good news for you is  
19 that I'm laboring under a little bit of a cold, so you  
20 won't be getting the bombastic, loud, bellicose Alan  
21 Roth you are accustomed to. Now, if I fail to speak  
22 loudly enough, I'm sure you will tell me.

23 Thank you very much for the opportunity to  
24 present the ANC's views, which are spelled out in some  
25 depth in the written report that we filed on November

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1 21<sup>st</sup>, to which was attached the ANC's resolution on  
2 this matter, which was approved by a vote of 5-2. I'm  
3 here to present the ANC's evidence and argument for  
4 its position and to focus primarily on the request of  
5 loading berth variance, because I'm not aware of any  
6 serious objection that any member of the ANC has to  
7 the rear yard variance, although there were two  
8 members of the ANC who did vote against approving the  
9 variances altogether.

10 The ANC resolution, I don't know if it's  
11 the most complex one you have ever seen, but it is  
12 complex. And this has been a complex project that  
13 produced nearly two years of discussion with the  
14 applicant, Faison and Harris Teeter. So I'm hoping  
15 that I can sort of explain a little bit of the  
16 background in our analysis how we got to the position  
17 we did and then go into more detail on the conditions  
18 that we are asking for.

19 The specific issues that we felt needed to  
20 be analyzed were whether the loading berth variance  
21 could be granted without, in the words of the  
22 regulations, substantially impairing the intent,  
23 purpose and integrity of the Zone Plan and without  
24 substantial detriment to the public good.

25 In analyzing those questions, the ANC was

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1 required to look at what we viewed as the over all  
2 public good, that is the interests of the Adams Morgan  
3 neighborhood as a whole. And so while we do not in  
4 any way diminish the concerns of the immediate  
5 neighbors to the proposed project, particularly those  
6 living directly across the street on the south side of  
7 the 1600 Block of Kalorama Road, it was also necessary  
8 for the ANC to balance those very particularized  
9 concerns with the broader interest, the strong  
10 interest, in fact, in bringing the new full service  
11 grocery store to the community, providing new and  
12 better choices to neighborhood consumers for their  
13 groceries and creating competition for and hopefully  
14 better service from another grocer, which will remain  
15 unnamed, but which now holds a virtual monopoly on  
16 full service grocery shopping within walking distance,  
17 at least, for the vast majority of our ANC's  
18 residents.

19 At the same time, we had to consider the  
20 incredible density already impacting Reed Cooke. The  
21 applicant and everyone seems to acknowledge the narrow  
22 streets. The 30 foot curb to curb measurement is a  
23 problem. Everybody acknowledges that parking is very  
24 tight. There are new condos and apartments going up  
25 in the immediate vicinity of this project at a

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1       breathhtaking rate.

2                       And with the Board's permission, I would  
3       like to submit as an exhibit to our presentation,  
4       essentially, a summary of the zoning action that have  
5       been taken on new residential developments that have  
6       either been completed or contemplated within the last  
7       five years and are within, approximately, two to three  
8       blocks of this project.

9                       And what this exhibit will show you,  
10       basically, is that there are, essentially, 450 new  
11       units, new residential units that have been approved  
12       either by this Board or by the Zoning Commission and  
13       that either have gone up or are going up in the last  
14       five years just within two or three blocks of this  
15       project, and that doesn't count matter-of-right  
16       projects, of which there are several.

17                      So there are certainly density and  
18       congestion concerns here. And in this environment, we  
19       felt there was no question that the requested loading  
20       berth variance, which is, in fact, a significant 20  
21       percent less than the required depth, would have  
22       substantial negative impacts on Reed Cooke if not  
23       conditioned with restrictions on Harris Teeter's truck  
24       operations.

25                      We also believe that it would be

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1 potentially inconsistent with the Reed Cooke Overlay  
2 District regulations, one purpose of which is, and I  
3 quote here, "to protect adjacent and nearby residences  
4 from damaging traffic, parking, environmental, social  
5 and aesthetic impacts." And so I think both prongs of  
6 the zoning test are implicated by what is being asked  
7 for here.

8 Balancing all those factors, the ANC came  
9 in, essentially, mid way between what began at least  
10 as an unfettered request for a shortened loading dock  
11 and the absolute opposition of some of the neighbors  
12 to the entire project. Specifically, we voted to  
13 support the variance requests, but only as modified or  
14 conditioned by 15 specific terms spelled out in the  
15 resolution. Those conditions we feel are necessary to  
16 address the substantial detriment and substantial  
17 impairment prongs of the variance test on which I note  
18 the applicant has the burden of proof.

19 The first five conditions reviewed are so  
20 important that we specifically singled them out for  
21 special treatment. Unless the Board imposes all five  
22 as conditions in the order, the ANC's position is to  
23 oppose the requested 41 foot berth and insist instead  
24 on at least one berth to be no less than 46 feet. And  
25 the reason for that is based simply on the

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1 transportation reality in the streets of Reed Cooke  
2 and indeed in other places of the District.

3 Although the roadway is only 30 feet curb  
4 to curb, parallel is both permitted and needed on both  
5 sides of most streets, trucks as long as 45 feet can  
6 and do now access these streets despite the  
7 difficulties. We heard Mr. Gorove testify before as  
8 to the creativity that some truck drivers have in  
9 navigating large trucks through small spaces.

10 Anybody who wants to join me one morning  
11 standing in front of the Hilton loading dock at the  
12 corner of 19<sup>th</sup> and Florida and watch the creativity  
13 there at a fairly large intersection of large trucks  
14 trying to get into a loading dock there or get out of  
15 a loading dock or turn the corner would be amazed at  
16 some of the things truck drivers are able to do.

17 It is impossible to understand the genesis  
18 of these 15 conditions without looking back to our  
19 prior negotiations, which have been referenced  
20 previously by various witnesses. For the most part,  
21 we are not asking for anything here that Harris Teeter  
22 and the applicant hadn't already agreed to and, in  
23 fact, proposed to the Zoning Commission as terms to be  
24 incorporated into a Memorandum of Understanding that  
25 they were negotiating with the ANC last spring.

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1           DDOT itself also acknowledged problems  
2 with the increased truck traffic as has the Office of  
3 Planning. And again, with the Board's permission,  
4 what I would like to do is place into the record three  
5 documents. I won't go through them in detail here,  
6 but I think they will be useful to you in assessing  
7 this point about conditions being imposed that Harris  
8 Teeter has already in the past agreed to and said that  
9 they could absorb or follow.

10           One is an excerpt from Holland and  
11 Knight's PUD submission, which contains an April 28<sup>th</sup>  
12 draft of the Memorandum of Understanding with the ANC.  
13 This is not the ANC's document. This is what Holland  
14 and Knight submitted on behalf of the applicant and  
15 Harris Teeter to the Zoning Commission during the PUD  
16 process essentially saying these are the things we can  
17 agree to do.

18           Second, the DDOT report to the Zoning  
19 Commission and I'm not aware, having gone through the  
20 file just yesterday, that DDOT has submitted anything  
21 in this variance case, but I think that their  
22 assessment of the situation in the PUD case would be  
23 very instructive, because the vast majority of what  
24 they discuss here pertains not to the reduced office  
25 space, which is what came out of the abandonment of

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1 the PUD, but rather the grocery store operations.

2 And finally, simply to complete that  
3 record, the ANC's submission to the Zoning Commission  
4 in that PUD case. Except for the prohibition on  
5 trucks longer than 40 feet, which the applicant has  
6 now said they can comply with, and the development of  
7 a Truck Management Plan, which the applicant has now  
8 said they can comply with, every other condition  
9 requested here by the ANC is one that the applicant  
10 and Harris Teeter either proposed themselves or agreed  
11 to last spring.

12 OP agreed then and still does that DDOT's  
13 approval of a Transportation or Truck Management Plan  
14 should be required and I understand there's this issue  
15 of whether it is before the variance is granted versus  
16 before the C of O is granted, before operations begin.  
17 There is any number of ways to cut that, but we still  
18 think that in addition to having DDOT's approval of a  
19 Transportation Management Plan, that maintenance of  
20 and adherence to that Transportation Management Plan  
21 be a part of that condition in the order.

22 The application in conversations with the  
23 ANC over the course of the last week or so,  
24 essentially, has agreed or partially agreed with four  
25 of the first five conditions. And they seem to

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1 acknowledge at least the first two conditions are  
2 relevant, indeed, to the variance request and would be  
3 within the authority of the Board to grant.

4 On the remaining 13 conditions, the  
5 applicant acknowledges that at least several of them  
6 are relevant to the variance request and agrees or  
7 largely agrees to abide by them. They don't identify  
8 which of those they believe fall into that relevant  
9 germane category, but at a minimum I would submit to  
10 the Board that ANC's Conditions No. 6, 8, 10 and 12  
11 absolutely meet that standard.

12 They have problems with the other  
13 conditions, particularly any limitation on the number  
14 and hours of truck deliveries, because they argue  
15 these don't bear on the questions of size of a loading  
16 berth. I believe they are wrong in that assertion.  
17 They would like the Board to believe that all these  
18 deliveries are completely severable, not only from the  
19 variance request, but from one another and that each  
20 condition is severable from the others and that isn't  
21 the case.

22 The fact of the matter is the greater  
23 number of deliveries and we have heard discussions  
24 this morning already about the additional trip  
25 generation created by a short loading dock, the

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1 greater the number of deliveries, the greater the  
2 likelihood is that a vendor is going to show up with  
3 a truck in excess of 40 feet and that's a truck that  
4 can't fit in the proposed loading berth or loading  
5 zone.

6 The longer the hours that the loading dock  
7 or loading zone are permitted to operate, the greater  
8 the likelihood that a truck in excess of 40 feet is  
9 going to show up. In the absence of a written and  
10 easy to understand Truck Management Plan, which spells  
11 out clearly for both vendors and loading dock  
12 employees what the rules are, then the trucks in  
13 excess of 40 feet are almost certain to show up and  
14 there will be intense pressure, notwithstanding all  
15 the good faith discussion here today, on the loading  
16 dock personnel to accept those deliveries, not  
17 withstanding Condition No. 1, which is the 40 foot  
18 limitation, because that's just the nature of the  
19 beast.

20 These conditions cannot artificially be  
21 separated from one another. They are designed to work  
22 together. They are designed to compliment each other,  
23 to be mutually reinforcing and to mitigate the adverse  
24 impacts on the neighborhood of the excessively long  
25 trucks that we know from our own observation and our

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1 own experience will be prone to show up and clutter  
2 streets here with a driver who expects his cargo to be  
3 unloaded and a grocer that wants to unload them.

4 We appreciate the applicant's agreement to  
5 most of the requested conditions. Some with  
6 clarifications, but I hasten to point out that in the  
7 absence of being incorporated in the Board's order,  
8 those agreements have no legal significance or  
9 enforceability whatsoever. The only way these  
10 agreements will be meaningful is for them to be  
11 incorporated in the Board's order.

12 I'm aware of the Board's practice of only  
13 imposing conditions necessary to mitigate the  
14 potential adverse impact of the zoning relief that is  
15 requested or granted. And if the Board concludes that  
16 it cannot grant all of the first five of our ANC  
17 conditions, then as you will see in the resolution our  
18 position is we oppose the 41 foot variance.

19 However, we offer another option which is  
20 granting of a variance that requires a berth of at  
21 least 46 feet, that way to enable or accommodate any  
22 45 foot truck that happens to show up. There were  
23 some discussions this morning about the diagram in Tab  
24 B of the applicant's prehearing statement. That  
25 document shows that it actually is possible to

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1 construct a 51 foot berth using the more northerly of  
2 the two existing berths, so constructing a 46 foot  
3 berth in the same space would certainly present no  
4 problem.

5 We still insist on Condition No. 1, even  
6 if you are not able to approve all five, even if you  
7 go ahead and require a 46 foot berth. We believe that  
8 Condition No. 1 is important and that its phraseology  
9 is important. But the issue is not just that 40 foot  
10 -- trucks longer than 40 feet won't show up, it's that  
11 Harris Teeter as a party in this case and the  
12 beneficiary in effect of the result or the order in  
13 this case, will be prohibited from that. Harris  
14 Teeter will refuse deliveries from 40 foot trucks and  
15 we think it's important that you use that language,  
16 because that's the only way that condition will be  
17 enforceable.

18 We have no way of chasing around all over  
19 the Washington or the East Coast every trucker that  
20 might show up and unload in violation of a zoning  
21 order. In addition to the specific requests or the  
22 request for specific conditions that were part of the  
23 previous PUD negotiations, our ANC support for the  
24 variances are predicated on two further conditions.

25 First, that all delivery trucks capable of

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1 being unloaded in an available loading berth must be  
2 directed into that berth by Harris Teeter personnel,  
3 rather than being unloaded from the street. We feel  
4 that is necessary to ensure that the reduction in size  
5 and hence in the navigability of the loading berth for  
6 drivers does not become an excuse for avoiding the  
7 loading berth all together and instead making it  
8 easier to move unloading from the street, even when a  
9 berth is open and available.

10 And second, that the Board's order should  
11 explicitly impose our conditions on Harris Teeter's  
12 successors and assigns and on any future grocery store  
13 tenant. PUD negotiations are regrettably  
14 demonstrated, but even Harris Teeter itself was often  
15 incapable of providing timely or accurate or firm  
16 commitments on many of the issues we have discussed  
17 and I appreciate Mr. Hutchens coming forward today  
18 with information that I wish we had had back in April,  
19 but we never seemed to be able to get that information  
20 until today from Harris Teeter.

21 So absent explicit provision in the order  
22 imposing those conditions on all future grocery store  
23 tenants as well, the inclination of a future tenant  
24 will be to evade as many of those conditions as they  
25 can get away with on the grounds that they applied

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1 only to Harris Teeter.

2 In conclusion, we believe our ANC's  
3 approach presents a rational and reasonable middle  
4 ground that will enable the Board to grant the  
5 requested variance while at the same time protecting  
6 the community from the substantial detriment and  
7 substantial impairment of the Zone Plan, particularly,  
8 the Reed Cooke Overlay.

9 The applicant cannot possibly sustain its  
10 burden of proof due to the reality of the trucks  
11 longer than 40 feet can and do access these streets  
12 already without agreeing to these conditions and I  
13 assume that's the reason why they have come forward  
14 today and stated their agreement with most of these  
15 conditions. They have acknowledged that this is a  
16 likely and serious detriment we hope will decide to  
17 take the same path that we, as the ANC, have to deal  
18 with it.

19 Thank you very much for your time and  
20 attention.

21 CHAIRPERSON GRIFFIS: Good. Thank you  
22 very much. Let me ask you a couple of quick  
23 questions. First of all, I'm not sure what is it that  
24 you think that we'll be able to do with the document  
25 submitted regarding the PUD application? And I guess

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1 my concern is that it would raise your expectation  
2 that we might fully understand all of that, which was  
3 put into the PUD.

4 We have not reviewed anything that had to  
5 do with the Zoning Commission. PUD has different  
6 requirements. And my understanding, just from reading  
7 this, was that it was a different application. There  
8 were different elements that we're going for, so help  
9 me understand why we need to see that.

10 MR. ROTH: I think the main purpose --  
11 well, first, let me back up a step and say what I have  
12 done in this exhibit is highlight in yellow the  
13 specific line items that pertain to trucks, truck  
14 delivery, transportation and so forth. And there are,  
15 approximately, 25 of them. And my main purpose in  
16 asking you to take a look at this as well as DDOT's  
17 submission in the PUD case as well as the ANC  
18 submission in the PUD case is, number one, primarily  
19 to see that Harris Teeter itself and the applicants  
20 have already said they can agree to much of what we  
21 are asking for.

22 In fact, with the exception, as I said  
23 before, the 40 foot issue and the Truck Management  
24 Plan issue, we believe that the other 13 conditions  
25 are all things that they have previously said they can

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1 agree to.

2 CHAIRPERSON GRIFFIS: Okay. So showing us  
3 that, you have already had discussion and ironed this  
4 out and under the PUD application, it's your testimony  
5 that they have already agreed to this. Why aren't we  
6 just running with that agreement now?

7 MR. ROTH: Well, I think I would go one  
8 step further and say, first, those relate -- in the  
9 context of a PUD case, they relate to the issue of  
10 adverse impact, which is, I think, very similar to the  
11 substantial detriment to the public good that we are  
12 talking about in this case.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ROTH: Second, that while the failure  
15 to implement these conditions in this case would  
16 create great prejudice and great trouble for the  
17 community, they correspondingly would create very  
18 little trouble for Harris Teeter. And so it would be  
19 very reasonable to impose conditions on them if they  
20 have already said they can agree to.

21 CHAIRPERSON GRIFFIS: Okay. In the PUD.  
22 They haven't said that in this planned one?

23 MR. ROTH: That's why I'm asking for the  
24 execution.

25 CHAIRPERSON GRIFFIS: I understand.

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1 Right.

2 MR. GLASGOW: And, Mr. Chairman, we would  
3 object to that.

4 CHAIRPERSON GRIFFIS: Object.

5 MR. GLASGOW: I mean, we have a  
6 substantial area of agreement that we have with the  
7 ANC, but because the characterization of -- and yes,  
8 those were our submissions. We're not going to  
9 disavow that they weren't submissions that were made  
10 during that case. There ended up not being a  
11 Memorandum of Understanding being executed.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GLASGOW: The Planned Unit Development  
14 application was withdrawn.

15 CHAIRPERSON GRIFFIS: Let me put it this  
16 way and I'll hear from Board Members, but I would  
17 uphold the objection and not take that information in  
18 just based on this. I think it suddenly widens our  
19 scope of review that we need to then get down and  
20 decipher in order to be really expeditious in deciding  
21 this. I think there's an easier way to deal with it.  
22 You have put forth an excellent representation all 15  
23 conditions.

24 They are now in the record before us. The  
25 applicant's representative has already said that they

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1 were going to address these conditions after your  
2 presentation. I think we have enough in the record,  
3 at this time, and there are some things that already  
4 are coming up that I know the Board wants to talk to.  
5 I think we ought to focus on what's here, I mean this  
6 record, rather than creating something that will, I  
7 think, probably be more confusing as to what is apples  
8 to apples with the BZA application.

9 MR. ROTH: I would just say, Mr. Chairman,  
10 I don't think it will be confusing at all. I think  
11 when you take a look at what's here, Mr. Williams had  
12 testified this morning and painstakingly drew up this  
13 document. It's on an Excel spreadsheet. There are  
14 specific line items that are highlighted for you to  
15 see. It's a four or five column document that I think  
16 will be very straightforward. And I think it does go  
17 to the issue of --

18 CHAIRPERSON GRIFFIS: Well --

19 MR. ROTH: -- the burden on the parties.

20 CHAIRPERSON GRIFFIS: Do we get into what  
21 the amenities were being offered in the PUD? I mean,  
22 what are the other structures? This Board doesn't  
23 process PUDs.

24 MR. ROTH: Well, this is --

25 CHAIRPERSON GRIFFIS: We're not even sure

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1 what to be looking at in terms of that.

2 MR. ROTH: Mr. Chairman, I understand,  
3 that's why I'm saying I highlighted specifically and  
4 I asked the Board only to take a look at those 25 or  
5 so items in here that pertain to truck traffic and  
6 related transportation, pedestrian safety and other  
7 matters. I'm not asking the Board to go anywhere  
8 beyond the specific line items that I have  
9 highlighted.

10 CHAIRPERSON GRIFFIS: I guess that's my  
11 difficulty. How do you extract that from a PUD  
12 application that has the entire aspect and differing  
13 relief sought, essentially, from the Zoning  
14 Commission.

15 MR. ROTH: The specific purpose of those  
16 provisions were aimed at helping the applicant in that  
17 case, the applicant in this case avoid the claim then  
18 before the Zoning Commission here before the Board of  
19 adverse impact on the community. It's the same legal  
20 issue, essentially, in the two cases. We're not  
21 asking you to take a look at any other item in that  
22 MOU, except those things pertaining to truck and  
23 transportation matters.

24 MR. GLASGOW: Mr. Chairman, the MOU was  
25 never executed and, therefore, there was not an

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1 agreement. So that to say that the applicant agreed  
2 to those items, that was in a context of a Planned  
3 Unit Development case where there is all kinds of  
4 other things going on.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. GLASGOW: And to parse out a piece of  
7 that, I think the better way to go and I think by the  
8 time we get through with this, to go through the 15  
9 items as to what we can agree on and what we can't in  
10 the ANC report where there is very substantial  
11 agreement on that.

12 MR. ROTH: I would just say in response,  
13 Mr. Glasgow, that it is true the MOU was never  
14 executed. However, the document that I'm offering is  
15 their document. This is a document that they  
16 provided.

17 VICE CHAIR MILLER: Can I ask a point? Is  
18 this a public record document? Is it in the public  
19 record at the Zoning Commission?

20 MR. ROTH: It is in the public record.

21 VICE CHAIR MILLER: I mean, just to jump  
22 in here, I'm not sure on what grounds that it is  
23 really in for. It doesn't sound like attorney/client  
24 privilege. It doesn't sound like -- it sounds like a  
25 public record. I understand the most efficient ways

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1 to zero in on the conditions.

2 MR. ROTH: Right.

3 VICE CHAIR MILLER: That are before us and  
4 find out it wouldn't be any different. But on the  
5 other hand, I think that Mr. Roth is trying to say  
6 that if it gets to the point where they say they can't  
7 do something and then there is this document that says  
8 well, they said they could do it.

9 MR. ROTH: Yes, that's exactly right.

10 VICE CHAIR MILLER: It seems to me it's  
11 public record. We know that this type of case is  
12 different from a PUD.

13 MR. GLASGOW: Right. Then what we would  
14 want to do is if you're going to do that, which I can  
15 understand the reasoning for that, then we want the  
16 entire record of the PUD incorporated into this case.

17 CHAIRPERSON GRIFFIS: That's right.

18 MR. GLASGOW: Because that's the only fair  
19 way to do it with the applicant because it's part of  
20 an over all process in a PUD negotiation.

21 CHAIRPERSON GRIFFIS: I think we're not  
22 losing substance if we don't accept it in just for a  
23 quick deliberation from the Board's end here. First  
24 of all, I agree that the PUD application, we have seen  
25 them in the back rows and never had to process them

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1 ourselves, they can be quite large and substantial and  
2 they go to different things and different aspects to  
3 it.

4 I don't think I'm finding it and I don't  
5 believe that it is inadmissible, but I do think that  
6 it would not bring us to the point which we need to  
7 get to. I think we have everything we need to look at  
8 and Mr. Roth has made an excellent presentation today  
9 bringing us to that point. In the same respects of  
10 his opponent, I'm going to issue that every single  
11 newspaper article ever done on this just to make sure  
12 that that's all in the record and why not put that in?

13 The matter to me is how much we start to  
14 defuse where we are going in terms of deliberating and  
15 deciding on a very straightforward application. And  
16 I want to make sure that we all are looking at it and  
17 we're all substantially prepared to do that.

18 VICE CHAIR MILLER: Well, that's -- yes,  
19 sorry. Then I will say, you know, maybe an  
20 alternative is is when we're looking at the various  
21 conditions if we have one that's at issue and there is  
22 some evidence in the PUD record that the applicant  
23 agreed to that condition previously, that that could  
24 be certainly admitted.

25 CHAIRPERSON GRIFFIS: I don't have any

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1 difficulty then in asking him. Did you agree to this  
2 in the PUD? And then they say yes, and they don't  
3 agree with it now. We can ask why. But let's just  
4 get to the substance of the conditions. For instance,  
5 we have a subsequent piece here that you said that  
6 they have previously agreed to and it's your Condition  
7 No. 3. They would limit the truck deliveries to,  
8 approximately, 20.

9 Well, approximately is one thing, but  
10 we've just heard, I think, something different. Where  
11 is that number coming from? Why did you want to  
12 condition that number? What is being mitigated in  
13 counting the 20 or how did you arrive at that  
14 condition?

15 MR. ROTH: That's why I want to submit  
16 this document for the record, so that there is  
17 something in the record that basically says out of  
18 their own mouths, out of the mouths of their own  
19 lawyers at least, they previously have told us  
20 something inconsistent with what they are telling you  
21 today.

22 CHAIRPERSON GRIFFIS: Well, we're not  
23 trying to prove any inconsistency. We're trying to  
24 get through an application. So if you're saying this  
25 is what was said before, it's 20 and now you have

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1 heard that it's 30 or 35 --

2 MR. ROTH: Mr. Chairman, I just think it  
3 goes to the credibility of the presentation.

4 CHAIRPERSON GRIFFIS: So what should we  
5 do?

6 MR. ROTH: Well, my suggestion would be  
7 accept the proffered exhibit for whatever worth the  
8 Board chooses to give it. I actually object to Mr.  
9 Glasgow's suggestion for precisely the reason that you  
10 brought up. I've said I'm offering this specifically  
11 for the narrow purpose of focusing in on the 25 items  
12 specifically related to truck and transportation  
13 issues.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. ROTH: Not for everything else.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. ROTH: The other 200 or 300 items in  
18 the PUD.

19 CHAIRPERSON GRIFFIS: Actually, maybe I  
20 wasn't clear. I was moving on actually to the  
21 substance of Condition No. 3. I had moved off of  
22 whether we accepted that information or not, but maybe  
23 we should be definitive in that.

24 BOARD MEMBER ETHERLY: I'll note just as  
25 we're having engagement in conversation, Mr. Chair, I

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1 would tend to agree with the direction that you have  
2 outlined. I understand and as Mr. Roth indicated at  
3 the top of our day, I often times understand where Mr.  
4 Roth is coming from and I understand that here.

5 MR. ROTH: I am willing to take that as a  
6 compliment.

7 BOARD MEMBER ETHERLY: It is a compliment,  
8 because that's not to suggest that my disagreement  
9 states that you are coming from left field. I  
10 understand why you want to get it in there. But I  
11 think it would kind of just complicate things, one  
12 from just the issue of procedural fairness, because it  
13 just opens up a whole process that, you know, isn't  
14 where we are.

15 I mean, the PUD is rightfully somewhere  
16 else in this whole Government apparatus and to kind of  
17 bring it, you know, open the door here, to me would,  
18 I think, invite precisely the point that was raised by  
19 the applicant's counsel that you would, indeed, then  
20 have to bring all the rest of it in to give it the  
21 appropriate context and the appropriate balance. Not  
22 to suggest that the agreement you are speaking to  
23 doesn't have any balance, but I do feel very strongly  
24 that just in order -- as part of an effort to maintain  
25 the clarity and the integrity of the two separate

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1 processes, I would just as soon keep it out.

2 I think you have a very detailed report  
3 here. The ANC has done, as it always does, very good  
4 work, whether I agree with it or not. But you have  
5 done very good work here. And I think the conditions  
6 that you have laid out sets out clearly the starting  
7 point for the conversation. So that would be where I  
8 am, Mr. Chairman, on that particular point.

9 MR. ROTH: Well, Mr. Chairman, I see where  
10 this is headed, so I'll withdraw my request to submit  
11 these items as exhibits.

12 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

13 MR. ROTH: Maybe I spoke too soon, maybe  
14 Ms. Miller wants to --

15 VICE CHAIR MILLER: No, I just wanted to  
16 do a clarification here a minute. I think that it  
17 sounds like you are offering them somewhat in an  
18 abstract. This is all the conditions they agreed to  
19 and then if perhaps the Board isn't open to that, I do  
20 think that if there seems to be some kind of an  
21 inconsistency that comes up in this hearing, that you  
22 should be able to point to something that shows that.  
23 And that would be on an individual basis then with  
24 respect to various conditions.

25 MR. ROTH: Well, let me --

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1                   VICE CHAIR MILLER:     I think you're  
2 precluded from that.

3                   MR. ROTH:    Yes.

4                   VICE CHAIR MILLER:   You know.

5                   MR. GLASGOW:   Right.  No, no, I would  
6 definitely --

7                   MR. ROTH:    I appreciate that.  I'm just  
8 specifically talking about, you know, whether to  
9 insist on a vote on whether or not this document  
10 should be admitted into evidence.  And I think I  
11 understand what you are saying.  I would just say to  
12 the Board the two most significant areas, I think,  
13 that reflect inconsistencies between their current  
14 position and past positions taken have to do with  
15 number of deliveries and hours of deliveries.

16                   And I guess I would renew my request to be  
17 able to submit as an exhibit the summary of zoning  
18 actions in the community.

19                   BOARD MEMBER ETHERLY:    There is no  
20 objection to that.

21                   CHAIRPERSON GRIFFIS:  And I don't have any  
22 objection either.  I was just wondering what is the  
23 context of which we are supposed to understand that?  
24 Frankly, I think I have sat on all of them and know  
25 all the PUDs.  But what are we supposed to believe?

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1 When is the duration?

2 MR. ROTH: The increasing and pressing  
3 density on these very, very tight narrow streets.

4 CHAIRPERSON GRIFFIS: Okay. Okay. I  
5 think everyone was here for the two adjacent on the  
6 corners, correct? No, Mr. Mann was not. Okay. I  
7 don't have any difficulty with that. I think it's  
8 well-understood and all the processing in this area,  
9 but certainly --

10 MR. ROTH: Who do I submit them to?

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. ROTH: With the assistance of opposing  
13 counsel.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. ROTH: Appreciate it. I'm sorry, Mr.  
16 Chairman.

17 CHAIRPERSON GRIFFIS: Where are we?

18 MR. ROTH: You were asking questions.

19 CHAIRPERSON GRIFFIS: Oh, good. Let's get  
20 back to my questions. Now, we had an objection to  
21 that material. Were you finished with the  
22 presentation then?

23 MR. ROTH: Yes, sir.

24 CHAIRPERSON GRIFFIS: Okay. Any questions  
25 then from the Board, the ANC? Ms. Miller, did you

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1 have something?

2 VICE CHAIR MILLER: Well, I think you  
3 began to question Mr. Roth on No. 3 and I think that's  
4 an important condition to understand. Where did the--

5 CHAIRPERSON GRIFFIS: I'm sorry, I'm going  
6 to interrupt you for two seconds, because I am back on  
7 track.

8 VICE CHAIR MILLER: Okay.

9 CHAIRPERSON GRIFFIS: I was looking for  
10 some of the regulations. You made an issue of 46  
11 feet, 46 foot dock. If we didn't go with five, let's  
12 go to 46. I don't understand the dimensional  
13 importance.

14 MR. ROTH: Well, it starts from the  
15 standpoint that we believe 45 foot trucks can and do  
16 already access this neighborhood and, in an absence of  
17 a variety of protections against their accessing this  
18 neighborhood, they will show up at Harris Teeter.

19 And our belief is that in the absence of  
20 all five of these things being incorporated in the  
21 order together as a package that it will be very, very  
22 much more difficult to enforce the 40 foot  
23 restriction, that they work together as a package.

24 And so if the Board can't see fit or  
25 doesn't see fit to impose all five, that is of the

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1 first five, then we believe the applicant ought to be  
2 required to have a 46 foot berth to accommodate the 45  
3 foot trucks that we believe will come.

4 CHAIRPERSON GRIFFIS: What is a 45 foot  
5 truck? Do you know? I mean, do you have an example  
6 of what it is?

7 MR. ROTH: I mean, typically, in our  
8 neighborhood, I'm not an expert and I'm sure I could  
9 be corrected by Mr. Hutchens and Mr. Gorove, but some  
10 of the beer and beverage delivery trucks I think -- I  
11 can't remember the name offhand of the wholesaler, but  
12 one of the beer and beverage wholesalers --

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ROTH: -- shows up in trucks that seem  
15 pretty large. I don't know specifically whether they  
16 are 45 feet.

17 CHAIRPERSON GRIFFIS: Okay. Let me help  
18 because, quite frankly, I'm sure, and myself sitting  
19 here and I'm wondering well, what is a 40 foot truck,  
20 a 45 foot truck? We got 10 vans, but let's get an  
21 expert and see what we got.

22 MR. ROTH: Yes. I mean, the other -- I  
23 think Mr. Etherly brought this out in his cross  
24 examination of Mr. Hutchens but, again, the other  
25 thing that I would emphasize is when they talk about

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1 limiting Harris Teeter's deliveries or the number of  
2 Harris Teeter deliveries, the three versus five are  
3 Harris Teeter trucks, as distinguished from the total  
4 30 to 40 vendor trucks including the Harris Teeter  
5 trucks.

6 CHAIRPERSON GRIFFIS: Sure. Okay. I do  
7 have a quick question. In your understanding of --  
8 well, what is a typical 40 foot or a 45 foot truck?  
9 Two questions.

10 MR. GOROVE: Well, there were two  
11 questions. You were talking about the beer trucks  
12 and, again, Harris Teeter is going to have some  
13 control over the vendors and what they are going to  
14 bring. A typical truck, 25, somewhere in that range,  
15 30 feet. There are some 40 foot ones that also --

16 CHAIRPERSON GRIFFIS: What is a 45 foot  
17 truck?

18 MR. GOROVE: A 45 foot truck? I'm trying  
19 to think of a good example. Yes, well, they are  
20 single unit ones, a single unit moving van, a small  
21 moving van. That's a 45 foot truck. I'm trying to  
22 think of examples.

23 CHAIRPERSON GRIFFIS: So, I mean, beer  
24 hauling trucks, I can picture it.

25 MR. GOROVE: I think beer hauling trucks,

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1 they are probably --

2 CHAIRPERSON GRIFFIS: It says Busch on the  
3 side. No.

4 MR. GOROVE: Yes. Some of those, some of  
5 those can get big, but those aren't the kind that they  
6 would use for this kind of a delivery.

7 BOARD MEMBER ETHERLY: So we'll say, for  
8 example, you clearly have an 18-wheeler. I think most  
9 people would understand what an 18-wheeler is, the  
10 very large truck.

11 MR. GOROVE: That's a very big truck.

12 BOARD MEMBER ETHERLY: And that is clearly  
13 not what we're talking about.

14 MR. GOROVE: Yes. A typical single unit  
15 with the two wheels in the front and the carriage in  
16 the back, those are about 35 feet. Some of them get  
17 up to 40 feet.

18 BOARD MEMBER ETHERLY: Okay. And in the  
19 case of a beer wholesaler truck just as an example, if  
20 it's like a traditional side load type of vehicle  
21 where you're moving the side load doors up and down,  
22 which also happen to be used in other industries, what  
23 would you measure that truck at?

24 MR. GOROVE: Yes. That, again, that's 35  
25 feet, somewhere around that range.

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1 BOARD MEMBER ETHERLY: Got you.

2 MR. GOROVE: I mean, but they vary.

3 BOARD MEMBER ETHERLY: Okay.

4 MR. GOROVE: I mean, different vendors use  
5 different sizes.

6 BOARD MEMBER ETHERLY: And those are the  
7 trucks that perhaps most frequently residents will see  
8 at a corner store or at the grocery store parked on  
9 the side of the street. And, once again, just kind of  
10 providing a sense of scale, that is typically a 35  
11 foot?

12 MR. GOROVE: Yes, even 25.

13 BOARD MEMBER ETHERLY: Or smaller.

14 MR. ROTH: I think Mr. Gorove put his  
15 finger on it though when he said they vary. It varies  
16 in large part on the practices of the vendor.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. ROTH: We believe based upon personal  
19 observation and, again, you know, I wouldn't swear  
20 this on a stack of Bibles, but based on personal  
21 observation, we believe there is already a 45 foot  
22 truck making deliveries to a corner grocery store at  
23 17<sup>th</sup> and Kalorama now.

24 CHAIRPERSON GRIFFIS: Okay.

25 BOARD MEMBER MANN: Mr. Chairman?

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1 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

2 BOARD MEMBER MANN: Didn't we also read  
3 this morning though that 55 feet, trucks 55 feet in  
4 length can also maneuver through those streets?

5 MR. ROTH: I think Mr. Gorove said they  
6 could with difficulty.

7 BOARD MEMBER MANN: And I don't know if  
8 that was something that the ANC took into  
9 consideration or not, but then why if you're  
10 conditioning it on saying, well, if they are not going  
11 to limit it to 40, then we want a 45 foot berth, then  
12 why not say then it should be a 55 foot berth?

13 MR. ROTH: It's a very good question and  
14 we did, I think, in all these situations, in all of  
15 the issues that were raised here, we tried to do a  
16 balancing act. There is a certain tradeoff in terms  
17 of lost parking both down below in the garage, as well  
18 as out on the street, depending upon how great or how  
19 limited the variance is.

20 Our feeling was the impact on the  
21 neighborhood of having a 45 foot truck pull up, double  
22 parked presumably because they won't be able to fit in  
23 the loading zone that is specifically for 40 foot  
24 trucks, on streets that currently two cars have  
25 difficulty passing each other with, much less a car

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1 trying to pass a truck in the opposite direction or  
2 two trucks trying to pass each other, that the  
3 tradeoff there was that it was more important to lose  
4 a handful of parking spaces both in the garage and out  
5 on the street than otherwise.

6 It's also our belief that there was a  
7 sufficiently dim likelihood that they would try to use  
8 55 foot trucks because of the difficulty getting in an  
9 out, that we should not sacrifice all those additional  
10 parking spaces both in the garage and out on the  
11 street.

12 And what I took away from testimony this  
13 morning, both my questions to Mr. VanPelt as well as  
14 Mr. Glasgow's clarification later on, was that,  
15 approximately, twice as many cars or twice as many  
16 parking spaces would have to be removed from the  
17 street as between a 45 and a 55 foot. What I heard  
18 was three versus six.

19 CHAIRPERSON GRIFFIS: Anything else?  
20 Follow-up?

21 VICE CHAIR MILLER: Yes.

22 CHAIRPERSON GRIFFIS: Ms. Miller?

23 VICE CHAIR MILLER: Well, a couple of  
24 things. I guess I started to ask you about No. 3.  
25 Where did those numbers come from in there about

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1 limiting deliveries to 20 and 10 and newspapers on  
2 Sunday?

3 MR. ROTH: The numbers there came  
4 essentially from what Harris Teeter told us they would  
5 do right up until 4:00 in the afternoon on June 1<sup>st</sup>,  
6 three hours before our ANC meeting when I got a  
7 telephone call from a gentleman in North Carolina who  
8 basically reneged on those commitments.

9 VICE CHAIR MILLER: And whose numbers were  
10 they?

11 MR. ROTH: They were numbers posed to us  
12 by Harris Teeter or by Harris Teeter's  
13 representatives.

14 VICE CHAIR MILLER: Okay. And I don't  
15 totally understand the rationale with respect to if all  
16 one through five conditions aren't adopted, you would  
17 go for the 46 foot loading berth. I mean, I could see  
18 No. 1 where they are refusing the trucks, deliveries  
19 from the trucks that exceed 40 feet, but after that  
20 I'm not sure why you would prefer a 46 foot one.

21 MR. ROTH: We just felt that it would all  
22 work together, that they are mutually reinforcing and  
23 that they will provide sufficient inducements beyond  
24 just condition No. 1 to say to truck drivers don't  
25 even bother showing up here in a truck larger than 40

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1 feet. Because, I believe, based upon what I see every  
2 day, that with the lack of enforcement that we have in  
3 Washington, D.C., trucks in excess of 40 feet will  
4 show up unless there are numerous conditions imposed  
5 to discourage that, and that there will be intense  
6 pressure on the loading dock people to accept those  
7 deliveries notwithstanding any condition, No. 1, that  
8 the Board might impose.

9 Condition No. 1 is probably the most  
10 important. That's why it's No. 1. But all by itself  
11 it basically requires citizens to go out and catch  
12 people in the act. That's a very difficult position  
13 to put people in. We feel that by imposing 1 through  
14 5, it will together keep the trucks from even trying  
15 to get there.

16 VICE CHAIR MILLER: Just looking at No. 3,  
17 would No. 3 have any different impact if it were the  
18 larger berth or the smaller berth?

19 MR. ROTH: I'm just trying to understand.

20 VICE CHAIR MILLER: I'm saying the number  
21 of deliveries, does that relate in any way in  
22 particular to whether the berth is for 40 foot trucks  
23 or 55 foot trucks?

24 MR. ROTH: I may be wrong and I would have  
25 to refresh my recollection. Maybe Mr. Glasgow can

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1 help with this, but my recollection is that that  
2 number, which again was generated during the PUD  
3 negotiations, contemplated the same configuration that  
4 they propose now, which is two 41 foot berths.

5 VICE CHAIR MILLER: Okay. Thanks.

6 BOARD MEMBER MANN: Well, I guess, I don't  
7 know if this is the same question or not, but doesn't  
8 a lower number of deliveries put pressure on a larger  
9 size truck?

10 MR. ROTH: It may. I'm just giving you  
11 the numbers that Harris Teeter told us they could  
12 abide by. They are now saying they need more. They  
13 are now saying they need 50 percent more, maybe 100  
14 percent more. That strikes me as somebody who has  
15 belatedly decided they want more flexibility, but it's  
16 not what they originally said they could do.

17 CHAIRPERSON GRIFFIS: Okay.

18 BOARD MEMBER MANN: I have a couple of  
19 other questions, but they don't have to do with the  
20 truck deliveries.

21 CHAIRPERSON GRIFFIS: Fire away.

22 BOARD MEMBER MANN: Condition No. 15  
23 regarding the extermination, is there any direct link  
24 between the Extermination Plan and these truck sizes  
25 or these truck delivery issues?

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1 MR. ROTH: No. I think what the  
2 Extermination Plan refers to is that one of the  
3 rationales for shortening the loading berth to 41 feet  
4 is so that they can put a trash compactor inside that  
5 area, inside the, I don't know what they call it, but  
6 the curtain, if you will, of the loading dock/storage  
7 area.

8 And our hope and expectation would be that  
9 they would be responsible for the consequences of  
10 having that compactor in there. I think it's a good  
11 idea that they are having the compactor indoors. I  
12 think it's a good idea that they will use various  
13 technologies, I hope they will at least, to dampen the  
14 sound effects of that.

15 But let's just say vermin in our  
16 neighborhood is a major problem and to the extent that  
17 the rationale for shortening the loading dock is to be  
18 allowed room for the compactor or other food storage  
19 back there, which seems to me what they contemplate,  
20 that we thought that that was an appropriate condition  
21 to ask.

22 BOARD MEMBER MANN: Okay. I actually  
23 don't recall that being the rationale, but maybe that  
24 will be addressed later.

25 MR. ROTH: I wouldn't say "the," but one

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1 of. One of the rationales for having a short loading  
2 berth was to provide them more storage space beyond  
3 that 41 feet.

4 BOARD MEMBER MANN: Okay. I think that  
5 answers the questions I have regarding the compactor  
6 as well. Thanks.

7 CHAIRPERSON GRIFFIS: Anything else?  
8 Well, let's continue up that realm, how we're looking  
9 at the dimensional aspects or where the condition  
10 plastics and recyclables will be sent back to North  
11 Carolina come from?

12 MR. ROTH: Again, their agreement.

13 CHAIRPERSON GRIFFIS: Is it? Okay.

14 MR. ROTH: As part of --

15 CHAIRPERSON GRIFFIS: That's all.

16 MR. ROTH: -- the MOU process.

17 CHAIRPERSON GRIFFIS: Just a quick  
18 clarification. I left off a lot of substance in that  
19 one, but I thought it was amusing. Send them back to  
20 North Carolina. Back to the loading dock. They have  
21 operation times there, too, right, 9:00 to 3:00 and  
22 that's what you're also proposing in your condition?

23 MR. ROTH: When you say they, they have?

24 CHAIRPERSON GRIFFIS: Well, your Condition  
25 No. 13 is trash compactor at loading dock will operate

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1 with these only.

2 MR. ROTH: Right.

3 CHAIRPERSON GRIFFIS: That is something  
4 that you received from them in the PUD application?

5 MR. ROTH: Yes, yes.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ROTH: Just to reiterate, to the best  
8 of my knowledge, I may be wrong about, you know, a  
9 comment here or there or a particular trend here or  
10 there, but the way this resolution was put together  
11 was based -- with the exception of the 40 foot  
12 limitation and the Truck Management Plan was based  
13 entirely upon the things they previously had told us  
14 they could do.

15 CHAIRPERSON GRIFFIS: Okay. And would you  
16 anticipate and with your involvement to date or with  
17 the Truck Management Plan, are some of these  
18 conditions covered in that management plan?

19 MR. ROTH: Well, I haven't seen one.

20 CHAIRPERSON GRIFFIS: I see.

21 MR. ROTH: The plan -- or at least I have  
22 seen various drafts that are, you know, three, four,  
23 five months old and they range from, you know, a sort  
24 of half page of not very much substance to two or  
25 three pages single spaced of, you know, great detail.

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1 I think we never really came to a conclusion in those  
2 negotiations on what a Truck Management Plan is or  
3 should contain.

4 Our view of it is that it ought to be a  
5 fairly simple document that clearly spells out both  
6 for vendors and for the employees of the loading dock  
7 in language that both can understand what the rules  
8 are and what the consequences of not following the  
9 rules are.

10 There may be more things that DDOT wants  
11 to include, but to date, I mean, actually up until a  
12 few days ago in a discussion with Mr. Glasgow, I had  
13 not had any further information about their  
14 willingness to undertake a Truck Management Plan and  
15 was, frankly, pleased to see it was one of OP's  
16 recommendations as well as ours.

17 CHAIRPERSON GRIFFIS: Okay. And in  
18 looking at this application and hearing the testimony  
19 today, do you find there is a nexus between the  
20 reduction of the dimension in the loading dock to the  
21 number of vehicle deliveries or anything else that is  
22 happening outside of those loading docks?

23 MR. ROTH: Yes. Based upon the discussion  
24 this morning, and I think actually, Mr. Chairman, you  
25 may have been the person to phrase it most precisely,

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1 the reduction in the size of the loading dock means a  
2 reduction in the size of trucks likely to come, which  
3 generates additional trips. People can differ as to  
4 which poison they would rather have, but there is no  
5 question that it's related to the variance being  
6 requested.

7 CHAIRPERSON GRIFFIS: Okay. That's all I  
8 have. Yes?

9 VICE CHAIR MILLER: Based on the  
10 discussion we have been having, I think it shows the  
11 difference between the PUD process and our process  
12 where many of these conditions, as far as I can tell,  
13 you know, look like amenities, look like nice things  
14 for the neighborhood, but in this proceeding we're  
15 looking at what conditions are necessary to mitigate  
16 an adverse impact that is a result of the relief being  
17 sought here.

18 And so that's why we're trying to focus  
19 on, well, how is this related to the smaller loading  
20 berth? So if there is anything else you want to point  
21 out. It's not clear like on its face, you know,  
22 necessarily that, like we said with No. 3, that  
23 limiting it to 20 just because they agreed to do that  
24 and maneuvers like that doesn't mean that that's  
25 mitigating an adverse impact related to the smaller

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1 loading berth. It might be but, I mean, I think  
2 that's what your burden is to show us.

3 MR. ROTH: Right. Again, let me just  
4 recap, essentially, how I laid it out in my prepared  
5 statement. I think, based on what I have read of  
6 their submissions, the applicant concedes that  
7 Conditions No. 1 and 2 are relevant and are germane to  
8 the variance request. They have also said without  
9 specifying that several of the other conditions are.

10 Now, I'm doing the best I can to, you  
11 know, read these conditions and interpret them in  
12 light of the standards that the Board applies, but my  
13 view is that in addition to Conditions 1 and 2, Nos.  
14 6, 8, 10 and 12 meets that standard.

15 As to the rest, we have a disagreement  
16 between us, obviously, as to whether or not they are  
17 germane, whether or not they are within the Board's  
18 authority to grant and we would urge you to grant as  
19 many of them, certainly, as the Board believes it's  
20 within its power to grant.

21 CHAIRPERSON GRIFFIS: Good. Anything  
22 else? If there are no other questions from the Board,  
23 let's go to cross.

24 MR. GLASGOW: Indulgence for a second.

25 CHAIRPERSON GRIFFIS: Sure.

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1 MR. ROTH: Would the Board Members be  
2 offended if I chewed a piece of gum? Thank you.

3 UNIDENTIFIED SPEAKER: Just swallow it  
4 when you're done.

5 CHAIRPERSON GRIFFIS: Just as long as you  
6 brought enough for the rest of us.

7 MR. ROTH: Well, it's the antihistamine,  
8 so I'm dried up.

9 MR. GLASGOW: I think, at this point in  
10 time, we may just -- it seems to me that there is one  
11 main issue with respect to the number of deliveries  
12 and how that fits into the scheme of things, and we  
13 can just handle that on rebuttal.

14 There are a number of items within the 15  
15 conditions that we have told Alan, that we told  
16 Commissioner Roth that we can agree to. Some of them  
17 we don't believe are appropriate for a BZA case. I  
18 can either run down that list in the nature of cross  
19 examination or we can just wait for rebuttal to handle  
20 everything. It's up to the Board.

21 CHAIRPERSON GRIFFIS: Right. I think the  
22 Board is fully anticipating to ask you that exact  
23 question, so it's good you're prepared to do that. I  
24 don't think we need to do it right now.

25 MR. GLASGOW: Okay.

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1 CHAIRPERSON GRIFFIS: Let's get through  
2 the cross. We're going to take a couple minute break.

3 MR. GLASGOW: Right.

4 CHAIRPERSON GRIFFIS: We're going to come  
5 back and then we'll get through all that.

6 MR. GLASGOW: We don't have any cross  
7 examination, because it will just be on the number of  
8 deliveries. We'll put on a rebuttal witness on that.

9 CHAIRPERSON GRIFFIS: Good. Good. And  
10 then we get that and everyone will be here. So do we  
11 have --

12 MR. BATRA: After cross we do have a  
13 process timing question for you.

14 CHAIRPERSON GRIFFIS: Good.

15 MR. BATRA: You just said you might get  
16 through this now.

17 CHAIRPERSON GRIFFIS: Yes, absolutely.

18 MR. BATRA: Chairman Roth, a question for  
19 you.

20 MR. ROTH: Yes, sir.

21 MR. BATRA: Does the management plan you  
22 referred to in the ANC resolution, which I don't have  
23 before me so I might be misstating it, does that  
24 contemplate truck management in terms of the route or  
25 also as in terms of it dealing with pedestrian safety,

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1 particularly during school hours?

2 MR. ROTH: I think it would deal with all  
3 those things and probably more as well. It's not just  
4 a route.

5 MR. BATRA: Okay.

6 MR. ROTH: As far as we're concerned. I'm  
7 not sure what OP has in mind, but as far as we're  
8 concerned it's not just an issue of the routing. It's  
9 an issue of the scheduling and the interaction with  
10 pedestrians and other vehicles in the community.

11 MR. BATRA: Right.

12 MS. GALLAGHER: Actually, my question has  
13 to do with -- I don't know if it's for Mr. Roth or for  
14 you guys, because Mr. Roth has actually --

15 CHAIRPERSON GRIFFIS: We don't normally  
16 get crossed, but --

17 MS. GALLAGHER: Yes, I know, but I guess  
18 it's kind of a procedural question.

19 CHAIRPERSON GRIFFIS: Sure.

20 MS. GALLAGHER: And it's if Mr. Roth has  
21 several of these conditions that he said that unless  
22 they are met, the ANC will pull its support for this.  
23 When, I guess, does that really come into effect and  
24 when does Mr. Roth pull -- if that doesn't happen to  
25 his conditions, when does that, you know, take effect?

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1                   CHAIRPERSON GRIFFIS: Excellent question.  
2                   In my mind what it would mean is that I think Mr. Roth  
3                   has great faith in us in being able to deliberate  
4                   adequately.

5                   If we found that we, in fact, weren't  
6                   going through the condition of which he was having  
7                   approval, that we would then obviously take it in  
8                   opposition and give it the great weight that it was  
9                   afforded if it meets that criteria. In which case the  
10                  Board in its deliberation would have to address all  
11                  the points of why we did not go with or did not find  
12                  persuasive those arguments of the ANC. So it puts it  
13                  up.

14                  To answer directly, when does that happen,  
15                  it's going to happen in deliberation.

16                  MS. GALLAGHER: Okay.

17                  CHAIRPERSON GRIFFIS: Because it's based  
18                  on a decision by the Board in the direction of which  
19                  I don't know where we're going with that, and there  
20                  will be repercussions for that decision.

21                  MS. GALLAGHER: And then whatever you  
22                  decide, it's the great weight either for or against,  
23                  according to whatever his conditions were met or not  
24                  met?

25                  CHAIRPERSON GRIFFIS: Right.

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1 MS. GALLAGHER: Okay.

2 MR. BATRA: So as a follow-up to that,  
3 there wouldn't be another hearing where the management  
4 plan was laid out and the ANC said yes, this meets  
5 this criteria and OP as well says yes, this meets out  
6 criteria, we agree with this before you can then make  
7 your decision? If it's conditioned, there's two  
8 different conditions and they both may contemplate  
9 different things. It's not just the plan. It's  
10 what's in the plan.

11 CHAIRPERSON GRIFFIS: Right. I can't  
12 answer that question. I'm having a little bit of  
13 trouble having this conditioned Truck Management Plan,  
14 which I have never seen, don't know what's in it or  
15 whatever it is. We're going to have to figure out  
16 whether and how much substance that goes to in terms  
17 of what we're looking at and it may be. We're not  
18 through this hearing.

19 We still have your case presentation. We  
20 have the persons to give testimony and we're going to  
21 have rebuttal from the applicant, and then we have  
22 conclusions and summations from the applicant and the  
23 Board, believe me, is gathering other things that we  
24 want to perhaps have done or addressed if they are not  
25 met as we walk through this.

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1                   So that is an interesting point.  Anyway,  
2                   I don't think I can answer that.

3                   MR. BATRA:  Okay.

4                   CHAIRPERSON GRIFFIS:  Office of Planning,  
5                   I thought, put together an interesting caveat on their  
6                   condition.  It wasn't tying it to our approval.  It  
7                   was tying it to the C of O which, as I said before,  
8                   takes us essentially out of the process of looking at  
9                   that or evaluating it, but perhaps it gives us the  
10                  ability to condition that it happens.  That's what  
11                  they are proposing.  I don't know if that, you know,  
12                  will come to fruition or not.

13                  MR. ROTH:  Mr. Chairman?

14                  CHAIRPERSON GRIFFIS:  Yes?

15                  MR. ROTH:  I may be going a little beyond  
16                  the ANC's stated view, but I think I am on pretty firm  
17                  ground in saying I think the ANC, none of whose  
18                  members are traffic or transportation experts, would  
19                  frankly be most comfortable with DDOT having approved  
20                  a plan.

21                  In other words, DDOT applying its traffic  
22                  safety responsibilities and its other traffic  
23                  administration responsibilities would be in a much  
24                  better position to make judgments on those questions  
25                  than any of us in this room would.

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1 CHAIRPERSON GRIFFIS: Good. Okay. Any  
2 other cross for the ANC? All set? Excellent.

3 MR. BATRA: Procedural questions.

4 CHAIRPERSON GRIFFIS: Yes, the procedural  
5 question.

6 MS. GALLAGHER: As I cross examined you,  
7 so I got that.

8 CHAIRPERSON GRIFFIS: Oh, did I answer the  
9 procedural question?

10 MS. GALLAGHER: Yes, you did.

11 CHAIRPERSON GRIFFIS: Oh, okay.

12 MS. GALLAGHER: Thank you.

13 CHAIRPERSON GRIFFIS: Then my procedural  
14 direction is let's take a quick two minute, five  
15 minute. We're going to come back. We're going to  
16 hear the party in opposition case presentation.

17 MR. BATRA: Having timing issues though as  
18 it approaches 5:00.

19 CHAIRPERSON GRIFFIS: Exactly.

20 MR. BATRA: Some of the folks --

21 CHAIRPERSON GRIFFIS: How many?

22 MS. GALLAGHER: Yes.

23 MR. BATRA: We have several of us as part  
24 of our formal application of the party, as well as a  
25 couple public witnesses at the end and we're going to

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1 start losing folks pretty shortly. I don't know how  
2 much longer this is going to need to go on, but if  
3 they have rebuttal testimony, as well, and then  
4 conclusions, it could be a couple more hours and I  
5 think we're going to definitely lose a lot of -- most  
6 of us.

7 CHAIRPERSON GRIFFIS: Well, the critical  
8 aspect is to get your case presentation done when they  
9 are here. Is that correct?

10 MS. GALLAGHER: Yes.

11 MR. BATRA: Yes.

12 CHAIRPERSON GRIFFIS: And they are going  
13 to be able to stay for another 20 minutes, 25 minutes  
14 to get your case done?

15 MR. BATRA: It may take a little bit  
16 longer than that.

17 CHAIRPERSON GRIFFIS: Can they stay for  
18 your case presentation?

19 MR. GLASGOW: I think the applicant's case  
20 in chief was about 35 minutes.

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. BATRA: It will be around that time.  
23 We're just going to start losing people as we approach  
24 5:30 and then --

25 CHAIRPERSON GRIFFIS: Okay. Well, what I

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1 want to get through is your case presentation.

2 MR. BATRA: Okay.

3 CHAIRPERSON GRIFFIS: Right? You have  
4 some people here now to go ahead.

5 MR. BATRA: We have people here now. We  
6 may lose a few, so I'm not sure how long, what we can  
7 tell people about how long this is going to last. I  
8 guess we weren't aware that it might go this far into  
9 the evening.

10 CHAIRPERSON GRIFFIS: Me neither.

11 MR. BATRA: And hadn't planned on it  
12 necessarily.

13 CHAIRPERSON GRIFFIS: Me neither. Okay.  
14 Well, you have got half an hour. You have 30 minutes  
15 for your case presentation. So we're going to come  
16 back. We're going to get right to it. I would  
17 suggest that anyone who has a scheduling problem, get  
18 them up first. Does that make sense?

19 MR. BATRA: Okay.

20 CHAIRPERSON GRIFFIS: And then, quite  
21 frankly, after your presentation of the case, we're  
22 going to evaluate where we are. Conceivably, that's  
23 a good place to stop. However, how many persons are  
24 here to give testimony today that aren't involved in  
25 the party application? Any persons waiting? Oh,

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1 right, I'm sorry. Mr. Johnson is here. Oh, two?

2 MR. BATRA: And maybe Mr. Wilkes.

3 CHAIRPERSON GRIFFIS: Okay. I'm going to  
4 get through all those today and then we'll reassess.  
5 That may be all that we can accomplish at that point,  
6 and then we'll have to reconvene very quickly and  
7 we'll set the date for that unless everyone is  
8 amenable to stay later which, frankly, I will check  
9 with the Board, but I think that would be an  
10 advantageous situation.

11 Is that clear? I often do not do too many  
12 clear directions when we're about to break. But the  
13 point is we're going to get through your case  
14 presentation. Hold your people here. Get to them  
15 first and then they can dismiss, and then we'll go to  
16 persons and then we'll evaluate the schedule.  
17 Hopefully, we'll be able to get through the rest of  
18 the piece, because it will just be closings, some  
19 rebuttal.

20 MR. BATRA: Okay.

21 CHAIRPERSON GRIFFIS: Good.

22 (Whereupon, at 5:00 p.m. the Public  
23 Hearing continued into the evening session.)

24

25



1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:07 p.m.

3 CHAIRPERSON GRIFFIS: Very well. Let's  
4 resume. Yes?

5 MR. BATRA: Okay. My name is Simi Batra,  
6 First Vice President of the Reed Cooke Neighborhood  
7 Association. I am leading off on behalf of RCNA and  
8 the neighbors directly across the street in this  
9 proposal and I will call them as witnesses as we go  
10 through our testimony. We will be submitting for the  
11 record our full testimony, but we will be summarizing  
12 for you today.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MR. BATRA: The Reed Cooke Neighborhood  
15 Association represents residents of Adam Morgan living  
16 south of Columbia Road, north of Florida and between  
17 16<sup>th</sup> and 18<sup>th</sup> Streets. We are dedicated to the  
18 preservation of the residential character of our  
19 neighborhood.

20 One of the primary challenges we continue  
21 to face as a neighborhood is the high level of  
22 development, as you heard earlier from OP and the ANC,  
23 and the many ensuing pressures that come with it.  
24 Over the past two years we have welcomed upwards of 10  
25 new substantial residential developments in our

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1 neighborhood all of which were approved, nearly all of  
2 which with zoning variances and special exceptions,  
3 and most of which are in a two block radius of this  
4 proposal.

5 Today we are requesting that the Board  
6 deny the application before you as it violates both  
7 the letter and the spirit of the Reed Cooke Overlay.  
8 I will be submitting for the record our full  
9 testimony, as well as seven more letters from area  
10 residents whose names have not been mentioned today as  
11 well.

12 Over the next 30 minutes or so I will be  
13 calling up Peter Lyden, Maureen Gallagher and Jeff  
14 Wilkes who will be presenting different aspects of our  
15 testimony. And, again, they will also summarize and  
16 submit their full testimony for the record.

17 To begin with, Peter Lyden will first  
18 present his testimony on the history and intent of the  
19 Reed Cooke Overlay and how that impacts the case  
20 before you today.

21 MR. LYDEN: There, I'm on. Not to bore  
22 you with a lot of stuff and yellow paper brought to  
23 you by a guy with a white beard, but it does have  
24 relevance on what is happening here today. This area  
25 was recognized as having a problem back at the time of

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1 the Home Rule granting and it was a condition of Home  
2 Rule that a Comprehensive Plan be created.

3 As part of that Comprehensive Plan, this  
4 area was designated a special treatment area. After  
5 that, and that is about when I came into this, in the  
6 early '80s, a number of residents got together and  
7 were taking a look at a lot of -- looking at the land  
8 use and realized there were a large number of  
9 problems.

10 Through a lot of hard work, what happened,  
11 we ended up dividing -- the work was divided up into  
12 two different cases by the Office of Zoning. They did  
13 the easy ones first and then the second ones, which  
14 was Reed Cooke 2, Case 8819, which took three years to  
15 decide.

16 Everybody in the neighborhood, the  
17 business people, the residents, the city, Office of  
18 Planning, everybody had input on it and the Office of  
19 Planning or the Zoning Commission had a really tough  
20 decision to make and they did it and they came out  
21 with the Reed Cooke Overlay, Chapter 14, which has a  
22 lot of elements to it.

23 But in general, the idea is there are very  
24 few specific things in it. The only one that really  
25 is a real pain to all the developers is the 50 foot

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1 height limitation and that was to limit the density,  
2 and also the traffic studies that this is all that the  
3 neighborhood can support.

4 And I would like to just -- one thing I  
5 think that really pulls it all together, and I think  
6 you're wrestling with it, too, and you probably feel  
7 like these things are going through your head right  
8 now, on page 2 of the zoning order, which you have a  
9 copy of it in my testimony, I gave you the whole thing  
10 so you can sit down and read it in all of its glorious  
11 detail.

12 But it says "Consideration of this case  
13 has been long and has presented the Commission with  
14 the need to make a difficult choice. The amendment to  
15 the land use zone reflects the same difficulty.  
16 Existing residential, commercial and industrial uses  
17 are juxtaposed in the area. All are thriving at least  
18 sufficiently to deserve protection. These uses are  
19 not easily made compatible and their proximity causes  
20 problems that detract from the reasonable enjoyment of  
21 the residential uses. The difficulties are compounded  
22 by narrow, crowded streets, sharply angled and  
23 doglegged intersections."

24 Now, frankly, what has changed since this  
25 was written in 1991? We have added more density. We

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1 have added over 450. As Chairman Roth pointed out, we  
2 have added over 450 units of housing.

3 I take a look at the -- with this  
4 particular case and the variances requested, my  
5 experience, profession, before I retired from federal  
6 civil service was Chief of Logistics of the Weather  
7 Service and the Weather Service thought that means  
8 head of supply. I had the largest warehouse in the  
9 Department of Commerce and we went through drop  
10 shipments and I listened to all of what is going on.

11 And, frankly, I see a truck problem  
12 because of the use, and this truck problem requires  
13 fixes and you see in the ANC's extolling, even the  
14 Office of Planning is talking about them, that would  
15 propose fixes.

16 While I think well-intended, I'm struck by  
17 the thought that this is like dating. When you walk  
18 up on a date, everybody is bright eyed and bushy  
19 tailed and all cleaned up, everything is trimmed and  
20 neat and everybody, this is as good as it gets. And  
21 then one day you end up with somebody walking in in a  
22 bathrobe sitting down at the table to have their  
23 Cheerios and the gloss goes off of it.

24 Well, that is what I see with this. There  
25 is a lot of great ideas, but enforcement is the key

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1 element that I look at. And I remember the manager of  
2 the warehouse in our Kansas City warehouse going out  
3 and listening to the calls that would come in. They  
4 are here. Their load is wrong. The paperwork is not  
5 right. The load shifted and I had trucks stacked up  
6 and we had a 17 bay warehouse, could take 17 18-  
7 wheelers at a time, and we would have four or five of  
8 them tied up with balled up shipments.

9 So a lot of this clicking, precise  
10 movement in and out of these trucks, it's a nice  
11 thought to have and it's a nice goal to strive for,  
12 but it's not necessarily reality. And our problem  
13 that we see in the neighborhood is more with the  
14 vendor trucks and the number has just doubled from  
15 what I had written down in my testimony I have given  
16 you, because I was told 15 to 18 a day and now, all of  
17 a sudden, it has jumped dramatically.

18 Going back to the overlay. It looks at a  
19 larger impact on the neighborhood and, again, the  
20 small narrow streets, doglegs, back-angled turns. We  
21 have got a real problem. I have talked to DDOT. I  
22 talked to Ken Laden who I think is Deputy for  
23 Planning, Policy, something, and they laid out a one-  
24 way grid from 16<sup>th</sup> Street down to Kalorama Road, a  
25 one- way going west, and from 17<sup>th</sup> Street all the way

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1 to Columbia Road, a one-way going north.

2 And the idea was that they would bring  
3 trucks in and shove them back out, but they are  
4 shoving them up to Columbia Road, which is equally  
5 jammed up or 16<sup>th</sup> Street, which is equally a problem.

6 So how does this relate to the issue of  
7 the loading dock? Well, the loading dock, the whole  
8 thing is overwhelmed and if you take a look at -- if  
9 it was looked at in terms of the impact, the larger  
10 impact on the neighborhood, you would see that this is  
11 just a problem use. I would like to think that  
12 putting a larger truck in would solve our problem, but  
13 I see what would happen trying to park it. Smaller  
14 trucks, you need more trucks.

15 But I'm just really torn. I just think  
16 that you should deny the variance and I think they  
17 should go for the larger trucks and I think they  
18 should work on getting them there.

19 MR. BATRA: Maureen Gallagher will speak  
20 next.

21 MS. GALLAGHER: As you know, my name is  
22 Maureen Gallagher and I actually live at 1656 Kalorama  
23 Road, N.W. Myself and my neighbors have been  
24 extremely concerned about this development, and I  
25 guess from the standpoint of when we actually moved

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1 into the area, we knew that there was a building  
2 across the street from us, but we also knew that the  
3 Reed Cooke Overlay was designed to protect the  
4 residences, allow commercial development but protect  
5 the residences from any really adverse, negative  
6 effects which include traffic, noise, lighting, all of  
7 the above issues.

8 Maxine or Ms. Brown-Roberts actually, when  
9 we asked her a question, she said that the Reed Cooke  
10 Overlay does come into use and that's where we're  
11 coming from from the standpoint of we will be affected  
12 by no matter what happens in that building. It  
13 doesn't just depend on the trucks. The route for  
14 those trucks is down Kalorama Road despite what they  
15 say, that we can't see it from our houses.

16 And to illustrate a point, there has been  
17 so much traffic and truck traffic in our neighborhood  
18 recently over all of the construction, and one day  
19 alone we had over three -- thousands of dollars of  
20 accidents with people's cars being sideswiped by  
21 trying to get across, with traffic trying to get  
22 around trucks as well as being awakened with truck  
23 jams and things like that.

24 We just think the issuance of not only the  
25 trucks that are coming down, we're now talking -- my

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1 testimony actually says 20. No, we hear like 40 to 50  
2 trucks. And the mix of residences and patrons going  
3 to the use of that building actually says more than  
4 the actual variance that the proponents are looking  
5 for, and I think that the use triggers all of the  
6 protections that should be afforded the citizens,  
7 particularly us across the street.

8 We are -- my front door, I have actually  
9 measured it. My front door, not my property line, but  
10 front door is 50 feet from the garage entrance and all  
11 of the pedestrian entrances and things like that.  
12 We're also concerned about safety, children in our  
13 neighborhood who live in our neighborhood, and the  
14 times of the deliveries as well. As I said, they are  
15 scheduled to come down Kalorama Road starting at 7:00  
16 in the morning and all day long and we are very, very  
17 concerned about that.

18 You know, they did talk about -- they also  
19 talked about the use for some of these variances of  
20 having more parking in the parking garage as well.  
21 Well, we see that as kind of like yes, we need parking  
22 because we don't want people parking out on the  
23 street, but at the same time we are going to be  
24 bothered by the parking in the parking lot, because  
25 there is only one entrance and one exit and those

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1 traffic lights actually at night do shine in our  
2 houses and there has been nothing to ameliorate those  
3 problems as well.

4 But we also feel that we would love to  
5 have this developed. Don't get us wrong. I mean, you  
6 know, we're just saying that this use, even though  
7 it's not -- a supermarket is not specifically stated  
8 against in the Reed Cooke Overlay. It is granted.  
9 However, the use and what they are proposing to do in  
10 the supermarket triggers all of the other  
11 restrictions, particularly on the residents, traffic,  
12 noise and any other adverse effects and particularly  
13 on us.

14 And while there is that unmet need, as  
15 well, in the Reed Cooke Neighborhood, we also feel  
16 that there is a grocery store within walking distance  
17 of our houses and within walking distance of most of  
18 the Adams Morgan area that they can use, and then  
19 there are other grocery stores within driving  
20 distance, which may be like a mile. The Giant up on  
21 Park Road can be used. The Whole Foods on P Street is  
22 not that far away, people want to take a bus. So I  
23 don't think that it would have such an adverse effect  
24 on the other parts of the neighborhood.

25 MR. BATRA: The Reed Cooke Overlay is not

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1 just about the specific variances requested in a  
2 vacuum. Once the overlay is triggered, in our  
3 opinion, the impact of the development and the use of  
4 the site does come into play.

5 You know, earlier on we talked about the  
6 use may or may not be very relevant, but it has come  
7 up in everyone's testimony, how the use is compatible,  
8 it is compatible, it's mostly compatible. So you  
9 heard other folks bringing this into their testimony  
10 and we, as well, feel that the use is very relevant  
11 once the Reed Cooke Overlay is triggered.

12 As part of that, the impact of this  
13 development, traffic, both truck traffic and car  
14 traffic and as they interrelate with the deliveries,  
15 is one of the primary impacts on the neighborhood.  
16 There are two elementary schools. Well, one learning  
17 center, one elementary school and a children's music  
18 center between -- across the street to one block away  
19 to two blocks away.

20 In the morning there will be many children  
21 that will be crossing the street on their way to  
22 school walking on the sidewalk where these trucks are  
23 unloading at 7:00 in the morning.

24 Jeff Wilkes is going to speak right now on  
25 the impacts on H.D. Cooke Elementary, which is a block

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1 up 17<sup>th</sup> Street, 17<sup>th</sup> Street. It's essentially on 17<sup>th</sup>  
2 between -- well, the map is no longer visible, between  
3 Euclid Street and Columbia Road.

4 MR. WILKES: Near the Citadel.

5 MR. BATRA: And Jeff will --

6 MR. WILKES: This school near the Marie  
7 Reed School.

8 MR. BATRA: Jeff?

9 MR. WILKES: Okay. I have some pictures  
10 of the traffic that I might give to you all.

11 CHAIRPERSON GRIFFIS: Can you hand it to  
12 staff?

13 MR. WILKES: My name is Jeff Wilkes. I  
14 have been in the neighborhood since 1979. I started  
15 working on the school modernization process in 1998.  
16 We got the H.D. Cooke School prioritized for  
17 modernization and it is scheduled now to start in the  
18 spring. It has been delayed several times. As you  
19 know, the school system has gone through a lot of  
20 changes, but it's now scheduled to start construction  
21 in March of '06 and it will go on for 16 to 20 months.

22 In the meantime, the 330 kids that go to  
23 that school have to be transported to a temporary  
24 facility. The temporary facility is over near Howard  
25 University, so every morning six Trailways buses show

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1 up in front of the school, pick up the kids and take  
2 them across town. They bring about half of them back  
3 at 3:30 and they bring another half of them back from  
4 the aftercare program at 6:30.

5 The way they get to the school, because  
6 Euclid Street is impassable for a bus and another car,  
7 so they have to go 16<sup>th</sup> Street, Kalorama Road, up  
8 around the Citadel and up 17<sup>th</sup> Street. As it is, I  
9 have talked to these bus drivers, I have been out  
10 there, it is a disaster down there. It's a 40 foot by  
11 a 10 foot Trailways bus they are trying to get around  
12 this corner, which is more than 90 degrees, and there  
13 are construction vehicles and they have a real hard  
14 time.

15 This is going to go on for two more years  
16 minimum, okay, while they reconstruct that facility in  
17 addition to which there will be construction vehicles  
18 on 17<sup>th</sup> Street and on Euclid Street working on that  
19 facility. So we're sort of looking -- it's already  
20 pretty much a disaster.

21 As you can see from these pictures, in one  
22 case, this picture shows because a special ed bus came  
23 down the street, one of the Trailways buses had to  
24 back across the Euclid Street intersection and this is  
25 in rush hour, and you can imagine the sort of the

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1 situation that there is there. We're trying to get  
2 towing done or the street blocked, so they can get  
3 those buses in and out of there, but so far it's just  
4 a real problem.

5           When this -- in two years when they finish  
6 the school, the school will then have a capacity of  
7 570 kids. You take the 570 and you add about 300 from  
8 Marie Reed, which will also be rebuilt two blocks the  
9 other direction, and you have about 50 kids that go to  
10 the Sitar Center at Columbia -- at 1700 Kalorama, you  
11 have about 900 children that are coming in and out of  
12 this neighborhood twice a day.

13           There are parents that are driving in and  
14 out, trying to bring their kids in to get on the  
15 buses. There are commuters. There are trucks making  
16 deliveries. There are special ed buses, which will  
17 continue to operate even when the school is finished,  
18 and it's a disaster, you know, that's going to happen  
19 sooner or later.

20           And my feeling about it is that if I'm --  
21 I'm totally in favor of this thing being developed.  
22 I have watched that thing go through three different  
23 incarnations and it has been a problem in the  
24 community, and I would love to have something  
25 constructively done with that building and contribute

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1 to the community and contribute to the city.

2 I just am seeing this -- particularly if  
3 these streets are turned into one-ways in various  
4 directions, the school will be almost inaccessible,  
5 you know, never mind that the traffic and the trucks  
6 going by there are going to be interfering with these  
7 buses that are already blocking 17<sup>th</sup> Street.

8 And, at some point, some child will have,  
9 you know, an unfortunate incident with one of these  
10 buses, trucks, Harris Teeter trucks, and someone will  
11 say whose idea was this, you know? This looks like  
12 not a good idea. You have got, you know, 900 kids  
13 within a three block radius and now we're going to  
14 bring in trucks as well as buses.

15 And, you know, I would like to have a  
16 store down there. I don't personally see that this is  
17 a huge improvement on the Safeway but, you know, if we  
18 can do it without impeding on this \$23 million  
19 modernization project, I would be all for it. It just  
20 doesn't look like it's a good idea. I appreciate it.  
21 Thanks.

22 MR. BATRA: Just to quote briefly from the  
23 Reed Cooke Overlay. "The purposes of the Overlay  
24 District shall be to protect current housing in the  
25 area and provide for development of new housing,

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1 maintain heights and densities at appropriate levels  
2 and encourage small scale business development that  
3 will not adversely affect the residential community."

4 Even the word density does not only  
5 pertain to the physical size of a building, but the  
6 impacts of that building. All three of these  
7 provisions seem to go directly against this  
8 development proposal.

9 When Mr. Wilkes was speaking about the 900  
10 kids, that does not include the commuters, the local  
11 residents and the 450 new units that have just come  
12 online. And, again, that only includes those that  
13 have gotten zoning variances, not the ones that have  
14 been done by a matter-of-right. The density of this  
15 neighborhood has increased dramatically and  
16 particularly of the corner of 17<sup>th</sup> and Kalorama.

17 And, interestingly, many of those  
18 residents have not moved in yet. So it's going to be  
19 a little bit of a surprise from the time they bought  
20 their place to when they move in with all these trucks  
21 being on the street that weren't there before. It's  
22 going to be a very different intersection than when  
23 people first invested.

24 In terms of the broader neighborhood as a  
25 whole, there are other things that we're concerned

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1 about. Our testimony goes into much more detail. On-  
2 street residential parking, for example. If there's  
3 a line of cars to get into Harris Teeter, they are  
4 going to grab the first space on the street. The odds  
5 of a resident finding one of those spaces are going to  
6 be, essentially, nil while the store is open, which is  
7 pretty much all the time while people would be  
8 driving.

9 Pedestrian safety in general, you know, we  
10 talked about the children and residents as well. This  
11 is trucks backing up over a sidewalk. This is a major  
12 pedestrian thoroughfare for us. And there's also  
13 issues with noise and lights for the immediate  
14 residents, and Maureen Gallagher is going to shed some  
15 more -- her thoughts on that.

16 MS. GALLAGHER: As I stated, one of the  
17 big concerns that we have, not only with the use of  
18 the street as -- of the Citadel as a grocery store,  
19 but also it is an office complex and a retail complex,  
20 too, and we are talking upwards of somewhere in the  
21 area of probably, I don't know, 1,500 cars a day plus  
22 the 50 trucks per day coming and using Kalorama Road.

23 All of the entrances to pedestrian,  
24 vehicular and the office complexes are located on  
25 Kalorama Road and to say that we are not going to be

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1 affected by even the office building is not true, as  
2 well, because that -- you know, to build a lobby in  
3 that area also makes that an entrance where you're  
4 going to have trucks that are going to be right  
5 outside who are going to deliver to that area as well.

6 You also have the trucks that are coming  
7 in, having to pass that area and go around, go around  
8 the corner onto 17<sup>th</sup> Street. While we don't actually-  
9 - the loading dock is not within sight of our house,  
10 it is within noise of our house. We can hear  
11 everything on 17<sup>th</sup> Street. We are very -- even inside  
12 our house right now, we can hear all of the  
13 construction vehicles.

14 We can hear everything and that says  
15 nothing about enjoying our houses outside of our  
16 house, and that is a major concern for the neighbors  
17 as well. We moved into a very quiet, nice  
18 neighborhood. While we would love some activity over  
19 there, don't get me wrong, it's the nature of the  
20 activity and the nature that actually hits on the Reed  
21 Cooke Overlay, and that is the protection of the  
22 neighborhoods from noise and the ability to enjoy  
23 their homes in peace, quiet and comfort.

24 MR. BATRA: I think that about wraps up  
25 our testimony.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BATRA: I would like to submit for the  
3 record, it's a transportation study that we had  
4 donated to the Reed Cooke Neighborhood Association.  
5 It was in preparation for the PUD application but,  
6 except for the word PUD in the title, it's just a  
7 generic traffic count of the street that doesn't  
8 really pertain to any one variance or so.

9 MR. WILKES: I just wanted -- when we were  
10 talking about, you know, Harris Teeter's experience  
11 with urban facilities and then mentioned the Glebe  
12 Road store and the Pentagon City store, there is  
13 hardly any comparison. I mean, Glebe Road is a six  
14 lane road. Pentagon City, you know, it's very  
15 accessible.

16 You couldn't -- I don't know how many of  
17 you have been down to this little neighborhood. You  
18 couldn't find a worse place to put, you know, a high  
19 traffic operation. So I'm sure they run good  
20 operations where they are, but it bears no relation to  
21 this particular situation.

22 CHAIRPERSON GRIFFIS: Good.

23 MR. BATRA: That's it.

24 CHAIRPERSON GRIFFIS: Excellent. Thank  
25 you very much. First of all, in terms of familiarity

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1 with the area, I don't know how familiar the Board is,  
2 but I think there has been ample evidence,  
3 documentation, photographs and drawings to show us the  
4 condition. I think we have a realistic understanding  
5 of what it is and certainly enough to deliberate on  
6 this. I will tell you, maybe because it's late, I  
7 think Curtis used to disco roller skate there.

8 MR. LYDEN: Mr. Chair?

9 CHAIRPERSON GRIFFIS: Yes?

10 MR. LYDEN: One thing I would like to say,  
11 we in no way expect you to solve our traffic problems.  
12 All we're asking is that you don't add to them.

13 CHAIRPERSON GRIFFIS: Good. Thank you.  
14 And I appreciate that.

15 VICE CHAIR MILLER: Yes.

16 CHAIRPERSON GRIFFIS: Because I think, you  
17 know, one of the things I think this Board does  
18 endeavor to do is not raise expectations beyond which  
19 we can ever come close to delivering. I mean, anyone  
20 that has been to Adams Morgan, I think all D.C.  
21 residents have been to Adams Morgan and some of us  
22 live very close in proximity, have great familiarity  
23 with it.

24 But it goes directly to this question then  
25 I have heard now from the testimony and the written

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1 submission in your case presentation is, you know,  
2 it's not animating this, it's not utilizing this  
3 building which is incredibly unique of what would fit  
4 in there, just by understanding what it is.

5           You're not adverse to having it developed,  
6 one was saying used, one was saying -- however, to be  
7 absolutely clear, this is in a Commercial Zone. It's  
8 zoned C-2-B, so the amount that is a matter-of-right  
9 in it. Now, I understand it's also in the Reed Cooke  
10 Overlay. Now, put those together. What is it, the  
11 use, that is acceptable? What is it that we're  
12 actually looking at, because let me also preface the  
13 fact of we don't trade horses here.

14           I mean, we have what is in front of us,  
15 but I don't get -- I guess my difficulty is I'm not  
16 catching a clear direction of -- you know, one  
17 testimony was we would rather have large trucks. One  
18 is we don't want a lot of pedestrian cars. I'm not  
19 sure how it all happens in an existing building that  
20 is meeting the FAR that's an allowable use, what it is  
21 that we can actually do or what you would expect to  
22 have happen across the way.

23           MS. GALLAGHER:       I guess from the  
24 standpoint of the Reed Cooke Overlay, we're actually  
25 saying that the use in the grocery store, like we

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1 don't want the large trucks. We don't want all of the  
2 traffic that the use of the grocery store actually  
3 brings to the neighborhood.

4 We would like to see a lighter development  
5 in that grocery store, but the constant use of trucks,  
6 50 a day, with, let's face it, a transportation plan  
7 that is very narrow, you know, for 50 trucks to  
8 deliver at, and I think you really need to take a look  
9 at the transportation plan once it is developed,  
10 because they are saying, you know, those trucks can  
11 come in and out, eight an hour, and I don't -- to be  
12 truthful with you, I have never seen that happen  
13 which, you know --

14 CHAIRPERSON GRIFFIS: But what is a 50,000  
15 square foot retailer that doesn't have trucks loading  
16 and unloading?

17 MS. GALLAGHER: It could be an office  
18 building.

19 CHAIRPERSON GRIFFIS: Wow.

20 MR. BATRA: I think the most intensive  
21 possible use of any site would be a full service  
22 grocery store. If you're trying to maximize traffic  
23 with people driving in, maximize trucks, this is  
24 probably the most intensive use you could have picked.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. BATRA: Not that we're engaging like  
2 a full charrette, we have a million ideas what we  
3 could do with this property, but if this were a  
4 smaller store it would require less trucks.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. BATRA: There would be less people  
7 coming.

8 CHAIRPERSON GRIFFIS: Right. And just to  
9 be clear, because I'm always redundant, but it's not  
10 like we can give you anything else.

11 MS. GALLAGHER: No.

12 CHAIRPERSON GRIFFIS: And I'm not sure  
13 that we could deny it based on this argument, but I  
14 needed to get to a brief understanding, because I also  
15 want to address the Reed Cooke Overlay. We have seen  
16 an awful lot of applications in the Reed Cooke Overlay  
17 and the provisions that you're reading in 1400.2, show  
18 me where it's descriptive in requirements.

19 MR. JOHNSON: Small scale business.

20 CHAIRPERSON GRIFFIS: Mr. Johnson, I will  
21 get to you in a minute, Mr. Johnson, but what we're  
22 doing is just crossing, essentially, and questioning  
23 the party in opposition.

24 But show me now and take it to the next  
25 level, I guess, absolutely directly. You have got an

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1 architect that pulls this together and they go in for  
2 a permit and the Zoning Administrator is reviewing  
3 these documents.

4 What is it that is measurable in those  
5 elements in 1400.2 or any that they are not complying  
6 with here?

7 MR. LYDEN: I think 10 years ago I would  
8 have said dual use. The idea was that the residents  
9 would leave the neighborhood in the morning, business  
10 would come in. Business would conclude at the end of  
11 the work day by 6:00 at night. They would leave. The  
12 residents would come back. And so you would have the  
13 dual use of the area.

14 This store is not going to be doing that.  
15 They have talked about going 24 hours a day. They are  
16 talking now about, from the last I heard, going to  
17 midnight and this gets away from the dual use idea of  
18 residents living in the place in the evening, business  
19 during the day.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. LYDEN: And there are -- and, by the  
22 way, we did the Reed Cooke Overlay. We, frankly, got  
23 to exhaustion when we got -- we did this. What do we  
24 want?

25 CHAIRPERSON GRIFFIS: No, I understand.

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1 MR. LYDEN: And we went around and around.  
2 But, basically, the idea that we're looking at is dual  
3 use that where a business would leave and the office  
4 will leave, leaving the residents with the evening.

5 MR. BATRA: I think I understand your  
6 question that these aren't very specific, 55 feet  
7 high, 55 feet high when an overlay says that it's not  
8 -- it's very clear. When you have these kind of  
9 general values, the underlying protect current  
10 housing, what does protect current housing mean  
11 particularly? Maintain appropriate levels, small  
12 scale business.

13 I think you have to look at the  
14 application as a whole and the impact on the  
15 neighborhood. When you have to squeeze one truck per  
16 14 minutes for nine hours, otherwise you're going to  
17 have a backup, and you're going to have to reroute the  
18 entire grid system of the neighborhood, you're going  
19 to have to have such an uproar in the community for a  
20 proposal such as this, it just seems that, based on  
21 all the other developments that have come before you,  
22 this one seems to have a much more intensive impact on  
23 the neighborhood.

24 We trust you to use your judgment as you  
25 weigh the impacts and the impacts do count. The

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1 impacts count. And I realize it's not a clear cut  
2 test, but I think from some of our testimony and just  
3 the entire holistic view of the neighborhood, this is  
4 too intensive for the neighborhood. This is the type  
5 of development that the overlay intends to prohibit.

6 Does that mean you can't sell food? No,  
7 of course you can sell food, but a huge grocery store  
8 might be too big for this tiny block.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. BATRA: And I think that is --  
11 essentially, it's the intensity of the use.

12 CHAIRPERSON GRIFFIS: Okay. And I won't  
13 prolong the use question too much longer because it's  
14 not really before us, but an understanding of your  
15 argument is what I'm looking at, because I still don't  
16 get it, because if I move out of the general  
17 provisions, 1400, into perhaps more specific, I go to  
18 1401, use provisions.

19 And what you're telling me is that it's  
20 the use that is the problem and I'm saying, okay, I  
21 have got, and I'm rounding off the total square  
22 footage, you know, 50,000 square feet would be  
23 allowable for retail, I can have a 50,000 square foot  
24 bar or cocktail lounge. I could have a restaurant and  
25 fast food. I could put all these things into the use

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1 provisions.

2 How is it different than what we're  
3 looking at in terms of the intensity of uses?

4 MS. GALLAGHER: I actually think that  
5 there are certain things that are prohibited in the  
6 Reed Cooke Overlay and restaurants as well as --

7 CHAIRPERSON GRIFFIS: Okay. I'm sorry.  
8 I read that wrong.

9 MS. GALLAGHER: Yes. They are actually  
10 prohibited, as well as alcohol, off premises alcohol  
11 sale.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. GALLAGHER: Now, the grocery store has  
14 said that they are using the alcohol sales as an  
15 adjunct to, but what we contend is that the alcohol  
16 sales are actually, you know, part of and also trigger  
17 the Reed Cooke Overlay and a zoning question, the  
18 underlying zoning question is met by what they want to  
19 -- by the use that they want to put in there.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BATRA: You know, this list of course  
22 was written out 14 years ago. If someone came to us  
23 with one of these things on this list, for example, a  
24 veterinary hospital, I'm just going to make that up,  
25 we would consider things and consider ways to get

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1 around this. But this intensive use, it's not just  
2 the specific use.

3 It's the intensity of the use and I think  
4 that's what kind of goes to these values that the  
5 overlay seeks to protect. I realize they didn't put  
6 any specific statutory triggers that say, you know,  
7 600 cars a day, 1,000 cars more per day, that triggers  
8 it. I wish they had. I think if we wrote it now, we  
9 would. You know, 1,000 more cars per day on your  
10 street? If anything is prohibited in the overlay, it  
11 doesn't say it, but I think that's the values that the  
12 overlay seeks to protect or prohibit from the  
13 neighborhood.

14 CHAIRPERSON GRIFFIS: Okay. Yes?

15 VICE CHAIR MILLER: I just want to make a  
16 comment in response, because I hear what you're saying  
17 and I think that the adverse impacts that you're  
18 talking about are, you know, real, that you live right  
19 there and you're going to get a lot of traffic from  
20 the grocery store and you get the entrance and all  
21 that stuff, the light, the door going up and down, but  
22 that is not really before this Board.

23 I mean, you're saying that it's too  
24 intensive a use. Then, you know, maybe there is  
25 something wrong with the regulations, but the

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1 regulations as they are written, as we can see them  
2 right here, allow the grocery store and it may be you  
3 might want to challenge the regulations in another  
4 forum, such as the Zoning Commission, or challenge the  
5 building permit that was granted to them.

6 But just so you understand what we are  
7 really looking at in this particular case, it's almost  
8 the difference between a shorter loading berth and a  
9 longer loading berth and there are some impacts that  
10 are associated with that that you can identify for us.

11 And I think the whole idea of truck  
12 accidents and small children is a really important  
13 issue, and that may be related to the number of  
14 trucks, and I'm not exactly clear and I would like to  
15 get clearer where this Truck Management Plan is going,  
16 who is going to be involved in it and when we're going  
17 to see it. But the use as a supermarket really isn't  
18 before this Board.

19 MS. GALLAGHER: Well, the only thing about  
20 the loading berth is, and whether it's a 55 foot or a  
21 41 foot, you wouldn't need that provision if the use  
22 wasn't a grocery store and we wouldn't be in this, you  
23 know, 40 foot truck versus 45 foot truck versus this  
24 truck.

25 VICE CHAIR MILLER: That's true, but --

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1 MS. GALLAGHER: But we're also dealing  
2 with like 50 trucks a day because of the use of it and  
3 I don't think that you can, you know, not look at the  
4 use of -- everybody has brought it up. It's not just  
5 us who are bringing it up. It's everybody here has  
6 brought it up. Even the proponents have said -- you  
7 know, in their submission it says for use as a grocery  
8 store.

9 VICE CHAIR MILLER: But they are allowed  
10 to use it as a grocery store, so that's --

11 MS. GALLAGHER: But we're saying that they  
12 are not, that they are not allowed to use it as a  
13 grocery store because it actually triggers the Reed  
14 Cooke Overlay.

15 MR. BATRA: We are saying the overlay does  
16 prohibit this size grocery store, this particular --

17 MS. GALLAGHER: Because of the ill effects  
18 that it has on the neighborhood.

19 VICE CHAIR MILLER: So we shouldn't even  
20 be considering variance relief, because they are not  
21 even allowed to operate is your argument?

22 MR. BATRA: No. I think the variance is  
23 not in a vacuum. It's in how does it -- as it  
24 pertains to the entire overlay, which does go to the  
25 impacts on the neighborhood. And when you bring in

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1 those impacts, they are too intensive. In our  
2 opinion, the overlay does prohibit impacts that are  
3 that intensive in the neighborhood whether or not it's  
4 a grocery store.

5 VICE CHAIR MILLER: Wait, let me -- I  
6 understand what you're saying. This is the way I see  
7 it right here. If we don't grant them the variance,  
8 they get the 51 foot or the 55 foot loading berth. So  
9 there you are.

10 MR. BATRA: A question that has never come  
11 up before, as far as I understand, is let's say they  
12 do come with a 55 foot loading berth, does the overlay  
13 still apply? Does the use of this property trigger  
14 the overlay?

15 In this case it would, because it would be  
16 triggered by the off premises alcohol sales. That is  
17 another -- it's not just the berth that triggers the  
18 overlay. It's the off-premises alcohol sales and  
19 possibly a couple of other things. I believe it is a  
20 question of first impression.

21 VICE CHAIR MILLER: Well, the way I see it  
22 just begins one more number at this point, you know,  
23 I'm saying you have to focus on what is happening in  
24 this case and we can grant or deny or we can grant  
25 with conditions, so there are three options. If we

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1 were to deny the relief, they could still operate  
2 their supermarket. They just wouldn't be able to --  
3 they are asking us for permission to have a smaller  
4 loading berth and then the rear wall piece. But if we  
5 deny, it doesn't mean they don't operate their grocery  
6 store.

7 MR. BATRA: I guess there is a question of  
8 law then how the Reed Cooke Overlay does apply. It is  
9 written pretty broadly. It is written very broadly  
10 and it is triggered by off-premises alcohol sales, as  
11 Maureen noted earlier. So in that case, if there is  
12 no question of a 55 foot loading berth, in our  
13 opinion, the overlay would still be triggered by the  
14 off-premises alcohol sales. It's noted pretty  
15 specifically in the overlay.

16 VICE CHAIR MILLER: Okay. I don't want to  
17 have too much exchange over that, but I just want to  
18 say that it can apply if you can weave in your  
19 arguments with respect to the adverse impacts related  
20 to the relief that is being sought or it may apply in  
21 another forum. You may have another way to use the  
22 Reed Cooke Overlay to seek relief, but it just may not  
23 be in this particular case.

24 MR. BATRA: Okay.

25 CHAIRPERSON GRIFFIS: Mr. Etherly. Sorry.

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1                   BOARD MEMBER ETHERLY: That's okay, Mr.  
2 Chair. You silenced me. Oh, my God. Not also  
3 wanting to kind of beat the horse that Mrs. Miller and  
4 you were kind of working on, but I think I somewhat  
5 share her perspective.

6                   The way I'm kind of envisioning this  
7 argument, and this is not to put words into your  
8 mouths in terms of suggesting what your argument is,  
9 but the way that I'm viewing this case is the issue  
10 here is is the applicant compelled to go with a larger  
11 load or with a larger loading bay, one that is  
12 consistent with zoning, such that larger vehicles  
13 would have to be used or if they are granted the  
14 variances, do they go with the smaller berths that we  
15 have been talking about?

16                   To me that sets up your argument. Your  
17 case has essentially been the smaller berth in turn  
18 leads to more vehicles and that creates a tipping  
19 point or takes us past a point of no return where the  
20 -- whether it's Reed Cooke Overlay or whether it's  
21 just other effects in general create issues that are  
22 not necessarily contemplated by the Zoning Regs. I'm  
23 doing a poor job of articulating it, because it's a  
24 little late in the evening.

25                   But, essentially, what I'm getting at is

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1 is there something about the issue of more trucks,  
2 smaller vehicles but more of them, that leads this  
3 into a realm where the Zoning Regulations are called  
4 into question? That to me was what I was expecting to  
5 hear in terms of your argument.

6 So perhaps my question simply is is that  
7 part of the argument that you're making in your case  
8 or is it your contention that there is some other  
9 piece and that other piece is what you just said, that  
10 the Reed Cooke Overlay is called into question in some  
11 other way? So I just kind of want to be sure that I'm  
12 understanding the argument.

13 Leaving that for a moment, let me ask a  
14 very specific question to Mr. Wilkes, if I could. I  
15 just want to be sure I understand the context of the  
16 pictures that we're seeing. With respect to the shots  
17 of the activity near H.D. Cooke Elementary on 17<sup>th</sup>  
18 Street, the bus situation that we see now, that  
19 particular side of the curb is directly in front of  
20 the school, correct?

21 MR. WILKES: The bus loading zone is, yes.

22 BOARD MEMBER ETHERLY: Okay. If you could  
23 be sure to turn on your microphone just so we can pick  
24 you up on the record. That bus loading zone is in  
25 front of the school?

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1 MR. WILKES: Yes.

2 BOARD MEMBER ETHERLY: Correct?

3 MR. WILKES: Yes.

4 BOARD MEMBER ETHERLY: Do you know offhand  
5 how that particular side of the street is signed? Is  
6 it signed in the traditional no parking during school  
7 days manner?

8 MR. WILKES: No. We have been through a  
9 long process. Currently, they are supposed to be  
10 putting in signs that say no parking 7:00 to 8:30,  
11 3:15 to -- let's see, 3:15 to 6:45, which covers the  
12 end of the day kids and the aftercare kids up to 6:45.

13 BOARD MEMBER ETHERLY: Yes, okay. Now,  
14 with respect to the large size commercial vehicle that  
15 is denoted in the picture, 7:16 a.m., commercial  
16 vehicle blocked by last bus, must back out to Columbia  
17 Road. It will be that picture with the ice cream  
18 truck there. Is it your contention that that is a  
19 fairly common occurrence based on your experience and  
20 familiarity with this stretch of roadway as it stands  
21 now?

22 MR. WILKES: I have been there. You know,  
23 I live a block from there and I go out there a lot and  
24 it's pretty typical. You have commercial vehicles  
25 coming down from Columbia Road. You have special ed

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1 buses coming down from Columbia Road. The buses are  
2 trying to come up 17<sup>th</sup> Street and then you have  
3 parents, you know, coming in and out trying to drop  
4 their kids off and then you have commuters.

5 BOARD MEMBER ETHERLY: Okay.

6 MR. WILKES: It's pretty much of a mess.

7 BOARD MEMBER ETHERLY: Okay.

8 MR. WILKES: Yes.

9 BOARD MEMBER ETHERLY: Thank you. Thank  
10 you. Let me then come back to that earlier question  
11 and perhaps just kind of leave it at is part of the  
12 argument that there is such a level of harm that would  
13 be brought upon the community and you as residents of  
14 this community by virtue of having the increased  
15 traffic that would come with a smaller loading dock?

16 Is that part of the argument? Is that  
17 part of your contention here or there is another  
18 argument perhaps with the exchange that you had with  
19 Mrs. Miller? I just want to be sure I understand kind  
20 of the argument here.

21 MR. BATRA: Well, I think maybe we haven't  
22 said it enough. The underlying request is what we are  
23 focused on and what we thought -- said also may  
24 trigger other aspects of the overlay. But to  
25 specifically answer your question, I believe it came

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1 up in earlier testimony by Gorove/Slade. They weren't  
2 entirely sure how many more trucks there are because  
3 you narrow, you shorten the length of the trucks.  
4 It's not just entirely proportional, because trucks  
5 aren't always full and things to that effect.

6 BOARD MEMBER ETHERLY: Sure.

7 MR. BATRA: So the extra trucks, as you  
8 could imagine, we did some really rough math, 40  
9 trucks a day, 50 trucks a day. This isn't the first  
10 time we have heard this. I think this is the first  
11 time maybe any of us have heard this number. It was  
12 a lot lower at one point.

13 So we did some quick math and if you  
14 divide that up over the entire time, it's pretty  
15 military precision in terms of how long a truck has to  
16 come and they have to show up every 15 minutes or so.  
17 By the increased number of trucks, it's almost not  
18 possible. There is going to be a truck idling and you  
19 see Jeff's pictures, Mr. Wilkes' pictures that he  
20 presented, just with school buses and that is only,  
21 you know, twice a day in any of them really.

22 If they are gridlocked now and you have  
23 two trucks coming at the same time in the morning, for  
24 example, which is what our guess is, contractors tend  
25 to come very early in our neighborhood to avoid

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1 traffic, I mean, very early and they will wait for the  
2 store to open, there is going to be gridlock.

3 BOARD MEMBER ETHERLY: Okay.

4 MR. BATRA: Because of the extra numbers  
5 of trucks which, of course, will further be  
6 detrimental to the safety of pedestrians that are  
7 trying to cross on that sidewalk.

8 BOARD MEMBER ETHERLY: Okay. And is it  
9 your sense and anyone, and any of the panel, please,  
10 feel free to answer this, is it your sense that the  
11 majority of traffic that could conceivably be  
12 generated by the subject property is not going to be  
13 foot traffic or pedestrian traffic of any type from  
14 the immediate neighborhood?

15 It's your sense that part of this traffic  
16 is also going to be traffic, just general vehicle  
17 trips that are generated as persons are coming to the  
18 store, because I think there are two pieces here. One  
19 is the loading dock piece, which I think is the  
20 primary one, but I want to just be sure that I'm clear  
21 on your argument.

22 Are you also alleging a concern that the  
23 vehicle trips for shoppers and patrons of -- the  
24 tenants at the subject property will also create  
25 additional traffic impacts?

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1 MR. BATRA: Absolutely. I think we don't  
2 have Harris Teeter's business model and there is one.  
3 And at one point in the PUD this started coming up,  
4 but we never really got into that detail. It's one of  
5 the reasons we think it tanked. There is only so many  
6 customers they are going to draw from the  
7 neighborhood.

8 When I say draw from the neighborhood,  
9 that will walk to that store. Their real profit is  
10 going to come from folks driving to the store. We  
11 envision, you know, a Washington Post advertisement  
12 that says "Drive to a new location in Adams Morgan,  
13 plenty of parking."

14 That is where their profit is going to  
15 come from. It's going to come from people driving in.  
16 There's only so many people that can walk to the store  
17 and, you know, it doesn't increase the population of  
18 the neighborhood. It's not that substantial, maybe a  
19 couple percentage points, but the real --

20 MR. GLASGOW: Mr. Chairman, I'm going to  
21 object at this point in time. I don't know how this  
22 is testimony.

23 MR. BATRA: I'm answering a question.

24 MR. GLASGOW: Mr. Batra has no idea what  
25 it is that he is addressing with respect to how Harris

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1 Teeter operates, where their profits come from or  
2 anything else. He hasn't been established as any kind  
3 of expert on grocery store operations or any of this.

4 MR. BATRA: I will simplify my answer  
5 then.

6 CHAIRPERSON GRIFFIS: Good.

7 MR. BATRA: Yes, we think there will be a  
8 lot of traffic driving in to the store.

9 BOARD MEMBER ETHERLY: Thank you.

10 MR. BATRA: Absolutely.

11 BOARD MEMBER ETHERLY: Thank you, Mr.  
12 Chair. That covers the question.

13 MS. GALLAGHER: I would actually like to--  
14 there actually have been people on like within a four  
15 block radius, let's just say, who have said we will  
16 drive to that store because it will be easier to take  
17 things home.

18 BOARD MEMBER ETHERLY: Okay.

19 MS. GALLAGHER: So yes.

20 BOARD MEMBER ETHERLY: Thank you. Thank  
21 you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Certainly. Any  
23 other questions from the Board?

24 VICE CHAIR MILLER: I do have another  
25 question and I don't want to put words in your mouth,

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1 but I kind of want to just focus on the berths and the  
2 traffic. I think we heard some testimony, but it's  
3 not all that clear to me how much of it, but there  
4 will be some increase in some trucks due to a smaller  
5 berth. I mean, I did hear three to five at least. I  
6 don't know how it affects the other ones.

7 But my question is would you all be in  
8 favor of a smaller berth with a limitation put on the  
9 number of deliveries, truck deliveries, or are you in  
10 favor of denial and a larger berth, just so I  
11 understand what your position is?

12 MR. BATRA: You know, we are asking for a  
13 denial today. I'm not sure, I mean, if the larger  
14 berth assumes that they would actually then go back to  
15 the drawing board and reconfigure. I mean, I'm not  
16 sure. Unless I'm misunderstanding, I'm not sure that  
17 is part of their application.

18 CHAIRPERSON GRIFFIS: No, it isn't.

19 MR. BATRA: So maybe they will then  
20 request a larger berth and --

21 VICE CHAIR MILLER: They are allowed that,  
22 that's how they would comply with the Zoning  
23 Regulations.

24 MR. BATRA: Right, but whether they  
25 actually go -- I mean, they are asking for the

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1 variance for many reasons and that may be. We have  
2 not answered that question and I'll definitely --

3 VICE CHAIR MILLER: Well, you can think  
4 about that.

5 MR. BATRA: -- think about that.

6 VICE CHAIR MILLER: I just wanted to pose  
7 it.

8 MR. BATRA: But we are asking for denial  
9 of their variances.

10 CHAIRPERSON GRIFFIS: Okay. Anything else  
11 from the Board? Quick question. In your calculations  
12 you were talking about how many trucks would actually  
13 come in. It seems to me even if we go with the high  
14 number that I heard testified today as 40, we have a  
15 7:00 to 4:00 loading time. That's nine hours.

16 How many trucks do you think are coming to  
17 the site? It seems to me, in my calculation, it would  
18 be just a little over four an hour.

19 MR. BATRA: Four an hour.

20 CHAIRPERSON GRIFFIS: And 90 and there's  
21 two loading berths and then there's 60 feet in Harris  
22 Teeter and then the other servicing of the building.  
23 So wouldn't that be -- I guess, I'm trying to get a  
24 handle on, you were saying it's kind of military  
25 precision and getting this idea that we have a convoy

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1 of trucks waiting to come in. But isn't that --

2 MR. BATRA: Just they are going to have  
3 several coming at once and it will happen and I have  
4 no doubt it will happen in the mornings. There will  
5 be several trucks at once lining up.

6 CHAIRPERSON GRIFFIS: Sure. There is  
7 going to be peak times, I'm certain.

8 MR. BATRA: Right.

9 CHAIRPERSON GRIFFIS: Peak times for  
10 deliveries and things like that, but I guess I'm  
11 looking for the factual basis to get into, okay, so  
12 where is diminishing that dimension creating the  
13 backup of additional trucks, creating a difficulty in  
14 the area? I mean, the loading, we're with you.

15 We understand the difficulty in the amount  
16 that the roads are going to have to take on and that's  
17 something we're already there with. What I'm  
18 understanding, trying to understand, is where is the  
19 difference? Where is the differential for that time  
20 period? Is it easier then maybe to increase the hours  
21 of loading? Let's say not.

22 Where do you see the major impact coming  
23 when you reduce that loading dock?

24 MR. BATRA: You know, it is interesting.  
25 If you reduce it, it's further exacerbated, but our

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1 real -- the immediate concern is first thing in the  
2 morning, just residents going to work.

3 CHAIRPERSON GRIFFIS: Sure.

4 MR. BATRA: Walking or driving and school  
5 children and buses. I think it's a recipe for good  
6 luck and I don't mean that expression in reality.

7 CHAIRPERSON GRIFFIS: Okay. Very well.  
8 If there's nothing further, we'll open it up. Mr.  
9 Glasgow, cross? Do we have a chair?

10 MR. GLASGOW: As most of the Board Members  
11 are familiar with, I don't generally do a lot of cross  
12 examination. I would just rather deal with it in  
13 rebuttal. I think the principle issues that I was  
14 going to cover in cross the Board has gotten to as to  
15 what is the Reed Cooke Overlay, what is the burden of  
16 proof and the standards for this case.

17 And rather than debating it with the  
18 opposition as to what it is they testified to and all  
19 of that type of thing, I think the only question that  
20 we would have is the one that remained, was the one  
21 that Ms. Miller just asked, was, you know, would you  
22 rather have -- you know, what is this actual  
23 differential between the number of trucks and we can  
24 put on a witness in rebuttal to deal with that.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. GLASGOW: Because I think that we had  
2 Mr. Hutchens testify to that before, but I want to  
3 make sure that is absolutely clear on the record,  
4 since some of the witnesses seemed to have remembered  
5 Mr. Gorove not being able to answer the question and  
6 we called up Mr. Hutchens to directly answer the  
7 question, I want to make sure the record is clear on  
8 that.

9 CHAIRPERSON GRIFFIS: Okay. But you don't  
10 have any direct cross then?

11 MR. GLASGOW: No, I do not.

12 CHAIRPERSON GRIFFIS: Okay. Mr. Roth?  
13 None? Okay. Thank you all very much. We do  
14 appreciate it. Let's move ahead. Mr. Johnson, you  
15 are here.

16 MR. GLASGOW: We do have the two public  
17 witnesses, which you said would go right after us and  
18 they are hanging on, they do have to leave, so I'm not  
19 sure if we can --

20 CHAIRPERSON GRIFFIS: Excellent. Yes,  
21 we're going to have you --

22 MR. GLASGOW: Do those real quick?

23 CHAIRPERSON GRIFFIS: -- go back to a  
24 comfortable lounge chairs and then we're going to fill  
25 the panel up front with anyone, everyone else that is

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1 here to give testimony either in support or in  
2 opposition. Let's just -- it look like it's all you.

3 MR. JOHNSON: It's a wonderful  
4 circumstance of standing between you and dinner.

5 CHAIRPERSON GRIFFIS: No, we've got a lot  
6 of work left, don't worry about it.

7 MR. JOHNSON: Okay. Good afternoon,  
8 Chairperson Griffis and fellow Board Members. My name  
9 is Campbell Johnson, III. I'm a third generation  
10 Washingtonian. First, I thank you for holding this  
11 hearing. However, I believe the hearing is premature  
12 because it only looks at several issues and I believe  
13 you need a balanced comprehensive and broader  
14 perspective.

15 If approved, these variances will be part  
16 of the Harris Teeter supermarket and general office  
17 project, which is totally out of scale for the  
18 adjacent streets, neighborhood configuration and heavy  
19 traffic congestion that already exists. Section  
20 1400.2 subsection (a)(3) refers to small scale  
21 businesses that do not have adverse impacts. This is  
22 not a small scale business.

23 The concerns that we have are numerous and  
24 I would like to mention that despite the proposed  
25 reconfigurations and traffic pattern adjustments, this

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1 project deeply undermines the quality of life for all  
2 residents living in the neighborhood. It will  
3 conflict with the interests of the neighborhood and  
4 maintaining this residential character and, as I  
5 mentioned, conflicts with the Reed Cooke Overlay,  
6 which was developed in consideration of the residents'  
7 desire to maintain a residential character.

8 We have many children going back and  
9 forth. Someone mentioned in terms of their travels to  
10 the Sitar Center, to the Maury Center, to Marie Reed  
11 Elementary School, as well as H.D. Cooke Elementary  
12 School. There is also, I think, a number of elderly  
13 who pass through this area. In my building, 394  
14 units, we have I would estimate still, the elderly  
15 population has diminished to a great extent, we have  
16 75 elderly persons, elderly units in that building.  
17 And these persons go back and forth and enjoy walking  
18 to Columbia Road and doing their shopping and taking  
19 care of their business.

20 We do have a market in the store, in the  
21 building that serves, that provides groceries and  
22 other items that persons need rather quickly. Public  
23 good is a major issue for us and it is jeopardized by  
24 the variances that are being proposed. And while the  
25 alcohol license is not within the scope of this

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1 hearing, you should know that alcohol sales represent  
2 a major part of the revenue mentioned that would drive  
3 the profitability of the Harris Teeter supermarket.

4 This is what they said on various  
5 occasions and why they are so concerned about pursuing  
6 an alcohol license. Alcohol vendors use trucks that  
7 are generally larger and especially with regard to the  
8 beer trucks. These are the larger trucks that we have  
9 expressed a concern about here. We think that that  
10 congestion would be, of course, compounded by customer  
11 vehicular traffic, pedestrian traffic as well as the  
12 traffic that will be taking place in terms of the  
13 general offices that are going to be located in this  
14 building as well.

15 And while parking has been mentioned by  
16 the applicant, there has been no reference to the fact  
17 that some of those spaces will certainly be allocated  
18 to tenants in that, office tenants, building as well  
19 as their visitors. And this is something that is just  
20 going to be a matter of course, so the 120 plus  
21 parking spaces certainly is a usury.

22 Your assessment of the adverse public  
23 good, neighborhood impact of the proposed variances  
24 should also consider the fact that an increase in  
25 alcohol selling outlets will increase neighborhood

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1 violence. This results in clear conclusion in nine  
2 studies from professional journals that are identified  
3 in the report that I will attach entitled "How Alcohol  
4 Outlets Affect Neighborhood Violence," by the  
5 Prevention Research Center of the Pacific Institute  
6 for Research and Evaluation.

7 This institute is one of the nation's  
8 preeminent independent nonprofit organizations merging  
9 scientific knowledge and proven practice. The adverse  
10 impacts of increasing alcohol selling establishments  
11 in this neighborhood have led to the residents  
12 securing a Moratorium Zone, which precludes the  
13 opening of new nightclubs in the neighborhood. The  
14 high level of drug trafficking, violence and other  
15 criminal behavior found in adjacent streets will be  
16 further aggravated by the Teeter supermarket.

17 The leverage and momentum that is your  
18 approval of the proposed variance will subject  
19 residences to consequences that will severely impact  
20 the quality of life and livability that they will have  
21 in their homes and at their doorsteps. The concerns  
22 that I'm mentioning here it has been throughout the 26  
23 years I have lived at the Dorchester. There has been  
24 an active drug trafficking taking place. Somehow the  
25 police aren't able to deal with this.

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1           Another concern as to why I mentioned this  
2 as being premature is that the environmental issues  
3 don't seem to have been fully addressed. It was  
4 glossed over that the Citadel was at one time an  
5 automobile gas station. And throughout the time that  
6 I have been -- I see no tanks removed and the hazard  
7 that these tanks pose for persons and the residents,  
8 especially with a new use of this sort, I think can be  
9 substantial.

10           I mentioned that I'm in a 394 unit  
11 building and I'm President of the Tenants Association  
12 and been a tenant and board member for 26 years and  
13 that the proposed project abuts the parking lot on  
14 which I park, the building itself there is no  
15 backyard. I'm a little bit -- I didn't read that too  
16 deeply, but also the driveway, the building abuts the  
17 driveway of the Dorchester house.

18           So these are, you know, just very direct  
19 relationships. You may also find it interesting to  
20 note that within 30 feet of the Citadel, you have  
21 three apartment building driveways that come right in  
22 to where the office, the main door is identified.  
23 There are several other major apartment buildings that  
24 are entering into this little small street as well.

25           And additionally, the owners of Dorchester

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1 are trying to build, would like to build a 120 unit  
2 apartment building, which from the schematic that I  
3 have seen last, the driveway from that garage will be  
4 directly adjacent to the loading dock, loading berth  
5 for the proposed Citadel grocery store. This doesn't  
6 make a whole lot of sense. And certainly it is  
7 something that undermines quality of life.

8 And when you consider the pedestrian  
9 traffic that is already in the community, it increases  
10 the risk, I think, that all of us face. One thing  
11 that we should also, I think, be mindful of is that  
12 neighbors are not interested in seeing the Citadel  
13 remain dark. We are interested in seeing the space  
14 used appropriately. I have worked in economic  
15 development for about 30 years in public and private  
16 sectors as well.

17 And as an appropriate alternative, it  
18 could be any one of the following scaled appropriate  
19 ventures, office suites for neighborhood small and,  
20 you know, home office businesses, an art center, which  
21 would be compatible with the Sitar Center that is  
22 directly across the street. And when you speak about  
23 the closeness of these things, the Sitar Center is  
24 diagonally directly across the street from the  
25 Citadel, as well as a small business incubator.

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1           These are the kinds of projects. They  
2 aren't the high intensity, high profit kinds of  
3 ventures that, it's clear, the owners and the  
4 applicant would be interested in having in that  
5 locality to get the maximum bang for their buck. But  
6 these are the kinds of things that would be compatible  
7 with the neighborhood, would not violate the Reed  
8 Cooke Overlay and would help us to have the kind of  
9 growth that would be, I think, an uplift for the  
10 community, rather than something that would tend to  
11 uproot its residents because of diminished quality of  
12 life.

13           These are some of the major points. I  
14 would like to mention also that the -- I mentioned the  
15 gridlock and would certainly be available for  
16 questions that you may have in regard to any of the  
17 points covered or others that you may wish to address.

18           CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you very much, Mr. Johnson. We appreciate your  
20 patience in waiting to address these issues, and I  
21 think they were very important to bring to light to  
22 the Board in understanding them. I have a couple of  
23 comments on some of those issues that you brought up.

24           First of all, the environmental. Would it  
25 be premature to bring a zoning application to us, even

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1       though there may be environmental remediation that had  
2       to take place? We have no jurisdiction authority --

3                   MR. JOHNSON: I understand.

4                   CHAIRPERSON GRIFFIS: -- or understanding  
5       of, you know, USTs or anything else that might be  
6       there, you know, contaminated soil. That will  
7       obviously have to be done in the permitting process.  
8       And it is very rigorous in the city, as I understand.  
9       Also, in terms of the parking, you mentioned we looked  
10      at 120 or 120 plus, we should be aware that there is  
11      an office component to this. This is a self-certified  
12      application.

13                   It is our assumption and, in fact, it's in  
14      the application as given, those are calculated into  
15      that which is going towards the parking requirement.  
16      And all that is required for the zoning is based on  
17      the use that the parking space is 9 x 19 with the  
18      proper drive and access are provided. And we have  
19      seen substantial evidence here that that is the case.  
20      In fact, there are more parking spaces than that is  
21      required in the Zoning Regulations.

22                   That's essentially where we begin and end  
23      on the parking counts. Obviously, there are other  
24      small issues. I was intrigued with the 1400.2 that  
25      you brought up in terms of small scale businesses and

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1 why this wouldn't be appropriate. And rereading it,  
2 which I often have to do numerous times after sitting  
3 all day dealing with regulations, but 1400.2(3) is  
4 what you cited says "Encourage small scale business  
5 development that will not adversely affect the  
6 residential community."

7 Again, I don't see any difficulty with  
8 that. I think it is appropriate and very important in  
9 the general provisions. I'm looking at what -- and  
10 I'll just make this statement, I don't find detail on  
11 that that would lend itself for us to review this  
12 application either in approving or denying it based on  
13 that provision in the general provisions of the Reed  
14 Cooke Overlay.

15 And then lastly, the elderly. I wasn't so  
16 sure your point on the elderly. You were indicating  
17 that you are perfectly capable inside your building  
18 with your market to providing the daily or, you know,  
19 immediate needs and the elderly like to walk all the  
20 way up to Columbia Road. Not to generalize like it's  
21 one clear group of people that do exactly the same  
22 thing, but isn't it an amenity to walk out of the  
23 building and have a full service grocery store there?

24 MR. JOHNSON: That certainly can be  
25 considered an amenity, but there are also downsides

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1 from that. For example, I've heard many of my  
2 neighbors speak of the increase in the road and  
3 population that will result from this and we cannot  
4 believe for a minute that somehow magically this  
5 grocery store, this supermarket is going to be able to  
6 differ from every other supermarket that with which we  
7 have had experience where loading population is  
8 certainly thriving in that area.

9 I think that a number of the people who  
10 are walking from our building to Columbia Road to get  
11 their groceries, some of whom have to walk behind and  
12 hold on to their carts, but they do appreciate the  
13 opportunity to get out and get that air. But having  
14 a market in the building is one that is a convenience  
15 for them certainly.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. JOHNSON: And that market will  
18 certainly disappear. This is one way in which you can  
19 look at three small businesses that will just  
20 disappear as a result of putting a Harris Teeter in  
21 there. It's almost like a Wal-Mart coming into the  
22 community. Wal-Mart will drive out the Dorchester  
23 Market or drive out the market that's on the southwest  
24 corner of 17<sup>th</sup> and Kalorama, the little store there.  
25 It will drive out the store that's on the north,

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1 southwest corner of the 17<sup>th</sup> and Euclid.

2 So, you know, these stores are going to  
3 disappear and they have been there a long time.

4 MR. ROTH: Mr. Chairman, am I allowed to  
5 object to this?

6 CHAIRPERSON GRIFFIS: You're a party in  
7 the case.

8 MR. ROTH: I don't think it's appropriate  
9 in a zoning case to be bringing in competitive issues.

10 CHAIRPERSON GRIFFIS: No.

11 MR. ROTH: Large or small. I just don't  
12 think that is relevant to this case.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ROTH: There are folks in the  
15 neighborhood who would feel otherwise about those  
16 particular grocery stores.

17 CHAIRPERSON GRIFFIS: Good. I often err  
18 in letting people go on, but I perfectly understand  
19 that objection. And actually, I was going to get to  
20 my point, an additional point to that, Mr. Johnson.  
21 Because you raise at the end of your last piece of  
22 being in economic development, which I perfectly  
23 understand and applaud, and the compatible uses, I  
24 think, are also very intriguing in the symmetry of the  
25 Sitar Center and maybe an art something here or

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1 community center of some sort would be phenomenal.

2 But it seems to be very planning oriented  
3 not bricks and mortar and development oriented. The  
4 bottom line is and it goes to, I think, the objection  
5 of projecting of who is going to do what or what the  
6 marketability is, but, one, we don't have a developer  
7 that has come forth to do that. So I'm not sure it's  
8 a real reality and then a reality of what we're doing.

9 And I would take issue with that and I  
10 know there's an objection to it, I'm talking about the  
11 compatibility or competitiveness. But, you know,  
12 their problem is without substantive detail of the  
13 argument. There probably is a case to be made that,  
14 you know, as one creates a mass of retail and  
15 shopping, it's good for everyone around. It may  
16 change, but it may differ.

17 I'm not sure we can be conclusive on the  
18 fact that this would decimate anything else of a  
19 commercial component in the surrounding area. But  
20 that's all I have with this. Anyone else have  
21 questions of Mr. Johnson? Nothing else? Mr. Glasgow,  
22 cross? Mr. Roth does not. Very well. Thank you very  
23 much, Mr. Johnson.

24 MR. JOHNSON: Thank you.

25 CHAIRPERSON GRIFFIS: We appreciate you

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1 being here. Mr. Rasmussen, correct?

2 MR. RASMUSSEN: Yes.

3 CHAIRPERSON GRIFFIS: You were going to  
4 what?

5 MR. RASMUSSEN: Well, I was going to make  
6 a statement, a short statement. I have concerns  
7 regarding the headlight issue. I think previous  
8 testimony has covered a little bit of that. I'm  
9 hoping some of this will be relevant, but if you'll  
10 allow me to make a quick statement, I would appreciate  
11 it.

12 CHAIRPERSON GRIFFIS: Let's take a minute.  
13 Go ahead.

14 MR. RASMUSSEN: Well, I strongly oppose  
15 the supermarket for many reasons my neighbors have  
16 identified, but I'm particularly concerned about the  
17 unsettling affect of headlights and brake lights will  
18 have on the houses across the street as they descend  
19 and emerge from the parking area that will be  
20 constructed by the supermarket. The high volume of  
21 vehicles expected to use the parking facility on a  
22 nightly basis will create a uniquely intolerable  
23 environment and especially during daylight saving  
24 hours.

25 I think, you know, from the traffic study

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1 I gleaned information that indicates about 300 or 400  
2 cars will be entering that building on a nightly basis  
3 on some evenings. And this is going to create a  
4 critical situation for us when you consider the  
5 additional negative impacts, such as car and truck  
6 traffic, pollution, noise, all the things that we have  
7 spoken about earlier.

8 I'm not a legal expert and I'm certainly  
9 no authority on laws or regulations that affect  
10 zoning. However, I would like to just propose to the  
11 Council here or the Board and maybe have them clarify  
12 section 1400.5(c). As far as I know of the Reed Cooke  
13 Overlay, as far as I know, this particular building  
14 has never been used as a supermarket and therefore  
15 this particular clause of this regulation indicates  
16 that the overlay, as I read it, would be applicable if  
17 the use that requires a change in the use listed of  
18 the owners or lessee's Certificate of Occupancy would  
19 invoke the Reed Cooke Overlay.

20 Now, I'm not a legal expert. I don't know  
21 if that holds weight, but I would merely propose that  
22 to you as a way of the way I was interpreting this  
23 regulation. I have been pursuing a remedy for this  
24 issue for 18 months. I started with the developer.  
25 I started with the ANC. I've worked with the, you

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1 know, Office of Planning and I've gotten nowhere.  
2 I've absolutely gotten nowhere and I was hoping here  
3 today that I could leave here with some confidence  
4 that this issue would be dealt with.

5 And from what I'm hearing, that's not  
6 likely going to be the case. So I would just like to  
7 put that on the record. I don't have any further  
8 comments. I don't know what else I can say other than  
9 this is very frustrating.

10 CHAIRPERSON GRIFFIS: Thank you. Well, we  
11 appreciate that, Mr. Rasmussen. I think it's  
12 important to bring your issues to light. Again, I'm  
13 not understanding if this was all a commercial office  
14 building, you would have cars ingressing and egressing  
15 out of that area, correct?

16 MR. RASMUSSEN: I don't believe, you know,  
17 that the conditions that are proposed under this  
18 development would be similar to a commercial office  
19 building. And certainly I don't -- and I'm not sure  
20 exactly what you are proposing there with that idea,  
21 but this is a retail space. This is what they are  
22 proposing and there is going to be a turnover of  
23 parking spaces on a regular basis.

24 I don't know if a commercial office  
25 building would attract 400 cars in one evening to it

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1 from 6:00 until 11:00 at night, hours where I like to  
2 be at home unwinding. You know, that was one of the  
3 proposals that I thought had weight that would have  
4 been very helpful to the neighborhood is having an  
5 office building. We've been told, however, that this  
6 building is likely to be protected for historical  
7 purposes if any changes dramatically occurred to this  
8 building, and therefore those sorts of options just  
9 aren't likely to happen or are open to us.

10 I do feel as though for us we are in a  
11 very difficult position and we -- our lives are  
12 definitely going to change. Many of us are long-time  
13 owners of those properties and, you know, we're very  
14 frustrated. I don't know how to pursue this. I don't  
15 know how to have this issue addressed if it can't be  
16 addressed here.

17 CHAIRPERSON GRIFFIS: Okay. Very well.  
18 Other questions, comments?

19 VICE CHAIR MILLER: I would just want to  
20 say I'm sympathetic to your issue, and also if they  
21 can't be pursued here, which it doesn't sound like you  
22 have made the connection of that problem to the  
23 variance, but I mean we haven't decided that yet. I  
24 think there are other avenues, so don't feel like just  
25 because you're not successful here you should give up.

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1 You know, there might be something that can be done to  
2 mitigate it.

3 CHAIRPERSON GRIFFIS: Okay.

4 VICE CHAIR MILLER: Or maybe not.

5 MR. RASMUSSEN: Well, you know, I would  
6 just -- just as part of this testimony, the developer  
7 has not come up with any significant mitigations.  
8 Just as being a good neighbor, which I think indicates  
9 some of the, you know, lack of good will that we have  
10 with that developer on this issue, it seems to me they  
11 would want to make some changes to address some of  
12 these issues that are going to very much make an  
13 impact on us, not necessarily negatively impact them.

14 I mean, they could make the relationship  
15 with us much better if they would just address some of  
16 these issues that have been unresolved for over 18  
17 months, maybe two years, unaddressed at least.

18 CHAIRPERSON GRIFFIS: Okay. Very well.  
19 Thank you very much. Let's go if there are any  
20 questions from the ANC, Mr. Roth, Mr. Glasgow? Okay.  
21 Thank you. Thank you very much, Mr. Johnson. Thank  
22 you. That would conclude all the testimony. Let us  
23 go to the applicant for rebuttal witnesses and closing  
24 remarks.

25 MR. GLASGOW: Just sit up front. With

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1 respect to the rebuttal, first, just with respect to  
2 the regulations very quickly. Just as a matter of  
3 statutory construction in Reed Cooke Overlay, you have  
4 the general provisions, which just lay out the goals  
5 and purposes of the overlay. Then you have the  
6 specific provisions that implement the general  
7 provisions in the overlay. There is nothing more.  
8 There is nothing else to it.

9           There's not some special regulations here  
10 that are different than any other overlay that the  
11 regulations have. There is nothing here in these  
12 regulations that trump the variance clause or anything  
13 else. So you have a general provision and so the  
14 general provisions set forth the goals and objectives  
15 and the way the Zoning Commission determine to  
16 implement those goals and objectives are through  
17 sections 1401, 1402 and 1403 of which are very  
18 specific and put all kinds of limitations that do not  
19 apply to the underlying district.

20           And when you get to 1400.4, they say where  
21 there are conflicts between this chapter and the  
22 underlying zone district, the more restrictive  
23 regulation shall govern. So that's how the overlay  
24 operates. And I know that the Board Members were  
25 driving toward that in their discussion and the

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1 questioning, but I want to make sure to get on the  
2 record from our standpoint how it is that we read  
3 these few pages of the regulations and how it all fits  
4 together and we think in a very logical and orderly  
5 fashion.

6 And then from that you derive the variance  
7 clause and the test under the variance. And with  
8 that, with respect to our rebuttal testimony, I wanted  
9 to, first, have Mr. Fred Gorove go over a couple of  
10 points with respect to traffic in the area, how it  
11 operates and how this would -- how it would relate to  
12 this specific project. And then have Mr. Hutchens  
13 address a point. Thank you.

14 MR. GOROVE: Okay. My name is Fred  
15 Gorove, Gorove/Slade Associates. And we have done the  
16 traffic analysis here, as I explained. The purpose of  
17 this testimony is to provide comments that might be  
18 useful to the Board. Some of these are scientific,  
19 some of them aren't. The comments are based on the  
20 traffic science that we had to collect and analyze to  
21 provide our reports to D.C. DOT and demonstrate that  
22 the proposed use would meet their criteria, as it is  
23 stated.

24 Today, the existing traffic is about 1,500  
25 per day on Kalorama. 1,500 vehicles per day. And

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1 that is comprised of the residents and it is comprised  
2 also of the cut-through. And because it is a tight  
3 neighborhood, people find the path of least resistance  
4 and we would say that these streets are about at their  
5 tolerable level of capacity, that's the way people  
6 drive in a tight urban area. They find the pathway  
7 and we're not proposing to add capacity.

8 So the capacity will stay what it is. The  
9 volumes will stay what they are. And if people find  
10 wow, there is traffic already on this street, that are  
11 the cut-through portion, they are going to go other  
12 routes. And we know that because that's the way our  
13 models work. That's the way traffic works.

14 Today, the traffic stream includes a high  
15 number of trips -- high number of trucks. In fact,  
16 more than four per hour and that's really associated  
17 with all the construction that is going on in the  
18 area. So the residents today are subject to this  
19 level of truck activity on the streets.

20 Additionally, there is 500 dwelling units  
21 more or less proposed in the area that are going to  
22 generate more traffic than the Harris Teeter facility  
23 will generate. Many of them going to shopping, so in  
24 some ways you might say if you live there, you would  
25 be there kind of thing. The grocery store will serve

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1 to intercept some of this traffic that's gone  
2 elsewhere for shopping purposes.

3 The five large trucks using the docks is  
4 a very small number, as you can see by these numbers  
5 I'm quoting as part of the traffic stream. These are  
6 on a daily basis. This says the trucks will now  
7 increase, the large trucks will increase to five.  
8 Additionally, the other 40 plus or minus trucks will  
9 be using the loading zone. Some will be using the  
10 dock when it is available, but a lot of them will be  
11 using the on-street loading zones. These are the  
12 small trucks.

13 And again, you heard the high numbers I'm  
14 using for the traffic stream. It's not a perceptible  
15 number. That's an important number from a traffic  
16 standpoint. I was talking about the 1,500 vehicles  
17 per day. We're talking about 45 or 50 vehicles per  
18 day. We're talking about the traffic stream. So from  
19 a traffic capacity or traffic standpoint, it's not a  
20 big number.

21 There was comments just about office being  
22 there. I would be concerned office has a greater  
23 impact during the peak hours, because you get this  
24 rush of people that are coming in. They have no  
25 choice to come in. Very intensive traffic in the

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1 morning. They come in the afternoon. We don't know  
2 what kind of office it is. If it's the kind of office  
3 like an insurance company or a data center or  
4 something like that, you get a lot of day trips, a lot  
5 of turnover and what have you.

6 So the office may not be the best use in  
7 that per the investigation. Retail by the other hand  
8 is split out during the day through the hours at  
9 different times. It doesn't peak like that. It peaks  
10 in the peak hour, but that traffic peaking during the  
11 peak hour is really intercept traffic. It's people on  
12 their trip from work to home that may stop to pick up  
13 something or what have you. It's not destination type  
14 traffic during the peak hour.

15 We always joke we do a lot of shopping  
16 centers. We say people don't go out to buy a new pair  
17 of socks during the evening peak hour on Rockville  
18 Pike, because it's not the kind of thing you want to  
19 attempt to do.

20 Let's see, other points. Oh, an  
21 interesting thing. We looked at this and this is from  
22 a client's standpoint. We get involved in a lot of  
23 neighborhood planning, a lot of, you know, what is the  
24 form of the neighborhood.

25 And if you think about the fact, if you

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1 look at 16<sup>th</sup> Street forward to 18<sup>th</sup> Street and Columbia  
2 as bordering this neighborhood and with a grocery  
3 store at the center of it, wow, you could envision  
4 this is a nice neighborhood center plan that we're  
5 talking about that lends itself to encouraging walking  
6 and what have you and over time, hopefully, more  
7 things are done to the sidewalks and to all of that.

8 It could be very nice. This is a dense  
9 neighborhood. I just got back from Europe, as I said,  
10 and we were looking at neighborhoods. We were looking  
11 at parking situations and that is not an uncommon  
12 situation.

13 In fact, there was a funny thing. One of  
14 the cab drivers said -- I said I'm a traffic engineer.  
15 He says from America? He says I want to hug you. He  
16 says I just was there. I saw the streets. They are  
17 so wide, they are so wonderful and what have you.  
18 We're driving in two-way traffic, two-way truck  
19 traffic on 20 foot streets. You know, people pulled  
20 up on the sidewalk and other people pull up on the  
21 sidewalk the other way. Somehow they got by each  
22 other and you wondered how it all worked. And I think  
23 that that's my comments.

24 MR. GLASGOW: Next we have Mr. Hutchens,  
25 just a couple quick questions. I want to make sure it

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1 was clear for the record. I wanted to make sure it  
2 was clear for the record that whether there is a 55  
3 foot berth or a 40 foot berth, it was my understanding  
4 of your testimony that there will be about 30 to 35  
5 non-Harris Teeter truck deliveries per day.

6 MR. HUTCHENS: That's correct.

7 MR. GLASGOW: And any size berth?

8 MR. HUTCHENS: Any size berth. The size  
9 of the truck really does not control the number of  
10 deliveries even with a 53 foot tractor trailer  
11 delivering to our largest volume store. If you take  
12 a beer delivery or a soft drink delivery, rarely are  
13 they going to unload more than four to six pallets off  
14 that 53 foot tractor trailer. The rest of it will go  
15 to other stores.

16 So the size of the trucks that are making  
17 the deliveries really has nothing to do with the  
18 number of deliveries. However, the amount of the back  
19 room space that we have in the store to store product  
20 could affect the deliveries with my estimate of 30 to  
21 35 non-Harris Teeter deliveries is based on a 40 foot,  
22 41 berth.

23 If we were to have to have a 41, 46 foot  
24 berth, that would cut into the back room space a  
25 little bit. It would tend to reduce the back room

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1 space. I don't know if 46 feet would reduce it that  
2 much. 55 feet, however, I have looked at the plans  
3 and with a ruler kind of measured it out, that would  
4 more significantly affect the back room space.

5 The less back room space we have, the more  
6 deliveries we have to have, because we don't -- you  
7 can't off-load as much on each delivery to provide the  
8 day's supply of product to get you through two days or  
9 three days. So since you don't have that storage  
10 space, then you have to have more deliveries to keep  
11 the product stored on the shelves. So I wanted to  
12 make it clear that what it, the -- you know, those two  
13 points really.

14 MR. GLASGOW: And, Mr. Hutchens, my  
15 recollection of your testimony is that if you were to  
16 be able to utilize a 55 foot truck, you would have,  
17 approximately, three deliveries per day and it would  
18 be five deliveries with the shorter berth.

19 MR. HUTCHENS: Right. And those three  
20 deliveries, it would be one full truck of dry  
21 groceries, a full truck of medium temp and a partial  
22 truck, although it will still be a delivery, it will  
23 be a partial truck of frozen food. And what we  
24 anticipate is that, approximately, we'll have two  
25 small dry grocery, two small medium temp and one

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1 frozen food.

2 MR. GLASGOW: And are you anticipating  
3 that you would use this five truck setup even if this  
4 variance were denied because of the difficulties in  
5 getting the 55 foot truck to this facility?

6 MR. HUTCHENS: Absolutely. And our VP of  
7 transportation has looked at that and he is not going  
8 to pull a 53 truck down those streets.

9 MR. GLASGOW: Okay. I think what we're  
10 dealing with, and now I'm getting into my closing  
11 statement, is we wanted the Board to understand as it  
12 looks at the parameters of this case as to the  
13 practical reality, is if we're not going to use 55  
14 foot trucks and we are required to have a 55 foot  
15 berth, we sort of make sure that we have a lose-lose  
16 for everyone, because there will be more truck  
17 deliveries.

18 We will have less storage space and less  
19 parking and more deliveries, and we'll all -- so there  
20 will be more deliveries, less storage space within the  
21 garage and less parking spaces within the garage. And  
22 we understand the Board and we have agreed to  
23 conditions. The ANC has proposed conditions.

24 What we are going to be looking at there  
25 and what we're going to be evaluating, assuming that

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1 the Board does deem that we did meet our burden of  
2 proof, is that the conditions would be such that they  
3 will help with the community, not too severely impact  
4 Harris Teeter so that we say that -- because that is  
5 what ended up happening before.

6 Then we got to the point where the  
7 conditions and the discussions were such that we felt  
8 that we were not able to -- we wouldn't be able to  
9 operate the grocery store. And since the grocery  
10 store is a matter-of-right use and we are proceeding  
11 with construction of the store, I don't know whether  
12 any of the Board Members have been out there, the  
13 demolition work has been proceeding.

14 We do have a matter-of-right set of  
15 drawings all on file. Now, we have been encouraged by  
16 a number of representatives within the city to proceed  
17 forward not irrespective of what the Board does,  
18 because obviously that is very important. But since  
19 the use is a matter-of-right and there are certain  
20 time deadlines that we have to meet with respect to  
21 this facility, we will want to work with the Board as  
22 to what the timing is of the decision, so that we  
23 don't get to a point where our construction schedule  
24 gets past a point where the Board's decision is of  
25 value to Harris Teeter as to how we proceed, because

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1 our variance test is practical difficulty not  
2 impossibility of construction.

3 And given time, effort and money, you can  
4 build a lot of things even though that's not what you  
5 think is the best thing. So we are looking at how it  
6 is that we strike the best balance, so that the Board  
7 feels comfortable with the conditions that it imposes  
8 that we can live with that are in the best interest of  
9 the community as a whole in moving forward.

10 And I didn't know whether you wanted me to  
11 go through where we were with the ANC resolution and  
12 its conditions or not.

13 CHAIRPERSON GRIFFIS: I think let's run  
14 down those very quickly, of how many that you're --

15 MR. GLASGOW: Sure.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. GLASGOW: Okay. I will give very  
18 quick responses. No. 1, we agree. No. 2, agree. No.  
19 3, we disagree. We have different numbers. They have  
20 10 to 20 deliveries. For example, if we were limited  
21 to 10 to 20 deliveries per day, we testified, we can't  
22 operate the store so we would build the 55 foot berth,  
23 you know, and move on.

24 CHAIRPERSON GRIFFIS: Okay. So what is  
25 the condition that you're proposing?

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1 MR. GLASGOW: Well, we don't believe that  
2 there should be a number of truck deliveries. We have  
3 testified that we need 30 to 35 non-Harris Teeter  
4 deliveries per day and five Harris Teeter deliveries  
5 per day.

6 BOARD MEMBER MANN: Are you  
7 differentiating between weekdays and weekends or  
8 Saturdays and Sundays?

9 MR. HUTCHENS: Yes, I think it was 30 to  
10 35 weekdays and Saturdays and about 10 on Sundays.

11 BOARD MEMBER MANN: Okay.

12 MR. HUTCHENS: That's the answer.

13 BOARD MEMBER MANN: And so that would be  
14 acceptable as a condition if it were limited to 10 on  
15 Sundays?

16 MR. HUTCHENS: Absolutely.

17 MR. GLASGOW: That is up to Harris Teeter.

18 MR. HUTCHENS: Absolutely.

19 VICE CHAIR MILLER: And the 35 or 30?

20 MR. HUTCHENS: Well, we would rather have  
21 35 and the reason I say 35 is that because of  
22 seasonality. You know, some days it's going to be 20.  
23 Some days it's going to be 35. Before Thanksgiving,  
24 before Christmas it's going to be -- it's going to be  
25 more.

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1 VICE CHAIR MILLER: Okay.

2 MR. GLASGOW: Then on No. 4, we agree.  
3 No. 5, we agree for the weekdays. For Saturdays, 7:00  
4 a.m. to 4:00 p.m. which is one hour later on Saturday  
5 than the ANC condition. No. 6, we agree. No. 7, we  
6 disagree in part and we agree in part.

7 We agree to keeping the overhead door  
8 closed after the last operation of the day until 8:00  
9 a.m. on weekdays and Saturdays and 10:00 a.m. on  
10 Sundays. That's when the door would start to go up.  
11 7, what we call 7B, we agree to. No. 8, we agree  
12 provided that the overhead door --

13 VICE CHAIR MILLER: I'm sorry. We're  
14 going to stop for one second.

15 MR. GLASGOW: Sure.

16 VICE CHAIR MILLER: There was another part  
17 to 7?

18 MR. GLASGOW: Yes.

19 VICE CHAIR MILLER: And you're saying you  
20 don't agree to the other end, the 3:00 p.m.?

21 MR. GLASGOW: Let's see. Hours for the  
22 overhead door will be limited Monday to Friday to 8:00  
23 a.m. to 3:00 p.m. Well, we have said we want  
24 different hours than that. We want it to be open  
25 until 4:00 so that's a different number there on 7.

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1 VICE CHAIR MILLER: So 7, your position  
2 would be 8:00 to 4:00?

3 MR. GLASGOW: It would be 8:00 to 4:00, so  
4 that's the agreed for weekdays.

5 VICE CHAIR MILLER: And Saturdays?

6 MR. GLASGOW: Saturday we're 7:00 a.m. to  
7 4:00 p.m. Okay. Oh, and what was that, in the  
8 evening? What were you all planning on doing in  
9 coming in the evening?

10 MR. HUTCHENS: The grocery trucks, dry  
11 grocery trucks, we deliver in the evening. So we  
12 needed a window from roughly 8:00 until 12:00 for dry  
13 grocery delivery.

14 MR. GLASGOW: Okay. So that would be for  
15 weekdays. Weekdays and Saturday or weekday?

16 MR. HUTCHENS: Seven days a week. It's  
17 like one big two level truck.

18 MR. GLASGOW: So it's two small trucks?

19 MR. HUTCHENS: Yes.

20 MR. GLASGOW: Two deliveries.

21 CHAIRPERSON GRIFFIS: And what time are  
22 those happening?

23 MR. HUTCHENS: In the evening from 8:00 to  
24 midnight, because we stock the stores in the evening.

25 VICE CHAIR MILLER: Which number are you

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1 on?

2 MR. GLASGOW: 7.

3 VICE CHAIR MILLER: So we're changing 8:00  
4 to 4:00 to 8:00 to midnight? Is that what you're  
5 doing?

6 MR. GLASGOW: No. What they are doing is  
7 they are saying they can -- the daylight hours were  
8 okay from 8:00 a.m. to 3:00 p.m., correct?

9 MR. HUTCHENS: Right.

10 MR. GLASGOW: But then there needs to be  
11 a time for the two deliveries of the dry goods in the  
12 evenings which would come between 8:00 and 12:00. All  
13 right. And those would be in the loading berths so  
14 they would be behind the doors.

15 MR. HUTCHENS: Yes, yes. That is only  
16 loading dock deliveries at night and no DSD  
17 deliveries, just the Harris Teeter delivery.

18 MR. GLASGOW: So the door is closed?

19 MR. HUTCHENS: Yes.

20 CHAIRPERSON GRIFFIS: That's every weekday  
21 night, the availability of using the loading dock from  
22 8:00 p.m. to midnight?

23 MR. HUTCHENS: Right.

24 MR. GLASGOW: Right, for two deliveries.

25 MR. HUTCHENS: We would hope it would be

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1 every night, but in likelihood it will probably be  
2 four nights a week or five nights a week.

3 CHAIRPERSON GRIFFIS: Got you. Okay.  
4 Next?

5 MR. GLASGOW: Let's see. We agree with 8  
6 provided that the overhead door may remain open to  
7 avoid opening and closing cycles within 15 minutes of  
8 each other. So if somebody is sitting right there  
9 getting ready to go in, there is no sense in having  
10 the truck sitting there and close the door and then  
11 open the door so it can get back in.

12 No. 9, we agree for the weekdays. For  
13 Saturdays, 7:00 a.m. to 4:00 p.m., which is two hours  
14 later on Saturday than the ANC condition. No. 10, we  
15 agree. No. 11, we agree with, that we would use  
16 handcarts or dollies and the width of the doorway is  
17 48 inches wide. It's not -- so it says goods not to  
18 exceed 42 inches.

19 We looked at that as whatever we can fit  
20 through there with a handcart, we ought to just do.  
21 So we have got just, we call it, a minor modification  
22 or clarification. I don't know how the ANC would view  
23 that. But since the door is 48 inches wide, if we can  
24 get something through on a handcart or a dolly that is  
25 48 inches, whatever it is.

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1           We agree in concept to supporting the ANC  
2           on their changes of DDOT operations, but we do think  
3           it would be better if the flow is westbound from 16<sup>th</sup>  
4           and 17<sup>th</sup> Street along Kalorama and then northbound  
5           from Kalorama Road to Columbia Road along 17<sup>th</sup>. We  
6           have discussed that, I think, in the past with the  
7           ANC.

8           No. 13, we agree that compacted waste  
9           would only be collected weekdays between 9:00 a.m. and  
10          3:00 p.m. We think that's what this ANC condition  
11          means. It says trash compactor on loading dock will  
12          operate weekdays only between 9:00 a.m. to 3:00 p.m.  
13          We think that refers to the collection of the  
14          compacted waste, because we're going to compact waste  
15          as it gets into the trash receptacle. It's inside the  
16          building. Are the plans that show that up there?

17                 CHAIRPERSON GRIFFIS: Right, it was next  
18          to the loading.

19                 MR. GLASGOW: Yes. It's next to the  
20          loading berths. The trash compactor is there, so  
21          we're assuming they mean when it is that that thing  
22          would be pulled out and emptied and that type of  
23          thing. No. 14 and 15 we agree to.

24                 CHAIRPERSON GRIFFIS: Okay. Anything  
25          else?

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1 MR. GLASGOW: No. That concludes our  
2 rebuttal. We do believe, in just a very brief closing  
3 statement, that we have met our burden of proof as to  
4 the variances that have been requested.

5 We know that there has been a lot of  
6 concern stated with respect to the loading berth  
7 variance but, as you try to connect what the issues  
8 are to the actual size of the loading berth, we think  
9 that there is a solution that can be crafted that is  
10 better for everyone with the Board granting the  
11 variances with conditions that can be accepted by  
12 Harris Teeter than denying the variance, and then you  
13 have a 55 foot berth that is not useable and you lose  
14 parking spaces and the rest.

15 With respect to the rear yard variance, we  
16 didn't really hear any testimony that specifically  
17 went to why the rear yard variance should be denied at  
18 all. We believe that that should be granted and that  
19 makes for a better working of the site and providing  
20 more parking. And because Harris Teeter is going to  
21 be -- because they have a right to a certain limited  
22 number of spaces, the loss of the parking spaces will  
23 go to the office component and the other retail  
24 component.

25 And, therefore, that means that whoever

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1 doesn't get a parking space because we don't provide  
2 it, they will be out on the street. They will be  
3 wherever instead of within the building, because  
4 Harris Teeter has a minimum number of spaces that they  
5 are entitled to as the lead tenant, which is no  
6 different than when a law firm is a lead tenant or  
7 anybody else.

8           When you go in as lead tenant, you say  
9 what it is that -- you get first dibs on the parking.  
10 That is not uncommon. So we believe that it is better  
11 from that standpoint also that we be able to craft a  
12 solution where the variances are approved. And with  
13 that, that concludes the closing remarks.

14           CHAIRPERSON GRIFFIS: Excellent. Thank  
15 you very much. Let's take last Board clarification  
16 questions of the applicant. Ms. Miller?

17           VICE CHAIR MILLER: Can you tell me what  
18 is happening with the Truck Management Plan, what the  
19 schedule on that is and what you expect it to  
20 encompass and who is going to be involved in that?

21           MR. GLASGOW: All right. With the truck  
22 management, Mr. Williams has been doing most of the  
23 negotiations of that with Mr. Laden and with a fellow  
24 named -- the Office of Planning with respect to where  
25 the status is of that. We would hope within the next

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1 couple of weeks to conclude that.

2 I think that was a fair time period,  
3 because the parameters of that and how they -- and  
4 that is a technical document that deals with the  
5 loading berths, how the truck area operates, the size  
6 of the berths, all of that. It's a technical document  
7 that gets into how that all will work operationally  
8 with respect to this site.

9 VICE CHAIR MILLER: It doesn't get into  
10 the routes for the trucks or anything?

11 MR. GLASGOW: Have you been discussing  
12 truck routes, Lindsley?

13 MR. WILLIAMS: Yes.

14 MR. GLASGOW: Okay.

15 MR. WILLIAMS: Yes, we have been  
16 discussing truck routes particularly for the larger  
17 vehicles. The smaller ones, we have not come to any  
18 conclusion that there must be a particular route for  
19 something on the order of a chip truck, which is  
20 basically a truck like a UPS truck or a FedEx truck.  
21 They are more nimble and we didn't know if they should  
22 be particularly restricted, but the larger trucks,  
23 absolutely. We want them to come not only at  
24 predicted times, but along a predicted route.

25 VICE CHAIR MILLER: Also, with respect to

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1 times, we heard some testimony about concern about  
2 when the trucks were coming, whether there was going  
3 to be a conflict with children going to school. Is  
4 that something that is factored into the times?

5 MR. GLASGOW: The times when the berths  
6 are operated.

7 MR. WILLIAMS: Nothing has been brought to  
8 my attention by DDOT as to that issue, but I have  
9 certainly heard about it today. I will add that to  
10 the frame of reference in my discussions with Mr.  
11 Laden.

12 VICE CHAIR MILLER: And we also heard that  
13 there is a rush for the office people coming in at  
14 rush hour in the morning.

15 MR. GLASGOW: Right. Yes, we have got  
16 13,000 square feet of office space and they will be  
17 coming in on the Kalorama side and the loading berths  
18 are all on the 17<sup>th</sup> Street side.

19 VICE CHAIR MILLER: Okay.

20 CHAIRPERSON GRIFFIS: Ms. Miller's follow-  
21 up question, Mr. Glasgow. How do you know they are  
22 coming down the Kalorama side?

23 MR. GLASGOW: Oh, because that's where the  
24 entrance to the parking garage is. We only have one  
25 entrance to the parking garage.

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1 CHAIRPERSON GRIFFIS: But there is nothing  
2 prohibiting them from coming up or up 17<sup>th</sup> or down  
3 17<sup>th</sup>.

4 MR. GLASGOW: Oh, you mean coming up  
5 there. Okay. Well, when they go, we know that they  
6 are all going to be on Kalorama Road.

7 CHAIRPERSON GRIFFIS: Right. Okay.  
8 Access to that building is on Kalorama.

9 MR. GLASGOW: Yes.

10 CHAIRPERSON GRIFFIS: And the loading dock  
11 is on 17<sup>th</sup>.

12 MR. GLASGOW: Access to the building is on  
13 Kalorama.

14 CHAIRPERSON GRIFFIS: Okay. Understood.  
15 You have obviously gone through these conditions and  
16 we have further processing of this. No. 6, yes, it  
17 says that Harris Teeter will establish a formal Truck  
18 Management Plan.

19 MR. GLASGOW: Correct.

20 CHAIRPERSON GRIFFIS: For grocery  
21 deliveries as well as waste removal as the grocery  
22 store produces full operation.

23 MR. GLASGOW: Yes.

24 CHAIRPERSON GRIFFIS: I don't think that  
25 I would be inclined to adopt that language, but the

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1 intent I fully understand. I want to go a step  
2 further and discuss do you know -- as you well know,  
3 this variance is for the property, the site itself.

4 MR. GLASGOW: Right.

5 CHAIRPERSON GRIFFIS: Not for the tenant.  
6 I don't know, unless you can tell me, legally how we  
7 would condition for the specific tenant in this, would  
8 it not be appropriate then that we would be crafting  
9 conditions that go to the large grocer or a large  
10 retail establishment and would maintain a Truck  
11 Management Plan?

12 MR. GLASGOW: Right. Correct.

13 CHAIRPERSON GRIFFIS: So if this lease  
14 falls through and, for goodness sakes, you get  
15 whatever this will do, but you get a Home Depot,  
16 conceivably they are also --

17 MR. GLASGOW: Right.

18 CHAIRPERSON GRIFFIS: -- maintaining the  
19 same operation or conditions.

20 MR. GLASGOW: That is correct. I view  
21 that that is -- assuming that you took the ANC  
22 template here, a lot of times where it says HT you  
23 would just say the retail operator or there would be  
24 some language that would be put in there instead of  
25 that.

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1 CHAIRPERSON GRIFFIS: Okay. And I think  
2 we're going to have -- and the difficulty, and I'm  
3 saying this because I'm going to ask you for proposed  
4 conditions.

5 MR. GLASGOW: Right.

6 CHAIRPERSON GRIFFIS: And I think there is  
7 an importance of crafting it correctly, so that if  
8 this iteration came out and there were, you know, 15,  
9 whatever it is, 15 1,000 square foot retailers, that  
10 they are not all having to comply with these  
11 conditions, but rather --

12 MR. GLASGOW: Right.

13 CHAIRPERSON GRIFFIS: So there has to be  
14 a size component here.

15 MR. GLASGOW: Yes. We were looking at  
16 that. I was thinking that if there is a retailer that  
17 is 35,000 square feet or larger, that this is what  
18 applies.

19 CHAIRPERSON GRIFFIS: Okay. I think  
20 that's appropriate to look at in terms of putting it  
21 into conditions that would be directly addressing this  
22 application. Okay. Others? Yes, Ms. Miller?

23 VICE CHAIR MILLER: Mr. Glasgow, did you  
24 say you also agreed to all of Office of Planning's  
25 conditions?

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1 MR. GLASGOW: As they were rephrased by  
2 Maxine, by Ms. Brown-Roberts today. She had  
3 modifications to I think either two or three of her  
4 conditions.

5 CHAIRPERSON GRIFFIS: Yes, and I don't  
6 think they are substantively different than what the  
7 ANC is proposing.

8 MR. GLASGOW: That's right.

9 CHAIRPERSON GRIFFIS: But the detail and  
10 the language is stated differently. Okay. If there  
11 is nothing further from the Board then in terms of  
12 clarification and questions, not noting any, we do  
13 thank you all very much for waiting through the entire  
14 day with us.

15 Let us get to scheduling on this and then  
16 submissions. We have additional submissions that we  
17 were requesting, if I'm not mistaken, and I'll pull  
18 out my notes but ask Ms. Bailey if she would start on  
19 what she has in her notes.

20 MS. BAILEY: Mr. Chairman, the only  
21 submission that I'm aware of is what you just asked  
22 the applicant for and that is draft conditions.

23 MR. GLASGOW: Right, draft conditions.

24 MS. BAILEY: Unless you want a proposed  
25 order and also the Truck Management Plan. If that

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1 isn't ready, I don't know if that --

2 MR. GLASGOW: Yes, no we need to do that.

3 CHAIRPERSON GRIFFIS: Mr. Roth, did you  
4 want to say something?

5 MR. ROTH: Yes. I certainly have no  
6 objection to Mr. Glasgow setting forth the conditions  
7 he would like to see, taking into account the  
8 Chairman's very appropriate point that any phraseology  
9 would really have to revolve around the property as  
10 opposed to Harris Teeter, per se, and taking into  
11 account some of the clarifications or modifications  
12 that Mr. Glasgow proposed, some of which we may agree  
13 with, others of which we may not.

14 I would like to have the opportunity. We  
15 have an ANC meeting a week from tomorrow night. I  
16 would like to have the opportunity to go back to my  
17 colleagues and get authorization to be able to submit  
18 a reply to Mr. Glasgow's submissions that perhaps has  
19 some more flexibility in my authority than what our  
20 resolution provides.

21 CHAIRPERSON GRIFFIS: Absolutely. Okay.

22 VICE CHAIR MILLER: I just want to ask you  
23 a question also. I mean, it sounded like Mr. Glasgow  
24 was agreeing to a lot of the conditions and maybe you  
25 could also look at the possibility to see one more

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1 time whether you might come to an agreement on the  
2 conditions. Is that possible?

3 MR. ROTH: We can certainly try that. I  
4 don't know if I will get a majority vote on that, but  
5 we can certainly try that.

6 VICE CHAIR MILLER: Right. Okay.

7 CHAIRPERSON GRIFFIS: Well, I'll be honest  
8 with you. The reason why we went through it orally  
9 was for your understanding. And if we were going to  
10 ask for proposed conditions, we can read them at our  
11 leisure, but now you're ahead of the game in  
12 understanding where they are in all of those  
13 conditions.

14 That being said, yes, anything we ask of  
15 the applicant we're going to have potentially the  
16 record open for submissions also from the parties and  
17 the ANC. Let's go to that though. Mr. Glasgow, how  
18 much time? I don't have anything else unless actually  
19 the ANC, the party or the applicant is aware of  
20 anything else we made note of to keep the record open  
21 for. I also don't have anything in addition to what  
22 we have just talked about.

23 MR. ROTH: Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes?

25 MR. ROTH: I'm not sure how to handle

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1 this. I got a telephone call this morning from an  
2 Office of Zoning staff person indicating that she had  
3 been inundated just this morning with emails.

4 CHAIRPERSON GRIFFIS: I want to make --  
5 thank you for reminding me. That's on the list of  
6 things to do at the very, very end. Everyone  
7 participating in this should be aware that they need  
8 to check the record.

9 But every time someone is walking behind  
10 me, they are not only delivering what you have  
11 submitted, but we're getting stacks and stacks of  
12 letters into the record. It's going to be written --  
13 it's going to be read as testimony for the Board.  
14 It's submitted.

15 The record is open at this point. It's  
16 closed in a matter of moments but you should be, if  
17 you're interested, looking at those letters. Frankly,  
18 I haven't read them substantively, but they are coming  
19 in support and they are coming in opposition to the  
20 application.

21 MR. ROTH: Well, what I was going to ask  
22 was that because, apparently, according to what I was  
23 told, these emails were coming in on both sides of the  
24 issue, but the people, residents or citizens, whomever  
25 is sending in the emails, were not aware that the

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1 Board does not accept email submissions. And so I'm  
2 wondering whether perhaps it might be appropriate to  
3 leave the record open for seven days for those people  
4 who didn't -- weren't able to get that message today,  
5 if they choose to, to be able to submit letters in  
6 writing.

7 CHAIRPERSON GRIFFIS: I don't see a  
8 difficulty with that.

9 MR. ROTH: Yes, that's open to both sides,  
10 pro and con.

11 CHAIRPERSON GRIFFIS: Right. Do you see  
12 any difficulty with that? I don't see any difficulty  
13 with that. We can certainly keep the record open for  
14 another five days to allow these to be put into the  
15 record.

16 MR. GLASGOW: Mr. Chairman, is that five  
17 business days or five calendar days?

18 CHAIRPERSON GRIFFIS: I would keep it open  
19 until Friday at 3:00.

20 MR. ROTH: That's fine. Thank you.

21 VICE CHAIR MILLER: Through the mail.

22 CHAIRPERSON GRIFFIS: Yes. Well, every  
23 time you ask you lose a day. No. I mean, this is  
24 going to be very easy to do. I mean, the emails,  
25 there are not numerous emails. I'm looking through

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1 what has been delivered to me out here tonight and  
2 it's faxed, which we'll take, and so some of these  
3 need to be signed. We'll get them all in. We'll make  
4 sure that they are in the record. We don't need to  
5 lose anything for technicalities in that aspect.  
6 Okay.

7                   Where are we then? That gets us at least  
8 a week, Mr. Glasgow, we're, obviously, having you send  
9 in findings, conclusions of proposed order with  
10 proposed conditions. We can do that all in one  
11 submission. I don't see any reason why we would break  
12 that apart. Timing for you in terms of getting that  
13 in?

14                   MR. GLASGOW: Alan, when was your meeting?

15                   MR. ROTH: Wednesday, December 7<sup>th</sup>.

16                   MR. GLASGOW: Wednesday, December 7<sup>th</sup>.

17 Okay. We will -- let me take a look at a calendar  
18 real quick.

19                   CHAIRPERSON GRIFFIS: And I think from the  
20 ANC's perspective, the proposed conditions are the  
21 critical ones for the December 7<sup>th</sup>.

22                   MR. GLASGOW: Right. I was thinking that,  
23 yes. If we can get you the conditions by the 2<sup>nd</sup>,  
24 conditions by the 2<sup>nd</sup>? Okay. I'm looking over at the  
25 drafter of the conditions. All right. We'll get the

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1 conditions to you on December 2<sup>nd</sup>, and then if we get  
2 the full order in, when would we be looking at getting  
3 this case decided, Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Well, I think we're  
5 going to have -- it's going to be based on the  
6 submission schedule.

7 MR. GLASGOW: Right.

8 CHAIRPERSON GRIFFIS: So as quickly as you  
9 get it in, as quick as the ANC responds, the party  
10 will have the same time in response to that, the  
11 record will be final unless you want a response to the  
12 responses, in which case we would allow that and then  
13 we would go for decision. So we're talking no less  
14 than four weeks in my calculation at this point.

15 MR. GLASGOW: Um-hum. Okay. So that  
16 would be late December, early January for a decision.  
17 All right. Then we would get in our proposed order.  
18 I guess we could get everything in December 7<sup>th</sup> then  
19 and then we could finish it up.

20 CHAIRPERSON GRIFFIS: Okay. So you'll  
21 have everything in by December 7<sup>th</sup>?

22 MR. ROTH: Can I make a suggestion? I  
23 have no idea whether we will be able to reach an  
24 agreement between us or not, but it would seem to me  
25 to make sense to give Mr. Glasgow at least a day or

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1 two after our ANC meeting before he submits his  
2 proposed conditions, so that if we do have agreement  
3 or agreement on some issues and not others, he can  
4 reflect that and we can respond on those issues that  
5 we have disagreement on or we may just say but we're  
6 supportive of them.

7 MR. GLASGOW: I guess then December 12<sup>th</sup>  
8 if we're having a decision in early January. That  
9 wouldn't foul up any time frames.

10 MR. ROTH: December?

11 MR. GLASGOW: 12<sup>th</sup>.

12 MR. ROTH: 12<sup>th</sup>.

13 MR. GLASGOW: 12<sup>th</sup> we would file and then  
14 you would respond on I guess, what, if they give you  
15 a week, the 19<sup>th</sup>?

16 MR. ROTH: Now I feel like Mr. Gottlieb  
17 before.

18 MR. GLASGOW: Alan, how much time do you  
19 want?

20 MR. ROTH: I have two practical problems.

21 MR. GLASGOW: Okay.

22 MR. ROTH: I will belabor the Board with  
23 this. I have been called for federal jury duty from  
24 December 5<sup>th</sup> to December 23<sup>rd</sup>, and the way that works  
25 is you call the night before and they tell you whether

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1 or not you have to waste the next day. So if we could  
2 have until the end of that week, to Friday the 23<sup>rd</sup>?

3 MR. GLASGOW: How late can we give him and  
4 still get a decision in January? And if we have a  
5 response, we'll respond within 24 or 48 hours.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. GLASGOW: We don't need a week.

8 CHAIRPERSON GRIFFIS: We're setting it for  
9 the 10<sup>th</sup> of January. We can give ANC and the Reed  
10 Cooke party in opposition -- I mean, we could give  
11 them until, you know, the week between the 25<sup>th</sup> and  
12 the 2<sup>nd</sup>. We could give them to the 27<sup>th</sup> or the 29<sup>th</sup>.  
13 It's just taking up time that you would have to  
14 respond. However, you have that week after the 2<sup>nd</sup>.

15 MR. GLASGOW: We only need -- we'll need  
16 24 or 48 hours to respond.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. GLASGOW: I mean, the issues in this  
19 case, you know, they are narrowing. They are not  
20 getting wider. Okay. Whatever date you want then,  
21 Alan, is fine.

22 MR. ROTH: I mean, for me, the more time  
23 the better. Is the office open on the 26<sup>th</sup>? I mean,  
24 my recollection is --

25 MR. GLASGOW: Well, you want later than

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1 that, you can have later.

2 MR. ROTH: No, no. You really want to  
3 ruin my Christmas week, huh?

4 MR. GLASGOW: Do you?

5 MR. ROTH: Mr. Chairman, what did you say  
6 was the latest that week that would be acceptable?

7 CHAIRPERSON GRIFFIS: For you?

8 MR. ROTH: The Christmas week,  
9 Christmas/New Years.

10 CHAIRPERSON GRIFFIS: Well, frankly, I can  
11 give you all up to the 4<sup>th</sup>, 5<sup>th</sup> of January. I mean, if  
12 he is turning it around in 48 hours, you back them up  
13 to the 8<sup>th</sup>, we could have him required to put it in on  
14 Sunday and then you could -- he is allowing you to  
15 have great flexibility. As we're setting it to the  
16 10<sup>th</sup>, it matters not to us. We get it all at the same  
17 time.

18 MR. ROTH: I appreciate that and let me  
19 say this. I would like to have until January 5<sup>th</sup>, if  
20 necessary. I will endeavor, for selfish reasons if  
21 none other, to get it in before then.

22 CHAIRPERSON GRIFFIS: That's right. And,  
23 you know, the Reed Cooke party is not with us but I'm  
24 sure they will also appreciate the additional time on  
25 that. That will be the two submissions on the 5<sup>th</sup>

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1 then and then the last submission will come in on --  
2 let's see, it can't be 48 hours before the 10<sup>th</sup>.

3 VICE CHAIR MILLER: What day is the 5<sup>th</sup>?

4 MR. ROTH: Again, let me voluntarily try  
5 to simplify things. What is the --

6 CHAIRPERSON GRIFFIS: What I just mean is  
7 I need Mr. Glasgow's in the Thursday before the 10<sup>th</sup>.  
8 What is the date on that?

9 MR. GLASGOW: That is the 5<sup>th</sup>.

10 CHAIRPERSON GRIFFIS: That's the 5<sup>th</sup>.

11 MR. MOY: That's when we have our mail out  
12 to the Board.

13 MR. ROTH: Yes. And what I was going to  
14 offer was what is the first day after New Years Day  
15 that the office is open?

16 MR. GLASGOW: I think it's Tuesday the  
17 3<sup>rd</sup>, right?

18 CHAIRPERSON GRIFFIS: Yes, it's the 3<sup>rd</sup>.

19 MR. GLASGOW: Because I think the 2<sup>nd</sup> is  
20 a holiday.

21 MR. ROTH: That's fine. We'll get it in  
22 by the 3<sup>rd</sup>.

23 MR. GLASGOW: Okay. And then I will get  
24 mine in the 5<sup>th</sup>. Okay? Does that work?

25 CHAIRPERSON GRIFFIS: It does for me.

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1 MR. GLASGOW: Okay.

2 CHAIRPERSON GRIFFIS: I get my stuff on  
3 time. But to be clear, if you're at 3:00 on the 3<sup>rd</sup>,  
4 you're serving it to Mr. Glasgow, he has got the 3<sup>rd</sup>  
5 and the 4<sup>th</sup>, it has got to be in by the 5<sup>th</sup> at 3:00.  
6 That's enough time?

7 MR. GLASGOW: Yes.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. GLASGOW: We'll get it to you in time.

10 CHAIRPERSON GRIFFIS: Good. Okay.  
11 Everybody clear? Ms. Bailey?

12 MS. BAILEY: Should we go over that?

13 CHAIRPERSON GRIFFIS: Sure. Why not?

14 MS. BAILEY: Do we want me to?

15 CHAIRPERSON GRIFFIS: Do you want me to?

16 MS. BAILEY: Yes.

17 CHAIRPERSON GRIFFIS: Oh, dear. Indeed.

18 The first submission is Mr. Glasgow's. It's going to  
19 be by the 7<sup>th</sup> of December. I'm sorry.

20 MR. GLASGOW: I have got one on the  
21 second. I'm going to get him the conditions, December  
22 2<sup>nd</sup>.

23 CHAIRPERSON GRIFFIS: 2<sup>nd</sup>.

24 MR. GLASGOW: Conditions to Alan.

25 CHAIRPERSON GRIFFIS: Right. And then

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1 your submission though is the 12<sup>th</sup>?

2 MR. GLASGOW: Yes, the 12<sup>th</sup> now.

3 CHAIRPERSON GRIFFIS: Sorry.

4 MR. GLASGOW: For findings of fact and  
5 conclusions of law.

6 CHAIRPERSON GRIFFIS: Okay. Findings,  
7 good, the 12<sup>th</sup>. And then we go all the way out to the  
8 3<sup>rd</sup> for responses.

9 MR. GLASGOW: ANC.

10 CHAIRPERSON GRIFFIS: And the record is  
11 open until the 5<sup>th</sup> at 3:00.

12 MR. GLASGOW: Right.

13 CHAIRPERSON GRIFFIS: For any redress of  
14 those replies to the responses.

15 MR. GLASGOW: Right.

16 CHAIRPERSON GRIFFIS: We have the record  
17 open for another -- until Friday at 3:00 for the hard  
18 copy of the testimony that has come in and, other than  
19 that, I don't see any other issues that we have that's  
20 open unless others are aware of any.

21 MS. BAILEY: And then the decision is  
22 scheduled for January 10<sup>th</sup>, Mr. Chairman?

23 CHAIRPERSON GRIFFIS: Yes. Thank you.

24 MR. GLASGOW: The 10<sup>th</sup> is good with me.  
25 January 10<sup>th</sup>.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GLASGOW: That's what it is. Yes.

3 CHAIRPERSON GRIFFIS: Excellent. Very  
4 well. Anything else?

5 MR. ROTH: Do we have any -- would that  
6 typically be at 9:30?

7 CHAIRPERSON GRIFFIS: The decision? Yes,  
8 that will be our first Tuesday session for the Public  
9 Meeting. We're going to set it for 9:30. We have  
10 several things that have been put on the agenda, at  
11 this point, but this one would be, I would imagine,  
12 early in the chronology. Okay.

13 Anything else? Nothing else? Very well.  
14 Thank you all very much. We do appreciate it and we  
15 will see you on the 10<sup>th</sup> of January for deliberation  
16 if you decide to attend in person. Thank you all very  
17 much.

18 (Whereupon, the Public Hearing was  
19 concluded at 7:05 p.m.)

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